

**MEMBERS INTERESTS 2012**

A Member with a disclosable pecuniary interest in any matter considered at a meeting must disclose the interest to the meeting at which they are present, except where it has been entered on the Register.

A Member with a non pecuniary or pecuniary interest in any business of the Council must disclose the existence and nature of that interest at commencement of consideration or when the interest becomes apparent.

Where sensitive information relating to an interest is not registered in the register, you must indicate that you have an interest, but need not disclose the sensitive information.

Please tick relevant boxes

Notes

	<b>General</b>		
1.	I have a disclosable pecuniary interest.	<input type="checkbox"/>	<i>You cannot speak or vote and must withdraw unless you have also ticked 5 below</i>
2.	I have a non-pecuniary interest.	<input type="checkbox"/>	<i>You may speak and vote</i>
3.	I have a pecuniary interest <b>because</b> it affects my financial position or the financial position of a connected person or, a body described in 10.1(1)(i) and (ii) <b>and</b> the interest is one which a member of the public with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice my judgement of the public interest or it relates to the determining of any approval consent, licence, permission or registration in relation to me or a connected person or, a body described in 10.1(1)(i) and (ii) <b>and</b> the interest is one which a member of the public with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice my judgement of the public interest	<input type="checkbox"/>          <input type="checkbox"/>	<i>You cannot speak or vote and must withdraw unless you have also ticked 5 or 6 below</i>          <i>You cannot speak or vote and must withdraw unless you have also ticked 5 or 6 below</i>
4.	I have a disclosable pecuniary interest (Dispensation 16/7/12) or a pecuniary interest but it relates to the functions of my Council in respect of:  (i) Housing where I am a tenant of the Council, and those functions do not relate particularly to my tenancy or lease.  (ii) school meals, or school transport and travelling expenses where I am a parent or guardian of a child in full time education, or are a parent governor of a school, and it does not relate particularly to the school which the child attends.  (iii) Statutory sick pay where I am in receipt or entitled to receipt of such pay.  (iv) An allowance, payment or indemnity given to Members  (v) Any ceremonial honour given to Members  (vi) Setting Council tax or a precept under the LGFA 1992	<input type="checkbox"/>          <input type="checkbox"/>          <input type="checkbox"/>          <input type="checkbox"/>          <input type="checkbox"/>          <input type="checkbox"/>	<i>You may speak and vote</i>          <i>You may speak and vote</i>          <i>You may speak and vote</i>          <i>You may speak and vote</i>          <i>You may speak and vote</i>          <i>You may speak and vote</i>
5.	A Standards Committee dispensation applies (relevant lines in the budget – Dispensation 20/2/13 – 19/2/17)	<input type="checkbox"/>	<i>See the terms of the dispensation</i>
6.	I have a pecuniary interest in the business but I can attend to make representations, answer questions or give evidence as the public are also allowed to attend the meeting for the same purpose	<input type="checkbox"/>	<i>You may speak but must leave the room once you have finished and cannot vote</i>

**'disclosable pecuniary interest'** (DPI) means an interest of a description specified below which is your interest, your spouse's or civil partner's or the interest of somebody who you are living with as a husband or wife, or as if you were civil partners and you are aware that that other person has the interest.

**Interest**

Employment, office, trade, profession or vocation

Sponsorship

**Prescribed description**

Any employment, office, trade, profession or vocation carried on for profit or gain.

Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.

	This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

*"body in which the relevant person has a beneficial interest" means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest; "director" includes a member of the committee of management of an industrial and provident society;*

*"land" excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income; "M" means a member of a relevant authority;*

*"member" includes a co-opted member; "relevant authority" means the authority of which M is a member;*

*"relevant period" means the period of 12 months ending with the day on which M gives notice to the Monitoring Officer of a DPI;*

*"relevant person" means M or M's spouse or civil partner, a person with whom M is living as husband or wife or a person with whom M is living as if they were civil partners;*

*"securities" means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.*

**'non pecuniary interest'** means interests falling within the following descriptions:

- 10.1(1)(i) Any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
- (ii) Any body (a) exercising functions of a public nature; (b) directed to charitable purposes; or (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
- (iii) Any easement, servitude, interest or right in or over land which does not carry with it a right for you (alone or jointly with another) to occupy the land or to receive income.
- 10.2(2) A decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a connected person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward, as the case may be, affected by the decision.

**'a connected person'** means

- (a) a member of your family or any person with whom you have a close association, or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of a type described in sub-paragraph 10.1(1)(i) or (ii).

**'body exercising functions of a public nature'** means

Regional and local development agencies, other government agencies, other Councils, public health bodies, council-owned companies exercising public functions, arms length management organisations carrying out housing functions on behalf of your authority, school governing bodies.

A Member with a personal interest who has made an executive decision in relation to that matter must ensure any written statement of that decision records the existence and nature of that interest.

**NB** Section 21(13) of the LGA 2000 overrides any Code provisions to oblige an executive member to attend an overview and scrutiny meeting to answer questions.

## AUDIT AND GOVERNANCE COMMITTEE

**HELD: 24 MARCH 2015**

Start: 7.00pm

Finish: 7.35pm

### PRESENT:

Councillors: Pope (Chairman)

Dereli	Owens
Gagen	Pendleton
Greenall	Westley
G Hodson	Whittington
Ms Melling	

Officers: Borough Treasurer (Mr M Taylor)  
Borough Solicitor (Mr T Broderick)  
Audit Manager (Mr M Coysh)  
Principal Member Services Officer (Mrs S Griffiths)

In attendance: Councillor J Hodson  
Karen Murray of Grant Thornton (External Auditors)  
Paul Thompson of Grant Thornton (External Auditors)

### 38. APOLOGIES

Apologies for absence were received on behalf of Councillors Pryce-Roberts and Savage.

### 39. MEMBERSHIP OF THE COMMITTEE

In accordance with Council Procedure Rule 4, the Committee noted the termination of membership of Councillor Jones and the appointment of Councillor Ms Melling for this meeting only, giving effect to the wishes of the Political Groups.

### 40. DECLARATIONS OF INTEREST

There were no declarations of interest.

### 41. MINUTES

RESOLVED That the minutes of the last meeting of the Committee held on 27 January 2015 be approved as a correct record and signed by the Chairman.

### 42. REPORT OF THE BOROUGH TREASURER

Consideration was given to the following reports of the Borough Treasurer as circulated and contained on pages 445 – 498 of the Book of Reports.

**43. GRANT THORNTON - AUDIT PLAN**

The Borough Treasurer reported upon the External Auditor's Audit Plan of the Council's 2014/15 financial statements.

The Chairman invited Karen Murray from Grant Thornton (External Auditors) to present the Plan to the Committee.

Comments and questions were raised in respect of the following:

- staffing levels (prior to and following OR reviews)
- redundancies
- agency staff/permanent contracts/zero hour contracts

RESOLVED That the report be noted.

**44. GRANT THORNTON - PROGRESS REPORT**

Consideration was given to the report of the Borough Treasurer which detailed the External Auditor's update report and outlined progress regarding the delivery of their responsibilities against their audit plan together with a range of other matters.

The Chairman invited Karen Murray from Grant Thornton (External Auditors) to present the update report to the Committee.

RESOLVED That the report be noted.

**45. INTERNAL AUDIT ACTIVITY - QUARTERLY UPDATE**

The Borough Treasurer reported upon progress against the 2014/2015 Internal Audit Plan.

The Audit Manager advised that 92% of the items were currently in progress compared with 89% for the same period in 2013/14.

Comments and questions were raised in respect of the following:

- Revenues and Benefits reconciliations
- Universal Credit/rent income
- Areas of work to be carried forward to next year

RESOLVED That progress in the year to date be noted and that a further update on Revenues and Benefits reconciliations be submitted to the next meeting of the Committee.

**46. INTERNAL AUDIT PLAN 2015/16**

Consideration was given to the report of the Borough Treasurer which provided details on the background to the preparation of the 2015/16 Internal Audit Plan and presented it for approval.

RESOLVED            That the Internal Audit Plan, attached as an Appendix to the report, be approved.

**47. REGULATION OF INVESTIGATORY POWERS ACT QUARTERLY MONITORING OF USE OF POWERS**

In relation to the quarterly monitoring of activity under the Regulation of Investigatory Powers Act 2000 (RIPA) the Borough Solicitor reported that there was no relevant activity to bring to the attention of the Committee.

RESOLVED            That the update be noted.

**48. WORK PROGRAMME**

Consideration was given to the Committee's work programme as set out at page 498 of the Book of Reports.

RESOLVED            That the Work Programme be noted

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CHAIRMAN





## **AGENDA ITEM: 5**

**AUDIT AND GOVERNANCE COMMITTEE:**

**30 June 2015**

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**Report of: Borough Treasurer**

**Relevant Managing Director: Managing Director (People and Places)**

**Contact for further information: Marc Taylor (Extn. 5092)  
(E-mail: marc.taylor@westlancs.gov.uk)**

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**SUBJECT: GRANT THORNTON UPDATE REPORT AND FEE LETTER**

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Wards affected: Borough wide

### **1.0 PURPOSE OF THE REPORT**

1.1 To receive an update from our External Auditors on a range of different matters.

### **2.0 RECOMMENDATION**

2.1 That the update report and fee letter be considered and that any questions be raised with the Grant Thornton representatives who will be attending the meeting.

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### **3.0 BACKGROUND**

3.1 Our external auditors have asked for the documents contained in the appendices to be included on the agenda for this meeting so that Members may give them due consideration.

### **4.0 UPDATE REPORT AND FEE LETTER**

4.1 The Grant Thornton update report sets out their progress in delivering their responsibilities against their audit plan as well as a summary of emerging national issues and developments and a number of challenge questions in respect of these emerging issues which Members may wish to consider.

4.2 The fee letter provides details of the planned audit fee for 2015/16, the scope of work covered by this fee, and an audit timetable.

4.3 Representatives of Grant Thornton will present these documents at the Committee meeting and will be able to answer any questions that Members may have on their contents.

## **5.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

5.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder. The report has no significant links with the Sustainable Community Strategy.

## **6.0 RISK ASSESSMENT**

6.1 The work that our External Auditors undertake is an integral part of the Council's control framework and provides assurance to Members that the Council is operating effectively.

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### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

### **Equality Impact Assessment**

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

### **Appendices**

Appendix A – Grant Thornton Update Report  
Appendix B – Grant Thornton Fee Letter



# West Lancashire Borough Council Audit & Governance Committee Update

Year ended 31 March 2015

11 June 2015

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Executive

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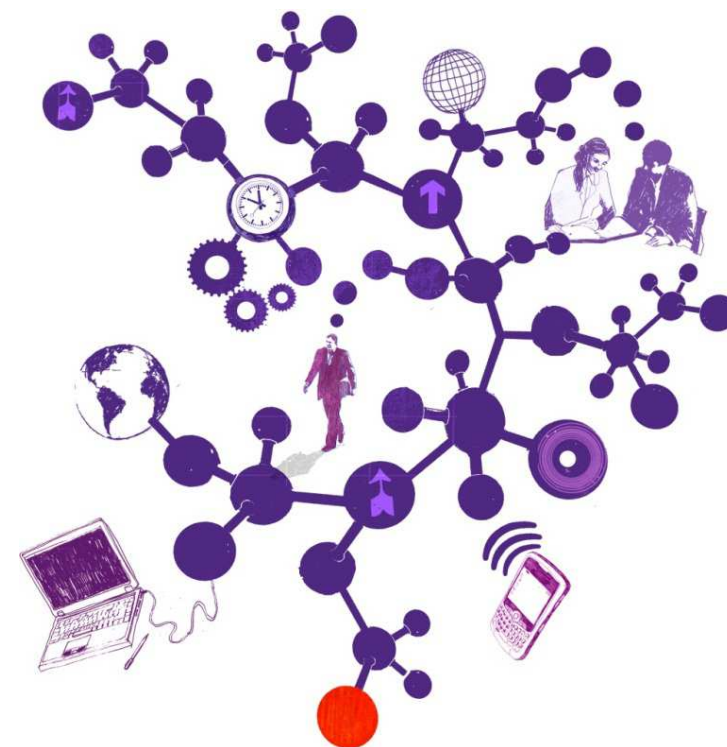
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**Alex Mason**

In Charge Auditor

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The contents of this report relate only to the matters which have come to our attention, which we believe need to be reported to you as part of our audit process. It is not a comprehensive record of all the relevant matters, which may be subject to change, and in particular we cannot be held responsible to you for reporting all of the risks which may affect your business or any weaknesses in your internal controls. This report has been prepared solely for your benefit and should not be quoted in whole or in part without our prior written consent. We do not accept any responsibility for any loss occasioned to any third party acting, or refraining from acting on the basis of the content of this report, as this report was not prepared for, nor intended for, any other purpose.

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# Introduction

This paper provides the Audit & Governance Committee with a report on progress in delivering our responsibilities as your external auditors. The paper also includes:

- a summary of emerging national issues and developments that may be relevant to you; and
- a number of challenge questions in respect of these emerging issues which the Committee may wish to consider.

Members of the Committee can find further useful material on our website [www.grant-thornton.co.uk](http://www.grant-thornton.co.uk), where we have a section dedicated to our work in the public sector (<http://www.grant-thornton.co.uk/en/Services/Public-Sector/>). Here you can download copies of our publications including:

- Stronger futures: development of the local government pension scheme
- Spreading their wings: Building a successful local authority trading company

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

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Paul Thompson Executive T 0161 234 6348 [paul.a.thompson@uk.gt.com](mailto:paul.a.thompson@uk.gt.com)

# Progress at June 2015

Progress against plan

On track

Opinion and VfM conclusion

All planned to be met

Outputs delivered

Fee Letter, Progress Reports and Audit Plan delivered to plan

Work	Planned date	Complete?	Comments
<p><b>2014-15 Accounts Audit Plan</b> We are required to issue a detailed accounts audit plan to the Audit and Governance Committee setting out our proposed approach in order to give an opinion on the Council's 2014-15 financial statements.</p>	March 2015	Complete	<p>Our plan highlights the audit risks we have identified from our audit planning and from discussions with officers and sets out our proposed work to address those risks</p> <p>The Audit Plan was presented to the March 2015 Audit and Governance Committee.</p>
<p><b>Interim accounts audit</b> Our interim fieldwork visit includes:</p> <ul style="list-style-type: none"> <li>• updating our review of the Council's control environment</li> <li>• updating our understanding of financial systems</li> <li>• review of Internal Audit reports on core financial systems</li> <li>• early work on emerging accounting issues</li> <li>• early substantive testing</li> <li>• proposed Value for Money conclusion.</li> </ul>	March 2015	Complete	<p>We have finalised our interim fieldwork and at this stage we do not have any issues that we need to bring to your attention.</p>
<p><b>2014-15 final accounts audit</b> Including:</p> <ul style="list-style-type: none"> <li>• audit of the 2014-15 financial statements</li> <li>• proposed opinion on the Council's accounts</li> <li>• proposed Value for Money conclusion.</li> </ul>	July 2015	Not yet started	<p>Our Audit Findings Report will be presented to the Audit and Governance Committee as "those charged with governance" in September 2015. It will set out matters arising from our accounts audit.</p>

# Progress at June 2015

Work	Planned date	Complete?	Comments
<p><b>Value for Money (VfM) conclusion</b></p> <p>The scope of our work to inform the 2014/15 VfM conclusion comprises:</p> <ul style="list-style-type: none"> <li>• The scope of our work to inform the 2014/15 VfM conclusion comprises the two criteria specified by the Audit Commission:</li> <li>• <b>Securing financial resilience.</b> Focusing on whether the Council has robust systems and processes to manage effectively financial risks and opportunities, and to secure a stable financial position for the foreseeable future.</li> <li>• <b>Challenging how it secures economy, efficiency and effectiveness.</b> Focusing on whether the Council is prioritising its resources within tighter budgets and by improving productivity and efficiency.</li> </ul>	March to July 2015	In progress	<p>We have completed our initial risk assessment and are undertaking our planned programme of VfM work to inform the 2014/15 conclusion.</p> <p>We will report our findings with management and the report to the Audit and Governance Committee in September.</p>
<p><b>Other areas of work</b></p> <p>We are required to summarise the outcome of our work to certify the Councils 2014/15 grant claims and returns.</p>	September – November 2015	Not yet started	We will prepare a report for the Audit and Governance Committee setting out the findings from our certification of your grant claims.

# Spreading their wings: Building a successful local authority trading company

## Grant Thornton market insight

'Spreading your wings' is the first in a series on alternative delivery models in local government. This report focuses on how to set up a local authority trading company and, importantly, how to make it successful.

The trend in using alternative models to protect and develop services has continued over the last year. As councils continue to confront financial pressure, many have considered how to reduce costs, generate income and improve efficiency by introducing commercial structures.

The introduction of LATCs has been a key part of this innovation and we predict that the number will grow in the next five years. While restricted initially to areas such as entertainment or airports – for example Birmingham's NEC and Manchester Airport – LATCs have grown into new areas such as highways, housing and education. More recently, LATCs dedicated to the delivery of social care services have emerged.

We recognise that the delivery of a successful company is not easy. In light of this, this report provides practical guidance on the steps that need to be followed in:

- deciding to set up a local authority trading company
- setting up a local authority trading company
- building a successful local authority trading company.

Grant Thornton has worked with many LATCs and continues to support growth in this area. We have based this report on market research, interviews with councils and LATCs, and our own experience of working with LATCs and councils. It is a practical guide drawing on our own experiences but also on the successful companies we have worked with



# Welfare Reform Review: Easing the burden

## Grant Thornton market insight

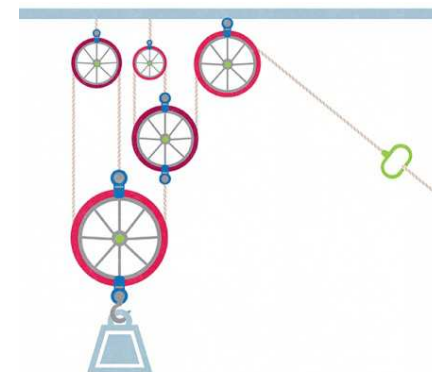
Our second welfare reform report, 'Easing the burden', followed on from 'Reaping the benefits?' to provide insight into the impact of welfare reform on English local authority and social housing organisations over the past two years.

It focused on the governance and management arrangements being put in place in England across the two sectors to deliver reform, the early signs of how successful the reforms have been and the upcoming issues and risks on the reform agenda in the wider context of social impact.

### Key messages:

- The cumulative effect of various welfare reforms is putting a significant financial strain on those people needing welfare support
- The majority of local authorities and housing associations surveyed had seen a rise in average council tax and rent arrears since 2012/13, which they attributed at least in part to welfare reform
- There had been limited movement to smaller properties as a result of the spare room subsidy (also known as the bedroom tax) and benefit cap reforms, with generally less than 10% of those affected having moved according to our survey. The shortage of smaller properties for people to move into played a key role in this
- Local authorities are becoming reliant on Discretionary Housing Payments (DHP) to plug the gap for those unable to pay. Ninety-five per cent of local authorities surveyed think that recipients of DHP allocations are either wholly or partly dependent on DHP to avoid homelessness in the longer-term. Any reduction in DHP funding from central government is therefore likely to result in further increases to rent arrears and homelessness in the next two years, unless mitigated by other means
- The withdrawal of ring-fenced hardship funding (formerly the Social Fund) will result in a reduction of provision, as the majority of local authorities told us that they are not in a position to fund this from their own revenue
- Reductions in DHP and hardship funding, in addition to general funding reductions will inhibit the ability of local authorities and housing associations to pursue early intervention policies that avoid people falling into long-term benefit dependency. This will have cost implications for the medium- to long-term.
- The cost of administering housing benefit has risen as a result of welfare reform and now 47% of local authorities and 51% of housing associations surveyed said housing benefit is becoming significantly more costly to administer. This is partly due to the increased complexity of cases

The report 'Easing the burden: The impacts of welfare reform on local government and social housing sector' can be found [on our website](#)





# Earlier closure and audit of accounts

## Accounting and audit issues

Legislation was recently passed to bring forward the deadlines for the preparation and audit of Local Government financial statements from 2017/18 onwards. The timeframes for the preparation of the financial statements and their subsequent audit will be reduced by one month and two months respectively as follows:

- Deadline for preparation of financial statements – 31 May (currently 30 June)
- Deadline for audit completion – 31 July (currently 30 September)

Although July 2018 is over 3 years away, both local authorities and their auditors will have to make real changes in how they work to ensure they are 'match-fit' to achieve this deadline. This will require leadership from members and senior management.

Local government accountants and their auditors should start working on this now.

Top tips for local authorities:

- make preparation of the draft accounts and your audit a priority, investing appropriate resources to make it happen
- make the year end as close to 'normal' as possible by carrying out key steps each and every month
- discuss potential issues openly with auditors as they arise throughout the year
- agree key milestones, deadlines and response times with your auditor
- agree exactly what working papers are required.

Auditors are already working on bringing forward more testing to before the financial statements are prepared and will be discussing further changes with local authorities including greater use of estimates in the accounts which will enable the audits to be brought forward further.

Some authorities currently produce their financial statements ahead of the current deadline, or have plans to do so in 2014/15, and some audits are completed before 31 July.

We will be assessing how this has been achieved and will share our findings in a national report, expected in early 2016.



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14 April 2015

Dear Gill and Kim

## **Planned audit fee for 2015/16**

Before it closed on 31 March 2015, the Audit Commission was asked to set the scale fees for audits for 2015/16. The Commission published its work programme and scales of fees for 2015/16 at the end of March 2015. In this letter we set out details of the audit fee for the West Lancashire Borough Council along with the scope and timing of our work and details of our team.

## **Scale fee**

The Audit Commission defines the scale audit fee as “the fee required by auditors to carry out the work necessary to meet their statutory responsibilities in accordance with the Code of Audit Practice. It represents the best estimate of the fee required to complete an audit where the audited body has no significant audit risks and it has in place a sound control environment that ensures the auditor is provided with complete and materially accurate financial statements with supporting working papers within agreed timeframes.”

The Council's scale fee for 2015/16 has been set by the Audit Commission at £43,746, which compares to the audit fee of £57,428 for 2014/15. The reduction in fees has been enabled by the procurement exercises run by the Commission across both the Local Government and Health sectors.

After the Commission's closure, the 2015/16 work programme and fees will be accessible from the archived Audit Commission website from the National Archives [http://webarchive.nationalarchives.gov.uk/\\*/http://www.audit-commission.gov.uk/](http://webarchive.nationalarchives.gov.uk/*/http://www.audit-commission.gov.uk/) and on the Public Sector Audit Appointments PSAA website [psaa.co.uk](http://psaa.co.uk)

The audit planning process for 2015/16, including the risk assessment, will continue as the year progresses and fees will be reviewed and updated as necessary as our work progresses.

