



**Gloucestershire**

COUNTY COUNCIL

**CONSTITUTION COMMITTEE**

**9.00 am**

**WEDNESDAY**

**17 OCTOBER 2012**

**Meeting Room 6 - Shire Hall,  
Gloucester**

**MEETING PAPERS**





## CONSTITUTION COMMITTEE

**TIME:** 9.00 am  
**DATE:** Wednesday 17th October, 2012  
**VENUE:** Meeting Room 6 - Shire Hall, Gloucester

### A G E N D A

| ITEM | TOPIC   | CONTACT                             |
|------|---|-------------------------------------|
| 1.   | <b>Apologies for absence</b>  | Simon Harper                        |
| 2.   | <b>Minutes</b> (Pages 1 - 4)<br>To approve the minutes of the meeting on 11 June 2012.  | Simon Harper                        |
| 3.   | <b>Public Questions</b><br>To answer any written public questions about matters which are within the powers and duties of the Committee. <b>The closing date/time for receipt of questions is 10.00am on 10 October 2012.</b> To answer any oral question(s) put by members of the public with the consent of the Chairperson.<br><br><i>Depending on the nature of the questions asked, it may not be possible to provide a comprehensive answer at the meeting, in which case a written answer will be supplied as soon as reasonably possible after the meeting.</i> | Simon Harper                        |
| 4.   | <b>Members' Questions</b><br>To answer any written members' questions.  | Simon Harper                        |
|      | <b>The closing date/time for the receipt of questions is 10.00am on 10 October 2012.</b>  |                                     |
| 5.   | <b>Changes to the Constitution arising from the report by Mr Graham Garbutt</b> (Pages 5 - 50)<br>To consider the attached report from the Assistant Director of Law and Administration   | Christine Wray<br>Tel: 01452 426911 |
| 6.   | <b>The role of the Monitoring Officer</b> (Pages 51 - 54)<br>To consider the attached report of the Chief Executive   | Peter Jones<br>Tel: 01452 426347    |

7. **Ratification of changes to the Constitution** (Pages 55 - 60)  
To consider the attached report of the Assistant Director of Law and Administration  
Christine Wray  
Tel: 01452 426911
8. **Next Meeting**  
7 November 2012 at 10.00am  
Christine Wray  
Tel: 01452 426911

## **NOTES**

- (a) **MEMBERSHIP** – Cllr Phil Awford, Cllr Mark Hawthorne, Cllr Tony Hicks, Cllr Jeremy Hilton, Cllr Ceri Jones, Cllr Steve McHale, Cllr Antonia Noble, Cllr Ray Theodoulou and Cllr Will Windsor-Clive
- (b) **DECLARATIONS OF INTEREST** – Members requiring advice or clarification about whether to make a declaration of interest are invited to contact the Monitoring Officer: Nigel Roberts ☎01452 425201 /fax: 426790/e-mail: nigel.roberts@gloucestershire.gov.uk prior to the commencement of the meeting.
- (c) **INSPECTION OF PAPERS AND GENERAL QUERIES** - If you wish to inspect reports relating to any item on this Agenda or have any other general queries about the meeting, please contact

Simon Harper, Lead Democratic Services Adviser  
☎: 01452 425230/fax: 425850/e-mail: simon.harper@gloucestershire.gov.uk

## **GENERAL ARRANGEMENTS**

- (1) *Will Members please sign the attendance list*

***EVACUATION PROCEDURE - in the event of the fire alarms sounding during the meeting please leave as directed in a calm and orderly manner and go to the assembly point which is outside the main entrance to Shire Hall in Westgate Street. Please remain there and await further instructions.***



## CONSTITUTION COMMITTEE

MINUTES of the meeting of the Constitution Committee held on Monday, 11 June 2012 at 3pm.

### PRESENT

|                     |                         |
|---------------------|-------------------------|
| Cllr Mark Hawthorne | Cllr Steve McHale       |
| Cllr Tony Hicks     | Cllr Ray Theodoulou     |
| Cllr Jeremy Hilton  | Cllr Will Windsor-Clive |
| Cllr Ceri Jones     |                         |

Christine Wray, Assistant Director of Law and Administration  
Simon Harper, Democratic Services

**Apologies:** Cllr Phil Awford and Cllr Antonia Noble

### 8. MINUTES

The minutes of the meeting held on 12 March 2012 were confirmed and signed as a correct record subject to noting the following amendment to minute 5 regarding police and crime panels:

*In response to a member's question, Christine Wray confirmed that there was no potential conflict of interest for members in discussing the panel arrangements as the recommendation they would be making to council was about setting up a future committee with as yet no membership.*

### 9. CHAIRMAN

Cllrs Jeremy Hilton and Mark Hawthorne were proposed and seconded for the position of chairman of the committee.

On being put to the vote, Cllr Hawthorne was elected as chairman of the committee for the remainder of the 2012-13 civic year.

### 10. PUBLIC QUESTIONS

No public questions had been received.

### 11. MEMBERS' QUESTIONS

No questions from members had been received.

## **12. PROPOSAL TO CHANGE THE CALL-IN PROCEDURE RULES**

Cllr Hilton presented a report requesting that one of the six signatories to a call-in be given the right to speak in support of the call-in at the Overview and Scrutiny Management Committee. He believed that in the interests of democracy, the six signatories should be given an opportunity to nominate a spokesperson to present the call-in for no more than five minutes. This would allow the spokesperson to explain the reasons why a cabinet decision had been called in. He believed that if this was introduced it would not hinder the process and would help the members of the committee in understanding the grounds for the call-in.

He noted that the Chairman of the Overview and Scrutiny Management Committee always reminded members of the committee that their role was to consider the merits of the call-in and they should not act as an advocate for the call-in. He felt that in the current climate where decisions could be subject to judicial review it was important that the council had a fair process in place which allowed members to express their view.

In response to a request from the chairman, the Assistant Director of Law and Administration advised that the way that the call-in process operated was not prescribed in legislation. She said that local provisions for call-in were set out in the council's constitution.

A member stated that the constitution provided for a cabinet member to address the committee and he believed that, in the interests of a balanced process, one of the signatories to the call-in should have an opportunity to present their case. He felt that the change proposed would enrich the process and make it more democratic. He noted that the chairman of the committee could always stop someone talking if they spoke for too long or were raising irrelevant matters.

Another member believed that the change proposed would strengthen the call-in process. He said that it was inappropriate for a signatory to the call-in to be substituted onto the Overview and Management Committee to allow them to participate in the discussion.

The chairman stated that the call-in notice should set out clear reasons for the call-in. He noted that the call-in notice was included in the report presented to the Overview and Scrutiny Management Committee along with a response from the relevant cabinet member. He noted that the purpose of the call-in was to challenge the process followed in making a decision and not to look again at the merits or otherwise of a particular decision.

*Minutes subject to their acceptance as a correct record at the next meeting*

Other members noted that the call-in process was all about checking that a decision had been made in a proper manner. They were concerned that giving a signatory to the call-in an opportunity to speak would simply open up the debate again on whether a particular decision should have been made in the first place. They said that the time to consider the merits of a particular decision was before it was taken and not afterwards.

*On being put to the vote, the proposal for a signatory to a call-in to be given five minutes to speak in support of the call-in at the Overview and Scrutiny Management Committee, was not supported.*

### **13. PROPOSAL TO EXTEND THE TIME LIMIT FOR COUNCIL MOTIONS**

Cllr Jones presented a report requesting that the 30 minute rule for debating motions from each political group be extended by 30 minutes to a maximum of 60 minutes. He said that democracy was about giving everyone an opportunity to have their say and not about controlling the length of meetings. A survey of other top tier local authorities had been undertaken and none had such stringent limits on the time for debating motions. He noted that South Gloucestershire Council and Cumbria County Council had no time limits for motions. This was also the position at Gloucester City Council.

Cllr Jones said that there were just seven full council meetings each year and he felt that it was essential that members had an opportunity to represent the views of their local communities. With the current 30 minute time limit, only six of the 63 members could speak if each member spoke for five minutes. He believed that it was time to give power back to the chairman who could stop the debate if irrelevant issues were being raised.

The chairman stated that the debate was not curtailed on important issues such as the council budget each year. He felt that the problem lay with too many motions being put forward by the political groups. He said that too often motions were presented after decisions had been made and they added nothing to the formal decision making process. He believed that it was important that meetings were held in a timely manner and considered issues that mattered to the council.

A member said that the current time limits made it difficult for cross-party motions to be put forward or for members from a particular area of the county to raise a particular issue. He believed that members should have an opportunity to debate issues of interest to the people of Gloucestershire that did not relate directly to the business of the council.

*Minutes subject to their acceptance as a correct record at the next meeting*

Some other members felt that the political groups had a responsibility to organise key speakers on particular topics. They said that the time limits for motions allowed meetings to be managed effectively. They could recall very few occasions when members who had wanted to speak had not been able to have their say. The chairman noted that, in any event, the Chairman of Council had discretion to extend the time limit during the meeting to allow members to make a contribution.

A member said that there were opportunities during full council meetings outside the time set aside for motions for members to examine issues relating to the council.

In summing up, Cllr Jones stated that democracy was about effective meetings and these were not necessarily concise meetings. He believed that the current arrangements which limited contributions to a small number of members were a denial of democracy.

*On being put to the vote, the proposal to extend the time limit to 60 minutes for debating motions from each political group at full council, was not supported.*

#### **CHAIRPERSON**

The meeting ended at 4pm



## CONSTITUTION COMMITTEE

17<sup>TH</sup> OCTOBER 2012

### REPORT OF THE ASSISTANT DIRECTOR OF LAW AND ADMINISTRATION

#### CHANGES TO THE CONSTITUTION FLOWING FROM THE RECOMMENDATIONS IN THE REPORT OF MR GRAHAM GARBUTT

##### 1. Introduction

Members will recall from their meeting held in March of this year that following the publication of the Garbutt report, they endorsed a proposal from the Leader of the Council that the committee should carry out a review of the officer delegations set out in the Constitution and that the Chief Executive consider the role of the Monitoring Officer. The council's audit committee has in the intervening period overseen the implementation of an action plan covering these and other recommendations from Mr Garbutt's report. In addition to the two mentioned above there are a further two issues which have been reviewed and which require some changes to the councils' constitution, namely, the employee Code of Conduct and the role of the Chief Financial Officer. The role of the Monitoring Officer is covered in the separate report from the Chief Executive, while the other issues are dealt with separately below, with recommendations summarised at the end of the report.

##### **A. Officer Scheme of Delegation.**

2. The specific action derived from the relevant Garbutt recommendation is –

“To undertake a review of the adequacy and compliance of the Council's Scheme of Delegation”.

