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Portsmouth City Council

A MEETING OF THE COUNCIL will be held at the Council Chamber - The Guildhall on Tuesday, 10 November 2015 at 2.00 pm and all members of the council are hereby summoned to attend to consider and resolve upon the following business:-

Agenda

- 1 Members' Interests**
- 2 To approve as correct records the Minutes of** (Pages 1 - 16)
 - the Extraordinary and Ordinary Meetings of the Council held on 13 October 2015
- 3 To receive such communications as the Lord Mayor may desire to lay before the Council, including apologies for absence.**
- 4 Deputations from the Public under Standing Order No 24.**
- 5 Questions from the Public under Standing Order 25.** (Pages 17 - 18)
- 6 Appointments**
- 7 Urgent Business - To receive and consider any urgent and important business from Members of the Cabinet in accordance with Standing Order No 26.**
- 8 Treasury Management Mid Year Review for 2015/16** (Pages 19 - 46)

To receive and consider the attached report of the Cabinet held on 5 November 2015, the recommendations for which will follow.
- 9 Contract Procedure Rules** (Pages 47 - 68)

To receive and consider the attached report of the Governance & Audit & Standards Committee held on 6 November 2015, the recommendations for which will follow.
- 10 Review of Members' Code of Conduct and Committee arrangements for assessment, investigation and determination of complaints** (Pages 69 - 80)

To receive and consider the attached report of the Governance & Audit & Standards Committee held on 6 November 2015, the recommendations for which will follow.
- 11 Changes to the designated independent person dismissal procedures** (Pages 81 - 94)

To receive and consider the attached report of the Governance & Audit &

Standards Committee held on 6 November 2015, the recommendations for which will follow.

12 Notices of Motion

(a) Housing Bill

Proposed by Councillor Darren Sanders
Seconded by Councillor Matthew Winnington

The City Council believes that good quality housing that families can afford is essential for families.

The City Council regrets the following decisions of the Government that will reduce the amount of good quality social housing for rent to Portsmouth families:

- * The decision that 200,000 out of 275,000 "affordable homes" to be built in this parliament are to be for sale at a price of up to £250,000 and therefore only 75,000 will be built for rent. This means many Portsmouth families will not be able afford these new "affordable homes".
- * That a tax will be imposed by the Government on the rents of council tenants to fund discounts for housing association tenants who are rich enough to buy their properties. Taxing families on the lowest incomes to fund discounts for people who may well be much better off.
- * The cuts to section 106 payments from developers which will see fewer social housing properties offered to residents in the city from new builds.

These actions will mean that there is less money for the provision of new social rented properties and less money available to provide services to tenants such as repairs, estate services officers, youth clubs or play centres that significantly improve the life of families.

The City Council therefore opposes the current Housing Bill going through Parliament and asks the Leader of the Council to write to the Prime Minister, the Secretary of State for Communities and the two Portsmouth MPs to ask them to express the City Council's opposition to the Bill and to ask them to make changes to the Bill to support the continued provision of sufficient good quality social rented housing to meet the needs of residents of Portsmouth.

(b) Keeping the Fire Service in Portsmouth strong

Proposed by Councillor Gerald Vernon-Jackson
Seconded by Councillor Hugh Mason

The City Council notes the proposals from the Hampshire Fire Authority to reduce the number of full sized fire engines in

Portsmouth.

The current provision is 2 full sized fire engines in Cosham and 3 full sized fire engines at Southsea (one being the engine transferred from Copnor when the fire station was closed).

The City Council notes that after the fire in a high rise in Southampton the guidance from the Fire Service is that if there is a fire in a high rise 5 fire engines need to be in attendance for a major fire to be tackled.

The city council notes that the proposals from Hampshire Fire Service will see one of Cosham's downgraded to a medium sized engine with less equipment and Southsea will have 1 Full size, 1 Medium and 1 van, with the current Aerial Ladder platform downgraded to a secondary response due to the changes of crewing.

This would leave only 4 full sized or medium sized fire engines based in the city, and that to fight a fire in a high rise will need fire engines to come into the city from surrounding areas when roads into the city can be very congested.

The proposals again see many more cuts to fire cover in Portsmouth than to any other area in Hampshire.

The City Council therefore opposes the changes to fire cover proposed by the Hampshire Fire Service and asks for them to be reconsidered by the Fire Authority. The City Council asks our representatives on The Fire Authority to reflect the views of the City Council when a decision is made at the Fire Authority.

(c) Tax Credits

Proposed by Councillor Hugh Mason
Seconded by Councillor Aiden Gray

The City Council wishes to place on record our thanks to the Bishop of Portsmouth for speaking out in the House of Lords debate about the removal of tax credits from around 15,000 low paid working families in Portsmouth.

The independent Institute of Fiscal Studies has examined the cuts to tax credits along with changes in tax and changes to the Minimum Wage and has concluded that the cuts fall heaviest on the poorest families in the country.

The Council regrets the decision of both the city's MPs not to vote against the cuts to tax credits which will hit many low paid families in Portsmouth and ask them to meet with the Bishop of Portsmouth to understand more of the realities of life for low paid working families in Portsmouth.

(d) Individual Electoral Registration

Proposed by Councillor John Ferrett
Seconded by Councillor Aiden Gray

Council notes:

The Electoral Commission's findings in its report into the transition to Individual Electoral Registration (IER) and, in particular, the finding that 1.9 million of the current entries on the electoral register are only being retained under the transitional arrangements from the previous household registration system, which represents 4% of all register entries. The Electoral Commission has previously estimated that the number of people not correctly registered at their current address is around 7.5million across the UK.

The Government want to end the transitional arrangements and fully implement IER 12 months early. However, the Electoral Commission has warned that there is "a risk that a considerable number of eligible voters could be removed from the registers before the significant set of polls scheduled for May 2016 if the transition to IER is brought forward."

Council believes:

That the government's proposals for the introduction of Individual Electoral Registration (IER) remain poorly thought out and implemented, running the risk that voters could be disenfranchised as part of this process.

That the end of the transitional arrangements before IER is fully implemented should remain December 2016 as stated in law and should not be brought forward to December 2015.

Council resolves:

To take every possible step to ensure that as many local residents as possible are registered to vote.

For the Council Leader to write to the Government to express our concerns and to ask for additional resources that ensure that local residents are not disenfranchised from the democratic process.

(e) Tax Exempt Vehicles

Proposed by Councillor Steve Hastings
Seconded by Councillor Robert New

There is a loop hole being exploited by some people due to the category that Historic vehicles are currently placed in and local

authority officers and police are unable to remove these cars and vans when they have no tax and MOT due to DVLA guidelines, which tell them in their guideline notes not to remove any vehicle that is in this category.

This council accepts that they should not be charged for their road fund licence but should be taken out of the category that they are in and placed in with all other cars and vans as this causes many problems to residents where multiple vehicles are littered all over their roads in a state of disrepair and seemingly abandoned, dangerous and a blight on the area and often owned by one person.

Any vehicle within standard vehicle category that has no tax and MOT would be removed by Portsmouth City Council officers and notified to DVLA and then they would follow it through with the registered keeper with fines or disposal.

Therefore this council asks that the Chief Executive, and the Cabinet Member for Traffic and Transport write a joint letter to the Secretary of State for Transport to request that Historic vehicles manufactured prior to 1st January 1975 be removed from the DVLA tax exempt classification alongside such vehicles as steam engines, mowing machines, MOD and agricultural vehicles.

This will mean that local authorities and the police will be empowered to remove these vehicles from the highway if they break the law and have no tax and MOT in the same way as any of us with our own cars and vans thus allowing officials to do their job.

13 Questions from Members under Standing Order No 17. (Pages 95 - 96)

David Williams
Chief Executive

Members of the public are now permitted to use both audio visual recording devices and social media during this meeting, on the understanding that it neither disrupts the meeting or records those stating explicitly that they do not wish to be recorded. Guidance on the use of devices at meetings open to the public is available on the Council's website and posters on the wall of the meeting's venue.

Full Council meetings are digitally recorded.

Civic Offices
Guildhall Square
PORTSMOUTH
2 November 2015

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Agenda Item 2

13 October 2015

1

MINUTES OF AN EXTRAORDINARY MEETING OF THE COUNCIL held at the Guildhall Portsmouth on Tuesday, 13 October 2015 at 2.00 pm

Council Members Present

The Right Worshipful The Lord Mayor
Councillor Frank Jonas (in the Chair)

Councillors

Dave Ashmore	Ian Lyon
Simon Boshier	Hugh Mason
Jennie Brent	Lee Mason
Ryan Brent	Gemma New
Yahiya Chowdhury	Robert New
Alicia Denny	Stuart Potter
Ben Dowling	Darren Sanders
John Ferrett	Phil Smith
Ken Ferrett	Lynn Stagg
David Fuller	Sandra Stockdale
Colin Galloway	Luke Stubbs
Paul Godier	Julie Swan
Aiden Gray	Linda Symes
Scott Harris	David Tompkins
Stephen Hastings	Gerald Vernon-Jackson
Hannah Hockaday	Steve Wemyss
Suzy Horton	Matthew Winnington
Lee Hunt	Rob Wood
Donna Jones	Neill Young

69. Apologies for Absence

Apologies for absence were received on behalf of Councillor Ken Ellcome, Councillor Will Purvis and Councillor Margaret Foster. Councillor Chowdhury sent apologies for lateness.

70. Deputations from the Public under Standing Order 24

The City Solicitor advised that there were no deputations in respect of agenda item 2.

71. Granting of the Freedom of the City to Honorary Alderman Syd Rapson BEM ISM

The Lord Mayor advised that the motion to grant the freedom of the city to Alderman Syd Rapson will need to be passed by not less than two thirds of the members present and voting.

It was

2 13 October 2015

Proposed by Councillor John Ferrett
Seconded by Councillor Donna Jones

That the freedom of the city of Portsmouth be formally granted to Honorary Alderman Syd N J Rapson BEM ISM.

RESOLVED unanimously that

- (i) In the light of the provisions of section 249 of the Local Government Act 1972, considered a proposal to grant the title of Freedom of the City;**
- (ii) The City Council wished to declare formally its further appreciation of Honorary Alderman Syd N J Rapson BEM ISM for his achievements and that he be formally granted the Freedom of the City of Portsmouth; and**
- (iii) This resolution be engrossed and sealed with the common seal for presentation at a future meeting.**

The Lord Mayor invited Honorary Alderman Syd Rapson to respond which he then did thanking members of the city council for conferring this honour upon him.

The meeting concluded at 2.10 pm.

.....
Lord Mayor

MINUTES OF A MEETING OF THE COUNCIL held at the Guildhall
Portsmouth on Tuesday, 13 October 2015 at 2.15 pm

Council Members Present

The Right Worshipful The Lord Mayor
Councillor Frank Jonas (in the Chair)

Councillors

Dave Ashmore	Ian Lyon
Simon Boshier	Hugh Mason
Jennie Brent	Lee Mason
Ryan Brent	Gemma New
Yahiya Chowdhury	Robert New
Alicia Denny	Stuart Potter
Ben Dowling	Darren Sanders
John Ferrett	Phil Smith
Ken Ferrett	Lynn Stagg
David Fuller	Sandra Stockdale
Colin Galloway	Luke Stubbs
Paul Godier	Julie Swan
Aiden Gray	Linda Symes
Scott Harris	David Tompkins
Stephen Hastings	Gerald Vernon-Jackson
Hannah Hockaday	Steve Wemyss
Suzy Horton	Matthew Winnington
Lee Hunt	Rob Wood
Donna Jones	Neill Young

72. Declarations of Interests under Standing Order 13(2)(b)

Councillor Darren Sanders declared a personal non-prejudicial interest in notice of motion 17(d) in that one of the deputations was being made by a member of the Red Cross for which he acts as a volunteer.

Councillor Steve Wemyss declared a personal non-prejudicial interest in agenda item 14 - Care Charter as this originated from Unison of which he is a member.

He also declared a personal non-prejudicial interest in agenda item 17(b) as he is an employee of the NHS but works outside the city.

Councillor Donna Jones, Councillor Gerald Vernon-Jackson and Councillor Neill Young each declared a personal non-prejudicial interest in agenda item 9 - Retaliatory Evictions - in that they are all landlords.

73. Minutes of the Meeting of the Council held on 7 July 2015

It was

Proposed by Councillor Donna Jones
Seconded by Councillor Gerald Vernon-Jackson

That the minutes of the meeting of the council held on 7 July 2015 be confirmed and signed as a correct record.

RESOLVED that the minutes of the meeting of the council held on 7 July 2015 be confirmed and signed as a correct record.

74. Communications and apologies for absence

Apologies for absence had been received on behalf of Councillor Ken Ellcome, Councillor Margaret Foster and Councillor Will Purvis.

The Lord Mayor advised that today's meeting is being filmed.

The Lord Mayor gave details of the evacuation proceedings and advised that a note covering these issues could be found on the green sheet previously circulated.

The Lord Mayor advised of a change in group membership. He said that the Chief Executive had received formal notification that Councillor Ken Ferrett has become a non-aligned independent member. The implications for political proportionality on committees would be dealt with under agenda item 8 and the circulated seating plan had been changed to reflect this change.

The Lord Mayor advised that he had recently visited Honorary Alderman Elaine Baker who was now at home recovering from a major operation and sent best wishes to her on behalf of the council.

75. Deputations from the Public under Standing Order No 24

The City Solicitor advised council that seven deputation requests had been received. He also advised that a number of written representations had been received in respect of item 17(d) and these had been previously circulated to members with the green sheet.

In view of the number of deputation requests made in respect of agenda item 17(d) it was

Proposed by Councillor Gerald Vernon-Jackson
Seconded by Councillor Donna Jones

That standing orders be suspended to allow each person making a deputation on this item to be allowed a full six minutes to speak.

On being put to the vote this was CARRIED.

Honorary Alderman Dr Alan Burnett made deputations in respect of agenda item 14 - Ethical Care Charter and item 17(b) - Guildhall Walk Healthcare Centre. Mr Malcolm Little, Mr M Woolley, Mrs S Benali, Ms Patricia Mooney

and Reverend Canon Nick Ralph each made deputations on agenda item 17(d).

The City Solicitor thanked members of the public for their deputations.

76. Questions from the Public under Standing Order 25

There were no questions from the public.

77. Appointments

The Lord Mayor advised that he had been notified of the appointment of Councillor Alicia Denny to replace Councillor Stuart Potter as a full member on the Housing & Social Care Scrutiny Panel.

He also noted that Councillor Phil Smith had been selected to be the Environment & Community Safety opposition spokesperson for the Liberal Democrat Group.

RESOLVED that Councillor Alicia Denny be appointed as a full member for the UKIP Group on the Housing & Social Care Scrutiny Panel.

78. Urgent Business - To receive and consider any urgent business

It was

Proposed by Councillor Donna Jones
Seconded by Councillor Colin Galloway

That in accordance with Standing Order 8 the January 2016 council meeting be rescheduled from 19 to 26 January should the meeting be required. This was CARRIED.

RESOLVED that in accordance with Standing Order 8, the January 2016 council meeting be rescheduled from 19 to 26 January should the meeting be required.

79. Review of Political Proportionality on Committees and Panels

The Lord Mayor advised that following a change in group strengths on the council, a report from the Chief Executive had been previously circulated regarding a review of the political proportionality on committees.

It was

Proposed by Councillor Donna Jones
Seconded by Councillor Simon Boshier

That council

Adopts the overall political balance and allocation of seats as set out in the Chief Executive's previously circulated report on the basis that

- (i) **Planning Committee - Councillor Stockdale remains on the committee but as a Conservative member, taking up the Conservative Group's extra seat.**
- (ii) **Licensing Committee - Councillor Gemma New is replaced by Councillor Ken Ferrett. Councillor Stockdale is replaced by Councillor Vernon-Jackson. Councillor Aiden Gray is appointed as a Labour group member.**
- (iii) **Housing & Social Care Scrutiny Panel - Councillor Stockdale replaces Councillor Phil Smith.**
- (iv) **Education, Children & Young People Scrutiny Panel - Councillor Ken Ferrett remains on the panel but sits as an independent member (replacing the Labour seat).**

RESOLVED that this be approved.

80. Recommendations from the Housing Cabinet Meeting held on 14 July 2015 - Retaliatory Evictions - Response to notice of motion - Deregulation Act 2015 and the implications on the private rented sector (Housing Cabinet Minute Number 15 refers)

The following minute was opposed to allow for thanks and support to be expressed to the Cabinet Member for his response.

Minute 15 - Retaliatory Evictions - Response to Notice of Motion.

It was

Proposed by Councillor Steve Wemyss
Seconded by Councillor Ian Lyon

That the recommendations contained in minute 15 be adopted. Upon being put to the vote this was CARRIED.

RESOLVED that council notes the decisions set out in Housing Cabinet minute number 15, meeting of 14 July 2015.

81. Recommendations from the Traffic & Transportation Cabinet Meeting held on 23 September 2015 - Fares on Buses - Minute 39

The following minute was opposed to allow for a short debate concerning a meeting that had been arranged with bus operators.

Minute 39 - Fares on Buses in Portsmouth - Response to Notice of Motion

It was

Proposed by Councillor Donna Jones
Seconded by Councillor Luke Stubbs

That the response to the notice of motion referred to it by full council as set out in minute 39 of the Traffic & Transportation's decision meeting be noted. Upon being put to the vote this was CARRIED.

RESOLVED that council noted the response to the notice of motion referred to the Traffic & Transportation's decision meeting dated 23 September 2015 as set out in minute 39.

82. Recommendations from the Cabinet Meeting held on 24 September 2015

The following minutes were approved unopposed:

Minute 58 - Treasury Management Outturn 2014/15

Minute 59 - Revision of Investment Strategy and Treasury Management Monitoring Report 1st Quarter 2015/16

Minute 54 - St George's Day Celebration - Response to Notice of Motion

The following minutes were opposed.

Minute 60 - Revenue Budget Monitoring Quarter 1

It was

Proposed by Councillor Donna Jones

Seconded by Councillor Luke Stubbs

That the recommendations contained in minute 60 be noted. Upon being put to the vote this was CARRIED.

RESOLVED that

- (i) The forecast outturn position for 2015/16 be noted:**
 - (a) An overspend of £5,247,800 before further forecast transfers from/(to) Portfolio Specific Reserves**
 - (b) An overspend of £5,381,100 after further forecast transfers from/(to) Portfolio Specific Reserves.**
- (ii) Members note that any actual overspend at year end will in the first instance be deducted from any Portfolio Specific Reserve balance and once depleted then be deducted from the 2016/17 Cash Limit.**
- (iii) Directors, in consultation with the appropriate Cabinet Member, consider options that seek to minimise any forecast overspend presently being reported and prepare strategies outlining how any consequent reduction to the 2016/17 Portfolio cash limit will be managed to avoid further overspending during 2016/17.**

Minute 53 - Ethical Care Charter - Response to Notice of Motion

It was

Proposed by Councillor Luke Stubbs
Seconded by Councillor Donna Jones

That the recommendations contained in minute 53 - Ethical Care Charter - Response to Notice of Motion be adopted.

As an amendment it was

Proposed by Councillor Matthew Winnington
Seconded by Councillor Ben Dowling

To add the following words after "that the report be noted".

"The city council regrets the decision of the Cabinet not to support the Ethical Care Charter and asks the Cabinet to reconsider its unethical decision."

Following debate, upon being put to the vote the amendment standing in the name of Councillor Matthew Winnington was LOST.

Upon being put to the vote the proposal to note the recommendations set out in paragraph 2 of the report was CARRIED.

RESOLVED that the recommendations set out in paragraph 2 of the report be noted.

Minute 55 - The Administration's Handling of the Emirates Tower Deal - Response to Notice of Motion

The following minute was opposed.

Minute 55 - The Administration's Handling of the Emirates Tower Deal
(Cabinet minute 55 refers)

It was

Proposed by Councillor Donna Jones
Seconded by Councillor Luke Stubbs

That the decisions contained in minute 55 be noted. Upon being put to the vote this was CARRIED.

RESOLVED that the recommendations contained in minute 55 be noted.

83. Notices of Motion

Notice of Motion (a) - Devolving Planning Powers to Portsmouth

It was

Proposed by Councillor Matthew Winnington
Seconded by Councillor Darren Sanders

That this notice of motion be debated today.

Upon being put to the vote this was CARRIED.

It was

Proposed by Councillor Matthew Winnington
Seconded by Councillor Darren Sanders

That notice of motion (a) as set out in the agenda be adopted.

Following debate, upon being put to the vote this was CARRIED.

RESOLVED that

Portsmouth is highly densely populated with a large number of conservation areas so has a need to control what is built where to continue to have a city that residents can be proud of. It is with dismay that Portsmouth residents see planning decisions taken by their democratically elected representatives overturned by unelected central government officials time and time again.

Therefore:

1) This Council believes that planning decisions made locally by the Portsmouth City Council Planning Committee should not be able to be overturned by the unelected officials of the Planning Inspectorate.

2) Any appeals against planning permission refusal should be heard locally by councillors not involved in the original Planning Committee decision.

3) To attain the above this Council calls on a letter to be sent to the Secretary of State for Communities and Local Government and the Minister for Portsmouth asking for these powers to be devolved from Central Government to Portsmouth City Council and therefore give our City and its people full responsibility and final say over future development in Portsmouth.

Council adjourned at 4.35 pm.

Council resumed at 5.00 pm.

Notice of Motion (b) - Guildhall Walk Healthcare Centre

It was

8 13 October 2015

Proposed by Councillor Alicia Denny
Seconded by Councillor Lynne Stagg

That this notice of motion be debated today. Upon being put to the vote this was CARRIED.

It was

Proposed by Councillor Alicia Denny
Seconded by Councillor Lynne Stagg

That notice of motion (b) as set out on the agenda be adopted. As an amendment it was

Proposed by Councillor Darren Sanders
Seconded by Councillor Yahiya Chowdhury

That the following words be added after the words "the council" in the final paragraph

"opposes the proposal and"

Following debate, upon being put to the vote the amendment standing in the name of Councillor Darren Sanders was LOST.

