



**CABINET
THURSDAY, 15TH JANUARY 2004 AT 6.00PM
IN COMMITTEE ROOM 3, SOUTHFIELDS, LOUGHBOROUGH**

To: Councillors Anthony, Feeney, Forrest, M.J. Hunt (Leader),
MacLeod, Newton (Deputy Leader), Sharpe,
Vincent and Wilson (Deputy Leader)
(for attention)

All other members of the Council
(for information)

AGENDA

1. APOLOGIES
2. DISCLOSURES OF PERSONAL INTERESTS
3. MINUTES

PART 2 (RESERVED TO CABINET)

4. QUESTION UNDER COUNCIL PROCEDURE RULE 27 (page 5)

Scrutiny Committee: Community Development

PART 1 (RESERVED TO COUNCIL)

5. COUNCIL TAX BASE 2004/05 AND SPECIAL EXPENSES
Head of Benefits and Revenue Services' report attached. (page 6)

*Scrutiny Committee: Resources
Key Decision*

6. 2004/05 ESTIMATES – HOUSING REVENUE ACCOUNT
Head of Financial Services' and Head of Housing Services' report attached. (page 27)

*Scrutiny Committee: Housing
Key Decision*

7. CONTRACT PROCEDURE RULES

Chief Executive's report attached. (page 36)

Scrutiny Committee: Resources

8. CHARNWOOD LEISURE CENTRE PHASE II "WET-SIDE"
REFURBISHMENT, APPOINTMENT OF CONSULTANTS

Head of Property Services' report attached. (page 76)

*Scrutiny Committee: Community Development
Key Decision*

9. TIMETABLE OF MEETINGS

Head of Legal and Democratic Services' report. (to follow)

Scrutiny Committees: All

PART 2 (RESERVED TO CABINET)

10. REVIEW OF REFUSE COLLECTION AND RECYCLING SERVICE

Head of Technical Services' report. (to follow)

*Scrutiny Committee: Health and Public Protection
Key Decision*

11. ENVIRONMENTAL IMPROVEMENTS SCHEME FOR GARDEN STREET,
THURMASTON

Head of Planning Services' report attached. (page 79)

Scrutiny Committee: Environment

12. REVISED HUMAN RESOURCES PROCEDURES AND CONSULTATION
ARRANGEMENTS

Head of People and Performance's report attached. (page 87)

Scrutiny Committee: Resources

13. RISK MANAGEMENT

Head of People and Performance's report attached. (page 108)

Scrutiny Committees: All

14. ANTI-SOCIAL BEHAVIOUR PROTOCOL

Head of Policy and Economic Regeneration's report attached. (page 113)

Scrutiny Committee: Health and Public Protection

15. LEICESTERSHIRE COMMUNITY INFORMATION INITIATIVE – DATA SHARING PROTOCOL

Head of Policy and Economic Regeneration's report attached. (page 134)

Scrutiny Committee: Resources

16. REVENUE MONITORING – HOUSING REPAIRS AND MAINTENANCE HOLDING ACCOUNT – 2003/04

Head of Financial Services' and Head of Property Services' report attached. (page 168)

Scrutiny Committee: Housing

17. COMMUNITY SPORTS FACILITY DEVELOPMENT PROGRAMME

Head of Cultural and Leisure Services' report attached. (page 172)

Scrutiny Committee: Community Development

17a. SHOPMOBILITY AND MARKETS AND FAIRS

Head of Policy and Economic Regenerations' report attached. (page 174a)

18. EXEMPT INFORMATION

It is recommended that members of the public be excluded from the meeting during the consideration of the following items on the grounds that they involve the likely disclosure of exempt information as defined in paragraphs 1 and 9 of Part 1 of Schedule 12A to the Local Government Act 1972.

19. GRANT OF EASEMENT AT ARNOLD SMITH HOUSE, BRIDGE STREET, SHEPSHED

Head of Legal and Democratic Services' report circulated to councillors. (page 175)

Scrutiny Committee: Resources

20. RELOCATION OF THE COUNCIL'S LIMEHURST AVENUE WORKS DEPOT TO GRANITE WAY, MOUNTSORREL

Director of Community Engagement's, Head of Contract and Public Services' and Head of Property Services' report circulated to councillors. (page 178)

Scrutiny Committee: Resources

21. TOWN HALL CLOSURE IMPLICATIONS AND ORGANISATIONAL REVIEW

Head of Cultural and Leisure Services' report. (to follow)

Scrutiny Committee: Community Development

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PART 2 (RESERVED TO CABINET)

CABINET – 15TH JANUARY 2004

ITEM 4 QUESTION UNDER COUNCIL PROCEDURE RULE 27

Councillor Harley has given notice of the following question which he wishes to ask the Leader under Council Procedure Rule 27:

“In Thurmaston, there are two access points into Watermead Country Park, one via Canal Street, and one via Mill Lane. There are two bridges to cross the river. The bridge at the end of Mill Lane is stepped and is, therefore, unsuitable for either wheelchairs or electric scooters. The access via Canal Street is rutted and potholed and the steep and uneven surface makes it impossible for elderly and disabled people to cross at this point.

The County Council is responsible for Watermead Country Park. It obviously acknowledges the rights of disabled people and its legal obligation to provide reasonable access because it has installed a gate specifically for disabled people which is operated by a RADAR key (which is widely available to any registered disabled person) at the access point at the end of Canal Street, just over Johnson’s bridge. However, people using a wheelchair or electric scooter cannot reach this gate from Thurmaston.

I would like to ask the Leader, in view of the access problems for disabled people, if he would urge the County Council to take action to resolve this situation and make Watermead Park accessible to disabled people from Thurmaston.”

Scrutiny Committee: Community Development

PART 1 (RESERVED TO COUNCIL)

CABINET – 15TH JANUARY 2004

REPORT OF THE HEAD OF BENEFITS & REVENUES

ITEM 5 COUNCIL TAX BASE 2004/05 & SPECIAL EXPENSES

Purpose for the report

Under the provisions of the Local Authorities (Calculation of Council Tax Base) Regulations 1992 (hereinafter referred to as “the regulations”) a billing authority is required to calculate its Council Tax Base in accordance with the regulations. It is also necessary to pass a resolution on the matter of Special Expenses.

Recommendations

1. that the report of the Head of Benefits & Revenues for the calculation of the Council Tax Bases for the year 2004/05 be approved; and
2. that pursuant to the Head of Benefits & Revenues’ report, in accordance with the Local Authorities (Calculation of Tax Base) Regulations 1992, the amounts calculated by Charnwood Borough Council as its Council Tax Bases for the year 2004/05 shall be as shown in the table.
3. that the expenses incurred by the Council in performing in Loughborough a function performed elsewhere in its area by a parish council or the chairman of a parish meeting are treated as special expenses for the purposes of Section 35 of the Local Government Finance Act 1992, but only to the extent provided in minute 413 of the meeting of the Policy and Finance Committee held on 15th November 1983.
4. that the balance of Special Expenses at 31st March last be taken into account for the coming financial year, as resolved by the Policy and Finance Committee in minute 567 of 23rd November 1999.

Reasons

1. To set the Council’s 2004/2005 Council Tax Base.
2. As 1 above
3. To determine Special Expenses in Loughborough.

4. As 3 above.

Background

The regulations require a billing authority to produce a Council Tax Base for its area by first of all converting the total of all properties in the valuation list into terms of Band D and also taking into account the number of discounts and exemptions allowable. The resultant figure is then multiplied by the estimated collection rate for the forthcoming year to produce the Council Tax Base.

The following tables show how this has been calculated for the parishes, the special expense area of Loughborough and Charnwood Borough Council as a whole and the products of all these calculations are shown in the recommendations below. The figure for Charnwood Borough Council represents a 0.32% increase on the 2003/2004 Council Tax Base of 50251.6.

<u>Parish etc</u>	<u>Band D Equivalent Properties</u>	<u>Collection Rate</u>	<u>Council Tax Base 2004/05</u>
Anstey	1951.0	98.5%	1921.7
Barkby	138.4	98.5%	136.3
Barkby Thorpe	14.9	98.5%	14.7
Barrow-upon-Soar	1886.5	98.5%	1858.2
Beeby	33.1	98.5%	32.6
Birstall	3991.9	98.5%	3932.0
Burton-on-the-Wolds	423.8	98.5%	417.4
Cossington	213.3	98.5%	210.1
Cotes	14.0	98.5%	13.8
East Goscote	906.8	98.5%	893.2
Hathern	728.2	98.5%	717.3
Hoton	150.4	98.5%	148.1
Mountsorrel	2683.0	98.5%	2642.8
Newtown Linford	506.6	98.5%	499.0
Prestwold	33.3	98.5%	32.8
Queniborough	927.6	98.5%	913.7
Quorndon	2106.0	98.5%	2074.4
Ratcliffe-on-the-Wreake	87.2	98.5%	85.9
Rearsby	432.6	98.5%	426.1
Rothley	1629.7	98.5%	1605.3
Seagrave	242.8	98.5%	239.2
Shepshed	4270.7	98.5%	4206.6
Sileby	2337.0	98.5%	2301.9

South Croxton	119.4	98.5%	117.6
Swithland	142.4	98.5%	140.3
Syston	3863.2	98.5%	3805.3
Thrussington	259.2	98.5%	255.3
Thurcaston & Cropston	950.5	98.5%	936.2
Thurmaston	2774.0	98.5%	2732.4
Ulverscroft	62.9	98.5%	62.0
Walton-on-the-Wolds	119.3	98.5%	117.5
Wanlip	80.8	98.5%	79.6
Woodhouse	917.9	98.5%	904.1
Wymeswold	497.5	98.5%	490.0
Loughborough	15687.6	98.5%	15452.3
Charnwood B C	51183.5	98.5%	50415.7

Special Expenses

It is also necessary at this time for the Council to pass a resolution where the expenses incurred by the Council in performing, in part of its area, a function performed elsewhere by a Parish Council or the Chairman of a parish meeting shall be special expenses.

The Policy and Finance Committee reviewed the Loughborough Special Expenses account in November 1999 (minute 567 refers) and it was resolved to adopt the decision of the Working Party set up for that purpose. This resulted in the decision that the balance on the Special Expenses account should be recognised and reported to Members, and taken into account in the forthcoming financial year. Expenditure exceeded the precept at 31st March 2003 by £38,785 and the 2004/05 precept will be adjusted accordingly.

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Scrutiny Committee: Resources

Background Papers:

Minute 413 P & F Committee 15th November 1983.

Minute 567 P & F Committee 23rd November 1999.

Banding Analysis Report 15th December 2003

CABINET – 15 JANUARY 2004

Joint Report of the Head of Financial Services and Housing Services

ITEM 6 2004/2005 ESTIMATES – HOUSING REVENUE ACCOUNT

Purpose of the Report

This report presents the 2003/2004 Revised Estimates and 2004/2005 Original Estimates for the Housing Revenue Account.

Recommendations

Cabinet are requested to recommend:

1. that the 2003/2004 Revised Estimates and 2004/2005 Original Estimates for the Housing Revenue Account be approved as outlined in Appendix A.
2. that weekly rents are increased via implementation of the rent restructuring guidance at an individual property level from 1st April 2004. The actual percentage increase will vary in relation to each individual property whilst the overall average increase taking into consideration all properties is approximately 4.57% for 2004/2005.
3. that service charges be increased by the average rent increase of 4.57% to the following amounts:
 - Garages from £4.40 to £4.60
 - Communal Facilities in Sheltered Units from £2.25 to £2.35
 - Communal Facilities in grouped dwellings from £1.05 to £1.10
 - Council Tax communal Charges (payable by tenants in sheltered units with shared facilities) from £1.45 to £1.50
 - Heating charge in sheltered units from £5.50 to £5.75
 - Shop rents and water charges to be unchanged in accordance with Minute 302 of the Cabinet meeting on 7th December 2000.
 - Hostel Service Charges to remain unchanged at £64.15 in accordance with the Best Value Inspectorate recommendation.
 - the Landlord Warden charge is increased from £2.81 to £2.93 for residents receiving warden care in Sheltered Units and from £0.82 to £0.85 per week for tenants receiving mobile warden services.

Reasons

1. To ensure sufficient funding for the Housing Revenue Account in 2003/2004 and 2004/2005.

2. To ensure that ODPM guidance on rent restructuring is implemented.
3. Increases in Service Charges remain at the discretion of local authorities. An increase of 4.57% mirrors the average rent increase calculated via the rent restructuring guidance. In previous years, service charges have been raised in direct proportion to the percentage rent increase and it is not proposed to alter this for these estimates.

Policy Context

This report supports the strategic aims of ‘Decent Homes’ by detailing the financial options to deliver Charnwood Borough Council’s Housing Revenue Account Business Plan.

Background

The estimates are completed in accordance with Statutory and CIPFA guidance regarding the calculation and presentation of the Housing Revenue Account and the subsidy determinations issued by the ODPM. The 2004/2005 Original Estimates include the financial implications of year three of rent restructuring.

The following Appendices support this report:

- A Memorandum Housing Revenue Account
- B Repairs and Maintenance Estimates
- C Detailed breakdown of Management and Maintenance estimates

Summary of Estimates

The following table summarises the estimated level of balances over the two budget cycles:

	2003/2004	2004/2005
	Revised Estimate	Original Estimate
	£	£
Income	(20,955,600)	(14,937,600)
Expenditure	21,689,800	14,919,900
Deficit/(Surplus)	734,200	(17,700)
Opening balance	(1,431,825)	(697,625)
Deficit/(Surplus)	734,200	(17,700)
Closing balance	(697,625)	(715,325)

The 2003/2004 Revised Estimate assumes right to buy sales of approximately 130 which is the current level.

Balances

The Head of Financial Services has recommended that a minimum balance must be maintained of approximately £100 per dwelling since 1989. Whilst that figure has reduced in real terms over time, there has been a move towards a specific percentage of net expenditure as a working balance together with an assessment of the risks facing the HRA. This will be reviewed during the year, meanwhile, the budgets now presented maintain an adequate level of working balance.

Rents and Rent Restructuring

The dwelling rents budget for 2004/2005 has been calculated at an individual property level. The methodology for calculating these rents was set out in a report to Housing Scrutiny 10th December 2002 called Housing Rent/Service Levels. The principal difference is the removal of an option to increase base rents by a uniform percentage increase. The average rent increase is calculated as a rise of 4.57%. It should be noted that the ODPM maintain a 'claw back' from benefit subsidy for increases above the guidelines.

Service Charges

These remain at the discretion of the authority and are recommended to rise in line with the average rent increase for dwellings totalling 4.57%.

Warden Charges and estimates

On 1st April 2003 the Supporting People mechanism was implemented. It is administered by the Supporting People team at Social Services based at Leicestershire County Council. Within these estimates the impact of Supporting People is restricted to Warden expenditure and income. Income for Warden Services for both landlord and supporting people grant is included in the estimates. The Warden costs are currently shown net of Supporting People grant. This follows a special directive from the ODPM issued since the 2003/2004 Original budget report which allows Supporting People income and expenditure to continue to be accounted for in the Housing Revenue Account.

2003/2004 Revised Estimates - Variances

Note that variances are matched against the 2003/2004 Original Estimates.

Expenditure

Supervision and Management – General (£8,900 decrease)

This has been due, in part, to the vacancies in the staffing of the service

Special Services - £99,300 increase

This is due to a reduction in supporting people grant due to cancellations in the use of the mobile warden service and increase in support service costs.

Management of Repairs and Maintenance – (£90,000 increase)

This account now reflects the revised structures of the authority following the Senior Management Review, and the increases are due to support service recharges, including Contact Centre.

Maintenance – (£10,200 increase)

Appendix B details individual variances in types of maintenance expenditure. There has been a need to transfer budgets from general remedial repairs to the relet repairs, as the ‘capitalisation’ of these has had to be reviewed following the 2002/03 audit.

Amortised Premiums – (£198,700 increase)

This represents the premium paid for the premature redemption of external borrowing. The increase is due to the premature redemption of a number of debts in March 2003 and will be written-off against the Housing Revenue Account over a ten-year period in accordance with accounting standards. The full cost is met by an allowance in the Housing Subsidy calculation.

Income

Housing Subsidy – (£227,800 decrease)

This decrease is due to a lower estimate of rent rebates awarded

Investment Income – (£74,600 decrease)

This has fallen due to the lower investment returns and the fact that interest is now being charged on the premiums outstanding. The premiums, not the interest, will be recovered over ten years from Housing Subsidy.

2004/2005 Original Estimates – Variances

Note that variances are compared with 2003/2004 Revised Estimates since these are the most current.

Expenditure

Supervision and Management – General – (£130,800 increase)

This increase reflects the full staffing establishment of the service following the review in the previous year.

Maintenance – (£342,500 increase)

Refer to Appendix B for a detailed breakdown of individual maintenance variances. The prices in the budget are based on the existing multi trade contract which is due for review in 2004/05.

Rent Rebates

The ODPM has transferred the rebates to the General Fund for 2004/05 onwards. There are certain transitional arrangement concerning non-incentivised areas, these costs will fall on to the General Fund within two years. The rents remain gross in the HRA and there is a consequent adjustment in Housing Subsidy (see below).

Capital Charges

Capital Charges are levied on the Housing Revenue Account as the debt financing which originally paid for these capital assets. These are based on a 'credit ceiling' which is anticipated will become negative by the end of 2003/2004. The effect of this is that Capital Charges will cease in the Housing Revenue Account; hence there is reduced budget for Debt Management expenses.

Income

Rents – (£ 417,000 increase)

This line is gross of benefits which in future will be paid by the General Fund (but see Housing Subsidy below). The budgets include the 4.57% (average) rent increase in accordance with the rent restructuring rules. However, there is an additional £240,000 included for a reduction in the level of voids in 2004/05. This will require careful managing to ensure its attainment.

Charges for Services

These have been increased in line with the average rent increase.

Housing Subsidy

The subsidy will become negative in 2004/05. This means that the HRA will be paying an amount to the ODPM each month. However, as described earlier, the rent rebates will be charged to the General Fund, and in reality this negative subsidy will offset the payment back to the General Fund from the Department of Work and Pensions.

Conclusions

The balance on the HRA has been very strong for a number of years. Under spending on the account and the removal of capital charges has built up the balance to a figure of £1.4m at 1st April 2003.

However, the revised budget shows a deficit of £734,200 which is a considerably change on the original. Some of the changes are financial adjustments, but the Supervision and Management has increased from original by £180,400. Rent income is only estimated to be £50,673 higher than last year's actual due in part to the poor voids position in the current year. Clearly, the sale of around 130 houses each year contributes to the reduction in rent income whilst not reducing any of the cost base.

For 2004/05 a surplus of £17,700 is forecast but this is after making allowances for a substantial improvement in the voids position and consequent increases in rental income. Also the repairs account has been reduced to a minimum level.

The projected balance at March 31st 2005 remains satisfactory but the position must be monitored carefully to ensure that costs are contained and income maximised through efficient letting of vacant properties.

Scrutiny Committee: Housing Scrutiny

Key Decision: Yes

Background papers: ODPM Subsidy determinations 2004/05
Working Papers in Accountancy/Housing

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Report of the Chief Executive

ITEM 7 CONTRACT PROCEDURE RULES

Purpose of the Report

To revise the Contract Procedure Rules within the Constitution which predate the adoption of the Constitution and require revision both in terms of the organisational framework and evolving best practice in procurement.

Recommendations

1. To recommend that Council adopt the Contracts Procedure Rules as set out in the Appendix to this report.
2. To adopt the Code of Practice as set out in the Appendix, without its appendices stipulating the form of certain reports, but note that the proposed Contract Procedure Rules delegate to the Chief Executive the authority to amend this Code of Practice within the framework of the rules themselves.

Reasons

1. To revise the Contract Procedure Rules which predate the adoption of the Constitution.
2. To allow the flexible and consistent development of the application of the Contract Procedure Rules within the Council

Background

When the Constitution was adopted on 22nd April 2002, there were two specific areas where further work was required and the existing standing orders were simply taken up into the new constitution. These were the Financial Procedure Rules, which were finally revised by Council on 15th September 2003, and the Contract Procedure Rules.

The existing Contract Procedure Rules is a brief document which has makes reference, for instance to Head of Works, etc. The Performance Team, working with the Director of Performance Improvement adapted the more comprehensive and up to date procedure rules in effect in Leeds City Council, which were available through the IDeA as a model of best practice. This was completed in the middle of last year.

The adapted rules have been further modified to take into account other developments in procurement, and model standing orders now available from the IDeA, as well as developments within Charnwood Borough Council to form a Central Purchasing Team.

Procurement in local authorities is a changing and important area and one of the cornerstones of the ODPM's improvement programme. There is, however, an urgent need to update or existing rules now, recognising that there may be a requirement in future to further improve the framework. In particular, under the current constitution the ability to waive standing orders, which was previously a feature of finance and general purposes committees, is reserved to the Council. This introduces an unnecessary rigidity which is addressed in these Procedure Rules.

The key features of these Procurement Rules are:

- The introduction of an Annual Procurement Plan which will be the principal vehicle for organising procurement, and planning Cabinet involvement in strategic procurement exercises.
- A lesser degree of delegation to officers than under the Leeds model, but a greater degree than the current system, with Cabinet involvement determined within the context of the Annual Procurement Plan.
- Increased delegation to facilitate accepting tenders below £500,000 and starting contracts sooner when the specification and process has been agreed by Cabinet in advance of the tender exercise.
- A mechanism for transparently recording delegated officer decisions in a manner similar to that currently in place for minor staffing changes.
- The creation of the role of Contract Compliance Officer, which diverges from the legal orientation of the role in the Leeds model and recognises the importance of purchasing performance. As a role which can be assigned as appropriate by the Chief Executive, rather than a post, it can be more flexibly deployed throughout the creation of the Central Purchasing Team.
- The continued reliance on the responsibility of Heads of Service for procurement within their areas, but the ability to formalise their use of the Central Purchasing Team through the Code of Practice.

Scrutiny Committee(s): Resources

Key Decision: No

Background Papers: Leeds City Council Procedure Rules
IDeA Model Standing Orders

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APPENDIX

CONTRACTS PROCEDURE RULES-INDEX

- 1 Introduction
- 2 Compliance and Conduct of Officers and Members
- 3 Pre Contract Requirements
- 4 Selective Tendering Procedure-Approved List of Tenderers
- 5 Restricted Tendering Procedure
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- 7 Negotiated Tendering Procedure
- 8 Competition Requirements for Contracts below £50,000
- 9 Land Transactions
- 10 Nominated or Named Sub Contractors and Nominated Suppliers
- 11 Exceptions to Requirements of Competition
- 12 Post Tender Negotiations
- 13 Submission of Tenders
- 14 Receipt of Tenders
- 15 Opening and Registration of Tenders
- 16 Submission, Receipt, Opening and Registration of Quotations
- 17 Errors in Tenders
- 18 Acceptance of Tenders/ Quotations
- 19 Variations and Contract Extensions
- 20 Written Contracts

CONTRACTS PROCEDURE RULES

1. INTRODUCTION

- (1) The purpose of Contracts procedure rules is to set clear rules for the procurement of goods, works and services for the Borough Council. This will ensure a system of openness, integrity and accountability where the probity and transparency of the process will be beyond reproach. In turn this will lead to better value for money and give confidence to all concerned that the Borough Council is fulfilling its fiduciary responsibilities.
- (2) Any dispute or difference as to the interpretation of Contracts procedure rules and/or any related Code of Practice shall be resolved by the Contract Compliance Officer. All such documents will be regularly reviewed.
- (3) The functions of the Contract Compliance Officer as described below are delegated to the Chief Executive who will then delegate these to another officer and a deputy for the normal performance of this role. An officer will not exercise discretion in the exercise of these functions where they have been directly involved in a procurement, either on a tender evaluation panel or in directly ordering goods.
- (4) The Chief Executive will keep under review a Code of Practice associated with these rules and will have delegated authority to amend this code within the framework of these rules in line with changed circumstances and evolving best practice.

2. COMPLIANCE AND CONDUCT OF OFFICERS AND MEMBERS

(1) COMPLIANCE

- (a) Every contract made by or on behalf of the Borough Council must comply with these Procedure rules, related Code(s) of Practice and the Council's Financial Procedure Rules.
- (b) All Council employees and firms engaged to act in any capacity to manage or supervise a Contract **must** comply with these Procedure rules, related Code(s) of Practice and the Council's Financial Procedure Rules, and each Head of Service must ensure such compliance in the department for which he/she is responsible. Failure to comply with these Procedure rules or the associated Code(s) of Practice may result in disciplinary action and legal proceedings against the officers or firms concerned.

All Council employees and firms engaged on the Borough Council's behalf must ensure that any conflicts of interest are avoided.

- (c) Subject to paragraph (f) below, no exception to these Procedure rules can be made unless authorised by the Contract Compliance Officer acting under delegated powers, or the Cabinet.
- (d) Where a Head of Service wishes to authorise an exception under Contracts procedure rule 2 (1) (c) he/she shall, prior to doing so, arrange for a report to be prepared as prescribed in Appendix 1 to the Code of Practice, and submit it for consideration by the Contract Compliance Officer. If the Contract Compliance Officer supports the exception they may either agree to it, if within their limits of delegation or recommend the exception to Cabinet for decision. The appropriate Head of Service shall not authorise an exception without the written agreement of the Contract Compliance Officer, which will be made as described in Appendix 2 to the Code of Practice. If the Contract Compliance Officer decides, having considered the comments made, to authorise an exception, then he/she shall record the decision in accordance with the Council's Delegated Decision process.
- (e) The Contract Compliance Officer shall maintain a register of all such exceptions where comments have been made.
- (f) National or European Union legislation overrides these Procedure rules.
- (g) Where it becomes apparent that a Head of Service has failed to comply with these Contracts Procedure Rules then the Contract Compliance Officer shall require a report outlining the reasons for the non-compliance and the steps taken to prevent a recurrence. That report, together with the Contract Compliance Officer's comments, will be submitted to the next available meeting of the Resources Scrutiny Committee.

(2) CONDUCT OF OFFICERS AND MEMBERS

- (a) Members must conform to the Members' Code of Conduct as detailed in the Council's Constitution.
- (b) Any officer, Member, agent of the Council or firm, whilst acting on the Council's behalf in relation to any contractual matter directly or indirectly concerning the Council, shall conduct themselves in such a manner that the independence and integrity of the Council and the

Council's procedures are at all times maintained and are seen to be maintained. Failure to observe such standards of conduct will be regarded by the Council with the utmost gravity.