2.1 Members will be aware that the Council first adopted a Constitution in 2001 following the implementation of the Local Government Act 2000. To assist with implementation central government (the Department of the Environment, Transport and the Regions) published a two volume guidance pack for local authorities entitled 'Local Government Act 2000 New Council Constitutions' which included a modular constitution to assist local authorities in introducing the new executive arrangements. Whilst this county council adopted many of the model clauses, there was no model for the Officer Scheme of Delegation.

2.2 Section 37 (1) of the Local Government Act 2000 requires local authorities operating executive arrangements or alternative arrangements to prepare and keep up to date a document known as the “Constitution”. This document must include

- such information as the Secretary of State may direct

- a copy of the local authority's standing orders
- a copy of the local authority's code of conduct for members; and
- such other information as the local authority considers appropriate

Paragraph 10.3 of the Guidance provides:

Local authorities should ensure that the constitution describes clearly and in a readily understandable form the way in which they conduct their business so that anyone who has dealings with the local authority on any matter can easily determine who is responsible for decisions in respect of those matters and so that they can easily determine how best to make representations to the relevant person. The constitution should therefore, as far as possible, be written in plain language.

- 2.3 Paragraph 10.7 of the Guidance provides that inter alia the Constitution should include information about the roles of officers of the local authority including details of delegations of functions to officers.
- 2.4 A general power of delegation to officers was originally introduced in the Local Government Act 1972; in the guidance issued by the DETR in 2000 it states 'The Secretary of State believes that the extent of delegation to officers should in general increase as result of the new arrangements' (Guidance Paragraph 4.21)
- 2.5 The format of the Scheme in the current Constitution is for the most part as it was in 2001, with amendments introduced on an ad hoc basis to take account of, for example, changes to the organisational structure of the Council.
- 2.6 In summary the current Scheme provides for delegation of functions to the Chief Executive, to the Commissioning Directors, to the Chief Fire Officer, to the Head of Trading Standards and to the Director of Law and Administration. There are also three very general delegations to Directors and Heads of Service covering day to day management of their service area in terms of contracts for the supply of goods and services; decisions under the Regulation of Investigatory Powers Act 2000 and management of staff and resources.
3. A selection of other local authority Schemes has been viewed, in order to compare with that of GCC. It would appear that they vary widely in terms of length, degree of detail and reference to specific powers. Leeds City Council for example splits the officer scheme between executive and non-executive functions. Councils operating a commissioning framework have further defined their officer scheme.

## 4. Adequacy of the Scheme

4.1 The purpose of the Scheme of Delegation as a whole, i.e. the Member and Officer Schemes is to allow the public to know broadly who is responsible for which decisions within the executive and how they can be contacted. (paragraph 7.9 of the Guidance)

4.2 The following extracts from the Garbutt Report are those relevant to the Scheme of Delegation;

*“ 116. The scheme is set out in section 5 of the council’s constitution (see appendix 35).*

*Issues arising from this review include the need for greater clarity in requirements for consultation, the levels of delegation (and the accompanying schedule), clarity and consistency in processes of authorisation and recording of decisions, and for their reporting and subsequent scrutiny.*

117. *Consultation: para 5.4 of the Constitution states:*

*“Before exercising delegated powers the Leader of the Council, Cabinet Members and Officers must consider whether it would be advantageous and/or prudent to consult with the Leader of the Council and/or Officer, and whenever they consult with another will carefully consider any response that they receive. In any event, consultation will always be required with all persons referred to in: “Consultation under paragraph 5.4 in the table below...”.*

*This could and should have formed the correct procedure for the delegated decision on the Keynes Country Park underlease. But the column referred to in paragraph 5.4 is blank. This does not negate the requirements of the earlier part of the paragraph, but inclusion in the schedule might have been both helpful and prudent. Generally, a review of the schedule, including completion of the blanks parts, is necessary.*

118. *Levels of Delegation: it follows from the above that a clear definition of thresholds for mandatory consultation would also be helpful. Volume of work may preclude consultation on smaller and less contentious matters. But it should be possible to apply reasonable definition of scale and sensitivity. In particular, where legal or financial advice challenges a proposed decision, this should be referred to a higher level in all cases, and probably to Directors or Cabinet Members.*

119. *Authorising and recording: the council has no single system for this but para.5.8 of the scheme sets out requirements for “key decisions” which are clear and do require consultation. For other decisions it does not specify a common system or format and does not require a record of any consultations undertaken nor that records should be made available for public inspection. The system for non-key decisions would benefit from closer definition.”*

4.3 It should be noted that the Scheme contained in the Constitution is for delegation to officers (generally) at the highest level. There are no thresholds for delegation. However, as Mr Garbutt recognised, paragraph 5.5 of the Constitution does require decision makers to consider the need for consultation, whilst paragraph 5.4 makes it mandatory for persons named in the right hand column to be consulted.

4.4 Having given consideration to the comments made by Mr Garbutt, some rationalisation of the Scheme is now put forward in the draft attached as Appendix A. The principles which have been adopted are that consultation should generally be upward in the hierarchy i.e. to Members or to a more senior officer, that consultation is mandatory where a decision has financial implications in excess of £250,000, that consultation is not required for day to day management; that the inclusion of a consultee in the right hand column means consultation is **mandatory**.

4.5 The amendments which are now proposed flow from the review prompted by the Garbutt report, but Members may wish to consider whether a more thorough review of the Scheme would be worthwhile including for example taking the opportunity to compare the range of approaches adopted by other councils.

## **5. Scheme of Authorisation**

5.1 Paragraph 5.7 of the Scheme permits an officer named in the Scheme to authorise another officer to exercise delegated powers on their behalf, provided certain conditions have been met. The register of authorisations is maintained by the Monitoring Officer.

5.2 Schemes of Authorisation for different service areas are under review as the implementation of the new operating model progresses. It is recognised that any such authorisation should reflect the requirement for the same recording of decisions as the delegations contained in the Constitution itself, and that consultation should be carefully addressed.

## **6. Recording of Decisions**

6.1 Members are referred to paragraph 5.8 of the Scheme which sets out certain minimum requirements for the recording of decisions. In respect of all

decisions taken by a Cabinet Member, and all key decisions taken by officers, a permanent record is maintained centrally by the Democratic Services Unit.

6.2 From discussions I have had with the Democratic Services Unit and liaison with directors, it seems that key decisions are only rarely taken by officers.

6.3 A key decision is defined as one which, if implemented, would be likely to:

- result in the Council incurring expenditure, or the making of a saving, which is significant having regard to the County Council's budget for the service or function to which the decision relates: or
- be significant in terms of its effects on communities living or working in an area comprising two or more county electoral divisions in the county.

6.4 The Constitution goes on to say that as a general rule, a decision will be significant in financial terms if the value of any expenditure or saving exceeds £500,000 unless the Council's Chief Financial Officer and Monitoring Officer certify that it would not be a key decision and state their reasons for this conclusion in writing.

6.5 Following the recommendation from the Garbutt report it is now proposed that all decisions taken by officers with financial implications over £250,000 should be recorded and the record maintained centrally by the DSU. A template for such decisions is attached at Appendix B.

Note that the intention is not to lower the threshold for a key decision to £250,000; that will continue to be £500,000 as now.

Since these decisions are not key decisions, they do not require publication in advance, nor do they required publication afterwards, but they will be subject to The Freedom of Information Act 2000, unless a relevant exemption applies.

## **7. Future Compliance**

It is proposed that Internal Audit will undertake a piece of work in Quarter 4 of this financial year to check compliance with the new process. However it is a management responsibility in the first instance to ensure that the requirements of the constitution are observed. It is envisaged that Internal Audit may instigate periodic checks as part of a future governance work plan.

## **8. Recommendation.**

That the Committee considers the proposed amendments to the Council's Scheme of Officer Delegation as set out in the draft Scheme at Appendix A and recommends the same to full Council for approval and adoption, together with the Decision record at Appendix B.

## **B. The Employee Code of Conduct.**

9. The recommendations set out in Mr Garbutt's Review of the Cotswold Water Park included the need for revised Codes of Conduct for both members and employees.

9.1 The standards regime for members is a statutory one and the Localism Act 2011 requires wholesale changes. As a result, the Director of Law and Administration is taking the opportunity to update the council policy in line with the legislative changes and a report will be taken to the next Constitution Committee meeting in early November.

9.2 The Council's Employee Code of Conduct has been fully reviewed, updated and incorporates the recommendations from the Cotswold Water Park review. A draft of the revised code is attached at Appendix C for consideration.

9.3 For ease of reference the changes are:

- a new paragraph setting out clearly to whom the Code applies.(para 1)
- emphasis on council values of honesty and integrity (para 9)
- new clarity on rules around receiving gifts (paras 34 to 39)
- incorporates obligations under the Bribery Act 2010 (paras 49, 50)
- a better reflection of Freedom of Information obligations.(paras 52 to 59)
- political neutrality is explicit but reflects the arrangements for political assistants. (paras 60 to 63)
- the procedure for an employee to follow if arrested is now explicit.(para 81)
- redrafted paragraph 82. Whole section on membership of societies now reflects the Members Code of Conduct.
- Incorporates Health and Safety (para 85)

9.4 It is important that the updated Code, once adopted, is promoted to ensure that employees have appropriate guidance on how the county council and the public expects them to behave. This both protects the council and employees from circumstances where employee conduct could create an impression of conflict of interest or corruption.

### **9.5 Recommendation**

That the Committee considers the draft of the revised Employee code of conduct attached at Appendix C and recommends the same to full Council for approval and adoption.

## **C. The Role of the Chief Financial Officer.**

10.1 The recommendations made in Mr Garbutt's report about the Chief Financial Officer specifically related to Financial Regulation E – External Arrangements. The relevant extract from the report is as follows:

The Role of Chief Finance Officer as per the Council's constitution, in Financial Regulation E (ref E1), requires that:

*“The Chief Financial Officer must ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures are satisfactory. He or she must also consider the overall corporate governance arrangements and legal issues when arranging contracts with external bodies. He or she must ensure that the risks have been fully appraised before agreements are entered into with external bodies.”*

10.2 Mr Garbutt's response to the above was: This is very broadly drawn and goes well beyond financial matters into “corporate governance and legal matters”. There is a real risk of failure unless this is reassessed and defined more clearly, including specific departmental and delegated roles. Moreover, these expectations need to recognise the likely substantial increase in the volume of work involved in “partnerships and joint ventures” and “contracts with external bodies”.

The resulting implications could be substantial, including numbers, flexibility and skills in the staffing structure.

### **10.3 Review**

A review of the latest guidance from CIPFA on the Role of the CFO and a number of other LAs has been undertaken. In terms of CIPFA guidance although there are some specific references to Partnerships, the constant theme throughout seems to emphasise establishing appropriate governance frameworks, effective risk management, internal control and informed decision making.

