

Agenda

Audit and Risk Assurance Committee

Thursday, 21 July 2022 at 5.30 pm
At Council Chamber - Sandwell Council House, Oldbury

This agenda gives notice of items to be considered in private as required by Regulations 5 (4) and (5) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

1 Apologies for Absence

2 Declarations of Interest

Members to declare any interests in matters to be discussed at the meeting.

3 Minutes 7 - 16

To confirm the minutes of the meeting held on 28th June 2022.

4 Urgent Business

To consider any urgent business.

5 Counter Fraud Update 17 - 28

To review and comment on the Counter Fraud Update.



6	Internal Audit Report 2021-22	29 - 50
	To review and comment on the Internal Audit Annual Report 2021/22.	
7	Auditor's Annual Report on Sandwell Council - Interim 2020-21	51 - 84
	To receive and comment on the Auditor's Annual Report on Sandwell Council - Interim 2020-21.	
8	Children's Services Directorate Risk Register	85 - 108
	To receive and comment on the Children's Services Directorate Risk Register.	
9	Constitution Review (Contract Procedure rules and Financial Regulations)	109 - 218
	That, the Committee considers the proposed changes to the Council's Constitution	
10	Cabinet Forward Plan	219 - 252
	Standing item to consider items on the Cabinet Forward Plan.	
11	Work Programme	253 - 256
	Standing item to consider the work programme of the Committee.	

Kim Bromley-Derry CBE DL
Managing Director Commissioner

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Distribution

Councillor Preece (Chair)
Councillors Anandou, Choudhry, L Giles, Hinchliff, Khatun and Melia

Independent Members:

Mr Ager
Mr Hussain

Contact: democratic_services@sandwell.gov.uk

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Minutes of Audit and Risk Assurance Committee

**Tuesday 28 June 2022 at 6.00 pm
at Council Chamber, Sandwell Council House**

Present: Councillor Preece (Chair)
Councillors Anandou and L Giles.
Mr Ager (Independent Member).

Officers: Rebecca Maher (Head of Finance);
Rebecca Jenkins (Senior Lead – Service Improvement);
Matt Powis (Senior Democratic Services Officer);
Amundeeep Johal (Democratic Services Officer);

24/22 **Apologies for Absence**

Apologies were received from Councillors Choudhry and Hinchliff and Independent Member, J Hussain.

25/22 **Declarations of Interest**

There were no declarations of interest.

26/22 **Minutes**

Resolved

That, the minutes of the previous meeting held on 17 March 2022 be confirmed as a correct record.



27/22

Urgent Business

The Chair agreed for two additional items to be added to the agenda which included the Committee's work programme for the 2022/23 municipal year and the Cabinet Forward Plan.

28/22

Strategic Risk Register Update Report

The Committee received an update on the Strategic Risk Register since the last reporting in March 2022.

The Risk Register identified 19 risks, 9 of which were red, 5 amber and 4 green.

Changes to the risk register included:

- Business continuity management was highlighted as a red risk due to an incident occurring in an ICT room in May 2021, which resulted in a temporary loss of access to Council systems and SBS (the Council's finance/human resources procurement system). The Council had requested a review of resilience arrangements in relation to this matter and it was hoped the risk would reduce in future.
- Towns Fund Programme was originally regarded as a risk at the time of submission of business cases. However, since the last reporting period, the business case had been successfully submitted therefore the risk had reduced. It was highlighted that a new risk would be assessed to reflect the next phase of the programme once ministerial decisions had been made and funding was officially secured.
- Improvement Plan risk had reduced as a result of the submission of the Improvement Plan to the Secretary of State. The Plan had been approved by the Minister and two commissioners had been appointed.
- The Interim and Future Management of the Council's Leisure Centres had reduced from red to green following an agreement with Sandwell Leisure Trust to continue providing the services in the interim period.



The following was noted in response to members' comments and questions:-

- The Council's period 2 budget monitoring had been reviewed for the 2021/22 financial year and included an estimated budget increase for utilities of 20%. However, due to the current climate with energy markets this uplift was not likely to be sufficient to cover expenses. It was highlighted that this was not a Sandwell specific issue but was a national challenge. It was noted that the inflation rise would be considered as part of the budget planning process for 2023/24 and the potential use of reserves if necessary to allow for flexibility during the current financial year.
- Whilst it was difficult to ascertain the full effect on inflation rises on services and officers were continuing to monitor the situation and its impact on the Borough and its residents.
- The latest data suggested that the Council's expenditure on energy was expected to increase by up to 70% in comparison to the previous financial year.
- The risk relating to the Sandwell Leisure Trust was in respect of the old contract. However, an agreement had been put in place on an interim arrangement, this would be reassessed to identify whether a new risk for the new permanent arrangement was required.
- A national review on Children's Services was conducted by Josh McCallister (Chair of the Independent Review of Children's Social Care). It was advised that the Council would examine and ascertain whether recommendations from the national review had been incorporated in mitigating the current risks within Children's Social Care.
- With regard to the business continuity management risk, damage had occurred to the servers at the Council House which initially resulted in disruption in access to all files across the Council network. Whilst the issue was resolved swiftly, due to the damage, the servers that hosted the Oracle e-Business Suite which hosts the Council's financial system was unusable. Therefore, manual methods of making emergency payments was used in the interim period. It was highlighted that the



Council was looking to upgrade servers to the Oracle cloud system over the next 12 months to prevent issues such as this occurring again in the future.

- As the risk with the business continuity management had increased, the Chair requested that a report on the incident and the mitigation measures implemented as a result be reported to a future meeting of the Committee.
- It was suggested that the current actions and ongoing controls for each risk had timestamps to allow the Committee to monitor the risk register in future.
- The risk in respect of to the compliance with the Data Protection Act 2018, GDPR and Freedom of Information Act 2000 was in relation to the retention of Council documentation. The Cabinet had approved an agreement on retention periods which would hopefully result in a reduction in the overall risk. The Chair informed the Committee that he would determine whether a report on this matter should be brought back to the Committee at a future meeting.
- In relation to the risk associated with the Oracle E-Business, officers were assessing and evaluating tenders for a new implementation partner which would ensure that the required resources were in place. Following the implementation period, the project could progress.

The Chair thanked officers for their attendance.

Resolved:

That, the Committee receive an item at a future meeting regarding the incident relating to the Business Continuity Management Risk Reference (6b 04/18) and the mitigation measures implemented following the incident.



The Committee received and noted the contents of the Improvement Plan.

In response to the Grant Thornton review, Council approved an Improvement Plan in January 2022 to address all 45 recommendations in the report as well as reporting mechanisms to ensure progress was managed effectively. The Council had received the findings of the Chartered Institute of Public Finance and Accountancy (CIPFA) Financial Management Review (January 2022) and LGA Corporate Peer Challenge (March 2022). Following this, the Council received further Statutory Directions from Government which was received in March 2022.

On 7 June 2022, Council approved an Improvement Plan that combined the actions to address not only the Grant Thornton Review, but also the findings of the CIPFA Financial Management Review (January 2022) and the LGA Corporate Peer Challenge (March 2022).

The Improvement Plan provided the organisation with a clear direction for its improvement journey that would enable the continued delivery of the strategic priorities in the Corporate Plan 2021-2025. In addition, the Plan would incorporate measures to address the requirements of the Statutory Direction to strengthen the effectiveness of scrutiny and associated audit functions.

The Value for Money Governance Review identified several specific recommendations relating to audit as follows:

- Key Recommendation 7: Delivering effective Elected Member development training with particular focus on those in key statutory roles, relating to Cabinet, Scrutiny, Standards and Audit functions. In addition, the Member development programme would be reviewed to ensure corporate governance forms part of the training for members with governance roles.
- Improvement Recommendation 14: Inclusion of the Cabinet forward plan on Audit and Risk Assurance Committee and Scrutiny Board agendas to assist with agenda planning.



- Improvement Recommendation I34: Managing the Council's long-term Governance position to focus on its corporate objectives.

Following a review of all the recommendations from the external reviews, key themes were identified to set the focus for the council's improvement journey:

- Organisational Culture
- Corporate Oversight Strategic Direction
- Decision Making
- Procurement and Commercial
- Partnerships and Relationships

Each theme was allocated objectives, milestones, deliverables, and measures of success used to track the Council's progress against expected timescales and achievements.

A detailed delivery plan setting out activity to achieve the deliverables, responsible officer and timescales was allocated to each theme. The delivery plan also set out how specific actions to address recommendations in the various external reviews, thus enabling direct reporting for different audiences as required.

The following was noted in response to members' comments and questions:-

- The Chair stated that a distinct approach to the Improvement Plan had been agreed with the Chair of the Budget and Corporate Scrutiny Management Board to avoid overlap with oversight. Primarily, the Committee would focus on the assurance and risk management of the Plan, whereas the Scrutiny Board would focus on challenging policy and performance.
- The Improvement Plan would regularly be brought before the Committee.
- The Statutory Direction received from Government outlined the requirement for the Council to give due consideration to the options around a four-yearly election cycle.
- A detailed monitoring tool would be reviewed monthly to look at the progress of the Improvement Plan that looked at the actions



and progress of each risk. This would be reported to Cabinet quarterly. This Chair requested that this document be brought before the Committee at a future meeting for review.

- With regard to the governance structure, Improvement Plan Review meeting allowed Chief Officers to monitor the progress against all actions in the Plan on a monthly basis, whilst also considering risks, changes, arising issues and resources pressures.
- The Senior Lead for Service Improvement confirmed that she would produce the governance structure in a visual form and distribute at a future meeting of the Committee.
- Work was being undertaken for the Member Development Plan and was due to be considered by the Ethical Standards and Member Development Committee.
- An online training session on the introduction to internal auditing, counter fraud and risk management had taken place with all Elected Members.
- It was highlighted that it may be useful for Members of the Committee to attend an LGA training course to understand how other local authorities conducted auditing and risk assurance to assist with learning and improvement.

29/22

Improvement Plan Risk Register

The Committee received the Risk Register, which accompanied the Improvement Plan.

The initial risk capture was undertaken by Leadership Team and followed the Corporate format for reporting on risk.

The Strategic Risk Register contained a risk on the Council's Improvement Plan and was currently rated amber.

Within the Improvement Plan Risk Register, there were 12 risks – 3 of which were green, 7 amber and 2 red. The 2 red risks were as follows:



- Investment and Financial Resources – Resource gaps and pressures associated with actions within the Improvement Plan had been identified. On 7th June 2022, Council approved use of Improvement & Capacity Reserve and 2021/22 underspend allocated to the Improvement Plan actions. It was expected that the risk rating would reduce following the recruitment to posts that formed current capacity gaps after the allocation of funding. Resource issues and risks associated with the Improvement Plan were to be reviewed regularly by Leadership Team and register maintained.
- Performance Management Framework (PMF) and Data Quality –Data was collected for the Council’s overall performance management framework and with the Improvement Plan specifically to understand evidence of the progress being made. The implementation of a Performance Management System was under consideration to provide capability for performance management. The Council was analysing methods to turn the evidence of success criteria into a detailed evidence framework which set out which measures were required to be captured and the frequency of review.

The following was noted in response to Members’ comments and questions:-

- In compiling the Improvement Plan, Leadership Team conducted a capture and considered the areas of major risk, as detailed in the Risk Register.
- It was expected that further risks would be added to the Register as the Plan would begin rolling out.
- Each of the risks had been scored according to the standard corporate definition, taking into account the risk of likelihood and severity.

The Chair thanked the Senior Lead for Service Improvement for her attendance.



The Committee noted the Cabinet's Forward Plan, which set out the key decisions that the Cabinet was due to take at forthcoming meetings. The Plan was presented for information and to give the Committee an opportunity to contribute to any items or raise any issues with the Executive.

31/22 **Work Programme**

The Committee noted the work programme for 2022/23.

Resolved that the following items be added to the Committee's work programme for 2022/23:-

- The Business Continuity Management risk as detailed the Strategic Risk Register
- Updates on the actions and progress of risks with the Improvement Plan

Meeting ended at 6:53pm.

Contact: democratic_services@sandwell.gov.uk



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Report to Audit and Risk Assurance Committee

21 July 2022

Subject:	Counter Fraud Update
Director:	Simone Hines Director of Finance and S151 Officer
Contact Officers:	<p>Oliver Knight Counter Fraud Lead Oliver_knight@sandwell.gov.uk</p> <p>Peter Farrow Audit Services and Risk Management Manager, peter_farrow@sandwell.gov.uk</p>

1 Recommendation

1.1 Review and comment upon the Counter Fraud Update.

2 Reasons for Recommendation

2.1 To inform the committee of details of the recent areas of counter-fraud activity undertaken by the Council's Counter Fraud Unit.



3 How does this deliver objectives of the Corporate Plan?

3.1 Internal Audit and the Counter Fraud Unit operates across the Council and helps it accomplish its vision by bringing a systematic, disciplined approach to reducing the risk of fraud and helping to safeguard the council's assets.

4 Context and Key Issues


4.1 The Counter Fraud Report contains details of the recent areas of counter-fraud activity undertaken by the Council's Counter Fraud Unit.

5 Alternative Options

5.1 The purpose of the report is to inform the Audit and Risk Assurance Committee on the activity of the Counter Fraud Unit. As such, there is no alternative option.

6 Implications

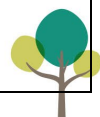
Resources:	There are no direct resource implications arising from this report.
Legal and Governance:	The Counter Fraud Unit operates within the following legal framework: <ul style="list-style-type: none">• The Fraud Act 2006• POSHFA (Prevention of Social Housing Fraud Act 2013)• PACE (Police and Criminal Evidence Act 1984)• General Data Protection Regulations• CPIA (Criminal Procedure and Investigations Act 1996)• RIPA (Regulatory Investigation Powers Act 2000)



- HRA (Human Rights Act 1998)
- Council Tax Reduction Scheme 2013

The Counter Fraud Unit investigators are required to investigate in accordance with the Local Government Act 1972. The following sections from this Act are relevant:

- Section 151 – Duty to protect public funds: Every Local Authority shall make arrangements for the proper administration of their financial affairs and shall secure that one of the officers has responsibility for the administration of those affairs.
- Section 222 – Right to prosecute: Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area they may prosecute, defend or appear in any legal proceedings and, in the case of any civil proceedings, may institute them in their own name.
- Section 223 – Right to appear in court: Any member or officer of a local authority who is authorised by that authority to prosecute or defend on their behalf or to appear on their behalf in proceedings before magistrates' court shall be entitled to prosecute or appear in any such proceedings and to conduct any such proceedings.
- Section 111 – Right to act: Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money



	<p>or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to the discharge of any of their functions.</p> <ul style="list-style-type: none"> • The right to question suspects and witnesses – Police and Criminal Evidence Act 1998 - PACE (Code C)
Risk:	The actions detailed in the Counter Fraud Report are designed to mitigate risks.
Equality:	It was not necessary to undertake an Equality Impact Assessment.
Health and Wellbeing:	There are no direct health and wellbeing implications from this report.
Social Value	There are no direct social value implications from this report.

7. Appendices

Appendix A – Fraud Risk Register

Appendix B - Counter Fraud Update



Fraud Risk Register @ July 2022

Themes	Potential fraud type	Risk
Housing Tenancy	Subletting, providing false information to gain a tenancy, wrongful tenancy assignment and succession, failing to use the property as the principle home	Red
Council Tax	Fraudulently claiming for discounts and exemptions such as the single persons discount, Local Council Tax Support	Red
Personal Budgets / Direct Payments	Falsely claiming that care is needed, carers using direct payments for personal gain, carers continuing to receive direct payments after a person dies, duplicate applications submitted to multiple councils	Red
Procurement	Collusion (staff and bidders), false invoices, overcharging, inferior goods and services, duplicate invoices	Red
Cyber Crime	Cyber enabled fraud and Use of cyber resulting in loss of service, resources as well as reputation harm	Red
Money Laundering	Accepting payments from the proceeds of crime	Amber
Blue Badge	Fraudulent applications and misuse	Amber
Right to Buy	Providing false information in order to get a discount when purchasing a council house	Amber
Business Rates Fraud/Avoidance	Evading payment, falsely claiming rate relief, empty property exemption, charity status	Amber
Bank Mandate Fraud	Fraudulent request for change of bank details	Amber
Theft	Theft of council assets including cash and equipment	Amber
Grants	False grant applications, failure to use for its intended purpose	Amber
Payroll	Expenses, other claims, recruitment, ghost employees	Amber
Schools	School accounts, expenses, procurement, finance leases	Amber
Housing Benefit	Failing to disclose income or household members within a property	Amber
Covid-19 Support Grants	Fraudulent grant applications for Covid-19 related support grants	Green
Discretionary housing and Council Tax hardship fund payments	False applications and fraudulent / exaggerated claims indicating significant hardship	Green
Sale of Land and Assets	Sale of council owned land and buildings	Green
Insurance	Fraudulent and exaggerated claims	Green
Bribery	Awarding of contracts, decision making	Green
Electoral	Postal voting, canvassing	Green
School Admissions	Fraudulent application to gain school place which a child may not be entitled to	Green
Manipulation of data	Amending financial records and performance information	Green
Welfare Assistance	Fraudulent claims, selling of equipment / goods received	Green

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Sandwell
Metropolitan Borough Council

Audit and Risk Assurance Committee

Counter Fraud Report - July 2022



1 Introduction

The purpose of this report is to provide the Audit and Risk Assurance Committee with an update on the counter-fraud activities undertaken by the Council's Counter Fraud Unit.

The Council is committed to creating and maintaining an environment where fraud, corruption and bribery will not be tolerated. This message is made clear within the Council's Anti-Fraud and Corruption Policy, which states:

'The Council operates a zero tolerance on fraud, corruption and bribery whereby all instances will be investigated and the perpetrator(s) will be dealt with in accordance with established policies. Action will be taken to recover all monies stolen from the council.'

2 Counter Fraud

The Counter Fraud Unit

The Counter Fraud Unit, based within Audit Services, is responsible for carrying out investigations into areas of suspected or reported fraud. Both pro-active and re-active work is undertaken to help detect, prevent and investigate fraud.

Officers within the unit are also responsible for the Council's compliance with the Cabinet Office's National Fraud Initiative, identifying and sharing fraud trends and alerts, as well as processing requests for information from other law enforcement agencies to prevent and detect crime and protect the public purse.

Anti-Money Laundering

The Counter Fraud Lead Officer is also responsible for supporting the council's Money Laundering Reporting Officer (MLRO) in their role. This includes the development of the Anti-Money Laundering Policy and associated procedures, the screening of money laundering concerns and producing Suspicious Activity Reports (SARs) for the National Crime.

Under the [Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017](#) offences exist for those participating in financial transactions whereby there is deliberate attempt to launder money or failure to report a suspicion of money laundering. Therefore, the council has a responsibility to report genuine concerns before processing transactions.

3 Counter Fraud Update

Sandwell School Fraudulent Payment Alert

In July 2022 a Sandwell School was the target of an attempted fraudulent payment attack. Fraudsters created an email account to replicate that of the Headteacher of the School, in an attempt to try and convince school finance employees to process a significant payment. Fortunately, the school staff identified the fraud and no payment was made. The instance

was reported to the Counter Fraud Unit, an alert to all Sandwell Schools was immediately issued in order to raise awareness and make the schools aware of the threat.

National Fraud Initiative (NFI)

The NFI programme is an exercise administered by the Cabinet Office. It is a programme on a two-year cycle, where data from public and private organisations is collated and cross matched. Participating agencies receive data match reports for consideration and investigation. The data matches identify inconsistencies that may require further investigation and allows potentially fraudulent claims and payments to be identified. The Cabinet Office conducts the NFI exercise under the statutory data matching powers in Part 6 and Schedule 9 of the Local Audit and Accountability Act 2014.

Preparations for the 2022-2023 programme are taking place. The Counter Fraud Unit will collect and cleanse the data from multiple Council departments before submitting data by the October 2022 deadline. Data matches will be released to the Counter Fraud Unit in early 2023.

On conclusion of the 2020-2021 exercise 516 matches were processed and investigated. This identified overpayments amounting to £54,965 and an additional estimated saving of £268,000 based on the Cabinet Officer's notional savings calculations. These figures included 52 fraudulent housing applications being cancelled prior to the allocation, the termination of a council property due to tenancy fraud and over £40,000 overpaid benefits.

The national 2020-2021 NFI report is expected to be released by the Cabinet Office in the summer of 2022 and will be shared with the Audit and Risk Assurance Committee once released.

Covid-19 Grant and Support Payments

To support businesses affected by Covid -19, the Department for Business, Energy and Industrial Strategy (BEIS) introduced a series of grant schemes throughout the pandemic. The initial grant schemes were Small Business Grants, Retail, Hospitality and Leisure Grants and Local Authority Discretionary Grants. In total £58 million of grants were paid to businesses within the borough.

The grants were the subject of pre-payment and post payment checks. These checks identified £530,000 worth of potentially fraudulent claims which were prevented before payment and £65,000 in overpaid grants which are the subject of recovery action and a further potential action. The Council has completed the post payment assurance checks outlined by BEIS which did not identify any additional issues.

Following the initial tranche of grants, a series of additional grants and support payments became available to local businesses. These grants were aimed to support those affected by local and national restrictions, those impacted by the Omicron variant and some specific types of businesses.

These additional grants were the subject of due diligence checks, as well as pre-payment and post payment checks similar to that of the earlier Covid-19 grants. These grants payments have now been completed and data of fraud prevention and loss has been

supplied to BEIS as part of the reconciliation and assurance process. Details are included in the table below:

Grant Type	Number of Prevented Fraudulent Incidents	Value (£) of Prevented Fraudulent Incidents	Number of Detected Fraudulent Incidents	Value (£) of Detected Fraudulent Incidents
Restart Grants	12	70,668	-	-
Local Restrictions Support Grants	3	25,000	2	11,000
Additional Restrictions Grants	1	3,000	4	4,000

Investigation work relating to grant payments continues, this includes liaison with BEIS, the Cabinet Office and other assigned business grant counter fraud partners; NAFN (National Anti-Fraud Network) and NATIS (National Investigation Service) to detect and investigate any potential fraudulent payments.

Fraud Prosecutions

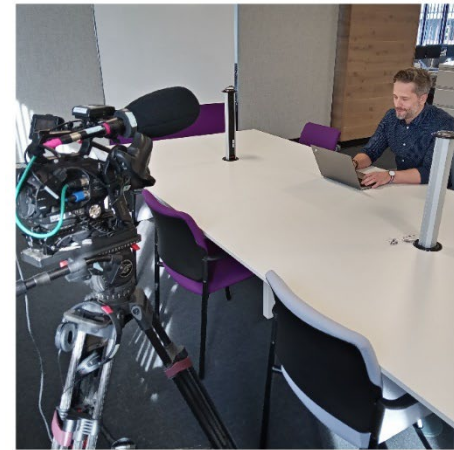
Pursuing offenders and having the capability to punish those who attack public funds forms part of the Council's anti-fraud strategy. It sends a message to other potential fraudsters and also assists with recovery of losses. Several investigations conducted by the Counter Fraud Unit have concluded in 2022, resulting in positive convictions against fraud. These include:

- ◆ A council tenant who sublet his council accommodation to an unknowing third-party by using an estate agent to collect rental payments. The individual then retained the money leaving substantial rent arrears against his council tenancy. Having failed to attend court a warrant for his arrest was issued, he was later arrested attempting to board a flight to Switzerland. He was fined £250 and ordered to pay compensation and a contribution towards costs. An Unlawful Profit Order under the Prevention of Social Housing Fraud Act 2013 was made in respect of the income that he received from the property being sub-let. In total he was required to pay the total sum of £5,426 in full to avoid spending 60 days in jail
- ◆ An individual who alleged he had paid rent arrears payments of £4,000 to the Council which had not been recorded against the relevant rent account. Payment receipts and bank statements were provided to support the payments he had made. However, a subsequent investigation established these documents and the claims that payments had been made were false. He was sentenced to 12 months in prison, suspended for two years and ordered to carry out 120 hours of unpaid work as well as pay a contribution towards the council's legal fees of £500.

