

Notice of Meeting

Governance and Ethics Committee

Monday, 23rd November, 2015 at 5.00 pm
in Council Chamber Council Offices
Market Street Newbury

Date of despatch of Agenda: Tuesday, 17 November 2015

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact Moira Fraser on (01635) 519045
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Agenda - Governance and Ethics Committee to be held on Monday, 23 November 2015
(continued)

To: Councillors Steve Ardagh-Walter, Jeff Beck (Vice-Chairman), Chris Bridges, Graham Bridgman, James Cole, Barry Dickens, Lee Dillon, Rick Jones, Anthony Pick and Quentin Webb (Chairman)

Substitutes: Councillors Billy Drummond, Sheila Ellison, Alan Macro and Tim Metcalfe

Agenda

Part I

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| 1 | Apologies
To receive apologies for inability to attend the meeting (if any). | |
| 2 | Minutes
To approve as a correct record the Minutes of the meeting of this Committee held on 24 th August 2015 and the special meeting held on the 03 rd September 2015. | 1 - 16 |
| 4 | Forward Plan
<i>Purpose: To consider the Forward Plan for the next 6 months.</i> | 17 - 20 |

Standards Matters

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| 5 | Monitoring Officer's Quarterly Report Quarter 2 of 2015/16 (GE3032)
<i>Purpose: To present the Monitoring Officer's quarterly report.</i> | 21 - 22 |
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Governance Matters

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| 6 | Risk Management - Revised Approach (GE3046)
<i>Purpose: To provide a refresh of the Council's Risk Management processes</i> | 23 - 26 |
| 7 | Changes to the Constitution - Part 5 (Executive Rules of Procedure) (C3011(a))
<i>Purpose: To review and if appropriate amend part 5 (Executive Rules of Procedure) following a request from the Liberal Democrat Group.</i> | 27 - 28 |

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(continued)

8 Changes to the Constitution - Part 11 (Contract Rules of Procedure) (C3011(b)) 29 - 32

Purpose: To review and if appropriate amend part 11 (Contract Rules of Procedure) following a request from the Procurement Board to do so.

Andy Day
Head of Strategic Support

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Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee

GOVERNANCE AND ETHICS COMMITTEE

MINUTES OF THE MEETING HELD ON MONDAY, 24 AUGUST 2015

Councillors Present: Jeff Beck (Vice-Chairman), Graham Bridgman, James Cole, Barry Dickens, Rick Jones and Quentin Webb (Chairman)

Also Present: Lesley Flannigan (Finance Manager: Technical and Control), Julie Gillhespey (Audit Manager), David Holling (Head of Legal Services), Ian Priestley (Chief Internal Auditor), Andy Walker (Head of Finance), Ian Pennington (KPMG), Jo Reeves (Policy Officer) and Grant Slessor (KPMG)

Apologies for inability to attend the meeting: Councillor Anthony Pick

PART I

1 Minutes

The Minutes of the Governance and Audit Committee meeting held on 22 June 2015 and the record of the Virtual meeting of the Standards Committee held on the 22 June 2015 were approved as a true and correct record and signed by the Chairman.

2 Declarations of Interest

There were no declarations of interest received.

3 Forward Plan

The Committee considered the Governance and Ethics Committee Forward Plan (Agenda Item 4).

Councillor Quentin Webb reiterated that the committee should like to see the Lead Member's name in addition to their portfolio title on the Forward Plan.

Andy Walker suggested that an item entitled 'Reviewing Accounting Policies' be added to the Forward Plan for the meeting on 23 November 2015. Lesley Flannigan explained that it would be useful to have the Governance and Ethics Committee's perspectives on those policies before they were applied at the end of the financial year. David Holling agreed that new Members might find this information useful.

Councillor James Cole noted that there was no detailed report regarding risk management scheduled to appear before the Committee. Councillor Quentin Webb commented that the external audit plan scrutinised the risk register. Ian Priestley advised that he was presenting a report entitled 'Review of the Risk Register' to Corporate Board imminently and could present this report to the Governance and Ethics Committee subsequently.

RESOLVED that the Governance and Ethics Committee Forward Plan be noted.

4 Monitoring Officer's Quarterly Update Report on the Governance and Ethics Committee - Quarter 1 of 2015/16

The Committee considered a report (Agenda Item 5) concerning an update on ethical matters for quarter one of the 2015/16 municipal year.

As Members were aware, the Governance and Audit and Standards Committees had been merged and the membership had been amended.

In addition to this Committee, the Council had also appointed three Independent Persons James Rees, Mike Wall and Lindsey Appleton. Their attendance at the Initial Assessments and Advisory Panels meetings had been rotated to ensure they all were familiar with the various stages of the complaints process. The Committee gave thanks to the three Independent Persons for agreeing to accept the roles.

The Council had continued to receive very few complaints during the first quarter of the municipal year. One complaint was received but it was subsequently withdrawn. Members were warned that there would be a dramatic increase in the number of complaints received during the second quarter.

The investigation into complaints NPC4/14, NPC5/14 and NPC1/15 was concluded in July 2015 and the Advisory Panel met on the 13th August 2015 to consider the Investigator's report. The Panel concurred with the investigator's finding that in respect of complaints NPC4/14 and NPC1/15 no breach had occurred and therefore no further action would be taken on these matters. They however did concur with the finding that there might be a breach in respect of NPC5/14. A special Governance and Ethics Committee had therefore been arranged for the 3rd September 2015 to consider this complaint.

No dispensations were granted during Quarter 1 and there were no declarations of gifts and hospitality made by District Councillors during Quarter 1 of 2015/16.

Training on the Code of Conduct for District, Town and Parish Councillors was undertaken in June 2015 and a further session had been arranged for October 2015.

Councillor Webb welcomed Barry Dickens and Chris Bridges, the co-opted Parish Council Representatives, to the meeting.

Councillor Graham Bridgman questioned what mechanisms the Council could utilise to ensure that Parish and Town Councillors observed their Code of Conduct. Councillor Bridgman also requested further information regarding the Code of Conduct training. David Holling advised that the training session in June 2015 was attended by approximately 12 parish clerks and councillors. Not all parishes used the same Code of Conduct. Another training session would be arranged for later in the year and would be advertised widely. Councillor Webb suggested that the training session could be announced at the District Parish Conference on 13th October 2015. *(Post meeting note: The additional training session had been arranged to coincide with the next District Parish Conference and invitations had already been issued to all Parish Councils. A reminder would be issued in mid-September).*

Councillor Bridgman stated that the Terms of Reference document attached at Appendix B to the report contained poor use of punctuation and capitalisation. Councillor Cole concurred and identified that the use of 'etc' under the definition of a relative on page 17 made the meaning vague. Councillor Webb suggested that any comments be directed to Moira Fraser, Democratic and Electoral Services Manager.

David Holling, in answering Councillor Bridgman's first question, advised that the Council had a statutory duty to make parish and town councils aware of their Code of Conduct. As the Council's Monitoring Officer, he received copies of all Declarations of Interest

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made by Parish and Town Councillors. It was the parish clerk's responsibility to maintain the Code of Conduct. Under the Localism Act 2011, the Council and Parish Councils were expected to publish this information on their websites.

RESOLVED that the report be noted

5 **West Berkshire Council Financial Statement 2014/15 including KPMG Opinion (GE3006)**

(David Holling left the meeting at 5.25pm)

The Committee considered a report (Agenda Item 6) concerning the West Berkshire Council Financial Statements for 2014/15.