### **10.4 Recommendation**

In conclusion it is proposed that the revised wording of Financial Regulation E is as outlined below; the Constitution Committee is asked to consider the wording and recommend the same to full Council for approval and adoption.

*E1 “The Chief Financial Officer must ensure that accounting arrangements adopted relating to partnerships and joint ventures are satisfactory and that the overall corporate governance arrangements are satisfactory when contracts are arranged with external bodies. The Chief Financial Officer must ensure that the risks have been fully appraised before agreements are entered into with external bodies.”*

The review also concluded that the role of the Monitoring Officer in this area should then include

E2 *“The Monitoring Officer must also consider the overall corporate governance arrangements and legal issues when arranging contracts with external bodies”.*

Finally as a result of the review it is recommended that the accountabilities of Directors are made clearer in relation to joint arrangements and partnerships.

E3 *“Directors are responsible for ensuring that appropriate risk assessments are undertaken and approvals are obtained before any negotiations are concluded in relation to work with external bodies and that all agreements and arrangements are properly documented, including details of the County Council’s financial and physical commitment to the arrangements which are to be in accordance with the Council’s procedures.”*

The wording of Regulation E4(formerly E3) is unchanged

#### *External Funding*

E4 *“The Chief Financial Officer is responsible for ensuring that all funding notified by external bodies is received and properly recorded in the Authority’s accounts.”*

### **Summary of Recommendations**

- A. That the Committee considers the proposed amendments to the Council’s Scheme of Officer Delegation as set out in the draft Scheme at Appendix A and recommends the same to full Council for approval and adoption, together with the Decision record at Appendix B.
- B. That the Committee considers the draft of the revised Employee code of conduct attached at Appendix C and recommends the same to full Council for approval and adoption.
- C. That the Committee consider the revised wording of Financial Regulation E and recommends the same to full Council for approval and adoption.

#### **Christine Wray**

Assistant Director of Law and Administration

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**SECTION 5 - SCHEME OF DELEGATION**

5.1 The Council is required to make very many executive and non-executive decisions every day. It would be quite impracticable to make all or many of these decisions through full Council, the Cabinet and other Council bodies. The full Council, Cabinet and, under the Council's new executive arrangements from June 2009, the Leader, are able to delegate powers to the Cabinet, individual Cabinet Members and to Officers. Such powers are called "delegated powers" and the distribution of responsibility amongst the Leader of the Council, Cabinet Members and Officers for making decisions under delegated powers is set out in this Scheme. Such powers must be exercised in accordance with the conditions specified in paragraphs 5.2 to 5.8 below.

This scheme does not delegate to the Leader of the Council, Cabinet Members and Officers:

5.1.1 Except under delegation CE1 any matter reserved to full Council (see Tables 1 and 2 of this Part of the Constitution);

5.1.2 Any matter that by law may not be delegated to the Leader of the Council, a Cabinet Member or Officer.

5.2 Delegated powers must be exercised in accordance with:

5.2.1 The law;

5.2.2 All of the rules, procedures, codes and protocols contained in the Council's Constitution;

5.2.3 Council policy.

5.3 Before exercising delegated powers, the Leader of the Council, Cabinet Members and Officers must satisfy themselves that the decision is:

5.3.1 Authorised by law and, if in doubt, will consult with the Director of Law and Administration;

5.3.2 Within budget (allowing for such variance as may be permitted under the Council's Financial Regulations) and if in doubt will consult with the Director: Strategic Finance.

5.4 Before exercising delegated powers the Leader of the Council, Cabinet Members and Officers must consider whether it would be advantageous and/or prudent to consult with the Leader of the Council, another Cabinet Member or any other Member of the Council and/or Officer, and whenever they consult with another will carefully consider any response that they receive. In any event, consultation will always be required with all persons referred to in the column "Consultation under paragraph 5.4" in the table below headed Particular Delegations to Officers and in accordance with paragraph 5.9.

5.5 Before exercising delegated powers, Officers will consider whether the use of a power might be regarded as sensitive or contentious by Members of the Council and if it appears that this will be the case, they will:

- 5.5.1 In respect of any executive function, consult with the Leader of the Council or Cabinet Member with responsibility for that area;
- 5.5.2 In respect of any non-executive function, consult with the Chair and other political groups' Lead Members of the committee having responsibility for that matter and any Member of the Council whose electoral division will be affected by the exercise of delegated powers.
- 5.6 In the absence of a Cabinet Member or if a Cabinet Member is unable to or should not exercise a delegated power, the Leader of the Council may exercise that delegated power.
- In the absence of the Leader of the Council or if the Leader of the Council is unable to or should not exercise a delegated power or other power under the Constitution, any Cabinet Member or the Cabinet may exercise those powers.
- 5.7 The Officers named in this scheme shall be deemed to include any other Officer of the Council that they authorise in writing to exercise delegated powers on their behalf provided:
- 5.7.1 An Officer named in this scheme must maintain a written record of any other Officer they have authorised to exercise delegated powers on their behalf and any limitation that they have imposed on the extent and duration or other exercise of those powers in addition to those specified in this scheme;
- 5.7.2 A copy of the information specified in paragraph 5.7.1 must be given to the Monitoring Officer before another Officer exercises a power on behalf of a named Officer and the Monitoring Officer shall place this information on a register that, in accordance with Section 100G of the Local Government Act 1972, will be maintained for inspection by the public.
- 5.8 The Leader of the Council and Cabinet Members in relation to all decisions they take and Officers in relation to decisions they take in the exercise of delegated powers where the financial implications exceed £250,000 or where the decision is politically sensitive must maintain a complete and permanent written record of their decisions, which must (as a minimum) include:
- 5.8.1 A dated record of that decision;
- 5.8.2 A record of the reasons for the decision;
- 5.8.3 Details of any alternative options considered and rejected at the time by the person when making the decision;
- 5.8.4 A record of any conflict of interest declared by any Executive Member who is consulted in relation to the decision; and
- 5.8.5 In respect of any declared conflict of interest a note of any dispensation granted by the Head of Paid Service of the Council.
- Note: Records of all decisions by Members and of key decisions by Officers are required to be available for public inspection after the decision has been taken, in the same way as Cabinet papers*

- 5.9 There shall be delegated to the Leader of the Council and each Cabinet Member all executive functions, duties or powers of the Council within his or her area of responsibility as specified in paragraph 4.4 of Section 4 of the Constitution. In exercising such functions, duties or powers, the Leader and Cabinet Members will consult with the Director or Head of any service area affected by their decision.
- 5.10 The functions, powers and duties identified in the table below headed “Particular Delegations to Officers” are delegated to Officers of the Council. Any Officer referred to in the “Appropriate Officer” column of the table below and to whom powers have been delegated, shall include any other person subsequently taking on that Officer’s responsibilities.
- 5.11 The Commissioning Director: Children and Families has responsibility for the statutory functions of the Director of Children's Services in accordance with Section 18 of the Children Act 2004.
- 5.12 The Officer designated as Director of Adult Social Services in accordance with Section 6(A1) of the Local Authority Social Services Act 1970 (as inserted by paragraph 2(2) of Schedule 2 to the Children Act 2004) is the Commissioning Director: Adults.

#### Particular Delegations to Officers

| Decision Category Number | Function, duty or power to be delegated  | Appropriate Officer | Consultation under paragraph 5.4   |
|--------------------------|--|---------------------|--|
| CE1                      | To take any decision that could be taken by the Council, the Cabinet, any committee or any Officer (provided such action is taken in accordance with the law, Rules on Access to Information about the County Council’s Business and the Cabinet Procedure Rules). | Chief Executive.    | Council function - Chairman and Leader of the Council.<br><br>Cabinet function - Leader of the Council or Cabinet Member, as appropriate.<br><br>Committee function - Chairperson and Lead Members |
| CE2                      | To be the Proper Officer of the County Council, Section 270(3) of the Local Government Act 1972.   | Chief Executive     | <u>N/A</u>   |

|       |   |                             |  |
|-------|---|-----------------------------|--|
| CE3   | To fill casual vacancies on committees, in accordance with Sections 15-17 of the Local Government & Housing Act 1989.   | Chief Executive             | Group leader of the political group entitled to appoint a Member to any committee by virtue of any vacancy that has arisen |
| CE4   | To be the Returning Officer for County Council elections and undertake the functions of the Council in relation to elections.   | Chief Executive             | N/A  |
| CE5   | To permanently appoint, determine the terms of appointment and terminate the appointment of all staff (except those Officers within the responsibility of the Appointments Committee) under Section 112 of the Local Government Act 1972; and | Chief Executive             | Director of People's Services  |
|       | To appoint on a temporary or acting up basis for up to one year, determine the terms of appointment and terminate the appointment of those Officers within paragraph 2 of the duties of the Appointments Committee.                           |                             | Relevant Cabinet Member, Group Leaders and relevant Scrutiny Chair   |
|       | To appoint on an interim basis and for a maximum period of up to six months to the positions of those officers within paragraph 2 of the duties of the Appointments Committee.  |                             | Relevant Cabinet Member, Group Leaders and relevant Scrutiny Chair   |
| DSF 1 | To be responsible for and do anything required for the proper administration of the financial affairs of the Council.   | Director: Strategic Finance | N/A  |

|       |   |                             |   |
|-------|---|-----------------------------|---|
| DSF 2 | To make arrangements for the financing of the capital programme of the Council by borrowing, leasing or other arrangements.   | Director: Strategic Finance | Leader of the Council or Cabinet Member, as appropriate.                            |
| DSF 3 | The functions, duties or powers of the Pensions Committee.  | Director: Strategic Finance | Relevant Cabinet Member for all decisions with financial implications over £250,000 |
| DSF 4 | To formulate and issue general guidelines to Officers on financial matters including insurance and the writing-off of debts.  | Director: Strategic Finance | N/A   |
| DSF 5 | To determine arrangements for treasury management in accordance with the Council's policy statement and approved treasury management practices and where relevant CIPFA's Standard of Professional Practice on Treasury Management. | Director: Strategic Finance | N/A   |
| DSF 6 | To make arrangements for the Internal Audit of the Council.   | Director: Strategic Finance | N/A   |
| DSF 7 | To manage the County Fund and all subsidiary accounts and any reserve or other fund.  | Director: Strategic Finance | N/A   |
| DSF 8 | To operate the Local Government Superannuation Regulations, including the exercise of discretion under those Regulations.   | Director: Strategic Finance | Relevant Cabinet Member for decisions with financial implications over £250,000     |
| DSF 9 | To implement national and local pay awards and increase payments under the Pension Increase Act.  | Director: Strategic Finance | N/A   |