3. PRE CONTRACT REQUIREMENTS

- (1) Before commencing any proposed procurement process with an estimated value of £15,000 or more, the appropriate Head of Service must consult the Officers mentioned below:-
 - (a) the Contract Compliance Officer and
 - (b) the relevant Cabinet Lead Member, and
 - (c) the Head of Financial Services
- (2) Before entering into a contract with any firm, or arranging for works or services to be carried out by another Service Unit, the appropriate Head of Service must:-
 - (a) be satisfied that a Specification which will form the basis of the contract/ arrangement, has been prepared; and
 - (b) have prepared and documented an estimate of the cost of the contract/ arrangement, including where appropriate, any future annual maintenance costs, and any internal costs or staffing required to complete the contract/arrangement;
- (3) At the beginning of each financial year the Contract Compliance Officer will submit an Annual Procurement Plan to Cabinet for approval, containing details of the contracts above £15,000 to be let in that financial year. In approving the report, the Cabinet will agree for each contract the form of tender evaluation arrangements, whether the tender specification needs to be approved by Cabinet and whether authority is delegated to the Contract Compliance Officer to agree exceptions and open negotiation procedures. Any contracts not in the annual plan must have their specification and arrangements agreed by Cabinet before procurement begins.
- (4) Before entering into a contract with any firm, the appropriate Head of Service must:-
 - (a) be satisfied about the technical capability of such firm; and

- (b) ensure that all evaluation criteria have been determined in advance; and
- (c) ensure that these Procedure Rules and any attendant Code(s) of Practice have been complied with, and that the proposed contract represents value for money.

4. SELECTIVE TENDERING PROCEDURE – APPROVED LIST OF TENDERERS

- (1) This Procedure rule applies where Cabinet has decided that a list will be kept of the firms to be invited to tender/ quote for contracts.
- (2) Any such list must:-
 - (a) contain the names of all firms who wish to be included in it, who comply with the criteria set for inclusion, and are approved by the Contract Compliance Officer;
 - (b) indicate the categories and values for which each firm is approved;
 - (c) be kept, maintained and administered by the Contract Compliance Officer.
- (3) At least four weeks before a list is first compiled, notices inviting applications for inclusion on it must be published in one or more local newspapers circulating in the Borough, and in one or more publications circulating amongst firms who undertake contracts of the specified values or categories. Such notices will also be published on the Council's Web-Site.
- (4) The list must be amended as required (including deletions due to any circumstances affecting any firm's ability to perform certain contracts), and must be reviewed from time to time in accordance with the procedures set out in Procedure rule 4(3) and relevant Code(s) of Practice.
- (5) Amendments to any list will be recorded by the Contract Compliance Officer.
- (6) Invitations to tender must be limited to firms whose names are on the list produced under this Procedure rule, and must be sent to at least three of those firms selected, or, if there are fewer than three such firms, to all firms. If less than three firms are invited to tender, then the Contract Compliance Officer must keep a record of the reasons for this.

- (7) The approved list shall be amended as required from time to time as part of a process of continual review. Overall review shall take place no less frequently than every three years.

5. RESTRICTED TENDERING PROCEDURE

- (1) This Procedure rule applies to contracts with an estimated value of £50,000 or more, and where no list has been approved under Procedure rule 4, or if the Contract Compliance Officer considers that Procedure rule 4 is inappropriate.
- (2) Public Notice must be given in one or more local newspapers circulating in the Borough and on the Council's Web-Site and, if the estimated value of the contract exceeds £100,000, in one or more newspapers or journals circulating among firms who undertake such contracts. The notice must set out details of the proposed contract, and invite firms interested to apply within such period as may be specified, (being not less than ten days), for permission to tender. All responses to advertisements must include the completion of an application form. Clear instructions shall be given in the advertisement regarding the arrangements for the delivery and receipt of applications with particular reference to a deadline for receipt. The rule for the receipt of applications will be the same as that for tenders as set out in Procedure rule 14. (4)
- (3) After the expiry of the period specified in the public notice, invitations to tender stating details of the proposed contract and the last date for receipt of tenders must be sent to at least three of the firms who applied for permission to tender selected by the appropriate Head of Service or, if fewer than three firms have applied and are considered suitable, to all such firms. If less than three firms are invited to tender, the appropriate Contract Compliance Officer must keep a record of the reasons for this.

6. OPEN TENDERING PROCEDURE

- (1) This Procedure rule applies to contracts with an estimated value of £50,000 or more, if no appropriate Approved List exists or if the Contract Compliance Officer considers Procedure rules 4 and 5 are inappropriate.
- (2) In any such case at least ten days public notice must be given in one or more local newspapers circulating in the district and on the Council's Web-Site and, if the estimated value of the contract exceeds £100,000, in one or more newspapers or journals circulating amongst such firms who undertake such contracts, setting out details of the proposed contract, inviting tenders and stating the last date on which tenders will be received.

7. NEGOTIATED TENDERING PROCEDURE

- (1) This Procedure rule applies to contracts with an estimated value of £50,000 or more, if the Contract Compliance Officer considers that Procedure rules 4, 5, and 6 are inappropriate.

- (2) The appropriate Head of Service acting under delegated powers may invite or authorise the invitation of tenders from firms by way of a negotiated procedure. Prior to using a negotiated procedure under this Contracts procedure rule, the appropriate Head of Service shall arrange for a report to be prepared as prescribed in Appendix 1 to the Code of Practice and submit it for consideration to the Contract Compliance Officer. If the Contract Compliance Officer supports the use of the negotiated procedure they may either agree to it, if within their limits of delegation or recommend the exception to Cabinet for decision.. The appropriate Head of Service shall not proceed without having obtained the written agreement of the Contract Compliance Officer, which will be made as described in Appendix 2 to the Code of Practice. The negotiated procedure can only be used where the appropriate Head of Service can show that:
 - (a) one of the procedures set out in Procedure Rules 4, 5 or 6 has been used and resulted in unacceptable or irregular tenders or no tenders or no appropriate tenders; or
 - (b) exceptionally where the nature of the procurement or risks involved does not permit prior overall pricing; or
 - (c) the nature of the procurement is such that a precise specification cannot be drawn up; or
 - (d) either of the other procedures have been used and resulted in no tenders or no appropriate tenders; or
 - (e) only one supplier is available for technical or artistic reasons or on account of exclusive rights; or
 - (f) a design contest is appropriate to the scheme. In this case all successful candidates shall be invited to participate in the negotiations; or
 - (g) extreme urgency exists for unforeseen reasons which are not attributable to the Council and the various time limits cannot be met; or

- (h) through unforeseen circumstances additional services (NB the aggregate amount of the “additional services” must not exceed 50% of the amount of the original main contract) not included in the original contract are required provided; such services cannot be technically or economically separated from the main contract without great inconvenience; or such services although separate from the original contract are strictly necessary for its completion; or
- (i) there is a need for new services, which are a repetition of work already awarded on an earlier contract. The original notice must state that the negotiated procedure might be used. This procedure may be used only during the first three years of the original contracts.

8. COMPETITION REQUIREMENTS FOR CONTRACTS BELOW £50,000

- (1) Where there is an Approved List of Tenderers in existence then that Approved List must be used as the source of providing the names of contractors from whom quotations are sought.
- (2) The appropriate Head of Service must invite at least three written quotations for a proposed contract with an estimated value of over £5,000 and up to £50,000. If three quotations cannot be obtained due to lack of suitable firms prepared to quote, then the Contract Compliance Officer must keep a record of the reasons for this.
- (3) For contracts valued at below £5,000, the Head of Service concerned should proceed in a manner most expedient to the efficient management of the service, having kept a record of the reason for so doing, and also the number of quotations received.

9. LAND TRANSACTIONS

(1) APPLICATION

- (a) This Procedure Rule applies where there is a land transaction.
- (b) “Land transaction” means the acquisition or disposal of, or other dealing with land whether or not buildings, plant and equipment, fixtures and fittings, or other assets are included in that transaction. A transaction concerning only plant and equipment, fixtures and fittings, or other assets is not a land transaction. The grant of temporary licence to occupy is not a land transaction.

- (c) “Major disposal” means a land transaction, which consists of either a disposal of the freehold where the consideration exceeds £50,000, or the grant of lease where the rent exceeds £20,000 per annum or where the premium exceeds £50,000.
- (d) With the exception of Contracts procedure rules 1 and 2, none of the Council’s other Contracts procedure rules apply to land transactions, unless otherwise stated in this Procedure Rule.
- (e) “The property procedures” means the procedures adopted by the Asset Management Team from time to time, in consultation with the Directors’ Team, Cabinet, Contract Compliance Officer and the Head of Financial Services.
- (f) “Best consideration” means the legal obligation upon the Borough Council to achieve a consideration, which is the best that can reasonably be obtained.

(2) APPROVAL OF MAJOR DISPOSALS

- (a) The principle and method of each major disposal must be approved by the Cabinet, who shall consider a report from the Directors’ Team, following consultation with the Asset Management Team:
 - (i) specifying the land to be disposed of;
 - (ii) confirming whether that land has been declared surplus to the Borough Council’s requirements;
 - (iii) advising upon the proposed method of disposal, and providing the reasons for selecting that method;
 - (iv) in matters where the Borough Council must achieve best consideration confirming that the proposed method of disposal which has been selected, is most likely to achieve this;
 - (v) in matters where it is proposed that the disposal should be for less than best consideration, giving reasons for and against seeking best consideration and, following consultation with the Contract Compliance Officer, specifying the relevant legal powers of the Council to accept less than best consideration.
- (b) The principal terms of major disposals (except where the approved method of disposal is by auction) must be approved by Cabinet.

When determining such matters, Cabinet shall consider a report confirming either that the consideration agreed represents best consideration, or following consultation with the Contract Compliance Officer specifying the relevant legal powers of the Council to accept less than best consideration.

- (c) In major disposals where the approved method of disposal is the inviting of formal tenders or informal offers, the disposal must be advertised in at least one local, national, international or specialist newspaper or publication, as determined by the Contract Compliance Officer.

(3) DEALING WITH FORMAL TENDERS AND INFORMAL OFFERS

- (a) The receipt and opening of formal tenders and informal offers will be in accordance with the property procedures. Tenders and offers shall be opened at one time by an officer nominated by the Contract Compliance Officer, and the names of tenderers/offers, and the amounts of tenders/offers shall be recorded in a register kept by the Contract Compliance Officer. Persons present at the opening of tenders/offers shall record their presence by signing the register against the specified details. Tenders/offers must be opened by the nominated officer and witnessed by a senior member of staff. Alterations/errors in tenders/offers and late or otherwise invalid tenders/offers shall be dealt with in consultation with the Contract Compliance Officer.
- (b) Where there are major alterations/errors, or where a tender or offer is received late, or is otherwise invalid, the Contract Compliance Officer should arrange for invalid tenders to be returned accompanied by an explanation for this action.

(4) DISPOSALS BY AUCTION

- (a) In disposals where the approved method of disposal is by auction, at least three auctioneers approved by the Contract Compliance Officer must be invited to provide a written quotation as to commission and additional costs, and the lowest quote must be selected by the Contract Compliance Officer.
- (b) A “reserve price” must be set by the Contract Compliance Officer in consultation with the Head of Financial Services and the Council’s consultant valuer. The reserve price must be disclosed only to the auctioneer and the Council’s representative attending the auction.

(5) APPROVAL OF LAND TRANSACTIONS OTHER THAN MAJOR DISPOSALS

The principal terms of land transactions other than major disposals (except where the method of disposal is by way of auction) must be approved by the Contract Compliance Officer or Cabinet as appropriate. When determining such matters, Cabinet shall consider the proposals in an agreed format confirming either that the consideration agreed represents best consideration, or following consultation with the Contract Compliance Officer specifying the relevant legal powers of the Council to accept less than best consideration.

(6) APPLICATION OF THE PROPERTY PROCEDURES

All land transactions must be conducted in accordance with the property procedures.

(7) FORMALITIES

All contracts and other documentation entered into pursuant to all land transactions shall be in writing, and shall be signed or sealed, as appropriate.

10. NOMINATED OR NAMED SUB-CONTRACTORS AND NOMINATED SUPPLIERS

- (1) This Procedure rule applies where a sub-contractor or a supplier is to be nominated to a main contractor.
- (2) Where the estimated amount of the sub-contract or the estimated value of the goods or materials to be supplied by a nominated supplier is £50,000 or more, then tenders must be invited in accordance with Procedure Rules 4, 5, 6 or 7.
- (3) Where the estimated amount of the sub-contract or the estimated value of goods or materials to be supplied by a nominated supplier is less than £50,000 then quotations must be invited in accordance with Procedure Rule 8.
- (4) The terms of any invitation for nominated sub-contractors or suppliers must require that, if selected, the firms would be willing to enter into:-
 - (a) a contract with the main contractor on terms which indemnify the main contractor against the main contractor's own obligations under

the main contract in relation to the work or goods or materials included in the sub-contract; and

- (b) an agreement to indemnify the Borough Council in such terms as may be prescribed.
- (5) The appropriate Head of Service must nominate to the main contractor the firm whose tender or quotation in his/her opinion is the most satisfactory. Provided that, where the tender is other than the lowest received, the Head of Service concerned shall arrange for a report to be prepared as prescribed in Appendix 1 to the Code of Practice and submit it for consideration by the Contract Compliance Officer and the Head of Financial Services. The appropriate Head of Service shall not authorise the nomination without having obtained written comments from the Contract Compliance Officer and the Head of Financial Services, which will be made as described in Appendix 2 to the Code of Practice. If the Contract Compliance Officer and/or the Head of Financial Services state that the Head of Service concerned should not proceed with the nomination and the Head of Service still wishes to proceed, then a joint report should be submitted to Cabinet to make the decision.

11. EXCEPTIONS TO REQUIREMENTS OF COMPETITION

- (1) Subject to Contracts Procedure Rule 11 (2) below and provided that a proposed contract complies with any other Procedure rules, related Code(s) of Practice and Financial Procedure Rules, Contracts Procedure Rules 4, 5, 6, 7, 8 and 10 will not apply to:-
 - (a) the purchase of proprietary or patented goods or materials or services which in the opinion of the appropriate Head of Service and the Contract Compliance Officer are obtainable only from one firm, and where no reasonably satisfactory alternative is available;
 - (b) the execution of works or supply of services of a specialised nature which in the opinion of the appropriate Head of Service and the Contract Compliance Officer are carried out by only one firm, and where no reasonably satisfactory alternative is available;
 - (c) the purchase of goods or materials, the execution of works or supply of services for which the appropriate Head of Service and Contract Compliance Officer consider no genuine competition can be obtained;
 - (d) the purchase of a named product required to be compatible with an existing installation as approved by the appropriate Head of Service and Contract Compliance Officer;

- (e) the instruction of, advice from or service provided by Counsel or instructions to Solicitors to act on the Borough Council's behalf;
 - (f) procurements made through or on behalf of ESPO or any other consortium, association, government body or agency, or similar body provided that tenders or quotations are invited and contracts placed in accordance with procedures, which are broadly equivalent to these Procedure rules and also comply with any national or EU legislation;
 - (g) the purchase of a work of art or museum specimen as approved by the appropriate Borough Council's Art Collection Panel;
 - (h) goods, works or services required by the appropriate Head of Service so urgently as not to permit compliance with the requirements of competition;
 - (i) special social care contracts, if in the opinion of the appropriate Head of Service, following consultation with the Contract Compliance Officer, it is considered in the Borough Council's interests and to meet its obligations under relevant legislation;
 - (j) the exercise of statutory grant aid powers delegated to an appropriate Head of Service (which shall be specified by that Head of Service in each case).
- (2) Prior to the use of any exception in this Contracts procedure rule, the appropriate Head of Service shall arrange for a report to be prepared as prescribed in Appendix 1 to the Code of Practice, and submit it for consideration by the Contract Compliance Officer. The appropriate Head of Service shall not proceed without having obtained written comments from the Contract Compliance Officer, which will be made as described in Appendix 2 to the Code of Practice. If the comments of either the Contract Compliance Officer or the Head of Financial Services state that the Head of Services concerned should not proceed, and the Head of Service still wishes to proceed, then a joint report should be submitted to Cabinet to make the decision.

12. POST-TENDER NEGOTIATIONS

- (1) This Procedure Rule relates to negotiations after the receipt of a quotation or tender submitted in accordance with these Procedure Rules.
- (2) Negotiations can only be commenced after the Contract Compliance Officer and the Head of Financial Services, have given the relevant Head of Service

written approval of the procedure(s) to be adopted to negotiate. A contract can be entered into only when the Contract Compliance Officer and the Head of Financial Services have given written approval to the outcome of the negotiations.

13. SUBMISSION OF TENDERS

- (1) If these Procedure Rules require an invitation to tender to be made, such invitations can be made using any available form of communication providing all invited parties receive identical information. Every notice of such invitation must state that no tender will be accepted unless it is in a tender envelope, which must bear the word “Tender”, and the subject to which it relates.
- (2) The tender must be submitted by the time and date specified in the invitation to tender as being the last time and date for the receipt of tenders.
- (3) Where the Head of Service estimates the tender value to be £50,000 or more, all tenders must be submitted to the Contract Compliance Officer.
- (4) Tenders submitted in hard copy must bear no details of name, mark, slogan or logo of the firm on the tender envelope.

14. RECEIPT OF TENDERS

- (1) Each tender submitted in accordance with Procedure Rule 13 will remain in the custody of the Contract Compliance Officer until the time appointed for opening.
- (2) The Contract Compliance Officer, upon receipt of a tender, must indicate on the envelope the date and time of its receipt.
- (3) If the tender envelope states the name, mark, slogan or logo of the firm, such name, mark, slogan or logo must immediately on receipt be obliterated by the Contract Compliance Officer.
- (4) No tender received after the date and time indicated for the receipt of tenders will be considered, but must be opened by the Contract Compliance Officer after the contract has been let to find out the name and address of the tenderer and returned to the tenderer.

15. OPENING AND REGISTRATION OF TENDERS

- (1) If tenders are invited under Procedure Rule 4, 5, 6, or 7 they shall be opened at one time by the representative of the Contract Compliance Officer in the

presence of a senior Financial Officer. Such tenders must only be opened at meetings pre-arranged by the Contract Compliance Officer.

- (2) The representative of the Contract Compliance Officer must at the time the tenders are opened record:
 - (a) the type of goods or materials to be supplied or disposed of, or the work or services to be carried out;
 - (b) the name of each firm submitting a tender;
 - (c) the date and time of receipt of each tender as recorded on the envelope;
 - (d) the amount of each tender where appropriate;
 - (e) the date and time of the opening of a tender;
 - (f) the signatures of all persons present at the opening of each tender;
 - (g) the reason for any disqualification of any tender;
 - (h) the name of each firm invited to tender but who did not submit a tender;
 - (i) where possible the position by competitive order of value of tenders received;

and ensure that:

- (j) each page of any tender document, which contains prices is initialled by each person present;

16. SUBMISSION, RECEIPT, OPENING AND REGISTRATION OF QUOTATIONS

Every quotation obtained for each proposed contract must be in writing and must be opened at one time and details recorded by the relevant Head of Service.

17. MINOR ERRORS IN TENDERS

Minor errors in tenders shall be dealt with in one of the following two ways:

- (1) the tenderer shall be given details of the minor error(s) found during the examination of the tender and shall be given the opportunity of confirming without amendment or withdrawing the tender; or
- (2) amending the tender to correct genuine arithmetic error(s) provided that in this case, apart from these genuine arithmetic errors, no other adjustment, revision or qualification is permitted.

Tender documents must state which method will be used for dealing with errors in tenders.

18. ACCEPTANCE OF TENDERS/QUOTATIONS AND AWARD OF CONTRACTS

- (1) No tender received can be excluded from the tender process without the approval of the Contract Compliance Officer.
- (2) Where a Head of Service recommends the acceptance of a quotation with a value exceeding £5,000, which is other than the lowest, if payment is to be made by the Borough Council, or the highest quotation if payment is to be received by the Borough Council, or is not within the limits prescribed by Financial Procedure Rules, the Head of Service shall arrange for a report to be prepared as prescribed in Appendix 1 to the Code of Practice, and submit it for consideration by the Contract Compliance Officer. The appropriate Head of Service shall not authorise the acceptance of a quotation without having obtained written agreement from the Contract Compliance Officer.
- (3) Subject to paragraph (2) of this Procedure Rule, if after evaluation of the tender/quotation, a tender/quotation is within the limits prescribed by Financial Procedure Rules and the appropriate delegated decision under the Councils' constitution has been made and the 'call in' period has expired, then:-
 - (a) In the case of a quotation below £5,000 in value, the appropriate Head of Service may accept the quotation by issuing either an official order (which should be signed by that Head of Service) or an Agreement signed by the Contract Compliance Officer.
 - (b) In the case of a tender or a quotation which has a value not exceeding £500,000, the Chief Executive, or another officer nominated for that purpose, may at the request of the appropriate Head of Service authorise the acceptance of the tender and award the contract on behalf of the Borough Council. This acceptance and award shall be notified in writing to the successful tenderer in a manner specified by the Contract Compliance Officer; or

- (c) All tenders which have a value of £500,000 or more must be the subject of a report to Cabinet, who must authorise the acceptance of the tender and the subsequent award of the contract by the Contract Compliance Officer.
 - (d) If Cabinet specifically requires it agreeing the Annual Procurement Plan or specification, or if in the opinion of the nominated officer in 3(b) issues have been raised in the tender evaluation which should be decided by Cabinet, the tender will be referred to Cabinet for decision irrespective of its financial value. Examples of such issues would be if the tender evaluation revealed significant unforeseen risks, or if the evaluation panel was unable to arrive at a consensus.
 - (e) Notwithstanding the above, the appropriate Head of Service must, prior to the Borough Council entering into any contract, ensure that the Head of Financial Services has approved the financial standing of the firm to whom it is proposed to award the contract, in accordance with Financial Procedure Rules, and where the contract value exceeds £50,000, the Head of Financial Services has carried out a detailed financial appraisal of the proposed contractor.
- (4) Heads of Service must ensure that ‘value for money’ will be achieved if an award is to be made after submission of a single tender/quotation.

19. VARIATIONS AND CONTRACT EXTENSIONS

- (1) All variations must be in the form of written instruction to the contractor. The likely cost effect of each variation should be assessed prior to the issue of the instruction. In cases where this would cause serious disruption to the contract, or where immediate action is necessary to prevent danger or damage, the instruction may be issued without prior costing, but in such cases this costing must be completed within seven working days of the instruction being issued.
- (2) Where a variation to a contract is such that without it the contract cannot be properly completed in accordance with the original design, with the performance standards required by the original design, then it is an essential variation.

The Supervising Officer may make essential variations to the contract which are considered necessary. The cost should be set against contingencies or accrued savings elsewhere in the contract.

Where an essential variation is likely to cause the authorised amount of the contract to be exceeded, the appropriate Head of Service shall seek the necessary approval set out in Financial Procedure Rules prior to issuing the variation.

- (3) Non-essential variations are those which fall outside the definition in paragraph (2) above. Non-essential variations must not be authorised without the appropriate Head of Service consulting with and considering the comments of the Head of Financial Services and also seeking the necessary approvals set out in Financial Procedure Rules.
- (4) All contract extensions, with the exception of “extensions of time” duly authorised within the original terms and conditions of contract, shall be regarded as non-essential variations, and should comply with Section 17 of the Code of Practice.

20. WRITTEN CONTRACTS

- (1) Every contract must be in writing and every contract with a value of £50,000 or more must be signed by the Chief Executive or another officer nominated by him for this purpose.

21. CONTENT OF CONTRACTS

The appropriate Head of Service must ensure that:

- (1) Every contract must set out:
 - (a) the work, goods, services, materials, matters or things to be carried out or supplied, and where specific items must be procured from an environmentally sustainable source;
 - (b) the price to be paid and/or the amounts and frequency or the method of calculation of contract payments with a statement of discounts or other deductions;
 - (c) the time(s) within which the contract is to be performed;
 - (d) such other matters referred to in this Procedure rule as are required to be included.
- (2) Every contract with an estimated value of £50,000 or more must state that if the firm fails to comply with its contractual obligations in whole or in part, the Borough Council may:-

- (a) cancel all or part of the contract;
 - (b) complete the contract;
 - (c) recover from the firm any additional costs in completing the contract;
 - (d) take other legal action against the firm.
- (3) Unless the Contract Compliance Officer and the appropriate Head of Service consider it to be unnecessary or impractical, every contract must provide that:
- (a) liquidated damages must be paid by the firm if it fails to comply with the terms of the contract;
 - (b) where under any contract, one or more sums of money are to be received by the Borough Council, the firm responsible for the payment of such sum or sums must pay interest at the rate stated in the contract from the date when payment is due until the date when payment is received;
 - (c)
 - (i) in the performance of the contract, the firm must not act incompatibly with the rights contained within the European Convention on Human Rights or the Disability Discrimination Act;
 - (ii) the firm must provide any information reasonably requested relating to the performance of the contract to ensure that the Borough Council meets its statutory obligations under:
 - Section 71 of the Race Relations Act 1976;
 - Best Value Legislation;
 - Transfer of Undertakings and Protection of Employment;
 - (d) in the performance of the contract, the firm must comply with the requirements of the Health and Safety at Work etc Act 1974 and of any other relevant Acts, Regulations, Orders or Rules of Law pertaining to health and safety;
 - (e)
 - (i) the firm must not sub-contract the works or any part of the works, without the prior written consent of the appropriate Head of Service who will take advice from the Contract Compliance Officer, where appropriate;

- (ii) without prejudice, and subject to any other condition of the contract, no sub-letting by the firm will relieve the firm of its liability to the Borough Council for the proper performance of the contract;
 - (iii) the firm is responsible to the Borough Council for the proper performance and observance by all sub-contractors of all the firm's obligations under the contract as if references in the contract to "the Contractor" were references to the sub-contractors. Failure or neglect by a sub-contractor is deemed to be failure or neglect by the firm;
- (f) the firm is prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever any part of its contract, without the prior written consent of the appropriate Head of Service (following consultation with the Contract Compliance Officer and the Head of Financial Services);
 - (g) all goods, materials, services or work must comply with any appropriate European Union Specification or Code of Practice or British Standard Specification or British Standard Code of Practice or European Union equivalents in force at the date of tender/quotation;
 - (h) the Borough Council is entitled to cancel the contract and to recover from the firm the amount of any loss resulting from such cancellation, if the firm or its employees or agents (with or without its knowledge):-
 - (i) does anything improper to influence the Borough Council to give the firm any contract;
 - (ii) commits an offence under the Prevention of Corruption Acts 1889 to 1916 or under Section 117(2) of the Local Government Act 1972;
 - (i) whenever under the contract any sum of money is recoverable from or payable by the firm, this sum may be deducted from any sum due or which at any time may become due to the firm under this or any other contract with the Council. Exercise by the Borough Council of its rights under this clause is without prejudice to any other rights or remedies available to the Borough Council under the contract.
 - (j) the firm must provide evidence of adequate insurance to cover both Public and Employers' Liability

- (4) Any standard terms and conditions of contract submitted by firms shall not be accepted without advice from the Contract Compliance Officer. Proposed payment arrangements under a contract must be discussed with and agreed by the Head of Financial Services in advance of any contract being entered into.

CODE OF PRACTICE

relating to

CONTRACTS PROCEDURE RULES

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CODE OF PRACTICE

relating to

CONTRACTS PROCEDURE RULES

1. Definitions

In Contracts Procedure Rules and this and any other associated Code of Practice, the following definitions are used:-

1. “Cabinet” means the Executive Committee of the Borough Council duly authorised.
2. “Member(s)” means an elected member of the Borough Council.
3. “Director” means a member of the Directors’ Team and includes any Director and the Chief Executive.
4. “Heads of Service” means the Chief Officers responsible for the management of an individual Service Unit.
5. “Firm(s)” includes any sole trader, partnership or company (limited or unlimited) or any duly incorporated trade, professional or commercial body.
6. “Contract” means an agreement between the Borough Council and any firm made by formal Agreement or by issue of a letter of acceptance or official order, for goods, materials, works or services;
7. “Quotation” means a formal offer to supply or purchase goods or materials, execute works or provide services at a stated price estimated by the appropriate Head of Service to be of a value of up to £50,000.
8. “Tender” means a formal offer to supply or purchase goods or materials, execute works or provide services at a stated price estimated by the appropriate Head of Service to be of a value of £50,000 or more.
9. “Supervising Officer” is used throughout this Code in the generic sense and includes Architect, Engineer and similar technical officer responsible for the management of the Contract.