Upon being put to the vote the original notice of motion as set out on the agenda paper was CARRIED.

RESOLVED that

The city council wishes to recognise the high standards of professional skill and attention which are shown to all patients of the Guildhall Walk Healthcare Centre and that it is concerned at proposals by Portsmouth Clinical Commissioning Group (CCG) to close this centre of excellence.

While appreciating the CCG's wish for more efficient use of its community premises and services, and in no way criticising the work done at St Mary's Treatment Centre, the greater good of all residents of Portsmouth, particularly those who are disadvantaged, would be better served by increasing the number of places in the city where appropriate medical treatment can be obtained rather than reducing them.

The council urges all patients and those likely to be affected by the proposed closure of Guildhall Walk Healthcare Centre to make their views known to the CCG before a final decision is made.

Notice of Motion (c) - Concerning Councillors as Corporate Parents

It was

Proposed by Councillor John Ferrett
Seconded by Councillor Donna Jones

That this notice of motion be debated today. Upon being put to the vote, this was CARRIED.

It was

Proposed by Councillor John Ferrett
Seconded by Councillor Donna Jones

That notice of motion (c) as set out on the agenda paper be adopted. Following a short debate an adjournment was requested by the City Solicitor.

Council adjourned at 6.00 pm.

Council resumed at 6.05 pm.

Councillor Donna Jones asked that the motion be put without further debate. The Lord Mayor agreed to do so, whereupon the motion as set out on the agenda was put to the vote and was CARRIED.

RESOLVED that this Council welcomes efforts by the administration to find properties within the city where looked-after children can be better integrated with the community. It is particularly important that those children who are shortly to exit the care of the council are able to live in an environment which enables them to learn and exhibit greater self-reliance. This is vital in enabling looked-after children to prepare for life outside of the care of the council.

Councillors, as Corporate Parents must ensure they are always working with the very best interests of the looked after children in mind. It is essential that councillors ensure looked-after children can integrate seamlessly within the local community. Therefore, this council gives an unequivocal commitment to Portsmouth's looked after children that it will continue to explore how best they can be accommodated and integrated within the local community.

Notice of Motion (d) - Cluster Area for the Dispersal of Asylum Seekers

It was

Proposed by Councillor Luke Stubbs
Seconded by Councillor Steve Wemyss

That notice of motion (d) as set out on the agenda be debated today. Upon being put to the vote this was CARRIED.

It was

Proposed by Councillor Luke Stubbs
Seconded by Councillor Steve Wemyss

That notice of motion (d) as set out on the agenda be adopted.

As an amendment it was

Proposed by Councillor Gerald Vernon-Jackson

Seconded by Councillor Hugh Mason

That new paragraph 2 be inserted after paragraph 1 "The City Council recognises that the proportion of asylum seekers in the South East accommodated in Portsmouth has fallen from 87% in 2007 to 26% now". The Red Cross say this is 126 people

New paragraphs at the end of the motion.

"The Council recognises that refugees/asylum seekers should be supported in all communities, and welcomes comments from the Minister responsible that councils around the country are offering to help. Therefore towns and cities that currently provide no homes for refugees should do so.

The City Council therefore condemns the approach taken by the administration in its interpretation of the decision of the UK Government to offer a safe haven for just a few thousand refugees, and congratulates the people of Portsmouth for their open hearted and generous response to refugees from war which is not being reflected by the Government or the current administration at the City Council.

Following debate, recorded votes on this notice of motion were requested by eight members standing. Upon the amendment standing in the name of Councillor Gerald Vernon-Jackson being put to the vote the following members voted in favour:

David Ashmore
Yahiya Chowdhury
Ben Dowling
John Ferrett
Ken Ferrett
David Fuller
Aiden Gray
Suzy Horton

Lee Hunt
Hugh Mason
Darren Sanders
Phil Smith
Lynne Stagg
Gerald Vernon-Jackson
Matthew Winnington
Rob Wood

The following members voted against:

Simon Boshier
Jennie Brent
Ryan Brent
Alicia Denny
Colin Galloway
Paul Godier
Scott Harris

Steve Hastings
Hannah Hockaday
Donna Jones
Ian Lyon
Lee Mason
Gemma New
Rob New

Sandra Stockdale
Luke Stubbs
Julie Swan
Linda Symes
David Tompkins
Steve Wemyss
Neill Young

The following member abstained:

Councillor Stuart Potter

The amendment standing in the name of Councillor Gerald Vernon-Jackson was therefore LOST.

Upon the original notice of motion as set out in the agenda being put to the vote the following members voted in favour:

Simon Boshier	Steve Hastings	Stuart Potter
Jennie Brent	Hannah Hockaday	Sandra Stockdale
Ryan Brent	Donna Jones	Luke Stubbs
Alicia Denny	Ian Lyon	Linda Symes
Colin Galloway	Lee Mason	David Tompkins
Paul Godier	Gemma New	Steve Wemyss
Scott Harris	Rob New	Neill Young

The following members voted against:

David Ashmore	Lee Hunt
Yahiya Chowdhury	Hugh Mason
Ben Dowling	Darren Sanders
John Ferrett	Phil Smith
Ken Ferrett	Lynne Stagg
David Fuller	Gerald Vernon-Jackson
Aiden Gray	Matthew Winnington
Suzy Horton	Rob Wood

The following member abstained:

Councillor Julie Swan

The notice of motion was therefore CARRIED.

RESOLVED that Since 2000 Portsmouth has been designated as a cluster area for the dispersal of asylum seekers. The intent of this policy was to lower the pressure on London and on those areas with the largest international ports - notably Kent. However while this has worked to some extent, it has done so by simply shifting many of those same pressures elsewhere.

In the first quarter of this year fully 43% of the asylum seekers housed in the south east of England were housed in Portsmouth. While their accommodation and support costs are met by the Home Office, the costs of looking after unaccompanied minors and of providing additional school places falls on the local authority and are only partially reimbursed by central government.

Portsmouth City Council will face some difficult choices as part of the 2016/7 revenue budget. Meanwhile despite substantial investment in the

capital programme to create new school spaces in both the primary and secondary sectors most city schools will remain at or near capacity.

.....
This council acknowledges the chaotic and dangerous conditions that exist for civilians in Syria and elsewhere. It supports efforts by the government to provide aid to those displaced by violence. However it is concerned that any addition to the number of asylum seekers housed in the city will put an undue strain on already stretched local services. It therefore asks the Chief Executive to write to the Home Secretary requesting that Portsmouth be removed from the list of cluster areas.

84. Questions from Members under Standing Order No 17

There were three questions before council but question number 2 from Councillor Colin Galloway was withdrawn.

Question number 1 was from Councillor Julie Swan

"In a recent survey the residents of Fratton Ward were asked if they wanted to keep or scrap residents parking. The result of this is that the former GA Zone has now considerably shrunk in size and it looks as though the new scheme will limit households to two permits.

Will the cabinet member please confirm that they will be informing residents in the new scheme area of these proposed limits, and provide details to both residents in the outlying areas where parking has been removed and the Ward Councillors on how they intend to manage parking on the roads outside of this zone which have traditionally suffered as a result of both commuter and football match day parking problems."

In the absence of the Cabinet Member for Traffic & Transportation, Councillor Donna Jones, Leader of the Council answered this question.

Question number 2 was from Councillor Colin Galloway but was withdrawn.

Question number 3 was from Councillor Stuart Potter

"Can the leader supply an update on the progress of the UKIP motion put forward addressing the sewage problem in and around Langstone harbour? Have the government departments officially responded yet?"

This and a supplementary question was answered by the Leader of the Council, Councillor Donna Jones.

The meeting concluded at 7.55 pm.

Lord Mayor

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Agenda Item 5



Portsmouth
CITY COUNCIL

COUNCIL MEETING

QUESTIONS BY THE PUBLIC AT COUNCIL MEETINGS UNDER STANDING ORDER NO 25

CITY COUNCIL MEETING – 10 November 2015

QUESTION NO 1

FROM: FRANCA WEBB

**TO REPLY: CABINET MEMBER FOR ENVIRONMENT &
COMMUNITY SAFETY
COUNCILLOR ROB NEW**

The Safer Portsmouth Partnership Plan states the demand for support services is likely to increase due to the added pressures resulting from ongoing welfare reforms and unemployment. The police and criminal justice agencies can deal with the criminal aspect of Domestic Violence, however evidence shows that victims and their families who receive specialist Domestic Violence support have better long term outcomes. If the council proceeds to cut DV services, what support provision will victims and their families have?

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Agenda Item 8

Title of Meeting	Cabinet City Council Governance & Audit & Standards Committee (information only)
Subject:	Treasury Management Mid-Year Review for 2015/16
Date of decision:	5 November 2015 (Cabinet) 6 November 2015 (Governance & Audit & Standards Committee – Information only) 10 November 2015 (City Council)
Report by:	Chris Ward, Director of Financial & Information Services and Section 151 Officer
Wards affected:	All
Key decision:	Yes
Budget & policy framework decision:	Yes

1. Purpose of report

The purpose of the report is to review the current treasury management position and strategy and make recommendations to improve the strength and performance of the treasury management operation. This report seeks to amend the minimum revenue provision (MRP) policy for the repayment of unsupported borrowing, to allow a wider range of investments to be made on the basis of a single credit rating, and to review the investment counter party limits. Appendix A aims to inform members and the wider community of the Council's Treasury Management position at 30 September 2015 and of the risks attached to that position.

2. Recommendations

1. That the annuity method of calculating the minimum revenue provision (MRP) for the repayment of debt is applied with effect from 2015/16 to General Fund post 1 April 2008 self-financed borrowing excluding:
 - Finance Leases
 - Service concessions (including Private Finance Initiative schemes)
 - Borrowing to fund long term debtors (including finance leases);
2. That investments be made in enhanced or cash plus money market funds on the basis of a single credit rating and that these be treated as category 6 investments
3. That the investment counter party limits be revised as shown in Appendix B

4. That the following investment duration limits be approved:

	Maximum Duration Limit
<u>Category 1</u> United Kingdom Government including the Debt Management Office Deposit Facility	Up to 5 years
<u>Category 2</u> Local authorities in England, Scotland and Wales	Up to 5 years
<u>Category 3</u> RSLs with a single long term credit rating of Aa-	Up to 10 years
<u>Category 4</u> Banks (including equity trackers) with a short term credit rating of F1+ and a long term rating of Aa-. Aaa rated money market funds.	Up to 5 years
<u>Category 5</u> RSLs with a single A long term credit rating of A-	Up 10 years
<u>Category 6</u> Banks (including equity trackers) and corporate bonds with a short term credit rating of F1 and a long term rating of A+. Building societies with a short term credit rating of F1 and a long term rating of A. Enhanced money market funds with a single AA credit rating.	Up to 5 years.
<u>Category 7</u> Banks (including equity trackers) and corporate bonds with a short term credit rating of F1 and a long term rating of A. Building societies with a short term credit rating of F1 and a long term rating of A-.	Up to 5 years
<u>Category 8</u> Banks (including equity trackers) and corporate bonds with a short term credit rating of F1 and a long term rating of A-.	Up to 5 years
<u>Category 9</u> Building societies with a short term credit rating of F2 and a long term rating of BBB.	Up to 2 years
<u>Category 10</u> Unrated building societies in the strongest financial position	Up to 2 years
<u>Category 11</u> Unrated building societies in a strong financial position	Up to 364 days

5. That the following actual Treasury Management indicators for the second quarter of 2015/16 be noted:

(a) The Council's debt at 30 September was as follows:

Prudential Indicator 2015/16	Limit	Position at 30/9/15
	£M	£M
Authorised Limit	503	469
Operational Boundary	484	469

(b) The maturity structure of the Council's borrowing was:

	Under 1 Year	1 to 2 Years	3 to 5 Years	6 to 10 Years	11 to 20 Years	21 to 30 Years	31 to 40 Years	41 to 50 Years
Lower Limit	0%	0%	0%	0%	0%	0%	0%	0%
Upper Limit	20%	20%	30%	30%	40%	40%	60%	70%
Actual	1%	4%	3%	4%	17%	11%	19%	41%

(c) The Council's interest rate exposures at 30 September 2015 were:

	Limit	Actual
	£m	£m
Fixed Interest	304	218
Variable Interest	(358)	(242)

(d) Sums invested for periods longer than 364 days at 30 September 2015 were:

Maturing after	Original Limit	Actual
	£m	£m
31/3/2016	243	159
31/3/2017	231	70
31/3/2018	228	5

3. Background

CIPFA's Treasury Management Code requires a Treasury Management Mid-Year Review to be considered by the City Council. The Council's treasury management position at 30 September and the risks attached to that position are reported in Appendix A.

The Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2008 require each authority to "determine for the current financial year an amount of minimum provision which it considers prudent". Our current policy uses the asset life equal instalment method. However, 60% of the Council's borrowings mature in over 30 years meaning that funds are set aside in advance of need. All but £11m of the Council's borrowing is PWLB debt. The PWLB introduced new lower discount rates to calculate premiums on the early repayment of debt in 2010. The increased premiums resulting from this means that the existing debt is unlikely to be repaid early or rescheduled. In the meantime providing MRP using the asset life equal instalment method is contributing to the Council's high cash balances. The need to invest such high cash balances exposes the Council to credit risk in the event that one of the Council's investment counterparties gets into financial difficulties.

The Council has to hold some of its cash in liquid investments in order to meet its expenditure obligations when they fall due. The Council currently invests its short term cash in instant access money market funds which are currently yielding around 0.46%.

The Council changed its provider for investment counter party information on 1st May following the expiry of the previous contract. In addition there have been some changes to the credit ratings of the Council's investment counterparties.

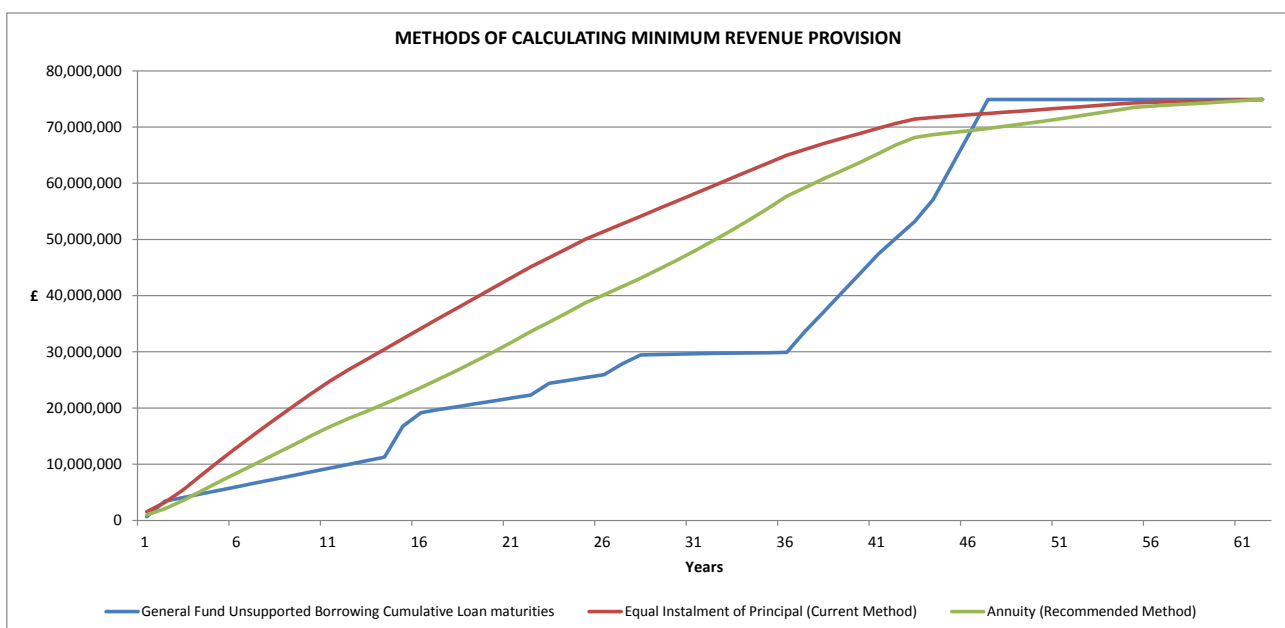
The Council's investment strategy approved by the City Council on 17 March 2015 set various duration limits for different investments depending on their credit quality.

4. Reasons for Recommendations

It is recommended that the annuity method of calculating minimum revenue provision (MRP) for the repayment of debt is applied with effect from 2015/16 to General Fund post 1 April 2008 self-financed borrowing excluding:

- Finance Leases
- Service concessions (including Private Finance Initiative schemes)
- Borrowing to fund long term debtors (including finance leases)

This will still ensure that provision is made for the repayment of unsupported borrowing within the life of the assets that it is used to finance, but in a way that better reflects the maturity pattern of the Council's borrowing and avoids the credit risk associated with providing for the repayment of debt long before there is any realistic chance of the debt actually being repaid. The graph below illustrates this point.



It should also be borne in mind that the real value of the Council's long term borrowing will be considerably eroded by inflation prior to it becoming due for repayment which is a further argument for not providing for its repayment excessively early.

Separate arrangements exist to provide MRP for finance leases, service concessions and borrowing to fund long term debtors. MRP on finance leases and service concessions including Private Finance Initiative (PFI) arrangements equals the charge that goes to write down the balance sheet liability. The principal element of the income receivable from long term debtors is set aside to repay debt if the asset was financed through self-financed borrowing in order that the repayment of the debt is financed from the capital receipt. The principal element of the rent receivable from finance leases is set aside to repay debt if the asset was financed through self-financed borrowing in order that the repayment of the debt is financed from the capital receipt. It is not recommended that these arrangements be changed.

The returns on the Council's short term cash could be significantly enhanced by investing funds where same day access is not required in enhanced or cash plus money market funds which require two to four days' notice of withdrawals. These funds only have a single credit rating whereas the Council's investment policy generally requires investment counter parties to have two credit ratings. This provides the Council with greater assurance as it is relying on the analysis of two credit rating agencies rather than just one. However there is a cost to obtaining multiple credit ratings and enhanced or cash plus funds only have a single credit rating. It is therefore recommended that investments be made in enhanced or cash plus money market funds on the basis of a single credit rating. These funds have AA or AAA credit ratings. However it is recommended that these funds be treated as category 6 (A+) investments to reflect the increased risk of relying on a single credit rating (as opposed to category 4 if two ratings had been obtained).

The Council's new supplier of counter party information has suggested some additional counter parties that meet the Council's credit criteria. It is recommended that these be added to the Council's investment counter party list and that the investment limits be revised to take account of any changes to counter party's credit ratings.

Following the City Council's decision on 13 October to permit unsecured investments with a duration in excess of 2 years to be placed with banks; it is recommended that the following investment duration limits in the investment strategy be approved:

	Maximum Duration Limit
<u>Category 1</u> United Kingdom Government including the Debt Management Office Deposit Facility	Up to 5 years
<u>Category 2</u> Local authorities in England, Scotland and Wales	Up to 5 years
<u>Category 3</u> RSLs with a single long term credit rating of Aa-	Up to 10 years
<u>Category 4</u> Banks (including equity trackers) with a short term credit rating of F1+ and a long term rating of Aa-. Aaa rated money market funds.	Up to 5 years
<u>Category 5</u> RSLs with a single A long term credit rating of A-	Up 10 years
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<u>Category 10</u> Unrated building societies in the strongest financial position	Up to 2 years
<u>Category 11</u> Unrated building societies in a strong financial position	Up to 364 days

5. Equality impact assessment (EIA)

The contents of this report do not have any relevant equalities impact and therefore an equalities impact assessment is not required.

6. Legal Implications

The Section 151 Officer is required by the Local Government Act 1972 and by the Accounts and Audit Regulations 2011 to ensure that the Council's budgeting, financial management, and accounting practices meet the relevant statutory and professional requirements. Members must have regard to and be aware of the wider duties placed on the Council by various statutes governing the conduct of its financial affairs.

7. Director of Finance's comments

All financial considerations are contained within the body of the report and the attached appendices

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 Signed by Director of Financial Services & IS (Section 151 Officer)

Appendices:

Appendix A: Treasury Management Mid-Year Review 2015/16

Appendix B: Investment Counter Party List

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

	<u>Title of document</u>	Location
1	Treasury Management Files	Financial Services
2		

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by the City Council on 10 November 2015.

.....
 Signed by: Leader of the Council

TREASURY MANAGEMENT MID YEAR REVIEW OF 2015/16**1. GOVERNANCE**

The Treasury Management Policy Statement, Annual Minimum Revenue Provision for Debt Repayment Statement and Annual Investment Strategy approved by the City Council on 17 March 2015 provide the framework within which Treasury Management activities are undertaken.

2. ECONOMIC UPDATE**United Kingdom**

UK gross domestic product (GDP) growth rates in 2013 of 2.2% and 2.9% in 2014 were the strongest growth rates of any G7 country; the 2014 growth rate was also the strongest UK rate since 2006 and the 2015 growth rate is likely to be a leading rate in the G7 again, possibly being equal to that of the US. However, quarter 1 of 2015 was weak at +0.4% (+2.9% y/y) though there was a rebound in quarter 2 to +0.7% (+2.4% y/y). Growth is expected to weaken marginally to about +0.5% in quarter 3 as the economy faces headwinds for exporters from the appreciation of Sterling against the Euro and weak growth in the EU, China and emerging markets, plus the dampening effect of the Government's continuing austerity programme, although the pace of reductions was eased in the May Budget.

Despite these headwinds, the Bank of England is forecasting growth to remain around 2.4 – 2.8% over the next three years, driven mainly by strong consumer demand as the squeeze on the disposable incomes of consumers has been reversed by a recovery in wage inflation at the same time that CPI inflation has fallen to, or near to, zero over the last quarter. Investment expenditure is also expected to support growth.