The s151 Officer had approved the draft Financial Statements in June 2015 and these had been published online. KPMG had completed their audit and had issued an unqualified opinion of the Financial Statements which was featured in the to-follow pack.

The Governance and Ethics Committee were required to approve, or not, the Financial Statements for the audit to be finalised and the accounts closed for the 2014/15 financial year by the 30th September 2015.

Councillor Webb advised that this item was connected to the External Audit Plan which was adopted in April 2014 and identified that one of the key issues was the corporate risk register (which had just been added to the Forward Plan for discussion). Referring to the significant audit risk identified by KPMG on page 7 of the to-follow pack, Councillor Webb enquired whether KPMG had written to schools in order to verify ownership. Ian Pennington advised that they had not as an alternative procedure was used to search the title deeds available within the Council. Ian Pennington clarified that it was the Council's responsibility, and not the Accountancy department specifically, to demonstrate a review had been undertaken on the legal titles of all school assets.

Councillor Bridgman expressed the view that the report was in danger of being self-congratulatory and due to its importance, would have liked more time to consider the report. Councillor Bridgman had identified some formatting errors and felt more attention to detail was required due to the report being in the public arena. He sought clarification on whether Newbury and Thatcham were referred to as one urban area or two and considered that the two towns had discrete features.

Councillor Bridgman referring to page 37, asked why short term borrowing was necessary if the Council had surplus cash. Andy Walker advised that whilst the Council's net balance over the year was positive, there were peaks and troughs in cash flow so there might be short term borrowing of funds to meet a liability. He brought Members' attention to the Treasury Management Report that was due to be presented to the Executive on 10 September 2015 which would offer further clarification.

Councillor Bridgman identified references within the report to the Governance and Audit Committee and requested that a note be inserted which recorded that the Governance and Audit Committee had been merged with the Standards Committee to create the Governance and Ethics Committee in July 2015. He also identified a typographical error on one of the report headers which should read 'Core Financial Statements'.

Councillor Cole observed that there appeared to be a large pension deficit and asked for further explanation. Ian Pennington explained how the pension deficit was calculated and the low likelihood of the Council's risk materialising in respect to the pension deficit; he provided assurance that the figures were calculated in the correct way. Councillor Cole said that he felt a pension deficit figure of £250m warranted further examination. Councillor Webb advised Members that the Committee's role was not to scrutinise the figures but to approve the methods used in creating the Financial Statements 2014/15 as

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there was a Pension Group which managed the scheme. Councillor Webb noted that it was an unlikely scenario that the Council's pension liability would have to be met all at the same time as not all members of the pension scheme were of pensionable age. The Pension Group would ensure the scheme evolved with the needs over the following 15 to 20 years.

Councillor Rick Jones noted the difference between the pension liability in 2013/14 and 2014/15. Ian Pennington advised that this was due to interest rates. Councillor Cole commented that views regarding life expectancy changed constantly. Ian Pennington advised that the Council's position was not unusual.

It was identified that the Annual Governance Statement included in the body of the report was from 2013/14 and would be updated once the Annual Governance Statement 2014/15 had been approved later in the meeting. Councillor Bridgman suggested that the Annual Governance Statement be excluded from the report if it was not the correct version.

A number of formatting and grammatical corrections were identified.

Councillor Cole sought clarification on whether the asset value of £5k on page 54 referred to the item price or package price and said that he was specifically thinking about IT equipment. Andy Walker explained that IT equipment had a 5 year asset life and the package price was calculated.

(Barry Dickens left the meeting at 5.50pm.)

Councillor Cole made an enquiry regarding the Self Insurance Fund, in particular the ex-Berkshire County Council Liabilities figure on page 87. Ian Priestley advised that payments were still being made to Municipal Mutual Insurance Ltd for Berkshire County Council liabilities.

Councillor Bridgman gave his thanks to KPMG for producing a report which was straight forward and clear. Councillor Webb gave his thanks to Andy Walker and his team for producing an accurate report of the Council's Financial Statements for 2014/15.

RESOLVED that the Financial Statements 2014/15 be approved.

6 Internal Audit Annual Report 2014/15 (GE3001)

The Committee considered a report (Agenda Item 7) concerning the Internal Audit annual Report 2014/15.

The report provided an opinion on the effectiveness of the Council's internal control framework as required by the Public Sector Internal Audit Standards. The report also served to provide evidence to support the Council's Annual Governance Statement by setting out the results of the work Internal Audit has done over the last year.

The report highlighted the fact that four of the audits conducted in the second half of 2014/15 were rated as weak (five rated weak over the whole year), but in areas where weaknesses were previously identified, management action had been taken to remedy them.

The report also gave the view that the Council's internal control framework was robust.

The weak opinion audits were outlined in the report, these were from audits into Corporate Fraud Review, Commercial Rents, the Council's Archived Records Service and Social Fund Reform.

Councillor Webb gave his thanks to Ian Priestley and his team in what he knew was a difficult year and asked what the intention was to follow up on the weak audit identified in the Finance – Commercial Rents section. Andy Walker advised that as the responsible

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Head of Service it was his responsibility to identify that the team had a temporary short term resource while finding a permanent solution and was in the process of recruiting to the vacant post.

Councillor Webb raised concerns about a sentence on page 114 of the agenda which read that “controls are removed to deliver savings” and sought to know which risk controls had been removed. Ian Priestley advised that when levels of staff and management were removed it followed that fewer controls were in place and that was the risk that an organisation took when it downsized. Councillor Webb advised that he knew of pressures within service areas but had never been informed that controls had been removed.

Councillor Jones noted that two of the narratives supplied by service heads regarding weak audits referred to resourcing issues. He asked if there was data not used or created that would be useful to establish the governance controls around risk. Councillor Jones stated that he was encouraged to see that weaknesses had been identified as that was the purpose of internal audit.

Councillor Graham Bridgman asked that acronyms be clarified in the report as their meaning was not clear.

Councillor Bridgman sought a response regarding commercial tenants’ insurance and suggested that a protocol was put in place where tenants were required to produce their certificate of insurance. Andy Walker advised that where tenants had a ground lease the risk to the local authority was minimal but there might be a reputational risk. Andy Walker agreed that the internal audit system had demonstrated itself to be independent.

Ian Priestley reminded Members that there would be a Member Development session on Risk Management and Civil Contingencies in September 2015.

RESOLVED that the report be noted.

7 Annual Governance Statement 2014/15 (GE3002)

The Committee considered a report (Agenda Item 8) concerning the Annual Governance Statement for 2014/15. Agenda Items 8a and 8b were considered alongside this item.

The report outlined the purpose of the Annual Governance Statement (AGS) and explained how the necessary assurance to support the AGS had been obtained. This was to enable the Governance and Ethics Committee to make an informed judgement as to the effectiveness of the processes followed in conducting the annual review of the system of internal control within the Council. The report concluded that the Council had effective governance arrangements that were kept under constant review.

Andy Walker brought attention to Item 8a. As part of the Annual Governance Statement, CIPFA guidance recommended that the S151 Officer provide assurance that the Council’s systems and procedures of internal control were effective, efficient and being complied with. The S151 Officer was required to ensure that all parts of the Council acted in accordance with the budgetary and policy requirements in connection with the setting of the budget and financial administration standards within the Council.