## **Scope of the audit fee**

The scale fee covers:

- our audit of your financial statements
- our work to reach a conclusion on the economy, efficiency and effectiveness in your use of resources (the value for money conclusion)
- our work on your whole of government accounts return.

### **Chartered Accountants**

Member firm within Grant Thornton International Ltd

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A list of members is available from our registered office.

Grant Thornton UK LLP is authorised and regulated by the Financial Services Authority for investment business.

### Value for Money conclusion

Under the Audit Commission Act, we must be satisfied that the Council has adequate arrangements in place to secure economy, efficiency and effectiveness in its use of resources, focusing on the arrangements for:

- securing financial resilience; and
- prioritising resources within tighter budgets.

We undertake a risk assessment to identify any significant risks which we will need to address before reaching our value for money conclusion. We will assess the Council's financial resilience as part of our work on the VfM conclusion and provide feedback.

### Certification of grant claims and returns

The Council's indicative grant certification fee has been set by the Audit Commission at £11,195.

### Billing schedule

Fees will be billed as follows:

<b>Main Audit fee</b>	<b>£</b>
September 2015	10,936
December 2015	10,936
March 2016	10,937
June 2016	10,937
	43,746
<b>Grant Certification</b>	
December 2016	11,195
<b>Total</b>	<b>54,941</b>

### Outline audit timetable

We will undertake our audit planning and interim audit procedures in spring 2016. Upon completion of this phase of our work we will issue a detailed audit plan setting out our findings and details of our audit approach. Our final accounts audit and work on the VfM conclusion will be completed in August 2016 and work on the whole of government accounts return in September 2016.

<b>Phase of work</b>	<b>Timing</b>	<b>Outputs</b>	<b>Comments</b>
Audit planning and interim audit	Feb to March 2016	Audit plan	The plan summarises the findings of our audit planning and our approach to the audit of the Council's accounts and VfM.
Final accounts audit	July to Aug 2016	Audit Findings (Report to those charged with governance)	This report sets out the findings of our accounts audit and VfM work for the consideration of those charged with governance.

VfM conclusion	Jan to Aug 2016	Audit Findings (Report to those charged with governance)	As above
Financial resilience	Jan to Aug 2016	Financial resilience report	Report summarising the outcome of our work.
Whole of government accounts	September 2016	Opinion on the WGA return	This work will be completed alongside the accounts audit.
Annual audit letter	October 2016	Annual audit letter to the Council	The letter will summarise the findings of all aspects of our work.
Grant certification	June to December 2016	Grant certification report	A report summarising the findings of our grant certification work

### **Our team**

The key members of the audit team for 2015/16 are:

	<b>Name</b>	<b>Phone Number</b>	<b>E-mail</b>
Engagement Lead	Karen Murray	0161 234 6364	<a href="mailto:karen.l.murray@uk.gt.com">karen.l.murray@uk.gt.com</a>
Engagement Manager	Paul Thompson	0161 234 6348	<a href="mailto:paul.a.thompson@uk.gt.com">paul.a.thompson@uk.gt.com</a>
In Charge Auditor	Alex Mason	0151 234 2637	<a href="mailto:alex.mason@uk.gt.com">alex.mason@uk.gt.com</a>

### **Additional work**

The scale fee excludes any work requested by the Council that we may agree to undertake outside of our Code audit. Each additional piece of work will be separately agreed and a detailed project specification and fee agreed with the Council.

### **Quality assurance**

We are committed to providing you with a high quality service. If you are in any way dissatisfied, or would like to discuss how we can improve our service, please contact me in the first instance. Alternatively you may wish to contact Sarah Howard our Public Sector Assurance regional lead partner [sarah.howard@uk.gt.com](mailto:sarah.howard@uk.gt.com).

Yours sincerely

Karen Murray  
Director – Public Sector Assurance  
For Grant Thornton UK LLP





## **AGENDA ITEM: 6**

**AUDIT AND GOVERNANCE COMMITTEE:**

**30 June 2015**

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**Report of: Borough Treasurer**

**Relevant Managing Director: Managing Director (People and Places)**

**Contact for further information: Marc Taylor (Extn. 5092)  
(E-mail: marc.taylor@westlancs.gov.uk)**

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**SUBJECT: GRANT THORNTON ASSURANCE LETTER**

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Wards affected: Borough wide

### **1.0 PURPOSE OF THE REPORT**

1.1 To consider a response to a letter from our external auditors asking for information on how this Committee gains assurance over management processes and arrangements.

### **2.0 RECOMMENDATION**

2.1 That the proposed response to the letter set out in Appendix 2 be approved.

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### **3.0 BACKGROUND**

3.1 To comply with International Auditing Standards our external auditors have requested information to be supplied so that they can consider how Members gain assurance over a range of different matters. A copy of the letter received from Grant Thornton has been included in Appendix 1.

### **4.0 PROPOSED RESPONSE**

4.1 Details on the proposed response to each of the questions that have been raised are set out in Appendix 2. Members are now asked to consider this position, so that relevant matters can be considered at the meeting, prior to the response being submitted.

- 4.2 Following consideration of the issues raised in this letter if Members feel that there are any areas where additional information should be reported to this Committee, then this can be considered further and built into the future work programme as appropriate.

## **5.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

- 5.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder. The report has no significant links with the Sustainable Community Strategy.

## **6.0 RISK ASSESSMENT**

- 6.1 The work that our External Auditors undertake is an integral part of the Council's control framework and provides assurance to Members that the Council is operating effectively.
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### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

### **Equality Impact Assessment**

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

### **Appendices**

Appendix 1 – Grant Thornton Letter  
Appendix 2 – Proposed Response





Grant Thornton

Councillor John Bullock  
Chair of the Audit and Governance Committee  
West Lancashire Borough Council  
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L39 2DF

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16 June 2015

Dear Councillor Bullock

**West Lancashire Borough Council Financial Statements for the year end 31  
March 2015  
Understanding how the Audit and Governance Committee gains assurance  
from management**

To comply with International Auditing Standards, we need to establish an understanding of how the Audit and Governance Committee gains assurance over management processes and arrangements.

I would be grateful, therefore, if you could write to me in your role as Audit and Governance Committee Chair with your responses to the questions in Appendix A.

We are hopeful that the Committee could co-ordinate responses in time for discussion at the next meeting on 30<sup>th</sup> June. If you are in agreement with this I would be grateful for the Committee's formal response by mid July.

Yours sincerely

Karen Murray  
Director  
For Grant Thornton UK LLP

T 0161 234 6364  
E [Karen.l.murray@uk.gt.com](mailto:Karen.l.murray@uk.gt.com)

## Appendix A – Questions for Audit and Governance Committee

Item	Description	Comment
a	Have you assessed the risk of material misstatement in the financial statements due to fraud?	
b	What are the results of this process?	
c	What processes do you have in place to identify and respond to the risks of fraud?	
d	Have any specific fraud risks, or areas with a high risk of fraud, been identified, and what has been done to mitigate these risks?	
e	Are internal controls, including segregation of duties, in place and operating effectively?	
f	If not, where are the risk areas and what mitigating actions have been taken?	
g	Are there any areas where there is a potential for override of controls or inappropriate influence over the financial reporting process (for example, because of undue pressure to achieve financial targets)?	
h	Are there any areas where there is a potential for misreporting?	
i	How do you exercise oversight over management's processes for identifying and responding to risks of fraud?	
j	What arrangements are in place to report fraud issues and risks to the Audit Committee?	
k	How do you communicate and encourage ethical behaviour of staff and contractors?	
l	How do you encourage staff to report their concerns about fraud?	
	Have any significant issues been reported?	
m	Are you aware of any related party relationships or transactions that could give rise to risks of fraud?	
n	Are you aware of any instances of actual, suspected or alleged fraud, either within the Council as a whole or within specific departments since 1 April 2014?	

- o What arrangements do you have in place to prevent and detect non-compliance with laws and regulations?
- p How does management gain assurance that all relevant laws and regulations have been complied with?
- q How are you provided with assurance that all relevant laws and regulations have been complied with?
- r Have there been any instances of non-compliance or suspected non-compliance with laws and regulation since 1 April 2014?
- s What arrangements do you have in place to identify, evaluate and account for litigation or claims?
- t Are there any actual or potential litigation or claims that would affect the financial statements?
- u Have there been any reports from other regulatory bodies, such as HMRC, which indicate non-compliance?



## APPENDIX 2 – PROPOSED RESPONSE

Item	Question	
A	Have you assessed the risk of material misstatement in the financial statements due to fraud?	A report on fraud, bribery and corruption issues is presented to the Audit and Governance Committee each year. The last report was produced in September 2014 and the next report is due in September 2015.
B	What are the results of this process?	Link to report: <a href="http://online.westlancs.gov.uk/coins/viewDoc.asp?c=e%97%9Dc%96o%7B%90">http://online.westlancs.gov.uk/coins/viewDoc.asp?c=e%97%9Dc%96o%7B%90</a>
C	What processes do you have in place to identify and respond to the risks of fraud?	This report covers a wide range of factors including:
D	Have any specific fraud risks, or areas with a high risk of fraud, been identified and what has been done to mitigate these risks	<ul style="list-style-type: none"> <li>• A review of the Council's anti-fraud, bribery and corruption policy</li> <li>• Completion of an Audit Commission self assessment checklist to evaluate our current fraud arrangements</li> <li>• The endorsement of a Counter Fraud plan</li> <li>• Numbers of fraud cases over the last 12 months</li> </ul>
I	How do you exercise oversight over management's processes for identifying and responding to risks of fraud?	Staff are encouraged to report any concerns through the Council's Anti-Fraud, Bribery and Corruption Policy and Whistleblowing Code. These documents are periodically reviewed and updated and re-issued to staff.
J	What arrangements are in place to report fraud issues and risks to the Committee?	Link to Anti-Fraud, Bribery and Corruption Policy: <a href="http://www.westlancs.gov.uk/media/47523/anti-fraud-and-corruption-policy.pdf">http://www.westlancs.gov.uk/media/47523/anti-fraud-and-corruption-policy.pdf</a>
L	How do you encourage staff to report their concerns about fraud? Have any significant issues been reported?	Link to Whistleblowing Code: <a href="http://www.westlancs.gov.uk/media/88532/constitution-172-nov-11.pdf">http://www.westlancs.gov.uk/media/88532/constitution-172-nov-11.pdf</a>
N	Are you aware of any instances of actual, suspected or alleged fraud, either within the Council as a whole or within specific departments since 1 April 2014?	
E	Are internal controls, including segregation of duties, in place and operating effectively?	The Internal Audit Annual Report 2014-15 presented to Audit and Governance Committee in June 2015 concludes that there is an effective system of internal control in place.
F	If not, what are the risk areas and what mitigating actions have been taken?	

G	Are there any areas where there is a potential for override of controls or inappropriate influence over the financial reporting process (for example because of undue pressure to achieve financial targets)?	<p>The system of internal control is designed to manage risk to a reasonable level but cannot eliminate all risk, and consequently provides reasonable but not absolute assurance of effectiveness.</p> <p>The statement of accounts is produced by qualified and experienced accountancy staff in accordance with professional standards, and consequently the risk of override of controls or misreporting is low.</p>
H	Are there any areas where there is the potential for misreporting?	
K	How do you communicate and encourage ethical behaviours of staff and contractors?	<p>With staff this is encouraged through the Officer Code of Conduct and with suppliers it is achieved through the inclusion of specific provisions and clauses within contracts documents:</p> <p>Link to Officer Code of Conduct:  <a href="http://www.westlancs.gov.uk/media/88520/constitution-171nov11.pdf">http://www.westlancs.gov.uk/media/88520/constitution-171nov11.pdf</a></p> <p>The Authority's standard terms for contracts and tenders provide for contracts to be terminated and tenders to be rejected should any attempt at corrupt practice be discovered.</p>
M	Are you aware of any related party relationships or transactions that could give rise to risks of fraud?	There is a specific note on related parties that is included in the statement of accounts.
O	What arrangements do you have in place to prevent and detect non-compliance with laws and regulations?	The Council has Monitoring Officer arrangements in place to meet the obligations imposed by sections 5 & 5A of the Local Government and Housing Act 1989. The Monitoring Officer protocol securing the delivery of this is embedded as an Article in the Council's Constitution, see link:
P	How does management gain assurance that all relevant laws and regulations have been complied with?	<p><a href="http://www.westlancs.gov.uk/media/86958/constitution-313a-may-2015.pdf">http://www.westlancs.gov.uk/media/86958/constitution-313a-may-2015.pdf</a></p> <p>Fulfilment of requirements is further assisted by the other reports, policies and codes referred to elsewhere in this response. An annual reminder is issued to officers by the Monitoring Officer highlighting the role and gaining assistance in reporting relevant matters.</p>
Q	How are you provided with assurance that all relevant laws and regulations have been complied with?	Internal audit review compliance with legislation in relation to areas subject to audit. This can be explicit and targeted specifically in a brief or as part of the general requirement under the Public Sector Internal Audit Standards for audit evaluation of risks to include consideration of compliance with laws and regulations.
R	Have there been any instances of non-compliance or suspected non-compliance with laws and regulations since 1 April 2014?	

		No relevant report has been made to Council or Cabinet in the period 1 April 2014.
S	What arrangements do you have in place to identify, evaluate and account for litigation and claims?	This area is subject to a specific review by the Borough Solicitor and Borough Treasurer as part of the process for producing the annual Statement of Accounts.
T	Are there any actual or potential litigation or claims that would affect the financial statements	The only material item in this category relates to claims for the repayment of Property Search income following a change in the statutory rules on charging. Details on this item have been included in the statement of accounts under provisions and contingent liabilities / assets.
U	Have there been any reports from other regulatory bodies, such as HMRC, which indicate non compliance?	No such reports have been received







## **AGENDA ITEM: 7**

**AUDIT AND GOVERNANCE COMMITTEE:**

**30 June 2015**

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**Report of: Borough Treasurer**

**Relevant Managing Director: Managing Director (People and Places)**

**Contact for further information: Mr M.Coysh (Extn. 2603)  
(E-mail: [mike.coysh@westlancs.gov.uk](mailto:mike.coysh@westlancs.gov.uk))**

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**SUBJECT: INTERNAL AUDIT ACTIVITY – QUARTERLY UPDATE**

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Wards affected: Borough wide

### **1.0 PURPOSE OF THE REPORT**

- 1.1 To advise of progress against the 2015/16 Internal Audit Plan.
- 1.2 To summarise audit work completed since the previous update.

### **2.0 RECOMMENDATION**

- 2.1 That Members note progress in the year to date.

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### **3.0 BACKGROUND**

- 3.1 This committee approved the 2015/16 Internal Audit Plan and the Internal Audit Manager brings written updates on progress against it to each meeting of this Committee.
- 3.2 The report summarises progress for the period up to the end of May. This work will inform the overall opinion in the Internal Audit Annual Report.
- 3.3 The appendix reports assurance provided by work concluded in the period and updates Members on any issues previously drawn to this Committee's attention.

#### **4.0 INTERNAL AUDIT ACTIVITY TO DATE**

- 4.1 An appendix summarising progress to date and any significant issues arising is attached and the Internal Audit Manager will attend the meeting to present the report should Members have any questions.
- 4.2 Progress against the plan to date is satisfactory with 18% of audits in progress compared to 19% for the same period in the previous year.

#### **5.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

- 5.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder. The report has no significant links with the Sustainable Community Strategy.

#### **6.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 6.1 All activity referred to in this report is covered by existing budget provisions.

#### **7.0 RISK ASSESSMENT**

- 7.1 This report summarises progress against Internal Audit's work programme to date. Internal Audit's work is a key source of assurance to this Committee that risks to the achievement of the Council's objectives are being properly managed.

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#### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

#### **Equality Impact Assessment**

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

#### **Appendices**

Appendix 1 Internal Audit Quarterly Activity Update.

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## INTERNAL AUDIT QUARTERLY UPDATE

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### 1.0 Summary of progress 2015/16

- 1.1 Due to publication requirements this report is compiled in early June and the Audit Manager will update members verbally on progress at the meeting.
- 1.2 5 of the 28 items on the original plan are currently in progress. This is approximately 18% and compares with 19% for the same period in 2014/15.

### 2.0 Internal Audit 2015/16 First Quarter Activity Update

<b>Title</b>	<b>Position</b>
Contract Procurement	In progress
National Fraud Initiative	In progress
Licensing	In progress
Icon cash receipting	In progress
Benefits	In progress

<b>Summary</b>	
Work complete	0
Work in progress	5
Work not yet commenced	23
<b>Total</b>	<b>28</b>

### 3.0 Significant issues

#### 3.1 Revenues reconciliations

The lack of reconciliations of NNDR and Council Tax to Icon postings and the General Ledger following the implementation of the Northgate revenues system has been the subject of previous reports to this committee.

The sources of the differences between the systems involved have now been identified and the practical mechanism for reconciliation of the systems has been agreed.

Reconciliations of the NNDR system to Icon and the Ledger have commenced.

Historical anomalies between the Council Tax fund, Icon and the General Ledger have now all been identified and the process of correcting them is underway. This is a complex process due to the number of transactions involved and adjustments need to be applied in a way that is reflected accurately in all the systems involved.

Satisfactory progress has been made on these reconciliations and it is now anticipated that the processes that are underway will work effectively in future.

### 3.2 Payroll – variations to pay

This update includes a summary of a report on the system for initiating payroll variations which has been included here as it provides only limited assurance. An action plan to address this has been agreed with management and is scheduled for completion by the end of July 2015. An update on progress against the action plan will be brought to the next meeting of this Committee.

## 4.0 Conclusion

4.1 Progress against the 2015/16 plan to date has been satisfactory and it is anticipated that internal audit coverage will be maintained at levels which will enable an adequate assessment of the overall adequacy and effectiveness of the Council's framework of governance, risk management and control.

## 5.0 Update on 2014/15 work

5.1 Below are summaries of 12 areas of activity from the 2014/15 Audit Plan. The remaining areas will be reported to the next meeting of this Committee.

## 6.0 Assurance rating system

6.1 This report records the level of assurance provided by internal audit work. The following categories are used to record the level of assurance.

### **Full assurance:**

there is a sound system of internal control designed to secure objectives and controls are being consistently applied.

### **Substantial assurance:**

there is a generally sound system of internal control in place designed to secure objectives and controls are generally being applied consistently. Some weaknesses in the design or operation of the controls put the achievement of particular objectives at risk.

### **Limited assurance:**

weaknesses in design or inconsistent application of controls put the achievement of objectives at risk.

### **No assurance:**

weak controls or significant non-compliance with controls could result (or have resulted) in failure to achieve objectives.

6.2 No system of internal control can eliminate every possible risk and increasing the level of control in a system frequently increases costs. Balancing risk appropriately against the costs of control is management's responsibility.

6.3 Internal audit's role is to evaluate and improve the effectiveness of risk management and control processes.

6.4 It is important to recognise that the scope of the work and the area examined define the limits of the assurance and for this reason some context will be provided for each piece of work in the form of summary reports as set out below

## 7.0 2014/15 assurance reports:

### 7.1 BENEFITS

#### 7.1.1 Objectives

Ensure quality control process incorporates a robust audit trail from sample selection to final outcome.

Retest a small sample of claims from a recent quality control check to verify accuracy of reported figures.

Where the original checks disclosed errors establish whether action has been taken to prevent re-occurrence

By reference to the results of quality check reports and independent testing determine whether measures implemented to reduce the raised error rates identified during previous audit work have been effective.

#### 7.1.2 Observations

The quality control check process incorporates a robust audit trail.

Re-examination of claims selected from the quality sample for March 2015 replicated the original results indicating that the quality control check was operating satisfactorily.

Errors disclosed during quality checks had been corrected and action taken proportionate to the nature of the errors to prevent re-occurrence

Measures implemented to reduce error rates have been effective.

#### 7.1.3 Assurance

The complexity of benefit regulations and the requirement for significant exercise of human judgement in assessment processes means that errors can never be completely eliminated however this Internal Audit work provides **substantial** assurance. There is a sound overall system in place to control the administration of Housing Benefit and the Council Tax Support Scheme.

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### 7.2 CONTRACT PROCUREMENT

#### 7.2.1 Objectives

To monitor the operation of Contract Procedure Rules and Financial Regulations by review of procurement for contracts identified by various means including analysis of expenditure across all services.

To progress any issues identified at review with management through appropriate channels.

To improve controls on procurement and promote good practice by communication of findings of reviews corporately and contributing to reviews of procurement procedures.

#### 7.2.2 Observations

Internal Audit carried out reviews of procurement activity throughout the year. and were also involved with the work of the Procurement and Project Group.

#### 7.2.3 Assurance

Internal Audit work carried out in the year provides **substantial** assurance. The Council's has established a sound corporate framework of controls on procurement. Procurement activity at service level is based on sound procedures but the complex nature of procurement requires these continue to be monitored to ensure they are applied consistently in practice.

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### 7.3 HOME CARE LINK

#### 7.3.1 Objectives

Document the major operational components of the service.

Ascertain the position on the tender for the external contract.

Review arrangements for disaster recovery / business continuity.

Review control of data held by the section

Review arrangements for income collection and budgetary control

#### 7.3.2 Observations

The service's own procedural instructions were essentially up to date. The service is independently inspected each year against industry standards. The latest inspection recommended that clearer instructions be provided for staff and these are to be introduced in 2015.

The service had successfully retained a significant external contract through competitive tender.

Adequate Disaster Recovery / Business Continuity plans are in place.

Record retention procedures had recently been reviewed in the section and are generally sound although paper record management procedures require further review. The service's data handling procedures have historically been integrated into their general procedure manuals and have not yet been translated into the current standard corporate format. This will be addressed through the workings of the Data Protection Working Group.

Budget monitoring and income collection arrangements are sound and remodelling of budgets has taken place to provide clear management information on the unit's financial performance.

### 7.3.3 Assurance

Internal Audit work carried out in the year provides **substantial** assurance. There is a generally sound system of internal control in place designed to secure objectives and controls are being applied consistently. Controls on some areas of operation require refreshing to bring them into line with current corporate standards.

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## 7.4 Council Tax

### 7.4.1 Objectives

Select a sample of 60 accounts active in the current financial year:

Verify banding for the property to ensure the correct valuation has been applied.

Validate the opening balance to confirm that calculation routines are operating correctly.

For accounts in arrears in the sample ensure that appropriate recovery action has been taken and that the system adequately records the current position.

Determine whether discounts and exemptions applied to accounts in the sample are supported by adequate evidence.

Determine whether refunds issued to accounts in the sample are properly authorised and supported by valid documentation including a request for refund from the account holder.

Where any account in the sample has been subject to write off, ensure all reasonable steps have been taken to collect the debt and the write off is supported by valid documentation and is properly authorised.