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| DSF 10   | To make finance leasing arrangements and authorise and make any other financial transaction including the borrowing and lending of money.   | Director: Strategic Finance | Relevant Cabinet Member for decisions with financial implications over £250,000  |
| DSF 11   | To authorise the writing-off of stock, other than through fair wear and tear.   | Director: Strategic Finance | N/A  |
| DSF 12   | To effect adequate insurance cover for the Council.   | Director: Strategic Finance | N/A  |
| DSF 13   | To exercise all other functions relating to the Financial Management of the Council.  | Director: Strategic Finance | N/A  |
| Dep CE 1 | To acquire and dispose of any interest in land and manage the Council's estate.   | Deputy Chief Executive      | Director: Strategic Finance and Relevant Cabinet Member for all transactions with financial implications over £250,000 |
| Dep CE 2 | The functions of the Safety & Licensing Committee under paragraphs 2 and 3 of its terms of reference.   | Deputy Chief Executive      | N/A  |
| Dep CE 3 | To manage the provision of information technology services to the Council.  | Deputy Chief Executive      | N/A  |
| Dep CE 4 | To exercise all other functions relating to the Support Services within Enabling & Transition save those within decision categories DSF 1 to 13. This power shall include the power to do anything necessary to secure the proper management of the Council's human resources except for functions falling within decision category CE5 but shall not include decision category HLDS 1 and 2. | Deputy Chief Executive      | N/A  |



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| D:S & C 1                 | To publish standards for the whole Council, which will secure the efficient processing of information.   | Director: Strategy and Challenge                      | N/A  |
| D:S & C 2                 | To exercise all other functions relating to the following services: Performance & Need; Communications and Engagement; Information Management and Archives and the Executive and Cabinet Offices.  | Director: Strategy and Challenge                      | N/A  |
| CFO 1                     | To manage the operations of the Gloucestershire Fire and Rescue Service.   | Chief Fire Officer                                    | Most relevant Cabinet Member(s) or Chief Executive for all decisions with financial implications over £250,000 |
| CD: C & I 1               | The functions of the Safety and Licensing Committee except those within paragraphs 2, 3, 4 and 7 of its terms of reference and decision categories HLDS1 and 2.  | Commissioning Director: Communities & Infrastructure. | N/A  |
| CD: C & I 2               | To enforce the Trading Standards, Food, Animal Health and other legislation referred to in the Trading Standards Legislation Master Lists A to D held by the Director of Law & Administration and issue statutory notices in relation to that legislation  | Commissioning Director: Communities & Infrastructure  | N/A  |
| Head of Trading Standards | Without prejudice to the powers of the Commissioning Director: Communities & Infrastructure to sign warrants and authorise Officers to enforce the legislation referred to in the Trading Standards Legislation Master Lists A to D held by the Director of Law & Administration and issue statutory notices in relation to that legislation | Head of Trading Standards                             | N/A  |

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| CD: C & I 3 | To exercise the functions of the Commons and Rights of Way Committee as Local Highway Authority<br>Commons and Rights of Way Committee terms of reference 3 to 19.                    | Commissioning Director:<br>Communities & Infrastructure  | N/A                                 |
| CD: C & I 4 | To be the Proper Officer in relation to functions under the Highways Act 1980.  | Commissioning Director:<br>Communities and Infrastructure  | N/A                                 |
| CD: C & I 5 | To exercise the functions falling within Planning Committee terms of reference 1 to 14 and 16 to 25, except decision categories HLDS1 and 2 of this Scheme of Delegation.             | Commissioning Director:<br>Communities & Infrastructure.<br>(Note: Where the Director is an Officer whose responsibilities include any aspect of the management of any land or building to which an application made by the Council relates, or is responsible for a function (other than as planning authority) materially affected by any planning matter, this power is delegated to the appropriate senior officer). | Director of Law and Administration. |
| CD: C & I 6 | To exercise the functions of the Traffic Regulation Committee (terms of reference 1 to 12), except those falling within decision categories HLDS1 and 2 of this Scheme of Delegation. | Commissioning Director:<br>Communities & Infrastructure.   | Director of Law and Administration. |

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| CD: C & I 7 | To exercise all other functions relating to the areas of responsibility of the following services: Development, Planning, Transport & Community Infrastructure, Road Safety, Trading Standards, Civil Protection, Registration & Coroners, Libraries and Waste Management except decision categories CFO 1, HLDS1 and 2 (although, in cases when only an Officer other than the Director of Law and Administration may institute proceedings, the Commissioning Director: Communities & Infrastructure may institute a prosecution once it has been authorised under HLDS2). | Commissioning Director<br>Communities and<br>Infrastructure | Relevant<br>Cabinet<br>Member for all<br>decisions with<br>financial<br>implications<br>over £250,000.         |
| CD: A 1     | The functions of the Safety and Licensing Committee under paragraph 7 of its terms of reference.   | Commissioning Director:<br>Adults.                          | N/A  |
| CD: A 2     | To exercise all other functions relating to the areas of responsibility of Adult Social Care except decision category HLDS1 and 2.   | Commissioning Director:<br>Adults                           | Most relevant<br>Cabinet<br>Member(s) for<br>all decisions<br>with financial<br>implications<br>over £250,000. |
| CD: C & F 1 | The functions of the Safety and Licensing Committee under paragraph 4 of its terms of reference.   | Commissioning Director:<br>Children & Families.             | N/A  |
| CD: C & F 2 | To exercise all other functions relating to the areas of responsibility of Children's Services, Education and Learning except decision category HLDS1 and 2.   | Commissioning Director:<br>Children & Families              | Most relevant<br>Cabinet<br>Member(s) for<br>all decisions<br>with financial<br>implications<br>over £250,000. |

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|-------|---|-------------------------------------|--|
| HLDS1 | To authorise the institution, defence withdrawal or settlement of any claims or legal proceedings, civil or criminal, the issue of cautions and to authorise the enforcement of any order made in those proceedings.  | Director of Law and Administration. | Director of any service area affected by such a decision.  |
| HLDS2 | To authorise Officers of the County Council to prosecute or defend or appear in any legal proceedings (NB: The Director of Law and Administration will <i>authorise</i> every decision to prosecute or defend such proceedings, including those which by law may only be <i>instituted</i> by another Officer). | Director of Law and Administration  | Director of any service area affected by such a decision   |
| HLDS3 | To authorise the withdrawal or settlement of any dispute between the Council and any third party, including those that have been referred to any statutory or non-statutory Tribunal or arbitrator (this includes authorising ex gratia payments not otherwise delegated).                                      | Director of Law and Administration  | Director of any service area affected by such a decision.  |
| HLDS4 | To be the local referee for disputes under the Local Government Pension Scheme.   | Director of Law and Administration  | N/A  |
| HLDS5 | To make payments or award other benefits under Section 92 of the Local Government Act 2000 (payments in respect of maladministration and related discretionary payments).   | Director of Law and Administration  | Chief Executive and/or Director responsible for the service in respect of which a payment or other benefit is awarded and Director: Strategic Finance. |

|       |   |  |  |
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| HLDS6 | The functions of the Commons and Rights of Way Committee under paragraphs 1, 2 and 19 of its terms of reference.  | Director of Law and Administration   | Lead Members   |
| HLDS7 | To amend the Constitution in any way whatsoever in order to secure compliance with the law and the convenient, efficient and effective discharge of any Council function. Such amendment shall be reported to the Constitution Committee and reported to and ratified by the full Council (in respect of any non-executive function) or the Cabinet (in respect of any executive function). | Director of Law and Administration   | Chief Executive and any Director whose service is affected by any amendment to the Constitution.                               |
| HLDS8 | The functions of the Constitution Committee to advertise for, interview and appoint persons as members of an Independent Remuneration Panel.  | Director of Law and Administration   | Lead Members of the Constitution Committee.  |
| GEN1  | To enter into any contract for works and the supply of goods and services.  | Chief Executive and Directors or Head of Service in relation to their service areas. | Director of Strategic Procurement and relevant Cabinet Member for decisions with financial implications in excess of £250,000. |
| GEN2  | To take any decision under the Regulation of Investigatory Powers Act 2000.   | Directors or Head of Service in relation to their service areas.                     | N/A  |
| GEN3  | To do anything that is required for the effective management of staff and other resources within each Service of the Council.   | Directors or Head of Service in relation to their services areas.                    | N/A  |

**SECTION 6 - GENERAL STATEMENT OF POLICY BY THE LEADER, THE FULL COUNCIL AND THE CABINET IN RESPECT OF THE DISTRIBUTION OF FUNCTIONS TO THE FULL COUNCIL, COUNCIL BODIES, CABINET MEMBER AND OFFICERS**

The Council, the Leader and Cabinet intend that Officers should be able to exercise any duty or power that could be exercised by them or any Council body. Accordingly, where the law confers a function, duty or power on the Authority but no Officer has been expressly authorised to exercise that function, duty or power under the Scheme of Delegation, the Council, the Leader and Cabinet (insofar as it is within their remit) hereby authorise any Director and any person authorised by any of them, to exercise that function, duty or power on behalf of the Authority.

*Note: Where an Officer has been expressly authorised to exercise a function, duty or power, only that Officer and any other Officer authorised in accordance with paragraph 5.7 of Section 5, can exercise that function, duty or power.*



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## Decision Making by an Officer with Delegated Powers

(for use when a decision has financial implications over £250,000 or might be regarded as sensitive or contentious by Members)

**Decision to be taken by:**  
**Pursuant to an Authorisation from**

**Dated:**

|   |  |
|---|--|
| What is the Decision?   |  |
| What are the financial implications?  |  |
| Might the decision be regarded as sensitive or contentious by Members?<br>If so, in what way?                     |  |
| Confirmation that the decision is within budget for the service area and resources are available.                 |  |
| Who has been consulted? What were their comments?   |  |
| Consultation with Legal Services  |  |
| Consultation with Finance   |  |
| Reasons for the decision:   |  |
| Other options considered  |  |
| Compliance with public sector equality duty.<br>Has an equality impact assessment been done?                      |  |
| Conflict of Interest declared by any councillor or committee or any dispensation granted by Head of Paid Service. |  |
| Risk Analysis   |  |
| Signed  |  |
| Dated   |  |



## **CODE OF CONDUCT AND CONFIDENTIAL REPORTING PROCEDURE (WHISTLE-BLOWING) FOR EMPLOYEES OTHER THAN FOR STAFF IN EDUCATIONAL ESTABLISHMENTS (FOR WHOM A SEPARATE CODE EXISTS)**

1. This Code also applies to others working within the County Council regardless of the basis of the employment including:-
  - Secondments (both to and from the County Council);
  - Temporary assignments (both to and from the County Council), Work Placements and Trainees;
  - Office holders; and
  - Employees acting as members of companies or voluntary organisations.

