

Local Councils — explained

By Meera Tharmarajah

Local Councils – explained

by Meera Tharmarajah, Solicitor

Published by the National Association of Local Councils

Local Councils — Explained

© 2013 National Association of Local Councils. All rights reserved.

Published in 2013 by the National Association of Local Councils
109 Great Russell Street
London
WC1B 3LD

No part of this book may be reproduced, whether by photocopying, scanning, downloading onto computer or otherwise, adapted, stored in a retrieval system, or transmitted in any form or by any means without the publisher's prior written permission.

Every effort has been made to ensure that the contents of this book are correct at the time of writing. Neither the author nor the publisher can accept responsibility for loss suffered as a result of the material in this book.

The author has asserted her moral right under the Copyright, Designs and Patents Act 1988 to be identified as the author of this work.

Printed in England by Warners Midlands PLC.

British Library Cataloguing in Publishing Data. A catalogue record for this book is available from the British Library.

ISBN XXXXXXXXXXXXX

About the author and acknowledgments

The author, Meera Tharmarajah, qualified as a solicitor in 1998. Since 2006, she has been the Head of Legal Services for the National Association of Local Councils (NALC). She is grateful to those who encouraged her with the book. Meera dedicates this book to her mum.

The following are thanked for their respective contributions:

Gary Barker, Solicitor, NALC

Martin Fine, Solicitor, NALC

Jane Moore, Solicitor, NALC

Claire FitzGerald, Executive Officer, NALC

Lisa Palmer, Administration Manager, NALC

Alan Jones, Head of Communications, NALC

Steve Walker, Head of Finance and Administration, NALC

George Wisz, Audit Commission

Jonathan Wragg, Barrister, Highgate Chambers

Paul Hoey, Co-director, Hoey Ainscough Associates Ltd

Special thanks are given to the solicitors at NALC.

Contents

Introduction	9
How to use this book	11
Glossary.....	13
Part one — How local councils work.....	17
1. The role of local councils	19
2. Local councillors	43
3. Local council staff	63
4. Accountability to the public.....	77
5. Working with others.....	95
6. A committee structure	131
7. Meetings	147
8. Debate at meetings	161
9. Chairing meetings.....	167
10. Preparing for meetings	175
11. After meetings	185
Part two — Model standing orders.....	191
How to use model standing orders.....	193
List of model standing orders	195
Index.....	221

Introduction

Parish, town, neighbourhood, community or village councils in England and community and town councils in Wales are colloquially known as “local councils”. Local councils are a type of local authority. A local council is not the same as the local parochial church council, whose role is to promote the Church of England in an ecclesiastical area.

All local authorities are established by legislation and work within a statutory framework. Legislation requires all local authorities, except local councils, to discharge certain essential functions. These statutory functions relate to the provision of everyday services, facilities and amenities that people and businesses in their areas depend on. For example, in England, district or unitary authorities have waste collection, highway and traffic regulation, street trading, licensing, housing, education and planning and development control functions. County councils have education, some highway and planning functions. In Wales, these functions are carried out by unitary authorities, being county borough or county councils. By contrast, local councils are not burdened with statutory duties to discharge the functions that are imposed on other local authorities.

Legislation has conferred on local councils a range of specific yet discretionary statutory powers which they may exercise if and only if they wish to. Many of these statutory powers relate to the provision of facilities and services which benefit the residents in a local council's area. If a local council exercises any of the discretionary powers conferred on it by legislation, it must work within the limits of those statutory powers and the broader statutory framework.

Local councils:

- are a type of local authority and subject to statutory provisions as to what they may do and how they must operate;
- must prepare annual accounts which are externally audited;
- hold and use data relating to individuals and are therefore subject to the Data Protection Act 1998;
- are public authorities and therefore subject to particular legislation such as the Human Rights Act 1998 and the Freedom of Information Act 2000;
- are subject to the Equality Act 2010;
- are employers and subject to employment law;
- are owners or occupiers of premises and subject to related legal obligations;
- are incorporated bodies which can enter into contracts;
- can be a party to legal proceedings;

- are made up of councillors whose conduct as representatives of the council and whose financial and other interests are subject to statutory rules.

The statutory framework that governs local councils is broad. This book gives an overview of what local councils are required to do and what they are permitted to do. The book has been written for local councillors, local council staff and for those who work with local councils or have an interest in how they work.

How to use this book

References in this book to the masculine gender include a reference to the feminine gender.

Part one — How local councils work

The beginning of each chapter includes:

- a summary of its key points;
- any definitions relevant to that chapter and
- any cross-references to relevant chapters.

At the end of each chapter, the footnotes provide statutory references for the main text.

The names, addresses and scenarios used in any example are for illustration purposes only; they do not refer to a real local authority, person, place or event. Example documents are just that. They are not templates.

Part two — Model standing orders

Model standing orders that are in bold contain statutory requirements. It is recommended that councils adopt them without changing them. Model standing orders not in bold are designed to help councils operate effectively but do not contain statutory requirements, so they may be adopted as drafted or amended to suit a council's needs.

Part two is separately available free of charge to local councils in membership of NALC or One Voice Wales.

Glossary

In this book certain terms are used throughout. Where an explanation of the term is not given in the main text, this is set out below.

“Accounting Statements” means the annual income and expenditure account, statement of balances or record of receipts and payments that a “local council” (see definition below) is required to prepare in accordance with, and in the form specified in, any annual return required by “proper practices” (see definition below) in relation to accounts.

“Councillor”, unless otherwise indicated, is a person elected (whether his election is contested or not) or co-opted onto a council. For convenience, the word councillor is used throughout the book and includes “non-councillor” (see definition below) unless otherwise stated.

“Financial regulations” are the “standing orders” (see definition below) of a local council that regulate and control its financial affairs and accounting procedures. Model financial regulations are not included in this book. They are available to councils in membership of the National Association of Local Councils or One Voice Wales (see definitions below).

“Local council” is a colloquial term used to describe a parish council in England and community council in Wales. Town, neighbourhood, community or village councils are synonymous with parish councils in England and, in Wales, town councils are synonymous with community councils.

“Local government elector” is a person registered as a local government elector in the register of electors in accordance with the provisions of the Representation of the People Acts 1983 and 1985.

“Monitoring Officer” is a member of staff in a district, county or unitary authority (including London borough council) in England or a county or county borough authority in Wales. He is responsible for advising his authority on the legality of its decisions. The Monitoring Officer has specific responsibilities regarding the registration and publicity of certain financial and personal interests held by councillors. He also has a role in the handling of complaints that concern the failure by a councillor or non-councillor with voting rights to observe the code of conduct adopted by their local council.

“National Association of Local Councils (NALC)” is the body that represents the interests of local councils in England.

“Non-councillor” is a member of a committee (including joint committee) or sub-committee (including a joint sub-committee) of a local council who is not a councillor. A non-councillor may or may not have voting rights in respect of limited matters. See also the definition of “councillor”.

“One Voice Wales (OVW)” is the body that represents the interests of local councils in Wales.

“Principal authority” is a reference to a type of local authority. It describes a district, county or unitary authority (including London borough council) in England and, in Wales a county borough or county council.

“Proper practices” is a term that appears in the accounting and audit regulations that apply to local councils. The regulations are different for England and Wales. For councils in England, “proper practices” is a reference to the publication ‘Governance and Accountability for Local Councils - A Practitioners’ Guide (England)’ issued by the Joint Practitioners Advisory Group (JPAG). The guide is available from the websites of NALC (see definition above) and the Society for Local Council Clerks (SLCC) (see definition below). In Wales, “proper practices” is a reference to the publication ‘Governance and Accountability for Local Councils in Wales - A Practitioners’ Guide’ issued by the Wales Audit Office and published jointly by OVW (see definition above) and the SLCC. This is available from the websites of OVW and the SLCC.

“Publication scheme” is a scheme which a local council must have in place under the Freedom of Information Act 2000. The purpose of the scheme is to publish certain information about the council. The Information Commissioner has created a model publication scheme for all local councils (and other local authorities) to use. Local councils do not have to use the model publication scheme but a bespoke publication scheme must be approved by the Information Commissioner. This book assumes that councils will be using the model publication scheme.

“Resolution” is the legal term for a decision lawfully made by the majority of those present and voting at a quorate meeting of a local council, a committee (including joint committee) or a sub-committee (including joint sub-committee).

“Society of Local Council Clerks (SLCC)” is the body that represents the clerks to local councils in England and Wales.

“Standing orders” is a term to describe the written rules of a local council. They are used to confirm a council’s internal organisational and administrative procedures, procurement and procedural matters for meetings. They are not the same as the policies of a council but they may refer to them.

Part one — How local councils work

1. The role of local councils

Key points

- **Local councils are a type of local authority. They do not exist everywhere in England and Wales.**
- **Local councils have a range of specific statutory powers which they may exercise if and only if they wish to.**
- **Local councils do not have statutory responsibility for services such as waste collection, street parking, traffic regulation, environmental health, street trading, planning and building control, licensing, housing, education, development control or social care functions for the area that they represent. Statutory responsibility for the discharge of those functions rests with other types of local authority.**
- **Local councils have a statutory power to precept (tax) the local government electors in their areas to finance the activities that flow from the exercise of their discretionary powers and subsequent legal obligations. The precept is a component of the council tax levied on the local government electors in the area of a local council.**
- **Most decisions about local council business are taken at formal meetings of the council.**

What are local councils?

Local councils are incorporated bodies, established by legislation. They are a type of local authority. In England, a local council may be formally known as a parish, town, community, neighbourhood or village council. In Wales, a local council may be formally known as a community or town council. Local councils were established by legislation in 1894, and are the oldest type of local authority in England and Wales. In England, there are over 8,500 local councils, as compared to 326 district, county and unitary councils. In Wales, there are about 735 local councils, as compared to 22 county borough and county councils. In England, local councils, district, county or unitary councils (which, in London, are London borough councils) and the Greater London Authority and, in Wales, local councils, county and county borough councils are the main bodies that together make up local government.

Are local councils everywhere?

In short, the answer is no. The structure of local government across England and Wales is by no means uniform and has evolved over time.

Some parts of England are identified by distinct parish areas with defined geographical areas for civil administrative purposes. These parish areas may or may not have a separate local council. If an area identifiable as a distinct parish area does not have a local council, it is served by a district and county council. In other words a two-tier local government structure is in operation. Alternatively, an area identifiable by a distinct parish area might be served by a local council, a district council, and a county council. In other words a three-tier local government structure is in operation. Some areas, particularly where there are large towns and cities, may be served by a local council and a unitary authority. In other words another two-tier local government structure is in operation.

London has different local government structures compared to the rest of England. From the 1960s until 2007, legislation did not permit different parts of London to be identified by distinct parish areas with or without a separate local council. Until 2008, the different parts of London were served by a London borough council and the Greater London Authority i.e. a two-tier local government structure. Since 2008 a newly created parish area in London may be served by a local council, London borough council and the Greater London Authority, resulting in a three-tier local government structure.

Some parts of Wales are identified by distinct community areas with defined geographical areas

for civil administrative purposes. They may or may not have a separate local council. If an area identifiable as a distinct community area does not have a local council, it is served by a county or county borough council. In other words a single-tier local government structure is in operation. Alternatively an area identifiable by a distinct community area may be served by a local council and a county or county borough council. In other words a two-tier local government structure is in operation.

The various statutory procedures that govern the creation, merging and abolition of local councils in England and Wales are outside the scope of this book. However one procedure that concerns the establishment of new local councils in England, introduced by the Local Government and Public Involvement in Health Act 2007, is worth noting.

The 2007 Act provides a statutory procedure for the establishment of a new parish area with or without a new local council. This is subject to the district or unitary authority for that area deciding so. The district or unitary authority may only reach such a decision after it has completed a community governance review¹ for the area concerned. A community governance review can be triggered by the submission of a petition signed by the local government electors living in a particular area. The petition may seek the establishment of a new parish area with a new local council or the establishment of a new local council for an existing parish area or part of that parish. The district or unitary council must consult the local government electors living in the area that is the subject of the review and have regard to the need to secure that the governance arrangements for the area under review reflect the identities and interests of the community in that area and are effective and convenient². Alternatively a district or unitary authority may, of its own accord³, undertake a community governance review for an area which may result in the creation of a new local council. The operation of the 2007 Act has resulted in the creation of the first parish area with a separate local council in London since the 1960s. A community governance review was undertaken by Westminster City Council. This was triggered by a petition from local government electors within its Queen's Park ward which requested the creation of a new parish area with a separate local council. The creation of other new local councils in London and other urban areas of England is likely to continue.

What do local authorities that are not local councils do?

Local authorities can only do what legislation requires or permits them to do. For example, district or unitary authorities have waste collection, planning and development control, building control, street parking and traffic regulation, street trading, environmental health, licensing, and housing and education functions. County councils have education, social care, some highway and

planning, and rights of way functions. Legislation makes it mandatory for district, county or unitary authorities to discharge particular functions such as those mentioned. The activities which flow from the discharge of the statutory functions by district, county or unitary authorities relate to the provision of vital services, facilities and amenities for local residents and businesses. Provision of these services and amenities relies on long term strategic planning and investment. Significant staffing resources and sometimes complex, high value agency arrangements and other forms of public and private partnership working are necessary for the delivery of these facilities and services. In addition to the discharge of these statutory functions, legislation permits district, county or unitary authorities to exercise a range of discretionary statutory powers, for example in relation to the provision of leisure, environmental, social care and youth services. The district, county and unitary authorities have discretion rather than an obligation to provide these amenities and services. Similar arrangements apply in Wales in relation to county borough and county councils.

What do local councils do?

Like all local authorities, local councils can only do what legislation requires or permits them to do. Unlike other local authorities, local councils are not burdened by statutory duties to discharge the functions that deliver services, facilities and amenities that local people and businesses rely on. There are very few statutory functions that a local council must discharge. These functions arise because a local council has a statutory power to raise a precept (see section below on local council finances) and spend it. Some of the statutory functions that a local council must discharge include holding an annual meeting (and in the case of a council in England at least three other meetings per year)⁴ which the public have a right to attend, appointing a person who is responsible for the administration of the council's financial affairs⁵, and preparing yearly accounts which are externally audited⁶. A council must also have a code of conduct which confirms the obligations of councillors when they are representing the council⁷. A local council has some statutory duties. For example, a local council cannot publish or assist others to publish material which affects public support for a political party⁸. A local council also has a duty to exercise its statutory powers with due regard to the need to do what it reasonably can do to prevent crime and disorder, the misuse of drugs, alcohol and other substances, and re-offending in its area⁹. It also has a duty in exercising its statutory responsibilities to have regard to the purpose of conserving biodiversity¹⁰. There are some statutory duties that a local council is subject to because it is a public body. For example, a local council is subject to the Freedom of Information Act 2000¹¹, meaning that it must make certain information available to the public and to those who request it. A council, like any other person, is subject to the Equality Act 2010 but it has additional obligations in the 2010 Act because it is a public authority. It must have due

regard to the need to eliminate discrimination and harassment, victimisation and to advance equality of opportunity in the exercise of its functions¹². A local council is also a public authority for the purposes of the Human Rights Act 1998¹³.

Legislation permits local councils to exercise a range of discretionary statutory powers, for example in relation to the provision of recreational amenities, allotments, off-street car parking and sports facilities. Unlike other local authorities, which are required to perform mandatory statutory functions, local councils enjoy the freedom of choosing which discretionary powers they exercise.

Legislation has conferred on local councils a range of specific yet discretionary powers which they may exercise if and only if they wish to. In choosing to exercise the range of statutory powers available to it, a local council has the potential to improve the services and the amenities for the community that lives in its area. The statutory powers originate from legislation made from before 1894 to the present day. The table below includes most of the statutory powers that local councils can choose to exercise.

Subject	Summary of discretionary powers	Legislation
Allotments	Power to provide land for allotments and to enter into allotment tenancies in or outside the council's area	Small Holding and Allotments Act 1908, ss.23, 25
Allowances for councillors	Power to pay councillors allowances	Local Authorities (Members' Allowances) (England) Regulations 2003 - England Local Government (Wales) Measure 2011, Part 8 - Wales
Ancillary power	Power to do anything that will facilitate, be conducive to or incidental to the discharge of its powers and functions	Local Government Act 1972, s.111
Bands and orchestras	Power to maintain a band or orchestra or contribute to the maintenance of a band or orchestra in or outside the council's area Power to charge for admission to performances	Local Government Act 1972, s.145(1)(c) Local Government Act 1972, s.145(2)

Subject	Summary of discretionary powers	Legislation
Bicycles and motor cycles – parking places	<p>Power to provide and maintain parking places for bicycles and motor cycles in the council's area</p> <p>Power to provide stands and racks for bicycles and motor cycles in the council's area</p> <p>Power to make byelaws for the use of and charging for parking places</p>	<p>Road Traffic Regulation Act 1984, s.57(1)(a)</p> <p>Road Traffic Regulation Act 1984, s.63</p> <p>Road Traffic Regulation Act 1984, s.57(7) - England</p> <p>Local Government (Byelaws) Wales Act 2012, s.6 - Wales when it is in force</p>
Boating pools	<p>Power to provide a boating pool in a park provided or managed by the council</p> <p>Power to charge a reasonable amount for its use</p>	<p>Public Health Act 1961, s.54(1)</p> <p>Public Health Act 1961, s.54(3)</p>
Borrowing money	Power to borrow money with approval where necessary	Local Government Act 2003, Schedule 1, paragraph 2
Burial grounds and cemeteries	<p>Power to provide and maintain open space or burial ground in or outside the council's area</p> <p>Power to maintain for payment a monument or memorial on a private grave (for no more than 99 years) in the council's area</p> <p>Power to provide and maintain cemeteries in or outside the council's area</p> <p>Power to contribute towards the maintenance of cemeteries where the inhabitants of the council's area may be buried</p> <p>Power to grant rights of burial, to place and maintain tombstones or memorials on graves and to charge fees</p> <p>Power to make byelaws</p>	<p>Open Spaces Act 1906, ss.9-10</p> <p>Parish Councils and Burial Authorities (Miscellaneous Provisions) Act 1970, s.1</p> <p>Local Government Act 1972, s.214(2)</p> <p>Local Government Act 1972, s.214(6)</p> <p>Local Authorities' Cemeteries Order 1977</p> <p>Open Spaces Act 1906, s.15 - England</p> <p>Local Government (Byelaws) Wales Act 2012, s.6 - Wales when it is in force</p>

Subject	Summary of discretionary powers	Legislation
Bus Shelters	Power to provide and maintain bus shelters on roads or land adjoining roads in the council's area	Local Government (Miscellaneous Provision) Act 1953, s.4
Byelaws	Power to make byelaws	See specific subject areas in this table – England The Local Government Byelaws (Wales) Act 2012 - for Wales when the byelaw making powers are in force
Car parks (off-road)	Power to provide and maintain suitable off-road car parking places in the council's area to relieve or prevent traffic congestion or to preserve local amenities Power to regulate use of car parks and charge for their use	Road Traffic Regulation Act 1984, s.57(1)(b) Road Traffic Regulation Act 1984, ss.59(3), 35(1)
Car sharing schemes	Power to establish and maintain a car sharing scheme that benefits the council's area or to assist others in doing so	Local Government and Rating Act 1997, s.26
Charging for discretionary services	Power to charge on a cost recovery basis (i.e. not to make any profit) if the council has discretion to provide a service. Power does not apply if the council has a separate power to charge for provision of a service or it is prohibited from charging for it	Local Government Act 2003, s.93
Charities	Power to act as trustee of non-ecclesiastical charity	Charities Act 2011, ss.298-303 Local Government Act 1972, s.139(1)
Cinemas	Power to provide a cinema, or contribute towards the expenses of a cinema in or outside the council's area Power to charge for admission to a cinema provided by the council	Local Government Act 1972, s.145(1)(b) Local Government Act 1972, s.145(2)
Clocks	Power to provide and maintain public clocks within the council's area	Parish Councils Act 1957, s.2

Subject	Summary of discretionary powers	Legislation
Closed churchyards	Power to maintain a closed churchyard in the council's area if requested to do so by a parochial church council	Local Government Act 1972, s.215
Commons and common pastures	Power to provide land in the council's area for common pasture if the council's expenditure can be recovered from any charges it makes for use of the land	Small Holdings and Allotments Act 1908, s.34
Community gardens	Power to provide and maintain open space as gardens in or outside the council's area	Open Spaces Act 1906, ss.9-10
Community meetings - Wales	Power to convene	Local Government Act 1972, Schedule 12, paragraph 30
Compensation - Wales	Power to pay compensation to a person affected by the council's maladministration	Local Government Act 2000, s.92
Conference facilities	Power to provide and encourage the use of facilities in the council's area	Local Government Act 1972, s.144
Contracts	Power to enter into contracts	Local Government Act 1972, s.111
Crime prevention	Power to spend money on crime detection and prevention measures in the council's area	Local Government and Rating Act 1997, s.31
Dance halls	Power to provide premises for dances or to contribute to the expenses of dances in or outside the council's area Power to charge for admission to dances provided by the council	Local Government Act 1972, s.145(1)(a) Local Government Act 1972, s.145(2)
Ditches and ponds	Power to deal with ditches, ponds, pools and gutters by draining them or preventing them from being harmful to public health Power to carry out works for their maintenance or improvement or to pay others to do this	Public Health Act 1936, s.260 Public Health Act 1936, s.260

Subject	Summary of discretionary powers	Legislation
Dog control orders	Power to make orders for dog control offences for land in the council's area Power to issue fixed penalty notices for offences committed under dog control orders	Clean Neighbourhoods and Environment Act 2005, s.55 Clean Neighbourhoods and Environment Act 2005, s.59
Employment of staff	Power to appoint staff	Local Government Act 1972, s.112
Fetes and other events	Power to provide entertainments and facilities for dancing in or outside the council's area Power to charge for admission	Local Government Act 1972, s.145(1)(a) Local Government Act 1972, s.145(2)
General power of competence - England	Power for an eligible council to do anything subject to statutory prohibitions, restrictions and limitations which include those in place before or after the introduction of the general power of competence	Localism Act 2011, ss.1-8
Gifts	Power to accept gifts	Local Government Act 1972, s.139
Graffiti	Power to issue fixed penalty notices for graffiti offences in the council's area	Anti-social Behaviour Act 2003, s.43
Honorary titles	Power to confer title of honorary freeman or freewoman	Local Government Act 1972, s.249
Indemnities	Power to indemnify councillors and staff with insurance cover	Local Government Act 2000, s.101 Local Authorities (Indemnities for Members and Officers) Order 2004 – England Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006
Investments	Power to invest property in approved schemes	Trustee Investments Act 1961, s.11

Subject	Summary of discretionary powers	Legislation
Land/premises	Power to purchase or sell land in or outside the council's area Power to appropriate land for an authorised purpose Power to accept and maintain gifts of land	Local Government Act 1972, ss.124,127 Local Government Act 1972, s.126 Local Government Act 1972, s.139
Life-saving appliances	Power to provide life-saving appliances (e.g life belts, defibrillators)	Public Health Act 1936, s.234
Lighting	Power to light roads and public places in the council's area	Parish Councils Act 1957, s.3; Highways Act 1980, s.301
Litter	Power to issue fixed penalty notices for litter offences in the council's area	Environmental Protection Act 1990, s.88
Litter bins	Power to provide and maintain litter bins in streets or other public spaces and contribute to their provision and maintenance	Litter Act 1983, ss.5-6
Lotteries	Power to promote lotteries	Gambling Act 2005, ss.98, 252
Markets	Power to establish markets in the council's area and provide a market place and market buildings Power for a council that maintains a market to make byelaws	Food Act 1984, s.50 Food Act 1984, s.60 – England Local Government (Byelaws) Wales Act 2012, s.6 - Wales when it is in force
Mortuaries and post-mortem rooms	Power to provide mortuaries and post-mortem rooms Power to make byelaws to manage and charge for the use of mortuaries and post-mortem rooms	Public Health Act 1936, s.198 Public Health Act 1936, s.198 - England Local Government (Byelaws) Wales Act 2012, s.6 - Wales when it is in force

Subject	Summary of discretionary powers	Legislation
Neighbourhood planning - England	Power to act as the lead body for the establishment of a neighbourhood development order or a neighbourhood development plan	Town and Country Planning Act 1990, s.61F(1),(2) Planning and Compulsory Purchase Act 2004, s.38C(2)
Newsletters etc.	Power to publish information about the council, its services and the services provided in the council's area by other local authorities, government departments, charities and other voluntary organisations	Local Government Act 1972, s.142
Non-councillors	Power to appoint non-councillors to council committees and sub-committees Power to appoint up to two non-councillor community youth representatives (aged 16-25) to committees – Wales only	Local Government Act 1972, s.102(3) Local Government (Wales) Measure 2011, s.118
Open spaces	Power to provide and maintain land for public recreation Power to make byelaws Power to provide and maintain land for open spaces in or outside the council's area Power to make byelaws	Public Health Act 1875, s.164 Public Health Act 1875, s.164 - England Local Government (Byelaws) Wales Act 2012, s.6 - Wales when it is in force Open Spaces Act 1906, ss.9-10, Open Spaces Act 1906, s.15 - England Local Government (Byelaws) Wales Act 2012, s.6 - Wales when it is in force
Parish meetings - England only	Power to convene	Local Government Act 1972, Schedule 12, paragraph 15
Planning applications	Power to be notified of planning applications affecting the council's area and to comment	Town and Country Planning Act 1990, Schedule 1, paragraph 8

Subject	Summary of discretionary powers	Legislation
Power of Well-being - Wales	Power to do anything to promote the economic, social and environmental well-being of the council's area or anyone in the area, subject to any statutory prohibitions, restrictions and limitations on council powers	Local Government Act 2000 ss.1-5
Precept	Power to raise a precept	Local Government Finance Act 1992, s.41
Public buildings and village halls	Power to provide buildings for public meetings and assemblies or contribute towards the expenses of providing such buildings	Local Government Act 1972, s.133
Public rights of way	<p>Power to repair and maintain public footpaths and bridleways in the council's area</p> <p>Power to enter into agreement to dedicate a road as highway in the council's area or an adjoining parish or community area</p> <p>Power to enter into agreement to widen existing highway in the council's area or an adjoining parish or community area</p> <p>Power to provide warning notices on footpaths and bridleways</p>	<p>Highways Act 1980, ss.43, 50</p> <p>Highways Act 1980, s.30</p> <p>Highways Act 1980, s.72</p> <p>Road Traffic Regulation Act 1984, s.72(2)</p>
Public toilets	<p>Power to provide public toilets</p> <p>Power to make byelaws</p>	<p>Public Health Act 1936, s.87</p> <p>Public Health Act 1936, s.87 - England</p> <p>Local Government (Byelaws) Wales Act 2012, s.6 - Wales when it is in force</p>

Subject	Summary of discretionary powers	Legislation
Recreation	<p>Power to provide and manage recreation grounds, public walks, pleasure grounds and open spaces</p> <p>Power to make byelaws</p> <p>Power to provide and contribute to a wide range of recreational facilities in or outside the council's area</p>	<p>Public Health Act 1875, s.164</p> <p>Public Health Act 1875, s.164 – England</p> <p>Local Government (Byelaws) Wales Act 2012, s.6 - Wales when it is in force</p> <p>Local Government (Miscellaneous Provisions) Act 1976, s.19</p>
Right to challenge services that are provided by a principal authority - England	Power to submit an interest in running a service provided by a district, county or unitary authority	Localism Act 2011, ss. 81-86
Right to nominate and bid for assets of community value - England	<p>Power to nominate assets to be added to a list of assets of community value</p> <p>Power to bid to buy a listed asset when it comes up for sale</p>	<p>Localism Act 2011, ss. 87-108</p> <p>Localism Act 2011, ss. 87-108</p>
Roads	<p>Power to consent or not consent to the local highway authority stopping maintenance of a road in the council's area or stopping up/ diverting a road in the council's area</p> <p>Power to complain to the local highway authority about the obstruction of rights of way and "roadside waste" in the council's area</p> <p>Power to plant and maintain trees and shrubs, and lay out grass verges in the council's area</p> <p>Power to provide and maintain seats and shelters on roads and land bordering any road in the council's area</p>	<p>Highways Act 1980, ss.47,116</p> <p>Highways Act 1980, s.130</p> <p>Highways Act 1980, s.96</p> <p>Parish Councils Act 1957, s.1</p>

Subject	Summary of discretionary powers	Legislation
Sports and recreational facilities	Power to provide sports facilities in or outside the council's area or contribute towards the expenses of any voluntary organisation or local authority that provides sports facilities in or outside the council's area	Local Government (Miscellaneous Provisions) Act 1976, s.19
Swimming pools	Power to provide public baths Power to charge for use of public baths Power to make byelaws	Public Health Act 1936, s.221 Public Health Act 1936, s.222 Public Health Act 1936, s.223 – England Local Government (Byelaws) Wales Act 2012, s.6 - Wales when it is in force
Traffic signs	Power to provide traffic signs on roads	Road Traffic Regulation Act 1984, s.72(1)
Theatres	Power to provide a theatre or contribute towards their expenses in or outside the council's area Power to charge for admission to a theatre provided by the council	Local Government Act 1972, s.145(1)(b) Local Government Act 1972, s.145(2)
Tourism	Power to encourage tourism to the council's area or contribute to organisations encouraging tourism	Local Government Act 1972, s.144
Traffic calming	Power to make payments to a highway authority for traffic calming schemes for the benefit of the council's area	Highways Act 1980, s.274A
War memorials	Power to maintain, repair and protect war memorials in the council's area	War Memorials (Local Authorities' Powers) Act 1923, s.1
Water	Power to make use of wells, springs or streams in the council's area and provide facilities for obtaining water from them	Public Health Act 1936, s.125

Subject	Summary of discretionary powers	Legislation
Websites	Power to provide a website to give information about the council, its services and the services provided in the area by other local authorities, government departments, charities or other voluntary organisations	Local Government Act 1972, s.142

Demand for some of the amenities and services in a particular area, highlighted in the table above, may of course be met by the principal authority, namely the district or unitary or county authority (in Wales, county borough and county council), and some by other organisations in the public or private sector rather than by a local council. Often local authorities that are not local councils lack the resources to meet such demand because their priorities are to discharge their mandatory statutory functions and obligations e.g. the provision of housing, educational facilities, highway maintenance, development control. Local voluntary organisations and charities, which might have an interest in the provision of certain services or facilities to a community, might have funding limitations. Businesses usually provide amenities and services in an area on a profit making model. By contrast, local councils may exercise the discretionary powers summarised in the table above (some of which are shared by principal authorities) and are well placed to provide additional services and amenities in their areas. If local councils exercise the discretionary powers that are available to them, they can make subtle, sustainable and valued contributions to the needs of their communities. Aside from the local council itself, local residents, businesses and other organisations might identify additional amenities and services for the council to provide. A council may seize opportunities to work with businesses, or charities, voluntary organisations, individuals or other local authorities. See Chapter 5 for more information. Like any other local authority, a local council has corporate accountability for what it does or does not do and the manner in which it undertakes activities in the performance of its statutory functions, powers and related legal obligations.

The table above highlights most of the statutory powers that a local council may exercise if and only if it wants to. Except for some of the statutory powers described below, an explanation of the statutory powers in the table is outside the scope of this book. Mere knowledge by a local council of the existence of statutory powers that it may exercise is not enough. A council must take steps to ensure that it understands the scope of the statutory powers that it proposes to exercise. Before it exercises a power, a council must ascertain if there are any prohibitions, limitations or restrictions that apply. If a council is not sure, it is appropriate for it to obtain professional legal advice.

A local council has a statutory power, as highlighted in the table above, to do anything that facilitates, is conducive or incidental to the exercise of its discretionary powers or the discharge of its statutory functions. It can be viewed as an ancillary power¹⁴ in so far as a council may exercise it to undertake activity that is necessary or gives effect to the exercise of other specific statutory powers. A council cannot rely on the ancillary power to undertake activity that is not permitted or indirectly connected with the exercise of the other statutory power or the discharge of a statutory function. For example, a council has a statutory power to “provide” a village hall or a sports centre¹⁵ and the exercise of the ancillary power would then permit the maintenance, repair, improvement and insurance of the premises by the council. Using another example, the ancillary power may be exercised by a council to obtain advice from an architect, professional surveyor or valuer, an estate agent, human resources consultants, property management companies, town planning consultants or solicitor because it is necessary to give effect to the exercise of its other statutory powers. If a council exercises its powers to purchase land for the benefit, improvement or development of its area¹⁶ the exercise of the ancillary power would permit the council to instruct a surveyor and firm of solicitors about this. It cannot rely on the ancillary power to develop and build new homes or shops because a council (unless it is eligible to exercise the general power of competence (England only)) does not have powers to build or provide houses or shops. The general power of competence is discussed below.

The Localism Act 2011 introduced useful discretionary powers that are exercisable by local councils in England only. Notably a council in England may initiate and lead on neighbourhood planning for its area¹⁷. The statutory neighbourhood planning process¹⁸ can result in the production of a neighbourhood development plan (NDP) that establishes the policy for the development and use of land in a local council’s area for a certain period, which is not prescribed. An NDP is the vision of the future landscape of the area subject to what the local government electors in a local council’s area want. It can, for example, confirm where new homes, offices, schools and shops should be built, and where there should be green open spaces for recreation. The statutory neighbourhood planning process can also result in the creation of a neighbourhood development order (NDO), which effectively grants planning permission for certain types of development that the local government electors want to see go ahead. An NDO would permit, for example, new homes, offices, schools and shops to be built without developers having to first obtain planning permission. A local council’s statutory role in neighbourhood planning is to initiate, contribute to and facilitate the outcomes of a statutory neighbourhood planning process. It does not decide what will be included in an NDP or NDO. This is subject to an independent examination and a referendum in which more than 50% of the local government electors in the area must vote to support the proposals. An NDP or NDO must also generally conform to the planning authority’s local development plan.

The 2011 Act also enables local councils in England to nominate premises in its area that have community value¹⁹. These are premises (except residential and certain other premises) whose current or recent past use furthers the social well-being or social interests of the local council's community. Such premises may include, for example, a park, village shop, community centre, tennis courts, post office, pub, church, library or car park. Once an asset of community value has been included on a list, which is administered by the district or unitary authority, its owner cannot sell the premises without notifying the district or unitary authority or for a fixed period of time thereafter. The district or unitary authority will give public notice of the proposed sale of the premises. A local council has an opportunity to organise its finances and to submit an offer to purchase the premises. Unless a council's offer reflects the market value of the premises, the owner of the premises is unlikely to accept it.

In addition, the 2011 Act introduced the general power of competence²⁰ in England for local councils that have met certain conditions²¹ and other local authorities. This power permits a council to do anything an individual can do unless specifically prohibited by the general power or by other legislation. An eligible local council that wishes to exercise the general power of competence is still subject to the statutory limitations, restrictions or prohibitions that were in place before the introduction of the general power of competence or implemented after. By example, the general power of competence does not override the statutory prohibitions on a local council discharging the functions of other local authorities, such as planning and development control, highways, housing or traffic regulation. Using another example, the general power of competence does not override statutory restrictions that relate to a council's power to sell open space land²² (meaning land laid out as a public garden, used for public recreation, or land which is a disused burial ground²³). These statutory requirements predate the introduction of the general power of competence and require a council to advertise its proposal to sell open space land in a local paper for two weeks and to formally consider any objections before it decides to sell the land. Using another example, the general power of competence does not permit a council to trade through a company because this is not permitted under other legislation²⁴.

It is always necessary for a council to identify and understand the statutory authority it relies on to undertake a particular activity. Once a council has done this, it must understand the effect of any statutory prohibitions, restrictions and limitations.

What can't a local council do?

A local council cannot undertake activity which is not expressly permitted, implied nor ancillary to the exercise of its statutory powers or the discharge of statutory functions and related legal obligations. A local council cannot generally undertake activity which legislation permits another or a particular type of local authority to undertake. This is explained below.

A local council may be under pressure to provide certain services or amenities. It may, for example, be asked to organise better or different weekly rubbish collections in its area or to provide a new nursery facility. A local council has statutory powers to provide litter bins in public areas but the collection of waste from residential or commercial premises is a statutory function that has been conferred on a principal authority. Similarly, a local council cannot provide a nursery because this is a function of another type of local authority. Using another example, a local council cannot provide a public library service, make charges for borrowing books or the use of other related facilities because this is a statutory function that only other types of local authority are permitted to discharge. There are statutory provisions which enable a local council to discharge the functions of another local authority (for example relating to waste collection, education or libraries) for and on behalf of that other local authority²⁵. A formal agency arrangement must be entered into. In practice, agency arrangements made between a local council and the principal authority for the area are rare. Local councils are sometimes unwilling to commit to the long term investment and may lack the resources in the short and medium term that are necessary to perform a statutory power or function on behalf of another local authority. Principal authorities are often reluctant to enter into agency arrangements with local councils for these reasons. Agency agreements are explained further in Chapter 5.

Local councils often want to undertake a particular activity because, put simply, it would benefit the residents in their areas. For example, they may want to develop land for new homes, shops or offices because there is a shortage of them. Whilst a local council can acquire land, a council (except an eligible council in England that is exercising the general power of competence) has no statutory power permitting it to develop land for the provision of homes, shops or offices. A local council may want to run a nearby grocery shop or pub but it has no power to provide these sorts of amenities and it is not permitted to trade²⁶.

Some powers conferred on local councils permit them to charge for services but on a cost recovery basis only²⁷, rather than for profit. Such statutory restrictions may impact on a council's budgeting for a proposed activity.

A local council is exposed to the risk of a particular type of legal action called judicial review which can only be brought against public bodies such as local authorities. If the decisions or actions of a local council exceed its statutory powers or its actions are so unreasonable that no reasonable council would have acted that way, it may be at risk of a judicial review action. Chapter 4 explains judicial review further.

Local government finances

The three main sources of revenue income for local authorities other than local councils are non-domestic rates (or business rates), grants from central government and council tax. Business rates are a form of local tax which is levied on the owners or occupiers of non-domestic premises with some exceptions such as agricultural land, churches, parks. Business rates in England and Wales are collected by billing authorities. In England, billing authorities are district, unitary and London borough councils and in Wales they are county or county borough councils²⁸. The billing authorities in England pay the revenue from business rates to central Government. In England, the Government redistributes this money to district, unitary and county councils (but not to local councils) in the form of a revenue support grant. There are parallel arrangements in Wales where county and county borough councils pass the revenue from business rates to the Welsh Government which redistributes this to county and county borough councils (but not to local councils) by way of a revenue support grant to them.

The revenue support grant makes up about 70-80 % of the total income that district, London Boroughs and unitary councils in England and in Wales county and county borough councils (not local councils) need to fund the plethora of local services that they provide relating to, for example, education, housing, planning, highways, traffic regulation and parking, social services, libraries, leisure and recreation, rubbish collection and disposal, environmental health and trading standards. In every financial year, the shortfall between the income local authorities (not local councils) received from the revenue support grant and their budget needs is met by the revenue received from council tax. Council tax is a local tax levied on persons over 18 who own or occupy a dwelling, and is based on the capital value of the dwelling.