Examine the Council Tax suspense account and confirm that the account has been reviewed on a regular basis

Establish whether the audit trail of movements to and from the suspense account is adequate and that balances arise from customer rather than system errors.

### 7.4.2 Observations

For the 60 accounts examined calculation routines in the Northgate system had operated effectively and properties had been correctly banded in accordance with the most recent Valuation Office assessments.

Appropriate recovery action was being taken on accounts in arrears. It was not possible to draw conclusions on the operation of recovery stage reset

procedures from the sample examined. This area will be incorporated into future audit work plans.

A number of issues were noted in relation to discounts and exemptions, e.g. changes to the information provided by educational establishments locally had degraded existing processes to confirm student status. As a result evidence was incomplete on a number of accounts in the sample. It was also noted that no proactive review process was in place for accounts granted Exemption F.

Council Tax Suspense is being pro-actively monitored and entries generally arise through customer error. Items moved out of Council Tax suspense were adequately recorded but in an inconsistent manner, in some cases this was achieved by entries on the system's notes facility, in others via a separate spread sheet.

#### 7.4.3 Assurance

Internal Audit work carried out in the year provides **substantial** assurance. System calculation and billing routines are operating effectively. Issues relating to a number of processes for "non cash" adjustments to accounts have been brought to management's attention.

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### 7.5 Debtors

#### 7.5.1 Objectives

Carry out transactional testing of a sample of debtor requests and corresponding invoices:

Review processes for reconciliation of the debtors system to the General Ledger to establish that reconciliation is accurate and complete, carried out with sufficient frequency and documentation held to record the exercise evidences a robust process.

Establish whether requests have been authorised appropriately.

Determine whether adequate details of the debtor are recorded on all invoices.

Check full descriptions of the services/functions for which charges were levied are provided.

Check amounts charged and appropriate VAT details were included on each invoice.

Establish invoices were despatched in a timely manner after receipt of debtor requests.

Check debtor number and invoice references are included on each invoice together with appropriate ancillary information such as contact details for the appropriate officer and acceptable payment methods.

Review process for maintaining records of officers authorised to request debtor invoices.



Examine the debtors suspense account. Confirm it is reviewed on a frequent basis, adequate records of movements to and from the account are maintained and balances are a result of customer error rather than system failings.

### 7.5.2 Observations

The process for reconciliation between the debtor system and General Ledger is robust, up to date, accurate and complete and carried out with sufficient frequency.

A review of a sample of 60 debtor request forms and corresponding invoices evidenced that:

- debtor requests were properly authorised, contained adequate debtor details, full descriptions of the services/functions for which charges were levied.
- Officers to contact in case of queries were present in all but one instance.
- Amounts charged and appropriate VAT details were included on each invoice and debtor and invoice references were present for all the sample.
- Details of acceptable payment methods are standard features on the reverse of all debtor invoices.

All invoices within the sample had been despatched in a timely manner after receipt of the debtor request.

While authorised signatory lists had been amended in relation to recent changes there was no evidence of systematic review by the client sections.

A review of the suspense account evidenced that it is checked on a frequent basis, movements into and out of the account are recorded appropriately and postings to the account arose as a result of incorrectly quoted reference numbers on the part of customers, as opposed to system shortcomings or staff errors. The balance on the account was zero.

### 7.5.3 Assurance

Internal Audit work carried out in the year provides **full** assurance. The corporate system for administration of debtors requested by services is operating effectively. (Note - this review did not include a detailed examination of the various systems in the user services which feed into and receive income through the debtors system.)

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## 7.6 Creditors

### 7.6.1 Objectives

To review the procedure for processing batches of invoices through the creditor system and the controls in place to verify payments made to invoices submitted.

To examine a sample of recent creditor invoices/payments encompassing all directorates within the authority to confirm the transactions were:

- traceable to the general ledger
- coded appropriately for the nature of the expenditure type and originating service
- arithmetically correct,
- approved in accordance with authorised signatory lists.

#### 7.6.2 Observations

The system automatically compares expected batch totals to those actually processed cumulatively, identifying variances if these totals do not reconcile.

Payment of invoices in excess of £20,000 are automatically blocked and require authorisation by the Principal Officer or Senior Officer Miscellaneous Income and Expenditure.

There is an effective audit trail in respect of user data input and payment authorisation.

Batch numbers and unique references in respect of individual invoices are automatically assigned, thereby enabling identification of transactions.

Where applicable, purchase order numbers relating to invoices automatically link transactions to the relevant expenditure codes and post to the general ledger, thereby minimising manual intervention.

Transactional testing indicated that invoices are being authorised appropriately and the system is operating effectively.

#### 7.6.3 Assurance

Internal Audit work carried out in the year provides **full** assurance. The corporate system for administration of creditor payments on behalf of services is operating effectively. (Note - this review did not include a detailed examination of the various services' processes for purchasing prior to input to the corporate creditor system.)

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### 7.7 Payroll

Previous audits concluded that computerised processing systems provided by Wigan MBC work effectively with adequate controls on payroll authorisation, calculation, recording and payment. The current review concentrated on original source documentation for variations to payroll (e.g. overtime, standby, additional duties) prior to input to the system for processing.

#### 7.7.1 Objectives

Establish if systems ensure that:

- source documentation has been adequately completed and signed by the employee

- payments have been made in accordance with the source documentation and manual calculations are correct
- variations are properly authorised in accordance with authorised signatory lists
- variations comply with appropriate terms and conditions and are in accordance with the Harmonisation Agreement
- there is an appropriate budget for each type of variation in each Service and that it has not been exceeded

### 7.7.2 Observations

There is a lack of control over variations to payroll due to insufficiently detailed prime documentation in some service areas and inadequate authorisation procedures prior to input to the system.

Processing of claims in some service areas did not provide an adequate audit trail from work claimed to payments processed.

Due to these factors it was not possible to confirm that payments are being made in accordance with appropriate terms and conditions and the Harmonisation agreement.

The system does not adequately control the risk of inaccurate claims being processed or support subsequent checking and correction.

Retention of documents is inconsistent across services.

Given the overall lack of consistent processes and poor retention of information the remainder of the work programme was deferred and the report issued.

While there is insufficient evidence to support variations, no evidence was found of incorrect variations being processed however controls to prevent this are inadequate.

### 7.7.3 Assurance

#### **Limited assurance:**

Internal audit work identified weaknesses in the design of controls on preparation, authorisation and retention of prime records prior to input to payroll which risk compromising system objectives.

## 7.8 Treasury Management

### 7.8.1 Objectives

Identify a sample of investment transactions for the financial year to date, examine the relevant records and ensure that the transactions were confirmed in writing and that there are appropriate documents, held securely supporting the transactions.

Ensure that all investments in the sample comply with the current Treasury Management Strategy.

Confirm that a regular reconciliation of investments has been carried out and that it has been signed off independently.

Examine the cashflow forecast spreadsheet to ensure it is up to date and provides adequate evidence to support appropriate levels of investment

#### 7.8.2 Observations

Transactions examined demonstrated satisfactory control on authorisation and recording of investments and complete compliance with the Council's Treasury Management strategy.

Adequate controls and procedures are in place to secure effective monitoring of cash flow and Investments made and repaid.

Weekly reconciliations of external investments, along with monthly interest received reconciliations, help ensure levels of investment meet vital output dates and major influxes are utilised most effectively.

#### 7.8.3 Assurance

Internal Audit work provides **substantial** assurance. The Treasury Management function is subject to effective control and investments had been made in accordance with the Treasury Management Strategy..

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### 7.9 Business Continuity

#### 7.9.1 Objectives

Time was included in the plan for internal audit attendance at "Exercise Lucifer", an exercise which was designed to test the business continuity plan by applying it in a simulated emergency situation.

#### 7.9.2 Observations

As this was not an audit of an operational area no formal audit report was produced although written feedback was provided to the Emergency Planning Officer.

#### 7.9.3 Assurance

Regular testing of business continuity arrangements by simulation provides a practical way of ensuring plans are kept up to date. Although this was not a regular assurance audit the exercise provided concrete evidence that key components of the Council's plans to control risks arising from threats to business continuity remain viable.

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## 7.10 ICON cash receipting

### 7.10.1 Objectives

This exercise was originally included in the plan to provide assurance on the overall management and operation of the ICON cash receipting system. Due to significant issues with reconciliations between Icon cash postings, Council Tax and NNDR systems and the General Ledger previously reported to this Committee the work actually undertaken focused specifically on this issue.

### 7.10.2 Observations

The detailed work undertaken with staff from Accountancy and BTLs Revenues and Benefits identified a number of technical issues giving rise to the apparent variances between the systems. With these resolved internal audit are no longer significantly involved in the on-going work to set up sustainable reconciliation routines which is reported elsewhere in this update.

### 7.10.3 Assurance

Although this work will ultimately contribute to improvements to controls in the systems involved, no assurance can be derived from involvement in this project. The assurance elements of the exercise originally planned have been included on the 2015/16 Audit Plan. Reconciliations will be tested as part of internal audits 2015/16 work on council tax and NNDR.

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## 7.11 ICT

### 7.11.1 Objectives

Review operation of relevant applications.

Provide input to corporate initiatives to improve ICT governance and manage risks in the wider ICT environment.

Attend the Lancashire Districts Computer Audit Group.

Provide internal audit input to the WLBC ICT user group

### 7.11.2 Observations

ICT is an integral part of the majority of the Council's operations. From 2014 the Council's ICT requirements have been provided by Lancashire County Council / BT Lancashire Services. Internal audit review of the operation and security of specific applications (e.g. Council Tax) has continued as part of individual service audits.

### 7.11.3 Assurance

During the year service reviews incorporating examinations of the operation of associated applications have all resulted in ratings of Substantial or Full assurance.

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## 7.12 Data Protection / SIRO

### 7.12.1 Objectives

Internal audit are represented on the Data Protection Working Group and through this channel maintain an overview of corporate arrangements to secure data security.

During the year as part of regular audit work a number of areas were reviewed against corporate standards for data security. In this way data protection arrangements are kept under continuous review. Issues are addressed directly with the Service under review. Matters disclosed could be escalated corporately where appropriate.

### 7.12.2 Observations

Through the working of the Data Protection Working Group improvements to procedures have continued to be made corporately and at service level. Elsewhere on this agenda is the Annual Governance Statement, the process for preparing this includes certification by the Borough Solicitor in his role as Senior Information Risk Owner that the Council has established an effective system of internal control in relation to the data it holds.

### 7.12.3 Assurance

Reviews of controls at service level provide assurance to the SIRO that the systems of control implemented at service level are operating in accordance with corporate standards. No issues significant enough to require noting in the SIRO's certification have been disclosed.

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## **AGENDA ITEM: 8**

**AUDIT AND GOVERNANCE COMMITTEE:**

**30 June 2015**

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**Report of: Borough Treasurer**

**Relevant Managing Director: Managing Director (People and Places)**

**Contact for further information: Mr M.Coysh (Extn. 2603)  
(E-mail: [mike.coysh@westlancs.gov.uk](mailto:mike.coysh@westlancs.gov.uk))**

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**SUBJECT: INTERNAL AUDIT ANNUAL REPORT 2014-15**

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Wards affected: Borough wide

### **1.0 PURPOSE OF THE REPORT**

1.1 To present the 2014-15 Internal Audit Annual Report.

### **2.0 RECOMMENDATION**

2.1 That members consider the Internal Audit Annual Report for 2014-15.

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### **3.0 BACKGROUND**

3.1 The United Kingdom Public Sector Internal Audit Standards require the Audit Manager to deliver an annual opinion and report. Consideration of the report is included in this Committee's Terms of Reference.

3.2 The report identifies matters which the Audit Manager considers relevant to Member's consideration of the Annual Governance Statement presented elsewhere on this agenda.

### **4.0 SUMMARY OF FINDINGS**

4.1 The Internal Audit Annual Report concludes that West Lancashire Borough Council's risk management systems and framework of governance and control are adequate and effective.

## **5.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

5.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder. The report has no significant links with the Sustainable Community Strategy.

## **6.0 FINANCIAL AND RESOURCE IMPLICATIONS**

6.1 All activity referred to in this report is covered by existing budget provisions.

## **7.0 RISK ASSESSMENT**

7.1 This Annual Report is a key element of assurance to this Committee that risks are being properly managed to increase the likelihood that the Council will achieve its overall objectives.

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### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

### **Equality Impact Assessment**

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

### **Appendices**

Appendix - Internal Audit Annual Report 2014-15.



# **INTERNAL AUDIT SERVICE ANNUAL REPORT 2014-15**

## **1.0 INTRODUCTION**

- 1.1 The role of internal audit is to provide independent assurance that the Council's risk management, governance and internal control processes are operating effectively.
- 1.2 The Council is required by the Accounts and Audit Regulations to maintain an internal audit of its accounting records and system of internal control in accordance with proper practices.
- 1.3 For 2014/15 proper practices were those defined in the Public Sector Internal Audit Standards (PSIAS).
- 1.4 The PSIAS require the Audit Manager to deliver an annual internal audit opinion and report that can be used by the Council to inform its Annual Governance Statement.
- 1.5 The annual internal audit opinion must conclude on the overall adequacy and effectiveness of the Council's framework of governance, risk management and control.
- 1.6 The assignments set out in the Internal Audit Plan approved by this Committee are the primary source of assurance upon which that opinion is based.
- 1.7 This report summarises key areas of internal audit activity during 2014-15 and identifies any issues relevant to the overall adequacy and effectiveness of the Council's framework of governance, risk management and control.

## **2.0 QUALITY ASSURANCE AND IMPROVEMENT PROGRAMME**

- 2.1 The PSIAS require internal audit to maintain a quality assurance and improvement programme (QAIP). A report was brought to this Committee in January of this year informing Members of the requirements for the QAIP and seeking their views on the commissioning of an external review as required by the PSIAS.
- 2.2 A further report will be brought to a future meeting of this Committee in relation to the future operation of the QAIP and proposals for the external review process.

2.3 For 2014/15 the requirement for a review was satisfied by an internal assessment. This was carried out using the “Checklist for Assessing Conformance with the PSIAS and the Local Government Application Note” published by the Chartered Institute of Public Finance and Accountancy (CIPFA). One area for improvement was identified.

### **3.0 CONFORMANCE WITH PUBLIC SECTOR INTERNAL AUDIT STANDARDS**

3.1 A report was brought to this Committee in March 2013 setting out the requirements of the PSIAS which were adopted with effect from April 2013.

3.2 A further report on guidance published by the Chartered Institute of Public Finance and Accountancy (CIPFA) on the application of the Standards in the public sector in the form of a Local Government Application Note was brought to this Committee in June 2013.

3.3 Since that time internal audit has reviewed its systems and procedures to ensure that services are provided in accordance with the standards. This process was completed with the adoption of a new Internal Audit Charter reflecting the changes approved by this committee in January of this year.

3.4 This Committee has approved a suitable framework to maintain an internal audit of the Council’s accounting records and system of internal control in accordance with the Accounts and Audit Regulations.

3.5 Internal audit have adopted the PSIAS and pay due regard to current CIPFA guidance on the application of those Standards.

3.6 The 2014/15 assessment concluded that the work performed by the section in the year was conducted in conformance with the PSIAS.

### **4.0 INTERNAL AUDIT ACTIVITY 2014-15**

4.1 The 2014-15 Internal Audit Plan was prepared using a risk based approach taking into account the Council’s objectives and considering local and national influences on risks to their achievement. It was approved by this Committee in March 2014.

4.2 The 2014/15 Internal Audit Plan contained 26 work-streams. Performance against the plan, summaries of internal audit activity and the level of assurance it provides are reported to this Committee in detail on a quarterly basis.

4.3 Results for the year are summarised in the table below

Title	Assurance
Benefits	Substantial
Contract Audit	Substantial
Performance Monitoring System (BTLS)	Substantial
Community Safety (CCTV)	Substantial
National Fraud Initiative	Non-assurance work
Home Care Link	Substantial
Council Tax	Substantial
Debtors	Full
NNDR	Substantial
Creditors	Full
Transport	In progress
Main accounting	Substantial
Electoral registration	Substantial
Business continuity	Non-assurance work
Payroll	Limited
Bacs	In progress
ICON cash receipting	Non-assurance work
Counter-Fraud Arrangements	Non-assurance work
Treasury Management	Substantial
ICT	Substantial
Data Protection / SIRO	Substantial
Housing QL system controls	Non-assurance work
Money Laundering Reporting System	Non-assurance work
Annual Governance Statement	Non-assurance work
Rents	In progress
Housing Property Services	In progress

4.4 The items in progress are nearing completion and it is anticipated that these will result in substantial assurance reports.

4.5 Non-assurance work is activity undertaken by internal audit not primarily designed to provide assurance. An example is the National Fraud Initiative which the Council is required to participate in. Such work may still provide useful evidence of the effectiveness of controls in operation. During the year the work completed in these non-assurance areas did not disclose any evidence of significant areas of weakness in controls.

4.6 Assurance work identified two areas where full assurance was provided by a sound system of internal control designed to secure objectives and controls being consistently applied.

4.7 The majority of systems provided substantial assurance that objectives will be met, having a generally sound system of internal control with controls generally being applied consistently but with some features of the design or

operation of the controls putting the achievement of some subsidiary objectives at risk.

- 4.8 One system was assessed as providing a limited level of assurance. This was one of the feeder systems to payroll. Previous audits concluded that the computerised payroll system itself incorporates effective controls on authorisation, calculation, recording and payments.
- 4.9 The 2014/15 work concentrated on localised systems in services which initiate variations to payroll prior to input to the computerised payroll system. It concluded that weaknesses in the design of controls on the preparation, authorisation and retention of prime records prior to input to payroll compromised the system.
- 4.10 While controls on variations were inadequate, no evidence was found of incorrect variations having been processed. An action plan to improve controls has been agreed with management and is being progressed through the usual channels.
- 4.11 No areas examined in the year had insufficient controls to provide any assurance that objectives would be achieved.
- 4.12 Assurance work undertaken in the year found that the Council has appropriate controls in place to manage significant risks to its operations. This is reflected in the substantial or full assurance ratings given in the majority of the areas examined.
- 4.13 In addition to planned activity, internal audit have a role in the investigation of potential fraud, responding to items referred to it in accordance with established procedures. In 2014/15 no initial referrals were progressed to the formal investigation stage.
- 4.14 Sufficient audit coverage has been achieved in the year to enable me to provide an opinion on the control environment .

## **5.0 MANAGEMENT RESPONSES TO INTERNAL AUDIT REPORTS**

- 5.1 During the year recommendations for improvements to controls in various systems have been made by internal audit and agreed by Management. Responses from auditees have been satisfactory and recommendations have been implemented in reasonable timescales.

## **6.0 ANNUAL GOVERNANCE STATEMENT**

- 6.1 Internal audit work supports the production of the Annual Governance Statement presented elsewhere on this agenda. There are no issues arising

from Internal Audit's work in 2014/15 which require disclosure in the Annual Governance Statement in addition to those already contained in it.

## **7.0 OVERALL OPINION**

- 7.1 The Internal Audit Plan was prepared without any limitations on scope and has been substantially completed. No issues were identified during the course of the audit work in 2014/15 that would be likely to have a material effect on the Council's Financial Statements.
- 7.2 Based on the work which internal audit have carried out and taking into account other sources of assurance available, such as the Council's external auditor's Annual Audit and Inspection Letter it is my opinion that West Lancashire Borough Council has in place a sound overall framework of governance and effective risk management and control systems.

M.A.Coysh  
Internal Audit Manager  
West Lancashire Borough Council





**AGENDA ITEM: 9**

**AUDIT & GOVERNANCE COMMITTEE: 30 June 2015**

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**Report of: Borough Treasurer**

**Relevant Managing Director: Managing Director (People and Places)**

**Contact for further information: Marc Taylor (Extn. 5092)**  
**(E-mail: marc.taylor@westlancs.gov.uk)**

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**SUBJECT: ANNUAL GOVERNANCE STATEMENT 2014/2015**

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Borough wide interest

**1.0 PURPOSE OF THE REPORT**

1.1 To consider the Council's Annual Governance Statement for 2014/15 as set out in Appendix 1

**2.0 RECOMMENDATION**

2.1 That the Annual Governance Statement 2014/2015 be approved and commended to the Leader and Managing Directors for signature.

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**3.0 BACKGROUND**

3.1 The Accounts and Audit Regulations require the Council to publish an Annual Governance Statement with its financial reports. The CIPFA / SOLACE Framework provides guidance on the proper practices to be followed to fulfil this requirement and Officers have followed this approach in producing the Annual Governance Statement.

3.2 An Application Note was issued by CIPFA in March 2010, outlining requirements for the Statement in relation to their document 'Statement on the Role of the Chief Financial Officer in Local Government (2010)' and the Governance Statement has also been produced in line with this guidance.

3.3 The terms of reference of this Committee include responsibility for approving the Annual Governance Statement and commending it for signature by the Leader and Managing Directors.

#### **4.0 CURRENT POSITION**

- 4.1 The Annual Governance Statement provides a summary of the Council's internal control environment and a review of its effectiveness. This year's Statement confirms that the framework is adequate and that good progress has been made in addressing the significant governance issues identified in last year's statement. This continues the Council's track record of demonstrating solid financial and governance arrangements.
- 4.2 The Authority has consistently received positive feedback from its external auditors on its arrangements for internal control, and the most recent Annual Audit Letter has concluded the same. In the Annual Audit Report, elsewhere on this agenda, the Council's Internal Audit Manager has summarised the findings from Internal Audit activity over the year and these findings are incorporated into the Annual Governance Statement.
- 4.3 All Heads of Service and Senior Managers have considered and signed a Certificate on Internal Control to confirm that governance arrangements and internal controls have not been compromised during the past year in their areas of responsibility. As it is Managers who are charged with embedding governance systems in their areas, this is an integral part of the annual review process.
- 4.4 However the Council cannot afford to be complacent and the main current governance issue, identified in the Statement, is the financial challenges facing the Council (as well as all other local authorities) and this will be monitored closely in the forthcoming months.
- 4.5 In order to comply with best practice for producing the Annual Governance Statement, as set out in the CIPFA/Solace publication "Delivering Good Governance in Local Government: Framework", it is necessary to have in place a Local Code of Governance which identifies the Governance framework of the Authority. The Authority's Code has been reviewed as part of this process and found to be accurate and up-to-date. Consequently no changes are required to the Code which has been included in Appendix 2 for information.

#### **5.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

- 5.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder. The report has no significant links with the Sustainable Community Strategy.

#### **6.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 6.1 All the activity referred to in this report is covered by existing budget provisions.

#### **7.0 RISK ASSESSMENT**

- 7.1 Failure to publish an Annual Governance Statement with the Statement of Accounts would breach one of the Council's statutory obligations.