The Code also extends to additional and dual employment that has been secured as a result of working for local government.

Inevitably some of the issues covered by the Code will affect senior, managerial and professional employees more than others – but the basic principles apply to everyone.

### **INTRODUCTION**

2. The purpose of this Code is to give all employees guidance on how the County Council and the public in general expects them to behave. If the Code is followed then staff should not find themselves in a situation where their conduct could create an impression of conflict of interest or corruption in the minds of the public. If staff are unsure of the standards expected of them guidance should be sought from their Chief Officer or, in the case of Chief Officers, the Chief Executive.
3. The areas covered by this Code are as follows:
  - Standards;
  - Personal Appearance;
  - Use of the Council's Facilities and Equipment;
  - Fraud and Corruption;
  - Gifts, Hospitality and Sponsorship;
  - Register of Gifts and Hospitality;
  - Disclosure and Use of Information;
  - Political Neutrality;
  - Relationships;
  - Appointments and Other Employment Matters;

- Undertaking Additional Outside Work;
- Arrest or conviction on civil or criminal charges;
- Membership of a Secret Society;
- Equality Issues;
- Health and Safety Issues;
- Confidential Reporting Procedure (Whistle-blowing); and
- Breaches of the Code of Conduct.

## **STANDARDS**

4. Employees are expected to give the highest possible standard of service to the public and to provide advice to Councillors and fellow employees with impartiality. The highest standard of probity must apply and employees must report any suspected unlawfulness, mal-administration, impropriety or breach of procedure of which they are aware to their Chief Officer. (See also paragraph 86 and Appendix 1 of this Code).
5. The Council, for its part, considers it has a duty to protect employees against unjustified allegations of wrong doing.

## **PERSONAL APPEARANCE**

6. Although the Council has not adopted a formal dress code it does expect employees to observe a standard of personal hygiene and appearance which is appropriate to the nature of the work undertaken.

## **USE OF THE COUNCIL'S FACILITIES AND EQUIPMENT**

7. The Council is entitled to expect at least the same standard of care of its property as employees give to their own property. Any facilities, property or equipment provided by the Council should only be used in connection with official duties except where the Council has agreed to private use. There are arrangements for the use of some services for private purposes on the payment of approved charges e.g. private telephone calls and photocopies, etc. You should always ensure that there is either general or specific agreement to private use of any facility or equipment.
8. When an employee ceases working for the Council all papers and other records, equipment and any other property of the Council must be returned.

## **FRAUD AND CORRUPTION**

### **Culture of the Organisation**

9. Although the Council believes that Members, employees and organisations associated with the Council will act with honesty and integrity it recognises that occasionally this will not be the case. The Council's culture is one of honesty and zero tolerance in respect of fraud and corruption.

10. Employees should make themselves aware, of the following key documents which set out various standards of behaviour and procedures which must be adopted in addition to those mentioned in this Code:-
- Financial Regulations/Accounting Instructions;
  - Powers of Committees and Officers;
  - Computer/Internet Policy;
  - Standing Orders;
  - Contract Guidance Manual;
  - Employee Handbook; and
  - Purchasing Guide.
11. Employees must use public funds entrusted to them in a responsible and lawful manner and ensure that value for money is achieved. They must comply at all times with the Council's Financial Regulations and associated Accounting Instructions.
12. It is a criminal offence for employees to give or receive any gift, loan, fee, reward or advantage for doing, or not doing anything, or showing favour or disfavour to any person, company or contractor, with a corrupt intention. If an allegation is made it is for the employee to demonstrate that any rewards received have not been corruptly obtained.
13. Although there may be no corruptive intention in the act of giving or receiving of gifts, etc it is important to avoid any grounds for suspicion of corruption. For example, where contracts are being negotiated employees should not negotiate with a potential contractor, supplier or purchaser (of land for example) on a one -to- one basis. All steps in the contract negotiations should be recorded and in accordance with the Council's constitution and scheme of delegation. Standing Orders, Financial Regulations, the Contract Guidance Manual, the Purchasing Guide and the policies of the Council must always be followed; an adequate audit trail must be maintained.
14. The Council recognises that a key preventative measure in the fight against fraud and corruption is to take effective steps at the recruitment stage to establish the previous record of potential employees in terms of their propriety and integrity. Employees responsible for applying the Council's recruitment procedures should ensure that they are followed in respect of all appointments and that written references are obtained regarding known honesty and integrity. (See also paragraph 68).

### **Personal Interests**

15. Any personal interests, financial or otherwise, must be registered (see paragraph 19) when they could reasonably be deemed to potentially conflict with any work undertaken by employees in the course of their duties. The Chief Executive and each Chief Officer will be responsible for ensuring that their personal interests are registered in accordance with this Code and that all of their employees are aware of the need to register personal interests. In certain circumstances even though a conflict of interest is not anticipated (e.g. acting as a School Governor, involvement
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with an organisation receiving grant aid from the Authority, involvement with an organisation or pressure group which may seek to influence the Authority's policies) employees should register their interests.

16. Section 117 of the Local Government Act 1972 requires all employees to give written notice of any contract or proposed contract in which the Council is involved and in which the employee has a financial interest (either direct or indirect) as soon as the employee becomes aware of it. Failure to declare an interest is a criminal offence and may result in prosecution.
  17. A direct financial interest arises where an employee or their partner, family member or close friend has a financial interest in a contract or proposed contract whether to their advantage or disadvantage, in which the Council is involved. An indirect financial interest may arise where an employee or their nominee or employee's partner holds securities or shares in a company, which exceed £5,000 or 1/100th of the nominal issued share capital of a company which has a direct financial interest, whichever is the lesser amount.
  18. A non-financial interest may occur when an employee or their partner, family member or close friend has membership or association in a company, society, club or other body, trade union or voluntary body, or is employed by another person or company which has direct financial interests in any matter which is the subject of discussions/negotiations with the Council.
  19. Details of interests must be made in writing and sent to the Director of Law and Administration who will record it in a register and acknowledge receipt of the declaration. Employees should ensure that they receive an acknowledgement back from the Director of Law and Administration. The declaration must be made as soon as the employee is aware of the interest and/or the contract or proposed contract to which the interest relates. All contracts or proposed contracts are covered by this requirement, including contracts for the regular supply of goods and services.
  20. Employees with a financial or non-financial interest in any matter should not only declare that interest but also seek to distance themselves from involvement in that matter. Employees must be open and up front about their interest in all associated dealings. In particular, any such interest must be stated at meetings, whether Council meetings or other meetings, public or private. Notes taken at the time should be placed in the appropriate file concerning the interest(s) and how it has been handled.
  21. Employees involved in the award or management of contracts shall declare in writing to their Chief Officer (or in the case of Chief Officers the Chief Executive) any association or friendship with any contractor on any part of the Council's select list of contractors and should take no part in the tender process without their written approval. Any employees engaged in the consideration or determination of any application for any contract, permission, grant, approval or consent must declare to the Chief Officer (or in the case of Chief Officers the Chief Executive) any association with any person or body who is an applicant in the field of work in which that employee is engaged.
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22. A Chief Officer (or in the case of Chief Officers the Chief Executive) to whom any such interest, association or friendship is declared shall consider whether to take steps to ensure the employee concerned is not placed in a position where private interests and official duties may conflict.

#### **Rules Governing Purchasing by Employees**

23. Employees must follow Financial Regulations, Standing Orders, the Council's Purchasing Guide, Contract Guidance Manual (when appropriate) and Accounting Instructions whenever any goods or services are purchased.
24. Employees may not order, in the name of the Council, equipment or goods, whether with a discount or not, from official Council suppliers for their own personal use even if the cost is reimbursed in full to the Council.
25. Where appropriate, copies of the Purchasing Guide and the Council's Contract Guidance Manual should be issued to those staff who are or become involved in purchasing supplies and services.

#### **Separation of Roles during Tendering**

26. Employees involved in the tendering process and dealing with contractors should understand the separation of client and contractor roles within the Council. Senior employees who have both client and contractor responsibilities must be aware of the need for accountability and openness.
27. Employees who are privy to confidential information in respect of tenders or costs for either internal or external contractors must not disclose that information to any unauthorised person or organisation or use it for any unauthorised purposes.
28. Employees should ensure that no special favour is shown to current or recent former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.
29. Employees must not use their position and knowledge of the Council to gain access to and provide information which puts a particular contractor or anyone else in a better position than any other contractor tendering to undertake work or to provide services or supplies.

#### **Reporting a Concern**

30. "Whistleblowing" by employees of the Council is fully supported and encouraged. Where concerns arise these should be brought to the attention of management at all times. In Appendix 1 of this Code a procedure is described for employees who wish to report serious concerns relating to any suspicions or allegations of fraud and corruption or any mal-practice or maladministration.

#### **Investigation**

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31. Allegations and concerns relating to fraud or corruption will normally be investigated by the Head of Internal Audit and a report issued to the Chief Executive, the Director of Law and Administration and the Director: Strategic Finance (s.151 Officer).
32. The Chief Executive, after consultation with the Director of Law and Administration, will then decide whether there are grounds for the matter to be reported to the Police. The Council will normally wish the Police to be made aware of, and investigate independently, offences where financial impropriety appears to have been discovered.
33. The Council's Disciplinary Procedures (Managing Performance Improvement Procedure) will be used where the outcome of an audit investigation indicates improper behaviour by an employee.

### **GIFTS, HOSPITALITY AND SPONSORSHIP**

34. Any offers of gifts, hospitality or sponsorship should be recorded in the Council's Gifts & Hospitality Register held by each Chief Officer or, in the case of Chief Officers the Chief Executive. The register must include all offers of gifts, etc whether accepted or declined. Advice/permission should be sought from the Chief Officer before any gift, hospitality or sponsorship is accepted. (see paragraph 51 below) When in doubt the employee should always refuse such gifts.
35. When hospitality or gifts have to be declined, the person making the offer should be informed of the procedures and standards operating within the Council, in relation to gifts, hospitality and sponsorship.

#### **Gifts (including bequests)**

36. Gifts offered by persons who are providing, or seeking to provide, goods or services to the Council, or who are seeking decisions from the Council, should be refused and returned, as should gifts (other than those of a trivial nature e.g. calendars, diaries, desk sets) offered by those receiving services from the Council.
  37. In all cases relating to the receipt of gifts it is wise to err on the side of caution: an obviously expensive gift must be tactfully declined or, if appropriate, donated to the Council for official use, and the Chief Officer or Chief Executive should be advised of the action taken. If a gift is simply delivered it must be returned to the donor or, if appropriate, be donated to the Council for official use, and the Chief Officer or Chief Executive must be advised of the action taken. All such gifts must be registered in accordance with paragraph 51 of this Code.
  38. On occasions an employee may become a beneficiary of a Will of a service user; this may be the way a service user wishes to express gratitude for the service he or she has received.
  39. Those directorates/services which provide personal services to service users have written policies concerning the receipt of bequests by employees – such policies
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have been drawn up to protect the interests of both service users and members of staff. Staff should ensure that they have read and comply with such policies.