For each financial year a billing authority must, by 11 March²⁹ in the preceding financial year, set an amount of council tax for different categories of dwelling. The first component of council tax is the amount that the billing authority has calculated it needs for its own statutory purposes, and it also includes the precept from a local precepting authority³⁰ which includes a local council³¹. The second component of the council tax is the amount which a major precepting authority has calculated as necessary for its statutory purposes, and in respect of which it has

issued a precept to the billing authority. In England major precepting authorities include a county council, the Greater London Authority, a fire and rescue authority, and in England and Wales, include the police and crime commissioner and a metropolitan county fire and civil defence authority³².

Local council finances

The financial year for a local council begins on 1 April and ends on 31 March. Local councils do not receive a direct grant from Government. A local council can generate income from the services or facilities that it provides (e.g. rent from leased premises, charges from use of car parks, sports facilities, community centres, burial rights' fees). However the main source of income for a local council is raised by the levy of a precept on persons over 18 who own or occupy a dwelling in the area of the council. The precept is collected through the council tax. A local council must set its precept for the financial year by 1 March in the preceding financial year³³. For example, the precept for 2015/16 must be set by 1 March 2015 and the precept for 2016/17 must be set by 1 March 2016 and so on. In determining the precept for a financial year a local council must calculate the aggregate of:

- the expenditure it estimates it will incur in the year in performing its functions and will charge to a revenue account for the year in accordance with proper practices;
- such allowance as it estimates will be appropriate for contingencies in relation to amounts to be charged or credited to a revenue account for the year in accordance with proper practices;
- the financial reserves which it estimates it will be appropriate to raise in the year for meeting its estimated future expenditure and
- such financial reserves as are sufficient to meet the amount estimated by it to be a revenue account deficit for any earlier financial year as has not already been provided for³⁴.

Where a local council in England has a precept of at least £140,000 it must also provide the following information to the billing authority:

- its gross expenditure for the year and the previous year;
- its precept for the year, and the previous year;
- its reasons for any difference between the gross expenditure and precept figures above and
- its opinion of the effect that its gross expenditure has on the level of its precept issued for the year³⁵.

Information with the formal council tax demand sent to a person in the area of a local council in England with a precept of more than £140,000 includes (i) the gross expenditure of the local council for the year that the demand for payment relates to and for the preceding year³⁶, (ii) the precept for the year that the demand for payment relates to and for the preceding year³⁷ and (iii) the local council's opinion of the effect that the gross expenditure has on the level of precept that year³⁸. Information given in the council tax demand sent to a person in the area of a local council in Wales includes a statement of the precept for the year that the demand for payment relates to³⁹.

Local councils, like other local authorities, must manage their activities within budget. Financial budgeting and internal control of their accounts requires a corporate approach that is subject to strict and detailed statutory requirements⁴⁰ and proper practices. This is summarised in Chapter 4.

Controls in respect of council tax/ precept increases

England

The Localism Act 2011 introduced statutory controls that restrict “excessive” increases in the council tax set by billing authorities and the precepts set by precepting authorities including local councils.

In England, a billing authority has a statutory duty to determine whether its basic amount of council tax is excessive⁴¹ in accordance with a set of principles determined by the Secretary of State for the year⁴². Such principles include a comparison between the basic amount of council tax for the current year and the preceding financial year. For most billing authorities, an excessive increase for 2012/13 was more than 3.5% higher than its relevant basic amount of council tax for 2011/12. If a billing authority's council tax is more than a statutorily set percentage increase from the basic council tax in the preceding financial year, it must make a substitute calculation⁴³ that results in a basic amount of council tax that is not excessive. The billing authority must then make arrangements to hold a local referendum in relation to the basic amount of council tax⁴⁴. The persons entitled to vote are those who would be entitled to vote in a local election and are registered in the register of local government electors at an address within the billing authority's area. If the excessive council tax is approved by a majority of persons voting, then it will be effective, otherwise the substitute calculation takes effect⁴⁵.

Similar statutory provisions⁴⁶ to those described above apply to control excessive increases in the precepts set by major and local precepting authorities. When this book was written, the statutory controls had been implemented for some major precepting authorities but not for local precepting authorities such as local councils. A precepting authority must notify the billing authority if its precept is excessive and the billing authority is requested to hold a referendum. The notification must include a precept based on the substitute calculation that results in a precept which is not excessive. Such notification triggers the duty of the billing authority to make arrangements for a local referendum⁴⁷. The relevant voters are those registered at an address within both the billing authority's and the precepting authority's areas. The excessive basic amount of council tax may be approved, either by a majority of persons voting in the referendum, or if there are two or more referendums in respect of the amount, by a majority of persons voting in all those referendums taken together⁴⁸.

Wales

In Wales, statutory control of excessive increases in council tax and precepts are not agreed or vetoed by way of a referendum of local government electors in the local council's area. The statutory rules empower the Welsh Ministers to either nominate or designate a billing authority or major precepting authority in Wales if the proposed council tax requirement is excessive. If the authority is designated for a particular year then the Welsh Ministers specify a maximum council tax for that authority. If the authority is nominated then the Welsh Ministers specify the amount that they would have set as the council tax maximum if the authority had been designated for that year. An authority that has been nominated can subsequently be designated.

The authority in question can challenge the amount specified by the Welsh Ministers. After considering any further information provided or available, the Welsh Ministers may confirm or alter the specified amount. Any order made must be approved by resolution of the Welsh Assembly⁴⁹.

¹ The Local Government and Public Involvement in Health Act 2007, ss.79-102

² The Local Government and Public Involvement in Health Act 2007, s.93(3)

³ The Local Government and Public Involvement in Health Act 2007, s.82

⁴ Local Government Act 1972, schedule 12, paragraph 8(1) and, in Wales, paragraph 24(1)

⁵ Local Government Act 1972, s.151

-
- ⁶ Audit Commission Act 1998, s.2 and schedule 2 and Accounts and Audit (England) Regulations 2011/817 and, in Wales, the Public Audit (Wales) Act 2004, 13 and the Accounts and Audit (Wales) Regulations 2005/368
- ⁷ Localism Act 2011, s.27(2) and, in Wales, Local Government Act 2000, s.51
- ⁸ Local Government Act 1986, s.2
- ⁹ Crime and Disorder Act 1998, s.17
- ¹⁰ Natural Environment and Rural Communities Act 2006, s.40
- ¹¹ Freedom of Information Act 2000, schedule 1, Part II, paragraph 7
- ¹² Equality Act 2010, s.149 and schedule 19
- ¹³ Human Rights Act 1998, s.6
- ¹⁴ Local Government Act 1972, s.111
- ¹⁵ Local Government (Miscellaneous Provisions) Act 1976, s.19(1)
- ¹⁶ Local Government Act 1972, s.124(1) (b)
- ¹⁷ Planning and Compulsory Purchase Act 2004, s.38A
- ¹⁸ Town and Country Planning Act 1990, ss.61E-61P and the Planning and Compulsory Purchase Act 2004, ss.38A-38C, Neighbourhood Planning (Referendums) Regulations 2012/2031
- ¹⁹ Localism Act 2011, ss.87-108
- ²⁰ Localism Act 2011, ss.1-8
- ²¹ Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012/965
- ²² Local Government Act 1972, s.127(3)
- ²³ Town and Country Planning Act 1990, s.336(1)
- ²⁴ Local Government Act 2003, s.95
- ²⁵ Local Government Act 1972, s.101(1) b)
- ²⁶ Local Government Act 2003, s.95
- ²⁷ Local Government Act 2003, s.93
- ²⁸ Local Government Finance Act 1992, s.1(2)
- ²⁹ Local Government Finance Act 1992, s.30(6)
- ³⁰ Local Government Finance Act 1992, s.31(A)(6)(b)
- ³¹ Local Government Finance Act 1992, s.39(2)
- ³² Local Government Finance Act 1992, s.39(1)
- ³³ Local Government Finance Act 1992, s.41(4)
- ³⁴ Local Government Finance Act 1992, s.49(A)
- ³⁵ Council Tax (Demand Notices) (England) Regulations 2011/3038, Regulations 2 and 8.
- ³⁶ Council Tax (Demand Notices) (England) Regulations 2011/3038, part 2 of schedule 2, paragraph 2
- ³⁷ Council Tax (Demand Notices) (England) Regulations 2011/3038, part 2 of schedule 2, paragraph 3
- ³⁸ Council Tax (Demand Notices) (England) Regulations 2011/3038, part 2 of schedule 2, paragraph 6
- ³⁹ The Council Tax (Demand Notices) (Wales) Regulations 1993/255, schedule 1, paragraph 6
- ⁴⁰ Accounts and Audit (England) Regulations 2011/817 and, in Wales, Accounts and Audit (Wales) Regulations 2005/368
- ⁴¹ Local Government Finance Act 1992, s.52ZB(1)
- ⁴² Local Government Finance Act 1992, s.52ZC. The relevant principles for 2012-13 are set out in The Referendums Relating to Council Tax Increases (Principles) (England) Report 2012-13
- ⁴³ Local Government Finance Act 1992, s.52ZF
- ⁴⁴ Local Authority (Referendums Relating to Council Tax Increases) Regulations 2012/460 and Local Authority (Conduct of Referendums) (Council Tax Increases) (England) Regulations 2012/444
- ⁴⁵ Local Government Finance Act 1992, s.52ZH
- ⁴⁶ Local Government Finance Act 1992, ss.52ZJ-52ZM

-
- ⁴⁷ Local Government Finance Act 1992, s.52ZN
⁴⁸ Local Government Finance Act 1992, s.52ZO
⁴⁹ Local Government Finance Act 1992, s.52A-52Y

2. Local councillors

Key points

- **A councillor's normal term of office is four years.**
- **Any person over 18 who is a citizen of the UK, the EU or the Commonwealth can be a councillor if they are an elector in, work in, live in or live within three miles of the area of the local council, unless they are disqualified.**
- **The first business of the annual meeting of a local council is the election of its Chairman.**
- **Most councils appoint a Vice-Chairman but this is optional.**
- **The normal term of office for the Chairman and Vice-Chairman (if there is one) of a local council is one year.**
- **A councillor is the holder of a public office, not a volunteer.**
- **A councillor can receive expenses for his role.**
- **A councillor has no authority to make decisions about council business on his own.**
- **The main job of a councillor is to participate in the collective decision-making processes of his council.**
- **A local council may arrange insurance cover to indemnify its councillors against liability resulting from them being representatives of the council.**
- **A councillor's financial and certain other interests in council business must be transparent.**
- **A councillor is subject to obligations set out in the code of conduct adopted by the council.**
- **Information about councillors is available in the council's publication scheme.**

Who is a local councillor?

A local council is a legal entity in itself¹ but it is constituted by councillors (at least 5 in England²) one of whom must be the Chairman of the Council³. Subject to the statutory rules about disqualification⁴, a person is eligible to be elected as a local councillor and to be a councillor if⁵ he is a qualifying Commonwealth citizen, an EU citizen (which includes a British Citizen) or a citizen of the Republic of Ireland. A person is a qualifying Commonwealth citizen if he is not a person who requires leave to enter or remain in the United Kingdom unless he has indefinite leave to remain within the meaning of the Immigration Act 1971. In addition a person is eligible to be elected as a local councillor and to be a councillor if on the day of election (or if there is no election, the day of nomination of the candidate) he is at least 18 and:

- he is and thereafter continues to be a local government elector in the council's area; or
- he has during the 12 months preceding that day occupied as owner or tenant any premises in the council's area; or
- his principal or only place of work during that 12 months has been in the council's area; or
- during the whole of those 12 months he has resided either in the council's area or within three miles of it.

When a person is a councillor, he is first and foremost the holder of a public office. Legislation dictates the term of his office, the conduct expected of him when he is acting as a representative of the local council and his role in making decisions about council business. Some local councillors regard themselves as volunteers because while they are entitled to receive an allowance or payments for expenses incurred in their office (see section below on councillors' allowances) they often do not. While it is true that councillors give up time to fulfil the responsibilities in their public office, and may elect to forgo receipt of an allowance or other payment, they are not volunteers in any legal sense.

Once elected, the normal term of office for a councillor is four years. In a year of elections to a local council, the persons who were councillors immediately before election retire together on the fourth day after an ordinary election, being the same date that the newly elected councillors take office⁶. Unless the person elected as a local councillor has signed and delivered a prescribed statutory form⁷ to accept his office as a councillor, his office is declared vacant⁸. All councillors must deliver their acceptance of office form before or at the first meeting of the council after their election unless the council decides this can be done at a later date⁹. In England and Wales, if a local council has decided to take the name of a town council, its councillors are known as town councillors. In England if a local council has the formal name of a community council or, as

the case may be, a neighbourhood council or a village council, its councillors are respectively known as community councillors, neighbourhood councillors or village councillors¹⁰.

The election of the Chairman of a local council by and from among the other councillors must be the first business of the annual meeting of the council¹¹ in May. In a year of elections to a local council, the annual meeting must take place on or within 14 days after the day on which the newly elected councillors take office¹². The Chairman must sign and deliver a form (the same statutory prescribed form¹³ that he and other councillors use to accept office as a councillor) which confirms his acceptance of this special office. The Chairman must do this at the meeting at which he is elected or by a later date if this is agreed by the Council¹⁴. The Chairman holds office until the next annual meeting of the council when his successor is elected¹⁵. If the Chairman ceases to be a councillor following an election he and the Vice-Chairman, if there is one, continue in office until a new Chairman is elected at the annual meeting that year¹⁶. The outgoing Chairman (or Vice-Chairman if the Chairman is not present) presides at the annual meeting until the new Chairman is elected. If the Chairman of a council dies, or resigns from his office as a councillor or from his office as the Chairman, or otherwise cannot continue as a councillor, a meeting of the council must be convened to elect a new Chairman from among the councillors¹⁷. A council is not lawfully constituted without a Chairman¹⁸.

A local council may but is not required to elect a deputy to the Chairman of the council¹⁹. Usually a council will appoint a Vice-Chairman because, subject to the standing orders adopted by a council, he may act as the Chairman of the council, for example in the absence of the Chairman²⁰. Unless he resigns from his office as a councillor or from his office as Vice-Chairman, dies or otherwise cannot continue as a councillor, the Vice-Chairman of a local council holds office until immediately after the election of a Chairman of the council at the next annual meeting²¹.

In England and Wales, if a local council is a town council, the Chairman (and Vice-Chairman, if any) may take the title of Town Mayor (and Deputy Town Mayor)²². In England, if a local council is a community council or, as the case may be, a neighbourhood council or a village council, its Chairman and Vice-Chairman are known as the Chairman and Vice-Chairman of the community council or, as the case may be, of the neighbourhood or village council²³.

Information about councillors

The Freedom of Information Act 2000 requires a local council to have a publication scheme²⁴ which makes available to the public certain information about the council. A council's obligations

under the 2000 Act are explained in Chapter 4. One category of information available via a council's publication scheme concerns who makes up the council and what they do. Councillors' names, roles within the council (e.g. Chairman or Vice-Chairman or Chairman of a committee) and, where used, contact details should be available to the public via the council's publication scheme.

When does a councillor stop being a councillor?

A councillor's normal term of office comes to an end after four years²⁵. A councillor's office will of course end upon his resignation or death²⁶. On account of the responsibility that a councillor has in the work of a local council and the nature of that work, he cannot continue in office if he:

- fails to deliver his form which formally confirms his acceptance of office²⁷ (explained above);
- fails to attend a meeting of the whole council, a committee, sub-committee or joint committee for a period of six consecutive months and the reason for his absence is not approved before the expiry of the six month period²⁸;
- holds a paid office (other than Chairman or Vice-Chairman) or employment, the appointments to which are made by the council²⁹;
- is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order, or a debt relief restrictions order or interim debt relief restrictions order under the Insolvency Act 1986³⁰;
- has within five years before the day of election or since his election been convicted of an offence in the UK, the Channel Islands or the Isle of Man which has imposed a sentence of imprisonment of three months or more (whether suspended or not) without the option of a fine³¹ or;
- is disqualified from being a councillor of a principal authority as a result of electoral offences³².

Councillors' conduct and interests

A councillor is subject to statutory rules about how he conducts himself as a representative of his council. He is also subject to statutory rules which require him to be transparent about the existence of certain financial and personal interests. There are seven principles which apply to the standards of conduct of those in public life which, for example, include members of Parliament, Ministers, and councillors of all local authorities.

The seven principles, which were established by the Committee on Standards in Public Life, are:

- 1) Selflessness
- 2) Integrity
- 3) Objectivity
- 4) Accountability
- 5) Openness
- 6) Honesty
- 7) Leadership

The seven principles are the origins of the legislation in England and Wales that established the standards of behaviour expected of a councillor as a representative of his local council, require the disclosure of certain financial or personal interests, and restrict his participation in the discussion and voting at a meeting that is considering a matter in which he holds a financial or other interest. The relevant legislation that a councillor is subject to is different in England and Wales³³.

England

In England, a local council has a statutory duty to promote and maintain high standards of conduct by its councillors when they are representing the council³⁴. In discharging this duty, a council must have a code of conduct that confirms the obligations of councillors when they are representing the council³⁵. A council's code of conduct must be consistent with the seven principles above³⁶. A council's code of conduct may, for example, require its councillors:

- to treat others with respect;
- not to bully or behave in an intimidatory manner;
- not seek to improperly confer an advantage or disadvantage on others;
- to use the resources of the Council in accordance with its requirements; and
- not to disclose confidential information.

A template code of conduct which councils in England are free to use is available from the National Association of Local Councils (NALC). A council must publicise its adoption, revision or replacement of a code of conduct in such a manner that is likely to receive the attention of people who live in its area³⁷. The code of conduct adopted by a council and the register of interests of its councillors (see below) should be available to the public via its publication scheme.

In England, a councillor is at risk of a criminal conviction (punishable by a fine and/or suspension or five years disqualification from holding office) for offences that concern a failure to observe statutory obligations that relate to the registration and disclosure at meetings of certain financial interests³⁸. These interests are known as disclosable pecuniary interests³⁹ and are interests held by a councillor or his spouse, civil partner or the person he lives with as if they were a spouse or civil partner. Examples of disclosable pecuniary interests include employment, business interests, or ownership of land in the council's area. A councillor must give signed written notice of the disclosable pecuniary interests that are held by him or his partner to the Monitoring Officer of the district or unitary (including a London Borough) council. The formal record of the interests of a councillor is known as his register of interests. A councillor does not need to disclose the name or marital status of his partner or even to distinguish in his notification between the disclosable pecuniary interests that are held by him and those that are held by his partner. A councillor must give written notification of his disclosable pecuniary interests within 28 days of his election⁴⁰ or within 28 days of a meeting that considered a matter in which he held a disclosable pecuniary interest but of which he had not previously notified the Monitoring Officer⁴¹. The Monitoring Officer has a duty to publish a councillor's register of interests on his authority's website. It will also be available for inspection at a place in the Monitoring Officer's authority's area⁴². A local council must also publish its councillors' register of interests on its website, if it has one⁴³. A councillor may ask the Monitoring Officer to exclude from his register of interests "sensitive interests" which are disclosable pecuniary interests the details of which, if disclosed in the public register of his interests, might lead to a threat of violence or intimidation to him or to a person connected with him⁴⁴. The Monitoring Officer has responsibility for deciding if a councillor's interests are sensitive interests that can be excluded from the public register of his interests.

When a councillor has a disclosable pecuniary interest in a matter to be considered at a meeting, he cannot take part in discussions or vote on the matter at a meeting⁴⁵ unless he has been granted a dispensation. If the disclosable pecuniary interest has not already been disclosed to the Monitoring Officer, the councillor must disclose the interest to the meeting⁴⁶. If it is a sensitive interest, he only needs to declare the existence of it, not the nature of it⁴⁷. A council may have standing orders that require a councillor to withdraw from the meeting while any discussion or vote takes place in respect of a matter in which the councillor has a disclosable pecuniary interest⁴⁸ so that he is not perceived to be influencing the discussion or vote.

The purpose of a dispensation is to relieve a councillor of some or all of the restrictions which apply to him at a meeting that is considering a matter in which he holds a disclosable pecuniary interest. A local council is responsible for granting dispensations. A council may grant a

dispensation, with regard to all the relevant circumstances, if it considers that:

- without the dispensation the number of persons prohibited from participating in any particular business being considered at a meeting would be so great a proportion of the meeting that it would impede the transaction of the business; or
- granting the dispensation is in the interests of persons living in the council's area; or
- it is otherwise appropriate to grant a dispensation⁴⁹.

If a councillor requires a dispensation, he must request this in writing and submit it to a designated member of staff. It is recommended that the dispensation requests are subject to the council's standing orders⁵⁰ which might reasonably require a request to be submitted before the meeting in question. A council's standing orders should confirm who is responsible for considering dispensation requests and granting dispensations. If a dispensation is granted, it must confirm if the councillor is permitted to participate in a discussion of the matter at a meeting or a discussion and a vote on the matter. The dispensation must also confirm the date of the meeting or the period to which the dispensation applies (not exceeding four years)⁵¹.

It is an offence⁵² for a councillor:

- to fail to register his disclosable pecuniary interests within 28 days of his election or re-election;
- to participate, without a dispensation, in the discussion or the voting at a meeting that is considering a matter in which he holds a disclosable pecuniary interest;
- not to disclose at a meeting a disclosable pecuniary interest he holds in a matter that is being considered at the meeting which he has not already notified the Monitoring Officer about, or not to register the new disclosable pecuniary interest within 28 days of the meeting; and
- to provide information about a disclosable pecuniary interest that is false or misleading.

A council's code of conduct may, but does not have to, include rules about the registration and disclosure of interests that are not disclosable pecuniary interests⁵³ and the availability of dispensations. For example, a council's code of conduct could restrict a councillor from participating at a meeting on a matter in which his relatives or friends have a financial interest unless he has been granted a dispensation.

A councillor is responsible for deciding if he holds an interest (whether a disclosable pecuniary interest or another interest in his council's code of conduct) which he needs to register or to

disclose at a meeting, or which may restrict his participation in the discussion or voting at a meeting. If a councillor is not sure about his legal obligations he can seek general guidance from the local Monitoring Officer.

A complaint that a councillor has not observed the code of conduct of his local council must be submitted to the district or unitary (including London Borough) council that covers the local council's area. The district or unitary council will notify the complainant of its procedures for handling the complaint⁵⁴. If the district or unitary council decides that the councillor has failed to comply with his council's code of conduct, it will notify the councillor and the local council of its decision. If the district or unitary council decides that the councillor has failed to comply with his local council's code of conduct it can take no direct action against the councillor. Responsibility for deciding what action to take against the councillor, if any, rests with the local council⁵⁵. It may, for example, decide to censure the councillor, remove him as its representative on an external body or request the councillor to attend training or apologise. A local council cannot suspend or disqualify a councillor from office.

Wales

In Wales, a council must have a code of conduct which confirms the obligations of councillors when they are representing the council⁵⁶. It must incorporate the mandatory provisions in a statutory model code of conduct⁵⁷. A council's code of conduct imposes obligations on a councillor to register and disclose at meetings certain financial and other interests known as personal and prejudicial interests. A council's code of conduct imposes other obligations on councillors when they are representing the council. For example a councillor must:

- treat others with respect;
- not bully or harass others;
- not bring his council into disrepute;
- not seek to confer improperly an advantage or disadvantage on others;
- use the resources of his council in accordance with its requirements;
- avoid accepting gifts, material benefits and services which may place him under an improper obligation; and
- not disclose confidential information.

A council's code of conduct requires a councillor to give written notification of his personal interests within 28 days of his election to the Monitoring Officer of the county council or county borough council in whose area the local council is. The formal record of the interests of a

councillor is known as his register of interests. If the councillor has a new personal interest or there is a change to a registered personal interest, he must give written notification to the Monitoring Officer within 28 days. The Monitoring Officer has a duty to make the register of interests of a councillor available for public inspection at an office of his authority. Information about the personal interests of a councillor may be “sensitive” meaning its availability to the public creates or is likely to create a serious risk that the councillor or a person living with him may be subject to violence or intimidation. If the Monitoring Officer agrees that such information is sensitive, a councillor is not required to include that information in his register of interests.

If a meeting of the local council is considering a matter in which a councillor has a personal interest, he is required by his council’s code of conduct to disclose the existence and nature of it at the meeting. If the personal interest is sensitive, the councillor must disclose the existence of the personal interest and the fact that the Monitoring Officer has agreed that the nature of the personal interest is sensitive. If a councillor holds a personal interest in a matter being considered at a council meeting, which the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the councillor’s judgement of the public interest, then this is regarded as a prejudicial interest. If a councillor has a prejudicial interest in a matter being considered by a meeting, he may speak at a meeting only if the public are also allowed to speak. The councillor must leave the meeting immediately after he has spoken and cannot be present at the meeting when the matter is being considered. The restrictions that apply to a councillor at a meeting which is considering a matter in which the councillor has a prejudicial interest do not apply if he has a dispensation from the standards committee of the county borough council or county council⁵⁸. If a councillor requires a dispensation, he must submit a written request to the standards committee.

A standards committee may only grant a dispensation if⁵⁹:

- no fewer than half of the number of councillors or the members of a committee of the council (as the case may be) by which the business is to be considered have an interest which relates to that business;
- the nature of the councillor's interest is such that his participation in the business to which the interest relates would not damage public confidence in the conduct of the council’s business;
- the interest is common to the councillor and a significant proportion of the general public;
- the participation of the councillor in the business to which the interest relates is justified by his particular role or expertise; or

- the business which is to be considered relates to the finances or property of a voluntary organisation of whose management committee or board the councillor is a member otherwise than as a representative of the local council and the councillor has no other interest in that business, provided that any dispensation shall not extend to participation in any vote with respect to that business.

A councillor who has been granted a dispensation must state at the meeting that he is relying on it and give written notice of it to his council⁶⁰.

A local council in Wales is free to adopt a code of conduct which includes other provisions that are consistent with the statutory model code of conduct⁶¹. A council is free to revise its code of conduct. As soon as possible after revising its code of conduct, it must ensure that a copy of the code is available for inspection by the public at the council's offices. The council must also publish a notice in at least one newspaper for the area which confirms that it has revised its code of conduct, and that a copy of the code is available for inspection at the council's offices. The council must also send a copy of the revised code to the Public Services Ombudsman for Wales⁶². The code of conduct adopted by a council and the register of interests of its councillors should be available to the public via its publication scheme.

A councillor is responsible for deciding if he holds a personal or prejudicial interest that he needs to register or to disclose at a meeting, or which may restrict his participation in the discussion or voting at a meeting. If a councillor is not sure about his legal obligations, he can seek general guidance from the local Monitoring Officer.

A complaint that a councillor has not observed the code of conduct of his local council must be submitted in writing to the Public Services Ombudsman for Wales⁶³. The Ombudsman can decide whether or not to investigate the matter. After an investigation, he may conclude that the councillor has not broken his council's code of conduct or that no further action needs to be taken. If he decides that there is enough evidence to do so, he will send a formal report to the authority's standards committee or, depending on the circumstances, to the Adjudication Panel for Wales. They will then decide if the councillor has broken his council's code of conduct and, if so, what sanction to impose on the councillor. The maximum sanction that a standards committee can apply is suspension from office for six months and the maximum sanction that a tribunal of the Adjudication Panel can apply is five years' disqualification from office.

What do councillors do?

There is no statutory description for the role of a councillor. A councillor's main role is to influence and contribute to the formal decisions of his council, known also as resolutions. As described in Chapter 1, a local council may make decisions about all sorts of matters. The obvious examples are about prioritising areas of spend, deciding the precept, setting and working within budgets, provision of its services and facilities, partnership working and management of staff.

A councillor's main responsibilities are to:

- raise matters that the council can consider and formally decide to take action about at meetings;
- attend council meetings;
- make informed contributions which influence the debate on the business that needs to be decided at those meetings;
- participate in his council's decision-making process, which in itself is subject to strict rules; and
- represent his council externally.

Councillors are not expected to possess the knowledge, skills or experience that are required for all aspects of their council's work. At a formal meeting of the council, committee (including joint-committee) or sub-committee (including joint sub-committee) councillors are expected to make informed decisions based on the consideration of relevant information. If councillors find themselves unable to make informed decisions because they lack information or understanding, or because they consider their council would benefit from the input of experts or professional advice, they should defer making decisions until this is made available to them.

Voting at a meeting should take place only after councillors have had an opportunity to consider and debate the issue to be decided among themselves. Councillors should use the period of the meeting before voting to seek clarification of information or issues, to listen to the views of other councillors and exchange views with them. Council decisions (or resolutions) are only valid if they are made by a majority of those councillors present and voting at a meeting. As described above, legislation requires a councillor to be transparent about the financial or other interests he has in a matter that is being considered at a meeting. Sometimes these interests may prevent a councillor from speaking and voting at a meeting. Before a council, committee or sub-committee meeting, a councillor is free to obtain information, exchange views and seek support from other

councillors in respect of a particular issue, provided that he does not use improper influence to affect the outcome of a decision. This sort of pre-meeting activity is not a substitute for considering a matter at a formal meeting.

A councillor's main role is to act as a representative of his local council. A councillor may however lawfully undertake activities as a councillor that are independent of the council. For example, a councillor representing a ward may deal with residents' interests specific to his ward. Using other examples, a councillor's organisation of his campaign for re-election to the local council, or campaigning at other times on behalf of the political party he is a member of will be done independently of his council. If a councillor acts independently of his council, it is recommended that he makes those he is dealing with aware of this fact. When a councillor acts independently of his council he has statutory obligations as a data controller, separate from his council, under the Data Protection Act 1998. This is explained in Chapter 4.

Pre-determination

It is quite likely that a councillor will be predisposed to a particular view on an issue or question which needs to be formally decided at a meeting. The views of a councillor on a particular topic or a certain issue might even be known by others. For example, the views of a councillor may have been communicated in his election campaign, openly expressed at prior meetings, reported in a local paper, or simply overheard. It is entirely acceptable in law for a councillor to be predisposed to a certain viewpoint that he would like to be agreed at a meeting. However a councillor must not, in advance, make up his mind as to how he will vote at a meeting nor risk being perceived to have done so.

The reason for this is that a decision made at a council, committee or sub-committee meeting (resolution) is at risk of being deemed invalid and quashed by the courts if it can be demonstrated that councillor(s) had or appeared to exercise bias or had a closed mind when they voted.

A councillor is not deemed to have had a closed mind when he votes at a meeting just because he previously said or did something that directly or indirectly indicated the way he voted at a meeting⁶⁴. For example, a councillor may be predisposed to voting against the development of a building for a nightclub, or against a position of the council that would undermine the policy of the political party he is a member of, or the informal policy of the political group that has an overall majority in the council (see section below on the politics of being a local councillor). This is not a problem if the councillor does not participate at the meeting with a closed mind or with

apparent bias. In other words, he must be open to a fair consideration of the information and arguments that are presented at the meeting.

In a legal action challenging the validity of a resolution because of the apparent bias or predetermination of a matter by councillor(s), the court would assess from the perspective of a fair-minded and well-informed observer whether the councillor(s) had refused to consider relevant information or views at a meeting before they voted on the issue.

Individual accountability

As explained above, a councillor is accountable for any personal failure to fulfil the obligations in the code of conduct that has been adopted by his council. In England, a councillor is also subject to statutory obligations about disclosable pecuniary interests, whether or not they are incorporated into his council's code of conduct. He is at risk of a criminal conviction for offences which concern a failure to observe these statutory obligations.

A councillor has no individual accountability for the decisions of his council because he cannot alone make decisions about council business. However, he is at risk of criticism from other councillors (and externally) for his part in those decisions.

Although a local council operates collective decision-making, a councillor cannot always hide behind the corporate veil of the council. At meetings, voting is normally by a show of hands⁶⁵ and therefore a councillor's vote is transparent to those present at the meeting. Chapter 7 explains voting. The way in which councillors vote on a matter (i.e. for or against) will be recorded in the minutes of a council meeting if a councillor exercises his statutory right to request this⁶⁶. The minutes of meetings are available to the public generally via the council's publication scheme. Chapters 4 and 11 provide more information about this.

As explained above, a resolution of the council is at risk of a legal challenge to its validity if a councillor voted on the matter with a closed mind or with bias.

Personal liability

There are circumstances, albeit rare, when legal proceedings may be issued against a councillor (not the council) because of acts or omissions attributable to him or arising from acting as a representative of the council. A councillor may be at risk of a defamation or negligence action or other legal action if, for example, he has failed to comply with provisions in the Equality Act

2000, the Data Protection Act 1998, the Health and Safety at Work etc. Act 1974, the Bribery Act 2010, or the Protection from Harassment Act 1997.

In England and Wales, a local council may arrange insurance cover for its councillors to indemnify them in respect of liability that arises when acting as a representative of the council⁶⁷. Legislation tightly regulates the conditions under which a councillor may be indemnified. Insurance cover can indemnify a councillor when he is undertaking an activity, with the approval of, or for the purposes of his council. Insurance cover may also be arranged to indemnify a councillor where his actions were outside the councillor's and the council's powers, but the councillor reasonably believed that the action in question was within his or the council's powers. The council may arrange insurance cover for a councillor to defend (but not to bring) a claim of defamation. The council may arrange insurance cover for councillors in the defence of criminal proceedings only on the basis that if a councillor is subsequently convicted of a criminal offence not overturned following any appeal, the councillor must reimburse the insurer for any sums expended by the insurer in relation to those proceedings.

In Wales⁶⁸, legislation also permits a local council to arrange insurance cover to indemnify a councillor in respect of any investigation, report, reference, adjudication or other proceedings in relation to the code of conduct he is subject to. If there is a finding that the councillor failed to comply with his council's code of conduct and that finding is not overturned following any appeal, or if the councillor admits that he has failed to comply with his council's code of conduct and sanctions are taken against the councillor as a consequence of his failure to comply with the code of conduct, the councillor must reimburse the insurer in relation to those proceedings.

Insurance cover to indemnify a councillor may be useful if, for example, a councillor faces legal action because a person suffered an injury while he was repairing the council's premises at the request of the council. Using another example, a councillor may face legal action as the trustee of a charity or as the director of a company, when such appointments were at the request of the council. The insurance cover would be available to the councillor in his capacity as the trustee or director.

The politics of being a local councillor

Many local councillors are not members of a political party. Councillors who are not members of a political party are often referred to as independents. In England, a councillor's membership of a political party is not a disclosable pecuniary interest. His council's code of conduct may however require the registration and disclosure of his membership of a political party. In Wales, a

councillor's membership of a political party is a personal interest that he must register and disclose in accordance with his council's code of conduct. A council must not publish or assist anyone else to publish material that affects public support for a political party⁶⁹. Councils and councillors in England are subject to a recommended code of practice about local authority publicity⁷⁰. Chapter 5 provides more information about the recommended code of practice.

Councillors may fall into different groups due to their membership of or support for the same political party. A group may organise itself before decisions about council business need to be taken. Councillors in the same political group, or even independents, may meet informally or otherwise liaise among themselves to discuss or agree their proposed approach for the business to be decided at a forthcoming meeting. They may agree among themselves who will speak for or against a matter that is on the agenda. The practices of a group of councillors, party political or otherwise, are informal and have no legal force. Informal meetings of groups of councillors are not a substitute for formal council meetings where councillors are expected to make decisions only after they have considered information presented before or at the meeting and exchanged views that are relevant to the question to be decided.

Inspired by the statutory arrangements that are applicable only to the constitution of principal authorities, some local councils appoint "leaders". Any such appointment is not recognised by the statutory provisions that apply to local councils. A leader is not a recognised office holder in the statutory constitution of a local council. The leader is a councillor who is selected from and among the group of councillors in the local council that has the political majority on the council. The leader of a council may be active in organising and lobbying other councillors in his political group on council business. Despite the informal conventions and practices within a local council, a "leader" has only the same formal standing as any other councillor.

Unlike a principal authority⁷¹, the composition of the committees and sub-committees of a local council is not required to represent the same proportions in which the council as a whole may be politically divided.

Councillors' allowances

In England, a local council may pay a basic allowance for each year to its chairman only or to each of its elected councillors (but not to councillors who have been co-opted). The amount payable to the chairman may differ from that of other councillors (i.e. a higher sum may be paid in light of the extra duties and responsibilities that are required of the chairman) but otherwise the sum shall be the same for each councillor. A basic allowance paid to a councillor is not a salary but it is

treated by HM Revenue and Customs as taxable income. A council is obliged to deduct income tax, where appropriate, under the PAYE system. A council may also pay councillors and co-opted councillors travelling and subsistence allowances. The payment of allowances to councillors is subject to a cumbersome statutory process which involves a local remuneration panel, independent of the local council, whose role is to make recommendations as to the level of the various allowances that a council can pay. Many councils do not pay allowances and for those that do it is usually a rather modest sum. A council cannot pay an allowance for childcare or other dependents' care expenses. If a council chooses to pay allowances, a councillor has a statutory right to forgo receipt of an allowance by giving written notice to the Proper Officer of the council⁷².

In Wales, the Independent Remuneration Panel for Wales⁷³ is responsible for determining the allowances that may be paid to elected and co-opted councillors of a local council (and to councillors with voting rights on a committee or sub-committee of a local council - discussed in Chapter 5). The Independent Remuneration Panel is also responsible for setting the payment of allowances to councillors in other local authorities. The Panel has a duty to produce an annual report which is publicised to local councils. The annual report confirms the amount that a local council must or may pay to an elected or co-opted councillor (or voting non-councillor member of a committee or sub-committee) as an allowance, unless he has exercised his statutory right to forgo receipt of an allowance by giving written notice to the Proper Officer of the council. A local council must comply with the requirements imposed on it by the annual report of the Panel. The Panel has statutory powers to monitor the allowances that are paid by a local council. An allowance paid to a councillor is treated by HM Revenue and Customs as taxable income. A council is obliged to deduct income tax, where appropriate, under the PAYE system.

As an alternative to paying the Chairman or all councillors an allowance, a council in England and Wales has a separate power in the Local Government Act 1972⁷⁴ to make payments to the Chairman which allow him to meet the expenses associated with his special office. In deciding whether to make a payment to the Chairman and what this amount should be, a council may want to consider the nature of the expenses incurred in his internal role as the Chairman of the Council and his external role as the councillor most likely to represent the council. In terms of expenses of the chairman arising from his internal role, he might need to telephone and email other councillors, or chairmen of committees of the council, the Clerk or third parties. In terms of his external role, he might need to represent the council at meetings and events, and incur travel expenses or other expenses for hospitality at events. Where a council has decided the annual budget for the allowance to be paid to the Chairman it must decide when it will make such payments. It may make payments on request or simply pay the allowance in quarterly or

biannual instalments.

When this book was written, the National Assembly for Wales had agreed to repeal the power in the 1972 Act⁷⁵ for a council in Wales to pay expenses to the chairman (the Local Government (Democracy) (Wales) Bill). When the 1972 Act provisions are repealed, responsibility for deciding the allowances for the chairman of a local council in Wales will rest with the Independent Remuneration Panel for Wales.

Details of councillors' allowances should be made available to the public via its publication scheme.

Training for councillors

A range of training and development opportunities are available to councillors in England via the National Training Strategy (NTS) which is coordinated by the National Association of Local Councils (NALC), the Society of Local Council Clerks (SLCC) and other national stakeholders. In Wales they are coordinated by the National Training Advisory Group (NTAG), led by One Voice Wales, SLCC and other national stakeholders.