2. Compliance (Contracts Procedure Rule 2)

Contracts Procedure Rules must be used in conjunction with the Borough Council's Financial Procedure Rules and any internal control procedures laid down by the Head of Financial Services. In particular, adequate division of duties and internal checking must exist and must be capable of being demonstrated by the maintenance of documentary evidence of the nature and extent of checks undertaken.

The provisions of Contracts Procedure Rules are overridden by national and/or European Union legislation (and may also be over-ridden by the terms of any external agency agreement). You must ensure that each is complied with, together with any relevant Council Codes of Practice (particularly EU procurement).

These requirements apply equally to Council schemes undertaken by external consultants.

1. Contracts Procedure Rules, related Code(s) of Practice and Financial Procedure Rules apply to ALL contracts entered into by the Borough Council. It is the responsibility of the relevant Head of Service to ensure compliance at all times. The Contract Compliance Officer MUST arrange for copies of Contracts Procedure Rules, the attendant Code(s) of Practice and Financial Procedure Rules to be given to officers, agents or firms involved in procurement whilst acting on the Borough Council's behalf, and for receipt to be acknowledged by those concerned.
2. With regard to any exceptions to Contracts Procedure Rules, the appropriate Head of Service should immediately consult with the Contract Compliance Officer and the Head of Financial Services. Officers must comply with the arrangements for requesting and the monitoring of Contracts Procedure Rule Waivers set out on the attached Guidance Note. The Contract Compliance Officer will keep a record of any exceptions to Contracts Procedure Rules together with the reasons, and will report details of such exceptions to the appropriate Scrutiny Committee from time to time.

THE PROCUREMENT PROCESS – AN INTRODUCTORY NOTE

There are effectively five stages to the procurement process:

1. Preparation (pre-contract requirements).
2. Invitation of tenders/quotations.
3. Evaluation of tenders/quotations.
4. Acceptance and award.
5. Monitoring of performance.

This Code now deals with each of those stages in turn.

3. Pre Contract Requirements (Contracts Procedure Rule 3)

1. The purpose of Contracts Procedure Rule 3, is, amongst other things, to ensure value for money. Before proceeding with a procurement of works or services, you must take into consideration the Borough Council's Best Value Procurement Policy (see Appendix 4). You must also be aware of any arrangements already in existence which you could or must use, and also that the Borough Council complies with the EU rules on procurement, particularly with regard to aggregation. Consultation with the Contract Compliance Officer and/or the relevant Overview Director can assist this pre-contract process.
2. Contracts Procedure Rules also require you to consult any Chief Officer who may be able to provide the works or services that you wish to procure. If that Head of Service decides that he/she wishes to submit a quotation or tender in competition, then that Head of Service must be included on the list of invitees. If he/she wishes to carry out the works or services competition free then he/she shall do so unless the Contract Compliance Officer determines otherwise. If, therefore, you consider that there are reasons why the works or services should not be carried out competition free by that Head of Service, your view and that of the in-house service provider should be referred to the Contract Compliance Officer who in consultation with the Head of Financial Services shall consider and decide upon the matter.
3. It is important that the reasons for **all** actions taken under Contracts Procedure Rules and/or the Codes of Practice are **documented** by the officers concerned.
4. The following represents a (non-exhaustive) checklist of issues that you will need to address before proceeding with any procurement:

(a) Policy and Funding Approvals

- (i) Before entering into any contract the appropriate Head of Service shall prepare an estimate in writing of the probable cost of the proposed procurement together with, where relevant, any maintenance costs.
- (ii) The appropriate Head of Service must obtain funding for the project and have considered the revenue implications, and, before acceptance of a tender certify to the Contract Compliance Officer that all financial approvals have been obtained.
- (iii) The necessary policy and funding approvals must have been obtained to enable the scheme to proceed. A detailed estimate of the cost of the scheme must be prepared to enable the necessary approvals to be obtained. This can be used as a guide as to whether tenders/quotations received are value for money.
- (iv) No tender for the execution of a contract should be invited unless all the Pre Contract Requirements referred to above and below are in place. See also Contracts Procedure Rule 21 relating to the contents of contracts.

(b) European Union (EU) Procurement Directives

The EU has issued Directives with regard to Works, Services and Supplies. As a result, the Borough Council has approved Codes of Practice for both Services and Supplies, and officers involved in procurement must make themselves aware of their contents. The Services and Supplies Directives apply where the value of such procurements exceeds the 249,681 ECU thresholds. The Works Directive applies where the value exceeds 6,242,028 ECU. These EU thresholds are revised periodically, and officers must ensure they comply with the relevant EU Procurement Directive.

The Codes explain the complex rules for calculating the value of a procurement, and as has been stated previously, there are occasions where Council wide procurements can be aggregated together, so that, although an individual procurement may be below the threshold, the EU rules will still apply.

(c) Contract Documentation

The value and complexity of the proposed procurement will have an influence on the depth of documentation prepared. If in doubt you should consult the Contract Compliance Officer and/or the Director of Performance Improvement.

(a) Specifications

- (i) The Contract Specification is the most important document in the procurement process. Procurements below £15,000 should be based on a definite Specification, although this need not necessarily be written. For all other procurements you must have in place a written Specification. The benefits are threefold.

Firstly, you have clearly documented what you are seeking from the procurement. Secondly, it ensures that tenderers are all bidding on the same basis, encouraging accurate tenders. Finally it should obviate the need for costly variations or preclude the submission of contractual claims, and will be easier to monitor.

- (ii) A Specification should include:-

- the task(s) required, their volume and frequency;
- the level of input, time and resources required or the outputs required;
- the facilities on-site and access to them;
- the standards of performance expected;
- the length of any contract and any other details not included elsewhere;
- quality of materials;
- relevant Council policies.

- (iii) The EU rules with regard to Specifications must be followed, and these are set out in the EU Codes of Practice. You should particularly avoid ‘naming’ products, suppliers or manufacturers as well as specifying provisions that could be classed as discriminatory (eg, ordinarily you cannot state that a product should comply with a British Standard). However, you may require the tenderer to only obtain specific materials from a sustainable environment source. Therefore, it is important to clearly understand what you can legitimately include in your contract specification.

(d) Other Contract Documents

The provisions of Contracts Procedure Rules relating to the content of contract documents are set out in Contracts Procedure Rule 21.

For procurements of £50,000 or more a formal contract must be prepared (see Contracts Procedure Rule 20). In addition to a Specification, you should include the following documentation (and document your reasons for your decision if you decide not to use any of them):

- Questionnaire* to ascertain financial standing;
- Managerial and technical ability;
- Record relating to Equal Opportunities;
- Attitude towards Quality and Environmental considerations;
- Health and Safety record;
- Instructions to tenderers;
- Collusive tendering certificate;
- Contract conditions;
- Method Statements and Work Programmes;
- Confirmation of Receipt of tender documents;
- Tender evaluation criteria.

*bear in mind that contractors on the Approved Lists will have already completed a Council questionnaire

(e) Evaluation criteria

At this stage you must decide the evaluation criteria against which tenders will be judged, so that you can be sure that the material requested from tenderers will give you the necessary information. These criteria will depend on the procurement in question but might include:-

- quality of work proposed;
- cost;
- experience of similar work;
- financial stability of the organisation;
- level of resources available in the organisation;
- references.

Tender evaluation is dealt with in more detail at paragraph 15 of this Code.

For bigger or more complex projects advice and assistance with evaluation teams is available from the Contract Compliance Officer and/or the Director of Performance Improvement.

5. Letters of intent should only be used in special circumstances, and then only with the approval of the Contract Compliance Officer. As an example, whilst a

letter of intent can be used for ordering materials, a contractor should not be allowed access to a site solely on the basis of a letter of intent.

6. Finally, there is expertise in procurement of all kinds available to assist you with your project (paragraph 21 of this Code of Practice). **IF IN DOUBT, ASK.**

INVITING TENDERS – AN INTRODUCTORY NOTE

See 3.4 (a) (iv) above

Procedure Rules 4-8 outline various methods by which you can procure supplies, services or works.

The appropriate Head of Service must have regard to the EU public procurement directives to ensure that the action he/she proposes to take is not in contravention thereof. (See the Council Codes of Practice on the EU's Services and Supplies Directives – copies are available in Public Folders.)

4. Selective Tendering Procedure – Approved Lists of Contractors (Contracts Procedure Rule 4)

1. The purpose of approved lists is to provide names of firms whose competence has been checked, and to invite only those firms on the lists to tender. This can save time because the contractors on those lists have already been pre vetted. In considering the suitability of firms to be recommended for inclusion on any approved list regard shall be taken of the following:-
 - (a) at least 2 references obtained from independent referees, preferably other local authorities or professional consultants. References may not be necessary if the firm is currently carrying out work for the Borough Council in a satisfactory manner in the category concerned;
 - (b) the financial stability of the firm – a copy of the firm's audited accounts for the last 2 years should normally be obtained for review. The Head of Financial Services will carry out a financial review of all contractors procured under Contracts Procedure Rule 4, except where the Approved List is for jobs of less than £50,000.
 - (c) the previous record of the firm in transactions with the Borough Council, including tendering performance;

- (d) the capacity of the firm to carry out work for the Borough Council at competitive prices and to provide supervision and control with minimal risk of service failure;
 - (e) the firm's experience in relation to the category of work particularly for comparatively new firms;
 - (f) where appropriate, membership of an acceptable trade or professional association, although care needs to be taken not to contravene the EU's non-discrimination provisions;
 - (g) the firm should indicate whether it has any relationship either directly or indirectly with any Member or employee of the Borough Council;
2. Use of Approved Lists. Where there is an Approved List in existence, then, subject to national legislation and/or the EU regime, that Approved List must be used, as those contractors will have been previously vetted and thereafter continuously reviewed.
 3. The basis of selection of those tenderers will be by way of strict rotation, which will be carried out by the Contract Compliance Officer, for a minimum of three tenderers. Where firms have recently submitted a competitively priced tender they can be added to the select tender list provided that they can accept the workload and have performed satisfactorily.
 4. Review of the Approved Lists is of the utmost importance and must be transparently fair. The Contract Compliance Officer will, as appropriate, and in conjunction with the appropriate Head of Service:
 - (a) regularly and rigorously scrutinise the lists and decide on the inclusion or deletion of contractors as the case may be;
 - (b) ensure that, in addition, a general review takes place at regular intervals and that the lists are at all times workable, effective and competitive.
 5. The appropriate Head of Service will carry out, within three months of the end of each contract, a performance review, and will submit to the Contract Compliance Officer, in a format to be determined by the Contract Compliance Officer, a contractor performance report, for consideration of the contractor's future status on the Approved List.
 6. The requirements set out in Contracts Procedure Rule 4(6) and 8 apply also to quotations. The format of the record to be kept under Contracts Procedure

Rule 4(6) will be determined from time to time by the Head of Financial Services.

5. Restricted Tendering Procedure (Contracts Procedure Rule 5)

1. In this procedure a select list is drawn up for a specific project. Advertisements are placed and respondents evaluated so that a select list of tenderers can be drawn up. This procedure is used where no approved list is maintained for the type of work envisaged or the firms on a list are unable to tender, or when necessary to comply with Directives of the EU. To facilitate this evaluation, you will need to prepare a questionnaire for prospective tenderers to complete, together with a list of evaluation criteria against which the responses will be evaluated (see also paragraph 3.4). Contractors who are already included on any of the Borough Council's approved lists need only provide updated or additional information necessary to allow the same evaluation as other contractors.
2. The format of the record to be kept under Procedure Rule 5(3) will be determined from time to time by the Head of Financial Services.

6. Open Tendering Procedure (Contracts Procedure Rule 6)

1. Under this Contracts Procedure Rule all respondents to an advertisement must be invited to tender. An evaluation of the tenderers and tenders is then carried out at the same time.

7. Negotiated Tendering Procedure (Contracts Procedure Rule 7)

1. The corresponding provision in the EU regime is referred to as the "negotiated procedure". It is used when Contracts Procedure Rules 4, 5 and 6 are inappropriate. It is not the same as 'Post Tender Negotiation', which is covered by Contracts Procedure Rule 12. Use of this Contracts Procedure Rule must be registered in advance with the Contract Compliance Officer.
2. The limited circumstances when you can use this method of procurement are set out in the Contracts Procedure Rule. If the EU regime applies, you must follow the requirements, which are set out in the respective Code on the EU regime. In some cases the requirements are more stringent than the Contracts Procedure Rule and must be followed.
3. If the EU regime does not apply and a single tender is received, there must be a clear technical, qualitative and pricing mechanism and comparators to justify, exceptionally, a negotiated tendering procedure.
4. No negotiations should ever involve discrimination against any contractor.

8. Contracts below £50,000 (Contracts Procedure Rule 8)

1. Contracts Procedure Rules distinguish between ‘tenders’ and ‘quotations’ (although legally there is little difference) and this is done on a value basis. The reason is merely to show that there are different procedures to be followed. Furthermore, for ‘quotations’ there are three different procedures, depending on the anticipated value of the quotation. It is not acceptable for a Head of Service to disaggregate the value of a contract so that quotations rather than tenders can be invited.
2. The Borough Council may also have a number of framework contracts for various supplies, services and works. Where there is such a contract in place it **must** be used by the Head of Service concerned. (A ‘framework contract’ is also sometimes known as a ‘standing offer’ or ‘call off contract’. It is legally binding, and provides a facility to send out a large number of small orders which come under the umbrella of the larger framework.) Details of all prevailing framework contracts are available from the Contract Compliance Officer or alternatively, from Public Folders.
3. If quotations are invited by telephone for procurements of £5,000 or below, you should keep a record of the names of the contractors/ suppliers telephoned and their responses.
4. Where there is an Approved List in existence you must use it. Details are available from the Contract Compliance Officer.
5. The rules relating to the use of in-house providers apply to quotations as they apply to tenders. Where an in-house provider is to submit a quotation (or tender) it will be classed as a ‘firm’ for the purposes of calculating the number invited.
6. The format of the records to be kept under Contracts Procedure Rule 8 (2) and (3) will be determined from time to time by the Head of Financial Services.
7. The use of this Contracts Procedure Rule must be consistent with the requirements for probity and transparency.

9 Nominated or Named Sub Contractors and Nominated Suppliers (Contracts Procedure Rule 10)

1. Generally, Head of Service are discouraged from nominating/ naming sub contractors or suppliers, as any failure on their part may be attributed to the Borough Council rather than the main contractor. Many of the problems

experienced on poor performance by such sub contractors arise from a lack of a vetting procedure in the first instance, and, secondly, an inability of the main contractor to exercise control.

**10. Exceptions to Requirements of Competition
(Contracts Procedure Rule 11)**

1. The appropriate Head of Service must be able to justify a contract as a genuine exception to the requirements for competition. The reasons for use of this Contracts Procedure Rule must be documented, and in a format approved by the Contract Compliance Officer. The Contract Compliance Officer and the Head of Financial Services must be consulted in advance as to whether this Contracts Procedure Rule can be applied.
2. Where procurements are made through or on behalf of any consortium, (eg, ESPO), association or similar body, you must ensure that that body has sought competition that would be broadly equivalent to Contracts Procedure Rules and would satisfy the requirements of any National or European Union legislation.

11 Post Tender Negotiations (Contracts Procedure Rule 12)

1. Details of all negotiations shall be adequately recorded. At least two persons should be present when conducting negotiations, one of whom should not have been involved in earlier stages of the process. These procedures also apply where it is proposed to extend an existing contract by negotiation.
2. Except where tenders/ quotations are invited under Contracts Procedure Rule 7, all negotiations with candidates or tenderers on fundamental aspects of contracts, variations of which are likely to distort competition, and in particular prices, shall be ruled out; however, discussions with candidates or tenderers may be held, but only for the purpose of clarifying or supplementing the content of their tender/ quotation or the requirements of the Council. No negotiations, including those under Contracts Procedure Rule 7, should ever involve discrimination against any contractor.

**12. Submission, Receipt, Opening and Registration of Tenders/Quotations
(Contracts Procedure Rules 13-16)**

1. Typical examples of communication referred to under Contracts Procedure Rule 13 (1) would be letter or facsimile, electronic mail or downloading from the Borough Council's Web-Site.

2. The provisions of Contracts Procedure Rule 14 (3) are so that the Borough Council does not have to reject tenders the envelopes of which have been inadvertently marked with the name of the sender. If a tenderer submits a tender with its name on the tender envelope, the Contract Compliance Officer should write to the tenderer concerned, stating that the practice should cease.
3. All tender envelopes should be retained with the tender documents.
4. Questionnaires relating to specific contracts should be rejected if they are not returned by the date and time required by the notice.
5. Officers, who have been involved in preparing a tender bid, must not be involved in the receipt or opening of tenders. Only persons authorised by the relevant Head of Service (as client), and the representatives of the Contract Compliance Officer and the Head of Financial Services shall attend the tender opening. Due notice must be given to the Contract Compliance Officer of the details of the scheme, the closing date and time, and the number of tenders invited. Submission to the Contract Compliance Officer of a blank set of tender documents when giving this due notice will enable preparatory work to commence and assist the acceptance and award procedure.
6. With regard to the submission, receipt, opening and registration of quotations, Head of Service must ensure that there is a system in place, which has been approved by the Head of Financial Services whereby the probity and transparency of the process cannot be called into question. The best way to do this is to set up a system which replicates that used for tenders. All quotation envelopes should be retained on file.
7. The design of the tender documents should be such that prices/rates/ documentation cannot be changed/ substituted following tender submission.

13 Errors in tenders (Contracts Procedure Rule 17)

1. The alternative ways of dealing with errors in tenders are identified in Contracts Procedure Rule 17. Careful consideration must be given to the effect of any procedure adopted and the reflection, which any such procedure may have on the integrity of the officers and the Borough Council. It is essential that whatever procedure is adopted, it should be transparent and seen to be fair and equitable to all tenderers. Certainly the use of alternative (a) is less likely to lead to the probity of the process being questioned. In cases of any doubt about the procedure to be adopted in any particular circumstances, the appropriate Contract Compliance Officer should consult with the Chief Legal Officer and the Head of Financial Services.
2. The same principles can be adopted for errors in quotations.

3. Clearly, materiality will play a part in considering the effect of any errors identified in a tender. If a tenderer agrees to stand by an error which will cast doubt on its ability to perform the contract, or to the standard required, or may result in attempted recovery via claims, consideration should be given to whether to proceed with acceptance. Tenderers regularly making errors should be warned appropriately by the Contract Compliance Officer.

14 Evaluation of tenders (see Contracts Procedure Rule 18)

1. Tender evaluation is the process by which the Borough Council scrutinises the competing bids put forward by those tenderers selected to tender. The majority of contracts awarded by the Borough Council will be evaluated on the basis of price only. However for more complex and high value procurements, you should evaluate on the basis of which tender is the most economically advantageous to the Borough Council. Such an evaluation requires consideration of a complex matrix of factors under two broad headings. These are:

- Consideration of non-financial elements of the bid.
- Consideration of financial aspects of the bid.

Non-financial factors:

- Compliance with conditions of tender.
- Technical suitability and the use of method statements.
- Guarantees.
- Health and Safety issues – particularly whether the contract is properly resourced in that respect.
- Quality Assurance.
- Compliance with Council policies.
- Race Relations.
- Disability Discrimination.
- Human Rights.
- Environmental issues.
- Site Inspections.
- Interviews and presentations.

Financial factors:

- Financial stability of the tenderer.
- Price, taking into account ‘life time’ costs.
- Tenders invited on different levels of uptake will require careful sensitivity analysis to be applied to establish which tender provides best value for money.

2. Where there is a Code of Practice in existence for the evaluation of certain types of contracts (eg ICE or JCT) these must be used in conjunction with the appropriate Borough Council Codes.
3. The criteria on which tenders will be evaluated must be set out in the contract documents. The method of evaluation must be concluded and documented **before** tenders are returned.
4. The file for every procurement under Contracts Procedure Rules with a value of £50,000 or more shall contain a tender evaluation report to be completed by the appropriate Head of Service in the format set out in Appendix 3.

15. Disclosure of Tender Results

1. In order to avoid keeping tenderers waiting, upon the opening of tenders where evaluation will be by price only, all but the firms submitting the best three tenders should be informed immediately that their tenders have been unsuccessful. The firm submitting the most suitable tender shall be told that its offer is under consideration and shall be asked to submit priced bills of quantities if these have not already been submitted.
2. The firms submitting the two next suitable tenders (where evaluation will be by price only) shall be informed that their tenders were not the most favourable received but that they will be approached if it is decided to give further consideration to their offer.
3. Tenderers whose offers have not been rejected shall be informed at once when a decision to accept a tender has been taken.
4. At no time prior to the award should the name of **any** tenderer (including the successful one) be disclosed to other tenderers.
5. The precautions set out in this Code of Practice should protect the Borough Council's interests in the event of the most suitable tender being withdrawn or if for any reason it is not accepted.

16. Award of Contracts (Contracts Procedure Rule ..?)

1. Following consultation with the relevant Head of Service and the Head of Financial Services, the Chief Executive, or an officer nominated by him for that purpose, is authorised to make a delegated decision to award a contract with a value less than £500,000 to the organisation which submitted the lowest valid tender, which does not exceed the approved budget for the scheme or supplies in question.
2. Where a contract has a value of £500,000 or more, or alternatively, where the lowest valid tender exceeds the approved budget, the decision to award the contract must be made by Cabinet, in accordance with a recommendation from the Contract Compliance Officer.

17. Variations and Contract Extensions (Contracts Procedure Rule 19)

1. All variations **must** be in the form of written instructions to the contractor from the officer in charge of the contract. Heads of Service responsible may delegate the authority to issue written variations to contracts provided that details of such delegations, together with specimen signatures of the officers concerned, are forwarded to the Head of Financial Services.
2. The likely cost effect of every variation shall be assessed prior to the issue of the instruction.
3. Variations or Contract Extensions are likely to be considered under the following circumstances:
 - (a) “Extensions of time” to be given under the original contract terms and conditions;
 - (b) The continuation of the contract after the expiry of the original term. This could mean:
 - (i) invoking a specific clause written into the original contract whereby pre-determined cost control exists or
 - (ii) seeking Cabinet approval to extend the contract for the same work;
 - (c) The injection of other work or projects for which it would be advantageous to add into the ongoing project.
4. Circumstance 16.3 (b) is likely to be justified if there has been no significant change in the market place and there are recognised indices for negotiating a revised price for the extended period.

5. Variations or extensions of contract under circumstances 16.3 (b) (ii) and (c) must only be ordered after approval in accordance with Contracts Procedure Rule 12.
6. The Contract Compliance Officer may deem that significant changes to contract under 16.3 (c), particularly where the additional work was pre-planned to take place as a separate contract, requires a request to waive (in accordance with Contracts Procedure Rule 2) Contracts Procedure Rule 4, 5 or 6 if there is any doubt regarding the transparency of the proposal.

18. Cost Control

1. The appropriate Heads of Service shall ensure that suitable procedures are laid down and followed for the effective cost control of all contracts. Such procedures shall involve a continuous monitoring of the cost position on each contract with the objective of ensuring that the project is completed within the authorised cost and that any unavoidable extra costs are identified quickly so that appropriate action can be taken.

The procedures shall provide:

- (a) A cost statement to be prepared every time a contract payment is made assessing the probable final cost. This should take into account all known factors including variations, adjustments of Prime Cost and Provisional Sums and other items such as re-measured work.
 - (b) A cash flow forecast based on a cost statement prepared by the appropriate Heads of Service, showing the expected pattern of payments to the end of the contract, updated each month until the final payment is made.
2. As soon as it becomes apparent to the appropriate Heads of Service that costs will by up to 10% exceed the amount authorised, that Heads of Service must immediately report to the Head of Financial Services. A joint report will then be submitted to the Capital Strategy Group and, if necessary, to Cabinet. A final cost report shall be submitted to the Chief Financial Officer as prescribed by Financial Procedure Rules. Where the final cost exceeds the original budget by more than 10%, a joint report shall be submitted to the relevant Scrutiny Committee, to explain this variation.

19. Site Records

1. The Supervising Officer shall ensure the maintenance of accurate records of activities on site as follows:

- (a) labour and plant working on site;
- (b) labour working on site by trade, including any operatives under 18 years of age; lost time due to inclement weather;
- (c) plant on site, when idle and when in use; date of arrival and departure of plant; whether plant owned by the contractor or hired;
- (d) date, type and volume of materials delivered to site, including the name of the supplier; ensure that there are adequate facilities for storage;
- (e) if appropriate, photographs to show the various stages of construction.

20. Monitoring Contractor Performance

1. The Borough Council has in place procedures for the monitoring of contracts generally, as well as the performance of individual contractors, and you are obliged to follow these. You must provide information on contractor performance, in a format to be determined by the Contract Compliance Officer, so the Borough Council can benefit corporately from performance monitoring. Contractor performance reports vary from time to time and for different categories of contract.

21. Contract Claims

1. To safeguard the Borough Council's right to deduct liquidated damages, if the contract is over-running the Supervising Officer must certify in writing that the contractor ought reasonably to have completed the works within the contract period. Such a certificate must be in accordance with the contract conditions and be issued prior to the issue of the final certificate for payment.
2. Any events that may lead to claims for extension of time should immediately be brought to the attention of the Supervising Officer.
3. Claims for extension of time must be assessed promptly and any extension award made before the contract completion date.
4. Immediately the (extended) date for completion has expired, if the works are not complete the Supervising Officer must issue a formal certificate of non-completion in accordance with any relevant contract conditions. It is the ultimate responsibility of the Supervising Officer to arrange for the deduction of liquidated damages.
5. If the contractor subsequently brings forward fresh evidence of delay, the Supervising Officer may award a further extension but must then also issue a

revised certificate stating the revised date in accordance with any relevant contract conditions.

6. Before the final certificate is issued the Supervising Officer shall check that any necessary certificate has been issued in accordance with the relevant contract conditions.
7. The above procedures must be strictly followed for each section of a contract in the case of sectional completions.
8. The Contract Compliance Officer shall be kept informed at all times of all contractual claims whether by or against the Borough Council.
9. It is critical that documentary evidence is kept relating to all aspects and stages of a claim and these should be kept at one central point.

22. Help and advice

Assistance is available. **IF IN DOUBT, ASK ONE OF THE FOLLOWING OFFICERS:**

Relevant officers to be listed

CABINET - 15 JANUARY 2004

Report of the Head of Property Services

ITEM 8 CHARNWOOD LEISURE CENTRE PHASE II 'WET-SIDE' REFURBISHMENT, APPOINTMENT OF DESIGN CONSULTANTS

Purpose of the report

To seek approval to the appointment of the consultant team to carry out design work on the proposed Phase II 'wet-side' refurbishment at Charnwood Leisure Centre.