Fraud Squad

As previously reported, some of the work carried out by the Counter Fraud Unit has this during the year featured on the BBC One TV series, Fraud Squad.

Proactive work such as this is a tactic aimed to increase the likelihood of frauds being reported, helping to deter fraudsters from targeting the council and demonstrating to council residents what we are doing as a council to tackle crime and protect public money.



The show was aired in January 2022 and can still be accessed via the BBC iPlayer@ [bbc.co.uk/programmes/m001433f](https://www.bbc.co.uk/programmes/m001433f)

Midland Fraud Group

The Counter Fraud Unit organise, host and chair the Midland Fraud Group. The group consists of the Heads of Fraud from councils across the Midlands. Its purpose is to identify fraud trends, share best practice and collectively combat fraud across a regional area. At the last meeting in June 2022 discussions were held on:

- Blue Badges
- Anti-Money Laundering
- Sanctions

Fraud Risk Register

The Counter Fraud Unit maintain the Council's Fraud Risk Register which helps inform the counter fraud work undertaken, and the latest version can be found at Appendix A of this report.

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Report to Audit and Risk Assurance Committee

21 July 2022

Subject:	Internal Audit Annual Report 2021/22
Director:	Simone Hines Director of Finance/Section 151 Officer
Contact Officer:	Peter Farrow Audit Services and Risk Management Manager, peter_farrow@sandwell.gov.uk

1 Recommendation

- 1.1 Review and comment upon the Internal Audit Annual Report 2021/22.

2 Reasons for Recommendation

- 2.1 To inform the Committee of the contents of the Internal Audit Annual Report for 2021/22, which also provides an opinion on the adequacy and effectiveness of the council's governance, risk management and control processes.



3 How does this deliver objectives of the Corporate Plan?

Internal Audit operates across the council and helps it accomplish its objectives by bringing a systematic, disciplined approach to evaluating and improving the effectiveness of risk management, control and governance processes.

4 Context and Key Issues

- 4.1 The main purpose of the report is to provide the Audit and Risk Assurance Committee and the Section 151 Officer with an opinion on the adequacy and effectiveness of the Council's governance, risk management and control processes. The contents of the report also provide one element of the evidence that is required to underpin the Council's Annual Governance Statement.
- 4.2 It summarises the audit work undertaken during the year in a tabular format. This includes:
- the areas subject to review during the year (Auditable Area)
 - an assessment of the assurance need assigned to each auditable area (high, medium or low)
 - the number and type of recommendations made as a result of each audit review
- 4.3 Finally, it provides a summary of the key control issues that arose during the year that in the opinion of Audit Services should be brought to the attention of the Audit and Risk Assurance Committee and the Section 151 Officer.



5 Alternative Options

- 5.1 The purpose of the report is to inform the Audit and Risk Assurance Committee of the Internal Audit Annual Report for 2021/22. As such, there is no alternative option.

6 Implications

Resources:	There are no direct resource implications arising from this report.
Legal and Governance:	Internal audit is a statutory service in the context of the Local Government Accounts and Audit Regulations (Amendment)(England) 2015. The Act states that: <i>“A relevant authority must undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account public sector internal auditing standards or guidance”</i> . These Standards have been adopted by the council’s internal audit section.
Risk:	The agreed actions detailed in Internal Audit reports are designed to mitigate risks.
Equality:	It was not necessary to undertake an Equality Impact Assessment.
Health and Wellbeing:	There are no direct health and wellbeing implications from this report.
Social Value	There are no direct social value implications from this report.

7. Appendices

Internal Audit Annual Report 2021/22.



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Annual Internal Audit Report - 2021/22



1 Introduction

1.1 Our internal audit work for the period from 1 April 2021 to 31 March 2022 was carried out in accordance with the internal audit plan. The plan was constructed in such a way as to allow us to make a statement on the adequacy and effectiveness of the council's governance, risk management and control processes. In this way, our annual report provides one element of the evidence that underpins the Annual Governance Statement the Council is required to make within its annual financial statements. This is only one aspect of the assurances available to the council as to the adequacy of governance, risk management and control processes. Other sources of assurance on which the council may rely could include:

- The work of the External Auditors (Grant Thornton)
- The result of any quality accreditation
- The outcome of any visits by HMRC
- Other pieces of consultancy or third-party work designed to alert the council to areas of improvement
- Other external review agencies

As stated above, the framework of assurance comprises a variety of sources and not only the Council's internal audit service. However, internal audit holds a unique role within a local Council as the main independent source of assurance on all internal controls. Internal audit is therefore central to this framework of assurance and is required to acquire an understanding not only of the council's risks and its overall whole control environment but also all sources of assurance. In this way, internal audit will be able to indicate whether key controls are adequately designed and effectively operated, regardless of the sources of that assurance. Also, consideration of the Council's governance, risk management, ethics-related objectives programmes and activities, and information technology governance is implicit in all internal audit activity.

1.2 The definition of internal audit, as described in the Public Sector Internal Audit Standards is:

Internal Auditing is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

Internal audit activity is organisationally independent and further details behind the framework within which internal audit operates, can be found in the internal audit charter which is reviewed annually by the Audit and Risk Assurance Committee.

Overall assurance

1.3 As the providers of internal audit to the Council, we are required to provide the *Section 151 Officer with an opinion on the adequacy and effectiveness of the Council's governance, risk management and control processes. In giving our opinion it should be noted that assurance can never be absolute. The most that internal audit can provide to the Section 151 Officer is reasonable assurance that there are no major weaknesses in the Council's governance, risk management and control processes. In assessing the level of assurance to be given, we have taken into account:

- All audits undertaken for the year ended 31 March 2022.
- Any follow-up action taken in respect of audits from previous periods.
- Any significant or fundamental recommendations not accepted by management.
- Any limitations which may have been placed on the scope of internal audit.
- The extent to which any resource constraints may impinge on the ability to meet the full audit needs of the council.
- The council's Strategic Risk Register is regularly presented to directors and the Audit and Risk Assurance Committee

* Section 151 of the Local Government Act requires the council to appoint a suitably qualified officer to be responsible for the proper administration of its financial affairs.

2 Internal audit opinion

2.1 We have conducted our audits in accordance with the Public Sector Internal Audit Standards. Within the context of the parameters set out in paragraph 1.3 above, our opinion is as follows:

2.2 As a result of a number of key governance issues raised during the year, predominantly those detailed in the Grant Thornton Value for Money review with its accompanying statutory and key recommendations, and the action taken by the Government in appointing commissioners to the Council, Internal Audit are unable to provide reasonable assurance for 2021/22 that the Council had fully adequate and effective governance processes. However, from the work we have completed we are able to provide reasonable assurance that both risk management and internal control processes remain adequate.

During the year a number of activities and actions have been put in place as part of the Council's improvement journey, including an appointed Commissioner alongside a new Leadership Team, and a Single Improvement Plan pulling together the recommendations from a number of recent key independent and external reviews (including Grant Thornton's Value for Money Governance Review, CIPFA's Financial Management Review and the LGA's Corporate Peer Challenge) which should help ensure that in the year ahead, reasonable assurance regarding governance processes can be achieved.

In reaching our opinion, the following factors were also taken into particular consideration:

- We have had unfettered access to all records and employees during 2021/22.
- The need for management to plan appropriate and timely action to implement our and other assurance providers' recommendations.
- Key areas of significance, identified as a result of our audit work performed in year are detailed later in this report.
- While stand-alone reviews of governance and risk management are not undertaken, consideration of both these issues are implicit in all internal audit work. Similarly, assurance is gained from the regular review of the council's Strategic Risk Register as presented at meetings of the Audit and Risk Assurance Committee.

Internal audit – limited assurance reports

While not fundamental to the overall control environment, from our internal audit work we gave a 'limited' or 'No' rating in the following areas and it remains important that the recommendations made in these areas are implemented and improvements made, in a timely manner:

- Procurement and Contract Compliance (Limited)
- Refurbishment of High and Low-rise buildings (Limited)
- Disposal of Land (Limited)
- Riverside Rents (Limited)
- Capital Accounting (No)

Delays in the 2020/21 and 2021/22 Statement of Accounts and Annual Governance Statement

There have been delays in the completion and signing off of the Council's Statement of Accounts for some time now. At the time this report was produced, the finalisation of the 2020/21 and subsequent 2021/22 Statement of Accounts had encountered similar delays. These delays in the finalisation of the Statement of Accounts, has resulted in similar delays in the production of the Council's Annual Governance Statement, which forms part of the Statement of Accounts. At the time this report was produced, the 2020/21 Annual Governance Statement was still being finalised and in effect remains 'live' until the Statement of Accounts are approved. This has also impacted upon the Council's ability to prepare its 2021/22 Annual Governance Statement, which in itself would usually help inform this annual report.

Improvement Plan

As referred to in our Annual Audit Opinion above, the 2021/22 year saw a number of external reviews including Grant Thornton's Value for Money Governance Review, CIPFA's Financial Management Review and the LGA's Corporate Peer Challenge. Within these reviews and subsequent reports, there were areas of interest to the Audit and Risk Assurance Committee.

In March 2022 the Secretary of State for Levelling Up, Housing and Communities announced an intervention package and a set of Directions to ensure the Council was able to comply with its best value duty under Part 1 of the Local Government Act 1999. These Directions were in-part influenced by the Grant Thornton report following their Value for Money Governance Review. The intervention package included the requirement for the development and implementation of an Improvement Plan within the first three months following the Directions notice and the appointment of two Commissioners.

In June 2022 the Council approved such an Improvement Plan that combined a series of actions to address the matters raised in the reviews referred to. The Improvement Plan was also presented to the June 2022 meeting of the Audit and Risk Assurance Committee in order to help inform the work of the Committee.

Send Passenger Transport Contract

At the start of the 2021/202 year and following concerns regarding the then SEND Passenger Transport Contract exercise, a fact-finding review was undertaken in order to make an initial assessment of the concerns raised. Following this a number of recommendations were made and the report was shared separately with the Audit and Risk Assurance Committee during the year. This issue also formed one of the Key Lines of Enquiry as part of the Grant Thornton

Value for Money Governance review. The recommendations from both reviews were accepted, have helped inform the latest procurement exercise and fed into the Council's Improvement Plan.

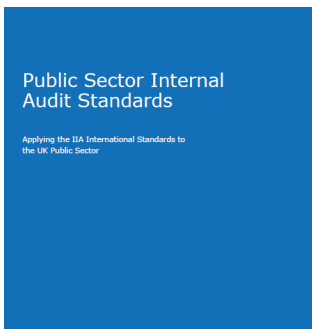
Internal audit's role in fraud investigations

During the year, a proportion of internal audit time was spent working with the Counter Fraud team on a range of fraud investigations. The outcomes of key investigations are reported where appropriate, separately to the Audit and Risk Assurance Committee through the regular Counter Fraud Update Reports.

Key risks the council faces

The key risks the council faces in delivering its outcomes are captured in a Strategic Risk Register which is updated as and when the risk profile of the Council changes and is reported to the Audit and Risk Assurance Committee on a regular basis.

3 *Performance of the audit service*



Compliance with the Public Sector Internal Audit Standards

The internal audit service follows the Public Sector Internal Audit Standards, and the Code of Ethics that form part of the standards, as laid out in the internal audit charter approved by the Audit and Risk Assurance Committee. The quality assurance and improvement programme self-assessment has identified no major non-conformances with these standards and therefore the internal audit activity has conformed with the international standards for the professional practice of internal auditing. An independent validation of the self-assessment process will need to seek to be commissioned during the new year.

Audit plans

Indicator	Actual
Audit Plan produced in advance of the year to which it relates (i.e. prior to 1 April 2022)	Yes. Approved by Audit and Risk Assurance Committee at its meeting in March 2022.

Recommendations

Indicator	Actual
90% of 2020/21 recommendations accepted by council management (where a response has been received)	100%

Relationships

Indicator	Actual
Satisfaction of Audit and Risk Assurance Committee members is good	No key issues have been flagged during the year

Reviews by other agencies

Indicator	Actual
Consideration of internal audit work by external audit	No issues raised
Outcome of external reviews by other agencies	No such reviews for 2021/22

Staffing

Indicator	Actual
% of Audit Services' employees professionally qualified (target 33%)	33 %

4 Summary of work completed

Where appropriate, a detailed written report and action plan is prepared and issued for every internal audit review. The responsible officer will be asked to respond to the report by completing and returning the action plan. This response must show what actions have been taken or are planned in relation to each recommendation. If the recommendation is not accepted, this must also be stated. We are responsible for assessing whether the response is adequate.

Audit reviews completed in 2021/22

The following tables below list all the reports issued by internal audit during 2021/22, alongside their original Assessment of Assurance Need (AAN) risk score, the number and type of recommendations made, whether those recommendations have been accepted and an overall level of assurance for each review. Where appropriate each report we issue during the year is given an overall assurance opinion based on the following criteria:

Substantial	Satisfactory	Limited	No Assurance
A robust framework of controls ensures objectives are likely to be achieved and controls are applied continuously or with only minor lapses.	A sufficient framework of key controls for objectives to be achieved but the control framework could be stronger, and controls are applied but with some lapses.	A risk of objectives not being achieved due to the absence of key internal controls and a significant breakdown in the application of controls.	Immediate action is required to address fundamental gaps, weaknesses or non-compliance identified.

For school reviews, we use a different opinion statement to match the assurance categories awarded by Ofsted, which is based on the following:

Outstanding	Good	Satisfactory	Inadequate
Robust framework of key controls ensures objectives should be achieved and controls are applied continuously.	Effective framework of key controls ensures objectives are likely to be achieved and controls are applied but with some minor lapses.	Reasonable framework of key controls exists, but could be stronger to support achievement of objectives, with occasional breakdown in the application of controls.	Risk of objectives not being achieved due to the absence of key internal controls, with significant breakdown in the application of controls.

Summary of internal audit work completed for the year 2021/22

AAN	Assessment of assurance need rating
*	Awaiting response
NA	Not applicable, review outside of normal risk-based auditing approach/customer request etc.

Auditable area	AAN rating	Recommendations					Level of assurance
		Fundamental	Significant	Merits attention	Total	Number accepted	
Covid-19 Compliance and Enforcement Grant 2020/21	N/A	-	-	-	-	-	N/A
Schools Financial Value Standard	N/A	-	-	-	-	-	N/A
Housing Benefit Subsidy Final Claim certification	N/A	-	-	-	-	-	N/A
Housing Benefit Mid-Year Subsidy Claim Estimate 2021/22	N/A	-	-	-	-	-	N/A
Discretionary Housing Payments Final Claim Certification	N/A	-	-	-	-	-	N/A
Discretionary Housing Payments follow up	Medium	-	-	1	1	1	Substantial
Bank Changes follow up	High	-	1	-	1	1	Satisfactory
Income Management (including write offs)	Medium	-	3	-	3	3	Satisfactory
Riverside, Rents	High	-	4	1	5	5	Limited
Day to Day Repairs, Follow up	Medium	-	-	1	1	1	N/A
Facilities Management, Follow up	Medium	-	1	1	2	2	N/A
Benefits	High	-	2	3	5	5	Satisfactory
Budgetary Control	High	-	2	2	4	4	Satisfactory
Treasury Management	High	-	-	3	3	3	Substantial
Capital Accounting	High	-	-	-	-	-	No assurance

Auditable area	AAN rating	Recommendations					Level of assurance
		Fundamental	Significant	Merits attention	Total	Number accepted	
Main Accounting System	High	-	2	-	2	2	Satisfactory
Accounts Receivable	High	-	3	-	3	3	Satisfactory
National Non Domestic Rates (NNDR)	High	-	-	1	1	1	Substantial
Council Tax	High	-	-	1	1	1	Substantial
Procurement and Contract Compliance	Medium	-	6	3	9	9	Limited
Housing Rents	High	-	2	1	3	3	Satisfactory
Sandwell Aquatic Centre	High	-	1	-	1	1	Substantial
New Build Programme, Follow up	Medium	-	2	1	3	3	N/A
Procurement Card, Follow up	Medium	-	3	-	3	3	N/A
Refurbishment of High and Low-rise buildings	Medium	2	-	2	4	4	Limited
Disposal of Land	Medium	-	3	1	4	4	Limited
Accounts Payable	High	-	2	-	2	*	Satisfactory
Payroll	High	-	2	1	3	*	Satisfactory

5 Key issues arising during the year

Procurement and Contract Compliance

Procurement is important to the Council as it contributes to the efficient use of resources to support operational needs and delivery of its objectives. Effective procurement, in line with following legislation and utilising the Council's policies and procedures is necessary to be able to demonstrate that funds are used and managed in a manner that is accountable and demonstrates both probity and value for money.

We identified five areas where improvements could be made, arising from the following:

- Where a contract is to be extended the correct approvals should be in place before commencing the procurement exercise. For a sample of 12 contract extensions four did not receive the appropriate approvals.
- Where Framework Agreements are sourced by external organisations/other councils, it is considered that an exemption report should be presented to the appropriate Chief Officer as the Council's Procurement and Contract Procedure rules will not be used in the procurement process. This is not undertaken at present.
- Service Areas do not always keep the Procurement Team fully informed of new contract activity, which does not allow the team to forward plan their resources.
- Before each procurement exercise commences as part of the internal process a 'Starting a Procurement' form should be completed and approved by both the relevant Budget Holder and the Procurement Business Partner. However, in 50% of the procurement exercises we reviewed as part of our sample, there was no evidence of this being completed.
- A conflict of interest form must be completed and signed-off by all those taking part in the procurement exercise, before any procurement exercise commences. From the sample of 12 contracts reviewed eight held no copies.

There appeared to be a general lack of awareness across the Council with regards to the complexities, regulations and legal requirements involved in procurement activity. As such it is considered training is needed for key staff involved in procurement exercises.

A number of recent significant changes have been made to both the procurement team and in the tightening of controls around ensuring compliance with the Council's Procurement and Contract Procedure rules.

Refurbishment of High and Low-rise buildings

The audit reviewed two projects Alfred Gunn House, Oldbury and The Lakes, Lion Farm.

A number of issues with regards to past non-compliance with the Council's Procurement and Contract Procedure rules, similar to those identified in our wider Procurement review referred to above, were found including:

- The central Procurement Team did not undertake a tender exercise even though the estimated cost exceeded the threshold where they should be involved.
- There was no documentary evidence that the client department undertook consultations with the Council's Central Procurement Team and/or Legal Services on the most appropriate tendering process.
- A contract was not advertised via the Council's e-tendering portal.

- When the minimum number of bids was not received for one of the projects, approval should have been sought for the tender process to continue. The requirements in this instance would have been for Cabinet approval as the contract was above £250,000. However, there was no documentary evidence to indicate that this took place.

There was a wider review taking place of the Councils Procurement processes and procedures. Following this, training is to be provided to all staff that undertake a procurement function and this should help address the issues identified.

Disposal of Land and Property

The sale of Council owned land and buildings had in the past raised a number of issues for the Council. In view of this the Council developed a Disposal of Council-Owned Land & Buildings protocol that was approved by the Audit Committee on 18 August 2016 and by the Cabinet on 21 September 2016 (and which forms an Appendix to the Council's Financial Regulations and Procedures). The Protocol sets out the governance process regarding the disposal of land and property owned by the Council (but does not apply to the sale of residential properties as that is subject to a different legal framework).

The protocol applies to all Members and Officers and anyone acting on behalf of the Council. Any exemptions to the protocol must receive approval from Cabinet.

Our review noted the following:

- The Disposal of Council-Owned Land and Buildings protocol was out of date and had not been formally reviewed or updated since it was introduced in 2016, and subsequently no longer represented actual practice. However, this was still the last formally approved and adopted protocol appended to the Financial Regulations for this purpose.
- On the five files we reviewed there were no copies of reports presented to the Land and Asset Management Officer Group detailing the proposed disposals and appropriate information.
- There was scope for improving and retaining evidence of the Anti-Money Laundering checks being undertaken.
- Evidence was not always on file to demonstrate that where external consultants had been used (i.e. surveyors and auctioneers) that their services had been procured in accordance with the Council's Procurement and Contract Procedure Rules.

A new protocol for the Disposal of Council-Owned Land & Buildings has now been prepared and is going through the various approval routes.

Riverside, Rents

Riverside manage a proportion of the councils housing stock under a PFI agreement that has been in place since 2006. The housing rents section at Riverside is responsible for collecting rent, the recovery of rent arrears and former tenants' arrears. A full review was undertaken which included following up the previous year's recommendations to ensure they had been implemented. Four issues were found where improvements could be made, one of which remained outstanding from the previous year and included:

- The rent debit reconciliation which provides a reconciliation of all the changes raised/rent debit each month and allows the Contract Manager to determine whether the rent collection requirements included within the contract have been met was still not completed each month in a timely manner. At a meeting attended by the Contract Manager, Riverside stated this would be addressed.

- The property extract reconciliation (rent variation spreadsheet) which provides evidence of the housing stock had not been updated to omit six properties that were sold under the right to buy. Although this was picked up by the Council when undertaking the reconciliation, it did initially inflate the stock figures reported.
- Riverside arrears have continued to increase for a third year running and although the pandemic will account for some of this increase it is a trend that needs to be addressed.

Although forming part of the contract, evidence of relevant arrears letters sent out was not provided on the screen prints requested and sent by Riverside. With the Council having no access to Riverside systems at the time of our review, full assurance on the testing undertaken could not be given. It has since been agreed for audit to have 'view only access' to the Riverside system.

Covid-19 Compliance and Enforcement Grant 2020/21

We carried out appropriate tests and checks, and determined that in all significant respects, the conditions attached to the use of the grant had been complied with.

Mid-Year Subsidy Claim Estimate 2021/22

The Council is required to submit a mid-year subsidy claim estimate for housing benefit. We undertook a review to confirm that the information contained in the return was in accordance with the Acts specified in the guidance notes and the relevant regulations, determinations, directions, circulars, notes, instructions and other agreed arrangements. No issues were identified which prevented submission of the claim to the Department for Works and Pensions.

School's Financial Value Standard (SFVS)

It is a statutory requirement for each maintained school to complete and submit a SFVS. The standard consists of a checklist and a dashboard. The checklist asks questions of governing bodies in six areas of resource management. It provides clarification for each question, examples of good practice, and details of further support available to assist schools in addressing specific issues. The dashboard shows how a school's data compares to thresholds on a range of statistics identified by the Department for Education (DfE) as indicators of good resource management and outcomes. It provides explanations of each of the indicators and helps schools to fill in their data and understand the results. The standard helps schools and local authorities meet basic standards for good financial health and resource management. A sample of submitted standards were reviewed to assess whether the information provided was adequate. No issues of significance were identified.

Bank Changes Follow up

Back in 2017/18 the Council had been the victim of a bank mandate fraud resulting in the loss of £16,000. Following which an audit report was issued and the controls and processes around the changing of bank account details was significantly tightened. In our latest review we checked that these controls were now embedded, and the risk of future losses reduced.

We noted that one recommendation remained outstanding, whereby the number of changes made to supplier details was not being reconciled to the number of amendment forms received from suppliers as the system was unable to run a suitable report showing such changes. However, it was noted that management continue to explore this situation further and ultimately will be seeking to enable suppliers to take responsibility for updating their own records via the i-supplier portal in the new Oracle Fusion financial system, once implemented.

Income Management (including write offs)

The Income Management team is responsible for recovering rent arrears. Both current, former tenant arrears and a sample of write offs were included within this review. Our review noted that at the time the Corporate Debt Recovery/Write Off Policy had not been consolidated to include the Former Tenant Arrears and Housing Rents write off policies. However, this has since moved forward with the policy framework being presented to Cabinet for 2021/22. A comprehensive review of the policy will still need to take place to include the new legislation which impacts on all debt recovery known as 'breathing space'.

We also noted that following a review of the former tenant arrear accounts, 59 historic accounts which were at the write off stage had not been written off with a total value of £22,632 with one dating back to 2016. Since the review a new process has been implemented whereby cases recommended for write-off that do not get written off are returned to Income Management for review/action. The 59 historic write-off cases were subsequently actioned.

Benefits

The Benefits Team process housing revenue and rent allowance claims. In the last financial year, the Benefits team paid around 22,000 claims, this included claims for both council and private tenants that totalled around £84.5m.