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## **Background Documents**

The following background documents (as defined in Section 100D (5) of the Local Government Act 1972) have been relied on to a material extent in preparing this Report.

- CIPFA Solace 'Delivering Good Governance in Local Government: a Framework'
- CIPFA Solace 'Application Note to Delivering Good Governance in Local Government: a Framework' 2010

## **Equality Impact Assessment**

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

## **Appendices**

- Appendix 1 – West Lancashire Borough Council's Annual Governance Statement
- Appendix 2 – West Lancashire Borough Council's Local Code of Governance



**WEST LANCASHIRE BOROUGH COUNCIL**

**2014/15 ANNUAL GOVERNANCE STATEMENT**

**SCOPE OF RESPONSIBILITY**

West Lancashire Borough Council is responsible for ensuring that its business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for and used economically, efficiently and effectively. The Council also has a duty to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

To discharge this overall responsibility, the Council must have in place proper arrangements for the governance of its affairs, facilitating the effective exercise of its functions, which include arrangements for the management of risk.

West Lancashire Borough Council has approved and adopted a Local Code of Corporate Governance, which is consistent with the principles of the CIPFA/SOLACE Framework *Delivering Good Governance in Local Government*.

This statement explains how the Council has complied with the code and also meets the requirements of the Accounts and Audit Regulations, in relation to the production of an Annual Governance Statement.

**THE PURPOSE OF THE GOVERNANCE FRAMEWORK**

The governance framework comprises the systems, processes, culture and values by which the Authority is directed and controlled and the mechanisms through which it accounts to, engages with and leads the community. It enables the Authority to monitor the achievement of its strategic objectives and to consider whether those objectives have led to the delivery of appropriate, cost effective services.

The system of internal control is a significant part of that framework and is designed to manage risk to a reasonable level. It cannot eliminate all risk of failure to achieve policies, aims and objectives and can therefore only provide reasonable and not absolute assurance of effectiveness.

The system of internal control is based on an ongoing process designed to identify and prioritise the risks to the achievement of the Council's policies, aims and objectives, to evaluate the likelihood of those risks being realised and the impact should they be realised, and to manage them efficiently, effectively and economically.

The governance framework has been in place at West Lancashire Borough Council for the year ended 31 March 2015 and up to the date of approval of the statement of accounts.

## **THE GOVERNANCE FRAMEWORK**

The Council has in place a comprehensive governance framework designed to regulate, monitor and control its various activities in its pursuit of its vision and objectives.

The key elements of the framework include:

The principal statutory obligations and functions of the Authority are identified in the Constitution and reflected in the Budget and Policy Framework which is approved by Council.

The Council reviews its vision and priorities regularly. A statement of the current vision, values and priorities is available in a number of formats and, together with a number of other documents referred to in this Annual Governance Statement, can be viewed online on the Council's [website](#).

The Council's Business Plan sets out how it will deal with the very difficult financial challenges facing all local authorities as a result of government decisions on grant funding reductions. It also contains details of the priority delivery projects that are designed to drive forward progress against priorities.

The Council's Covalent Performance Management System is used to monitor achievement of the Council's objectives and progress against priority delivery projects. Information from this system is presented to Management and Members on a regular basis and there is a Data Quality protocol in place to ensure the accuracy of this information.

The innovative Joint Managing Director structure continues to provide high quality management for the Council.

The Council has a number of core customer service standards which apply to all customers and staff. These corporate customer care standards provide a clear commitment of our desire to provide a high quality of customer service. They include response times for letters and emails, telephone calls, complaints, visits to our offices, visits to customer's homes and out of hours emergencies. They cover targets and the attitude and behaviour of staff and customers.

The Council has in place Codes of Conduct which set out the standards of behaviour expected of all members and officers. These are provided to all members and officers on appointment and are also available on the Council's website. The Council also has a Standards Committee whose role is to promote and maintain high standards of conduct.

A corporate Equality and Diversity steering group is in place which meets periodically to ensure the Council complies with its duties under Equality legislation.

The Council's Constitution clearly sets out the respective roles and responsibilities of the Council, its Executive and Overview and Scrutiny functions, and delegations to Committees, Portfolio holders and Chief Officers as well as those functions which, by Statute, are to be exercised by a designated "Proper Officer".

As part of the Constitution the Council has agreed a Protocol on Member/Officer Relations and Conventions for the Management of Council Business.

The Council's professionally qualified Chief Finance Officer (the Borough Treasurer) is responsible for the proper administration of its financial affairs. The Officer attends Council, Cabinet and Directorate Service Head meetings and has a direct reporting line to the Joint Managing Directors. Financial advice is provided for all the key decisions that are made.

A Medium Term Financial Forecast, HRA Business Plan and Treasury Management Strategy, which fully assesses the potential financial risks to the Authority, are in place and are reviewed regularly. Standing orders and financial regulations, that detail the Authority's financial management arrangements, are also maintained and reviewed and updated periodically.

The Council has a comprehensive Risk Management process in place which is fully embedded throughout the Authority and forms an integral part of the management process. This includes a dedicated resource committed to this area of work to ensure consistency and compliance throughout the Authority. In addition all reports to Council and Cabinet have a risk assessment section.

The Council's Audit and Governance Committee undertakes the core functions of an audit committee as identified in CIPFA's publication *Audit Committees – Practical Guidance for Local Authorities*. The Committee receives regular reports on governance issues from both officers and the Council's external auditors.

The Council's Monitoring Officer Protocol sets out how the Council deals with issues of concern including legality, probity and constitutional issues.

The Council is committed to the highest possible standards of openness, probity and accountability and has in place a formal Complaints Procedure, Anti-Money Laundering Policy, Whistleblowing Code and Anti-Fraud, Bribery and Corruption Policy. The Council has a zero tolerance policy towards fraud and corruption. The Council's Whistleblowing Code provides the opportunity for anyone to report their concerns confidentially and enable them to be investigated properly.

In accordance with best practice the Council has in place Senior Information Risk Owners arrangements. The arrangements ensure suitable allocation of responsibilities for information systems through a network led by the Borough Solicitor.

Recruitment Procedures are in place to ensure the appointment of appropriately skilled employees. An induction process is also in place for employees along with guidance for Managers on how to induct new employees into their teams. Ongoing training needs are identified through a Development Appraisal Scheme.

The Council is committed to consulting local people and a 'Your Views' section is available on the Council's website dedicated to engaging the public.

The Council has in place a Protocol which sets out how the essential elements of local governance, accountability and transparency will be maintained within any proposed arrangements for service delivery through partnerships.

## **FINANCIAL MANAGEMENT ARRANGEMENTS**

The Authority's Financial Management arrangements conform with the governance requirements of the CIPFA Statement on the Role of the Chief Financial Officer in Local Government (2010).

## **REVIEW OF EFFECTIVENESS OF THE COUNCIL'S GOVERNANCE FRAMEWORK**

West Lancashire Borough Council has responsibility for conducting, at least annually, a review of the effectiveness of its governance framework including the system of internal control. The review of effectiveness is informed by the work of Heads of Service and Managers within the Authority who have responsibility for the development and maintenance of the governance environment, by the Head of Internal Audit's annual report, and also by the work undertaken by the External Auditors and other review agencies and inspectorates.

The Council is ultimately responsible for maintaining an up to date governance framework which is chiefly contained in its Constitution and is made up of its standing orders, financial regulations and scheme of delegation together with various associated policies and procedures.

Our most recent Annual Audit Letter from Grant Thornton concluded that the Council has effective arrangements in place for internal control.

As part of the procedure for producing this statement, the Council's Heads of Service and Senior Managers are required to review whether there are any significant control or governance issues that require addressing. No significant issues have been identified in this year's review.

The Borough Treasurer, who has overall responsibility for the Authority's financial framework, has not identified any significant governance or internal control issues in relation to financial matters. In carrying out a continuous audit of the Council's business, the Internal Audit Section review the effectiveness of key elements of the Council's governance arrangements and report to the Audit and Governance Committee accordingly. The Internal Audit Manager's Annual Report for 2014/15 does not identify any serious deficiencies in the Council's internal control mechanisms.

The Audit and Governance Committee are charged with monitoring Contract Procedure Rules, Financial Regulations and other provisions of the Constitution. This Committee also considers how well the Council has complied with its own and other published standards and controls in so far as these contribute to the adequacy of its framework of internal control.

We have been advised on the implications of the review of the effectiveness of the governance framework by the Audit and Governance Committee, and plans to address development issues and ensure continuous improvement of the system are in place.

**PROGRESS ON ISSUES IDENTIFIED IN THE LAST ANNUAL GOVERNANCE STATEMENT**

**FINANCIAL CHALLENGES AND THE BUSINESS PLAN**

Due to robust financial monitoring and management the Council has achieved a favourable budget variance for 2014/15 and has set a balanced budget for 2015/16. Consequently, the Council is taking appropriate action to ensure a stable financial standing and this position has been confirmed in our latest Annual Audit letter.

**SICKNESS**

On-going management action, and the prioritisation of tackling sickness issues, has helped to deliver a significant improvement in sickness levels over the last 12 months. The average number of days lost per full time equivalent staff member reduced from over 10 days to 8.7 over this period.

**BENEFITS PROCESSING**

In 2012 and 2013 the Benefits service implemented new systems and had to deal with significant changes to benefit rules. During this period both internal and external audit identified an increase in processing errors which was a matter of concern. To address this position an improvement plan was put in place which has helped to deliver significant and sustained improvements in the accuracy of benefit processing and consequently this area no longer represents a significant governance issue.

**CURRENT SIGNIFICANT GOVERNANCE ISSUES**

**FINANCIAL CHALLENGES AND THE BUSINESS PLAN**

Further significant savings will be required to ensure a balanced budget position is achieved over the next three years. A new business plan covering the period 2015-2018 has been developed setting out how these savings will be achieved. This savings programme may create significant risks in the governance framework that will need to continue to be managed and reviewed effectively.

We propose to monitor the above issues over the coming year and to take steps to maintain and develop our governance arrangements.

**SIGNED:** .....

Date .....

**LEADER**

**SIGNED:** .....

Date .....

**MANAGING DIRECTOR (PEOPLE AND PLACES)**

**SIGNED:** .....

Date .....

**MANAGING DIRECTOR (TRANSFORMATION)**

On behalf of West Lancashire Borough Council





# West Lancashire Borough Council



## Local Code of Governance

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## **INTRODUCTION**

The contents of this Code have been developed by drawing on the CIPFA/Solace publication “Delivering Good Governance in Local Government Framework” and associated guidance, which set out “proper practice” for the publication of an Annual Governance Statement as required by Regulation 4 of the Accounts and Audit Regulations 2011.

The Council has in place arrangements to govern its activities with the aim of ensuring that it is doing the right things, in the right way, for the right people, in a timely, inclusive, open, honest and accountable manner.

These are comprised of the systems, processes, priorities, cultures and values by which it is directed and controlled and through which it accounts to, engages with and, where appropriate, leads its communities.

The Council’s governance framework brings together underlying legislative requirements, governance principles and management processes that enable it to pursue its vision effectively, as well as underpinning that vision with mechanisms for control and management of risk.

The publication of this document is intended to make the Council’s governance processes more transparent and increase accountability to all of the Council’s stakeholders.

The CIPFA/SOLACE framework recommends that the Council tests its arrangements against the framework principles by:

- Developing and maintaining an up to date local code of governance
- Reviewing existing governance arrangements against it
- Preparing a governance statement in which they publicly report how they have monitored their governance arrangements in the year, the extent to which they comply with their own code and any planned changes to it.

This Local Code and governance arrangements will be reviewed annually and a Governance Statement will be published each year in conjunction with its financial reports.

## **THE CORE PRINCIPLES OF GOOD GOVERNANCE**

The CIPFA/SOLACE framework sets out how good governance can be recognised by adherence to six core principles with associated supporting principles.

The six core principles are set out below in bold together with the supporting principles which underpin them:

### **1. Focusing on the purpose of the Council and on outcomes for the community and creating and implementing a vision for the local area.**

Exercising strategic leadership by developing and clearly communicating the authority's purpose and vision and its intended outcomes for citizens and service users

Ensuring that users receive a high quality of service whether directly, or in partnership, or by commissioning

Ensuring that the authority makes best use of resources and that tax payers and service users receive excellent value for money

### **2. Members and officers working together to achieve a common purpose with clearly defined functions and roles.**

Ensuring effective Leadership throughout the Authority and being clear about executive and non-executive functions and the roles and responsibilities of the scrutiny function

Ensuring that a constructive working relationship exists between authority Members and Officers and that the responsibilities of authority Members and Officers are carried out to a high standard

Ensuring relationships between the authority and the public are clear so each knows what to expect of the other

### **3. Promoting values for the authority and demonstrating the values of good governance through upholding high standards of conduct and behaviour.**

Ensuring authority Members and Officers exercise leadership by behaving in ways that exemplify high standards of conduct and effective governance

Ensuring that organisational values are put into practice and are effective

**4. Taking informed and transparent decisions which are subject to effective scrutiny and managing risk.**

Being rigorous and transparent about how decisions are taken and listening and acting on the outcome of constructive scrutiny

Having good-quality information, advice and support to ensure that services are delivered effectively and are what the community wants/needs

Ensuring that an effective risk management system is in place

Using their legal powers to the full benefit of the citizens and communities in their area.

**5. Developing the capacity and capability of Members to be effective.**

Making sure that Members and Officers have the skills, knowledge, experience and resources they need to perform well in their roles

Developing the capability of people with governance responsibilities and evaluating their performance, as individuals and as a group

Encouraging best use of individuals' skills and resources in balancing continuity and renewal.

**6. Engaging with local people and other stakeholders to ensure robust public accountability.**

Exercising leadership through a robust scrutiny function which effectively engages local people and all local institutional stakeholders, including partnerships, and develops constructive accountability relationships

Taking an active and planned approach to dialogue with and accountability to the public to ensure effective and appropriate service delivery whether directly by the authority, in partnership or by commissioning

Making best use of human resources by taking an active and planned approach to meet responsibility to staff.

## **THE COUNCIL'S APPROACH TO THE APPLICATION OF THE SIX PRINCIPLES**

### **Implementing a Vision for the Area**

The Council's longer term vision and priorities are reviewed annually to ensure that they remain relevant. A statement of the vision, values and priorities is made available publicly in a number of formats.

#### **CORPORATE PRIORITIES**

The Council's vision is to be a Council to be proud of – delivering services that are lean, local and fair

#### **OUR VALUES**

We will deliver our vision by continuing to be an innovative organisation which:

- Prioritises customers and the services that are most important to quality of life;
- Work as 'one council' to provide a joined up approach;
- Is open and accountable in the way that it makes decisions;
- Develops and values employees;
- Promotes equality and diversity; and
- Works in partnership to benefit the Borough

#### **OUR PRIORITIES**

Our values underpin the way in which we will deliver our priorities and achieve our vision. Our corporate priorities are:

- Balancing the budget and providing the best possible services within the resources available;
- Focusing upon sustainable regeneration and growth within the Borough;
- Caring for our Borough by delivering the small improvements that can make a big difference;

(We will minimise uncertainty for staff and stakeholders by continuing to implement a managed approach to change and explore innovation as a means to secure further value for money)

Our services will continue to prioritise the following, subject to affordability

- Protect and improve the environment and keep our streets clean and tidy;
- Combat crime and the fear of crime;
- Work to create opportunities for and retain good quality jobs in particular for local people;

- To be a top performing landlord
- Improve housing and deliver housing that meets the needs of local people, including affordable housing; and
- Provide opportunities for leisure and culture that together with other council services contribute to healthier communities

## **PERFORMANCE**

We manage our performance by using performance indicators to highlight any areas of concern at the earliest opportunity. We also manage performance against a number of Priority Delivery projects (those identified in the Business Plan as being the most important in terms of achieving the Council's priorities). We do this by monitoring progress against key milestones and targets.

The Council has an agreed suite of Corporate Performance Indicators aimed at meeting the Borough's needs and priorities. They are key to monitoring, and thereby managing, the Council's performance in achieving the aims of the Business Plan. They are monitored annually and, where appropriate, quarterly by Members.

These are supplemented by other operational and management indicators/measures (the "local" PIs) which reflect our corporate priorities and are monitored regularly by Senior Management, Portfolio Holders and within the individual service areas.

The Council's Business Plan 2011-15 is supported by a Delivery Plan which details key projects, milestones and targets. This is monitored regularly by both Chief Officers and Members. Progress against the Delivery Plan, which also contains key overarching targets for the Council, will be reported yearly to Members, partners and the public through an Annual Report.

Indicators are managed and monitored within the Council's performance management system, Covalent. Indicators are linked to Service Priorities, Key Projects and Service Action Plans, which are also managed through the Covalent system.

Internal and External Audit regularly examine performance indicators as part of their review work.

## **GOVERNANCE**

The Council has in place a Protocol which sets out how the essential elements of local governance, accountability and transparency will be maintained within any proposed arrangements for service delivery through partnerships.

A Medium Term Financial Forecast and Treasury Management Strategy and Policy are maintained which fully assess the potential financial risks facing the Council.

The Council follows and complies with CIPFA's Code on a Prudential Framework for Local Authority Capital Finance and CIPFA's Treasury Management Code.

Advice from Statutory Officers, along with Member input, plays a key part in the decision making process of the Council to ensure the effective use of resources and achievement of objectives.

The Council has in place a clearly defined complaints process which enables it to identify and learn from any failings in service delivery.

## The Roles of Members and Officers

The Council's [Constitution](#) clearly sets out the respective roles and responsibilities of the Council, its Executive and Overview and Scrutiny functions, and delegations to Committees, Portfolio Holders and Chief Officers as well as those functions which by statute are to be exercised by a designated "Proper Officer". It also delineates the Council's Management Structure.

As part of the Constitution the Council has agreed a Protocol on Member/Officer Relations and Conventions for the Management of Council Business.

## Promoting High Standards of Conduct

As part of the Constitution the Council has adopted the Members' Code of Conduct and an Officer's Code of Conduct. The Council has a Standards Committee whose role is to promote and maintain high standards of conduct by councillors and co-opted members.

The Council's Human Resources team lead and monitor on Equality issues. An Equality Scheme Action Plan 2011-14 is in place to ensure the Council conforms with the Equality Act 2010 requirements. 'Approach to Equality' and 'Equality in Employment' documents are available to all staff and an Equality and Diversity Corporate Steering Group meets periodically to monitor compliance. Arrangements have recently been reviewed and new objectives put in place for 2014 and beyond

### **SERVICE STANDARDS**

We have a number of core customer service standards which apply to all customers and staff. These corporate customer care standards provide a clear commitment of our desire to attain an effective and consistent customer



service making our services easier to understand and access; they include responses to letters and emails, telephone calls, complaints, visits to our offices, visits to customer's homes and out of hours emergencies; they cover targets and the attitude and behaviour of staff and customers.

We are committed to improving, front-line services for residents and visitors to the Borough. To underline this we also have a set of service standards for each key front-line service, available on the Council's [Website](#), which are linked to our priorities.

## Informed, Transparent Decision Making

The Council publishes Key Decision Forward Plans which set out those executive decisions it knows it will be considering in advance for the information of interested stakeholders. In addition, appropriate notice of meetings of Council bodies is given together with the publication of the agenda and all available reports.

It has arrangements in place to ensure that conflicts of interest for members and officers are explicitly identified and dealt with before decisions are taken.

Guidance for report authors sets out matters which must be explicitly considered in the production of any report, including financial, resource and equality implications. These provide documentary evidence of the rationale behind any recommendations.

All decisions of the Council, Cabinet and Committees are formally minuted. Information about the Council's Committees including membership, meeting timetables, Agendas and Minutes can be accessed through the Council's [Committee Information System](#).

The Council has adopted a formal Risk Management Strategy and process which is fully embedded throughout the Authority and forms an integral part of the management process. A dedicated resource is committed to this area of work to ensure consistency and compliance throughout the Authority. Cabinet receives reports against the Key Risk Register which are available for call-in through the Overview and Scrutiny process.

Guidance on effective internal financial controls are detailed within the Council's Financial Regulations.

The Council has in place a Data Quality Protocol to ensure the accuracy, relevance and reliability of data produced for use by internal and external stakeholders.

## Developing Capacity to act Effectively

The Managing Director (People and Places) takes a leading role in developing Members of the Council through the Member Development Commission. The Managing Director (Transformation), through the HR service, develops Officers through the Development Appraisal Scheme which enables them to continue delivering high quality services.

Audit and Governance Committee Members receive training, in both financial and non financial matters, to support them in their role.

## Engaging with Local People and Stakeholders

West Lancashire Borough Council is committed to consulting local people and we are keen to gather your views. The Council has a consultation diary in the ["Your Views"](#) section of its website. This provides information on recent, current and future consultation activities as well as information on how you can get involved.

The "Duty to involve", is a statutory requirement for all Councils aimed at ensuring people have greater opportunities to have their say. The Council has devised an Action Plan for Corporate Consultation in response to the requirements of the Duty.



## **AGENDA ITEM: 10**

**AUDIT AND GOVERNANCE COMMITTEE:**

**30 June 2015**

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**Report of: Borough Treasurer**

**Relevant Managing Director: Managing Director (People and Places)**

**Contact for further information: Marc Taylor (Extn. 5092)  
(E-mail: marc.taylor@westlancs.gov.uk)**

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**SUBJECT: STATEMENT OF ACCOUNTS**

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Borough wide interest

### **1.0 PURPOSE OF THE REPORT**

1.1 To provide details on the preparation of the Statement of Accounts for the year ended 31st March 2015.

### **2.0 RECOMMENDATIONS**

2.1 That this report be noted.

2.2 That a further report to approve the audited statement of accounts be produced for the next meeting of the Committee.

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### **3.0 BACKGROUND**

3.1 It is part of the terms of reference of this Committee that it will approve the Council's Statement of Accounts by the 30<sup>th</sup> September each year.

## **4.0 AUDIT PROCESS**

- 4.1 The Accounts and Audit Regulations require that by the 30<sup>th</sup> June each year that the Council's Chief Finance Officer must sign and date the statement of accounts, and certify that it presents a true and fair view of the financial position and performance of the body for that year. At the time of writing this report, the accounts are being reviewed and verified, and are on course to be produced by the due date. Once the accounts are finalised it is intended that they will be published on the Council's website and a link sent to all Council Members, with paper copies being made available on request. I will also provide a presentation on the key issues from the Statement in the training session immediately prior to the Committee meeting.
- 4.2 Over the course of the summer our external auditors – Grant Thornton – will conduct an audit of the accounts. The summer period will also provide Members with the opportunity to scrutinise the accounts in detail and request any additional information or raise any issues.
- 4.3 Regulations require that our external auditors report on their findings from the audit directly to Members before the end of September. This report will be presented to the next meeting of the Audit and Governance Committee, and at that time the Committee will be asked to approve the audited accounts.