The August Bank of England Inflation Report forecast was notably subdued with inflation barely getting back up to the 2% target within the 2-3 year time horizon. However, with the price of oil taking a fresh downward direction and Iran expected to soon re-join the world oil market after the impending lifting of sanctions, there could be several more months of low inflation still to come, especially as world commodity prices have generally been depressed by the Chinese economic downturn.

There are therefore considerable risks around whether inflation will rise in the near future as strongly as previously expected; this will make it more difficult for the central banks of both the US and the UK to raise rates as soon as had previously been expected, especially given the recent major concerns around the slowdown in Chinese growth, the knock on impact on the earnings of emerging countries from falling oil and commodity prices, and the volatility we have seen in equity and bond markets in 2015 so far, which could potentially spill over to impact the real economies rather than just financial markets.

United States

The American economy has made a strong comeback after a weak first quarter's growth at +0.6% (annualised), to grow by no less than 3.9% in quarter 2 of 2015. While there had been confident expectations during the summer that the Fed. could start increasing rates at its meeting on 17 September, or if not by the end of 2015, the recent downbeat news about Chinese and Japanese growth and the knock on impact on emerging countries that are major suppliers of commodities, was cited as the main reason for the Fed's decision to pull back from making that start. This has led to a reappraisal of the likelihood of any increase occurring in 2015 with early 2016 now being widely regarded as being more likely.

Eurozone (EZ)

In the Eurozone, the European Central Bank (ECB) fired its big bazooka in January 2015 in unleashing a massive €1.1 trillion programme of quantitative easing to buy up high credit quality government and other debt of selected EZ countries. This programme of €60bn of monthly purchases started in March 2015 and it is intended to run initially to September 2016. This already appears to have had a positive effect in helping a recovery in consumer and business confidence and a start to a significant improvement in economic growth. GDP growth rose to 0.5% in quarter 1 2015 (1.0% y/y) but came in at +0.4% (+1.5% y/y) in quarter 2 and looks as if it may maintain this pace in quarter 3. However, the recent downbeat Chinese and Japanese news has raised questions as to whether the ECB will need to boost its QE programme if it is to succeed in significantly improving growth in the EZ and getting inflation up from the current level of around zero to its target of 2%.

3. INTEREST RATE FORECAST

The Council's treasury advisor, Capita Asset Services, has provided the following forecast:

	Dec-15	Mar-16	Jun-16	Sep-16	Dec-16	Mar-17	Jun-17	Sep-17	Dec-17	Mar-18	Jun-18
Bank rate	0.50%	0.50%	0.75%	0.75%	1.00%	1.00%	1.25%	1.50%	1.50%	1.75%	1.75%
5yr PWLB rate	2.40%	2.50%	2.60%	2.80%	2.90%	3.00%	3.10%	3.20%	3.30%	3.40%	3.50%
10yr PWLB rate	3.00%	3.20%	3.30%	3.40%	3.50%	3.70%	3.80%	3.90%	4.00%	4.10%	4.20%
25yr PWLB rate	3.60%	3.80%	3.90%	4.00%	4.10%	4.20%	4.30%	4.40%	4.50%	4.60%	4.60%
50yr PWLB rate	3.60%	3.80%	3.90%	4.00%	4.10%	4.20%	4.30%	4.40%	4.50%	4.60%	4.60%

Capita Asset Services undertook a review of its interest rate forecasts on 11 August. Later in August, fears around the slowdown in China and Japan caused major volatility in equities and bonds and sparked a flight from equities into safe havens like gilts and so caused PWLB rates to fall. However, there is much volatility in rates as news ebbs and flows in negative or positive ways and news in September in respect of Volkswagen, and other corporates, has compounded downward pressure on equity prices. This latest forecast includes a first increase in Bank Rate in quarter 2 of 2016.

Despite market turbulence in late August, and then September, causing a sharp downturn in PWLB rates, the overall trend in the longer term will be for gilt yields and PWLB rates to rise, due to the high volume of gilt issuance in the UK, and of bond issuance in other major western countries. Increasing investor confidence in eventual world economic recovery is also likely to compound this effect as recovery will encourage investors to switch from bonds to equities.

The overall balance of risks to economic recovery in the UK is currently evenly balanced. Only time will tell just how long this current period of strong economic growth will last; it also remains exposed to vulnerabilities in a number of key areas.

Downside risks to current forecasts for UK gilt yields and PWLB rates currently include:

- Geopolitical risks in Eastern Europe, the Middle East and Asia, increasing safe haven flows.
- UK economic growth turns significantly weaker than we currently anticipate.
- Weak growth or recession in the UK's main trading partners - the EU, US and China.

- A resurgence of the Eurozone sovereign debt crisis.
- Recapitalisation of European banks requiring more government financial support.
- Monetary policy action failing to stimulate sustainable growth and to combat the threat of deflation in western economies, especially the Eurozone and Japan.
- Emerging country economies, currencies and corporates destabilised by falling commodity prices and / or the start of United States Fed. rate increases, causing a flight to safe havens

The potential for upside risks to current forecasts for UK gilt yields and PWLB rates, especially for longer term PWLB rates include: -

- Uncertainty around the risk of a UK exit from the EU.
- The ECB severely disappointing financial markets with a programme of asset purchases which proves insufficient to significantly stimulate growth in the EZ.
- The commencement by the US Federal Reserve of increases in the Fed. funds rate in 2015, causing a fundamental reassessment by investors of the relative risks of holding bonds as opposed to equities and leading to a major flight from bonds to equities.
- UK inflation returning to significantly higher levels than in the wider EU and US, causing an increase in the inflation premium inherent to gilt yields.

4. NET DEBT

The Council's net borrowing position excluding accrued interest at 30 September 2015 was as follows:

	1 April 2015	30 September 2015
	£'000	£'000
Borrowing	376,471	383,795
Finance Leases	3,027	2,740
Service Concession Arrangements (including Private Finance Initiative)	83,068	82,589
Gross Debt	462,566	469,124
Investments	(321,917)	(408,236)
Net Debt	140,649	60,888

The Council has a high level of investments relative to its gross debt due to a high level of reserves, partly built up to meet future commitments under the Private Finance Initiative schemes and future capital expenditure. However these reserves are fully committed and are not available to fund new expenditure. The £84m of borrowing taken in 2011/12 to take advantage of the very low PWLB rates has also temporarily increased the Council's cash balances.

The current high level of investments increases the Council's exposure to credit risk, ie. the risk that an approved borrower defaults on the Council's investment. In the interim period where investments are high because loans have been taken in advance of need, there is also a short term risk that the rates (and therefore the cost) at which money has been borrowed will be greater than the rates at which those loans can be invested. The level of investments will fall as capital expenditure is incurred and commitments under the Private Finance Initiative (PFI) schemes are met.

5. DEBT RESCHEDULING

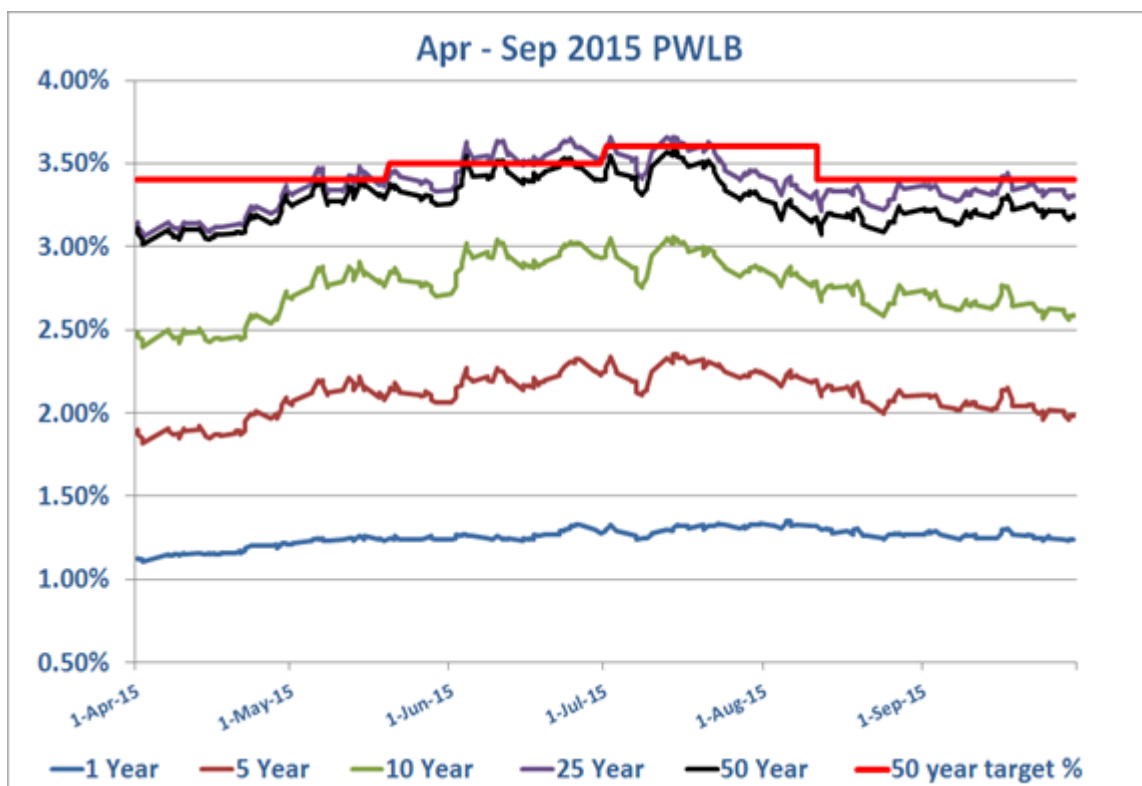
Under certain circumstances it could be beneficial to use the Council's investments to repay its debt. However this normally entails paying a premium to the lender, namely the Public Works Loans Board (PWLB). Debt rescheduling is only beneficial to the revenue account when the benefits of reduced net interest payments exceed the cost of any premiums payable to the lender. Debt rescheduling opportunities have been limited in the current economic climate and by the structure of interest rates following increases in PWLB new borrowing rates in October 2010.

No debt rescheduling was undertaken during the first half of the year.

6. BORROWING ACTIVITY

The City Council has access to borrow £18m from the Public Works Loans Board (PWLB) at the project rate in 2015/16 to fund the development of Tipner, Horsea Island and Dunsbury Hill Farm. The project rate is 0.2% less than the certainty rate that the PWLB normally offers to the Council.

The graph below shows the PWLB's certainty rates in the first six months of 2015/16.



There were many small movements in PWLB rates in the first six months of 2015/16, both upwards and downwards, but overall the general trend has been an increase in interest rates during the first quarter but then a fall during the second quarter. There was a dip in PWLB rates on 24th August and £9m was borrowed from the PWLB at the project rate which was 2.73% at the time. The loan has a term of 15 years repayable at maturity in August 2030.

The remaining £9m of the allocation will be borrowed at a time when PWLB rates are favourable.

The Council's debt at 30 September was as follows:

Prudential Indicator 2015/16	Limit	Position at 30/9/14
	£M	£M
Authorised Limit	503	469
Operational Boundary	484	469

7. MATURITY STRUCTURE OF BORROWING

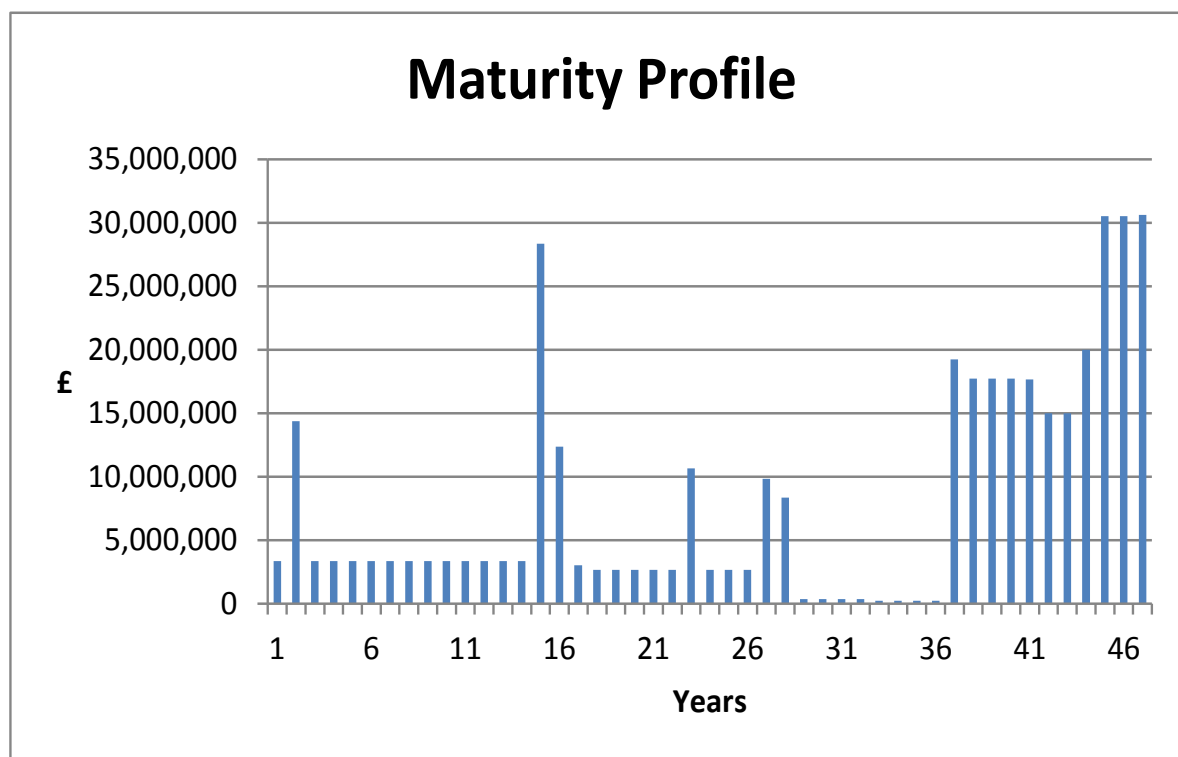
In recent years the cheapest loans have often been very long loans repayable at maturity.

During 2007/08 the Council rescheduled £70.8m of debt. This involved repaying loans from the Public Works Loans Board (PWLB) early and taking out new loans from the PWLB with longer maturities ranging from 45 to 49 years. The effect of the debt restructuring was to reduce the annual interest payable on the Council's debt and to lengthen the maturity profile of the Council's debt.

£50m of new borrowing was taken in 2008/09 to finance capital expenditure. Funds were borrowed from the PWLB at fixed rates of between 4.45% and 4.60% for between 43 and 50 years.

A further £173m was borrowed in 2011/12 to finance capital expenditure and the HRA Self Financing payment to the Government. Funds were borrowed from the PWLB at rates of between 3.48% and 5.01%. £89m of this borrowing is repayable at maturity in excess of 48 years. The remaining £84m is repayable in equal installments of principal over periods of between 20 and 31 years.

As a result of interest rates in 2007/08 when the City Council rescheduled much of its debt and interest rates in 2008/09 and 2011/12 when the City Council undertook considerable new borrowing 60% of the City Council's debt matures in over 30 years' time. This is illustrated in graph below.



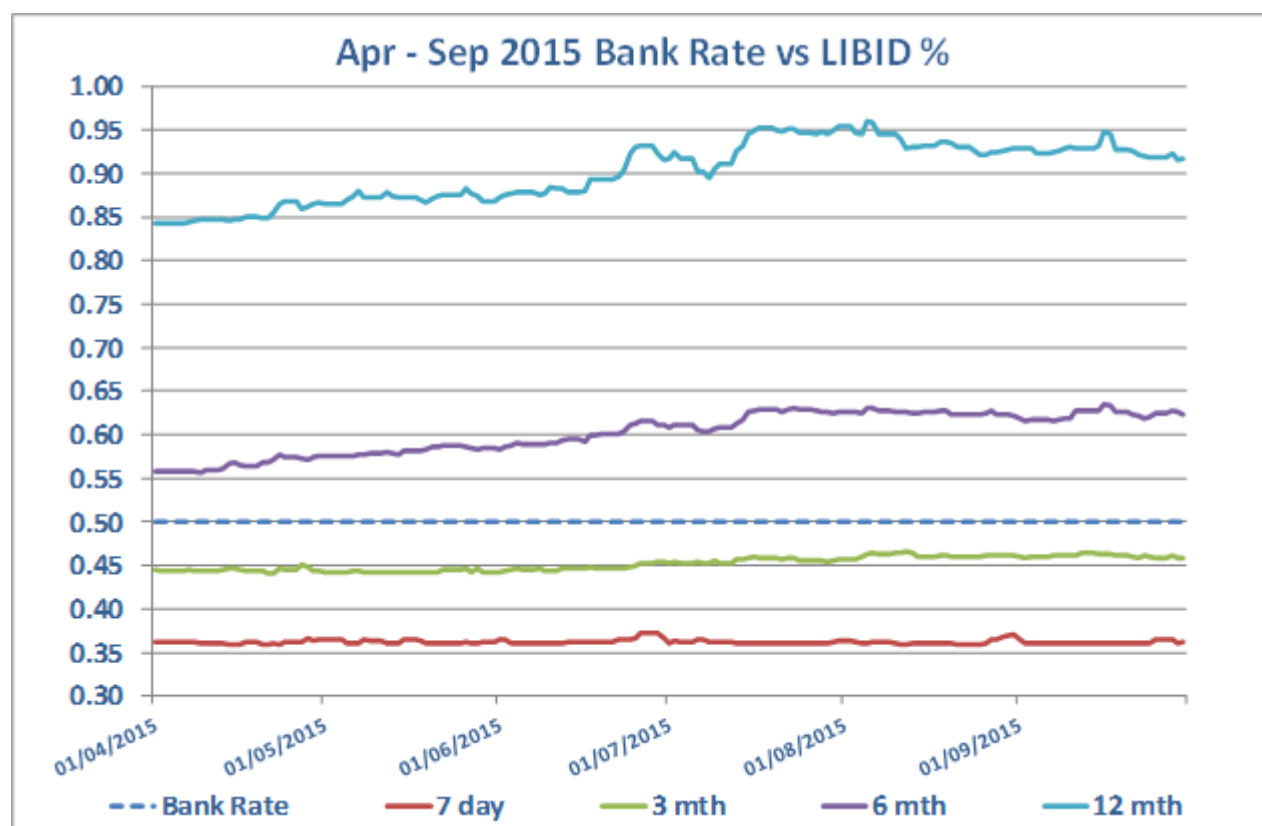
CIPFA's Treasury Management in the Public Services Code of Practice which the City Council is legally obliged to have regard to requires local authorities to set upper and lower limits for the maturity structure of their borrowing. The limits set by the City Council on 17 March together with the City Councils actual debt maturity pattern are shown below.

	Under 1 Year	1 to 2 Years	3 to 5 Years	6 to 10 Years	11 to 20 Years	21 to 30 Years	31 to 40 Years	41 to 50 Years
Lower Limit	0%	0%	0%	0%	0%	0%	0%	0%
Upper Limit	20%	20%	30%	30%	40%	40%	60%	70%
Actual	1%	4%	3%	4%	17%	11%	19%	41%

8. INVESTMENT ACTIVITY

In accordance with the Government's statutory guidance, it is the Council's priority to ensure security of capital and liquidity, and to obtain an appropriate level of return which is consistent with the Council's risk appetite. It is a very difficult investment market in terms of earning the level of interest rates commonly seen in previous decades as rates are very low and in line with the 0.5% Bank Rate.

Short term market interest rates for the first half of 2015/16 are shown in the graph below:



The Council's investment portfolio has increased by £86.3m from £321.9m to £408.2m. This resulted in up to £85m being invested in AAA rated money market funds and 1 month UK Government Treasury Bills which paid interest of between 0.33 and 0.42% until it was possible to invest these funds for a longer term at higher interest rates. This caused the average return on the Council's investments to fall from 0.76% in 2014/15 to 0.68% in the first quarter of 2015/16. Despite this the Council has been able to reduce its investments in other local authorities by £54.5m from £161.5m to £107.0m. Local authorities are currently typically offering 0.5% for a year or 0.9% for two years compared to 1.05% for a year or 1.25% for two years from other borrowers.

The overall investment portfolio yield for the first six months of the year is 0.76%.

The Council's budgeted investment return for 2015/16 is £2,297k, and performance for the year to date is £376k above budget. This is due to having more cash to invest than had been anticipated and improved investment returns.

9. REVISION OF INVESTMENT COUNTER PARTIES

The Council changed its provider for counter party information on 1st May following the expiry of the previous contract. The Council's new supplier of counter party information has suggested some additional counter parties that meet the Council's credit criteria.

In addition there have been a lot of changes to institutions credit ratings in the first six months of 2015/16. Following the financial crisis many governments, including the UK government, put bank resolution arrangements in place so that if a bank fails in future, it will be depositors that fund the resolution of the failure rather than the tax payer. This resulted in numerous banks being placed on negative outlook by the credit rating agencies as they considered whether uplifts to credit ratings on the basis of sovereign support were still justified. At the same time the regulatory authorities have required banks to strengthen their balance sheets. Uplifts to credit ratings for sovereign support have now been largely removed. The credit rating agencies have also changed their methodologies to focus more on loss absorbing capital, effectively shareholders' funds. The credit rating agencies have now completed many of their reviews and as a result of banks strengthening their balance sheets, many of the negative outlooks that were placed on banks did not actually result in downgrades.