As part of their monitoring checks, the Benefits Team examine the validity of claims that are over £1,500. From a sample of six claims examined no audit trail of the calculations had been retained, limiting evidence of what checks had been carried out and any issues that may have arisen. It was agreed that supporting documentation and sign off from a Lead Officer would be undertaken and retained.

The Council is also required to complete a subsidy claim to submit to the Department of Works and Pensions for housing benefit each year. As part of the subsidy claim some of the housing benefit payments must be moved manually. This includes adjustments due to partial weeks, where tenants have moved mid-week. The system however does not recognise this and puts them through as full week payments. An adjustment is therefore needed on the system. Again, it was requested that additional information should be held to provide further clarification of how the adjustments are calculated to be retained.

Budgetary Control

The General Fund Revenue Budget for the council is held on the General Ledger module of the Oracle Financial System. Central control of the budget is managed by the council's Strategic Finance team and Budgetary Control is a key financial system.

Due to the increased workload in previous years accounting issues there had been a substantial delay in the closedown timetable which had meant statutory deadlines for the publication and finalisation of the closedown of accounts was impacted. It was agreed when these issues have been resolved accounts would be prepared in accordance with CIPFA deadlines. With regards to issues raised last year by the External Auditor on the volume of journal entries being significantly high, we noted that improvements in reducing these were still needed.

Main Accounting System

The Main Accounting System (MAS) for the Council resides on the General Ledger module of the Oracle Financial system. It records and consolidates all the financial transactions carried out. Our audit involved a review of the key controls over the MAS, including reconciliations, suspense accounts and the councils contract register.

Bank reconciliations highlight and evidence differences at a point in time between the bank balances shown on the general ledger, and the balances shown within the Councils' bank

statements, as supplied by the bank. Due to the delay in the financial year 2020/21 accounts closedown and work pressures relating to this, at the time of our review there had been a delay in the cash income reconciliations completed.

The Council also has a central contract register, which is maintained and updated on a quarterly basis. On review of the contracts held on this register, we noted that certain areas required updating as the register included contracts that were no longer in date. Therefore, highlighting that a more proactive approach to provide comprehensive data for the register would be beneficial to the management of the current register.

Capital Accounting

The Council holds assets in the form of property, vehicles, equipment etc. It is important that assets are safeguarded and used efficiently in service-delivery, and that there are arrangements for the security of these assets. Asset registers are utilised to record the assets held by the Council, to ensure the assets are identified and their location recorded within these registers together with their estimated value.

Unfortunately, we were unable to provide assurance at the time of our planned review, due to the delay in the finalisation and sign off of the 2020/21 accounts, and the Council not yet having received any of the valuations for 2021/22 with work being in progress regarding the revaluation of assets, in year disposals and capital spend.

We did however note that the Council is at present, looking to procure a new system that will improve the asset registers held on spreadsheets into a more integrated system, that will help to provide relevant information to both Finance and Strategic Asset Management.

Accounts Receivable

The accounts receivable module is used to raise invoices. This includes residential care, trade waste, rents for market pitches, business properties and bereavement services. A review was undertaken to ensure that an effective system was in place for raising invoices and managing debtors. This included the integrity and reliability of charging information recorded in the accounts, the collection of payments and the process to monitor and report the debtor position. Our audit highlighted that recommendations made in the previous year had still to be fully implemented. This included the Corporate Debt Recovery/Write Off Policy was still to be consolidated to include the Former Tenant Arrears and Housing Rents write off policies and that full recovery action had yet to be taken on outstanding invoices relating to the Black Country Partnership NHS Foundation Trust which had since dissolved.

National Non-Domestic Rates (NNDR)

NNDR is the charge given on most non-domestic properties such as shops, offices, pubs, warehouses and factories etc. The rate is calculated by the properties rateable value, which is an open market rental value calculated by the Valuation Office Agency (VOA). Some non-domestic properties are exempt or entitled to claim business rate relief and it is the councils' responsibility to ensure each non-domestic property is charged the appropriate rate and that all money is collected.

The Council's record of business in properties within the borough had improved and included the extensive work that took place associated with making the Covid-19 business support grants. We did not identify any fundamental or significant issues where improvements could be made, and substantial assurance was given.

Council Tax

Council tax is payable on all domestic properties with certain exemptions for classes of properties. Properties are allocated to one of eight bands according to their valuations at 1 April 1991. The band the property is in determines the amount which must be paid. Substantial assurance was given and during the review we identified the following examples of good practice:

- All qualifying properties are identified for the main billing run for council tax and this takes place annually. The property database on I-World is reconciled to the Valuation Office Agency (VOA) records to ensure the correct numbers/category of properties is correct.
- Periodic reconciliations of the number of properties on the council tax system to the valuation office listing is undertaken on a regular basis. The system is updated by the teams Inspector on a weekly basis.
- Regular monitoring of the receipts received for council tax payments are reconciled daily, this ensures the correct income has been transferred from I-World to the financial ledger in a timely manner.

Housing Rents, Council

Local authorities rely on their rental income to fund the management and maintenance of their housing stock and other housing services. Sandwell manages around 27,300 council properties, which generates rental income in excess of £2.8 million per annum. The Rent Accounting team uses Open Housing to manage and process housing rent information.

Large improvements had been made within the Rent Accounting team over the last 12 months with newly recruited staff resolving many historic issues. As part of this review we followed up our previous recommendations and noted that only one remained outstanding. However, it is acknowledged that action is in hand and analysis is ongoing to remedy the differences found. Alongside this, a further recommendation was made to strengthen the controls. Therefore, the two main issues flagged were:

- Social rents are set by using a government formula and this calculates a 'formula rent' for each property. From the sample of ten properties chosen, two properties although uplifted correctly, differed from the social formula rent that could be charged for both properties. With the Council having a housing stock of just over 27,300 properties, a rolling programme of review should take place to establish how many other properties may not be being charged the correct rent so that on change of tenancies this can be remedied.
- Local authority rents are largely controlled by the Housing Benefit system where the Government has issued guidance to local authorities on the social rents they should charge. The reconciliations between the two systems with the general ledger should balance, however, some differences have occurred between these systems for a while. It is acknowledged this previously made recommendation is making progress.

Sandwell Aquatic Centre

Sandwell Aquatics Centre is the host venue for Birmingham 2022 Commonwealth Games for swimming and diving events. Following on from last year's governance review, this year the scope was to ensure adequate monitoring of payments was undertaken ensuring that variation orders and/or compensation events were in line with the terms and conditions of the contract.

Substantial assurance was once again provided with only one good practice recommendation made. This related to the contract documentation for the Aquatic Centre which is held in an electronic format on this system together with key documentation. This will include but will not

be limited to compensation events where additional payments have been made to a contractor where work is undertaken outside of the contract, all work programmes where project management and instructions are issued and responded to electronically etc. is held on this system.

The software Client had stated that when the contract is complete, all relevant information which has been uploaded to the 'Sypro project management system' will:

- set all the user's accounts to read-only and therefore any amendments that may still be needed will not be able to take place and/or
- provide the Council with a Project download. This will only provide collated PDF versions of the communications and attached documents to keep for our internal records.

It was therefore recommended that the Project Supervisor should request a full download of all the contract documents so that they can be stored on the Council's server. Alternatively, a subscription, if not material, should be considered so that continued access to the project management system is retained.

Procurement Card, Follow up

Procurement cards are still a relatively new tool that offers an alternative to more traditional procurement processes, such as the raising of purchase orders, and provide an efficient method of purchasing and paying for low value goods and services. In November 2020, we issued a report with four significant recommendations where improvements could be made, and this report was followed up to ensure the issues raised had been implemented.

Our testing did note that further improvements were still required with regards to the day to day use of the cards, as cardholders were not always attaching supporting receipts onto the system, and from the analysis undertaken in 2021/22, 1,865 unapproved transactions were still awaiting to be approved. In some cases, the approvers had since left their employment with the Council.

Whilst a comprehensive policy has been in place since the implementation of the cards, the policy and card holder terms have not yet been amended in line with changes that have evolved. Therefore, the approach and operational controls, as such, are slightly inconsistent with the controls operating in practice. It is therefore further recommended that the Procurement Card Policy should be reviewed to confirm that it clearly reflects expected practices and controls and is suitably and consistently enforced. It is acknowledged that the review of the policy is now in progress.

New Build Programme, Follow up

In December 2020, we issued a report regarding the New Build Programme, noting that recommendations made in the project/s financial appraisal report, within the sample chosen, were not followed-up, detailed need and demand studies were not undertaken, and a more formal mechanism was needed where requests from Housing Solutions for specific needs was requested. This would allow the requests and solutions to be considered as part of the planning application process.

It was noted that the work to implement the recommendations made in the 2020/21 New Build Programme audit report is currently ongoing. As such, we rolled-forward the recommendations in this report, to allow additional time for implementation. This included work to the written procedures regarding the New Build Programme.

Accounts Payable

An annual review of this key financial system was undertaken in order to confirm that appropriate controls were in operation over the council's payment systems and that payments were made in an accurate and timely manner. We noted that there were still areas within individual recommendations from our previous review which still needed to be fully actioned, and these included:

- While a spreadsheet was now in place to evidence any actions taken for duplicate payments, any potential overpayments made through Autopay could still potentially remain undetected or unresolved. However, as part of the development of the new system, the generation of a potential duplicate payments report will be included.
- There was no process in place to log the number and reasons for returned remittances where payments had been made against incorrect addresses. While there had been issues with regards to the developing of a database for this purpose, this requirement is being included as a requirement as part of the development of the new system.

Audit Services also play a role in the following areas

Annual Governance Statement

We assist in the preparation of the Annual Governance Statement which accompanies the council's Statement of Accounts and is produced to comply with the requirements of the Accounts and Audit Regulations.

CIPFA – Audit Committee Updates

We continue to present the regular CIPFA Audit Committee Updates to the Audit and Risk Assurance Committee.

Internal Audit Charter

We undertake and present to the Audit and Risk Assurance Committee an annual review of the Internal Audit Charter. The latest version was presented and approved at the January 2022 meeting of the Committee.

Audit and Risk Assurance Committee – Terms of Reference

We complete a regular review of the Audit and Risk Assurance Committee Terms of Reference. The last version was presented and approved at the November 2021 meeting of the Committee and the latest version will be reviewed prior to the 2022/23 year-end.

Internal Audit Plan 2022/23

We submitted the Internal Audit annual plan for 2022/23 to the Committee for approval at the March 2022 meeting.

Audit and Risk Assurance Committee Annual Report

Assistance was provided in the preparation of the Annual Report of the Chair, on the work of the Committee.

West Midlands Contract Group

We host a bi-annual group meeting attended by other West Midlands councils, with the purpose of discussing new issues within procurement and contract monitoring and the sharing of best practice.

Counter Fraud

The council's Counter Fraud Unit sits within internal audit and is responsible for, amongst others, investigating assigned cases of potential fraud, running a series of raising fraud awareness activities and talking in part in all national anti-fraud initiatives and benchmarking activities. Full reports on the work of the Counter Fraud Unit and the relevant investigatory work undertaken by Internal Audit are presented separately to the Audit and Risk Assurance Committee.

Wider client base

Through a shared service arrangement, the Head of Internal Audit and where appropriate members of the audit team have a role in the delivery of internal audit services to:

- Sandwell Leisure Trust
- Sandwell Children's Trust
- West Midlands Fire Service
- City of Wolverhampton Council
- West Midlands Pensions Fund
- West Midlands Combined Authority
- Wolverhampton Homes

Each of these have their own Audit Committee, or equivalent, to which our work is reported.

Auditor's Annual Report on Sandwell Council (Interim)

2020-21

12 July 2022



Agenda Item 7

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We are required under Section 20(1)(c) of the Local Audit and Accountability Act 2014 to satisfy ourselves that the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources. The Code of Audit Practice issued by the National Audit Office (NAO) requires us to report to you our commentary relating to proper arrangements.

We report if significant matters have come to our attention. We are not required to consider, nor have we considered, whether all aspects of the Council's arrangements for securing economy, efficiency and effectiveness in its use of resources are operating effectively.



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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. 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 the Council or all 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.

Commentary on the Council's arrangements to secure economy, efficiency and effectiveness in its use of resources

Councils report on their arrangements, and the effectiveness of these arrangements as part of their annual governance statement. Under the Local Audit and Accountability Act 2014, we are required to be satisfied whether the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources. The National Audit Office's Auditor Guidance Note (AGN) 03, requires us to assess arrangements under three areas:



Financial sustainability

Arrangements for ensuring the Council can continue to deliver services. This includes planning resources to ensure adequate finances and maintain sustainable levels of spending over the medium term (3-5 years).



Governance

Arrangements for ensuring that the Council makes appropriate decisions in the right way. This includes arrangements for budget setting and management, risk management, and ensuring the Council makes decisions based on appropriate information.



Improving economy, efficiency and effectiveness

Arrangements for improving the way the Council delivers its services. This includes arrangements for understanding costs and delivering efficiencies and improving outcomes for service users.



Our commentary on each of these three areas, as well as the impact of Covid-19, is set out on pages [11 to 27](#). Further detail on how we approached our work is included in Appendix B.

Executive summary

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Value for money arrangements

Introduction

All Councils are responsible for putting in place proper arrangements to secure economy, efficiency and effectiveness from their resources. This includes taking properly informed decisions and managing key operational and financial risks so that they can deliver their objectives and safeguard public money. The Council's responsibilities are set out in Appendix A.

Under the Local Audit and Accountability Act 2014, in our role as appointed external auditor, we are required to be satisfied whether the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources. This is done through our annual Value for Money (VfM) assessment, which focuses on three themes:

- Financial Sustainability
- Governance
- Economy, Efficiency and Effectiveness

This report sets out the findings of our VfM assessment for the financial year 2020/21.

Overview of our findings

We have now completed our VfM assessment for 2020/21. This comprised of our standard VfM work programme, covering the themes of financial sustainability, governance and the 3 E's (economy, efficiency and effectiveness). In addition, to support our 2020/21 VfM assessment and to address significant risks relating to governance identified at the planning stage, we undertook additional risk-based work in the autumn of 2021. The detailed results of this work were reported to you in December 2021 and should be read alongside this report. In this report, we summarise the findings and place them into the context of the wider VfM assessment. Our risk-based work on governance identified significant weaknesses in arrangements to deliver value for money in the use of Council resources, during 2020/21.

Our work on our wider VfM procedures did not identify any further significant weaknesses in arrangements across the three themes noted above. However, additional improvement recommendations have been made which we set out in this report.

Significant weaknesses in arrangements to secure VfM

Our Governance Review highlighted a number of areas that reflect significant weaknesses in the Council's arrangements to secure value for money in its use of resources. These issues are set out in summary in the following slides, and in detail in our Governance Review report. In relation to the three Value for Money themes that make up our assessment, the majority of the issues identified in the Review relate to Governance, however there are implications for other themes. We have summarised how the significant weaknesses reconcile to the VfM themes in the table below.

Significant weakness	Impacting Financial Sustainability	Impacting Governance	Impacting Economy, efficiency and effectiveness
Corporate performance management and grip		Yes	Yes
Procurement and commercial decision making			Yes
Contract management			Yes
Lack of longer-term planning		Yes	
Officer empowerment and decision making		Yes	
Capacity, experience and skills		Yes	
The impact of changes to senior officers and members		Yes	

Executive summary - conclusions under the VfM themes

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Financial sustainability

There were weaknesses in the financial management arrangements in place during 2020/21 and 2021/22 that could have impacted on medium term financial sustainability. In particular, the Leadership Team had not been receiving regular monthly budget monitoring reports and were not effectively engaged in the budget setting process or medium-term financial planning.

Improvements have since been made and the 2022/23 process was significantly better. We also note that the Council's financial position continues to be robust.

On balance, we consider that potential significant risks have been sufficiently mitigated in the short to medium term. In the medium to long term, the Council will need to quickly implement its improvement plan, and other recommendations from external reviews, to avoid these weaknesses and wider performance issues impacting its financial sustainability. We note that steps are being taken by the new management team to further strengthen financial management arrangements.



Governance

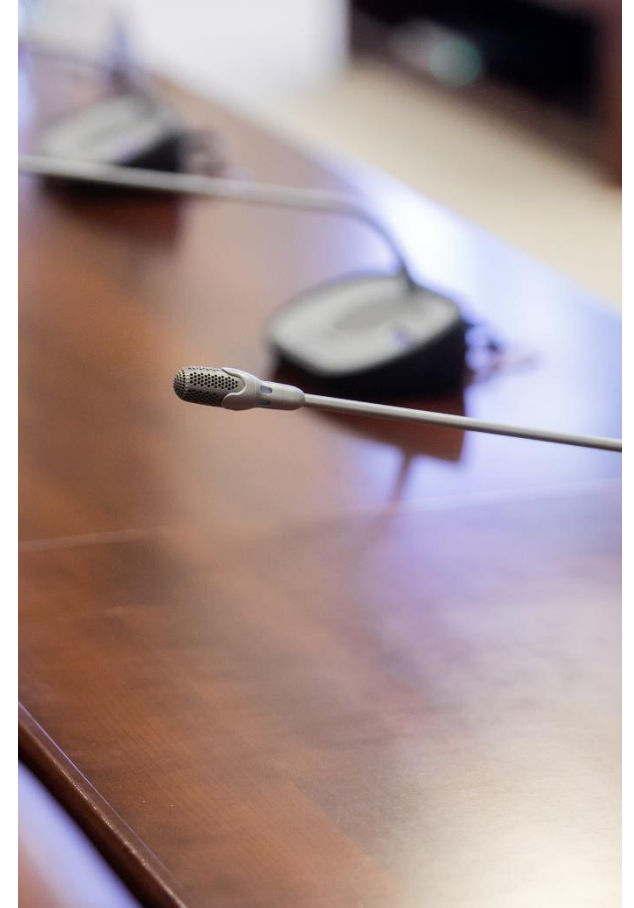
We identified significant weaknesses in the Governance of the Council during our Governance Review. These related to corporate performance monitoring and grip, lack of long term planning, officer empowerment and decision making, capacity, experience and skills and changes to senior officers and members. While recognising the weaknesses in the governance arrangements in place during 2020/21 we note that the Council have made a range of improvements to address these. The ongoing actions in the improvement plan are focussed on strengthening financial and governance arrangements but will take time to embed fully. These areas are summarised on pages 6 to 9. Outside of the Governance Review, we have identified further improvement recommendations.



Improving economy, efficiency and effectiveness

There were significant weaknesses during 2020/21 in relation to performance management and contract management. These include the management of Sandwell Leisure Trust (SLT), Serco, Inoapps and Sandwell Children's Trust (SCT). The Council now has plans in place for each of these areas and for improving contract management across the Council.

Also council services such as waste, leisure, and housing are not always performing at an appropriate level. Other services such as Adult and Children's services face a range of difficult challenges including workforce issues and increased demand. Despite this it is evident the Council now has ambitious plans in place to improve services. Further investment is needed to achieve this and better governance and management of services. The Council is aware of this and has an appropriate improvement plan in place. It is working closely with Government commissioners to ensure that this is achieved.



Executive Summary – Governance Review

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Summary Findings of our Governance Review

Up to 2020/21 and the early part of 2021/22 the Council had seen deteriorating senior officer and senior member relationships over a number of years. This had resulted in a breakdown in trust, respect and confidence between those holding governance roles. This limited the Council's ability to look forward and manage the challenges and opportunities it faces. This breakdown in relationships between senior officers and senior members is central to the governance issues identified by this review.

There had been poor progress in resolving service and governance issues, with a significant amount of time being spent responding to internal allegations and complaints. There is evidence of reviews and issues being reopened. This has impacted on the Council's ability to focus on service improvement.

The Council has been insular and siloed. Its focus has been on responding to external service-based challenges as well as managing the fallout from previous decisions or investigations. Senior officers and senior members have historically been unable to make the changes required to move away from this organisational culture and focus.

We note that since the appointment of the interim Chief Executive in August 2021, working with the then new Leader of the Council, that many of these matters are being resolved. The Council's senior leadership team, the majority of whom are recent external appointments, recognise the challenges and issues set out in this report and are supporting the interim Chief Executive on an improvement journey.

These 'green shoots' are positive and we have tried to reflect the improvements in this report. Without these changes we would have had concerns with regard to the Council's ability to manage and govern itself, and intervention by the Government may have been necessary.

Inevitably these changes are not yet embedded, and the Council will need to manage the transition to a permanent Chief Executive well, alongside maintaining continuity and stability of the wider leadership team, so that the new Chief Executive, working with the leadership team, continues to support the service and cultural changes that are being put in place and that momentum is maintained.

Due to the issues identified we have determined that it is appropriate to raise the following statutory recommendations under Section 24 of the Local Audit and Accountability Act:

Statutory Recommendations

We have made a number of statutory and key recommendations which are set out page 12. Other improvement recommendations are made in the detailed findings of the Governance Review report.

Our statutory recommendations are:

- **It is imperative that senior officers and senior members take effective corporate grip of long-standing service issues highlighted by the findings in this report (including SLT, SCT, the waste service, the ERP system, and Lion Farm) and prioritise corporate effort in managing the issues identified, and embed the solutions into the Council.**
- **The Council must ensure that the learning in relation to commercial decisions, procurement and contract management highlighted in this report are understood through the organisation.**
- **Senior leadership, both officers and members, must demonstrate that they can continue to work together effectively, that they operate in line with the Council's values, codes, policies and procedures, and that there is zero tolerance to inappropriate behaviours. This includes changing the organisational culture in relation to complaints so that they restore balance and proportionality.**

Key recommendations

In addition to the Statutory Recommendations, we have identified a number of Key Recommendations that reflect other significant VfM weaknesses and will need to be addressed as a matter of urgency. These are summarised on the next page.

Other Improvement Recommendations

In addition to the above, we have made a number of other improvement recommendations in the Governance Review report that will also be important to implement.

Executive Summary – Governance Review

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The following key findings were set out in detail in our Governance Review report and are summarised here. These findings underpin the Statutory Recommendations and reflect significant weaknesses in arrangements in the context of the VFM assessment.

Corporate performance management and grip

Understandably COVID-19 has significantly impacted the leadership and organisational focus of all local authorities over the past eighteen months. Even taking account of this impact we consider that until recently the Council has failed to take an effective corporate grip on key issues facing the Council.

We note that it is hindered in taking a corporate grip by the lack of a clear performance management framework and agreed key corporate indicators, although we note recent progress has been made on this. This has impacted on the ability of the Leadership Team and Cabinet to have a single line of sight and single version of the truth. This has contributed to a culture of silo working, resulting in a lack of corporate ownership and accountability. This has, in turn, resulted in a lack of ownership and grip on key challenges and issues and an absence of intervention and decision making.

In failing to take ownership and seeking resolution, lessons have not been learned. This has resulted in a number of instances whereby the Council has repeated actions leading to similar outcomes. For example, the Wragge report continues to be an area of mistrust between members and between officers and members.

Procurement and commercial decision making

Our review has identified repeated instances where commercial decisions or procurement decisions have contributed to a number of key legacy challenges facing the Council, which have not been resolved.

These included legacy property related decisions such as those relating to Lion Farm, Providence Place and Sandwell Land and Property Company where there was either a lack of appropriate expertise and advice or failure to consider all appropriate options.

There are also more recent examples of poor procurement decisions relating to waste management and recycling, the Council's enterprise and resource planning (ERP) system and SEND Transport. In each case the procurements have either been poorly specified, did not provide adequate timescales, or those responsible for decision making have not been fully aware of the context and detail.

These property transactions and procurement decisions have created future service or delivery challenges. In some cases, they have impacted negatively on the Council's reputation. In each instance, until recently, the decisions have not had effective corporate ownership to allow appropriate management or resolution.

Contract management

Our review identified a number of key contracts having been impacted by either poor specification during procurement, a lack of clear contract management responsibility, or poorly defined approaches to contract management. These related to Sandwell Leisure Trust (SLT), Serco, Inoapps and Sandwell Children's Trust (SCT) and we note that the interim Chief Executive has recently commenced more effective engagement with these key suppliers and partners.