The S151 Officer was required to report to all the local authority’s Members, in consultation with the Head of Paid Service and the Monitoring Officer, if there was, or there was likely to be, unlawful expenditure or an unbalanced budget. This report was known as a Section 114 report and Members were required to have regard to the S151 Officer’s advice in this report. There had been no necessity to implement the Section 114 process during 2014/15. However, the Council was facing a number of significant financial pressures in the current and following year and would need to rely heavily on

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the financial and budgetary frameworks in place in order to deliver a balanced budget for 2016/17.

Overall it was the S151 Officer's assessment that all parts of the Council had acted in accordance with the budgetary and policy requirements in connection with the setting of the budget and met financial administration standards as set out in legislation. There had been no formal reports required by the S151 Officer to Council under the relevant legislation.

Throughout the year, the Governance and Audit Committee (now the Governance and Ethics Committee) was referred to amendments to the Council's Constitution and its rules of procedure where amendment was necessary. Subject to its view, matters were then referred to Council for adoption. This ensured that administrative processes remained effective, efficient and pertinent.

Reviews of risk registers had been carried out by the Monitoring Officer and S151 Officer in their roles as members of Corporate Board. Liabilities likely to impact on the Council's operations from a legal perspective had been identified.

Overall there had been an increase in the number of instructions received by Legal Services from services throughout the Council. The Council commenced two judicial reviews against central government departments during the year, the outcomes of which had potential for impact on services in Planning and Communities as well as budgetary implications.

The Monitoring Officer was of the view that the Council's governance arrangements were robust and effective. There had been no formal reports required by the Monitoring Officer to Council under the relevant legislation.

Councillor Jones requested that the Section 114 process to be explained. Andy Walker explained that he had an obligation to report if there was any unlawful expenditure or if the Council was proposing an unbalanced budget. Councillor Webb asked if there were any areas for concern which might require robust monitoring although they did not reach the Section 114 criteria. Andy Walker responded that he had an increased awareness of the organisation's financial standing and that as the cost base exceeded the income further cuts would need to be made to services.

Councillor Beck asked for an update on the progress of the two measures for implementation during 2015/16 as identified on page 134 of the agenda. Andy Walker advised that he could circulate an email with this information.

Councillor Cole acknowledged that in financially difficult times, risk management became more important and asked if the Council would be liable for the overspend of £900k by John O'Gaunt school. Councillor Webb observed that the answer to that query would depend on what action the school took. Andy Walker added that it was intended for John O'Gaunt to become an academy and the Council would be seeking for the Academy Trust to take on the funding deficit. Ultimately, however, the Council underwrote the financial risk.

Councillor Cole commented that risk management should be proactive and did not feel that the report also included this view. Ian Priestley advised that Corporate Board saw a register of risks monthly and otherwise had sole responsibility to maintain this register. Councillor Cole commented that in the absence of a colleague, the responsibility to ensure effective management of risks were the relevant Heads of Service.

Councillor Bridgman identified some corrections to the formatting of the report.

Councillor Jones sought elucidation on the recommended action of the reports. Councillor Webb advised that the Committee were asked to approve the actions taken as

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described within the Annual Governance Statement 2014/15 in order to allow the Leader and Chief Executive of the Council to sign it off.

Councillor Beck proposed that the Committee approve the items on block. This proposal was seconded by Councillor Webb from the Chair and accepted by the Committee.

RESOLVED that the report be noted.

a Annual Governance Statement - Statement in Support by the Section 151 Officer

The Committee considered the report (Agenda Item 8a) under discussion of the Annual Governance Statement 2014/15 (Agenda Item 8).

b Annual Governance Statement - Statement in Support by the Monitoring Officer (GE3004)

The Committee considered the report (Agenda Item 8b) under discussion of the Annual Governance Statement 2014/15 (Agenda Item 8).

Councillor Bridgman sought clarification on the status of the meeting of the Governance and Ethics Committee to take place on 3rd September 2015. It was clarified that the meeting on 3rd September 2015 was a special meeting of the Governance and Ethics Committee and not a meeting of the Advisory Panel or a Sub-Committee.

(The meeting commenced at 5.00 pm and closed at 6.40 pm)

CHAIRMAN

Date of Signature

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Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee

GOVERNANCE AND ETHICS COMMITTEE

**MINUTES OF THE MEETING HELD ON
THURSDAY, 3 SEPTEMBER 2015**

Councillors Present: Chris Bridges, James Cole, Lee Dillon, Sheila Ellison (Substitute) (In place of Anthony Pick), Rick Jones, Tim Metcalfe (Substitute) (In place of Jeff Beck) and Quentin Webb (Chairman)

Also Present: Sarah Clarke (Team Leader - Solicitor), Moira Fraser (Democratic and Electoral Services Manager) and Linda Pye (Principal Policy Officer)

Apologies for inability to attend the meeting: Councillor Steve Ardagh-Walter, Councillor Jeff Beck, Councillor Graham Bridgman, Barry Dickens and Councillor Anthony Pick

PART I

8 Declarations of Interest

Councillor Jeff Beck declared an interest in Agenda Item (3), and reported that, as his interest was personal and prejudicial, he would not participate in the debate or voting on this matter.

Councillor Anthony Pick declared an interest in Agenda Item (3), and reported that, as his interest was personal and prejudicial he would not participate in the debate or voting on this matter.

Councillors Lee Dillon and Quentin Webb declared an interest in Agenda Item (3), but reported that, as their interest was personal and not prejudicial or a disclosable pecuniary interest, they determined to remain to take part in the debate and vote on the matter.

9 NPC5/14

(Councillor Jeff Beck declared a personal and prejudicial interest in Agenda item (3) by virtue of the fact that as a Member of Newbury Town Council Staff Sub-Committee, he was involved with chairing one of the Staff Grievance Committees which had previously considered elements of this complaint. As a consequence he had deemed that it would not be appropriate to participate in this meeting and had tendered his apologies and would therefore not be taking part in the debate or voting on this matter).

(Councillor Anthony Pick declared a personal and prejudicial interest in Agenda item (3) by virtue of the fact that there might be a 'public perception' that as a result of his close personal relationship with a member of Newbury Town Council's Grievance Panel his position on this Committee could be associated with the decisions of the Town Council particularly arising from his role as Mayor during the time of the reported incidents as well as his close relationship with a member of the panel. As a consequence he had deemed that it would not be appropriate to participate in this meeting and had tendered his apologies and would therefore not be taking part in the debate or voting on this matter).

(Councillor Lee Dillon declared a personal interest in Agenda item (3) by virtue of the fact that he was a member of the Liberal Democrat Group and the Subject Member was also a member of that Group. As his interest was personal and not prejudicial he was permitted to take part in the debate and vote on the matter).

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(Councillor Quentin Webb declared a personal interest in Agenda item (3) by virtue of the fact that he had met the Subject Member on occasions in his role as a Councillor. As his interest was personal and not prejudicial he was permitted to take part in the debate and vote on the matter).

The Committee considered the Investigator's report (Agenda Item 3) concerning the complaint in respect of Councillor Ruwan Uduwera-Perera (Subject Member) NPC5/14.

The Independent Investigator, Liz Howlett, introduced her report to the Committee:

Liz Howlett confirmed that originally she had been asked to investigate three complaints about potential breaches of the Code of Conduct of Newbury Town Council. The three complaints were inextricably linked in context as they had arisen from the same set of events in May 2014. However, following investigation Liz Howlett had concluded that no breach had occurred in respect of complaints NPC4/14 and NPC1/15. In respect of the latter complaint she had found no evidence of any cover up but she advised that concerns which had been raised as part of that complaint regarding the failure to claim under an insurance policy and the lack of a robust procurement process had been well founded.