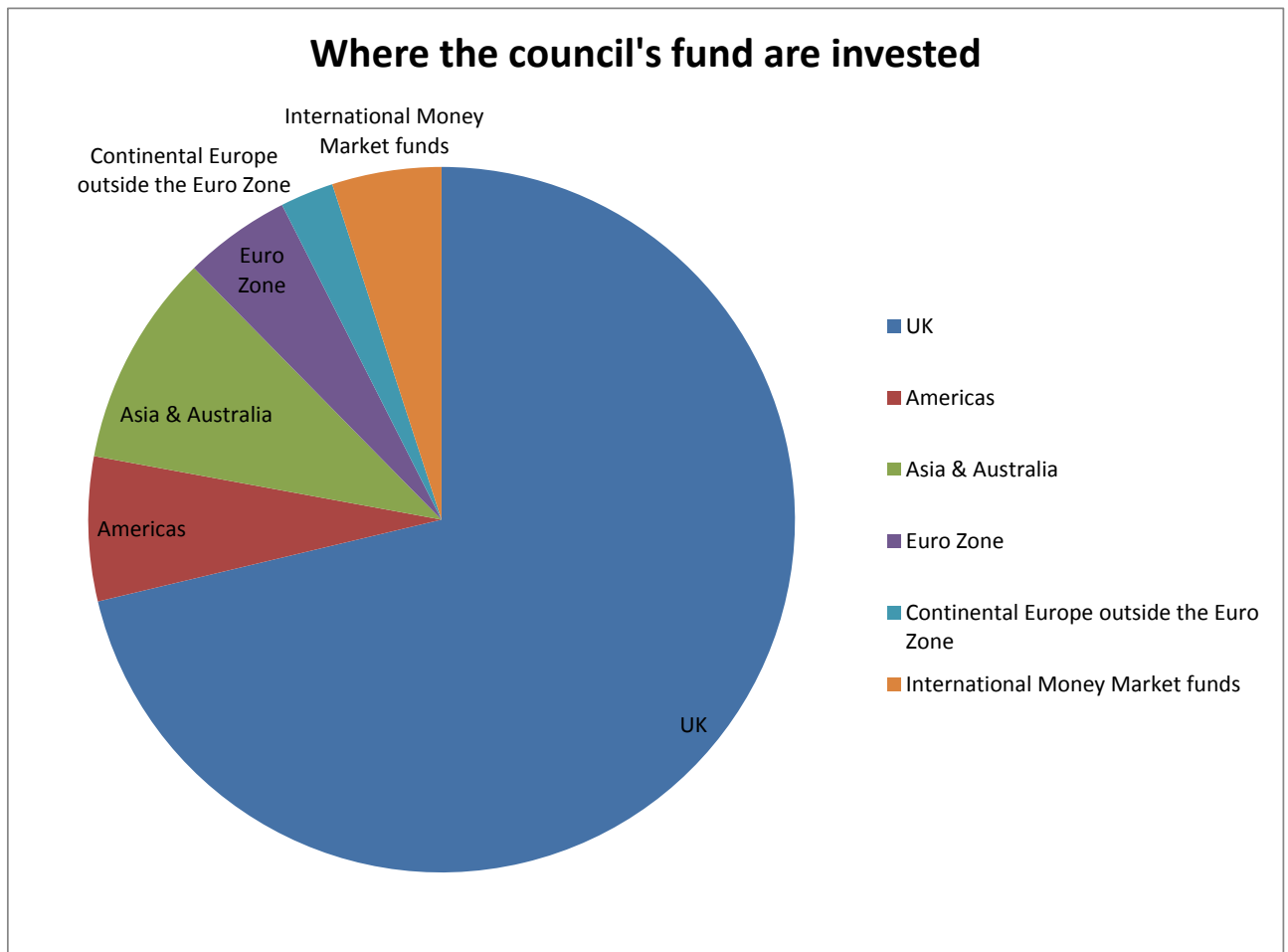
It is recommended that the new counter parties identified be added to the Council's investment counter party list and that the investment limits be revised to take account of any changes to counter party's credit ratings.

10. SECURITY OF INVESTMENTS

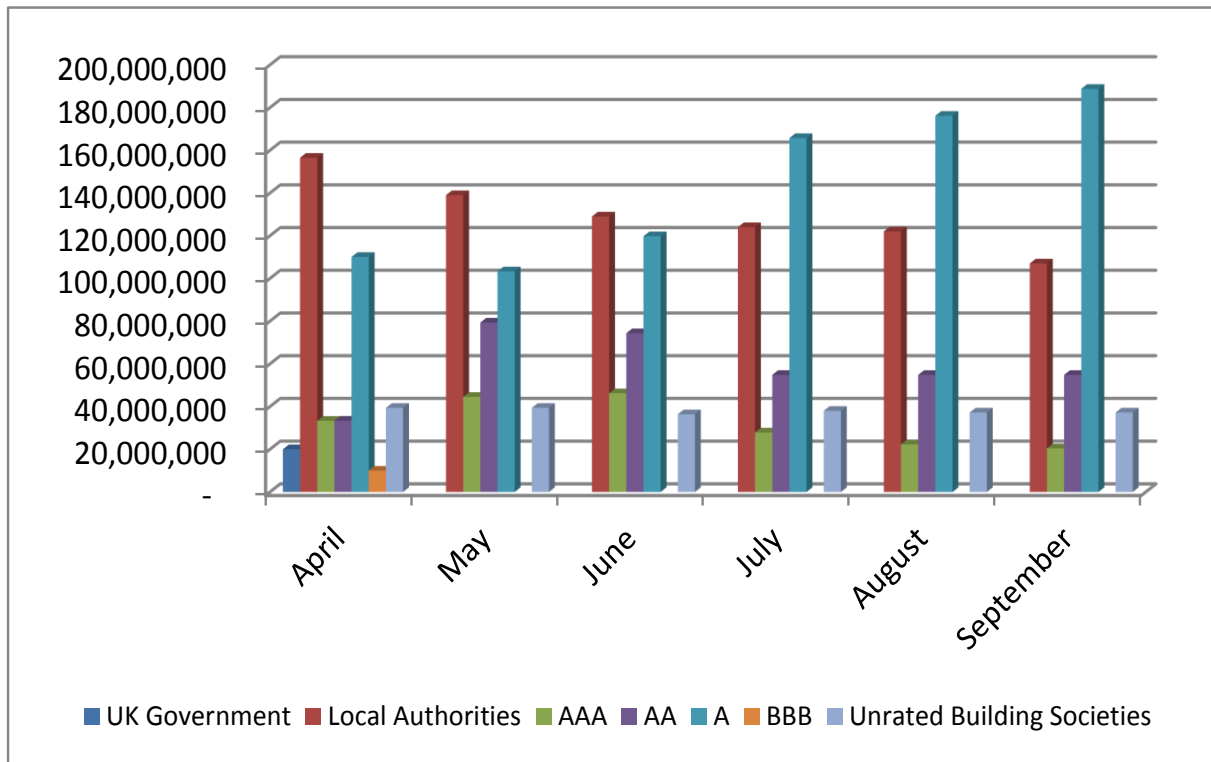
The risk of default has been managed through limiting investments in any institution to £30m or less depending on its credit rating and spreading investments over countries and sectors.

At 30 September 2015 the City Council had on average £5.8m invested with each institution.

The chart below shows where the Council's funds were invested at 30 September 2015.



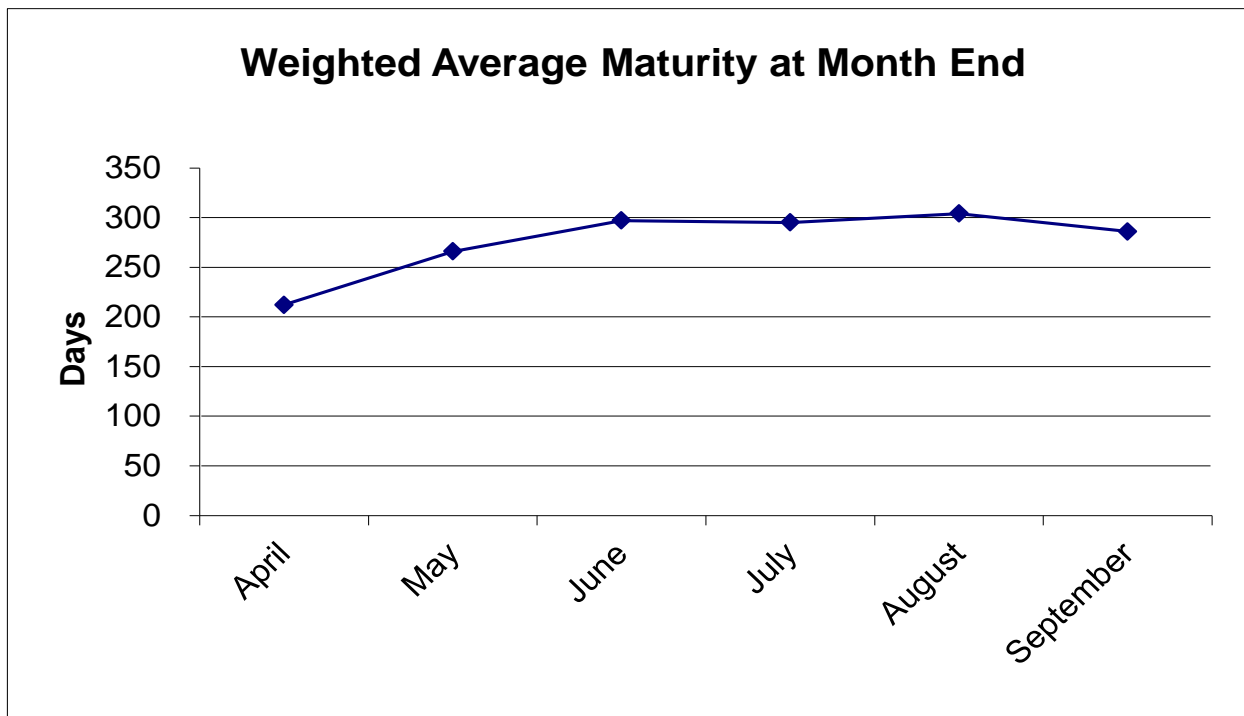
The chart below shows how the Council's investment portfolio has changed in terms of the credit ratings of investment counter parties over the first six months of 2015/16.



It can be seen from the graph above that investments in local authorities have declined over the first six months of 2015/16. These investments have largely been replaced by investments in A rated counter parties which generally offer a better return than investments in local authorities.

11. LIQUIDITY OF INVESTMENTS

The weighted average maturity of the City Council's investment portfolio started at 212 days in April and increased to 297 days in June as suitable investments opportunities became available for the increased level of cash in the first quarter of the year. Since June the weighted maturity of the investment portfolio has been fairly stable. This is shown in the graph below.



The Treasury Management Policy seeks to maintain the liquidity of the portfolio, ie. the ability to liquidate investments to meet the Council's cash requirements, through maintaining at least £10m in instant access accounts. At 30 September £20.4m was invested in instant access accounts. Whilst short term investments provide liquidity and reduce the risk of default, they do also leave the Council exposed to falling interest rates.

Under CIPFA's Treasury Management Code it is necessary to specify limits on the amount of long term investments, ie. investments exceeding 364 days that have maturities beyond year end in order to ensure that sufficient money can be called back to meet the Council's cash flow requirements. The Council's performance against the limits set by the City Council on 17 March 2015 is shown below.

Maturing after	Limit	Actual
	£m	£m
31/3/2016	243	159
31/3/2017	231	70
31/3/2018	228	5

12. INTEREST RATE RISK

This is the risk that interest rates will move in a way that is adverse to the City Council's position.

The CIPFA Treasury Management in the Public Services: Code of Practice and Cross-Sectoral Guidance Notes require local authorities to set upper limits for fixed interest rate exposures. Fixed interest rate borrowing exposes the Council to the risk that interest rates could fall and the Council will pay more interest than it need have done. Long term fixed interest rate investments expose the Council to the risk that interest rates could rise and the Council will receive less income than it could have received. However fixed interest rate exposures do avoid the risk of budget variances caused by interest rate movements. The Council's performance against the limits set by the City Council on 17 March 2015 is shown below.

	Limit	Actual
	£m	£m
Maximum Projected Gross Borrowing – Fixed Rate	395	384
Minimum Projected Gross Investments – Fixed Rate	(91)	(166)
Fixed Interest Rate Exposure	304	218

The CIPFA Treasury Management in the Public Services: Code of Practice and Cross-Sectoral Guidance Notes also require local authorities to set upper limits for variable interest rate exposures. Variable interest rate borrowing exposes the Council to the risk that interest rates could rise and the Council's interest payments will increase. Short term and variable interest rate investments expose the Council to the risk that interest rates could fall and the Council's investment income will fall. Variable interest rate exposures carry the risk of budget variances caused by interest rate movements. The Council's performance against the limits set by the City Council on 17 March 2015 is shown below.

	Limit	Actual
	£m	£m
Minimum Projected Gross Borrowing – Variable Rate	-	-
Maximum Projected Gross Investments – Variable Rate	(358)	(242)
Variable Interest Rate Exposure	(358)	(242)

The City Council is particularly exposed to interest rate risk because all the City Council's debt is made up of fixed rate long term loans, but most of the City Council's investments are short term. Future movements in the Bank Base Rate tend to affect the return on the Council's investments, but leave fixed rate long term loan payments unchanged. This could favour the City Council if short term interest rates rise.

The risk of a 0.5% change in interest rates to the Council is as follows:

<u>Effect of +/- 0.5% Rate Change</u>	2015/16 (Part Year)	2016/17	2017/18
	£'000	£'000	£'000
Long Term Borrowing	-	2	55
Investment Interest	(123)	(641)	(780)
Net Effect of +/- 0.5% Rate Change	(123)	(639)	(725)

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INVESTMENT COUNTER PARTY LIST

Category	Counter Party	Average Long Term Credit Rating *	Comments	Investment Limit £	Maximum Term
1	United Kingdom Government including investments explicitly guaranteed by the UK Government	AA+		Unlimited	5 years
2	All local authorities in England, Scotland & wales	n/a		30,000,000	5 years
3	Registered Social Landlords (RSLs)	AA-		30,000,000	10 years
4	Australia & New Zealand Banking Group	AA-		26,000,000	5 years
4	Commonwealth Bank of Australia	AA-		26,000,000	5 years
4	National Australia Bank	AA-		26,000,000	5 years
4	Westpac Banking Corporation	AA-		26,000,000	5 years
4	Bank of Nova Scotia	AA-		26,000,000	5 years
4	Toronto Dominion Bank	AA		26,000,000	5 years
4	DZ Bank AG	AA-	New counter party	26,000,000	5 years
4	Landwirtschaftliche Rentenbank	AAA	New counter party	26,000,000	5 years
4	NRW Bank	AA	New counter party	26,000,000	5 years
4	Bank Nederlanden Gemeeten	AA+	New counter party	26,000,000	5 years
4	Nederlandse Waterschapsbank NV	AA+	New counter party	26,000,000	5 years
4	DBS Bank	AA		26,000,000	5 years
4	Overseas Chinese Banking Corp	AA		26,000,000	5 years
4	United Overseas Bank	AA		26,000,000	5 years
4	Nordia Bank AB	AA-		26,000,000	5 years
4	Svenska Handelsbanken	AA-	Upgraded from category 6	26,000,000	5 years
4	HSBC Bank plc	AA-	Upgraded from category 6	26,000,000	5 years
4	Bank of New York Mellon	AA-		26,000,000	5 years
4	JP Morgan Chase Bank NA	AA-	Upgraded from category 6	26,000,000	5 years
4	Wells Fargo Bank NA	AA-		26,000,000	5 years
4	Nordic Investment Bank	AAA		26,000,000	5 years
4	Inter-American Development Bank	AAA		26,000,000	5 years
4	IBRD (World Bank)	AAA		26,000,000	5 years
4	Council of Europe Development Bank	AA+		26,000,000	5 years
4	European Bank for Reconstruction & Development	AAA		26,000,000	5 years
4	European Investment Bank	AA+		26,000,000	5 years

Category	Counter Party	Average Long Term Credit Rating *	Comments	Investment Limit £	Maximum Term
4	Global Treasury Funds Plc	AAA	Money Market Fund	26,000,000	Instant Access
4	Morgan Stanley Funds Plc	AAA	Money Market Fund	26,000,000	Instant Access
4	Short Term Investment Company (Global Series) Plc	AAA	Money Market Fund	26,000,000	Instant Access
4	Goldman Sachs Sterling Liquidity Reserve	AAA	Money Market Fund	26,000,000	Instant Access
4	Scottish Widows Investment Partnership Global Liquidity Sterling Fund	AAA	Money Market Fund	26,000,000	Instant Access
4	BNY Mellon Sterling Liquidity Fund	AAA	Money Market Fund	26,000,000	Instant Access
4	Deutsche Global Liquidity Series Plc	AAA	Money Market Fund	26,000,000	Instant Access
4	Morgan Stanley Funds Plc	AAA	Money Market Fund	26,000,000	Instant Access
4	Aberdeen Investment Cash OEIC Plc	AAA	New counter party. Money Market Fund	26,000,000	Instant Access
4	Insight Investment	AAA	New counter party. Money Market Fund	26,000,000	Instant Access
4	Federated Investors (UK) LLP	AAA	New counter party. Money Market Fund	26,000,000	Instant Access
4	Royal London Asset Management	AAA	New counter party. Money Market Fund	26,000,000	Instant Access
4	Standard Life Sterling Liquidity Fund	AAA	New counter party. Money Market Fund	26,000,000	Instant Access
5	Registered Social Landlords (RSLs)	A-		20,000,000	10 years

Category	Counter Party	Average Long Term Credit Rating *	Comments	Investment Limit £	Maximum Term
6	Lloyds TSB Bank plc	A+	Upgraded from category 8	20,000,000	5 years
6	Standard Chartered Bank	A+		20,000,000	5 years
6	Bank of Montreal	A+	Downgraded from category 4	20,000,000	5 years
6	Canadian Imperial Bank of Commerce	A+	Downgraded from category 4	20,000,000	5 years
6	Royal Bank of Canada	A+	Downgraded from category 4	20,000,000	5 years
6	Landesbank Hessen - Thuringen	A+	New counter party	20,000,000	5 years
6	Sumitomo Mitsui Banking Corporation Europe Ltd	A+	New counter party	20,000,000	5 years
6	Rabobank Nederland NV	A+	Downgraded from category 4	20,000,000	5 years
6	Swedbank AB	A+		20,000,000	5 years
6	DNB Bank	A+		20,000,000	5 years
6	Bank of America NA	A+	New counter party	20,000,000	5 years
6	Citibank NA	A+	New counter party	20,000,000	5 years
6	Morgan Stanley	A+	New counter party	20,000,000	5 years
6	Coventry Building Society	A	Upgraded from category 7	20,000,000	5 years
6	Nationwide Building Society	A	Upgraded from category 7	20,000,000	5 years
6	Standard Life Investments	AAA	New counter party. Short Duration Cash Fund	20,000,000	3 working days notice
6	Aberdeen Investment Cash OEIC Plc	AAA	New counter party. Cash Investment Fund	20,000,000	3 working days notice
6	Insight Investment	AAA	New counter party. Liquidity Plus Fund	20,000,000	4 working days notice
6	Federated Investors (UK) LLP	AAA	New counter party. Cash Plus Fund	20,000,000	2 working days notice
6	Royal London Asset Management	AA	New counter party. Cash Plus Fund	20,000,000	2 working days notice

Category	Counter Party	Average Long Term Credit Rating *	Comments	Investment Limit £	Maximum Term
7	Santander UK Plc	A	New Counter party	13,000,000	5 years
7	Barclays Bank Plc	A	Upgraded from category 8	13,000,000	5 years
7	Macquarie Bank Ltd	A	New Counter party	13,000,000	5 years
7	National Bank of Canada	A	Downgraded from category 6	13,000,000	5 years
7	Danske Bank	A	New counter party	13,000,000	5 years
7	Landesbank Baden Wurtenburg	A	New counter party	13,000,000	5 years
7	ABN Amro Bank NV	A		13,000,000	5 years
7	ING Bank NV	A		13,000,000	5 years
7	Skandinaviska Enskilda Banken (SEB)	A		13,000,000	5 years
7	Credit Suisse	A		13,000,000	5 years
7	UBS AG	A		13,000,000	5 years
7	Goldman Sachs (including Goldman Sachs International Bank)	A	New counter party	13,000,000	5 years
7	National Bank of Canada	A		13,000,000	5 years
7	Leeds Building Society	A-		13,000,000	5 years
8	Deutsche Bank AG	A-		10,000,000	5 years
8	Bayern LB	A-	New counterparty	10,000,000	5 years
9	Yorkshire Building Society	A-	Short term rating P2	10,000,000	2 years
10	Furness Building Society	Unrated		4,200,000	2 years
10	Leek United Building Society	Unrated		4,200,000	2 years
10	Newbury Building Society	Unrated		3,900,000	2 years
10	Hinckley & Rugby Building Society	Unrated		2,800,000	2 years
10	Tipton & Coseley Building Society	Unrated		1,800,000	2 years
10	Marsden Building Society	Unrated		1,700,000	2 years
10	Dudley Building Society	Unrated		1,600,000	2 years
10	Loughborough Building Society	Unrated		1,400,000	2 years
10	Harpenden Building Society	Unrated		1,400,000	2 years
10	Stafford Railway Building Society	Unrated		1,200,000	2 years
10	Swansea Building Society	Unrated		1,100,000	2 years
10	Chorley and District	Unrated		1,000,000	2 years
11	Nottingham Building Society	BBB	Single rating	6,000,000	364 days
11	Progressive Building Society	Unrated		6,000,000	364 days
11	Cambridge Building Society	Unrated		5,700,000	364 days
11	Monmouthshire Building Society	Unrated		4,800,000	364 days
11	Darlington Building Society	Unrated		2,600,000	364 days
11	Market Harborough Building Society	Unrated		2,000,000	364 days
11	Melton Mowbray Building Society	Unrated		1,900,000	364 days
11	Scottish Building Society	Unrated		1,900,000	364 days
11	Hanley Economic Building Society	Unrated		1,600,000	364 days
11	Mansfield Building Society	Unrated		1,400,000	364 days
11	Vernon Building Society	Unrated		1,300,000	364 days

Notes

* The long term credit ratings shown are adjusted to take account of possible future actions resulting from negative watches & outlooks.