At varying times relationships between the Council and these key partners have been fraught with the lack of senior leadership grip significantly contributing to a deterioration of these relationships. A lack of clear corporate ownership has meant that issues with these contracts have not been resolved in a timely manner. This is particularly the case for SLT, Serco and Inoapps.

We also note that some key contracts such as SLT and SCT, have not previously had key performance indicators reviewed since the contracts were let, whilst others have not had appropriate focus on service quality (such as SEND Transport) or outcomes (such as SLT and Serco).

Executive Summary – Governance Review

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The following issues were also highlighted in the Governance Review as key themes, and they also constitute significant weaknesses in arrangements in the context of the VfM assessment.

Lack of longer-term planning

The insularity and short-term focus previously noted has meant that the Council has not had the necessary time and space to consider the long-term. Recent changes to the Council's leadership have seen a re-emphasis on longer-term planning, with time invested in a refresh of the Corporate Plan, which has now been approved by full Council.

However, as mentioned earlier, the lack of a corporate performance framework has meant that the Council has not received management information on key corporate indicators. We also note that the Leadership Team had not been receiving regular monthly budget monitoring reports and have not been effectively engaged in the budget setting process or medium-term financial planning. We understand that processes are being put in place to resolve these issues.

Officer empowerment and decision making

The scheme of delegation and the involvement of senior members in key decision making has resulted in a lack of empowerment of officers in decision making and the agility of the Council to make, where necessary, prompt decisions. An example of which is the delay to taking a decision in relation to the rescheduled MADE Festival, which had been due to take place in August 2021. We consider that this reflects the lack of trust between senior members and senior officers at the time.

Capacity, experience and skills

The prevalence of interim and acting up arrangements in senior officer roles has in some places not seen effective back-fill arrangements put in place, resulting in capacity challenges for some key officers and teams such as Finance. These temporary arrangements have contributed to confusion over some key roles and responsibilities, such as those in relation to SLT and Oracle Fusion, impacting on effective contract management.

More generally, the lack of corporate ownership, again already discussed, has left some officers exposed in managing key service challenges and relationships without appropriate senior officer support and direction.

The impact of changes to senior officers and members

The Council has been through a period of significant change to its leadership, both in terms of senior officers and senior members. Following the local elections in May 2021 a new Leader was elected, who appointed a new Cabinet with effect from June 2021. Many of these Cabinet members had not previously held a Cabinet role, and some were fairly new to the role of councillor. There was a further change to the Council Leader in late November 2021, as we were finalising this report.

An interim Chief Executive has been in role since August 2021 and there has been significant changes to chief officers over the past year, with vacancies being filled by either external interims, or Council officers in acting up roles. These changes were driven in large part by a senior management review which concluded in October 2020, although we note that some chief officer departures were caused by unrelated circumstances.

Other than the Chief Executive there are currently ten chief officer roles, of these four are recent external appointments, and two other external appointments have been made with these officers starting in November 2021. Three officers remain from the previous leadership team, two in the same role and one appointed to one of the new roles created by the review.

At the time of our review, two roles remained vacant: the Chief Executive and the Deputy Chief Executive, with the recruitment of the former recently initiated. The Council has decided to not recruit the Deputy Chief Executive and to review the need for this role. In addition there is a Director of HR, which is not a permanent role and is being held by an external interim.

The impact of this recent period of change has been instability and uncertainty for the organisation. Whilst external interims are recognised positively for the experience they bring from working with other councils and having a "fresh pair of eyes" on some of the service challenges being faced, the wider organisation considers the use of interims as maintaining a holding pattern before permanent chief officers join. The Council will reach the position of having all roles filled by a permanent officers during November 2021, other than the two vacancies noted above.

The changes to key senior roles have led to a loss of corporate knowledge and history among senior officers and senior members. This has contributed to historic issues resurfacing and senior members making the initial decision to progress a major project or initiative not being the same group of members taking further decisions during the project's implementation, such as the SEND Transport procurement.

Statutory and Key recommendations

Page 59

#	Recommendation
Statutory recommendations	
1.	It is imperative that senior officers and senior members take effective corporate grip of long-standing service issues highlighted by the findings in this report: (including SLT, SCT, the waste service, the ERP system, and Lion Farm) and prioritise corporate effort in managing the issues identified, and embed the solutions into the Council.
2.	The Council must ensure that the learning in relation to commercial decisions, procurement and contract management highlighted in this report are understood through the organisation.
3.	Senior leadership, both officers and members, must demonstrate that they can continue to work together effectively, that they operate in line with the Council's values, codes, policies and procedures, and that there is zero tolerance to inappropriate behaviours. This includes changing the organisational culture in relation to complaints so that they restore balance and proportionality.
Key recommendations	
4.	The Council's leadership needs be relentless in its focus in delivering and embedding sustainable change, and use its past history as a reference point when focusing on improvement.
5.	Critical to embedding the transformation and change required will be the appointment of the right permanent Chief Executive. The Council must ensure an effective recruitment process, including attracting a pool of appropriate candidates.
6.	The Council should ensure that a corporate performance framework is agreed so that the implementation of the Corporate Plan can be effectively monitored, and there is collective corporate responsibility rather than silo working.
7.	Members in key statutory roles, in particular in relation to Cabinet, scrutiny, standards and audit, need to be provided with effective induction and ongoing development, training and support. The member development programme should be reviewed to ensure corporate governance forms part of the training for members with governance roles.
8.	The Council should develop and agree an action plan in relation to the statutory, key and improvement recommendations included in this report, ensuring that they are specific, measurable, attainable, realistic and time-bound.

Use of formal auditor's powers

Page 60 We bring the following matters to your attention:

60 Statutory recommendations

Under Schedule 7 of the Local Audit and Accountability Act 2014, auditors can make written recommendations to the audited body which need to be considered by the body and responded to publicly

As part of our Governance Review which was presented to the Council on 3rd December 2021, we made a number of statutory and key recommendations.

Public interest report

Under Schedule 7 of the Local Audit and Accountability Act 2014, auditors have the power to make a report if they consider a matter is sufficiently important to be brought to the attention of the audited body or the public as a matter of urgency, including matters which may already be known to the public, but where it is in the public interest for the auditor to publish their independent view.

We did not issue a Public Interest Report.

Application to the Court

Under Section 28 of the Local Audit and Accountability Act 2014, if auditors think that an item of account is contrary to law, they may apply to the court for a declaration to that effect.

We did not apply to the Court for a declaration.

Advisory notice

Under Section 29 of the Local Audit and Accountability Act 2014, auditors may issue an advisory notice if the auditor thinks that the authority or an officer of the authority:

- is about to make or has made a decision which involves or would involve the authority incurring unlawful expenditure,
- is about to take or has begun to take a course of action which, if followed to its conclusion, would be unlawful and likely to cause a loss or deficiency, or
- is about to enter an item of account, the entry of which is unlawful.

We did not issue an advisory notice.

Judicial review

Under Section 31 of the Local Audit and Accountability Act 2014, auditors may make an application for judicial review of a decision of an authority, or of a failure by an authority to act, which it is reasonable to believe would have an effect on the accounts of that body.

We did not apply for judicial review.

Financial sustainability



We considered how the Council:

- identifies all the significant financial pressures it is facing and builds these into its plans
- plans to bridge its funding gaps and identify achievable savings
- plans its finances to support the sustainable delivery of services in accordance with strategic and statutory priorities
- ensures its financial plan is consistent with other plans such as workforce, capital, investment and other operational planning
- identifies and manages risk to financial resilience, such as unplanned changes in demand and assumptions underlying its plans.

Financial outturn

Revenue 2020/21

The Council set a net revenue budget for 2020/21 of £226m at its meeting on 10 March 2020. The budget was subsequently impacted by the COVID pandemic. The impacts included: reduced expenditure due to service reductions, loss of income, redeployment of staff and resources, and additional Covid related grant funding to manage additional costs and income reductions. The overall net service outturn variance, excluding the HRA, was an under spend of £23m due to the level of grant funding.

This placed the Council in a strong position regarding its reserves and earmarked reserves increased by over £40m to £99m. Most of the increase relates to S31 Business Rate Relief (£34.4m) and Covid Emergency Funding (£7.9m). Both of these reserves are temporary Covid related funding and not available for general service expenditure.

During 2020/21 capital expenditure totalled £131.730m in comparison to a budget of £152m. Given the impact of the pandemic on capital projects this is a positive delivery.

Revenue 2021/22

The Council set a net revenue budget of £267m for the 2021/22 financial year at its meeting on 2 March 2021. After the use of balances (c. £53.8m) forecast expenditure was £213.3m. Balances used included £7.9m from General reserves, £4.7m from service c/fwds and £5.8m from earmarked reserves.

The financial monitoring outturn for the year (as reported to Cabinet in July 2022) shows that services spent £248.3m. An underspend of £18.7m before contribution to reserves (£10.5m). The outturn includes the financial impact of Covid, most significantly a loss of income due to suspended or significantly reduced services.

Most services underspent. The most significant of these were Adult Social care £6.7m (due to additional NHS and Grant funding and in house services running below capacity) and Regeneration and Growth £3.4m (due to vacancies, reduce office building costs, additional premises hire income, and slippage on property maintenance projects.).

At the 31 March 2022 the Council had £154.9m in reserves, an increase of £5.8m from the prior year.

Capital Expenditure on the Council's capital programme was £137.8m compared to the budget of £150.4m. This is not unanticipated given the impact of COVID on capital programmes.

Revenue 2022/23

The draft budget proposals were considered by the Budget and Corporate Scrutiny Board on 8th February 2022 and approved by the Council on 2 March. A net revenue budget of £237m was set. This assumes the use of £14m of earmarked reserves.

The Council is experiencing demand and inflationary pressures in Adult Social Care and spend pressures of over £6m have been included in the budget for 2022/23. The Council has flagged additional risks re Children's Social Care.

The level of reserves is estimated to reduce significantly between 2021-22 to £85m, although this is in part due to use of Covid funding to meet continued related costs and the use of the S31 grant held in reserves to deal with the timing differences between accounting for various COVID relief grants and the government grant being received.

The Council remains in a robust financial position.

Financial sustainability

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Financial planning

The Council has a good track record of managing its financial position, benefitting from a comparatively strong historic base funding position and healthy levels of reserves prior to the COVID-19 pandemic. It has therefore been able to adopt a relatively short-term approach to financial planning with no major savings or transformation programme being put in place in 2020/21 or 2021/22. Any shortfall in funding has been met from reserves or small scale efficiencies.

The 2020/21 and 2021/22 Budget and MTFS were published in February 2020 and March 2021 respectively. The budgets were presented to Cabinet initially and then to full Council. As reported in our governance report, there were weaknesses in the financial management arrangements in place during 2020/21 and 2021/22 that could have impacted on medium term financial sustainability. In particular, the Leadership Team were not effectively engaged in the budget setting process or medium-term financial planning. Improvements have since been made and the 2022/23 process was significantly better and we note that the Council's financial position continues to be robust.

For example, net budget pressures for 2021/22 of £13.8m were closed in the budget by the use of short term measures, specifically £5.8m of COVID grant and £8.0m of Earmarked reserves. The reason given for this approach was the temporary risk of reduced income and the inability to address budget pressures over the last year.

The Council's new management team have recognised the need to move away from a reliance on short term one off measures. We are pleased to note that the Council has significantly strengthened its approach and was able to identify £14.6m of savings for the 2022/23 budget without relying on use of reserves and other one off measures.

In 2021/22 the Council continued to participate in the 100% Business Rates Retention pilot as part of the West Midlands Combined Authority pool and assumed that 100% retention would remain in future years of the MTFS, however it recognised a risk that a return to 75% retention would result in additional cost pressure. We note that for 2022/23 the Council has revised this assumption and revising its MTFS to assume crystallisation of this risk, which we regard as sensible based on the latest direction of travel from government.

The most recent iteration of the MTFS was refreshed at high level and published in February 2022. This presented a balanced budget for 2022/23 and projects a deficit position of £14.1m in 2023/24 and £13.0m in 2024/25. A new rebased MTFS is currently being developed, alongside a sustainable financial transformation plan. While this presents a challenging medium term financial position, the Council should be able to close the gap providing it sustains focus and momentum in the delivery of sustainable savings and transformation in the current year.

In response to the projected deficits for 2022/23 and 2023/24 the Leadership Team has developed a draft Transformation Savings Programme, which has identified cross-cutting, transformational projects that will deliver service improvements and either reduce costs or generate more external income.

The updated 2022/23 to 2024/25 MTFS adequately references pressures associated group entities such as the Children's Trust.

The Council has used key economic and demographic projections to support the MTFS (e.g. social care demand and population growth) and we note assumptions around pay inflation. However, CIPFA highlighted in their report on the Council's performance against their Financial Management Model, that the Council needed to make better use of comparative data, benchmarking, and demand management techniques in an increased number of service areas to support building the medium term financial plan.

We are satisfied that a potential weakness around robust forward financial planning has now been recognised and addressed.

Financial sustainability

Addressing identified budget gaps

There were no significant savings or service transformation programme in place during 2020/21. The Council was able to set a balanced budget through the use of reserves and COVID grant.

The MTFS 2021-22 to 2023/24, prepared in February 2021, highlighted projected funding deficits of £8.9m in 2022/23 and £6.8m in 2023/24 and the need for a savings programme to be developed. We note that the revised 2022/23 MTFS, presented February 2022, was able to balance the budget for 2022/23 while also achieving a net contribution to reserves (excluding the use of temporary reserves accumulated from COVID-19 grants). This was achieved primarily through £14.6m of savings and additional income.

We note that the financial planning agenda in for both 2020/21 and 2021/22 years was significantly influenced by the funding and delivery of services under COVID conditions. As such we would not have anticipated significant savings programmes.

The revised high level MTFS projections indicate increased deficits of £14.1m in 2023/24 and £13.0m in 2024/25. A new rebased MTFS is currently being developed, alongside a sustainable financial transformation plan which may result in a further adjustment to the projected funding gap. For the revised 2022/23 to 2024/25 MTFS, a new savings programme is also being developed.

The Council retains comparatively high levels of reserves and this provides the main contingency against slippage on future savings plans. We note that a new Financial Planning earmarked reserve of £2.5m has been created in 2022/23 to help manage any slippage during the year and any in-year cost pressures, particularly in relation to inflation.

Overall, following the implementation of a strengthened process for 2022/23 we are satisfied that the Council understands its potential funding gaps, and has put in place plans to further improve their understanding and mitigate the identified gaps in the medium term.

Alignment of financial plans with strategic goals

The Corporate Plan and budget for 2021/22 were presented to Cabinet in tandem in February 2021, which provides a relatively strong mechanism for reconciling budget decisions to strategy. For both 2020/21 and 2021/22 the budget and both revenue and capital investments broadly align to the corporate priorities in a coherent way. The narrative also sets out the response to COVID and how this has impacted on delivery of the strategy.

The 2020/21, 2021/22 and 2022/23 budget papers clearly set out the rationale for new investment and this is broadly in line with the delivery of corporate priorities or responding to COVID emergency measures and pressures. Additional revenue investment was relatively modest in 2020/21 and 2021/22 and was primarily concerned with covering the cost of pay and utilities cost inflation and other adjustments to core assumptions. The main area of new investment was to provide additional funding to the Children's Care Trust to support the cost of increasing unit costs. The explanations provided in the supporting papers, and the focus on managing the COVID crisis rather than more ambitious levels of investment in services, is entirely in keeping with the challenges faced. Also in the context of Sandwell's financial position, which has been relatively secure, the investments proposed are reasonable and affordable.

The key published financial planning information such as the MTFS and budget for 2020/21 and 2021/22 does not make a distinction between discretionary and statutory areas of spend. This has not been a primary consideration in the planning process. There are examples of discretionary investment in services to support priorities - for example, under the extended financial support offer to care leavers under the priority "Best start in life for Children and Young People" .

In developing the savings programme for the MTFS period 2022/23 to 2024/25, the Council should consider incorporating an analysis of discretionary and statutory spend to help members consider and approve savings schemes. This should include benchmarking, for example, unit cost analysis against similar Councils.

Our Governance Review highlighted a general lack of engagement of Directors and Portfolio Holders - in 2020/21 and early in 2021/22 - in budget setting discussions and the MTFS development process. We note that this improved for the 2022/23 budget and savings proposals were subject to some limited consultation with third party stakeholders who would be impacted, in addition to detailed review and scrutiny by members. For example, there was consultation with 3rd sector partners in receipt of Council grants. However, wider consultation with service users and the public has not taken place - this is explored further in our governance section.

Financial sustainability

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Capital investment

In 2020/21 we note that overall, the Council underspent on its original planned capital budget of £152.9m, eventually delivering £131.7m in year (in line with its revised capital budget). In the context of delivering under COVID-19 conditions, this reflects reasonable performance. We note that in regard to two of the largest projects from the core programme (Rowley Regis Adult Social Care facility and the Sandwell Aquatic Centre) delivery was ahead of schedule, which compensated for slippage on a number of smaller projects.

The Council's 2021/22 to 2025/26 Capital Strategy includes clear linkages to the Council's corporate strategy. The 5 year capital programme was revised in February 2021 alongside the revised Capital strategy. The resources committed by the Council for capital programme investment is significant, but not unusually ambitious when compared to other Councils. In the period 2020/21 to 2024/25 total capital resources invested over 5 years were planned at around £345m with a further £140.6m of grants and externally generated funding. The primary areas of investment are around Regeneration and Growth, with smaller amounts invested in Borough Economy and Adult Social Care, which match to corporate priority areas.

The Council's Capital strategy emphasises the leveraging of grant and 3rd party contributions to supplement investment from the Council. CIPFA's review of financial management arrangements stated that in their view, the authority has lacked ambition and did not previously seek to invest in major regeneration initiatives. However it noted that this situation was changing. We note that a number of Towns Fund projects are in progress with final business cases submitted at the end of March 2022. We note that the Capital Programme only covers a period of 5 years, where as capital investment programmes are often delivered over a longer period. The Council should consider a longer planning horizon for its published capital strategy.

Our benchmarking analysis (based on draft 2020/21 draft accounts), indicates that Sandwell had relatively low exposure to borrowing risk in 2020/21 compared to other similar Councils, with a lower than average ratio of long term borrowing in proportion to the income available to repay.

Financial management arrangements

We note that the Council's financial management arrangements were subject to a detailed review by CIPFA during 2021 that covered financial systems, capacity and capability, the budget process and aspects of financial culture. CIPFA scored the Council as a 'progressive' 2 stars out of 4 overall, indicating that CIPFA felt the Council had an outdated financial management culture, lacked clear engagement and leadership from members on budgeting, and has some poor processes in place, particularly around contract management. They noted that the finance function's culture needs to be addressed, especially in the area of business partnering, and there are a few immediate structural steps that can be taken to improve what is a substantial but underperforming team. CIPFA acknowledged that these issues were being addressed and improvements were underway - including a new finance team structure and a greater focus on business partnering.

The CIPFA resilience index indicate that the authority at present is financially stable and CIPFA acknowledged that in recent years the Council had been able to contribute towards reserves through achieving a balanced budget or an underspend.

The Annual Internal Audit Report for 2020/21 concludes that there is reasonable assurance that the council has adequate and effective governance, risk management and internal control processes.

In our view, despite the identified weaknesses, the Council's arrangements have proved adequate to ensure financial sustainability in the medium term. However, in order to be able to meet the significant financial challenges outlined in the current MTFs and avoid the depletion of reserves, the Council will need to complete the current programme of improvements in line with CIPFA's recommendations.

Financial sustainability

Progress

Managing financial risks

The Council manages risk through its Corporate Risk Strategy and the Audit and Risk Assurance Committee provides oversight of the process. Service directors undertake an Equality Impact Assessment on all identified service changes and policy amendments.

The 2020/21 MTFS lacks sufficient detail as to how risk management arrangements have fed through into the development of financial assumptions. This improved for 2021/22 and the Budget and MTFS paper (Feb 2021) sets out the Council's approach to financial risks and how these are incorporated into the budget. In particular, it considers some key financial uncertainties such as the continuation of the COVID-19 pandemic and uncertainty over government funding in terms of future settlement income, the fair funding review and business rate retention. However, the narrative and analysis is not particularly comprehensive, and was in need of improvement.

We note that under the new Chief Finance Officer, the risk narrative in the budget and MTFS papers for 2022/23 (Feb 2022) is significantly more comprehensive than in the prior year. It includes an analysis of specific financial risks, such as a resurgence of COVID, assesses the likelihood and impact, and then sets out mitigation or options to manage the risk through reserves. This reflects an improved process to better enable Cabinet to discuss how financial risk is being managed and reflected in the MTFS.

The focus of Cabinet and Leadership team for 2022/23 was to ensure the identified budget gap for 2022/23 could be closed in a sustainable way whilst protecting frontline services as much as possible. This is being followed by a fundamental review of the MTFS in Spring 2022, to be reported to Cabinet in the September 2022, so the Council is well placed to develop robust budget proposals for 2023/24 and future years of the MTFS.

As was also noted by CIPFA in their review of financial management, improvement was needed in the MTFS development process so that the Council could move away from short term financial planning horizon. We are encouraged by the Council's direction of travel in this regard and will continue to monitor progress towards a robust medium term plan.

We are satisfied that the Council's relatively healthy levels of usable reserves and relatively positive financial outturn up to the end of 2021/22 mitigate the risk to financial sustainability in the short term, while the new MTFS is developed.

Alignment with other strategies

The CIPFA Financial Management Review comments on the need for better integration between the MTFS and corporate strategies. For example, there is no overarching workforce strategy but workforce related pressures such as adult services and pay awards impact significantly on the MTFS.

As noted, the 2021/22 budget did not encompass significant savings and transformation programmes and did not reflect significant investment in improvement and development priorities. In the absence of major service development programmes and new services provision, the need for alignment is limited. As the Council's ambitions increase it will need to ensure that service strategies clearly align with the budget.

Some strategies already align. For example, the 2021/22 to 2025/26 Capital strategy sets out the Council's arrangements for recognising the revenue implications of the capital programme. The Council has a consolidated revenue and capital budget setting process and the Cabinet receives all reports and information about the council's revenue and capital strategies and expenditure plans. The current MTFS revision process, should include an improvement to the way that the revenue costs associated with the Capital strategy are analysed and disclosed in the MTFS.

Similarly, the Council has a Treasury Management Strategy in place that clearly sets out policies around the contribution of treasury management as part of its financial plan, and the balance between mitigating risk and optimising the contribution that borrowing and investment. The Treasury Management Strategy is reviewed and approved on an annual basis alongside the budget and MTFS.

Conclusion

Overall, although there were some weaknesses in the financial management arrangements in place during 2020/21 improved processes are now in place and potential significant risks have been sufficiently mitigated in the short to medium term. In the medium to long term, the Council will need to implement its improvement plan to avoid these performance issues impacting on its financial sustainability.

We note steps are being taken by the new management team to further strengthen financial management arrangements. Conscious of this, we have consolidated our findings into a single improvement recommendation.

Improvement recommendations

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Financial sustainability

1 Recommendation	<p>In the context of the ongoing work to revise the medium term financial strategy and strengthen the Council's financial management arrangements, we recommend that the following improvement areas be addressed as part of this process:</p> <ul style="list-style-type: none"> • Improve coverage of commercial investment performance and group entities in the MTFS narrative and analysis. • Develop and provide narrative on the use of savings plan headroom and budgeted contingencies, to provide further flexibility to manage slippage. • Consider incorporating an analysis of discretionary and statutory spend to help members consider and approve savings schemes. • Develop a longer planning horizon for its published capital programme. • Complete the programme of improvement in financial management arrangements, to address the weaknesses identified in the CIPFA FM report. • Improve the way that the revenue costs associated with the capital strategy are analysed and disclosed in the MTFS. • Incorporate the use of scenario planning to convey financial risk to members in the MTFS.
Why/impact	The Council's future financial sustainability in the medium term will depend on the successful embedding of the new financial management arrangements.
Auditor judgement	Improvement Recommendation.
Summary findings	We noted a number of areas for improvement in the Council's arrangements to secure financial sustainability, however we are also aware of the Council's financial management restructure, the revised budget process and the on-going work to implement the recommendations of the Governance Review and the CIPFA Financial Management Review. This recommendation is therefore intended to compliment this work.
Management comment	The improvement recommendations in relation to the Council's MTFS and Capital Strategy will be implemented as part of the refreshed MTFS due to be reported to Cabinet in September. The Finance Improvement Plan, which is a key component of the Council's Corporate Improvement Plan, also includes actions which covers these recommendations.