¹ Local Government Act 1972, s.14(2) and, in Wales, s.33(1)

² Local Government Act 1972, s.16(1)

³ Local Government Act 1972, s.14(1) and, in Wales, s.33(1)

⁴ Local Government Act 1972, s.80

⁵ Local Government Act 1972, s.79

⁶ Local Government Act 1972, s.16(3) and, in Wales, s.35(2B)

⁷ Local Elections (Declaration of Acceptance of Office) Order 2012/1465, schedule 1 and, in Wales, Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004/1508, schedule 1

⁸ Local Government Act 1972, s.83(4)

⁹ Local Government Act 1972, s.83(4)

¹⁰ Local Government Act 1972, s.16(6)-(8)

¹¹ Local Government Act 1972, s.15(2) and, in Wales, s.34(2)

¹² Local Government Act 1972, schedule 12, paragraph 7(2) and, in Wales, paragraph 23(2)

¹³ Local Elections (Declaration of Acceptance of Office) Order 2012/1465, schedule 1 and, in Wales, Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004/1508, schedule 1

¹⁴ Local Government Act 1972, s.83(4)

¹⁵ Local Government Act 1972, s.15(4) and, in Wales, s.34(4)

¹⁶ Local Government Act 1972, s.15(8) and, in Wales, s.34(8)

¹⁷ Local Government Act 1972, s.88

¹⁸ Local Government Act 1972, s.14(1) and, in Wales, s.33(1)

¹⁹ Local Government Act 1972, s.15(6) and, in Wales, s.34(6)

-
- ²⁰ Local Government Act 1972, s.15(9) and, in Wales, s.34(9)
- ²¹ Local Government Act 1972, s.15(7) and, in Wales, s.34(7)
- ²² Local Government Act 1972, s.245(6)(b) and, in Wales, s.245B(2)(b)
- ²³ Local Government Act 1972, s.15(11)-(13)
- ²⁴ Freedom of Information Act 2000, s.19
- ²⁵ Local Government Act 1972, s.16(3) and, in Wales, s.35(2A) and (2B)
- ²⁶ Local Government Act 1972, s.87(1)(b) and (c)
- ²⁷ Local Government Act 1972, s.83(4)
- ²⁸ Local Government Act 1972, s.85
- ²⁹ Local Government Act 1972, s.80(1)(a)
- ³⁰ Local Government Act 1972, s.80(1)(b)
- ³¹ Local Government Act 1972, s.80(1)(d)
- ³² Local Government Act 1972, s.80(1)(e)
- ³³ Localism Act 2011, ss.27- 34 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012/1464 and, in Wales, the Local Government Act 2000, ss.49-56, 68-78, 79-83 and Local Authorities (Model Code of Conduct) (Wales) Order 2008/788
- ³⁴ Localism Act 2011, s.27(1)
- ³⁵ Localism Act 2011, s.27(2)
- ³⁶ Localism Act 2011, s.28(1)
- ³⁷ Localism Act 2011, s.28(12)
- ³⁸ Localism Act 2011, s.34
- ³⁹ Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012/1464
- ⁴⁰ Localism Act 2011, s.30(1)
- ⁴¹ Localism Act 2011, s.31(3)
- ⁴² Localism Act 2011, s.29(6)
- ⁴³ Localism Act 2011, s.29(7)
- ⁴⁴ Localism Act 2011, s.32
- ⁴⁵ Localism Act 2011, s.31(4)
- ⁴⁶ Localism Act 2011, s.31(2)
- ⁴⁷ Localism Act 2011, s.32(3)
- ⁴⁸ Localism Act 2011, s.31(10)
- ⁴⁹ Localism Act 2011, 33(2)
- ⁵⁰ Local Government Act 1972, schedule 12, paragraph 42
- ⁵¹ Localism Act 2011, s.33(3)
- ⁵² Localism Act 2011, s.34
- ⁵³ Localism Act 2011, s.28(2)(b)
- ⁵⁴ Localism Act 2011, s.28(6) and (9)
- ⁵⁵ Localism Act 2011, s.28(11)
- ⁵⁶ Local Government Act 2000, s.51(1)
- ⁵⁷ Local Government Act 2000, s.51(4)(a) and Local Authorities (Model Code of Conduct) (Wales) Order 2008/788
- ⁵⁸ Local Government Act 2000, s.81(4) and s.56
- ⁵⁹ Standards Committees (Grant of Dispensations) (Wales) Regulations 2001/2279
- ⁶⁰ Local Authorities (Model Code of Conduct) (Wales) Order 2008/788
- ⁶¹ Local Government Act 2000, s.51(4)(b) and (c)
- ⁶² Local Government Act 2000, s.51(6)

-
- ⁶³ Local Government Act 2000, s.69
- ⁶⁴ Localism Act 2011, s.25
- ⁶⁵ Local Government Act 1972, schedule 12, paragraph 13(1) and, in Wales, paragraph 29(1) and s.106
- ⁶⁶ Local Government Act 1972, schedule 12, paragraph 13(2) and, in Wales, paragraph 29(2)
- ⁶⁷ The Local Authorities (Indemnities for Members and Officers) Order 2004/3082 and, in Wales, the Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006/249
- ⁶⁸ The Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006/249, Article 8
- ⁶⁹ Local Government Act 1986, s.2
- ⁷⁰ Local Government Act 1986, s.4 and 2011 Code of Recommended Practice on Local Authority Publicity
- ⁷¹ The Local Government (Committees and Political Groups) Regulations 1990
- ⁷² The Local Authorities (Members' Allowances) (England) Regulations 2003/1021 and The Local Authorities (Members' Allowances) (England) (Amendments) Regulations 2004/2596
- ⁷³ The Local Government (Wales) Measure 2011, Part 8
- ⁷⁴ Local Government Act 1972, s.15(5) and, in Wales, s.34(5)
- ⁷⁵ Local Government Act 1972, s.34(5)

3. Local council staff

Key points

Local council staff:

- include person(s) to undertake statutory obligations conferred on the “Responsible Financial Officer”;
- include person(s) to undertake statutory obligations conferred on the “Proper Officer”;
- are needed to support a council’s general administration, and accounting and audit administration;
- may provide or manage a council’s services and facilities;
- may discharge some of a council’s statutory powers and functions on the council’s behalf;
- cannot be councillors in the same council;
- cannot be managed by individual councillors.

Local councils as employers

The Local Government Act 1972 confers a specific statutory power on a local council to employ staff as it thinks necessary for it to carry out its statutory functions and powers¹. The same power confirms that a council may employ staff on such reasonable terms and conditions, including in respect of pay, as it thinks fit. Council staff may include a person who works for a council directly (an employee), indirectly through an agency (a worker) or as a self-employed person. In practice however, most staff are likely to be employed by a council directly. The staff who work for local councils, as with the staff of other local authorities, are often referred to as “officers”. This tradition is sometimes extended to use of the term “officer” in job titles, e.g. administrative officer or grounds maintenance officer.

Working for a council

Local council staff often have direct and sometimes very regular contact with individual councillors. However, it is the corporate body of the council itself, not its councillors or committees and sub-committees or groups of councillors (political or otherwise), that is the employer for the purposes of an employer’s legal obligations.

Employment contracts

An explanation of a local council’s obligations in employment and equalities law terms is outside the scope of this book. A council may employ staff on such reasonable terms and conditions including in respect of pay, as it thinks fit. It is recommended that the employees of a local council have a written employment contract. In Wales only, local council employees are subject to a statutory code of conduct² and the terms and conditions of employment for local council employees automatically incorporate the statutory code of conduct³.

Local authorities (including local councils) may but do not have to employ staff on terms and conditions which are agreed at a national level by the National Joint Council for Local Government Services (NJC) through a collective bargaining process. The NJC is made up of representatives from the bodies that represent different local authority employers (e.g. the Local Government Association which represents the interests of principal authorities in England and its counterpart in Wales) and the various unions that represent local authority staff. The NJC is responsible for a national agreement on pay (including pay scales and cost of living increases) and conditions (e.g. working hours, annual leave, sick pay and benefits which accrue over time) of employment for local authority staff. This national agreement is known as the Green Book.

The Green Book provides a local authority with a comprehensive set of terms and conditions and recommendations in respect of its employment of staff. It identifies terms and conditions of employment which are for the individual local authority to determine. Although the Green Book is not mandatory for local authorities, the employment of staff on its terms and conditions of service achieves fairness and uniformity. Many principal authorities employ their staff on Green Book terms and conditions or a variation of the Green Book conditions for this reason. In addition the very essence of the Green Book is that it is easy to adapt to suit the needs of a particular local authority employer. A criticism sometimes made of the Green Book is that it inhibits and limits the discretion of a local authority employer to employ and manage staff on their own terms and to dictate pay according to local market forces. However, many principal authorities use the Green Book as the basis for the terms and conditions in their employment contracts because its terms have been collectively agreed and, as such, are deemed fair.

With the objective of establishing relevant pay scales and working conditions for clerks and assistant clerks employed by local councils, in 2004 the National Association of Local Councils (NALC) and the Society for Local Clerks (SLCC) jointly agreed a National Agreement on Salaries and Conditions of Service of Local Council Clerks in England and Wales. This has its foundation in the Green Book but it has specific provisions relevant to the terms of employment of clerks (see below) and assistant clerks, and in establishing pay scales. NALC and SLCC's National Agreement includes a model employment contract for clerks and deputy and assistant clerks employed by local councils. NALC and SLCC promote the use of the model employment contract but local councils do not have to use it.

As already stated, a local council has a statutory power to employ staff (administrative, professional, manual) on any reasonable pay and other terms and conditions that it sees fit. Consistent with the proper practices for the accounting, auditing and financial management of a council, the job description for council staff with responsibility for collecting money or making payments should refer to them being subject to the relevant standing orders, financial regulations and internal controls.

Essential local council staff

Some local council staff are essential because they are office holders who have specific statutory obligations that are key to the internal administration of a council. In other words, some work that relates to the internal administration of a council must be undertaken only by these office holders. An office holder may but does not have to be an employee for the purposes of employment or other legal rights. Legislation identifies two office holders in a local council.

Firstly, under the Local Government Act 1972 a council must appoint a person to be responsible for the administration of its financial affairs⁴. This person is known as the Responsible Financial Officer (RFO). Accounting and audit regulations⁵ that local councils are subject to confer statutory obligations on the RFO. These responsibilities include signing the annual accounts of the council⁶. Further responsibilities that are conferred on the RFO are set out in the proper practices that councils are subject to. In addition to the performance of their statutory obligations, most RFOs provide financial administrative support to the council. In very general terms, an RFO supports the council in respect of the internal control and audit of its accounts and the preparation of the council's budgets, and liaises with the council's internal and external auditors. There must always be a member of staff to undertake the work of the RFO. It is common for councils to employ a deputy RFO or to nominate another member of staff who can undertake the RFO's responsibilities if the RFO is absent. See Chapter 4 for more information about the work of the RFO.

Secondly, the Local Government Act 1972 also confers certain responsibilities to be undertaken by the council's "Proper Officer", meaning an officer appointed for a particular purpose⁷. The Proper Officer has certain statutory obligations which, for example, include:

- to sign and serve on councillors a summons with an agenda to attend council meetings⁸;
- to convene a meeting of the council if a casual vacancy in the office of the Chairman occurs⁹;
- to receive and hold copies of byelaws made by other local authorities which affect the council's area¹⁰ and
- to receive and retain documents or notices¹¹.

In addition to the performance of certain statutory obligations, a local council requires the Proper Officer to support the council's day to day administration. Examples of work undertaken by the Proper Officer for his council include:

- receiving and sending the council's correspondence;
- handling face to face, telephone and email queries about the council;
- updating or managing the content on the council's website;
- assisting in the production of the council's newsletters;
- issuing public notices for meetings;
- organising, updating, accessing, storing and destroying council records;
- drawing up agendas for meetings;

- taking minutes of meetings;
- keeping the council's minute book up to date and available for inspection;
- assisting with requests for information under the Freedom of Information Act 2000 and the Data Protection Act 1998;
- assisting with the handling of complaints against the council;
- the purchase of basic office equipment or supplies;
- arranging emergency repairs to the office or other council premises (subject to the council's standing orders and/or financial regulations);
- actions arising from other emergencies;
- follow-up work from committees or sub-committees of the council;
- liaising with the bodies that the council works with, e.g. sports and youth clubs, other local authorities, businesses, local interest groups and charities; and
- supervision or management of other staff.

The statutory and other responsibilities of the Proper Officer are central to the internal administration of a council. The Proper Officer is thus regarded as the most senior member of staff and commonly known as "the Clerk" to the council. Some councils apply a different title for the post of the Proper Officer. These include "Executive Officer", "Chief Executive", "Head of Support Services" or "Executive Manager". Often a council will appoint a deputy or assistant Proper Officer.

Many councils separate the job of the Proper Officer and the RFO and it is recommended that they do. As already mentioned, many councils also employ an assistant or deputy Proper Officer and deputy RFO to support the Proper Officer and the RFO and to undertake their work when they are absent. However, a small council may employ one person who is the council's Proper Officer and RFO.

The responsibilities of the Proper Officer and RFO are cardinal to the internal workings of a council and also merit close control and supervision by a council. For these reasons, most Proper Officers and RFOs are directly employed by a council. Irrespective of the employment law status of a Proper Officer or RFO, HM Revenue and Customs regards them as office holders whose income tax and national insurance contributions must be paid by a council under PAYE. If the income received by the Proper Officer or RFO is lower than the lower earnings limit for national insurance contributions, the council does not have to register with HMRC as an employer and operate PAYE. The income of the Proper Officer or RFO includes income from another job or a pension. The payment of the Proper Officer's or RFO's income tax and national insurance contributions by the council under PAYE is not in itself conclusive evidence of their employment

status.

Some Proper Officers and RFOs hold professional qualifications or have previous work experience that may help them in their work for a local council. For example, they may have worked for another local authority, public body or a charity. However the law, internal administration, accounting and audit requirements of a local council is a niche area even for those who have worked for another type of local authority.

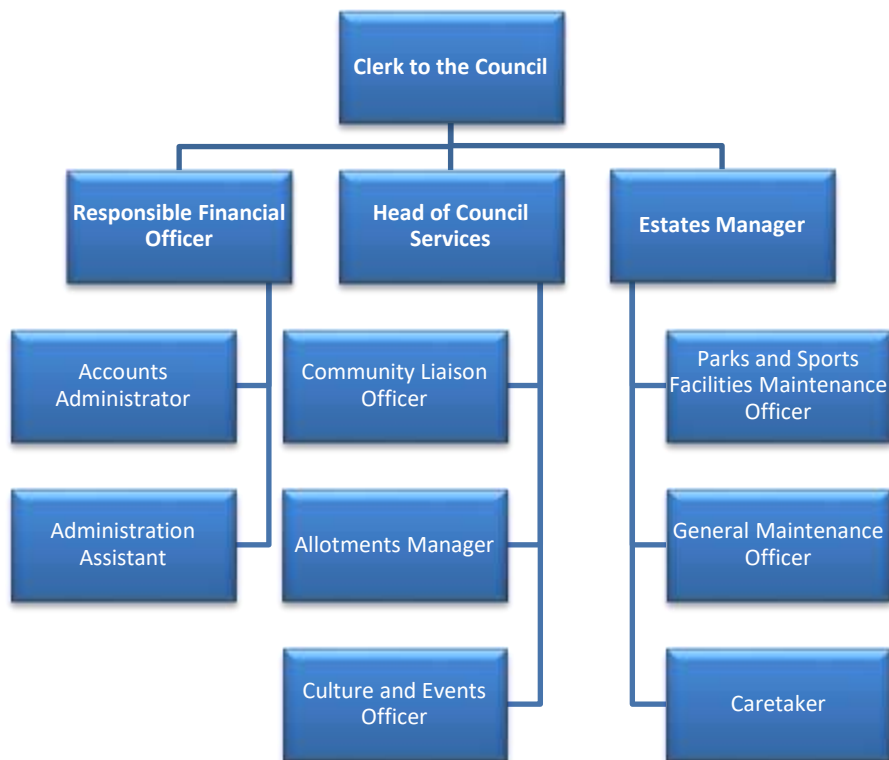
Vocational training and development opportunities have been developed for local council staff in England via the National Training Strategy (NTS) which is coordinated by NALC, SLCC and other national stakeholders, and in Wales by the National Training Advisory Group (NTAG), led by One Voice Wales, SLCC and other national stakeholders. There are a number of sector qualifications which local council staff can obtain, the most basic of which is the Certificate in Local Council Administration (CiLCA). Many councils expect essential staff to hold recognised local council sector qualifications.

Other staff

The number or qualifications and experience of other staff employed by a local council will depend on what is required to support the activities undertaken by a council.

A local council may need other staff to run or manage the services and facilities that it provides. For example, a council may need staff for the running of a village hall, community centre, youth club, sport facilities, market, car parks, theatre or parks. A local council may also need staff to organise community events and local festivals. A council that provides allotments may need staff to administer the allotment tenancies and generally manage the allotment site. Councils that provide facilities or services for vulnerable groups (e.g. children or disabled persons) need specialist staff. Councils who work jointly with other local authorities, local charities and voluntary organisations may require staff to work with those organisations on a day-to-day basis. Local councils that issue fixed penalty notices in respect of dog fouling etc, graffiti or litter dropping require staff who have undertaken special training to issue and enforce fixed penalty notices. Other council staff typically include handymen, gardeners, cleaners, caretakers, community wardens, administrative and accounts administration assistants and receptionists.

Although the staff of many councils consist only of the RFO and Proper Officer/Clerk, an example of the staff structure for a bigger council is below.



The Freedom of Information Act 2000 requires a local council to have a publication scheme¹² whereby certain information about the council is available to the public. One category of information includes the council's staff structure. A council's staff structure and staff contact details (where used) should be available to the public via the council's publication scheme.

Staff delegations

Legislation requires certain statutory functions of a local council to be discharged by the council itself. This means, for example, that a local council cannot delegate to staff responsibility for:

- levying or issuing a precept¹³;
- borrowing money¹⁴;
- approving the council's annual accounts¹⁵;
- considering an auditor's report made in the public interest¹⁶;
- confirming (by resolution) that it has satisfied the statutory criteria to exercise the power of general competence (England only)¹⁷; or
- adopting or revising the council's code of conduct¹⁸.

However where no statutory prohibition applies, responsibility for the performance of the statutory functions and powers of a local council may be delegated to its staff or to its committees or sub-committees¹⁹. Internal delegations to committees and sub-committees are explained in the section below on staff management and in Chapter 6. A delegation to staff member(s) means that they are performing the council's statutory powers or functions on the council's behalf. Legal responsibility for the performance of the statutory powers and functions of the local council remains with the council. As such, a complaint about matters that have been delegated to staff is to be treated as a complaint against the council, not its staff. A delegation of statutory responsibilities to staff will not prevent the council from performing them itself²⁰.

A council may, for example, delegate to staff responsibility for the organisation of a local fete²¹, or the running of a football and cricket pitch facility or management of a community centre²². In doing so, it would allocate a budget for them to work with, any such expenditure incurred being subject to proper practices and control by the standing orders and/or financial regulations of the council. A council may also delegate to staff responsibility for the performance of administrative matters, such as compliance with its obligations under the Freedom of Information Act 2000, or the granting of dispensations²³ to councillors (England only). If a council wants to delegate responsibilities to staff member(s), it must formally decide this at a meeting by resolution.

Extensive delegation arrangements with staff are commonplace in other types of local authorities. For example, the staff of principal authorities have delegated responsibility for dealing with planning applications, street trading, roads maintenance, traffic regulation, provision of housing services and social care, staff recruitment and management, contractual matters, and resolving legal disputes. Unless a local council is small, has few staff or its work is undertaken by committees and sub-committees, staff delegations can be expedient.

Staff management

In employment law and equality legislation terms, a local council is generally no different from any other employer as a recruiter and an employer. Chapter 1 confirms that there are additional statutory responsibilities conferred on a local council by the Equality Act 2010. An explanation of these obligations is outside the scope of this book. A council should ensure that its structures, policies and practices enable staff development (via appraisals, promotions, training and other support) and accommodate the handling of staff grievances and disciplinary matters. They must also safeguard against bullying and harassment and discrimination, ensure the health and safety of staff, and protect the unnecessary disclosure of or use of information about individual staff members. Chapter 4 summarises the obligations of a council under the Data Protection Act 1998.

As an employer, a local council has to make decisions about the recruitment, management and dismissal of staff. In most workplaces, day to day line management is traditionally undertaken by one person. This model does not work in relation to management of staff by a single councillor. A councillor has no statutory authority to make decisions.

A council may formally delegate some recruitment and staff management functions to staff. The job description of a member of staff will accordingly confirm any responsibilities that relate, for example, to recruiting staff, supervising the work of other staff, managing their development and training needs, recording and monitoring their absences, approving leave arrangements and the handling of informal grievances and disciplinary matters.

Even if a council has delegated some recruitment and staff management responsibilities to staff, it is undesirable for decisions about the management of staff to be made by the whole council. It is recommended that responsibility for the general management of staff rests with a committee of the council. Unless a council decides otherwise, such a committee may delegate its responsibilities to a sub-committee (a committee of the committee)²⁴. It is recommended that responsibility for the management of a council's most senior member of staff (the Proper Officer or Clerk) is delegated to a staffing sub-committee.

When a council appoints a staffing committee (with or without a sub-committee) to perform any of its responsibilities as an employer or recruiter, the responsibilities of the committee must be clear from the outset. A council achieves this by deciding the terms of reference for the staffing committee. If the staffing committee is permitted to appoint a sub-committee, it is the staffing committee that decides the terms of reference for the sub-committee. The terms of reference for a sub-committee cannot be broader in scope or unrelated to the terms of reference for the committee. The terms of reference for any committee or sub-committee of a council should be available to the public via the council's publication scheme.

When a council delegates recruitment or staff management responsibilities to a committee (with or without a sub-committee), legal responsibility for the decisions and actions of the staffing committee (or sub-committee) remains with the council as a whole. Whether or not a council delegates its responsibilities as an employer and recruiter to a staffing committee or a staffing sub-committee, the Data Protection Act 1998 imposes obligations about the council's use of information about individual staff members and candidates for jobs at the council. Chapter 4 explains a council's statutory obligations under the Data Protection Act 1998. From another perspective, if a staffing committee decided to withdraw an offer of employment after it had

been accepted, the council not the committee is at risk of a breach of contract claim. If a staffing sub-committee unfairly dismisses an employee, the unfair dismissal claim will be against the council, not the sub-committee.

Below is an example of a council's terms of reference for a committee that it appointed to discharge its staffing functions.

SUTTON PARISH COUNCIL
STAFFING COMMITTEE - TERMS OF REFERENCE

Purpose of staffing committee:

This committee is appointed to make decisions about all staffing matters, subject to budget and expenditure limits decided by the finance committee.

Terms of Reference

1. To establish and keep under review the staffing structure in consultation with the Finance Committee.
2. To draft, implement, review, monitor and revise policies for staff.
3. To establish and review salary paycales for all categories of staff and to be responsible for their administration and review.
4. To oversee the recruitment and appointment of staff.
5. To arrange execution of new employment contracts and changes to contracts.
6. To establish and review performance management (including annual appraisals) and staff training programmes for staff.
7. To oversee any process leading to dismissal of staff (including redundancy).
8. To keep under review staff working conditions, and health and safety matters.
9. To monitor and address regular or sustained staff absence.

10. To make recommendations on staffing related expenditure to the Finance Committee.
11. To consider any appeal against a decision in respect of pay.
12. To consider a grievance or disciplinary matter (and any appeal).
13. To supervise and performance manage the Clerk's work, to administer his leave requests, record and monitor his absences, and handle grievance and disciplinary matters and pay disputes.

Using the example above, the committee would have significant responsibility even if the council employed only one or two people. The nature of its responsibilities means that the committee would need to meet regularly (perhaps quarterly) but also when it is required e.g. to handle the recruitment of temporary staff.

There will be some responsibilities of a staffing committee that are best handled by a sub-committee of the staffing committee. The most obvious example is the handling of a grievance or disciplinary matter. Any such sub-committee should be made up of three councillors. If an employee appeals a decision made by a staffing sub-committee about a grievance or disciplinary matter, then the appeal must be heard by another sub-committee of three councillors of the staffing committee who have not previously been involved in the grievance or disciplinary matter. There may be insufficient councillors on the staffing committee who have not previously been involved. If so, the sub-committee handling the appeal should be made up of three councillors who may include members of the staffing committee.

The other responsibilities suited to a staffing sub-committee include the management of the Proper Officer/Clerk. It will be necessary for the staffing sub-committee to appoint one of its councillors as the day to day contact to support, supervise and appraise the work of the Proper Officer/Clerk, handle leave requests, absences from work, informal grievances and disciplinary matters etc. The standing orders of a council may be used to confirm the responsibilities of individual members of the staffing sub-committee²⁵.

Below is an example of the terms of reference for a staffing sub-committee, appointed to discharge some of the responsibilities of its parent committee.

SUTTON PARISH COUNCIL
STAFFING SUB-COMMITTEE - TERMS OF REFERENCE

Purpose of staffing sub-committee

This sub-committee is appointed to consider grievance or disciplinary matters (not including any appeal therefrom) referred from the staffing committee and to manage the Clerk.

Terms of reference

1. To consider grievance or disciplinary matters in accordance with the council's grievance or disciplinary policies.
2. To manage, supervise and appraise the Clerk, administer leave requests, record and monitor absences from work.
3. To consider any appeal by the Clerk against a decision on pay.

When a council appoints a staffing committee, it also needs to decide the number of councillors and their terms of office for that committee²⁶. As a staffing committee is recommended to appoint sub-committee(s) to handle any grievance and disciplinary matters (and related appeals) and to manage the council's Clerk, the number of councillors appointed to the staffing committee should, if possible, be sufficient for the appointment of these sub-committees.

A staffing committee is likely to benefit from the availability of substitute councillors. The number and term of office of substitute councillors is decided by the council at the same time that it decides the number and terms of office of the ordinary councillors of a committee. Chapter 6 explains the role of substitute councillors. Chapters 6 and 7 set out the statutory rules or standing orders²⁷ for a meeting of any committee and sub-committee, not limited to a staffing committee or staffing sub-committee.

A meeting of the whole council, a staffing committee or staffing sub-committee will inevitably decide matters that relate to an individual staff member or are otherwise confidential between a member of staff and his employer. A meeting of the full council or a staffing committee may exclude the public when it is considering information about an individual staff member or confidential matters²⁸ and it is expected to do so. Using the example terms of reference for the staffing sub-committee above, it is undesirable for a meeting of a staffing sub-committee like this to be notifiable or accessible to the public. It is recommended that the standing orders²⁹ of a

local council confirm that the public has no advance notification or right to attend a meeting of a staffing sub-committee whose decisions, under delegated responsibilities, will always concern individual staff members, disclosure of which would breach the obligations of a council under the Data Protection Act 1998 or be confidential³⁰. Chapter 4 summarises the statutory obligations of a council under the Data Protection Act 1998, which is relevant to its use of information about individual staff members and candidates for jobs at the council. Chapters 7, 8, 10 and 11 explain the consideration at a meeting of a confidential matter or a matter that concerns an individual staff member.

Staff liability

There may be circumstances, albeit rare, when legal proceedings may be issued against a member of staff (not the council) because of certain acts or omissions or conduct arising from his employment or attributable to him as a member of the council's staff. For example a member of staff may be at risk of a defamation or negligence action or he may face legal action because he has failed to comply with provisions in the Equality Act 2000, the Data Protection Act 1998, the Health and Safety at Work etc. Act 1974, or the Bribery Act 2010.

In England and Wales, a local council may arrange insurance cover to indemnify staff for liabilities arising from their work³¹. Legislation tightly regulates when a council may or may not indemnify staff when they are acting for the council. Insurance cover can indemnify staff when they are undertaking an activity with the approval of, or for the purposes of, the council. Insurance cover may also be arranged to indemnify a member of staff where his actions were outside his and the council's powers, but the member of staff reasonably believed that his actions were within his or the council's powers. The council may also arrange insurance cover for a member of staff to defend (but not to bring) a claim of defamation. The council may arrange insurance cover for staff in the defence of criminal proceedings only on the basis that if a member of staff is subsequently convicted of a criminal offence not overturned following any appeal, the member of staff must reimburse the insurer for any sums expended by the insurer in relation to those proceedings.

¹ Local Government Act 1972, s.112

² Code of Conduct (Qualifying Local Government Employees) Wales Order 2001/2280

³ Local Government Act 2000, s.82(7)

-
- ⁴ Local Government Act 1972, s.151
- ⁵ Accounts and Audit (England) Regulations 2011/817 and, in Wales, the Accounts and Audit (Wales) Regulations 2005/368
- ⁶ Accounts and Audit (England) Regulations 2011/817, Regulation 13(2) and, in Wales, the Accounts and Audit (Wales) Regulations 2005/368, Regulation 8B(1)
- ⁷ Local Government Act 1972, s.270
- ⁸ Local Government Act 1972, schedule 12, paragraph 10(2)(b) and, in Wales, paragraph 26(2)(b)
- ⁹ Local Government Act 1972, s.88
- ¹⁰ Local Government Act 1972, s.236(9)
- ¹¹ Local Government Act 1972, s.225
- ¹² Freedom of Information Act 2000, s.19
- ¹³ Local Government Act 1972, s.101(6)
- ¹⁴ Local Government Act 2003, schedule 1, paragraph 2(4)
- ¹⁵ Accounts and Audit (England) Regulations 2011/817, Regulation 13(3)(b) and, in Wales, the Accounts and Audit (Wales) Regulations 2005/368, Regulation 9(2)
- ¹⁶ Audit Commission Act 1998, s.11(8) and, in Wales, the Public Audit (Wales) Act 2004, s.25(8)
- ¹⁷ Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012/965, paragraph 1 of schedule
- ¹⁸ Localism Act 2011, s.28(13) and, in Wales, Local Government Act 2000, s.51(9)
- ¹⁹ Local Government Act 1972, s.101(1)(a)
- ²⁰ Local Government Act 1972, s.101 (4)
- ²¹ Local Government Act 1972, s.145(1)(a)
- ²² Local Government (Miscellaneous Provisions) Act 1976, s.19(1)
- ²³ Localism Act 2011, s.33
- ²⁴ Local Government Act 1972, s.101(2)
- ²⁵ Local Government Act 1972, s.106
- ²⁶ Local Government Act 1972, s.102(2)
- ²⁷ Local Government Act 1972, s.106 and schedule 12, paragraph 42
- ²⁸ Public Bodies (Admission to Meetings) 1960, s.1(2) and Local Government Act 1972, s.100(2)
- ²⁹ Local Government Act 1972, s.106
- ³⁰ Local Government Act 1972, s.106
- ³¹ The Local Authorities (Indemnities for Members and Officers) Order 2004/3082 and, in Wales, The Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006/249

4. Accountability to the public

Key points

- A local council is a public authority under the Freedom of Information Act 2000.
- Information about a local council is generally available to the public under the Freedom of Information Act 2000.
- A council must have a publication scheme.
- A council's annual accounts are externally audited.
- A council is a data controller for the purposes of the Data Protection Act 1998.
- A council should have a procedure for handling complaints.
- As a public body, the decisions of a local council risk legal challenge by judicial review.
- As a public body, a local council must comply with the Human Rights Act 1998.
- The Local Audit and Accountability Bill, expected to receive Royal Assent by December 2013, proposes changes to arrangements for the audit of the annual accounts of a local council in England and to the public disclosures a council must make about its financial affairs.

Minutes

The purpose of the minutes of a meeting of the whole council, a committee (including a joint committee), or a sub-committee (including a joint sub-committee) is to record in clear terms the formal decisions or resolutions that have been made at the meeting. A local council must keep formally approved minutes of any such meeting in a minute book¹.

Those interested in a council's business may want to read the minutes of meetings. Gaining access to the minutes of a meeting of the whole council, its committees (including joint committees) and sub-committees (including joint sub-committees) is straightforward. Under the Local Government Act 1972, a local government elector in the council's area has a statutory right to inspect and copy the minutes of a meeting of the whole council, its committees (including joint committees) and sub-committees (including joint sub-committees)². However, since the introduction of the Freedom of Information Act 2000, which gives anyone a right to access information held by a local council³, the statutory right of local electors to inspect minutes under the 1972 Act is less significant. The minutes of a meeting of the whole council, its committees (including joint committees) and sub-committees (including joint sub-committees) are available to the public via its publication scheme. This is explained below.

The Freedom of Information Act 2000

A local council has two important statutory obligations under the Freedom of Information Act 2000. A council must publish certain information and also respond to requests for information held by it. Both of these obligations are explained below.

Publication schemes

Put simply, a council's publication scheme includes information that the council is expected to routinely and proactively make available to the public. A local council must have a publication scheme, the purpose of which is to make certain information about the council available at minimum cost and inconvenience. As authorised by the 2000 Act, the Information Commissioner has created a model publication scheme for all local councils (and other local authorities) to use⁴. Local councils do not have to use the model publication scheme but a bespoke publication scheme must be approved by the Information Commissioner⁵.

This book assumes that a council is using the model publication scheme which requires that seven classes of information must be made available to the public. The seven classes in the table below are in bold.

<p>1. Who makes up the council and their roles <i>Organisational information, structures, locations and contacts.</i></p> <p>e.g. Names of councillors, roles e.g. Chairman of the council, Chairmen of committees of the council Council structure, i.e. confirming existence and purpose of committees and sub-committees of the council Staffing structure Locations and accessibility details Staff contact details</p>
<p>2. What the council spends and how it spends it <i>Financial information relating to projected and actual income and expenditure, procurement, contracts and financial audit.</i></p> <p>e.g. Annual return form Annual Statutory report by auditor Precept request Councillors' allowances and/or expenses Loans sanctioned Financial Standing Orders and Regulations</p>
<p>3. The council's priorities and its progress <i>Strategies and plans, performance indicators, audits, inspections and reviews.</i></p> <p>e.g. Parish Plan Annual Report to parish or community meeting Best Value Performance Plan Best Value Inspection reports Policy statements issued by council Responses to consultation papers</p>

<p>4. How the council makes decisions</p> <p><i>Decision-making processes and records of decisions.</i></p>
<p>e.g.</p> <p>Timetable of meetings</p> <p>Agendas</p> <p>Responses to planning applications</p> <p>Procedural Standing Orders</p> <p>Councillors' Register of Interests</p> <p>Minutes of council and council sub-committee meetings</p>
<p>5. The council's policies and procedures</p> <p><i>Current written protocols, policies and procedures for delivering the council's services and responsibilities.</i></p>
<p>e.g.</p> <p>Policies and procedures for the conduct of council business</p> <p>Policies and procedures for the provision of services</p> <p>Policies and procedures about the employment of staff</p>
<p>6. Lists and Registers</p> <p><i>Any information that the council has to hold in publicly available registers.</i></p>
<p>e.g.</p> <p>Any publicly available register or list</p> <p>List of assets</p>

7. The Council's services

***Information about the council's services, details of the council's charges and/or fees.
Leaflets, newsletters and other information for the public and/or businesses.***

e.g.

Information about the services concerning, for example:

Allotments

Burial grounds and closed churchyards

Community centres and village halls

Parks and playing fields

Highways

Byelaws

Seating, litter bins, clocks and lighting

Bus shelters

Markets

Public conveniences which the council offers

Leaflets, newsletters produced for the public and businesses

Details of the services for which the council charges, together with details of its charges and/or fees

The seven classes of information in the table above do not include:

- information that the council is prevented from disclosing by law;
- information exempt under the Freedom of Information Act 2000 (see below);
- information in draft form.

The table above demonstrates the type of information that a council may provide for each mandatory class of information. The examples are just that, they do not reflect a minimum statutory requirement and they are not a definitive list. If a council does not hold the type of information in one of the classes, it will not be in breach of any statutory obligations under the 2000 Act.

Ensuring that the public can access the information available via the council's publication scheme is vital. A council's publication scheme must confirm how the information in the seven classes can be accessed and if there is a charge. A council is expected to keep such charges to a minimum. So in addition to the publication scheme, a council must provide a guide which

provides the information below:

- whether some or all of the information in its publication scheme is available online free of charge if the council has a website;
- the means of access to information if it is impractical for the council to provide information on its website or if a person wants access to the information by another means or the council does not have a website;
- staff contact details for arrangements to access information to be viewed in person;
- the availability of information by other means or formats because of a person's disability;
- the availability of information in the language in which it is held or in such other language that is required by the Equality Act 2010. The Welsh Language Act 1993 established the principle that, in the conduct of public business and the administration of justice in Wales, the Welsh and English languages should be treated on a basis of equality;
- the council's charges for actual disbursements incurred in making information available other than free of charge via its website e.g.:
 - photocopying charges (e.g. 10p per sheet)
 - postage and packaging and
 - the costs directly incurred as a result of viewing information
- if payment is due before the information is provided.

The council's guide to information is not subject to a prescribed model form. It is not necessary for it to refer to the council's publication scheme or to "classes" of information.

If a local council has a website, its publication scheme and the guide to information should be made available on the website. If a council does not have a website, its publication scheme and the guide to information should be easily accessible, e.g. at the council's main office or on the council's notice boards in the area.

Freedom of Information Act 2000 requests

Information that is not available via a council's publication scheme can still be requested and should be made available unless there are statutory grounds to withhold it. Under the 2000 Act, anyone (including an individual, an incorporated body such as a newspaper company or an unincorporated body such as a local campaign group) has a statutory right to submit a written request for information held by a local council. However a requester must provide their real name and an address for correspondence which can be an email address. A council has no right to ask the requester to explain the reason for the request and the requester has no obligation to

provide such explanation although this might be implicit.

The 2000 Act covers all information held by a council which is in a recorded form. This is not limited to official council documents such as agendas and minutes for meetings. It also includes, for example, emails, handwritten notes, recordings of telephone conversations, photos, plans, maps, audio, video or CCTV recordings, correspondence and other documents received and held by the council. It includes information held by a council even if it is not held on its premises, for example, records in off-site storage or information processed by a contractor or agent of the council. Staff and individual councillors, as representatives of the council, may hold information about the council at home or in their computers.

A person's right of access to information held by a local council is subject to 23 exemptions. There are two general categories of exemptions. The first category of exemption is qualified, thus placing a duty on the council to consider whether disclosure is required in the public interest (a qualified exemption). The second category of exemption is absolute and a council has no duty to consider the public interest (an absolute exemption). A list and explanation of all the exemptions in the 2000 Act are outside the scope of this book. The exemptions highlighted below demonstrate why it is important for a council to identify the statutory exemptions it may rely on.

Information that carries an absolute exemption for which the council has no duty to consider the public interest includes:

- information that is accessible to applicants by other means⁶, for example, if the information requested is already available via the council's publication scheme, a council will not then be required to provide the information in response to an individual request;
- if an individual has requested information about himself⁷. His statutory right of access to information about him is under the Data Protection Act 1998⁸;
- information provided in confidence⁹.

Information that carries a qualified exemption for which the council has a duty to consider whether disclosure is in the public interest includes:

- information intended for future publication by the council or by another person¹⁰;
- information which may endanger the physical or mental health of an individual or his safety¹¹;
- information relating to another individual¹²;
- information which has the protection of legal professional privilege¹³; and

- information which may prejudice the commercial interests of a person (including the council)¹⁴.