Agenda Item 9



Portsmouth
CITY COUNCIL

Title of meetings:	Governance and Audit and Standards Committee Council
Date of meetings:	6 November 2015 10 November 2015
Subject:	Contract Procedure Rules
Report by:	City Solicitor
Wards affected:	All
Key decision:	No
Full Council decision:	Yes

1. Purpose of report

To seek the adoption of revised Contract Procedure Rules to be implemented in place of those approved on 20th July 2010.

2. Recommendations

That the Governance & Audit & Standards Committee

- (1) Agree the proposed changes to the Contract Procedure Rules as set out as Appendix 1 to this report and**
- (2) Recommend the revised Contract Procedure Rules be adopted by Council and brought into force from 1 January 2016.**

3. Background

The current Contract Procedure Rules were adopted by the Council in 2010 and have not been updated since that date. As a result they do not reflect the most up to date legal requirements and practice.

There has also been significant case law interpreting both European and UK procurement procedures.

The effect of the case law and general developments in procurement processes has resulted in the adoption by the European Union of new directives relating to procurement. The UK government is obliged to bring these directives into UK law which it has done with the Public Contract Regulations 2015 which came into force on 26th February 2015. In these regulations the government has also implemented measures designed to make public contract opportunities more accessible to small and medium enterprises.

In addition to this the Council has introduced new procedures, for example Category Management, the Grantway process and the Strategic Management Process, which are not included in the current rules.

The opportunity has also been taken to make the Contract Procedure Rules compatible with an electronic format by including hyperlinks to guidance documents. The Contract Procedure Rules are more outcome based, and are designed to provide appropriate levels of flexibility, in conjunction with targeted oversight.

4. Reasons for recommendations

The Contract Procedure Rules followed by the Council should reflect current law and practice, and should also reflect the Council's approach to risk management. Accordingly they need to be updated to ensure that any risk to the Council caused by a failure to comply with legal requirements is kept to a minimum. The rules should also be in a form which gives as much information, as clearly as possible to those budget holders procuring contracts on behalf of the Council. The revised format of the Rules is considered to achieve that objective.

The Contract Procedure Rules divide contracts into types, depending on the sum of the contract value, and whether they are strategic, operational or transactional. These types are more fully described below:

By Value:

Low - Under £5,000

Medium - Between £5,000 and £100,000

High - Over £100,000, which includes contracts whose value exceeds the EU thresholds for Service and Works contracts of £174,000 and £3,100,000 respectively.

By Type

Strategic - contracts are over four years duration or have a lifetime value in excess of £4 million or is critical to the ongoing effective operation of the council with a supplier market of 3 or less or is annually renewable and has been in place for four years or more or has a high service or reputational risk for the Council.

Operational - contracts are over 18 months but less than four years in duration, or have a lifetime value between £400,000 and £4 million, or is a contract for major equipment requiring ongoing maintenance.

Transactional - contracts are those with a duration of less than 18 months (including extensions) or have a lifetime value under £400,000

or, are a one off supply contract for a product with no ongoing maintenance.

The management and control of risk, in terms of quality assuring tendering, checking for the necessity of a given procurement, and the risk as to the compliance of a given tender with the law on procurements, is assured by way of regular reviews of the procurement practices of budget holders by the Procurement Service through the application of Contract Procedure Rules, Gateway and Grantway processes, overview by the City Solicitor and Section 151 officer and the requirement for all procurements to comply with the Council's Financial Rules. Contract management will be overseen by the Strategic Contract Review Board and the Governance and Audit and Standards Committee.

5. Equality impact assessment

An equality impact assessment is not required as the recommendations do not have a negative impact on any of the protected characteristics as described in the Equality Act 2010

6. Legal implications

Legal comments are contained within the body of this report.

7. Director of Finance's comments

This review of the Contract Procedure Rules reflects the requirements of Financial Rules that are put in place so that the City Council can meet all of its statutory responsibilities for the proper financial stewardship and safeguarding of public funds as required by law.

These revised Contract Procedure Rules need to be read in conjunction with the Financial Rules.

.....
Signed by:

Appendices: Appendix 1 - Draft Contract Procedure Rules

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

.....
Signed by:

Draft Contract Procedure Rules

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1. INTRODUCTION

- 1.1 The Council has a statutory duty under Section 135 Local Government Act 1972 to make Rules for the provision of supplies, services, works and Concessions. These Rules should be read in conjunction with the Council's Procurement Guidance ([link](#)) published on the Council's Intranet which provides more detail on specific procedures and practice.
- 1.2 These Contract Procedure Rules apply to all new procurements from 1 January 2016. The City Solicitor is responsible for updating and maintaining these Rules and has delegated authority to amend these Rules and the Procurement Guidance from time to time in article 12 of the constitution.
- 1.3 These Rules apply to all Contracts that are to be entered into by the Council as appropriate to the value of the transaction. They also apply to any Concession Contracts or Grant Agreements made by the Council that have required service outcomes or specifications.

2. APPLICATION AND INTERPRETATION

2.1 Definitions

In these Rules:

- "Anti Bribery Legislation"** Means the Bribery Act 2010 any provision relating to the prevention of corruption in any legislation relating to Local Government and any statute amending or replacing them and any statutory instrument made thereunder.
- "Authorised Officer"** means the officer with delegated authority from the relevant Service Director for the receipt of quotations and tenders and for signing Contracts
- "Best Value"** means the Council's duty under Section 3 Local Government Act 1999 to promote economies, efficiencies, and effectiveness
- "Category Manager"** means the person responsible for overseeing all procurement and Contract management activity for the Category within the Council that they are responsible for. A list of the current Category Managers may be found [here](#).
- "Commissioner"** means the person responsible for planning and scoping the requirements which form the object of the Contract, as described in the Procurement Guidance.
- "Concession Contract"** means an agreement whereby the Council grants another person, whether legal or natural, the right to provide a service or function, or carry out works, at that person's risk, to the public, as more fully described in Procurement Legislation and with appropriate and measurable levels of service (KPIs)
- "Contract Manager"** means the person responsible for the management of the Contract, its scope and maintaining day-to-day relationships with the supplier as described in the Procurement Guidance.
- "Contract"** means a Contract (whether in writing or otherwise) for supplies, services, or for the execution of any works and also includes Framework Agreements, Dynamic Purchasing Systems, and Concession Contracts. It excludes exempt Contracts.
- "Contracting Authorities"** means Central Government, local government bodies, bodies governed by public law or associations formed by any one or more of these.

"Contract Guide"	means a document based on a standard template which summarises the key procedures and actions to be undertaken in the management of the Contract,
"Contract Operations Manual"	means a document based on a standard template which provides, in a summary form, information on key stakeholders, relationships, contractual and financial arrangements concerning the Contract.
"Contractor"	means any person or company seeking to enter into a Contract with the Council.
"Council"	means Portsmouth City Council.
"Dynamic Purchasing System"	means a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the Contracting Authority and open throughout its validity to any Contractor which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.
"Equalities"	Any duty or requirement placed on the council or any other body by the Equality Act 2011 or any legislation amending or replacing it and any statutory instrument made thereunder.
"eSourcing Solution"	means the on-line system maintained by the Council for notifying potential suppliers and Contractors of Contract opportunities, issuing tender documentation, administration of clarifications, receiving and receipting bids, awarding and managing Contracts and maintaining compliance with the Transparency Code through the publication of Contract spend.
"Estimated Total Cost"	means the aggregate total whole life cost of the supplies or services to be provided or works to be performed under a Contract estimated prior to its procurement, calculated in accordance with Procurement Legislation, as described in the Procurement Guidance (link).
"European Directive"	means a Directive made in accordance with the Treaty on the Functioning of the European Union by the Commission of the European Union.
"European Threshold"	means the threshold applying to local authorities at which supplies, services and works are subject to the European Directives (link).
"Exempt Contract"	means Contracts for the acquisition or disposal of an interest in land, the grant of a licence (unless a licence involves the letting of a Concession Contract), the raising of finance, Contracts of employment or a Contract for the provision of legal services in connection with litigation or dispute resolution.

"Framework Agreement"	means an agreement which establishes the terms under which a Contractor will enter into Contracts with the Contracting Authority in the period during which the Framework Agreement applies. A Contractor may be awarded a Contract under a framework for a period which extends beyond the termination date of the framework providing that the Contract is entered into before that date and is proportionate to the duration of the framework.
"Grant Agreement"	means an agreement whereby the Council provides monies to another person, whether legal or natural to provide a function or service without the expectation of any monetary benefit to the Council except the repayment of the monies if the services are not performed or not performed to a specified standard.
"Joint Procurement Agreement"	means combining the procurement actions of two or more Contracting Authorities. The key defining characteristic is that there should be only one tender published on behalf of all participating authorities.
"Operational Contract"	means a Contract that: <ul style="list-style-type: none"> • lasts more than eighteen (18) months but less than four (4) years (including extensions) in duration; or; • is a Contract with a lifetime value of less than £4 million and greater than £400,000 (including extensions) or; • is a Contract for major equipment requiring on-going maintenance. <p>Notwithstanding the above, a Contract that exceeds eighteen (18) months in length and is less than £100,000 in lifetime value is classified as a Transactional Contract.</p>
"Procurement Category Business Partner"	means the procurement officer responsible for advising the relevant Authorised Officer.
"Procurement Document"	means any document produced or referred to by the Council to describe or determine elements of the procurement or the procedure, including the Contract notice, the prior information notice where it is used as a means of calling for a competition, the technical specifications, the descriptive document, the invitation to tender, proposed conditions of contract, formats for the presentation of documents by Contractors, information on generally applicable obligations and any additional documents
"Procurement Legislation"	means the procurement directives of the European Union and any regulations that implement them within the United Kingdom
"Service Director"	means the senior officer under the Council's constitution of the Council Service responsible for the Contract
"Social Value Duty"	Means the duty imposed upon the Council by the Public Services Social Value Act 2011

"Regulated Contract"	means a Contract to be entered into which is subject to the provisions of the Procurement Legislation (in particular the Public Contracts Regulations 2015 and Concession Contracts Regulations 2016 as amended or replaced from time to time). The most up to date version of the Regulations may be obtained from Legal Services.
"Strategic Contract"	means a Contract that: <ul style="list-style-type: none"> • lasts more than four (4) years (including extensions) in duration; or • is a Contract with a lifetime value in excess of £4 million (including extensions); or • is a Contract which is critical to the ongoing effective operation of the Council and is sourced from a market that only has three or fewer providers capable of supply; or • is an annually renewable Contract that has been in place for four or more years; or • is a Contract with potential for either high service user risk or high risk of reputational impact to the Council. <p>Notwithstanding the above, a Contract that exceeds four (4) years in length but is under £1 million in lifetime value is classified as an Operational Contract.</p>
"Transactional Contract"	means a Contract that; <ul style="list-style-type: none"> • lasts less than eighteen (18) months (including extensions); or • has a lifetime value less than £400,000 (including extensions); or • is a Contract for one-off supplies for a product to be consumed with no on-going maintenance.
"Transparency Information/Code"	means the information that the Council is required to publish under the Local Authority Transparency Code 2015 to be found at https://www.gov.uk/government/publications/local-government-transparency-code-2015 as amended or replaced from time to time.
"Umbrella Agreement"	means one of the following agreement types: Framework Agreements, Dynamic Purchasing System, corporate Contracts, shared service arrangements, purchase of services from another Contracting Authority, etc.

Any departure from the definitions of "Operational", "Transactional" or "Strategic" in relation to Contracts shall be approved by the Procurement Manager, whose decision shall be final.

2.2 Compliance and Best Value, Social Value Duties, Equalities and Anti-Bribery Legislation

Every Contract, except Exempt Contracts, made by the Council shall comply with these Rules. Where compliance with these Rules contradicts the requirements of any statutory legislation the views of Legal Services must be obtained. Where compliance with these rules contradicts any specific best practice guidance advice must be sought from Legal Services and Procurement Services.

The Council is under a legal duty to promote Best Value and to consider the Public Services (Social Value) Act 2013 and the Public Sector Equality Duty and every officer engaged in the letting of Contracts shall have regard to these duties.

All Members and Officers of the Council must disclose any conflict of interest that they may have relating to a Contract to which these rules relate and in which they are acting on behalf of the Council. If any member or officer has such an interest they must not take any further part in the awarding of the Contract or grant and complete any appropriate declarations and registrations of interest.

No Member or Officer may solicit or receive any gift or financial inducement in respect of any Contract which is being awarded by the Council or commit any corrupt act or any offence under the Bribery Act 2010 or any act in breach of the Codes and Protocols set out in Part 4 of the Council's Constitution.

2.3 Subdivision of Contracts

No Contract shall be subdivided into smaller Contracts or let via a series of short term agreements so as to avoid compliance with these Rules or Procurement Legislation. Contracts may be divided into lots, particularly to encourage procurement opportunities for Small and Medium Enterprises but the costs of the Contract shall be aggregated accordingly. Where a Regulated Contract is not divided into lots then a written record of that decision, with reasons, shall be included in the Contract notice and kept on the Council's eSourcing Solution. Detailed guidance on aggregation is provided in the Procurement Guidance. Contract and Category Managers must review the aggregate spend on Contracts for which they are responsible regularly (and at least every 6 months) to assess whether new Contracts should be procured.

2.4 Value Added Tax

In calculating the value of a Contract for the purposes of these Rules, the sum shall be exclusive of VAT.

2.5 Schools

Maintained Schools, and the Council where it acts on their behalf, must comply with these Rules when procuring Contracts. This includes use of the Council's eSourcing solution for such Contracts. In addition the appropriate Contract register entries must be made as set out in Rule 4.

2.6 Other Contracting Authorities

Where the Council procures a Contract jointly with one or more other Contracting Authorities then approval of the proposed tender must be given through the Council's Gateway Process involving, where appropriate, the Strategic Contract Management Board. Where such a collaborative procurement exercise is undertaken then the Procurement Category Business Partner must be consulted and use of a Joint Procurement Agreement shall be considered as appropriate.

3. PROCUREMENT GUIDANCE

3.1 Members and Officers must have regard to the guidance relating to the procurement of Contracts through the Gateway process and the awarding of grants through the Grantway process. Officers must also ensure that they carry out ongoing management of the Contract in accordance with these rules and any guidance issued by the Procurement Service.

4. RECORD KEEPING

4.1 For all Contracts with a value of £5,000 or greater the following must be logged on the Council's eSourcing solution prior to commencement of the Contract:

- A copy of the draft Contract document to be replaced with a signed copy when available.
- The evaluation documents
- The standstill notice - if applicable

- Any waivers
- Any variations to the Contract
- Copy of the Contract operations manual (in respect of Strategic Contracts)
- Copy of the Contract Guide (in respect of Operational and Strategic Contracts)

4.2 Contracts should be reviewed annually and information updated accordingly.

4.3 A copy of the Contract Set-up form is available [here](#)

5. FORM OF CONTRACT

5.1 Contracts must accord with the Approved Forms of Contract ([link](#)), and any significant amendments or deviations must:

- a) Be referred to the Service Director, in relation to Contracts up to a value of £50,000;
- b) Be referred to the Procurement Category Business Partner, in relation to Contract with a value between £50,000 and £100,000
- c) Be referred to Legal Services in relation to Contracts with a value of £100,000 or above.

Each of whom shall have regard to the strategic importance of the Contract, and the risks associated with the change.

5.2 Risks shall be categorised as low, medium and high.

- A Low Risk is one which is unlikely to occur and which will have little or no impact on the provision of supplies and services under the Contract.
- A Medium Risk is one which is likely to occur and which will have significant impact on the provision of supplies and services under the Contract.
- A High Risk is one which is almost certain to occur and will have a major impact on the provision of supplies and services under the Contract.

5.3 Where a risk comprises one element from any category then the risk shall be assessed as being in the higher category.

5.4 The advice of legal services shall be sought where any of the risks are assessed as being medium or high.

5.5 In circumstances where an Approved Form of Contract is not to be used, the proposed form shall be approved by legal services.

5.6 Where these Rules require a Contract opportunity to be offered by tender, all documents relating to that tender, including draft terms of Contract must be available when the opportunity is advertised or when the OJEU Contract notice is published.

6. LOW VALUE CONTRACTS (under £5,000)

6.1 Where the Estimated Total Cost of a Contract does not exceed £5,000 no Contract shall be let unless at least three quotations have been obtained or the purchase is being made via a compliantly let Umbrella Agreement.

6.2 In the event that it is not possible due to factors outside of the Authorised Officers control - e.g. single source such as DVLA, Land Registry, utilities, etc. or price setting market norms such as low value purchases from retailers, transport operators, etc. - to obtain three quotations, the Authorised Officer is required to ensure Value for Money is achieved on a proportionate basis by consideration of purchasing options available.

6.3 Where quotations are sought the Authorised Officer must ensure that an audit trail is maintained and recorded on file. Quotations should be sought ideally in writing and via the Council's eSourcing solution. Where verbal quotations are sought the quotation from the successful organisation must be confirmed in writing and put on file.

6.4 In instances where no quotations have been sought where prices are set by seller in line with market norms no file note is required. For instances where competition is viable but less than three quotations have been obtained and the purchase has not been made via a compliant

Umbrella Agreement the Authorised Officer should file a written record stating the reasons for this.

- 6.5 Where supplies or services are paid for using a Purchasing Card then the Authorised Officer must satisfy themselves that it is an appropriate method of purchase and must not use the card in a way that will permit avoidance of these rules.

See flowchart at Appendix 1 for more details.

7. MEDIUM VALUE CONTRACTS (£5,000-£100,000)

- 7.1 No Contract with an Estimated Total Cost between £5,000 and £100,000 shall be let unless at least three written quotations have been obtained from appropriately qualified and competent bidders via the Council's eSourcing solution or the purchase is being made via a compliantly let Umbrella Agreement.
- 7.2 Where the provisions of the Council's Grantway process apply these must be followed in strict accordance.
- 7.3 In seeking quotations, the Authorised Officer must ensure that an audit trail is maintained and recorded on the Council's eSourcing solution. Quotations must be sought via the Council's eSourcing solution. The Council's standard procurement documentation must be used.
- 7.4 Where the Authorised Officer decides to invite quotations via advertised process via publication to the unrestricted area of the Council's eSourcing solution the opportunity must also be advertised on Central Government's Contracts Finder.
- 7.5 In instances where no quotations have been sought and the purchase has not been made via a compliant umbrella agreement or where quotations have been sought but fewer than three have been obtained the Authorised Officer must seek approval from the relevant Service Director and any other officers relevant to the decision making process prior to the issue of Contract award letters to bidders in accordance with delegated authority provisions. A waiver must be completed, approved and filed on the Council's eSourcing solution.

8. HIGH VALUE CONTRACTS (over £100,000)

- 8.1 No Contract with an Estimated Total Cost over £100,000 shall be let unless at least three written tenders have been obtained from appropriately qualified and competent bidders via the Council's eSourcing solution following an advertised tender process or the purchase is being made via a compliantly let Umbrella Agreement.
- 8.2 The provisions of the Council's Gateway and Grantway processes must be followed in strict accordance. Any departure from these processes must be expressly approved and documented within a completed waiver.
- 8.3 The opportunity must also be advertised on Central Government's Contracts Finder. Regard should also be given to advertisement of the opportunity within trade journals and other publications as appropriate.
- 8.4 In seeking tenders the Authorised Officer must ensure that an audit trail is maintained and recorded on file in accordance with the Council's record keeping policies. Tenders must be sought via the Council's eSourcing solution. The Council's standard procurement documentation must be used.
- 8.5 Contracts with a value in excess of the relevant EU threshold ([link](#)) must be let in accordance with the relevant Procurement Legislation. Commissioners must also follow the Gateway/Grantway process and any advice from the Procurement Service.

9. TENDER / QUOTATION PROCEDURE

- 9.1 The Procedure shall be approved in accordance with the Gateway/Grantway Process and supporting Procurement Guidance as deemed appropriate by the Procurement Category Business Partner. ([link](#))
- 9.2 The Council's standard procurement documentation must be used and may only be altered or omitted with the express advice and approval of the Procurement Category Business Partner.

- 9.3 All invitations shall state that no bid shall be considered unless it is submitted in accordance with the requirements described in the instructions for quoting / tendering, and that no costs of tendering shall be met (without the express approval of the Procurement Manager).

10. PROVISION OF PRE BID SUBMISSION CLARIFICATION

- 10.1 All requests for clarification from bidders must be dealt with as a matter of urgency in order to mitigate any delays to bidders in preparing their submissions. Similarly where the Authorised Officer identifies a requirement for further information or clarification or correction of previously distributed documentation this must be addressed and issued as a matter of urgency.
- 10.2 All responses to requests for clarification must be issued to all bidders. Where the Authorised Officer wishes just to respond to the requesting bidder for reasons of commercial confidence the approval and advice of the relevant Procurement Category Business Partner must be sought.
- 10.3 All requests for clarifications and responses must be filed and fully auditable using the Council's eSourcing solution (where utilised.). The clarifications and responses must be recorded via a clarification log in accordance with the Procurement guidance and standard template documentation.