## **5.0 SUSTAINABILITY IMPLICATIONS / COMMUNITY STRATEGY**

- 5.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder. The report has no significant links with the Sustainable Community Strategy.

## **6.0 RISK ASSESSMENT**

- 6.1 The formal reporting of the Council's financial performance and position is part of the overall control framework that is designed to minimise the financial risks facing the Council.

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### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

### **Equality Impact Assessment**

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

### **Appendices**

None



## **AGENDA ITEM: 11**

**Audit and Governance Committee  
30 June 2015**

**Council  
22 July 2015**

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**Report of: Borough Solicitor**

**Relevant Managing Director: Managing Director (People and Places)**

**Contact for further information: Neale Walker (Extn.5022)  
(neale.walker@westlancs.gov.uk)**

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**SUBJECT: REVISED CONTRACTS PROCEDURE RULES**

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### **1.0 PURPOSE OF THE REPORT**

1.1 To agree updated Contracts Procedure Rules (CPRs) to incorporate the requirements of the Public Contracts Regulations 2015, and to highlight associated implications for the Council.

### **2.0 RECOMMENDATION TO AUDIT AND GOVERNANCE**

2.1 That the Contracts Procedure Rules set out in Appendix A to this report be submitted to Council for approval.

### **3.0 RECOMMENDATION TO COUNCIL**

3.1 That the Contracts Procedure Rules set out in Appendix A to this report be approved.

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### **4.0 BACKGROUND**

4.1 Major revisions to the existing CPRs have become necessary as a result of the Public Contracts Regulations 2015, and the publication of associated guidance by the Cabinet Office (the Crown Commercial Service). The changes are likely to have a significant impact upon the administration and conduct of Council procurements.

4.2 The Public Contracts Regulations 2015 (the Regulations) came into force on 26 February 2015. The Regulations bring into effect requirements of the April 2014 EU Public Procurement Directive, together with the addition of a UK-specific

'below EU threshold' section designed to increase transparency and help SMEs (small and medium sized enterprises) gain greater access to Public Sector tendering opportunities.

## **5.0 CURRENT POSITION**

- 5.1 Three training sessions on the Regulations were provided for relevant officers during April 2015. A revised set of Contract Procedure Rules have been prepared for approval, see Appendix A. Members can find a tracked change version of the existing Contract Procedure Rules at Appendix B.
- 5.2 It is acknowledged that the volume and complexity of the changes, when superimposed upon CPRs, which have already been subjected to a series of ad hoc amendments over a long period, mean there is a need to thoroughly review them and redraft it in a clearer format. It is proposed that the most suitable time to do this will be when further amendments are required as a result of the implementation of a new e-procurement system, which is planned for Autumn 2015. Meanwhile, a series of flowcharts and Procurement Practice Notes will be produced to assist Officers in understanding and adhering to the processes described in the CPRs.

## **6.0 SUMMARY OF MAIN CHANGES**

- 6.1 The majority of amendments and additions result directly from legal requirements set out in the Public Contracts Regulations 2015:

New Rule 8 - describes the new tender advertising requirements, including use of the government's 'Contracts Finder' website to increase transparency in respect of tender opportunities that are below the EU tendering threshold.

Rule 9 (was Rule 8) - has been amended to incorporate the prohibition on pre-selection of potential suppliers for tenders below £172,514. This provision is designed to increase access to tenders for SMEs which often struggle to complete complex Pre-Qualification Questionnaire documents.

Rule 10 (was Rule 17) - deals with the use of Constructionline for tenders for works between £172,514 and the EU Works threshold of £4.3m.

Rule 12 (was rule 10) - has been amended to make open tendering the norm rather than the exception, again to increase access for SMEs.

New Rule 14(iv) - introduces the concept of Most Economically Advantageous Tender (MEAT) (as opposed to considering price only) into above EU threshold tender evaluations.

Rule 16 (was Rule 14) – has been amended to include new compulsory contract clauses relating to contract termination and prompt payment.

New Rule 18 - describes the new Regulation restricting contract modifications. The new Regulation is relatively prescriptive, but has the benefit of clarity and does allow greater flexibility to add additional work to existing contracts than did the previous version of the Regulations.

New Rule 19 - introduces the requirement to consider dividing large procurements into smaller Lots. This is designed to help SMEs gain greater access to large contracts by splitting requirements, where this is feasible and appropriate.

New Rule 21 - describes extensive new reporting requirements, aimed at increasing transparency.

- 6.2 Amendments that are not related to the Public Contracts Regulations 2015 have deliberately been kept to a minimum. The main change that falls into this category is the removal from Note 6(iii) (was Note 4(iii)) of reference to building industry tendering codes which are understood to be obsolete.

## **7.0 IMPLICATIONS**

- 7.1. Constructionline is used by the Council and other Councils as a way of reducing the number of potential bidders for construction-related contracts. It involves the selection of a shortlist of potential bidders from a list of pre-registered accredited suppliers, thus reducing the considerable workload associated with assessing the large numbers of Pre-Qualification Questionnaire responses that often result from using the standard supplier filtering process.
- 7.2 Constructionline can no longer be used to select shortlists of potential tenderers for construction contracts below £172,514, because this would constitute pre-tender filtering which is prohibited by the new Regulations for tenders below this threshold. Therefore Rule 11 (was Rule 17) has been drafted to accommodate the continued use of Constructionline for construction contracts between £172,514 and the EU Works threshold of £4.3m only. This is understood on balance to be permissible in principle and takes into account non-statutory guidance issued by the Crown Commercial Service which allows the continuation of certain practices which were embodied in Contracts Procedure Rules prior to the Regulations taking effect.
- 7.3 Constructionline is a UK-only service, so it is not to be used where the procurement exercise being undertaken would be of interest to contractors (etc) from other EU states. A scrutiny process is described in Rule 11 (was Rule 17). The continued use of Constructionline will be kept under review, particularly in the light of any future guidance issued by the Crown Commercial Service.

## **8.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

- 8.1 There are no significant sustainability/community strategy implications.

## **9.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 9.1 Wider advertising of contract opportunities and restrictions on the use of Pre-Qualification Questionnaires will almost certainly result in an increase in the volume of below EU threshold tender enquiries and tender submissions, and consequently increase the overall workload of Officers while tenders are in progress. This will be mitigated to some extent by the planned introduction of an e-procurement system and, where appropriate, the continued but limited use of Constructionline.

## **10.0 RISK ASSESSMENT**

- 10.1 The relative complexity and unfamiliarity of the revised Regulations could lead to procedural issues and on occasion the possibility of challenge. Process flowcharts and supporting Procurement Practice Notes are being produced, which in addition to the training already provided and support from the Procurement Executive will assist in minimising this risk.

10.2 As noted, the continued use of Constructionline will be kept under review to ensure appropriate practice is followed.

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### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

### **Equality Impact Assessment**

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

### **Appendix**

*Appendix A – Revised Contracts Procedure Rules*

*Appendix B – Tracked change version of Contracts Procedure Rules*



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## Appendix A: Contracts Procedure Rules

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## **CONTRACTS PROCEDURE RULES**

### **Definitions**

1. In these Rules:

- (i) “authorised body” - shall mean the Council, Cabinet, committee, sub-committee, Portfolio Holder and any officer, with relevant authority (e.g. authority to take the decision or undertake the relevant action).
- (ii) “contractor” - shall mean any organisation or individual with whom the Council enters into a contract whether that contract is for the provision of materials, goods or work of any kind including professional services

- (iii) “quotations” - shall mean written, e-mail, facsimile or telephoned bids received from potential contractors in response to a written specification or other description of the works required
- (iv) “spending Service” - shall mean that Service of the Council which has responsibility for the budget which will pay for the contract in question or will be credited with any income emanating from the contract in question.
- (v) “Senior Officer” – shall mean a Managing Director or Head of Service.
- (vi) “contract” – when the Council purchases any goods, services and/or building works that procurement is a contract irrespective of the value (Note 22).
- (vii) “framework agreement” – shall mean an agreement with a panel of suppliers which sets out the terms and conditions under which individual purchases (call-offs) can be made throughout the term of the agreement.
- (viii) “Works” – shall mean the specific construction and construction-related activities listed in Schedule 2 of the Public Contracts Regulations 2015.

### **General**

- 2. Every contract made by the Council shall comply with the EU Treaty, with any relevant Directives of the EU and with UK law and, except as hereinafter provided, these Rules. *(Note 1 and 2)*
- 3. It shall be a condition of any contract between the Council and any person (not being an officer of the Council) who is required to supervise a contract on their behalf that, in relation to such contract, he/she shall comply with the requirements of these Rules as if he/she were a Senior Officer of the Council.
- 4. (i) Any of the following provisions of these Rules may be waived by Council, Cabinet, committee, sub-committee or a Managing Director where that body or person is satisfied that to do so is justified in special circumstances and that those special circumstances are identified in the relevant minute or record of decision dealing with that contract. *(Note 15)*.  
  
(ii) Any exercise of the power in (i) by a Managing Director shall be reported in the relevant Members’ Update.

### **Contracts £10,000 or less**

- 5. Where the estimated value or amount of a proposed contract will not exceed £10,000 the appropriate Senior Officer shall ensure that when the contract is entered into its value should offer good value and reflect competitiveness (in appropriate circumstances this could involve obtaining three quotations). The provision of these Rules shall have no application in respect of such contracts

insofar as they relate to the invitation, submission, custody, acceptance or opening of tenders. (*Notes 2, 11, 16, 20 and 24*)

### **Contracts over £10,000 but under £50,000**

6. Where the estimated value or amount of a proposed contract will exceed £10,000 but will not exceed £50,000 the appropriate Senior Officer shall obtain not less than three written quotations and accordingly, these Rules shall have no application in relation to such contracts insofar as they relate to the invitation, submission, custody, acceptance or opening of tenders. (*Notes 2, 3, 11, 16 and 24*)

### **Contracts over £50,000**

7. Where the estimated value or amount of a proposed contract exceeds £50,000, and in any other case where an authorised body determine or where required by legislation tenders shall be invited in accordance with either Rule 9, 10, 11 or 12 and shall be the subject of a contract signed by both contracting parties. (*Notes 2, 3, 11 & 16*)

### **Public Notices**

- 8 (i) Where the estimated value or amount of a proposed contract lies between £50,000 and the relevant EU tendering threshold (*Note 1*) a public notice shall appear in Contracts Finder (*Note 4*), and tender or pre-qualification documents shall be made available for downloading from the Council's website (*Note 4*).
- (ii) Where the estimated value or amount of a proposed contract exceeds the relevant EU tendering threshold (*Note 1*) a public notice shall appear firstly in the Official Journal of the European Union (OJEU) and then in Contracts Finder within 24 hours after publication in the OJEU (*Note 4*).
- (iii) Public notices shall comply with the content and format requirements set out in the Public Contracts Regulations 2015 (*Note 4*).
- (iv) Public notices shall specify a time limit within which tenders or completed pre-qualification questionnaires are to be submitted to the Council. For contracts below the EU tendering threshold the time limit should be not less than 14 days. For contracts above the EU tendering threshold the minimum time limits specified in the Public Contracts Regulations 2015 shall be adhered to (*Note 6*).

### **Selective tendering - ad hoc list**

9. (i) This Rule shall apply where an authorised body has decided that invitations to tender for a contract are to be made to some or all of those persons or bodies who have completed a pre-qualification questionnaire in response to a public notice.

- (ii) Selective tendering is not permitted where the estimated value or amount of the proposed contract is less than £172,514 (*Note 5*).
- (iii) For Works contracts where the estimated value or amount of the proposed contract lies between £172,514 and the EU tendering threshold (*Note 1*), invitations to tender shall be sent to:
  - (a) not less than 4 of the persons or bodies who applied for permission to tender, selected by the Senior Officer of the spending Service or (*Note 6*)
  - (b) where fewer than 4 persons or bodies have applied or are considered suitable, those persons or bodies which the Senior Officer of the spending Service considers suitable. (*Note 6*)
- (iv) Where the estimated value or amount of the proposed contract exceeds the EU tendering threshold (*Note 1*) invitations to tender shall be sent to the number of persons or bodies set out in the Public Contracts Regulations 2015. (*Note 6 (iii)*).
- (v) The pre-qualification questionnaire evaluation process leading to selection of persons or bodies to which invitations to tender are sent shall be fair and transparent and shall comply with statutory guidance (*Note 6*).

### **Selective tendering - standing list**

- 10. (i) This Rule shall apply where an authorised body has decided that invitations to tender for contracts for certain categories of work are to be limited to those persons or bodies whose names shall be included in a list compiled and maintained for that purpose. (*Note 18*).
- (ii) The list shall: (*Note 7*)
  - (a) be compiled and maintained by the authorised body;
  - (b) contain the names of all persons or bodies who wish to be included and who are approved by the authorised body; and
  - (c) indicate in respect of a person or body whose name is so included, the categories of contract and, where applicable, the values or amounts in respect of those categories for which approval has been given; and
  - (d) invitations to tender shall be sent to all persons or bodies in the categories or values of contract for which they have been approved.
- (iii) Where the estimated value or amount of the proposed contracts utilising the standing list exceeds the EU tendering threshold (*Note 1*), the list shall be

- compiled and maintained in accordance with the Public Contracts Regulations 2015 (specifically Regulation 33 “Framework Agreements”).
- (iv) A public notice inviting applications for inclusion in the standing list shall be issued in accordance with Rule 8, and the standing list shall be established in accordance with the procedures and restrictions set out in Rule 9.
  - (v) Where the standing list is compiled in accordance with Rule 10 (iii) it shall have a maximum duration of 4 years; in all other cases it shall have a maximum duration of 5 years (*Note 8*).

### **Selective tendering – Constructionline**

- 11 (i) Where construction contracts are to be tendered, and the estimated total value of the contract lies between £172,514 and the EU tendering threshold for Works Contracts (£4,322,012) (*Note 1*), and subject to Rule 11 (ii), tenderers can be selected from those pre-qualified organisations listed on Constructionline rather than advertising the tender opportunity in accordance with Rule 9 and where tenderers are so selected the requirements of Rule 9 shall be deemed to be fully satisfied.
- (ii) The authorised body shall always consider whether a construction contract of this value might be of interest to persons or bodies in other EU member states, and if it is, place a public notice in the Official Journal of the European Union (OJEU) rather than selecting tenderers from Constructionline. If it is the considered opinion of the authorised body that the contract will only be of interest to organisations within the UK, Constructionline may be used providing a formal record is made of the rationale for this decision. (*Note 6 (v)*).

### **Open tendering**

12. (i) This Rule shall apply where an authorised body has decided that tenders for a contract are to be obtained by open competition. (*Note 3*)
- (ii) A public notice inviting tenders or applications for tenders shall be issued in accordance with Rule 8.

### **Submission of tenders**

13. (i) Where in pursuance of these Rules an invitation to tender is made, every invitation shall state that no tender will be received unless it is enclosed in a sealed envelope to be supplied by the Council, for this purpose, which shall bear the word “Tender” - followed by the subject to which it relates but no name or other mark indicating the sender. (*Note 9(ii)*)
- (ii) The tenders shall be addressed to the Managing Director (People and Places) at 52 Derby Street, Ormskirk, Lancashire and shall be kept under lock and key in the custody of the Borough Solicitor or such other officer

of the Council as may be duly authorised by him in that behalf until the time and date specified for their opening.

- (iii) No tender received after the time and date specified in the invitation shall be accepted or considered under any circumstances unless the Borough Solicitor is satisfied that there is clear evidence of it having been posted by first class post at least the day before tenders were due to be returned or clear evidence of it having been delivered to the Council's office at 52 Derby Street, Ormskirk by the time specified in the tender documents. *(Note 9(i) and (ii).)*

### **Opening and acceptance of tenders**

14. (i) Tenders received under either Rule 9, 10, 11 or 12 shall be opened at one time and in the presence of:
- (a) two Members of the Council. Each tender will be initialled by the Member present.
  - (b) a representative of the Borough Solicitor together with the appropriate officer(s) of the spending Service(s).
- (ii) All tenders received shall be dated and time stamped on receipt and recorded consecutively in a register maintained for this purpose by the Borough Solicitor.
- (iii) A tender other than the lowest tender if payment is to be made by the Council or the highest tender if payment is to be received by the Council shall not be accepted except
- (a) as agreed by an authorised body (other than an officer), having considered a report by the appropriate Senior Officer; or
  - (b) where a Senior Officer decides that best value for the Council would be achieved by considering factors in addition to cost in the tender evaluation process and the Senior Officer in consultation with the relevant Portfolio Holder, has established the criteria and methodology to be used in the tender evaluation process. In such a case the criteria must include price which shall account for at least 60% of the total score. The remaining criteria shall be relevant to the tender exercise and shall be weighted appropriately but together must not exceed 40% of the total score *(Note 25)*.
  - (c) where, in the opinion of the Senior Officer of the spending Service, the consideration of sustainability issues, associated with the product/service being procured, means that best value would be obtained by accepting a tender other than the lowest (or highest if payment is to be received by the Council). In such circumstances, the tender which is accepted must not exceed the lowest (or highest) by

more than 15% to a maximum amount of £10,000. Where a tender other than the lowest (or highest) is accepted then a written record must be kept of the rationale for the acceptance and this must be initialled by the appropriate Senior Officer. Where a Senior Officer wishes to accept a tender (for sustainability reasons) which exceeds the lowest (or highest) by more than 15% or by more than £10,000, a separate exception to Contracts Procedure Rules shall be obtained on a case by case basis. (*Note 10*).

- (iv) Where the estimated value or amount of a proposed contract exceeds the relevant EU tendering threshold (*Note 1*), the contract must be awarded to the tenderer which has offered the Most Economically Advantageous Tender (MEAT) in order to comply with the Public Contracts Regulations 2015. MEAT does not allow price to be the sole contract award criterion. Tender evaluation criteria and the scoring methodology shall be set out clearly in the invitation to tender documents.

### **Nominated sub-contractors and suppliers**

- 15. Where a sub-contractor or supplier is to be nominated to a main contractor, the following provisions shall have effect:
  - (i) Where the estimated amount of the sub-contract or the estimated value of the goods to be supplied by the nominated supplier does not exceed £50,000 then, unless the Senior Officer of the spending Service is of the opinion in respect of any particular nomination that it is not reasonably practicable to obtain written competitive quotations, such quotations shall be invited.
  - (ii) Where the estimated amount of the sub-contract or the estimated value of the goods to be supplied by the nominated supplier exceeds £ 50,000 then, unless the authorised body determine in respect of any particular nomination that it is not reasonably practicable to obtain competitive tenders, such tenders shall be invited in accordance with either Rules 9, 10, 11 or 12 as the case may be.
  - (iii) The provisions of Rules 13 and 14 shall apply to tenders received under this Rule.
  - (iv) Some standard forms of contract are prescriptive about how suppliers and/or sub-contractors must be nominated. Where such a standard form of contract is being used and where the requirements of that standard form as regards nomination are incompatible with this Rule then the requirements of the standard form shall take precedence.

### **Contract conditions**

- 16. (i) Every contract which exceeds £10,000 in value or amount shall: (*Note 2*)



- (a) be in writing and signed by an officer of the Council duly authorised in that behalf EXCEPT THAT where the Contract exceeds £50,000 it shall be made in writing and must either be signed by at least two officers of the Council or made under the common seal of the Council attested by at least one officer.
- (b) specify the goods or services to be supplied or the work to be executed; the price to be paid together with the statement as to the amount of any discount(s) or other deduction(s); the period(s) within which the contract is to be performed and such other conditions and terms as may be agreed between the parties, and
- (c) in appropriate cases, to be determined by the Senior Officer of the spending Service, where a contract exceeds £50,000 in amount or value, provide for the payment of liquidated damages by the contractor where he fails to complete the contract within the time specified in the contract or any amendment thereto made in accordance with the terms of the contract. (*Note 12*)
- (ii) The Senior Officer of the spending Service may also require a contractor to give sufficient security for the due performance of any contract. (*Note 13*)
- (iii) When specifying the standard of goods/services/works to be provided under a contract the following shall be observed (*Note 14*).
- (a) where a mandatory technical standard is required under UK Law and where that requirement is compatible with EU obligations then that standard shall be specified
- (b) where there is no mandatory technical standard the following should be used in order of preference:-
- British standards implementing European standards,
  - European technical approvals (e.g. for new construction materials),
  - Common technical specifications,
  - International standards, or
  - Other technical reference systems established by the European standardisation bodies.
- (c) where neither (a) or (b) apply then the following can be used but must be accompanied by the words “or equivalent”:-
- British standards,
  - British technical approvals (e.g. Agreement certificates), or
  - British technical specifications relating to the design, calculation and execution of the work or works and the use of the products.
- (iv) The Senior Officer shall be aware of the Bribery Act 2010 which introduces general offences of offering or receiving bribes, a specific offence of bribing a foreign public official, and the corporate offence of failing to prevent bribery; and the Council’s Anti Fraud and Corruption Strategy (*Note 23*).

The following clause shall be inserted in every written Council contract:

“The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf do any of the following things:

- (a) offer, give or agree to give to anyone any inducement or reward in relation to the improper performance of any function or activity in respect of this or any other Council contract (even if the Contractor does not know what has been done), or
  - (b) commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972, or
  - (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees. Any clause limiting the Contractor’s liability shall not apply to this clause”.
- (v) All contracts shall include a prompt payment clause as required by Regulation 113 of the Public Contracts Regulations 2015 (*Note 29*).
- (vi) All contracts whose value or amount exceeds the relevant EU tendering threshold (*Note 1*) shall include a contract termination clause as required by Regulation 73 of the Public Contracts Regulations 2015 (*Note 29*).
- (vii) In all appropriate circumstances the Senior Officer of the spending Service shall ensure that a contractor has appropriate insurances at levels relevant to the contract in question. In this respect regard should be paid to the guidance issued by the Borough Treasurer. (*Note 17*)

### **Bulk Buying Etc.**

- 17 (i) Where the Council wishes to procure via an existing contract or framework agreement which has been entered into by another public body or by a bulk buying consortium and that contract or framework agreement facilitates participation by public bodies (which include the Council) then the requirement of Contract Procedure Rules Nos. 5 to 14 inclusive shall have no application providing the following requirements are all satisfied (*Note 19*).
- (a) the contract or framework agreement has been the subject of a tender exercise which has involved the placing of a Contract Notice in the Official Journal of the European Union which required organisations to notify their interests in tendering for the contract or framework agreement.
  - (b) the terms of that existing contract or framework agreement allow the Council to make a procurement(s) via that contract or framework agreement.