In respect of complaint NPC5/14 this related to two specific incidents and Liz Howlett had been asked to establish the accuracy of those incidents and to explore the evidence available:

- (1) Did Councillor Uduwera-Perera behave in a disrespectful way towards Mr. Granville Taylor on 19th May 2014?
- (2) Did Councillor Uduwera-Perera behave in an unprofessional manner, which could be interpreted by a reasonable person as being intimidating and bullying, towards Mr. Graham Hunt on 29th May 2014?

The background to the incidents was in relation to the civil litigation claim by the Town Council against Costain for the recovery of monies for damage to Victoria Park due to water extraction for the Parkway development. It should be borne in mind that this was a significant and complex issue for Newbury Town Council to deal with and it had been a steep learning curve for those involved in it. The investigator noted that not many organisations which were the size of the Town Council would have to deal with a multimillion pound civil litigation claim.

There had been issues about the way that the claim had been handled which was mainly due to the inexperience in such matters. This claim was still ongoing and therefore information in relation to it would be limited.

The meeting of 19th May 2014

A meeting had been arranged at Newbury Town Council's offices on 19th May 2014 to prepare for a meeting with Costain in Gardner Leader's offices later that morning. The main meeting was due to start at 9.00am and the pre-meet had been arranged for 8.00am. This was the first meeting with Costain on the issue of the damage to Victoria Park. It had been a major achievement in getting Costain to the negotiating table and therefore tensions were running high and nerves were frayed.

The meeting was important as discussions would take place in relation to the settlement figure and it was therefore considered to be essential that the right people were in attendance but also that there were not too many people around the table. Advice from Gardner Leader was that the fewer people in the meeting the more likely progress would be made. There had been various discussions about who should be involved in the meeting and e-mails showed that there was disagreement between Granville Taylor and Councillor Uduwera-Perera as to whether it had ever been intended, or was

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necessary, for Councillor Uduwera-Perera to be at the main meeting at Gardner Leader. Granville Taylor was clear that Councillor Uduwera-Perera had insisted that he should be at the meeting and Councillor Uduwera-Perera disputed this fact.

At the pre-meeting tensions had escalated and both Granville Taylor and Councillor Uduwera-Perera had become irritated with each other. Witnesses at the meeting corroborated the tone which had been used and confirmed that Councillor Uduwera-Perera had referred to Newbury Town Council as a 'Numpty Council'. Councillor Uduwera-Perera did not dispute that he had made this comment. His opinion was that this comment was not a breach of the Code of Conduct and that he was exercising his right to freedom of speech.

Councillor Uduwera-Perera accepted that he may have also said 'numpty officers'. Councillor Uduwera-Perera was of the opinion that this term was not insulting. As Mr Taylor had submitted a complaint about this behaviour it could be inferred that he did feel it lacked respect and was demeaning.

Granville Taylor said that Councillor Uduwera-Perera had then stormed out of the meeting saying that 'he had better things to do'. Councillor Uduwera-Perera said that he had walked out forcefully. Liz Howlett stated that the tone, context and demeanour here was key - Councillor Uduwera-Perera had demonstrated a lack of respect and did not care that his behaviour might have been offensive.

Councillor Chris Bridges asked whether the team appointed had been inexperienced. Liz Howlett confirmed that in Councillor Uduwera-Perera's view the team were inexperienced and did not understand the case. Julian Swift-Hook clarified that the Councillors were inexperienced in dealing with a multi-million pound litigation claim. However, they all had a significant amount of experience of being a Councillor and they also had a Solicitor (Barrister) advising them.

Councillor Rick Jones noted that the remarks had been witnessed by others but it was unclear what was actually said. Liz Howlett confirmed that the only statement that Councillor Uduwera-Perera said that he did not say was 'numpty ex-prison officer' as he was certain this was something he would not say as he was an ex Police Officer. However, other witnesses had confirmed that he had said that and all witnesses had been clear that he had lost control but in a controlled way.

The meeting of 29th May 2014

On 29th May 2014 Councillor Swift-Hook (the then Leader) and Councillor Uduwera-Perera (the then Deputy Leader) were due to have a regular meeting with Mr. Graham Hunt, the then Chief Executive of Newbury Town Council. Councillor Uduwera-Perera arrived first and was questioning Mr. Hunt about why no claim had been made in 2010 against the Council's insurance policy for legal costs incurred in the dispute with Costain and he also questioned the appointment of the legal representatives for the case. However, there had been no suggestion that the Solicitors concerned had not dealt with the case adequately. Mr. Uduwera-Perera had admitted that he was 'robust and direct' in his questioning and he felt that it was his duty to hold the Chief Executive to account and therefore his actions had been justified. He had stated that he was proud of the way that he had handled the exchange. As a Councillor he felt that it was his public duty to hold the Chief Executive to account. He was of the opinion that if he had not adopted this approach the issues around Victoria Park would not have been investigated.

Liz Howlett felt that there had been a breach of the Code of Conduct which put in place a framework of working between Councillors and Officers. The relationship between Councillors and Officers should be one of mutual trust and respect. Where there were concerns about the performance of Officers these should be dealt with through the formal processes with both sides taking appropriate professional advice as necessary and they

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should not be dealt with by bullying or intimidation. In her opinion Councillor Uduwera-Perera had crossed the line and had been fully aware of and in control of what he was doing.

Councillor Chris Bridges asked if Mr. Uduwera-Perera had lost his temper? Liz Howlett responded that if one was looking at it from the outside it would appear that he did but the impression she had got from talking to Mr. Uduwera-Perera was that it was stage managed. He had stated that he had the ability to appear aggressive but be entirely in control.

Councillor Rick Jones enquired whether Newbury Town Council had disciplinary, grievance and capability procedures in place. Liz Howlett confirmed that they had. These procedures had been reviewed separately and therefore she had not considered these in her investigations and she would not therefore comment on whether or no they were fit for purpose..

Councillor Tim Metcalfe queried whether the Chief Executive was also the Responsible Finance Officer. Liz Howlett responded that generally a Head of Finance would be appointed and most Town Council's would have a specifically qualified person. In Parish Councils the Parish Clerk would be the Responsible Finance Officer. The litigation claim would normally be something that the Responsible Finance Officer would lead on, however, in 2010 Newbury Town Council had had a relatively inexperienced Finance Officer in post and the Chief Executive had therefore taken on that responsibility at the time the claim was made.

Councillor Julian Swift-Hook, on behalf of Newbury Town Council, made the following representations to the Committee:

Councillor Quentin Webb asked why Councillor Swift-Hook had been asked to represent Newbury Town Council. Councillor Swift-Hook advised that the Leader of the Town Council had not been available and following discussions with the Chief Executive it was felt that Councillor Swift-Hook would be better placed to represent the Town Council. He was Leader at the time of the incidents and that he had been appointed by the Town Council to act as their representative.

Councillor Swift-Hook advised that the issues involved in this case were very complex and it was not just a 'he said/she said' scenario. This issue went back to 2010 and was in relation to ongoing litigation. Costain undertook the water extraction in the Summer of 2010 which had had a considerable impact on Victoria Park. When the issues arose the Town Council had taken the appropriate steps. However, one thing did not happen and was in relation to a notification or claim against the Council's insurance policy for the legal costs incurred. This was something that the then Chief Executive should have done and this was found to be a failing on his part at the recent Employment Tribunal.