11. EVALUATION PRINCIPLES

- 11.1 Low and Medium Value Contracts shall be evaluated and agreed by the Authorised Officer.
- 11.2 High Value Contracts shall be evaluated and agreed under the Gateway Process involving the Procurement Category Business Partner, Service Director and any other officers relevant to the decision making process.
- 11.3 The assessment of bids must be in full accordance with the evaluation methodology communicated to bidders within the procurement documentation.
- 11.4 In the assessment of bids where it becomes apparent that a bidder has made a genuine mistake in their pricing they must be given the opportunity to correct their bid. In all instances the Authorised Officer must obtain the approval and advice of the Procurement Category Business Partner before seeking corrections from the relevant bidders via the Council's eSourcing solution.
- 11.5 Where further information is to be sought from bidders following submission of bids, which extends further than clarifying what has already been submitted and constitutes the submission of new information, the Authorised Officer must obtain the approval and advice of the Procurement Category Business Partner before seeking further information from the relevant bidders.
- 11.6 Full detailed bid information must be sought from all bidders at the point of inviting bids. Any departure from this must be expressly approved by the Procurement Category Business Partner in line with the Council's Gateway processes.
- 11.7 Should the Authorised Officer have a case to reject a bid as non-compliant they must gain the approval and advice of the Procurement Category Business Partner before proceeding.
- 11.8 Should the Authorised Officer consider a bid to be abnormally low they must investigate this with the relevant bidder/s, and in accordance with Procurement Legislation. Before proceeding with investigation the Authorised Officer must gain the approval and advice of the Procurement Category Business Partner. Following this investigation should the Authorised Officer consider that the reasoning and any corrections put forward by the bidder does not satisfy their concerns and wishes to reject the bid, they must seek the approval and advice of the Procurement Category Business Partner.
- 11.9 Should the Authorised Officer consider that a bidder does not meet minimum requirements and wishes to set aside the bid - which may relate to previous experience, legal standing, H&S record, financial standing, etc. as appropriate to the Contract in question - approval and advice must be sought from the Procurement Category Business Partner.

- 11.10 Should the Authorised Officer wish to take previous or current Contractual performance into account in the assessment of a bid - whether the Contract/s in question relate to Council or other Contracting Authorities - approval and advice must be sought from the Procurement Category Business Partner.

12. TECHNICAL AND FINANCIAL APPRAISAL

- 12.1 The Authorised Officer shall comply with the Financial Rules of the Council as published by the S151 officer as amended from time to time.
- 12.2 The Authorised Officer shall in relation to all medium and high value (low value as appropriate) Contracts compile a report which refers to:
- a) Budget for the Contract.
 - b) Technical requirements of the Contractor.
 - c) Financial appraisal of the Contractor's offer (undertaken by Financial Services and approved by the S151 Officer).
 - d) Financial appraisal of the Contractor (undertaken by Financial Services).
- 12.3 For high value Contracts compilation of this report will normally be achieved as part of the Gateway process.
- 12.4 The form and level of detail contained within the report should be proportionate to the value and risk associated with the Contract.

13. AWARD OF CONTRACT

- 13.1 The award of all high value Contracts must be in strict accordance with the requirements of the Council's Gateway/Grantway processes.
- 13.2 All high value Contracts must be awarded in accordance with the provisions set out within the Procurement Legislation following the standstill provisions in full and using the Council's procurement documentation. Any departure from this process will only apply to the letting of high value Contracts which fall below the EU Procurement thresholds and must be expressly approved following the requirements of the Gateway/Grantway process.
- 13.3 The award of all medium value Contracts must be in accordance with the Grantway process if applicable. Approval must be sought from the Service Director and any other officers relevant to the decision making process prior to the issue of intention to award letters to bidders in accordance with delegated authority provisions.
- 13.4 The award of all low value Contracts must be in accordance with delegated authority provisions with approval sought by the Service Director, Budget Holder and any other relevant officers as appropriate, proportionate and appropriate to the Contract in question.
- 13.5 All challenges to any procurement process or to a subsequent Contract at any point must be referred to Legal Services and Procurement Service within one working day

14. CONTRACT VARIATIONS (Changes to duration, value, scope and Contractor)

- 14.1 Contracts usually have conditions permitting variation relating mainly to the duration or the costs. Where a variation is permitted by the Contract then it must be recorded in accordance with those terms and executed according to the form of the original Contract. Thus a Contract executed under seal may only be varied by deed.
- 14.2 Where the variation amends the conditions of the Contract, including the specification an assessment of the effect of the variation on the value of the Contract must be carried out.
- 14.3 If the increase in value of the Contract is less than 10% for service and supply Contracts and less than 15% for works Contracts then no new procurement needs to take place.
- 14.4 If additional supplies, services or works are needed and the use of a new Contractor would:
- a) be economically or technically difficult, e.g. because of difficulties relating to interchangeability or integration with existing equipment; or

b) cause significant additional or duplication of costs,

then the original Contract may be varied without a further procurement process subject to the increase in cost being less than 50% of the original value. Any variation must be in accordance with Procurement Legislation and approved by Procurement Service, Legal Services and the budget holder for the Contract.

14.5 If the Contract to be varied is a strategic Contract then the Strategic Contract Management Board must be consulted in respect of any variation as soon as the need or request for a variation is identified or made.

14.6 Where the variation involves any change to the provider then Legal Services must be consulted.

15. CONTRACT EXTENSIONS

15.1 The Service Director shall be consulted prior to the extension of a Contract with an aggregate total value of less than £100,000.

15.2 Subject to 15.4 below, where a Contract provides for an extension and the value of the existing Contract together with the extension exceeds £100,000, the approval of the Procurement Category Business Partner, Service Director, Budget Holder, Category Manager and Legal Services shall be sought.

15.3 In all cases where the extension of a Contract will bring the total of the original value and the value of the extension over £1,000,000 then approval must be sought from the Strategic Contract Management Board.

15.4 In cases where the proposed extension is not allowed within the terms of the Contract and the extension is thus a direct award then approval shall be sought as per appendix 2.

16. CONCESSIONS AND UTILITIES

16.1 All Concession Contracts, whether for works or services shall be let according to the provisions of these Rules as if they were non-Concession Contracts unless the relevant opportunity is one covered by Procurement Legislation. The estimated value of the Concession shall determine the procurement route to be used. The value of the Concession shall be determined in an objective manner set out in the document offering the concession and shall be an estimate of the total turnover (excluding VAT) from the Concession over the period for which it is to be let, including for any extension/variations in scope and/or duration.

16.2 Concessions exceeding the European Threshold shall be procured in accordance with Procurement Legislation. More detailed information is contained with the Procurement Guidance.

16.3 All Contracts for the sale of Utilities must also comply with the provisions of these rules together with any applicable Procurement Legislation when brought into force. ([link](#))

17. CONTRACTOR SUBSIDIES AND STATE AID

17.1 Where it is proposed to provide financial support to a Contractor, or where a Contractor proposal entails financial support or benefit from the Council or another public body necessary to ensure the continuance of Contracting activity (State Aid), the advice of legal services must be sought prior to advertising the opportunity or concluding the Contract.

17.2 State Aid is when taxpayer funded resources are used to provide assistance to one or more organisations in a way that gives an advantage over others. The legislative framework that applies to State Aid is very technical and legal advice should be obtained well in advance in the event that the rules on State Aid may apply. The Service Director shall consult with the City Solicitor when State Aid issues are applicable. State Aid is likely to become applicable if the following applies:

- The assistance is provided with or through state, including Council, resources.

- The assistance gives one or more economic entities an advantage over others (includes not-for-profit organisations and charities as well as businesses and an advantage is anything that they could not get themselves on the open market).
- The assistance distorts or has the potential to distort competition (even small distortions count).
- The assistance affects trade between Member States of the European Union (this is defined broadly, if something is tradable, it is covered).

17.3 Assistance may be through payments to the Contractor, subsidised payments, the provision of equipment or support or low cost loans.

17.4 In certain circumstances financial assistance may be given where the amounts involved may be covered by de minimis provisions. Legal advice should still be obtained to ensure that de minimis applies before any financial assistance is given to another organisation.

18. CONTRACT MANAGEMENT

18.1 All Contracts shall be managed in accordance with the Contract Management Procedures provided by the Procurement Service which may be found [here](#).

18.2 Contract management standards apply to all Contracts depending on their classification as Strategic, Operational or Transactional.

18.3 All Contracts:

- Contract documents must be stored on the council's eSourcing Solution as described in section 4
- Contract managers (and others closely involved in managing contracts) must have read and understood the contract documents.
- Contract Managers must check that valid insurance documents are provided by Contractors, proving that the annual premium has been paid, to cover the duration of the Contract, and that copies are stored on the council's eSourcing Solution.
- Contract Managers must review the aggregate spend on Contracts for which they are responsible every six months to assess whether new contracts should be procured
- Meetings with contractors to discuss performance must take place at least every 12 months. Key Performance Indicators must be used to assess performance at least every 12 months, and records of assessment must be kept up to date on the council's eSourcing Solution. (NB different minimum intervals apply to Operational and Strategic Contracts)

18.4 Operational Contracts:

In addition to the standards in section 18.3 the following standards also apply to Operational Contracts:

- Contract managers (and others closely involved in managing contracts) must sign a declaration that they have read and understood the contract documents. ([link](#)).
- Operational Contracts must have a Contract Guide in place at the start of the Contract which is kept up to date throughout the duration of the Contract.
- Assessment of performance using Key Performance Indicators and meetings with Contractors to discuss performance must take place at least every 6 months.

18.5 Strategic Contracts:

In addition to the standards in sections 18.3 and 18.4, the following standards also apply to Strategic Contracts

- Strategic Contracts must have a Contract Operations Manual in place at the start of the Contract which is kept up to date throughout the duration of the Contract.
- Assessment of performance using Key Performance Indicators and meetings with Contractors to discuss performance must take place at least every 3 months.

- Meetings between Contractors and the Council at director level must take place at least every 12 months to discuss performance, strategy and future business opportunities.
- Contract Managers must keep a record of any Contract variations of duration, value or scope on the Council's eSourcing Solution and in the Contract Operations Manual in order to maintain a deal history of the Contract,

19. CONSULTANTS

- 19.1 No Ex-Employee of the Council or of any other Public Sector Body covered by the Small Business Enterprise and Employment Act 2015 shall be engaged by the Council without the express consent of the City Solicitor and the Service Director responsible for Human Resources.
- 19.2 Any ambiguity on whether a Contract is an employment Contract or a consultancy Contract covered by these rules should be referred to HR, Legal Services and Procurement Service.

20. SUB-CONTRACTING

- 20.1 For Above Threshold Contracts the advice of legal services shall be sought as to the form and obligation to sub-contract.
- 20.2 Where a sub-contractor is to be engaged then the Council is under an obligation to ensure that the Contractor is under the same timescale obligations as to payment of the sub-contractor as the Council is to the Contractor.

21. NON-COUNCIL STAFF

- 21.1 Any person who is not an officer of the Council, but is engaged by the Council to advise, conduct, or supervise any stage of a Tender, must:
- a) Comply with the Council's Contract Procedure and Financial Rules
 - b) Produce on request, all records relating to the Contract he/she are engaged on, to the Service Director; and
 - c) Pass all relevant records to the Procurement Manager at the end of his/her appointment/engagement
 - d) Sign a declaration of interest relating to any Contract that they were involved with on behalf of the Council and give it to the Procurement Category Business Partner.
- 21.2 The Authorised Officer must ensure that non-council staff comply with these Rules and consult the Procurement Category Business Partner as appropriate.

22. PUBLIC TO PUBLIC COOPERATION OR IN-HOUSE BIDDING

- 22.1 Advice should be sought from the Procurement Category Business Partner and, if appropriate, Legal Services on proposals involving the provision of a service through a subsidiary company, jointly owned, or jointly provided.
- 22.2 Where an in-house provider wishes to compete for an Above Threshold tendered Contract, the Tender Documents must comply with the following:
- a) That those involved with the in-house tender will maintain appropriate divisions with those managing the tender process for the Council to ensure that the in-house bid team has no advantage over non-Council bidders. In house tender bid teams must sign declarations that they have maintained independence of the tender review team,
 - b) The fact that there will be an in house tender must be noted on the relevant OJEU notice and the Council's proposed arrangements should the in house bid be successful must be described, and
 - c) No information other than that provided to all bidders will be supplied to the in-house bidder.

23. INSURANCE

- 23.1 The Authorised Officer shall ensure all Contractors have sufficient levels of insurance in place prior to entering and throughout the duration of a Contract. The appropriate levels may be found here. ([link](#))
- 23.2 These amounts may only be varied on the advice of the Insurance Officer whose advice shall be sought on any other insurances required.

24. SECURITY FOR PERFORMANCE

- 24.1 When drafting the invitation to tender the Authorised Officer shall seek the advice of the Procurement Service, Legal Services and Financial Services on whether a Contract performance bond or some other form of security for performance is required prior to entering into a Contract. The amount of, and form of security shall be determined by Legal Services in consultation with the S151 Officer having carried out an appropriate financial risk assessment. Such security must be effected with a reputable body authorised to effect such security and approved by the S151 officer or by way of a parent company guarantee if appropriate. Where appropriate a sum for liquidated damages to be included in the Contract prior to any award to a Contractor shall be set in consultation with the relevant technical officer and finance manager.

25. CONTRACT EXECUTION

- 25.1 Contracts must be executed in accordance with the following:
- a) Under hand - value under £100,000
 - b) Seal - value over £100,000
- 25.2 For all Contracts below £100,000, the Service Director is authorised to sign Contracts and having regard to the Council's scheme of delegation may authorise an officer of the Council to enter into Contracts as an Authorised Officer. Where delegated authority is used then a record must be kept in accordance with the Council's procedures.
- 25.3 All Contracts with a value in excess of £100,000 must be entered into and sealed by Legal Services.

26. GOVERNANCE

- 26.1 Authority to enter into Contracts
- Authority for Officers of the Council to enter into Contracts on behalf of the Council is governed by the Scheme of Delegation which may be found ([here](#)).
- 26.2 Gateway/Grantway
- The Gateway and Grantway processes (which may be found [here](#)) govern the assessment of the business case for entering into each Contract and for oversight of the process of awarding the Contract/grant.
- 26.3 Strategic Contract Management Board
- This board supervises the management of strategic Contracts, including the commissioning process.
- Approval must be sought from the Strategic Contract Management Board for:
- Procurement of Strategic Contracts jointly with one or more other Contracting Authorities (see section 2.6)
 - Contract variations of Strategic Contracts (see section 14.5)
 - Extension of high value Contracts (see section 15.3)
 - Price increases in Strategic Contracts where the proposed price increase is either:
 - Above that provided for in the contract; or
 - Above inflation (Consumer Price Index (CPI))

(Link to Price Increase approval form)

27. DEPARTURE FROM THE CONTRACT PROCEDURE RULES

27.1 Waiver of these Rules may be sought in the following circumstances:

- a) Where the need to enter into a Contract arises in circumstances that cannot be reasonably foreseen or
- b) Where the need to enter into or extend a Contract arises in exceptional circumstances.

27.2 These examples are not exhaustive but indicative of the situations where a waiver may be sought.

27.3 When the need for a waiver becomes apparent the Authorised Officer must seek approval following the approval levels that apply to waiver applications which can be found in appendix 2.

27.4 Blanket waivers may be approved in certain situations where the normal process to be followed is considered inappropriate. Such waivers must be fully supported with justifiable reasons and will only remain in force for one year from the date of approval.

28. TRADING

28.1 Any proposals to sell or trade in services, supplies, or assets must be referred to Legal Services. Any proposal to dispose of Council Property other than land must be referred to the Procurement Manager. Proposals to dispose of land must be referred to the Corporate Asset Manager.

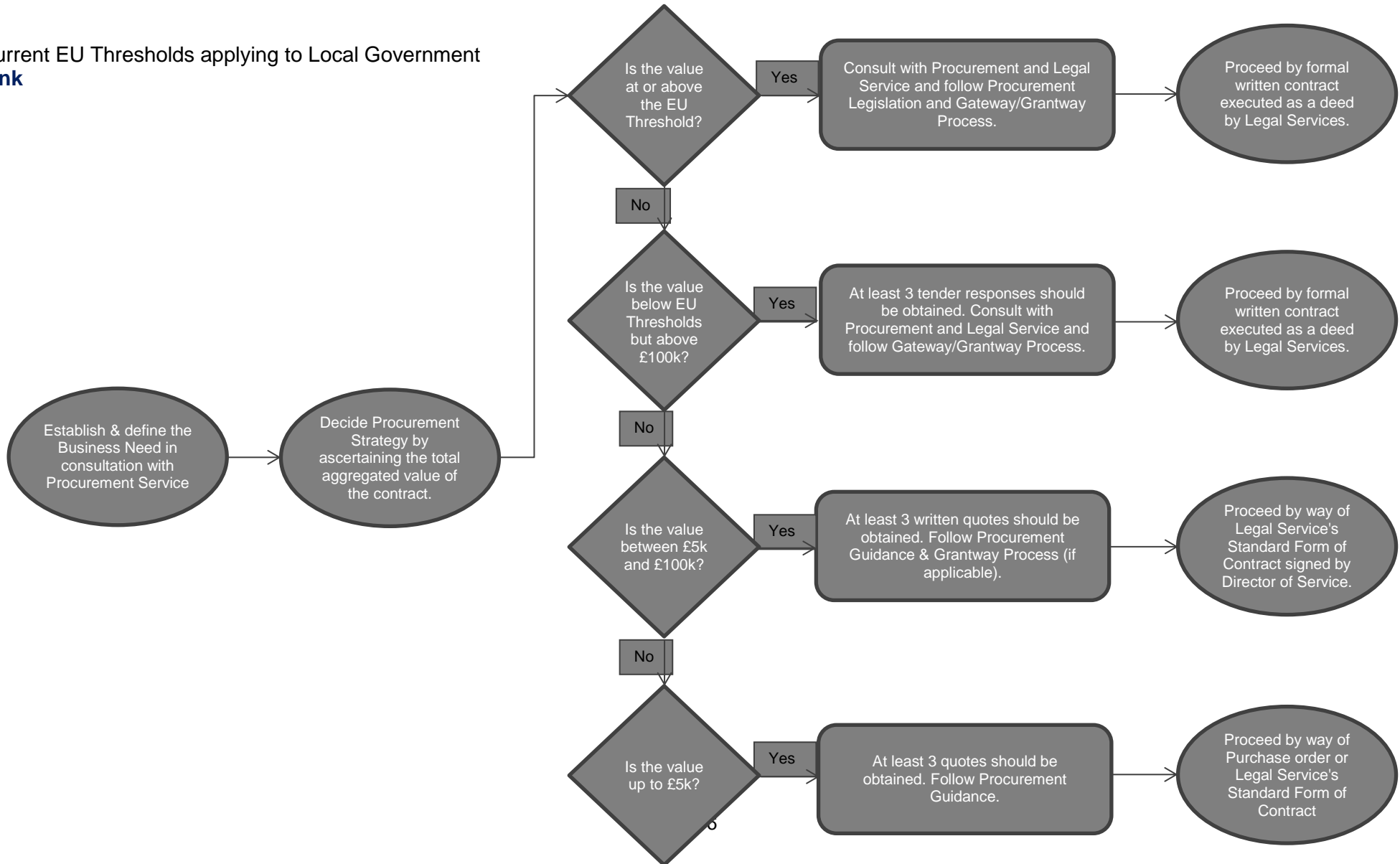
29. REVIEW OF RULES

The City Solicitor shall keep these Rules under review and may make minor changes (including changes consequential to changes in legislation).

APPENDIX 1 - THE COUNCIL'S PROCUREMENT PROCESS

Current EU Thresholds applying to Local Government
[Link](#)

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APPENDIX 2 - APPROVAL LEVELS.

Value	Type	Sign off required	Considerations - must give regard to:
Up to £100k	Contract terms - standard approved form	Authorised Officer	<ul style="list-style-type: none"> Value for money - benchmarking. Reputational risk Transparency - market challenge Peer review & market norms Proportionality
	Contract terms - bespoke	Legal Services	
	Contract award	Director of Service signature under hand	
	Waiver - Direct award	Director of Service approval file note form	
	Extension in Contract term		
	Extension out of Contract term		
	Variation - up to 10% (services) or 15% (works)	Procurement Manager and Legal Services	
Variation - up to 50% for services and works			
£100k - £1m	Contract terms - standard approved form	Authorised Officer in consultation with Legal Services	<ul style="list-style-type: none"> Value for money - benchmarking. Reputational risk Transparency - market challenge Peer review & market norms Proportionality Breach of PCRs 2015 (supplies/services) if direct award/extension out of term. VEAT Notice/Contract Award without competition for direct awards if over EU Thresholds.
	Contract terms - bespoke	Legal Services	
	Contract award	Legal Services to sign under seal	
	Waiver - Direct award	Procurement Manager and relevant Officers - waiver form	
	Extension in Contract term	Procurement Category Business Partner and relevant Officers - Authority to Extend Form	
	Extension out of Contract term	Procurement Manager and relevant Officers - waiver form	
	Variation - up to 10% (services) or 15% (works)	Director of Service, Budget Holder, Category Manager, Legal Services and Category Business Partner.	
Variation - up to 50% for services and works	Director of Service, and relevant Officers, Legal Services, Category Business Partner plus Procurement Manager		
Over £1m	Contract terms - all	Legal & Gateway Board	<ul style="list-style-type: none"> Value for money - benchmarking. Reputational risk Transparency - market challenge Proportionality Peer review & market norms Breach of PCRs 2015 (supplies/services/works) if direct award/extension out of term VEAT Notice/Contract Award without competition for direct awards if over EU Thresholds.
	Contract award	Gateway Board/SCMB	
	Waiver - Direct award	Gateway Board	
	Extension in Contract term	Strategic Contract Management Board.	
	Extension out of Contract term		
	Variation - up to 10% (services) or 15% (works)	Strategic Contract Management Board.	
	Variation - up to 50% for services and works		

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Title of meeting:	Governance & Audit & Standards Committee
Date of meeting:	6 th November 2015
Subject:	Review of Members' Code of Conduct and Committee Arrangements for Assessment, Investigation and Determination of Complaints
Report by:	City Solicitor
Wards affected:	N/A
Key decision:	No
Full Council decision:	Yes

1. Purpose of report

Following Members' consideration of the Code of Conduct earlier in the year, further changes have been made to the Arrangements for Assessment, Investigation and Determination of Complaints following the resolution passed at the Committee on 17 April 2015.

