

Notice of Meeting



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Governance and Ethics Committee

Monday 26 November 2018 at 5.00pm
in the Roger Croft Room Council Offices
Market Street Newbury

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Date of despatch of Agenda: Friday 16 November 2018

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact Andy Day/Moira Fraser/Stephen Chard on (01635) 519459/519045/519462

e-mail: andy.day@westberks.gov.uk / moira.fraser@westberks.gov.uk / stephen.chard@westberks.gov.uk

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WestBerkshire
C O U N C I L

Agenda - Governance and Ethics Committee to be held on Monday, 26 November 2018
(continued)

To: Councillors Steve Ardagh-Walter, Jeff Beck (Vice-Chairman), Jeff Brooks, Paul Bryant, Keith Chopping (Chairman), James Cole, Barry Dickens, Jane Langford, Geoff Mayes, Anthony Pick and Quentin Webb

Substitutes: Councillors Jason Collis, Sheila Ellison and Alan Macro

Agenda

Part I		Page No.
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 meetings of this Committee held on 30 July 2018, 8 August 2018 (Special) and 29 October 2018 (Special).	1 - 22
3	Declarations of Interest To remind Members of the need to record the existence and nature of any personal, disclosable pecuniary or other registrable interests in items on the agenda, in accordance with the Members' Code of Conduct .	
4	Forward Plan <i>Purpose: To consider the Forward Plan for the next 12 months.</i>	23 - 26

Governance Matters

5	Financial Statements 2017/18 - Annual Audit Letter (GE3360) <i>Purpose: To provide Members with the Final Annual Audit Letter 2017/18 from KPMG, this audit letter summarises the outcome from their audit work at West Berkshire Council in relation to the 2017/18 audit year.</i>	27 - 38
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Agenda - Governance and Ethics Committee to be held on Monday, 26 November 2018
(continued)

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| 6 | External Auditors - Audit Progress Report and Sector Update (GE3661)
<i>Purpose: To provide the Governance and Ethics Committee with a report from Grant Thornton on progress in delivering their responsibilities as our new external auditors and a sector update.</i> | 39 - 56 |
| 7 | Internal Audit Update Report (GE3628)
<i>Purpose: To update the Committee on the outcome of Internal Audit work carried out during quarters one and two of 2018-19.</i> | 57 - 70 |
| 8 | Amendments to the Constitution (GE3260)
<i>Purpose: To propose a number of amendments to Parts 2, 3, 10, 11 and 13 of the Constitution.</i> | 71 - 116 |
| 9 | Exclusion of Press and Public
<i>RECOMMENDATION: That members of the press and public be excluded from the meeting during consideration of the following items as it is likely that there would be disclosure of exempt information of the description contained in the paragraphs of Schedule 12A of the Local Government Act 1972 specified in brackets in the heading of each item.</i> | |

Part II

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| 10 | Strategic Risk - Key Issues Q2 2018/19 (GE3639)
<i>(Paragraph 3 -information relating to financial/business affairs of particular person)</i>
<i>Purpose: To highlight the key strategic risk issues that need to be considered and to outline the actions that are being taken to mitigate those risks. Full details regarding the Strategic Risk Key Issues are provided in Appendix D together with the method used to score risks for the Council included in Appendix E.</i> | 117 - 154 |
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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, 30 JULY 2018

Councillors Present: Steve Ardagh-Walter, Jeff Beck (Vice-Chairman), Jeff Brooks, Paul Bryant, Keith Chopping (Chairman), James Cole, Jane Langford (In place of Barry Dickens), Geoff Mayes, Anthony Pick and Quentin Webb

Also Present: Shannon Coleman-Slaughter (Chief Financial Accountant), Andy Day (Head of Strategic Support), Julie Gillhespey (Audit Manager) and Andy Walker (Head of Finance and Property), Moira Fraser (Democratic and Electoral Services Manager) and Councillor Rick Jones (Executive Portfolio: Corporate Services)

Apologies for inability to attend the meeting: Barry Dickens

PART I

3 Minutes and Matters Arising

The Chairman welcomed Antony Smith and Greg Morris from KPMG to the meeting.

The Minutes of the meetings held on 23 April 2018 and 08 May 2018 were approved as a true and correct record and signed by the Chairman subject to the inclusion of the following amendments:

23 April 2018, Item 29 (Minutes and Matters Arising), Page 2, first paragraph, last line replace the word 'form' with 'from'.

23 April 2018, Item 32 (Monitoring Officer's Annual report to the Governance and Ethics Committee – 2017/18 Year End), Page 3, second paragraph, eighth line replace the word 'wad' with 'had'.

23 April 2018, Item 33 (Internal Audit Plan 2018/19), Page 4, final paragraph, first line delete the word 'in'.

Matters Arising

Actions 1 and 2 had been completed and could therefore be deleted from the list of outstanding actions.

Item 4 GDPR Training – Sarah Clarke had established from the Head of HR that Members were not required to undertake the e-learning.

Item 5 Risk Evaluation of Street Lighting – Julie Gillhespey stated that she had relooked at this issue and that she believed that street lighting warranted being classified as a moderate risk and consideration would be given to including it in the audit plan for the following year.

4 Declarations of Interest

There were no declarations of interest received.

5 Forward Plan

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

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Moira Fraser commented that if Members were minded to approve the recommendations in Agenda Item 5 she would include six monthly risk management update reports to the forward plan.

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

6 Review of Governance of Risk Management (GE3601)

The Committee considered a report (Agenda Item 5) concerning the governance and management arrangements of the Council's Risk Management function.

Andy Day in introducing the item reported that this report attempted to consolidate a number of previous reports relating to risk management. The risk management function had recently been subsumed in the Strategic Support Service. While the function had been transferred no resources had been attached to the transfer. As a consequence he had allocated 0.75 days per week to this activity. This was largely commensurate with the level of resource previously allocated to this function when it had resided in the Audit Team.

This report provided an update on progress made since April 2018 when the function had transferred. Andy explained that he and Catalin Bogos were in the process of reviewing and redrafting the risk management policy. Work was also ongoing on amending the risk management templates and they were also reviewing the triggers which would cause a risk to be escalated from a service risk register to the strategic risk register. It was envisaged that this would be a living document and risks would move between registers when triggers were reached or where risks were not imminent. Andy and Catalin would be meeting Heads of Service and Senior Management Teams as well as the Corporate Management Team to discuss the changes.

A quarter 1 report had been produced which was based on previous iterations but work would be ongoing to update this document too. It was envisaged that six monthly risk management updates would be taken to Corporate and Operations Board as well as to the Governance and Ethics Committee.

Andy apologised that recommendation 2.6 had erroneously been included in this report.

Councillor Paul Bryant was concerned with the impact a reduction in resources could have on this important function. Andy commented that as he was new to managing this function he could not comment on how this area was previously resourced. Officers would be seeking to educate services and amend processes however any activity had to be proportionate to the resources available.

Councillor James Cole commented that he had initiated this activity after the Governance and Ethics Committee had asked him to attend Risk Management Group meetings. That Committee had not proved to be very successful and had subsequently been disbanded. Ian Priestley had drafted the first report on this issue and Councillor Cole had had significant input into that report. He did not agree with the current version of the report. He had however met with Andy Day and Catalin Bogos and could see a way forward which could be achieved over a period of time.

Councillor Cole stated that he had wanted Senior Managers and the Executive to gain a clearer understanding of risk appetite and tolerances. He wanted the Council to understand that the risk register did not quantify financial exposure of the Council. He also wanted to test the controls to ensure they actually existed. He also wanted to ensure integration across the silos that existed within the Council. He wanted to use existing

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data to understand if the Council was likely to hit its tolerances. In his opinion the only way to achieve this would be have a database for risk and this was the one recommendation that had not been agreed by either Corporate or Operations Board. The database could also be used to tie risk reserves to the risk register. In summary this document did not achieve what he had set out to achieve but that that could be resolved over time.

Councillor Steve Ardagh-Walter queried if the revised level of resources had been compared with other similar authorities. Andy Day commented that he had not done so. He wished to stress that this report was an update on progress that had been made since April 2018. The issues around risk appetite and tolerances etc. raised by Councillor Cole would be considered as part of the review of the risk management policy which was currently been undertaken.

Councillor Quentin Webb thanked Councillor Cole for his endeavours. He welcomed the revised governance arrangements which were set out in paragraph 4.2 of the report. Councillor Webb commented that he supported the contents of this report.

Councillor Jeff Brooks queried what processes Councillor Cole wished to see in place in order to achieve his goals. He asked if Councillor Cole wished him to propose that he be involved in the introduction of the changes. Councillor Cole did not take him up on this offer but commented that he had not been invited by Officers to help. Councillor Brooks supported the recommendation for ongoing updates to be brought to the Governance and Ethics Committee. He also suggested that it would be useful if the Strategic Risk Register was also presented to the Committee as part of the update report. Andy Day agreed to do this **(Andy Day to Action)**.

RESOLVED that:

1. notwithstanding the resource implications, the Risk Management function be subsumed into Strategic Support.
2. the Risk Management Group be abolished and the existing governance arrangements set out in Paragraph 4.2 (Appendix A) be used to manage this function going forward.
3. the Risk Management policy be reviewed and, as part of this review, the Council's risk appetite be considered and developed.
4. all service risk registers be amended to ensure that they contained the full impact of any risks such as any financial liability etc.
5. Operations Board and the Governance and Ethics Committee receive 6 monthly Risk Management update reports.
6. 4 of the 5 recommendations proposed by Councillor Cole (paragraph 3.2 of Appendix A refers) be supported, the only one not supported, at this stage, being the need for a Risk Management database.

7 Internal Audit Annual Assurance Report (GE3330)

The Committee considered a report (Agenda Item 6) which discharged the requirement of the Audit Manager to make an annual formal report to those charged with governance within the Council under the Public Sector Internal Audit Standards (PSIAS).

The audit opinion was based upon the assurance work undertaken during the year, knowledge gained from previous assurance work, as well as intelligence gained from other sources of assurance, both internal and external, for example, Ofsted and the Council's Finance and Governance Group. The report was linked to the Annual Governance Statement which was also included on this agenda.

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Julie Gilhespey explained that the council was required to produce this report on an annual basis. This report was longer than previous iterations to ensure that it fully met the requirements of the PSIAS, but the key issues were set out in paragraph 5.4 on page 24 of the agenda

Councillor Quentin Webb asked for comment on the process that was followed in the case of weak and very weak audits. Julie explained that the recommendations would be shared with the relevant Head of Service and Corporate Director who would be tasked with meeting the recommendations. Audit would undertake a follow up six months later to ensure that sufficient progress was being made with implementing the recommendations. Councillor

Councillor Rick Jones commented that as the portfolio holder for this area he wished to stress that it was the audit teams role to identify issues and then report them to the relevant Head of Service, Corporate Director and Portfolio Holder. It was these officers that needed to resolve the issues. Audit then undertook a review six months later where the audits were deemed to be weak or very weak to see if satisfactory progress had been made. Julie Gilhespey stated that Governance and Ethics could ask Internal audit to undertake a second follow up where they felt it was needed.

Councillor Anthony Pick noted that in terms of the follow ups one follow up had shown that progress was unsatisfactory (Management of Archive Storage) and one was satisfactory (Section 17 Support), where it was unsatisfactory did this then mean that the service was ineffective. Julie Gilhespey stressed that this did not demonstrate that the service was ineffective just that the controls were weak which increased the risk that something could go wrong.

Councillor Steve Ardagh-Walter was concerned about the potential delay between a concern being identified and the concern being reported at a Governance and Ethics Committee meeting. He queried if the presentation on follow ups could be amended to be more informative for the Committee. Data for the past three years would be useful. Julie stated that she could look into this. **(Julie Gillhespey to Action)**. Members commented that it would be useful if some of the definitions could also be included in the report.

RESOLVED that the report be noted.

8 **Annual Governance Statement (GE3331)**

The Committee considered a report (Agenda Item 7) which set out the Annual Governance Statement (AGS) for the Council for 2017-18. The report also outlined issues that Corporate Board considered should be included in the 2017-18 AGS as they required action to resolve.

Andy Walker explained that the governance framework comprised the systems and processes, and culture and values, by which West Berkshire Council was directed and controlled and its activities through which it engaged with, led and accounted to the community.

It enabled West Berkshire Council to monitor the achievement of its strategic objectives and to consider whether those objectives had led to the delivery of appropriate, cost effective services. Comments from the Monitoring Officer and the s151 Officer were set out in Section 4 of the report.

RESOLVED that the actions to mitigate risks to the Council's governance arrangements be agreed.

9 Financial Statements (GE3327)

The Committee considered a report (Agenda Item 8) which provided Members with the ISA260 report from KPMG. Shannon Coleman-Slaughter explained that the report included KPMG's opinion on the Council's Financial Statements, the Council's Value for Money and any additional recommendations. The report also included the final copy of the Council's Financial Statements as at 31st March 2018.

Antony Smith from KPMG stated that this was an excellent audit report. Page 61 of the report set out any issues that were outstanding at the time the report was prepared. They noted that the timeframe for preparing the report had been foreshortened by two months this year which was why some of the work was still ongoing.

Mr Smith highlighted the following key outcomes in the report:

- There were no unadjusted audit differences.
- One presentational adjustment had been made in respect of capital financing.
- They had agreed an audit adjustment of £4.1m to the Comprehensive Income and Expenditure Account to remove transactions relating to the financing of capital which was in line with a similar adjustment in 2016/17
- They had issued an unqualified value for money conclusion.
- They had not identified any matters that would require them to issue a public interest report nor had they needed to exercise any other audit powers. There were no issues that they wished to draw to the attention of the Committee.
- The only significant risk to the council that they had identified was in relation to pension liabilities
- The other areas the audit had focussed on were valuation of land and buildings, valuation and disclosure of investment assets and the faster close.
- In terms of the investment assets they had looked into the governance arrangements and were satisfied that the purchases accorded with the agreed policies.
- In terms of the faster close down the Council had delivered a commendable quality of accounts and supporting documents given the reduced timescales. This was particularly notable given the loss of key staff over this critical period.
- Fraud risk from revenue recognition was not seen to be a particular issue for local authorities they therefore had not included specific work into their audit plan over and above their standard fraud procedures. No issues were identified.
- There were no matters arising from their work related to fraud risk from management override of controls.
- The value for money conclusions were set out on page 75 and 76 of the agenda. They were satisfied that the Council's arrangements were satisfactory and processes were in place to identify situations early on and take corrective action.

Andy Walker stated that KPMG had been the Council's auditors for the past ten years. New auditors (Grant Thornton) would be taking over as of the 2018/19 financial year. He wished to convey the Council's thanks to the team for all their hard work and pragmatic approach.

Councillor Jeff Brooks queried the rate at which the Berkshire County Council PWLB loans were being repaid. Andy Walker commented that the Council had taken on loans of around £34m and the value of these loans had been reduced to £20.5m. Some of the

GOVERNANCE AND ETHICS COMMITTEE - 30 JULY 2018 - MINUTES

loans were for a sixty year period and therefore still had a long way to run. The Council had looked at refinancing these loans but this had not proved to be possible.

Councillor Ardagh-Walker queried what impact a rise in interest rates would have on the Council's outstanding loans. Andy Walker explained that a separate report (Treasury Management Annual report) would be produced that would look at these issues the report would be taken to the September Executive meeting. He stated that the council had decided that all borrowing would be done on fixed rates.

Councillor Quentin Webb thanked the Team for all their hard work and Councillor Chopping commented that this was an excellent piece of work.

RESOLVED that the Financial Statements be approved as required by the Accounting and Audit Regulations.

(Antony Smith and Greg Morris left the meeting)

10 Planned Audit Fee for 2018/19 (GE3577)

The Committee considered a report (Agenda Item 9) which provided Members with a copy of the Audit Fee letter for 2018/19 from Grant Thornton. The letter set out the fee for audit in line with the prescribed scale fee set by the Public Sector Audit Appointments Ltd (PSAA). It was noted that the Governance and Ethics Committee had previously agreed that the Council should become a member of the PSAA, who now appointed its auditors which had resulted in a 23% reduction in the fees for 2018/19. The 2018/19 fee totalled £74,423.

Councillor Jeff Brooks commented that it was good practice to change auditors periodically.

Councillor Steve Ardagh-Walter stated that he had raised concerns about this approach at previous meetings but that it appeared to be a successful decision and he wanted to thank Officers for seeing it through.

RESOLVED that the planned audit fee letter for 2018/19 be noted.

11 Outcome of the External Review of Internal Audit (GE3270)

The Committee considered a report (Agenda Item 10) concerning the outcome of the external assessment of Internal Audit.

The outcome of the assessor's report had concluded that the Council's Audit Team 'Generally Conforms' with the PSIAS. There were a small number of recommendations and some suggestions for improvement.

Julie Gillhespey commented that the Council was required to undertake this review every five years. She was pleased with the outcome of the review which stated that the Council generally conformed with requirements. The report set out 4 recommendations and 5 suggestions. These were incorporated into the action plan set out on page 222 of the agenda. If members were minded to agree them she was happy to introduce them.

The only item which was slightly unusual was S1 Consider undertaking a review of the remit and effectiveness of the Governance and Ethics Committee. This would be done against a checklist from CIPFA guidance for audit committees. Julie commented that if Members were minded to accept this suggestion the review would be undertaken by Internal Audit.

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Councillor Jeff Beck commented that he endorsed the recommendations especially Recommendation 3 which was to strengthen the Service by the introduction of an additional post to the team. Julie Gillhespey explained that there were currently three members of the team and they were in the process of recruiting a senior auditor. It was hoped that the appointment would be made later that week.

RESOLVED that the report be noted and the content of the Action Plan be approved as the basis of a Quality Assurance Improvement Plan (QAIP) for Internal Audit.

12 Date of the Next Meeting

The Committee noted that the dates for the remainder of the Municipal Year were as follows:

- 8 August 2018
- 28 August 2018
- 26 November 2018
- 4 February 2019
- 16 April 2019

(The meeting commenced at 5.00 pm and closed at 6.10 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 WEDNESDAY, 8 AUGUST 2018

Councillors Present: Steve Ardagh-Walter, Jeff Beck (Vice-Chairman), Paul Bryant, Keith Chopping (Chairman), James Cole, Barry Dickens, Jane Langford, Geoff Mayes, Anthony Pick and Quentin Webb

Also Present: Sarah Clarke (Acting Head of Legal Services), Stephen Chard (Principal Policy Officer) and Moira Fraser (Democratic and Electoral Services Manager)

Apologies for inability to attend the meeting: Councillor Jeff Brooks

PART I

13 Declarations of Interest

Councillors Steve Ardagh-Walter, Jeff Beck, Paul Bryant, Keith Chopping, James Cole, Anthony Pick and Quentin Webb declared an interest in Agenda Item 3, but reported that, as their interest was a personal or an other registrable interest, but not a disclosable pecuniary interest, they determined to remain to take part in the debate and vote on the matter.

Councillor Jane Langford declared an interest in Agenda Item 3, but reported that, as her interest was a personal or an other registrable interest, but not a disclosable pecuniary interest, she determined to remain to take part in the debate.

14 NDC2/18

(Councillors Steve Ardagh-Walter, Jeff Beck, Paul Bryant, Keith Chopping, James Cole, Anthony Pick and Quentin Webb declared a personal interest in this item by virtue of the fact that the Subject Member was a fellow member of the Conservative Group).

(Councillors Ardagh-Walter, Beck, Pick and Cole also declared that they had previously canvassed with the Subject Member during elections).

(The Subject Member had previously acted as the agent for Councillor Webb during elections).

(None of these Councillors considered the Subject Member to be a close personal friend).

(As their interests were personal and not prejudicial they were permitted to take part in the debate and vote on the matter).

(Councillor Anthony Pick declared a personal interest in this item by virtue of the fact that his wife was a member of the Newbury and District Association of the National Trust as was the Investigator, Elizabeth Howlett. As his interest was personal and not prejudicial he was permitted to take part in the debate and vote on the matter).

(Councillor Jane Langford declared a personal interest in this item by virtue of the fact that she was a member of the West Berkshire Conservative Association, however she did not know any of the parties involved in the complaint. As her interest was personal and not prejudicial she was permitted to take part in the debate but as a parish councillor she was not able to vote on the matter).

GOVERNANCE AND ETHICS COMMITTEE - 8 AUGUST 2018 - MINUTES

The Committee considered a report (Agenda Item 3) concerning an alleged breach of West Berkshire Council's Code of Conduct by Councillor Dominic Boeck. The complaint was received from Mr Thomas Tunney on behalf of the Newbury Constituency Labour Parties Executive Committee and was received by West Berkshire Council's Monitoring Officer on 3 April 2018.

The Chairman, Councillor Keith Chopping, welcomed everyone to the meeting and outlined the procedure for the day.