In relation to the scheduled meeting on 29th May 2014 Councillor Uduwera-Perera had previously discussed with Councillor Swift-Hook his concerns that the litigation claim had not been made. When Councillor Swift-Hook had walked into the meeting room that day he had encountered a very frosty atmosphere. Graham Hunt explained that there had been an issue whereupon Councillor Uduwera-Perera interrupted Mr. Hunt and started what could only be described as 'a rant'. Councillor Swift-Hook stated that he had been shocked by Councillor Uduwera-Perera's behaviour. Mr. Hunt had then said to Councillor Swift-Hook that he felt like he was being bullied. Councillor Uduwera-Perera then turned on Mr. Hunt and stated quite forcefully that 'no you are the bully' and he told him to get his coat and go home. Councillor Uduwera-Perera also stated that Mr. Hunt had 'lied to the Town Council'. Councillor Swift-Hook felt, with the benefit of hindsight, that Councillor Uduwera-Perera had been aware of what he was doing and that his demeanour had been very aggressive and bullying. Councillor Uduwera-Perera had

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often pointed out that he was an ex Police Officer and often presented himself as a champion of the under dog and stood up for equality matters etc. Councillor Swift-Hook stated that however on this occasion he had contravened the standards that he wished to be upheld.

Councillor Swift-Hook confirmed that Newbury Town Council did have comprehensive HR policies and all would have been available for Councillor Uduwera-Perera to pursue if he had wished. Graham Hunt had raised a grievance which had been fully investigated in line with policy. The Grievance Sub-Committee had considered the grievance and had determined that the behaviour of Councillor Uduwera-Perera was as had been claimed. Councillor Swift-Hook confirmed that he had not taken part in that procedure and Councillor Uduwera-Perera had also not participated.

Councillor Chris Bridges noted that Councillor Swift-Hook was at the meeting in question and he asked if he had tried to calm the atmosphere down. Councillor Swift-Hook confirmed that the meeting had been going on for 25 minutes before he had arrived. After the altercation had taken place Graham Hunt had left the room and Councillor Swift-Hook had stated his concerns about what had taken place. The interaction had lasted about two to three minutes and he had been too shocked to interject at first. In response to a query from the Chairman he confirmed that he had attempted to take the heat out of the situation.

Councillor Bridges asked for confirmation as to when the grievance had been raised. Mr. Swift-Hook confirmed that the grievance had been raised against Councillor Uduwera-Perera 5 working days after the incident.

Councillor Lee Dillon asked if Councillor Uduwera-Perera had approached Councillor Swift-Hook to look at Mr. Hunt's behaviour and his failure to make the legal claim. Councillor Swift-Hook responded that he had not. At that time the Town Council were in the middle of intense negotiations and this was the focus of every Councillor. The questions that Councillor Uduwera-Perera were raising were matters which needed to be dealt with but they were not urgent. Those issues had consequently been discussed at Group meetings at the beginning of June and that was why an investigation had been carried out.

Councillor Quentin Webb asked if every Town Councillor was signed up to the Code of Conduct. It was confirmed that that was the case.

Councillor Rick Jones asked if other Councillors had been aware of the concerns that Councillor Uduwera-Perera was expressing. Councillor Swift-Hook confirmed that all Councillors had been aware. However, the concerns in respect of the claim against the insurance policy had been expressed over a very short timeframe and at the same time the Town Council was trying to resolve the litigation claim which was of higher importance.

Councillor Rick Jones referred to the HR policies and procedures. Councillors tended to feel that they were in place generally to help staff and he asked if Councillor Uduwera-Perera would have been aware that he could use them. Councillor Swift-Hook responded that they were in place to be used by both Officers and Councillors and that Councillor Uduwera-Perera was Deputy Leader at the time and had been in attendance at Grievance Committee meetings so he would have been aware of those policies but chose not to use them.

Councillor James Cole mentioned that mitigation had been referred to and he questioned whether any mitigation was acceptable as an excuse for bad behaviour. Councillor Swift-Hook agreed that in his view there was no instance when bad behaviour would be acceptable.

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Councillor Tim Metcalfe asked if the subsequent actions taken by the Town Council were prompted by Councillor Uduwera-Perera's outburst. Councillor Swift-Hook said that they had not been prompted by the outburst and that the actions taken would have happened in any event.

In relation to the meeting on 19th May 2015 Councillor Swift-Hook advised that there were many aspects to communication and the words actually only formed a small part. The tone, context and demeanour of how those words were spoken were all more important. Five people had been present and Councillor Swift-Hook was in no doubt that Councillor Uduwera-Perera intended to be insulting and rude. He had raised his voice and had referred to Granville Taylor as a 'numpty ex prison officer'. After the event it would have been easy to use his previous status as a Police Officer to say that he would not have referred to Granville Taylor in that way. The source of the tensions around that meeting was a telephone call the previous Thursday about who should be attending the round table meeting or not. Granville Taylor had made notes of the telephone call and he had referred to those notes on 19th May 2014 which had led to the altercation.

Councillor Quentin Webb asked if Mr. Taylor had regularly made notes of telephone calls. Councillor Swift-Hook stated that he was aware that Mr. Taylor had regularly made notes of telephone calls. The issue of the Costain meeting was important and he was not surprised that Granville Taylor had made notes in relation to that issue. The Independent Investigator had stated in her report that nerves had been frayed. Councillor Swift-Hook agreed that there had been a heightened degree of anticipation on the day and that nerves had only become frayed after the altercation and that had caused the tension.

Councillor Lee Dillon asked if Councillor Swift-Hook had asked Councillor Uduwera-Perera to attend the meeting in his role as Leader. Councillor Swift-Hook confirmed that his view was that the team should have been as lean and effective as possible and therefore it was not necessary for Councillor Uduwera-Perera to be there.

Councillor Rick Jones asked if Councillor Swift-Hook had been aware of Councillor Uduwera-Perera's low opinion of the Council – was it staff, Councillors or both? Councillor Swift-Hook felt that he was not in a position to answer that. Councillor Jones asked if there were other incidents involving Councillor Uduwera-Perera which had happened previously. Councillor Swift-Hook confirmed that there had been at least one other incident between Councillor Uduwera-Perera and Graham Hunt but none that he could recall in relation to Granville Taylor. All those involved at the Town Council were aware of Councillor Uduwera-Perera's robust approach.

Councillor Tim Metcalfe noted that Councillor Uduwera-Perera was Deputy Leader and therefore Councillor Swift-Hook's (Leader) right hand man and therefore he was surprised that Councillor Swift-Hook had not wanted him there at the meeting with Costain. Councillor Swift-Hook clarified that the appointment of the Deputy Leader was the choice of the Group and not an appointment made by the Leader. It was essential to ensure that those Councillors with the most experience were in attendance at the meeting. One other Councillor (Alex Payton) was a barrister and therefore it was felt that it would be more important to have him in the room than Councillor Uduwera-Perera. The team at the pre-meeting consisted of six people plus the barrister and a solicitor. The plan was that only three of that group would go to the round table meeting and would report back to the larger group following the meeting. Councillor Uduwera-Perera had been part of the larger group.

Councillor Chris Bridges asked if Councillor Uduwera-Perera had been involved in the issues around Victoria Park in 2010. It was noted that Councillor Uduwera-Perera was only elected in 2013.