## Hospitality

40. Employees may only accept offers of hospitality if there is a genuine need to exchange information or represent the Council in the community. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community within Gloucestershire and where the Council should be seen to be represented. All such hospitality must be properly authorised and recorded by Chief Officers or, in the case of Chief Officers the Chief Executive. Exceptions to this rule must be properly authorised and recorded by Chief Officers or the Chief Executive.
  41. Acceptance of hospitality through attendance at relevant conferences and courses is acceptable where the hospitality is corporate rather than personal, or where the Chief Officer (or Chief Executive in the case of Chief Officers) gives consent in advance and where it is clear that any purchasing decisions are not compromised.
  42. An offer of hospitality to individual employees calls for special caution particularly if the host is undertaking, or applying to do business with the County Council or hoping to obtain a decision from it. It is very important to avoid any suggestion of improper influence.
  43. A working lunch of modest standards to allow the parties to discuss business would normally be acceptable; this is a case where the hospitality is secondary to a specific working arrangement. On the other hand, it would not be acceptable conduct for an employee to accept such things as:-
    - a holiday
    - tickets for concerts, theatre or sporting events
    - the use of a company flat or hotel suite
    - expensive meals or entertainment
  44. Hospitality must not be accepted unless the acceptance can be readily acknowledged in public or is similar to that which the Council would provide in the same circumstances.
  45. There are occasions when an offer of hospitality of any kind must be declined e.g. when the person offering the hospitality has a current issue with the Council such as a tender under consideration or is involved in a contract dispute.
  46. Offers of hospitality accepted or rejected must be registered by employees to their Chief Officer or, in the case of Chief Officers to the Chief Executive. The details to be registered must be in accordance with that shown in paragraph 51 of this Code.
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## Sponsorship

47. Where outside organisations, contractors or potential contractors wish or seek to sponsor a Council activity, the basic conventions concerning acceptance of gifts or hospitality apply.
48. Where the Council acts as a sponsor for an event or service, neither an employee or any partner or relative must benefit from such sponsorship without there being full disclosure to an appropriate manager of any such interest. Similarly, where the Council through sponsorship, grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.

## Bribery Act 2010

49. The Bribery Act 2010 came into force in the UK on 1<sup>st</sup> July 2011. It amends and reforms the UK criminal law and provides a modern legal framework to combat bribery in the UK and internationally. Staff need to be aware of their obligations under this Act, which sets out the criminality of accepting and giving of bribes. This applies to both individual staff and the Council corporately.
50. The Bribery Act creates the following offences:
- Active bribery: promising or giving a financial or other advantage;
  - Passive bribery: agreeing to receive or accepting a financial or other advantage;
  - Bribery of foreign public officials; and
  - The failure of commercial organisations to prevent bribery by an associated person (corporate offence).

The penalty under the Bribery Act is an unlimited fine and/or imprisonment up to a maximum of 10 years.

Full details of the Act can be found at: <http://www.legislation.gov.uk/ukpga/2010/23/contents>

## REGISTER OF GIFTS AND HOSPITALITY

51. A register will be maintained by every Chief Officer detailing all offers of gifts or hospitality made to employees in their department. The following information will be recorded, based on information reported by employees:-
- the person or body making the offer;
  - the member of staff to whom the offer was made;
  - the gift or hospitality offered;
  - the circumstances in which the offer was made;
  - the action taken by the member of staff concerned; and
  - the action taken (if any) by the Chief Officer (or in the case of Chief Officers the Chief Executive).

A similar register will be maintained by the Chief Executive in relation to Chief Officers.

Where a suspected breach has been reported a formal investigation will be undertaken and recorded.

## **DISCLOSURE AND USE OF INFORMATION**

52. The Council believes that, subject to the content of paragraphs 53 to 59 below, information should normally be disclosed unless it is in the public interest not to do so. If in doubt, comply with the council's Freedom of Information policy, procedures and authorisation process.
  53. Many employees obtain information which has not been made public and/or is confidential. Employees may also have access to personal information about other employees or clients. This information must only be disclosed to a third party where there is a legal responsibility to provide it, or where the employee or client provides a written authority for the information to be provided.
  54. The restrictions in paragraph 53 to 59 apply equally to information which an employee may obtain from their employment about a contractor, debtor or creditor of the Council.
  55. No employee, unless specifically authorised by their Chief Officer to do so, may communicate to the public or press any information about the discussions or decisions of the County Council or any of its Boards following the exclusion of the public and press, with the exception of information which is required to be published by law.
  56. As a general rule employees must not enter into any public correspondence or debate on a matter related to their official duties, or in respect of which they hold official information, unless this is done with the consent of their Chief Officer. Similar considerations exist covering the position of employees invited to participate in press interviews, radio or television programmes, etc., where the subject relates directly or indirectly to their work for the Council. Employees invited to take part in such programmes should discuss the position with their Chief Officer before replying to the invitation.
  57. Employees must adhere to the Council's published employee guidelines relating to confidential information, as covered by current Data Protection legislation. In particular, information must not be disclosed to unauthorised people or organisations.
  58. Employees must not use any information obtained in the course of their employment for personal gain or benefit, nor should they pass it on to others who might use it in such a way.
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59. Employees must comply with published policies and codes of practice relating to the secure use of ICT systems, including the use of the Internet and e-mail and the acquisition and use of software. A serious breach of the rules is likely to lead to disciplinary action.

## **POLITICAL NEUTRALITY**

60. Employees must serve all Councillors and not just those of a single or controlling group, and must ensure that the individual rights of all Councillors are respected.
61. Employees of the County Council are not eligible to stand for office as an elected member of the County Council. Employees, whether or not politically restricted under the terms of the Local Government and Housing Act 1989, must follow every policy of the Council and must not allow their own personal or political opinions to interfere with their work.

### **Politically Sensitive Posts**

62. The Local Government and Housing Act 1989 has the effect of imposing restrictions on public political activity by certain staff of local authorities in politically sensitive posts. Political assistants employed pursuant to Section 9, Local Government and Housing Act 1989 are not wholly bound by these restrictions.
63. The effect of the inclusion of a post in a list of sensitive posts is that the postholder will be prevented from becoming a member of a local authority (except a Town or Parish Council), or a member of the House of Commons or the European Parliament. In addition, regulations prevent them from:-
- holding office in a political party
  - canvassing at elections
  - speaking or writing publicly on matters on party political lines

## **RELATIONSHIPS**

### **Councillors**

64. Mutual respect between employees and Councillors is essential to good local government. However, close personal familiarity can possibly damage working relationships and cause embarrassment.

### **Contractors**

65. All relationships of a business or private nature with external contractors, or potential contractors, must be made known to the employee's immediate line manager. Orders and contracts must be awarded on merit, through fair competition, and no
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special favour should be shown to businesses run by, for example, friends, partners or relatives. No part of the local community should be discriminated against.

66. Employees who engage or supervise contractors or have any other official relationship with contractors and have previously had, or currently have, a relationship in a private or domestic capacity with such contractors, must declare that relationship to their Chief Officer, or in the case of Chief Officers to the Chief Executive.
67. No employee shall purchase for private purposes goods or services from a firm which has dealings with the Council where the firm is offering preferential terms to the individual employee (directly or indirectly) because of a contractual, business or other relationship with the Council. This rule equally applies to the ordering of extra supplies against a contract where the intention is to use the goods privately and pay for them at the Authority's contract price, particularly if the employee is aware that the price is not available to the ordinary customer. It would also apply to the use of services of a contractor with whom employees have official contacts as part of their employment with the Council. It also precludes employees from using, for private purposes, any special trading cards which the Council may hold for council business. It does not, however, preclude employees benefiting from general discounts offered by suppliers to all Council employees or made available by the Council or trade unions on behalf of staff generally.

#### **APPOINTMENTS AND OTHER EMPLOYMENT MATTERS**

68. It is contrary to the Council's HR policies for an employee to make an appointment/engagement which is based on anything other than the ability of the individual to undertake the duties of the post. Employees must not be involved in an appointment/engagement where they are related to an applicant, or have any personal or business relationship outside work with them.
  69. Employees must not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner or close personal friend.
  70. Employees of the Council shall inform their Chief Officer or, in the case of Chief Officers the Chief Executive, of any relationship known to them to exist between themselves and a candidate for an appointment/engagement in which they are directly involved. If a candidate deliberately omits to disclose a relationship they will be disqualified. If the omission is discovered after appointment or engagement they shall be liable to dismissal.
  71. Employees involved in appointments/engagements must, where practicable, ensure that references are obtained from the current and previous employer of the candidate to whom they wish to formally offer a post. Ideally both referees should be senior persons, one from the candidate's present employer and the other from their previous employer.
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72. In the case of applicants leaving full-time education or not having worked since doing so, the Head of School, College, University etc. should be named as one of the referees.

### **UNDERTAKING ADDITIONAL WORK OUTSIDE OF THE COUNCIL**

73. Full-time employees shall devote their whole time service to the work of the Council, and shall not engage in any other business, including self-employment, or take up any other additional appointment without the express written prior consent of their Chief Officer, and in the case of Chief Officers, the Chief Executive. The Chief Officer or the Chief Executive reserve the right to withdraw such consent at any time.
74. All prospective employees shall, prior to appointment, provide details on the Council's standard application form of any other employment(s) in which they are engaged, giving full details of the employer, job title and the hours worked per week in each job. (This information will be examined to see whether any other existing employment(s) is in conflict with the employment being sought with the Council and whether, in overall terms, the total hours of all the employments exceed 48 per week - as per the Working Time Regulations 1998.) Also, existing part-time employees must declare any other employment to the Council in order that the latter can ensure that there is no conflict of interest between such employment and that there is adherence to the Working Time Regulations.
75. Employees should avoid situations where a conflict between work and personal interests may arise.
76. Undertaking unpaid activities outside Council employment may, on occasions, be detrimental to the Council's interests. Employees should be mindful of any potential conflict of interests in such situations.
77. No personal business activity or outside work of any sort may be undertaken by an employee during their normal working hours for the Council.

### **Consultancy, Lecturing, Fee Paying Work**

78. Where a request is received for any employee to make a presentation, speak at a seminar or lecture on a course, within their normal field of work and during their normal working hours, the work will be undertaken on behalf of the Council and any fee will be treated as income for the Council.
79. Where an employee is approached to undertake fee paying work the Council has determined that the fee is to be treated as income for the employee if all the work, including preparation, is undertaken outside normal work hours. In the case of activities which are prepared and/or take place partly during normal working hours, the Council has agreed that half the fee is to be treated as income for the employee and the remainder paid to the Council. All consultancy, lecturing and other fee paying work must be approved by the employee's Chief Officer or, in the case of Chief Officers the Chief Executive.