Sarah Clarke (Monitoring Officer) informed the Committee that following a request by the Subject Member that he be permitted to stand down from his Portfolio, the Leader of the Council agreed to change Councillor Boeck's Portfolio from Health and Wellbeing, Leisure and Culture to that of Corporate Services.

In accordance with the Council's protocol and procedures the Committee would receive representations from the Independent Investigator (Ms Elizabeth Howlett), the Complainant (Mr Thomas Tunney, supported by Ms Julie Wintrup) and the Subject Member (Councillor Dominic Boeck, supported by Councillor Graham Bridgman).

Independent Investigator – Ms Elizabeth Howlett in addressing the Committee raised the following points:

- She felt there were three key areas on which to focus:
 - (a) The question of whether the Subject Member was acting, claiming to act or giving the impression of acting in his capacity as a Councillor at the time of the complaint.
 - (b) The two distinctly separate social media threads which were the subject of the complaint. Ms Howlett considered that the first thread, in relation to Eddie Izzard, was a political comment and she did not consider it to be disrespectful. The second thread was different. Ms Howlett did consider this to be disrespectful as it directly characterised transgender people as mentally ill.
 - (c) Thirdly, the legal framework.
- In relation to point (a), this was the key question because it would determine whether the Code of Conduct applied at all. Ms Howlett highlighted that Councillor Boeck was a high profile Councillor, a Member of West Berkshire Council's Executive and until very recently was Chairman of the Health and Wellbeing Board. She considered that because of Councillor Boeck's high profile role at West Berkshire Council that he would be followed on Twitter purely because he was a Councillor. Ms Howlett felt that on balance, it was likely that Councillor Boeck was perceived by followers of his Twitter account to be acting in his capacity as a Councillor. Ms Howlett therefore concluded that the Subject Member gave the impression that he was acting in his capacity as a Councillor even though she accepted that it might not have been his intention and was not in relation to the business of West Berkshire Council.
- Turning to point (b) and specifically the first thread, Ms Howlett expanded on her view that the comment in relation to Eddie Izzard was political but was not disrespectful to an individual. While the Complainant considered it to be disrespectful to the Labour Party, Ms Howlett stated that the Code of Conduct allowed for political debate and political 'tit for tat', which could often be robust and passionate, meaning a degree of leeway was permissible. She therefore repeated her view that Councillor Boeck had not acted disrespectfully for the first thread.
- Ms Howlett repeated her conclusion that the second thread was disrespectful as it equated a transgender person as being mentally ill.

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- In terms of the legal framework, actions which were illegal offline were illegal online and the same rules applied. Twitter, despite its transient nature, was subject to defamation laws. The case law provided in the report highlighted a precedent which supported this view. The case law also gave an example of where an individual was considered to be acting as a Councillor even though they did not identify themselves as such, this was particularly so for those of a high profile.
- The Independent Investigator confirmed her conclusions as follows:
 - On balance, the Subject Member gave the impression that he was acting in his capacity as a Councillor even though it might not have been his intention.
 - She did not believe that the Subject Member had used resources issued to him by the Council. Ms Howlett was reasonably confident that Councillor Boeck had used his own personal iPhone.
 - The Subject Member had been disrespectful in relation to thread two, but not thread one.
 - The Subject Member had failed to adhere to the regulations pertaining to equality as Councillor Boeck had not treated those with mental illness with respect.

Questions and Answers – the Committee

In response to a question from Councillor Anthony Pick, it was confirmed that the thread one complaint was dated 3 April 2018 and the thread two complaint was dated 16 March 2018.

Councillor Pick referred to the definition provided in the Independent Investigator's report of bullying and intimidating behaviour. This stated that it might happen once, or be part of a pattern of behaviour, although minor isolated incidents were unlikely to be considered bullying. He therefore queried if it was the Independent Investigator's view that the matter was a minor isolated incident. Ms Howlett reiterated that she considered Councillor Boeck to have acted disrespectfully but this did not amount to bullying.

Questions and Answers – the Complainant – none raised.

Questions and Answers – the Subject Member

Councillor Bridgman, on behalf of Councillor Boeck, queried the definition of capacity in the West Berkshire Council Code of Conduct. This stated that a Councillor or Co-opted Member was acting in their capacity as such when they were:

- acting as a representative of the Council; or
- participating in a meeting, or at briefing meetings with officers and members of the public; or
- corresponding with the authority other than in their private capacity.

Councillor Bridgman sought confirmation that the matter of whether or not Councillor Boeck was acting in his capacity as a Councillor was in relation to 'acting as a representative of the Council'. Ms Howlett confirmed this to be the case and reiterated that, on balance, she considered that Councillor Boeck had been acting in his capacity as a Councillor. She did however accept that greater clarity could be provided in the Code of Conduct and Social Media Policy on the use of social media by Councillors, and the matter of capacity.

Ms Howlett added that she had considered this point very carefully and explained that Councillor Boeck's high profile tipped the balance on her view that he was acting in his capacity as a Councillor. If the complaint related to a lower profile, backbench Member then she might have reached a different conclusion.

GOVERNANCE AND ETHICS COMMITTEE - 8 AUGUST 2018 - MINUTES

The Complainant – Mr Thomas Tunney in addressing the Committee raised the following points:

- That he had nothing to add to the information that was already included in the paperwork.

Questions and Answers – the Committee

Councillor Anthony Pick noted that at the time of the incident Councillor Boeck only had around 120 to 130 followers on his twitter account and he asked Mr Tunney whether he considered this was a relatively small number to make a complaint about. Mr Tunney responded by saying that he did not agree with this assertion and that anything in the public domain could be deemed to be disrespectful irrespective of the number of people that followed a Twitter user.

Councillor Pick noted that a complaint, about the tweets, had been made to the Newbury Labour Party's Executive Committee (NLPEC) by a resident and he queried if this person was someone from the Lesbian, Gay, Bisexual, and Transgender (LGBT) community. Mr Tunney stated that he would rather not comment on the identity of the person who had complaint to the NLPEC.

Councillor Paul Bryant asked Mr Tunney if the sole reason he had submitted the complaint was because it had been brought to his attention by an individual and Mr Tunney confirmed that it was.

Sarah Clarke stated that it was irrelevant if the person who had raised the concern with the complainant had any protected characteristics or not. The role of the Committee was simply to determine if the tweets were disrespectful or not.

Councillor Jeff Beck stated that the paperwork presented to the Committee appeared to be contradictory in terms of the apology made by Councillor Boeck. On page 45 (Investigator's Report) of the agenda it stated that "Mr Tunney, the complainant, did not accept the apology as being sincere." However on page 46 of the agenda it stated that "Councillor Boeck has made the point that others, including Newbury Labour Party, accepted his apology graciously (on 10th April it welcomed the change of heart and looked forward to his future contributions to the social media debate)." Mr Tunney explained that in his personal opinion the apology was not sincere but that the Newbury Labour Party had decided to accept Councillor Boeck's apology.

Councillor Beck sought clarity on who should be deemed to be the complainant. Mr Tunney explained that the matter had been raised with him by an individual. He had then discussed the submission of a complaint and sought permission from the NLPEC to submit it as he would not do anything that could implicate them without their permission. Ms Julie Wintrup commented that the NLPEC had worked together on a joint submission. Sarah Clarke stated that the Committee should consider Mr Tunney to be the complainant.

Ms Wintrup in addressing the Committee and answering queries raised the following points:

- Councillor Boeck was a councillor in a small local community;
- He held a high profile position within the Administration;
- Councillors were expected to abide by high standards of behaviour and in her opinion they should be deemed to be Councillors, and therefore representing the Council, at all times, twenty four hours a day seven days a week.
- Social media was no longer such a grey area and any comments on social media should be treated the same as comments made in other forms of media.

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- They disagreed with the Investigator's conclusion that thread one was political tit for tat and had set out their detailed reasons for doing so on pages 51 to 56 of the agenda.
- The comments made by Councillor Boeck did not refer to Eddie Izzard's (a high profile transgender person) political views, they merely commented on his appearance and that he presented as non-binary. They could therefore not see how these comments could be deemed to be 'political debate'.
- Councillor Boeck's comments were insulting to an especially vulnerable group of people and she was concerned about the message Councillor Boeck's tweet could have on other transgender people.
- Retweeting comments, even if it was only to 130 followers, could not be seen as anything but endorsing the views of others who had commented.

(The meeting was adjourned from 10.40am to 10.45am)

The Subject Member – Councillor Dominic Boeck in addressing the Committee raised the following points:

- He had lived in Thatcham, West Berkshire since 1988.
- He first stood as a candidate in the local elections in 2007, motivated by his wish to contribute more to the community that had embraced his family.
- He was unsuccessful in the 2007 elections but in 2011 he was returned to West Berkshire Council and Thatcham Town Council to represent the Thatcham South and Crookham Ward.
- He joined the Executive in 2014.
- The Twitter account he presently used had been active since 2009. Initially he only used it for private purposes, mainly in following other users.
- In 2015 he started to use Twitter more actively and to engage in political exchanges, although he still considered his usage to be 'light'. His Twitter profile had remained relatively unchanged from 2009 until recently.
- At the time of the complaint he had not considered whether he was acting in his capacity as a Councillor on Twitter and it was not his intention to portray himself as such. He noted the conclusion of the Independent Investigator and the Advisory Panel that he was acting in his capacity as a Councillor but he did not consider that the political dialogues that he was part of fell into the categories of activities set out in the Code of Conduct.
- The dialogues were confined to the 121 followers he had at the time who were friends, activists, political organisations, journalists and businesses.
- He never meant to retweet the wrong and offensive comments by another user that was the subject of the complaint.
- At that time he considered that he was acting as a private individual and if he had realised then that he might have been perceived as Councillor Boeck he would have taken much more care.

Questions and Answers – the Committee

Councillor Pick asked the Subject Member if he was content with the statement he made in his response to the complaint that he absolutely did not believe that anyone with gender identity issues was mentally ill. Councillor Boeck confirmed that this was his firm

GOVERNANCE AND ETHICS COMMITTEE - 8 AUGUST 2018 - MINUTES

belief, he added that he had worked with transgender people and had family members also.

The Subject Member's response to the complaint also referred to support he had received from a previous Labour Party Parliamentary candidate and Councillor Beck queried who this individual was. Councillor Boeck explained that this was Richard Garvey.

In response to a question from Councillor Quentin Webb, Councillor Boeck explained that he had not identified himself as a Councillor or Executive Member in any tweets. He had tweeted in his role as a Councillor, but these were very small in number.

Councillor Boeck went on to explain that his current Twitter profile stated that he was the Ward Member for Aldermaston and a Lead Member at West Berkshire Council. At the time of the complaint however his profile only contained a photograph of himself taken before he was elected to West Berkshire Council in 2010.

Councillor Pick queried Councillor Boeck's motive for retweeting thread two. The Subject Member explained, as per his submission to the Advisory Panel, that he was interested in this story which involved a student in America expressing a view on gender identity which was disagreed with by the College Professor, the student was then ejected from their class. His interest was in relation to a suppression of or threat to freedom of speech. This was the only point that he wished to highlight by his retweet and should have done so independently. Inadvertently his retweet included the post that equated a transgender person as being mentally ill which was something he absolutely did not agree with.

Councillor Graham Bridgman in addressing the Committee and answering queries raised the following points:

- He was an adjacent Ward Member to Councillor Boeck and would speak on the Subject Member's behalf if a breach was found.
- However, he did state that he was a Member of the Code of Conduct Task Group that produced the existing Code of Conduct provided in the paperwork. Councillor Bridgman commented on the point of the capacity under which a Councillor was acting, i.e. acting in their capacity as a Councillor and where a councillor was not acting with capacity. Councillor Bridgman acknowledged that this was an area needing further work, particularly in relation to social media.
- However, there was a need to interpret this from the existing Code. The Code sought to distinguish the difference between acting and not acting in the capacity of Councillor. The Code applied to Councillors and Co-opted Members when they were acting, claiming to act or giving the impression that they were acting in the said capacity. Councillor Bridgman was not of the view that a Councillor was acting in their role 24 hours a day, seven days a week and the fact that the Code did distinguish between the different capacities supported that.
- Councillor Bridgman then turned to the definitions in Appendix 1 to the Code. This gave three elements of where a Councillor was acting in their capacity and Councillor Bridgman reiterated the view that only the first point 'acting as a representative of the Council' could apply in this case. This had been the definition in the previous version of the Code of Conduct.
- He referred back to the point made by the Independent Investigator and her view on whether this complaint was in relation to a frontbench or backbench Member, which influenced her view on the capacity question. Councillor Bridgman did not share the view of Ms Howlett, he considered that the Code, and any breach of it by a Member, should apply regardless of this status.

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- Councillor Bridgman therefore questioned whether Councillor Boeck was acting as a representative of West Berkshire Council when he made the retweet, regardless of his profile as an Executive Member. Councillor Bridgman explained that at the time of the complaint, Councillor Boeck was not the Chairman of the Health and Wellbeing Board, although he was an Executive Member. He was elected to that role after these retweets had taken place.

Questions and Answers – the Committee

Councillor Barry Dickens commented that from the point of view of a non-involved member of the public, they would not consider the point of capacity and this was to some degree irrelevant. Members of the public would consider a Councillor to be holding their office at all times. To a member of the public this retweet would be concerning.

Councillor James Cole asked Councillor Bridgman if he felt that all Councillors should be subject to a stricter approach to the use of social media. Councillor Bridgman repeated his view that the Code needed further attention in relation to social media. This case had brought out questions regarding interpretation of capacity. Councillor Bridgman pointed out that a different interpretation had been found by himself, the Independent Investigator and the Complainant. The social media element made this more difficult to determine.

Councillor Bridgman acknowledged the points made by Councillor Dickens but stated that the consideration for the Committee had to be on the current Code that was before them.

Councillor Webb sought to understand whether the Subject Member had a separate Twitter account as a Councillor. Councillor Boeck confirmed that he had a single Twitter account. At the time of the complaint, he did not identify himself as a Councillor on his account. He had since changed this and his account stated that he was a Councillor, Ward Member for Aldermaston and an Executive Member.

Closing

The Chairman asked the Investigator if there were any issues that she would like to clarify or respond to and Ms Howlett stated that there was nothing she wished to add.

The Chairman asked the complainant if there were any issues that he would like to clarify or respond to. Ms Wintrup stated that she was interested to note the comment made by Councillor Bridgman that at the time of tweeting Councillor Boeck was not the Portfolio Holder for Health and Wellbeing. He had been appointed to this role after the comments were made and she stated that she did not know if this was better or worse. She noted that Councillor Boeck had stood down from his role as Portfolio Holder for Health and Wellbeing but she stated that promoting equality and mental health was the responsibility of all Portfolio Holders.

Councillor Anthony Pick queried if the second tweet, however offensive the remark was, should be deemed to be disrespectful to people with a mental illness or transgender people? Julie Wintrup stated that this class of people, especially young people, tended to suffer from mental health issues associated with uncertainty around their gender. They had a higher rate of suicide and were consequently often vulnerable and therefore this tweet should be deemed to be insulting.

The Chairman asked the Subject Member if there were any issues that he would like to clarify or respond to and Councillor Boeck stated that there was nothing he wished to add.

(The meeting was adjourned from 11.16am to 12.15pm)

Decision as to whether a breach had occurred

GOVERNANCE AND ETHICS COMMITTEE - 8 AUGUST 2018 - MINUTES

The Chairman welcomed everyone back to the Chamber and thanked all parties for their patience. The Chairman announced that the Committee has resolved, after considering the written and oral information presented to it that day, that in relation to the complaint made by Mr Thomas Tunney on behalf of Newbury Constituency Labour Party's Executive Committee on 3 April 2018 that Councillor Dominic Boeck had breached West Berkshire Council's Code of Conduct:

1. That they concurred with the Investigator's finding that Councillor Boeck was "acting, claiming to act or giving the impression of acting in his capacity as a Councillor" even though he may not have intended that.
*To quote the West Berkshire Code of Conduct for Councillors.
2. That they concurred with the Investigator's finding that Councillor Boeck did not make the comment or retweet the threads, using resources issued to him by the Council and that in all likelihood all the social media activity took place on Councillor Boeck's iPhone which was his own personal property.
3. That, in relation to thread one, the comments made by Councillor Boeck about Eddie Izzard on his Twitter account constituted robust political debate or political comment and therefore the comments were not disrespectful, bullying or intimidating.
4. That, in relation to thread two, where Councillor Boeck had retweeted the comments offered by BrexitTory even if he had acted carelessly or in haste, he had not contradicted the opinion offered. In retweeting the comments it could be concluded that he supported the view that transgender people were mentally ill. His behaviour could therefore be deemed to be disrespectful and therefore Councillor Boeck had breached the Council's Code of Conduct.
5. The Committee also considered that thread two, whilst of itself contrary to the regulations pertaining to equality, did not amount to a separate breach of the Code of Conduct.

Sanctions

The Chairman stated that as the Committee had determined that a breach of West Berkshire Council's Code of Conduct had occurred he would like to invite the Monitoring Officer to address the Committee as to whether the Committee should take any action against Councillor Boeck and what form any sanction should take.

Sarah Clarke explained to Members of the Committee that the sanctions available to them were set out on page 65 of the agenda. The sanctions were a matter for this Committee to determine and any sanctions imposed should be both reasonable and proportionate. The Committee needed to have regard to the specific breach identified and the facts relevant to that breach.

The Committee also needed to take cognisance of any mitigation put forward by the Subject Member. Members should have regard to what the Subject Member's intention was, in other words did he intend to cause offence and had he disregarded the Council's Code of Conduct.

The Committee should consider the steps subsequently taken by the Subject Member including the fact that he had removed the offending tweet, he had made a public apology on more than one occasion for offence caused by his action, he had co-operated with the Investigator and the investigation and that he had resigned from his post as Portfolio Holder for Health and Wellbeing.

Sarah Clarke also stated that Members might also have regard to the fact that the Social Media Protocol should have been updated in 2016 and that the current version did not

GOVERNANCE AND ETHICS COMMITTEE - 8 AUGUST 2018 - MINUTES

offer any advice or set suitable parameters around tweeting. This was a rapidly changing area and the Protocol needed to be updated to reflect this. The Advisory Panel had noted this and asked that the Protocol be updated as part of their recommendations.

The Chairman then invited Councillor Boeck to make representations by way of mitigation and to explain which sanctions he felt would be most appropriate in this case.

The Subject Member – Councillor Dominic Boeck in addressing the Committee raised the following points:

- He believed that he was well respected by those who knew him well and he always tried to put the residents of Aldermaston Ward and West Berkshire first in all he did as a Councillor.
- He understood the Nolan Principles and his instinctive behaviour tended to mirror them well.
- This complaint was the first one that had ever been brought against him whether formally or informally, as far as he was aware.
- The tweet that the Committee had ruled to be a breach of the Code of Conduct came about through his interest in a story of a threat to freedom of speech. It was his intention to retweet only this story but he inadvertently included the wrong and offensive comments from another user.
- When he found out that his tweet had offended others he immediately regretted posting it and sought advice from friends on how best to redress the matter. He decided to make an apology through Twitter to clarify his personal views and to disassociate himself from the views he had mistakenly retweeted.
- His apology drew supportive comments on Twitter from private individuals and from the Newbury Labour Party.
- He thanked Ms Howlett for her investigation and for the well-balanced report she had produced.
- He had made a mistake that he regretted and it was a mistake that he would not make again. It was a mistake that did not reflect any view that he held.
- He had been brought up to treat others with respect and he had always tried his best to do so. In this case, he had failed and he accepted the Committee's conclusion that through one retweet he was in breach of the Code of Conduct.
- He felt that the complainant had set out to portray him as a peddler of a high profile stream of discriminatory material that posed a threat to the wellbeing of residents.
- Most of his tweets were about local issues and events, sometimes relating to his friends and family sometimes about what he had been doing. He had retweeted material critical of other political parties.
- The complainant had tried to identify him as an individual who deliberately incited division and discrimination and they attributed beliefs to him that were far from those that he actually held.
- He had welcomed the request from the Leader of the Council, Graham Jones, to take the lead on Public Health and Wellbeing, Culture and Leisure. He saw the role as being important and challenging with the potential to bring about significant change for the good of all of the district's residents.
- He had always tried his best to treat others with respect and he was certain that he would never deliberately seek to harm or disadvantage anyone.

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- The previous week he had concluded that this process had become such a distraction that the important work of the Health and Wellbeing Board was at risk of being impaired and he had reluctantly tendered his resignation to the Leader.
- He accepted that he had breached the Code of Conduct in respect of one tweet but questioned the severity of the sanctions recommended by the Advisory Panel.
- He asked the Committee to consider whether the sanctions reflected a deliberate act that succeeded in causing severe harm and widespread horror or a careless slip with unfortunate consequences.