- (c) the procurement(s) are made in strict accordance with the terms of that existing contract or framework agreement.
- (d) the award of the contract is reported in accordance with Rule 21.

Where a procurement(s) is to be made in accordance with the foregoing the Service Officer of the spending Service shall compile, sign and retain a file note which shall detail the nature of the procurement(s) to be made including values, the title of the existing contract or framework agreement which will facilitate the procurement(s), the name of the organisation which established that existing contract or framework agreement and that the requirements of this Contracts Procedure Rule have been complied with. A copy of the existing contract or framework agreement shall also be retained with the file note.

A copy of that file note (only) shall be provided to the Council's Internal Audit Section for their retention.

- (ii) The requirements set out at Rule 17(i) shall also apply where the Council wishes to procure as part of a consortium and another consortium member will act as lead for the procurement process.

### **Contract Modifications**

- 18 Contracts and framework agreements whose value or amount exceeds the EU tendering threshold (*Note 1*) may only be increased in value or amount within the limits and for the reasons set out in Regulation 72 of the Public Contracts Regulations 2015. (*Note 26*).

### **Division of Contracts into Lots**

- 19 Where the estimated value or amount of a proposed contract exceeds the relevant EU tendering threshold (*Note 1*) the authorised body shall always give consideration to dividing the contract into smaller lots. Where it is determined that such subdivision would be impractical or disadvantageous, the authorised body shall give its main reasons for its decision in the tender documents or in the report referred to in Rule 21 (vi) (*Note 28*).

### **Retention and Recording of Contracts**

- 20 (i) In respect of all contracts which exceed £50,000 in value
- (a) The signed contract documents shall be provided to Legal Services so they can be retained in the Council's central contract document filing system (*Note 21*).
  - (b) Summary details of the contract shall be provided to the Purchasing Manager for inclusion in the Council's Contract Register (*Note 21*).

- (ii) Where the value of a contract exceeds £10,000 but does not exceed £50,000 it is the responsibility of the spending Service to retain a copy of the signed contract documents. Those documents shall be retained in accordance with the Council's Retention and Disposal Policy.

### **Reporting of Contract Awards**

- 21.
- (i) In respect of all contracts and framework agreements whose value or amount exceeds the EU tendering threshold (*Note 1*), a contract award notice shall be sent firstly to the Official Journal of the European Union (OJEU) no later than 30 days after the award of the contract or framework agreement, then to Contracts Finder no later than 90 days after the award of the contract or framework agreement (*Note 27*).
  - (ii) A contract award notice shall be sent to Contracts Finder for contracts awarded using a framework agreement where the value or amount of the contract exceeds the EU tendering threshold (*Note 1*) within 90 days of the award of the contract (*Note 27*).
  - (iii) In respect of all contracts and frameworks agreements (including contracts awarded using a framework agreement) whose value or amount lies between £50,000 and the EU tendering threshold, a contract award notice shall be sent to Contracts Finder within 90 days of award of the contract or framework agreement (*Note 27*).
  - (iv) A notice of modification shall be sent to the OJEU when an existing contract or framework agreement whose value exceeds the EU tendering threshold (*Note 1*) is modified in accordance with Rule 18, but only in the circumstances set out in Regulation 72 of the Public Contracts Regulations 2015 (*Note 27*).
  - (v) Contract award and modification notices shall comply with the content and format requirements set out in the Public Contracts Regulations 2015 (*Note 27*).
  - (vi) Within 30 days of awarding a contract or framework agreement that has been established using an EU procurement procedure set out in Part 2 of the Public Contracts Regulations 2015, a formal report shall be compiled in accordance with Regulation 84 of the Public Contracts Regulations 2015 (*Note 27*). The report shall be retained by the authorised body for the duration of the contract or framework agreement.

### **NOTES – (All these “Notes” are prefixed “N” to make them easily distinguishable from the Contract Procedure Rule numbers).**

- N1. Rule 2 requires compliance with the EU Treaty (the Treaty of Rome) and with any relevant EU Directives. One of the main principles of European procurement legislation is that nothing should be done which prevents a company in one member state tendering for public contracts in another member state.

European procurement legislation divides public contracts into three categories each with a threshold value below which the full EU procurement rules do not apply.

- (i) Works Contracts (broadly building and civil engineering work) threshold for 2014 and 2015 £4,322,012 (this threshold value will be reviewed 1<sup>st</sup> January 2016).
- (ii) Supply Contracts (for any type of goods and materials) threshold as for 2014 and 2015 £172,514 (this threshold value will be reviewed 1<sup>st</sup> January 2016).
- (iii) Services Contracts (applies to all contracts which are neither “works” or “supplies”) threshold for 2014 and 2015 £172,514 (this threshold value will be reviewed 1<sup>st</sup> January 2016).

These thresholds are the total value of the contract over its full duration, including any extension periods and options set out in the procurement documents, and excluding VAT other taxes or duties. EU procurement legislation is very strict requiring that no one must do anything, the purpose of which is to avoid having to tender a contract in compliance with EU requirements.

If a threshold value is going to be exceeded then contact either the Borough Solicitor (Extn. 5001) or the Procurement Executive (Extn. 5022) for further advice.

Even where the threshold values given above are not exceeded (or where the service being tendered falls under Schedule 3 of the Public Contracts Regulations 2015) there may still be a need to advertise the tender opportunity throughout Europe. For advice on this matter Officers are referred to Procurement Practice Note No.3 which is available on the Council’s Intranet in the “Document” Section under “Miscellaneous documents” see those documents listed under the sub-heading “Procurement”.

The Public Contracts Regulations 2015 identify a number of goods, services or activities which are either completely exempt from the rules set out in the Regulations, or which are subject to a more relaxed “light touch” procurement regime. These are listed in a Procurement Practice Note on the Council’s intranet.

- N2. The Local Government Act 1988 Section 17 (5) lists matters which it deems “non-commercial” and which no local authority should make reference to in any contract documents and which no local authority should take any account of when deciding whether or not to accept a tender. These non-commercial matters apply to all local authority contracts and the list is reproduced in a Procurement Practice Note for ease of reference. However, Statutory Instrument 2001 No. 909 gives local authorities some latitude in being able to address workforce

related issues where this is necessary to achieve best value or to comply with TUPE. Circular 03/2003 contains advice in respect of work force matters and contracts. Officers who wish/need to address such workforce related issues in contract documents/tenderer selection/contract award, should contact either the Borough Solicitor (Extn. 5001) or the Procurement Executive (Extn. 5022) for advice.

N3. (i) There are three main ways in which tender prices can be obtained: (This Note 3 also has some application to written quotations as required by Rule 6, see below).

(a) selective tendering (covered by Rules 9, 10 and 11)

(b) open competition (covered by Rule 12)

(c) negotiation.

Use of negotiation in cases where the estimated value or amount of a proposed contract falls within the threshold prescribed in Rules 6 and 7 would require formal steps to be taken under Rule 4. Generally, negotiation is acceptable where it is based on some preliminary form of price competition such as in two stage tendering, or continuation contracts where the earlier contract, for broadly similar work, was won in competition within a year or two of the later contracts. Under E.U. Procurement legislation there are only very restricted cases where negotiations can be used. Prior to use of this procedure contact either the Borough Solicitor Extn. 5001 or the Procurement Executive Extn. 5022.

(ii) The Public Contracts Regulations 2015 stipulate that an open competition process must be carried out where the estimated value or amount of a proposed contract lies between £50,000 and £172,514. However, above £172,514 it is advisable to use open competition only in exceptional circumstances and it is recommended that either the Borough Solicitor (Extn. 5001) or the Procurement Executive (Extn. 5022) should be contacted for advice.

N4. The Official Journal of the European Union (OJEU) facilitates the on-line publication of tendering opportunities and contract award information throughout the EU. Contracts Finder is a UK government website which performs the same function as the OJEU for UK contracts which are below the EU tendering threshold, as well as duplicating information that has already been sent to the OJEU. The content and format requirements differ between OJEU and Contracts Finder, and are strictly defined in the Public Contracts Regulations 2015. Publication of notices is arranged by the Purchasing Manager (Ext. 5426) or the Procurement Executive (Extn. 5022).

N5. Regulation 111 of the Public Contracts Regulations 2015 prohibits the use of a pre-qualification stage in any procurement below £172,514 in value. This measure is intended to remove barriers which make it difficult for smaller firms to

access public sector contracts. Moreover, for higher-value procurements in which a pre-qualification stage is permitted, use of a standardised pre-qualification questionnaire (or PAS 91 for Works contracts) is mandated. The authorised body must be able to justify the reasons for any deviations from the wordings in the standardised documents and from 1<sup>st</sup> September 2015 deviations are to be approved by the Procurement Executive and reported to Crown Commercial Service within 30 days of the pre-qualification questionnaire being made available to potential suppliers via Contracts Finder. For advice in respect of this matter contact the Procurement Executive (Extn. 5022).

- N6.
- (i) In considering whether or not to depart from the periods indicated in Rule 8(iv), it is considered that 14 days shall be regarded as the minimum period for contracts below the EU tendering thresholds. The principle to be followed is that a reasonable and sufficient period shall be allowed. Such reasonable and sufficient timescales can only be identified by officers who are familiar with the market in question and on a case by case basis
  - (ii) Where the threshold values given in Note 1 are exceeded the EU procurement legislation sets out the periods which must be allowed for organisations to apply for inclusion on the tender list and the tender periods and specifies that tender exercises need to be advertised in the Official Journal of the European Union. EU tendering timescales are summarised in a Procurement Practice Note on the Council's intranet.
  - (iii) Rule 9 (iii) requires that a minimum of 4 tenders be sought. The Public Contracts Regulations 2015 stipulate minimum numbers of tenderers in specified circumstances (e.g. Regulations 28-31).
  - (iv) Even where the respective EU threshold value (see N1) is not exceeded general EU procurement law requires that where a tendering opportunity may be of interest to an organisation in another Member State of the EU, that tendering opportunity must be advertised throughout the EU. In such a case an appropriate publication/portal must be identified and an appropriate advert/notice inserted (NB the Official Journal of the European Union is free to use, is accessible throughout the EU and can be used to "advertise" below threshold and Schedule 3 services if a Council so desires).
  - (v) Wherever Constructionline is used under Rule 11 for contracts between £172,514 and the EU tendering threshold for Works Contracts (£4,322,012) advice should be sought from either the Borough Solicitor (Extn. 5001) or the Procurement Executive (Extn. 5022) regarding the potential for interest from other EU Member States.
  - (vi) Use of a standardised pre-qualification questionnaire (or PAS 91 for Works contracts) is mandatory, and the process for evaluating questionnaire responses is subject to statutory guidance. Advice on this matter should be sought from the Procurement Executive (Extn. 5022).
- N7. In Rule 10 the list will detail the principles and procedure under which organisations contained on the list will be chosen for inclusion for individual tender lists.

- N8. Generally, lists of contractors maintained under Rule 10 shall be kept under continuous review with provision for both deletions and additions when the list is re-tendered. It is important that standing lists shall not become rigid and self-perpetuating and that the entry of new and rising firms be encouraged. In reviewing standing lists those firms who have shown interest in local authority contracts and whose performance has been satisfactory shall, subject to checks on their current viability, be retained. Those who have failed to show an interest or whose performance has been inadequate or whose financial position has become unsatisfactory shall be dropped. Note that although firms may be removed from the list at any time, new ones can only be added when the list is re-tendered.
- N9. (i) In cases of late receipt of a tender then where that tender has arrived via the postal system only official postmarks shall be accepted as evidence of the day of the posting of a tender. Where such postmarks are illegible the tender shall be rejected. The envelopes of admitted late tenders shall be endorsed by the officer responsible and the envelope retained. Late tenders which are not admitted shall be returned to the sender as soon as possible.
- (ii) Where tenders are delivered to the Council's offices at 52 Derby Street, Ormskirk, Lancashire by hand then the person handing the tender in shall be given a receipt indicating the date and time at which the tender was delivered and showing clearly the title of the contract in respect of which the tender is made.
- N10. That the Senior Officer shall in considering the sustainability issues associated with any products/services have regard to the Council's "Environmental Purchasing Guide for Staff". Where that document fails to resolve matters, consideration shall be given to the advice of the Environmental Strategy Officer.
- N11. Where the Council is acting as an agent for another body (e.g. highway work for Lancashire County Council or Department of Transport, sewerage work for the Water Company, etc.) then that body may have special requirements which must be taken into account (e.g. that a particular tendering method has to be used for contracts over a certain size).
- N12. In Rule 16(i)(c) provision is made for the Council to require, in appropriate cases, the payment of liquidated damages for failure to complete a contract, exceeding £50,000 in value, within the stipulated (or extended) time. The following points shall be borne in mind in connection with this Rule.
- (i) Where liquidated damages are provided for in a contract, the amount included for them shall be a genuine pre-estimate of the loss to the Council/client body which delayed completion is likely to cause. Amounts which are likely to be construed as a penalty shall not be inserted.



- (ii) When considering whether it is necessary to provide for liquidated damages in a contract, the Senior Officer of the spending Service shall satisfy himself/herself that such damages are applicable to the type of work/supplies/services and the form of contract and that they are enforceable and administratively economic to recover, (e.g. in the case of standing-offer type contracts [term contracts] where there may be difficulties in genuinely pre-estimating the loss to the client they may not be appropriate). Where the Council is acting as agent for any other organisation then liquidated damages should be administered in accordance with their requirements.
- N13. Rule 16(ii) provides that the Council may take security for the due performance of a contract. The most common form of security is the performance bond, the cost of which is inevitably met by the Council via the tender. Where proper selective tendering procedures are used, including the investigation of the financial standing of firms, the need for bonds may be reduced. Each contract will, therefore, be considered on its merits and the need for a bond will be dispensed with wherever this seems reasonable. The question of bonding is at the discretion of the relevant Senior Officer and is to be exercised in the light of all relevant circumstances. Guidance on the use of performance bonds has been issued by the local authority associations.
- N14. Rule 16 (iii) requires that certain “standards” are specified in contracts; this is to comply with the general requirements of E.U. Procurement legislation (as set out in the Public Contracts Regulations 2015. If there are no mandatory technical standards compatible with E.U. obligations then it is best to use a British Standard which implements a European standard and these can be recognised as they are prefixed by the letters “BS EN”. As this is a rather technical point of procurement law, should an Officer have any queries these should be raised with the Borough Solicitor (Extn 5001) or the Procurement Executive (Extn. 5022).
- N15. (i) Rule 4 relates to the waiver of Contract Procedure Rules under special circumstances. Such special circumstances would include
- only one company makes the product which the Council wishes to purchase and no other product is a reasonable substitute
  - a recent tender exercise has shown that one supplier/contractor provides significantly better value than anyone else for the product/work in question
  - urgency, resulting from circumstances beyond the Council’s control, means that there is insufficient time to obtain tenders in accordance with the procedures set out in Contracts Procedure Rules.
- (ii) Furthermore where an Officer intends to ask Council, Cabinet, a Committee or Sub-Committee to provide a waiver of Contracts Procedure Rule (s) then he/she must ensure that the body in question have the necessary authority.

- (iii) When a Managing Director grants an exception to Contracts Procedure Rules in accordance with Rule 4, that exception shall be recorded as a “record of decision taken under delegated authority” which is available from the Member Services Section. That record of decision shall then be included in the next relevant Members Update.
- N16. (i) These Rules consider contracts in three cost bands (up to £10,000; £10,000 to £50,000; over £50,000). These are not annual values, they are the value of the contract for its whole duration including any optional extension periods and options to acquire additional goods, services or building works.
- (ii) No attempt must be made to split a single contract into several lower value contracts to avoid the application of any aspect of these Rules.
- (iii) Care must be taken where a low value contract is expanded to include additional work because if that additional work moves the contract value into another cost band a waiver of these Rules may be necessary if the requirements of these Rules are not to be breached. Advice on this matter can be obtained from the Borough Solicitor (Ext. 5001) or the Procurement Executive (Ext 5022).
- N17. Rule 16 (vii) requires contractors to have appropriate insurances. Advice on this topic is contained in a document entitled “Insurance Procedure: Checking Contractors/Consultants Insurances” which is available from the Insurance Section.
- N18. Rule 10 relates to “standing lists”. The Public Contracts Regulations 2015 which is the main domestic legislation to give effect to EU procurement legislation, provide for a category of contracts called “framework agreements”. In specific circumstances, certain framework agreements, can be deemed to operate as standing lists. (True standing lists would generally only apply to tender exercises where the values are below the threshold values given in Note I). For advice in respect of this matter contact either the Borough Solicitor (Extn. 5001) or the Procurement Executive (Extn. 5022).
- N19. In respect of Rule 17 the following advice is offered:-
- (i) where an officer wishes to make a procurement under the terms of an existing contract or framework agreement but where the requirements of Rule 17 are not satisfied it may still be possible to go ahead providing that existing contract was tendered and awarded in a fair, open and transparent manner and in full accordance with all legislation which applies to the Council. In such a case a specific exception to Contracts Procedure Rules must be obtained in accordance with Rule 4.
- (ii) Some “Services” fall under Schedule 3 of the Public Contracts Regulations 2015 which means that a Contract Notice, as described in Rule 17 (i), would not be required by procurement legislation, therefore,

the requirements of Rule 17 (i) would not be satisfied. In such cases a specific exception to Contracts Procedure Rules must be obtained in accordance with Rule 4.

- (iii) As compliance with Rule 17 is a technical matter Officers are encouraged to contact either the Procurement Executive (Extn 5022) or the Borough Solicitor (Extn 5001) whenever they are considering using Rule 17.

N20. Rule No.5 requires that where contracts are under £10,000 the relevant Senior Officer shall ensure that the accepted price offers good value and reflects competitiveness. The Rule goes on to say that in appropriate circumstances this could include obtaining three quotations. In such circumstances it would be acceptable to obtain quotations via e-mail. This requirement to offer good value and reflect competitiveness could also be satisfied where quotations/tenders have been obtained in the last 12 months for similar work when it would then be in order to award a new contract to the tenderer who was successful in the previous tender exercise providing the new work is the same or similar to the work contained in the previous accepted tender and the new work can be priced by reference to the rates in the previous accepted tender. Where it is proposed to award a contract below £10,000 in value and where value for money and competitiveness will be demonstrated (as required by Rule 5) other than by obtaining three quotes or by reference to a previous quotation/tender exercise (as detailed in this N20) then the advice of the Audit Manager (Extn 2603), the Borough Solicitor (Extn 5001), or the Procurement Executive (Ext.5022) should be sought. In all cases reasonable evidence must be retained (as an audit trail) to demonstrate that the requirements of Rule 5 have been complied with.

N21. Rule 20 requires that in respect of contracts over £50,000 in value:-

- (i) The signed copy of the contract documents shall be provided to Legal Services for filing. The Officer to be contacted in this respect is the Managing Clerk (Extn. 5422). Furthermore the contract documents to be provided to Legal Services are the original signed contract documents. The spending Service shall retain appropriate copy(ies) of the signed contract documents to facilitate the proper client management of the contract.
- (ii) Summary details are to be provided to the Purchasing Manager (Extn. 5426) for inclusion in the Council's Contracts Register. Those summary details in respect of each contract shall comprise; the identity of the spending division, the name of the contractor/supplier/consultant, the title of the contract, the total value of the contract over its life excluding any potential extension(s) to the contract period, the start date of the contract, the end date of the contract and any other details which would allow a better understanding of the contract.
- (iii) Should a contract be extended then the Purchasing Manager (Extn. 5426) shall be advised accordingly and shall be provided with appropriate revised summary details in respect of the extended contract.

N22. Rule 1 contains a definition of the term "contract". In respect of that definition the following advice is offered. Many small value purchases are made through Council-wide bulk contracts which have been put in place centrally. Such

contracts have already been entered into in full accordance with Contracts Procedure Rules and require no further quotation or tender exercise. It is the responsibility of the spending Service to ensure that the Council-wide bulk contract being used allows the purchase of the goods/services/building works being purchased. Queries regarding this matter should be directed to the Purchasing Manager (Extn. 5426) or the Procurement Executive (Extn. 5022).

- N23. Senior Officers may choose to supplement the requirements set out at Rule 16 (iv) by specifying particular requirements, e.g. adherence to the Council's Anti Fraud and Corruption Policy (as amended from time to time), having regard to risks arising from any particular area of contractual activity. If so they are invited to discuss this with the Borough Solicitor (Extn. 5001) or the Procurement Executive (Extn. 5022).
- N24. Where quotations are to be sought, care must be taken not to always obtain quotations from the same organisations thereby discouraging the development of price rings. It is important that the entry of new and rising organisations be encouraged. Therefore where appropriate, when seeking quotations include within the organisations who are invited to quote, an organisation which is "new" to the Council (i.e. an organisation who the Council do not regularly do business with and/or invite to submit quotations). However, the relevant Senior Officer must be happy with the financial stability and technical ability of any organisation before a contract is awarded to that organisation.
- N25. Where a tender evaluation methodology is to include criteria other than price (Rule 14(iii)(b) and Rule 14(iv)) care must be taken to ensure that the evaluation methodology is relevant, objective and transparent. The production of a robust tender evaluation methodology is a rather technical matter and advice must be sought from either the Procurement Executive (Ext. 5022) or the Purchasing Manager (Ext. 5426).
- N26. There will be circumstances where it is clearly more convenient or economic to add a new requirement to a suitable existing contract than to pursue a quotation or tendering process. However, the Public Contracts Regulations 2015 place strict limits on the nature and extent of such additions where the original value of the existing contract or the additional requirement exceeds the EU tendering threshold. These limits are summarised in a Procurement Practice Note which can be viewed on the Council's intranet. The advice of the Procurement Executive (Extn. 5022) should always be sought when considering such changes to existing contracts.
- N27. The reporting requirements relating to contract awards set out in the Public Contracts Regulations 2015 are relatively complex. Publication of contract award notices in Contracts Finder and the OJEU is arranged by the Purchasing Manager (Extn. 5426) or the Procurement Executive (Extn. 5022). A detailed digest of the various requirements are contained in a Procurement Practice Note which can be viewed on the Council's intranet.
- N28. Regulation 46 of the Public Contracts Regulations 2015 promotes the division of contracts which exceed the EU tendering threshold into smaller lots, with the

objective of encouraging wider participation from SMEs in bidding for public sector opportunities. As well as requiring that the reasons for not dividing a contract into lots are documented and transparent, Regulation 46 also requires that tender documents are explicit about how many lots may be awarded to any one supplier and how this will be decided. Detailed guidance on lotting can be found in a Procurement Practice Note on the Council's intranet, and advice may be sought from the Procurement Executive (Extn. 5022).

N29. Model contract clauses which meet the requirements of Regulations 73 and 113 of the Public Contracts Regulations 2015 are set out in a Procurement Practice Note which is available on the Council's intranet.