The range of recommendations that external auditors can make is explained in Appendix C.

Governance



We considered how the Council:

- monitors and assesses risk and gains assurance over the effective operation of internal controls, including arrangements to prevent and detect fraud
- approaches and carries out its annual budget setting process
- ensures effectiveness processes and systems are in place to ensure budgetary control
- ensures it makes properly informed decisions, supported by appropriate evidence and allowing for challenge and transparency
- monitors and ensures appropriate standards.

Monitoring and assessing risk

The Council have in place a risk management framework which includes the Strategic Risk Register (SRR) which is used to manage the Council's longest standing risks. During the 20-21 financial year the Council also had in place a specific Covid-19 Register. In 2021/22 these registers have been merged as the Covid waves subsided.

The registers are collated from an underlying template which is sent to each directorate to update quarterly from their own risks an areas, before risks are collated by the Risk Management & Assurance team (sitting under the Head of Internal Audit) and input into the SRR. Whilst there are directorate risk registers in place, the use of these is more ad hoc and has not been an area of focus previously. A clear risk management approach at directorate level has not been fully embedded, although it is evident this takes place at the strategic level. There is the potential that specific directorate focussed risks could be overlooked and lead to issues not being mitigated before they become strategic level risks to the organisation. As of March 2022 the risk management framework is being updated. It would also be beneficial for a review of all directorate risk registers to take place to ensure with the development of the new framework that risk management is fully embedded among each of the directorates.

The SRR is presented to the Audit Committee on a quarterly basis and details each risk along with an associated action plan. There were no significant gaps noted, the register is sufficiently detailed and outlines the mitigating actions that have been developed to counteract the risks to the Council. There were clear links to the Corporate Plan and the direction of the risk score, although risk owners were not always named for each risk. The Audit Committee have also invited risk owners to attend in order to explain further how specific risks are being managed, as well as deep dives taking place into particular areas of concern.

Internal Audit

The Council's Head of Internal Audit manages Internal Audit, Counter-Fraud and the Risk Management & Assurance Team at Sandwell Council. The team have an Internal Audit Charter and provide an Internal Audit Plan to the Audit Committee on an annual basis for their approval. The plan is built on a risk-based approach.

Recommendations are all RAG rated - Red, Amber and Green and highlight those areas which require improvements.

The Head of Audit produces an Annual Report each year. For 2020/21 Sandwell Council was provided with reasonable assurance on the adequacy and effectiveness of internal audit and risk management. Limited assurance was provided on some areas however, it was noted the recommendations in these areas were implemented and improvements were made in a timely manner as a result.

The Council also has in place a specific Counter Fraud Team who also provide regular updates to the Audit Committee on the progress of their work. Pre-pandemic the team ran regular training sessions, although these have not taken place virtually. This is an area going forward which the Council should focus on re-introducing, with the move to hybrid working.

Governance

Budget Setting Process

Historically, there have been a number of issues in relation to the approach taken to budget setting. There has not been a comprehensive understanding across services of the make up and profile of individual budgets and director and service line engagement in the process has previously been limited. However, the Council have been focussed on improving their approach to budget setting with wider engagement, to ensure that alternative proposals and scenarios are considered before the final budget is presented to Cabinet.

Through planned engagement work on the refresh of the Corporate Plan, members and other stakeholders were asked to consider a wide range of options around budget savings. Outcomes from these workshops fed into the future Corporate Plan and budget proposals.

The Council adopt a two-way process for budget setting where each of the directorates are encouraged to flag their priorities to highlight those areas where budgets are changing. These flow into the Corporate Centre and the Executive Management Team (EMT) level so that they can be adapted into the corporate level modelling. This allows the corporate centre to understand what the overall financial gap is likely to be. The size of that gap is then communicated back to directorates with suggestions and requests for a review of priorities to make savings and close the funding gap. Despite this, the recent LGA Peer Review highlighted that there is a desire within the organisation for managers and budget holders to be even more fully involved in budget setting. It must also be noted that for 2020/21 there were no corporate level savings plans identified, any shortfall was expected to be filled through use of reserves.

The Council have recently introduced benchmarking analysis as part of the budget setting process but do not currently complete sensitivity analysis to help understand and solve key challenges. The Council may want to introduce sensitivity analysis into their budget setting process in order to ensure a clearer understanding the likelihood of potential funding gaps.

In relation to external stakeholders, the Council have not completed a consultation process with residents for a number of years. It would be beneficial to adopt a sustained and strategic approach to consultations. Residents are more equipped than ever to participate. Increasingly, they expect to be informed and consulted about how services will be delivered, and how their money is going to be raised and spent. Nevertheless, there remain significant inequalities in the public's capacity to engage and these will need to be considered as part of any consultation strategy. The Council should embed consultation with residents into the budget setting process for future years.

Additionally, member engagement in the budget setting process has been historically lacking. This has been acknowledged by the Council and several budget workshops have now taken place to encourage improvements in this area. Improvements in member training to encourage engagement in the budget setting process have been set out in the Council's Improvement Plan.

Budgetary Control

The Council have in place Finance Business Partners who work with the directorates to review financial performance and identify variances on a monthly basis. This is an area where arrangements need to be developed and improved, and the Council are addressing through a new finance structure which should provide a greater focus on business partnering.

Whilst budget holders are expected to manage their budgets and operate within allocated resources, currently, there isn't a self-service option in place, with all reports produced by finance in consultation with budget holders. This places a lot of reliance on staff within finance, which can prevent finance from really taking on that 'critical friend' role to allow for appropriate strategic challenge. The Council may want to consider moving towards more of a self-service approach to budget monitoring, so that budget holders have access to all the information they need on a real time basis. This could be incorporated as part of the move to the new financial system.

Monthly finance reports are also produced at the directorate level and presented to each Directorate Management Team. It is in these forums that budget holders are held to account for any variances, and development of appropriate mitigating actions. Although, there is no regular updated training for budget holders to help manage their resources.

An updated training programme should be developed to help ensure budget holders fully understand all elements of their role and to embed accountability across the organisation.

Governance

Budgetary Control (continued)

At the Committee level, budget monitoring is presented to the Budget & Corporate Scrutiny Management Board, the Audit Committee and Cabinet on a quarterly basis. This provides a high level overview of outturn for the period with explanation for any significant variances compared to budget. Finance reports are sufficiently comprehensive with a high level and detailed level analysis of costs. Additionally during the pandemic, any issues directly related to Covid-19 pressures were also identified.

One area of concern is in relation to the lack of monitoring which was provided to the Council's leadership team during 2020/21 and previous years. With the introduction of the new leadership team, these are now being provided on a monthly basis.

Policies

The Council have a number of policies which are out of date and require updating. Including the Procurement Strategy which was last updated in 2010, and the Equality Policy last reviewed in 2016. Additionally some of the links on the Council website to policy documents are broken, such as that to the Code of Corporate Governance.

The Council should ensure there is a process in place to review and update policies on a timely basis, and ensure these are added to the external and internal webpages as appropriate. This will help to prevent policies from becoming redundant or no longer following regulatory guidelines or recommended best practice.

Leadership and Committee effectiveness

As identified as part of our Governance Review, the Council's Scrutiny Boards and Audit & Risk Assurance Committee were viewed as needing improvement in order to effectively hold decision makers to account. As a result, the Council are working with the LGA to develop an updated member training programme with a focus on scrutiny and audit roles. There is also opportunity for strengthening of the scrutiny function through the planned review of the Constitution.

Additionally there is a need to ensure that members of the scrutiny and audit committees are aware of their governance roles including how to interrogate reports and ask the right questions. We would also encourage these committees to invite officers to attend the committees to present on key internal audit responses, particularly where there may be successive delays in implementation, to fully understand key risks and stimulate responsive action.

There were a number of findings identified in Council's recent LGA Peer Review which highlighted that the organisation currently struggles with clear communication and there is a real opportunity for the Council to become a learning organisation who look outward more and actively listen and learn from service user feedback. The Council need to focus on regular updates to key stakeholders and sharing information on future plans, emerging projects and collective ambitions of the Council. Upcoming opportunities include the Borough's Commonwealth Games, the comprehensive staff survey and introduction of the Resident's Panel.

The Council don't run public consultations regularly and haven't had a budget consultation in a number of years. Therefore the LGA Peer Review's recommendation for a regular resident's survey is appropriate.

As a result of the historical issues and behaviour, the decision-making is underpinned by a cautious approach and risk averse culture. Whilst it is clear there are in place arrangements for decisions to be challenged before being taken, the process of escalation for relatively minor actions, is hindering the Council in its decision making. This has resulted in a lack of empowerment of officers in decision making and the agility of the Council to make prompt decisions. Such as with the delay in relation to the rescheduled MADE Festival, which had been due to take place in August 2021.

The Council's change in leadership and review of the Constitution should help to engender the necessary changes needed. The Council are aware this will require considerable time, investment and collaboration to embed sustainably, and there is a clear desire to make the improvements required.

Conclusion

We have identified a number of significant weaknesses in this area during our Governance Review relating to corporate performance monitoring and grip, lack of long term planning, officer empowerment and decision making, capacity, experience and skills and changes to senior officers and members. The Council have made a range of improvements to address these. The ongoing actions in the improvement plan are focussed on strengthening financial and governance arrangements, but will take time to embed fully. Outside of the Governance Review, we have identified a number of further improvement recommendations.

Improvement recommendations

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Governance

2 Recommendation	<p>In the context of the ongoing improvement plan actions, we recommend that the following improvement areas be addressed as part of this process:</p> <ul style="list-style-type: none"> • Improve the level of benchmarking and sensitivity analysis used to support the MTFS assumptions • The Council should embed consultation with residents into the budget setting process for future years • Introduce counter-fraud training and awareness sessions for staff and members • Undertake a review of all directorate risk registers to ensure that risk management is fully embedded among each of the directorates • Ensure there is a system in place for the timely review of Council policies and procedures to prevent policies becoming redundant or no longer following regulatory guidelines or recommended best practice
Why/impact	
Auditor judgement	Improvement Recommendation.
Summary findings	We noted a number of areas for improvement in the Council's governance arrangements, however we are also aware of the Council's financial management restructure, the revised budget process and the on-going work to implement the recommendations of the Governance Review, the CIPFA Financial Management Review and the LGA Peer Review. This recommendation is therefore intended to compliment this work.
Management comment	These recommendations are covered in the Council's Corporate Improvement Plan and there are specific actions in place to move the improvements forward. A budget consultation is due to be launched in July for the 2023/24 budget process. The Council is also exploring options for a Performance Management System which will facilitate monitoring of policies, procedures and risk registers.

The range of recommendations that external auditors can make is explained in Appendix C.

Improving economy, efficiency and effectiveness



We considered how the Council:

- uses financial and performance information to assess performance to identify areas for improvement
- evaluates the services it provides to assess performance and identify areas for improvement
- ensures it delivers its role within significant partnerships, engages with stakeholders, monitors performance against expectations and ensures action is taken where necessary to improve
- ensures that it commissions or procures services in accordance with relevant legislation, professional standards and internal policies, and assesses whether it is realising the expected benefits.

Performance review, monitoring and assessment

Our Governance Review in December 2021 highlighted that the Council's lack of a performance management framework was a key area of weakness. Whilst prior to the pandemic the Council had begun to set up performance boards on a monthly basis and key measures were being discussed, no specific detail was pulled together before the pandemic hit. This meant performance management was not the priority as the focus shifted to the pandemic response.

Currently work is underway to develop performance management arrangements. A reporting framework to monitor the Council's improvement plan actions, was approved in January 2022. This has resulted in monthly reports to the Leadership Team and quarterly reports to Cabinet.

One of the key actions within the improvement plan is the development of the performance management framework, focussing on building up four elements of Customer Experience, Organisational Health, Improvement and Finance. There are currently monthly sessions to the Leadership Team and directorate level plans are under development to feed into achievement of the key aims of the Corporate Plan. Additionally the Strategic Lead for Service Improvement has been working on the service planning framework which will sit under the Corporate Plan and working with service directorates to discuss business plans. This is a move in the right direction, and our conversations with officers have highlighted that effective performance management is a key focus going forward for the leadership team, which has been communicated across the organisation.

Despite this the Council have a lot of work to do to ensure robust performance management arrangements are embedded across the organisation. In particular, there is still work to be completed in relation to the mapping and accuracy of the Council's data. The CIPFA Financial Management Review highlighted the current reliance on "information which is contained within disparate and outdated systems". The Council has restarted the process of upgrading the ERP system which should help provide more reliable information to finance team and budget holders across the Council on financial performance. We comment in our VfM Governance review on the issues with the implementation of the ERP project.

In relation to operational performance, the Council use a mixture of tools with the majority of performance data concentrated within Business Software. Time is being invested in developing use of Power BI which council officers already have access to. However, there is no one corporate management system currently in place. This is an option the Council are hoping to explore in the next 12-18 months, and as detailed on the Improvement Plan.

In relation to data mapping and data quality the Council recognise that they have a lot of work to do, and that this needs a corporate approach. It would be beneficial for the Council to develop a Corporate Data Strategy which outlines how data should be captured and stored across the organisation, as well as guidance on technology and information governance.

It is clear that performance management and data quality has not been a key focus for Sandwell Council during 20-21, and whilst management are taking actions to improve this position, this is likely to take a number of years before being fully embedded.

Improving economy, efficiency and effectiveness

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Benchmarking

As highlighted in our Governance Review the Council have not regularly engaged in corporate level benchmarking in order to understand how the organisation performs in relation to other local authorities. Whilst there is some evidence this takes place at directorate levels, it is ad hoc and there has been no consistent approach.

In response the Director of Finance has introduced financial benchmarking which should be sustained going forwards. Our conversations with officers highlighted that the Council are also considering making use of a number of benchmarking analytics available through sources such as LG Futures, LG Inform and CIPFA. This is with the hope to include these as part of performance management and analysis in future.

It must also be noted that during the 2021/22 financial year the Council asked CIPFA to complete a review of financial management and engaged in the LGA Peer Review in order to understand performance in comparison to others. This has identified that improvements can be made throughout the organisation. Officers have been engaged throughout the process and our interviews have highlighted a Council that is willing to make progress against the improvement plan actions and learn from other local authorities.

Partnership working

Our Governance review highlighted that the Council had been insular and siloed. Its focus being on responding to external service-based challenges and the management of fallout from previous decisions or investigations. We noted that senior officers and senior members had not worked closely with local partners.

The recent LGA Peer Review noted that the Council have been an absent partner for many of their partnerships. However, the LGA Peer Review also highlighted that local operational relationships feel better developed and these have been strengthened during the pandemic.

The Council's partnership with the Children's Trust has improved, with regular communication at all levels and robust governance arrangements now in place.

Relationships with schools and other partners will be key to tackle complex cases and growing demand in a post pandemic landscape across all areas of social care. Arrangements with health partners will be key. The recent LGA review highlighted the need for simplification of the partnership arrangements across both adults' and children's, a review of these would be useful in streamlining arrangements.

Our conversations with officers highlighted that whilst at directorate level partnership arrangements are in place, with Partnership Boards and sharing of best practice, this has been historically lacking at the corporate level, particularly on a regional basis. Whilst regional level partnership arrangements are in place, such as the Black Country Local Enterprise Partnership, the Council have not always taken full advantage of arrangements, having been described as an "absent partner". With the changes in leadership team and the clear engagement and enthusiasm for change throughout the organisation, there is a real opportunity for Sandwell to become a more engaged partner.

Procurement and Contract Management

Significant weaknesses were identified in procurement and contracting arrangements by our Governance Review. We have raised both statutory and improvement recommendations in relation to these areas, which are outlined in the Executive Summary of this report. Many of these relate to outsourced contracts and cover a number of areas including procurement and contract management.

There are two distinct procurement teams at the Council:

- Corporate Procurement Service
- Adult Social Care Contracts Team.

There is also ad hoc procurement which is undertaken at the service level within directorates below the £50k threshold, making use of the In-Tend procurement system.

One of the key weaknesses with the current procurement processes are in relation to the delay. Any awards above £250k require Cabinet approval. This can be a lengthy process and if completed towards the end of the procurement process can lead to lengthy delays of 7-8 week, due to committee reporting deadlines. The Council are aware this is an area for improvement and similar issues were highlighted in the LGA Peer Review in relation to decisions taking a longer time than strictly necessary.

Improving economy, efficiency and effectiveness

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Procurement and Contract Management (cont.)

To address this, the Council are in the process of conducting a governance review of which the use of delegated authorities and procurement thresholds, will be included. Focus is currently on benchmarking against best practice models to ensure a robust process is adopted.

This should allow for awards to be delegated at the outset by Cabinet, so whilst they will still have full visibility it should prevent the delay, whilst achieving the same goal of a clean and transparent procurement process. Additionally the Council are refreshing key procurement documents such as the Procurement Strategy (dated 2010), the Contract Procedure Rules and the Project Management framework.

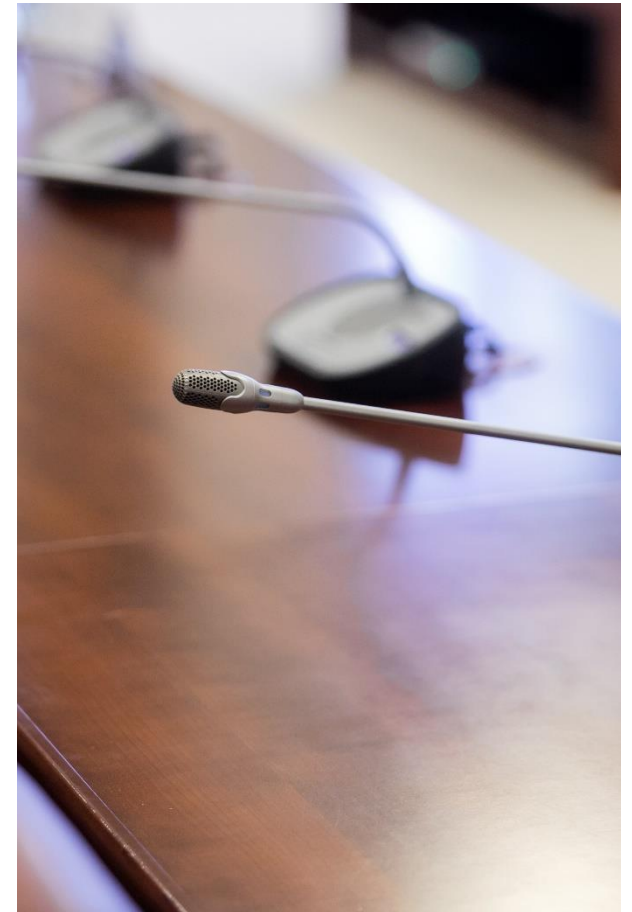
In order to ensure the procurement strategy does not become out of date, we consider that the Council should embed a regular review process of all corporate governance documents. We would recommend every 2-3 years as a minimum.

The Councils current procurement monitoring makes use of IN-TEND. However tracking of direct awards and pipelines currently makes use of spreadsheets which poses difficulties to track and update without risk of errors. It also makes it difficult to accurately gain oversight of future pipelines of work. Ideally pipelines should look ahead three to five years to be truly effective, and should be a live tool, updated at each major change, in a timely manner.

As part of the review of procurement practices, the Council should consider alternative tools for reliable, accurate procurement pipelines.

Contract management takes place within the service areas rather than directly through the procurement team. As part of the initial procurement process the contract manager is identified and KPIs set, so that these can be managed and monitored throughout the life of the contract. Despite this, there been a range of issues which have caused both reputational and financial impacts to the Council, due to performance issues with outsourced contracts to SCT, SLT and SERCO.

These have been well documented as part of our Governance Review, presented to the Council in December 2021. The Council are in the process of developing a corporate approach to project management to address these findings, which will also apply to management of capital projects and align with the Council's Corporate Asset Management Strategy once developed.



Improving economy, efficiency and effectiveness – Adult Social Care

Areas of high spend

As part of our review we made use of the Grant Thornton data analytics platform CFO Insights to benchmark Sandwell Council against other local authorities in relation to spend per head.

The results of this showcased that the Council were ‘Very High Spenders’ (i.e. in the top 20% of all metropolitan boroughs) in Adult Social Care, using 2020/21 outturn data and 2021/2022 budgeted figures. Our analysis identified ‘Very High Spend’ across a range of areas including, Commissioning and service delivery, Learning disability support, Physical Support, Sensory Support and Support with memory and cognition.

Adult Social Care

Sandwell’s social care responsibilities are also a significant budgetary cost, with budgeted net expenditure of £90m for 20.21. Additionally, like many local authorities, Sandwell faced pressures within the service directly as a result of the pandemic, due to increased demand and staffing constraints. Despite this Adults Services attained a £12m underspend during the 2020/21 financial year, although this was significantly supported by Covid-19 funding. Whilst the Council has had significant cost pressures in terms of residential and care home costs, this plateaued throughout the year. However, there will continue to be pressures on future budgets driven by the fair cost of care and the cost of care cap.

Whilst the Council have some Council run care homes, they like many local authorities they also rely on the private provider market which can be expensive. In order to drive more evidence-based decision making as part of utilising these services the Council is making use of digital tools such as Care Cubed.

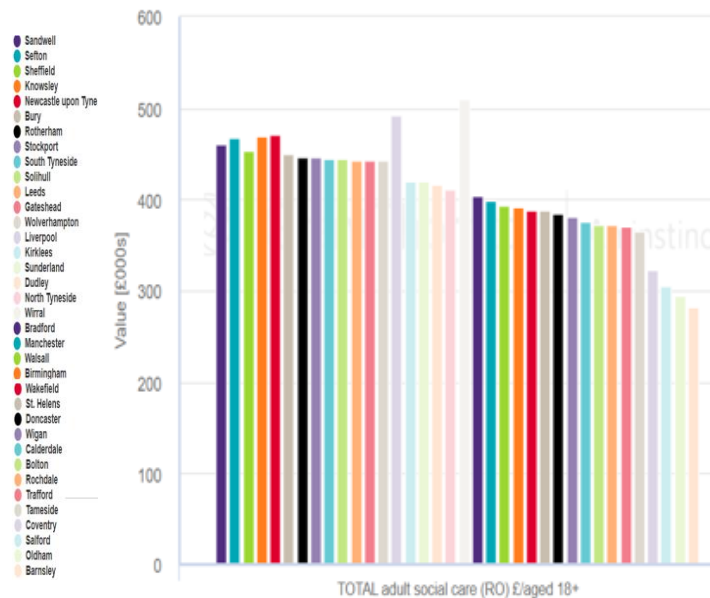
Workforce continues to be a key concern, and the directorate continue to have recruitment problems, which has resulted in a reliance on agency staff. In order to ensure adequate workforce planning, the Council are planning to conduct a benchmarking analysis to provide the evidence and data to underpin a sustainable workforce plan which can be built into the MTFs. This is due to be completed by September 2022, and to be agreed at Cabinet.

There continue to be a number of challenges within the directorate which are driving high costs. These include costs relating to transitions between the Children’s Social Care Services across to Adults. The Council are therefore beginning to explore work which looks at the whole model of care and to ensure there is no void in between the transfer from Children's to Adults.

There are also concerns around the complexity of cases, and the level and intensity of packages which are currently delivered. The Directorate is therefore shifting the focus to look at what can be provided to families to help them meet their own needs or for options for needs to be met by wider community initiatives and reablement models which make use of digital tools.

Externally adult social care services appear to be performing well, with all CQC reports ranking services as Good. However internally, performance management, has not been a key focus and is only now being developed and embedded in the directorate through the Adult Social Care Outcomes Framework in order to really understand performance.