Councillor Bridgman in addressing the Committee raised the following points:

- He was in attendance as an adjacent Ward Member and fellow Councillor.
- In terms of sanctions he accepted that it was not Councillor Boeck's intention to give the impression that was taken.
- He reiterated that at the time he had retweeted the comments, Councillor Boeck was not the Portfolio Holder for Health and Wellbeing.
- Councillor Boeck had already apologised for his actions and had done so shortly after the concerns were brought to his attention.
- He did not believe that the sanctions recommended by the Advisory Panel were appropriate.

(The meeting was adjourned from 12.30pm to 1.09pm)

The Chairman stated that after carefully considering all the information, both written and oral, presented to the Committee it had been determined that the following sanction should be applied:

1. A formal letter would be sent to the Subject Member by the Chairman of the Governance and Ethics Committee, indicating that he had failed to comply with West Berkshire Council's Code of Conduct. The letter would be sent within 15 clear working days of the meeting.

In reaching a decision as to which sanctions to apply the Committee had given regard to the advice of the Monitoring Officer that any sanction should be both proportionate and reasonable.

The Committee accepted that the Subject Member did not intend to cause offence and that the thread was re-tweeted inadvertently.

The Committee noted in particular the steps that the Subject Member had already taken, regarding this matter, including:

1. He had removed the offending tweet.
2. He had made a public apology on more than one occasion for offence caused by his action. The Committee accepted the finding of the Independent Investigator that Councillor Boeck's apology was genuine.
3. He had co-operated with the Investigator and the investigation.
4. He had resigned from his post as Portfolio Holder for Health and Wellbeing.

RESOLVED that after carefully considering both the written evidence submitted and the oral evidence given at the hearing, the Committee found that in respect of the complaint made by Mr Thomas Tunney on behalf of Newbury Constituency Labour Party's Executive Committee on 3 April 2018, Councillor Dominic Boeck had breached West Berkshire Council's Code of Conduct. In reaching that decision, the Committee resolved:

GOVERNANCE AND ETHICS COMMITTEE - 8 AUGUST 2018 - MINUTES

1. That they concurred with the Investigator's finding that Councillor Boeck was "acting, claiming to act or giving the impression of acting in his capacity as a Councillor" even though he may not have intended that.

*To quote the West Berkshire Code of Conduct for Councillors

Reason: Although these two threads did not refer to Council business and Councillor Boeck's profile, at the time he retweeted the threads which were the subject of the complaint, did not identify himself as a Councillor he acknowledged that there were references to Council business on his twitter account, a number of the tweets were of a political nature and that he did use his twitter account for Council business.

Councillor Boeck was a member of the Executive at the time of the incidents and the Council's Social Media Protocol for Councillors stated that "be aware that the higher your profile as a councillor, the more likely it is you will be seen as acting in your official capacity when you blog or network".

The Committee therefore felt that any reasonable person looking at his twitter feed would perceive that Councillor Boeck was acting in his capacity as a Councillor.

2. That they concurred with the Investigator's finding that Councillor Boeck did not make the comment and retweeted the threads, using resources issued to him by the Council and that in all likelihood all the social media activity took place on Councillor Boeck's iPhone which was his own personal property.

Reason: There was no information presented to indicate that Councillor Boeck had used his Council equipment and Councillor Boeck had stated that he had used his personal phone for social media activity.

3. That, in relation to thread one, the comments made by Councillor Boeck about Eddie Izzard on his twitter account constituted robust political debate or political comment and therefore the comments were not disrespectful, bullying or intimidating.

Reason: The Committee agreed with the assertion of the Independent Investigator that the tweet amounted to political comment and was not a personally directed insult and could therefore not be deemed to be disrespectful.

4. That, in relation to thread two, where Councillor Boeck had retweeted the comments offered by BrexitTory even if he had acted carelessly or in haste he had not contradicted the opinion offered. In retweeting the comments it could be concluded that he supported the view that transgender people were mentally ill. His behaviour could therefore be deemed to be disrespectful and therefore Councillor Boeck had breached the Council's Code of Conduct.

Reason: The Committee stated that retweeting a comment that linked transgenderism to mental illness, without a qualifying comment to the contrary, could be seen by any reasonable person to be endorsing the comment.

5. The Committee also considered that thread two, whilst of itself contrary to the regulations pertaining to equality, did not amount to a separate breach of the Code of Conduct

Reason: The Committee commented that in retweeting the comment Councillor Boeck had not bound the Council by his actions and therefore he had not done anything which would have caused the Council to breach any of the equality enactments as defined in legislation.

Sanctions Imposed and the Reasons for the Sanctions

GOVERNANCE AND ETHICS COMMITTEE - 8 AUGUST 2018 - MINUTES

After carefully considering all the information, both written and oral, provided to the Committee they determined that a formal letter would be sent to the Subject Member by the Chairman of the Governance and Ethics Committee, indicating that he had failed to comply with West Berkshire Council's Code of Conduct. The letter would be sent within 15 clear working days of the meeting.

In reaching a decision as to which sanctions to apply the Committee had given regard to the advice of the Monitoring Officer that any sanction should be both proportionate and reasonable.

The Committee accepted that the Subject Member did not intend to cause offence and that the thread was re-tweeted inadvertently.

The Committee noted in particular the steps that the Subject Member had already taken, regarding this matter, including:

1. He had removed the offending tweet.
2. He had made a public apology on more than one occasion for offence caused by his action. The Committee accepted the finding of the Independent Investigator that Councillor Boeck's apology was genuine.
3. He had co-operated with the Investigator and the investigation.
4. He had resigned from his post as Portfolio Holder for Health and Wellbeing.

(The meeting commenced at 10.00am and closed at 1.11pm)

CHAIRMAN

Date of Signature

DRAFT

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, 29 OCTOBER 2018

Councillors Present: Steve Ardagh-Walter, Jeff Beck (Vice-Chairman), Jeff Brooks, Keith Chopping (Chairman), James Cole, Jason Collis (Substitute) (In place of Anthony Pick), Barry Dickens, Jane Langford, Geoff Mayes and Quentin Webb

Also Present: The Subject Member and their representative, the investigator, Sarah Clarke (Acting Head of Legal Services), Debi Miles, Moira Fraser (Democratic and Electoral Services Manager) and Jo Reeves (Principal Policy Officer)

Apologies for inability to attend the meeting: Councillor Paul Bryant and Councillor Anthony Pick

PART I

15 Exclusion of Press and Public

RESOLVED that members of the press and public be excluded from the meeting for the under-mentioned item of business on the grounds that it involves the likely disclosure of exempt information as contained in Paragraphs of Part 1 of Schedule 12A of the Local Government Act 1972, as amended by the [Local Government \(Access to Information\)\(Variation\) Order 2006](#). [Rule 8.10.4 of the Constitution also refers](#).

16 Declarations of Interest

Councillors Steve Ardagh-Walter, Jeff Beck, Jeff Brooks, Keith Chopping, Jason Collis, James Cole and Quentin Webb declared personal interests in this item for the reasons set out on the confidential decision notice. As their interests were personal and not an Other Registrable or Disclosable Pecuniary Interests they determined to take part in the meeting and vote on the item.

Councillor Jane Langford declared a personal interest in this item for the reason set out on the confidential decision notice. As her interests was personal and not an Other Registrable or Disclosable Pecuniary Interests she determined to take part in the meeting

17 NPC1/18

(Paragraph 1 – information relating to an individual)

The Committee considered an exempt report (Agenda Item 4) concerning a complaint regarding an alleged breach of the Code of Conduct.

RESOLVED that:

- a breach of the relevant Code of Conduct had occurred for the reasons set out in the decision notice.
- a formal letter be sent to the subject member by the Chairman of the Governance and Ethics Committee, indicating that they had failed to comply with the relevant Code of Conduct

(The meeting commenced at 10.00 am and closed at 2.16 pm)

GOVERNANCE AND ETHICS COMMITTEE - 29 OCTOBER 2018 - MINUTES

CHAIRMAN

Date of Signature

Governance and Ethics Committee Forward Plan November 2018 – November 2019

No.	Ref No	Item	Purpose	Lead Officer	Lead Member	Governance/Audit/Ethics
04 February 2019						
1.	C3405	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.	Sarah Clarke	Corporate Services	Governance
2.	C3650	Governance of the Code of Conduct Regime	To consider the governance arrangements around Standards complaints.	Sarah Clarke	Corporate Services	Governance
3.	GE3406	Internal Audit – Interim Report 2018-19	To update the Committee on the outcome of internal audit work.	Julie Gilhespey	Corporate Services	Audit
15 April 2019						
4.	C3424	Monitoring Officer's Annual Report to the Governance and Ethics Committee –2018/19 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.	Sarah Clarke	Corporate Services	Ethics
5.	GE3426	Internal Audit Plan 2019/20	To outline the proposed internal audit work programme for the next three years	Julie Gilhespey	Corporate Services	Audit
6.	GE3427	External Audit Plan 2019-20	To provide Members with a copy of the External Audit Plan for 2018-19	Julie Gilhespey	Corporate Services	Audit
7.	GE3629	Internal Audit – Interim Report 2018-19	To update the Committee on the outcome of internal audit work.	Julie Gilhespey	Corporate Services	Audit

No.	Ref No	Item	Purpose	Lead Officer	Lead Member	Governance/Audit/Ethics
17 June 2019 (Date TBC)						
8.	GE3639	Risk Management Update Report Q2 2018/19	To provide an update with progress.	Catalin Bogos	Corporate Services	Audit
9.	GE3436	Internal Audit Plan 2019/20	To outline the proposed internal audit work programme for the next three years.	Julie Gilhespey	Corporate Services	Audit
29 July 2019 (Date TBC)						
10.	GE3624	West Berkshire Council Financial Statements 2018/19 including external auditor's Opinion.	To provide Members with the final copy of the Council's Financial Statements	Andy Walker	Finance, Transformation and Economic Development	Audit
11.	GE3625	Internal Audit Annual Assurance Report 2018/19	The Public Sector Internal Audit Standards (PSIAS) require the Audit Manager to make a formal annual report to those charged with governance within the Council.	Julie Gilhespey	Corporate Services	Audit
12.	GE3626	Planned Audit Fee for 2019/20	To note the contents of the audit fee letter.	Lesley Flannigan	Chairman of Governance and Ethics Committee	Audit
13.	GE3627	Annual Governance Statement	To allow the committee to review the Annual Governance Statement before it is signed by the Leader and Chief Executive	Andy Walker	Corporate Services	Governance
25 November 2019 (Date TBC)						
14.	C3260	Amendments to the Constitution	To review and amend sections of the Scheme of Delegation in light of	Sarah Clarke	Corporate Services	Governance

No.	Ref No	Item	Purpose	Lead Officer	Lead Member	Governance/Audit/Ethics
			legislative changes and current practice.			
15.	GE3637	Financial Statements 2018/19 - Annual Audit Letter	To provide Members with the Final Annual Audit Letter 2018/19 from <i>external auditor. The audit letter summarises the</i> outcome from their audit work at West Berkshire Council in relation to the 2018/19 audit year.	Lesley Flannigan	Finance, Transformation and Economic Development	Audit
16.	GE3638	Internal Audit – Interim Report 2019-20	To update the Committee on the outcome of internal audit work.	Julie Gilhespy	Corporate Services	Audit

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Financial Statements 2017/18 - Annual Audit Letter

Committee considering report:	Governance and Ethics Committee
Date of Committee:	01 November 2018
Portfolio Member:	Councillor Anthony Chadley
Date Portfolio Member agreed report:	01 November 2018
Report Author:	Lesley Flannigan
Forward Plan Ref:	GE3360

1. Purpose of the Report

To provide Members with the Final Annual Audit Letter 2017/18 from KPMG, this audit letter summarises the outcome from their audit work at West Berkshire Council in relation to the 2017/18 audit year.

2. Recommendation

- 2.1 Members are requested to note the Annual Audit Letter.

3. Implications

- 3.1 **Financial: N/A**
- 3.2 **Policy: N/A**
- 3.3 **Personnel: N/A**
- 3.4 **Legal: N/A**
- 3.5 **Risk Management:**
N/A
- 3.6 **Property: N/A**
- 3.7 **Other: N/A**

4. Other options considered

- 4.1 None

5. Executive Summary

- 5.1 The Annual Audit letter summarises the results of the audit of this Council for the financial year 2017/18.
- 5.2 Value for Money was given an unqualified conclusion, KPMG were satisfied the Council had appropriate arrangements in place for securing economy, efficiency and effectiveness in the use of its resources.
- 5.3 The main areas identified in the risk assessments were; the reduction in core grant funding from central government and significant demand led pressure on the social care budgets. KPMG concluded that there is a balanced budget for 2018/19 and plans in place to deal with future identified gaps in the budget.
- 5.4 KPMG issued an unqualified opinion on the Council's financial statements on 31st July 2018.
- 5.5 The Whole of Government Accounts return for central government was not required to be audited as it now falls below the threshold.

6. Conclusion

- 6.1 KPMG have not raised any recommendations as part of their 2017/18.
- 6.2 Members are requested to note the Final Audit letter from KPMG for 2017/18.

7. Appendices

- 7.1 Appendix A – KPMG Final Audit Letter



Annual Audit Letter 2017/18

West Berkshire Council

August 2018

A group of business professionals, including a woman with dark hair and a man with grey hair, are seated at a table, looking down at documents. The image is partially obscured by a blue horizontal band containing text.

Section one

Summary for Governance and Ethics Committee

Summary for Governance and Ethics Committee

This Annual Audit Letter summarises the outcome from our audit work at West Berkshire Council ("the Authority") in relation to the 2017-18 audit year.

Although it is addressed to Members of the Authority, it is also intended to communicate these key messages to key external stakeholders, including members of the public, and will be placed on the Authority's website.

Audit opinion

We issued an unqualified opinion on the Authority's financial statements on 31 July 2018. This means that we believe the financial statements give a true and fair view of the financial position of the Authority and of its expenditure and income for the year.

Financial statements audit

Our audit procedures are designed to identify misstatements which are material to our opinion on the financial statements as a whole. Materiality for the Authority's accounts was set at £3.6 million which equates to around 1.1 percent of gross expenditure. We design our procedures to detect errors in specific accounts at a lower level of precision. We report to the Governance and Ethics Committee any misstatements of lesser amounts, other than those that are "clearly trivial", to the extent that these are identified by our audit work. In the context of the Authority, an individual difference is considered to be clearly trivial if it is less than £180,000.

We identified one significant adjustment. This related to various disclosures of capital items mainly within the Comprehensive Income and Expenditure Statement. Although the amendments increased income by £4 million, the change to net operating expenditure was only £11,000. There were also only small impacts on the Authority's 'net worth' (£144,000 increase); General Fund balance (£77,000 increase); and capital receipts reserve (£144,000 increase).

Our audit work was designed to specifically address the following significant risks:

- **Management Override of Controls** – Our audit methodology incorporates the risk of management override as a default significant risk, including controls testing and substantive procedures over journal entries and accounting estimates. We did not identify any specific additional risks of management override relating to this audit; and
- **Pension Liabilities** – we reviewed the controls that the Authority has in place over the information sent to the Scheme Actuary, including the Authority's process and controls with respect to the assumptions used in the valuation. We also evaluated the competency, objectivity and independence of Barnett Waddingham. We reviewed the appropriateness of the key assumptions included within the valuation and compared them to expected ranges. We also reviewed the methodology applied in the valuation by Barnett Waddingham. In addition, we reviewed the overall Actuarial Valuation and considered the disclosure implications in the financial statements. In order to determine whether the net pension liability has been appropriately accounted for we also considered the valuation of pension assets. As a result of this work we had no issues arising, relating to the pension assets and liabilities movements and year end balances as disclosed in the financial statements.

Whole of Government Accounts

The Authority prepares a consolidation pack to support the production of Whole of Government Accounts by HM Treasury. We are not required to review your pack as the Authority falls below the threshold where an audit is required. As required by the guidance, we have confirmed this with the National Audit Office.

Summary for Governance and Ethics Committee (cont.)

Other information accompanying the financial statements

Whilst not explicitly covered by our audit opinion, we review other information that accompanies the financial statements to consider its material consistency with the audited accounts. This year we reviewed the Annual Governance Statement and Narrative Report. We concluded that they were consistent with our understanding and did not identify any issues.

Value for Money conclusion

We issued an unqualified conclusion on the Authority's arrangements to secure value for money (VFM conclusion) for 2017/18 on 31 July 2018. This means we are satisfied that during the year the Authority had appropriate arrangements for securing economy, efficiency and effectiveness in the use of its resources.

To arrive at our conclusion we looked at the Authority's arrangements to make informed decision making, sustainable resource deployment and working with partners and third parties.

Value for Money risk areas

We undertook a risk assessment as part of our VFM audit work to identify the key areas impacting on our VFM conclusion and considered the arrangements you have put in place to mitigate these risks.

Our work identified the following significant matter:

- **Financial Resilience** – The Authority has continued to face reductions in its core grant funding leading to greater reliance on funding from Council Tax and from local business rate generation. 2017/18 saw a 61% cut in Revenue Support Grant for the Authority from the previous year. The reduction in core grant funding will continue until 2020/21 when it will have reduced to just 1.5% of available funding. The Authority has also faced significant demand-led pressure on its social care budgets and needed to make additional budget investment in 2017/18 of nearly £4 million. The final revenue outturn for 2017/18 was an over spend of £276,000 (which represents 0.23% of the net revenue budget), following actions taken by the Authority.

The Authority's balanced budget for 2018/19 includes £5.2 million of savings and income generation proposals, including reductions in street cleansing, introducing a charge for garden waste collection, further transformation in the way adult social care is provided, demand and cost management in social care, and investment in commercial property to generate new income streams.

For 2019/20 and 2020/21, the assumption in the Medium Term Financial Strategy is that Council Tax increases will be at 2% per year, leaving savings and income requirements of £5.22 million and £3.10 million respectively. For 2019/20, £2.80 million has already been identified and in 2020/21, £240,000 has been identified. The key financial strategy to close the funding gap over the medium term will focus on innovation around service transformation, strategic transformation and commercialisation. The Corporate Programme is driving this change and contains a number of projects that aim to support the Authority's financial strategy.

Consequently, although the Authority's financial position remains challenging, there is a balanced budget for 2018/19 and plans are being made to deal with the gap identified (£5.28 million remains to be found in 2019/20 and 2020/21 from the original £23 million gap). The Authority plans to continue capital investment to ensure that core assets are maintained and protected. Officers have reviewed reserves to ensure they are sufficient for the Authority to deliver services and take appropriate risks in amending service delivery models without impacting on the financial viability of the organisation.

Given the Authority's track record and that there is time (albeit limited) to develop savings plans for 2019/21 we do not consider that there is any adverse impact on the VFM conclusion that we need to identify in the auditor's report for year ended 31 March 2018.

Summary for Governance and Ethics Committee (cont.)

High priority recommendations

We have not raised any recommendations as a result of our 2017/18 work.

Certificate

We issued our certificate on 31 July 2018. The certificate confirms that we have concluded the audit for 2017/18 in accordance with the requirements of the Local Audit & Accountability Act 2014 and the Code of Audit Practice.

Audit fee

Our fee for 2017/18 was £96,653, excluding VAT (2017: £96,653). Further detail is contained in Appendix 2.

Exercising of audit powers

We have a duty to consider whether to issue a report in the public interest about something we believe the Authority should consider, or if the public should know about.

We have not identified any matters that would require us to issue a public interest report.

In addition, we have not had to exercise any other audit powers under the Local Audit & Accountability Act 2014.



Appendices

Summary of reports issued

This appendix summarises the reports we issued since our last Annual Audit Letter. These reports can be accessed via the Governance and Ethics Committee pages on the Authority’s website at www.westberks.gov.uk .

Certification of Grants and Returns ◆

This report summarised the outcome of our certification work on the Authority’s 2016/17 grants and returns.

◆ **External Audit Plan**

The External Audit Plan set out our approach to the audit of the Authority’s financial statements and to support the VFM conclusion.

Report to Those Charged with Governance ◆

The Report to Those Charged with Governance summarised the results of our audit work for 2017/18 including key issues and recommendations raised as a result of our observations.