2. Recommendations

That Members of the Committee

- (i) Agree the proposed changes to the Arrangements for Assessment, Investigation and Determination of Complaints set out in the appendix (or propose and agree further changes) and
- (ii) Recommend the agreed changes to Council for adoption.

3. Background

Since members last considered the Code of Conduct and the Arrangements for Assessment, Investigation and Determination of Complaints, one complaint has been referred for investigation and a subsequent hearing has taken place. As a consequence of this in consultation with the members who have considered the complaint, further amendments to the procedure are proposed as set out in the attached appendix.

4. Reasons for recommendations

The amendments are proposed in order to clarify the procedure when there is no finding of fault and to avoid additional formal meetings having to be held

when the procedure can be dealt with under delegation to the City Solicitor in consultation with the members of the Initial Filtering Panel.

5. Equality impact assessment (EIA)

This report does not require an Equality Impact Assessment as it does not propose any new or changed services, policies or strategies.

6. Legal implications

The legal implications are embodied within this report.

7. Director of Finance's comments

There are no financial implications arising from the recommendations contained within this report.

Appendices:

Appendix - Arrangements for Assessment, Investigation and Determination of Complaints (comparison document).

.....
Signed by:

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

Governance and Audit and Standards Committee Arrangements for Assessment, Investigation and Determination of a Complaint that a Member has failed to Comply with the Members' Code of Conduct

1. Application of these Arrangements

- 1.1. These are the Arrangements to be followed by the Governance and Audit and Standards Committee of Portsmouth City Council ("the Council") in the assessment, investigation and determination of a complaint that any Member of the Authority has failed to comply with the Members' Code of Conduct. The Arrangements will be followed and applied in accordance with the requirements of the Localism Act 2011.

2. Receipt of Complaint

- 2.1. A complaint shall be made by email to michael.lawther@portsmouthcc.gov.uk or by post addressed to the Monitoring Officer to Portsmouth City Council (Civic Offices, Guildhall Square, Portsmouth PO1 2AL). The Complaint Form shall be used for this purpose.
- 2.2. Anonymous complaints will not normally be considered unless the complaint is accompanied by documentary or photographic evidence indicating an exceptionally serious or significant matter.

3. Notification to Member

- 3.1. The Monitoring Officer shall provide the ~~Member who is the subject of the allegation~~ Subject-Member with written notification that a complaint has been made.

4. Terms of Reference of Initial Filtering Panel.

- 4.1. The Initial Filtering Panel is established to receive allegations that a Member of the Council has failed to comply with the Members' Code of Conduct.
- 4.2. The Initial Filtering Panel shall be an informal meeting to enable the Monitoring Officer to obtain the views of Members upon a complaint, shall comprise three members and shall in so far as practicable shall have no more than one member of each political group represented on it
- 4.3. The Monitoring Officer will, within 10 working days of receipt of the complaint, set up an Initial Filtering Panel to see if the complaint falls within the Local Assessment Criteria. Having considered the complaint and taken into account the views of the Members and Independent Person, the Monitoring Officer will:-

4.3.1. Arrange:

- 4.3.1.1. a formal investigation of the allegation;⁵ or
- 4.3.1.2. training or conciliation;⁵ or
- 4.3.1.3. such other appropriate alternative steps; or

4.3.2. ~~Decide~~decide that no action should be taken in respect of the allegation.

4.4. The Monitoring Officer will take reasonable steps to notify the person making the allegation ("the Complainant"), and the Subject-Member ~~the subject of it,~~ of that decision. Where the decision is that no action should be taken, reasons for the decision shall be given, and reference made to the right to request a review of that decision under ~~Paragraph 5~~paragraph 5 below. This notification shall normally be given within ten working days of the decision being made.

4.5. The notification to the Subject-Member ~~concerned~~ shall include a copy of the complaint, unless the Monitoring Officer determines that to disclose the identity of the ~~complainant~~Complainant would be contrary to the public interest or would prejudice any person's ability to investigate the allegation.

4.6. When it is decided to investigate or take other action, it does not mean that the Initial Filtering Panel has made up its mind about the allegation.

The Initial Filtering Panel makes no findings of fact on the matter. It simply means that the Initial Filtering Panel believes the alleged conduct, if proven, may amount to a failure to comply with the Code of Conduct, and that some action should be taken in response to the complaint.

5. **Right to Request a Review**

5.1. Where a decision is made by the Initial Filtering Panel that no action should be taken in respect of the allegation, the Complainant ~~person who made the allegation~~ may make a request for that decision to be reviewed. The request shall be made in writing addressed to the Monitoring Officer. The request must be received within 30 days of notification being given under paragraph 4.4 above.

6. **Convening of Meeting of the Governance and Audit and Standards Review Sub-Committee**

6.1. The Monitoring Officer shall appoint, and convene a meeting of, the Governance and Audit and Standards Review Sub-Committee, ("the Review Sub-Committee") from amongst the Members of the Governance and Audit and Standards Committee, provided that at all times the composition of the Sub-Committee complies with paragraphs 6.2 and 6.3. The meeting shall take place within 20 working days of the date of receipt of the request for review, where practicable, and certainly within a maximum of three months from that date.

- 6.2. The Review Sub-Committee shall comprise three members and so far as is practicable have no more than one member from each political group represented on it.
- 6.3. The Review Sub-Committee shall not include any member who was a member of the Initial Filtering Panel whose decision to take no action is subject to review. This is to minimise the risk of conflicts of interest and ensure fairness for all parties.

7. Notification to Subject-Member

- 7.1. The Monitoring Officer shall notify the Subject-Member ~~who is the subject of the allegation~~ that a request for review has been received.

8. Terms of Reference of Governance and Audit and Standards Review Sub-Committee

- 8.1. The Governance and Audit and Standards Review Sub-Committee is established to review, upon the request of the ~~person who has made an allegation~~ Complainant that a Member of the Authority has failed or may have failed to comply with the Council's Code of Conduct, a decision of the Initial Filtering Panel that no action be taken in respect of that allegation.
- 8.2. Upon receipt of such request for a review and any accompanying report by the Monitoring Officer the Governance and Audit and Standards Review Sub-Committee shall, within 20 working days, review the decision of the Initial Filtering Panel and shall then do one of the following:
 - 8.2.1. ~~Refer~~ refer the allegation to the Monitoring Officer with an instruction that he/she arrange a formal investigation of the allegation or (after consultation with the Deputy Monitoring Officer where appropriate) directing that he/she arrange training, conciliation or such other appropriate alternative steps; or
 - 8.2.2. ~~Decide~~ decide that no action should be taken in respect of the allegation; or
 - 8.2.3. ~~Where~~ where the allegation is in respect of a person who is no longer a Member of the Authority but is a Member of another relevant authority (as defined in Section 27(6) of the Localism Act 2011) refer the allegation to the Monitoring Officer of that other Authority.
- 8.3. In reaching its decision, the Sub-Committee shall have regard to the Local Assessment Criteria.
- 8.4. The Sub-Committee shall instruct the Monitoring Officer to take reasonable steps to notify the ~~person making the allegation~~ Complainant, and the Subject-Member concerned, of that decision. Where the decision is that no action should be taken, reasons for the decision shall be given. This notification shall normally be given within ten working days of the decision being made.

- 8.5. When a matter is referred for investigation or other action, it does not mean that the Sub-Committee has made up its mind about the allegation. The Sub Committee makes no findings of fact on the matter. It simply means that the Sub-Committee believes the alleged conduct, if proven, may amount to a failure to comply with the Code of Conduct, and that some action should be taken in response to the complaint.

9. Referral for Steps other than Investigation

- 9.1. Where the Initial Filtering Panel or Review Sub-Committee has consulted the Monitoring Officer with a view to making a direction to take steps other than investigation that involve conciliation, the Monitoring Officer shall contact the ~~person making the allegation~~Complainant, and the ~~Subject-Member~~ ~~the subject of it,~~ seeking confirmation that they would co-operate with the action proposed if such a direction were made. It must be made clear that the decision to take other action, if pursued, will close the opportunity for the complaint to be fully investigated. The Monitoring Officer shall inform the Sub-Committee of the responses received from the ~~complainant~~ Complainant and ~~Subject-M~~member.
- 9.2. Where a direction is then made to take steps other than investigation, the Monitoring Officer shall report this as part of his annual report to Governance and Audit and Standards Committee. This meeting shall normally be open to the press and public, unless the Committee decides that, in accordance with Part VA of and Schedule 12A to the Local Government Act 1972, the report should be considered in private session.

10. Referral for Investigation

- 10.1. Where the Initial Filtering Panel or Review Sub-Committee has referred the matter to the Monitoring Officer for investigation, the Monitoring Officer shall arrange for such investigation to be carried out by the Deputy Monitoring Officer, or other person the Monitoring Officer considers to be suitably qualified and experienced to undertake the task (“the Investigating Officer”). This may include:

- 10.1.1. ~~Making-making~~ inquiries of such persons as the Investigating Officer considers necessary or expedient;
- 10.1.2. ~~Requiring-requiring~~ such persons to give such information or explanation as the Investigating Officer considers expedient;
- 10.1.3. ~~Inspection-inspection~~ of such documents as the Investigating Officer considers expedient.

The Monitoring Officer may set up a Sub-Committee to consider its further progress if the Subject-Member has died, resigned, or is seriously ill, and he is of the opinion that it is no longer appropriate to continue with an investigation.

- 10.2. Where the matter is referred back to a Sub-Committee they may decide not to proceed with the investigation.

10.3. On completion of an investigation, the Investigating Officer shall prepare a written report of the investigation making one of the following findings:

10.3.1. ~~That that~~ there has been a failure to comply with the Code of Conduct; or

10.3.2. ~~That that~~ there has not been a failure to comply with the Code of Conduct.

10.4. The Monitoring Officer shall send a copy of the Investigating Officer's report to the ~~Subject-Member the subject of the allegation, and to the Governance and Audit and Standards Committee. The Governance and Audit and Standards Committee shall then arrange for the report to be considered at a hearing of the Governance and Audit and Standards Consideration Sub-Committee ("Consideration Sub-Committee").~~

11. Convening a meeting of the Consideration Sub-Committee Investigating Officer's finding of no failure to observe the Code of Conduct

~~11.1. In consultation with the Chair, the Monitoring Officer shall appoint, and convene a meeting of, the Consideration Sub-Committee, from amongst the Members of the Governance and Audit and Standards Committee, provided that at all times the investigation shall be carried out in accordance with any guidance issued by the Governance and Audit and Standards Committee and the composition of the Sub-Committee complies with Paragraph 11.2.~~

~~In the event that the Investigating Officer finds that there is no failure to observe the Code of Conduct, the Monitoring Officer shall consult with the Initial Filtering Panel or Review Panel as appropriate and if the Initial Filtering Panel or Review Panel, as appropriate, accepts the Investigating Officer's findings, the Investigating Officer shall give written notice of this to the Complainant and the Subject-Member.~~

~~10.5-11.2. In the event that the finding is not accepted, the Initial Filtering Panel or Review Panel may give further directions to the Monitoring Officer as appropriate.~~

~~10.6. The Consideration Sub-Committee shall comprise three members. Membership may include any member who has participated in consideration of the allegation at a meeting of the Governance and Audit and Standards Review Sub-Committee at an earlier stage.~~

~~10.7. This meeting shall not normally be open to the press and public, provided that the Sub-Committee decides that, in accordance with Part VA and Schedule 12A to the Local Government Act 1972, the report should be considered in private session.~~

11.12. Terms of Reference of the Consideration Sub-Committee Finding a breach of the Code of Conduct

~~12.1. Where the Investigating Officer finds that there has been a breach of the Code the matter will be referred for consideration at a hearing~~

before the Governance and Audit and Standards Hearings Sub-Committee

~~11.1. The Consideration Sub-Committee shall be responsible for determining whether:~~

~~11.1.1. It accepts the Monitoring Officer's finding of no failure to observe the Code of Conduct; or~~

~~12. The matter should be referred for consideration at a hearing before the Governance and Audit and Standards Hearings Sub-Committee Finding of No Failure~~

~~13. —~~

~~14. —~~

~~15. Where a finding of no failure is made, the Monitoring Officer shall give written notification of this to the person who made the allegation, and the Member the subject of it.~~

~~16. —~~

~~17. —~~

~~18. The Monitoring Officer shall also arrange for a notice to be published on the Council's website, within 10 working days stating that there has been no failure to comply with the Code of Conduct, unless the Member the subject of the allegation requests that no such notice be published.~~

19.13. Convening a meeting of the Governance and Audit and Standards Hearings Sub-Committee ("the Hearings Sub-Committee")

~~19.1.13.1. Where the Assessment Sub-Committee decides that the matter should be referred for consideration at a hearing before the Hearings Sub-Committee, then, in consultation with the Chair, the Monitoring Officer shall appoint, and convene a meeting of, the Hearings Sub-Committee for this purpose.~~ The Sub-Committee shall be appointed from amongst the Members of the Governance and Audit and Standards Committee, provided that at all times the composition of the Sub-Committee complies with Paragraph 13.2.

~~19.2.13.2.~~ The Hearings Sub-Committee shall comprise three members. Membership may include any member who has participated in consideration of the allegation at a meeting of the Governance and Audit and Standards Review Sub-Committee ~~or Governance and Audit and Standards Consideration Sub-Committee~~ at an earlier stage.

~~19.3.13.3.~~ The meeting shall be held within three months of the date of completion of the Investigating Officer's report (or as soon as reasonably practicable thereafter) and at least fourteen days after the date on which the Monitoring Officer sent the Investigating Officer's report to the ~~member Subject-Member the subject of the allegation,~~ (unless the member agrees to it being held earlier).

~~19.4.13.4.~~ This meeting shall normally be open to the press and public, unless the Sub-Committee decides that, in accordance with Part VA and Schedule

12A to the Local Government Act 1972, the report should be considered in private session.

~~19.5.13.5.~~ The meeting of the Hearings Sub-Committee may consider the report in the ~~subject-Subject-member's Member's~~ absence if the ~~subject-Subject-M~~member does not attend the hearing. If the Sub-Committee is satisfied with the ~~subject-Subject-M~~member's reasons for not being able to attend the meeting, it may arrange for the hearing to take place on another date.

~~20.14.~~ **Terms of Reference of Hearings Sub-Committee**

~~20.1.14.1.~~ The Hearings Sub-Committee is established to hold a hearing and make one of the following findings:

~~20.1.1.14.1.1.~~ ~~That that~~ the Member did not fail to comply with the Code of Conduct; or

~~20.1.2.14.1.2.~~ ~~That that~~ the Member did fail to comply with the Code of Conduct, but that no action needs to be taken in respect of the matters considered at the hearing; or

~~20.1.3.14.1.3.~~ ~~That that~~ the Member did fail to comply with the Code of Conduct and that one of, or any combination of, the following sanctions should be imposed:

~~20.1.3.1.14.1.3.1.~~ ~~Censure-censure~~ of the Member;

~~20.1.3.2.14.1.3.2.~~ ~~Restriction-restriction~~ for a period not exceeding six months of that Member's access to the premises of the Authority or that Member's use of the resources of the Authority, provided that those restrictions are reasonable and proportionate to the nature of the breach, and do not unduly restrict the Member's ability to perform the functions of a Member;

~~20.1.3.3.14.1.3.3.~~ ~~Recommending-recommending~~ to the Member's Group Leader that he/she be removed from any or all Committees or Sub-Committees of the Authority;

~~20.1.3.4.14.1.3.4.~~ ~~Reports-reports~~ its findings to the Authority and/or the relevant authority responsible for appointing the Member to the Authority.

~~20.2.14.2.~~ Any sanction imposed shall take effect immediately, except where the Sub-Committee directs that it shall take effect on a later date within the following six months.

~~21.15.~~ **Pre-Hearing Procedure**

~~21.1.15.1.~~ ~~In consultation with the Chair of the Governance and Audit and Standards Committee, the~~The Monitoring Officer shall write to the Subject Member proposing a date for the hearing. The letter shall outline the hearing procedure, and the member's rights, asking for a response within a

set time. The letter shall enquire whether the ~~subject m~~Subject-Member:

~~21.1.1.15.1.1.~~ Wants-wants to be represented at the hearing by a solicitor, barrister or other person;

~~21.1.2.15.1.2.~~ Disagrees-disagrees with any of the findings in the investigation report, including reasons for any disagreements;

~~21.1.3.15.1.3.~~ Wants-wants to give evidence at the hearing, either verbally or in writing;

~~21.1.4.15.1.4.~~ Wants-wants to call relevant witnesses to give evidence and, if so to provide outlines or statements of the evidence those witnesses intend to give;

~~21.1.5.15.1.5.~~ Wants-wants any part of the hearing to be held in private;:

~~21.1.6.15.1.6.~~ Wants-wants to have any part of the investigation report or other documents withheld from the public; and

~~21.1.7.15.1.7.~~ Can-can attend the hearing.

~~21.2.15.2.~~ The Monitoring Officer shall send a copy of the Subject Member's response to the Investigating Officer, inviting them to say by a set date whether they wish to:

~~21.2.1.15.2.1.~~ Be-be represented at the hearing;:

~~21.2.2.15.2.2.~~ Call-call relevant witnesses to give evidence;

~~21.2.3.15.2.3.~~ Have-have any part of the hearing held in private; and

~~21.2.4.15.2.4.~~ Have-have any part of the investigation report or other documents withheld from the public.

~~21.3.15.3.~~ The Monitoring Officer shall advise the Hearings Sub-Committee as necessary on any matter arising out of the Subject Member's response. At least two weeks before the hearing, the Monitoring Officer shall send a pre-hearing process summary to everyone involved in the complaint. This should set the date, time and place for the hearing, summarise the allegation, outline the main facts that are agreed and those which are not agreed, note whether the ~~subject-Subject-M~~member will attend and be represented, list the witnesses who intend to give evidence, and outline the procedure to be followed at the hearing.

~~22.16.~~ **Hearing Procedure**

~~22.1.16.1.~~ The hearing is a formal meeting of the Authority and is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities. The hearing will be conducted in a demonstrably fair, independent and politically impartial way, so that members of the public and members of the Authority have confidence in the Council's procedures and findings.

~~22.2.16.2.~~ The procedure followed at the hearing will be confirmed in the pre-hearing process summary referred to in Paragraph 15.3.

~~23.17.~~ **Notification of Findings**

~~23.1.17.1.~~ As soon as reasonably practicable after the Hearings Sub- Committee makes its finding on the matter, the Monitoring Officer shall give written notice of the finding and the reasons for it to the Subject-Member and the ~~person who made the allegation~~ Complainant. ~~A summary of the finding and reasons for it shall be placed on the Council's website.~~

~~23.2.17.2.~~ ~~Where the finding is that there was no failure to comply with the Code of Conduct, a summary of the finding and reasons for it shall not be placed on the Council's website if the Subject-Member the subject of the finding so requests.~~

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Agenda Item 11



Portsmouth
CITY COUNCIL

Agenda item:

Title of meeting:	Governance & Audit & Standards Full Council
Date of meeting:	6 th November 2015 10 th November 2015
Subject:	Changes to the designated independent person dismissal procedures
Report From:	Director of HR, Legal & Procurement
Report by:	Paddy May, Corporate Strategy Manager
Wards affected:	N/A
Key decision:	No
Full Council decision:	Yes

1. Purpose of report

- 1.1. To inform members of a change to the process (as recently agreed by Employment Committee) that must be followed for the dismissal of designated statutory officer posts (Head of Paid Service, Monitoring Officer or Chief Finance Officer) and to seek, from Governance and Audit and Standards Committee (G&A&S), a recommendation to council to amend paragraph 10 of the Council's *Officers' Employment Procedure Rules in Part 3D of the Constitution* to reflect this new process.
- 1.2. This process was developed following a previous debate at G&A&S and Full Council and the request that consideration be given as to how an appeal process would work. The revised approach, allowing an appeal, was agreed at Employment Committee and this has led to a further proposed change to the Officers Employment Procedure Rules which has to be approved by Full Council via a recommendation from G & A & S.

2. Recommendations

- 2.1. It is recommended that :
 - 1) Governance & Audit & Standards Committee recommends that Full Council approves the changes to paragraph 10 of the revised new Officers Employment Procedure Rules as shown in Appendix 2
 - 2) Council approves the changes to paragraph 10 of the new Officer Employment Procedure Rules as shown in Appendix 2 recommended by Governance and Audit and Standards Committee.

3. Background

- 3.1. As previously reported to G&A&S the dismissal process for the Head of Paid Service, the Monitoring Officers and the Chief Finance Officers (S151 officer) have been changed. Previously any allegation of misconduct against any of these officers had to be undertaken by a Designated Independent Person (DIP) and no disciplinary action could be taken other than that which had been recommended in a report by the DIP. The purpose of these requirements was to ensure that these officers could discharge their duties without any fear of being influenced by elected members or of being dismissed without good reason.
- 3.2. In response to a policy position that the process of appointing a DIP and undertaking an investigation was bureaucratic, complex, time consuming and expensive, new regulations (the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ("the regulations")) were issued which had the effect of directing councils to change their standing orders. Councils had to agree the new approach at the first ordinary Council meeting after the election and modify their standing orders (or equivalent) with the text given in the regulations. In Portsmouth this meant that changes had to be made to the "Officers' Employment Procedure Rules in Part 3D of the Constitution" and this was agreed at the Council meeting on the 7th July.
- 3.3. When G&A&S considered this issue in June 2015 they agreed to the process and the changes to our Officers Employment Procedure Rules to ensure that the Council met its statutory obligations. However G&A&S and Full Council were very concerned that the requirements in the regulations did not allow for an appeal process. A revised process that allowed for an appeal was agreed at Employment Committee on 15th September 2015. This has led to the creation of a revised version of paragraph 10 of the Officers Employment Procedure Rules and these need to be approved by Full Council via a recommendation from G&A&S. Appendix 1 to this report shows the proposed process as a flow chart and Appendix 2 includes the proposed changes to paragraph 10 of the new Officers Employment Procedure Rules that reflect this process.