## Appendix B: Contracts Procedure Rules

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<a href="#">LOTS – Division of Contracts into</a>	<del>1</del> 9	

	<b>RULE NUMBER (S)</b>
<a href="#">MODIFICATIONS to contracts</a>	<a href="#">18</a>
NOMINATED Sub-Contractors and Suppliers	<a href="#">153</a>
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**CONTRACTS PROCEDURE RULES**

**Definitions**

1. In these Rules:

- (i) “authorised body” - shall mean the Council, Cabinet, committee, sub-committee, Portfolio Holder and any officer, with relevant authority (e.g. authority to take the decision or undertake the relevant action).
- (ii) “contractor” - shall mean any organisation or individual with whom the Council enters into a contract whether that contract is for the provision of materials, goods or work of any kind including professional services

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- (iii) "quotations" - shall mean written, e-mail, facsimile or telephoned bids received from potential contractors in response to a written specification or other description of the works required
- (iv) "spending Service" - shall mean that Service of the Council which has responsibility for the budget which will pay for the contract in question or will be credited with any income emanating from the contract in question.
- (v) "Senior Officer" – shall mean a Managing Director or Head of Service.
- (vi) "contract" – when the Council purchases any goods, services and/or building works that procurement is a contract irrespective of the value: (Note [2249](#)).
- (vii) "framework agreement" – shall mean an agreement with a panel of suppliers which sets out the terms and conditions under which individual purchases (call-offs) can be made throughout the term of the agreement.
- (viii) "Works" – shall mean the specific construction and construction-related activities listed in Schedule 2 of the Public Contracts Regulations 2015.

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**General**

- 2. Every contract made by the Council shall comply with the EU Treaty, with any relevant Directives of the EU and with UK law and, except as hereinafter provided, these Rules. (Note 1 and 2)
- 3. It shall be a condition of any contract between the Council and any person (not being an officer of the Council) who is required to supervise a contract on their behalf that, in relation to such contract, he/she shall comply with the requirements of these Rules as if he/she were a Senior Officer of the Council.
- 4. (i) Any of the following provisions of these Rules may be waived by Council, Cabinet, committee, sub-committee or a Managing Director where that body or person is satisfied that to do so is justified in special circumstances and that those special circumstances are identified in the relevant minute or record of decision dealing with that contract. (Note [152](#)).
- (ii) Any exercise of the power in (i) by a Managing Director shall be reported in the relevant Members' Update.

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**Contracts £10,000 or less**

- 5. Where the estimated value or amount of a proposed contract will not exceed £10,000 the appropriate Senior Officer shall ensure that when the contract is entered into its value should offer good value and reflect competitiveness (in appropriate circumstances this could involve obtaining three quotations). The provision of these Rules shall have no application in respect of such contracts

insofar as they relate to the invitation, submission, custody, acceptance or opening of tenders. (Notes 2, [118](#), [163](#), [2017](#) and [241](#))

### Contracts over £10,000 but under £50,000

6. Where the estimated value or amount of a proposed contract will exceed £10,000 but will not exceed £50,000 the appropriate Senior Officer shall obtain not less than three written quotations and accordingly, these Rules shall have no application in relation to such contracts insofar as they relate to the invitation, submission, custody, acceptance or opening of tenders. (Notes 2, 3, [118](#), [163](#) and [241](#))

### Contracts over £50,000

7. Where the estimated value or amount of a proposed contract exceeds £50,000, and in any other case where an authorised body determine or where required by legislation tenders shall be invited in accordance with either Rule ~~8~~, [9](#), [10](#), [11](#) or [12](#) and shall be the subject of a contract signed by both contracting parties. (Notes 2, 3, [118](#) & [163](#))

### Public Notices

- ~~78A~~ (i) Where the estimated value or amount of a proposed contract lies between £50,000 and the relevant EU tendering threshold (Note 1) a public notice shall appear in Contracts Finder (Note 43A), and tender or pre-qualification documents shall be made available for downloading from the Council's website (Note 43A).
- (ii) Where the estimated value or amount of a proposed contract exceeds the relevant EU tendering threshold (Note 1) a public notice shall appear firstly in the Official Journal of the European Union (OJEU) and then in Contracts Finder within 24 hours after publication in the OJEU (Note 43A).
- (iii) Public notices shall comply with the content and format requirements set out in the Public Contracts Regulations 2015 (Note 43A).
- (iv) Public notices shall specify a time limit within which tenders or completed pre-qualification questionnaires are to be submitted to the Council. For contracts below the EU tendering threshold the time limit should be not less than 14 days. For contracts above the EU tendering threshold the minimum time limits specified in the Public Contracts Regulations 2015 shall be adhered to (Note 64).

### Selective tendering - ad hoc list

- ~~98~~. (i) This Rule shall apply where an authorised body has decided that invitations to tender for a contract are to be made to some or all of those persons or

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bodies who have ~~replied~~ completed a pre-qualification questionnaire in response to a public notice. ~~(See Rule 17).~~

- (ii) ~~Selective tendering is not permitted where the estimated value or amount of the proposed contract is less than £172,514 (Note 53B). For the purposes of this Rule, public notice shall be given:~~

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- ~~(iii) For Works contracts where the estimated value or amount of the proposed contract lies between £172,514 and the EU tendering threshold (Note 1), invitations to tender shall be sent to:~~

- ~~(a) in at least one local newspaper unless the public notice appears in accordance with 8(ii)(b) in which case the appearance of the public notice in the local press is optional; and~~

- ~~(b) where appropriate in at least one trade/professional publication or portal commonly in use by such persons or bodies who undertake such contracts or in the Official Journal of the European Union. (Note 4)~~

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- ~~(c) at the discretion of the authorised body, to all or a selected number of persons or bodies named in the list maintained under Rule 9.~~

- ~~(iii) The public notice shall:~~

- ~~(a) specify details of the contract into which the Council wishes to enter;~~

- ~~(b) invite persons or bodies interested, to apply for permission to tender; and~~

- ~~(c) specify a time limit, being not less than 14 days, within which such applications are to be submitted to the Council. (Note 4)~~

- (a) not less than 4 of the persons or bodies who applied for permission to tender, selected by the Senior Officer of the spending Service or (Note 64)

- (b) where fewer than 4 persons or bodies have applied or are considered suitable, those persons or bodies which the Senior Officer of the spending Service considers suitable. (Note 64)

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- (iv) ~~Where the estimated value or amount of the proposed contract exceeds the EU tendering threshold (Note 1) invitations to tender shall be sent to the number of persons or bodies set out in the Public Contracts Regulations 2015. (Note 64 (iii)). After the expiry of the period specified in the public notice invitations to tender for the contract shall be sent to:~~

~~(v) The pre-qualification questionnaire evaluation process leading to selection of persons or bodies to which invitations to tender are sent shall be fair and transparent and shall comply with statutory guidance (Note 64).~~

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**Selective tendering - standing list**

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109. (i) This Rule shall apply where an authorised body has decided that invitations to tender for contracts for certain categories of work are to be limited to those persons or bodies whose names shall be included in a list compiled and maintained for that purpose. (Note 185).

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(ii) The list shall: (Note 75)

- (a) be compiled and maintained by the authorised body;
- (b) contain the names of all persons or bodies who wish to be included and who are approved by the authorised body; and
- (c) indicate in respect of a person or body whose name is so included, the categories of contract and, where applicable, the values or amounts in respect of those categories for which approval has been given; and

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~~(d) invitations to tender shall be sent to all persons or bodies in the categories or values of contract for which they have been approved.~~

~~(iii) Where the estimated value or amount of the proposed contracts utilising the standing list exceeds the EU tendering threshold (Note 1), the list shall be compiled and maintained in accordance with the Public Contracts Regulations 2015 (specifically Regulation 33 “Framework Agreements”). At least 4 weeks before a list is compiled, notices inviting applications for inclusion in it shall be published: (Note 4)~~

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~~(a) in at least one local newspaper unless the public notice appears in accordance with 9(iii)(b) in which case the appearance of the public notice in the local press is optional; and~~

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~~(b) where appropriate in at least one trade/professional publication or portal commonly used by such persons or bodies as undertake such contracts.~~

~~(iv) A public notice inviting applications for inclusion in the standing list shall be issued in accordance with Rule 87A, and the standing list shall be established in accordance with the procedures and restrictions set out in Rule 98.~~

~~(iv) The lists shall be kept under constant review and shall be compiled again at intervals of not more than 5 years. (Note 6)~~

~~(v) Where the standing list is compiled in accordance with Rule 109 (iii) it shall have a maximum duration of 4 years; in all other cases it shall have a maximum duration of 5 years (Note 86).~~

~~(v) Invitations to tender for a contract shall be sent to:~~

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~~(a) not less than 4 of the persons or bodies selected by the Senior Officer of the spending Service from among those approved for a contract of the relevant category and amount or value; (Note 4) or~~

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~~(b) where fewer than 4 persons or bodies are approved for a contract of the relevant category and amount or value, all those persons or bodies. (Note 4)~~

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**Selective tendering – Constructionline**

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119A (i) ~~Where construction contracts are to be tendered, and the estimated total value of the contract lies between £172,514 and the EU tendering threshold for Works Contracts (£4,322,012) (Note 1), and subject to Rule 119A (ii), tenderers can be selected from those pre-qualified organisations listed on Constructionline rather than advertising the tender opportunity in accordance with Rule 98 and where tenderers are so selected the requirements of Rule 98 shall be deemed to be fully satisfied.~~

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~~(ii) The authorised body shall always consider whether a construction contract of this value might be of interest to persons or bodies in other EU member states, and if it is, place a public notice in the Official Journal of the European Union (OJEU) rather than selecting tenderers from Constructionline. If it is the considered opinion of the authorised body that the contract will only be of interest to organisations within the UK, Constructionline may be used providing a formal record is made of the rationale for this decision. (Note 64 (v)).~~

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**Open tendering**

120. (i) This Rule shall apply where an authorised body has decided that tenders for a contract are to be obtained by open competition. (Note 3)

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(ii) ~~A public notice inviting tenders or applications for tenders shall be issued in accordance with Rule 87A. At least 14 days prior to the closing date for the submission of tenders a public notice shall appear (Note 4)~~

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~~(a) in at least one local newspaper, unless the public notice appears in accordance with 10(ii)(b) in which case the appearance of the public notice in the local press is optional; and~~

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~~(b) where appropriate in at least one trade/professional publication or portal commonly used by such persons or bodies as undertake such contracts or in the Official Journal of the European Union.~~

~~The notice shall express the nature and purpose of the contract, state where further details (if any) may be obtained, invite tenders for its execution and state the last date and time when tenders will be received.~~

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**Submission of tenders**

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134. (i) Where in pursuance of these Rules an invitation to tender is made, every invitation shall state that no tender will be received unless it is enclosed in a sealed envelope to be supplied by the Council, for this purpose, which shall bear the word "Tender" - followed by the subject to which it relates but no name or other mark indicating the sender. (Note 97(ii))

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(ii) The tenders shall be addressed to the Managing Director (People and Places) at 52 Derby Street, Ormskirk, Lancashire and shall be kept under lock and key in the custody of the Borough Solicitor or such other officer of the Council as may be duly authorised by him in that behalf until the time and date specified for their opening.

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(iii) No tender received after the time and date specified in the invitation shall be accepted or considered under any circumstances unless the Borough Solicitor is satisfied that there is clear evidence of it having been posted by first class post at least the day before tenders were due to be returned or clear evidence of it having been delivered to the Council's office at 52 Derby Street, Ormskirk by the time specified in the tender documents. (Note 97(i) and (ii).)

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**Opening and acceptance of tenders**

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142. (i) Tenders received under either Rule ~~8, 9, 9A~~ 10, 11 or 120 shall be opened at one time and in the presence of:

(a) two Members of the Council. Each tender will be initialled by the Member present.

(b) a representative of the Borough Solicitor together with the appropriate officer(s) of the spending Service(s).

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(ii) All tenders received shall be dated and time stamped on receipt and recorded consecutively in a register maintained for this purpose by the Borough Solicitor.

(iii) A tender other than the lowest tender if payment is to be made by the Council or the highest tender if payment is to be received by the Council shall not be accepted except

- (a) as agreed by an authorised body (other than an officer), having considered a report by the appropriate Senior Officer; or
- (b) where a Senior Officer decides that best value for the Council would be achieved by considering factors in addition to cost in the tender evaluation process and the Senior Officer in consultation with the relevant Portfolio Holder, has established the criteria and methodology to be used in the tender evaluation process. In such a case the criteria must include price which shall account for at least 60% of the total score. The remaining criteria shall be relevant to the tender exercise and shall be weighted appropriately but together must not exceed 40% of the total score (Note 252).
- (c) where, in the opinion of the Senior Officer of the spending Service, the consideration of sustainability issues, associated with the product/service being procured, means that best value would be obtained by accepting a tender other than the lowest (or highest if payment is to be received by the Council). In such circumstances, the tender which is accepted must not exceed the lowest (or highest) by more than 15% to a maximum amount of £10,000. Where a tender other than the lowest (or highest) is accepted then a written record must be kept of the rationale for the acceptance and this must be initialled by the appropriate Senior Officer. Where a Senior Officer wishes to accept a tender (for sustainability reasons) which exceeds the lowest (or highest) by more than 15% or by more than £10,000, a separate exception to Contracts Procedure Rules shall be obtained on a case by case basis. (Note 107A).

(iv) Where the estimated value or amount of a proposed contract exceeds the relevant EU tendering threshold (Note 1), the contract must be awarded to the tenderer which has offered the Most Economically Advantageous Tender (MEAT) in order to comply with the Public Contracts Regulations 2015. MEAT does not allow price to be the sole contract award criterion. Tender evaluation criteria and the scoring methodology shall be set out clearly in the invitation to tender documents.

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**Nominated sub-contractors and suppliers**

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153. Where a sub-contractor or supplier is to be nominated to a main contractor, the following provisions shall have effect:

- (i) Where the estimated amount of the sub-contract or the estimated value of the goods to be supplied by the nominated supplier does not exceed £50,000 then, unless the Senior Officer of the spending Service is of the opinion in respect of any particular nomination that it is not reasonably practicable to obtain written competitive quotations, such quotations shall be invited.

- (ii) Where the estimated amount of the sub-contract or the estimated value of the goods to be supplied by the nominated supplier exceeds £ 50,000 then, unless the authorised body determine in respect of any particular nomination that it is not reasonably practicable to obtain competitive tenders, such tenders shall be invited in accordance with either Rules ~~8, 9, 10, 11~~ or ~~120~~ as the case may be.
- (iii) The provisions of Rules ~~131~~ and ~~142~~ shall apply to tenders received under this Rule.
- (iv) Some standard forms of contract are prescriptive about how suppliers and/or sub-contractors must be nominated. Where such a standard form of contract is being used and where the requirements of that standard form as regards nomination are incompatible with this Rule then the requirements of the standard form shall take precedence.

**Contract conditions**

- ~~164.~~ (i) Every contract which exceeds £10,000 in value or amount shall: (*Note 2*)
  - (a) be in writing and signed by an officer of the Council duly authorised in that behalf EXCEPT THAT where the Contract exceeds £50,000 it shall be made in writing and must either be signed by at least two officers of the Council or made under the common seal of the Council attested by at least one officer.
  - (b) specify the goods or services to be supplied or the work to be executed; the price to be paid together with the statement as to the amount of any discount(s) or other deduction(s); the period(s) within which the contract is to be performed and such other conditions and terms as may be agreed between the parties, and
  - (c) in appropriate cases, to be determined by the Senior Officer of the spending Service, where a contract exceeds £50,000 in amount or value, provide for the payment of liquidated damages by the contractor where he fails to complete the contract within the time specified in the contract or any amendment thereto made in accordance with the terms of the contract. (*Note ~~129~~*)
- (ii) The Senior Officer of the spending Service may also require a contractor to give sufficient security for the due performance of any contract. (*Note ~~130~~*)
- (iii) When specifying the standard of goods/services/works to be provided under a contract the following shall be observed (*Note ~~141~~*).
  - (a) where a mandatory technical standard is required under UK Law and where that requirement is compatible with EU obligations then that standard shall be specified

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- (b) where there is no mandatory technical standard the following should be used in order of preference:-
- British standards implementing European standards,
  - European technical approvals (e.g. for new construction materials),
  - Common technical specifications,
  - International standards, or
  - Other technical reference systems established by the European standardisation bodies.
- (c) where neither (a) or (b) apply then the following can be used but must be accompanied by the words “or equivalent”:-
- British standards,
  - British technical approvals (e.g. Agreement certificates), or
  - British technical specifications relating to the design, calculation and execution of the work or works and the use of the products.
- (iv) The Senior Officer shall be aware of the Bribery Act 2010 which introduces general offences of offering or receiving bribes, a specific offence of bribing a foreign public official, and the corporate offence of failing to prevent bribery; and the Council’s Anti Fraud and Corruption Strategy *(Note 230)*.

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The following clause shall be inserted in every written Council contract:

“The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf do any of the following things:

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- (a) offer, give or agree to give to anyone any inducement or reward in relation to the improper performance of any function or activity in respect of this or any other Council contract (even if the Contractor does not know what has been done), or
- (b) commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972, or
- (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees. Any clause limiting the Contractor’s liability shall not apply to this clause”.

(v) All contracts shall include a prompt payment clause as required by Regulation 113 of the Public Contracts Regulations 2015 (Note 296).

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(vi) All contracts whose value or amount exceeds the relevant EU tendering threshold (Note 1) shall include a contract termination clause as required by Regulation 73 of the Public Contracts Regulations 2015 (Note 296).

(vii) In all appropriate circumstances the Senior Officer of the spending Service shall ensure that a contractor has appropriate insurances at levels relevant to the contract in question. In this respect regard should be paid to the guidance issued by the Borough Treasurer. (Note 174)

**Bulk Buying Etc.**

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~~175~~ (i) Where the Council wishes to procure via an existing contract or framework agreement which has been entered into by another public body or by a bulk buying consortium and that contract or framework agreement facilitates participation by public bodies (which include the Council) then the requirement of Contract Procedure Rules Nos. 5 to 14 inclusive, 6, 7, 8, 9, 10, 11 and 12 shall have no application providing the following requirements are all satisfied *(Note 196)*.

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(a) the contract or framework agreement has been the subject of a tender exercise which has involved the placing of a Contract Notices in the Official Journal of the European Union which required organisations to notify their interests in tendering for the contract or framework agreement.

(b) the terms of that existing contract or framework agreement allow the Council to make a procurement(s) via that contract or framework agreement.

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(c) the procurement(s) are made in strict accordance with the terms of that existing contract or framework agreement.

(d) the award of the contract is reported in accordance with Rule 218.

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Where a procurement(s) is to be made in accordance with the foregoing the Service Officer of the spending Service shall compile, sign and retain a file note which shall detail the nature of the procurement(s) to be made including values, the title of the existing contract or framework agreement which will facilitate the procurement(s), the name of the organisation which established that existing contract or framework agreement and that the requirements of this Contracts Procedure Rule have been complied with. A copy of the existing contract or framework agreement shall also be retained with the file note.

A copy of that file note (only) shall be provided to the Council's Internal Audit Section for their retention.

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~~145~~ (ii) The requirements set out at Rule ~~175~~(i) shall also apply where the Council wishes to procure as part of a consortium and another consortium member will act as lead for the procurement process.

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**Contract Modifications**

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~~185A~~ Contracts and framework agreements whose value or amount exceeds the EU tendering threshold (Note 1) may only be increased in value or amount within the limits and for the reasons set out in Regulation 72 of the Public Contracts Regulations 2015. (Note 263).

**Division of Contracts into Lots**

~~195B~~ Where the estimated value or amount of a proposed contract exceeds the relevant EU tendering threshold (Note 1) the authorised body shall always give consideration to dividing the contract into smaller lots. Where it is determined that such subdivision would be impractical or disadvantageous, the authorised body shall give its main reasons for its decision in the tender documents or in the report referred to in Rule 218 (vi) (Note 285).

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**Retention and Recording of Contracts**

~~2046~~ (i) In respect of all contracts which exceed £50,000 in value

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(a) The signed contract documents shall be provided to Legal Services so they can be retained in the Council's central contract document filing system (Note 218).

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(b) Summary details of the contract shall be provided to the Purchasing Manager for inclusion in the Council's Contract Register (Note 218).

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(ii) Where the value of a contract exceeds £10,000 but does not exceed £50,000 it is the responsibility of the spending Service to retain a copy of the signed contract documents. Those documents shall be retained in accordance with the Council's Retention and Disposal Policy.

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~~17. Where construction contracts are to be tendered, tenderers can be selected from those pre-qualified organisations listed on "Constructionline" rather than advertise the tender opportunity in accordance with Rule 8 and where tenderers are so selected the requirements of Rule 8 shall be deemed to be fully satisfied.~~

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**Reporting of Contract Awards**

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~~218.~~ (i) In respect of all contracts and framework agreements whose value or amount exceeds the EU tendering threshold (Note 1), a contract award notice shall be sent firstly to the Official Journal of the European Union (OJEU) no later than 30 days after the award of the contract or framework agreement, then to Contracts Finder no later than 90 days after the award of the contract or framework agreement (Note 274).

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~~(ii) A contract award notice shall be sent to Contracts Finder for contracts awarded using a framework agreement where the value or amount of the contract exceeds the EU tendering threshold Note 1) within 90 days of the award of the contract (Note 274).~~

~~(iii) In respect of all contracts and frameworks agreements (including contracts awarded using a framework agreement) whose value or amount lies between £50,000 and the EU tendering threshold, a contract award notice shall be sent to Contracts Finder within 90 days of award of the contract or framework agreement (Note 274).~~

~~(iv) A notice of modification shall be sent to the OJEU when an existing contract or framework agreement whose value exceeds the EU tendering threshold (Note 1) is modified in accordance with Rule 185A, but only in the circumstances set out in Regulation 72 of the Public Contracts Regulations 2015 (Note 274).~~

~~(v) Contract award and modification notices shall comply with the content and format requirements set out in the Public Contracts Regulations 2015 (Note 274).~~

~~(vi) Within 30 days of awarding a contract or framework agreement that has been established using an EU procurement procedure set out in Part 2 of the Public Contracts Regulations 2015, a formal report shall be compiled in accordance with Regulation 84 of the Public Contracts Regulations 2015 (Note 274). The report shall be retained by the authorised body for the duration of the contract or framework agreement.~~

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**NOTES – (All these “Notes” are prefixed “N” to make them easily distinguishable from the Contract Procedure Rule numbers).**

N1. Rule 2 requires compliance with the EU Treaty (the Treaty of Rome) and with any relevant EU Directives. One of the main principles of European procurement legislation is that nothing should be done which prevents a company in one member state tendering for public contracts in another member state.