A council is not required to comply with a person's request for information if it is vexatious or if it is a request for information that repeats an identical or similar request for information made by the same person which the council has recently complied with¹⁵. A council has no duty to comply with a request for information if its estimated costs for complying would exceed £450 in staff time¹⁶. The statutory limit of £450 is based on 18 hours of staff time (chargeable at a statutory rate of £25 per hour) in determining if the information is held, locating the information or document(s) which may contain the information, retrieving the information or document(s) which may contain the information, and editing or extracting the releasable information from a document. The estimated costs for staff time cannot include checking that a request for information is compliant, locating information due to poor records management practice or considering the application of exemptions or public interest tests. Cost estimates for staff time cannot include obtaining legal advice or authorisation to send out information, calculating any fee to be charged, or providing advice and assistance to the applicant¹⁷, for example in determining precisely what information they are seeking. Most requests for information made to local councils will not exceed the estimated costs limit.

The Act imposes a duty on local councils to provide advice and assistance to applicants¹⁸. For example this may apply where the council does not hold the information requested but does know where it is held. Equally this duty might be applicable where a request exceeds the cost limits and the council can help to refine the request to bring the costs within the limits.

Data Protection Act 1998

A local council routinely holds and uses information about individuals in the performance of its statutory functions, powers and contractual obligations. For the purposes of the Data Protection Act 1998, a council is deemed a "data controller"¹⁹ and thus has statutory obligations in this capacity. A council will hold and use "personal data"²⁰ held electronically or in paper form in a manual filing system that can be retrieved. Personal data is information from which an individual can be identified or which concerns an individual. For example, a council holds or uses data about local government electors, its staff, councillors, contractors and suppliers. As a data controller, a council must notify the Information Commissioner's Office (ICO) that it is a data controller. Notification is a statutory requirement and failure to notify is a criminal offence²¹. As a last resort the Information Commissioner will prosecute where there is a refusal to notify.

As a data controller, a council has a duty to process personal data fairly and lawfully and in accordance with the data protection principles²² in the 1998 Act. A full description and interpretation of the statutory data protection principles is outside the scope of this book.

In summary, the obligations in the 1998 Act and the statutory data protection principles require a council to:

- use personal data only for the performance of its contracts, and statutory powers and functions or with the consent of the individual;
- keep personal data secure. For example, paper records which contain personal information should be secured and locked, access to personal information held electronically should be restricted to those who need it, personal information held electronically that would cause damage or distress if it were lost or stolen should be encrypted;
- ensure that personal data it uses is relevant and up to date; and
- hold only as much personal data as it needs, and only for as long as it needs it.

Under the 1998 Act, an individual who submits a written request to the council is entitled to be:

- told whether his personal data is being held or used;
- given a description of the personal data, the reasons it is being held or used, and if it has been shared with others;
- given a copy of the information comprising the data; and
- given details of the source of the data (where this is available)²³.

This statutory right is known as a subject access request. A council is entitled to ask the person who has submitted a subject access request to provide evidence to confirm his identity, if this is reasonably required. A council may also charge up to £10 for handling a subject access request²⁴.

A council must apply the statutory data protection principles to its everyday internal administration, external communications and what is necessary for the performance of its statutory powers, functions and contracts. For example, agendas for and minutes of council meetings or a council's annual accounts are public documents and should where possible avoid the inclusion of personal data. Similarly, the agenda and minutes of the committee considering a complaint against the council should not identify the name or contact details of the complainant. Equally, the agenda and minutes of a meeting of a staffing sub-committee should not identify the name or other information about a member of staff. Chapters 10 and 11 consider the impact of the 1998 Act in the preparation of agendas and minutes.

An individual councillor may, separately from his council, be deemed a data controller²⁵ with obligations under the 1998 Act as described above. A councillor will be a data controller if he holds in electronic form and uses personal data independently of his council, rather than as a representative of the council. For example he may be handling complaints or responding to issues raised by the local residents in his ward. Similarly, a councillor may hold and use personal data in the course of his campaign for election to the local council or when campaigning for a political party.

Council accounts and financial management, annual accounts and external audit

In England, the Audit Commission Act 1998 and subsequent regulations²⁶ govern the accounting and auditing practices and financial management of a council. In Wales, a council is governed by the Public Audit (Wales) Act 2004 and subsequent regulations²⁷.

The term “proper practices” used in this book refers to how local councils apply the accounting and audit regulations which councils in England and Wales are subject to. The proper practices have statutory weight and effect²⁸. For councils in England, the source of proper practices is the free publication ‘Governance and Accountability in Local Councils - A Practitioners’ Guide (England)’, issued by the Joint Practitioners Advisory Group (JPAG) and published jointly by the National Association of Local Councils (NALC) and the Society for Local Council Clerks (SLCC). In Wales, the source of proper practices is the free publication ‘Governance and Accountability for local councils in Wales - a Practitioners’ Guide’, issued by the Wales Audit Office and published jointly by One Voice Wales and SLCC.

A local council’s financial year begins on 1 April and ends on 31 March in the following year. Legislation requires a council to prepare accounting statements for each financial year, which must be externally audited²⁹. Proper practices provide for a council to prepare its accounting statements in the form required by an annual return which summarises the accounts and includes an annual governance statement. The external audit of a council’s annual return provides a professional audit of a council’s annual income and expenditure, or receipts and payments, and a review of the annual governance statement by someone who is independent to the council. The statutory role of the external auditor is to provide an independent opinion on the council’s annual accounting statements. The auditor will also review and, if necessary, report on aspects of a council’s arrangements to ensure the proper conduct of its financial affairs.

A council in England is responsible for ensuring that its financial management is adequate and

effective. It must have a sound system of internal control that facilitates the performance of its statutory functions and powers and includes arrangements for internal audit and the management of risk. A council in England must conduct a review of the effectiveness of its system of internal control at least once a year. The findings of the council's annual review of its system for internal control must be considered by full council. Following such a review, and having considered the annual report from internal audit, the council must approve an annual governance statement, prepared in accordance with proper practices in relation to internal control³⁰. In Wales, a council must maintain an adequate and effective system of internal audit of its accounting records and of its system of internal control in accordance with the proper internal audit practices³¹. The system of internal control for all local councils includes the appointment of an internal auditor by the council and responding to matters reported to the council by the internal auditor.

Statutory responsibility for the handling of all financial transactions rests with the council as a whole. The proper practices require a council to identify individuals who have responsibility for matters such as:

- securely managing money;
- identifying internal controls that, for example, manage risk, error and fraud; and
- supervision measures.

The individuals can be the Responsible Financial Officer (RFO), the Proper Officer/Clerk, other nominated staff or councillors.

Subject to instructions by the council, its RFO must determine the council's accounting records, including the form of accounts and supporting accounting records and accounting control systems. In addition, the RFO must ensure that the accounting control systems determined by him are observed and that the council's accounting records are kept up to date. Councils may delegate the role of safeguarding the use of public funds to individuals, for example to the Clerk or the RFO, but the legal responsibility always remains with the council and its councillors.

Dependent on the level of a council's income or expenditure for each financial year ending on 31 March, the council must prepare a record of receipts and payments, or a statement of accounts, or an income and expenditure account and a statement of balances. These must be in accordance with, and in the form specified in the Annual Return required by, proper practices.

By 30 June of each year, it is the council's duty to consider and formally approve its record of

receipts and payments, or as the case may be, a statement of accounts, or its income and expenditure account and statement of balances³². Before the council can do this, its RFO should sign to certify that the council's record of receipts and payments properly presents, or as the case may be, a statement of income and expenditure fairly presents the council's position as at the previous 31 March³³.

It is only after the council has formally approved its annual accounting statements and annual governance statement that the annual return can be submitted to the external auditor. In England, the Audit Commission is responsible for the appointment of a council's external auditor. In Wales, it is the Auditor General for Wales. The council's external auditor is the person responsible for setting the date of the commencement of the audit on or after which local government electors have certain rights.

Local government electors in the council's area and the wider public have statutory rights in respect of a council's annual accounting statements and external audit. These rights are summarised below.

Local government electors' rights	Explanation
Inspect and make copies of the statement of accounts and auditors' reports	When the council prepares the accounts it must advertise that they are available for inspection. Members of the public can obtain copies of the accounts, inspect and make a copy of any report the auditor makes to the council.
Inspect the accounts and supporting documents	When the council has advertised the availability of its accounts for inspection, interested persons can inspect the accounts and all books, deeds, contracts, bills, vouchers and receipts relating to them. They may not inspect documents which include information about an individual or information that is not relevant to the accounts.
Ask questions at external audit	Once the external audit begins, interested persons can ask the auditor questions about the accounts for the year they are auditing.
Object to the accounts or items within the accounts	Local government electors may object to the accounts or items within them. There are two grounds for an objection: <ul style="list-style-type: none"> • that an item of account is unlawful; or • there is something in the accounts that the auditor should tell the public about in a public interest report.

By 30 September in each year, a council must publish (by means other than a reference to them in the minutes of the relevant council meeting) its annual accounting statements together with the external auditor's certificate that he has completed his audit and any opinion or report he has given in relation to the council's annual accounting statements.

Complaints against a council

Local councils levy a precept on the local government electors in their area, and spend it in the performance of their statutory powers and functions. Councils should provide a means of seeking redress about any complaints about a local council's decisions and activities. A formal complaints procedure facilitates this. A complaints procedure is a positive tool for a council. It can resolve a complainant's concerns, restore confidence and may in some cases reduce the risk of legal action against the council.

Ideally the way in which a council handles a complaint should:

- be unbiased and fair;
- be time-efficient;
- accommodate a complainant who wants his complaint to be dealt with in confidence;
- include an opportunity for the complainant to appeal against the council's determination of the complaint. Unless a complaint concerns the conduct of staff, there is no reason why the council cannot delegate responsibility for the handling of complaints to staff.
- be accessible (e.g. a complaints form, and details of who to submit the complaint to and an explanation of the complaints process should be available via the council's publication scheme);
- accommodate remedial action by the council if it upholds the complaint. In Wales, a local council has a specific power to make a payment to, or provide some other benefit to, a person who has or may have been adversely affected by an act or omission of a council which has resulted from its maladministration³⁴. In England, a council (except a council that is eligible to exercise the general power of competence) does not have similar specific statutory powers.

In England, an individual may complain to the Local Government Ombudsman about a principal authority if he has suffered an injustice because of the way in which a decision has been made, the way a service has been delivered, or if a service has not been delivered at all. The Ombudsman cannot challenge the merits of a decision taken by the principal authority. The submission of a complaint to the Ombudsman is not the same as taking legal action against a

local authority. The Ombudsman cannot investigate complaints about which the subject gives the complainant a right to take legal action or to exercise a right of appeal to the Secretary of State unless there are particular circumstances that make it unreasonable for the complainant to do so.

Generally the Ombudsman does not have statutory responsibility for the handling of complaints made by a member of the public against a local council. Exceptions to this general rule might include where (i) a local council is working jointly with a principal authority through a joint committee which includes representatives of the principal authority³⁵ and (ii) where a local council is exercising the functions of a principal authority³⁶. Joint committees are explained in Chapter 5. If a member of the public complains to the Ombudsman about a local authority, the Ombudsman must be satisfied that the local authority has had a reasonable opportunity to investigate and respond to the complaint, using any internal process specific to the subject complained about and/or the authority's formal complaints procedure.

Once a complaint is investigated by the Ombudsman, he will send a report of the findings of his investigation to the complainant and the principal authority or other person who is the subject of the complaint (e.g. a local council working jointly with the principal authority). Unless directed otherwise, the principal authority must make the report available for inspection by the public at its offices free of charge for a period of three weeks. If the Ombudsman finds that the complainant has suffered injustice due to the principal authority's maladministration, the principal authority must, within three months of the report, confirm to the Ombudsman what remedial action it will take. The Ombudsman has statutory powers to follow up the actions to be taken by a local authority.

In Wales, the Public Services Ombudsman is responsible for dealing with an individual's complaint about a local council and a principal authority. The Public Services Ombudsman's statutory responsibilities and powers are very similar to those of the Ombudsman in England described above. Once a complaint about a local council is investigated by the Public Services Ombudsman, he will send a report of the findings of his investigation to the complainant and to the local council. A local council must make the Public Services Ombudsman's report available for inspection by the public at its offices free of charge and on its website, if it has one, for a period of three weeks (having given prior notice in a local paper of the opportunity). If the Ombudsman's report concludes that the complainant suffered injustice or hardship due to the local council's maladministration, the local council must, within one month of the Ombudsman's report, confirm to the Ombudsman what remedial action it will take. The Public Services Ombudsman is also responsible for handling complaints that councillors of local councils (and

other local authorities) in Wales have broken their council's code of conduct. Chapter 2 provides more information on this.

Legal action against a council

Unsurprisingly, a local council is not immune to the risk of legal action being taken against it. For example, a council may be at risk of legal action for breach of contract, negligence, unfair dismissal, non-compliance with statutory duties in the Employment Rights Act 1996, Equality Act 2010 or the Health and Safety at Work etc. Act 1974. Additionally, a specific type of legal proceedings known as judicial review can be taken against local councils (and other local authorities) because they are public bodies. The administrative division of the High Court has responsibility for determining judicial review claims.

Generally speaking, judicial review proceedings tend to examine the way in which a decision has been made rather than considering the merits of the decision itself. A judicial review claim may concern a local council's internal procedures or its consideration of an issue (e.g. at a meeting) in the lead-up to the resolution or actions being challenged. The court may consider whether the resolutions or actions of the council:

- failed to take into account relevant considerations or were made on the basis of irrelevant considerations;
- failed to follow relevant internal procedures;
- were outside the scope of the council's statutory powers; or
- were so unreasonable that no reasonable council would have acted in that way.

To reduce the risk of a judicial review claim, councils should ensure that their decisions are informed, follow internal procedures and are within their statutory powers.

As public authorities, local councils (and other local authorities) are open to legal claims that they have breached a person's rights pursuant to the European Convention on Human Rights and Fundamental Freedoms, as ratified by the Human Rights Act 1998. All local authorities have an obligation to treat people in accordance with their Convention rights, which are enforceable in courts in England and Wales. Examples of human rights are:

article 8 — the right to respect for private and family life;

article 9 — the right to freedom of thought, conscience and religion;

article 10 — the right to freedom of expression; and

article 11 — the right to freedom of association.

Most decisions made by local councils are unlikely to conflict with human rights. However, councils cannot afford to be complacent. Convention rights may be relevant to the range of activities undertaken by local councils (e.g. the holding of meetings and provision of recreational facilities), and a claim for infringement of those rights can be included in a judicial review claim.

The insurance cover taken out by a council should include cover for legal expenses to defend legal actions. If a council receives notice of legal action, or a threat of it, it should notify its insurers without delay otherwise this may vitiate the policy. It is common for a council's insurance cover to exclude legal expenses for defending a judicial review claim.

¹ Local Government Act 1972, schedule 12, paragraphs 41 and 44

² Local Government Act 1972, s.228(1) and schedule 12, paragraphs 41 and 44

³ Freedom of Information Act 2000, s.1

⁴ Freedom of Information Act 2000, s.20

⁵ Freedom of Information Act 2000, s.19

⁶ Freedom of Information Act 2000, s.21

⁷ Freedom of Information Act 2000, s.40(1)

⁸ Data Protection Act 1998, s.7

⁹ Freedom of Information Act 2000, s.41

¹⁰ Freedom of Information Act 2000, s.22

¹¹ Freedom of Information Act 2000, s.38

¹² Freedom of Information Act 2000, s.40(1)

¹³ Freedom of Information Act 2000, s.42

¹⁴ Freedom of Information Act 2000, s.43

¹⁵ Freedom of Information Act 2000, s.14

¹⁶ Freedom of Information Act 2000, s.12, The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004/3244

¹⁷ Freedom of Information Act 2000, s.16

¹⁸ Freedom of Information Act 2000, s.16

¹⁹ Data Protection Act 1998, s.1(1)

²⁰ Data Protection Act 1998, s.1(1)

²¹ Data Protection Act 1998, ss.17 and 21

²² Data Protection Act 1998, schedules 1, 2 and 3

²³ Data Protection Act 1998, s.7

²⁴ Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000/191, Regulation 3

²⁵ Data Protection Act 1998, s.1(1)

²⁶ Accounts and Audit (England) Regulations 2011/817

²⁷ Accounts and Audit (Wales) Regulations 2005/368

-
- ²⁸ CLG Guidance Circular 03/2006 and, in Wales, the Guidance on the Accounts and Audit (Wales) Regulations 2005 issued in April 2005
- ²⁹ Audit Commission Act 1998, s.2 and, in Wales, the Public Audit (Wales) Act 2004, s.12
- ³⁰ Accounts and Audit (England) Regulations 2011/817, Regulation 4
- ³¹ Accounts and Audit (Wales) Regulations 2005/368, Regulation 6
- ³² Accounts and Audit (England) Regulations 2011/817, Regulation 13 and, in Wales, Accounts and Audit (Wales) Regulations 2005/368, Regulation 9
- ³³ Accounts and Audit (England) Regulations 2011/817, Regulation 13(2) and, in Wales, the Accounts and Audit (Wales) Regulations 2005/368, Regulation 8B(1)
- ³⁴ Local Government Act 2000, s.92
- ³⁵ Local Government Act 1974, s.25(4)(b)
- ³⁶ Local Government Act 1974, s.25(7)

5. Working with others

Key points

- **Financial and legal due diligence and written agreements are vital for all partnership working.**
- **Councils should be equipped to deal with media interest in their affairs.**
- **Councillors can have other roles such as the trustee of a charity, the employee or director of a company or managing other organisations but these roles cannot overlap.**
- **Councils have different methods of communicating with local residents e.g. surgeries, surveys and public participation in meetings, etc.**

Every local council has different priorities. Legislation permits local councils to work with others within a statutory framework.

Working with other local authorities

Legislation permits a local council to work with other local authorities in different ways. The different methods of joint working will be dependent on a local council's reason(s) for wanting to work with another local authority. A summary of a local council's reason(s) for working with another local authority and a guide to the relevant statutory framework are below.

Financial support

A local council has specific powers to contribute to the expenditure incurred by another local authority in the exercise of concurrent statutory powers.¹ A local council may contribute to the expenditure incurred by another local council or another type of local authority in the exercise of concurrent statutory powers that relate, for example, to the provision of a community centre² or a theatre³. Other powers permit a local council to contribute to the expenditure incurred by another local authority in the exercise of certain powers. For example, a local council may make a grant to another local authority to provide recreational or sports facilities in or outside the area of the other local authority⁴. A local council may contribute to the expenses of another local authority in providing or maintaining a cemetery that residents in the area of a local council can be buried in⁵. A local council may contribute to the expenses of another local authority in holding a summer fete.⁶

There is less scope for a local council to contribute to the expenses of another type of local authority when the local authority is performing statutory powers and functions that are not conferred on a local council e.g. in relation to maintenance of highways, provision of social services, housing and education or traffic regulation. In England, a council eligible to exercise the general power of competence⁷ enjoys more freedom to give financial assistance to another type of local authority unless a statutory prohibition, restriction or limitation applies. A council may use the general power of competence to make a loan to another local authority or to make a contribution to the expenses incurred by a local authority in exercising statutory powers that are not available to a local council (e.g. in relation to libraries) or in discharging functions that are not a statutory responsibility of a local council (e.g. in relation to the provision of housing, social services or education). A local council is free to impose conditions on the financial assistance (i.e. grant or loan) that it wants to give to another local council or different type of local authority.

If a council wants to make a grant or loan to another local authority, it must agree in writing the conditions of the grant or the terms of the loan. A council will need a solicitor to help it draw up a loan agreement.

Delegation

A local council may, except when prohibited by legislation, delegate responsibility for the performance of a statutory power or statutory function of the council to another local authority⁸.

Legislation requires certain statutory functions of a local council to be discharged only by the council itself. This means, for example, that a local council cannot delegate responsibility for:

- levying or issuing a precept⁹;
- borrowing money¹⁰;
- approving the council's annual accounts¹¹;
- considering an auditor's report made in the public interest¹²;
- confirming (by resolution) that it has satisfied the statutory criteria to exercise the power of general competence (England only);¹³ or
- adopting or revising the council's code of conduct¹⁴.

However where no statutory prohibition applies, responsibility for the performance of the statutory functions and powers of a local council may be delegated to another local authority. The delegation of statutory responsibilities from one local council to another local council relating to, for example, the provision of parks, village halls, cemeteries or allotments is not common. Delegations by a local council to another type of local authority are also uncommon.

The effect of a delegation is that the other local authority undertakes the statutory responsibilities of a local council on its behalf. Legal responsibility for the performance of delegated statutory powers and functions of the local council remains with the delegating council. As such, a complaint about matters that have been delegated to another local authority is to be treated as a complaint against the local council, not the other authority. A delegation of its statutory responsibilities to another local authority will not prevent the local council from performing them itself, subject to the terms of the delegation agreement between the local council and the other authority¹⁵. This is also known as an agency agreement. The importance of an agency agreement should not be underestimated. An agency agreement may provide for the local authority that is acting as an agent to receive a payment for the services it is providing on behalf of the other local authority.

A delegation of the statutory responsibilities of a local council to another local authority must be decided by resolution. The other authority must also formally agree to take on the delegated

responsibilities. Subject to any statutory prohibitions, restrictions and limitations and the terms of the agency agreement between the two authorities, the other authority is free to discharge the delegated statutory responsibilities as it pleases. When a local council delegates responsibility for the performance of its statutory responsibilities to another local authority, then subject to the terms of the agency agreement, the other authority is free to decide its internal arrangements for the exercise of the power or discharge of the function. The other local authority may delegate the responsibilities to a committee and the committee may delegate its responsibilities to a sub-committee or to staff, unless otherwise directed by the authority¹⁶.

Local councils are often keen for principal authorities to delegate responsibilities for the performance of statutory functions or powers that are not otherwise conferred on them. For example, a local council has no statutory functions or powers relating to the provision of libraries, waste collection, planning, housing, highway or education services and therefore cannot undertake these activities, without a formal delegation. A local council has no statutory right to require another local authority to delegate its statutory responsibilities. Other local authorities are sometimes reluctant to delegate the performance of their statutory functions and powers to a local council because of concerns that the local council lacks the necessary capacity and resourcing. As the other local authority would remain responsible in law for the performance of its delegated statutory responsibilities, many are unwilling to risk a delegation of their statutory responsibilities to a local council.

An example of an agency agreement between a county council and a local council is below.

<p>AGREEMENT DATED 1st day of MARCH 2014</p> <p>BETWEEN</p> <p>DERBYSHIRE COUNTY COUNCIL ("the County Council") of Town Hall, Broughton Street, Derby and</p> <p>SUTTON PARISH COUNCIL ("the Parish Council") of 24 Mayflower Road, Sutton, Derbyshire</p> <p>WHEREAS:</p> <p>(1) By virtue of section 101 of the Local Government Act 1972 ("the 1972 Act") the Parish Council may exercise the Function of operating the library at The Civic Centre, St.</p>

Peter's Way, Sutton, Derbyshire ("the Function") subject to the provisions of this agreement.

- (2) The County Council and the Parish Council wish to record the arrangements that exist between them.

NOW IT IS HEREBY AGREED AS FOLLOWS:-

1. Functions

1.1. Subject to the provisions of this Agreement the Parish Council shall discharge the Function and the County Council shall make a yearly contribution of £6000 the first instalment to be paid 30 days after the commencement date of this agreement and subsequent yearly contributions to be paid on the anniversary of the commencement date of this agreement.

1.2. The Parish Council shall discharge the Function with proper care and skill.

1.3. In the event of the Parish Council failing to exercise the Function with proper care and skill, the County Council shall serve a written notice on the Parish Council giving details of the failure and either:

- requiring that any breach of the Parish Council's obligations under this Agreement which is capable of remedy is remedied within two calendar months or such reduced notice period as the County Council shall reasonably allow where the failure to exercise the Function in the reasonable opinion of the County Council requires urgent redress; or
- where any breach of this Agreement on the part of the Parish Council is incapable of remedy, specifying steps to be taken by the Parish Council to improve future performance within two calendar months or such reduced notice period as the County Council shall reasonably allow where the failure to exercise the Function in the reasonable opinion of the County Council requires urgent redress; or
- where any breach of this Agreement on the part of the Parish Council is incapable of remedy and is fundamental in nature, give notice to the Parish Council terminating some or all of the Functions undertaken by the Parish

Council under this Agreement.

1.4. Nothing in this Agreement shall prevent the County Council from exercising the Function or a part of the Function at its own expense but prior to exercising the Function or part of the Function the County Council will consult the Parish Council and will consider any representations made and will not thereafter exercise the Function or a part of the Function except where it is required to do so by law (by virtue of section 101(1B) of the 1972 Act or otherwise) or where, in the reasonable opinion of the County Council:

- 1.4.1. there is an emergency; or
- 1.4.2. there has been a failure on the part of the Parish Council to comply with a written notice served in accordance with clause 1.3 of this Agreement within the period specified in that notice.

2. Variation

2.1. The County Council and the Parish Council may vary this Agreement to reflect:

- 2.1.1. new legislation;
- 2.1.2. operational requirements;
- 2.1.3. financial requirements; or
- 2.1.4. any other terms they may agree.

Any variation will only have effect if in writing and signed by an authorised signatory of each party

2.2. Where the Parish Council fails to comply with a notice issued pursuant to clause 1.3 in relation to the exercise of any Function, the delegation of the Function or part of the Function will be treated as terminated from the date the notice expires, together with the liability upon the County Council to make any further payment in relation thereto.

2.3. The County Council shall not be liable to make any payments to the Parish Council in respect of the Function or a part of the Function when it is being carried out by the County Council in accordance with clause 1.4 of this Agreement save that the

County Council shall remain liable to the Parish Council for any payments due to the Parish Council prior to the County Council taking over that Function or part of the Function.

2.4. The County Council and the Parish Council agree that the County Council shall be under no obligation to reimburse the Parish Council for any expense incurred by the Parish Council in excess of the Payment in accordance with clause 1.1 of this agreement but this shall not prevent the County Council from making payment to the Parish Council in respect of unexpected or one-off items of expenditure entirely at the County Council's discretion.

2.5. The Parish Council shall make available upon request to any authorised officer of the County Council and the County Council's auditor at all reasonable times any documents and/or information relating to the exercise of the Function and the Payments Specification and maintain and make available as aforesaid such other records and/or information as the County Council and/or the County Council's auditor may from time to time reasonably require.

3. Term and Termination

This Agreement shall commence on 1st April 2014 and, unless terminated in accordance with clause 1 above, shall continue until it is determined by either party giving not less than six months' notice in writing to expire on 31st March in any year.

4. Prevalence

This agreement replaces all previous agreements between the County Council and the Parish Council in relation to the Function. Should any dispute arise, this agreement shall prevail over any previous arrangements or agreements.

5. Dispute Resolution

5.1. Should any dispute arise that cannot be resolved between the County Council and the Parish Council, a meeting shall be held between the Monitoring Officer, an elected councillor of the County Council, an elected councillor of the Parish Council and the Parish Clerk in order to resolve the issue in good faith.

5.2. In the event that agreement cannot be reached, the parties shall jointly instruct an arbitrator in accordance with section 16(3) of the Arbitration Act 1996 not later than 28 days after service of a request in writing by either party to do so. In the event that the parties cannot agree on the identity of an arbitrator, the arbitrator shall be appointed by the Chartered Institute of Arbitrators. The arbitrator will review the decision in good faith taking into account the arguments presented by both parties.

5.3. The decision of the arbitrator on any matter shall be final and both parties agree to be bound by any such decision.

5.4. Liability for the costs of the arbitration shall be determined by the arbitrator following consideration of the arguments presented by both parties.

6. The Contracts (Rights of Third Parties) Act

No person who is not a party to this Agreement shall have any right to enforce any term of the Agreement which confers a benefit on him expressly or by implication, without the prior agreement in writing by both the County Council and Parish Council. This clause does not affect any right or remedy of any person which exists or is available otherwise than under that Act, and does not apply to the Crown.

7. Governing Law

This Agreement shall be governed by and interpreted in accordance with the law of England and Wales and the County Council and Parish Council submit to the jurisdiction of the courts of England and Wales. Section 101 of the 1972 Act shall apply to this Agreement unless any of the matters set out in that section are modified by this Agreement.

8. Service of Notices

Any notice required to be served by this Agreement shall be properly served (i) on the County Council if it is sent by recorded delivery and sent to the Head of Legal Services for the County Council at Town Hall, Broughton Street, Derby and (ii) on the Parish Council if it is sent by recorded delivery and sent to the Clerk of the Parish Council at 24 Mayflower Road,

Sutton, Derbyshire.

The Common Seal of **THE**)
COUNTY COUNCIL was hereunto)
affixed in the presence of:-)

.....
Head of Legal Services

The Common Seal of **THE**)
PARISH COUNCIL was hereunto)
affixed in the presence of:-)

.....
Councillor Ian Brown

and

.....
Councillor Katy Williams

SCHEDULE

Conditions and restrictions affecting delegation

1. The Parish Council may delegate the exercise of the Function to a member of its staff who possesses a qualification approved by the Chartered Institute of Library and Information Professionals.
2. The Parish Council shall confirm and ensure at all times that its librarians, library assistants, officers and volunteers involved in the Function have successfully completed an accredited training course in librarianship or attended the County Council's Library Basic Training and Induction.
3. The Parish Council shall ensure that the library is open to the public for at least 50

hours per week including Saturday but excluding Sunday.

4. The Parish Council shall ensure at all times that the library equipment is properly maintained and all relevant tests (e.g. Portable Appliance Tests) are undertaken in accordance with legislation.
5. All library equipment and the stock of books, magazines, CDs and DVDs remain the property of the County Council at all times and any item requested by the County Council must be supplied to it within 7 working days, save for an item which is loaned to a member of the library which must be supplied within 10 working days of the return of the item.
6. Subject to availability and annual review, the County Council shall provide each year the Parish Council with new loan items from a list supplied by the Parish Council to a maximum total cost of £1000 per year.
7. The Parish Council's exercise of the Function is subject to the Transfer of Undertakings (Protection of Employment) Regulations 2006.

Joint working

Unless prohibited by legislation, a local council and another local authority may jointly exercise concurrent statutory powers. If local authorities are jointly discharging concurrent functions, they must work within the statutory framework that governs this. One method requires the authorities to appoint a joint committee consisting of councillors (or as the case may be non-councillors) from each authority. The other method requires one local authority to delegate its statutory responsibilities to a staff member of the other local authority¹⁷.

With the joint committee model, the authorities must each formally agree how many councillors each authority will appoint to the committee and their term of office¹⁸. Both authorities must also decide what responsibilities the joint committee will have and thus agree the terms of reference for the joint committee. Unless otherwise directed by the appointing bodies, a joint committee may delegate its responsibilities to a joint sub-committee and unless the appointing bodies for the joint committee or the joint committee themselves direct otherwise, the joint sub-

committee may delegate its responsibilities to a staff member of one of the authorities¹⁹. Both local authorities must agree from the outset how they will share the expenses incurred by the joint committee²⁰. For example the expenses incurred by the joint committee may be shared by each authority 50:50 or 70:30 etc. If the authorities cannot agree on how the expenses of their joint committee will be met between them, the proportion of the expenses incurred by the joint committee payable by each of the authorities will be decided by a third party²¹. Arbitration by a third party is undesirable; it is important for the local authorities working together to agree this from the outset.

A joint committee represents two or more authorities. It is not in itself a legal entity and therefore cannot own property. Property in its control or management may be owned either by one of the local authorities or, though uncommon, jointly owned by both of them.

The exercise of a statutory function by two or more local councils confers joint legal responsibility on the two councils. However, if the other local authority with whom a local council is jointly exercising a statutory power is a local authority with executive arrangements within the meaning of Part II of the Local Government Act 2000 (i.e. a principal authority), and the function being jointly shared is or becomes the legal responsibility of the executive of that principal authority, then the joint working must cease²².

In England, the Local Government Ombudsman has powers²³ to deal with complaints against a local council if it is jointly working with a principal authority through a joint committee or where the local council is exercising the functions of a principal authority²⁴. See Chapter 4 for more information.

Working with voluntary organisations

Legislation provides different ways for a local council to work with or support voluntary organisations. Local bodies e.g. a local history group, pressure or campaign group, sports club, residents association, conservation group, an amateur dramatics society or an allotment holders society, may seek financial assistance or other support from a council. If a local council wants to work with a voluntary organisation in a particular way, it must always check if it has statutory powers to do so and what activities are permitted. For example, a local council has a specific statutory power to grant or loan money to a voluntary organisation if it is providing sports or recreational facilities in or outside the council's area²⁵. Using another example, a council may want to lease²⁶ or licence its premises to a voluntary organisation. In England, an eligible council with the general power of competence enjoys more freedom if it wants to work with or give

financial assistance to a voluntary organisation where there is no statutory prohibition, restriction or limitation.

Sometimes the statutory powers that permit a council to work with a voluntary organisation define a voluntary organisation as a body whose activities are carried on otherwise than for profit. In such context, there is no statutory definition of “otherwise than for profit”. However it is generally accepted that a not-for-profit organisation is a type of organisation that does not earn profits for its owners. All of the money earned by or donated to a not-for-profit organisation is used to pursue the organisation's objectives. Typically not-for-profit organisations are charities or other types of public service organisations. Generally, not-for-profit organisations can apply for tax exempt status so that the organisation is not subject to most forms of taxation. In this respect the defining feature of a not-for-profit organisation is likely to be what the organisation does with any profits and not (i) how it raises money or (ii) whether it generates a profit. If a council has any doubts as to the status of a voluntary organisation it should ask it to confirm if it is exempt from corporation tax or from some or all of its business rates liability. If answers to these questions are irrelevant or inconclusive, a council might want to ask the body in question why it considers itself to be “otherwise than for profit”.

Most voluntary organisations are unincorporated. They may or may not have a constitution, or any other formal rules which govern its purpose, activities and management. They may not have a business bank account. If a local council is proposing to make a grant or loan to an unincorporated body, or enter into other agreements or contracts including leases or licences, it should always use a solicitor.

Working with charities

A local council has specific powers to hold property that has been gifted to the council on charitable trust for the benefit of some or all of the residents in the council's area. A will, or conveyance, or other legal deed will appoint the council as a trustee of the property and specify the charitable purposes that the property is to be used for. A council cannot be the trustee of an ecclesiastical charity or a charity which is for the relief of poverty²⁷.

A local council may be appointed as the custodian trustee to a charity. This means that ownership of the property of a charity is vested in the council but the council has no role in the management or administration of the charity. The charity property should be listed in the council's assets register but with nil value. Responsibility for insuring the property of the charity property falls on the trustees appointed to manage the charity, not on the council if it is the

custodian trustee²⁸. A council may also be appointed as the sole trustee of a charity. This means ownership of the property of the charity is vested in the council and it is also responsible for the administration and management of the charity and is subject to charity law legislation. When a council is the custodian or sole trustee of a charity, it is the whole council that is the trustee. Individual councillors are not trustees of the charity in these situations.

As with the discharge of most statutory functions of a local council, a council may decide to delegate the discharge of its functions as trustee of a charity to one of its committees (with or without a sub-committee), staff or even to another local authority²⁹. A delegation will not alter the position that the council as a whole is still responsible in law as the trustee of the charity. Delegations to staff and to other local authorities are rare. Unless the council's duties as trustee have been delegated in this way, decisions about the charity are taken at meetings of the council or if there has been an internal delegation by meetings of a committee (with or without a sub-committee). See Chapter 6 for more information about delegations to committees and sub-committees. The convening, procedure and conduct of such meetings of a council or its committee exercising its charity trustee function, are governed by local government legislation. The meetings may however be subject to additional requirements as specified by the charity's governing document.

The councillors present at a meeting of the council or its committee with delegated responsibility to discharge the functions of a council as a charity trustee should remember that they are making decisions as the trustee of the charity not as councillors.

If a local council is the sole trustee of a charity, the accounts of the charity should be kept separate from the accounts of the council. A council should have a separate bank account if it is the custodian or sole trustee of a charity. If the council's bank account is used to pay for any expenditure on behalf of a charity (prior to recovery from the charity account), then these transactions, including any VAT, are treated as the council's own expenditure and income for the purposes of the annual accounts of the council. To simplify accounting, it is recommended that funds of the council and the funds of a charity of which the council is the custodian or sole trustee are never mixed. The reserves of the council should not include those of any charity or vice versa.

The governing document of a charity may require its trustees, who collectively manage the charity, to include representatives from a local council. A council may be asked by the charity to nominate or appoint councillor(s) or even staff as trustees. Councillors and council staff who are trustees of a charity must not confuse or allow their other roles as a councillor or council staff to

conflict with their duty to act in the interests of the charity.

A councillor who is a charity trustee must observe the council's code of conduct when he attends council meetings relating to the charity. Furthermore, a councillor in England has statutory obligations regarding the registration and disclosure of disclosable pecuniary interests, whether or not these obligations have been incorporated into the council's code of conduct. For example, if a councillor is also a charity trustee for profit or gain or a director of a charitable company, and a council meeting is making a decision about a contract for services to the charity, he will have a disclosable pecuniary interest in that matter.

If a council wants to work with a charity in a particular way, it must always check if the relevant legislation defines the term charity or type of charity and specifically what activities it permits the council to do in relation to working with or supporting the charity. A council has a specific statutory power to give limited financial assistance to a charity which does not benefit the residents of its area³⁰.

In England, a council eligible to use the general power of competence enjoys more freedom if it wants to work with or give financial assistance to a charity where there are no other statutory powers and no statutory prohibitions, restrictions or limitations. It would permit financial support being given to, for example, a local scouts association or a citizen's advice bureau which are charities.

If a council wants to make a grant or loan to a charity or enter into another contract with a charity, it will need a solicitor to help it draw up an agreement. Sometimes, it is only the trustees of the charity who have authority to enter into legal agreements on behalf of the charity.

Working with others

Businesses come in different forms such as a sole trader, partnership, company limited by guarantee (including a charitable company), company limited by shares or community interest company (CIC). A CIC, like any company, has articles of association which confirm the purpose of the company, a board of directors and usually has limited liability (which can be limited by shares). A CIC is different from other companies because its property is subject to a statutory "asset lock" to ensure that its assets and profits are retained for the CIC, or transferred to another asset-locked organisation, such as another CIC or charity. CICs are regulated by Companies House and the Office of the Regulator of Community Interest Companies.

If a councillor is connected to a company that his council is working with, for example he is a director of the company or employed by it or has shares in the company, he must observe obligations in his council's code of conduct which relate to the registration and disclosure of such interests. Chapter 2 provides more information. In England, a councillor has statutory obligations about the registration and disclosure of disclosable pecuniary interests, whether or not these obligations have been incorporated into the council's code of conduct. For example, if a councillor is also a director of a CIC and a council meeting is considering a rent increase under a lease in which the council is the landlord and the CIC is the tenant, he will have obligations arising from his disclosable pecuniary interest in the matter.

Specific statutory powers enable councils to undertake activities jointly with others. For example, a council may work jointly with anyone to encourage visitors to the area³¹. A council may work with anyone to provide entertainments in the area³². For example, a well-known high street supermarket business may work to sponsor a Big Lunch event organised by the council. Similarly, a council may work with events companies that organise large-scale annual music festivals.

In England, a council eligible to exercise the general power of competence enjoys more freedom to work with others (e.g. individuals or businesses) where statutory prohibitions, restrictions or limitations do not apply.