Recommendation

1. That Council be recommended to appoint Pick Everard and Gibson Hamilton Partnership as consultants for the design stages of the Charnwood Leisure Centre Phase II 'wet-side' refurbishment and that, subject to the scheme proceeding, be appointed to continue as consultants for the implementation phase of the project; the fees to be in accordance with those indicated in the body of the report.
2. That the current Category 1 2003/04 capital programme allocation of £122,200 for works to Charnwood Leisure Centre be utilised to meet the cost of consultants' fees and survey work necessary to carry out initial design work on the scheme.

Reason

1. To comply with the requirements of the Contracts Procedure Rules.
2. To ensure that adequate financial resources are available for design work on the scheme to proceed.

Policy Context

The proposal to improve Charnwood Leisure Centre swimming facilities is listed as a priority within the 'Leisure and cultural opportunities for all' section of the Corporate Plan.

Background

1. Refurbishment and extension of the dry-side facilities at Charnwood Leisure Centre was carried out some four years ago. The 'wet-side' facilities at the centre also require refurbishment since they no longer meet reasonable public

expectations and the plant and equipment is time expired and could suffer major breakdown in the near future if not replaced.

2. The Soar Valley Leisure Centre is due for completion in summer 2004 and the scheme for the 'wet-side' refurbishment at Charnwood Leisure Centre is planned to begin as the new centre opens in order to give continuity of service provision and to allow staff to move from Charnwood to Soar Valley whilst the refurbishment takes place.
3. Design work needs to begin now in order to meet this programme. To this end consultants have been selected and preliminary design work commenced.
4. Because of the uncertain position regarding the 2004/05 Capital Programme, the Capital Strategy Group agreed that the unused capital allocation of £122,200 in the current financial year for works to Charnwood Leisure Centre be used to fund initial design work prior to a final decision being taken in early 2004 on whether the scheme could continue through to completion. The sum of £122,200 is in the committed capital programme, being surplus funds remaining from the Phase 1 works to the building. Actual expenditure against this figure is expected to be £91,000 in the current financial year.

Selection of Consultants

1. It is proposed that, as with previous large capital schemes, the consultant team be headed by a Project Manager who will be responsible for co-ordinating the consultant team. The Phase I scheme at Charnwood Leisure Centre was project managed by Pick Everard who have since successfully carried out a similar role on Phases II and III of the Town Hall refurbishment. Because of this previous record and in view of their familiarity with the building from the Phase I works, it is recommended that Pick Everard be appointed as Project Managers and also as consultants for Quantity Surveying, Structural and Services Engineering and Planning Supervision.
2. Although Pick Everard provided the architectural consultancy for the Phase I works it was decided that, in order to ensure that the best possible design for the scheme was procured, preliminary design proposals be sought from three architectural practices. A panel comprising the Project Manager, staff from Property and Leisure Services and a representative of Serco, the Leisure Centre manager, assessed these proposals. Although not submitting the lowest fee bid for the work, Gibson Hamilton of Loughborough were unanimously selected by the panel as providing the best design proposals and it is therefore proposed that they be appointed as architects for the scheme.

Project Cost & Consultants Fees

1. The estimated project cost for the ‘wet-side’ refurbishment scheme is £2,400,000 and the full fee proposals are based on this amount.
2. The proposed fees (should the project proceed) are indicated below. Those for Pick Everard have been benchmarked against fees for similar projects and are felt to represent good value for money. The fees for Gibson Hamilton, although not the cheapest submitted, are still considered to be competitive.

	£
Project Manager	44,000
Architect (Gibson Hamilton)	143,000
Structural Engineer	20,400
Services Engineer	64,000
Quantity Surveyor	28,500
<u>Planning Supervisor</u>	<u>6,000</u>
Total	305,900

If it is decided not to proceed with the project, then the consultants’ contracts will be terminated by agreement; the Council’s fee commitment for design work carried out will be contained within the £122,200.

Scrutiny Committee
Key decision
Background Papers
Officers to contact

Community Development
Yes
Nil
David Murfin (015090 634675)
dave.murfin@charnwoodbc.gov.uk
Peter Upton (01509) 634676
peter.upton@charnwoodbc.gov.uk

CABINET – 15 JANUARY 2004

Report of the Head of Legal and Democratic Services

ITEM 9 TIMETABLE OF MEETINGS – 2004/05

Purpose of Report

To put forward options for a programme of Council, Cabinet, Scrutiny, Standards and Regulatory (including Plans) Committee meetings in the 2004/05 Council year.

Recommendation

That the timetable of meetings in 2004/05 be that indicated in Appendix C to this report.

Reasons

To enable the effective programming of business and to provide a recess period during the August holiday period in the interests of all concerned in organising and attending the meetings.

Background

The fixing of Council meeting dates is reserved to Council, whereas decisions relating to Cabinet and committee meeting dates are reserved to the Cabinet or committee concerned. However, there is a strong argument for a programme of meetings to be adopted for the full year to enable the effective planning of business across the range of meetings. It remains open to the Cabinet or individual committees to fix additional meetings as required.

The draft programme of meetings at Appendix A is based on that approved for 2003/04 but, with the higher level of planning that is currently being achieved by officers, and the possibility of making efficiencies in the administration, it has been suggested by the Leader that Cabinet meetings be programmed at intervals of three rather than two weeks in most cases.

It may be recalled that in June 2003, the Cabinet decided to vary its programme of meetings by deleting the meeting on 7th August and recommending to Council that the Council meeting on 4th August be cancelled to create something of a “recess” in the timetable, in the interests of all concerned in organising and attending these meetings, particularly the Council’s employees.

At the same time, the Cabinet asked that in proposing a timetable of meetings for 2004/05, regard be had to the effects of that and the possibility of an extended recess period in 2004.

In terms of the effects of the trial in 2003, it is probably fair to say that the reduction in the number of meetings in August was welcomed by many officers and councillors but that the gap between council meetings was unacceptably long for some.

Preparing a calendar of meetings for a new year provides the opportunity to strike an appropriate balance between the two issues and the timetables at Appendices B and C seek to achieve that.

It is suggested that the timetable in Appendix C be recommended to Council for adoption as it provides a recess and a more even spread of meetings through the year.

It should be noted that the meetings in each of the appendices are not in strict chronological order but are grouped to indicate the Council meeting to which the minutes of meetings will be submitted. Also that, with change to the frequency of Cabinet meetings it has been possible in both options to avoid the current regular clashes between Cabinet and Plans Committee meetings.

Scrutiny Committee: Resources

Key Decisions: No

Background Papers: Cabinet minute 223 – 19 June 2003

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APPENDIX A

TIMETABLE OF MEETINGS – 2004/05

Housing Scrutiny Committee	Tuesday 18/5
Resources Scrutiny Committee	Wednesday 19/5
Health and Public Protection Scrutiny Committee	Tuesday 25/5
Environment Scrutiny Committee	Wednesday 26/5
Cabinet	Thursday 27/5
Plans Committee 2	Thursday 3/6
Community Development Scrutiny Committee	Monday 7/6
Standards Committee	Tuesday 8/6
Regulatory Committee	Monday 14/6
Scrutiny Commission	Tuesday 15/6
Cabinet	Thursday 17/6
COUNCIL	Monday 28/6
Plans Committee 1	Thursday 24/6
Housing Scrutiny Committee	Tuesday 29/6
Resources Scrutiny Committee	Wednesday 30/6
Cabinet	Thursday 1/7
Health and Public Protection Scrutiny Committee	Tuesday 6/7
Environment Scrutiny Committee	Wednesday 7/7
Community Development Scrutiny Committee	Monday 12/7
Plans Committee 2	Thursday 15/7
Scrutiny Commission	Tuesday 20/7
Cabinet	Thursday 22/7
COUNCIL	Monday 2/8
Regulatory Committee	Monday 26/7
Housing Scrutiny Committee	Tuesday 3/8
Resources Scrutiny Committee	Wednesday 4/8
Plans Committee 1	Thursday 5/8
Health and Public Protection Scrutiny Committee	Tuesday 10/8
Environment Scrutiny Committee	Wednesday 11/8
Cabinet	Thursday 12/8
Community Development Scrutiny Committee	Monday 16/8
Scrutiny Commission	Tuesday 24/8
Plans Committee 2	Thursday 26/8
Cabinet	Thursday 2/9
COUNCIL	Monday 13/9

Regulatory Committee	Monday 6/9
Housing Scrutiny Committee	Tuesday 14/9
Resources Scrutiny Committee	Wednesday 15/9
Plans Committee 1	Thursday 16/9
Health and Public Protection Scrutiny Committee	Tuesday 21/9
Environment Scrutiny Committee	Wednesday 22/9
Cabinet	Thursday 23/9
Community Development Scrutiny Committee	Monday 27/9
Standards Committee	Tuesday 28/9
Scrutiny Commission	Tuesday 5/10
Plans Committee 2	Thursday 7/10
Cabinet	Thursday 14/10
COUNCIL	Monday 25/10

Regulatory Committee	Monday 18/10
Housing Scrutiny Committee	Tuesday 26/10
Resources Scrutiny Committee	Wednesday 27/10
Plans Committee 1	Thursday 28/10
Health and Public Protection Scrutiny Committee	Tuesday 2/11
Environment Scrutiny Committee	Wednesday 3/11
Cabinet	Thursday 4/11
Community Development Scrutiny Committee	Monday 8/11
Scrutiny Commission	Tuesday 16/11
Plans Committee 2	Thursday 18/11
Cabinet	Thursday 25/11
COUNCIL	Monday 6/12

Regulatory Committee	Monday 29/11
Housing Scrutiny Committee	Tuesday 7/12
Resources Scrutiny Committee	Wednesday 8/12
Plans Committee 1	Thursday 9/12
Health and Public Protection Scrutiny Committee	Tuesday 14/12
Environment Scrutiny Committee	Wednesday 15/12
Cabinet	Thursday 16/12
Community Development Scrutiny Committee	Monday 20/12
Standards Committee	Tuesday 21/12
Scrutiny Commission	Tuesday 4/1
Plans Committee 2	Thursday 6/1
* Housing Scrutiny Committee	Tuesday 11/1
Cabinet	Thursday 13/1
COUNCIL	Monday 24/1

*Community Development Scrutiny Committee	Monday 10/1
*Environment Scrutiny Committee	Wednesday 12/1
Regulatory Committee	Monday 17/1
*Health and Public Protection Scrutiny Committee	Tuesday 18/1
Housing Scrutiny Committee	Tuesday 25/1
Resources Scrutiny Committee	Wednesday 26/1
Plans Committee 1	Thursday 27/1
Health and Public Protection Scrutiny Committee	Tuesday 1/2
Environment Scrutiny Committee	Wednesday 2/2
Cabinet	Thursday 27/1
Community Development Scrutiny Committee	Monday 7/2
Scrutiny Commission	Tuesday 15/2
Cabinet	Thursday 10/2
Plans Committee 2	Thursday 17/2
COUNCIL	Monday 28/2

Housing Scrutiny Committee	Tuesday 1/3
Resources Scrutiny Committee	Wednesday 2/3
Cabinet	Thursday 3/3
Regulatory Committee	Monday 7/3
Health and Public Protection Scrutiny Committee	Tuesday 8/3
Environment Scrutiny Committee	Wednesday 9/3
Plans Committee 1	Thursday 10/3
Community Development Scrutiny Committee	Monday 14/3
Standards Committee	Monday 15/3
Scrutiny Commission	Tuesday 22/3
Plans Committee 2	Thursday 31/3
Cabinet	Thursday 31/3
COUNCIL	Monday 25/4

Regulatory Committee	Monday 18/4
Plans Committee 1	Thursday 21/4
Cabinet	Thursday 28/4
Plans Committee 2	Thursday 12/5
ANNUAL COUNCIL	Monday 16/5

*Potential additional meetings

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APPENDIX B

TIMETABLE OF MEETINGS – 2004/05

Housing Scrutiny Committee	Tuesday 18/5
Resources Scrutiny Committee	Wednesday 19/5
Health and Public Protection Scrutiny Committee	Tuesday 25/5
Environment Scrutiny Committee	Wednesday 26/5
Cabinet	Thursday 27/5
Plans Committee 2	Thursday 3/6
Community Development Scrutiny Committee	Monday 7/6
Standards Committee	Tuesday 8/6
Regulatory Committee	Monday 14/6
Scrutiny Commission	Tuesday 15/6
Cabinet	Thursday 17/6
COUNCIL	Monday 28/6
Housing Scrutiny Committee	Tuesday 22/6
Resources Scrutiny Committee	Wednesday 23/6
Plans Committee 1	Thursday 24/6
Health and Public Protection Scrutiny Committee	Tuesday 29/6
Environment Scrutiny Committee	Wednesday 30/6
Community Development Scrutiny Committee	Monday 5/7
Cabinet	Thursday 8/7
Scrutiny Commission	Tuesday 13/7
Plans Committee 2	Thursday 15/7
COUNCIL	Monday 26/7
Regulatory Committee	Tuesday 27/7
Housing Scrutiny Committee	Tuesday 27/7
Resources Scrutiny Committee	Wednesday 28/7
Cabinet	Thursday 29/7
Plans Committee 1	Thursday 5/8
Plans Committee 2	Thursday 26/8
Cabinet	Thursday 2/9
Regulatory Committee	Monday 6/9
Health and Public Protection Scrutiny Committee	Tuesday 7/9
Environment Scrutiny Committee	Wednesday 8/9
Community Development Scrutiny Committee	Monday 13/9
Standards Committee	Tuesday 14/9

Plans Committee 1	Thursday 16/9
Scrutiny Commission	Tuesday 21/9
Cabinet	Thursday 23/9
COUNCIL	Monday 4/10
Housing Scrutiny Committee	Tuesday 5/10
Resources Scrutiny Committee	Wednesday 6/10
Plans Committee 2	Thursday 7/10
Health and Public Protection Scrutiny Committee	Tuesday 12/10
Environment Scrutiny Committee	Wednesday 13/10
Cabinet	Thursday 14/10
Regulatory Committee	Monday 18/10
Community Development Scrutiny Committee	Monday 25/10
Scrutiny Commission	Tuesday 26/10
Plans Committee 1	Thursday 28/10
Cabinet	Thursday 4/11
COUNCIL	Monday 15/11
Housing Scrutiny Committee	Tuesday 16/11
Resources Scrutiny Committee	Wednesday 17/11
Plans Committee 2	Thursday 18/11
Health and Public Protection Scrutiny Committee	Tuesday 23/11
Environment Scrutiny Committee	Wednesday 24/11
Cabinet	Thursday 25/11
Regulatory Committee	Monday 29/11
Community Development Scrutiny Committee	Monday 6/12
Standards Committee	Tuesday 7/12
Plans Committee 1	Thursday 9/12
Scrutiny Commission	Tuesday 14/12
Cabinet	Thursday 16/12
Plans Committee 2	Thursday 6/1
Cabinet	Thursday 13/1
COUNCIL	Monday 24/1
Housing Scrutiny Committee	Tuesday 11/1
Resources Scrutiny Committee	Wednesday 12/1
Regulatory Committee	Monday 17/1
Health and Public Protection Scrutiny Committee	Tuesday 18/1
Environment Scrutiny Committee	Wednesday 19/1
Plans Committee 1	Thursday 27/1
Community Development Scrutiny Committee	Monday 31/1
Cabinet	Thursday 3/2

Scrutiny Commission	Tuesday 8/2
Plans Committee 2	Thursday 17/2
Cabinet	Thursday 17/2
COUNCIL	Monday 28/2
Standards Committee	Tuesday 2/3
Housing Scrutiny Committee	Tuesday 8/3
Resources Scrutiny Committee	Wednesday 9/3
Plans Committee 1	Thursday 10/3
Regulatory Committee	Monday 14/3
Health and Public Protection Scrutiny Committee	Tuesday 15/3
Environment Scrutiny Committee	Wednesday 16/3
Cabinet	Thursday 17/3
Plans Committee 2	Thursday 31/3
Community Development Scrutiny Committee	Monday 4/4
Cabinet	Thursday 7/4
Scrutiny Commission	Tuesday 12/4
COUNCIL	Monday 25/4
Regulatory Committee	Monday 18/4
Plans Committee 1	Thursday 21/4
Cabinet	Thursday 28/4
Plans 2	Thursday 12/5
ANNUAL COUNCIL	Monday 16/5

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APPENDIX C

TIMETABLE OF MEETINGS – 2004/05

Housing Scrutiny Committee	Tuesday 18/5
Resources Scrutiny Committee	Wednesday 19/5
Health and Public Protection Scrutiny Committee	Tuesday 25/5
Environment Scrutiny Committee	Wednesday 26/5
Cabinet	Thursday 27/5
Plans Committee 2	Thursday 3/6
Community Development Scrutiny Committee	Monday 7/6
Standards Committee	Tuesday 8/6
Regulatory Committee	Monday 14/6
Scrutiny Commission	Tuesday 15/6
Cabinet	Thursday 17/6
COUNCIL	Monday 28/6

Plans Committee 1	Thursday 24/6
Housing Scrutiny Committee	Tuesday 29/6
Resources Scrutiny Committee	Wednesday 30/6
Cabinet	Thursday 1/7
Health and Public Protection Scrutiny Committee	Tuesday 6/7
Environment Scrutiny Committee	Wednesday 7/7
Community Development Scrutiny Committee	Monday 12/7
Plans Committee 2	Thursday 15/7
Scrutiny Commission	Tuesday 20/7
Cabinet	Thursday 22/7
Regulatory Committee	Monday 26/7
Plans Committee 1	Thursday 5/8
Plans Committee 2	Thursday 26/8
COUNCIL	Monday 6/9

Cabinet	Thursday 2/9
Regulatory Committee	Monday 6/9
Housing Scrutiny Committee	Tuesday 7/9
Resources Scrutiny Committee	Wednesday 8/9
Plans Committee 1	Thursday 16/9
Health and Public Protection Scrutiny Committee	Tuesday 14/9
Environment Scrutiny Committee	Wednesday 15/9
Cabinet	Thursday 16/9
Community Development Scrutiny Committee	Monday 20/9

Standards Committee	Tuesday 21/9
Scrutiny Commission	Tuesday 28/9
Plans Committee 2	Thursday 7/10
Cabinet	Thursday 7/10
COUNCIL	Monday 18/10
Regulatory Committee	Monday 18/10
Housing Scrutiny Committee	Tuesday 26/10
Resources Scrutiny Committee	Wednesday 27/10
Plans Committee 1	Thursday 28/10
Health and Public Protection Scrutiny Committee	Tuesday 2/11
Environment Scrutiny Committee	Wednesday 3/11
Cabinet	Thursday 4/11
Community Development Scrutiny Committee	Monday 8/11
Scrutiny Commission	Tuesday 16/11
Plans Committee 2	Thursday 18/11
Cabinet	Thursday 25/11
COUNCIL	Monday 6/12
Regulatory Committee	Monday 29/11
Housing Scrutiny Committee	Tuesday 7/12
Resources Scrutiny Committee	Wednesday 8/12
Plans Committee 1	Thursday 9/12
Health and Public Protection Scrutiny Committee	Tuesday 14/12
Environment Scrutiny Committee	Wednesday 15/12
Cabinet	Thursday 16/12
Community Development Scrutiny Committee	Monday 20/12
Standards Committee	Tuesday 21/12
Scrutiny Commission	Tuesday 4/1
Plans Committee 2	Thursday 6/1
* Housing Scrutiny Committee	Tuesday 11/1
Cabinet	Thursday 13/1
COUNCIL	Monday 24/1
*Community Development Scrutiny Committee	Monday 10/1
*Environment Scrutiny Committee	Wednesday 12/1
Regulatory Committee	Monday 17/1
*Health and Public Protection Scrutiny Committee	Tuesday 18/1
Housing Scrutiny Committee	Tuesday 25/1
Resources Scrutiny Committee	Wednesday 26/1
Plans Committee 1	Thursday 27/1
Health and Public Protection Scrutiny Committee	Tuesday 1/2
Environment Scrutiny Committee	Wednesday 2/2

Cabinet	Thursday 27/1
Community Development Scrutiny Committee	Monday 7/2
Standards Committee	Tuesday 8/2
Scrutiny Commission	Tuesday 15/2
Cabinet	Thursday 10/2
Plans Committee 2	Thursday 17/2
COUNCIL	Monday 28/2

Housing Scrutiny Committee	Tuesday 1/3
Resources Scrutiny Committee	Wednesday 2/3
Cabinet	Thursday 3/3
Regulatory Committee	Monday 7/3
Health and Public Protection Scrutiny Committee	Tuesday 8/3
Environment Scrutiny Committee	Wednesday 9/3
Plans Committee 1	Thursday 10/3
Community Development Scrutiny Committee	Monday 14/3
Standards Committee	Tuesday 15/3
Scrutiny Commission	Tuesday 22/3
Plans Committee 2	Thursday 31/3
Cabinet	Thursday 31/3
COUNCIL	Monday 25/4

Regulatory Committee	Monday 18/4
Plans Committee 1	Thursday 21/4
Cabinet	Thursday 28/4
Plans Committee 2	Thursday 12/5
ANNUAL COUNCIL	Monday 16/5

*Potential additional meetings

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PART 2 (RESERVED TO CABINET)

CABINET – 15 JANUARY 2004

Report of the Head of Technical Services

ITEM 10 REVIEW OF REFUSE COLLECTION AND RECYCLING SERVICE

Purpose of the Report

1. To provide further details of how the Council might increase its recycling and composting performance to meet the targets set in Charnwood Together based on Options E and G as reported to Cabinet on the 18 December 2003.
2. To seek Cabinet's guidance on how it wishes to proceed with the implementation of a scheme to meet the targets.

Recommendation(s)

1. That the Cabinet indicates how it wishes to proceed to meet the recycling and composting targets set in Charnwood Together.

Reason(s)

1. To allow action to be taken to enable the chosen scheme to be introduced during 2004/05.

Policy Context

Increasing the percentage of waste recycled to 36% by 2005/06 is one of the priorities contained in the "A sustainable environment" section of the Borough Council's Corporate Plan for 2003-2007. This is in line with the recycling and composting targets set by the Government. The Borough Council has also committed to increasing the amount of waste being composted by the same target date under the Leicestershire Public Service Agreement (LPSA). An additional 1,225 tonnes of garden waste will have to be collected and composted by the Borough Council to meet the LPSA commitment.

Background

At its meeting on the 18 December 2003, the Cabinet considered six options for increasing the Council's recycling and composting performance together with an additional option which reflected some of the issues raised during the public consultation exercise. It resolved that: -

“to meet the targets for recycling and composting set out in Charnwood Together, a refuse collection and recycling scheme, based on option E or option G set out in appendix B to the report, be introduced subject to further details of how the scheme will operate in practice, the cost of implementing the scheme and the yield being prepared by the Head of Technical Services for consideration by the Cabinet at its meeting on the 15 January 2004”

Since that time joint discussions have taken place with the Council’s Refuse Collection and Street Cleansing contractor, Onyx UK Ltd, and the Council’s advising consultant, Indecon Ltd, to enable the Head of Technical Services to produce the information provided in this report

How the Options Would Operate in Practice

A table is provided in Appendix A setting out the characteristics of each option. Both options will require the householder place the contained waste at the edge of the property on the day of collection and when emptied the containers will returned to the point they were collected from. Assistance may need to be given in exceptional circumstances to manage the wheeled bins. Any assistance scheme must be carefully monitored both initially and over time to ensure that only households with a true need are provided with the service. Clear guidelines will have to be introduced to ensure equity. Experience elsewhere in the country suggests a likely requirement to approximately 2% of households. It must be accepted that not all properties can physically accommodate the use of wheeled bins and in a limited number of cases alternative arrangements will have to be introduced. Again it is important that this should be the exception not the rule and clear guidelines will have to be introduced.

The Anticipated Yield from Each Option

The table in Appendix A includes predictions of likely yield of the two options. Were a similar garden waste collection scheme to that included in Option E introduced as part of Option G, a combined recycling/composting rate similar to Option E would be achieved.

The Cost of Implementing the Options

A large part of the estimated cost of each scheme is associated with basic resources such as containers vehicles and staff. The table in Appendix B summarises the resources that are likely to be required for each option. The estimated additional annual costs are tabulated in Appendix C.

Were a similar garden waste collection scheme to that included in Option E introduced as part of Option G, the additional annual cost of approximately £743,000 would be required giving a total additional annual cost of £994,000.

Conclusion

To meet the 2005/06 targets, action needs to be taken during 2004/05 and it is considered that the chosen scheme must be in place and working by late 2004 to be successful. The need for a comprehensive and thorough publicity/information campaign is vital to the success of the chosen scheme as is the improvement and expansion of the existing network of recycling bring sites.

Scrutiny Committee(s): Health & Public Protection

Key Decision: Yes

Background Papers:

<i>Item</i>	Date	Description
1	18/12/03	Report to Cabinet – Review of Refuse Collection and Recycling Service Minute 195 and associated Background Papers
10	22/05/03	Petition to Cabinet – Wheelie Bins Minute 5

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APPENDIX A

Comparison of Option Characteristics

Elements of Option	Option E	Option G
Recycling Container 1	Box sorted at kerbside	Box
Materials in Container 1	Paper, mags, tins, cans, plastic bottles, glass and cardboard	Glass (bottles and jars) and textiles
Collection Frequency of Container 1	Fortnightly (alternating with residual waste bin)	Fortnightly (alternating with residual waste bin)
Recycling Container 2	Wheeled bin	Optional wheeled bin provided at an annual charge
Materials in Container 2	Garden waste	Garden waste
Collection Frequency of Container 2	Fortnightly (alternating with residual waste bin)	Fortnightly (alternating with residual waste bin)
Recycling Container 3		Green sack
Materials in Container 3		Papers, mags, tins, cans and plastic bottles
Collection Frequency of Container 3		Fortnightly (alternating with residual waste bin)
Recycling Container 4		Red sack
Materials in Container 4		Cardboard
Collection Frequency of Container 4		Fortnightly (alternating with residual waste bin)
Residual Container	Wheeled bin	Wheeled bin
Collection Frequency of Residual Container	Fortnightly (alternating with box and garden waste bin)	Fortnightly (alternating with sacks, box and garden waste bin)
Recycling Rate %	31%	31%
Composting Rate %	15% (2% see note)	2% (15% see note)
Combined Rate %	46%	33%

Additional Cost per Annum (£)	720,000	251,000
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Note : The garden waste collection element of each option is interchangeable. If an “opt-in” scheme is chosen the predicted yield will be 2% whereas a full borough wide scheme is expected to achieve 15%.