Although these programmes of work are still in their infancy, it is clear that the Directorate are aware of the challenges they face and are now under the direction of the new leadership team developing responsive action. There is a degree of urgency needed to ensure that sufficient progress against plans is being made. It is essential that this is clearly communicated to members and will continue to be monitored in 2021/2022.



Improving economy, efficiency and effectiveness – Children’s Social Care

Page 75

Children’s Social Care

Within Children's Social Care there are a range of governance arrangements now in place. These cover both the operation of Sandwell's Children's Trust (SCT) and those services which sit outside of the Trust's remit.

In relation to the Trust specifically there are now much more robust governance arrangements in place, due to the direction from DfE. This includes an Operational Partnership Board (OPB) led by the Trust. This is used to provide updates in order to give a clear overall picture of operations through a performance scorecard report. The scorecard includes a range of KPIs which have been set out in the contract, covering performance, financial issues and workforce development. The KPIs are currently under review as part of the actions in the Improvement Plan, expected to be reviewed and finalised in Summer 2022 following review of the SCT contract.

The Partnership Board is made up of Trust Board members and Council staff including finance and commissioning colleagues who meet on a monthly basis. In addition, there is a pre-meeting of Officers before the OPB to discuss any key issues and to ensure that no areas of concern are missed. This prevents surprises and provides a high level of oversight to Council officers.

Additionally the Council have focussed on opening the lines of communication, through a closely fostered relationship between the Director of Children’s Services and the Trust Chief Executive who meet on a weekly basis. The appointed member is also provided with an update on a monthly basis. At a corporate level, performance is also reported to the Sandwell Performance Board, chaired by the Chief Executive on a quarterly basis.

In line with the Council's improvement plan the Trust have undertaken a realignment of social care teams and introduced a locality model across 3 distinct areas, each managed by a separate Head of Service. The aim is to strengthen partnership working, to provide a better alignment of services and a greater focus on prevention.

Ofsted conducted an inspection of the Fostering Agency in August 2021, followed by a monitoring visit to the Trust in November 2021. The former highlighted some areas of improved practice such as good partnership working with Education & Health, visible leaders and robust safeguarding processes. Recommendations were also raised including increased training for foster carers and the joint panel, as well as a recruitment strategy for foster carers.

The November visit emphasised that they could "see tangible progress... however, there remains a lot more to do to secure permanence for many children in care". Despite the progress being made, such as improved tracking arrangements and effective working with partnerships, Ofsted found that experiences of children were inconsistent. Whilst quality assurance has improved, further work is still required to embed this, and a key focus is needed to stabilise and strengthen the workforce, as the turnover of staff and use of agency workers continues to be high.

As with many other Council's across the UK, there are significant workforce challenges within Children's Social Care, leading to reliance on expensive agency staff. The Trust carried out a market analysis of social worker pay, presented to Cabinet in March 2022, which found that some salaries were not competitive within the region. The Council recognises the risk this poses with fewer permanent staff applying for jobs and current staff leaving for higher salaries elsewhere, leading to a further reliance on agency workers and increased costs, as well as compromising outcomes for children.

In response the Council agreed to introduce a Market Supplement for case holding social workers at an annual cost of £582k, of which £150k is within the Contract Sum resulting in a maximum additional sum of £432k to the Council. This is being funded through an earmarked reserve built from the additional Social Care Grant received by the Council.

The Trust have also been focussed on developing a comprehensive plan for recruitment and retention, set out in the public document '12 reasons to work for Sandwell'. These include focus on reward packages, career progressions and visible leadership.

A key area of high spend and strategic challenge for the Council is in relation to special educational needs and disabilities (SEND) provision. Sandwell are facing increased demand and more complex needs, coupled with a lack of capacity in specialist settings. As a result, the Council are continuously making use of independent special school places, which have associated financial implications. Whilst Funding is provided to the local authority, through the High Needs Block of the Dedicated Schools Grant, this will balance at the end of 2021/22 leading to an increasing deficit position in future years. The Council have set up multi-agency partnership Boards to monitor and review SEND arrangements and progress, these will need to be continually monitored through these forums.

Whilst it is clear the Council have been making improvements, they are in the infancy of this journey and there are a number of key challenges, which they will need to work to overcome. The governance arrangements that have now been put in place, should support the directorate to make the necessary changes in future years.

Improving economy, efficiency and effectiveness - Housing

Housing

Sandwell Council has undergone a recent restructuring which has moved the Housing Directorate out of Neighbourhoods and Communities to condense the housing functions into one area. As part of this transformation the Council have engaged Savills to conduct a review of the directorate, to help highlight improvements and to ensure preparedness for changes to regulatory frameworks. The Council are in the process of setting up a Housing & Transformation Board to review the reports and action issues raised. This will be reviewed as part of future value for money reviews.

One of the Council's strategic outcomes is focussed on producing 'Quality Homes in thriving neighbourhoods' which is underpinned by the aim to have 8,000 more new homes in the Borough by 2030 and to improve the quality of existing accommodation. The Housing Directorate have their own distinct 3 year business plan which outlines how this is to be achieved and includes a well-established set of KPIs and governance structures.

However the Council's 30 year HRA Business Plan should be regularly reviewed and by the Directorate. This should be used as a tool for long-term strategic planning, incorporating revenue and capital spend, along with income over the medium to long term, to provide the informed direction of travel for the housing service. This should provide a focus on delivering affordable quality homes whilst maintaining standards of existing stock.

The Council should ensure there is a robust HRA 30 year Business Plan in place, which includes narratives to explain forecast projections contained in the excel spreadsheets. We note that this exercise is underway and is being supported by external consultants.

The Council's asset management and maintenance programme has come under pressure due to the pandemic with a significant backlog and reliance on contractors. In January 2022 there was a BBC article focussed on the recent refurbishment of Alfred Gunn House which highlighted the poor living conditions of a number of tenants. As a result the Council conducted a lessons learned review which highlighted that whilst governance arrangements were in place, they focussed on the contract and completion of the project with no single designated Project Manager. These roles are now being put in place with regular reports being sent to the Directorate Management Team on a monthly basis. In addition Council projects will now also be supported by a Tenant Communication Plan focussed on communication and impact on tenants. The new governance structure will be rolled out when the next refurbishments begin in June 2022.

As highlighted in the financial sustainability section of this report, Sandwell Council have not previously been focussed on maximisation of income generation or savings plans. In Housing this has meant that the rental charges for garages have not been increased for a number of years. When compared with neighbouring Local Authorities, 2020/21 garage rents in Sandwell were significantly lower (we note that these have been increased for 2022/23. Increases to the rental prices are now under consideration by Cabinet.

It is clear that the Council's overall transformation and the introduction of the new leadership team has ignited enthusiasm to bring about changes throughout the organisation. There is a clear momentum to enact change in the way services are run and monitored, with improved performance management practices and large scale reviews, such as that being carried out by Savills within Housing, but also more widely through the LGA Peer Review and CIPFA FM Review.

Conclusion

Although there were some weaknesses in the arrangements in place during 2020/21 for achieving economy, efficiency and effectiveness, the Council have made a range of improvements to address these. We have identified a number of improvement recommendations in these areas, to complement the work already ongoing.

There were key weaknesses during 2020/21 in relation to performance management and contract management for which the Council are making steps to improve through the actions detailed in the Improvement Plan. Whilst the Council have not regularly engaged in benchmarking exercises, the engagement with CIPFA and the LGA for recent reviews have shown a keen willingness to learn from best practice and to make far-reaching changes across the organisation.

Adult and Children's services in particular face a range of difficult challenges including workforce issues and increased demand. The Council are aware of these issues and are working towards addressing these at the Directorate level, but also with engagement across the organisation via the Leadership Team. It is evident the Council has ambitious plans in place to improve services and appropriate investment will be required to realise these. It is clear the Council have developed increasing self-awareness and an appetite for change, which has been reflected in the current plans for improvement and the engagement from officers with the recent reviews. It is recognised that this will be a journey for the Council, and this will be kept under review.

Improvement recommendations

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Financial sustainability

1 Recommendation	<p>In the context of the ongoing improvement plan actions, we recommend that the following improvement areas be addressed as part of this process:</p> <ul style="list-style-type: none"> • It would be beneficial for the Council to develop a Corporate Data Strategy which outlines how data should be captured and stored across the organisation, as well as guidance on technology and information governance. • Use of national and regional benchmarking should be used when available and appropriate, as part of the performance management arrangements to help the Council understand their position in relation to other local authorities • Council should continue to develop and engage with partners, particularly at the corporate and regional level • Update the Procurement Strategy, which was last updated in 2010 • As part of the review of procurement practices, the Council should consider alternative tools for reliable, accurate procurement pipelines.
Why/impact	There are a number of specific areas that will help the Council to strengthen its grip on the performance of services, and deliver reform and improvement over time.
Auditor judgement	Improvement Recommendation.
Summary findings	We noted a number of areas for improvement in the Councils governance arrangements, however we are also aware of the Council's financial management restructure, the revised budget process and the on-going work to implement the recommendations of the Governance Review, the CIPFA Financial Management Review and the LGA Peer Review. This recommendation is therefore intended to compliment this work.
Management comment	The Corporate Data Strategy is within the Business Strategy and Change Business Plan for 2022/23 and resources have been set aside for this. The other recommendations are covered in the Council's Corporate Improvement Plan with specific actions over the next 12 months.

The range of recommendations that external auditors can make is explained in Appendix C.

COVID-19 arrangements

Page 78



Since March 2020 COVID-19 has had a significant impact on the population as a whole and how Council services are delivered.

We have considered how the Council's arrangements have adapted to respond to the new risks they are facing.

Financial sustainability

The Council managed its financial position reasonably well in 2020/21 in the context of the COVID-19 pandemic. The Council was in receipt of significant emergency support funding from government which was used to balance the budget in 2021/22 and provide general fund reserves, which were used to manage COVID related cost and income pressures in both 2020/21 and 2021/22. This has enabled the Council to protect its usable general fund reserves at a healthy level into financial year 2022/23.

We note that the Council implemented a COVID Reset and Recovery plan and board that included a workstream to understand the financial impact, which was presented to members in September 2020. The Council was also able to track one off COVID pressures, and separate these from underlying pressures reasonably well.

The Council was not able to address its projected budget deficit in 2021/22 through savings and instead, using COVID emergency funding and one off measures to balance the budget. While it is expected that the pandemic would affect the ability of to deliver planned savings in full, many Councils were able to deliver a proportion of savings. Had the Council had a more robust financial management process in 2020/21, this should have been achievable, as was shown in the delivery of £14.6m of savings in the 2022/23 budget.

Governance

The Council had to adapt its governance arrangements to continue to address the challenges posed by the Covid-19 pandemic. In order to manage these pressures, the Council made use of delegated decision-making arrangements and virtual committee meetings following enactment of the Coronavirus Act 2020.,

The Council set up the Emergency Committee which acted as the primary decision-making body throughout the first lockdown and the Sandwell Strategic Incident Management Team who oversaw the day to day Covid-19 response.

In relation to risk management the Council set up a separate Covid-19 risk register which was regularly presented to the Audit & Risk Assurance Committee. By completing 2 separate risk registers, the Committee were able to have oversight of the pandemic related risks, without losing sight of the other strategic level risks which continued to pose challenge to the Council throughout this time period. These have now been merged as the risks posed by the pandemic have continued to decrease.

In our view, effective arrangements were introduced to monitor the operational impact of Covid-19 on services and these arrangements enabled timely and responsive action to be taken.

Improving economy, efficiency and effectiveness

The Council response to the pandemic was driven by the Local Outbreak Plan, which focussed on a system-wide response and was predicated on existing major incident plans the Council already had in place. This was monitored through the Sandwell Strategic Incident Management Team which included Council directors and partner representatives from NHS, police and voluntary sectors.

The Plan focussed heavily on working together and defining clear roles and responsibilities across the local systems, making use of multi-agency risk assessments.

Integrated situation reports were compiled regularly to present at SIMT meetings with versions shared among workforce, stakeholder groups and members. Abridged version were also added to the Council website to keep the public informed.

Case studies and lessons learned from the Council's response to the pandemic have been collated and used for future learning throughout the system. This has been clearly articulated within the Council's updated COVID-19 Local Outbreak Management Plan published in April 2021.

Opinion on the financial statements

Page 79



Independent opinion

Grant Thornton provides an independent opinion on whether the accounts are:

- True and fair
- Prepared in accordance with relevant accounting standards
- Prepared in accordance with relevant UK legislation.

Audit opinion on the financial statements

Our audit of the 2020/21 financial statements is ongoing. We anticipate issuing our audit opinion in August 2022.



Appendices

Appendix A - Responsibilities of the Council



Role of the Chief Financial Officer (or equivalent):

- Preparation of the statement of accounts
- Assessing the Council's ability to continue to operate as a going concern

Public bodies spending taxpayers' money are accountable for their stewardship of the resources entrusted to them. They should account properly for their use of resources and manage themselves well so that the public can be confident.

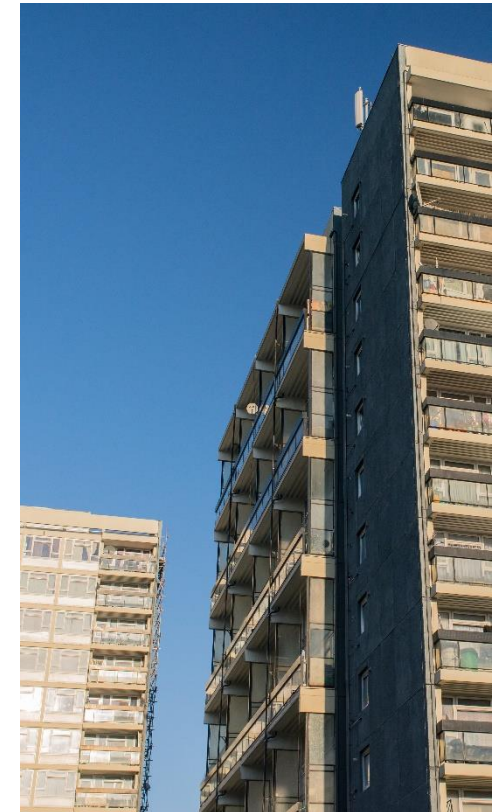
Financial statements are the main way in which local public bodies account for how they use their resources. Local public bodies are required to prepare and publish financial statements setting out their financial performance for the year. To do this, bodies need to maintain proper accounting records and ensure they have effective systems of internal control.

All local public bodies are responsible for putting in place proper arrangements to secure economy, efficiency and effectiveness from their resources. This includes taking properly informed decisions and managing key operational and financial risks so that they can deliver their objectives and safeguard public money. Local public bodies report on their arrangements, and the effectiveness with which the arrangements are operating, as part of their annual governance statement.

The Chief Financial Officer (or equivalent) is responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view, and for such internal control as the Chief Financial Officer (or equivalent) determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

The Chief Financial Officer (or equivalent) or equivalent is required to prepare the financial statements in accordance with proper practices as set out in the CIPFA/LASAAC code of practice on local authority accounting in the United Kingdom. In preparing the financial statements, the Chief Financial Officer (or equivalent) is responsible for assessing the Council's ability to continue as a going concern and use the going concern basis of accounting unless there is an intention by government that the services provided by the Council will no longer be provided.

The Council is responsible for putting in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources, to ensure proper stewardship and governance, and to review regularly the adequacy and effectiveness of these arrangements.



Appendix B - Risks of significant weaknesses - our procedures and findings

Page 82

As part of our planning and assessment work, we considered whether there were any risks of significant weakness in the Council's arrangements for securing economy, efficiency and effectiveness in its use of resources that we needed to perform further procedures on. The risks we identified are detailed in the table below, along with the further procedures we performed, our findings and the final outcome of our work:

Risk of significant weakness	Procedures undertaken	Findings	Outcome
Governance was identified as a potential significant weakness.	Additional procedures – Governance Review	See summary findings in this report	Significant Weakness identified.

Appendix C - An explanatory note on recommendations

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A range of different recommendations can be raised by the Council's auditors as follows:

Type of recommendation	Background	Raised within this report	Page reference
Statutory	Written recommendations to the Council under Section 24 (Schedule 7) of the Local Audit and Accountability Act 2014. A recommendation under schedule 7 requires the Council to discuss and respond publicly to the report.	Yes or no	
Key	The NAO Code of Audit Practice requires that where auditors identify significant weaknesses as part of their arrangements to secure value for money they should make recommendations setting out the actions that should be taken by the Council. We have defined these recommendations as 'key recommendations'.		
Improvement	These recommendations, if implemented should improve the arrangements in place at the Council, but are not a result of identifying significant weaknesses in the Council's arrangements.		



Audit and Risk Assurance Committee

21 July 2022

Subject:	Children's Services Directorate Risk Register Report
Director:	Director of Children's Services and Education Michael Jarrett
Contact Officer:	Senior Commissioning Manager for Statutory Services Mandip Chahal Mandip_chahal@sandwell.gov.uk Audit Services Business Partner Narinder Phagura Narinder_phagura@sandwell.gov.uk

1 Recommendations

1.1 To note and comment on the directorate risks.

2 Reasons for Recommendations

2.1 Effective risk management is a key element of good corporate governance, as noted in the council's [Code of Corporate Governance](#), and is essential to the overall performance of the council in meeting its corporate plan objectives. Good risk management will ensure that resources are used efficiently and effectively and that assets and resources are protected against risk in the most efficient way.

2.2 The role of the Audit and Risk Assurance Committee (ARAC) is to provide assurance to the Council that it has a system of governance, risk management and internal control in place and that the adequacy and



effectiveness of these arrangements continue to inform decision making. Thereby, it provides assurance that risks to the delivery of the council's key priorities are being managed.

2.3 The Committee will be aware that these risks are managed through the council's risk management process which is set out in its Corporate Risk Management Strategy, and involves the development of risk registers at strategic, directorate, operational and project levels.

Risk hierarchy



2.4 Ownership of the individual directorate risks is assigned to the director and service managers, who have responsibility to:








- Consider and agree the risk description
- Assess the current risk score based upon the controls in place and the assurances they have received on the adequacy and effectiveness of these controls
- Implement mitigating actions to reduce the risk scores where necessary, in order to deliver the target risk score by the target date.

2.5 The Director is also responsible for keeping the Cabinet Members informed of the relevant risks that fall within their portfolio and the implementation of mitigating actions.



- 2.6 Further ongoing reviews of the directorate register are undertaken by the Directorate Management Team on a regular basis.
- 2.7 A summary of the directorate risks is included at Appendix A of this report which notes two risks that are currently assessed as red, five amber risks and four green risks. This summary register should be considered alongside the council’s strategic risk register which also includes risks which the Children’s Services directorate has responsibility for managing or will contribute to the management of.

3 How does this deliver objectives of the Corporate Plan?

	Best start in life for children and young people People live well and age well
	Strong resilient communities Quality homes in thriving neighbourhoods
	A strong and inclusive economy A connected and accessible Sandwell
	The report details the key directorate risks that need to be managed to ensure that they do not negatively impact on the delivery of the directorate business plan and thereby the Corporate Plan objectives.
	
	
	

4 Context and Key Issues

- 4.1 This report updates the Committee on the profile of the key risks currently faced by the directorate.
- 4.2 The risk register is a live document and reflects the risk profile at the time of preparing this report in June 2022. The risks undergo ongoing review to ensure they remain appropriate and are assessed in order to aid informed decision making and resource allocation.



4.3 The directorate risk register may not include all of the risks faced by the directorate. Other risks are captured within service, programme and project risk registers and assessments, in line with the Council's risk management framework as noted above.

4.4 The directorate incorporates the following service areas:

- Learning and Advisory Support
- Education of vulnerable children
- Early years and childcare
- School organisation
- Attendance and safeguarding
- SEND and inclusive learning
- Youth service
- Sandwell residential education
- Play service
- Partnerships and commissioning
- Skills and employability

4.5 An update of the risks, including the measures in place to mitigate them are included within appendix A.

5 Alternative Options

5.1 Whilst this report does not require a decision and therefore, alternative options do not need to be considered, when measures are being considered for the mitigation of each of the directorate risks, this takes into account any alternative options available.

6 Implications

Resources:	The authority's budget planning process incorporates financial and other resources required to manage the authority's risks and deliver the priorities within the corporate plan.
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Legal and Governance:	There are numerous standards applicable to the management of risk within the local authority sector. Included amongst these is guidance from CIPFA/Solace, the British Standards Institute (BSI) and a set of joint standards published by the Institute of Risk Management (IRM), Alarm (The public sector risk management association) and AIRMIC (Association of Risk Managers in Industry and Commerce). Evidence that robust management of the authority's risks is being undertaken demonstrates compliance with these standards.
Risk:	The report itself is an update of the key risks facing the directorate.
Equality:	As a decision is not being sought in this report, it is not necessary to undertake an Equality Impact Assessment. However, when measures and decisions are being considered for the mitigation of risks, risk owners must take into account any equalities impact and whether an equalities impact assessment is required.
Health and Wellbeing:	The management of risk takes into account where appropriate, the implications on health and wellbeing of our communities.
Social Value	The actions and decisions that are being considered for the mitigation of the risks, will take into account where appropriate, the meeting of the Council's social value commitments.