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Councillor Lee Dillon referred to page 3 of the Investigator’s report where it stated that ‘Alex believes that Granville Taylor complained in order to support Graham Hunt’. He asked if the meeting on 29th May 2014 had not happened would Granville Taylor still have come forward with a complaint. It was confirmed that the official complaint had been received by West Berkshire Council on 4th November 2014 but that a grievance had been raised internally at the Town Council before that.

The Legal Officer confirmed that another reason that the complaint had taken so long to resolve was that a number of inter-related complaints has also been received. In her view the complaint was made irrespective of the motivation for doing so. The Town Council as an entity had actually made the complaint and not Mr. Taylor. Councillor Swift-Hook agreed that the issue to determine was whether the behaviour of Councillor Uduwera-Perera had been a breach of the Code of Conduct. He admitted that the comment made by Alex Payton had caused him some concern as he had not been in the room at the time the comments were made and therefore he had concerns about the relevance of this comment. It was noted that on the same page of the report Councillor Allen had referred to Councillor Uduwera-Perera’s behaviour as ‘awful’ and ‘aggressive’.

In respect of the timeline Councillor Swift-Hook confirmed that after the incidents had occurred Officers had raised grievances which had been investigated separately by the Town Council and they had concluded that the grievances were justified. The Town Council had then referred it to the Monitoring Officer at West Berkshire Council as it had not been able to invoke the disciplinary process against a Councillor as they were not covered by the staff policies. The Committee needed to decide whether Councillor Uduwera-Perera’s behaviour towards senior staff was acceptable and the motivation for that behaviour was not an issue. An elected Councillor should not treat any member of staff in that manner in his view.

Councillor James Cole noted that the Subject Member was an ex-Councillor and he asked if Councillor Uduwera-Perera had resigned. Councillor Swift-Hook confirmed that Councillor Uduwera-Perera had resigned as Deputy Leader in July 2014 and as a Councillor in November 2014.

(The meeting was adjourned at 10.55am in order for the Committee to deliberate and make their decision).

RESOLVED that:

The Committee determined that the minimum standard of acceptable behaviour was breached by Mr. Uduwera-Perera on both 19th May 2014 and 29th May 2014. The reasons for this decision were as set out in the Investigating Officer’s report.

Sanction:

Sanctions were limited as a consequence of the legislation in the Localism Act but the Committee agreed that a formal notice should be placed in the Newbury Weekly News setting out the decision in relation to this complaint. The decision notice should also be published on West Berkshire Council’s website.

(The meeting commenced at 9.30 am and closed at 11.55 am)

CHAIRMAN

Date of Signature

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Governance and Audit Committee Forward Plan November 2015 – April 2016

No.	Ref No	Item	Purpose	Lead Officer	Lead Member	Governance/Audit/Ethics
08 February 2016						
1.	C3012	Changes to the Constitution	To review and amend parts of the Constitution if required following discussion at the Finance and Governance Group	David Holling	Leader of the Council, Strategy & Performance, Legal & Strategic Support	Governance
2.	C2981	Amendments to the Constitution – Scheme of Delegation	To review and amend sections of the Scheme of Delegation in light of legislative changes and current practice.	David Holling	Leader of the Council, Strategy & Performance, Legal & Strategic Support	Governance
3.	GE3007	Internal Audit – Interim Report 2015-16	To update the Committee on the outcome of internal audit work.	Ian Priestley	Deputy Leader, Finance, Insurance, Health & Safety, HR, Pensions, ICT & Corporate Support	Audit
4.	GE3056	Reviewing Accounting Policies		Andy Walker	TBC	Governance
5.	GE3033	Monitoring Officer's Quarterly Update Report to the	To provide an update on local and national issues relating to ethical	David Holling	Chairman of Governance	Standards

No.	Ref No	Item	Purpose	Lead Officer	Lead Member	Governance/Audit/Ethics
		Governance and Ethics Committee – Quarter 3 of 2015/16	standards and to bring to the attention of the Committee any complaints or other problems within West Berkshire.		ad Ethics	
25 April 2016						
6.	GE3008	Internal Audit Plan 2016/17	To outline the proposed internal audit work programme for the next three years	Ian Priestley	Deputy Leader, Finance, Insurance, Health & Safety, HR, Pensions, ICT & Corporate Support	Audit
7.	GA3008 (a)	External Audit Plan 2015-16	To provide Members with a copy of the External Audit Plan for 2015-16.	Ian Priestley	Deputy Leader, Finance, Insurance, Health & Safety, HR, Pensions, ICT & Corporate Support	Audit
8.	C3013	Changes to the Constitution	To review and amend parts of the Constitution if required following	David Holling	Leader of the Council,	Governance

No.	Ref No	Item	Purpose	Lead Officer	Lead Member	Governance/Audit/Ethics
			discussion at the Finance and Governance Group		Strategy & Performance, Legal & Strategic Support	
9.	C3034	Monitoring Officer's Quarterly Update Report to the Governance and Ethics Committee –2015/16 Year End	To provide an update on local and national issues relating to ethical standards and to bring to the attention of the Committee any complaints or other problems within West Berkshire.	David Holling	Chairman of Governance and Ethics	Standards

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Update on Ethical Matters – Quarter 1 of 2015/16 - Summary Report

Committee considering report:	Governance and Ethics Committee
Date of Committee:	23 November 2015
Lead Member:	Quentin Webb
Date Portfolio Member agreed report:	N/A
Report Author:	David Holling
Forward Plan Ref:	GE3032

1. Purpose of the Report

- 1.1 To provide an update on local and national issues relating to ethical standards and to bring to the attention of the Committee any complaints or other problems within West Berkshire.

2. Recommendation(s)

- 2.1 Members of the Governance and Ethics Committee are asked to note the report.

3. Implications

- 3.1 **Financial:** There are no financial issues arising from this report. All costs associated with the investigation of complaints are met from within existing budgets.
- 3.2 **Policy:** Revised policy and changes to processes adopted at Council in December 2013
- 3.3 **Personnel:** There are no personnel issues associated with this report
- 3.4 **Legal:** There are no legal issues arising from this report, The matters covered by this report are generally requirements of the Localism Act 2011 and regulations made under it.
- 3.5 **Risk Management:** The benefits of this process are the maintenance of the Council's credibility and good governance by a high standard of ethical behaviour. The threats are the loss of credibility of the Council if standards fall.
- 3.6 **Property:** None
- 3.7 **Other:** None

4. Other options considered

- 4.1 None

5. Executive Summary

6. Introduction

- 6.1 Following the introduction of the Localism Act 2011 it was agreed that quarterly reports would be provided to the Governance and Ethics Committee. This report sets out the number and nature of standards complaints received, progress made with complaints submitted and highlights any areas where training or other action might avoid further complaints in the future.

7. Key Issues Identified in the report:

- 7.1 During Quarter 2 of 2015/16 fifteen formal complaints were received by the Monitoring Officer. Fourteen of these complaints related to district councillors and one to a parish councillor. All the district council complaints pertained to planning matters. Following the initial assessment by the Monitoring Officer, in consultation with the Independent Person, no further action was taken on any of the complaints against the district councillors. The complaint against the parish councillor (NPC4/15) is being investigated.
- 7.2 A special meeting of the Governance and Ethics Committee took place on the 03rd September 2015 to consider the independent investigator's findings in respect of NPC5/14. The Committee concluded that Mr Uduwera-Perera had breached Newbury Town Council's Code of Conduct by failing to treat others with respect and behaving in an intimidatory and/or bullying manner.
- 7.3 The Committee decided that a formal public notice setting out that Ruwan Uduwera-Perera had breached Newbury Town Council's Code of Conduct, should be published on both Newbury Town Council and West Berkshire Council's website and in the Newbury Weekly News.
- 7.4 No dispensations were granted during Quarter 2 of 2015/16.
- 7.5 A small number of gifts and hospitality have been declared by District Councillors during Quarter 2 of 2015/16.
- 7.6 Training on the Code of Conduct for, Town and Parish Councillors was undertaken on the 13th October 2015 prior to the District/Parish Conference.