APPENDIX B

Summary of Required Resources

Item Description		Option E	Option G
Containers			
	Wheeled bins – residual waste	64,100	64,100
	Boxes	64,100	64,100
	Sacks (per annum)	-	3,333,200
	Wheeled bins – garden waste	64,100	6,500
Vehicles			
	26t RCV with lift	15	9
	26t Kerbsider	10	-
	7.5t Caged Tipper	-	12
Staff			
	HGV Drivers	25	9
	Other drivers	-	12
	Sorters	20	
	Collectors	30	41

APPENDIX C

Breakdown of Estimated Additional Annual Costs

Both Options with Full Garden Waste Element (46% overall yield)

Item Description	Estimated Additional Annual Cost (£)	
	Option E	Option G
Wheeled bin lease costs	375,400	375,400
Box lease costs	26,800	26,800
Sack costs	-	77,600
Vehicle Costs	1,030,900	971,200
Staff Costs	997,900	1,239,000
Overheads	600,000	600,000
Promotion and media campaigns	100,000	100,000
Sub-total	3,131,000	3,390,000
Existing service costs	2,160,000	2,160,000
Estimated income	251,000	236,000
Sub-total	2,411,000	239,6000
Total	720,000	994,000

Both Options with “Opt In” Garden Waste Element (33% overall yield)

Item Description	Estimated Additional Annual Cost (£)	
	Option E	Option G
Wheeled bin lease costs	206,400	206,400
Box lease costs	26,800	26,800
Sack costs	-	77,600
Vehicle Costs	916,800	857,100
Staff Costs	763,000	980,100
Overheads	600,000	600,000
Promotion and media campaigns	100,000	100,000
Sub-total	2,613,000	2,848,000
Existing service costs	2,160,000	2,160,000
Estimated income	452,000	437,000
Sub-total	2,612,000	2,597,000
Total	1,000	251,000

CABINET – 15th January 2004

Report of the Head of Planning Services

ITEM 11 ENVIRONMENTAL IMPROVEMENTS SCHEME FOR GARDEN STREET, THURMASTON

Purpose of the Report

To inform Cabinet of the Capital Project Appraisal for the proposed environmental improvements scheme at Garden Street, Thurmaston, to report on the tenders received by Thurmaston Parish Council for the implementation of the scheme's landscape and engineering works and to approval of a grant to enable the overall project to proceed.

Recommendations

2. To approve the conclusions of the Capital Project Appraisal for the environmental improvements scheme for Garden Street, Thurmaston.
3. To support Thurmaston Parish Council in the acceptance of the tender from Landward Landscape Contracts Ltd in the sum of £92,176.59.
4. To approve a grant of £50,000 from the 2004/05 Capital Programme to Thurmaston Parish Council as a contribution to the overall project.

Reason(s)

To support the work of the Thurmaston Partnership and enable the implementation of the enhancement scheme as part of the Council's Environmental Improvements Programme for 2004/05.

Policy Context

The proposal accords with the Council's strategic aims of 'a prosperous and vibrant local economy' and 'a sustainable environment' by helping Thurmaston to maintain a vibrant village centre, to conserve and enhance its historic environment and to improve its parks and public spaces.

Background

At the Cabinet meeting on 21st August 2003 the new village green scheme for Garden Street, Thurmaston was approved in principle and advanced to category 2 in the Capital Programme for 2003/04, its progression being subject to the approval of a further report on Capital Project Appraisal and details of tenders. Subsequent adjustments to the management of the Capital Programme resulted in the project being deferred to the Future Capital Programme. Resolution of outstanding aspects of the project have taken some time to finalise with the result that promotion to the Current Capital Programme for 2003/04 cannot now be funded on account of its being fully committed. To maintain the Council's support for the scheme and to demonstrate its commitment to the funding partners, it will be necessary to advance the project to the Current Capital Programme for 2004/05.

The proposal has now been subject to a Capital Project Appraisal, details of which are attached as an appendix.

A grant of £50,000 has been requested from the Borough Council to enable the achievement of this partnership scheme with Thurmaston Parish Council. The Borough Council's contribution to the project, along with those from Leicestershire County Council (£10,000 FLAG grant) and the Parish Council (£35,000) has been fundamental to the attraction of 'Doorstep Green' grant of £49,000 (or 35% of the project expenditure), from the Countryside Agency. Critically, hard landscaping works, including those within the highway at Garden Street, are ineligible for "Doorstep Green" funding and those works must necessarily be funded through the partner contributions.

Overall the total cost of the scheme is estimated to be £144,088. This includes engineering and landscape works, professional fees, cost of community events and other proposals that the Partnership would like to include in the scheme if funding allows, such as public art and CCTV.

Thurmaston Parish Council, in its role as lead partner, invited tenders from five contractors for the engineering and landscape works within and adjacent to the existing park **only**. The Parish Council proposes to accept the lowest tender received, which is from Landward Landscape Contracts Ltd. The total tender sums received by the Parish Council were:

	£
Fitzgerald Contractors Ltd	118,161.35
Blakedown Landscapes Ltd	108,748.27
DTM Gardens	106,276.96
English Landscapes	105,532.53
Landward Landscape Contracts Ltd	92,176.59

All tender submissions have been submitted to the Partnership's landscape design consultant for checking and analysis. The consultant's conclusions are that:

Landward Landscape Contracts have submitted the lowest tender, which I consider to be exceptionally competitive. Whilst I suggest that the groundworks and tree planting should be closely monitored to ensure compliance with the requirements of the specification, I recommend that Landward Landscape Contracts be appointed to implement the scheme.

Landward Landscape Contracts are included on Leicestershire County Council's standing list for landscape contractors.

Acceptance of this tender will leave a balance of about £52,000 which, it is intended, should go towards the funding of an improved footpath link to Newark Road and other improvements and features, such as public art and CCTV, excluded from the current contract.

Scrutiny Committee(s): Environment

Key Decision: Yes

Background Papers: Report to Cabinet 21/08/03 (Minute 83) – Environmental Improvements Programme.
All Tender process documents.

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CABINET – 15 January 2004

Report of the Head of People and Performance

ITEM 12 REVISED HUMAN RESOURCES PROCEDURES AND CONSULTATION ARRANGEMENTS

Purpose of Report

To seek Cabinet's approval for revised consultation arrangements and revised procedures covering reorganisation, redeployment and sickness.

Recommendations

1. To approve revised arrangements for consultation with employee representatives.
2. To approve a revised policy for dealing with organisational review.
3. To approve a procedure designed to secure the successful redeployment of employees where there is no longer a need for them to continue to perform their existing duties and responsibilities and their posts have been deleted from the establishment.
4. To approve a revised Sickness Procedure to replacement the Council's existing Sickness Absence Policy Statement including the implementation of trigger points in the management of sickness.

Reasons

1. To improve the consultation arrangements with employees and their elected representatives.
2. To revise and update the Council's policy for dealing with organisational review.
3. To establish a procedure for the redeployment of employees and ensure consistency of treatment.
4. To revise and update the current procedure in the light of good practice in the management of sickness and to ensure consistency in the application of the procedure.

Background

The three HR procedures covered by this report are part of a continuing programme to revise and update existing HR policies to make the more fit for purpose. As part of developing these procedures, consultation has taken place with the Corporate Management Team and with the Trade Unions at meetings on 25 November and 5 January. Views expressed have been taken into account in modifying the final versions of these reports and no substantial areas of disagreement remain.

It is good practice for an employer to consult with employees on a regular basis. Current consultation arrangements allows for consultation between elected members and officers and the trade unions represented on the Joint Consultation Committees on an ad hoc basis. It is proposed that members and officers to meet with trade union representatives on a regular basis to discuss items of mutual interest. It is also proposed that the frequency of these meetings with the trade unions would be every six months with elected members and every two months with officers. Two meetings have now been held between officers and trade union representatives and this approach has been welcomed by the trade unions.

The Council has been is going through a period of considerable change and there is a need for the Council's employee policies and procedures to support the change process and to ensure that the resulting employee issues are dealt with in a timely and sensitive way. The Reorganisation Procedure is designed to ensure that where reorganisation is required, it is handled efficiently and effectively and that the employees affected are properly consulted. The Council does not have an existing redeployment procedure although instances where redeployment has become necessary has been dealt with on an informally based on legislative requirements and best practice. A formal procedure is now proposed to ensure consistency of treatment.

The Council's current Sickness Absence Policy Statement has been in existence for some years. The levels of sickness absence are currently of some concern to the Council and it has targets for reducing these. It is good practice for an organisation to review its policies and procedures from time to time and, in the light of experience of using the current policy, it is now appropriate to produce a new policy and procedure, which takes into account areas of good practice. Accompanying the procedure are Guidelines for Employees and Managers.

Report Prepared by: Jane Brinklow
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Scrutiny Committee: Resources

Reorganisation Procedure – Draft

1. Introduction

This procedure replaces the procedure on Organisational Reviews O1.1/1.

It deals in turn with the various stages in a reorganisation:

- Formulation of proposals
- Formal consultation
- Decision
- Implementation
- Post implementation

The paper deals primarily with procedural requirements rather than advice on good practice.

Employees may not approach councillors directly on matters to do with reorganisations or their terms and conditions of employment except through procedures laid down in the employee handbook.

The grievance procedure is not applicable to matters related to reorganisation and selection, except insofar as they concern the improper operation of the established procedures.

2. Formulation of proposals

Reorganisation proposals may derive from a number of sources such as consultants' reports or best value reviews, but primarily they will be instigated by the Head of Service.

In formulating proposals, information may be drawn from a number of sources, including benchmarking, external reviews, views of partners and elected members, and discussions with employees.

Prior to the formal consultation stage it is important that employees are aware of the problems the proposals are trying to address and have had an opportunity to contribute as appropriate, although not necessarily on the range of solutions being proposed.

Once proposals have been formulated, the Head of Paid Service will ensure that the relevant members of the Cabinet have been consulted over the proposals prior to any formal consultation.

2. Formal Consultation

Once the decision has been taken to proceed with the proposals, the Head of Paid Service will nominate a Lead Officer, usually the Head of Service, and a Lead HR Officer.

The Lead Officer will prepare consultation documents, which will consist of:

- A covering note identifying the Lead Officer, Lead HR Officer, arrangements for meetings or individual discussions during the consultation period, and a statement of the closing date for consultation.
- A paper describing the rationale for the changes
- A structure chart (if necessary)
- Draft job descriptions of new posts with enough detail to allow employees to form a view on the content of the post
- Estimates of post gradings (optional)
- Assimilation proposals (optional)
- An indicative timetable for decision and implementation

These documents will be issued to employees and the trade unions in an appropriate manner.

- Employees whose continued employment is threatened by the proposals should be informed of the proposals first in a face-to-face meeting, individually if practicable.
- Employees whose employment is being changed by the proposals should be the next ones informed of the proposals in a group meeting if at all possible.
- Trades Unions and other employees affected by the proposals may be informed in writing or by email.

The first two groups are the primary consultees.

The period allowed for consultation will depend on the complexity of the proposals and availability of consultees but will normally be two weeks. Leave arrangements will not normally require an extension of the consultation period provided the consultee has received the documents.

All responses on the consultation must be directed to the Lead Officer. Comments to any other officer will not be taken into account. Queries over HR aspects of the proposals can be addressed directly to the Lead HR Officer.

The purpose of the consultation is to discuss the proposals with an open mind and a view to reaching an agreement.

3. Decision

Following the close of the consultation, the Lead Officer will take into account all representations made during the consultation period and prepare a report with the original consultation paper as an annex. The report will contain:

- Background
- Summary of consultation responses
- Recommendations
- Financial implications
- Legal implications
- Implementation timetable
- Structure chart with grades

This report will be submitted to the Head of Paid Service who will either agree the recommendations, if within delegated authority, or submit the report to Cabinet in the name of the Lead Officer.

In urgent cases, where issues are relatively straightforward, a report may be written and submitted to Cabinet before the close of consultation, and the summary of consultation responses tabled at the meeting. If the consultation raises substantive or complex issues, the report will be withdrawn.

Following the decision, the Lead Officer will immediately inform primary consultees of the decision and the date at which the decision will become effective. If there are assimilation proposals that have not been consulted on, or any proposed variations to HR policies on selection, the Lead Officer will issue these at this time for consultation.

Should the decision be called in, the Lead Officer will inform primary consultees of the delay and when a decision is expected.

Once the decision is effective, the Lead Officer will reply in writing to all written consultation responses, as soon as practically possible.

4. Implementation

Once the decision has become effective and any consultation period on additional assimilation or selection proposals has passed, the Lead Officer will confirm the implementation process and timetable and commence any required selection for posts, employees should also be advised of a target implementation date.

Selection will be conducted in accordance with Council procedure, and will normally proceed from higher graded posts to lower graded posts.

In the first instance applications to new posts in the structure will be ring fenced to employees whose posts are deleted or changed by the reorganisation proposal as well as any employees on the Redeployment Register.

The selection process should move forward expeditiously, but employees should be allowed at least a week to indicate their desire to apply for a new post and submit an application. The requirements of the Council's application form may be abbreviated but should always include a supporting statement.

Prior to the implementation date, the Lead HR Officer should write to staff within the new structure informing them of the implementation date, and their new post and reporting lines. New appointments become effective on the implementation date.

In certain circumstances it may be practical to have a number of different implementation dates for larger reorganisations.

5. Post-Implementation

On the implementation date, all employees without a post in the new structure are potentially redundant and will enter the redeployment register where a separate procedure applies.

The Head of Paid Service will assign employees on the redeployment register with suitable temporary responsibilities and a line manager. If vacancies exist in the Council that, in the view of the Head of Paid Service, constitute suitable alternative employment, they may offer these to employees on the redeployment register. Before deciding whether to make an offer, the Head of Paid Service may require employees to undertake assessment for these posts.

External recruitment should commence immediately for any remaining vacant posts.

Six months from the implementation date, the Head of Paid Service will appoint an officer to produce a report on the progress of the reorganisation. This report will be shared with relevant Cabinet Members and the Chair of the Resources Scrutiny Committee.

REDEPLOYMENT PROCEDURE

Purpose and Scope.

- 1.1 This procedure is designed to secure the successful redeployment of employees where there is no longer a need for them to continue to perform their existing duties and responsibilities and their post has been deleted from the establishment. The principles of this procedure will also apply to those employees who are pronounced to be medically unfit to continue with their duties or as part of the capability procedure.
- 1.2 The procedure is intended to enable the Council to retain people with the skills, abilities and experience needed by the Council to deliver effective public services.
- 1.3 The procedure applies to all employees of Charnwood Borough Council who have a minimum of 2 years service. The principles of this procedure will also be followed in cases of redeployment due to ill health or as part of the capability procedure.

Principles

- 2.1 There will be fair and consistent treatment of all employees who are subject to redeployment.
- 2.2 The Council will do its utmost to offer the employee suitable alternative employment where available. The Council will have fulfilled this undertaking where an employee refuses an offer of a job or an interview that the Council considers to be suitable alternative employment.
- 2.3.1 Where employees are redeployed to a job on lower earnings as a result of reorganisation or redeployment, to help them adjust to this change by paying a temporary supplement to their income to make good the actual loss suffered during the early period of the redeployment. This does not apply to employees who are redeployed on capability or ill health grounds.
- 2.3.2 The Council will provide reasonable levels of training for employees subject to redeployment where this could realistically enable them to be successfully redeployed within the Council.

The Procedure

- 1 The redeployment period will start from the date an employee is formally notified that they are redundant or that they are coming to the end of a temporary or fixed term contract. The redeployment period will last for three calendar months. The redeployment period is the period during which the Council will search for alternative employment.

2. All employees subject to redeployment will be included on a redeployment register for the duration of the redeployment period. Whilst on this register, suitable work will be found for the employee, and the employee will have preferential access to vacancies arising in the Council as described below. The Head of Paid Service may admit employees onto the redeployment register at an earlier stage if in his view this would facilitate the overall process of redeploying staff.
3. Written notice of dismissal will be given at the beginning of the redeployment period. If the employee has not been redeployed within the notice period, the Council will dismiss the employee under the terms of any redundancy legislation and regulations for local government employees as operated by the Council. The employee's employment will, therefore, expire at the end of the notice period.
4. If, however, an employee is undergoing a trial period in a new job at the end of the redeployment period, he or she will be allowed to complete the trial period.
5. A Human Resources Adviser will provide support to the employee and will meet with them to discuss the type of job to which they might be suited and to undertake a skills audit. The Human Resources Adviser will be responsible for searching for suitable alternative employment. The employee also has a responsibility for looking and identifying suitable posts.
6. Employees on the redeployment register will be advised of all vacancies prior to these being advertised. Where an employee(s) wishes to apply for vacancy, it will be initially be ring fenced for that employee(s).
7. The employee will be interviewed and the interview panel will consider whether or not the employee is suitable for the post and what training may be necessary.
8. Employees have a right to a trial period of up to four weeks in their new post, which may be extended by mutual agreement.
9. An employee who believes a job offer is not a suitable alternative employment may claim redundancy. However, a redundancy payment will only be paid where the Council agrees that the job is unsuitable and, where the Council has a genuine belief that the job is suitable alternative employment, there will be no such payment. This decision will be made following an assessment by the Council of all the circumstances of the case and will include factors such as new location, travelling time, new earnings level and grade of the new job.
10. All vacant posts are potential redeployment opportunities. Where employees are permanently redeployed to a job with a lower earnings* potential than the job previously occupied, their actual earnings* shall be protected for a maximum period of three years from the date of redeployment, or until the new earnings overtake those in the previous job whichever is the earlier (redeployment on the grounds of capability is excluded).

*Earnings shall be defined as normal pay as paid for holidays.

- 11 In appropriate cases where employees fall short of meeting the essential job requirements of the job, they may be considered for a period of pre-training or they may be appointed if it is considered they can meet the full requirements in a short period of time with appropriate training.
12. An employee subject to this scheme will have reasonable paid time off with pay to search for jobs or arrange training outside the Council subject to prior permission.
13. Employees who incur additional travelling expenses as a result of being redeployed will be reimbursed excess travel costs in accordance with the National Schemes of Conditions of Service, subject to employment contracts and to the prescribed "cut-off" provisions. This allowance will stop if it is no longer appropriate e.g. where the employee obtains promotion, or transfers to different post within the Council.
- 14 Where a temporary post is offered and accepted by the employee, efforts will be made to find suitable permanent employment for the length of the temporary contract. However, if these attempts are unsuccessful, the employee will be made redundant once the temporary contract comes to an end.
- 15 Any employee made redundant will receive the appropriate redundancy payment immediately following the date of termination.

SICKNESS ABSENCE PROCEDURE

Introduction

Sickness absence is often one of the more difficult issues that managers have to deal with. High levels of absence due to sickness can have a detrimental effect on the level of service provided, place an additional burden on other employees in the section and may result in increased costs.

It is also important to have a robust procedure to ensure that the Council meets the requirements of the Best Value Performance Indicators. Under Best Value, absence management has been established as a corporate health indicator (BV12). This Council has a corporate target figure that is set nationally of no more than an average of 8.3 Day's sickness absence per employee for the years 2003/4 and 2004/5.

This procedure sets out the Council's expectations of both managers and employees in the management of sickness absence. The aim is to establish good management practice and provide a framework within which managers can balance a genuine concern for employees' welfare with the need to provide services and control costs. Further advice on managing Sickness Absence can be sought from Human Resources.

The Council recognises and accepts that there will be occasions when employees will be unable to attend work due to sickness. Although the absence needs to be discussed, all such cases that are genuinely attributable to sickness will be treated in a caring and sympathetic way, having regard to both the needs of the Council and the individual.

The following principles apply to the Council's procedures for dealing with sickness absence:

- Raising matters relating to an employee's attendance do not imply any distrust of staff or concerns regarding their conduct.
- Sickness absence will be dealt with in a way that is non-discriminatory and in accordance with the Council's Equalities Policy.
- The Council will aim to promote a positive and preventative, rather than a punitive approach to sickness absence.
- Sickness absence cases will be conducted with respect for confidentiality and in accordance with the requirements of the Data Protection Act and Access to Medical Records Act.

Scope of the Procedure

The procedure applies to all employees of the Council except probationary employees. Probationary employees are covered by a separate probationary procedure that includes the principle of monitoring attendance as part of assessing the probationary employees suitability for permanent employment.

Aims of the Procedure

The aims of the sickness procedure are:

- To ensure employee absence is reported, monitored and controlled.
- To ensure that all employees receive fair and consistent treatment in respect of sickness absence.
- To introduce effective sickness absence controls and achieve high levels of attendance throughout the Council.
- To provide fair and flexible treatment of employees with a disability as defined under the Disability Discrimination Act 1995.
- To tackle the causes of sickness absence in order to prevent or deter absence recurring where possible.
- To enable managers and supervisors to take appropriate action against those who abuse the system at the expense of their colleagues.

Manager & Employee Responsibilities

Manager Responsibilities

All supervisors and managers with involvement in the management of absence should discuss any issues with Human Resources prior to taking any action, in order that they are able to deal with sickness absence or other health related issues that affect work in a fair and professional manner.

Managers must ensure that sickness absence among their employees does not become excessive and that positive steps are taken to resolve individual cases by:

- Ensuring good physical working conditions and appropriate workloads are provided.
- Ensuring health and safety standards are maintained.
- Taking an interest in employee's health & welfare and ensuring relevant training needs are addressed.
- Ensuring new starters are properly inducted including making sure that employees are familiar with the absence reporting procedure, the absence rules that apply and that a high level of attendance at work is promoted.
- Ensuring the Council's Probationary Procedure is properly followed which includes the monitoring of attendance.
- Ensuring sickness absence is dealt with sensitively and with respect for confidentiality.
- Ensuring this Procedure is followed and instances of sickness absence are addressed.
- Ensuring a working environment free from Harassment & Bullying (See Harassment & Bullying Policy & Procedure)

Employee Responsibilities

On their appointment all employees are issued with an Employee Handbook, and given an explanation of the procedures to be followed within Charnwood Borough Council including the Sickness Procedure.

All employees have the following obligations, irrespective of whether or not they are eligible to be paid during their period of sickness absence:

- To attend work unless unfit to do so.
- To be available to attend meetings with their manager or Occupational Health as required.
- To raise concerns with their Manager or Human Resources, if they believe their job is making them ill or contributing to their illness.
- To report sickness absences promptly, in accordance with this Procedure.
- To ensure that appropriate certificates are completed, in accordance with this procedure.
- To maintain contact with their manager during periods of sickness.
- To co-operate fully with the Occupational Health Unit and other organisations that provide support to the Council and its employees.
- To ensure that medical advice and treatment, where appropriate, is sought as quickly as possible in order to facilitate a return to work.
- Not to abuse the Sickness Absence Procedure or the sick pay scheme.
- Not to be involved in activities whilst on sick leave which may inhibit their recovery.

Confidentiality & Data Protection

The procedures for monitoring sickness absence entail the processing and use of sensitive personal data. In all cases, the confidentiality of sickness absence or accident records (as defined by the Data protection Code of Practice on employment Records) will be respected by those who necessarily process or use those records. Sickness, absence or accident records will only be made available on a “need to know” basis during the relevant monitoring procedure.

Disability Discrimination Act

This Procedure takes into account the implications of the Disability Discrimination Act 1995 (DDA) at all stages of the absence management process.

Support Mechanisms

In order to support this Procedure the following services are available to managers and employees:-

- Human Resources – to provide support and guidance to managers and employees in dealing with sickness absence and ill health and in the use of the Council’s related policies and procedures.
- The Health & Safety Officer – to provide support and guidance to managers and employees on health & safety issues.
- Occupational Health Services – to provide advice and guidance on the impact of ill health on work and on what steps the Council and/or the employee may take.
- External Counselling Service (AMICA) – to provide a confidential counselling service to employees in order to discuss concerns related to work or personal circumstances.
- Payroll – to provide details of sick pay.

Notifying Sickness

First Day: If employees are sick they must notify their immediate Manager or in their absence their Admin Officer within two hours of their normal starting time (or by locally agreed arrangements for example in the case of shift workers). Employees must contact their manager personally unless they are too ill to do so, and should only leave a message with a colleague if they are unable to contact their manager. They will need to tell him/her:

- The day their illness began.
- Although they are not obliged to it would be useful to notify their immediate manager of the nature of their illness, to ensure that he/she can provide the necessary support or assistance.
- Whether the absence is caused by an accident.
- The expected duration of the absence.

If their absence continues longer than they previously indicated, they must telephone their immediate Manager again to update him/her on the situation.

The person receiving the call should complete a self-certificate as far as possible. If the employee is not back at work after seven days, this form should be photocopied for reference and the original sent, or taken out for the employees’ signature. The signed self-certificate is required in order to make any payment for the first seven days of illness.

Seventh Day: Employees must if they have not done so already visit their doctor immediately and submit a doctor’s statement to their immediate Manager or to the Council’s People Manager (if they indicate in person that they wish the reasons for their absence to remain confidential).

Continuing Sickness: Employees must submit doctor’s statements to provide for continuous cover during periods of sickness and keep their immediate Manager or Human Resources informed on their progress and expected return to work.

Where the above notification times fall on a non-working day employees must make contact on the next available working day.

Failure to follow the correct Reporting Procedure

Employees who fail to follow the sickness absence procedures may lose sick pay and benefits. Absence that is not reported before the time stated, or that is not covered by an appropriate sick note, may be classed and recorded as unauthorised unpaid leave and may result in suspension of pay.

Failure to comply with the notification procedures may lead to disciplinary action. However each case will be assessed on its merits.

Recording Sickness

A key aspect in managing sickness absence is to measure it by recording the absence levels of all employees, by section and division, not only for the purpose of ensuring correct payment of sickness benefit, but also to assist in identifying individuals whose absence levels rise above an acceptable standard.

The administrative officer / manager for each division is responsible for collecting and maintaining absence data of ½ day or more for all employees in their division, by completing a three part monthly return. One copy, which must have all relevant certificates attached, goes to Payroll by the 5th of the following month, one copy goes to Human Resources and, one copy is kept by the Division. The Human Resources Division will produce monthly reports of sickness absence for Heads of Service and report quarterly to Resources Scrutiny; this will include episodes of sickness as well as the number of days, and will enable managers to monitor sickness absence within their section and take action as necessary.

Return to Work Procedure

If the employee has been sick for more than 14 days or becomes fit to return to work before the doctors certificate has expired they will be required to obtain a certificate from their doctor that they are fit to return to work.

As part of the absence monitoring process, and as soon as possible after a return to work following any period of sickness absence, managers must meet with the employee to discuss their absence in an informal Return to Work Interview. This should be done in a positive and supportive way and can be done at the same time as signing the Self Certification form if the absence is only for a few days (see previous comments re requirements to pay first seven days). This discussion will provide an informal opportunity to determine if the employee has any difficulties that need support and/or advice from the manager or other specialist help for example from Occupational Health or AMICA.

Types of Sickness Absence

Sickness absence is generally classified as:-

- Cumulative short-term sickness with related or unrelated causes.
- Long-term sickness.

Short-term Sickness

This refers to a pattern of sickness comprising frequent episodes of certified and self-certified sickness. The following trigger points will be used for commencing an Attendance Consultation Meeting, where reasons for the sickness absence will be discussed including any contributory problems such as domestic or work problems, along with any action or assistance which is required to help the employee recover and improve their attendance record. Targets for improvement will be set and a review period agreed. Where appropriate a referral to Occupational Health will be sought to obtain advice in managing the absence with a view to reducing the absence levels to an acceptable level. Trigger points are as follows:

- 3 weeks continuous absence.
- 10 days of minor ailments per rolling 12-month period.
- 3 episodes of sickness in a rolling 3-month period.