4. The proposed new arrangements

- 4.1. It is worth stressing that the new regulations do not "trump" employment law. A process that is entirely consistent with the new regulations could be against Employment Law and therefore leave the Council open to legal challenge through an employment tribunal. It is therefore important that we designed a process that was both consistent with the new regulations and with employment law. It should be noted that nationally it has been very rare for such dismissals to take place.
- 4.2. The Local Government Association published an Advisory Bulletin which suggested a new process that could be followed that would be consistent with the new regulations and employment law. In this advisory bulletin they state *"the regulations provide little detail of how the new process will operate in practice. For this reason authorities will need to consider how the new process could work in their authority and in particular how they will join the gaps in the Regulations to ensure the effective running of a disciplinary / dismissal process"*. A modified version of the LGA approach was the approach agreed by Employment Committee. Appendix 1 provides a flow chart that reflects what was agreed at Employment Committee.

- 4.3 Employment Committee agreed that in the event of a potential disciplinary process against one of the designated statutory officer posts that the Council should secure by way of the Director of HR, Legal and Procurement (or in the event that the factual circumstances suggest that a conflict of interests may arise in respect of that Director another Director) the establishment of:
- an Investigation and Disciplinary Committee (I&DC) of three members; and
 - a standing I&DC Appeals Committee of three members,
 - along with a Panel to independently advise on the decision.
- 4.4 Each of the I&DC and the I&DC Appeals Committee would be made up of councillors in political proportionality to the number of seats each party has on the council and each of whom shall not take part in any decisions of the council relating to the same matter. The process is as follows:
- The I&DC should:
 - screen potential disciplinary / dismissal issues to consider whether they require investigation and whether the relevant "protected" officer should be suspended
 - organise the investigation
 - review the results of the investigation to consider what disciplinary action, if any, is appropriate after hearing the views of the relevant officer and then report its recommendations
 - refer the matter to the Panel if the recommendation is for a dismissal (the new Panel would be set up in line with the new regulations, to be convened by the Director of HR, Legal and Procurement (or other Director in the event of a conflict of interests), as described in the draft Officers' Employment Procedure Rules, at Appendix 2).
 - subject to the right of appeal referred to below, send any report from the Panel, alongside its own report to Council for a formal decision.
 - In the event that the relevant "protected" officer elects to appeal the recommendation (within a 14 day time limit), the I&DC Appeals Committee shall convene to hear the appeal of the relevant "protected" officer, who shall review the decision of the I&DC, referring any new matters to the Panel, before submitting a report to Council for formal decision.
 - If the Council approves the dismissal the City Solicitor or Deputy City Solicitor (in the event that the City Solicitor was the relevant "protected" officer) shall notify all members of the Cabinet of the name, and matters relevant to the dismissal.
 - Following receipt of the notification above, the Leader may within 7 days, give notice of objection to the dismissal, accompanied by reasons for the objection.
 - The City Solicitor or Deputy City Solicitor (in the event that the City Solicitor was the relevant "protected" officer) may request that the I&DC action the dismissal provided that:

- No objection is received from the Leader; or,
- Upon receiving an objection, a meeting of the Council is convened, the objection considered, and the Council resolves that the objection is not material or is not well-founded.

4.5 The advice from the LGA is that if a process is set up without an I&DC, or equivalent, and the process results in a dismissal it would not be possible to have an appeal because no one would have the authority to overturn the Council's decision.

4.6 Undertaking the process as described would also satisfy the Executive Objections procedure. The Executive Objection Procedure, set out in Schedule 3 to the 2001 Regulations, remains in force.

4.7 Finally it is worth noting that whilst we have met the requirements to amend our standing orders, or equivalent, this has no effect on the contracts of employment of the designated officers or on the National Terms and Conditions. The current national Joint Negotiating Committee (JNC) terms and conditions for Chief Officers are based on the old DIP process. The statement of particulars for the three Portsmouth City Council designated statutory officer posts state that "Any disciplinary situation will be handled in accordance with the principles of the Joint Negotiating Committee for Chief Officers of Local Authorities" This means that until these change the Council would be following the old DIP process. The LGA is currently in discussion with CLG and the unions about updating the national terms and conditions although it is not clear when this will be complete.

5. Reasons for recommendations

5.1 The recommendations in this report are to amend paragraph 10 of the Officers Employment Procedure Rules from Part 3D of the Constitution so that they are consistent with the process agreed by Employment Committee and the regulations and employment law. It is worth noting that negotiations are still being undertaken nationally about how the new regulations will be implemented and so there may be further changes required.

6. Equality impact assessment (EIA)

6.1 A preliminary EIA was completed at the time of taking the report to Council and this concluded that there was no requirement for a full EIA at that stage.

7. Legal Implications

7.1 All legal comments are contained within the body of the report.

8. Director of Finance's comments

8.1 No specific budget provision exists for such an event and should this situation arise, costs would represent a call on contingency.

.....
Signed by: Jon Bell, Director of HR, Legal & Procurement

Appendices:

Appendix 1 - A flow chart showing how the process, approved by Employment Committee on 15th September, would work for the dismissal of the Head of Paid Service, Monitoring Officer or S151 Officer for reasons other than redundancy, permanent ill health or infirmity of mind and body, or failure to renew a contract of employment for a fixed term (unless the authority has undertaken to renew such a contract).

Appendix 2 - Complete proposed New Officers' Employment Procedure Rules from Part 3D of the Constitution (clean version)

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

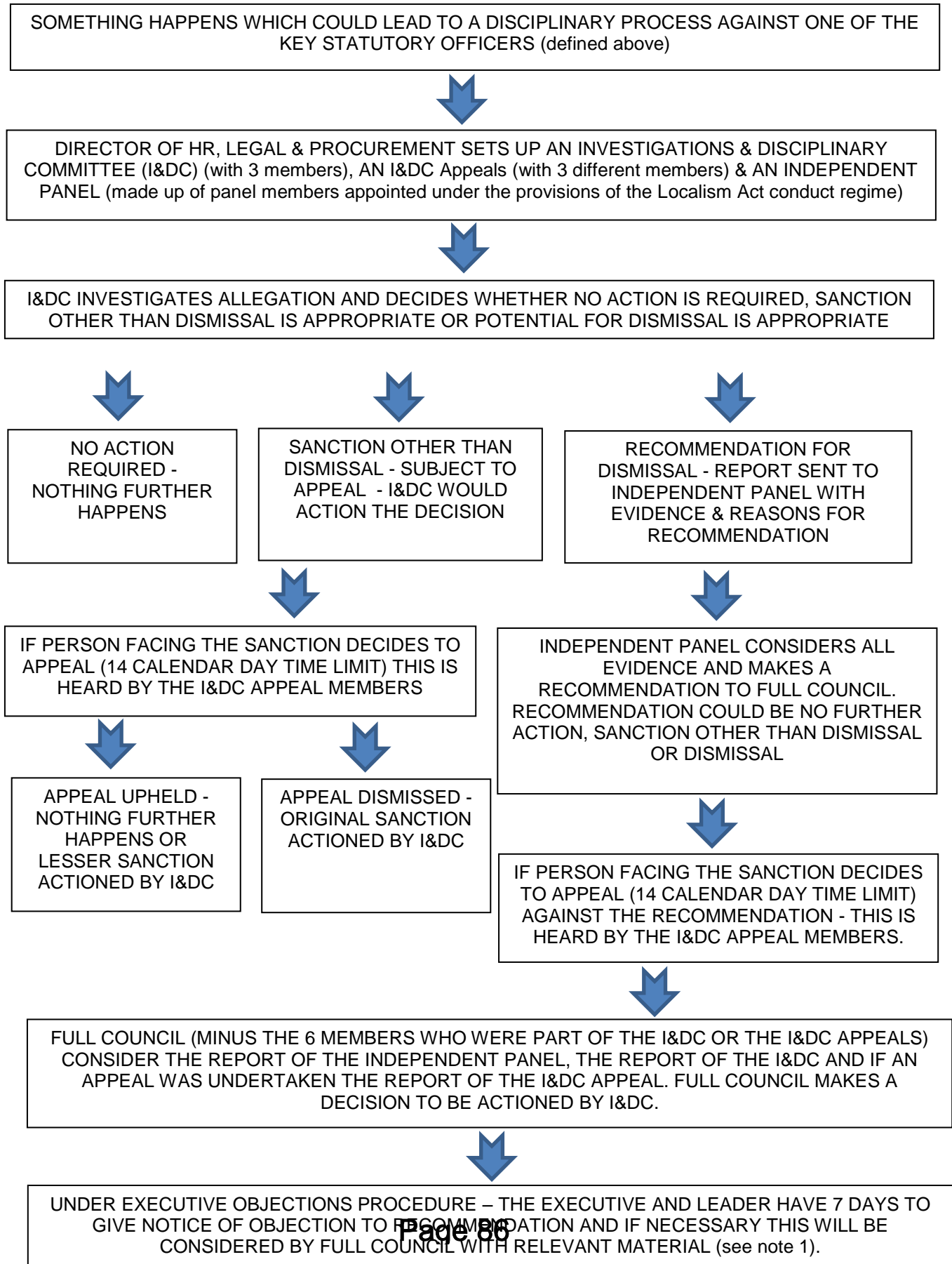
Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

.....
Signed by: Name and Title

APPENDIX 1

Process flow chart for dismissal of Head of Paid Service, S151 Officer or Monitoring Officer



APPENDIX 1**Note 1****Executive Objection Procedure**

If the Council approves the dismissal the City Solicitor or Deputy City Solicitor (in the event that the City Solicitor was the relevant "protected" officer) shall notify all members of the Cabinet of the name, and matters relevant to the dismissal.

- (1) Following receipt of the notification above, the Leader may within 7 days, give notice of objection to the dismissal, accompanied by reasons for the objection.
- (2) The City Solicitor or Deputy City Solicitor (in the event that the City Solicitor was the relevant "protected" officer) may request that the I&DC action the dismissal provided that:
 - No objection is received from the Leader; or,
 - Upon receiving an objection, a meeting of the Council is convened, the objection considered, and the Council resolves that the objection is not material or is not well-founded.

APPENDIX 2**Proposed Officers' Employment Procedure Rules in Part 3D of the Constitution****Part 3D - Officers' Employment Procedure Rules ¹**

These rules determine procedures to be followed in the recruitment of senior officers of the council and in any disciplinary action which may become necessary and the involvement of Members in such matters. Further details of the disciplinary process for senior officers are contained in relevant policies agreed by the Employment Committee.

1. Recruitment and appointment**(a) Declarations**

- i) The council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are related to, or in a relationship with, any existing councillor or employee of the council; or of the partner of such persons.
- ii) No candidate so related to a councillor or an officer will be appointed without the authority of the relevant chief officer or an officer nominated by him/her.

(b) Seeking support for appointment.

- i) Subject to paragraph (iii), the council will disqualify any applicant who directly or indirectly seeks the support of any councillor for any appointment with the council. The content of this paragraph will be included in any recruitment information.
- ii) Subject to paragraph (iii), no councillor will seek support for any person for any appointment with the council.
- iii) Nothing in paragraphs (i) and (ii) above will preclude a councillor from giving a written reference for a candidate for submission with an application for appointment.

2. Recruitment of head of paid service and chief officers

Where the council proposes to appoint a chief officer and it is not proposed that the appointment be made exclusively from among their existing officers, the council will:

- (a) draw up a statement specifying:
 - i) the duties of the officer concerned; and
 - ii) any qualifications or qualities to be sought in the person to be appointed;
- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it;
- (c) make arrangements for a copy of the statement mentioned in paragraph (1) to be sent to any person on request;

¹ Last updated on [to be added]

APPENDIX 2

3. **Where a post has been advertised as provided in paragraph 2(b), the council shall -**
- (a) interview all qualified applicants for the post, or
 - (b) select a short list of such qualified applicants and interview those included on the short list.
4. Where no qualified person has applied the council shall make further arrangements for advertisement in accordance with paragraph 2(b),
5. The council may authorise a chief officer to carry out any or all of the steps in paragraphs 2, 3 and 4 above and unless the council otherwise directs, the chief executive is authorised to carry out those steps in respect of any chief officer post.
6. **Appointment of head of paid service**
- (a) The arrangements for the appointment of the head of paid service (the chief executive) are reserved to the council².
 - (b) Where the Employment Committee or an appointments sub committee is acting on behalf of the authority, the full council must approve the appointment before an offer of appointment is made.³
 - (c) The council may only make or approve the appointment of the head of paid service where no well-founded objection has been made by any member of the Cabinet.
7. **Appointment of chief officers**
- (a) The arrangements for and appointment of all chief officers and staff on the Joint National Council for Chief Officers conditions of service is delegated to the Employment Committee who are authorised to delegate any such process and appointment (including the terms of any contract for such appointment) to an 'appointments sub committee', which shall comprise such members as the Employment Committee thinks fit, but must include at least one member of the Cabinet.
 - (b) An offer of employment under (a) above must not be made by the Employment Committee or the appointments sub committee until —
 - (i) the chief executive has been notified of the names of the shortlisted candidates together with any particulars considered relevant to the proposed appointment;
 - (ii) the chief executive has notified every member of the Cabinet of —
 - any particulars relevant to the proposed appointment of any of the shortlisted candidates;

² The head of paid service (usually referred to as the Chief Executive) is a statutory appointment pursuant to section 4 of the Local Government and Housing Act 1989.

³ Paragraph 4 of Part 2 of Schedule 1 of the Local Authorities (Standing Orders) (England) Regulations 2001(as amended).

APPENDIX 2

- the period within which any objection to the making of any offer is to be made by the Leader of the Council on behalf of the Cabinet; and
- (iii) either —
 - The Leader has, within the period specified, notified the committee that the Cabinet has no objection to the making of any offer;
 - the chief executive has notified the committee that no objection was received from the Leader within the period specified; or
 - the committee is satisfied that any objection received from the Leader of the Council within the period specified is not material or is not well-founded.

8. Other appointments

- (a) Officers other than head of paid service and chief officers

Appointment of officers on any other scheme of condition of service is the responsibility of the relevant chief officer or his/her nominee, and may not be made by councillors.

9. Disciplinary action of Relevant Officers

- (a) **Suspension.** The head of paid service, monitoring officer and chief finance officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months.

- (b) councillors will not be involved in disciplinary action against any officer other than those employed on the Joint National Council for Chief Officers conditions of service.

10. Dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer

- (a) In this paragraph 10:
- "the 2011 Act" means the Localism Act 2011;
 - "independent person" means a person appointed under section 28(7) of the 2011 Act;
 - "local government elector" means a person registered as a local government elector in the council's area;
 - "The Panel" means a committee appointed by the council for the purposes of advising the council on matters relating to the dismissal of the head of paid service, the monitoring officer or the chief financial officer;

APPENDIX 2

- "relevant meeting" means a meeting of the full council to consider whether or not to approve a proposal to dismiss the head of paid service, the monitoring officer or the chief financial officer;
 - "relevant officer" means the chief officer, head of paid service, or monitoring officer, as the case may be.
- (b) Where the Employment Committee or a committee acting on its behalf is discharging on behalf of the council the function of dismissal of a relevant officer, the full council must approve that dismissal before notice of dismissal is given to that person.

The relevant officer may not be dismissed unless the procedure set out in the following paragraphs 10(b) (i) to (xi) is complied with:

- (i) The Director of HR, Legal, and Procurement (or in the event that the factual circumstances suggest that a conflict of interests may arise in respect of that Director another Director) shall appoint:
- a. In consultation with the leaders of each political group, a committee of three members (the Investigation and Disciplinary Committee (I&DC)) shall be established, made up of councillors in political proportionality to the number of seats each party has on the council and each of whom shall not take part in any decisions of the council relating to the same matter;
 - b. In consultation with the leaders of each political group, a committee of three members (the I&DC Appeals Committee) not being members of the I&DC shall be established made up of councillors in political proportionality to the number of seats each party has on the council and each of whom shall not take part in any decisions of the council relating to the same matter;
 - c. A Panel of at least two independent persons appointed in accordance with the procedure set out below at (ii) to (v) for the purpose of providing advice, views, and recommendations.
- (ii) The Panel referred to at (i) (c) shall comprise "relevant independent persons" (meaning any independent person who has been appointed by the council), or where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the council considers appropriate.
- (iii) Subject to paragraph (iv), the council must appoint to the Panel such relevant independent persons who have accepted an invitation issued

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in accordance with paragraph (iii) in accordance with the following priority order-

- (1) a relevant independent person who has been appointed by the council and is a local government elector;
 - (2) any other relevant independent person who has been appointed by the council;
 - (3) a relevant independent person who has been appointed by another authority or authorities.
- (iv) No more than two relevant independent persons need be appointed but the Council may do so.
- (v) The Panel must be appointed at least 20 working days before the relevant meeting.
- (vi) A meeting of the Investigation and Disciplinary Committee (the I&DC) shall:
- a. Screen potential disciplinary / dismissal issues to consider whether they require investigation and whether the relevant officer should be suspended;
 - b. Organise an investigation;
 - c. Review the results of the investigation to consider what disciplinary action, if any, is appropriate after hearing the views of the relevant officer and then report its recommendations;
 - d. If the recommendation is for a dismissal, refer the matter to the Panel who shall review the decision and report of the I&DC, and provide their advice, views, and recommendations;
 - e. The I&DC shall, subject to (vii) below, provide the report of the Panel alongside its own report to Council for a formal decision.
- (vii) In the event that the relevant officer elects to appeal the decision of the I&DC to recommend dismissal the I&DC Appeals Committee shall convene to hear the appeal of the relevant officer, and shall review:
- a. the decision and report of the I&DC
 - b. any report of the Panel on the matter
 - c. any representations made by the relevant officer,
 - d. any additional commentary provided by the Panel (in relation to any new matters raised)

Following which, the I&DC Appeals Committee shall where it resolves to recommend dismissal, submit its report together with any report of the Panel to Council for formal decision

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- (viii) Before the taking of the vote at the relevant meeting on whether or not to approve such a dismissal, the full council must take into account, in particular-
- any advice, views or recommendations of the Panel;
 - the conclusions of any investigation into the proposed dismissal; and
 - any representations of the officer whose dismissal is being considered at the meeting
- (ix) If the Council approves the dismissal the City Solicitor or Deputy City Solicitor (in the event that the City Solicitor was the relevant officer) shall notify all members of the Cabinet of the name, and matters relevant to the dismissal.
- (x) Following receipt of the notification above, the Leader may within 7 days, give notice of objection to the dismissal, accompanied by reasons for the objection.
- (xi) The City Solicitor or Deputy City Solicitor (in the event that the City Solicitor was the relevant officer) may request that the I&DC action the dismissal provided that:
- a. No objection is received from the Leader; or,
 - b. Upon receiving an objection, a meeting of the Council is convened, the objection considered, and the Council resolves that the objection is not material or is not well-founded.

Any remuneration, allowances or fees paid by the council to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the 2011 Act.

11. Dismissal of other Senior Officers

- (a) councillors will not be involved in the dismissal of any officer other than those who are employed on the Joint National Council for Chief Officers conditions of service.
- (b) Where the Employment Committee or a committee acting on its behalf is discharging the function of dismissal of an officer on the Joint National Council for Chief Officers Conditions of Service, at least one member of the Cabinet must be a member of that committee.
- (c) Notice of the dismissal of an officer on the Joint National Council for Chief Officers Conditions of Service must not be given by the council, the Employment Committee, a sub-committee or officer until —
 - (i) the chief executive has been notified of the name of the person whom it is proposed to dismiss and any particulars which are considered relevant to the dismissal;

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- (ii) the chief executive has notified every member of the Cabinet of —
- the name of the person whom it is proposed to dismiss;
 - any particulars relevant to the proposed dismissal;
 - the period within which any objection to the proposed dismissal is to be made by the Leader of the Council on behalf of the Cabinet; and
- (iii) either —
- The Leader has, within the period specified, notified the committee or officer taking the decision that the Cabinet has no objection to the dismissal;
 - the chief executive has notified the committee or officer taking the decision that no objection was received from the Leader within the period specified; or
 - the committee or officer is satisfied that any objection received from the Leader of the Council within the period specified is not material or is not well-founded.

(These Rules incorporate where required within paragraphs 6, 7, 8, 9, 10 and 11, the provisions of the Local Authorities (Standing Orders) (England) Regulations 2001)(as amended).

NOTE:

The term chief officer includes Directors.

Agenda Item 13



Portsmouth CITY COUNCIL

COUNCIL MEETING

QUESTIONS FOR THE CABINET OR CHAIR UNDER STANDING ORDER NO 17

CITY COUNCIL MEETING – 10 November 2015

QUESTION NO 1

FROM: COUNCILLOR GERALD VERNON-JACKSON

TO REPLY: CABINET MEMBER FOR ENVIRONMENT &
COMMUNITY SAFETY
COUNCILLOR ROB NEW

Why was a decision to sack nine Community Wardens taken in secret and not open to scrutiny by the public or councillors?

QUESTION NO 2

FROM: COUNCILLOR MATTHEW WINNINGTON

TO REPLY: CABINET MEMBER FOR PLANNING,
REGENERATION AND ECONOMIC
DEVELOPMENT
COUNCILLOR LUKE STUBBS

Can the cabinet member please update Full Council on the progress of the work going on at South Parade Pier and of the bid to the coastal revival fund that the council has made with the pier owners?

QUESTION NO 3

FROM: COUNCILLOR COLIN GALLOWAY

TO REPLY: LEADER OF THE COUNCIL
COUNCILLOR DONNA JONES

Will the Leader please give us an update on the survey that was conducted to consider local elections to be held every four years instead of the expensive present system?

QUESTION NO 4

FROM: COUNCILLOR MATTHEW WINNINGTON

TO REPLY: LEADER OF THE COUNCIL
COUNCILLOR DONNA JONES

Will the Council Leader please give us a progress report on the joint bid with Caen to host the Tour de France by the end of this decade?