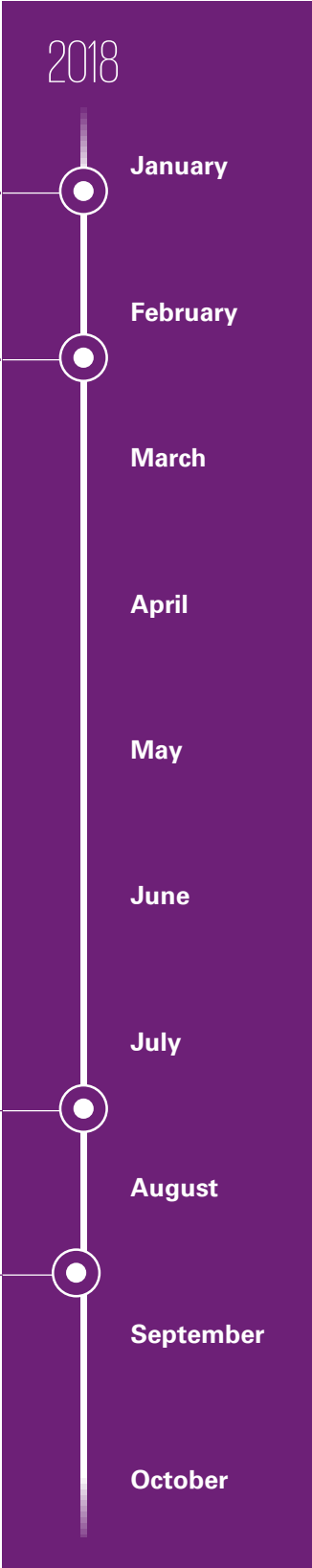
We also provided the mandatory declarations required under auditing standards as part of this report.

Auditor’s Report ◆

The Auditor’s Report included our audit opinion on the financial statements along with our VFM conclusion and our certificate.

Annual Audit Letter ◆

This Annual Audit Letter provides a summary of the results of our audit for 2017/18.



Appendix 2:

Audit fees

This appendix provides information on our final fees for the 2017-18 audit.

External audit

Our final fee for the 2017/18 audit of the Authority was £96,653, which is in line with the planned fee.

Certification of grants and returns

Under our terms of engagement with Public Sector Audit Appointments we undertake prescribed work in order to certify the Authority's housing benefit grant claim. This certification work is still ongoing. The planned fee for this work is £10,560 and the final fee will be confirmed through our reporting on the outcome of that work, expected to be in January 2019.

We expect to charge £3,300 for additional audit-related services for the certification of the Teachers' Pensions return, which is outside of Public Sector Audit Appointment's certification regime.

Other services

We did not charge any additional fees for other services.

All fees quoted are exclusive of VAT.



The key contacts in relation to our audit are:

Ian Pennington

Director

T: 029 2046 8087

E: ian.pennington@kpmg.co.uk

Antony Smith

Manager

T: 020 7311 2355

E: antony.smith@kpmg.co.uk

kpmg.com/uk



This report is addressed to the Authority and has been prepared for the sole use of the Authority. We take no responsibility to any member of staff acting in their individual capacities, or to third parties. We draw your attention to the Statement of Responsibilities of auditors and audited bodies, which is available on Public Sector Audit Appointment's website (www.psaa.co.uk).

External auditors do not act as a substitute for the audited body's own responsibility for putting in place proper arrangements to ensure that public business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for, and used economically, efficiently and effectively.

We are committed to providing you with a high quality service. If you have any concerns or are dissatisfied with any part of KPMG's work, in the first instance you should contact Ian Pennington, the engagement lead to the Authority, who will try to resolve your complaint. If you are dissatisfied with your response please contact the national lead partner for all of KPMG's work under our contract with Public Sector Audit Appointments Limited, Andrew Sayers, by email to Andrew.Sayers@kpmg.co.uk. After this, if you are still dissatisfied with how your complaint has been handled you can access PSAA's complaints procedure by emailing generalenquiries@psaa.co.uk by telephoning 020 7072 7445 or by writing to Public Sector Audit Appointments Limited, 3rd Floor, Local Government House, Smith Square, London, SW1P 3HZ.

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External Auditors - Audit Progress Report and Sector Update

Committee considering report: Governance and Ethics Committee on 26 November 2018

Portfolio Member: Councillor Anthony Chadley

Date Portfolio Member agreed report: 01 November 2018

Report Author: Lesley Flannigan

Forward Plan Ref: GE3661

1. Purpose of the Report

- 1.1 To provide the Governance and Ethics Committee with a report from Grant Thornton on progress in delivering their responsibilities as our new external auditors and a sector update.

2. Recommendation

- 2.1 Members are requested to note the Audit Progress Report and Sector Update.

3. Implications

- | | | |
|-----|-------------------------|------------|
| 3.1 | Financial: | N/A |
| 3.2 | Policy: | N/A |
| 3.3 | Personnel: | N/A |
| 3.4 | Legal: | N/A |
| 3.5 | Risk Management: | N/A |
| 3.6 | Property: | N/A |
| 3.7 | Other: | N/A |

4. Other options considered

- 4.1 None

Executive Summary

- 4.2 The report outlines the way forward: for the Financial Statements Audit,
- Grant Thornton have started planning for the 18/19 financial statements audit and will issue a detailed audit plan setting out their approach to the audit.
 - They will communicate with KPMG and arrange to see their working papers on the 2017/18 audit.
 - The plan is to commence the interim audit in early 2019.
- 4.3 The way forward: in Value for Money,
- Grant Thornton need to satisfy themselves that 'the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources'.
 - They will make their initial risk assessment to determine their approach in December 2018 and report this to Governance and Ethics Committee in their Audit Plan early 2019.
- 4.4 The way forward: in other areas,
- Grant Thornton will meet with Finance Officers frequently, planning quarterly liaison meetings and will continue to be in discussions with finance staff regarding emerging developments.
 - They will meet with our Chief Executive to discuss the Council's strategic priorities and plans going forward.
 - A range of workshops, along with network events for members and publications to support the Council will be provided.
- 5.4 The report also includes a summary of emerging national issues and developments that may be relevant to West Berkshire Council. Along with a number of challenge questions in respect of these emerging issues which the Committee may wish to consider.

5. Conclusion

- 5.1 Members are requested to note the Audit Progress Report and Sector Update from Grant Thornton.

6. Appendices

- 6.1 Appendix A – Audit Progress Report and Sector Update.

Audit Progress Report and Sector Update

West Berkshire Council
Year ending 31 March 2019

September 2018



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Introduction



Barrie Morris

Engagement Lead

T 0117 305 7708
M 07771 976 684
E barrie.morris@uk.gt.com

Barrie is a Director and Leads the Public Services team across the South West and Wales.

Barrie has over 25 years of public sector audit experience. Over this period, he has been involved in a large and wide variety of local and central government and healthcare audits within the South West and Wales. Barrie has extensive experience in financial, regularity and performance audit, including undertaking reviews of governance, risk management and overall use of resources arrangements across public sector bodies in England and Wales.

Outside of direct client responsibilities, Barrie is also an accredited coach and supports the development of senior people with Grant Thornton as well as those undertaking the Cranfield MBA programme.

Barrie has led the facilitation of a number of workshops for both clients and wider sector groups on a range of areas including good governance and effective financial and business planning.



David Johnson

Engagement Manager

T 0117 305 7727
M 07825 028 921
E david.a.johnson@uk.gt.com

David is an Audit Manager working for Public Sector Assurance across the South West.

David has previous experience working in UK GAAP financial reporting, and internal and external audit, covering a wide variety of public sector bodies and within the Charity Sector.

David has specialised within Public Sector Assurance since 2012. His experience working with a wide variety of clients, with multiple challenges, means that he can bring a range of knowledge to the audit, particularly around "best practice" processes, controls, and risk knowledge.

Outside of David's Audit Manager role, he is the Office Finance Reporting contact for Grant Thornton's offices in the South West, responsible for the setting and monitoring of budgets for our colleagues in the region.

Introduction

This paper provides the Governance and Ethics Committee with a report on progress in delivering our responsibilities as your external auditors.

The paper also includes:

- a summary of emerging national issues and developments that may be relevant to you as a local authority; and
- includes a number of challenge questions in respect of these emerging issues which the Committee may wish to consider (these are a tool to use, if helpful, rather than formal questions requiring responses for audit purposes)

Members of the Governance and Ethics Committee can find further useful material on our website, where we have a section dedicated to our work in the public sector. Here you can download copies of our publications. Click on the Grant Thornton logo to be directed to the website www.grant-thornton.co.uk.

If you would like further information on any items in this briefing, or would like to register with Grant Thornton to receive regular email updates on issues that are of interest to you, please contact either your Engagement Lead or Engagement Manager.

Progress at September 2018

Financial Statements Audit

We have started planning for the 2018/19 financial statements audit and will issue a detailed audit plan, setting out our proposed approach to the audit of the Council's 2018/19 financial statements.

Upon completion of the 2017/18 audit, we will communicate with the predecessor auditor, and arrange to observe the predecessor auditor's working papers.

We plan to commence our interim audit in early 2019.

Our interim fieldwork visit will include:

- Review of the Council's control environment
- Understanding of financial systems
- Review of Internal Audit reports on core financial systems
- Early work on emerging accounting issues
- Early substantive testing

The statutory deadline for the issue of the 2017/18 opinion was brought forward by two months to 31 July 2018. We will discuss our plan and timetable with officers for the 2018/19 statutory deadline.

The final accounts audit findings will be reported to you in the Audit Findings Report.

Value for Money

The scope of our work is set out in the guidance issued by the National Audit Office. The Code requires auditors to satisfy themselves that: "the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources".

The guidance confirmed the overall criterion as: "in all significant respects, the audited body had proper arrangements to ensure it took properly informed decisions and deployed resources to achieve planned and sustainable outcomes for taxpayers and local people".

The three sub criteria for assessment to be able to give a conclusion overall are:

- Informed decision making
- Sustainable resource deployment
- Working with partners and other third parties

We will make our initial risk assessment to determine our approach in December 2018 and report this to you in our Audit Plan in early 2019.

We will report our work in the Audit Findings Report and give our Value For Money Conclusion by the deadline in July 2018

Other areas

Meetings

We will meet with Finance Officers frequently, planning quarterly liaison meetings, and will continue to be in discussions with finance staff regarding emerging developments and to ensure the audit process is smooth and effective. We also meet with your new Chief Executive to discuss the Council's strategic priorities and plans going forward.

Events

We provide a range of workshops, along with network events for members and publications to support the Council. Further details of the publications that may be of interest to the Council are set out in our Sector Update section of this report.

Our next event takes place on 2 October 2018 and we will invite the Council's Officers to attend.

Audit Deliverables

2018/19 Deliverables	Planned Date	Status
Fee Letter Confirming audit fee for 2018/19.	July 2018	Complete
Accounts Audit Plan We are required to issue a detailed accounts audit plan to the Governance and Ethics Committee setting out our proposed approach in order to give an opinion on the Council's 2018-19 financial statements.	February 2019	Not yet due
Interim Audit Findings We will report to you the findings from our interim audit and our initial value for money risk assessment within our Progress Report.	April 2019	Not yet due
Audit Findings Report The Audit Findings Report will be reported to the July Governance and Ethics Committee.	July 2019	Not yet due
Auditors Report This is the opinion on your financial statement, annual governance statement and value for money conclusion.	July 2019	Not yet due
Annual Audit Letter This letter communicates the key issues arising from our work.	August 2019	Not yet due

Sector Update

Local government finances are at a tipping point. Councils are tackling a continuing drive to achieve greater efficiency in the delivery of public services, whilst facing the challenges to address rising demand, ongoing budget pressures and social inequality.

Our sector update provides you with an up to date summary of emerging national issues and developments to support you. We cover areas which may have an impact on your organisation, the wider NHS and the public sector as a whole. Links are provided to the detailed report/briefing to allow you to delve further and find out more.

Our public sector team at Grant Thornton also undertake research on service and technical issues. We will bring you the latest research publications in this update. We also include areas of potential interest to start conversations within the organisation and with audit committee members, as well as any accounting and regulatory updates.

- **Grant Thornton Publications**
- **Insights from local government sector specialists**
- **Reports of interest**
- **Accounting and regulatory updates**

More information can be found on our dedicated public sector and local government sections on the Grant Thornton website

CIPFA consultation – Financial Resilience Index

The Chartered Institute of Public Finance and Accountancy (CIPFA) has consulted on its plans to provide an authoritative measure of local authority financial resilience via a new index. The index, based on publically available information, will provide an assessment of the relative financial health of each English council.

CIPFA has designed the index to provide reassurance to councils who are financially stable and prompt challenge where it may be needed. To understand the sector's views, CIPFA invited all interested parties to respond to questions it has put forward in the consultation by the 24 August.

The decision to develop an index is driven by CIPFA's desire to support the local government sector as it faces a continued financial challenge. The index will not be a predictive model but a diagnostic tool – designed to identify those councils displaying consistent and comparable features that will highlight good practice, but crucially, also point to areas which are associated with financial failure. The information for each council will show their relative position to other councils of the same type. Use of the index will support councils in identifying areas of weakness and enable them to take action to reduce the risk of financial failure. The index will also provide a transparent and independent analysis based on a sound evidence base.

The proposed approach draws on CIPFA's evidence of the factors associated with financial stress, including:

- running down reserves
- failure to plan and deliver savings in service provision
- shortening medium-term financial planning horizons.
- gaps in saving plans
- departments having unplanned overspends and/or undelivered savings.

Conversations with senior practitioners and sector experts have elicited a number of additional potential factors, including:

- the dependency on external central financing
- the proportion of non-discretionary spending – e.g. social care and capital financing - as a proportion of total expenditure
- an adverse (inadequate) judgement by Ofsted on Children's services
- changes in accounting policies (including a change by the council of their minimum revenue provision)
- poor returns on investments
- low level of confidence in financial management.

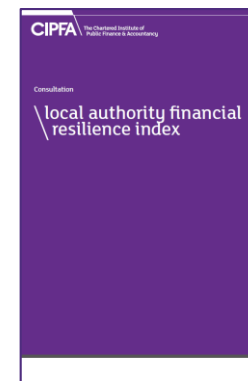
The consultation document proposes scoring six key indicators:

1. The level of total reserves excluding schools and public health as a proportion of net revenue expenditure.
2. The percentage change in reserves, excluding schools and public health, over the past three years.
3. The ratio of government grants to net revenue expenditure.
4. Proportion of net revenue expenditure accounted for by children's social care, adult social care and debt interest payments.
5. Ofsted overall rating for children's social care.
6. Auditor's VFM judgement.

CIPFA Consultation

Challenge question:

Has your Head of Finance and Property briefed members on the Council's response to the Financial Resilience Index consultation?



MHCLG – Social Housing Green Paper

The Ministry of Housing, Communities and Local Government (MHCLG) published the Social Housing Green Paper, which seeks views on government's new vision for social housing providing safe, secure homes that help people get on with their lives.

With 4 million households living in social housing and projections for this to rise annually, it is crucial that MHCLG tackle the issues facing both residents and landlords in social housing.

The Green Paper aims to rebalance the relationship between residents and landlords, tackle stigma and ensure that social housing can be both a stable base that supports people when they need it and also support social mobility. The paper proposes fundamental reform to ensure social homes provide an essential, safe, well managed service for all those who need it.

To shape this Green Paper, residents across the country were asked for their views on social housing. Almost 1,000 tenants shared their views with ministers at 14 events across the country, and over 7,000 people contributed their opinions, issues and concerns online; sharing their thoughts and ideas about social housing,

The Green Paper outlines five principles which will underpin a new, fairer deal for social housing residents:

- Tackling stigma and celebrating thriving communities
- Expanding supply and supporting home ownership
- Effective resolution of complaints
- Empowering residents and strengthening the regulator
- Ensuring homes are safe and decent

Consultation on the Green Paper is now underway, which seeks to provide everyone with an opportunity to submit views on proposals for the future of social housing and will run until 6 November 2018.

The Green Paper presents the opportunity to look afresh at the regulatory framework (which was last reviewed nearly eight years ago). Alongside this, MHCLG have published a Call for Evidence which seeks views on how the current regulatory framework is operating and will inform what regulatory changes are required to deliver regulation that is fit for purpose.

The Green Paper acknowledges that to deliver the social homes required, local authorities will need support to build by:

- allowing them to borrow
- exploring new flexibilities over how to spend Right to Buy receipts
- not requiring them to make a payment in respect of their vacant higher value council homes

As a result of concerns raised by residents, MHCLG has decided not to implement at this time the provisions in the Housing and Planning Act to make fixed term tenancies mandatory for local authority tenants.

The Green Paper is available on the MHCLG's website at:

<https://www.gov.uk/government/consultations/a-new-deal-for-social-housing>

Social Housing Green Paper Consultation



Challenge question:

What does the Social Housing Green Paper mean for your local authority?



Institute of Fiscal Studies: Impact of 'Fair Funding Review'

The IFS has published a paper that focuses on the issues arising in assessing the spending needs of different councils. The government's 'Fair Funding Review' is aimed at designing a new system for allocating funding between councils. It will update and improve methods for estimating councils' differing abilities to raise revenues and their differing spending needs. The government is looking for the new system to be simple and transparent, but at the same time robust and evidence based.

Accounting for councils' spending needs

The IFS note that the Review is seeking a less subjective and more transparent approach which is focused on the relationship between spending and needs indicators. However, like any funding system, there will be limitations, for example, any attempt to assess needs will be affected by the MHCLG's funding policies adopted in the year of data used to estimate the spending needs formula. A key consideration will be the inherently subjective nature of 'spending needs' and 'needs indicators', and how this will be dealt with under any new funding approach. Whilst no assessment of spending needs can be truly objective, the IFS state it can and should be evidence based.

The IFS also note that transparency will be critical, particularly in relation to the impact that different choices will have for different councils, such as the year of data used and the needs indicators selected. These differentiating factors and their consequences will need to be understood and debated.

Accounting for councils' revenues

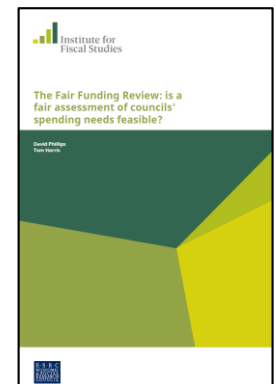
The biggest source of locally-raised revenue for councils is and will continue to be council tax. However, there is significant variation between councils in the amount of council tax raised per person. The IFS identify that a key decision for the Fair Funding Review is the extent to which tax bases or actual revenues should be used for determining funding levels going forward.

Councils also raise significant sums of money from levying fees and charges, although this varies dramatically across the country. The IFS note that it is difficult to take account of these differences in a new funding system as there is no well-defined measure of revenue raising capacity from sales, fees and charges, unlike council tax where the tax base can be used.

The overall system: redistribution, incentives and transparency

The IFS also identify that an important policy decision for the new system is the extent to which it prioritises redistribution between councils, compared to financial incentives for councils to improve their own socio-economic lot. A system that fully and immediately equalises for differences in assessed spending needs and revenue-raising capacity will help ensure different councils can provide similar standards of public services. However, it would provide little financial incentive for councils to tackle the drivers of spending needs and boost local economics and tax bases.

Further detail on the impact of the fair funding review can be found in the full report <https://www.ifs.org.uk/uploads/publications/comms/R148.pdf>.



National Audit Office – The health and social care interface

The NAO has published its latest ‘think piece on the barriers that prevent health and social care services working together effectively, examples of joint working in a ‘whole system’ sense and the move towards services centred on the needs of the individual. The report aims to inform the ongoing debate about the future of health and social care in England. It anticipates the upcoming green paper on the future funding of adult social care, and the planned 2019 Spending Review, which will set out the funding needs of both local government and the NHS.

The report discusses 16 challenges to improved joint working. It also highlights some of the work being carried out nationally and locally to overcome these challenges and the progress that has been made. The NAO draw out the risks presented by inherent differences between the health and social care systems and how national and local bodies are managing these.

Financial challenges – include financial pressures, future funding uncertainties, focus on short-term funding issues in the acute sector, the accountability of individual organisations to balance the books, and differing eligibility criteria for access to health and social care services.

Culture and structure – include organisational boundaries impacting on service management and regulation, poor understanding between the NHS and local government of their respective decision-making frameworks, complex governance arrangements hindering decision-making, problems with local leadership holding back improvements or de-stabilising joint working, a lack of co-terminus geographic areas over which health and local government services are planned and delivered, problems with sharing data across health and social care, and difficulties developing person-centred care.

Strategic issues – include differences in national influence and status contributing to social care not being as well represented as the NHS, strategic misalignment of organisations across local systems inhibiting joint local planning, and central government’s unrealistic expectations of the pace at which the required change in working practices can progress..

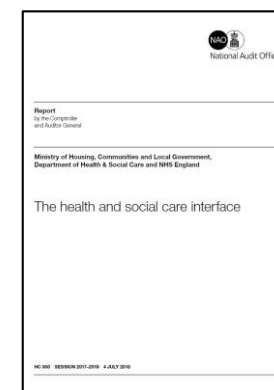
This ‘think piece’ draws on the NAO’s past work and draws on recent research and reviews by other organisations, most notably the Care Quality Commission’s review of health and social care systems in 20 local authority areas, which it carried out between August 2017 and May 2018. The NAO note that there is a lot of good work being done nationally and locally to overcome the barriers to joint working, but often this is not happening at the scale and pace needed.