The above trigger points do not preclude managers from discussing sickness issues with employees whatever the level of absence where justified. Managers may wish to hold Attendance Consultation Meetings for example if they observe patterns of sickness emerging, such patterns of sickness could include:

- If sickness occurs on more than one occasion, alongside periods of planned absence (e.g. annual leave, flexi leave, bank holidays).
- A departure from a previously good record of attendance.
- A pattern of Friday/Monday absences, absence on specific days or for specific reasons.

A review meeting will be set in order to see if the required improvements have been made. At the review meeting the level of absence will be reviewed. If it has reduced to an acceptable level the employee will be advised that there will be no further review and that absence will be monitored in the usual way. However if the level of absence is still unacceptable the manager will try to ascertain whether there are any initiatives which the employee considers may assist them to improve attendance, e.g. a referral to Occupational Health, re-deployment, re-training, part-time work, etc. and a further review meeting will be set.

Whilst the Council would not wish to put pressure on any employee to attend work unless they are completely fit, the employee will be made aware that unless there is sign of

improvement during the next review period it may be necessary to consider the possibility of ill health retirement/termination of employment on health grounds. If it has not already been done a referral to Occupational health will be sought to establish if there is an underlying cause for the instances of sickness. A final review period will then be set of not less than one month but not more than two months. If there is no improvement in attendance and ill health retirement is not an option the employee may be dismissed.

At all stages of this procedure the employee may be accompanied by a Trade Union representative, friend or other person that they choose. Following the meetings the Manager will write to the employee confirming the points discussed and the actions agreed. The employee must then sign the copy letter confirming that they agree that the contents are an accurate record of the meeting. This signed copy will then be placed on the employees Personnel file.

Long-Term Sickness

This refers to a continuous certificated long period of absence of more than 4 Weeks.

If employees are absent from work for whatever type of illness for longer than 4 weeks they will be visited by their line manager and a member of Human Resources, at the latest by the 4th week of absence and referred to the Occupational Health Advisor where appropriate. The employee can request to see the Council's Occupational Health Advisor at any time during the first 4 weeks of continuous sickness absence or at any time during their absence from work due to sickness.

The purpose of the visit is to encourage open discussion between manager and employee and to consider in a positive manner a period of absence. The meeting will aim to focus on employee health and welfare, facilitating a return to work, and on improvements in attendance.

Following a referral, the advice from the Council's Occupational Health Advisor will be discussed with the employee. A member of Human Resources will attend to provide advice to the manager/supervisor conducting the meeting and the employee, and an appropriate course of action will be decided.

If the Occupational Health Service confirms that there is an underlying medical cause for the absence which is now resolved, or will be resolved within an acceptable timescale, no further action will be taken other than the usual monitoring.

If there continues to be no improvement in the employee's attendance the employee may be dismissed, however amendments to working arrangements, redeployment and ill health retirement will also be considered. This will only follow after discussion of all the relevant facts with the employee.

At all stages of this procedure the employee may be accompanied by a Trade Union representative, friend or other person that they choose. Following the meetings the Manager will write to the employee confirming the points discussed and the actions agreed. The employee must then sign the copy letter confirming that they agree that the contents are an accurate record of the meeting. This signed copy will then be placed on the employees Personnel file.

Payments During Sickness

Employees may be entitled to two forms of payments from the Council during illness:

- Under Social Security legislation, i.e. STATUTORY SICK PAY (SSP)
- Under your conditions of employment, i.e. OCCUPATIONAL SICK PAY (OSP)

SSP

Where an employee is entitled to Occupational sick pay, statutory sick pay is offset until a half or no pay situation is reached. In these cases Statutory sick pay is paid in addition to Occupational entitlements.

SSP is payable:

- For any person earning over the National Insurance Lower earnings level
- For periods of four or more consecutive days' illness whether or not his/her place of work is open.
- For up to a maximum of 28 weeks.
- At a rate fixed by the Government
- If employees do not qualify for SSP, or their entitlement ceases, they may be eligible for benefit paid by the Benefit Agency. A form will be issued by the payroll office to enable an application to be made.

OSP

Conditions of employment generally make provision, during illness, for employees to receive normal pay for a period, then, for some employees; half pay for a period, depending on their length of service.

SSP and OSP are both subject to deductions for tax, national insurance and, where appropriate, pension purposes.

In accordance with National Joint Council conditions of service, in any twelve month rolling period employees will be entitled to receive sick pay for up to the following periods depending on your length of service:-

During 1st year of service 1 month full pay (after completing 4 months service) & 2 months' half pay.

During 2nd year of service	2 months' full pay 2 months' half pay
During 3rd year of service	4 months' full pay & 4 months' half pay
During 4th and 5th years of Service	5 months' full pay & 5 months' half pay.
After 5 years service	6 months' full pay & 6 months' half pay

Entitlements to sick pay will only be extended in exceptional circumstances.

Employees will not be entitled to claim sickness pay under this scheme if their incapacity stems from their own misconduct, or injury while taking part in professional sport or injury whilst working in the employee's own time on their own account for private gain or for another employer.

Industrial Injury has a separate entitlement.

Redeployment

In some cases the medical advice will recommend that the employee is permanently incapable of discharging the duties of their current post but would be fit to carry out alternative duties (which must be specified). In these cases every effort will be made, in accordance with the Council's Redeployment Procedure to redeploy the employee into another post for which they are physically and mentally fit. This may involve the provision of aids or making reasonable adjustments to the workplace. In determining whether alternative employment can be offered, the following criteria will be considered:-

- Nature and extent of the illness or injury.
- Prospects of recovery in the longer term.
- Length of service in local government.
- Employment record.
- Current and potential vacancies.

Where medical redeployment is being considered, the employee will be given his/her notice period to find suitable alternative employment in accordance with the Redeployment Procedure. During this period every effort will be made to secure a redeployment opportunity, which is as close to the earnings and conditions of employment as the employee's original post however this cannot be guaranteed. Where a redeployment opportunity is identified, there will be a 4 week trial period for all redeployments, during which time both managers and employees will have the opportunity to assess suitability for the new post.

Ill Health Retirement / Ill Health Dismissal

In some cases the medical advice will reveal that the employee is incapable of carrying out efficiently the duties of their employment or the duties of any other comparable employment, or it has not been possible to find suitable alternative employment. It will be necessary, therefore, to terminate the employee's contract of employment. This may be done by early retirement on health grounds subject to certification from the Occupational Health Advisor that the criteria have been met, or dismissal on grounds of incapacity owing to ill health. Retirement in the efficiency of the service may also be considered.

If an employee is unhappy with the medical advice received they have the right to request a second opinion from another doctor.

Where decisions are made to terminate employment on the grounds of ill health the employee has the right of appeal. In order to exercise this right, the employee must write to the People Manager within ten working days of receipt of the written notice of termination of employment, stating the grounds of their appeal.

Work related Ill Health or Injury

If an employee believes that his/her ill health or injury has been caused by work, they should notify their manager so he/she can notify Councils Health & Safety Officer where appropriate as soon as possible. If an employee has not done this and subsequently believes that their ill health or injury is caused by work, they should report this to their manager, setting out the reasons why they believe that work has contributed or caused their ill health or injury. The manager should inform their Head of Service and discuss the situation with the Health and Safety Officer in order to determine who should undertake the investigation. Human Resources should also be informed.

The investigation should be undertaken by the employee's manager and the Health & Safety Officer and should be completed as quickly as possible.

Ill Health that does not lead to absence from work

There may be occasions where an employee is suffering from ill health, but this does not lead to the employee being absent from work. If the employee believes that their ill health is having an impact on their ability to undertake their job he/she should raise this with their line manager, the line manager should discuss this matter confidentially with the employee, review the workplace risk assessment and discuss whether any additional support can be provided to the employee to support them at work. Depending on the circumstances it may be helpful to seek advice and guidance from Human Resources the Health & Safety Officer and/or the Council's Occupational Health Service.

Medical Appointments

It should be noted that appointments with a General Medical Practitioner, General Dental Practitioner or Specialist should not be recorded as sick leave unless the employee is receiving treatment which renders the employee unfit for work (e.g. a day case surgical procedure). Whenever possible the employee should arrange appointments to take place outside their normal working hours. (see the Flexi-time rules for those employees who participate in the flexi-time scheme)

Managing Special Circumstances

The following are examples of how the sickness procedure caters for special problems that employees may face which are likely to affect their health and attendance at work. Line Managers can obtain further details from Human Resources with regard to any of these listed or any other special circumstances that occur.

Disability and Sickness Absence

There are particular equality implications with respect to impairment and disability, including any mental disability (which may include stress). If the line manager and the employee, in consultation with Human Resources, agree that they are a disabled person under the terms of the Disability Discrimination Act 1995 there is a duty to make reasonable adjustments.

A disabled employee will be granted reasonable time off in order to manage their disability, for example in order to be fitted for a new wheelchair or to have treatment related to their disability. This absence is not related to ill health and will not be recorded as such. Any sickness absence that is not related to the employees disability will be recorded as such.

If there is any doubt, or a difference of view with the employee advice should be sought from Human Resources and/or the Occupational Health Advisor.

Regular Hospital Attendance During or Following a Period of Illness/ Hospitalisation

The Line Manager should still monitor the absence using these procedures but reporting requirements will not apply.

Maternity Related

If an employee is absent with sickness, which is maternity, related, the Line Manager should still monitor the absence using these procedures. If the level of absence as a result of ill health breaches the marker points or becomes long term, the Line Manager must consult with Human Resources with regard to the best means of managing the non-attendance. If the pregnant employee is absent with a maternity related illness within 4 weeks of the Expected Week of Birth Maternity Leave will automatically begin.

Terminal Illness

An employee who is diagnosed as terminally ill is exempt from the normal procedures for dealing with long-term or frequent short-term sickness as detailed in these procedures. If such an employee's level of absence as a result of terminal illness breaches the marker points or becomes long term, the Line Manager must consult with Human Resources with regard to the best means of managing the non attendance.

Where a terminally ill employee is retired on the grounds of their ill health, there are special provisions in the Local Government pension Scheme regulations which allow part of the employees pension to be commuted to a lump sum if, at the time benefits first become payable, life expectancy is less believed to be less than one year.

Other reasons for unplanned absence

The Council also recognises that there may be other domestic reasons why employees feel it necessary to take a period of unplanned absence. Employees are reminded that the Compassionate Leave Policy may cover such eventualities, and that this Procedure must be followed. Employees may also want to take a period of unpaid leave to accommodate such eventualities. Sick leave must not be claimed for these reasons.

The Council is committed to improving the Work life Balance of its employees and recognises that the introduction of policies in relation to this can contribute to a reduction in sickness absence and a committed and motivated workforce. The Council currently has several policies/procedures supporting Work Life Balance which are:-

- Parental leave.
- Compassionate leave.
- Flexi-time.
- Time off in lieu.
- Flexible working including Job-Sharing and Part time working.

Further information can be obtained from Human Resources.

Further Assistance

Counselling – AMICA

The Council subscribes to the AMICA Employee Assistance Programme, which is a confidential counselling service available to all staff. If employees would like support, they can access the confidential Telephone Counselling Service, the number is on the card that is issued to all new starters. If employees have mislaid their card **they can contact Human Resources who will be happy to let them have a replacement.**

Sickness & Annual Leave

Sickness while on annual leave or on a public holiday

National Conditions of Service provide that an employee who falls sick during the course of annual leave shall be regarded as being on sick leave from the date of their self-certificate, normal reporting procedures must be adhered to. Annual leave will be suspended from that date. The strict interpretation will be applied that further annual leave only becomes due after the employee returns to work at the end of the period of sick leave. Where a public or extra statutory holiday falls during a period of sickness absence this is treated as sickness absence but no substitute day in lieu is given.

Should an employee become well enough to resume their annual leave they should inform their manager.

Accrual of Annual leave whilst on sick leave

Employees will continue to accrue Annual Leave whilst on paid sick leave.

Where an employee does not return to work, whether because employment is terminated by notice on either side or due to retirement, the employee shall be allowed payment in lieu of any outstanding holiday entitlement calculated at the last day of the paid sickness absence in accordance with the sickness pay scheme. Where in its discretion the Council has extended the period of paid sickness absence, no proportionate holiday will be due in respect of the extended period.

In the unfortunate event of the death of an employee payment will be made in lieu of outstanding holidays.

Employees on long-term sickness absence will have an entitlement to take their annual leave with pay during the current leave year in accordance with the principles of the Working Time Regulations. The annual leave must be authorised in accordance with the normal procedures (i.e. the employee must contact their manager in advance to seek authorisation for the annual leave). An employee taking leave during sickness absence will have their sick pay allowance deferred until the end of the holiday leave. He/She cannot have their sick pay allowance re-calculated. The sickness absence will be treated as one period of absence and therefore the original entitlement to sick pay allowance remains.

In all cases (i.e. where an employee leaves the Council or where they return to work), the employee will be allowed to carry forward up to 5 days outstanding annual leave if their sickness absence commenced prior to the current annual leave year. A further 5 days carry over may be granted at the managers' discretion making a maximum carry over of 10 days.

Abuse of the Sickness Scheme

Where a manager suspects that an employee is malingering, or fraudulently absent, the situation must be thoroughly investigated. In each case managers are not obliged to accept a doctors certificate at face value and may investigate further. If misconduct is identified, Human Resources must be contacted, as the Disciplinary Procedure may need to be instigated.

Employees may not undertake paid employment whilst on sick leave. If it is found that an employee is working whilst on sick leave they may be subject to disciplinary action.

Review of Procedure

This procedure will be reviewed periodically.

CABINET – 15 January 2004

Report of the Head of People and Performance

ITEM 13 RISK MANAGEMENT

Purpose of the Report

To seek the adoption of a Corporate Risk Management policy framework and approval for two Risk Management workshops during February 2004.

Recommendations

1. That the attached Corporate Risk Management Policy Framework is adopted.
2. That Cabinet approves the undertaking of a Strategic Risk Assessment workshop for Senior Members and officers on Monday 2 February 2004 and a Risk Management/Mitigation workshop on Wednesday 25 February 2004 for the Corporate Management Team.

Reasons

1. To guide the embedding of risk management within the Council's key management and decision-making processes.
2. To enable the production of a prioritised risk register and appropriate action plans to manage and mitigate the key risks identified; and also to improve the skills and knowledge of senior Members and officers in risk management.

Policy Context

A corporate risk management policy is a key component in meeting the CIPFA/Solace Code of Corporate Governance that the Council is committed to adopting. In particular, it will help ensure the robustness of the Corporate Plan objectives and its monitoring and review arrangements.

Background

The corporate self-assessment against the Comprehensive Performance Assessment (CPA) criteria identified, as a key area for improvement, the need to develop risk management processes and integrate these into the Council's overall performance management framework. The CPA Corporate Self-Assessment: Short Term Improvement Plan, which was approved by Cabinet on 11th December 2003, contains an improvement action "to establish a risk management strategy and high level risk register by February 2004".

Some significant progress has been achieved over the last few months in introducing risk management principles in the Council's key planning and decision-making processes. In particular:

- A risk assessment has been built into the Medium Term Financial Strategy.
- Risk assessment is now undertaken as part of Capital project appraisals.
- Outline Service Plans contain a framework of key risks for major service improvements or changes.

However, it is also recognised that risk management is not fully embedded in the organisation and there is a need to carry out a risk assessment of the Corporate Plan in order to establish a prioritised strategic risk register. Both Members and officers also need structured training and guidance in order to achieve these objectives.

The Chief Executive and Head of People and Performance sought proposals from IPFA, the IDeA and Zurich Municipal, all of whom have a proven track record in providing risk management support to local authorities, with a view to:

- (a) facilitating a strategic risk assessment of the Corporate Plan and the establishment of a risk register;
- (b) developing a risk management/mitigation plan;
- (c) providing some structured training on Risk Management principles in a workshop environment.

Following consultation with the Deputy Leader (Strategy) it was agreed to accept the proposal from the IDeA to provide two full day workshops as set out below:

- A Strategic Risk Assessment Workshop for senior Members and Officers, planned for Monday 2 February 2004, to undertake a risk assessment of the Corporate Plan and produce a prioritised risk register;
- A Risk Mitigation/Management Workshop for the Corporate Management Team to be held on Wednesday 25 February 2004.

The Strategic Risk Assessment workshop will introduce the application of the scrutiny process to strategic risk management and it is therefore recommended that, in addition to Cabinet Members, Scrutiny Chairs and Vice Chairs should be invited to attend the workshop arranged for Monday, 2 February 2004.

A draft Corporate Risk Management Policy Framework is attached to enable Cabinet to formally adopt a comprehensive risk management approach to planning and decision-making.

The Performance Improvement Team have also undertaken a review of the insurance and risk management function and will be reporting back to the Chief Executive Team

shortly. This is likely to result in recommendations as to the corporate management arrangements and responsibilities for risk management. This, together with the outcomes of the workshops, will enable a more comprehensive risk management strategy to be developed and submitted to Cabinet for approval in March 2004.

Financial Implications

The cost of the workshops will be approximately £4,500 and can be met from the 2003-04 revenue contingency fund allocated for CPA related consultancy support.

Scrutiny Committee(s): All

Key Decision: No

Background Papers: Cabinet 11 December 2003 (minute 187)

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CORPORATE RISK MANAGEMENT POLICY FRAMEWORK

Introduction

The Council recognises that the provision of services to the community gives rise to some level of risk. We are fully committed to identifying and assessing these risks and taking appropriate actions to prevent or minimise their impact on service delivery through the development of a Risk Management Strategy.

Objectives

The corporate risk management policy aims, through the development of a Risk Management Strategy to:

- Adopt a systematic approach to managing risk as an integral element of the service planning and performance management framework
- Embed risk management into the culture and operations of the organisation
- Ensure all major strategic and operational activities are risk assessed and a high level risk register is maintained
- Manage risk in accordance with best practice
- Define the roles and responsibilities within the organisation for the identification and management of risk

Categories of Risk

There are two categories of risk that the Risk Management Strategy will address:

<u>Strategic</u>	Operational
a) political – those associated with the failure to deliver an agreed policy; b) economic – those affecting the Council’s ability to meet its financial commitments; c) social – those relating to the effects of changes in demographic, residential and socio-economic trends on the Council’s ability to deliver its objectives; d) technological – those associated with the capacity of the Council to deal with the pace/scale of technological change or the impact technology failure can have on service delivery; e) legislative/regulatory – those associated with changes in the law;	a) managerial/professional – those associated with the particular nature of each profession (e.g. giving incorrect advice); b) financial – those associated with financial control; c) legal – those related to possible breaches of legislation; d) physical – those related to health and safety and security; e) partnership/contractual – those associated with the failure of contractors to deliver services; f) technological – those relating to reliance on IT systems; g) environmental – those relating to the

<p>f) environmental – those relating to the environmental consequences of progressing strategic objectives (e.g. emissions);</p> <p>g) competitive – those effecting the competitiveness of a service;</p> <p>h) customer/citizen – those associated with the failure to meet customer needs.</p>	<p>impact of service delivery in terms of noise, pollution and energy usage;</p> <p>h) personnel – those which could lead to an employment tribunal, injury claim etc.</p>
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Applying the Risk Management Cycle

The Council will tackle Risk Management by the application of a 5-step cycle:

Identify risks and obstacles to the achievement of the plan or project

Analyse the identified risks in terms of likelihood and impact on the organisation

Prioritise the risks by focussing on those that will have a catastrophic or critical impact and are of a high likelihood of occurrence

Manage the risks by:

- maintaining a prioritised risk register
- developing action plans to ensure that they are managed and
- mitigation to reduce the chance of risks causing major disruption or loss

Monitor the achievement of action plans.

Roles and Responsibilities

The identification and management of risk is ultimately the responsibility of all Members and officers of the Council. However, there are specific areas of responsibilities that need to be clearly defined:

General responsibilities	
Members	<ul style="list-style-type: none"> • Approval of a Corporate Risk Management policy framework and underpinning strategy • Determining strategic risks to the achievement of the Corporate Plan and Medium-Term Financial Strategy
Corporate Management Team	<ul style="list-style-type: none"> • Engendering a culture of risk awareness • Ensuring that all key strategic and operational activities are risk assessed and managed • Developing action plans to deal with strategic risks • Ensuring that appropriate training is given to officers with risk management responsibilities • Monitoring the application of the risk

	management policy and action plans
Specific responsibilities	Officer(s) Responsible
Occupational Health & Safety	Head of Environmental Health Service Heads
Insurance Risks	Internal Audit & Insurance Manager
Financial Matters	Head of Financial Services
Capital Programme	Head of Financial Services
Service Plans	Service Heads

CABINET – 15th January 2004

Report of the Head of Policy and Economic Regeneration

ITEM 14 ANTI-SOCIAL BEHAVIOUR PROTOCOL

Purpose of the Report

To consider adoption of the proposed corporate Anti- Social Behaviour Protocol.

Recommendation

That the proposed corporate Anti- Social Behaviour Protocol be adopted.

Reason

To confirm the Protocol as setting the framework for dealing with cases of ant-social behaviour by the Council and its partners.

Policy Context

The Council's Corporate Plan, Charnwood Together, identifies the reduction of incidents of ant-social behaviour as a priority. The proposal supports the delivery of the Charnwood Crime and Disorder Reduction Strategy. The Protocol has been developed following consultations with key partners, scrutiny and other bodies and reflects recent legislative developments.

Background

In 2002 Cabinet approved a draft Anti-social Behaviour Strategy, which had been prepared by a working group of officers and police representatives. For consultation purposes that was refined into a working Protocol, which was submitted for comment to scrutiny and key partners. At the same time changes in legislation were in train and the opportunity was taken to develop the draft Protocol not only to reflect comments from consultees (which mainly concerned technical issues and general support to keep the ASB management process to two levels, rather than three as originally proposed) but also the new powers. In parallel the opportunity has been taken to create an Anti- Social Behaviour Case Officer post through the Community Safety Partnership and to put in place regular inter-service/inter- agency case management meetings, in line with the Protocol.

Therefore although the Protocol has had long gestation activity has focussed on seeking to improve responses to live cases while bearing in mind that new legislation was being processed. The Protocol is now attached for consideration for adoption.

Scrutiny Committee(s): Health and Public Protection

Key Decision: No

Background Papers: Consultation responses to the draft protocol.

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**A PROTOCOL FOR
TACKLING ANTI-SOCIAL BEHAVIOUR IN
CHARNWOOD**

LINKS TO MAJOR POLICIES

*Charnwood Together
Charnwood Community Strategy
Charnwood Crime and Disorder Reduction Strategy (2002 – 2005)
Housing Strategy*

AIM

Signatories to this Protocol are committed to promoting a safe and secure environment in Charnwood so that residents are able to live peacefully in their own communities. The Council aims to achieve this as landlord by enforcing tenancy and occupancy conditions in appropriate circumstances; and, with the other signatories, across all housing tenures by exercising powers under the Crime and Disorder Act 1998 and the Anti-Social Behaviour Bill 2003 (ASB Bill 2003) in appropriate circumstances to deal with Anti-Social Behaviour by any resident.

OBJECTIVES

- By establishing clear guidelines and procedures for staff, in terms of the investigation of complaints, and the appropriate action to be taken.
- By recognising that neighbour disputes and anti-social behaviour may be a result of wider social issues and by establishing a clear protocol for inter-services and inter-agency co-operation in addressing such matters.
- By ensuring that staff are adequately trained to implement the Protocol.
- By establishing targets for performance monitoring, the results of which will be reported as required by the signatories to this Protocol.
- By regularly reviewing both the policy and the procedures.

DEFINITIONS

Anti-Social Behaviour

The Crime and Disorder Act 1998 defines Anti-Social Behaviour as behaviour which causes or is likely to cause alarm or distress to one or more persons not of the same household, or where a course of conduct has been pursued which causes or is likely to cause alarm or distress.

Anti-Social Behaviour Order

An Anti-Social Behaviour Order (ASBO's) can be made under the Crime and Disorder Act 1998 against a person aged 10 or over in any housing tenure i.e. owner-occupiers, private and public sector tenants. It is intended to tackle both behaviour, which is likely to escalate to the criminal level, and patterns of behaviour which cumulatively cause alarm or distress to the community but which do not consist of single acts which are sufficiently serious or sufficiently clear-cut to be prosecuted individually as criminal offences. The behaviour is not restricted to housing situations. The terms of an Anti-Social Behaviour Order can only be prohibitory, and only those necessary to protect people in the area from further anti-social behaviour. Under the Police Reform Act 2002, it is also possible to apply for an ASBO to be made at the same time as sentencing and attached following post criminal convictions. The Anti-Social Behaviour Bill 2003, will also enable ASBO's to be served to relatives and friends of someone subject to proceedings in the County Court where it is deemed appropriate.

Anti-Social Behaviour may arise from any one or several of the following:

- Noise nuisance
- Criminal behaviour
- Harassment of all types including racial harassment
- Intimidation
- Domestic violence and abuse
- Dealing in illegal drugs
- Alcohol and solvent abuse
- Nuisance from vehicles
- Nuisance from business use
- Overgrown gardens
- Verbal abuse
- Damage to property
- Disruptive or dangerous animals
- Rubbish and misuse of communal areas
- Joyriding
- Kerb-crawling
- Prostitution

POLICY AND PROCEDURES – Council Tenants

Policy Issues

The Council will clearly establish and publicise:

- The behaviour standards expected from Council tenants and from former Council tenants who have purchased their home.
- The actions, which will be taken by the Council if these standards, are breached.

Where complaints about behaviour are received:

- It will be easy for complainants to report problems.
- All complaints reported will be investigated.
- Every effort will be made to resolve disputes amicably, including the use of mediation services where appropriate.
- Complaints will be confidential (unless legal action becomes necessary).
- Complainants will be kept advised of progress at every stage.
- A series of warnings will be issued to tenants or former Council tenants who have purchased their home, where complaints are found to be justified.
- Legal action will be considered and may be taken against tenants or former Council tenants who have purchased their home, if no effort is made to amend or modify behaviour and complaints continue to be received.
- Inter-services and inter-agency co-operation will be initiated where necessary and in line with the Framework as outlined in Appendix C.

Legal Action

Where council tenants or former council tenants do not modify their behaviour as required, the Council may utilise one or more of the relevant interventions listed in Appendix A, including application for an Anti-Social Behaviour Order in terms of Section 1(1) of the Crime and Disorder Act 1998.

Appeals

Where a complainant is unhappy with progress made on decisions reached by the investigating officer, the case will be reviewed by a senior Officer who has not been involved in the case up to that point.

- Where legal action is being considered against a tenant/former tenant, the tenant will be invited to attend an interview to discuss steps taken by the Council to that point. A senior Officer will conduct this interview.
- Where legal action is being considered against a tenant/former tenant, and that tenant is under 18, a responsible adult must be present when interviewed to discuss steps taken by the Council to that point. This is also the case where the tenant/former tenant has learning difficulties/mental health problems. A senior Officer will conduct this interview

POLICY AND PROCEDURES - OWNER OCCUPIERS AND PRIVATE TENANTS

Policy Issues

Where complaints about Anti-Social Behaviour are received in relation to non-council tenants by any of the lead agencies identified in Appendix B, the lead agencies will ensure:

- It will be easy for complainants to report problems
- All complaints reported will be investigated
- Every effort will be made to resolve disputes amicably, including the use of mediation services where appropriate
- Complaints will be confidential (unless legal action becomes necessary)
- Complainants will be advised of progress at every stage
- Relevant and appropriate action will be taken in line with the lead agency's respective procedures, enforcement policies and inter-agency agreements – this includes their duty to publish policies on how they deal with Anti-Social Behaviour
- Inter-service and inter-agency co-operation will be initiated where necessary in line with the Framework outlined below

Other landlords and owner-occupiers must try all reasonable means at their disposal to resolve complaints before approaching the Council or the Police with a request to intervene or make an application for an Anti-Social Behaviour Order.