### **Intellectual Property**

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80. Intellectual property is a generic term that includes inventions, creative writings and drawings. If these items are created as part of an employee's normal course of employment then, as a general rule, they belong to the Council.

### **ARREST OR CONVICTION ON CIVIL OR CRIMINAL CHARGES**

81. You must, as soon as practicable inform your line manager, at each stage, if you are arrested, charged, refused bail, required to attend court, convicted or sentenced for any criminal offence. This does not apply to traffic offences unless the possible penalty includes imprisonment or disqualification from driving or involves an official vehicle. Failure to inform will be considered an act of gross misconduct.

### **MEMBERSHIP OF A CLUBS, SOCIETIES AND OTHER ORGANISATIONS**

82. All employees must declare membership of any organisation which is not open to the public, where there is a commitment of allegiance, and /or which has secrecy about rules, membership or conduct. This declaration needs to be made through completing a form held by each Chief Officer
83. Where employees belong to any club, society, charity or similar body and any person within it or the club, society or similar body itself may benefit from a decision or action employees may take in their work with the Council, then they must register their interest and discuss what action should be taken with their line manager.

### **EQUALITY ISSUES**

84. All employees must comply with the Council's policies on equal opportunities in employment and with those relating to service delivery.

### **HEALTH AND SAFETY ISSUES**

85. Employees should ensure they read and follow all health and safety policies and arrangements relating to their employment.

### **CONFIDENTIAL REPORTING PROCEDURE FOR EMPLOYEES (WHISTLE-BLOWING)**

86. Appendix 1 of this Code provides procedures for employees to follow who wish to report, in strict confidence, their serious concerns about any aspect of the Council's work or the behaviour or standard of conduct of other employees or anyone associated with the work and services provided by the Council.

### **BREACHES OF THE CODE OF CONDUCT**

87. Any suspected breach of this Code must be:-

(a) immediately reported to the appropriate Chief Officer and to the Chief Executive or, in the case of Chief Officers, to the Chief Executive,  
OR

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(b) be reported through the confidential reporting procedure for employees, detailed at Appendix 1.

88. Where a suspected breach has been reported, a formal investigation into that suspected breach will be undertaken.
89. Failure to comply with any of the standards detailed in this Code may result in formal disciplinary action, under the Managing Performance Improvement Procedure, including dismissal.



## APPENDIX 1

### CONFIDENTIAL REPORTING PROCEDURE FOR EMPLOYEES (WHISTLE BLOWING)

1. Employees are often the first to realise that there may be something wrong within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation and it may be easier, therefore, to ignore the concern rather than report what may just be a suspicion of malpractice.
2. The Council is committed to the highest standards of openness, probity and accountability. It expects employees, and others that it deals with, who have serious concerns about any aspect of the Council's work, to come forward and voice those concerns. The phrase 'whistle-blowing' in this procedure refers to the disclosure internally or externally by employees of malpractice, as well as illegal acts or omissions at work.
3. This Procedure makes it clear that employees can report, in a confidential manner, their concerns without fear of victimisation, subsequent discrimination or disadvantage and is intended to encourage and enable serious concerns to be raised with the Council, rather than overlooking a problem or 'blowing the whistle' outside. It is stressed that under the Public Interest Disclosure Act 1998, employees of the Council who, in good faith, speak out against corruption or malpractice at work have statutory protection against victimisation and dismissal.

### AIMS AND SCOPE OF THIS PROCEDURE

4. This Procedure aims to:
    - encourage employees to feel confident in raising serious concerns in those cases where they do not wish to use the normal reporting routes within their service area
    - provide alternative avenues for raising concerns
    - ensure that responses to concerns are made
    - to reassure employees that they will be protected from possible reprisals or victimisation if they have a reasonable belief that they have raised a concern in good faith
  5. There are existing procedures in place to enable employees to lodge a grievance relating to their own employment. This Procedure is intended to cover concerns that fall outside the scope of other procedures and include:
    - conduct which is an offence or a breach of law
    - disclosures related to miscarriages of justice
    - health and safety risks, including risks to the public as well as other employees (where the concerns raised have not been addressed through normal departmental procedures)
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- damage to the environment
  - the unauthorised use of public funds including fraud and corruption sexual or physical abuse
  - other unethical or unprofessional conduct
  - notification of any suspicions of price-fixing cartels providing services/goods to the Council
6. The Council fully understands that employees who are members of a Trade Union recognised by the Council may, in the first instance, wish to seek advice and guidance from their Union on the application of this Procedure (see paragraph 23 of this Appendix).
7. Any serious concerns that employees have about any aspect of service provision, or the conduct of employees or members of the Council or others acting on behalf of the Council, can be reported under this Procedure. This may be about something that:
- makes an employee feel uncomfortable in terms of apparent non adherence to known standards
  - appears to be contrary to the requirements of the Council's Standing Orders and Code of Conduct
  - falls below established standards of practice
  - may amount to improper conduct
  - appears to be an attempt to mislead

## **SAFEGUARDS**

### **Harassment or Victimisation**

8. The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from the person(s) who is the subject of the complaint. However, if employees believe that what they raise as a concern to be the truth they should be confident that they are fulfilling their duty to their employer and those for whom they are providing a service.
9. The Council will not tolerate any form of sexual, racial or general harassment or victimisation and will take appropriate action to protect employees when they raise a concern in good faith.
10. Any investigation into allegations of potential malpractice will be dealt with separately to any grievance, disciplinary or redundancy procedure concerning an employee. Equally, any investigation will not be influenced by any such procedures involving an employee.

## **CONFIDENTIALITY**

11. All concerns will be treated in confidence and every effort will be made to protect an employee's identity if that is their wish. However this cannot be guaranteed if say
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following an investigation a case is taken to Court, where the employee may need to be called as a witness.

### **ANONYMOUS ALLEGATIONS**

12. In order to ensure that employees receive protection of the Public Interest Disclosure Act 1998 employees should put their name to their allegation. Concerns expressed anonymously are sometimes less credible. Anonymous concerns and allegations, whether made to the Director of Law and Administration or Head of Internal Audit, will therefore be investigated at the discretion of the Council.
13. In exercising this discretion the factors to be taken into account would include:
  - the seriousness of the issues raised
  - the credibility of the concern; and
  - the likelihood of confirming the allegation from attributable sources factual evidence.

### **UNTRUE ALLEGATIONS**

14. If an employee makes an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against them. If, however, an allegation is frivolous, malicious or for personal gain, disciplinary action may be taken against them.

### **HOW TO RAISE A CONCERN**

15. Employees who wish to raise a serious concern should do so verbally or in writing (marked 'Confidential') to the:

Director of Law and Administration  
Gloucestershire County Council  
Shire Hall  
Gloucester GL1 2TZ  
Telephone: (01452) 425201

The Director of Law and Administration will refer all concerns in relation to possible financial impropriety to the Director: Strategic Finance and/or the Head of Internal Audit.

16. Alternatively employees may wish to use the Council's 24 hour "whistleblowing" answerphone service on Gloucester 01452 - 427052 to report any concern relating to possible fraud, corruption, conduct or mal-practice/administration.
  17. Employees who wish to make a written statement/report are invited to set out:
    - the background and history of the concern
    - relevant dates, person involved
    - details of supporting evidence
-

18. Although employees are not expected to prove an allegation they will need to demonstrate that there are reasonable grounds for their concerns.

### **HOW THE COUNCIL WILL RESPOND**

19. The Council will respond to such concerns and, where appropriate, the matters raised may:
- be investigated by management, Internal Audit, or through the disciplinary process
  - be referred to the Police
  - be referred to the District Auditor
  - be the subject of an independent inquiry
20. In order to protect individuals and those involved in the concern, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle which the Council will take into account is public interest; however, the Council has a zero tolerance attitude to any fraudulent activity. Concerns or allegations which fall within the scope of specific procedures (for example, child protection) will normally be referred for consideration under those procedures.
21. Within 10 working days of a concern being raised, the Director of Law and Administration will write to the employee concerned at their private address:-
- acknowledging that the concern has been received
  - indicating how he proposes to deal with the matter
  - telling the employee whether any initial enquiries have been made
  - telling the employee whether further investigations will take place and, if not, why not
22. If the matter is subject to further investigation the employee will be informed of any progress and proposed timescale for the investigation. The amount of contact between the officers considering the issues and the employee raising the concern will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the Council will seek further information from the employee raising the concern.
23. A representative of a Trade Union recognised by the Council or work place colleague may accompany an employee during any stage of an investigation conducted under this Procedure.
24. The Council will take steps to minimise any difficulties which may be experienced as a result of raising a concern. For instance, where an employee is required to give evidence in criminal or disciplinary proceedings the Council will arrange for them to receive advice about the procedures involved.
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25. The Council accepts that employees need to be assured that matters of concern have been properly addressed and, therefore, subject to legal constraints, employees will be informed of the outcome of any investigation.

**THE RESPONSIBLE OFFICER**

26. The Director of Law and Administration has overall responsibility for the maintenance and operation of this Procedure. He will ensure that a record of concerns raised and the outcomes recorded is maintained in a form that does not breach confidentiality.

**FURTHER ACTION**

27. This Procedure is intended to assist employees who wish to raise concerns within the Council. The Council hopes employees will be satisfied with any action taken. However, if they are not, and they feel it is right to take the matter outside the Council, the following organisations are possible contact points:

- Health & Safety Executive
- Environment Agency
- District Audit/Audit Commission/External Auditors
- Financial Services Authority
- DSS Benefits/Contributions Agencies
- Serious Fraud Office
- Trade Union
- Inland Revenue
- Relevant Voluntary Organisation
- Charity Commission
- Police
- Customs & Excise
- 'Public Concern at Work' (tel: 0207 404 6609)

28. If employees do decide to take the matter outside the Council, they must ensure that they do not disclose to a third party any Council confidential information. If employees are in any doubt, they are strongly advised to seek the confidential advice of the Director of Law & Administration before taking any action to ensure that they are not putting themselves in a vulnerable position.

**GLOUCESTERSHIRE COUNTY COUNCIL  
CONSTITUTION COMMITTEE  
17<sup>th</sup> OCTOBER 2012  
THE ROLE OF THE MONITORING OFFICER  
REPORT OF THE CHIEF EXECUTIVE**

## **Introduction**

In March 2012, Graham Garbutt concluded his review into the Council's dealings past and present with Cotswold Water Park. His report, including recommendations, was considered by Audit Committee on 12<sup>th</sup> March. Those recommendations, which include Mr Garbutt's suggestions for the future course of the Council's relationship with CWP as well as matters concerning the general governance of the Council, have now been incorporated into an action plan that will be overseen by Audit Committee.