The report is available to download from the NAO’s website at:
<https://www.nao.org.uk/report/the-health-and-social-care-interface/>

The health and social care interface

Challenge question:

Has the **Audit Committee** considered the 16 challenges to joint working and what can be done to mitigate these?



The Vibrant Economy Index

a new way to measure success

Our Vibrant Economy Index uses data to provide a robust, independent framework to help everyone understand the challenges and opportunities in their local areas. We want to start a debate about what type of economy we want to build in the UK and spark collaboration between citizens, businesses and place-shapers to make their places thrive.

Places are complex and have an intrinsic impact on the people and businesses within them. Economic growth doesn't influence all of the elements that are important to people's lives – so we shouldn't use GDP to measure success. We set out to create another measure for understanding what makes a place successful.

In total, we look at 324 English local authority areas, taking into account not only economic prosperity but health and happiness, inclusion and equality, environmental resilience, community and dynamism and opportunity. Highlights of the index include:

- Traditional measures of success – gross value added (GVA), average workplace earning and employment do not correlate in any significant way with the other baskets. This is particularly apparent in cities, which despite significant economic strengths are often characterised by substantial deprivation and low aspiration, high numbers of long-term unemployment and high numbers of benefit claimants
- The importance of the relationships between different places and the subsequent role of infrastructure in connecting places and facilitating choice. The reality is that patterns of travel for work, study and leisure don't reflect administrative boundaries. Patterns emerge where prosperous and dynamic areas are surrounded by more inclusive and healthy and happy places, as people choose where they live and travel to work in prosperous areas.
- The challenges facing leaders across the public, private and third sector in how to support those places that perform less well. No one organisation can address this on their own. Collaboration is key.

Visit our website (www.grantthornton.co.uk) to explore the interactive map, read case studies and opinion pieces, and download our report **Vibrant Economy Index: Building a better economy**.

Vibrant Economy app

To support local collaboration, we have also developed a Vibrant Economy app. It's been designed to help broaden understanding of the elements of a vibrant economy and encourage the sharing of new ideas for – and existing stories of – local vibrancy.

We've developed the app to help people and organisations:

- see how their place performs against the index and the views of others through an interactive quiz
- post ideas and share examples of local activities that make places more vibrant
- access insights from Grant Thornton on a vibrant economy.

We're inviting councils to share it with their employees and the wider community to download. We can provide supporting collateral for internal communications on launch and anonymised reporting of your employees' views to contribute to your thinking and response.

- To download the app visit your app store and search 'Vibrant Economy'
- Fill in your details to sign up, and wait for the verification email (check your spam folder if you don't see it)
 - Explore the app and take the quiz
 - Go to the Vibrant Ideas section to share your picture and story or idea



Supply Chain Insights tool helps support supply chain assurance in public services

Grant Thornton UK LLP has launched a new insights and benchmarking platform to support supply chain assurance and competitor intelligence in public services.

The Supply Chain Insights service is designed for use by financial directors and procurement professionals in the public sector, and market leaders in private sector suppliers to the public sector. It provides users with a detailed picture of contract value and spend with their supply chain members across the public sector. The analysis also provides a robust and granular view on the viability, sustainability, market position and coverage of their key suppliers and competitors.

The platform is built on aggregated data from 96 million invoices and covers £0.5 trillion of spending. The data is supplemented with financial standing data and indicators to give a fully rounded view. The service is supported by a dedicated team of analysts and is available to access directly as an on-line platform.

Phillip Woolley, Partner, Grant Thornton UK LLP, said:

"The fall-out from the recent failure of Carillion has highlighted the urgent need for robust and ongoing supply chain monitoring and assurance. Supply Chain Insights provides a clear picture of your suppliers' activities across the sector, allowing you to understand risks, capacity and track-record. We think it's an indispensable resource in today's supplier market."



The tool enables you to immediately:

- access over 96 million transactions that are continually added to
- segment invoices by:
 - organisation and category
 - service provider
 - date at a monthly level
- benchmark your spend against your peers
- identify:
 - organisations buying similar services
 - differences in pricing
 - the leading supplier
- see how important each buyer is to a supplier
- benchmark public sector organisations' spend on a consistent basis
- see how much public sector organisations spend with different suppliers

Supply Chain Insights forms part of the Grant Thornton Public Sector Insight Studio portfolio of analytics platforms.

Click on Supply Chain Insights for more information.

Supply Chain Insights

Grant Thornton

Challenge question:

Has your Authority considered how our Supply Chain Insight tool can help support your supply chain assurance?



Links

Grant Thornton website links

<https://www.grantthornton.co.uk/>

<http://www.grantthornton.co.uk/industries/publicsector>

National Audit Office link

<https://www.nao.org.uk/report/the-health-and-social-care-interface/>

Ministry of Housing, Communities and Local Government links

<https://www.gov.uk/government/news/social-housing-green-paper-a-new-deal-for-social-housing>

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728722/BRR_Pilots_19-20_Prospectus.pdf

Institute for Fiscal Studies

<https://www.ifs.org.uk/uploads/publications/comms/R148.pdf>



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Internal Audit Plan Update Report

Committee considering report: Governance and Ethics Committee on 26 November 2018

Portfolio Member: Councillor Dominic Boeck

Date Portfolio Member agreed report: Emailed to Portfolio Holder 24/10

Report Author: Julie Gillhespey (Audit Manager)

Forward Plan Ref: GE3628

1. Purpose of the Report

- 1.1 To update the Committee on the outcome of Internal Audit work carried out during quarters one and two of 2018-19.
- 1.2 The Public Sector Internal Audit Standards (PSIAS), as adapted by CIPFA's "Local Government Application Note", require the Audit Manager to provide periodic updates to senior officers and members on performance against the Audit Plan. As stated in the Council's approved Internal Audit Charter quarterly updates are required to be presented to Committee. Due to the timing of the committee meetings the first update report provides an update for quarters one and two of the 2018/19 Audit Plan.
- 1.3 The periodic reports aim to provide a progress update against the work in the Audit Plan together with highlighting any emerging significant issues/risks that are of concern.

2. Recommendation

- 2.1 To note the content of the report.

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. Other options considered

- 4.1 None, the PSIAS require periodic updates to be provided on progress Audit Plan.

Executive Summary

5. Introduction / Background

- 5.1 A summary of the Internal Audit work that is in progress is set out in Appendix C. Details of completed work is set out in Appendix D.
- 5.2 The following table summarises the results of the audit work where an opinion was given.

Type	Very weak	Weak	Satisfactory	Well Controlled	Very Well Controlled
Key Financial Systems				1	
Other Systems			4		
Schools		1			

- 5.3 For this reporting period there were no completed central audits that had an opinion of weak or very weak. There was a secondary school where we gave an opinion of weak, this was mainly due to the financial governance arrangements needing to be improved.
- 5.4 There was no follow-up work completed during this period.
- 5.5 At the Governance and Ethics Committee in April 2018 the Audit Manager gave a presentation regarding delays with audit work progressing together with suggestions to try and improve the situation. These improvements have not yet been able to take full effect because of the following:-
- A senior auditor post became vacant when the post holder decided to take early retirement, the Audit Manager and remaining Senior Auditor then needed to take on the work not yet completed by this post;
 - Taking into account the vacancy and that there is a trainee in the auditor post, the team has therefore been equivalent to 2.5 officers (the team has four posts) for most of the summer.
 - A request was made for the team to carry out an investigation, with a large proportion of the work being undertaken by the Audit Manager.
 - A significant risk came to light corporately in July with the unforeseen projected overspend within Adult Social Care. The Audit Manager and one of the Senior Auditors is assisting with reviewing how this position came about.
- 5.6 The Senior Auditor vacancy was recruited to with the new person commencing mid-September.

- 5.7 At the Governance and Ethics Committee in July members requested information regarding the Follow Up work due/undertaken over the last three years in order to be given an oversight of this work. This is set out in Appendix E.

6. Proposal

- 6.1 Note the results of the work carried out.

7. Conclusions

- 7.1 No significant/fundamental weaknesses were identified in the Council's internal control framework through the work carried out by Internal Audit during the first two quarters of 2018/19.
- 7.2 Progress against the plan was slow during the second quarter due to a Senior Auditor post becoming vacant, and also because there was unplanned work that Internal Audit was requested to undertake which needed to be prioritised over planned work.

8. Appendices

- 8.1 Appendix A – Data Protection Impact Assessment – N/A
- 8.2 Appendix B – Equalities Impact Assessment – N/A
- 8.3 Appendix C – Current Audit Work
- 8.4 Appendix D – Completed Audit Work
- 8.5 Appendix E – Audit Follow up Work for the last 3 years

Appendix A

Data Protection Impact Assessment – Stage One

The General Data Protection Regulations require a Data Protection Impact Assessment (DPIA) for certain projects that have a significant impact on the rights of data subjects.

Should you require additional guidance in completing this assessment, please refer to the Information Management Officer via dp@westberks.gov.uk

Directorate:	
Service:	
Team:	
Lead Officer:	
Title of Project/System:	
Date of Assessment:	

Do you need to do a Data Protection Impact Assessment (DPIA)?

	Yes	No
<p>Will you be processing SENSITIVE or “special category” personal data?</p> <p><i>Note – sensitive personal data is described as “data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation”</i></p>	<input type="checkbox"/>	x
<p>Will you be processing data on a large scale?</p> <p><i>Note – Large scale might apply to the number of individuals affected OR the volume of data you are processing OR both</i></p>	<input type="checkbox"/>	x
<p>Will your project or system have a “social media” dimension?</p> <p><i>Note – will it have an interactive element which allows users to communicate directly with one another?</i></p>	<input type="checkbox"/>	x
<p>Will any decisions be automated?</p> <p><i>Note – does your system or process involve circumstances where an individual’s input is “scored” or assessed without intervention/review/checking by a human being? Will there be any “profiling” of data subjects?</i></p>	<input type="checkbox"/>	x
<p>Will your project/system involve CCTV or monitoring of an area accessible to the public?</p>	<input type="checkbox"/>	x
<p>Will you be using the data you collect to match or cross-reference against another existing set of data?</p>	<input type="checkbox"/>	x
<p>Will you be using any novel, or technologically advanced systems or processes?</p> <p><i>Note – this could include biometrics, “internet of things” connectivity or anything that is currently not widely utilised</i></p>	<input type="checkbox"/>	x

If you answer “Yes” to any of the above, you will probably need to complete [Data Protection Impact Assessment - Stage Two](#). If you are unsure, please consult with the Information Management Officer before proceeding.

Appendix B

Equality Impact Assessment - Stage One

We need to ensure that our strategies, policies, functions and services, current and proposed have given due regard to equality and diversity as set out in the Public Sector Equality Duty (Section 149 of the Equality Act), which states:

- “(1) A public authority must, in the exercise of its functions, have due regard to the need to:**
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;**
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; This includes the need to:**
 - (i) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;**
 - (ii) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;**
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it, with due regard, in particular, to the need to be aware that compliance with the duties in this section may involve treating some persons more favourably than others.**
- (2) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.**
- (3) Compliance with the duties in this section may involve treating some persons more favourably than others.”**

The following list of questions may help to establish whether the decision is relevant to equality:

- Does the decision affect service users, employees or the wider community?
- (The relevance of a decision to equality depends not just on the number of those affected but on the significance of the impact on them)
- Is it likely to affect people with particular protected characteristics differently?
- Is it a major policy, or a major change to an existing policy, significantly affecting how functions are delivered?
- Will the decision have a significant impact on how other organisations operate in terms of equality?
- Does the decision relate to functions that engagement has identified as being important to people with particular protected characteristics?
- Does the decision relate to an area with known inequalities?
- Does the decision relate to any equality objectives that have been set by the council?

Please complete the following questions to determine whether a full Stage Two, Equality Impact Assessment is required.

What is the proposed decision that you are asking the Executive to make:	This report is for information only, there is no decision to be made.
Summary of relevant legislation:	
Does the proposed decision conflict with any of the Council's key strategy priorities?	
Name of assessor:	
Date of assessment:	

Is this a:		Is this:	
Policy	Yes/No	New or proposed	Yes/No
Strategy	Yes/No	Already exists and is being reviewed	Yes/No
Function	Yes/No	Is changing	Yes/No
Service	Yes/No		

1 What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?	
Aims:	
Objectives:	
Outcomes:	
Benefits:	

2 Note which groups may be affected by the proposed decision. Consider how they may be affected, whether it is positively or negatively and what sources of information have been used to determine this. (Please demonstrate consideration of all strands – Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation.)		
Group Affected	What might be the effect?	Information to support this
Age		
Disability		
Gender Reassignment		
Marriage and Civil		

Partnership		
Pregnancy and Maternity		
Race		
Religion or Belief		
Sex		
Sexual Orientation		
Further Comments relating to the item:		

3 Result	
Are there any aspects of the proposed decision, including how it is delivered or accessed, that could contribute to inequality?	Yes/No
Please provide an explanation for your answer:	
Will the proposed decision have an adverse impact upon the lives of people, including employees and service users?	Yes/No
Please provide an explanation for your answer:	

If your answers to question 2 have identified potential adverse impacts and you have answered 'yes' to either of the sections at question 3, or you are unsure about the impact, then you should carry out a Stage Two Equality Impact Assessment.

If a Stage Two Equality Impact Assessment is required, before proceeding you should discuss the scope of the Assessment with service managers in your area. You will also need to refer to the [Equality Impact Assessment guidance and Stage Two template](#).

4 Identify next steps as appropriate:	
Stage Two required	
Owner of Stage Two assessment:	
Timescale for Stage Two assessment:	

Name:

Date:

Please now forward this completed form to Rachel Craggs, Principal Policy Officer (Equality and Diversity) (rachel.craggs@westberks.gov.uk), for publication on the WBC website.

1) CURRENT AUDITS

Directorate – Corporate / Service	Audit Title	Current Position of Work	Audit Plan Year
Corporate	National Fraud Initiative	Commencing the next national exercise	2018/19
Resources			
Finance and Property	Bank Reconciliation	Draft Issued	2017/18
Finance and Property	Procurement Cards	Main report – being drafted	2017/18
Finance/Strategic Support	Business Improvement Levy	Testing	2017/18
Human Resources	Apprenticeship Levy	Being Reviewed	2017/18
Human Resources	Payroll	Testing	2018/19
Communities			
Education	Education Capital Programme	Draft Issued	2017/18
Adult Social Care	Better Care Fund	Testing	2017/18
Adult Social Care	Purchase of Care - Residential	Ready for Review	2017/18
Children and Families	Castlegate	Draft issued	2017/18
Children and Families	Turnaround Families Grant Claim work	Ongoing	2018/19
Education Services	Beenham Primary	Draft issued	2017/18
Education Service	Thatcham Park Primary	Draft issued	2018/19
Education Service	Downsway Primary	Draft Issued	2018/19
Education Service	i-College	Draft issued	2018/19
Environment			
Development and Planning	S106	Testing	2018/19
Development and Planning	CIL	Testing	2018/19

Transport and Countryside	Public Transport	Testing	2018/19
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2) CURRENT ADVISORY REVIEWS/OTHER WORK

Directorate/Service	Audit Title	Current position of work
Corporate	Assistance with reviewing the ASC projected budget overspend position	Ongoing

3) CURRENT FOLLOW-UPS

Directorate/Service	Audit title
Resources	
Finance and Property	Property Database
Finance and Property	Asset Management Strategy (due to the Property Team working on other corporate priorities a postponement has been agreed with the HoS. The work will be rescheduled for January 2019).
Communities	
Children and Family Services	Special Guardianship and Child Arrangement Orders
Economy and Environment	
Transport and Countryside	Home to School Transport

1) COMPLETED AUDITS

Directorate/Service	Audit Title	Date Audit finalised	Overall Opinion
Resources			
Finance & Property	Accounts Payable	26/06/18	Well Controlled
Finance & Property	Procurement Cards	May - July 2018	Not Applicable - Individual memos issued to the sample of services included in the review highlighting issues found.
Communities			
Adult Social Care	Client Charging	21/06/18	Satisfactory
Adult Social Care	Personal Budgets (Use of Payment Cards)	01/10/18	Satisfactory
Education Service	The Willink School	08/06/18	Weak
Environment			
Transport and Countryside	Parking	20/07/18	Satisfactory
Public Protection & Culture	Leisure Centre Contract Management	21/06/18	Satisfactory
Transport and Countryside	Bus Subsidy Grant Sign Off Work	20/09/18	Letter sent to Department for Transport confirming grant used in accordance with terms and conditions.

NOTE

The overall opinion is derived from the number/significance of recommendations together with using professional judgement. The Auditor's judgement takes into account the depth of coverage of the review (which could result in more issues being identified) together with the size/complexity of the system being reviewed.

2) COMPLETED FOLLOW UPS

<u>Directorate/ Service</u>	<u>Audit Title</u>	<u>Date follow up finalised</u>	<u>Overall Opinion - Report</u>	<u>Opinion - Implementation progress</u>
Resources				
Communities				

Audit Follow-ups Due/Undertaken over the last 3 years

	Audit Title	Year Report Finalised	Report Opinion	Follow-up Status	Follow-up Opinion
1)	Archiving of Council Records	2015/16	Weak	Completed	Unsatisfactory Agreed to carry out a 2 nd Stage Follow-up. 2nd stage Unsatisfactory – progress then monitored through Corporate Board. Last update was made in September 2018, Corporate Management Team to be reminded again of requirements.
2)	Contract Letting	2015/16	Weak	Not undertaken	A decision was taken not to follow this up as there had been major changes to the legal framework together with the Council's Contract Rules of Procedure since the initial audit had been undertaken. This area therefore needed a new audit to be undertaken not a follow-up.
3)	Insurance Pot Hole Claims	2015/16	Satisfactory	Completed	Satisfactory
4)	Disclosure and Barring Service (DBS) checks	2015/16	Satisfactory	Completed	Satisfactory
5)	Procurement Cards	2016/17	Weak	Completed	Unsatisfactory Agreed to carry out a new audit in 2017/18 (report currently in draft).

Appendix E

	Audit Title	Year Report Finalised	Report Opinion	Follow-up Status	Follow-up Opinion
6)	Commercial Rents	2016/17	Weak	Completed	Satisfactory
7)	Section 17 Support	2016/17	Weak	Completed	Satisfactory
8)	Home to School Transport	2017/18	Weak	Completed	Satisfactory
9)	Property Database	2017/18	Very Weak	In Progress	N/A
10)	Asset Management Strategy	2017/18	Very Weak	Postponed	N/A – due to other work pressures in the team responsible for implementation, a postponement was agreed with the HoS. Work to recommence in January 2019.
11)	Special Guardianship/Child Arrangement Orders	2017/18	Weak	Commenced	N/A - not yet completed

Amendments to the Constitution

Committee considering report:	Council on 6 December 2018
Portfolio Member:	Councillor Dominic Boeck
Date Portfolio Member agreed report:	01 November 2018
Report Author:	Sarah Clarke
Forward Plan Ref:	C3260

1. Purpose of the Report

- 1.1 The Monitoring Officer together with other members of the Finance and Governance Group are required to keep the Constitution under regular review.
- 1.2 This paper proposes a number of amendments to Parts 2, 3, 10, 11 and 13 of the Constitution.

2. Recommendations

It is recommended that Council approve the following:

- (i) The amendments to the Articles of the Constitution which are detailed in Appendix D of this Report.
- (ii) The amendments to the Scheme of Delegation which are shown fully in Appendix E of this Report.
- (iii) The amendments to the Financial Rules of Procedure at Part 10 of the Constitution, as detailed in Appendix F of this Report.
- (iv) The amendments to the Contracts Rules of Procedure at Part 11 of the Constitution, as detailed in Appendix G of this Report.
- (v) The amendments to the Social Media Protocol for Councillors at Part 13 of the Constitution, as shown at Appendix H of this Report.

3. Implications

- 3.1 **Financial:** Although the financial thresholds for bad debts will be amended to increase the level of debt that can be written off under delegated authority, there will be no actual financial impact as only bad debts will be written off.
- 3.2 **Policy:** This report proposes amendments to the Constitution, including the Social Media Protocol for Councillors.
- 3.3 **Personnel:** None
- 3.4 **Legal:** It is essential that the Council's Constitution is maintained and updated to ensure that the Council operates within a sound and lawful governance framework.

3.5 **Risk Management:** These proposals set out clear operational rules and guidelines which should reduce the risk of successful challenge.

3.6 **Property:** None

3.7 **Other:** None

4. Other options considered

4.1 The alternative to approving the proposed amendments is to not update the Constitution. This is not recommended for the reasons detailed in the report.

Executive Summary

5. Introduction / Background

- 5.1 Throughout the year the Governance and Ethics Committee is referred to amendments to the Council's constitution and its rules of procedure where amendment is considered necessary. Subject to its view, matters are then referred to Council for adoption. This ensures that administrative processes remain effective and efficient.