8. Conclusion

- 8.1 The number of complaints against District Councillors has risen substantially in Quarter 2 but all of the complaints relate to one particular planning application which was addressed to all members who attended the particular meetings. Following assessment it was determined that no breach had occurred but members were reminded as to standards of behaviour which is appropriate at such meetings.
- 8.2 It is of concern that a large number of Parishes have still provide details of Declarations of Interest in accordance with the Localism Act in order that this Council as responsible authority can ensure that relevant details are provided for the public to ensure transparency. The Monitoring Officer has reminded Clerks and given a deadline of 1st December 2015 in order to respond.

9. Appendices

- 9.1 Appendix A - Supporting Information

Risk Management - Revised Approach

Committee considering report:	Governance and Ethics Committee on the 23 November 2015
Date of Committee:	23 November 2015
Portfolio Member:	Councillor Roger Croft
Date Portfolio Member agreed report:	22 October 2015
Forward Plan Ref:	GE3046

1. Recommendation(s)

- 1.1 Review and comment on the process for the management of risk that is outlined in this report.

2. Purpose of the Report

- 2.1 To provide a refresh of the Council's Risk Management processes with the aim of:

- (1) Ensuring risks associated with the delivery of the Council Strategy are identified and mitigated
- (2) Clarifying the respective roles of the Risk Management Group, Corporate Board and Members. The RMG will oversee risk allowing CB and Members to focus on responding to critical / key issues. The aim being to delegate the bulk of the work on Risk Management to the RMG.
- (3) Confirm the role of RMG in carrying out a rolling review of service and project risk registers.
- (4) Review the Council's Risk Appetite to ensure it is still appropriate

- 2.2 Risk Management is a part of any activity undertaken by the Council. The process outlined in this report is not essential to the management of risk. All that this process seeks to do is to provide a framework that:

- (1) Is applied consistently
- (2) Provides clarity and transparency in relation to the risks the Council is managing
- (3) Provides assurance to Members that risk management is effective in ensuring appropriate actions taken to minimise risk to the delivery of the Council's objectives.

3. Implications

- 3.1 **Financial:** None
- 3.2 **Policy:** None
- 3.3 **Personnel:** None
- 3.4 **Legal:** None
- 3.5 **Risk Management:** None
- 3.6 **Property:** None
- 3.7 **Other:** None

4. Executive Summary

- 4.1 The proposed approach to risk management is outlined in the diagram at appendix C.
- 4.2 The role of Corporate Board (CB) is set out below:
 - (1) Overall approval of the risk management process
 - (2) Annual review and approval of the:
 - (a) Council Strategy risk register
 - (b) Corporate Risk Register
 - (c) Chief Executives key risks that will require monitoring through controls assurance testing.
 - (d) Projects that require a review of the associated risk register by the RMG in the coming year.
 - (3) Quarterly review of the Key Issues list to ensure that appropriate action, mitigation / monitoring, is being put in place by the lead officer.
- 4.3 The role of the Risk Management Group (RMG) is set out below:
 - (1) Review Key Issues list at each meeting and prior to submission to Corporate Board
 - (2) Annual review of the Council Strategy Risk Register and the Corporate Risk Register
 - (3) Rolling review of service risk registers with a focus on ensuring that risks associated with the delivery of the 108 manifesto pledges are covered and that consideration has been given to the risks of fraud and corruption.
 - (4) Rolling review of project risk registers identified by Corporate Board as a priority

- (5) Quarterly review of the controls assurance relating to the key risks owned by the Chief Executive, and delegated to the RMG to review.
- (6) Review of the Annual Governance Statement
- (7) Review lessons learned, with a view to improving the control environment, from:
 - (a) Quarterly performance returns
 - (b) H&S incidents / accidents
 - (c) Insurance claims
 - (d) Civil contingencies incidents / exercises
 - (e) Business Continuity incidents / exercises
 - (f) Information security incidents

4.4 The role of Members is outlined below:

- (1) The Operations Board will see the Key Issues List on a quarterly basis. This will be timed to run alongside the quarterly performance reporting. However, as the Key Issues List is designed to be an operational management tool, it will not be taken through into the public domain at Executive.
- (2) The Governance and Ethics Committee will be asked to review the process outlined in this report.

4.5 More detail of the purpose / operation of the different elements of the risk management process that is outlined at Appendix C.

5. Other options considered

- 5.1 The proposals contained in this report can be flexed. The process will be kept under review and will be amended in the light of experience.

6. Measures of Success

- 6.1 The main measure of success will be the successful delivery of all of the Council's strategic and service objectives. The quarterly reporting against the delivery plan, managed by Strategic Support, will be used to help measure the effectiveness of the risk management framework.

7. Appendices

- 7.1 Appendix A – Supporting Information
- 7.2 Appendix B – Equalities Impact Assessment
- 7.3 Appendix C – Overview of the proposed risk management processes
- 7.4 Appendix D – Risk Management Appetite

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Changes to the Constitution - Part 5 (Executive Rules of Procedure)

Committee considering report:	Governance and Ethics on the 23 November 2015 Council on the 10 December 2015
Member:	Councillor Alan Macro
Date Member agreed report:	19 October 2015
Report Author:	David Holling
Forward Plan Ref:	C3011(a)

1. Purpose of the Report

- 1.1 To review and if appropriate amend Part 5 (Executive Rules of Procedure) following a request from the Liberal Democrat Group.

2. Recommendation(s)

- 2.1 To reduce the number of Members required to request that an item be called-in from five to three to reflect the political balance of the Council.
- 2.2 To delegate authority to the Monitoring Officer to make associated changes to paragraphs 5.3, 2.7.5 and 6.4.4. of the Constitution.
- 2.3 To agree that any changes will come into effect on the 11 December 2015.

3. Implications

- 3.1 **Financial:** There will be no costs associated with making the amendments to the Constitution.
- 3.2 **Policy:** Will require changes to Parts 2, 5, and 6 of the Constitution
- 3.3 **Personnel:** None
- 3.4 **Legal:** None
- 3.5 **Risk Management:** None
- 3.6 **Property:** None
- 3.7 **Other:** None

4. Other options considered None

- 4.1 Not to agree the changes

5. Executive Summary

5.1 Following an internal audit of the management of the Constitution in 2010 it was noted that one of the responsibilities of the Finance and Governance Group is to have ownership of the Council's Constitution. The content of the Local Code of Corporate Governance says that there will be an annual review of the operation of the Constitution. A timetable has been established for the Finance and Governance Group to review individual sections of the Constitution and this work is ongoing.

Part 5 (Executive Rules of Procedure) – Call in

5.2 In accordance with the Council's Constitution almost all decisions of the Executive, Committees of the Executive, individual Members of the Executive and 'key decisions' taken under delegated powers of Officers are subject to call-in.