The Council, the Police or Registered Social Landlords may, having exhausted all other available options outlined in Appendix A apply for an Anti-Social Behaviour Order in circumstances which warrant such action to address behaviour which causes, or is likely to cause, alarm or distress to the people of Charnwood.

The Council, the Police and Registered Social Landlords (where applicable) will work together in considering an application for an Anti-Social Behaviour Order, following consultation with other relevant agencies through the framework set at Appendix C.

Before making an application for an Anti-Social Behaviour Order, the Council or the Police must be satisfied that the person complained about has acted in an anti-social manner and that an Anti-Social Behaviour Order is necessary to protect the community from further anti-social behaviour. The following criteria will be applied in considering such requests:-

- The behaviour which is to be used as justification for an application has taken place after 1 April 1999.

- The person complained about is aged 10 or over.
- The behaviour is sufficiently serious to warrant the intervention.
- All other appropriate preventative measures e.g. negotiation, mediation, warnings, enforcement of tenancy agreements, etc. have been tried.

If it is decided that it is appropriate to apply for an Anti-Social Behaviour Order, any costs and/or legal costs incurred will be the responsibility of the landlord or lead agency (owner-occupier) requesting the application.

Who can apply for an Order?

Agencies able to apply for orders are defined as “relevant authorities” in Section 1 (1A) of the Crime and Disorder Act 1998. These are:

Local authorities

Police Forces (including British Transport Police) and

Registered Social Landlords

Procedures

All complaints about tenants of Housing Associations and private landlords must be made in the first instance to the relevant landlord, who should follow their own policy and procedures for dealing with such complaints. Registered Social Landlord’s can take action themselves but are encouraged to liaise with the Police and Council. Where such policies and procedures have been unable to resolve the complaint and the complaint clearly involves or is likely to involve Anti-Social Behaviour, an application may be made to the Council or to the Police to consider applying for an Anti-Social Behaviour Order.

Requests by landlords or owner-occupiers for applications for Anti-Social Behaviour Orders must be made on the appropriate form to the relevant Lead Agency (see list at Appendix B) or to the Council’s Anti-Social Behaviour Case Officer at Charnwood Borough Council, Southfields, Loughborough, LE11 2TR

Where an application is received it will be dealt with, in accordance with the Framework set out below including:-

- Consulting with the Police and relevant Council services and other agencies as appropriate.
- Writing to the person against whom the Order would be sought, offering a meeting to discuss the matter and advising him/her to seek independent legal advice.
- Applying any relevant interventions short of an ASB listed in Appendix A.

- Deciding the terms to be sought in an Order, including the duration.
- Keeping the complainant, the Police, relevant agencies and anyone else affected by the Anti-Social Behaviour informed.

Where an Order is sought the Courts will consider on the evidence whether the person has acted in an anti-social manner as defined by the Crime and Disorder Act 1998 and if so, whether an Order is necessary to protect the community from further anti-social acts.

If an Order is made the Council or Police will inform the applicant, and anyone else affected, of its terms and duration and advise that any breach of the Order is a criminal offence, which should be reported to the Police. The Council and Police will also consider at least annually whether the Order should be varied or revoked.

Application forms and general information and advice about the procedures for applying for Anti-Social Behaviour Orders will be available at:

- Environmental Health, Macaulay House, Cattle Market, Loughborough
- Housing Services, Charnwood Borough Council, Southfields, Loughborough
- Legal and Democratic Services, Macaulay House, Cattle Market, Loughborough
- Loughborough Police Unit, Community Unit, Southfields, Loughborough
- Policy Unit, Charnwood Borough Council, Southfields, Loughborough

Appeals

Each application will be considered on an individual basis and the decision as to whether to take legal action will be based on the individual merits of the case. There will be no right of appeal against that decision other than through the relevant agencies formal complaints procedure or to the relevant Ombudsman.

Training

Training will be provided to all relevant staff. Such training will be undertaken jointly between Services/Agencies/Police where appropriate and ongoing training requirements will be regularly reviewed.

Consultation

The policy is the product of a Working Group involving representatives of relevant Council Services and Leicestershire Police. In addition, consultations were also held with organisations as listed at Appendix D

Information And Marketing

A booklet for the public outlining procedures and advice for dealing with Anti-Social Behaviour will be drawn up and these will be made available in all appropriate Council offices, doctors' surgeries, libraries, etc. In addition, clear information about expected standards of behaviour will be provided to new Council tenants at the commencement of their tenancy.

Review Period

The policy will be reviewed as required, but initially after 12 months.

Monitoring

Key indicators will be developed and communicated at an early stage to all partners and lead agencies in order to allow IT and data management systems to be established and made consistent.

THE FRAMEWORK FOR CASE MANAGEMENT

The framework is arranged in levels of resolution and is designed to provide timely, effective and inexpensive remedies while at the same time evidencing that reasonable, considered steps have been taken prior to full and costly enforcement proceedings.

Signatories to the Protocol agree to inter-service and inter-agency assistance in relation to neighbour disputes and anti-social behaviour. Agreement has also been reached that appropriate services and agencies will participate in case conferences to agree an approach to dealing with incidences of anti-social behaviour.

Written inter-agency protocols and guidance to facilitate communication and disclosure of information will be developed and made available to all staff.

It has also been recognised that any one of those Services or agencies may be the "Lead agency" in cases as appropriate (see Appendix B). The "lead agency" is defined as that agency which takes/receives the first initial call of complaint. The "lead agency" can/could change as a case develops.

Lead Officer

The lead officer will be the officer from the service/agency that is leading on the initial complaint to an issue of anti-social behaviour. The aim is to resolve as many complaints at the earliest stages as possible, through normal working arrangements.

Anti-Social Behaviour Case Officer

The Framework involves relevant services and agencies working in partnership to seek resolutions in particular to the more serious/complex/problematic cases.

To facilitate an effective approach to Anti-Social Behaviour as outlined in this Protocol a role of Anti-Social Behaviour Case Officer will be established. The duties of the officer will be to:

- Facilitate the process
- Establish relevant membership of Reduction Team and Action Group
- Convene meetings
- Act as secretariat to the above
- Collect and record data on anti-social behaviour incidents supplied by services and agencies.
- Develop common partnership referral forms
- Develop an agreement supporting joint information sharing protocols
- Develop a communication and publicity strategy
- Lead the periodic review of this protocol
- Act as a filter for complaints referred to in level 2 of the framework

The case officer will **not** usually act as a lead officer at the outset; rather this role would be undertaken by a member of staff from the agency (Lead Officer – see above), primarily involved in the case at hand (see Appendix B). The Case Officer will work with the Lead Officer in managing individual cases through the Framework and will take on the Lead Officer role in particularly complex or difficult cases. The Council’s Policy Unit will provide secretarial support to the case officer and for the framework outlined below.

THE FRAMEWORK

The Framework comprises 2 levels as follows:

Level One Anti-Social Behaviour Reduction Team

Level Two Anti-Social Behaviour Action Group

The Framework includes proposed triggers indicating when to move to the next level.

Appendix C sets the Framework out as a diagram including indicative timescales.

It is expected that 'low level' issues that might involve anti-social behaviour should be acted upon initially by the Lead Agency (with others as necessary) to achieve resolution through normal service procedures. If they are unsuccessful or are judged likely to be unsuccessful then the matter needs to be brought to the Anti-Social Behaviour Reduction Team. In all cases data about anti-social behaviour needs to be fed to the Anti Social Behaviour Case Officer.

The case officer will:

- Receive, record and acknowledge complaint
- Deal with it at local level and within agency policy/procedures
- Liase with other agencies if and when required, based on agreed inter-agency protocols

Level One - Anti-Social Behaviour Reduction Team (Housing, Environmental Health, Police, Social Registered Landlord etc)

Made up of Lead Officers and practitioners from relevant agencies with the aim of seeking resolution through joint intervention and action planning.

- Clarify the type and nature of the complaint
- Assess its severity
- Review the nature of the complaint, the current situation and interventions to date
- Consider available interventions
- Decide on action plan
- Gather information and evidence on specific cases and resolved incidents
- Consider warning letter to perpetrator
- Monitor case – send data to co-ordinator
- Resolve case
- Report back to originating agency
- Consider advising complainant/parties to case of progress made

The Anti-Social Behaviour Reduction Team will meet regularly (monthly) to monitor and review cases and the actions taken.

Trigger:

- *Situation remains unresolved in anticipated timescale – intervention has not worked and additional support is needed*
- *Escalation of situation*

Anti-Social Behaviour Reduction Team refers case and prepares for submission to next level with a view to seek legal sanctions

Level Two – Anti-Social Behaviour Action Group

A new group made up of managers from relevant partnership agencies that reviews referred cases and considers options for legal sanctions such as Anti-Social Behaviour Orders, Injunctions or to implement other interventions.

- Review the referred case including the Reduction Team’s Action Plan
- Review available information and substantiating evidence
- Consider any new interventions
- Consider a final warning
- Consider suitability and type of legal sanction appropriate
- Form Action Plan
- Seek relevant approval for legal sanction
- Start legal sanction process
- Monitor situation

Fast Track:

*It is intended that the framework will enable a fast track process for **acute and serious** incidents of Anti-Social Behaviour requiring an immediate intervention partnership approach i.e. the omission of Level One from the process outlined above, and immediate legal intervention by way of Level Two.*

SUMMARY OF POSSIBLE INTERVENTIONS

Environment and Facilities

Changes to the physical environment can play an important role in discouraging some anti-social behaviour, such as better lighting, adopting “designing out crime” principles, rapid repairs responses to vandalism, graffiti removal etc. Equally the provision of or support for community, recreational, cultural or other facilities and activities can be important. However, the effect can be lost if actions are piecemeal and not seen by the agencies involved as part of a wider package of measures, such as those mentioned below. These may also be medium/longer term actions that need to be considered alongside short-term interventions to deal with an immediate problem.

The Council will carry out an on-going ‘**nuisance audit**’ of its own housing stock in order to be aware of and to deal with those factors, which increase the potential for nuisance, such as poor sound insulation and inadequate home security. Any proposed remedies will be fed into the Council’s on-going Capital Programme of improvements to its housing stock.

Tenancy Support Schemes

The Council operates small-scale tenancy support schemes in partnership with a number of specialist agencies for specific groups of new tenants identified as vulnerable for a variety of reasons.

Such provision is currently largely focussed on Council tenants and further work will be required to include residents from registered social landlords and the private sector.

Introductory Tenancies

The Council has decided to use its powers under the Housing Act 1996 and its powers under the Anti-Social Behaviour Bill 2003, to implement an Introductory Tenancy Scheme. These tenancies apply to all new tenants and the Council can ask the Court for an eviction order without having to prove a ground for possession during the first twelve months. The rationale is that the Council’s ability to obtain early possession and removes the “right to buy” in the case of a serious breach of tenancy will act as a deterrent and reduce the incidence of ASB at least among new tenants.

Mediation

The use of mediation can sometimes be a cost-effective method of attempting to resolve disputes before they escalate more seriously, although it can only be used if both/all parties agree and is not always appropriate, for example in cases involving violence, intimidation or harassment.

Further work is needed to identify local opportunities for mediation and to consider the provision of direct access from any source.

Anti-Social Behaviour Contracts (also known as Acceptable Behaviour Contracts) and Parental Control Agreements.

These contracts and agreements are typically individual written agreements between perpetrators and the local Housing Office and local Police for the perpetrator **not** to carry out certain identifiable acts, which could be construed as anti-social behaviour. These are voluntary agreements between perpetrators and their parents and the landlord, and although they are not legally binding, they may be used in evidence in any later legal action.

Reparation Agreements

These agreements typically involve the Police, registered social landlords and Youth Offending Teams in the provision of a scheme whereby youths caught damaging property work for a maximum of seven hours alongside staff employed to repair properties or remove graffiti. Candidates receive a certificate of achievement once their placement is completed with the intention of creating a positive outcome from a negative situation.

If the youth/parent/guardian does not agree to reparation or pay the cost of the damage then the Council seeks compensation via the County Court 'Small Claims Track'.

Children and Young People

Recent research (*Coles, England and Rugg 1998*) has stated that a number of housing management problems are often associated with high concentrations of children and young people living on estates.

The Anti-Social Behaviour Bill 2003(ASB Bill), will enable Schools, Local Education Authorities and the Youth Offending Teams to enter into parenting contracts to intervene in a child's anti-social behaviour.

Where, an ASBO has been sought by the Borough Council against a minor (10 years and plus), the Council will have access to a Youth Court for prosecution of a breach.

Other Preventative Measures

The Council has appointed **street wardens** on three estates in Loughborough, who play an important pro-active role in reporting actual and potential situations of ASB. The scheme is being closely monitored, with the possibility of future expansion if there are clear cost benefits in the fight against ASB.

Two other powers, available primarily to the Police and Social Services, were introduced by the Crime and Disorder Act 1998.

Parenting Orders may be obtained against a parent where an Anti-Social Behaviour Order or **Sex Offender Order** is made against a child aged between 10 – 17 in order to prevent further repetition of offences or ASB.

Child Safety Orders relate to children under 10, who are placed under supervision by the Orders.

The Council may develop its own **local lettings policies**, which would need to be transparent and objective, with safeguards to prevent unfair discrimination, if a need is identified in specific areas as a means of preventing or reducing ASB. This would require a change to the Council's allocations policy, but it should be noted that the Council would still have statutory duties to many of the vulnerable applicants, who may be future perpetrators of ASB.

The Legal Remedies

Injunctions can be sought from Courts and unlike possession orders can be used either directly to restrain or restrict the activities of tenants or against third parties, who are affecting the lives of tenants or disrupting a neighbourhood.

Injunctions (the actual Orders of the Court) can be obtained more quickly than a possession hearing, sometimes within hours, witnesses generally do not need to attend Court for an Interim Injunction and the action may avoid the need for an eviction if it is sufficient to stop the nuisance. Injunctions are considerably cheaper to obtain than ASBO's in terms of both financial cost and time.

Under the ASB Bill 2003, the circumstances in which housing injunctions can be used have been expanded and provide new powers to Registered Social Landlords.

Further work is needed to identify the potentially wider use of Injunctions as a legal remedy against ASB, including, for example, when they are considered appropriate and what pre-legal investigation needs to be carried out.

Anti-Social Behaviour Orders (ASBOs) have been available for use since April 1999 under powers granted by the Crime and Disorder Act 1998 to local authorities and the Police. They can be obtained from the Magistrates Court against anyone aged 10 or over, who has acted in an anti-social manner and where the Order is considered necessary to protect people from further anti-social behaviour. An ASBO under the Police Reform Act 2002 can also be sought prior to sentencing and becoming effective following post criminal. An ASBO normally remains in force for a minimum of two years and a breach is an arrestable criminal offence.

The ASB Bill 2003 will also see the removal of reporting restrictions on Anti-Social Behaviour Orders made in the Youth Courts. Local authorities under the ASB Bill 2003

will be able to prosecute any breaches of ASBO's regardless of where they were obtained.

These can be expensive and time-consuming to obtain (approximately £5,000+ and involve several weeks/months preparatory work). Experience gained from environments where they have been sought, indicates that they should only be considered as a last course of action when other interventions have been tried and found to fail. Nevertheless, there may be cases where applications for such Orders are appropriate.

Possession Orders relate directly to the Tenancy Agreement and the terms and conditions of the tenancy and there are two main relevant grounds for possession under current legislation:

Breach of tenancy agreement
Nuisance and annoyance

Ground 1 Housing Act 1985
Ground 2 Housing Act 1985

The Council will use these grounds to obtain Possession Orders if all the factors above are satisfied and if it is firmly believed that the Court will consider it reasonable to grant possession. Any eviction as a result of a Possession Order is seen as a last resort and Council must still be aware of the possible consequences and effects of such action.

Abatement Notices can be served on those responsible for statutory nuisances, e.g. noise, graffiti or other forms of environmental pollution. Where a graffiti abatement notice has been served and there has been a failure to comply, the council may clean/remove it without fear of prosecution and reclaim their costs.

In addition, **Warning Notices** may be issued for single incident noise nuisance events although in order to do so, the Council must first adopt the provisions of the Noise Act.

ANTI-SOCIAL BEHAVIOUR – LEAD AGENCY

Noise	Charnwood Borough Council(CBC)Environmental Health/ CBC Housing
Criminal Behaviour	Police
Harassment	Police/CBC Housing/CBC Legal
Intimidation	CBC Housing / CBC Legal
Domestic Violence	Police
Drugs	Police / CBC Housing
Alcohol/solvent abuse	Police / CBC Housing
Nuisance from vehicles	CBC Housing/ Police/ CBC Environmental Health
Overgrown Garden	CBC Housing/ CBC Environmental Health/ CBC Development Control
Verbal Abuse	CBC Housing/ Co-ordinator
Damage to Property	Police/ Co-ordinator
Disruptive/Dangerous Animals	CBC Environmental Health/CBC Housing
Boundary Disputes	CBC Housing/Co-ordinator/ CBC Legal
Rubbish	CBC Environmental Health/ CBC Technical Services
Misuse of Communal Areas	CBC Housing
Other	Co-ordinator (initially)

Inter-agency protocols should set out who leads in individual cases depending on the specific case details

All agencies including other key-partners such as Registered Social Landlords must be prepared for the increase in workloads that this protocol will generate. Quantifying this

should be an indicator in these monitoring processes to allow all agencies to adapt their Service Delivery Plans and service procedures accordingly

The lead agency will set targets for the implementation of a response and the completion of a review.

LIST OF CONSULTEES

All Saints Residents Association
Ashby Road Estates Community Association
Association of Charnwood Tenants
Charnwood Borough Council Directors
Charnwood Borough Council Heads of Services
Charnwood Community Safety Partnership
Charnwood Community Voluntary Services
Charnwood Racial Equality Council
Charnwood Shelter Project
Citizens Advice Bureau
Equality Working Group
Faith Communities
Government Office for the East Midlands
Leicestershire and Rutland Probation Services
Leicestershire County Council - Community Safety Team
Leicestershire County Council - County Youth Services
Leicestershire County Council - Leicestershire Education Authority
Leicestershire County Council – Social Services
Leicestershire Mental Health
Leicestershire North Neighbourhood Watch Association
Leicestershire Police – North Area
Loughborough College
Loughborough Nightstop
Loughborough Students Union
Loughborough University
Magistrates Court
Parish and Town Councils and Parish Meetings
Primary Care Trust
Private Landlords Forum
Registered Social Landlords
Rural Community Council (Leicestershire and Rutland)
Shelthorpe Residents Group
Storer Road Residents
The Bridge
Youth Offending Team

CABINET – 15th January 2004

Report of the Head of Policy & Economic Regeneration

ITEM 15 LEICESTERSHIRE COMMUNITY INFORMATION INITIATIVE – DATA SHARING PROTOCOL

Purpose of the Report

To enable consideration of this Data Sharing Protocol.

Recommendation

That adoption of the Leicestershire Community Information Initiative – Data Sharing Protocol and participation in its application is approved.

Reason(s)

2. To confirm the Council's position with regard to the proposed Protocol

Policy Context

Effective sharing of appropriate information between key organisations is an important feature of effective partnership working and joint service provision. This is identified as an aim of both the Charnwood Community Strategy and the Leicestershire Community Strategy. The proposed protocol would also support the intentions of Charnwood Together to strengthen partnership working between key agencies.

Background

Leicestershire County Council on behalf of the Leicestershire Local Strategic Partnership and supported by the Leicester Partnership Information Group has prepared the attached protocol to promote safe and legal exchange of data and information between organisations in order to help them to co-ordinate and deliver services. The data sharing protocol sub-group include representatives of Leicestershire County Council, Leicester City Council, Leicestershire Probation Service, Leicestershire Constabulary and the Health Informatics Service.

The draft data sharing protocol has been subject to wide range consultations including public and voluntary sector organisations in the County and the Leicester city area. All comments that were submitted were taken into account in producing the protocol now attached. In October the Leicestershire Local Strategic Partnership Board considered and endorsed this protocol and all key organisations in the County are now being asked to similarly endorse it.

Where there are already arrangements for sharing information and data in place these are not affected by the new protocol. However when those arrangements are due for review then organisations will be expected to use the new data sharing protocol as the basis for that review.

Scrutiny Committee(s):	Resources
Key Decision:	No
Background Papers:	Correspondence from Leicestershire County Council dated 12 th November and 3 rd December.
Officer(s) to Contact:	Steve Phipps, Head of Policy & Economic Regeneration Tel: 01509 634605 Steve.Phipps@charnwoodbc.gov.uk

Produced by Leicestershire County Council on behalf of the
Leicestershire Local Strategic Partnership and supported by the
Leicester Partnership Information Group

Data Sharing Protocol

October 2003

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Preface

This high level document has been jointly developed by public sector organisations in Leicestershire, Leicester and Rutland to facilitate the sharing of information amongst key organisations.

1.Introduction

- 1.1 This document is a Data Sharing Protocol for key organisations in Leicestershire, Leicester (and Rutland). The aim of this document is to facilitate sharing of information between the public, private and voluntary sectors so that members of the public receive the services they need.
- 1.2 Organisations involved in providing services to the public have a legal responsibility to ensure that their use of personal information is lawful, properly controlled and that an individual's rights are respected. This balance between the need to share information to provide quality service and protection of confidentiality is often a difficult one to achieve.
- 1.3 The legal situation regarding the protection and use of personal information can be unclear. This situation may lead to information not being readily available to those who have a genuine need to know in order for them to do their job properly. See Appendix B for Relevant Legislation.
- 1.4 For the purpose of this protocol, the terms data and information are synonymous.

2. Scope

- 2.1 This overarching Protocol sets out the principles for information sharing between Partner Organisations. (See appendix A).
- 2.2 This Protocol sets out the rules that all people working for or with the Partner Organisations must follow when using and sharing information.
- 2.3 The Protocol applies to the following information:
 - 2.3.1 All personal information processed by the organisations including electronic (e.g. computer systems, CCTV, Audio etc), or in manual records.
 - 2.3.2 Aggregated and anonymised data. The considerations, though less stringent, must take into account factors such as commercial or business, sensitive data, and the effect of many data sets being applied.
- 2.4 This Protocol will be further extended to include other public sector, private and voluntary organisations working in Partnership to deliver services.

3. Aims and Objectives

- 3.1 The aim of this Protocol is to provide a framework for the Partner Organisations and to establish and regulate working practices between Partner Organisations. The Protocol also provides guidance to ensure the secure transfer of information, and that information shared is for justifiable 'need to know' purposes (see 6.3 and 11.6).
- 3.2 These aims include:
- a. To guide Partner Organisations on how to share personal information lawfully.
 - b. To explain the security and confidentiality laws and principles of information sharing.
 - c. To increase awareness and understanding of the key issues.
 - d. To emphasise the need to develop and use Data Exchange Agreements.
 - e. To support a process, which will monitor and review all data flows.
 - f. To encourage flows of data.
 - g. To protect the Partner Organisations from accusations of wrongful use of personal data.
 - h. To identify the lawful basis for information sharing.
- 3.3 By becoming a Partner to this Protocol, Partner Organisations are making a commitment to:
- a. Apply the Information Commissioner's Code of Practice's 'Fair Processing' and 'Best Practices' Standards;
 - b. Adhere to or demonstrate a commitment to achieving the appropriate compliance with the Data Protection Act 1998; (See Appendix B).
 - c. Develop local Data Exchange Agreements that specify transaction details. (See Appendix D for template).
- 3.4 All Partners will be expected to promote staff awareness of the major

requirements of Information Sharing. This will be supported by the production of appropriate guidelines where required that will be made available to all staff via the Partners' Intranet sites and/or via other communication media.

4. The Legal Framework

4.1 The principal legislation concerning the protection and use of personal information is listed below and further explained in Appendix B:

- Human Rights Act 1998 (article 8)
- The Freedom of Information Act 2000
- Data Protection Act 1998
- The Common Law Duty of Confidence

4.2 Other legislation may be relevant when sharing specific information.

5. Data covered by this Protocol

5.1 All personal and anonymised information as defined in the Data Protection Act 1998 (DPA). **Anonymous data should be used wherever possible.**

5.2 Personal Information

5.2.1 The term 'personal information' refers to **any** information held as either manual or electronic records, or records held by means of audio and/or visual technology, about an individual who can be personally identified from that information.

5.2.2 The term is further defined in the DPA as:

- Data relating to a living individual who can be identified from those data, or
- Any other information which is in the possession of, or is likely to come into the possession of the data controller (person or organisation collecting that information).

5.2.3 The DPA also defines certain classes of personal information as 'sensitive data' where additional conditions must be met for that information to be used and disclosed lawfully.

5.2.4 An individual may consider certain information about themselves to be particularly 'sensitive' and may request other data items to be kept especially confidential e.g. any use of a pseudonym where their true identity needs to be withheld to protect them.

5.2.5 In general, people have a right to choose how their data is used and who may have access to it.

5.3 Anonymised Data

5.3.1 To ensure anonymised data, especially when combined with other information from different agencies, **does not** identify an individual, either directly or by summation.

5.3.2 Anonymised data about an individual can be shared without consent (subject to certain restrictions regarding health/social care records), in a form where the identity of the individual cannot be recognised i.e. when:

- Reference to any data item that could lead to an individual being

identified has been removed

- The data cannot be combined with any data sources held by a Partner to produce personal identifiable data.

5.4 Anonymising data does not remove the duty of confidence.

6. Purposes for Sharing Information

- 6.1 Information should only be shared for a specific lawful purpose or where appropriate consent has been obtained.
- 6.2 Staff should only have access to personal information on a justifiable **need to know** basis, in order for them to perform their duties in connection with the services they are there to deliver.
- 6.3 Having this agreement in place does not give license for unrestricted access to information another Partner Organisation may hold. It lays the parameters for the safe and secure sharing of information for a justifiable **need to know** purpose.
- 6.4 Every member of staff has an obligation to protect confidentiality and a duty to disclose information only to those who have a right to see it.
- 6.5 All staff should be trained and be fully aware of their responsibilities to maintain the security and confidentiality of personal information.
- 6.6 All staff should follow the procedures and standards that have been agreed and incorporated within this Information Sharing Protocol and any associated Data Exchange Agreements.
- 6.7 Each Partner Organisation will operate lawfully in accordance with the 8 Data Protection Principles, see Appendix B.
- 6.8 Personal data shall not be transferred to a country or territory outside the EEA without an adequate level of protection for the rights and freedoms of the data subject in relation to the processing of personal data.

7. Restrictions on use of Information Shared

- 7.1 Information must only be used for the purpose(s) specified at the time of disclosure(s) as defined in the relevant Data Exchange Agreement. It is a condition of access that it must not be used for any other purpose without the permission of the Data Controller who supplied the data, unless an exemption applies within the Data Protection Act 1998.

- 7.2 Additional Statutory restrictions apply to the disclosure of certain information for example Criminal Records, HIV and AIDS, Assisted Conception and Abortion, Child Protection etc.