6. Proposals

- 6.1 It is proposed that a number of amendments are made to the Constitution.
- 6.2 It is proposed that the Financial Rules of procedure be amended to increase the level of bad debt that the Head of Finance and Property is authorised to write off from the current limit of £10k to £25k.
- 6.3 Commercial Board has recently been renamed Procurement Board and a review of existing requirements under Part 11 has demonstrated that a number of requirements do not provide any additional benefits. Specifically, this relates to the requirement to provide reports for information to Corporate Board and Operations Board detailing decisions which can be taken under delegated power once the matter has been considered and agreed by Procurement Board. It is proposed to remove the requirement to provide information reports in the existing manner.
- 6.4 It is also proposed that the Scheme of Delegation and Financial Rules of Procedure be amended to enable the Head of Finance and Property in consultation with the Portfolio Holder for Finance, the Head of Human Resources and the Head of Legal, be authorised to make payments up to a maximum of £5k, to officers of tier 3 and below where that officer(s) have suggested an idea which has generated significant income for the Council.
- 6.5 It is proposed that the Scheme of Delegation be amended to delegate power to the Personnel Committee to allocate the statutory posts of Director of Children's Services and the Director of Adults Services to appropriate officers.
- 6.6 Following the update to the Officers Code of Conduct which was approved by Council in March to include a section on the use of social media, the Social Media Protocol for Councillors was also identified as being in need of updating. The amendments which are proposed to this are fully detailed in Appendix H.

7. Conclusions

- 7.1 It is considered that the proposed changes will ensure that the Council maintains a robust and efficient governance and decision making framework. The update to the Social Media Protocol for Councillors will also provide updated clarity and guidance for Members when using social media.

8. Appendices

- 8.1 Appendix A – Data Protection Impact Assessment
- 8.2 Appendix B – Equalities Impact Assessment

- 8.3 Appendix C – Supporting Information
- 8.4 Appendix D – Proposed Amendments to Part 2 of the Constitution
- 8.5 Appendix E – Proposed Amendments to Part 3 of the Constitution
- 8.6 Appendix F – Proposed Amendments to Part 10 of the Constitution
- 8.7 Appendix G – Proposed Amendments to Part 11 of the Constitution
- 8.8 Appendix H – Proposed Social Media Protocol for Councillors

Appendix A

Data Protection Impact Assessment – Stage One

The General Data Protection Regulations require a Data Protection Impact Assessment (DPIA) for certain projects that have a significant impact on the rights of data subjects.

Should you require additional guidance in completing this assessment, please refer to the Information Management Officer via dp@westberks.gov.uk

Directorate:	Resources
Service:	Legal Services
Team:	
Lead Officer:	Sarah Clarke
Title of Project/System:	Review of Constitution
Date of Assessment:	16 October 2018

Do you need to do a Data Protection Impact Assessment (DPIA)?

	Yes	No
<p>Will you be processing SENSITIVE or “special category” personal data?</p> <p>Note – sensitive personal data is described as “data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation”</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/> X
<p>Will you be processing data on a large scale?</p> <p>Note – Large scale might apply to the number of individuals affected OR the volume of data you are processing OR both</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/> X
<p>Will your project or system have a “social media” dimension?</p> <p>Note – will it have an interactive element which allows users to communicate directly with one another?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/> X
<p>Will any decisions be automated?</p> <p>Note – does your system or process involve circumstances where an individual’s input is “scored” or assessed without intervention/review/checking by a human being? Will there be any “profiling” of data subjects?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/> X
<p>Will your project/system involve CCTV or monitoring of an area accessible to the public?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/> X
<p>Will you be using the data you collect to match or cross-reference against another existing set of data?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/> X
<p>Will you be using any novel, or technologically advanced systems or processes?</p> <p>Note – this could include biometrics, “internet of things” connectivity or anything that is currently not widely utilised</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/> X

If you answer “Yes” to any of the above, you will probably need to complete [Data Protection Impact Assessment - Stage Two](#). If you are unsure, please consult with the Information Management Officer before proceeding.

Appendix B

Equality Impact Assessment - Stage One

We need to ensure that our strategies, policies, functions and services, current and proposed have given due regard to equality and diversity as set out in the Public Sector Equality Duty (Section 149 of the Equality Act), which states:

- “(1) A public authority must, in the exercise of its functions, have due regard to the need to:**
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;**
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; This includes the need to:**
 - (i) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;**
 - (ii) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;**
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it, with due regard, in particular, to the need to be aware that compliance with the duties in this section may involve treating some persons more favourably than others.**
- (2) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.**
- (3) Compliance with the duties in this section may involve treating some persons more favourably than others.”**

The following list of questions may help to establish whether the decision is relevant to equality:

- Does the decision affect service users, employees or the wider community?
- (The relevance of a decision to equality depends not just on the number of those affected but on the significance of the impact on them)
- Is it likely to affect people with particular protected characteristics differently?
- Is it a major policy, or a major change to an existing policy, significantly affecting how functions are delivered?
- Will the decision have a significant impact on how other organisations operate in terms of equality?
- Does the decision relate to functions that engagement has identified as being important to people with particular protected characteristics?
- Does the decision relate to an area with known inequalities?
- Does the decision relate to any equality objectives that have been set by the council?

Please complete the following questions to determine whether a full Stage Two, Equality Impact Assessment is required.

What is the proposed decision that you are asking the Council to make:	The proposal is to make various amendments to the Council's Constitution.
---	---

Summary of relevant legislation:	Various, including Local Government Act 1972
Does the proposed decision conflict with any of the Council's key strategy priorities?	No
Name of assessor:	Sarah Clarke
Date of assessment:	16 October 2018

Is this a:		Is this:	
Policy	No	New or proposed	No
Strategy	No	Already exists and is being reviewed	Yes
Function	Yes	Is changing	Yes
Service	No		

1 What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?	
Aims:	To review the Constitution to ensure that it is up to date.
Objectives:	To ensure that the Council has effective, efficient and lawful decision making systems in place.
Outcomes:	The Council will be able to take effective decisions in a lawful.
Benefits:	The Council can operate in an effective and efficient manner.

2 Note which groups may be affected by the proposed decision. Consider how they may be affected, whether it is positively or negatively and what sources of information have been used to determine this. (Please demonstrate consideration of all strands – Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation.)		
Group Affected	What might be the effect?	Information to support this
Age	None	
Disability	None	
Gender Reassignment	None	
Marriage and Civil Partnership	None	
Pregnancy and Maternity	None	
Race	None	
Religion or Belief	None	

Sex	None	
Sexual Orientation	None	
Further Comments relating to the item:		
The proposal affects the rules governing how the Council will conduct itself, and includes proposals relating to how some decisions will be made.		

3 Result	
Are there any aspects of the proposed decision, including how it is delivered or accessed, that could contribute to inequality?	No
Please provide an explanation for your answer: See above	
Will the proposed decision have an adverse impact upon the lives of people, including employees and service users?	No
Please provide an explanation for your answer: See above	

If your answers to question 2 have identified potential adverse impacts and you have answered 'yes' to either of the sections at question 3, or you are unsure about the impact, then you should carry out a Stage Two Equality Impact Assessment.

If a Stage Two Equality Impact Assessment is required, before proceeding you should discuss the scope of the Assessment with service managers in your area. You will also need to refer to the [Equality Impact Assessment guidance and Stage Two template](#).

4 Identify next steps as appropriate:	
Stage Two required	No
Owner of Stage Two assessment:	
Timescale for Stage Two assessment:	

Name: Sarah Clarke

Date: 16.10.18

Please now forward this completed form to Rachel Craggs, Principal Policy Officer (Equality and Diversity) (rachel.craggs@westberks.gov.uk), for publication on the WBC website.

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Amendments to the Constitution – Supporting Information

1. Introduction/Background

- 1.1 Throughout the year the Governance and Ethics Committee is referred to proposed amendments to the Council's constitution and its rules of procedure where amendment is considered necessary. Subject to its view, matters are then referred to Council with a recommendation for adoption. This ensures that administrative processes remain effective and efficient.
- 1.2 This Report seeks to make amendments to four parts of the Constitution. In essence the proposals if approved would result in the following changes:
- (1) It would increase the level of debt that can be written off under delegated powers from £10k to £25k;
 - (2) Exceptions to the Contracts Rules of Procedure will no longer be required to be referred to Corporate Board as an item for information;
 - (3) Officers would be given delegated powers to make additional payments to officers in specified circumstances;
 - (4) Personnel Committee will designate the statutory posts of Director of Adult Social Services and the Director of Children's Services to suitable officers; and
 - (5) An updated Social Media Protocol for Councillors would be adopted.

2. Supporting Information

Write off of bad debts

- 2.1 The Council's Head of Finance and Property is the Council's s151 officer. This is a statutory post and the post-holder has a statutory obligation to make arrangements for the proper administration of the Council's financial affairs.
- 2.2 Under the Council's Constitution, the Head of Finance and Property has delegated authority to write off arrears of irrecoverable debt of an amount not exceeding £10,000 and in cases where the debtor is subject to formal insolvency proceedings, sums exceeding £10,000. The Scheme of delegation additionally states that the Head of Finance and Property be authorised to write off amounts of up to £50 in respect of rent arrears.

A recent review of the delegated write off limits in our neighbouring Berkshire Councils has demonstrated that the level of delegated authority in West Berkshire is low. Details of the write off limits in the 6 Berkshire Unitary Authorities is detailed in the table below.

Name of Council	Details of delegation
Bracknell Forest Borough Council	Borough Treasurer / s151 Officer <u>£50,000</u>
Reading Borough Council	<p>No <i>bona fide</i> debt may be cancelled, other than by formal write off. The scheme of delegation gives delegated authority to Directors/Heads of Service delegated authority to write off debts, for a particular debtor, for sums up to £1,000 at their own discretion; and for sums of up to <u>£20,000</u> with the consent of the Strategic Finance Director. In both cases they must keep a written record of the debt and the reasons for writing it off.</p> <p>The Strategic Finance Director will report to the Policy Committee on the writing-off of individual debts of over <u>£20,000</u>. A record must be maintained for all debts written off.</p>
Slough Borough Council	<p>Recommend Write Off debts to SD, Finance and Resources (incl. stocks and stores). Any write offs over <u>£15,000</u> to Cabinet.</p> <p>Up to <u>£15k</u> and approved by s151 officer</p> <p>Up to £15k (and p.a.) and approved by s151 officer</p> <p>Up to £1k with Level 2 approval</p>
West Berkshire District Council	<p>Head of Finance - <u>£10,000</u> in cases of irrecoverable debt, <u>over £10,000</u> in cases of insolvency of the debtor.</p> <p><u>£50</u> in respect of rent arrears.</p>
The Royal Borough of Windsor & Maidenhead	<p>To seek Cabinet approval to the write-off of redundant stocks and equipment in excess of <u>£20,000</u>.</p> <p>Head of Finance - To agree the write-off of bad debts within those functions that fall within the responsibilities of the Executive Director up to <u>£50,000</u> in each case and to refer larger sums to the Cabinet.</p>

Wokingham Borough Council	Chief Finance Officer is responsible for Write Offs and Waivers Write off of uneconomic debts, or fees and charges, between £1,000 and £25,000.
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- 2.3 It is proposed to delete the separate delegation which appears in paragraph 3.10.6.9 of the Scheme of Delegation at Part 3 of the Constitution relating to rent arrears. It is additionally proposed that the Head of Finance & Property be given delegated authority to write off bad debts up to the sum of £25,000, with authority to write off larger debts up to £100,000 in the case of insolvency in consultation with the Portfolio Holder for Finance. Part 10 of the Constitution dealing with the Financial Rules of Procedure will also be amended to reflect this increase in delegated authority.

Contract Rules of Procedure

- 2.4 The Contract Rules of Procedure detailed at Part 11 of the Constitution make reference to Commercial Board, which has recently been re-named Procurement Board. The Contract Rules therefore need to be updated to reflect this name change.
- 2.5 It is currently a requirement of the Contracts Rules of Procedure that when officers propose to award contracts of a certain value using their delegated powers, they must first bring reports to Corporate Board and/or Operations Board to inform them of the proposed contract award. It is proposed to remove this requirement to bring reports for information.
- 2.6 Details of contract awards now form part of the Corporate Quarterly Reporting and Monitoring and it is considered that this combined with Procurement Board provides adequate corporate governance and oversight. Having regard to the processes that are currently in place, it is considered that the requirement to provide information Reports adds little value and the allocation of resources to the process is therefore unjustified. It is therefore proposed that the requirement to produce reports for information will be removed and Part 11 of the Constitution will be amended as detailed in Appendix G.

Incentive payments to employee's

- 2.7 On 23 November 2017, the Corporate Programme Board approved in principle a scheme by which officers could be encouraged to generate ideas which should produce revenue receipts by way of additional and new income streams for the Council.
- 2.8 The proposal is for those ideas delivering the agreed financial return, the officer(s) who generated the idea will be eligible to receive a payment up to a maximum of £5k per idea pitched. Officers of tier 3 and below will be eligible for payments under the scheme.
- 2.9 An amendment is therefore required to the Scheme of Delegation and Financial Rules of Procedure to enable these payments to be made. It is proposed that the delegated authority to make these payments be given to the Head of Finance & Property, in consultation with the Head of HR and the Portfolio Holder for Finance.

Appointment to statutory posts.

- 2.10 The Scheme of Delegation at paragraph 3.1.3 contains a Schedule of Council functions, which indicates that the Personnel Committee shall be responsible for making appointments to proper officer posts, and for exercising the Council's statutory duty to appoint the Council's Head of Paid Service and a Monitoring Officer.
- 2.11 It has become apparent that a number of statutory posts were omitted from this table, notably the appointment of the Council's section 151 officer, who is responsible for ensuring that arrangements exist to ensure the proper administration of the Council's financial affairs.
- 2.12 The Council has a statutory duty under section 6 of the Local Authority Social Services Act 1970 to appoint an officer as the Director of Adult Social Services, who will have responsibility for the adult social services functions of the Council.
- 2.13 The Council also has a duty under section 18 of the Children Act 2004 to appoint an officer as a Director of Children's Services, who will have responsibility of the Council's education and social services functions for children.
- 2.14 Paragraphs 3.3.5.1 and 3.3.5.2 state that the Corporate Director Communities shall be appointed as the Council's Director of Adult Social Services and the Director of Children's Services.
- 2.15 In view of the statutory duties placed on the Director of Adult Social Services and on the Director of Children's Services, it is considered that the Personnel Committee should also be responsible for appointing suitable officers to fulfil these important statutory roles. It is proposed therefore that the Constitution be amended accordingly.

Social Media Protocol for Members

- 2.16 The officers Code of Conduct was updated in March 2018 following a review on the provisions relating to social media. This highlighted the fact that the review of the Social Media Protocol for Councillors was overdue.
- 2.17 Given the similarities in the issues that arise from the use of social media, it is proposed that in future, these provisions will be reviewed simultaneously for both Officers and Members.
- 2.18 Attached at Appendix H is a revised Social Media Protocol for Councillors. It is proposed that this will replace the existing Protocol which appears at Appendix K of Part 13 of the Constitution.

3. Options for Consideration

- 3.1 The options for consideration are as follows:
- i. The Council could continue to operate under the existing constitutional provisions. This is not recommended.
 - ii. The Council could adopt some of the proposed constitutional amendments. This is not recommended.

- iii. The Council could adopt the proposed constitutional amendments to ensure that the Constitution remains up to date.

4. Proposals

- 4.1 It is recommended that the proposed amendments to the Constitution be adopted by Council.

Part 2 – Articles of the Constitution

- 4.2 It is proposed that the amendments detailed in Appendix D be approved to enable the Personnel Committee to designate suitable officers to fulfil the statutory roles of the Director of Adult Social Care and/or the Director of Children's Services.

Part 3 - Scheme of Delegation

- 4.3 It is proposed that the Scheme of Delegation at Part 3 of the Constitution be amended as detailed in Appendix E.
- 4.4 In summary, the proposed amendments related to the following:
 - (1) The appointment of officers to fulfil statutory posts
 - (2) The approval of delegated authority to the s151 Officer to write off bad debt up to £25,000.
 - (3) The approval of delegated authority to make additional payments to employees in specified circumstances.

Part 10 – Finance Rules of Procedure

- 4.5 It is proposed that paragraph 10.17.1 of the Financial Rules of Procedure be amended as detailed in Appendix F, to enable the s151 Officer to write off bad debt up to £25,000 and debts of up to £100,000 in cases of insolvency in consultation with the Portfolio Holder for Finance.

Part 11 – Contract Rules of Procedure

- 4.6 It is proposed that Part 11 of the Constitution should be amended as detailed at Appendix G.

Part 13 – Codes & Protocols

- 4.7 It is proposed that Part 13 of the Constitution be amended by replacing the existing Social Media Protocol for Councillors with the revised protocol which appears at Appendix H of this report.

5. Conclusion

- 5.1 The Council's Monitoring Officer is required to monitor and review the Council's Constitution to ensure that the Council operates in an efficient and effective manner whilst meeting its legal obligations.
- 5.2 In order to ensure that the Council operates in a way that is both effective and efficient, it is recommended that the changes proposed above be approved by the Council.

6. Consultation and Engagement

.Andy Walker, Andy Day, Robert O'Reilly, David Lowe, Moira Fraser, Shiraz Sheikh

Subject to Call-In:

Yes: ☐ No: ☒

The item is due to be referred to Council for final approval ☒

Delays in implementation could have serious financial implications for the Council ☐

Delays in implementation could compromise the Council's position ☐

Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months ☐

Item is Urgent Key Decision ☐

Report is to note only ☐

Wards affected: All wards could be affected to the extent that the proposals in the Report, if adopted, will result in changes to the Constitution which governs how the Council conducts itself.

Strategic Aims and Priorities Supported:

The proposals will help achieve the following Council Strategy aim:

☒ **MEC – Become an even more effective Council**

The proposals contained in this report will help to achieve the following Council Strategy priority:

☒ **MEC1 – Become an even more effective Council**

Officer details:

Name: Sarah Clarke
Job Title: Interim Head of Legal Services
Tel No: 01635 519596
E-mail Address: sarah.clarke@westberks.gov.uk

Appendix D

Proposed Amendments to Part 2 of the Constitution

Part 2 – Articles of the Constitution

It is proposed that the table at paragraph 2.8.7 be amended with the text in bold and italics below to note that the purpose of the Personnel Committee shall include the following:

To designate an officer as the Director of Adult Social Care and to designate an officer as the Director of Children's Services.

Appendix E

Proposed Amendments to Part 3 of the Constitution

1. The Table at paragraph 3.1.3 of the Constitution shall be amended to include the following:

<i>Duty to designate an Officer as the Council's section 151 officer</i>	<i>Personnel Committee</i>	<i>These functions will not be delegated further</i>
<i>Duty to designate an Officer as the Director of Adult Social Services</i>	<i>Personnel Committee</i>	<i>These functions will not be delegated further</i>
<i>Duty to designate an Officer as the Director of Children's Services</i>	<i>Personnel Committee</i>	<i>These functions will not be delegated further</i>

2. The following paragraphs in the Scheme of Delegation relating to the Corporate Director Communities should be deleted:

3.3.5.1 Shall be appointed as a Director of Children Services and carryout functions pursuant to section 18 of the Children Act 2004.

3.3.5.2 Shall be appointed as a Director of Adult Social Services and carryout functions pursuant to section 6 of the Local Authority Social Services Act 1970.

3. Paragraph 3.10.3.8 of the Scheme of Delegation referring to powers delegated to the Head of Finance and Property be amended as follows:

Decisions to write off arrears of irrecoverable debt of an amount not exceeding ~~£10,000~~ **£25,000** and in cases of insolvency where the sums exceed ~~£10,000~~ **£25,000 up to a maximum of £100,000, the decision should be taken in consultation with the Portfolio Holder for Finance.**

4. It is proposed to add an additional paragraph at 3.10.3 of the Scheme to provide as follows:

In consultation with the Head of Human Resources and the Portfolio Holder for Finance, to make additional payments to qualifying employees of up to £5,000 where it is deemed appropriate to do so.

Appendix F

Proposed Amendments to Part 10 of the Constitution

Part 10 – Finance Rules of Procedure

1. It is proposed that paragraph 10.17.1 of the Financial Rules of Procedure be amended as follows:

No debt due to the Council, after it has been correctly established, shall be discharged otherwise than by payment in full or by the writing-off of the debt or the unpaid portion of it, on the authority of the Head of Finance and Property or nominated officer where either:

- (a) the debt is not enforceable or that attempted recovery is likely to involve expensive litigation with limited hope of success; or

(b) the cost of recovery would be disproportionate to the amount involved;

- the debt does not exceed ~~10,000~~**£25,000** ~~or in cases of bankruptcy or liquidation the full amount.~~ ***In cases of insolvency where the debt exceeds £25,000 up to a maximum of £100,000, the decision shall be taken in consultation with the Portfolio Holder for Finance;***

- Housing rent does not exceed ~~10,000~~**£25,000**.