Sometimes local councils work with volunteers. For example, a council may use volunteers to help at a community event, for gritting local roads and paths in snow, or a communal gardening project. The essence of a true council/volunteer relationship is that the council cannot require a volunteer to undertake work for the council and the council cannot commit to providing work for the volunteer. A person who volunteers to work with a council will not be paid, except perhaps expenses.

A council will need to give a volunteer clear instructions as to what he is (and is not) authorised to do for and on behalf of the council. This information is best communicated in writing. The volunteers may also need to be informed if they are subject to certain policies of the council. A council has a statutory duty to ensure so far as reasonably practicable the health, safety and welfare at work of not only employees but also other persons, which would include volunteers³³. Volunteers who undertake activities for a council act as agents of the council. A council should notify its insurers if it uses services of volunteers in the exercise of its statutory powers.

Legal agreements, contracts and tender process

A contract is a legally binding agreement that grants rights and creates duties. It can be oral, written or partly written and partly oral or inferred from the conduct of the parties.

Loan and grant agreements, agency agreements, and other contracts have already been mentioned in this Chapter. It is likely that a local council will enter into contracts on a regular basis. It may enter into contracts with individuals and a range of different legal entities e.g. companies, charities, local authorities, unincorporated bodies. Whilst oral contracts can be legally binding, it is not advisable to rely on contractual terms that have not been put into writing.

In any event, local councils are subject to certain statutory requirements before they enter into contracts³⁴. A council may make standing orders with respect to the making of contracts, and must have standing orders with respect to contracts for the supply of goods or materials or for the execution of works. In relation to contracts for the supply of goods or materials or for the execution of works, a council must have standing orders that include provisions for securing competition and for regulating the manner in which tenders are invited. The standing orders of a council may exempt contracts for the supply of goods or materials or for the execution of works for a price below a particular figure from its tendering process if special circumstances as confirmed by standing orders permit this. e.g. the execution of emergency repair works not exceeding £5000. A council's non-compliance with its own standing orders for entering into contracts with a person will not invalidate the contract³⁵.

If a local council intends to enter into a written contract for the supply of goods or services or the provision of works, which is above a threshold value of £173,934 for services and £4,348,350 for works it will be subject to detailed statutory requirements as to the procurement process³⁶. The statutory requirements originate from an EU directive aimed at safeguarding the free movement of goods, the freedom of establishment and the freedom to provide services, as well as the principles of equal treatment, non-discrimination and transparency in the EU community. The statutory requirements extend to the tender and advertisement of the contract, the evaluation of tenders, the award of contracts and the publicising of awards.

Below is a short guide to remind councils of what they need to think about before and during any tendering process regulated by their standing orders or by law and before entering into contracts which are not subject to their standing orders. The guide is not applicable to contracts for the purchase or sale of premises.

1. What does the council want to achieve? Is it commercially realistic?
2. A council or the other party may prepare heads of terms to summarise the principal terms of the agreement that it wants. Heads of terms are sometimes known as a letter of intent or memorandum of understanding. A heads of terms document should be expressed as being “subject to contract” to ensure that it does not commit the council to a legally binding agreement. If a new contract is subject to a council's tendering process, the council's invitation must set out what the council wants to achieve. If a council's invitation to tender is expressed to be subject to contract, a council is not under a legal obligation to accept the tender(s) it receives, shortlists or otherwise considers.
3. Negotiate. A negotiation is best approached by prioritising the terms that are important to the council and knowing what terms are important to the other party. The council might not achieve everything that it wants and compromises will have to be made. For complex or high value contracts, a council is recommended to use a solicitor to negotiate the terms sought and ultimately to draft or advise on the draft contract terms.
4. Deal breakers. Not all negotiations result in the creation of a contract. Even the acceptance of a tender which was expressed to be subject to contract may leave some terms which cannot be agreed.
5. Avoid making assumptions. A council cannot assume that verbal statements, other assurances in the negotiation process or representations during the tender process will end up in the contract. It should make sure key requirements are included in the written contract.
6. The written contract. Over-simplification may result in uncertainty and contract terms that are complex may be unavoidable. A council will usually need a solicitor to draft and advise on contract terms. The most important thing is that both parties understand what has been agreed. Once a contract is signed or sealed it is binding regardless of whether the parties understand what it means.

A council may need to enter into a service level agreement (SLA) which is a type of contract, or a document which forms the appendix to a contract. An SLA may be used to confirm:

- the scope of the services to be provided;
- the service levels, response times and resolution times;
- escalation procedures to resolve problems;
- how the service levels will be objectively assessed;
- the remedy should the service levels not be achieved;
- the price for the services;

- ways to identify improvements to the service levels; and
- ways to terminate the agreement e.g. expiration of the term of the agreement, breach, insolvency, convenience, changed circumstances, or force majeure.

Most councils do not have the necessary expertise to draft complex or high value SLAs.

Working with non-councillors

A local council has statutory powers to appoint non-councillors to most committees (including joint committees) and sub-committees (including joint sub-committees)³⁷. A council cannot appoint non-councillors to a committee that regulates and controls the council's finances³⁸.

A person cannot be appointed as a non-councillor member of a committee (including a joint committee) or a sub-committee (including a joint sub-committee) if he would be disqualified from being elected or being a councillor of a local council³⁹. A person cannot be appointed as a non-councillor on a committee if he:

- holds any paid office or employment (other than the office of Chairman, Vice-Chairman or deputy Chairman) to which he has been appointed by the council or by any joint committee on which the council is represented; or
- is the subject of a bankruptcy restrictions order or interim bankruptcy order; or
- has within five years before the day of election, or since his election, been convicted in the UK, Channel Islands or Isle of Man of any offence and has had passed on him a sentence of imprisonment of at least three months (whether suspended or not) without the option of a fine; or
- has been found guilty of corrupt or illegal practices or was responsible for incurring unlawful expenditure and the court orders his disqualification⁴⁰.

Generally, non-councillor members of a committee (including a joint committee) or a sub-committee (including a joint sub-committee) do not have voting rights⁴¹. Only in extremely limited situations do they enjoy voting rights. They may vote at meetings which concern the following:

- the management of land owned or occupied by the council;
- the functions of the council as a harbour authority;
- functions of the council relating to the promotion of tourism;
- functions of the council relating to the management of a festival;⁴² and

- advising the council in respect of the discharge of any of its functions⁴³.

The term “management” does not include making decisions about the total amount of money which may be spent by the council in a financial year in respect of land or a festival⁴⁴.

When a non-councillor has voting rights on a question that falls to be decided at any meeting of the committee (including a joint committee) or a sub-committee (including a joint sub-committee) he is also subject to the code of conduct adopted by a council. In England a non-councillor with voting rights has statutory obligations about the registration and disclosure of disclosable pecuniary interests, whether or not these obligations have been incorporated into the council’s code of conduct⁴⁵. See Chapter 2.

Non-councillors may be appointed by a council because, for example, they represent a particular section of the local community (e.g. local charities, businesses, voluntary organisations), or because they have an expertise in or enthusiasm for the work of the committee. For example, a council committee that has delegated powers to organise festivals may involve representatives from local businesses because they are better placed to encourage sponsorship and financial contributions by other businesses and may contribute commercial ideas about how they are run.

If a non-councillor is appointed to a committee (including a joint committee) or a sub-committee (including a joint sub-committee) in which he has no statutory voting rights, he will still be summoned to attend meetings and can speak at meetings in the same way as another member of the committee.

It is important for a council to explain the limited statutory rights that non-councillors have at the meetings of a committee (including a joint committee) or a sub-committee (including a joint sub-committee) to which they have been appointed. Similarly a council should explain the statutory obligations that follow their appointment e.g. in relation to the registration and disclosure of interests and the code of conduct adopted by the council.

In addition to the powers to appoint non-councillors with limited voting rights, a local council in Wales has a statutory power to appoint up to two individuals to act as community youth representatives with no voting rights⁴⁶. A community youth representative is a person between the ages of 15 and 26 whom the council considers to be suitable to act as a community representative, namely to represent the interests of individuals under the age of 26 who live, work or receive education or training in the council’s area. If a council wants to appoint youth representatives, it must give public notice of its intention to do so in a conspicuous place in the

council's area. In addition, the council must give notice of its intention to appoint community representatives to any schools and higher education institutions in its area and in other ways that it thinks desirable for ensuring that those eligible for appointment as youth representatives are aware that the council intends to appoint such a representative (e.g. using the council's website and notifying local youth groups or organisations)⁴⁷. In the appointment of youth representative(s), a council must have regard to any guidance given by the Welsh Ministers⁴⁸.

A youth representative holds and vacates office in accordance with the terms of the appointment by the council. Although they cannot vote on council business, they can effectively represent to the council the views of young people in the area. The Welsh Ministers may in the future make regulations that provide for a youth representative to be treated for specific purposes as a councillor.

Working with the media

A meeting of a local council and its committees must be open to the public which includes anyone from the press⁴⁹. The press (and public) do not have a statutory right to attend a meeting of a sub-committee. If the main work of a particular sub-committee is always confidential (e.g. a staffing sub-committee), or concerns individuals, disclosure of which would breach the obligations of a council under the Data Protection Act 1998 (e.g. a complaints sub-committee), or always considers sensitive information which is not in the public interest then it is not desirable for the public to be permitted to attend its meetings. See also Chapters 6 and 7.

A meeting of the full council, a committee or a sub-committee that, through standing orders⁵⁰ permits attendance of the press (and public), is free to exclude them if it decides that their presence at the meeting is prejudicial to the public interest because of its confidential nature or other special reason(s) stated in the resolution⁵¹. If the press (and public) have to be excluded from a part or whole of the meeting, the chairman of the meeting is expected to explain the broad reason. He must ensure that in doing so he does not disclose the confidential or sensitive information. The explanation given by the chairman of the meeting is designed to help the press (and public) accept the need to be excluded from the meeting. The chairman should also explain that resolutions made in the closed session will be minuted but will not include confidential or sensitive information. Chapters 7 and 10 provide further guidance.

Newspapers, news agencies or organisations that collect news for sound and TV broadcast have a statutory right to request, subject to payment of postage etc, a copy of the agenda with supporting papers for meetings of the council and its committees. Documentation that is due to

be considered at a meeting without the public present (because it is confidential or there is another special reason) does not have to be provided. A council must also provide the accredited representatives of newspapers, news agencies or organisations that collect news for sound and TV broadcast reasonable facilities for taking their report of a meeting of the council and its committees and for telephoning their report at their own expense⁵². A council can adopt standing orders which extend the rights of the press (and the public) to the meetings of some or all of its sub-committees⁵³.

The press (and public) have no statutory right to take photographs, or to use any means (e.g. a mobile phone, video, TV camera, handheld recorder) which would enable a person not present at a meeting to see or hear the meeting⁵⁴. This means that the press (and public) cannot photograph, record, broadcast, or transmit a meeting unless this has been agreed or is permitted by the standing orders of the council⁵⁵. There are no statutory restrictions about tweeting, blogging or other social media reporting of a meeting. At the start of a meeting, the chairman should remind the press (and public) about recording or filming restrictions if there are any. Signage at the venue can also assist.

Whether or not the press attend meetings, their agenda and minutes are easy enough to access by the media via a council's publication scheme. See Chapter 4. Council business may be reported with or without a council's prior knowledge or involvement. It is sensible for a council to have a policy to regulate its proactive or reactive communications with the media. The media policy of a local council would be subject to the statutory obligations of a local council under the Public Bodies (Admission to Meetings) Act 1960, the Local Government Act 1972, the Local Government Act 1986, the Freedom of Information Act 2000, and the Data Protection Act 1998. The 1986 Act prohibits a council from publishing or assisting others to publish party political material⁵⁶. The media policy would also be subject to obligations on the council, its councillors and staff not to disclose information which is confidential or where disclosure is prohibited by law.

Below is an example of a media policy for a local council.

SUTTON PARISH COUNCIL - MEDIA POLICY

Introduction

1. Sutton Parish Council ("the Council") is committed to the provision of accurate information in respect of its functions, decisions and actions.
2. The Council may communicate with those whose work involves gathering material for editorial publication in print, broadcast and electronic form (e.g. researchers, journalists, reporters, photographers, editors of newspapers and magazines, camera or sound operators and crew of TV and radio programmes) ("the media") to publicise its business, decisions and actions. The Council may require the media to produce a UK press card.
3. Where information is not available via the Council's publication scheme the Council shall endeavour to assist the media with enquiries about the Council's functions, decisions and actions.
4. This policy explains how the Council, its councillors and staff will work with the media to meet the above objectives.

Legal restrictions

5. This policy is subject to the Council's statutory obligations set out in the Public Bodies (Admission to Meetings) Act 1960, the Local Government Act 1972, the Local Government Act 1986, the Freedom of Information Act 2000, the Data Protection Act 1998 and the Council's standing orders. Relevant standing orders referenced to or explained in this policy are available via the Council's publication scheme.
6. The Council, its councillors and staff cannot disclose information which is confidential or where disclosure of information is prohibited by law. Some but not all of the relevant obligations that councillors are subject to are contained in the Council's code of conduct, a copy of which is available via the Council's publication scheme.

Meetings

7. The meetings of the Council, its committees and sub-committees are open to the public unless they resolve that their presence at the meeting is prejudicial to the public interest due to the confidential nature of the business or other special reason(s) stated in the resolution or if standing orders for certain sub-committees do not permit attendance of the public. In accordance with its standing orders, persons may be required to leave a meeting of the Council, its committees, sub-committees and joint committees if their disorderly behaviour obstructs the business of the meeting.
8. Where meetings include time for public participation, the media may speak and ask questions. Public participation is regulated by the Council's standing orders.
9. The Council's standing orders prohibit the photographing, recording, or filming of meetings of the Council, its committees and sub-committees, without prior written consent.
10. In advance of meetings of the Council, its committees, sub-committees and joint committees, newspapers, news agencies or organisations that collect news for sound and TV broadcast are entitled, on payment of postage or other necessary charges, to copies of the agenda and necessary supporting papers. The accredited representatives of newspapers, news agencies or organisations that collect news for sound and TV broadcast shall be given reasonable facilities for taking their report of a meeting and for telephoning their report at their own expense. This is confirmed in the Council's standing orders.

Interviews, statements and articles

11. The media shall contact the Council's Clerk if they want to (i) interview councillors or staff about its business decisions and actions or (ii) obtain a verbal or written statement from the Council about its business decisions and actions. If the Clerk is not available, the media should contact the Council's deputy Clerk.
12. Any verbal or written statement given by the Council's Clerk (or deputy Clerk as the case may be) to the media represents the corporate position and views of the

Council, not the individual views of its councillors or staff held in their official capacity.

13. An interview by the media with councillors or staff in their official capacity about the Council's business, decisions and actions requires the Council's prior written consent. In any such interview, the media cannot ask about the personal views of the councillors or staff in their private capacity. Councillors and staff cannot communicate their personal views about the Council's business, decisions and actions, other than the views they hold in their official capacity. Councillors and staff are not permitted to misrepresent the corporate position and views of the Council, or to damage the reputation of others in the Council or the Council itself.
14. The Council's Clerk, or in his absence, the deputy Clerk may contact the media if the Council wants to give an interview, provide a verbal or written statement to the media or publish an article using the media about its business, decisions and actions.
15. Councillors and staff, other than the Clerk or deputy Clerk in accordance with paragraph 12, cannot in their official capacity, provide verbal or written statements to the media, or write articles for publication using the media about the Council's business decisions and actions without the Council's prior written consent. Councillors and staff cannot communicate their personal views about the Council's business decisions and actions, other than the views they hold in their official capacity. Councillors and staff are not permitted to misrepresent the corporate position and views of the Council, or to damage the reputation of others in the Council or the Council itself.
16. If councillors or staff, in their private capacity, provide verbal or written statements or interviews to the media or write articles for publication using the media about the Council's business decisions and actions, any personal views must be expressed in their private capacity. Personal views held in their official capacity cannot be communicated. Councillors are not permitted to use their title "Councillor" and staff are not permitted to use their job title.

In England, a local council is subject to the 2011 code of recommended practice on local

authority publicity issued under the Local Government Act 1986. The code of recommended practice provides guidance on the content, style, distribution and cost of local authority publicity. The code provides that the publicity by a council should be lawful, cost-effective, objective, even-handed, appropriate, have regard to equality and diversity and be issued with care during periods of heightened sensitivity.

The code confirms that it is acceptable for local councils to publicise the work done by individual councillors, and to present the views of those individuals on local issues. This might be appropriate, for example, when one councillor has been the “face” of a particular campaign. If views expressed by or attributed to individual councillors do not reflect the views of the local authority itself, such publicity should make this fact clear. The code also confirms that during the period between the notice of an election and the election itself, local councils should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any individual councillors or groups of councillors. Publicity relating to individuals involved directly in the election should not be published by local councils during this period unless legislation permits. Local councils are allowed to publish factual information which identifies the names, wards and parties of candidates at elections. Councils and councillors should familiarise themselves with the 2011 code of recommended practice on local authority publicity.

Working with the public

Most information about a council that is of interest to the public is available via the council’s publication scheme. Information not available via a council’s publication scheme can still be requested under the Freedom of Information Act 2000 or the Data Protection Act 1998. Chapter 4 explains this in more detail.

At meetings

The public’s right to attend meetings of the council, its committees and sub-committees is explained in the above section on working with the media.

Members of the public have no statutory right to speak at a meeting of the council, its committees or sub-committees. A council might want to give those who are in attendance an opportunity to speak. A council may in standing orders⁵⁷ set aside a short part of its meetings (e.g. 15 minutes) for the public (and press) to ask questions or give views on the business on the agenda for the meeting. The part of the meeting where the public can speak is known as the

public participation session. It enables members of the public and the media (see above) to raise issues and to seek answers to questions about the council's activities and decisions. If the public has had an opportunity to "have its say" at meetings or has used the public participation session to gain a better understanding of the role and limitations of the council or the meeting in certain matters (e.g. commenting on planning applications or the limited role of a council in England in neighbourhood planning or the right to bid for the purchase of an asset of community value) this will often benefit a council. The standing orders of a council will confirm if public participation is permitted at any meeting or only at some meetings. It may be that a council only allows public participation at the meetings of the full council and at its planning committee, which are the types of meeting that usually most interest the public. Standing orders should be used to regulate the purpose or nature of the permitted public participation⁵⁸. This may range from only allowing the public to ask questions, to allowing the public to make statements and representations.

If the public are required to raise their hand to speak or to stand up when speaking, these formalities must be confirmed in the standing orders of the council. Standing orders should also be used to confirm the period of time allocated for the public participation session and limit the time that an individual can speak for. Councillors may provide answers to questions and points raised in the public participation session as a method for explaining the procedures and decisions of the council. Members of the public and councillors are expected to treat people with courtesy and respect, not interrupt another speaker, nor use improper language or behaviour etc.

The questions and representations of the public should ideally be confined, by the use of standing orders, to the matters that are on the agenda for the meeting. However, it can be difficult to police this and there is some merit in permitting questions about matters that are not on the agenda. Limiting members of the public to speak at a meeting only about the items on the agenda may be perceived as pedantic and obstructive. The chairman of the meeting must keep control of the public participation session otherwise it may be in danger of becoming unfocussed and unhelpful. Chapter 9 explains the role of the chairman of a meeting.

Despite standing orders, the public participation session of a meeting may sometimes overrun or influence the rest of the meeting. It is very important that councillors do not allow the views expressed by the public to determine their decisions without careful consideration. The councillors must make sure that, among themselves, they rigorously consider all relevant facts and representations made at the meeting before voting. Chapter 2 explains this further. The fact that a meeting includes a public participation session must be minuted. See Chapter 11 on this point.

Communicating in other ways

Legislation may require a council to give certain information about its proposals. For example, a council is subject to statutory requirements to advertise its intention to sell open space land (meaning land laid out as a public garden, used for public recreation, or land which is a disused burial ground) in a local paper for two weeks and to formally consider any objections before it decides to sell the land⁵⁹. If no specific statutory requirements apply, a council is free to determine the different methods, if any, that it uses to provide information about decisions it has made or future proposals, not already available in its minutes or otherwise via its publication scheme.

A council may publish a magazine or newsletter. The form or frequency of this method of communication by a council may depend upon the amount of information it wants to publicise and the cost. Another option for a council is the provision of information via a user-friendly and regularly updated website. Note that a local council is entitled to use a 'gov.uk' website address.

A council cannot publish or assist others to publish material which affects public support for a political party⁶⁰. In England, a council is subject to the 2011 code of recommended practice on local authority publicity issued under the Local Government Act 1986. The code of recommended practice provides guidance on the content, style, distribution and cost of local authority publicity. The code provides that the publicity by a council should be lawful, cost-effective, objective, even-handed, appropriate, have regard to equality and diversity and be issued with care during periods of heightened sensitivity. The recommended code confirms that councils should not publish on their website, newsletters, or magazines matters which emulate commercial newspapers in content and style. For example, a council is not expected to include horoscopes, national or international news stories, or TV listings in its publications. The recommended code also specifically provides that councils should not publish newsletters or similar communications more frequently than on a monthly basis. The printed newsletters or similar communications published by a council should clearly identify on the front page that they are published by the council.

Parish and Community Meetings

A parish meeting in England or, in Wales, a community meeting is made up of the local government electors in a particular administrative parish or community area even if it is divided into wards for elections⁶¹. The purpose of the meeting is to discuss “parish affairs” or in Wales

“community affairs”, which have no statutory definition⁶². Parish or community affairs can be any issue or topic that specifically affects that particular parish or community area, and it is not exclusive to the business of the local council for the area. Matters which do not specifically affect the parish or community area are not parish or community affairs.

A meeting (or assembly) of the parish or community meeting is an effective forum for the local council for that area to engage with local residents. Even if local residents do not support certain decisions or actions of the local council, the attendance and involvement of councillors at an assembly of a parish or community meeting may demonstrate that the council is prepared to listen to the views of local residents.

The public (and press) have a statutory right to attend an assembly of a parish or community meeting⁶³. Only the local government electors at a parish or community meeting have a right to vote at the meeting⁶⁴. If the local council has convened the meeting, it can use its register of the electoral roll for the area when people arrive to identify the local government electors who may later vote at the meeting⁶⁵. If local government electors are seated separately from the others who attend, this may make the counting of votes more straightforward. Such measures may be helpful if there is a dispute as to the eligibility of those who voted at the meeting.

A vote at a parish or community meeting or subsequent poll (see below) is not binding on the local council except in exceptional circumstances. For example, the result may trigger a council’s statutory duty to consider if its provision of allotment gardens is sufficient to meet demand⁶⁶. A poll that follows a community meeting in Wales has consequences for a principal authority (see below).

In England, a local council may test initial ideas for the establishment of a Neighbourhood Development Plan (NDP)⁶⁷ or Neighbourhood Development Order (NDO) for the area. There is however an intricate statutory framework that governs the establishment of an NDP or NDO for the area of a local council. This requires an external examination and support of the proposed NDP or NDO via a referendum. See also Chapter 1 which explains neighbourhood planning further.

The statutory requirements for convening an assembly of a parish meeting or, in Wales, a community meeting are explained below.

England

In England, the assembly or meeting of a parish meeting may be called by the chairman of the local council, any two councillors of the local council or any six local government electors of the parish. Where there is no local council, the parish meeting may be convened by the chairman of the parish meeting or any district councillor representing the parish; or any six local government electors of the parish⁶⁸. There must be a meeting between 1 March and 1 June each year. In a parish without a separate local council, there must be at least one other meeting each year. Other meetings must be held on days and times fixed by the local council or, if there is no council, by the chairman of the parish meeting⁶⁹.

A meeting must not start before 6 o'clock in the evening or be held in premises licensed for the sale of alcohol unless no other room is available free or at a reasonable cost⁷⁰. Ideally a meeting should be held at a time and place which will encourage the largest attendance of residents if the council is to get the maximum benefit from the meeting.

Public notice of the meeting must be given at least seven clear days beforehand except where the meeting is convened to discuss the establishment or dissolution of a local council, or the grouping of the parish area with another parish or parishes under a common local council, in which case the public notice must be given at least 14 clear days beforehand⁷¹.

The public notice must specify the time and place of the intended meeting; specify the business to be transacted at the meeting; and be signed by the person or persons convening the meeting. It must be posted in conspicuous place(s) in the parish, and in such other manner, if any, as appears to the person or persons convening the meeting to be desirable for giving publicity to the meeting⁷².

Public notice of the business for the meeting will have been given but it is helpful for this to be explained by the chairman or one of the people calling the meeting. The chairman of the meeting should put the specific issue to the meeting for debate and agree with the meeting the terms of any question to be decided at the meeting. Where necessary a vote can be taken on any question under discussion but any such question must require a yes or no answer.

The Chairman of the local council can attend the meeting whether or not he is a local government elector for the parish, but if he is not an elector for the parish he cannot vote at the meeting other than any casting vote which he may have⁷³ (see below).

Where there is a separate local council, the Chairman of the council, if present, must preside at a parish meeting and if he is absent the Vice-Chairman (if any) must, if present, preside. In a parish without a separate local council, the chairman of the parish meeting, if present, shall preside. If none of the above is present, the parish meeting must appoint a person to take the chair of that meeting⁷⁴.

Only local government electors for the parish can vote at a parish meeting or any subsequent poll. Each elector has one vote on any question and it is decided by a simple majority of those present and voting. The decision of the person chairing the meeting on the result of the voting is final unless a poll is demanded. In the case of a tied vote, the chairman of the meeting has a casting vote, in addition to any other vote he may have⁷⁵.

A poll may be demanded before the conclusion of a parish meeting on any question arising at the meeting; but no poll shall be taken unless either the person presiding at the meeting consents or the poll is demanded by not less than ten, or one-third of the local government electors present at the meeting, whichever is the fewer⁷⁶. If a poll is validly demanded, the chairman of the parish meeting must notify the relevant district or unitary authority which will appoint a Returning Officer.

All local government electors for the parish can vote in any poll following a parish meeting whether or not they attended the meeting. The procedure is similar to that of electing a local councillor.

In a parish with a local council the expenses of the parish meeting (including the expenses of a poll) must be paid by the council⁷⁷.

Wales

In Wales, a community meeting may be called by the Chairman of the local council or any two councillors of the council for the community⁷⁸. A community meeting may also be convened at any time by not less than (a) 10% of the local government electors for the community, or (b) 50 of the electors (if 10% of the electors exceeds 50 electors)⁷⁹. Where a meeting is convened by the electors they must give notice to the local council or, if there is no local council, to the principal authority. The notice must give information such as the business to be considered and the time and place of the meeting and be signed. Where the notice is to be given to a principal authority it can be given in electronic form⁸⁰. The principal authority must consider whether the notice is valid. If the notice is valid the principal authority must give public notice of the

meeting⁸¹ which largely replicates the public notice provisions which a local council would need to give if it convened the meeting itself (see below).

Public notice of the meeting must be given at least seven clear days beforehand except where the meeting is convened to discuss the existence or grouping of a local council with another local council in which case the public notice must be given at least 30 clear days beforehand⁸². The public notice must specify the time and place of the intended meeting; the business to be transacted at the meeting; and be signed by the person or persons convening the meeting⁸³. It must be posted in conspicuous place(s) in the community, and in such other manner, if any, as appears to the person or persons convening the meeting to be desirable for giving publicity to the meeting⁸⁴.

Public notice of the business for the meeting will have been given but it is helpful for this to be explained by the chairman or one of the people calling the meeting. The chairman of the meeting should put the specific issue to the meeting for debate and agree with the meeting the terms of any question to be decided at the meeting. Where necessary a vote can be taken on any question under discussion but any such question must require a yes or no answer.

The Chairman of the local council can attend a community meeting whether or not he is a local government elector for the community, but if he is not an elector for the community he cannot vote at the meeting other than any casting vote which he may have⁸⁵ (see below).

Where there is a separate local council, the Chairman of the council, if present, must preside at a community meeting. If there is no local council or if the chairman of the community meeting is not present the community meeting must appoint a person to take the chair of that meeting⁸⁶.

The community meeting must not start before 6 o'clock in the evening or be held in premises licensed for the sale of alcohol unless no other room is available free or at a reasonable cost⁸⁷. Ideally a meeting should be held at a time and place which will encourage the largest attendance of residents if the council is to get the maximum benefit from the meeting.

Only local government electors for the community can vote at a community meeting or any subsequent poll. Each elector has one vote on any question and it is decided by a simple majority of those present and voting. The decision of the person chairing the meeting on the result of the voting is final unless a poll is demanded. In the case of a tied vote, the chairman of the meeting has a casting vote, in addition to any other vote he may have.

A poll may be demanded before the conclusion of a community meeting on any question arising at the meeting but no poll shall be taken unless (a) the poll is demanded by a majority of the local government electors present at the meeting, and (b) the electors demanding a poll constitute not less than (a) 10% of the local government electors for the community, or (b) 150 of the electors (if 10% of the electors exceeds 150 electors)⁸⁸.

After a community poll has taken place, the principal authority Returning Officer must, where a majority voted in favour, notify the Monitoring Officer of the question and the fact of a majority in favour⁸⁹. The Monitoring Officer must then consider whether to give notice of the poll result to (i) the principal authority⁹⁰; (ii) the local council⁹¹ or (iii) both. The Monitoring Officer must give the notification in writing, as soon as practicable and give the reasons for the notification⁹².

If the principal authority is notified by the Monitoring Officer it must either:

- implement the decision of the poll;
- consider what action to take at a meeting of the full council held within two months of the notice;
- hold a consultation process;
- hold an open public meeting;
- initiate research; or
- refer the matter to an oversight and scrutiny committee⁹³.

The principal authority must then notify the chairman of the community meeting (or the Chairman of the local council or the person convening the community meeting, as appropriate) of the action it has taken and any further action it intends to take⁹⁴.

If the local council is notified by the Monitoring Officer it must consider what action (if any) to take at a meeting held within six weeks of the notification. If no meeting is planned within that time the Chairman of the local council must convene an extraordinary meeting for this purpose⁹⁵.

Where the community meeting was convened by electors the local council must take steps to notify the persons convening the meeting of what action (if any) the local council is to take as a result of the meeting⁹⁶. However the local council is under no duty to take any action as a result of the poll.

In a community with a separate local council the expenses of the community meeting (including

the expenses of a poll) must be paid by the community⁹⁷.

Councillors' surgeries

Councillors' surgeries fall into two categories. Firstly, there are surgeries which the council has decided to run, often involving several councillors and reliant on light staff support. The purpose of these surgeries is to explain decisions or promote the proposals of the local council and to obtain the views of and information from residents. The council will decide who is required to attend each surgery. Where councillors are members of different political parties, then ideally councillors representing the different parties on the council should be present. This will mean that a resident who wants to discuss a matter with a councillor from a particular party can do so. Where a particular political party has a very small number of councillors, it may not be possible for that party to be represented at every surgery. Advance public notice of names of the councillors who will be present at each surgery will mean that residents can attend (or not attend) in full knowledge of which councillors they will be able to speak to. A local council will designate the premises for the surgeries to take place. The meeting could be held at the council's premises, or at any other suitable and convenient location. While there is no ban on holding a surgery in licensed premises, it is sensible to avoid this. The information gained in this type of surgery will be council information and subject to the council's obligations under the Data Protection Act 1998 and the Freedom of Information Act 2000. See Chapter 4.

Secondly, there are surgeries run by individual councillors independently of the council. As explained in Chapter 2, a councillor is permitted to undertake some activities in his official capacity as a councillor independently of the council. For example, a councillor representing a ward may organise surgeries to deal with residents' interests and complaints specific to his ward. For this category of surgery, the council has no formal role. The council may decide, at the request of the councillor, to publicise the date and venue for his surgery. Information obtained by the councillor is not information held by the council and statutory responsibility for holding and using personal data rests with the individual councillor. See also Chapters 2 and 4.

In order to maximise attendance, surgeries of either type should be held outside normal working hours (i.e. in the evening or at the weekend) and publicised. The surgeries should only be concerned with discussions which are a "parish affair" or, in Wales, a "community affair" which would be relevant to a parish or community meeting. Councillors should not use surgeries to discuss national or international matters unless they are of direct relevance to the parish or community and the local council. The venue for holding surgeries should ideally have facilities for a discussion to take place in private where requested by residents. Councillors should also be

prepared to identify and disclose a conflict of interest in the matter raised by a resident. It is then a matter for the resident whether they wish to continue to discuss the matter with the councillor in question or with another councillor.

Surveys

Another way of working with the public is for a council to survey the views of the residents and businesses in its area. This can be done in two ways. Firstly, a council may commission an organisation independent to the council to collect the information on the council's behalf. This sort of survey might be appropriate if, for example, a council is trying to gauge demand for affordable housing, or other amenities such as schools, nurseries, shops, post offices, doctors' surgeries and allotments, or if the issue was merging two councils into one. The advantage of this method is that the survey is perceived to be professional and independent of the council. The disadvantage of this type of survey can be the cost. As an alternative, the council may conduct surveys itself. This has the advantage of being low cost.

Surveys may be completed online, by post or face to face. Door to door surveys provide an opportunity for councillors or staff to have face to face contact and potentially to learn more about the views of local residents and businesses. Survey responses cannot be expected of everyone; results of a survey may not be representative or useful if only a few respond.

¹ Local Government Act 1972, s.136

² Local Government Act 1972, s.133 or Local Government (Miscellaneous Provisions) Act 1976 s.19(1)(d)

³ Local Government Act 1972, s.145(1) (b)

⁴ Local Government (Miscellaneous Provisions) Act 1976, s.19 (3)

⁵ Local Government Act 1972, s.214(6)

⁶ Local Government Act 1972, s.145(1) (a)

⁷ Localism Act 2011, s.1

⁸ Local Government Act 1972, s.101 (1)(b)

⁹ Local Government Act 1972, s.101(6)

¹⁰ Local Government Act 2003, schedule 1, paragraph 2(4)

¹¹ Accounts and Audit (England) Regulations 2011/817, Regulation 13(3)(b) and, in Wales, the Accounts and Audit (Wales) Regulations 2005/368, Regulation 9(2)

¹² Audit Commission Act 1998, s.11(8) and, in Wales, the Public Audit (Wales) Act 2004, s.25(8)

¹³ Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012/965, paragraph 1 of schedule

¹⁴ Localism Act 2011, s.28(13) and, in Wales, Local Government Act 2000, s.51(9)

¹⁵ Local Government Act 1972, s.101(4)

-
- ¹⁶ Local Government Act 1972, s.101(3)
- ¹⁷ Local Government Act 1972, s.101(5)(a)
- ¹⁸ Local Government Act 1972, s.102(4)
- ¹⁹ Local Government Act 1972, s.101(5)(a) and s.101(2)
- ²⁰ Local Government Act 1972, s.103
- ²¹ Local Government Act 1972, s.103
- ²² Local Government Act 1972, s.101(5A)
- ²³ Local Government Act 1974, s.25(4)(b)
- ²⁴ Local Government Act 1974, s.25(7)
- ²⁵ Local Government (Miscellaneous Provisions) Act 1976, s.19(3)
- ²⁶ Local Government Act 1972, s.127(1)
- ²⁷ Local Government Act 1972, s.139
- ²⁸ The Public Trustee Act 1906, s.4
- ²⁹ Local Government Act 1972, s.101(1)
- ³⁰ Local Government Act 1972, s.137(3)(a)
- ³¹ Local Government Act 1972, s.144
- ³² Local Government Act 1972, s.145
- ³³ Health and Safety at Work etc. Act 1974, s.3
- ³⁴ Local Government Act 1972, s.135
- ³⁵ Local Government Act 1972, s.135(4)
- ³⁶ Public Contracts Regulations 2006/5
- ³⁷ Local Government Act 1972, s.102(3)
- ³⁸ Local Government Act 1972, s.102(3)
- ³⁹ Local Government Act 1972, s.104
- ⁴⁰ Local Government Act 1972, s.80
- ⁴¹ Local Government and Housing Act 1989, ss.13(1) and (7)
- ⁴² The Parish and Community Councils (Committees) Regulations 1990/2476
- ⁴³ Local Government and Housing Act 1989, ss.13(3) and (4)(e)
- ⁴⁴ The Parish and Community Councils (Committees) Regulations 1990/2476 Regulation 3
- ⁴⁵ Localism Act 2011, s.30
- ⁴⁶ Local Government (Wales) Measure 2011, s.118
- ⁴⁷ Local Government (Wales) Measure 2011, s.119
- ⁴⁸ Local Government (Wales) Measure 2011, s.120
- ⁴⁹ Public Bodies (Admission to Meetings) Act 1960, s.1(1) and Local Government Act 1972, s.100(2)
- ⁵⁰ Local Government Act 1972, s.106
- ⁵¹ Public Bodies (Admission to Meetings) Act 1960, s.1(2)
- ⁵² Public Bodies (Admission to Meetings) Act 1960, s.1(4)
- ⁵³ Local Government Act 1972, s.106
- ⁵⁴ Public Bodies (Admission to Meetings) Act 1960, s.1(7)
- ⁵⁵ Local Government Act 1972, schedule 12, paragraph 42
- ⁵⁶ Local Government Act 1986, s.2
- ⁵⁷ Local Government Act 1972, schedule 12, paragraph 42
- ⁵⁸ Local Government Act 1972, schedule 12, paragraph 42
- ⁵⁹ Local Government Act 1972, s.123(2A) applied by s.127
- ⁶⁰ Local Government Act 1986, s.2
- ⁶¹ Local Government Act 1972, s.13(1) and, in Wales, s.27(1)

-
- ⁶² Local Government Act 1972, s.9(1) and, in Wales, s.27(1)
- ⁶³ Public Bodies (Admission to Meetings) Act 1960, s.1
- ⁶⁴ Local Government Act 1972, schedule 12, paragraph 18(1) and, in Wales, paragraph 34(1)
- ⁶⁵ Representation of the People (England and Wales) Regulations 2001/341, Regulation 107(8)
- ⁶⁶ Small Holdings and Allotments Act 1908, s.23
- ⁶⁷ Localism Act 2011, Schedule 9 and the Neighbourhood Planning (General) Regulations 2012/637
- ⁶⁸ Local Government Act 1972, schedule 12, paragraph 15
- ⁶⁹ Local Government Act 1972, schedule 12, paragraph 14
- ⁷⁰ Local Government Act 1972, schedule 12, paragraph 14
- ⁷¹ Local Government Act 1972, schedule 12, paragraph 15
- ⁷² Local Government Act 1972, schedule 12, paragraph 15
- ⁷³ Local Government Act 1972, schedule 12, paragraph 16
- ⁷⁴ Local Government Act 1972, schedule 12, paragraph 17
- ⁷⁵ Local Government Act 1972, schedule 12, paragraph 18
- ⁷⁶ Local Government Act 1972, schedule 12, paragraph 18
- ⁷⁷ Local Government Act 1972, s.150(2)
- ⁷⁸ Local Government Act 1972, schedule 12, paragraph 30
- ⁷⁹ Local Government Act 1972, schedule 12, paragraph 30A
- ⁸⁰ Local Government Act 1972, schedule 12, paragraphs 30B and 30C
- ⁸¹ Local Government Act 1972, schedule 12, paragraphs 30B and 30E
- ⁸² Local Government Act 1972, schedule 12, paragraphs 30(2) and 30(3).
- ⁸³ Local Government Act 1972, schedule 12, paragraph 30(3A)
- ⁸⁴ Local Government Act 1972, schedule 12, paragraph 30(4)
- ⁸⁵ Local Government Act 1972, schedule 12, paragraph 31
- ⁸⁶ Local Government Act 1972, schedule 12, paragraph 33
- ⁸⁷ Local Government Act 1972, schedule 12, paragraph 32
- ⁸⁸ Local Government Act 1972, schedule 12, paragraph 34(4)
- ⁸⁹ Local Government Act 1972, schedule 12, paragraph 38A(3)
- ⁹⁰ Local Government Act 1972, schedule 12, paragraph 38B(3)
- ⁹¹ Local Government Act 1972, schedule 12, paragraph 38B(4)
- ⁹² Local Government Act 1972, schedule 12, paragraph 38B(6)
- ⁹³ Local Government Act 1972, s.33B
- ⁹⁴ Local Government Act 1972, s.33C
- ⁹⁵ Local Government Act 1972, schedule 12, paragraph 26A
- ⁹⁶ Local Government Act 1972, schedule 12, paragraph 29A
- ⁹⁷ Local Government Act 1972, s.150(3)

6. A committee structure

Key points

- **A council can but does not have to appoint committees.**
- **A committee of a council undertakes work for and on behalf of a council.**
- **The specific responsibilities of a committee are confirmed by its terms of reference.**
- **A council is responsible for the appointment of committees and their members.**
- **Non-councillors may be appointed to most committees.**
- **The voting rights of non-councillor members of committees are limited.**
- **A non-councillor with voting rights is subject to the council's code of conduct. In England a non-councillor with voting rights at a meeting has statutory obligations in respect of the registration and disclosure of disclosable pecuniary interests.**
- **A committee either has functions of the council that have been formally delegated to it or it simply advises the council on matters which relate to the performance of its statutory powers and functions.**
- **A sub-committee is a committee appointed by a committee. The sub-committee is comprised of members of the committee and cannot exceed the responsibilities conferred on it by the parent committee.**

Introduction

Unless a statutory prohibition applies, the performance of the statutory powers and functions and related work of a local council can be delegated to a committee or a sub-committee. A sub-committee is a committee appointed by a committee. A council can but does not have to appoint committees¹.