5.3 Where items are marked as being subject to call-in currently five Members are required to sign the notice asking for the decision to be reviewed. Following the May 2015 elections the make up of the Council comprises 48 Conservative Members and 4 Liberal Democrat Members. This means that in order to affect a call-in the Liberal Democrat Group have to garner cross party support. They have therefore asked that this section of the Constitution be reviewed to reflect the political balance of the Council.

5.4 It should be noted that one item was called-in in 2014 and four items were called-in in 2013.

5.5 Within the other Berkshire unitaries the call-in requirements are as follows:

Bracknell Borough Council – five Members or the Chair of Overview and Scrutiny and two other Chairs

Reading Borough Council – does not operate Executive arrangements

Royal Borough of Windsor and Maidenhead – three Members

Slough Borough Council – three Members

Wokingham Borough Council – five Members

5.6 It is therefore suggested that to promote greater accountability paragraphs 5.3, 2.7,5 and 6.4.4 should be amended to require three Members to affect a call-in.

6. Conclusion

6.1 This report recommends changes to Parts 2, 5 and 6 of the Council's constitution.

Changes to the Constitution - Part 11 (Contract Rules of Procedure)

Committee considering report:	Governance and Ethics on the 23 November 2015 Council on the 10 December 2015
Portfolio Member:	Councillor Gordon Lundie
Date Portfolio Member agreed report:	15 October 2015
Report Author:	David Holling
Forward Plan Ref:	C3011(b)

1. Purpose of the Report

- 1.1 To review and if appropriate amend Part 11 (Contract Rules of Procedure) following a request from the Procurement Board to do so.

2. Recommendations

1. To consider and agree, if appropriate, the proposed amendments to Part 11 (Contract Rules of Procedure) and to discuss any additional changes required.
2. To agree that any changes will come into effect on the 11 December 2015.

3. Implications

- 3.1 **Financial:** S151 Officer at the Finance, Audit & Governance Group approved the amendments to Part 11 of the Constitution
There will be no costs associated with making the amendments to the Constitution
- 3.2 **Policy:** Will require changes to Part 11 of the Constitution
- 3.3 **Personnel:** None
- 3.4 **Legal:** None
- 3.5 **Risk Management:** None
- 3.6 **Property:** None
- 3.7 **Other:** None

4. Other options considered

- 4.1 Not to agree the changes

5. Executive Summary

- 5.1 Following an internal audit of the management of the Constitution in 2010 it was noted that one of the responsibilities of the Finance and Governance Group is to

have ownership of the Council's Constitution. The content of the Local Code of Corporate Governance says that there will be an annual review of the operation of the Constitution. A timetable has been established for the Finance and Governance Group to review individual sections of the Constitution and this work is ongoing.

Part 11 Contract Rules of Procedure

- 5.2 A number of changes were made to Part 11 of the Council's Constitution (Contract Rules of Procedure) in May 2015 to ensure that the Council was acting in accordance with the Public Contracts Regulations 2015. The changes included the setting of thresholds delegating decision making as follows:

Total Contract Value £	Delegated decision or Resolution of:
Up to £99,999	Relevant Head of Service (or such officers as nominated by the Head of Service in writing) shall have delegated authority to award the contract.
£100,000 to £499,999	Relevant Head of Service following recommendation of S151 officer and Head of Legal Services shall submit a report to Corporate Board seeking delegated authority to award the contract in consultation with the S151 officer and Head of Legal Services.
Over £500,000	These contracts shall require a key decision of the Executive following recommendation by S151 officer and Head of Legal Services. Executive shall receive a report from the relevant officer either recommending for the contract to be awarded or seeking delegated authority for the relevant Head of Service to award the contract in consultation with the relevant Portfolio Holder, s151 officer and the Head of Legal Services.

- 5.3 The revised rules have been in place since May 2015 and Officers have now been asked to amend the thresholds by both Corporate Board and Procurement Board to reduce the number of contracts that require Executive approval. Under paragraph 11.4.4 transactions falling outside of the Capital Programme (e.g. revenue) and where the relevant Head of Service does not have the delegated authority to award the contract an approval or a resolution of the Executive is required.

- 5.4 The changes proposed affect mainly contracts over the £500,000, threshold; however some minor changes to the other thresholds are required to address clarity. The proposed table of amendments is set out below: -

Contract Value £	Delegated decision or Resolution of:
Total Contract value of up to £99,999.	Relevant Head of Service (or such officers as nominated by the Head of Service in writing) shall have delegated authority to award the contract.
Total Contract value of between £100,000 and	Relevant Head of Service (following recommendation of the S151 officer and Head of Legal Services) shall

Contract Value £	Delegated decision or Resolution of:
£499,999.	<p>have delegated authority to award the contract following</p> <p>a) a written report by the relevant Head of Service (or such officers as nominated by the Head of Service in writing) has been provided and approved by the Procurement Board; and</p> <p>b) the report been included as an “item for information” item for the Corporate Board.</p>
<p>For contracts exceeding £500,000 in total value and up to £2.5million per annum.</p>	<p>The award of these contracts shall require a “key decision”(as defined in Part 5.1.1 of the Constitution) delegated to be taken by relevant Head of Service in consultation with the relevant Portfolio Holder (following recommendation by the relevant Corporate Director, S151 officer and Head of Legal Services) to award the contract provided:</p> <p>a) a written report by the relevant Head of Service (or such officers as nominated by the Head of Service in writing) has been provided and approved by the Procurement Board; and</p> <p>b) the report been included as an “Item for information” item for the Corporate Board and to the Operations Board.</p> <p>c) such decision has been made in accordance with Part 5.3 and 5.4 of the Constitution.</p>
<p>For contracts exceeding £2.5million per annum.</p>	<p>These contracts shall require a key decision of the Executive following recommendation by S151 officer and Head of Legal Services. Executive shall receive a report from the relevant officer either recommending for the contract to be awarded or seeking delegated authority for the relevant Head of Service to award the contract in consultation with the relevant Portfolio Holder, s151 officer and the Head of Legal Services.</p>

5.5 Paragraph 11.11.11 (Exclusions and Exceptions to Contract Rules of Procedure) of the Constitution already identifies that the requirement to conduct a competitive procurement process is excluded in certain circumstances including:

- where the contract is excluded under the Procurement Legislation;
- where the proposed contract is being awarded under a Purchasing Scheme;
- where the proposed contract is an extension to or a variation of the scope of an existing contract where the existing contract provides for such extension or a variation or where the variation is a modification permitted under the Procurement Legislation;
- where the contract is for specified social care services.

- 5.6 It should however be noted that all key decisions taken by the Council need to appear on the Council's Forward Plan. In accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 where a decision maker intends to make a key decision, that decision must not be made until at least 28 days public notice (Forward Plan) has been given that such a decision is to be made.
- 5.7 Under the Regulations a key decision is an executive decision, which is likely:
- (a) to result in the relevant local authority incurring **expenditure** which is, or the making of savings which are, **significant** having regard to the relevant local authority's budget for the service or function to which the decision relates; or
 - (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.
- 5.8 If Members are minded to approve the amended contract thresholds then it should be noted that decisions made by Officers under delegated authority will still have to appear on the Forward Plan within the prescribed deadlines and will also require the publication of a delegated officer decision notice which are then subject to the Council's call-in procedures

6. Proposals

- 6.1 It is proposed that the revised thresholds as set out in paragraph 5.4 of this report be adopted.

7. Conclusion

- 7.1 This report recommends changes to Part 11 of the Council's constitution.