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West Berkshire Council Constitution

Part 11

Contract Rules of Procedure

Document Control

Document Ref:	WB/P&C/MF/2008-11	Date Created:	May 2007
Version:	10	Date Modified:	April 2017
Revision due	Annual		
Author:	Moirra Fraser – Democratic Services Manager		
Owning Service	Strategic Support		

Change History

Version	Date	Description	Change ID
1.1	Sept 2008	Amended to include up to date guidance on the use of consultants	
2	Jan 2010	Significant re-write in line with current legislation.	
3	April 2012	Changes to whole document as a consequence of the Senior Management Review	
4	December 2012	Significant re-write to bring in line with current law, practice and procedures. Also to streamline it.	
5	June 2014	11.11.3(a)	Delegated authority



West Berkshire
C O U N C I L

Version	Date	Description	Change ID
6	May 2015	11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.6, 11.1.7, 11.2.1, 11.2.2, 11.2.3, 11.2.4, 11.3.1 (b) and (f), 11.4.3, 11.4.4, 11.5.1, 11.5.2, 11.6.1, 11.6.2, 11.6.4, 11.7.2, 11.7.3, 11.8.1, 11.8.2 (deleted), 11.9.1, 11.9.2, 11.9.4, 11.9.5, 11.11.1, 11.11.2, 11.11.3, 11.11.4, 11.11.5, 11.11.6, 11.13.1, 11.13.2, 11.15.5, 11.16.2, 11.16. Implementation of the new Directives and Regulations	
7	July 2015	Amendments arising from the merge of the Governance and Audit and Standards Committee	11.14.3
8	September 2016	11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.6, 11.1.7, 11.1.8 (added), 11.1.9 (added), 11.2.1, 11.2.2, 11.2.3, 11.2.4, 11.3.1, 11.4.3, 11.4.4, 11.4.5, 11.5.1, 11.5.2, 11.6.1, 11.6.2, 11.6.3, 11.6.4, 11.6.5, 11.7.2, 11.7.3, 11.8.1, 11.8.2 (deleted), 11.9.1, 11.9.2, 11.9.3, 11.9.4, 11.9.5, 11.9.6 (deleted), 11.9.7 (deleted), 11.10.4 (deleted), 11.10.5 (deleted), 11.10.6 (deleted), 11.10.6 (deleted), 11.10.7 (deleted), 11.10.8 (deleted), 11.11, 11.11.1, 11.11.2, 11.11.3, 11.11.4, 11.11.5, 11.11.6, 11.12, 11.12.1, 11.12.2, 11.12.3, 11.12.4, 11.13, 11.13.1, 11.13.2, 11.14, 11.14.1, 11.14.2, 11.14.3, 11.15 (added), 11.16 (added)	
9	November 2016	11.4.4, 11.4.5, 11.11.2, 11.11.3, 11.11.7 and 11.11.8 to reflect the change from the Procurement Board to the Commercial Board	Delegated Authority
10	1 st April 2017	Changes throughout this Part of the Constitution to change Head of Finance to Head of Finance and Property post Senior Management Review	
<u>11</u>	<u>August 2018</u>	<u>Changes throughout this Part from Commercial Board to Procurement Board.</u> <u>Reports for contracts below £2.5m do not now need to go Corporate Board or Operations Board for information.</u>	<u>Council</u>

Any Acts, Rules or Regulations mentioned in the text of this document can be accessed on the Office of Public Sector Information website at:
<http://www.opsi.gov.uk/legislation/uk>

If you require this information in a different format, such as audio tape or in another language, please ask an English speaker to contact
 Moira Fraser on 01635 519045 who will be able to help.

West Berkshire Council Constitution



West Berkshire
C O U N C I L

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11.1 Application of Contract Rules of Procedure

- 11.1.1 These Contract Rules of Procedure (also referred to as the Contract Standing Orders) are made in accordance with the requirements of Section 135 of the Local Government Act 1972.
- 11.1.2 These Contract Rules of Procedure apply to purchases by or on behalf of the Council of works, supplies and services.
- 11.1.3 These Contract Rules of Procedure apply to all contracts including (but not limited to) purchase orders, consultancy agreements, service level agreements, software licenses, concessions and contractual arrangements entered into by or on behalf of the Council, except for the specific types of contracts and purchasing methods which are expressly excluded under the Procurement Legislation.
- 11.1.4 The Procurement Legislation referred to in these Contract Rules of Procedure includes the following:
- 11.1.5 The EU Directives, as follows:
- 11.1.6 Directive 2014/24/EU on public procurement, replacing Directive 2004/18/EC, for Public Sector Contracts;
- 11.1.7 Directive 2014/25/EU procurement by entities operating in water, energy, transport and postal services sectors, replacing Directive 2004/17/EC; and Directive 2014/23/EU on award of concession contracts, which does not directly replace any previous directive.
- 11.1.8 The Regulations, as follows:
- 11.1.9 Public Contracts Regulations 2015 (“PCR”)
- 11.1.10 Utilities Contracts Regulations 2016 (“UCR”)
- 11.1.11 Concessions Contracts Regulations 2016 (“CCR”)
- 11.1.12 as amended from time to time and all implementing the above EU Directives.
- 11.1.13 These Contract Rules of Procedure do not provide guidelines on the best way to purchase works, supplies and services. They seek to set out minimum requirements to be followed. Further information is provided by of guidance and updates on the Legal Services intranet pages, which accompany these Contract Rules of Procedure. This further information is made available and updated from time to time.
- 11.1.14 The Council has designated that the Head of Legal Services be the Monitoring Officer. The Council has designated the Head of Finance and Property be the S151 Officer. The Head of Legal Services shall be responsible for interpreting these Contract Rules of Procedure. All reference to Head of Legal Services hereafter includes any such officers nominated by the Head of Legal Services.
- 11.1.15 In the event where a Governing Body of a school, under the control of the Local Education Authority, intends to enter into a contract for works, supplies or services the Head teacher or such persons as delegated by them must follow these Contract Rules of Procedures.

- 11.1.16 In the event of a declaration of major incident the Council's Major Incident Plan and/or Business Continuity Plan may be invoked. This in turn may lead to the need to incur additional unbudgeted expenditure. When this becomes necessary the Contract Rules of Procedure will be suspended and the Chief Executive, or an officer nominated by the Chief Executive, is then authorised to incur whatever expenditure is necessary in consultation with the Head of Finance and Property. A Corporate Director will act in the place of the Chief Executive if they are unavailable.
- 11.1.17 Failure to comply with these Contract Rules of Procedure will be viewed by the Council as a breach of the Officers' Code of Conduct contained within Part 13 (Codes and Protocols) of this Constitution and may be considered a disciplinary matter.

11.2 Purpose of Contract Rules of Procedure

- 11.2.1 The purpose of these Contract Rules of Procedure is to provide a structure within which procurement decisions are made and implemented to ensure that the Council furthers its corporate objectives in an efficient manner leading to procurement of quality supplies, services and works.
- 11.2.2 These Contract Rules of Procedure protect the legal position of the Council in respect of compliance with the law and in its contractual dealings with external suppliers and contractors. They protect the interests of Members, Officers and the citizens of West Berkshire.
- 11.2.3 Every purchase, contract or official order for works, supplies or services made by the Council shall be for the purpose of implementing the Council's policies and must be made in accordance with the Council's duty of Best Value, Equality and Sustainable Commissioning.
- 11.2.4 When proposing to procure or making arrangements for procuring a service contract where the estimated value exceeds the EU Threshold (for Services) then consideration must be given as to how the procurement or contract might improve the economic, social and environmental wellbeing of West Berkshire, as required by the Public Services (Social Value) Act 2012

11.3 Tendering – Preliminaries

- 11.3.1 It is the responsibility of the Chief Executive, Corporate Directors, and Head of Services to ensure all purchases of supplies and services and works comply with:
- (a) all relevant statutory requirements;
 - (b) the relevant EU Rules including EU Treaty Principles and Directives.
 - (c) the Council Constitution including these Contract Rules of Procedure and Financial Rules of Procedure and Scheme of Delegation.
 - (d) any code, guidance or conditions approved by the Governance and Ethics Committee and/or the Executive and/or the Council to the exercises of powers delegated by them.
 - (e) any conditions attached by the Executive or the Council to the exercise of powers delegated by them.

- (f) the guidance and updates (available from time to time) on the Legal intranet pages (to include Consultancy Guides) and other policies and procedures of the Council as appropriate.

11.3.2 In the event of conflict between the above, the EU Rules will take precedence, followed by UK legislation, then (c), (d), (e), and (f) as above.

11.4 Authority

11.4.1 All transactions must fall within the powers delegated to the Chief Executive or Corporate Director or the Head of Service or must have been approved by a decision (in accordance with the Council's Constitution) of the Executive, an authorised Member of the Executive, the Council or one of its committees or sub-committees.

11.4.2 No contract, agreement or other document shall be signed or sealed unless it gives effect to:

- a decision or resolution (in accordance with the Council's Constitution) of the Executive, an authorised Member of the Executive or one of its committees or sub committees; or
- a decision by an officer exercising delegated powers.

11.4.3 Budgetary provision must exist before any contract can be entered into. This provision should be explicit in a budget approved by resolution of the Council. Where budgetary approval exists for a specific item within the Capital Programme further Member approval is generally not required.

11.4.4 For items outside of the Capital Programme (e.g. revenue) if the relevant Head of Service does not have the delegated authority then an approval or a resolution (as appropriate) is required as outlined in the table below (provided the expenditure can be met within budget) before the contract can be awarded:

Total Contract Value per annum*	Delegated decision or Resolution of:
£100,000 or less	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 or more and less than £500,000	Relevant Head of Service (following recommendation of the S151 Officer and Head of Legal Services) shall have delegated authority to award the contract provided: <div style="margin-left: 20px;"> 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 Commercial Procurement Board; and b) the report has been included as an "item for information" item for Corporate Board. </div>
£500,000 or more and less than £2.5million	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

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Total Contract Value per annum*	Delegated decision or Resolution of:
	<p>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 Commercial Procurement Board; and</p> <p>b) the report has been included as an "Item for information" item for Corporate Board and to the Operations Board.</p> <p>c) b) such decision have been made in accordance with Part 5.3 (Call-In) and 5.4 (Forward Plan) of the Constitution.</p>
£2.5million or more	<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>

* Total Contract Value is the calculation of the estimated value of procurement based on the total amount payable, net of VAT, including any renewals, extensions, any form of option and variation calculated in accordance with the Procurement Legislation. Please also refer to Paragraph 11.7.

- 11.4.5 All contracts over £50,000 in Total Contract Value will be reported to ~~Commercial Procurement~~ Board on at least a quarterly basis by the Heads of Services for review and scrutiny.

11.5 Tendering - Financial Thresholds & Procedures

- 11.5.1 Officers undertaking the procurement are responsible for ensuring that all persons awarded contracts for the supplies, services or works to the Council meet the Council's minimum standards of suitability, capability, legal status and financial standing. Where the contract is below the EU threshold for goods and services officers must not include a pre-qualification stage. However questions relating to a supplier's suitability assessment may be included provided such questions are relevant to the subject matter of the procurement and proportionate.
- 11.5.2 The financial value thresholds (exclusive of Value Added Tax) at which processes become mandatory are set out in the table below. The thresholds apply to contracts for works, supplies and services:

	Total Value £	Award Procedure	Advertising requirements
A	Less than 10,000	At least one quote must be sought from an appropriate source via the Procurement Portal.	None mandated.
B	10,000 or more and less than 100,000	Invitations to quote must be sent via the Procurement Portal to at least three appropriate sources, including at least one SME* or VCSE* organisation (where appropriate and possible) ¹ .	None mandated. However if advertising then information about the opportunity should be placed on Contracts Finder database.
C	100,000 or more and less than relevant EU threshold ²	Full competitive tender process applies and at least five written tenders must be sought via the Procurement Portal.	An advert should be placed on the Portal together with information on the Contracts Finder database
D	Relevant EU threshold ² or more	EU Procedures apply– full competitive tender process with at least five written tenders sought (where appropriate) via the Procurement portal.	An advert should be placed on the Official Journal of the European Union together with information on the Contracts Finder database.

*SME (means an enterprise falling within the category of micro, small and medium-sized enterprises) or *VCSE (means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives).

¹The Council cannot give preference to SME/ VCSE or local contractors/suppliers, as there are legislative constraints and such a policy would be incompatible with Best Value. However, the Council recognises that there can be barriers limiting or restricting the ability of such smaller suppliers to compete for Council business. The Council will seek to reduce the impact of such barriers, where it can do so legally, without discrimination, and without placing unacceptable levels of risk on the Council.

²There are three different EU thresholds for Works; Supply and Services; Social and Other Specific Services. The latest values are published on Legal intranet page as updated from time to time.

11.6 Tendering - Advertising

- 11.6.1 There is a general presumption in favour of competition. Subject to advertising requirement in paragraph 11.5.2 (Tendering- Financial Thresholds and Procedures)
- 11.6.2 all contract opportunities being advertised by the relevant Head of Service should be done so electronically on the Council's Procurement Portal to ensure that such opportunities also appear on the Contracts Finder database For opportunities relating to works, services and supplies which fall below the EU threshold a UK Government Certified national database can be used to select tenderers.

11.6.3 Subject to 11.6.1 (above) all contract opportunities which are:

- above the EU thresholds; and
- subject to the full application of EU Rules

must be advertised by notice in the Official Journal of the European Union ("OJEU notice") and Contracts Finder database prior to such advertisement appearing on any other advertising medium (such as trade journal etc.). Contracts Finder means a web-based portal provided by the Cabinet Office.

11.6.4 However under the EU Treaty principles where the contract is of potential cross border interest then it must be publicised to ensure that tenderers from other member states have an opportunity to participate and the process is conducted in a fair and transparent manner.

11.6.5 Where a contracts is above the EU financial threshold there are five main types of EU procedures available. These are Open procedure, Restricted procedure, Competitive procedure with negotiation, Competitive dialogue and Innovation partnership. Care must be taken to ensure that the correct and most appropriate procedure is used and advice is sought from Legal Services on the choice and use of EU procedure. OJEU notices must be approved and issued by Legal Services who will also assist in the conduct of the procurement.

11.7 Tendering - Contract Value & Aggregation

11.7.1 The contract value shall be the total cost of the supply, service or work to be procured over the contract term. The starting point for calculating the contract value for the purposes of these Contract Rules of Procedure is that the contract value shall be the genuine pre-estimate of the value of the entire contract excluding Value Added Tax. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period (including proposed extensions, variations and options).

11.7.2 There shall be no artificial splitting or disaggregation of a contract to avoid the application of the provisions of the Procurement Legislation and/or these Contract Rules of Procedure.

11.7.3 The Procurement Legislation can cover contracts, which are below the stated EU threshold, where they constitute repeat purchases and/or purchases of a similar type in a specified period. Officers responsible for the procurement should therefore seek advice on the application of the Procurement Legislation where they envisage that they may be required to make such purchases.

11.8 Tendering - Principles and Evaluation

11.8.1 All tendering procedures (including obtaining quotes), from planning to contract award and execution (seal or signature), shall be undertaken in a manner so as to ensure:

- sufficient time is given to plan and run the process;
- equal opportunity and equal treatment;
- openness and transparency;

- proportionality;
- probity;
- outcomes that deliver sustainability, efficiency and cost savings (where appropriate).

11.9 Tendering - Submission and Opening of Tenders

- 11.9.1 An electronic Invitation to Tender shall be issued by the Council for all contracts with an estimated value of £100,000, or more and tenders shall be submitted electronically via the Council's Procurement Portal.
- 11.9.2 The Council Procurement Portal and the Invitation to Tender must specify the format in which an electronic tender is submitted by tenderers and such tenders shall be stored in a secure portal account which is locked until the date and time specified for its opening.
- 11.9.3 No tender received after the time and date specified for its opening shall be accepted or considered by the Council unless the Head of Legal is satisfied that there are exceptional circumstances and the other tenders have not been opened.
- 11.9.4 The electronic opening of tenders submitted on the Procurement Portal shall be conducted by a Procurement or Legal Officer and the relevant Head of Service or their nominated representative.
- 11.9.5 Only in limited circumstances a tender process should be undertaken by hard copy submissions. In such cases written approval of the Head of Legal Services is required. The following circumstances shall apply:
- 11.9.6 The Invitation to Tender shall specify that such tenders should be returned to the relevant Head of Service; in an unmarked, plain and sealed envelope marked "Tender" followed by the subject matter to which it relates and:
- (a) Tenders should be kept unopened in a secured cabinet until the tender opening date; and
 - (b) The relevant Head of Services shall invite the appropriate Portfolio Holder and an officer from Legal Services to undertake the tender opening and shall complete a standard tender opening form as issued by Legal Services (available on the intranet) in order to avoid risk of challenge.

11.10 Tendering – Evaluations of Quotes and Tenders

- 11.10.1 All quotes and tenders shall be evaluated in accordance with evaluation criteria notified in advance to those submitting quotes/tenders.
- 11.10.2 Tenders subject to the EU Rules shall be evaluated in accordance with the EU Rules. Advice from Legal Services should be sought on the selection and evaluation criteria.
- 11.10.3 Save in exceptional circumstances approved in advance by the relevant Head of Service all contracts shall be awarded on the basis of the quote or tender which is most economically advantageous and represents best value for money to the Council and not on the basis of lowest price.

11.11 Exclusions and Exceptions to Contract Rules of Procedure

11.11.1 Exclusions

11.11.2 The requirement to conduct a competitive procurement process is excluded in the following circumstances:

	Type of circumstance	Written record and approval
a)	the proposed contract is excluded under the Procurement Legislation.	Prior written approval from the Head of Legal Services is required.
b)	the proposed contract is being awarded under a Purchasing Scheme (refer to 11.12) of a type where a competition has already been undertaken on behalf of the Council or other public sector organisation; or	Prior written approval from the Head of Legal Services is required.
c)	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.	For contract value below £50,000 prior written approval from the Head of Legal Services and S151 Officer is required. For contract value greater than £50,000, approval of the Commercial Procurement Board , following the submission of an extension report to Commercial Procurement Board with recommendation from Head of Legal Services and S151 Officer
d)	the contract is for the following social care services: <ul style="list-style-type: none"> i. residential placements sought for an individual with a registered care provider of their choice; ii. supported living services sought for an individual with an appropriate care and support provider of their choice under the National Health Service and Community Care Act 1990; iii. individual school placements sought for a child with Special Educational Needs (SEN); 	Head of Service must ensure that a record of the reasons for the choice of provider is maintained on the individual's case notes. A record of the annual cumulative expenditure with each provider should be maintained by each directorate and made available for audit.

	Type of circumstance	Written record and approval
	iv. social care packages managed by or on behalf of individual clients under the personalisation agenda; v. where certain needs of an individual (either an adult or a child) require a particular social care package, which is only available from a specific provider. vi. residential placements sought for an individual under the Shared Lives scheme (or any equivalent scheme).	

11.11.3 In the interests of clarity where an exemption is applied all contracts with an annual or total value of more than £50,000 must be approved by Commercial Procurement Board. Please refer to 11.11.4.

11.11.4 Exceptions

11.11.5 Subject to 11.11.6 the requirement for the Council to conduct a competitive purchasing process for contracts in excess of £9,999, may be excepted or waived in the following circumstance:

- for contracts which are not subject to the EU Rules, the work, supply or service is required as a matter of urgency and a delay would be likely to lead to financial loss, personal injury or damage to property; or
- at the discretion of the relevant Corporate Director and/or the Chief Executive, acting lawfully, who may proceed in a manner most expedient for the efficient management of the Council with reasons recorded in writing.

11.11.6 Only the Head of Legal Services and/or the Head of Finance and Property (as S151 Officer) may grant a waiver or an exception to these Contract Rules of Procedure, subject to Exception Values and delegations below. An Officer, who seeks a waiver of Contract Rules of Procedure, shall do so only in advance and only in exceptional circumstances.

11.11.7 Exception values and delegations

(a) For all contracts up to £49,999 the Section 151 Officer or nominated Officer must approve the exception.

~~(b)~~ For contracts between £50,000, and £5200,000, the Section 151 Officer or nominated Officer will consult with the Head of Legal Services and the appropriate Corporate Director provided an exception report has been approved by Commercial Procurement Board.

~~(e)(b)~~ For contracts between £200,000 and £500,000 the exception will be dealt with by way of recommendation to Corporate Board after consultation with the Section 151 Officer and with the Head of Legal

~~Services or such officer as nominated by them provided an exception report has been approved by the Commercial Board.~~

(d)(c) For contracts over £500,000 the Section 151 Officer and the Head of Legal Services or such officer as nominated by them will make a recommendation to the Executive provided an exception report has been prepared and approved by ~~Commercial~~Procurement Board and Corporate Board.