A council is responsible for the appointment and dissolution of a committee, deciding what a committee does, whether the committee can delegate its responsibilities further to a sub-committee or a staff member², the number of the members appointed to the committee and the term of office of such members³. A council may elect the chairman to the committee or it can allow the members of the committee to elect its chairman when the committee first meets.

A committee may appoint a sub-committee, unless otherwise directed by the council⁴. The committee is responsible for deciding what the sub-committee does, the number of the members appointed to the sub-committee and the term of office of such members. A committee may elect the chairman to the sub-committee or it can allow the members of the sub-committee to elect its chairman when the sub-committee first meets. A sub-committee may delegate its responsibilities to a staff member, unless otherwise directed by its parent (or appointing) committee or the council⁵.

What do committees do?

There are two types of committee. Firstly, a committee may perform the statutory functions and powers and other legal responsibilities of a council on the council's behalf⁶. If a local council delegates the performance of certain statutory functions, powers and responsibilities to a committee (with or without delegation to a sub-committee or staff member), the council is not prevented from carrying out this work itself⁷. In doing so, the council is subject to the previous decisions made by the committee (or sub-committee), particularly where they affected others or created legal obligations and rights.

Legal responsibility for the matters that are delegated to a committee of a council remains with the council. A complaint which relates to the performance of a statutory function or power of the council that has been delegated to a committee (with or without delegation to a sub-committee or staff member) is to be treated as a complaint against the local council, not against the committee (or, as the case may be, a sub-committee or staff member).

Legislation requires certain statutory functions of a local council to be discharged by the council itself. This means, for example, that a local council cannot delegate responsibility to a committee (or sub-committee) for:

- levying or issuing a precept⁸;
- borrowing money⁹;
- approving the council's annual accounts¹⁰;
- considering an auditor's report made in the public interest¹¹;
- confirming (by resolution) that it has satisfied the statutory criteria to exercise the power of general competence (England only)¹²; or
- adopting or revising the council's code of conduct¹³.

Secondly, a committee may be appointed to simply advise the council on matter(s) relating to the performance of its statutory functions, powers and related responsibilities¹⁴. An advisory committee does not make decisions about the performance of the statutory functions and powers of the council. Its role is to research or investigate, consider and report to the council on them. A committee may appoint a sub-committee to advise it on some of the matters that it is advising the council about¹⁵. Ultimately the job of an advisory committee or sub-committee is to influence the decisions made by their appointing body.

How many committees does a council need?

Every council is different and there are no rules about this. A council may appoint committee(s) (with or without sub-committees) to administer some business of the council that cannot be handled by staff and would otherwise demand the time of the whole council. Staff resources, the number of councillors, and how active a council is, are factors that influence the number of committees (with or without sub-committees) appointed by a council.

A standing committee of a council is a committee with ongoing responsibilities concerning the performance of the statutory powers and functions of the council and related work. A planning committee, staffing committee, finance committee, complaints committee and an allotments committee are examples of standing committees.

A special (or ad hoc) committee of a council is usually a committee appointed with short-term responsibilities or a committee whose work does not fall within the terms of reference (see below) of an existing committee. A committee responsible for negotiating the terms of a new lease for the council, or for overseeing the completion of major refurbishment works in a

community hall, or the organisation of a local event are examples of special committees.

There is no need for a council to label a committee either a standing committee or a special committee. However an understanding of the different types of committee might help a council decide if it needs a committee and the work that it wants the committee to do on its behalf.

Below is an example of the committee structure for a local council.



In the example, there are six standing committees. Two of the standing committees have sub-committees. There are no special committees in the example.

Terms of reference

When a council appoints a committee, it must be clear why it is appointing it and what its responsibilities are. A council achieves this by deciding the terms of reference for the committee. If a committee is permitted to appoint a sub-committee, it is the committee that decides the

terms of reference for the sub-committee. The terms of reference for a sub-committee cannot confer responsibilities that are not within the responsibilities set out in the terms of reference for the parent committee.

The terms of reference also informs the members of the committee or the sub-committee of the matters for which they are collectively responsible. It is important to give careful thought to the wording of the terms of reference. If the terms of reference are too brief or over-simplistic, then the members of the committee (or sub-committee) will not know what is expected of them. As a consequence, the committee (or sub-committee) may inadvertently exceed their responsibilities. If a committee (or sub-committee) decides matters which are outside its terms of reference, such decisions risk challenge and are likely to be invalid. The terms of reference for a committee or a sub-committee should be available to the public via the council's publication scheme.

Chapter 3 includes an example of the terms of reference for a staffing committee and a staffing sub-committee. Below is an example of the terms of reference for (i) a committee that has been delegated the functions of a local council in respect of its powers to provide allotments, sports and recreational facilities and (ii) a committee that has been delegated the neighbourhood planning functions of a local council (England only). Chapter 1 explains neighbourhood planning.

SUTTON TOWN COUNCIL

ALLOTMENTS, SPORTS AND RECREATIONAL FACILITIES COMMITTEE

TERMS OF REFERENCE

Purpose of the committee

The Committee is established to manage, maintain and improve the allotments, sports and recreational facilities on behalf of the Town Council and this shall include the following responsibilities.

1. To keep under review the provision of allotments, sports and recreational facilities for the residents of Sutton.
2. To put forward to the Town Council (in consultation with the Finance Committee) proposals for any improvements, developments or any capital expenditure when requesting funding for the following financial year.

3. To manage a list of residents in Sutton who are waiting for a tenancy of an allotment garden.
4. To lead on and approve tenders for all aspects of maintenance and ground works in accordance with the Town Council's financial regulations.
5. To manage use of the Town Council's playing fields and parks by sports clubs in Sutton which shall include the grant of licences.
6. To advise the Town Council of the impact of proposals by owners or occupiers of land that may affect its allotments, sports and recreational facilities.
7. To make recommendations to the Town Council about the level of the annual rents for allotments and other fees for use of sports and recreational facilities.
8. To review and recommend byelaws for the Town Council's allotments, parks and playing fields.
9. To work in partnership with appropriate funding bodies to improve the Town Council's allotment facilities.
10. To work in partnership with the police to alleviate anti-social behaviour and vandalism in the Town Council's allotments, sports and recreational facilities.
11. To encourage recycling opportunities within the Town Council's allotment sites.
12. To prepare an annual report to summarise the work undertaken in exercise of its delegated powers for consideration by the Town Council.

SUTTON VILLAGE COUNCIL

NEIGHBOURHOOD PLANNING COMMITTEE

TERMS OF REFERENCE

Purpose of the committee

This committee is responsible for the creation of a Neighbourhood Development Plan for Sutton and this shall include the following responsibilities.

1. To develop in consultation with the residents of Sutton a sustainable plan for the development of the village for a 15 year period from 2015/16. The Committee has delegated powers to incur expenditure for the professional services of a planning consultant who is a member of the Royal Town Planning Institute (RTPI) within the approved annual budget for the committee in 2014/15.
2. Subject to item 3, the Committee shall seek to establish a Neighbourhood Development Plan for Sutton subject to statutory examination and referendum.
3. To hold up to three public meetings in 2014/15 with residents and to use other forms of consultation to obtain the views of businesses, medical care providers, schools and the local education authority about the proposed Neighbourhood Development Plan.
4. The Committee shall not delegate the discharge of its functions to a sub-committee or to a staff member, but it may appoint an advisory sub-committee.

When does a council appoint a committee?

A council can appoint a committee at any time. The annual meeting of the council in May or some time shortly after is a good opportunity for the council to review existing committees (with or without sub-committees) and the need for new committees (with or without sub-committees).

Members of a committee and sub-committee

Unlike a principal authority, there is no statutory requirement for the composition of a committee or a sub-committee to represent the proportions that the council is divided by membership of a political party. A council decides the number of councillors (and non-councillors) and their terms of office in a committee. A committee decides the number of persons and their term of office in a sub-committee¹⁶.

A councillor may be nominated and appointed to a committee because he has a special interest, or expertise to offer, in respect of the work of the committee. A council may want the Chairman or the Vice-Chairman of the council to be members of every committee by virtue of their office (i.e. ex-officio) rather than by nomination. A council must use standing orders¹⁷ to regulate the rights and restrictions, if any, that apply to ex-officio members of a committee. For example, standing orders should confirm whether the Chairman or the Vice-Chairman of the council are full voting members of every committee of the council. Alternatively, standing orders may limit the ex-officio members' rights to being summoned to attend committee meetings, receiving agendas and background papers to meetings and speaking but not voting.

A committee, other than one that regulates and controls the finances of the council¹⁸, can include non-councillors. Chapter 5 explains what is meant by a non-councillor and confirms that the voting rights of non-councillors are limited to five situations. Non-councillors can vote at a meeting of a committee (or sub-committee) concerned with the management of land owned or occupied by the council, the statutory functions of the council as a harbour authority, and statutory powers relating to the promotion of tourism and relating to the management of a festival¹⁹. The term "management" does not include making decisions about the total amount of money which may be spent by the council in a financial year in respect of land or a festival²⁰. Additionally, a non-councillor can vote at a meeting of an advisory committee or sub-committee²¹. Although it rarely happens, an advisory committee or sub-committee of a council can be comprised entirely of non-councillors²².

Non-councillor members of a committee may or may not have voting rights. They will be summoned to attend meetings, receive agendas and background papers to meetings and can speak at the meeting whether or not they can vote.

Substitute members may be nominated and appointed to a committee (or to a sub-committee). The role of a substitute member is to take the place of an ordinary member of a committee (or sub-committee) if the ordinary member cannot attend a meeting of the committee (or sub-

committee), and without the attendance of a substitute member the meeting would be inquorate. A council must decide the number and term of office of substitute members at the same time that it determines the number and term of office of the ordinary members of a committee. The standing orders²³ of a council must confirm whether substitute members may be appointed to certain committees or sub-committees. A staffing, planning and complaints committee and their sub-committees may benefit from the availability of substitute members. Standing orders must also (i) regulate the circumstances in which a substitute member may attend a meeting in the place of an ordinary member of a committee (or sub-committee), (ii) confirm that if a substitute member is legitimately summoned to and attends a meeting of a committee or sub-committee, the ordinary member cannot participate in that meeting if they also attend.

The members of a committee and sub-committee are not independent of the council. Their collective decision-making responsibilities in the committee or sub-committee are limited by the terms of reference of the committee. The chairman of a committee or sub-committee may be elected by the committee from amongst its members at its first meeting, or is elected by the council when the committee or sub-committee and members to it are first appointed.

A councillor who is not a member of a committee or sub-committee has the same rights to attend a meeting of the committee or sub-committee as a member of the public. He can participate in the meeting if the public can, subject to standing orders²⁴ about public participation. It may be that a council only allows public participation for certain committees or sub-committees. Chapter 5 explains public participation sessions. A councillor in England is not, without a dispensation, permitted to speak during a public participation session if he holds a disclosable pecuniary interest in a matter discussed during the public participation session of the meeting²⁵. In Wales, a community councillor with a prejudicial interest in a matter being considered at a meeting (without a dispensation) can only participate at a meeting if the public can²⁶.

The number of members in a committee or sub-committee

There should be no less than three members appointed to a committee or sub-committee. The quorum of a committee or sub-committee of three should also be three. The standing orders²⁷ of a council should confirm this. A meeting cannot proceed if it is inquorate. See Chapter 9 on this procedural issue.

Control of meetings of a committee and sub-committee using standing orders

A council's standing orders should control the number, date, place, quorum, notices and other procedures to regulate a meeting of a committee and sub-committee²⁸. The number of meetings of a committee or a sub-committee should be commensurate with the responsibilities that have been delegated to them. Standing committees (e.g. planning, staffing or finance committees) require the dates of their regular (or ordinary) meetings to be fixed. Additional (or extraordinary) meetings of a committee or sub-committee can be held as necessary. Special committees may generally meet as and when the need arises.

The timetable of the meetings of a committee and sub-committee should be aligned to the timetable of the meetings of their appointing body. This allows for the minutes of a meeting of a committee or a sub-committee to be brought to the attention of the next meeting of their appointing body. See also the section below on reporting structures.

Aligning the timetable of the meetings of a committee and sub-committee with the timetable of the meetings of their appointing body becomes particularly significant when a meeting of the appointing body needs confirmation of the recommendations made by a committee or sub-committee so it can make a decision about them.

Many statutory provisions apply to a meeting of the full council, committee and sub-committee, irrespective of their incorporation into the standing orders of the council. Chapter 7 explains the relevant statutory provisions. However there are some statutory requirements that apply to a meeting of full council but not to a meeting of a committee or sub-committee. Where no statutory requirements apply, the standing orders of a council should regulate the proceedings of a meeting of a committee or sub-committee²⁹.

Unlike a meeting of the council, a meeting of a committee or a sub-committee can be held in premises which at the time of the meeting are licensed for the supply of alcohol. It is recommended that a council has standing orders that require a meeting of a committee or a sub-committee not to be held in premises licensed for the supply of alcohol³⁰.

Unlike the statutory requirements for advance public notice for a meeting of the council³¹, the statutory requirements for notice of a meeting of a committee accommodate more flexibility. There must be at least three clear days' public notice of the time and place of a committee meeting or if it is convened at shorter notice, then public notice must be given at the same time³². Standing orders may simply mirror the statutory requirements that govern the statutory

requirements for public notice of a committee meeting. However it is recommended that standing orders require a minimum of three clear days' public notice to be given at all times. Although not required by law, standing orders can require the members of a committee to be formally summoned to attend a committee meeting at least three clear days before the meeting and that the summons is signed by the Proper Officer and includes an agenda³³.

Unlike a meeting of the whole council or a meeting of a committee, there are no statutory requirements concerning the advance notice of a meeting of a sub-committee. It is recommended that standing orders require the members of a sub-committee to be summoned to attend a sub-committee meeting at least three clear days before the meeting and that the summons is signed by the Proper Officer and includes an agenda³⁴.

Unlike a meeting of the whole council and a committee³⁵, the public has no statutory right to attend a meeting of a sub-committee. If the work of a sub-committee, under its delegated responsibilities, is confidential (e.g. a staffing sub-committee) or considers information about individuals, disclosure of which would breach the obligations of a council under the Data Protection Act 1998 (e.g. a complaints sub-committee) or information that is commercially sensitive, then it is not desirable for the public to be present. For other sub-committees, the standing orders of a council may permit the public to attend their meetings subject to them being excluded if the matters being considered are confidential or there is another special reason. This being the case, it is recommended that standing orders stipulate a minimum of three clear days' public notice of the sub-committee meeting³⁶.

Additional standing orders may be necessary for regulating the role of particular members of the committee when acting on behalf of a committee or sub-committee³⁷. Standing orders can be used to confirm which members of a committee or sub-committee will be the main point of contact with staff or third parties such as solicitors, surveyors, architects, planning consultants. In the absence of such standing orders, a meeting will need to decide this by resolution. Chapter 7 explains procedural issues relevant to all meetings, not limited to a meeting of a committee or a sub-committee.

Minutes

The minutes of a meeting of a committee and a sub-committee record the resolutions that have been made at them. Resolutions that are confidential or for some other special reason are not in the public interest must still be recorded in the minutes, without undermining or disclosing confidential or otherwise sensitive information. Chapters 10 and 11 explain this further.

Chapter 11 explains the drafting and approval of minutes of a meeting. The appointing body for a committee or sub-committee has no role in approving their draft minutes.

The approved minutes of a committee and sub-committee must be kept in the council's minute book³⁸ and made available to the public via the council's publication scheme. See Chapter 4 for an explanation of publication schemes.

Reporting structures

It is standard practice for the minutes of a meeting of a committee and sub-committee to be formally received or acknowledged by the next meeting of its appointing body. Service of the minutes in this way is an effective means of reporting the work undertaken by the committee or sub-committee. This is the case, even if the resolutions in the minutes of the committee or sub-committee make reference to the minutes of previous meetings or other documents (sometimes confidential) considered by the committee or sub-committee. If the minutes of a committee or the sub-committee meeting do not provide sufficient information for the appointing body, it may request a report from a committee or sub-committee. This should be the exception rather than normal practice. A report is more likely to be requested of an advisory committee or sub-committee or a committee or sub-committee tasked with making recommendations. Unlike minutes, a report may better explain the reasons or factors for recommending a course of action and may confirm alternative courses of action that have been considered but rejected.

Apart from its minutes or the production of a report from time to time, a committee or sub-committee may be subject to additional reporting arrangements in their terms of reference. Paragraph 12 in the above example terms of reference for the Allotments, Sports and Recreational Facilities Committee demonstrates one form of additional reporting.

On account of the various reporting structures described, if a councillor is not a member of a particular committee or sub-committee, he does not have an automatic right of access to information or documents relating to the business of that committee or sub-committee as would apply to a member of the committee or sub-committee. He would need to explain why information or the papers available to a committee or sub-committee (not limited to confidential or other sensitive information) are necessary to enable him to perform his duties as a councillor. Unjustified or improper access to the information or documents available to only the members of a committee or sub-committee should not be accommodated.

Advantages of a committee structure

- Committees and sub-committees can be appointed long term or short term, as dictated by the organisational needs, activities and resources of a council.
- Committees and sub-committees work for and on behalf of the council.
- Advisory committees and sub-committees can save a council valuable time. The council can use them to focus on the consideration of one topic or issue in relation to the performance of a council's statutory functions and powers (e.g. the management of allotments or neighbourhood planning), and to make recommendations.
- Committees or sub-committees, with fully delegated powers, can make the council's decision-making process more efficient. Without them, the whole council must meet whenever it needs to make any decision about council business, responsibility for which has not been formally delegated to staff. Very regular meetings of the whole council may burden councillors' time.
- Committees and sub-committees can include non-councillors, giving a wider perspective on matters.
- Committees and sub-committees that harness the special interests, skills and knowledge of its members can be especially worthwhile.
- Committees and sub-committees can be dissolved when there is no longer a use for them.

Disadvantages of a committee structure

- If a council or committee assumes the responsibilities that it has delegated to a committee or sub-committee, which it is free to do, this duplicates efforts and undermines the appointment of the committee or sub-committee.
- If a council or committee routinely challenges the decisions of a committee or sub-committee with delegated responsibilities, confidence in the council as a whole is likely to suffer.
- There may be an insufficient number of councillors or non-councillors available to appoint to committees.
- Members of a committee or a sub-committee may not possess the requisite knowledge or skills.
- A council may not have adequate staff resources to support the meetings of committees and sub-committees.

Joint committees

See Chapter 5.

What is not a committee?

A group of councillors (or non-councillors) who informally work together on council business is not a committee. The absence of a formal appointment by the council of a committee with terms of reference to undertake specific responsibilities for and on behalf of the council means that the group is not a committee.

A group of councillors (or non-councillors) and staff working together on council business is not a committee. The inclusion of staff means that it does not meet the statutory definition of a committee.

A group of councillors who have membership of or support the same political party and who informally work together on council business is not a committee. The absence of a formal appointment by the council of a committee with terms of reference to undertake specific responsibilities for and on behalf of the council means that the group is not a committee.

A group of councillors (or non-councillors) and members of the public working together on council business is not a committee. The absence of a formal appointment by the council of a committee with terms of reference to undertake specific responsibilities for and on behalf of the council means that the group is not a committee. Also the inclusion of members of the public who have not been appointed as non-councillor committee members means that it does not satisfy the statutory definition of a committee.

The decisions of informal groups (sometimes known as working parties or panels) of councillors, non-councillors and staff or others cannot bind a council.

¹ Local Government Act 1972, s.101(1)(a)

² Local Government Act 1972, s.101(2)

³ Local Government Act 1972, s.102(2)

⁴ Local Government Act 1972, s.101(2)

⁵ Local Government Act 1972, s.101(2)

⁶ Local Government Act 1972, s.101(2)

⁷ Local Government Act 1972, s.101(4)

-
- ⁸ Local Government Act 1972, s.101(6)
- ⁹ Local Government Act 2003, schedule 1, paragraph 2(4)
- ¹⁰ Accounts and Audit (England) Regulations 2011/817, Regulation 13(3)(b) and, in Wales, the Accounts and Audit (Wales) Regulations 2005/368, Regulation 9(2)
- ¹¹ Audit Commission Act 1998, s.11(8) and, in Wales, the Public Audit (Wales) Act 2004, s.25(8)
- ¹² Parish Councils (General Power of Competence) (Prescribed conditions) Order 2012/965, paragraph 1 of schedule
- ¹³ Localism Act 2011, s.28(13) and, in Wales, Local Government Act 2000, s.51(9)
- ¹⁴ Local Government Act 1972, s.102(4)
- ¹⁵ Local Government Act 1972, s.102(4)(b)
- ¹⁶ Local Government Act 1972, s.102 (2)
- ¹⁷ Local Government Act 1972, schedule 12, paragraph 42 and s.106
- ¹⁸ Local Government Act 1972, s.102 (3)
- ¹⁹ The Parish and Community Councils (Committees) Regulations 1990/2476
- ²⁰ The Parish and Community Councils (Committees) Regulations 1990/2476, Article 3
- ²¹ Local Government and Housing Act 1989, ss.13(3) and (4)(e)
- ²² Local Government Act 1972, s.102(4)(a)
- ²³ Local Government Act 1972, schedule 12, paragraph 42 and s.106
- ²⁴ Local Government Act 1972, schedule 12, paragraph 42 and s.106
- ²⁵ Localism Act 2011, s.31(4)
- ²⁶ Local Government Act 2000, s.50 and Local Authorities (Model Code of Conduct) (Wales) Order 2008/788
- ²⁷ Local Government Act 1972, schedule 12, paragraph 42 and s.106
- ²⁸ Local Government Act 1972, s.106 and schedule 12, paragraph 42
- ²⁹ Local Government Act 1972, s.106 and schedule 12, paragraph 42
- ³⁰ Local Government Act 1972, s.106 and schedule 12, paragraph 42
- ³¹ Local Government Act 1972, schedule 12, paragraph 10(2) and, in Wales, paragraph 26(2)
- ³² Public Bodies (Admission to Meetings) Act 1960, s.1(4)(a) applied by Local Government Act 1972, s.100(2)
- ³³ Local Government Act 1972, s.106 and schedule 12, paragraph 42
- ³⁴ Local Government Act 1972, s.106 and schedule 12, paragraph 42
- ³⁵ Public Bodies (Admission to Meetings) Act 1960, s.1(1) and Local Government Act 1972, s.100(2)
- ³⁶ Local Government Act 1972, s.106 and schedule 12, paragraph 42
- ³⁷ Local Government Act 1972, s.106 and schedule 12, paragraph 42
- ³⁸ Local Government Act 1972, schedule 12, paragraphs 41 and 44

7. Meetings

Key points

- **Councillors and the public must be given sufficient notice of a meeting.**
- **Meetings cannot proceed unless they are quorate.**
- **Most meetings are open to the public unless there is a particular reason for excluding them.**
- **Meetings can only deal with business on the agenda.**
- **Decisions at meetings are made by the majority of the councillors present and voting.**
- **The second or casting vote of the chairman of the meeting may be used to break a tied vote.**
- **Standing orders are necessary to regulate the order and conduct of meetings.**

References to “meetings” in this Chapter include a meeting of full council, a committee and a sub-committee unless otherwise stated.

Introduction

Important decisions about local council business are made at the meetings. Meetings are often held in the evenings because councillors who work cannot attend meetings during the day. Meetings can be held at weekends, but this is not common. Meetings of the whole council (often referred to as full council) should generally not exceed one to two hours. Long meetings inconvenience councillors and are likely to discourage attendance by the public. A meeting of a committee or a sub-committee should generally be shorter than a meeting of the full council because it has less business to deal with. A council can use standing orders¹ to confirm the duration of meetings of the whole council, committees and sub-committees.

Meetings are subject to numerous statutory requirements as to how they are convened and how they are conducted. Most of the statutory requirements (excluding those that relate to the conduct and interests of councillors) are in the Public Bodies (Admission to Meetings) Act 1960, the Local Government Act 1972 and the Localism Act 2011. Not all of the statutory requirements that are mandatory for a meeting of the full council are mandatory for a meeting of a committee or a sub-committee. Chapters 6 and 7 explain the statutory requirements that do not apply to a meeting of a committee or a sub-committee. A meeting of a committee or a sub-committee merits order, control and regulation in the same way that a meeting of the full council does. A council is advised to use standing orders to achieve this².

Statutory requirements

A summary of the relevant legislation is below.

- There must be at least three clear days' public notice of the time and place of a meeting of the full council and its agenda³. The meaning of "clear days" excludes the day on which notice was issued and the day of the meeting. A Sunday, a day of the Christmas break, a day of the Easter break, a bank holiday or a day appointed for public thanksgiving or mourning do not count when calculating three clear days⁴.
- A councillor must be summoned to attend a meeting of the full council at least three clear days (as defined above) before the meeting. The summons, signed by the Proper Officer, must include an agenda for the meeting and be served at the usual residence of the councillor⁵. It is accepted practice for standing orders⁶ to permit electronic service of the summons and agenda at least three clear days before a meeting provided the email to councillors includes the electronic signature and title of the Proper Officer.
- The annual meeting of the full council is held in May⁷.

- In England, in addition to its annual meeting, there must be a minimum of three other (or ordinary) meetings of the full council in every year. In Wales, in addition to its annual meeting, a local council may hold as many ordinary meetings in every year as it sees fit⁸.
- There must be at least three clear days' public notice of the time and place of a meeting of a committee or if the meeting is convened at shorter notice, public notice must be given at the time the meeting is convened⁹. The meaning of "clear days" excludes the day on which notice was issued and the day of the meeting. Despite the aforementioned statutory requirements, it is recommended that standing orders¹⁰ always provide a minimum of three clear days' public notice of the time and place of a meeting of a committee and a sub-committee. The standing orders that regulate the period of public notice for a meeting of a sub-committee may depend on whether the public are permitted to attend. As explained in Chapter 6, standing orders that permit the public to attend a meeting of a sub-committee may not be suited to a meeting of a staffing sub-committee or certain other sub-committees.
- For a meeting of a committee or sub-committee, standing orders may stipulate the advance notice requirements for members of the committee or sub-committee¹¹. It is advised that members of a committee or sub-committee are summoned to attend a meeting at least three clear days before the meeting. It is recommended that standing orders confirm that the summons, signed by the Proper Officer, includes an agenda for the meeting and is served at the usual residence of the councillor. Standing orders¹² may permit electronic service of the summons and agenda at least three clear days before a meeting of a committee or sub-committee provided the email to councillors includes the electronic signature and title of the Proper Officer.
- A meeting of the full council cannot be held in premises licensed for the supply of alcohol unless no other suitable premises are available free of charge or at a reasonable cost¹³. As explained in Chapter 6, standing orders may extend this rule to a meeting of a committee or a sub-committee¹⁴.
- The public (and press) have a statutory right to attend a meeting of the full council and a committee¹⁵. As explained in Chapter 6, standing orders may exclude or permit the attendance of the public at a meeting of a sub-committee¹⁶.
- Despite enjoying statutory rights of attendance, the public can be excluded from all or part of a meeting of the full council and a meeting of a committee if the consideration of certain matters is prejudicial to the public interest because of its confidential nature or other special reason¹⁷. It is recommended that standing orders extend this requirement to a meeting of a sub-committee which the public are permitted to attend¹⁸.
- A person must preside at meetings of the full council¹⁹. Standing orders dictate the arrangements for chairing a meeting of a committee or sub-committee²⁰.

- The quorum for a meeting of the full council is at least one-third of the councillors but no less than three²¹. Separate statutory provisions apply if more than one-third of the councillors are disqualified at the same time²². As explained in Chapter 6, standing orders dictate the quorum for a meeting of a committee or a sub-committee²³. It is advised that the standing orders require a quorum of at least three for both.
- Minutes that record the existence and nature of any interest that a councillor is required to disclose in a matter being considered at a meeting are required²⁴.
- Minutes that record a councillor leaving and returning to a meeting room (because in England he is required to do so by standing orders or in Wales by his council's code of conduct) are required²⁵.
- Voting at a meeting of the full council is by show of hands, unless an alternative method of voting is provided for in standing orders²⁶. Standing orders commonly extend voting by a show of hands to a meeting of a committee and sub-committee²⁷.
- Individual votes for and against a question being decided at a meeting of the full council must be recorded in minutes if requested by a councillor²⁸. Standing orders may extend this requirement to a meeting of a committee or a sub-committee²⁹.
- Decisions at meetings are made by the majority of those councillors present and voting³⁰.
- In the event of a tie in voting, the person presiding at the meeting has a second or casting vote³¹.
- Minutes that record the councillors present³² and absent at meetings are required.
- Minutes of all meetings must be approved and retained in a minute book³³.

Why have standing orders for meetings?

As described above and in previous chapters, meetings, councillors and the Proper Officer are subject to countless statutory requirements. A local council is recommended to have, as a minimum, standing orders that incorporate these. Having such standing orders avoids having to check or clarify the statutory or other requirements which different meetings are subject to. It is necessary for a council to have standing orders that regulate and control committees or sub-committees and their meetings³⁴ because some matters are not dictated by legislation. Chapter 6 explains the matters specific to a committee and sub-committee that need careful thought and control by standing orders.

It is desirable for a council to have other standing orders³⁵ which give purpose to or generally keep order at a meeting.

Below are examples of the subjects that merit control by standing orders:

- the order of business at the annual meeting of a council;
- submitting motions for debate at meetings;
- discussion and debate of motions;
- public participation at meetings (see Chapter 5);
- dealing with disorderly conduct (see Chapter 9);
- awarding or entering into contracts for goods and services (see Chapter 5);
- consideration of confidential or sensitive information that is prejudicial to the public interest;
- review and management of delegation arrangements (see Chapters 3, 5 and 6);
- frequency and duration of meetings; and
- amendment, suspension or revocation of standing orders³⁶ that do not incorporate statutory requirements.

The annual meeting of a local council

In a year of elections to a local council, the annual meeting must take place on or within 14 days after the day on which the newly elected councillors take office. In a year when there are no elections to the local council, a local council's annual meeting must take place in May³⁷.

The first business of the annual meeting of a local council is the election of the new Chairman of the council³⁸. The present Chairman of the council must preside at the meeting until his successor is elected³⁹. His obligations at the meeting include formally opening the meeting, receiving nominations for and declaring the result of the election of the new Chairman.

In a year of elections to a local council, if the current Chairman of the council has been re-elected as a councillor, then he may vote in the election of the new Chairman. If there is a tied vote, he has a casting vote which he must use to break any deadlock⁴⁰. He is not required to use either his original or casting vote in any particular way; there is no prohibition against him using either his original or casting vote for himself.

In a year of elections to a local council, if the current Chairman of the council has not been re-elected as a councillor then, if present, he must preside at the meeting until the new Chairman of the council is elected as described above. In a year of elections to a local council, he does not have an original vote in the election of the new Chairman but if there is a tied vote, then he has a casting vote which he must use in order to break any deadlock⁴¹.

Once he is elected, the new Chairman of the council must sign and deliver a form (a statutory prescribed form that all newly elected councillors use to accept office as a councillor)⁴² that confirms his acceptance of this special office. The Chairman must do this at the meeting at which he is elected or by a later date if this is agreed by the council⁴³. Newly elected councillors are expected to deliver their acceptance of office form before or at the first meeting of the council after election unless the council decides this can be done at a later date⁴⁴. See Chapter 2 also. Legislation does not require a local council to have a Vice-Chairman but most local councils do elect a Vice-Chairman who, subject to any standing orders to the contrary, is able to step into the role of the Chairman when he is absent.

Apart from the election of a Chairman and any Vice-Chairman to the council, and deciding if any acceptance of office forms can be submitted at a later date, the annual meeting is not subject to any other statutory requirements. The agenda for the meeting is likely to have other business for the annual meeting to deal with. This would include approving the accuracy of the minutes of the last meeting of the council, or receiving the minutes of the last meeting of a particular committee. Other items of business on the agenda for the annual meeting may be regulated by the council's standing orders.

The annual meeting of the council or, failing that, the next meeting of the full council after the annual meeting presents an ideal opportunity for the full council to address internal organisational structures (e.g. the existence of committees and sub-committees), procedures, policies and other administrative arrangements. Examples are:

- a review of delegation arrangements to committees, sub-committees, staff and other local authorities;
- a review of the terms of reference and standing orders specific to committees and sub-committees;
- the appointment of new members of standing committees;
- the appointment of new committees if this is necessary etc;
- identification of other standing orders that need amending⁴⁵;
- setting the dates, times and venue of ordinary (see below) meetings of full council and standing committees;
- an assessment of the meetings which merit a public participation session;
- a review of the council's representation on or work with outside bodies (e.g. charities and voluntary organisations) and the arrangements for reporting back;
- a review of the council's asset register which records its ownership of land, buildings, office

- equipment and other property;
- a check of the council's arrangements for holding and accessing title deeds, leases, contracts and other legal documents;
- a review of arrangements for insurance cover for insurable risks;
- making changes to the council's complaints handling procedure or procedures for handling requests made under the Freedom of Information Act 2000 and the Data Protection Act 1998 if this is necessary;
- revising the council's policy for dealing with the press and media if this is necessary.

The difference between extraordinary and ordinary meetings of a council

An ordinary meeting is a meeting of the full council that is required by legislation. The section above on statutory requirements confirms the number of ordinary meetings that are required in a year. An ordinary meeting is also one convened by the council's Proper Officer to fill the office of Chairman of the council if a casual vacancy arises⁴⁶.

A local council should use standing orders⁴⁷ to diarise the date and time of the ordinary meetings of the full council. Many councils hold an ordinary meeting every month or every two months. A local council with appropriate internal delegation arrangements may require fewer ordinary meetings of the full council because responsibilities of the council that have been delegated to committees or staff are merely reported back.

An extraordinary meeting is one which may be called at any time by the Chairman of the council⁴⁸. Extraordinary meetings are usually occasioned by urgent business that needs to be resolved before the next ordinary meeting of the council. The Chairman of a council should not hesitate to call extraordinary meetings when necessary. If a local council has appointed a Vice-Chairman to the council, its standing orders may permit the Vice-Chairman to convene an extraordinary meeting in the Chairman's absence⁴⁹.

If the Chairman of a council (or, subject to standing orders, a Vice-Chairman of a council) fails or refuses to call an extraordinary meeting of the council within seven days of having been requested to do so by two councillors, any two councillors may convene a meeting of the council⁵⁰. The public notice giving the time, place and agenda for such a meeting must be signed by the two councillors who called the meeting⁵¹.

What happens at a meeting?

There are accepted conventions and practices as to what happens at a meeting and the order in which they happen. Below is a guide to the basic sequence of events at a meeting:

1. The names of councillors present and absent are noted for inclusion in the minutes of the meeting.
2. The Chairman formally opens the meeting, and may make short announcements about the meeting that are appropriate or merely procedural (e.g. a reminder that recording devices are not permitted or that there will be a part of the meeting from which the public will be excluded). See Chapters 5 and 9.
3. If a councillor is unable to attend a meeting and prior to this he has formally sought approval for his absence, his request will be considered. If granted, a resolution approving his absence will be included in the minutes of the meeting.
4. Certain interests of councillors in agenda items are, as appropriate, disclosed and minuted. See Chapter 2.
5. Subject to standing orders⁵², dispensation requests made by councillors may be considered and granted (England only). See Chapter 2.
6. The accuracy of the minutes of the last meeting is formally approved. See Chapter 9.
7. Subject to standing orders⁵³, the public are permitted to speak about items of business on the agenda. Public participation is explained in Chapter 5. In Wales, councillors with a prejudicial interest in an item of business on the agenda may also speak during the part of the meeting in which the public may participate.
8. Updates to resolutions from the last meeting are received.
9. Motions or other items of business on the agenda are considered and resolved. See Chapter 8 for guidance on the formal procedure for the debate of a motion.
10. Standing items of business (e.g. authorisation of payments, the formal acknowledgement of the minutes of a committee and/or as the case may be sub-committee) are dealt with. See Chapter 10.
11. The Chairman formally closes the meeting.

Voting

Chapter 2 explains that (i) the interests of councillors in matters being considered at a meeting may prevent them from voting and (ii) councillors must avoid predetermination and bias when considering a matter at a meeting. Chapter 5 confirms that the same rules apply to non-councillors with voting rights. Assuming a meeting is quorate, any question that needs to be

decided at a meeting must be decided by the majority of the councillors present and voting⁵⁴. A question that needs to be decided at a meeting includes an original or procedural motion, as explained in Chapter 8.

A councillor has one vote only, for or against the question being decided. Voting at a meeting of the full council is by show of hands, unless an alternative method of voting is provided for in standing orders⁵⁵. Standing orders commonly extend voting by a show of hands to a meeting of a committee and sub-committee⁵⁶. There are no other generally accepted practices for voting. A councillor cannot vote by teleconference or skype, by post or proxy or in advance of a meeting. Voting by “secret” ballot, if permitted by standing orders, is unlikely to withstand scrutiny as to its legitimate purpose and validity. A secret ballot will not eliminate a risk of legal challenge to a resolution on the basis of predetermination or bias by councillor(s).

A councillor has no statutory obligation to vote and he may abstain. In addition, the person presiding at the meeting (other than for the election of a new chairman of the Council at the annual meeting⁵⁷) may but does not have to exercise a second or a casting vote in the event of an equality of votes.