European procurement legislation divides public contracts into three categories each with a threshold value below which the full EU procurement rules do not apply.

- (i) Works Contracts (broadly building and civil engineering work) threshold for 2014 and 2015 £4,322,012 (this threshold value will be reviewed 1<sup>st</sup> January 2016).
- (ii) Supply Contracts (for any type of goods and materials) threshold as for 2014 and 2015 £172,514 (this threshold value will be reviewed 1<sup>st</sup> January 2016).
- (iii) Services Contracts (applies to all contracts which are neither “works” or “supplies”) threshold for 2014 and 2015 £172,514 (this threshold value will be reviewed 1<sup>st</sup> January 2016).

These thresholds are the total value of the contract over its full duration, including any extension periods and options set out in the procurement documents, and excluding VAT other taxes or duties (not annual value) of all similar contracts which will be entered into in any one financial year. ~~The E.U. procurement legislation is very strict about aggregating similar contracts in this way to check if a threshold value has been exceeded.~~ EU procurement legislation is also very strict requiring that no one must do anything, the purpose

of which is to avoid having to tender a contract in compliance with EU requirements.

If a threshold value is going to be exceeded then contact either the Borough Solicitor (Extn. 5001) or the ~~Executive~~ Procurement ~~Executive and Projects Manager~~ (Extn. 5022) for further advice.

Even where the threshold values given above are not exceeded (or where the service being tendered falls under Schedule 3 of the Public Contracts Regulations 2015~~Section B~~) there may still be a need to advertise the tender opportunity throughout Europe. For advice on this matter Officers are referred to Procurement ~~Practice~~Procedure Note No.3 which is available on the Council's Intranet in the "Document" Section under "Miscellaneous documents" see those documents listed under the sub-heading "Procurement".

The Public Contracts Regulations 2015 identify a number of goods, services or activities which are either completely exempt from the rules set out in the Regulations, or which are subject to a more relaxed "light touch" procurement regime. These are listed in a Procurement Practice Note on the Council's intranet.

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N2. The Local Government Act 1988 Section 17 (5) lists matters which it deems "non-commercial" and which no local authority should make reference to in any contract documents and which no local authority should take any account of when deciding whether or not to accept a tender. These non-commercial matters apply to all local authority contracts and the list is reproduced in a Procurement Practice Note for ease of reference. However, Statutory Instrument 2001 No. 909 gives local authorities some latitude in being able to address workforce related issues where this is necessary to achieve best value or to comply with TUPE. ~~—~~Circular 03/2003 contains advice in respect of work force matters and contracts. Officers who wish/need to address such workforce related issues in contract documents/tenderer selection/contract award, should contact either the Borough Solicitor (Extn. 5001) or the Procurement ~~Executive~~Projects Manager (Extn. 5022) for advice.

N3. (i) There are three main ways in which tender prices can be obtained: (This Note 3 also has some application to written quotations as required by Rule 6, see below).

(a) selective tendering (covered by Rules 8, 9, 10 and 119A)

(b) open competition (covered by Rule 120)

(c) negotiation.

Use of negotiation in cases where the estimated value or amount of a proposed contract falls within the threshold prescribed in Rules 6 and 7 would require formal steps to be taken under Rule 4. Generally, negotiation is acceptable where it is based on some preliminary form of price

competition such as in two stage tendering, or continuation contracts where the earlier contract, for broadly similar work, was won in competition within a year or two of the later contracts. Under E.U. Procurement legislation there are only very restricted cases where negotiations can be used. Prior to use of this procedure contact either the ~~Borough Solicitor~~ Legal Services Manager - Extn. 5001 or the Procurement Executive ~~Procurement and Projects Manager~~ - Extn. 5022.

- (ii) The Public Contracts Regulations 2015 stipulate that an open competition process must be carried out where the estimated value or amount of a proposed contract lies between £50,000 and £172,514. However, above £172,514 it is advisable to use open competition only. Open competition should only be used in exceptional circumstances and it is recommended that, again, if this procedure is to be used contact either the Borough Solicitor (Extn. 5001) or the Procurement Executive ~~Procurement and Project Manager~~ (Extn. 5022) should be contacted for advice.

N43A. The Official Journal of the European Union (OJEU) facilitates the on-line publication of tendering opportunities and contract award information throughout the EU. Contracts Finder is a UK government website which performs the same function as the OJEU for UK contracts which are below the EU tendering threshold, as well as duplicating information that has already been sent to the OJEU. The content and format requirements differ between OJEU and Contracts Finder, and are strictly defined in the Public Contracts Regulations 2015. Publication of notices is arranged by the Purchasing Manager (Ext. 5426) or the Procurement Executive (Extn. 5022).

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N53B. Regulation 111 of the Public Contracts Regulations 2015 prohibits the use of a pre-qualification stage in any procurement below £172,514 in value. This measure is intended to remove barriers which make it difficult for smaller firms to access public sector contracts. Moreover, for higher-value procurements in which a pre-qualification stage is permitted, use of a standardised pre-qualification questionnaire (or PAS 91 for Works contracts) is mandated. The authorised body must be able to justify the reasons for any deviations from the wordings in the standardised documents and from 1<sup>st</sup> September 2015 deviations are to be approved by the Procurement Executive and reported to Crown Commercial Service within 30 days of the pre-qualification questionnaire being made available to potential suppliers via Contracts Finder. For advice in respect of this matter contact the Procurement Executive (Extn. 5022).

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- N64. (i) In considering whether or not to depart from the periods indicated in Rules ~~87A(iv)~~ ~~8(iii)(c)~~ and ~~10(ii)~~, it is considered that 14 days shall be regarded as the minimum period for contracts below the EU tendering thresholds. The principle to be followed is that a reasonable and sufficient period shall be allowed. Such reasonable and sufficient timescales can only be identified by officers who are familiar with the market in question and on a case by case basis. ~~The period of 4 weeks in Rule 9(iii) shall also be the minimum period.~~

- (ii) Where the threshold values given in Rule 2 Note 1 are exceeded the EU procurement legislation sets out the periods which must be allowed for organisations to apply for inclusion on the tender list and ~~the for~~ tender periods and specifies ~~where that~~ tender exercises need to be advertised in the Official Journal of the European Union. EU tendering timescales are summarised in a Procurement Practice Note on the Council's intranet.
- (iii) Rules 98 (i)(iv) and 9(v) requires that a minimum of 4 tenders be sought. ~~Furthermore where tenders are being sought for projects to which the National Joint Consultative Committee for Building's "Code of Procedure for Single Stage Selective Tendering" or "Code of Procedure for Two Stage Selective Tendering" apply then the number of tenderers shall, as appropriate, be in accordance with the respective "procedure". The Public Contracts Regulations 2015 EU Procurement legislation contains some requirements regarding stipulate~~ minimum numbers, ~~of tenderers in specified circumstances (see The Public Contract Regulations (e.g. Regulations 28-31).2006, e.g. Regulation 16 (9) (b), Regulation 17 (11) (b), Regulation 18 (12) (b) Regulation 19 (7) (b).~~
- (iv) Even where the respective EU threshold value (see N1) is not exceeded general EU procurement law requires that where a tendering opportunity may be of interest to an organisation in another Member State of the EU, that tendering opportunity must be advertised throughout the EU. In such a case an appropriate publication/portal must be identified and an appropriate advert/notice inserted (NB the Official Journal of the European Union is free to use, is accessible throughout the EU and can be used to "advertise" below threshold and Schedule B-3 services if a Council so desires).
- ~~(v) Wherever Constructionline is used under Rule 119A for contracts between £172,514 and the EU tendering threshold for Works Contracts (£4,322,012) advice should be sought from either the Borough Solicitor (Extn. 5001) or the Procurement Executive (Extn. 5022) regarding the potential for interest from other EU Member States.~~
- ~~(vi) Use of a standardised pre-qualification questionnaire (or PAS 91 for Works contracts) is mandatory, and the process for evaluating questionnaire responses is subject to statutory guidance. Advice on this matter should be sought from the Procurement Executive (Extn. 5022).~~
- N75. In Rule 109 the list will detail the principles and procedure under which organisations contained on the list will be chosen for inclusion for individual tender lists.
- N86. Generally, lists of contractors maintained under Rule 109 shall be kept under continuous review with provision for both deletions and additions when the list is re-tendered at appropriate times. It is important that standing lists shall not become rigid and self-perpetuating and that the entry of new and rising firms be encouraged. In reviewing standing lists those firms who have shown interest in local authority contracts and whose performance has been satisfactory shall,

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subject to checks on their current viability, be retained. Those who have failed to show an interest or whose performance has been inadequate or whose financial position has become unsatisfactory shall be dropped. Note that although firms may be removed from the list at any time, new ones can only be added when the list is re-tendered.

- N97.** (i) In cases of late receipt of a tender then where that tender has arrived via the postal system only official postmarks shall be accepted as evidence of the day of the posting of a tender. Where such postmarks are illegible the tender shall be rejected. The envelopes of admitted late tenders shall be endorsed by the officer responsible and the envelope retained. Late tenders which are not admitted shall be returned to the sender as soon as possible.
- (ii) Where tenders are delivered to the Council's offices at 52 Derby Street, Ormskirk, Lancashire by hand then the person handing the tender in shall be given a receipt indicating the date and time at which the tender was delivered and showing clearly the title of the contract in respect of which the tender is made.
- N107A.** That the Senior Officer shall in considering the sustainability issues associated with any products/services have regard to the Council's "Environmental Purchasing Guide for Staff". Where that document fails to resolve matters, consideration shall be given to the advice of the Environmental Strategy Officer.
- N118.** Where the Council is acting as an agent for another body (e.g. highway work for Lancashire County Council or Department of Transport, sewerage work for the Water Company, etc.) then that body may have special requirements which must be taken into account (e.g. that a particular tendering method has to be used for contracts over a certain size).
- N129.** In Rule 164(i)(c) provision is made for the Council to require, in appropriate cases, the payment of liquidated damages for failure to complete a contract, exceeding £50,000 in value, within the stipulated (or extended) time. The following points shall be borne in mind in connection with this Rule.
- (i) Where liquidated damages are provided for in a contract, the amount included for them shall be a genuine pre-estimate of the loss to the Council/client body which delayed completion is likely to cause. Amounts which are likely to be construed as a penalty shall not be inserted.
- (ii) When considering whether it is necessary to provide for liquidated damages in a contract, the Senior Officer of the spending Service shall satisfy himself/herself that such damages are applicable to the type of work/supplies/services and the form of contract and that they are enforceable and administratively economic to recover, (e.g. in the case of standing-offer type contracts [term contracts] where there may be difficulties in genuinely pre-estimating the loss to the client they may not be



appropriate). Where the Council is acting as agent for any other organisation then liquidated damages should be administered in accordance with their requirements.

N130. Rule 164(ii) provides that the Council may take security for the due performance of a contract. The most common form of security is the performance bond, the cost of which is inevitably met by the Council via the tender. Where proper selective tendering procedures are used, including the investigation of the financial standing of firms, the need for bonds may be reduced. Each contract will, therefore, be considered on its merits and the need for a bond will be dispensed with wherever this seems reasonable. The question of bonding is at the discretion of the relevant Senior Officer and is to be exercised in the light of all relevant circumstances. Guidance on the use of performance bonds has been issued by the local authority associations.

N141. Rule 164 (iii) requires that certain “standards” are specified in contracts; this is to comply with the general requirements of E.U. Procurement legislation (as set out in the Public Contracts Regulations 201506 ~~(as amended)~~). If there are no mandatory technical standards compatible with E.U. obligations then it is best to use a British Standard which implements a European standard and these can be recognised as they are prefixed by the letters “BS EN”. As this is a rather technical point of procurement law, should an Officer have any queries these should be raised with the Borough Solicitor (Extn 5001) or the Procurement Executive ~~Procurement and Projects Manager~~ (Extn. 5022).

N152\_(i) Rule 4 relates to the waiver of Contract Procedure Rules under special circumstances. Such special circumstances would include

- only one company makes the product which the Council wishes to purchase and no other product is a reasonable substitute
- a recent tender exercise has shown that one supplier/contractor provides significantly better value than anyone else for the product/work in question
- urgency, resulting from circumstances beyond the Council’s control, means that there is insufficient time to obtain tenders in accordance with the procedures set out in Contracts Procedure Rules.

(ii) Furthermore where an Officer intends to ask Council, Cabinet, a Committee or Sub-Committee to provide a waiver of Contracts Procedure Rule (s) then he/she must ensure that the body in question have the necessary authority.

(iii) When a Managing Director grants an exception to Contracts Procedure Rules in accordance with Rule 4, that exception shall be recorded as a “record of decision taken under delegated authority” which is available from the Member Services Section. That record of decision shall then be included in the next relevant Members Update.

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N163. (i) These Rules consider contracts in three cost bands (up to £10,000; £10,000 to £50,000; over £50,000). These are not annual values, they are the value of the contract for its whole duration including any optional extension periods and options to acquire additional goods, services or building works.

(ii) No attempt must be made to split a single contract into several lower value contracts to avoid the application of any aspect of these Rules. ~~In this respect the figure which should be considered against the threshold is the total cost of engaging the particular contractor (operating in his/her particular profession/trade/field) to fulfil the procurement requirement which is the essential purpose of the contract. Advice on this matter can be obtained from the Executive Procurement and Projects Manager (Ext. 5022) or the Borough Solicitor (Ext. 5001).~~

~~(iv)~~ (iii) Care must be taken where a low value contract is expanded to include additional work because if that additional work moves the contract value into another cost band a waiver of these Rules may be necessary if the requirements of these Rules are not to be breached. Advice on this matter can be obtained from the Borough Solicitor (Ext. 5001) or the Procurement Executive ~~Procurement and Projects Manager~~ (Ext 5022).

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N174. Rule 164 (vii) requires contractors to have appropriate insurances. Advice on this topic is contained in a document entitled “Insurance Procedure: Checking Contractors/Consultants Insurances” which is available from the Insurance Section.

N185. Rule 109 relates to “standing lists”. The Public Contracts Regulations 200615 ~~(as amended)~~ which is the main English domestic legislation to give effect to EU procurement legislation, provides for a category of contracts, called “framework agreements”. In specific circumstances, certain framework agreements, can be deemed to operate as standing lists. (True standing lists would generally only apply to tender exercises where the values are below the threshold values given in Note I). For advice in respect of this matter contact either the Borough Solicitor (Extn. 5001) or the Procurement Executive ~~Procurement and Projects Manager~~ (Extn. 5022).

N196. In respect of Rule 175 the following advice is offered:-

(i) where an officer wishes to make a procurement under the terms of an existing contract or framework agreement but where the requirements of Rule 175 are not satisfied it may still be possible to go ahead providing that existing contract was tendered and awarded in a fair, open and transparent manner and in full accordance with all legislation which applies to the Council. In such a case a specific exception to Contracts Procedure Rules must be obtained in accordance with Rule 4.

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- (ii) Some “Services” fall under Schedule 3 ~~Part B~~ of the Public Contracts Regulations 2006~~15 (as amended)~~ which means that a Contract Notice, as described in Rule 17~~5~~ (i), would not be required by procurement legislation, therefore, the requirements of Rule 17~~5~~ (i) would not be satisfied. In such cases a specific exception to Contracts Procedure Rules must be obtained in accordance with Rule 4.
- (iii) As compliance with Rule 17~~5~~ is a ~~fairly~~ technical matter Officers are encouraged to contact either the Procurement Executive ~~Procurement and Projects Manager~~ (Extn 5022) or the Borough Solicitor (Extn 5001) whenever they are considering using Rule 17~~5~~.

~~N2017~~. Rule No.5 requires that where contracts are under £10,000 the relevant Senior Officer shall ensure that the accepted price offers good value and reflects competitiveness. The Rule goes on to say that in appropriate circumstances this could include obtaining three quotations. In such circumstances it would be acceptable to obtain quotations via e-mail. This requirement to offer good value and reflect competitiveness could also be satisfied where quotations/tenders have been obtained in the last 12 months for similar work when it would then be in order to award a new contract to the tenderer who was successful in the previous tender exercise providing the new work is the same or similar to the work contained in the previous accepted tender and the new work can be priced by reference to the rates in the previous accepted tender. Where it is proposed to award a contract below £10,000 in value and where value for money and competitiveness will be demonstrated (as required by Rule 5) other than by obtaining three quotes or by reference to a previous quotation/tender exercise (as detailed in this ~~N2017~~) then the advice of the Audit Manager (Extn 2603), the Borough Solicitor (Extn 5001), or the Procurement Executive ~~Procurement and Projects Manager~~ (Ext.5022) should be sought. In all cases reasonable evidence must be retained (as an audit trail) to demonstrate that the requirements of Rule ~~No.5~~ have been complied with.

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~~N218~~. Rule ~~2016~~ requires that in respect of contracts over £50,000 in value:-

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- (i) The signed copy of the contract documents shall be provided to Legal Services for filing. The Officer to be contacted in this respect is the Managing Clerk (Extn. 5422). Furthermore the contract documents to be provided to Legal Services~~d~~ are the original signed contract documents. The spending Service~~s~~ shall retain appropriate copy~~(ies)~~ of the signed contract documents to facilitate the proper client management of the contract.
- (ii) Summary details are to be provided to the Purchasing Manager (Extn. 5426) for inclusion in the Council’s Contracts Register. Those summary details in respect of each contract shall comprise; the identity of the spending division, the name of the contractor/supplier/consultant, the title of the contract, the total value of the contract over its life excluding any potential extension(s) to the contract period, the start date of the contract, the end date of the contract and any other details which would allow a better understanding of the contract.

- (iii) Should a contract be extended then the Purchasing Manager (Extn. 5426) shall be advised accordingly and shall be provided with appropriate revised summary details in respect of the extended contract.

N2249. Rule 1 contains a definition of the term “contract”. In respect of that definition the following advice is offered. Many small value purchases are made through Council-wide bulk contracts which have been put in place centrally. Such contracts have already been entered into in full accordance with Contracts Procedure Rules and require no further quotation or tender exercise. It is the responsibility of the spending Service to ensure that the Council-wide bulk contract being used allows the purchase of the goods/services/building works being purchased. Queries regarding this matter should be directed to the Purchasing Manager (Extn. 5426) or the Procurement Executive ~~Procurement and Projects Manager~~ (Extn. 5022).

N230. Senior Officers may choose to supplement the requirements set out at CPR Rule 164 (iv) by specifying particular requirements, e.g. adherence to the Council’s Anti Fraud and Corruption Policy (as amended from time to time), having regard to risks arising from any particular area of contractual activity. If so they are invited to discuss this with the Borough Solicitor (Extn. 5001) or the Procurement Executive ~~Procurement and Projects Manager~~ (Extn. 5022).

N244. Where quotations are to be sought, care must be taken not to always obtain quotations from the same organisations thereby discouraging the development of price rings. It is important that the entry of new and rising organisations be encouraged. Itherefore where appropriate, when seeking quotations include within the organisations who are invited to quote, an organisation which is “new” to the Council (i.e. an organisation who the Council do not regularly do business with and/or invite to submit quotations). However, the relevant Senior Officer must be happy with the financial stability and technical ability of any organisation before a contract is awarded to that organisation.

N252. Where a tender evaluation methodology is to include criteria other than price (Rule 142(iii)(b) and Rule 14(iv)) care must be taken to ensure that the evaluation methodology is relevant, objective and transparent. The production of a robust tender evaluation methodology is a rather technical matter and advice must be sought from either the Procurement Executive ~~Procurement and Projects Manager~~ (Ext. 5022) or the Purchasing Manager (Ext. 5426).

N263. There will be circumstances where it is clearly more convenient or economic to add a new requirement to a suitable existing contract than to pursue a quotation or tendering process. However, the Public Contracts Regulations 2015 place strict limits on the nature and extent of such additions where the original value of the existing contract or the additional requirement exceeds the EU tendering threshold. These limits are summarised in a Procurement Practice Note which can be viewed on the Council’s intranet. The advice of the Procurement Executive (Extn. 5022) should always be sought when considering such changes to existing contracts.

N274. The reporting requirements relating to contract awards set out in the Public Contracts Regulations 2015 are relatively complex. Publication of contract award notices in Contracts Finder and the OJEU is arranged by the Purchasing Manager (Extn. 5426) or the Procurement Executive (Extn. 5022). A detailed digest of the various requirements are contained in a Procurement Practice Note which can be viewed on the Council's intranet.

N285. Regulation 46 of the Public Contracts Regulations 2015 promotes the division of contracts which exceed the EU tendering threshold into smaller lots, with the objective of encouraging wider participation from SMEs in bidding for public sector opportunities. As well as requiring that the reasons for not dividing a contract into lots are documented and transparent, Regulation 46 also requires that tender documents are explicit about how many lots may be awarded to any one supplier and how this will be decided. Detailed guidance on lotting can be found in a Procurement Practice Note on the Council's intranet, and advice may be sought from the Procurement Executive (Extn. 5022).

N296. Model contract clauses which meet the requirements of Regulations 73 and 113 of the Public Contracts Regulations 2015 are set out in a Procurement Practice Note which is available on the Council's intranet.

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**Audit & Governance Committee Work Programme – 30 June 2015**

<b>Date</b>	<b>Training (commencing 6.30pm)</b>	<b>Items</b>
September 2015	Procurement Training	<ol style="list-style-type: none"><li>1. Grant Thornton – Audit Plan Findings Report</li><li>2. Approval of Statement of Accounts</li><li>3. Internal Audit Activities – Quarterly Update</li><li>4. Regulation of Investigatory Powers Act Annual and Quarterly monitoring of Use of Powers</li><li>5. Annual Review - Anti-Fraud, Bribery and Corruption Policy</li><li>6. Risk Management Framework</li></ol>
January 2016	Housing Options Process	<ol style="list-style-type: none"><li>1. Internal Audit Activities – Quarterly Update</li><li>2. Regulation of Investigatory Powers Act quarterly monitoring of use of powers</li><li>3. Grant Thornton Annual Audit Letter</li><li>4. Grant Thornton Certification Letter</li><li>5. Treasury Management</li></ol>
March 2016		<ol style="list-style-type: none"><li>1. Local Code of Governance</li><li>2. Internal Audit Activities – Quarterly Update</li><li>3. Internal Audit Plan 2016/17</li><li>4. Regulation of Investigatory Powers Act quarterly monitoring of use of powers</li><li>5. Grant Thornton – Audit Plan</li><li>6. Risk Management Framework</li></ol>
June 2016		<ol style="list-style-type: none"><li>1. Internal Audit Activities – Annual report</li><li>2. Internal Audit Activities – Quarterly Update</li><li>3. Annual Governance Statement</li><li>4. Statement of Accounts</li><li>5. Regulation of Investigatory Powers Act Quarterly Monitoring of Use of Powers</li><li>6. Risk Management Framework</li></ol>