11.11.8 All exceptions or waivers to these Contract Rules of Procedure must be:

- fully documented;
- subject to a written exception report to be submitted in advance to ~~Commercial~~Procurement Board (for 11.11.3 b, c, d) by the relevant Head of Service or Corporate Director which shall include reasons for the exception or waiver which demonstrate that the exception or waiver is genuinely required;
- subject to approval by the Section 151 Officer who shall record they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver are genuinely exceptional. Applications for waivers which are a result of poor contract planning will rarely be considered genuinely exceptional;
- relevant approval has been sought under 11.11.3.

11.11.9 For contracts subject to the EU Rules, any waiver or an exception from the requirement for competition must meet the conditions set out in the EU Rules in addition to the general requirements above.

11.12 Purchasing Schemes

11.12.1 An officer responsible for the procurement exercise may use Purchasing Schemes subject to the following conditions:-

11.12.2 An officer responsible for the procurement must seek advice in advance that:

- the Council is legally entitled to use the Purchasing Scheme;
- the purchases to be made do properly fall within the coverage of the Purchasing Scheme;
- the establishment and operation of each Purchasing Scheme is in compliance with the EU Rules (where they apply) and meets the Council's own requirements.

11.12.3 A "Purchasing Scheme" may include:

- Contractor prequalification lists/select lists;
- Framework arrangements (including those set up by the Government Procurement Service);
- Purchasing arrangements set up by central purchasing bodies and commercial organizations;
- Consortium purchasing;
- Collaborative working arrangements;
- Formal agency arrangements;

- E-procurement / purchasing schemes and methods;
- Other similar arrangements.

11.12.4 Where a Purchasing Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Rules of Procedures in respect of the choice and conduct of procedures. Advice should be sought from Legal Services prior to entering to such arrangements.

11.13 Reporting Requirements

11.13.1 A written report should be drawn by the relevant Head of Service for each contract that is awarded which is above EU threshold and subject to the Procurement Legislation. The Procurement Legislation places an obligation on the Council to document, for each procurement, key decision and steps taken and stages leading to the award of contracts. This report may be requested by the European Commission and/or the Cabinet Office and should be kept for a period of 3 years. A guidance note and template for such report ~~will be made~~ available ~~by way of guidance and updates~~ on the Legal Services intranet pages which accompany these Contract Rules of Procedure.

11.13.2 In addition to the above, the relevant Head of Service should document the progress of all procurement procedures including ensuring sufficient information is kept to justify decisions such as communications with contractors and internal deliberations, preparation of procurement documents, any dialogue and negotiation, selection and award. Documentation must be kept for three years from the award of the contract.

11.14 Prevention of Corruption

11.14.1 The public is entitled to demand of Local Government Officers conduct of the highest standard. Public confidence in their integrity would be undermined were the least suspicion, however ill-founded, to arise that they could in any way be influenced by improper motives.

11.14.2 Where a Member or Officer of the Council has an interest in a contract or a proposed contract whether it is a disclosable pecuniary interest or otherwise and is also involved in the process of letting or managing of that contract, this interest must be registered with the Monitoring Officer who shall decide on whether that Member or Officer should be involved or not.

11.14.3 In the case of ownership of shares Members should seek advice from the Head of Legal Services as to the current level of share ownership accepted by the Governance and Ethics Committee or any such successor authority as being de minimus for the purposes of declarations of interest.

11.15 Entering into a Contract

11.15.1 There should be written evidence of all purchases, including electronic evidence.

11.15.2 All contracts entered into by the Council must be in writing in a form approved by the Head of Legal Services or their delegated officer. Where a standard form of contract is used, or a standard form is to be amended, the form of contract shall be prepared/amended by the Head of Legal

Services or his delegated officer. The Head of Legal Services shall retain all relevant contract documents.

- 11.15.3 The relevant Head of Service must formally notify the Head of Legal Services (or nominated officer) of the award of all contracts with the relevant data for the purpose of it being recorded on the Council Contract Register.
- 11.15.4 Every contract shall include wherever possible the standard clauses set out in Standard Form of Agreement issued and updated from time to time by the Head of Legal Services or their nominated officer and available from Legal Services.
- 11.15.5 As a minimum, where appropriate, all contracts shall include clauses which set out:
- the works, supplies (goods), services, material, matters or things to be carried out or supplied;
 - the time within which the contract is to be performed. Quality requirements and/or standards which must be met;
 - requirements on the contractor to hold and maintain appropriate insurance;
 - what happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part);
 - requirements on the contractor to comply with all relevant equalities and health and safety legislation;
 - that the Council shall be entitled to cancel the contract and recover losses in the event that the contractor does anything improper to influence the Council to give the contractor any contract or commits an offence under the Bribery Act 2010.
 - payment obligations which require that:
 - (a) any payment due from the Council is made no later than 30 days from the date on which the relevant invoice is regarded as valid and undisputed; and
 - (b) any subcontract imposes obligations similar to those required above (a) and an obligation that the subcontractor is required to impose such obligations in any further subcontract.
 - All contracts shall include relevant specifications and/or briefs/technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability and efficiency (as appropriate).

11.16 Legal Consideration

- 11.16.1 *Indemnities:* No relaxation of full indemnities releasing the Council from all liability whether provided by public liability insurance or other instrument should be allowed unless authorised in writing by the Head of Legal Services and the Head of Finance and Property or nominated Officer.
- 11.16.2 *Risk Assessment & Performance Bond:* Where a contract is estimated to exceed £500,000, in value or amount and is for the execution of works (or

for the supplies or services by a particular date or series of dates) the relevant Head of Service should consider requiring a performance bond (for an amount equal to 10% of the value of the contract) from the contractor. The bond must be in a form approved by Legal Services and must be included in the Invitation to Tender. This is to provide sufficient security for the due performance of the contract. If a performance bond is considered not necessary then the relevant Head of Service must:

- (a) undertake a risk assessment in writing; and
- (b) seek approval from the Head of Finance and Property; and
- (c) keep a copy the risk assessment on the contract file for inspection.

11.16.3 *Insurances:* Every contract should be assessed for risk. If the risk assessment identifies the need for insurance the Head of Service must:

- in consultation with the Head of Finance and Property or nominated Officer set adequate levels of insurance cover. This includes employer's liability, public liability and any other as determined by the needs of the particular contract;
- in consultation with the Head of Finance and Property or nominated Officer ensure that the required insurances are in fact held by the contractor and that the policies concerned are renewed, if necessary, during the period required;
- in consultation with the Head of Finance and Property or nominated Officer who must ensure the contractor's status under the Inland Revenue Construction Industry Tax Deduction Scheme (for construction contracts);
- in consultation with the Head of Finance and Property set an appropriate level of professional indemnity insurance for each specific contract that require professional and/or design services. This should not be a standard level but be assessed on a case by case basis.

11.16.4 *Sealing:* All contracts above the value of £49,999 shall be sealed. The affixing of the seal shall be attested and witnessed in writing by the Head of Legal Services, or an Officer duly designated by them in accordance with the delegated powers conferred by the Council. An entry of every sealing of a document shall be made and consecutively numbered in a book to be provided for the purpose and shall be signed by the person attesting the sealing.

The Common Seal shall be in the Custody of the Head of Legal Services and kept in a safe place at their discretion. The Common Seal of the Council may be affixed to any document that has been approved by a resolution of the Council; or of the appropriate Committee or an Officer to which the Council or the Executive has delegated its powers on its behalf, provided that a resolution of the Council or of the appropriate Committee or Officer where that appropriate Committee or Officer has the appropriate authority authorising the acceptance of any tender, the purchase, sale, letting or taking of any property, the issue of stock, the presentation of any petition, memorial or address, the making of any rate, contract or order, or

any other matter or thing, shall be a sufficient authority for sealing any document necessary to give effect to the resolution.

The Common Seal of the Council may be affixed to any:

- petition to be presented to Parliament against the promotion of any Bill or confirmation of any Provisional Order which the Council opposes;
- mortgage in respect of a loan arranged by the Head of Finance and Property or nominated Officer under the powers of Heads of Service approved by the Council;
- incomplete form of transfer for the duly authorised sale of securities by the Council as necessary for the purposes of dealing with stocks and shares in accordance with the Stock Transfer Act 1963.

11.16.5 *Signature of Documents:* Where any document will be a necessary step in legal proceedings on behalf of the Council it shall, unless any enactment otherwise requires or authorises or the Council shall have given the necessary authority to some other person for the purpose of such proceedings, be signed by the Head of Legal Services.

11.16.6 Where it becomes necessary to execute any document on behalf of the Council not required by law to be under Seal, the Head of Legal Services or an Officer designated by them in accordance with the delegated powers conferred by the Council shall be deemed to have authority to sign such a document accordingly. A register of such documents shall be kept by the Head of Legal Services or Officer duly designated by them.

11.16.7 *Counsel:* Within budget, the Head of Legal Services (or nominated officer) shall have discretion to select Counsel, obtain Counsel whenever it is considered expedient in the Council's interest to do so.

Appendix K

Social Media Protocol for Councillors

1. ~~Background~~Introduction

- ~~(a) The Scheme was approved at the full meeting of West Berkshire Council on 12 December 2013 and is available on the Council's website.~~
- ~~(b) The scheme will be reviewed in December 2016 or such earlier time as may be required.~~

~~1.1 This protocol was last reviewed and updated on the 6th December 2018.~~

~~1.2 The purpose of the protocol is to ensure that Councillors of West Berkshire Council make use of social media effectively whilst avoiding as far as possible, any potential accusations that they may be breaching breaches of the Council's Councillor's Code of Conduct.~~

~~1.3 This protocol should be read in conjunction with the Members Code of Conduct (Appendix H to Part 13 Codes and Protocols of the Council's Constitution), the Council's ICT Policy, the Council's Equalities Policy, and the Local Authority Code of Publicity under the Local Government Act 1986.~~

~~1.4 Appendix 1 of the Councillor's Code of Conduct contains definitions for some of the words and phrases used in that Code and those definitions apply for the purpose of this protocol for consistency and ease of understanding.~~

~~1.5 It is also designed to ensure that the reputation of the Council is not adversely affected and that the Council is not subject to legal challenge as a result of information posted on social networking sites or blogs.~~

~~1.6 Advice on the use of social media can be sought from different departments across the Council but enquiries should in the first instance be directed to the Head of Strategic Support, West Berkshire Council, Market Street Offices, Market Street, Newbury, RG14 5LD.~~

~~1.7~~

~~1.8~~

~~(e) 1.9 It is also designed to ensure that the reputation of the Council is not adversely affected and that the Council is not subject to legal challenge as a result of information posted on social networking sites or blogs.~~

- ~~(d)(a) Advice on the use of social media can be sought from different departments across the Council but enquiries should in the first instance be directed to the Head of Strategic Support, West Berkshire Council, Market Street Offices, Market Street, Newbury, RG14 5LD.~~

2. Application

- 2.1 This protocol will apply to Councillors using social media who are acting in their Capacity as a Councillor, and in circumstances where a Councillor is purporting or perceived to be acting as such.
- 2.2 For the purposes of this protocol, social media has a broad meaning. By way of example, this will include but will not be limited to the following types of social media: Facebook, Instagram, Twitter, Snapchat, You Tube and local internet based discussion forum
- 2.3 You should bear in mind that anything posted, shared for example by retweeting, or liked on social media could end up in the public domain, regardless of any privacy settings that you have applied.
- 2.4 Particular care needs to be taken when retweeting the views or comments of others as this could be perceived as an endorsement of the content regardless of your intention.
- 2.5 protocol applies to you as a Member of this Council when you are acting or purporting to act in your role as a Member and you have a responsibility to comply with the provisions of this protocol. The protocol should be read in conjunction with the Members Code of Conduct (Appendix H to Part 13 Codes and Protocols of the Council's Constitution).

2.1 —

2.2.6 Bear in mind the Code of Conduct when you blog, use social networking sites or any other digital content publication service. You should pay particular attention to the following paragraphs requirements of the Code relating to:

- Disrespect Courtesy and respect;
- Bullying or intimidating behaviour;
- Disclosure of confidential information;
- Conduct which could bring their office or the Council into dDisrepute;
- Misuse of the Council's resources.
- Misuse of authority resources.

It is difficult to give definitive advice on the application of the Code of Conduct to social media use and there is developing case law in this area. However, if you use a social media platform where you identify yourself or can otherwise be identified as a Councillor, either in your profile or otherwise, there is a strong likelihood that you will be regarded as acting in your Capacity as a Councillor.

~~It is difficult to give definitive advice on the application of the Code of Conduct as each blog and social networking page is different.~~

2.32.7 The content of a blog or other social networking tool and the circumstances surrounding its creation will determine whether or not it might be covered by the Code of Conduct you are deemed to be acting in your capacity as a

councillor. There are however ~~two~~ some general rules that councillors should bear in mind when deciding on whether to publish content:

- (1) Only publish on social media what you would say verbally in public, even in an informal discussion, ~~when representing the Council.~~
- (2) Only publish on social media what you could defend in court if asked to do so.
- (3) If retweeting or forwarding the views of others, ensure that it is clear whether you are endorsing or otherwise the original content.

~~(2) Only publish what you could defend in court if asked to do so.~~

2.4 ~~Ethical use of online social media is not limited to what is covered in the Code of Conduct. Councillors are encouraged to respect the Seven Principles of Public Life as set out in section 28(1) of the Localism Act 2011 which can be found at paragraph 2.2 in the Members Code of Conduct (Appendix H to Part 13 Codes and Protocols of the Council's Constitution). While your conduct may not be a breach of the Code it may still be viewed as less than exemplary and attract adverse publicity for your office and the Council.~~

3. **Associated Policies**

~~3.4.2.8 This protocol should be read in conjunction with the Members Code of Conduct (Appendix H to Part 13 Codes and Protocols of the Council's Constitution), the Council's ICT Policy, the Council's Equalities Policy, the Local Authority Code of Publicity under the Local Government Act 1986. The Council's Social Media Guidelines and Social Media Guidance can be found on the Council's website.~~

4.3. **Introduction Protocol**

3.1 ~~All Members of the authority~~ Councillors are required to act in accordance with the ~~Members~~ Councillor's Code of Conduct whilst acting ~~in their official~~ with ~~Capacity.~~

~~4.4.3.2 Blogging and social networking are~~ Social media is an effective methods ~~for by which councillors~~ Councillors to can interact with constituents and support local democracy. Used effectively, ~~they~~ Councillors can engage those who would not normally have access to local councillors and politics.

~~4.23.3 However it is not always clear whether such activities are covered by the Code of Conduct.~~ This guide is intended to assist ~~councillors~~ Councillors in complying with the Code of Conduct and ensuring that the use of ~~online social~~ media is well received. You should think about what you say and how you say it, in just the same way as you must when making statements in person or in writing. ~~You will also need to think about whether you are seen to be, or give the impression that you are acting in your official capacity as a councillor.~~

3.4 ~~If you do give the impression that~~ Whenever you are acting in your official capacity whilst blogging or using social media, you should be aware that such activity may be subject to the Councillor's Code of Conduct. ~~Individual~~ Councillors are permitted to write their own official blogs as ~~Members~~ members of West Berkshire Council but in these, they must conform to the Code of Conduct and other relevant policies and protocols of the Council.

3.5 ~~If you have a private blog. It should be noted that privacy settings will not prevent others with access to your comments from sharing your views with a broader audience. Therefore, notwithstanding the privacy settings applied to any of your social media accounts,~~ you must bear in mind that if you refer to council business in it, you may be viewed as acting in your ~~official~~ eCapacity.

3.6 ~~To make sure you comply with the Code of Conduct, you are requested it is suggested that when using social media as a Councillor, to you should observe the following guidelines below. You may also wish to adopt these principles even when you regard your social media activity as being conducted in your private capacity, as this should reduce the potential that allegations are made against you that you have breached the Council's Code of Conduct.~~

4.3 **Social Media Guidelines:**

You should:

- ~~consider whether you need to set appropriate privacy settings for your blog or networking site—especially if you have a private, non-political blog;~~
- ~~Always conduct yourself in a manner that is respectful of others. This does not prevent you from holding opposing views and expressing political opinion, but views should be expressed in an appropriate manner.~~
- ~~Keep an eye out for defamatory, untrue or obscene posts from others on your blog or page and remove them as soon as possible to avoid the perception that you condone such views and to prevent any potential libel action being taken against you;~~
- act in accordance with the Council's policies, including but not limited to the Council's Equality Policy
- be aware that the higher your profile as a councillor, the more likely it is you will be seen as acting in your official capacity when you blog or network;
- be careful about being 'friends' with service users who are vulnerable adults or children, as this could be regarded as a safeguarding issue;
- ensure you use Council facilities appropriately; and be aware that any posts you make using Council facilities will be viewed as being made in your official capacity and/ or an inappropriate use of Council resources;
- ~~be aware that by publishing information that you could not have accessed without your position as a councillor, you will be seen as acting in your official capacity;~~
- ~~make political points, but be careful about being too specific or personal if referring to individuals. An attack on individuals may be seen as disrespectful, whereas general comments about another party or genuine political expression is less likely to be viewed as disrespect.~~

Commented [SC1]: Wouldn't this by implication involve the disclosure of confidential information?

- consider that English Law allows actions for libel to be brought in the High Court for any published statements alleged to defame a named or identifiable individual or individuals. Blogging, social media and other forms of digital content publication are covered by the libel laws.

You should not:

- blog, tweet or network on social media in haste;
- An Engage in any form of personal attack on an individual that may be seen as disrespectful, whereas General comments about another political party or genuine political expression is less likely to be viewed as disrespect.
-
- place images or text on social media your site from a copyrighted source (for example extracts from publications or photos) without permission;
- post comments on social media that you would not be prepared to make in writing or face to face;
- make any comments on social media that you could not defend in court.
- use Council facilities for personal or party political blogs;
- refer in a blog to disclose any information identified by the Council as confidential or exempt;
- disclose information given to you in confidence by anyone or information acquired by you which you believe or are aware is of a confidential nature;
- publish personal data information of relating to individuals, including photographs, unless you have their express written permission to do so;
- give the impression that you are expressing the views of the Council where it is not appropriate to do so;
- use online accounts and digital publishing services associated with a specific council office if you no longer hold that office, or during Purdah;
- if you are involved in determining planning or licensing applications or other quasi-judicial decisions, publish anything on your blog that might suggest you do not have an open mind about a matter you may be involved in determining.

5.4. Derogatory comments

5.4.1 On occasion, councillors might find themselves the subject of offensive or defamatory remarks on other people's blogs or networking sites. The following approach is advised in such circumstances, and applies equally to any form of publication:

~~5.24.2~~ If you become the subject of offensive on-line behaviour or trolling, we suggest that you pursue a policy of indifference to such remarks, but if you do wish to respond, ~~do not be tempted into retaliation because you may risk breaching the Code~~ so in a measured manner. You could ask the blog owner/person making the remarks to remove them from the site.

~~5.34.3~~ If the person making the comments is a local authority, town or parish councillor, discuss the situation with the Monitoring Officer. It might be the case that the person has breached the Code of Conduct by making the remarks, and it could be appropriate to make a complaint to the Governance and Ethics Committee.

~~5.44.4~~ Aside from any possible breaches of the Code of Conduct, the matter is usually deemed private between yourself and the individual. The Council cannot provide legal assistance for pursuit of a claim through the civil courts, but you may decide that you wish to take independent legal advice. If you are subject to unacceptable on-line behaviour, you should seek advice from the Monitoring Officer as to whether there is any action that can be taken by the Council in this regard.

6.5. Use of Social Media During and after Council Meetings

~~6.15.1~~ Members/Councillors are permitted to use social media for the reporting of proceedings of public Council meetings. ~~If Members wish to use social media during meetings they should inform the Chairman who will make it clear to any members of the public attending that this activity is permissible. Members Councillors~~ will need to consider whether using social media may distract them from participating and understanding information that is being shared at the meeting prior to a decision being made to use social media at any point or points during the meeting.

~~5.2~~ Councillors should however switch their mobile phone or other equipment to silent mode, so that no disruption is caused to proceedings. If, at a meeting, a ~~Member's Councillor's~~ use of an electronic communication device is causing proceedings to be disrupted any ~~Member councillor~~ may move that the ~~Member Councillor~~ should desist from using the device. If the motion is seconded it should be put to the vote without discussion.

~~6.25.3~~ Members wishing to record (whether in an audio or visual format) meetings will need to do so in accordance with Appendix A to Parts 4 (Council Rules of Procedure), 5 (Executive Rules of Procedure), 6 (Overview and Scrutiny Rules of Procedure) and 7 (Regulatory and Other Committees Rules of Procedure).

Agenda Item 10

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