If any councillor so requires, the way in which each councillor voted on a matter at a meeting of the full council must be recorded in the minutes⁵⁸. Standing orders may apply this rule to a meeting of a committee or a sub-committee⁵⁹.

Voting on a procedural motion will result in a decision but decisions resulting from procedural motions concerning the progress of a debate about an original motion do not need to be recorded in the minutes.

Voting on an original motion will result in a resolution. Resolutions must be recorded in the minutes for the meeting. The wording of a resolution must leave no room for ambiguity or uncertainty in its meaning even if it makes reference to another document, which may be confidential.

Excluding the public

The public may be excluded from all or part of a meeting where discussion in public of the business being considered would be prejudicial to the public interest because of its confidential nature or other special reason. See Chapter 5 for further explanation of this.

At the meeting, it will be necessary for a councillor to move a motion to exclude the public from the meeting during the particular items of business on the agenda. Chapter 8 explains the process of moving a procedural motion such as this. Before the public can be excluded, a meeting must pass a resolution to confirm that the public were excluded from the meeting and the broad reason for this. The resolution does not need to document the precise legal or other reason as to why the public were excluded.

The examples below illustrate:

- that the wording of items on the agenda need careful thought. See also Chapter 10;
- the wording of resolutions to exclude the public from all or part of a meeting;
- the technical or legal reasons that should be in councillors' minds if they think a matter should be considered at a meeting without the public present.

Agenda item: approval of councillors' absences

RESOLVED:- Public excluded from meeting to consider sensitive personal data.

Reason: *The ill health of the councillor is considered. An individual's physical and mental health is classified as sensitive personal data and use of it by the council is protected under the Data Protection Act 1998.*

Agenda item: to consider tenders received for a new contract for parks maintenance services

RESOLVED:- Public excluded to consider tenders for parks maintenance services contract.

Reason: *Disclosure of the time sensitive commercial interests of the council and the persons that have tendered is not in the public interest.*

Agenda item: to progress staffing issue referenced in confidential report dated 10 July 2014 referenced NPC 3.

RESOLVED:- Public excluded from meeting to progress a confidential staffing matter.

Reason: Information about an individual member of staff is confidential between the council and the staff member. Under the Data Protection Act 1998, a council also has obligations as to how it uses such information about an individual.

Agenda item: to consider professional legal advice

RESOLVED:- Public excluded from meeting to consider legal advice from solicitor.

Reason: Communications between the solicitor and client council which is for the purpose of giving legal advice is protected by legal professional privilege and therefore confidential. While the legal advice is the property of the council, publicity of it is likely to prejudice the legal position of the council.

Agenda item: to progress a complaint against a council

RESOLVED:- Public excluded from meeting to consider a complaint against the council.

Reason: Under the Data Protection Act 1998, a council has obligations as to how it uses personal data about the individual complainant.

Agenda item: to consider the outcome of a code of conduct complaint

RESOLVED:- Public excluded from meeting to consider personal data.

Reason: Under the Data Protection Act 1998, a council has obligations as to how it uses personal data about the complainant and the councillor.

Agenda item: to progress lease negotiations about 28 Station Road, Sutton

RESOLVED:- Public excluded from meeting to consider commercial interests concerning 28 Station Road Sutton.

Reason: *The proposed heads of terms for a new lease are subject to contract and publicity would prejudice the ongoing lease negotiations by the council.*

Agenda item: to progress purchase of new playing field

RESOLVED:- Public excluded from meeting to consider the purchase price for a new playing field.

Reason: *Publicity of the professional survey and purchase price being considered is likely to prejudice the commercial position of the council in making its offer.*

The resolutions that are made at a meeting when the public are not present must be recorded in the minutes for the meeting. However the wording of such resolutions must not disclose or otherwise undermine confidential information or other sensitive information that is not in the public interest. Chapter 11 gives an example of a resolution about a confidential matter.

The role of the Clerk

At the meeting itself, a member of staff, usually the Clerk, will take minutes of the meeting. Meetings may be recorded to assist the Clerk to prepare the draft minutes for approval of their accuracy at the next meeting⁶⁰. Chapter 11 explains the preparation of draft minutes.

During a meeting, the Clerk is often called upon by the chairman of the meeting to give guidance on a range of matters including procedural matters about the conduct of the meeting, clarifying background information on agenda items, and internal procedures and policies. Although the chairman of the meeting is responsible for determining the correct application of the standing orders that regulate the meeting, he may request the Clerk to assist. The Clerk may also be asked to assist in the interpretation of a statutory power and if any prohibitions, restrictions or limitations exist. The Clerk can only give guidance or assistance if he has sufficient knowledge or experience. He cannot give legal advice at the meeting unless he is a qualified legal professional.

-
- ¹ Local Government Act 1972, schedule 12, paragraph 42 and s.106
- ² Local Government Act 1972, s.106 and schedule 12, paragraph 42
- ³ Local Government Act 1972, schedule 12, paragraph 10(2)(a) and, in Wales, paragraph 26(2)(a)
- ⁴ Local Government Act 1972, s.243
- ⁵ Local Government Act 1972, schedule 12, paragraph 10(2)(b) and, in Wales, paragraph 26(2)(b)
- ⁶ Local Government Act 1972, schedule 12, paragraph 42
- ⁷ Local Government Act 1972, schedule 12, paragraph 7(2) and, in Wales, paragraph 23(2)
- ⁸ Local Government Act 1972, schedule 12, paragraph 8(1) and, in Wales, paragraph 24(1)
- ⁹ Local Government Act 1972, s.100 (2)
- ¹⁰ Local Government Act 1972, schedule 12, paragraph 42 and s.106
- ¹¹ Local Government Act 1972, s.106 and schedule 12, paragraph 42
- ¹² Local Government Act 1972, s.106 and schedule 12, paragraph 42
- ¹³ Local Government Act 1972, schedule 12, paragraph 10(1) and, in Wales, paragraph 26(1)
- ¹⁴ Local Government Act 1972, s.106 and schedule 12, paragraph 42
- ¹⁵ Public Bodies (Admission to Meetings) Act 1960, s.1 and Local Government Act 1972, s.100(2)
- ¹⁶ Local Government Act 1972, s.106
- ¹⁷ Local Government Act 1972, s.100(2) and Public Bodies (Admission to Meetings) Act 1960, s.1(2)
- ¹⁸ Local Government Act 1972, s.106 and schedule 12, paragraph 42
- ¹⁹ Local Government Act 1972, schedule 12, paragraph 11 and, in Wales, paragraph 27
- ²⁰ Local Government Act 1972, s.106
- ²¹ Local Government Act 1972, schedule 12, paragraph 12 and, in Wales, paragraph 28
- ²² Local Government Act 1972, schedule 12, paragraph 45
- ²³ Local Government Act 1972, schedule 12, paragraph 42 and s.106
- ²⁴ Localism Act 2011, s.31(2) and, in Wales, Local Authorities (Model Code of Conduct) (Wales) Order 2008/788 and as required by the code of conduct adopted by the council
- ²⁵ Localism Act 2011, s.31(10) and, in Wales, Local Authorities (Model Code of Conduct) (Wales) Order 2008/788 and as required by the code of conduct adopted by the council
- ²⁶ Local Government Act 1972, schedule 12, paragraph 13(1) and, in Wales, paragraph 29(1)
- ²⁷ Local Government Act 1972, s.106 and schedule 12, paragraph 42
- ²⁸ Local Government Act 1972, schedule 12, paragraph 13(2) and, in Wales, paragraph 29(2)
- ²⁹ Local Government Act 1972, s.106 and schedule 12, paragraph 42
- ³⁰ Local Government Act 1972, schedule 12, paragraph 39(1)
- ³¹ Local Government Act 1972, schedule 12, paragraph 39(2)
- ³² Local Government Act 1972, schedule 12, paragraph 40
- ³³ Local Government Act 1972, schedule 12, paragraphs 41 and 44
- ³⁴ Local Government Act 1972, s.106
- ³⁵ Local Government Act 1972, schedule 12, paragraph 42
- ³⁶ Local Government Act 1972, schedule 12, paragraph 42
- ³⁷ Local Government Act 1972, schedule 12, paragraph 7(2) and, in Wales, paragraph 23(2)
- ³⁸ Local Government Act 1972, s.15(2) and, in Wales, s.34(2)
- ³⁹ Local Government Act 1972, s.15(4) and, in Wales, s.34(4)
- ⁴⁰ Local Government Act 1972, s.15(3) and, in Wales, s.34(3)
- ⁴¹ Local Government Act 1972, s.15(2) and, in Wales, s.34(2)
- ⁴² Local Elections (Declaration of Acceptance of Office) Order 2012/1465, schedule 1 and, in Wales, Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004/1508, schedule 1

-
- ⁴³ Local Government Act 1972, s.83(4)
- ⁴⁴ Local Government Act 1972, s.83(4)
- ⁴⁵ Local Government Act 1972, schedule 12, paragraph 42
- ⁴⁶ Local Government Act 1972, s.88(2)
- ⁴⁷ Local Government Act 1972, schedule 12, paragraph 42
- ⁴⁸ Local Government Act 1972, schedule 12, paragraph 9(1) and, in Wales, paragraph 25(1)
- ⁴⁹ Local Government Act 1972, s.15(9) and, in Wales, s.34(9)
- ⁵⁰ Local Government Act 1972, schedule 12, paragraph 9(2) and, in Wales, 25(2)
- ⁵¹ Local Government Act 1972, schedule 12, paragraph 10(2)(a) and, in Wales, 26(2)(a)
- ⁵² Local Government Act 1972, schedule 12, paragraph 42
- ⁵³ Local Government Act 1972, schedule 12, paragraph 42
- ⁵⁴ Local Government Act 1972, schedule 12, paragraph 39(1)
- ⁵⁵ Local Government Act 1972, schedule 12, paragraph 13(1) and, in Wales, paragraph 29(1)
- ⁵⁶ Local Government Act 1972, s.106 and schedule 12, paragraph 42
- ⁵⁷ Local Government Act 1972, s.15(3) and, in Wales, s.34(3)
- ⁵⁸ Local Government Act 1972, schedule 12, paragraph 13(2) and, in Wales, paragraph 29(2)
- ⁵⁹ Local Government Act 1972, s.106 and schedule 12, paragraph 42
- ⁶⁰ Local Government Act 1972, schedule 12, paragraph 41(1) and paragraph 44 for committees and sub-committees

8. Debate at meetings

Key points

- **A decision or resolution at a meeting must be preceded by a motion.**
- **A motion proposes that a meeting decides upon a course of action.**
- **A motion can be procedural or original.**

References to “meetings” in this Chapter include a meeting of full council, a committee and a sub-committee unless otherwise stated.

Chapter 2 explains why certain interests of councillors may restrict their participation at a meeting. Chapter 5 confirms that these rules apply to non-councillors with voting rights. Chapter 2 confirms that resolutions are only to be made upon consideration and debate of all the relevant facts and issues. Chapter 9 explains the role of the chairman of the meeting in the control of debate. Chapter 7 explains voting at a meeting.

Rules of debate and standing orders

There are conventions and common practices for the rules of debate at a meeting, modelled on the rules of debate in Parliament. The rules of debate at a meeting are designed to ensure that councillors have an opportunity to speak while respecting the speaking rights of others and their views. The usual rules of debate practised by local councils and other local authorities are described below. As with other local authorities, a local council should have standing orders¹ that generally conform to these rules. Councillors should ensure that they are familiar with them. It is the responsibility of the chairman of the meeting to control the debate at a meeting. See Chapter 9 for guidance about this.

Motions

The purpose of a motion is to propose that a meeting decides a particular course of action. A motion can be original or procedural. The differences are explained below. The practice of seconding a motion is customary in meetings of all local authorities and is included in their standing orders. The seconding of a motion by a councillor is a formal gesture to get a debate started or to move a point on.

Original motions

Original motions appear on the agenda only if a councillor gives advance written notice of them to the Proper Officer. Chapter 10 explains the procedure for the submission of a motion to the agenda. The mover or proposer, being a reference to the councillor who tabled the original motion to go on the agenda, should formally move it. The seconder is not expected to speak in support of the motion when he seconds it. He can speak later in the debate if he wishes.

After the original motion has been seconded, the mover of the original motion should explain his reasons for tabling the motion and why it should be supported when the meeting comes to vote on it. The time that he is allowed to speak for will be restricted by standing orders. After the mover has spoken, the chairman of the meeting should direct the order of the other speakers before there is a vote on the motion. The mover of an original motion is entitled to a right of reply to the debate on his motion before there is a vote on it. Contributions to the debate by other councillors should usually be shorter than that of the mover of the motion.

A meeting is under no obligation to consider an original motion in the form it appears on the agenda. In accordance with the standing orders of the council, a meeting may:

- pass the motion with or without amendments;
- reject the motion;
- postpone consideration of the motion to a later meeting;
- delegate consideration of the motion to a relevant committee or sub-committee or to a staff member.

Alternatively, the mover may withdraw it. Most of these options are explained below.

Amendments to original motions

An amendment is a motion to remove or add words to a motion in its original form. Verbal notice of proposed amendments must be given to the chairman at the meeting at the earliest opportunity. They may need to be expressed in writing if for example they are complicated or there are several of them. If there is more than one amendment, the chairman is responsible for determining the order in which proposed amendments are put to the meeting. The amendment which is the most controversial or significant is usually dealt with first. For example if a motion is “to approve a draft budget of £350,000 for building works for the new sports centre” and there are three amendments which propose to substitute “£350,000” with “£100,000” or “£150,000” or “£250,000”, the amendment proposing to substitute “£350,000” with “£100, 000” should be considered first.

Every amendment must be debated and voted on separately. If an amendment fails, the motion is known as the original motion. If amendment(s) are carried, the motion is known as the substantive (or main) motion. The standing orders of a council usually limit the number of amendments which may be moved by a councillor. If due consideration of a motion and amendments to it is likely to cause a meeting to overrun, the motion can be deferred to a later meeting.

An amendment may be moved by any councillor and must be seconded. In exceptional circumstances the mover of the original motion may wish to move a minor amendment on his own motion if he thinks it would make it more acceptable to the meeting. This is acceptable if the meeting consents.

After being seconded, an amendment will need to be debated. Before it is put to the vote, the mover of the original motion has a right of reply to the debate on the amendment. In a series of amendments, the mover of the original motion has a right of reply which he may exercise only once during the whole debate. He may do this at the end of the debate on the first amendment

or at the end of the debate on the final substantive motion.

The mover of the amendment does not normally have a right of reply.

Procedural motions

Procedural motions, usually confirmed in the standing orders of a council, do not require notice of them to the Proper Officer before the meeting. They are used to progress or close debate at a meeting and also to respond to matters of procedure in the meeting itself. When procedural motions are used to progress or close debate, they are not usually be moved by a councillor who has moved, seconded or spoken on the original motion or an amendment. A procedural motion must be seconded but it is put to the vote immediately after without debate.

A procedural motion may propose:

- to withdraw a motion;
- to move to a vote (subject to exercise of a right of reply);
- to defer consideration of a motion;
- to refer a motion to a particular committee or sub-committee;
- to appoint a person to preside at a meeting;
- to change the order of business on the agenda;
- to proceed to the next business on the agenda;
- to require a written report;
- to appoint a committee or sub-committee and members;
- to extend the time limits for speaking;
- to exclude the press and public from a meeting in respect of confidential information or other special reasons which are prejudicial to the public interest;
- to not hear further from a councillor;
- to exclude a councillor or member of the public for disorderly conduct;
- to temporarily suspend the meeting;
- to suspend a particular standing order (unless it contains statutory requirements);
- to adjourn the meeting; and
- to close a meeting.

Points of order

During a meeting a councillor may raise a point of order. A point of order is an objection

addressed to the chairman of the meeting about a procedural irregularity in the debate that is going on or in the conduct of the meeting itself due to non-compliance with a statutory provision or standing orders. If a councillor wishes to raise a point of order, he should express this to the chairman of the meeting when the reason for it becomes apparent and give his reason(s). The councillor who was speaking before the point of order was raised should stop speaking. The chairman of the meeting must rule on the points of order and his decision is final.

A point of order may, for example, be raised because:

- standing orders are not being complied with;
- inappropriate or offensive language is being used;
- a meeting is inquorate;
- the meeting has no authority to consider or decide the original or substantive motion;
- the effect of a proposed amendment is to defeat (or negate) an original or substantive motion e.g. to insert the word “not” before the word “to” in a motion “to purchase two benches for the village green”; or
- the contribution is not relevant to the motion under discussion.

Points of order cannot be used to challenge the views expressed by a councillor in the course of debate, unless this relates to the use of inappropriate language.

A councillor who is interrupted by comments that do not constitute a point of order is free to respond to the comments when he resumes speaking, or to ignore them, as he thinks appropriate.

Personal explanations

When a motion is debated, a councillor may realise that he has been misquoted or otherwise misunderstood by a councillor speaking after him. In this situation, standing orders may permit that councillor to interrupt the current speaker in order to make a personal explanation to clarify matters. The chairman of a meeting should ensure that points of personal explanation are not abused. Personal explanations are not another opportunity for a councillor to speak for or against a motion. See Chapter 9 about chairing meetings.

When does a councillor speak?

The rules of debate at a meeting, as described above, are not straightforward at first glance. To summarise, normally a councillor who has spoken once on a motion may not speak again while it

is being debated except:

- to speak once on an amendment moved by another councillor;
- to move another amendment if the motion has been amended since he last spoke;
- to speak on the main issue if the first time he spoke was on an amendment moved by another councillor;
- in exercise of a right of reply;
- on a point of order;
- by way of personal explanation; or
- where the chairman in his discretion permits him to speak again.

¹ Local Government Act 1972, schedule 12, paragraph 42

9. Chairing meetings

Key points

- **The role of the chairman of a meeting is to keep order and control the meeting in accordance with standing orders.**
- **He may exercise a second or casting vote in the event of a tie in votes on any question to be decided at a meeting.**
- **For other matters, his status is the same as any other councillor.**

References to “meetings” in this Chapter include a meeting of full council, a committee and a sub-committee unless otherwise stated. The term “chairman” in this Chapter refers to the person presiding at a meeting of the council, a committee or a sub-committee except where otherwise stated.

Chapter 7 explains (i) the role of a Chairman of the council at the beginning of the annual meeting of a local council and is not dealt with in this chapter and (ii) the usual sequence of events at meetings.

General responsibilities

The role of the chairman of a meeting is to:

- formally preside at the meeting;
- ensure that the meeting considers the business before it;
- keep control of the meeting;
- maintain order; and
- apply standing orders that the meeting is subject to.

As such he will intervene in a meeting for these purposes. The councillors and the public present at a meeting are expected to respect and obey the chairman in this respect. He must be fair yet firm in what he does. He has a power to exercise a second or casting vote¹ if the votes on a question to be decided at the meeting are tied.

Specific responsibilities for the chairman of a meeting include:

- to formally open a meeting;
- to consider if there is a procedural obstacle to the meeting going ahead;
- to ensure that the draft minutes of a previous meeting are duly approved by the meeting;
- to order debate on motions;
- to decide points of order and other incidental questions;
- to control disorderly or disruptive behaviour of anyone in attendance at the meeting;
- to get the meeting through the business on the agenda;
- to exercise his casting vote when votes are tied for the election of the Chairman of the council at the annual meeting. See also Chapter 7;
- to choose to exercise his casting vote when votes are tied in other situations;
- to declare the result of a vote;
- to temporarily suspend or adjourn a meeting if necessary; and
- to close a meeting after its business has been concluded.

Chairmen of meetings should also read Chapter 7 for an explanation of the usual sequence of events at a meeting and Chapter 8 for guidance about the rules of debate.

Before the meeting

Before the chairman of a meeting formally receives his summons and agenda, he is already likely to be on notice as to the items of business on the agenda. The standing orders of a council usually require the Proper Officer to consult with the chairman of the meeting that the agenda relates to before finalising the agenda. See Chapter 10 for guidance about agenda items.

In any event, it is good practice for the chairman to give advance thought to motions on the agenda to anticipate what he might need to deal with at a meeting. Examples of the issues include:

- Does the meeting have sufficient information provided by the background documents supplied with the agenda or otherwise from staff, councillors or others invited to the meeting (e.g. a solicitor, district councillor)?
- Are there councillors who hold certain interests in items on the agenda that will prevent them from participating in the meeting without a dispensation?
- Is there a risk that the meeting will be inquorate for the above reason or because councillors are absent from the meeting?
- Does the risk of disorderly conduct or disruption to the proceedings of the meeting merit the presence of the police? See Chapter 10.

At the start of a meeting

Problems

The chairman of a meeting is not expected to have personal knowledge about the issue of public notices for the meeting and the service of summonses to councillors. An irregularity in the service of a summons for a meeting does not necessarily invalidate the meeting. If complaints are made about the advance public notice for a meeting or the service of summonses, the chairman will need to decide if these procedural complaints invalidate the meeting itself. If the period for advance public notice for a meeting does not satisfy the statutory requirements that apply, the meeting cannot proceed. If there is non-compliance with standing orders which confirm the period of advance public notice for a meeting, it cannot proceed. The chairman must close the meeting.

A meeting cannot proceed if it is inquorate because of absences by councillors or because councillors cannot vote on a matter due to the nature of their interests in the matters to be

considered at the meeting. The chairman must close the meeting. See Chapter 2 for further guidance on councillors' interests.

Formal announcements

The chairman formally opens a meeting. The public and press may not be aware of any standing orders that restrict the use of recording devices. The chairman may remind them that they cannot take photographs, or use any means which would enable a person not present at a meeting to see or hear the meeting (e.g. a mobile phone, video, TV camera or handheld recorder). See Chapter 5 for more guidance on this subject. If the public are expected to raise their hand or to stand up when speaking in the public participation session, the chairman should remind them of these formalities. Although these requirements are confirmed in standing orders available via the publication scheme, the chairman cannot assume that the public is aware of them.

If the public and press are likely to be excluded from a part or all of the meeting, the chairman should remind them of this, whether or not this has already been highlighted in the agenda.

Approving minutes

When the meeting is approving the draft minutes of a previous meeting as an accurate record, the only issue for the meeting is whether the minutes accurately record the proceedings of the meeting and the resolutions made at them. It is irrelevant if the chairman or other councillors were not present at the meeting to which the draft minutes relate.

If it is necessary for the draft minutes of the previous meeting to be corrected because of an inaccuracy in them, then the amendments to the draft minutes must be approved by resolution.

Public participation

Chapter 5 explains how public participation sessions at meetings work. The chairman must ensure that any public participation session is in accordance with standing orders. The chairman should be mindful that members of the public may be less experienced at speaking in public and may not be familiar with the formal proceedings of a meeting.

Rest of the meeting

The chairman must be familiar with the standing orders about the formalities, order and duration of contributions from councillors during the debate of a motion. Even during a heated debate, it is the responsibility of the chairman to ensure that order is kept and that the meeting gets through the business on the agenda.

The chairman usually introduces the (original) motions in the order they appear on the agenda. Where a contribution during a meeting is obviously irrelevant to the motion under consideration, the chairman should explain this to the speaker and invite him to return to the point or to stop speaking. If it is evident that nothing new can be added to the consideration of a motion, the chairman or other councillors may move it to the vote.

If there is insufficient information presented or exchanged at a meeting to fully consider and then vote on a motion, the meeting may resolve to consider the motion at a later meeting. In this situation, it is desirable to resolve what additional information is required and the date it is required by.

Healthy debate and expressions of opposing views are positive features of debate at a meeting. The chairman is more likely to appear non-partisan if, where possible, he avoids speaking on a motion first or last. The chairman is also encouraged to intervene when comments are not addressed to him or if they are irrelevant, repetitious, or use inappropriate language. The chairman of the meeting must rule on points of order and his decision is final. Chapter 8 explains the rules of debate at a meeting.

Disorderly or disruptive behaviour

The standing orders of a council govern the actions that can be taken when disorderly conduct or behaviour disrupts the debate at a meeting or obstructs the proceedings in a meeting. This includes a situation where someone is behaving offensively or using inappropriate language.

Disruptive individuals, whether they are councillors or members of the public, are at risk of being asked to leave the meeting. The chairman may request anyone who is disruptive to stop. He should explain the consequences if they do not behave appropriately.

If an individual disregards the chairman's request to modify his conduct, aimed at restoring order to the debate or to the meeting itself, any councillor (including the chairman) may move a

(procedural) motion that the offending person(s) are “not heard further” (i.e. silenced) or excluded from the meeting. If the meeting then passes a resolution that requires a person to be silent or to leave the meeting but this is ignored, further steps can be taken. If permitted by standing orders, the meeting may be temporarily suspended to give the offending person(s) an opportunity to improve their behaviour or to persuade them to be silent or to leave the meeting. If, after a suspension of the meeting, disruptive behaviour continues, the meeting may need to be closed and consideration of the outstanding business for the meeting postponed to a later date.

Attempts to silence or exclude a councillor from a meeting should not be motivated by a wish to shut down legitimate debate.

Excluding the public

If the public (including the press) have to be excluded from a part or the whole of a meeting because their attendance would be prejudicial to the public interest because of its confidential nature or other special reason, the chairman should ensure that the public broadly understand the reasons for exclusion. In explaining the reason, he must take care that he does not disclose any confidential or other sensitive information that is not in the public interest. He may also want to explain that the resolutions made in closed session will be minuted, although they will not disclose confidential information or other sensitive information that is not in the public interest. See also Chapters 5, 7, 10 and 11 for more explanation of handling confidential or sensitive information before, during and after a meeting. Chapter 6 explains this from the perspective of committees.

Confirming decisions

It is the job of the chairman to declare the outcome of the vote on any question at a meeting. This would include the result of a vote on a procedural or original motion.

End of the meeting

The chairman formally closes the meeting.

Training

Training will improve the skill set that is required to chair a meeting. A range of training and

development opportunities are available in England via the National Training Strategy (NTS) which is coordinated by the National Association of Local Councils (NALC), the Society of Local Council Clerks (SLCC) and other national stakeholders. In Wales, they are coordinated by the National Training Advisory Group (NTAG) led by One Voice Wales, SLCC and other national stakeholders.

¹ Local Government Act 1972, schedule 12, paragraph 39(2)

10. Preparing for meetings

Key points

- **Advance notification of absences by councillors is good practice.**
- **Motions from councillors must be submitted in time.**
- **The Proper Officer is responsible for the preparation of the agenda.**
- **Advance notice of a meeting and its agenda must be given to councillors and the public.**
- **Dispensations need to be organised in time.**

References to “meetings” in this Chapter includes a meeting of full council, a committee and a sub-committee unless otherwise stated.

Councillor absences

If a councillor is unable to attend a meeting of full council or a committee or sub-committee that he is a member of, it is good practice to give notice of this to the Proper Officer. If a councillor is not present at a meeting that he has been summoned to attend, his absence will be confirmed in the minutes of the meeting.

A councillor does not have to seek the formal approval of the meeting for his absence. A meeting can only approve the absence of a councillor from a meeting if he has requested this in writing and given the reason for his absence. As mentioned in Chapter 2, a councillor cannot continue in office if he fails to attend a meeting of the whole council, a committee, sub-committee or joint committee for a period of six consecutive months and the reason for his absence has not been formally approved before the expiry of the six month period¹.

Submission of motions

Most of the items of business on an agenda for a meeting will represent the matters that councillors want to get resolved at the meeting. In other words, the agenda will include motions from councillors that propose that a meeting decides a particular course of action. A motion should be capable of being understood and of being accepted or rejected when put to the vote.

Motions cannot be submitted at the last minute. The standing orders of a council dictate the timetable for the submission of a motion by a councillor before a meeting. A motion must be written and submitted to the Proper Officer in accordance with the standing orders of a council. They may reasonably require motions to be submitted five to seven days before the date of a meeting but in any event before the service of the summonses on councillors and advance public notice of the meeting is given.

Reviewing motions

The Proper Officer is expected to review motions received from councillors and decide if they can be included in the agenda. He is expected to include the motions that have been submitted to him in the agenda, but this is not always possible.

If the motion contains simple grammatical or typographical errors, the Proper Officer should correct the error and include the corrected version of the motion in the agenda. If the Proper Officer considers a more extensive change in the wording is required, it is recommended that he

obtains the councillor's consent. If a motion is unclear in meaning, the Proper Officer is expected to explain this to the councillor, who is then free to resubmit it. Once a motion is accepted it will be included as an item of business on the agenda.

The standing orders of a council may require the Proper Officer to consult with the chairman of the forthcoming meeting (or, if a meeting has been called by other councillors, with those councillors) whether a motion should be included in an agenda. Consultation can be very helpful but decisions about the content of an agenda cannot be taken by a councillor.

Rejecting motions

Reasons for rejecting a motion are given below.

- A motion is submitted outside the timetable confirmed in standing orders.
- The wording of a motion is ambiguous and will not lead to a clear outcome, for example "to relocate the council's offices to 4 Station Road or 15 Draper Street".
- A motion is not relevant to the responsibilities of the meeting it is tabled for. A motion of this nature is sometimes described as irregular or improper. For example, a motion "to lobby for an increase in the national minimum wage" is unrelated to the statutory powers and functions of a local council and cannot be considered by a meeting of the council. A motion "to review disabled access to the community centre" may only be tabled for a meeting that has responsibility for the management of the community centre.
- A motion is defamatory or otherwise offensive. A motion of this nature is sometimes described as improper. For example, a motion "to evict the gypsies" will need to be resubmitted. A more suitable wording of a motion may be "to take legal action for possession of Broughton playing field, south of Station Road, Sutton". Using another example, a motion to agree a vote of confidence in an individual has no effect on their standing, except reputational. The motion cannot be progressed without risking a defamation action.
- A motion proposes to rescind a previous resolution that is not within the period of time that is permitted by standing orders. It is common for the standing orders of a council to prohibit motions to rescind an earlier resolution for a period of six months from the date of that resolution. Such standing orders may exclude motions to rescind the resolution of an advisory committee or sub-committee that merely recommends a course of action. This is because the final decision on the substantive main issue or question to which the recommendation relates has not been made. A motion to rescind a previous resolution should arise in exceptional circumstances because there is an assumption that the previous

resolution was made upon consideration of all the relevant facts and issues. If a previous resolution created legal rights or affected a third party, a motion to rescind the previous resolution needs careful thought.

If a motion is irregular, improper or otherwise inappropriate but it makes its way onto the agenda, it must be duly considered at the meeting and may be disposed of by a procedural motion. Chapter 8 explains this and other rules of debate at a meeting.

If a motion is rejected, the Proper Officer should notify the councillor who proposed it. A record should also be kept of all rejected motions with reasons for the rejection. The Proper Officer should keep a written record of all motions received.

Agenda preparation

The main purpose of an agenda is to provide advance notification of the items of business to be decided at a meeting and to ensure that the meeting itself has purpose and structure. The Proper Officer is responsible for preparing the agenda. It is not usually more than one or two pages, but requires careful thought.

Aside from the motions accepted from councillors, there will be other motions which the Proper Officer will need to include on the agenda. These may relate to the consideration of particular recommendation(s) of a committee or sub-committee, with or without a separate report, about which only a meeting of the parent body can make the final decision. Chapter 6 gives more guidance about this.

The agenda will also include certain standard items of business for the meeting that usually appear at the beginning of an agenda. These include for example:

- to approve councillor absences;
- to note certain interests held by councillors in motions on the agenda;
- to elect the chairman of a committee or sub-committee if it is its first meeting and the chairman has not already been appointed;
- to approve the draft minutes of the previous meeting;
- to receive an update about the progress of resolutions from the last meeting. This is sometimes referred to on the agenda as “matters arising”. This heading is not recommended because it is ambiguous in meaning.
- the public participation session of the meeting.

Other standard items of business for a meeting that usually appear at the end of the agenda include for example:

- to receive or formally acknowledge the minutes of a committee and or sub-committee and
- to authorise payments.

It is recommended but not mandatory for the agenda to highlight the motions or items of business that are likely to be considered without the public being present at the meeting. The wording of a motion that is due to be considered without the public present must not undermine or disclose confidential or other sensitive information that is not in the public interest. Chapter 7 gives examples of the form of wording that might be used to describe motions on an agenda that are due to be considered at a meeting without the public present.

An example of an agenda for a meeting of the full council is below.

<p>SUTTON NEIGHBOURHOOD COUNCIL</p> <p>NOTICE OF MEETING</p> <p>THERE WILL BE A MEETING OF THE NEIGHBOURHOOD COUNCIL</p> <p>On 14 February 2014 at 6.30pm</p> <p>At Room 3, 2nd floor, Community Centre, Mayflower Road, Sutton</p> <p>AGENDA</p> <p>1) Apologies and approval of absences.</p> <p>2) To receive declarations of interests.</p> <p>3) To consider requests for dispensations.</p> <p>4) To resolve that the minutes of the Neighbourhood Council meeting held on 14 January 2014 are a correct record.</p>

- 5) To receive an update about progress of resolutions from the last meeting of the Neighbourhood Council on 14 January 2014.
- 6) Public participation.
- 7) To consider planning applications:
 - a) New Tesco Metro, 52-55 High Street, Sutton
 - b) Hair salon, 15 High Street, Sutton.
- 8) To receive planning application decisions:
 - a) New two-storey residential premises at 28 Fore Street, Sutton
 - b) Note planning permission granted for: land south of Moulton Drive, Sutton
 - c) Note planning permission withdrawn for: 15B St Peter's Avenue, Sutton.
- 9) To consider the proposed sale of Mill Lane car park.
- 10) To progress lease negotiations with Sutton Cricket Club.
- 11) To review progress of the refurbishment of Sutton community centre.
- 12) To receive oral reports from District Councillors.
- 13) To receive the minutes of the meeting of the parks and recreation committee held on 15 November 2013.
- 14) Finance:
 - a) To consider request for grant from the Holy Trinity Church for upkeep of churchyard
 - b) To agree grant to Scouts Group
 - c) To consider price quotations for two new benches for village green
 - d) To authorise payments as listed below:

Premium for renewal of insurance	£461.55
January newsletter	£35.00
 - e) To note receipt of income, as listed below:

Allotment rents (15 plots at £18.00 per annum)	£270.00
Car park charges (Dec 2013 & Jan 2014)	£120.00

15) To receive the minutes of the staffing committee meeting held on 19 December 2013.

Signed

Clerk

Date 10 February 2014

Papers or information to support the agenda

The items of business on an agenda may make reference to other documents. When sending out the agenda, the Proper Officer is expected to furnish councillors with documentation that provides relevant background or information about the items of business on the agenda. This may include reports prepared by staff.

If an item on the agenda is to receive or formally acknowledge the approved minutes of a committee or sub-committee, the Proper Officer must send councillors the minutes of the committee or sub-committee.

If the agenda includes a motion to consider particular recommendation(s) of a committee or sub-committee, sending councillors the relevant minutes of the committee or sub-committee may not be adequate. It might be necessary to provide a written report from the committee or sub-committee that documents the reasons or factors for recommending a course of action and confirming whether alternative courses of action have been considered but rejected. As an alternative, the chairman of the committee or sub-committee whose recommendations are being considered may be invited to give an oral report at the meeting. The agenda will need to reflect this.

When compiling the documents that are given to councillors in advance of a meeting in support of the agenda, great care must be taken over documents that are confidential, or for another special reason publicity of which is prejudicial to the public interest.

Confidential information or information not in the public interest (whether or not considered and acted on by a previous meeting) must be protected. Sensitive or commercial information

(whether or not considered and acted on by a previous meeting) may also need to be protected from wider disclosure. Examples of sensitive or commercial information include contractual negotiations, legal advice or a matter of which disclosure or wider use would breach the Council's obligations under the Data Protection Act 1998. See Chapter 4 for an explanation of the 1998 Act.

When a meeting is due to consider confidential matters that are documented separately to the agenda, great care must be taken when handling and disclosing those confidential papers.

Dispensation requests

A councillor is responsible for deciding if he needs or wants a dispensation to participate at a meeting. Sometimes he will only be able to submit a dispensation request after he has had sight of the agenda for a meeting or he knows the date of the meeting that he needs the dispensation at. However it is possible for a councillor to seek a dispensation at meetings for a period of up to four years in relation to certain interests.

In England, the standing orders of a council² should dictate the procedure for the submission of a dispensation request. Chapter 2 explains applications for and grants of dispensations.

Planning for disruptions to a meeting

It is the responsibility of the chairman of a meeting to deal with the disorderly conduct or behaviour of the public or councillors that disrupts the debate at a meeting or obstructs the proceedings of the meeting itself. See also Chapter 9.

In exceptional cases, the nature of the conduct or the scale of disruption that is anticipated at a meeting may be beyond the control of the chairman or the meeting. In this situation, the police should be asked to attend the meeting. The police may attend if they believe that a public order or other offence might be committed. If assistance from the police is not possible, and people refuse to modify their behaviour or leave the meeting, the meeting can be temporarily suspended or closed. Procedural motions, usually confirmed in the standing orders of a council, permit the temporary suspension or closing of a meeting. See Chapter 8 for more guidance about this.

¹ Local Government Act 1972, s.85

² Local Government Act 1972, schedule 12, paragraph 42

11. After meetings

Key points

- **Prepare an action sheet.**
- **Write up draft minutes as soon as possible.**
- **Make minutes available to the public.**

References to a “meeting” in this Chapter include a meeting of full council, a committee and a sub-committee.

Introduction

The resolutions made at a meeting have immediate effect. They are not subject to the preparation of draft minutes or the approval of minutes of that meeting at a later meeting. When a meeting is over, certain tasks need to be completed in order to give effect to or progress the resolutions that were made. The main tasks are summarised below.

Matters that need action

Following the resolutions that have been made at a meeting, it is helpful for the Clerk or the other member of staff who took the minutes of the meeting to prepare an action sheet that confirms all the actions or tasks (including urgent ones) to be undertaken by staff or councillors. Actions or tasks might include, for example, sending correspondence, arranging internal or external meetings, writing reports, obtaining quotes or preparing draft budgets.

The action sheet should confirm the relevant information that is necessary for the completion of the action or task and the deadline for its completion. The relevant information could, for example, identify the resolution or refer to a report or to previous minutes.

The Clerk or the appropriate member of staff should follow up actions and tasks prior to the next meeting. Follow-ups should also be diarised.

Minutes

Writing up the minutes for a meeting is key because they confirm the resolutions made. Minutes should be written up as soon as possible so that the minute taker's memory is fresh and he can interpret the information available from handwritten notes or an audio recording of the meeting. Once the draft minutes have been prepared they are often submitted to the chairman of the meeting concerned to check. Once the chairman has commented on the minutes and changes, if any are made, the draft minutes may be circulated for information only to all councillors, or where the minutes relate to a meeting of a committee or sub-committee to the members of the committee or sub-committee.

Draft minutes

The draft minutes of a meeting should be formally approved (with any necessary amendments) at the next meeting¹. Chapter 9 explains this further. After the draft minutes are approved, the

contemporaneous notes or the recording of the meeting should be destroyed.