7. Appendices

Appendix A – Children's Services Directorate risk register summary as at June 2022

8. Background Papers

None



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RED	5, 6,
AMBER	1, 3, 9, 11, 12, 13
GREEN	2, 7, 8, 10

Summary Children’s Services Directorate Risk Register as at June 2022



Ambition 1
High aspirations



Ambition 2
Healthy lives



Ambition 3
Skills



Ambition 4
High quality education



Ambition 5
Safe communities



Ambition 6
Excellent and affordable public transport



Ambition 7
Housing to meet needs



Ambition 8
Community life, leisure centres & entertainment




Ambition 9
Location of choice for business and growth



Ambition 10
Reputation for getting things done


Children’s services directorate business plan priorities


1. Children, young people and families are aspirational, resilient, ambitious and safeguarded	2. Sandwell’s children to be healthy and active	3. Good school places	4. Best start in life and school readiness	5. Children to be well prepared for adulthood	6. Career opportunities
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Risk Ref	Risk Title and Description	Previous score (Sept 2021)	Direction of travel	Current score (June 2022)	Target score and date	Comment
001 05/16	<p>Impact of Reductions to Funding</p> <p>If the directorate does not plan and identify innovative new ways of dealing with the uncertainties and significant reductions imposed by central government on schools funding, then this will result in:</p> <ul style="list-style-type: none"> Services and schools unable to operate within a balanced budget School improvement strategy not being delivered Ineffective service delivery being provided by the directorate More schools converting to academies and the inability 	8 (amber)		8 (amber)	8 (amber)	<p>This risk is linked to the strategic risk 027 around council finances but considers the impact on schools resulting from the central government. When adjusted for inflation, funding per pupil was broadly flat between 2010-11 and 2015-16 at just under £6,400 in 2021-22 prices. It then fell by 4.0% over 2016-17 and 2017-18, but subsequently increased by 1.4% over 2018-19 and 2019-20. Since then, funding increased by 4.5% over the course of 2020-21 and 2021-22 and then by a further 4.2% in 2022-23, reaching £6,780 (in 2021-22 prices).</p> <p>Since financial year 2018-19, a new National Funding Formula (Soft NFF) has been used to determine how much mainstream schools attract in core revenue funding. There are separate formulas for sixth form, high needs, and early years funding. Pupil Premium (additional money to support disadvantaged children) is also paid via a separate grant.</p> <p>The government has said it remains committed to introducing a hard NFF from 2023-24, i.e., one</p>

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		1	2	3	4
	Impact				


Risk Ref	Risk Title and Description	Previous score (Sept 2021)	Direction of travel	Current score (June 2022)	Target score and date	Comment
	<p>to support the remaining Sandwell schools effectively</p> <p>Risk owner – Director of Children and Education (Finance)</p> <p>Directorate priorities impacted: 1, 3, 4 and 5</p>					<p>with a reduced role for local authorities in deciding allocations. In July 2021, it consulted on completing the NFF reforms, proposing a gradual move toward a hard NFF. The government launched phase 2 consultation in June 2022 and have set out that they expect to have moved to the direct NFF within the next five years; which is by the 2027-28 funding year. The government further go on to say, “We hope that we may be able to move to the direct NFF sooner than this – but not later”.</p> <p>Current Controls</p> <p>At present the measures in place to manage the risk include:</p> <ul style="list-style-type: none"> • Regular monthly budget monitoring meetings • Response to on-going schools and SEND consultations • Working with similar LA (through groups like SIGOMA/ADCS) to lobby government on schools funding. • Early identification of schools showing financial strain (through the RAG system) and working with them to prevent them from going into deficit. • Service level agreements with schools for the provision of council services • Regular review of council services provided to schools to ensure they remain effective <p>Further Actions</p> <p>This risk which is likely to remain amber due to the continued uncertainties around funding. As such this risk does not have target dates.</p>


Risk Ref	Risk Title and Description	Previous score (Sept 2021)	Direction of travel	Current score (June 2022)	Target score and date	Comment																																
						The current control mitigates against the risk escalating. The government is still consulting on the changes it proposes, once it is clear as to what these changes will be, consideration will be given to what further actions can be taken to mitigate risk.																																
002 01/19	<p>Implementation of Synergy System</p> <p>If the council does not implement the Synergy education management information system to the required specification and within the appropriate timescales then this will require the continued and extended use of the current Capita system and result in increased financial costs of running the two systems. In addition, the current system will become unsupported.</p> <p>Risk owner – Group Head Education Support Service</p> <p>Priorities impacted: 4 and 5</p>	8 (amber)		6 (green)	4 (green) July 2022	<p>The Capita ONE system is the main education system that is used by the directorate and provides a wide range of statutory and non-statutory functions to the directorate including data on admissions; SEN; free school meals; attendance, etc.</p> <p>The system has been in place since 1993 and following Cabinet approval a procurement exercise was undertaken in 2018 to ensure that any education system was able to provide the current and future needs of the service. The procurement exercise resulted in the award of a contract for a new system provided by Synergy. This risk relates to the implementation of new system.</p> <p>Current Controls</p> <p>In order to manage the risk project management arrangements are in place including a project board; project plan, risk register, regular communications and briefings with staff and training of super users.</p> <p>Implementation is nearing full completion, with the final modules due to complete by July 22.</p>																																
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Risk Ref	Risk Title and Description	Previous score (Sept 2021)	Direction of travel	Current score (June 2022)	Target score and date	Comment																															
						<p>Further Actions</p> <p>Project team will continue to meet to support the next phase which includes:</p> <ul style="list-style-type: none"> - The move to case management to support cross team working. - Evaluation of SEND Transport Module - Review the contract to consider the use of the extension option. 																															
003 03/17	<p>Special Educational Needs and Disabilities (SEND)</p> <p>If the council does not effectively deliver the SEND development plan then the most vulnerable young people will not receive the support and services they are entitled to and may not reach their full potential.</p> <p>Risk owner - Group Head for Inclusion</p> <p>Priorities impacted: 1, 4 and 5</p>	6 (green)		9 (amber)	6 (green) April 2023	<p>In March 2019, Ofsted and CQC revisited Sandwell to establish whether sufficient progress had been made against the Written Statement of Action that was put in place in 2017. The visit concluded that sufficient progress had been made against all weaknesses identified and action areas in the written statement. As a result, the inspectors recommended that the formal monitoring visits by DfE and NHS England (the decision makers) cease.</p> <p>The impact of Covid has resulted in more Children and Young People (C/YP) requiring assessment and support for Special Educational Needs. There are also staff capacity issues across the system (in education, health and social care) which are leading to delays in the completion of holistic assessments of need. This has impacted on the timeliness of C/YP receiving appropriate intervention and provision through an Education, Health and Care Plan / SEN Support Plan</p> <p>Current Controls</p>																															
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						<p>The current measures to manage the risk include a SEND Strategy which is supported by a multi-agency development plan. Priority areas identified are: Quality Assurance of statutory duties, Workforce development, improving provision and improving outcomes. The SEND Strategic Board holds different partners to account for their actions against the development plan.</p> <p>Further Actions</p>																																
05 03/18	<p>High Needs Block (HNB)</p> <p>If the council continues to face increased funding requirements for its high needs block then this will result in significant adverse impact on schools' budgets.</p> <p>Risk owner – Group Head for Inclusion</p> <p>Priorities impacted: 1, 4 and 5</p>	12 (Red)		12 (Red)	8 (amber) April 2023	<p>This risk is a national risk one around the ongoing rise in children and young people with SEND and Education, Health Care Plans (EHCP) and therefore an increasing demand for additional support services for children/ young people with SEND. The increased demand arises from a combination of factors including population growth, advances in medicine which mean children with special needs live longer with more complex needs, better diagnosis of conditions such as autism and extension of the service for children with SEND to age 25 (the latter which took effect from 2014). Covid and subsequent lockdowns / inconsistent educational support has also had an impact.</p> <p>There has also been a significant increase in requests for Specialist Provision (Special schools / mainstream schools with Specialist Resource bases/ SEN Units). A Specialist Place Planning Strategy has been written to address</p>																																
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						<p>capacity issues within Sandwell going forward however current shortfall is being met by independent / Out of borough placements which puts further strain on the HNB.</p> <p>While not currently in deficit, based on the current trajectory that, it could potentially fall into deficit in the next 2 years.</p> <p>The high needs block also funds children in Alternative Provision (AP) which includes pupils who have been permanently excluded from mainstream schools and pupils who are too medically unwell to attend.</p> <p>The Department for Education has issued a Green Paper and consultation proposals on recommendations to improve provision for C/YP with SEND and in AP, including the management of the HNB. Consultation ends in July 22</p> <p>Current Controls</p> <p>Proactive strategies have and continue to be employed to keep spend within budget however this is becoming more challenging as the needs of C/YP increase.</p> <p>Regular reviews of spend in partnership with the School's Forum.</p> <p>Further Actions</p>


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						<p>Review of the HNB based on the outcomes of the Green Paper consultation.</p> <p>Develop a plan to implement any legislative changes made</p>																																
06 03/18	<p>Special Educational Needs and Disabilities Transport</p> <p>If the council does not consider options on how to manage the increasing upwards trajectory of costs in respect of SEND transport then this will significantly impact service budgets and the provision of other services across the directorate.</p> <p>Risk owner – Group Head Education Support Service Priorities impacted: 2, 3 and 4</p>	12 (red)		12 (red)	8 (amber) August 2023	<p>This risk is a subset of the above risk and has been identified separately as a result of its significance as well as subsequent references being made to this risk in the Council's Improvement Plan.</p> <p>The Council has a statutory duty to provide transport assistance to eligible pupils with SEND. The current financial position in this area is challenging, whereby the costs for transport continue to exceed the planned budget due to increasing demand and pressures against current policy provision. There have been ongoing pressures against the SEN transport budget for several years which have historically been covered by savings across the directorate.</p> <p>The risk assessment has been informed by the current outturn forecast position for SEN transport which is an overspend of £1.77m. The reasons for this overspend arise from an increase in the number of children who are eligible for this transport; the increase in the statutory age at which SEN transport must be provided from 18 to 25 years and a general</p>																																
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						<p>increase in transport costs as inflation continues to increase (fuel/energy).</p> <p>Current Controls</p> <p>An external review was commissioned to look at benchmarking current practise and identified potential changes to improve service delivery or reduce costs. The findings will be presented to Cabinet later in the Autumn term.</p> <p>The new transport contracts will be in place from 1 September 2022 to 31 July 2024.</p> <p>Further Actions</p> <p>Recruitment of a SEND commissioner who will undertake periodic review of the delivery of the contract and support future development.</p> <p>Implementation of the recommendations made by Scrutiny and AARC</p>																					
07 04/18	<p>Client function for the Sandwell Children’s Trust Contract</p> <p>If the council does not establish a client function role then it may be unable to effectively monitor the service delivery contract and the service support agreement between the council and the Sandwell Children’s Trust.</p>	8 (amber)		4 (green)	4 (green) To be closed	<p>The contract with SCT has a comprehensive and robust programme of governance arrangements in place, as acknowledged in the Grant Thornton Governance Review. The Director of Children’s Services, together with council senior officers from finance and legal services, and the Chief Executive of the Trust meet on at least a monthly basis to consider performance and operational matters. In addition, each quarter, the Lead Member for Children’s Services, the DCS and the Chief Executive meet with the Chair of the SCT Board and the Chief Executive of SCT, at a Strategic Partnership Board.</p>																					
						<table border="1"> <tr> <td rowspan="4" style="writing-mode: vertical-rl; transform: rotate(180deg);">Likelihood</td> <td>4</td> <td style="background-color: #90EE90;"></td> <td style="background-color: #FFD700;"></td> <td style="background-color: #FF0000;"></td> <td style="background-color: #FF0000;"></td> </tr> <tr> <td>3</td> <td style="background-color: #90EE90;"></td> <td style="background-color: #90EE90;"></td> <td style="background-color: #FFD700;"></td> <td style="background-color: #FF0000;"></td> </tr> <tr> <td>2</td> <td style="background-color: #90EE90;"></td> <td style="background-color: #90EE90;"></td> <td style="background-color: #90EE90;"></td> <td style="background-color: #FFD700;"></td> </tr> <tr> <td>1</td> <td style="background-color: #90EE90;"></td> <td style="background-color: #90EE90;"></td> <td style="background-color: #90EE90;"></td> <td style="background-color: #90EE90; text-align: center;">4</td> </tr> </table>	Likelihood	4					3					2					1				4
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	Risk owner – Strategic Partnership and Commissioning Manager Priorities impacted: 1 and 4	<table border="1"> <tr> <td></td> <td>1</td> <td>2</td> <td>3</td> <td>4</td> </tr> <tr> <td colspan="5">Impact</td> </tr> </table>		1	2	3	4	Impact								<p>The Trust is required to attend Children's Services and Education Scrutiny Board twice a year and at the Budget and Corporate Scrutiny Management Board if requested.</p> <p>Current Controls The Strategic Partnership and Commissioning Manager and Senior Commissioning Manager for Statutory Services have now been in place for over 12 months, these roles provide strong oversight of performance against the Service Delivery Contract.</p> <p>There is a clear trajectory of improvement as evidenced by inspections and monitoring visits undertaken by Ofsted.</p> <p>Further Actions No further action, risk is being closed</p>
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08 03/18	Business Continuity in Sandwell Schools If the council has not put in place arrangements that provide assurance that suitable business continuity plans are in place then in the event of an unplanned	9 (amber)		4 (green)	4 (green) To be closed	To ensure that the directorate has effective business continuity plans in place, the service needs to obtain assurances that sufficient and suitable arrangements are in place in all Sandwell schools in the event of an unplanned emergency such as a partial or full school closure. Current Controls										

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	<p>emergency which forces a school closure, schools will be unable to operate and the council will fail in its statutory duty to provide school places.</p> <p>Risk owner – Group Head Education Support Service/Andrew Timmins</p> <p>Priorities impacted: 1, 3 and 4</p>	<table border="1"> <tr> <td rowspan="5">Likelihood</td> <td>4</td> <td style="background-color: #90EE90;"></td> <td style="background-color: #FFD700;"></td> <td style="background-color: #FF0000;"></td> <td style="background-color: #FF0000;"></td> </tr> <tr> <td>3</td> <td style="background-color: #90EE90;"></td> <td style="background-color: #90EE90;"></td> <td style="background-color: #FFD700;"></td> <td style="background-color: #FF0000;"></td> </tr> <tr> <td>2</td> <td style="background-color: #90EE90;"></td> <td style="background-color: #90EE90;"></td> <td style="background-color: #90EE90;"></td> <td style="background-color: #FFD700;"></td> </tr> <tr> <td>1</td> <td style="background-color: #90EE90;"></td> <td style="background-color: #90EE90;"></td> <td style="background-color: #90EE90;"></td> <td style="background-color: #90EE90; text-align: center;">4</td> </tr> <tr> <td></td> <td style="text-align: center;">1</td> <td style="text-align: center;">2</td> <td style="text-align: center;">3</td> <td style="text-align: center;">4</td> </tr> <tr> <td></td> <td colspan="5" style="text-align: center;">Impact</td> </tr> </table>	Likelihood	4					3					2					1				4		1	2	3	4		Impact								<p>Measures to manage this risk include:</p> <ul style="list-style-type: none"> Schools' business continuity plans which are reviewed by Internal Audit as part of their review of the school A single point of contact for schools to report a closure due to weather or other emergencies A review plan to be prepared after each school closure to ensure any lessons learned are captured <p>Assurances from academies that suitable arrangements and plans are in place to cover any increased financial costs if pupils need to be relocated in the event of a school closure.</p> <p>Further Actions</p> <p>No further action, risk is being closed</p>
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09 04/18	<p>Children Missing Education and from Education (CME and CMfE)</p> <p>If the council does not have effective mechanisms in place to track CME and CMfE then it will fail in its safeguarding duties.</p>	8 (amber)		8 (amber)	4 (green) Sept 2022	<p>Children missing education (CME) are children and young people who are not on a school roll and not in receipt of education at school or otherwise (electively home educated/alternative provision).</p> <p>Children missing from education (CME) are children and young people on a school roll and</p>																																

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	Risk owner – Group Head Education Support Service Priorities impacted: 1, 2 and 4	<table border="1"> <tr> <td rowspan="5">Likelihood</td> <td>4</td> <td>Green</td> <td>Amber</td> <td>Red</td> <td>Red</td> </tr> <tr> <td>3</td> <td>Green</td> <td>Green</td> <td>Amber</td> <td>Red</td> </tr> <tr> <td>2</td> <td>Green</td> <td>Green</td> <td>Green</td> <td>8</td> </tr> <tr> <td>1</td> <td>Green</td> <td>Green</td> <td>Green</td> <td>Green</td> </tr> <tr> <td></td> <td>1</td> <td>2</td> <td>3</td> <td>4</td> </tr> <tr> <td></td> <td colspan="5">Impact</td> </tr> </table>	Likelihood	4	Green	Amber	Red	Red	3	Green	Green	Amber	Red	2	Green	Green	Green	8	1	Green	Green	Green	Green		1	2	3	4		Impact								not in receipt of full-time education (on part-time timetables etc.). The council's Attendance Service provides support to schools and families to reduce lost learning, maintain safeguarding and improving life chances for children and young people. Current Controls There is a robust process in place to identify/monitor & support Children not in Education: The introduction of the DfE White paper "Opportunity for All" and new guidance "Working together to improve school attendance" brings new and increasing responsibilities for the Council. Further Actions An action plan to be in place for the start of the new Academic year.
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10 07/16	Apprenticeship Levy If the council (including schools) does not put in place effective arrangements to use the resources it will have available from the introduction of the apprenticeship levy, then it will	9 (amber)		6 (green)	6 (green) Achieved	The Apprenticeship Levy introduced in 2017 continues to be a requirement for all organisations with a turnover in excess of £3 million. The public sector target is no longer a mandatory target, however the Council has chosen to continue with this target to benchmark performance.																																

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	<p>be unable to maximise benefits and its use of resources and will miss out on the opportunities available through the fund.</p> <p>Risk owner – Employment and Skills Services Manager</p> <p>Priorities impacted: 5 and 6</p>	<table border="1"> <tr> <td rowspan="5">Likelihood</td> <td>4</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>3</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>2</td> <td></td> <td></td> <td>6</td> <td></td> </tr> <tr> <td>1</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td>1</td> <td>2</td> <td>3</td> <td>4</td> </tr> <tr> <td></td> <td colspan="5">Impact</td> </tr> </table>	Likelihood	4					3					2			6		1						1	2	3	4		Impact								<p>For 2021/22, the target equates to 184 apprenticeships for the council. In the last update to the Apprenticeship Board, the actual performance for the year to 31 March 2022 showed that 108 apprenticeships had been placed during the year. Performance for this year has been largely impacted by the pandemic, alongside nationwide recruitment challenges.</p> <p>Current Controls</p> <p>The Council has continued to support local businesses by offering up unspent levy funds for transfer, enabling additional apprenticeships for Sandwell residents and businesses. Also, providing much needed support to industries experiencing growth and skills gaps.</p> <p>Further Actions</p> <p>No further action, risk is being closed</p>
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11 08/19	<p>Impact of School Academisation</p> <p>If the council does not effectively manage schools that have received an academy order prior to the conversion date then this will result in:</p> <ul style="list-style-type: none"> Schools unable to operate within a balanced budget and the overspend/debt 	8 (amber)		8 (amber)	8 (amber)	<p>This risk is linked to the strategic risk 027 around council finances but considers the impact on schools resulting from the implementation of the new Ofsted Inspection Framework for schools which came in to force on 1 September 2019.</p> <p>Current Controls</p> <p>At present the measures in place to manage the risk include:</p> <ul style="list-style-type: none"> Multi-discipline Task Groups are put in place for all schools in Special Measures or that are likely to fail an inspection 																																

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	<p>remaining with the council upon conversion</p> <ul style="list-style-type: none"> Increased risk of school staff redundancy and associated redundancy costs for the council Associated costs for school buildings which may not have been maintained to the expected standard prior to conversion falling to the council. <p>All risks above increase where the council is not contracted to provide services from council HR, Finance or Repairs and Maintenance teams.</p> <p>Risk owner – Group Head for Learning Services</p> <p>Priorities impacted: 1, 3 and 4</p>	<table border="1"> <tr> <td rowspan="5">Likelihood</td> <td>4</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>3</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>2</td> <td></td> <td></td> <td></td> <td>8</td> </tr> <tr> <td>1</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td>1</td> <td>2</td> <td>3</td> <td>4</td> </tr> <tr> <td colspan="6">Impact</td> </tr> </table>	Likelihood	4					3					2				8	1						1	2	3	4	Impact									<ul style="list-style-type: none"> Governing Body are strengthened or removed entirely dependent on performance (using LA powers of intervention) Contingency Dedicated Schools Grant (DSG) has been agreed by Schools Forum up to a maximum of £125,000 per school in difficulty to assist with costs. Monthly monitoring reports of school balances are held by Schools Finance Team and are reported to the Director. Annual Health and Safety reports are completed for buildings maintenance and recommendations for essential work are highlighted to school governing bodies where they do not buy in to the council repairs and maintenance account. <p>With the above control measures in place there remains an ongoing risk due to the uncertainty associated with Ofsted inspection and their judgement differing from the view of the Council.</p>
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12 04/19	<p>Regional Adoption Agency (RAA)</p> <p>If the council does not put in place an effective arrangement to monitor the delivery of the contract with the Regional Adoption Agency,</p>	8 (amber)		8 (amber)	4 (green) October 2022	The regional adoption agency arrangements are intended to improve outcomes for children by speeding up the adoption process, recruiting a wider pool of adopters and improving post-adoption support. There is a potential risk the regional arrangements do not deliver against these intentions. There is a further potential risk																																

Risk Ref	Risk Title and Description	Previous score (Sept 2021)	Direction of travel	Current score (June 2022)	Target score and date	Comment																																	
	<p>Adoption@Heart, then it may not:</p> <ul style="list-style-type: none"> • deliver the best outcomes for children • achieve a good Ofsted outcome • ensure value for money. <p>Risk owner – Director of Children and Education and Strategic Partnership and Commissioning Manager</p> <p>Priorities impacted: 1, 2, and 5</p>			<table border="1" data-bbox="772 279 1191 475"> <tr> <td rowspan="4" style="writing-mode: vertical-rl; transform: rotate(180deg);">Likelihood</td> <td>4</td> <td style="background-color: #90EE90;"></td> <td style="background-color: #FFD700;"></td> <td style="background-color: #FF0000;"></td> <td style="background-color: #FF0000;"></td> </tr> <tr> <td>3</td> <td style="background-color: #90EE90;"></td> <td style="background-color: #90EE90;"></td> <td style="background-color: #FFD700;"></td> <td style="background-color: #FF0000;"></td> </tr> <tr> <td>2</td> <td style="background-color: #90EE90;"></td> <td style="background-color: #90EE90;"></td> <td style="background-color: #90EE90;"></td> <td style="background-color: #FFD700; text-align: center;">8</td> </tr> <tr> <td>1</td> <td style="background-color: #90EE90;"></td> <td style="background-color: #90EE90;"></td> <td style="background-color: #90EE90;"></td> <td style="background-color: #90EE90;"></td> </tr> <tr> <td></td> <td>1</td> <td>2</td> <td>3</td> <td>4</td> <td></td> </tr> <tr> <td></td> <td colspan="5" style="text-align: center;">Impact</td> </tr> </table>	Likelihood	4					3					2				8	1						1	2	3	4			Impact						<p>that the expenditure exceeds the budget available.</p> <p>Current Controls</p> <p>These risks are mitigated through the governance arrangements in place which include:</p> <ul style="list-style-type: none"> • A monthly Management Board meeting (attended by Sandwell Children’s Trust’s Operations Director as lead for the delivery of Adoption related functions) • A quarterly Strategic Commissioning Board meeting attended by the Director of Children’s Services and the CEO of Sandwell Children’s Trust. <p>Additionally, the RAA reports to Sandwell’s Children’s Scrutiny Committee and the Corporate Parenting Board on an annual basis. A Black Country meeting of Lead Members from the four local authorities also meet twice yearly to ensure additional oversight. A Senior Commissioning Manager is in place to strengthen the monitoring and oversight of the contract.</p> <p>Further Actions</p> <p>Discussions are currently underway to amend the governance arrangements, Sandwell are fully engaged in these discussions and will ensure that they continue to afford the Council strong oversight of adoption arrangements. Once this action is complete the risk will move to green.</p>
Likelihood	4																																						
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Risk Ref	Risk Title and Description	Previous score (Sept 2021)	Direction of travel	Current score (June 2022)	Target score and date	Comment
						The progress against the areas identified in the corporate improvement plan to be monitored via the Directorate Management Team.

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Report to Audit and Risk Assurance Committee

21 July 2022

Subject:	Governance Review – Proposed Changes to the Council’s Constitution
Director:	Surjit Tour Director of Law and Governance & Monitoring Officer
Contact Officer:	Elaine Newsome Service Manager – Democracy

1 Recommendations

That the Committee considers the proposed changes to the Constitution detailed in this report and to be considered by Full Council on 26 July 2022, namely:

1.1 That the Key Decision threshold in the Constitution:

1.1.1 be raised to £1m;

1.1.2 that Cabinet Member be delegated to make financial decisions between £500,001 and £999,999;

1.1.3 that the limit of Chief Officers’ financial delegations be raised to £500,000;

1.2 That Contract and Procurement Procedure Rules be revised and amended as proposed in this report.



- 1.3 That the Protocol for the Disposal of Council Owned Land and Buildings, forming part of the Financial Regulations and Procedures, be revised and amended as proposed in this report.
- 1.4 Subject to the approval of the above recommendations, the Director of Law & Governance/Monitoring Officer, in consultation with the Director of Finance (and S151 Officer), be authorised to make all necessary consequential changes to the Constitution to give effect to the approved changes.







2 Reasons for Recommendations

- 2.1 The Council commenced a review of the Council's governance arrangements following the Grant Thornton Governance Review, LGA Corporate Peer Review and CIPFA Review. These reviews identified a number of key governance issues that need to be addressed.
- 2.2 The reviews specifically identified the requirement to address underlying constitutional and procedural deficiencies that directly and indirectly undermine or hinder the Council's governance arrangements, decision making ability and key working relationships.
- 2.3 An Officer Governance Review Project Team has been established to help coordinate and oversee the delivery of the Governance Review. Support has also been provided by the Local Government Association, Centre for Governance and Scrutiny, Chartered Institute of Public Finance and Accountancy, Association of Democratic Services Officers and the Commissioners.
- 2.4 The Governance and Constitution Review Committee, on 27 May 2022, established a cross-party Member Working Group to oversee the process for and coordination of constitution revisions and proposals. The Working Group considered the following proposed changes to the Constitution at its meeting on 14 July 2022:
 - a) Key Decision Thresholds,
 - b) Contract and Procurement Rules, and
 - c) Protocol for the Disposal of Council Owned Land and Buildings.