8. Consent

- 8.1 Consent is not the only means by which data can be disclosed. Under the Data Protection Act 1998 in order to disclose personal information at least one condition in schedule two must be met. In order to disclose sensitive personal information at least one condition in both schedules two and three must be met. See Appendix B and Glossary for explanation. (Appendix C)
- 8.2 Where a Partner Organisation has a statutory obligation to disclose personal information then the consent of the data subject is not required; but the data subject should be informed that such an obligation exists.
- 8.3 If a Partner Organisation decides not to disclose some or all of the personal information, the requesting authority must be informed. For example the Partner Organisation may be relying on an exemption or on the inability to obtain consent from the data subject.
- 8.4 Consent has to be signified by some communication between the organisation and the Data Subject. If the Data Subject does not respond this cannot be assumed as implied consent.
- 8.5 If consent is used as a form of justification for disclosure, the data subject must have the right to withdraw consent at any time. When using sensitive data, explicit consent must be obtained. In such cases the data subject's consent must be clear and cover items such as the specific details of processing, the data to be processed and the purpose for processing.
- 8.6 Specific procedures will apply where the data subject is either under the age of 16, or where the data subject does not have the capacity to give informed consent. In these circumstances the relevant policy of the Partner Organisation should be referred to.

9.Organisational Responsibilities

- 9.1 Each Partner Organisation is responsible for ensuring that their organisational and security measures protect the lawful use of information shared under this Protocol.
- 9.2 Partner Organisations will accept the security levels on supplied information and handle the information accordingly.
- 9.3 Partner Organisations accept responsibility for independently or jointly auditing compliance with the Data Exchange Agreements in which they are involved within reasonable time-scales.
- 9.4 Every organisation should make it a condition of employment that employees will abide by their rules and policies in relation to the protection and use of confidential information. This condition should be written into employment contracts and any failure by an individual to follow the policy should be dealt with in accordance with that organisation's disciplinary procedures.
- 9.5 Every organisation should ensure that their contracts with external service providers abide by their rules and policies in relation to the protection and use of confidential information.
- 9.6 The Partner Organisation originally supplying the information should be notified of any breach of confidentiality or incident involving a risk or breach of the security of information.
- 9.7 Partner Organisations should have documented policies for retention, weeding and secure waste destruction.

10. Individual Responsibilities

- 10.1 Every individual working for the organisations listed in this Partnership Agreement is personally responsible for the safekeeping of any information they obtain, handle, use and disclose.
- 10.2 Every individual should know how to obtain, use and share information they legitimately need to do their job.
- 10.3 Every individual has an obligation to request proof of identity, or takes steps to validate the authorisation of another before disclosing any information.
- 10.4 Every individual should uphold the general principles of confidentiality, follow the rules laid down in this Protocol and seek advice when necessary.
- 10.5 Every individual should be aware that any violation of privacy or breach of confidentiality is unlawful and a disciplinary matter that could lead to their dismissal.

11. General Principles

- 11.1 The principles outlined in this Protocol are recommended good standards of practice or legal requirements that should be adhered to by all Partner Organisations.
- 11.2 This Protocol sets the core standards applicable to all Partner Organisations and should form the basis of all Data Exchange Agreements established to secure the flow of personal information.
- 11.3 This Protocol should be used in conjunction with local service level agreements, contracts or any other formal agreements that exist between the Partner Organisations.
- 11.4 All parties signed up to this Protocol are responsible for ensuring that organisational measures are in place to protect the security and integrity of personal information and that their staff are properly trained to understand their responsibilities and comply with the law.
- 11.5 This Protocol has been written to set out clear and consistent principles that satisfy the requirements of the law that all staff must follow when using and sharing personal information.
- 11.6 The specific purpose for use and sharing information will be defined in the Data Exchange Agreements that will be specific to the Partner Organisations sharing information.

12. Review Arrangements

- 12.1 This overarching Agreement will be formally reviewed annually by the Leicestershire Community Information Steering Group and the Leicester Partnership Information Group, unless new or revised legislation or national guidance necessitates an earlier review.
- 12.2 Any of the signatories can request an extraordinary review at any time where a joint discussion or decision is necessary to address local service developments.

Appendix A: Signatures and Contact Information (to be completed in due course)

Agreement: We the undersigned do hereby agree to implement the terms and conditions of this Protocol.

Organisation	Chief Executive/ Officer	Signature	Date	Contact Name	Telephone	Email

Appendix B: Relevant Legislation

1. **Data Protection Act 1998** governs the protection and use of **personal** data. The Act does not apply to personal data relating to the deceased.

Any organisation processing (obtaining, holding, using, disclosing and disposing) data is a 'Data Controller' responsible for abiding by the 8 data protection principles and notifying the Information Commissioner of that processing.

The Act gives seven rights to individuals in respect of their own personal data:

- Right of subject access;
- Right to prevent processing likely to cause damage or distress;
- Right to prevent processing for the purposes of direct marketing;
- Rights in relation to automated decision taking;
- Right to take action for compensation if the individual suffers damage or damage and distress (as a result of any breach of the act);
- Right to take action to rectify, block, erase or destroy inaccurate data;
- Right to request the Information Commissioner for an assessment to be made as to whether any provision of the Act has been contravened.

Appendix B: Relevant Legislation Continued...

The key principles of the Act are:

<i>The Data Protection Act 1998 – 8 Principles</i>	
1st Principle	Personal data shall be processed fairly and lawfully and shall not be processed unless at least 1 of the conditions in Schedule 2 is met and for 'sensitive personal data' at least 1 of the conditions in Schedule 3 is also met.
2nd Principle	Personal data shall be obtained for specified and lawful purposes and shall not be further processed in any manner incompatible with that purpose/purposes.
3rd Principle	Personal data shall be adequate, relevant and not excessive in relation to the purpose/purposes for which they are processed.
4th Principle	Personal Data shall be accurate and, where necessary kept up to date
5th Principle	Personal data shall not be kept for longer than is necessary for that purpose/purposes.
6th Principle	Personal data shall be processed in accordance with the rights of the data subject under this Act.
7th Principle	Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss, destruction or damage to personal data.
8th Principle	Personal data shall not be transferred to a country or territory outside the EEA without an adequate level of protection for the rights and freedoms of the data subject in relation to the processing of personal data.

Appendix B: Relevant Legislation Continued...

Schedule 2 and Schedule 3 conditions:

Conditions for processing personal data is that 1 condition in Schedule 2 should be met.

Conditions for processing sensitive personal data is 1 condition in Schedule 2 and a condition in Schedule 3 should also be met.

Schedule 2: Personal data	Schedule 3: Sensitive personal data
The data subject has given consent, or	The data subject has given explicit consent, or
<p>The processing is necessary for:</p> <ul style="list-style-type: none"> • A contract • Legal obligation • Protection of the vital interests of the data subject • Public function • In the public interest • A statutory obligation • Legitimate interests of the Data Controller 	<p>The processing is necessary for:</p> <ul style="list-style-type: none"> • Employment related purposes • The purpose of, or in connection with legal proceedings • Protection of vital interests of the individual (where consent cannot be obtained) • Made public by the data subject • Substantial public interest • Prevention or detection of an unlawful act • Legitimate interests of a non-profit making organisation • Medical purposes

Appendix B: Relevant Legislation Continued...

2. The Human Rights Act 1998

The Human Rights act 1998 incorporates into our domestic law certain articles of the European Convention on Human Rights (ECHR). The act requires all domestic law to be read compatibly with the Convention Articles.

It also places a legal obligation on all Public Authorities to act in a manner compatible with the Convention. Should a Public Authority fail to do this then it may be the subject of a legal action under section 7. This is an obligation not only not to violate Convention Rights, but also a positive obligation to uphold these rights. The sharing of information between agencies has the potential to infringe a number of Convention Rights. In particular, Article 3 (Freedom from torture or inhuman or degrading treatment), Article 8 (Right to respect for private and family life) and Article 1 of Protocol 1 (Protection of Property). There is a qualification of Article 8 that “there shall be no interference by a Public Authority with this Right unless it is in the interests of national security, public safety, the economic well being of the country, the prevention of disorder and crime, the protection of health and morals, or the protection of the rights and freedoms of others”. In addition, all Convention Rights must be secured without discrimination on a wide variety of grounds under article 14. The Convention does allow interference with the Convention Rights by Public Authorities under certain broadly defined circumstances known as legitimate aims. However, mere reliance on a legal power may not alone provide sufficient justification and the following principles should be considered:

- Is there a legal basis for the action being taken?
- Does it pursue a legitimate aim (as outlined in the particular Convention Article)?
- Is the action taken proportionate and the least intrusive method of achieving that aim?

Article 8.1 provides that “everyone has the right to respect for his private and family life, his home and his correspondence”.

Article 8.2 provides “there shall be no interference by a public authority with the exercise of this right except as in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country for the prevention of crime and disorder, for the protection of health and morals or for the protection of the rights and freedoms of others”.

Appendix B: Relevant Legislation Continued...

3. The Freedom of Information Act (FOIA) 2000

The Freedom of Information Act 2000 applies to all public authorities and will start coming into force from 2003 onwards. The Act creates new rights of access to information (rights of access to personal information will remain under the Data Protection Act) and revises and strengthens the Public Records Act 1958 & 1967 by re-enforcing records management standards of practice.

The Lord Chancellor has issued a code of practice on the management of records under FOIA. The principle is that *“any freedom of information legislation is only as good as the quality of the records to which it provides access. Such rights are of little use if reliable records are not created in the first place”*. Further information guidance can be found at the following web site <http://www.informationcommissioner.gov.uk/>

4. The Common Law Duty of Confidentiality

The Common Law Duty of Confidentiality requires that unless there is a statutory requirement to use information that has been provided in confidence, it should only be used for purposes that the subject has been informed about and consented to. In certain circumstances, this also applies to the deceased. The duty is not absolute but should only be overridden if the holder of the information can justify disclosure as being in the public interest i.e. to protect others from harm.

5. Other Legislation

Other Acts apply to further specify these exceptions, e.g. **Prevention of Terrorism Act 2002, Health & Social Care Act 2000, Regulation of Investigatory Powers Act (RIPA) 2000**. Further information about these or any other relevant legislation can be found at the HMSO website <http://www.hmso.gov.uk/>

Appendix C: Glossary of Terms

Accessible Record – unstructured personal information usually in manual form relating to health, education, social work and housing.

Agent – acts on behalf of the data subject.

Aggregated – collated information in a tabular format.

Anonymous data – anonymous data is where an Organisation does not have the means to identify an individual from the data they hold. If the Data controller has information, which allows the Data Subject to be identified, regardless of whether or not they intend to identify the individual is immaterial - in the eyes of the IC this is not anonymous data. Data Controller must be able to justify why and how the data is no longer personal.

CCTV – close circuit television.

Consent – to give permission or approval for something to happen.

Consent – The Information Commissioner’s legal guidance to the Data Protection Act 1998 is to refer to the Directive, which defines consent as “...any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed” (3.1.5).

Data –

- a) Information being processed by means of equipment operating automatically or
- b) Information recorded with the intention it be processed by such equipment.
- c) Recorded as part of a relevant filing system or
- d) Not in a or b or c, but forming part of an accessible record.

Data Controller – a person or a legal body such as a business or public authority who jointly or alone determines the purposes for which personal data is processed.

Data Exchange Agreement – the local information sharing agreement based on the attached template Appendix D.

Data Flows – the movement of information internally and externally, both within and between organisations.

Appendix C: Glossary of Terms Continued...

Data Processing – any operation performed on data. The main examples are collection, retention, deletion, use and disclose.

Data Processor – operates on behalf of the Data Controller. Not staff.

Data Set – a defined group of information

Data Subject – an individual who is the subject of personal information.

Disclosure – the passing of information from the Data Controller to another organisation / individual

Duty of Confidentiality – everyone has a duty under common law to safeguard personal information.

European Economic Area (EEA) – this consists of the fifteen EU members together with Iceland, Liechtenstein and Norway.

Fair processing – to inform the Data Subject how the data is to be processed before processing occurs

Health Professional – In the Data Protection Act 1998 "health professional" means any of the following who is registered as:

A medical practitioner, dentist, optician, pharmaceutical chemist, nurse, midwife or health visitor, and osteopaths.

and

Any person who is registered as a member of a profession to which the Professions Supplementary to Medicine Act 1960 currently extends to, clinical psychologists, child psychotherapists and speech therapist, music therapist employed by a health service body, and scientist employed by such a body as head of department.

Health Record – any information relating to health, produced by a health professional.

Need to know – to access and supply the minimum amount of information required for the defined purpose.

Appendix C: Glossary of Terms Continued...

Personal Data – means data relating to a living individual who can be identified from those data (including opinion and expression of intention).

Processing – any operation performed on data. Main examples are collect, retain, use, disclosure and deletion.

Purpose – the use / reason for which information is stored or processed.

Recipient – anyone who receives personal information except statutory bodies for the purpose of specific inquiries

Relevant Filing System – two levels of structure, (i) filing system structured by some criteria (ii) each file structured so that particular information is readily accessible.

Sensitive Personal Data – data concerning racial origin, politics, Trade Union activity, health, sexuality, offending, religion, etc.

Serious Crime – There is no absolute definition of "serious" crime, but section 116 of the Police and Criminal Evidence Act 1984 identifies some "serious arrest-able offences".

These include:

- Treason
- Murder
- Manslaughter
- Rape
- Kidnapping
- Certain sexual offences
- Causing an explosion
- Certain firearms offences
- Taking of hostages
- Hijacking
- Causing death by reckless driving
- Offences under prevention of terrorism legislation (disclosures now covered by the Prevention of Terrorism Act 1989).

Subject Access – the individual's right to obtain a copy of information held about themselves.

Third Party – any person who is not the data subject, the data controller, the data processor (includes Health, Housing, Education, Carers, Voluntary Sector etc. as well as members of the public).

Appendix D: Data Exchange Agreement Template

1. Purpose of this data exchange agreement

A clear statement of why there is a need to share information between the organisations party to this Data Exchange Agreement, together with any relevant legislation or central government circulars that enable lawful data sharing.

For Example

- a. The purpose of this Data Exchange Agreement is to co-ordinate the continued care of children between the partner organisations
- b. This data sharing is done under the legal framework contained in the Children's Act 1998

2. Extent and type of information to be shared

2.1 Extent of the data to be shared

The data exchanged should be the minimum amount necessary. The agreement should clearly state what information is shared routinely. You should expressly state what information you are exchanging under this agreement.

For Example

- a. The information exchanged routinely is Client Name, Address, and DOB.

2.2 Type of information to be shared

- a. Anonymised information

Wherever possible data should be anonymised, if large volumes of data is provided for research and/or planning by partner organisations, as a matter of courtesy the outcome of that research/planning should be provided to the organisation(s) supplying the data.

3. How the information may be used

A clear statement of:

- *What information is collected*
- *How it will be used and stored*
- *With whom it will/may be shared*

4. Appropriate Security Levels

- 4.1 Each Partner Organisation should ensure that the minimum standards of security, that they require, are in place with Partner Organisations that they intend sharing information with, for example

- Storage
- How data will be transferred
- Secure destruction
- Accessibility
- Integrity
- Availability

5. Breach of Confidentiality

5.1 *Items to be considered – how are you going to deal with*

- Any breach of agreement
- Internal discipline
- Monitoring security incidents
- Dealing with malfunctions

6. Indemnity

The following text is an example that may be included

The partner or third party processor will accept total liability for the breach should legal proceedings be served in relation to the breach.

7. Subject Access Request

- How you will deal with Subject Access Requests
- Procedures for obtaining 3rd party consent

8. Release of 3rd Party Information

- Information provided by one agency must not be given to another agency or used for a different purpose without informing and obtaining the consent of the original provider unless an exemption applies.

9. General Operational Guidance

9.1 Review and Weeding

Agreement should be reached between the parties as to an acceptable time period for the data to be exchanged.

An agreement of the time scales for the retention of electronic and paper based information and how the information should be securely disposed of.

9.2 Resource Implications

Consideration should be given to the staff time and resource implications that are involved for the Data Controller extracting the data. If a request is made and then the data is no longer required there should be a process for rescinding the request.

9.3 Appropriate Signatories

- Named individual to lead on DEA
- Who will champion training in the DEA
- Who will monitor the DEA

9.4 Review of Data Exchange Agreement

- How long will the DEA last
- When will the DEA be reviewed (insert date)

9.5 Compliance with the DEA

How are you going to ensure compliance with the DEA?

10. Closure/termination of agreement

- Termination and Completion of agreement
- What will happen if there is a serious breach of confidentiality
- Termination/notice penalty

Any Partner Organisation can suspend the Data Sharing Agreement for 30 days, if they feel that Security has been seriously breached.

Termination and/or completion that must be given in writing with at least 30 days notice.

11. Signatories

This agreement is signed on behalf of the Partner Organisations as follows:

NAME OF ORGANISATION: _____

NAME OF OFFICER: _____

TITLE: _____

DATE: _____

NAME OF ORGANISATION: _____

NAME OF OFFICER: _____

TITLE: _____

DATE: _____

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CABINET – 15th January 2004

Joint Report of the Head of Finance and the Head of Property Services

ITEM 16 REVENUE MONITORING – HOUSING REPAIRS AND MAINTENANCE HOLDING ACCOUNT – 2003/2004

Purpose of Report

This report indicates the position of the Housing Repairs and Maintenance Holding Account for 2003/2004, at week 36, compared to the proposed Revised Estimated budget. This account forms a major expense for the Housing Revenue Account.

Recommendation

Cabinet is recommended to:

1. Note that the expenditure position of the Repairs and Maintenance Holding Account for 2003/2004 at week 36 is satisfactory and that no action is required at this stage.

Reason

1. To comply with Cabinet's wish to receive quarterly reports and to ensure that the amount of repairs committed at any time is affordable within the agreed budgets for the Repairs and Maintenance Holding Account, part of the Housing Revenue Account.

Policy Context

This report supports many of the strategic aims of the Corporate Plan but specifically 'Decent Homes and a well-managed Council.' It sets out the latest detailed financial position of the Repairs and Maintenance Holding Account.

Introduction

The attached presents the latest position of the Repairs and Maintenance Account for 2003/2004 compared to the 2003/2004 Revised Estimate budget. The total commitment to week 36 is £2,409,029, which compares with the pro-rata budget provision of £2,526,214. This is an under commitment of approximately 4.6%, or £117,285 at week 36.

Responsive Maintenance

The Responsive Maintenance budget is under committed by 7% (£116,818). However, it is important to note that Cabinet, on 14th November 2002, agreed to capitalise all void property repair work that could legitimately be charged to the HRA capital programme (Minute 201 refers). Recently, the external auditors have challenged whether all of this work is truly capital expenditure. Accordingly, the current voids budget in this HRA account has been increased by £250,000 to account for any costs that may have to be recharged back from the MRA capital programme. The exact figure to be transferred will not be known until officers have met with the external auditors to ascertain and agree the amount of such work. This meeting is planned for early January 2004.

Planned and Cyclical Maintenance

There is no material variance to report for Planned and Cyclical Maintenance.

Conclusion

The revised Repairs and Maintenance budget estimate is comprised of many elements totalling £3,571,900. Members will be aware that in previous years all the elements of the repairs and maintenance have been contained within this budget. However, notwithstanding the outcome of the meeting with the external auditor it is hoped once again to contain all the repair elements within budget.

It is recommended that the Head of Property Services for 2003/2004 is noted and it's position will closely monitor the expenditure position of the Housing Repair & Maintenance Holding Account.

CABINET – 15th January 2004

Report of the Head of Cultural and Leisure Services

ITEM 17 COMMUNITY SPORTS FACILITY DEVELOPMENT PROGRAMME

Purpose of the Report

To seek Cabinet approval to implement the 2003/04 phase of the Community Sports Facility Development Programme.

Recommendation(s)

That Cabinet:

1. Approves the following projects:

APPLICANT	PROJECT PROPOSED	EST COST	AMOUNT REQUESTED	AMOUNT RECOMMENDED
Sileby Parish Council	Multiuse games area	£35,000	£10,000	£10,000 (29%)
Thurmaston Parish Council	Kick Wall and combination goal unit	£12,695	£8251	£8251 (65%)
Barrow on Soar Parish Council	Outdoor Basketball Post	£755	£490	£490 (65%)

2. Approves a budget of £19,000 as a Category 1 item in the 2003/04 Capital Programme to enable the approved projects to be implemented
3. Does not approve the following projects :

APPLICANT	PROJECT PROPOSED	EST COST	AMOUNT REQUESTED	REASON FOR REJECTION
Anstey Parish Council	Children's Play Equipment	£13,000	£6500	Children's Play equipment is not eligible
Mountsorrel Parish Council	Drainage and creation of football pitches	Not known	Not specified	Insufficient information – scheme only in very initial stages

Reason(s)

3. To enable locally identified community sport and leisure facility developments to take place which aim to improve the facilities for young people and key priority target groups within the borough.
4. To provide the necessary resources to implement the 2003/04 programme.
5. To ensure that finance is only allocated to those schemes which meet the criteria.

Policy Context

Strategic Aim	Leisure and cultural opportunities for all
Priorities	To provide a wide range of cultural and leisure opportunities focussed on need
Leisure Centres & Sport	<p>We will develop initiatives to take sport and leisure activities out into the community...especially rural ones.</p> <p>We will encourage more people of all ages and circumstances to participate.</p> <p>We aim to increase the number of 12 – 18 year olds participating in sport from 1,120 in 2002/03 to 1,700 by 2005/06.</p>
Key Issues	Delivering leisure and sports facilities and activities to local communities.
What we plan to do	Support provision of suitable facilities in outlying local communities.

Background

At the meeting of the Public Services Committee held on the 30th September 1998 the committee agreed to adopt the Sports Development Strategy. Contained within the strategy was reference to the Community Sports Facility Development Programme (Ref: 6.2.5)

This paragraph states:

“This element of the strategy recognises the value to be derived from smaller scale capital developments which may enhance opportunities within the town / village / parish catchment areas”

At a cabinet meeting on the 28th June 2001, it was agreed that the continuation of the Community Sports Facility Development programme be approved in principle.

Proposed Projects for 2003 – 2004 and Allocation of Resources

In order to identify projects, a letter outlining the scheme was circulated to all Parish / Town Councils and all Community Colleges (that are part of the Borough Council and Leicestershire County Council funding partnership) in September. The letter invited submission of applications for projects that could clearly demonstrate that they would provide real sporting / leisure benefit for the local community and that the maximum level of grant aid towards a project would be 65% of total project cost up to a maximum of £10,000.

The projects were assessed against the criteria agreed by Cabinet on the 18th September 2003. A copy of all application forms received has been lodged in the members' room.

Conditions of Grant Aid

The recipient organisations are required to comply with the conditions of grant aid which refer to: confirmation of all match funding, community liaison, public access, public liability cover, maintenance costs and planning permission.

They are also advised that the Borough Council will not assist with any ongoing maintenance costs accruing from any of the facilities that have been funded.

Resource Implications

A provision of £60,000 was made available in the capital programme budget for the Community Sports Facility Development Programme in 2003/04. However, because time restrictions only £30,000 of expenditure was allocated in the 2003/4 financial year with the remaining carried forward into 2004 / 05.

Background Papers

Public Services Committee Meeting 30th September 1998 Min 6.2.5
Cabinet 13th January 1999 Min 6.2.7
Cabinet 7th December 2000 Min 309
Cabinet 28th June 2001 Min 38
Cabinet 2nd January 2003 Min 243
Cabinet 18th September 2003 Min 120

Scrutiny Committee(s): Community Development

Key Decision: No

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CABINET – 15TH JANUARY 2004

Report of the Head of Policy & Economic Regeneration

ITEM 17a SHOPMOBILITY AND MARKETS AND FAIRS

Purpose of the Report

To give consideration to options for the relocation of Shopmobility and proposals for the Markets and Fairs Service during the closure of the Town Hall

Recommendation(s)

1. That consideration is given to the relocation of the Shopmobility Service to Granby Street Car Park with the estimated loss of car park income being offset by temporarily redesignating an equivalent number of disabled parking spaces for general use across the Council's car parks.
2. That an additional capital sum of £6,000 be approved as Category 1 expenditure as part of the Town Hall Refurbishment Phase III.

Reason(s)

1. To determine the preferred option for relocation of Shopmobility
2. To provide capital funds, should the Granby Street option be favoured.

Policy Context

Closure of the Town Hall will necessitate removal and relocation of the Shopmobility and Markets & Fairs services. Shopmobility will return to the Town Hall whereas Markets and Fairs will not. Therefore, any costs from these relocations arise directly from the Town Hall Refurbishment Phase III.

Background

Markets and Fairs will be relocated to the first floor of Macaulay House. Although this is not an ideal situation (traders and the public should have easy access to the service) it is accepted that this is the simplest solution. There are no additional costs associated with this move other than removals, which will be dealt with in-house. This service is not due to return to the Town Hall.

Shopmobility is the more difficult to relocate as, by its nature, has to be easily accessible for people with disabilities (currently around 3000 bookings per year) and so needs to be close to car parking. To register with Shopmobility each person needs to complete an application form and to have the equipment demonstrated to him or her, so they are safe and confident to use it. Shopmobility users may have to wait to be picked up, so any accommodation must provide an appropriate area to enable

people to continue to do this in comfort. They may also wish to discuss personal issues relating to their disability, so a degree of privacy is preferable.

One option is to use Beehive Lane multi-storey car park, which was used for a two-week period last year. This would entail use of the car park office by the Shopmobility co-ordinator and conversion of the cycle cage for storage of scooters and wheelchairs by removal of cycle racks etc. Property Services advise that this could be achieved at minimal or no cost.

Unfortunately this option would mean a reduction in the quality of service for users over the period of the Town Hall closure. It would not make provision for the needs of the customers, who often need to wait for some time for their transport. A car park is not an appropriate venue for people to wait, particularly during winter months - as cold and damp can exacerbate certain disabilities, particularly joint problems. The car park office is also not easily accessible by people with disabilities and the health and safety of both users and staff would also need to be properly safeguarded. This location is also not easily accessible to the Community Transport minibus, which brings in excess of a dozen customers at any one time.

An alternative option is to place portable units on Granby Street car park, in the area to the rear of the former Tesco building. This would comprise a Portacabin suitable for use as an office and customer waiting area and a secure unit for storing and charging scooters and wheelchairs. The office would have appropriate ramping, heat and light. There is an external power supply available nearby, installed for the purposes of the Fair. It is anticipated that a water supply could be arranged, as this is done for Loughborough Fair. The accommodation would take up a limited number of parking spaces (approximately six) and a number of current disabled spaces would be re-designated 'Shopmobility only'. There would be a metre-wide walkway around the buildings, with direct access to the town centre via Devonshire Lane.

Estimates obtained indicate a cost of £6,000 for hire of the temporary buildings plus ramping and supplies and services. In addition there would be an approximate loss of car parking income of £7,000. This income loss has not been accounted for in the budget setting process. However, this could be offset by redesignating, on a temporary basis, for general use an equivalent number of bays currently designated for disabled parking (preferably not all at the Granby Street car park).

Scrutiny Committee(s): Community Development

Key Decision: No

Background Papers: n/a

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