If a request for information under the Freedom of Information Act 2000 asks for information in the draft minutes or in the audio recording of a meeting, the imminent availability of approved minutes via the council's publication scheme, being information intended for future publication by the council, is a qualified exemption². This means a council may refuse to provide the information requested because it intends to publish the approved minutes of the meeting and in all the circumstances it is reasonable to withhold the information prior to publication of the approved minutes. However there is a duty to consider whether disclosure of the information requested is in the public interest. If, for example, a person wants to know whether his planning application was supported or opposed by a council and needs this information urgently, then it may not be reasonable in all the circumstances to make the person wait until the approved minutes are available. In other situations too it will not be in the public interest to withhold information in the handwritten notes, audio recording or draft minutes of the meeting.

Some councils make draft minutes available to the public via their publication schemes, to be replaced by the approved minutes when these are available. This practice is encouraged. Care must be taken to clearly mark draft minutes as a draft.

There are other qualified exemptions in the 2000 Act that enable a council to refuse to provide information in handwritten notes or draft minutes if disclosure is not in the public interest. If, for example, disclosure would breach one of the statutory data protection principles, the request can be refused³.

If the information requested carries an absolute exemption in the 2000 Act, then there is no duty to consider the public interest. For example, if the information requested concerns information that was provided in confidence, a council can refuse disclosure⁴. More information about the handling of requests for information under the 2000 Act is in Chapter 4.

Matters referred to full council or a committee or sub-committee

Where a matter has been referred by a sub-committee to a committee, by a committee to full council, by full council to a committee or by one committee to another, the appropriate part of the draft minutes should be passed to the chairman of the relevant body by way of notification. If the next meeting of that body is to be clerked by a different person then he should also receive the draft minutes as notification of the referral. When the draft minutes are approved, the approved minutes should also be passed on for confirmation.

Form of minutes

The style, form and amount of detail in the minutes for a meeting is a matter for individual councils. The main purpose of the minutes is to record the resolutions made at the meeting. A well-worded resolution is clear in meaning to anyone not at the meeting and years later. The resolutions should visibly stand out when presented in the minutes for easy reference. They may, for example, be in bold, italics or upper case.

Minutes of a meeting are not a verbatim record of the meeting. Neither are they a story of what happened at the meeting and should not document opinions or views that were expressed at the meeting. There is no need to include matters of opinion such as “heated debate” or “valuable comment” or “Cllr X disagreed”.

Minutes should distinguish between (i) the receipt or acknowledgement of the minutes of a committee or sub-committee and (ii) resolutions that follow the particular resolutions in the minutes of another meeting or the recommendations in a report. The minutes should also record the interests of councillors that were declared at a meeting and if they left the meeting on account of them. See Chapter 2.

Well-written minutes are:

- brief yet informative
- factual, accurate, relevant
- logically presented and
- a clear record of resolutions (including recommendations).

There is a duty to observe the data protection principles in the Data Protection Act 1998. This means that the minutes cannot routinely record the names or other personal data of an individual unless this is for the performance of contractual obligations, statutory powers or functions of the council or if the individual consents. The minutes of a meeting should not thus ordinarily include personal data relating to members of the public who attended and spoke at the meeting. See Chapter 4 for guidance about the 1998 Act.

Resolutions that are confidential or for some other special reason are not in the public interest to disclose must be recorded in the minutes, without undermining or disclosing the confidential or other sensitive information. For example, the resolution “option 2 in confidential report dated 10 July 2014 reference NPC 3 approved” provides clarity as to the resolution that was made but

does not reveal confidential information.

Minute book

When the minutes of a meeting are formally approved, they serve as a true and accurate record of the events and resolutions made at the meeting.

All minutes, including minutes of resolutions made at a meeting without the public present, must be kept in the council's minute book in whatever form this is held and made available via the council's publication scheme. Chapter 4 explains publication schemes in more detail.

Payments

Payments authorised by a meeting should be made as soon as the chairman has reviewed the draft minutes, subject to the council's financial regulations and arrangements for internal control of payments.

¹ Local Government Act 1972, schedule 12, paragraphs 41(1) and 44

² Freedom of Information Act 2000, ss.2(2)(b) and 22

³ Freedom of Information Act 2000, ss.2(2)(b) and 40(2)

⁴ Freedom of Information Act 2000, ss.2(2)(a) and 41

Part two — Model standing orders

How to use model standing orders

Standing orders are the written rules of a local council. They are used to confirm a council's internal organisational, administrative and procurement procedures and procedural matters for meetings. They are not the same as the policies of a council but they may refer to them. A local council must have standing orders for the procurement of contracts.

Meetings of full council, councillors, the Responsible Financial Officer and Proper Officer are subject to many statutory requirements. A council should have standing orders to confirm those statutory requirements. A council should have standing orders to control the number, place, quorum, notices and other procedures for committee and sub-committee meetings because these are subject to fewer statutory requirements. If it does not, committees and sub-committees may adopt their own standing orders.

Model standing orders that are in bold type contain statutory requirements. It is recommended that councils adopt them without changing them. Other model standing orders not in bold are designed to help councils operate effectively but do not contain statutory requirements so they may be adopted as drafted or amended to suit a council's needs. For convenience, the word "councillor" is used in model standing orders and includes a non-councillor with or without voting rights unless otherwise stated.

A model standing order that includes brackets like this '()' requires information to be inserted by a council. A model standing order that includes the term 'OR' provides alternative options for a council to choose from when determining standing orders.

The model standing orders do not include model financial regulations. Financial regulations are standing orders to regulate and control the financial affairs and accounting procedures of a local council. The financial regulations, as opposed to the standing orders of a council, include most of the requirements relevant to the Responsible Financial Officer.

Model financial regulations are available to councils in membership of the National Association of Local Councils (NALC) or One Voice Wales (OVW).

List of model standing orders

1. Rules of debate at meetings	197
2. Disorderly conduct at meetings.....	199
3. Meetings generally.....	200
4. Committees and sub-committees.....	203
5. Ordinary council meetings.....	204
6. Extraordinary meetings of the council and committees and sub-committees.....	206
7. Previous resolutions.....	207
8. Voting on appointments.....	207
9. Motions for a meeting that require written notice to be given to the Proper Officer	207
10. Motions at a meeting that do not require written notice	208
11. Handling confidential or sensitive information	209
12. Draft minutes	209
13. Code of conduct and dispensations	210
14. Code of conduct complaints	212
15. Proper Officer	213
16. Responsible Financial Officer.....	214
17. Accounts and accounting statements	214
18. Financial controls and procurement	215
19. Handling staff matters.....	217
20. Requests for information	218
21. Relations with the press/media.....	218
22. Execution and sealing of legal deeds	219
23. Communicating with District and County or Unitary councillors.....	219
24. Restrictions on councillor activities	219
25. Standing orders generally.....	220

1. Rules of debate at meetings

- a Motions on the agenda shall be considered in the order that they appear unless the order is changed at the discretion of the chairman of the meeting.
- b A motion (including an amendment) shall not be progressed unless it has been moved and seconded.
- c A motion on the agenda that is not moved by its proposer may be treated by the chairman of the meeting as withdrawn.
- d If a motion (including an amendment) has been seconded, it may be withdrawn by the proposer only with the consent of the seconder and the meeting.
- e An amendment is a proposal to remove or add words to a motion. It shall not negate the motion.
- f If an amendment to the original motion is carried, the original motion becomes the substantive motion upon which further amendment(s) may be moved.
- g An amendment shall not be considered unless early verbal notice of it is given at the meeting and, if requested by the chairman of the meeting, is expressed in writing to the chairman.
- h A councillor may move an amendment to his own motion if agreed by the meeting. If a motion has already been seconded, the amendment shall be with the consent of the seconder and the meeting.
- i If there is more than one amendment to an original or substantive motion, the amendments shall be moved in the order directed by the chairman.
- j Subject to standing order 1(k) below, only one amendment shall be moved and debated at a time, the order of which shall be directed by the chairman of the meeting.
- k One or more amendments may be discussed together if the chairman of the meeting

considers this expedient but each amendment shall be voted upon separately.

- l A councillor may not move more than one amendment to an original or substantive motion.
- m The mover of an amendment has no right of reply at the end of debate on it.
- n Where a series of amendments to an original motion are carried, the mover of the original motion shall have a right of reply either at the end of debate of the first amendment or at the very end of debate on the final substantive motion immediately before it is put to the vote.
- o Unless permitted by the chairman of the meeting, a councillor may speak once in the debate on a motion except:
 - i. to speak on an amendment moved by another councillor;
 - ii. to move or speak on another amendment if the motion has been amended since he last spoke;
 - iii. to make a point of order;
 - iv. to give a personal explanation; or
 - v. in exercise of a right of reply.
- p During the debate of a motion, a councillor may interrupt only on a point of order or a personal explanation and the councillor who was interrupted shall stop speaking. A councillor raising a point of order shall identify the standing order which he considers has been breached or specify the other irregularity in the proceedings of the meeting he is concerned by.
- q A point of order shall be decided by the chairman of the meeting and his decision shall be final.
- r When a motion is under debate, no other motion shall be moved except:
 - i. to amend the motion;
 - ii. to proceed to the next business;
 - iii. to adjourn the debate;
 - iv. to put the motion to a vote;

- v. to ask a person to be no longer heard or to leave the meeting;
 - vi. to refer a motion to a committee or sub-committee for consideration;
 - vii. to exclude the public and press;
 - viii. to adjourn the meeting; or
 - ix. to suspend particular standing order(s) excepting those which reflect mandatory statutory requirements.
- s Before an original or substantive motion is put to the vote, the chairman of the meeting shall be satisfied that the motion has been sufficiently debated and that the mover of the motion under debate has exercised or waived his right of reply.
- t Excluding motions moved under standing order 1(r) above, the contributions or speeches by a councillor shall relate only to the motion under discussion and shall not exceed () minutes without the consent of the chairman of the meeting.

2. Disorderly conduct at meetings

- a No person shall obstruct the transaction of business at a meeting or behave offensively or improperly. If this standing order is ignored, the chairman of the meeting shall request such person(s) to moderate or improve their conduct.
- b If person(s) disregard the request of the chairman of the meeting to moderate or improve their conduct, any councillor or the chairman of the meeting may move that the person be no longer heard or excluded from the meeting. The motion, if seconded, shall be put to the vote without discussion.
- c If a resolution made under standing order 2(b) above is ignored, the chairman of the meeting may take further reasonable steps to restore order or to progress the meeting. This may include temporarily suspending or closing the meeting.

3. Meetings generally

Full Council meetings ●

Committee meetings ●

Sub-committee meetings ●

- a **Meetings shall not take place in premises which at the time of the meeting are used for the supply of alcohol, unless no other premises are available free of charge or at a reasonable cost.**
- b **The minimum three clear days for notice of a meeting does not include the day on which notice was issued, the day of the meeting, a Sunday, a day of the Christmas break, a day of the Easter break or of a bank holiday or a day appointed for public thanksgiving or mourning.**
- c **The minimum three clear days' public notice for a meeting does not include the day on which the notice was issued or the day of the meeting unless the meeting is convened at shorter notice** OR [The minimum three clear days' public notice of a meeting does not include the day on which the notice was issued or the day of the meeting].
- d **Meetings shall be open to the public unless their presence is prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons. The public's exclusion from part or all of a meeting shall be by a resolution which shall give reasons for the public's exclusion.**
- e Members of the public may make representations, answer questions and give evidence at a meeting which they are entitled to attend in respect of the business on the agenda.
- f The period of time designated for public participation at a meeting in accordance with standing order 3(e) above shall not exceed () minutes unless directed by the chairman of the meeting.

- g Subject to standing order 3(f) above, a member of the public shall not speak for more than () minutes.
- h In accordance with standing order 3(e) above, a question shall not require a response at the meeting nor start a debate on the question. The chairman of the meeting may direct that a written or oral response be given.
- i [A person shall stand when requesting to speak and when speaking (except when a person has a disability or is likely to suffer discomfort)] OR [A person shall raise his hand when requesting to speak and stand when speaking (except when a person has a disability or is likely to suffer discomfort)]. The chairman of the meeting may at any time permit a person to be seated when speaking.
- j A person who speaks at a meeting shall direct his comments to the chairman of the meeting.
- k Only one person is permitted to speak at a time. If more than one person wants to speak, the chairman of the meeting shall direct the order of speaking.
- l **Photographing, recording, broadcasting or transmitting the proceedings of a meeting by any means is not permitted without the Council's prior written consent.**
- m **The press shall be provided with reasonable facilities for the taking of their report of all or part of a meeting at which they are entitled to be present.**
- n **Subject to standing orders which indicate otherwise, anything authorised or required to be done by, to or before the Chairman of the Council may in his absence be done by, to or before the Vice-Chairman of the Council (if any).**
- o **The Chairman, if present, shall preside at a meeting. If the Chairman is absent from a meeting, the Vice-Chairman, if present, shall preside. If both the Chairman and the Vice-Chairman are absent from a meeting, a councillor as chosen by the councillors present at the meeting shall preside at the meeting.**

- p **Subject to a meeting being quorate, all questions at a meeting shall be decided by a majority of the councillors or councillors with voting rights present and voting.**

●

●
- q **The chairman of a meeting may give an original vote on any matter put to the vote, and in the case of an equality of votes may exercise his casting vote whether or not he gave an original vote.**

●

● *See standing orders 5(i) and (j) below for the different rules that apply in the election of the Chairman of the Council at the annual meeting of the council.*
- r **Unless standing orders provide otherwise, voting on a question shall be by a show of hands. At the request of a councillor, the voting on any question shall be recorded so as to show whether each councillor present and voting gave his vote for or against that question.** Such a request shall be made before moving on to the next item of business on the agenda.
- s The minutes of a meeting shall include an accurate record of the following:

 - i. the time and place of the meeting;
 - ii. the names of councillors present and absent;
 - iii. interests that have been declared by councillors and non-councillors with voting rights;
 - iv. whether a councillor or non-councillor with voting rights left the meeting when matters that they held interests in were being considered;
 - v. if there was a public participation session; and
 - vi. the resolutions made.
- t **(England) A councillor or a non-councillor with voting rights who has a disclosable pecuniary interest or another interest as set out in the council's code of conduct in a matter being considered at a meeting is subject to statutory limitations or restrictions under the code on his right to participate and vote on that matter.**

●

●
- **(Wales) A councillor or a non-councillor with voting rights who has a personal or prejudicial interest in a matter being considered at a meeting which limits or restricts his right to participate in a discussion or vote on that matter is subject to obligations in the code of conduct adopted by the council.**

●

- u **No business may be transacted at a meeting unless at least one-third of the whole number of members of the council are present and in no case shall the quorum of a meeting be less than three.**
See standing order 4d(viii) below for the quorum of a committee or sub-committee meeting.
- v **If a meeting is or becomes inquorate no business shall be transacted** and the meeting shall be closed. The business on the agenda for the meeting shall be adjourned to another meeting.
- w A meeting shall not exceed a period of () hours.

4. Committees and sub-committees

- a **Unless the council determines otherwise, a committee may appoint a sub-committee whose terms of reference and members shall be determined by the committee.**
- b **The members of a committee may include non-councillors unless it is a committee which regulates and controls the finances of the council.**
- c **Unless the council determines otherwise, all the members of an advisory committee and a sub-committee of the advisory committee may be non-councillors.**
- d The council may appoint standing committees or other committees as may be necessary, and:
 - i. shall determine their terms of reference;
 - ii. shall determine the number and time of the ordinary meetings of a standing committee up until the date of the next annual meeting of full council;
 - iii. shall permit a committee, other than in respect of the ordinary meetings of a committee, to determine the number and time of its meetings;
 - iv. shall, subject to standing orders 4(b) and (c) above, appoint and determine the terms of office of members of such a committee;
 - v. may, subject to standing orders 4(b) and (c) above, appoint and determine the terms

of office of the substitute members to a committee whose role is to replace the ordinary members at a meeting of a committee if the ordinary members of the committee confirm to the Proper Officer () days before the meeting that they are unable to attend;

- vi. shall, after it has appointed the members of a standing committee, appoint the chairman of the standing committee;
- vii. shall permit a committee other than a standing committee, to appoint its own chairman at the first meeting of the committee;
- viii. shall determine the place, notice requirements and quorum for a meeting of a committee and a sub-committee which shall be no less than three;
- ix. shall determine if the public may participate at a meeting of a committee;
- x. shall determine if the public and press are permitted to attend the meetings of a sub-committee and also the advance public notice requirements, if any, required for the meetings of a sub-committee;
- xi. shall determine if the public may participate at a meeting of a sub-committee that they are permitted to attend; and
- xii. may dissolve a committee.

5. Ordinary council meetings

- a In an election year, the annual meeting of the council shall be held on or within 14 days following the day on which the new councillors elected take office.**
- b In a year which is not an election year, the annual meeting of a council shall be held on such day in May as the council may direct.**
- c If no other time is fixed, the annual meeting of the council shall take place at 6pm.**
- d (*England*) In addition to the annual meeting of the council, at least three other ordinary meetings shall be held in each year on such dates and times as the council directs.**
- e (*Wales*) In addition to the annual meeting of the council, any number of other ordinary meetings may be held in each year on such dates and times as the council may direct.**
- f The first business conducted at the annual meeting of the council shall be the election of**

the Chairman and Vice-Chairman (if any) of the Council.

- g The Chairman of the Council, unless he has resigned or becomes disqualified, shall continue in office and preside at the annual meeting until his successor is elected at the next annual meeting of the council.**
- h The Vice-Chairman of the Council, if any, unless he resigns or becomes disqualified, shall hold office until immediately after the election of the Chairman of the Council at the next annual meeting of the council.**
- i In an election year, if the current Chairman of the Council has not been re-elected as a member of the council, he shall preside at the meeting until a successor Chairman of the Council has been elected. The current Chairman of the Council shall not have an original vote in respect of the election of the new Chairman of the Council but must give a casting vote in the case of an equality of votes.**
- j In an election year, if the current Chairman of the Council has been re-elected as a member of the council, he shall preside at the meeting until a new Chairman of the Council has been elected. He may exercise an original vote in respect of the election of the new Chairman of the Council and must give a casting vote in the case of an equality of votes.**
- k Following the election of the Chairman of the Council and Vice-Chairman (if any) of the Council at the annual meeting of the council, the business of the annual meeting shall include:**
 - i. In an election year, delivery by the Chairman of the Council and councillors of their acceptance of office forms unless the council resolves for this to be done at a later date. In a year which is not an election year, delivery by the Chairman of the Council of his acceptance of office form unless the council resolves for this to be done at a later date;**
 - ii. Confirmation of the accuracy of the minutes of the last meeting of the council;
 - iii. Receipt of the minutes of the last meeting of a committee;
 - iv. Consideration of the recommendations made by a committee;
 - v. Review of delegation arrangements to committees, sub-committees, staff and other local authorities;
 - vi. Review of the terms of reference for committees;
 - vii. Appointment of members to existing committees;

- viii. Appointment of any new committees in accordance with standing order 4 above;
- ix. Review and adoption of appropriate standing orders and financial regulations;
- x. Review of arrangements, including any charters and agency agreements, with other local authorities and review of contributions made to expenditure incurred by other local authorities;
- xi. Review of representation on or work with external bodies and arrangements for reporting back;
- xii. (*England*) In an election year, to make arrangements with a view to the council becoming eligible to exercise the general power of competence in the future;
- xiii. Review of inventory of land and assets including buildings and office equipment;
- xiv. Confirmation of arrangements for insurance cover in respect of all insured risks;
- xv. Review of the council's and/or staff subscriptions to other bodies;
- xvi. Review of the council's complaints procedure;
- xvii. Review of the council's procedures for handling requests made under the Freedom of Information Act 2000 and the Data Protection Act 1998;
- xviii. Review of the council's policy for dealing with the press/media; and
- xix. Determining the time and place of ordinary meetings of the full council up to and including the next annual meeting of full council.

6. Extraordinary meetings of the council and committees and sub-committees

- a The Chairman of the Council may convene an extraordinary meeting of the council at any time.**
- b If the Chairman of the Council does not or refuses to call an extraordinary meeting of the council within seven days of having been requested in writing to do so by two councillors, any two councillors may convene an extraordinary meeting of the council. The public notice giving the time, place and agenda for such a meeting must be signed by the two councillors.**
- c The chairman of a committee [or a sub-committee] may convene an extraordinary meeting of the committee [or the sub-committee] at any time.**

- d If the chairman of a committee [or a sub-committee] does not or refuses to call an extraordinary meeting within () days of having been requested by to do so by () members of the committee [or the sub-committee], any () members of the committee [and the sub-committee] may convene an extraordinary meeting of a committee [and a sub-committee].

7. Previous resolutions

- a A resolution shall not be reversed within six months except either by a special motion, which requires written notice by at least () councillors to be given to the Proper Officer in accordance with standing order 9 below, or by a motion moved in pursuance of the recommendation of a committee or a sub-committee.
- b When a motion moved pursuant to standing order 7(a) above has been disposed of, no similar motion may be moved within a further six months.

8. Voting on appointments

- a Where more than two persons have been nominated for a position to be filled by the council and none of those persons has received an absolute majority of votes in their favour, the name of the person having the least number of votes shall be struck off the list and a fresh vote taken. This process shall continue until a majority of votes is given in favour of one person. A tie in votes may be settled by the casting vote exerciseable by the chairman of the meeting.

9. Motions for a meeting that require written notice to be given to the Proper Officer

- a A motion shall relate to the responsibilities of the meeting which it is tabled for and in any event shall relate to the performance of the council's statutory functions, powers and obligations or an issue which specifically affects the council's area or its residents.

- b No motion may be moved at a meeting unless it is on the agenda and the mover has given written notice of its wording to the Proper Officer at least () clear days before the meeting. Clear days do not include the day of the notice or the day of the meeting.
- c The Proper Officer may, before including a motion on the agenda received in accordance with standing order 9(b) above, correct obvious grammatical or typographical errors in the wording of the motion.
- d If the Proper Officer considers the wording of a motion received in accordance with standing order 9(b) above is not clear in meaning, the motion shall be rejected until the mover of the motion resubmits it in writing to the Proper Officer so that it can be understood at least () clear days before the meeting.
- e If the wording or subject of a proposed motion is considered improper, the Proper Officer shall consult with the chairman of the forthcoming meeting or, as the case may be, the councillors who have convened the meeting, to consider whether the motion shall be included in the agenda or rejected.
- f Subject to standing order 9(e) above, the decision of the Proper Officer as to whether or not to include the motion on the agenda shall be final.
- g Motions received shall be recorded in a book for that purpose and numbered in the order that they are received.
- h Motions rejected shall be recorded in a book for that purpose with an explanation by the Proper Officer for their rejection.

10. Motions at a meeting that do not require written notice

- a The following motions may be moved at a meeting without written notice to the Proper Officer;
 - i. to correct an inaccuracy in the draft minutes of a meeting;
 - ii. to move to a vote;

- iii. to defer consideration of a motion;
- iv. to refer a motion to a particular committee or sub-committee;
- v. to appoint a person to preside at a meeting;
- vi. to change the order of business on the agenda;
- vii. to proceed to the next business on the agenda;
- viii. to require a written report;
- ix. to appoint a committee or sub-committee and their members;
- x. to extend the time limits for speaking;
- xi. to exclude the press and public from a meeting in respect of confidential or sensitive information which is prejudicial to the public interest;
- xii. to not hear further from a councillor or a member of the public;
- xiii. to exclude a councillor or member of the public for disorderly conduct;
- xiv. to temporarily suspend the meeting;
- xv. to suspend a particular standing order (unless it reflects mandatory statutory requirements);
- xvi. to adjourn the meeting; or
- xvii. to close a meeting.

11. Handling confidential or sensitive information

- a The agenda, papers that support the agenda and the minutes of a meeting shall not disclose or otherwise undermine confidential or sensitive information which for special reasons would not be in the public interest.
- b Councillors and staff shall not disclose confidential or sensitive information which for special reasons would not be in the public interest.

12. Draft minutes

- a If the draft minutes of a preceding meeting have been served on councillors with the agenda to attend the meeting at which they are due to be approved for accuracy, they shall be taken as read.

- b There shall be no discussion about the draft minutes of a preceding meeting except in relation to their accuracy. A motion to correct an inaccuracy in the draft minutes shall be moved in accordance with standing order 10(a)(i) above.
- c The accuracy of draft minutes, including any amendment(s) made to them, shall be confirmed by resolution and shall be signed by the chairman of the meeting and stand as an accurate record of the meeting to which the minutes relate.
- d If the chairman of the meeting does not consider the minutes to be an accurate record of the meeting to which they relate, he shall sign the minutes and include a paragraph in the following terms or to the same effect:

“The chairman of this meeting does not believe that the minutes of the meeting of the () held on [date] in respect of () were a correct record but his view was not upheld by the meeting and the minutes are confirmed as an accurate record of the proceedings.”
- e Upon a resolution which confirms the accuracy of the minutes of a meeting, the draft minutes or recordings of the meeting for which approved minutes exist shall be destroyed.

13. Code of conduct and dispensations

See also standing order 3(t) above.

England

- a All councillors and non-councillors with voting rights shall observe the code of conduct adopted by the council.
- b Unless he has been granted a dispensation, a councillor or non-councillor with voting rights shall withdraw from a meeting when it is considering a matter in which he has a disclosable pecuniary interest. He may return to the meeting after it has considered the matter in which he had the interest.
- c Unless he has been granted a dispensation, a councillor or non-councillor with voting rights shall withdraw from a meeting when it is considering a matter in which he has another

interest if so required by the council's code of conduct. He may return to the meeting after it has considered the matter in which he had the interest.

- d **Dispensation requests shall be in writing and submitted to the Proper Officer** as soon as possible before the meeting, or failing that, at the start of the meeting for which the dispensation is required.
- e A decision as to whether to grant a dispensation shall be made [by the Proper Officer] OR [by a meeting of the council, or committee or sub-committee for which the dispensation is required] and that decision is final.
- f A dispensation request shall confirm:
 - i. the description and the nature of the disclosable pecuniary interest or other interest to which the request for the dispensation relates;
 - ii. whether the dispensation is required to participate at a meeting in a discussion only or a discussion and a vote;
 - iii. the date of the meeting or the period (not exceeding four years) for which the dispensation is sought; and
 - iv. an explanation as to why the dispensation is sought.
- g Subject to standing orders 13(d) and (f) above, dispensations requests shall be considered [by the Proper Officer before the meeting or, if this is not possible, at the start of the meeting for which the dispensation is required] OR [at the beginning of the meeting of the council, or committee or a sub-committee for which the dispensation is required].
- h **A dispensation may be granted in accordance with standing order 13(e) above if having regard to all relevant circumstances the following applies:**
 - i. **without the dispensation the number of persons prohibited from participating in the particular business would be so great a proportion of the meeting transacting the business as to impede the transaction of the business or**
 - ii. **granting the dispensation is in the interests of persons living in the council's area or**
 - iii. **it is otherwise appropriate to grant a dispensation.**

Wales

- i **Councillors and non-councillors with voting rights shall observe the code of conduct**

adopted by the council.

- j All councillors shall undertake training in the code of conduct within six months of the delivery of their acceptance of office form.
- k **Dispensation requests shall be in writing and submitted to the standards committee of [the County Borough] OR [County Council] as soon as possible before the meeting that the dispensation is required for.**

14. Code of conduct complaints

- a Upon notification by the District or Unitary Council [(Wales) [County Borough] OR [County Council]] that it is dealing with a complaint that a councillor or non-councillor with voting rights has breached the council's code of conduct, the Proper Officer shall, subject to standing order 11 above, report this to the council.
- b Where the notification in standing order 14(a) above relates to a complaint made by the Proper Officer, the Proper Officer shall notify the Chairman of Council of this fact, and the Chairman shall nominate another staff member to assume the duties of the Proper Officer in relation to the complaint until it has been determined [(England) and the council has agreed what action, if any, to take in accordance with standing order 14(d) below].
- c The council may:
 - i. provide information or evidence where such disclosure is necessary to progress an investigation of the complaint or is required by law;
 - ii. seek information relevant to the complaint from the person or body with statutory responsibility for investigation of the matter;
 - iii. [(Wales) indemnify the councillor or non-councillor with voting rights in respect of his related legal costs and any such indemnity is subject to approval by a meeting of the full council.]
- d ***(England)* Upon notification by the District or Unitary Council that a councillor or non-councillor with voting rights has breached the council's code of conduct, the council shall consider what, if any, action to take against him. Such action excludes disqualification or suspension from office.**

15. Proper Officer

- a The Proper Officer shall be either (i) the clerk or (ii) other staff member(s) nominated by the council to undertake the work of the Proper Officer when the Proper Officer is absent.
- b The Proper Officer shall:
 - i. **[at least three clear days before a meeting of the council, a committee and a sub-committee serve on councillors, by delivery or post at their residences, a signed summons confirming the time, place and the agenda.]**
OR
[at least three clear days before a meeting of the council, a committee and a sub-committee serve on councillors a summons, by email, confirming the time, place and the agenda provided any such email contains the electronic signature and title of the Proper Officer].
See standing order 3(b) above for the meaning of clear days for a meeting of a full council and standing order 3 (c) above for a meeting of a committee.
 - ii. **give public notice of the time, place and agenda at least three clear days before a meeting of the council or a meeting of a committee or a sub-committee (provided that the public notice with agenda of an extraordinary meeting of the council convened by councillors is signed by them);**
See standing order 3(b) above for the meaning of clear days for a meeting of a full council and standing order 3(c) above for a meeting of a committee.
 - iii. subject to standing order 9 above, include on the agenda all motions in the order received unless a councillor has given written notice at least () days before the meeting confirming his withdrawal of it;
 - iv. **convene a meeting of full council for the election of a new Chairman of the Council, occasioned by a casual vacancy in his office;**
 - v. facilitate inspection of the minute book by local government electors;
 - vi. **receive and retain copies of byelaws made by other local authorities;**
 - vii. retain acceptance of office forms from councillors;
 - viii. retain a copy of every councillor's register of interests;
 - ix. assist with responding to requests made under the Freedom of Information Act 2000 and Data Protection Act 1998, in accordance with and subject to the council's policies and procedures relating to the same;
 - x. receive and send general correspondence and notices on behalf of the council except where there is a resolution to the contrary;

- xi. manage the organisation, storage of, access to and destruction of information held by the council in paper and electronic form;
- xii. arrange for legal deeds to be executed;
See also standing order 22 below.
- xiii. arrange or manage the prompt authorisation, approval, and instruction regarding any payments to be made by the council in accordance with the council's financial regulations;
- xiv. record every planning application notified to the council and the council's response to the local planning authority in a book for such purpose;
- xv. refer a planning application received by the council to the [Chairman or in his absence the Vice-Chairman of the Council] OR [Chairman or in his absence Vice-Chairman (if any) of the () Committee] within two working days of receipt to facilitate an extraordinary meeting if the nature of a planning application requires consideration before the next ordinary meeting of [the council] OR [() committee];
- xvi. manage access to information about the council via the publication scheme; and
- xvii. retain custody of the seal of the council (if any) which shall not be used without a resolution to that effect.
See also standing order 22 below.

16. Responsible Financial Officer

- a The council shall appoint appropriate staff member(s) to undertake the work of the Responsible Financial Officer when the Responsible Financial Officer is absent.

17. Accounts and accounting statements

- a "Proper practices" in standing orders refer to the most recent version of [Governance and Accountability for Local Councils – a Practitioners' Guide (England)] OR [Governance and Accountability for Local Councils in Wales – A Practitioners' Guide].
- b All payments by the council shall be authorised, approved and paid in accordance with the law, proper practices and the council's financial regulations.

- c The Responsible Financial Officer shall supply to each councillor as soon as practicable after 30 June, 30 September and 31 December in each year a statement to summarise:
 - i. the council's receipts and payments for each quarter;
 - ii. the council's aggregate receipts and payments for the year to date;
 - iii. the balances held at the end of the quarter being reported

and which includes a comparison with the budget for the financial year and highlights any actual or potential overspends.

- d As soon as possible after the financial year end at 31 March, the Responsible Financial Officer shall provide:
 - i. each councillor with a statement summarising the council's receipts and payments for the last quarter and the year to date for information; and
 - ii. to the full council the accounting statements for the year in the form of Section 1 of the annual return, as required by proper practices, for consideration and approval.
- e The year end accounting statements shall be prepared in accordance with proper practices and applying the form of accounts determined by the council (receipts and payments, or income and expenditure) for a year to 31 March. A completed draft annual return shall be presented to each councillor before the end of the following month of May. The annual return of the council, which is subject to external audit, including the annual governance statement, shall be presented to council for consideration and formal approval before 30 June.

18. Financial controls and procurement

- a The council shall consider and approve financial regulations drawn up by the Responsible Financial Officer, which shall include detailed arrangements in respect of the following:
 - i. the keeping of accounting records and systems of internal controls;
 - ii. the assessment and management of financial risks faced by the council;
 - iii. the work of the independent internal auditor in accordance with proper practices and the receipt of regular reports from the internal auditor, which shall be required at least annually;
 - iv. the inspection and copying by councillors and local electors of the council's accounts and/or orders of payments; and

- v. procurement policies (subject to standing order 18(c) below) including the setting of values for different procedures where a contract has an estimated value of less than [£60,000].
- b Financial regulations shall be reviewed regularly and at least annually for fitness of purpose.
- c **Financial regulations shall confirm that a proposed contract for the supply of goods, materials, services and the execution of works with an estimated value in excess of [£60,000] shall be procured on the basis of a formal tender as summarised in standing order 18(d) below.**
- d Subject to additional requirements in the financial regulations of the council, the tender process for contracts for the supply of goods, materials, services or the execution of works shall include, as a minimum, the following steps:
 - i. a specification for the goods, materials, services or the execution of works shall be drawn up;
 - ii. an invitation to tender shall be drawn up to confirm (i) the council's specification (ii) the time, date and address for the submission of tenders (iii) the date of the council's written response to the tender and (iv) the prohibition on prospective contractors contacting councillors or staff to encourage or support their tender outside the prescribed process;
 - iii. the invitation to tender shall be advertised in a local newspaper and in any other manner that is appropriate;
 - iv. tenders are to be submitted in writing in a sealed marked envelope addressed to the Proper Officer;
 - v. tenders shall be opened by the Proper Officer in the presence of at least one councillor after the deadline for submission of tenders has passed;
 - vi. tenders are to be reported to and considered by the appropriate meeting of the council or a committee or sub-committee with delegated responsibility.
- e Neither the council, nor a committee or a sub-committee with delegated responsibility for considering tenders, is bound to accept the lowest value tender.
- f **Where the value of a contract is likely to exceed £138,893 (or other threshold specified by the Office of Government Commerce from time to time) the council must consider whether the Public Contracts Regulations 2006 (SI No. 5, as amended) and the Utilities**

Contracts Regulations 2006 (SI No. 6, as amended) apply to the contract and, if either of those Regulations apply, the council must comply with EU procurement rules.

19. Handling staff matters

- a A matter personal to a member of staff that is being considered by a meeting of council OR [the () committee] OR [the () sub-committee] is subject to standing order 11 above.
- b Subject to the council's policy regarding absences from work, the council's most senior member of staff shall notify the chairman of [the () committee] OR [the () sub-committee] or, if he is not available, the vice-chairman of [the () committee] OR [the () sub-committee] of absence occasioned by illness or other reason and that person shall report such absence to [the () committee] OR [the () sub-committee] at its next meeting.
- c The chairman of [the () committee] OR [the () sub-committee] or in his absence, the vice-chairman shall upon a resolution conduct a review of the performance and annual appraisal of the work of [the employee's job title]. The reviews and appraisal shall be reported in writing and is subject to approval by resolution by [the () committee] OR [the () sub-committee].
- d Subject to the council's policy regarding the handling of grievance matters, the council's most senior employee (or other employees) shall contact the chairman of [the () committee] OR [the () sub-committee] or in his absence, the vice-chairman of [the () committee] OR [the () sub-committee] in respect of an informal or formal grievance matter, and this matter shall be reported back and progressed by resolution of [the () committee] OR [the () sub-committee].
- e Subject to the council's policy regarding the handling of grievance matters, if an informal or formal grievance matter raised by [the employee's job title] relates to the chairman or vice-chairman of [the () committee] OR [the () sub-committee], this shall be communicated to another member of [the () committee] OR [the () sub-committee], which shall be reported back and progressed by resolution of [the () committee] OR [the () sub-committee].

- f Any persons responsible for all or part of the management of staff shall treat the written records of all meetings relating to their performance, capabilities, grievance or disciplinary matters as confidential and secure.
- g The council shall keep all written records relating to employees secure. All paper records shall be secured and locked and electronic records shall be password protected and encrypted.
- h Only persons with line management responsibilities shall have access to staff records referred to in standing orders 19(f) and (g) above if so justified.
- i Access and means of access by keys and/or computer passwords to records of employment referred to in standing orders 19(f) and (g) above shall be provided only to (post holder) and/or the Chairman of the Council OR [the () committee] OR [the () sub-committee].

20. Requests for information

- a Requests for information held by the council shall be handled in accordance with the council's policy in respect of handling requests under the Freedom of Information Act 2000 and the Data Protection Act 1998.
- b Correspondence from, and notices served by, the Information Commissioner shall be referred by the Proper Officer to the chairman of the () committee. The said committee shall have the power to do anything to facilitate compliance with the Freedom of Information Act 2000.

21. Relations with the press/media

- a Requests from the press or other media for an oral or written comment or statement from the Council, its councillors or staff shall be handled in accordance with the Council's policy in respect of dealing with the press and/or other media.

22. Execution and sealing of legal deeds

See also standing orders 15(b)(xii) and (xvii) above.

- a A legal deed shall not be executed on behalf of the council unless authorised by a resolution.
- b **[Subject to standing order 22(a) above, the council's common seal shall alone be used for sealing a deed required by law. It shall be applied by the Proper Officer in the presence of two councillors who shall sign the deed as witnesses.]**

The above is applicable to a council with a common seal.

OR

[Subject to standing order 22(a) above, any two councillors may sign, on behalf of the council, any deed required by law and the Proper Officer shall witness their signatures.]

The above is applicable to a council without a common seal.

23. Communicating with District and County or Unitary councillors

- a An invitation to attend a meeting of the council shall be sent, together with the agenda, to the ward councillor(s) of the [(England) [District and County Council] OR [Unitary Council]] [(Wales) [County Borough] OR [County Council]] representing the area of the council.
- b Unless the council determines otherwise, a copy of each letter sent to the [(England) [District and County Council] OR [Unitary Council]] [(Wales) [County Borough] OR [County Council]] shall be sent to the ward councillor(s) representing the area of the council.

24. Restrictions on councillor activities

- a. Unless authorised by a resolution, no councillor shall:
 - i. inspect any land and/or premises which the council has a right or duty to inspect; or
 - ii. issue orders, instructions or directions.

25. Standing orders generally

- a All or part of a standing order, except one that incorporates mandatory statutory requirements, may be suspended by resolution in relation to the consideration of an item on the agenda for a meeting.
- b A motion to add to or vary or revoke one or more of the council's standing orders, except one that incorporates mandatory statutory requirements, shall be proposed by a special motion, the written notice by at least () councillors to be given to the Proper Officer in accordance with standing order 9 above.
- c The Proper Officer shall provide a copy of the council's standing orders to a councillor as soon as possible after he has delivered his acceptance of office form.
- d The decision of the chairman of a meeting as to the application of standing orders at the meeting shall be final.

Index

A

B

C

D

E

F

G

H

I

J

L

M

N

O

P

Q

R

S

T

U

V

W

X

Y

z

///NALC