One of Graham Garbutt's recommendations was that the Council should review the role of the Monitoring Officer and the Chief Legal Adviser.

## **Recommendations**

That the committee

- (1) considers the question of whether or not there should be a mandate for changing the current designation of the post of Director of Law & Administration as the Council's Monitoring Officer; and if so
  
- (2) recommends to the County Council that a different officer post is so designated as soon as is practicable.

## **The Original Role of the Monitoring Officer**

The Monitoring Officer is a statutory appointment pursuant to section 5 of the Local Government and Housing Act 1989. The role was established to meet the recommendations of the Widdicombe Report that every principal local authority should be required to appoint one of their senior officers as MO, with an independent statutory duty to report to full Council on any action or proposal which would be unlawful, in breach of a statutory code, or give rise to maladministration or injustice. It is one of three statutory appointments that a Council must make in relation to its governance arrangements, the other two being the Head of Paid Service and the Chief Financial Officer. The current responsibilities of the role rest with the Council's Director of Law and Administration.

Since 1989, councils have tended to appoint one of the following as Monitoring Officer –

- their Chief Executive (no longer permissible at law);
- a senior corporate director; or
- their chief legal adviser.

There is no requirement that the post holder should be legally qualified, and although a legal qualification would be of assistance in identifying potential illegality, it is at least equally important to the performance of the duties of the post that the post holder should be in a position to know what the various parts of an authority are proposing to do, so that advice

can be given at an early stage (when it can be much more effective), and that the post holder should be an individual whose advice carries weight within the authority. If determined that a non-legal officer would be in a better position to identify and to resolve proposals that might give cause for concern, then the appointment to the post of a non-legal officer would be perfectly proper, subject to the proviso that the post holder has the independence, authority and budget to procure legal advice wherever and whenever he or she considers it to be appropriate.

Furthermore, whoever is appointed to act as MO, it has always been of paramount importance that the MO should –

- be one of a council's most senior officers
- have direct access to the Head of Paid Service

### **Developments**

The Local Government Act 2000 introduced a new statutory regime for the conduct of members. The Act, subsequent Statutory Instruments and a range of guidance provided by the then Standards Board for England (later 'Standards for England' but now abolished) set down a number of detailed processes and procedures to be followed, with a number of roles allocated to the Monitoring Officer (for example, maintaining registers of interests, and of gifts and hospitality, overseeing the investigation of allegations of member misconduct and discharging the function of lead liaison and link officer with a council's standards committee). Although the standards functions provided by the 2000 Act have now been largely repealed, they have been replaced by the less onerous duties (but duties nonetheless) established by the Localism Act 2011.

These actual expansions of the role of the Monitoring Officer have seen a consequent presumption that MO duties extend beyond the original statutory role and the further role devolved by the standards regimes, to include a general duty to ensure full probity in everything that a council does or in which it becomes involved, and in every single area of its activity or influence; put another way, almost an independent arbiter, auditor, regulator and protector of the public interest.

Today, the role and purpose of local government is coming under increasing scrutiny, with a public policy debate being conducted as to what the functions of a local authority might be in today's world. Historically councils have been agencies of direct provision of a wide range of services. Increasingly, however, that role is becoming more of a procurement one, where councils are shrinking in size to a core function that oversees and facilitates the delivery and provision of services by a range of partner organisations operating in the public, private and third sectors.

Here at Gloucestershire, the Monitoring Officer is also responsible for monitoring and reviewing the operation of the Council's constitution.

### **The Risk of Conflict**

As Graham Garbutt observes in paragraph 21 of his *Cotswold Water Park Review* –  
*"The combination, in one person, of the roles of monitoring officer, chief legal adviser and line manager of key service areas involves risk of role conflict. It will be increasingly difficult to sustain as more widespread outsourcing and other changes to council services creates a*



*growing need for demonstrably independent investigation and reporting. Urgent review is needed.”*

Local government now finds itself on the cusp of hugely significant change in terms of its role and relevance. No longer the provider of first resort of public services, the future will involve an increasing role for *commissioning* services from elsewhere, as recognised by this Council’s move to its *New Operating Model* in strategic terms; and moving forward, the need in the public interest for the delivery of overt systems of due diligence as part of the structure of corporate governance to overlay that commissioning role will be of increasing significance and importance. In a sense, therefore, there is an argument for saying that to expect this role to be performed by a council’s chief legal adviser is to ask for a function to be performed that at times may not actually be capable of being so performed. Indeed, this is a view that the Council’s own Director of Law and Administration has expressed on occasions in the past.

### **Relevant Issues**

In general terms, the ability of an MO to discharge the duties and responsibilities of the role will depend to a significant extent upon members and officers –

- complying with the provisions of all laws and statutory guidance (including any relevant code of conduct);
- complying with any other guidance that is issued from any relevant source;
- observing minimum standards of good governance and administration;
- making lawful and proportionate decisions; and
- not acting in any way that would bring the Council into disrepute.

### **Conclusions**

There are no wrong or right answers as to which officer is best placed to discharge the functions of the Monitoring Officer, subject to the key considerations identified in this report. Graham Garbutt has recommended that the Council should urgently review the combination in one person of the roles of Monitoring Officer, Chief Legal Adviser and Line Manager of key services, and this report is intended to stimulate such a debate. I have deliberately not made any specific recommendations as to the post within the officer structure best suited to be designated as MO, because I wanted to ensure that no parameters are placed on the debate. There are, however, a number of non-negotiable considerations that I advise are in the best interests of good governance, such that the most appropriate post for designation is likely to have the following features –

- it should be selected from posts within the top two tiers of the officer structure, to ensure that the role has the appropriate significance and *gravitas*;
- the post holder should be a member of the officer corporate management team, to ensure sufficient proximity to the development of policy and strategy; and
- it cannot at law be one of two other statutory officer posts (the head of paid service and chief financial officer) and should not one of the remaining two (the directors of children services or adult social services) to eliminate the risk of conflicts of interest

If there is a mandate for change, this report is the medium for that change to be delivered. Further, the Monitoring Officer debate is a timely one, given that the time is right generally for

the future role of the Council to be the subject of wide-ranging review, for a number of significant reasons as follows –

- the ambitious *Meeting the Challenge* programme is delivering fundamental changes to the provision of services;
- with the dismantling of a traditional directorate structure, the Council's *New Operating Model* has changed the emphasis at strategic level from direct service delivery to a commissioning role;
- all of the Council's support services are currently federated into an *Enabling and Transition* function, with the proviso that there will be significant change in the short to medium term;
- the Council's Democratic Services function has been substantially overhauled to bring the service into direct line with new operating arrangements; and
- with full elections to be held next May, the current Council is in the final year of its life, such that an opportunity now presents itself to design a blueprint for the future that aligns the function and relevance of the Council directly to community need.

This report, with its conclusion and recommendations, was submitted to the members of the council's audit committee on 27<sup>th</sup> September for their comments, which were as follows:

- members recognised that this was one of the more significant recommendations emerging from Mr Garbutt's report
- members noted that whichever senior officer takes on the MO role might find themselves faced with a conflict of interest as they too will be a service manager. Any such conflict must be articulated and resolved, for example by liaising with the Chief Executive or even the MO of another authority
- members were unanimous in their view that the MO role and that of the chief legal adviser should be split.

The recommendations from this the Constitution Committee will be taken to the full Council meeting on 21<sup>st</sup> November 2012 for approval. If such approval is given the matter will then be referred to the Appointments Committee whose terms of reference include the appointment of the Monitoring Officer.

Peter Bungard, Chief Executive

## CONSTITUTION COMMITTEE

17<sup>TH</sup> OCTOBER 2012

### REPORT OF THE ASSISTANT DIRECTOR OF LAW AND ADMINISTRATION

#### RATIFICATION OF CHANGES TO THE CONSTITUTION

##### **Ratification of Changes to the Constitution made by the Director of Law & Administration under delegated powers.**

The Committee is asked to ratify and recommend to full Council for approval and adoption the changes made to the Constitution by the Director of Law & Administration under delegated powers as shown at Annexes 1 and 2 hereto.

##### **IT IS RECOMMENDED THAT:**

The amendments to the Constitution set out above are approved and recommended to full Council.

##### **Christine Wray**

Assistant Director of Law and Administration

Tel: 01452 426911

email: [christine.wray@gloucestershire.gov.uk](mailto:christine.wray@gloucestershire.gov.uk)

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**Changes to Gloucestershire County Council Constitution  
by the Monitoring Officer**

In the exercise of my powers set out in Article 15.02.2 of the Council's Constitution, I make the following amendments to the Council's Constitution:

- (i) Article 16.03.1 shall be amended to read:

"The Monitoring Officer will make available an electronic copy of the Constitution on the Council's web site for the benefit of county councillors, council officers and members of the public. The electronic copy can be accessed at county libraries."

- (ii) Article 16.03.2 shall be amended to read:

"A paper copy of the Constitution will be available for inspection at the Council's principal office and a copy can be purchased by any person who requests one on payment of a reasonable fee."



.....  
N J Roberts

Director of Law and Administration and Monitoring Officer  
Gloucestershire County Council

12th June 2012

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## Changes to Gloucestershire County Council Constitution by the Monitoring Officer

In the exercise of my powers set out in Article 15.02.01 of the Council's Constitution, I make the following amendments to the Council's Constitution:

a) Article 10 The Standards Committee

I. Article 10.01 shall be amended to read:

“ The Council has established a Standards Committee, whose role is described in Part 3 of the Constitution. It is comprised of six County Councillors, only one of whom may be a Member of the Cabinet. ”

II. Article 10.04 shall be omitted.

b) Table 3.11 The duties of the Standards Committee

I. Item 5 shall be omitted.

II. Item 14 shall be omitted.

III. The notes to Table 3.11 shall be amended to read:

“ **Standard Committee Membership:**

Six County Councillors.

In accordance with the Standards Committee (England) Regulations 2008, the Standards Committee has resolved to establish:

- A Referrals Sub-Committee comprising three members of the Standards Committee with the terms of reference set out below in Table 3.11a.
- A Review Sub-Committee comprising three members of the Standards Committee and with the terms of reference set out below in Table 3.11b.

The quorum for a meeting of each sub-committee shall be three members present for its duration.

IV. Item 1 (b) (ii) in Table 3.11a shall be omitted and the resulting re-numbering applied.

V. Item 1 (b) (ii) in Table 3.11b shall be omitted and the resulting re-numbering applied.

.....  
NJ Roberts

Director of Law & Administration and Monitoring Officer  
Gloucestershire County Council

July 2012

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