- 2.5 The changes to the Constitution proposed in his report have been recommended by the cross-party Member Working Group. In order for any of the changes to take effect Full Council approval is required.
- 2.6 Demonstrating progress in respect of the Governance Review is a key area of focus for the Secretary of State and ensuring necessary changes to the Council's Constitution are delivered at pace considered critical to the Council's improvement.

3 How does this deliver objectives of the Corporate Plan?

	Best start in life for children and young people
	People live well and age well
	Strong resilient communities
	Quality homes in thriving neighbourhoods
	A strong and inclusive economy
	A connected and accessible Sandwell

4 Context and Key Issues

BACKGROUND

- 4.1 Earlier this year, we commenced a review of the Council's governance arrangements following the Grant Thornton Governance Review, LGA Corporate Peer Review and CIPFA Review. These reviews identified a number of key governance issues that required consideration and refresh.
- 4.2 The review also identified a need to address underlying cultural and behaviour issues that directly and indirectly undermined the Council's governance arrangements, decision-making ability and key relationships.



4.3 An Officer Governance Project Team has been established to help coordinate and oversee the delivery of the Governance Review. Support has also been provided by the Local Government Association, Centre for Governance and Scrutiny, Chartered Institute of Public Finance and Accountancy, Association of Democratic Services Officers and the Commissioners.

4.4 The Governance and Constitution Review Committee has met and established a cross-party Member Working Group consisting of 10 members – namely, all the members of the Committee and two additional Conservative Group members. The Working Group has started to consider draft constitution proposals and work with other Committees and Boards/Groups to ensure proposed change are joined up, for example, any development and training needs are being fed into the Member Development Programme as training and development needs are identified.

KEY AREAS OF FOCUS

4.5 The Governance Review is refreshing the Council's decision-making mechanisms and updating the constitutional arrangements to enable: the achievement of the Council's strategic direction and ambition, in particular:

- efficient and effective decision-making;
- a more open, transparent and accountable Council;
- greater engagement with residents, communities and stakeholders in relation to democratic functions;
- more effective support to Elected Members to enable them to be confident and successful in their various roles;
- corporate governance documentation, policies and procedures to be updated and revised so that they are consistent with national guidance, align to best practice and are fit for purpose;
- strong and healthy relationships between Elected Members and Officers.



- 4.6 The Governance Review will review all elements of the Council's Constitution in line with the indicative timetable set out below. Where possible, the various work strands will be expedited to ensure the Constitution review is completed as expeditiously as possible, and in any event by the end of the calendar year.

Indicative Timetable

Full Council on 26 July 2022

- Key Decision Thresholds
- Contract and Procurement Procedure Rules
- Protocol for the Disposal of Council Owned Land and Buildings

Full Council on 25 October 2022 -

- Scheme of Delegation to Officers
- Budget & Policy Framework Procedure Rules
- Council Procedure Rules
- Executive Procedure Rules
- Officer Employment Procedure Rules
- Access to Information Rules
- Protocol Member and Employee Relations
- Officers' Code of Conduct

For approval by Full Council on 13 December 2022 -

- Financial Regulations and Procedure Rules
- Scrutiny Review Update/Changes (if any) (including Scrutiny Procedure Rules) Remaining Articles (including Committee Structures and Terms of Reference)
- Responsibility for Functions
- Third Sector Grant Funding & Procedures



CURRENT KEY WORK STRANDS

Key Decision Threshold

- 4.6 It has been recognised that the Governance Review needed to promote and embed effective decision making. Over recent years, more and more decisions have been escalated to Cabinet resulting in inefficient decision making in the Council.
- 4.7 The characteristics of effective decision making include:
- making decisions in a timely manner
 - decisions being made at the right level within the organisation (which is balanced between officers and members)
 - decision making that is informed
 - decisions that are open and transparent and compliant with the Council's Access to Information Rules
- 4.8 To enable decisions to be taken more effectively, it is proposed that the Key Decision Threshold be changed. Details are set out as follows:
- | | |
|---------------------------------------|-----------------------|
| Key Decision threshold to: | £1m (from £250k) |
| Cabinet Member financial delegations: | £500,001 and £999,999 |
| Chief Officers financial delegations: | £500k (from £249,999) |
- 4.9 A comparison has been undertaken with a number of other councils in relation to their financial thresholds. A table showing the different thresholds is set out at Appendix 1.
- 4.10 Given the benchmarking information, the proposal is comparable with some other Local Authorities. The changes to the key decision thresholds will enable more agile decision-making and operational efficiency, which supports the Council's ambitious strategic agenda for delivery and improvement.
- 4.11 It should be noted that decisions taken by officers and Cabinet Members will require the same level of information and consideration of the issues as a decision taken by the Cabinet. Decisions by officers and the Cabinet Member will be accompanied by a Decision Notice that will be published (subject to Sch12 Local Government Act 1972 considerations) and a detailed report that includes all material and relevant information, together with legal, finance, HR, equality and other necessary



implications, to enable an informed decision to be taken. Any delegated decision taken by a Cabinet member or Officer will also be reported to the next available Cabinet Meeting for noting. Such an approach ensures that decision remain open and transparent, and consistent with good governance principles.

Contract and Procurement Procedure Rules (CPRs)

- 4.13 A detailed review has been undertaken in relation to the CPRs with the support of internal staff, another experienced Monitoring Officer and governance practitioner (who also supported Birmingham City Council - via the LGA - with their governance review). The review has drawn upon various officer experiences, including the Council's Interim Procurement Manager. The officers involved collectively have extensive experience that has been gained over many years working at other metropolitan, unitary and district councils.
- 4.14 Support and input has also been provided from the wider Procurement Team, Legal Services and various officers from across the Council who have provided feedback on the CPRs to ensure areas of improvement have been identified and addressed as part of the revision of the Rules.
- 4.15 Initial work undertaken looked at the Council's current CPRs and benchmarking against CPRs from a number of authorities around the country. In particular, consideration has been given to a cross section of Greater Manchester Authorities, including Salford City Council, Manchester City Council, STAR Procurement (Stockport, Trafford, Rochdale and Tameside), Brent LBC and Birmingham City Council. These Councils have either been involved in significant procurement projects, recently undergone a CPR review and/or are considered similar in size to Sandwell MBC.
- 4.16 Overall, the Council's CPR arrangements were broadly similar to the benchmarked authorities. However, there were some areas which needed strengthening, such as robust statements were required about the need to procure within a strong ethical governance environment and this has been reflected in the draft CPRs. The review has also provided the opportunity to deal with changes in the law which were not reflected in any benchmarked examples we reviewed – principally around the changes to the statutory procurement regime following the UK's exit from the EU.



- 4.16 The revised CPRs are set out at Appendix 2. A summary of the changes proposed are set out in a Summary Table at Appendix 3.
- 4.17 Overall, some 70 substantive changes to CPRs are being proposed. These have formed the basis of a consultation exercise in June with a focus group of officers, before the draft CPRs being submitted to the Corporate Leadership Team.
- 4.18 The proposed changes to the CPRs will make procurement more agile and effective whilst retaining the necessary safeguards to ensure governance risks are mitigated and managed effectively. The changes introduce greater flexibilities on decision-making where it was considered sensible to do so, for example on exemptions and quotations; whilst strengthening requisite check and balances to provide effective assurance to the Council. The CPRs will be accompanied by revised Guidance and Protocols that will promote and embed good practice whilst improving timely and effective procurement. The CPRs specifically require compliance with any guidance, advice or protocol issued by the Council's Procurement Team. The revised CPRs therefore seek to strike a balance between the need for an effective legal framework and operational efficacy to delivery effective procurement across the Council.

Financial Regulations (Fin Regs)

- 4.19 A review of the Council's Fin Regs is underway and from the benchmarking exercise are considered to be broadly in line with those found in many authorities, although there are some areas, such as the definition of budget overspends and underspends, that seem to have been affected by historic local circumstances.
- 4.20 The Chief Finance Officer will be keeping the Fin Regs under review throughout the Municipal Year to ensure any emerging issues not currently known or anticipated can be addressed.
- 4.21 The Fin Regs are currently being reviewed and a revised version will be considered by Full Council at a later meeting.
- 4.22 The review is almost complete and comprises of consequential changes from the (anticipated) proposed increase in the Key Decision



Thresholds; corrections to Committees references, updates to teams and officer designations and removal of provisions no longer used.

4.24 The Director of Finance has been engaged in the review of the Fin Regs. The changes will help embed improvements to the Council financial management arrangements, provide greater clarity and understanding for members and officer, and ensure financial responsibility and accountability sits at the heart of the Fin Regs.

Protocol for the Disposal of Council Owned Land and Buildings ("Protocol")

4.25 The Protocol forms part of the Council's Fin Regs. It was introduced to bolster the Council's governance and decision making around the disposal of significant land and building assets.

4.26 The Protocol provides an opportunity for potential land and building assets considered to be surplus to requirements and appropriate to be disposed of, to be considered by the Land and Asset Management Committee (subject to the value meeting the threshold) prior to any disposal. The Committee whilst not a decision-making Committee, will make recommendations to the Cabinet Member or Cabinet on any qualifying disposal.

4.27 The proposed changes to the Protocol focus on ensuring the Protocol is clear, the thresholds set at the appropriate level to ensure decision making is effective whilst ensuring the requisite checks and balances are in place.

4.28 The proposed Protocol for the Disposal of Council Owned Land and Buildings is set out at Appendix 4.

5 Implications

Resources:	There are no direct resources implications arising from this report. However, the changes proposed enables more effective decision making, greater financial oversight and management. The changes ensure greater clarity around obligations, approach and expectations which are essential to promote and embed good governance.
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<p>Legal and Governance:</p>	<p>The proposals will enable high standards of decision making across the authority and addresses the recommendations contained within the Council's Improvement Plan.</p> <p>The council must ensure good governance underpins its decision making which needs to be informed and timely. The proposed changes seek to achieve this whilst striking a balance between the necessary safeguards necessary tom provide assurance to the Council.</p> <p>Any constitutional changes require Full Council approval.</p>
<p>Risk:</p>	<p>The proposed changes will reduce the Council risk of challenge as more informed and effective decision making will be achieved. Mitigation of risks associated with decision making is essential and protects the council from avoidable challenge and reputational harm.</p>
<p>Equality:</p>	<p>There are no direct equality implications arising from this report save that all decision making needs to be compliant with the Equality Act 2010 and the public sector equality duty. All decisions must therefore consider relevant equality, diversity and inclusion implications.</p>
<p>Health and Wellbeing:</p>	<p>There are no direct implications for health and wellbeing from this report.</p>
<p>Social Value</p>	<p>The changes [proposed to the Contract and Procurement Rules promote and emphasise the need to ensure social value is properly considered and encouraged wherever possible.</p>

6 Appendices

Appendix 1 – Key decision thresholds

Appendix 2 – Draft Contract Procedure Rules



7. Background Papers

Constitutions of Salford City Council, Manchester City Council, STAR Procurement (Stockport, Trafford, Rochdale and Tameside Councils), Brent LBC, Birmingham City Council, Durham County Council, Nuneaton and Bedworth Borough Council, Gateshead Metropolitan Borough Council, Nottinghamshire County Council, Hertfordshire County Council, Liverpool City Council.



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Appendix 1

Benchmarking Exercise Key Decision Financial Threshold Data from metropolitan districts and local neighbours

Council	Financial threshold
Barnsley	£500k
Birmingham	£1million Capital £500k Revenue
Bolton	£100k
Bradford	£250k
Calderdale	£200k
Coventry	£1million
Doncaster	£1million Capital £250k Revenue
Dudley	£250k
Gateshead	£250k
Kirklees	£250k
Knowsley	£250k Revenue £1m Capital
Leeds	£500k
Liverpool	£250k
Manchester	£500k
North Tyneside	£500k
Newcastle upon Tyne	£1million capital £250k revenue
Oldham	£250k
Rochdale	£500k
Rotherham	£400k
South Tyneside	£250k
Salford	£350k £1million for procurement
Sandwell	£250k
Sefton	£100k or more than 2% of a Departmental Budget, whichever is greater
Sheffield	£500k
Solihull	£250k
St Helens	£500k
Stockport	£500k
Sunderland	£250k

Tameside	Any Executive decision which requires a budget expenditure of £30,000 or more that is not in the budget presented to Council; or Any Executive decision to vire £500,000 or more in the budget presented to Council;
Trafford	£500k
Wakefield	£250k £500k public health contract spend £1million land and property acquisition or disposal
Walsall	£500k
Wigan	£500k
Wirral	£500k
Wolverhampton	£250k



Sandwell
Metropolitan Borough Council

DRAFT

CONTRACT

PROCEDURE RULES

Reviewed: July 2022

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1. Introduction

1.1. These Contract Procedure Rules (made in accordance with section 135 of the Local Government Act 1972) are intended to promote probity in commissioning and purchasing practice; public accountability; reflect the Council's priorities and deter corruption.

1.2 Purchasing decisions and processes are important because the money involved is public money. The purpose of these Contract Procedure Rules is to provide a structure within which commissioning and purchasing decisions are made and implemented and which ensure that the Council:

- Achieves best value for money, including social value
- Supports all relevant council priorities and policies to include the Corporate Plan and Vision 2030
- Purchases quality goods, services and works
- Safeguards its reputation from any suggestion of dishonesty or corruption
- incorporates principles of sustainability, efficiency, quality, social value, best value for money and whole life-cycle costing
- complies with the Public Contract Regulations 2015 (PCR) and any future amendments

1.3 Basic Principles

1.3.1 All procurement, contracting, contract management and disposal procedures must:

- comply with these rules and Financial Regulations;
- achieve Best Value;
- be consistent with the highest standards of integrity;
- comply with the relevant Legislation (including the Council's statutory duties and powers);
- comply with any relevant Council policies;
- support the Council's corporate and departmental aims; and
- ensure that non-commercial considerations do not influence the award decision.
- must ensure that all procurement activity is transparent and proportionate and that all bidders are treated equally and without discrimination throughout its processes.

1.4 General Principles – Application and Compliance

1.4.1 No contract may be awarded unless there is a budget allocated and the appropriate delegated authority has been granted.

1.4.2 These Contract Procurement Rules apply to the purchase by or on behalf of the Council of works, supplies (goods) and services.

1.4.3 These Contract Procurement Rules apply to all contracts including all purchase orders, concessions and contractual arrangements entered into by or on behalf of the Council, except for the specific types of contracts and purchasing methods which are listed in 2.3.

1.4.4 In the event of conflict between the above, UK legislation will take precedence, then the Council's Constitution, policies and procedures

1.4.5 Non-compliance with these rules could result in a legal challenge to the Council. Therefore, any incidence of non-compliance with these rules could constitute a disciplinary offence.

1.5. These rules should be read in conjunction with the following:

- Financial Regulations
- Scheme of Delegations
- Member Code of Conduct
- Officer Code of Conduct
- Voluntary and Community Sector Grant Funding Guidance and Procedures
- The Public Services (Social Value) Act 2012 Policy and Guidance

1.6. All procurement activity and sales of Council assets, excluding land and buildings, shall comply with these rules unless an exemption is approved under Rule 15. This includes where a partner or consultant has been instructed to invite tenders on behalf of the Council.

1.7. Advice on any matter within these rules can be obtained from the Procurement Services or Legal Services. Where these rules are applicable and engaged any advice, guidance, protocols (or the equivalent) relating to them issued by the council Procurement Team must be adhered to by any officer, member or third party acting on behalf of the council.

1.8 The threshold values at which public procurement opportunities are subject to the full suite of regulations governing public contracts are revised every two years to take account of currency fluctuations, and to ensure the UK complies with its obligations under the World Trade Organisation's Agreement on Government Procurement (GPA). Appendix C sets out the threshold values for public contracts, utilities contracts, concession contracts and defence and security contracts from 1 January 2022. When calculating the estimated value of the contract to determine whether the regulations apply, the contract value estimation should be inclusive of VAT (where applicable) from 1 January 2022.

1.9. Appendix A of these Contract Procedure Rules contains a list of defined words and expressions

2. Scope

2.1. These Rules apply to all contracts with outside organisations or people, including agreements with or on behalf of other public sector organisations and partner agencies, where there is an agreement to supply materials, goods, services or works, in return for money or payments in kind, whether that agreement is formal or informal. This includes:

- a) purchasing of all materials, goods, services or works; and
- b) instruction of outside experts or consultants under contracts for services.

2.2. Where the Council enters into a contract as an agent for another authority the agency agreement should specify which rules apply. Where other public bodies are acting as the lead or contracting body for a procurement that the Council will be participating in, then their own Contract Procedure Rules or Contract Standing Orders will apply.

2.3. However, these rules do not apply to the following areas:

- a) Expenditure funded by EU grants – European Procurement Rules must be complied with. Where use of the Council's centrally arranged contracts is made then compliance with the European Procurement Rules will be achieved.
- b) Grants that are made by the Council to external organisations that do not constitute a contract for services – this expenditure is covered by the Third Sector Grant Funding Guidance and Procedures.
- c) Locally maintained school expenditure operating under the scheme of the delegated budget.
- d) Treasury management transactions, including leasing, exercising borrowing consents, cash management, investments and other transactions in accordance with the Treasury Management Policy.
- e) Contracts of employment which make an individual a direct employee of the Council.

f) Disposal, including sale, of Council owned land and buildings – this is dealt with under the Sale of Land and Buildings Appendix to the Financial Regulations.

2.4. It should be noted that depending upon the terms and conditions, a Development Agreement entered in to by the Council may need to follow the Public Procurement Regulations. Prior advice must be sought from the Monitoring Officer/Chief Legal Officer before steps are taken to negotiate any Development Agreement.

2.5. Advice should be sought from Procurement Services or Legal Services as to whether proposed activity is covered by the scope of these rules.

3. Roles and Responsibilities

3.1. All officers of the Council must adhere to these Rules. The Rules also apply where consultants or third parties are employed to act on behalf of the Council.

3.2. Before commencing any procurement activity, officers must ensure that they have appropriate authority and delegated approval to act. It is the responsibility of individual officers leading on a contract/procurement exercise to ensure appropriate authority to act has been obtained, which might include obtaining the approval of the relevant Cabinet Member or Cabinet and that the budget is available. The officer should consult with Legal Services at the earliest opportunity regarding the proposed form of authority to ensure it is sufficient, but the ultimate responsibility for obtaining appropriate authority rests with the officer. Failure to obtain appropriate authority will cause delay to procurement activity and/or the award of a contract.

3.3. Roles and responsibilities of members and officers across the Council are set out below. Definitions of officers are as in the Scheme of Delegation.

Members

a) Set the strategic direction of services, which informs the requirements from the market.

b) Are not involved in the evaluation of quotations or tenders.

c) Cabinet authorises the commencement of procurement above the Key Decision Threshold (£1million+) and delegates the award of all contracts with total value above the Key Decision Threshold (£1million+) to the relevant Chief Officer/Cabinet Member unless otherwise agreed by Cabinet.

d) Cabinet approves exemptions from any part of these rules for contracts with a total value above the Key Decision Threshold (£1million+director).

e) Individual Cabinet Members authorise the commencement of procurement as it relates to their portfolio for procurement between £500,001 and £1million and may delegate the award of all contracts to the relevant Chief Officer.

f) Individual Cabinet Members approves exemption from any part of these rules for contracts with a total value between £500,001 and £1million as it relates to their portfolio.

g) Cabinet approves and maintains the Council's Procurement Policy Framework

Chief Executive

a) Approves any exemption to these rules for contracts up to a total value of £500,000 which relate to service areas that are the responsibility of the Chief Finance Officer.

b) Endorses any exemption to these rules for contracts with a total value above £500,000 which relate to service areas that are the responsibility of the Chief Finance Officer.

Chief Finance Officer

- a) Act as a compulsory consultee on procurement activity above £250,000 in value to ensure appropriate resources are in place and compliant processes have been followed.
- b) Review all monetary limits shown in these Rules annually and report any resulting amendments to the relevant Cabinet Member.
- c) Act as escalation point for any appeals or reviews made by bidders with regard to these Rules.
- d) Approve any exemptions to these Rules for contracts up to a total value of £500,000 relating to services outside of their area of responsibility
- e) Endorse any exemption to these Rules for contracts above a total value of £500,000 relating to services outside of their area of responsibility.

Chief Officer

- a) Ensure compliance with these Rules across their service areas.
- b) Ensure all strategic procurement projects are properly resourced, and have financial, procurement, legal and (where necessary) HR input from the start.
- c) Ensure delegated authority is obtained as required.
- d) Ensure appropriate cabinet members are briefed on appropriate levels of procurement activity within their portfolios.
- e) Ensure officers are sufficiently trained, experienced and knowledgeable about these Rules and commissioning/procurement activity.
- f) Ensure resources are available to allow compliance with these Rules.
- g) Ensure that the Head of Procurement is notified of all planned procurement activities to include in the Corporate Procurement Plan
- h) Approve the award of contracts relating to their service areas up to a total value of £500,000.
- i) Endorses any exemption to these Rules for contracts relating to their service areas

Director of Law & Governance/ Monitoring Officer

- a) Authorise the commissioning/procurement of legal services for all aspects of Council business.
- b) Act as a compulsory consultee on procurement activity above £250,000 in value to protect the Council's interests and ensure onerous terms and conditions are not entered into.
- c) Act as a compulsory consultee on any Development Agreement.
- d) Enter into contracts on behalf of the authority with delegated authority.
- e) Endorses any exemptions to these rules for expenditure above £250,000 in value

Director of Regeneration & Growth

a) Authorise the commissioning/procurement of advice relating to the valuation, sale or acquisition of land or property.

Head of Procurement

a) Review these rules annually to ensure they are fit for purpose and meet all relevant legislative and policy requirements.

b) Provide advice and guidance on all procurement activity across the Council

c) Endorses any exemptions to these rules prior to Chief Finance Officer/Monitoring Office, other than those for Minimal Quotes/Tenders.

d) Ensures that all procurement activity above £100,000 is compliant with these Rules.

e) Ensure the Procurement Team adhere to The Procurement Processes & Guidance Documents on The Sandwell Intranet Procurement Site.

Service Manager – ICT

a) Authorise the commissioning/procurement of ICT systems and support across the Council.

All Officers of the Council

a) Comply with these rules, The Procurement Processes & Guidance Documents on The Sandwell Intranet Procurement Site, Financial Regulations, Employee Code of Conduct and with all relevant UK legislation.

b) Make use of existing Council contracts and internal suppliers where available.

c) Ensure they and any team members they are responsible for are suitably trained to carry out procurement activities.

d) Ensure that appropriate budget and authorities are in place before commencing procurement activity.

e) Undertake procurement activity for all requirements below £100,000.

f) Consult with Legal Services in relation to obtaining authority to award a contract at the earliest opportunity, including obtaining advice from the lawyer who is assigned to the matter on the form and content of the authority (i.e. either in the form of a Cabinet report or delegated authority).

g) Ensure procurement procedures are commenced as early as possible to ensure compliance with these rules and sufficient pre-market engagement to develop requirements and attract suitable suppliers.

h) Ensure any agents, consultants and contractual partners acting on their behalf comply with these rules. Legal advice must be obtained by officers where any conflict of interest has potential to impact on a contractual relationship.

- i) Maintain an audit trail of all authorities given and decisions made to show how these rules have been complied with.
- j) Involve Procurement, Finance, Legal Services and (where necessary) HR at the earliest opportunity, and at all stages of a project.
- k) Store all documents electronically and in compliance with any corporate or service specific document management and retention policies.
- l) Ensure that all opportunities are advertised as per procedures set out in this document to achieve value for money.
- m) Monitor contracts for which they are responsible, and manage issues arising to ensure optimum contract performance.

Third Parties commissioned to act on behalf of the Council

- a) Must comply with these rules
- b) Must not carry out any procurement activity without prior consultation with Head of Procurement
- c) Ensure any conflict of interest is avoided in the first instance or declared to the appropriate Chief Officer/Service Manager as soon as possible. Legal advice must be obtained by officers where any conflict has potential to impact on a contractual relationship.

4. Conduct of Officers, Members and Suppliers

4.1. The Council will adopt the necessary processes and procedures to be able to demonstrate a fair and transparent procurement process, providing auditable justification for all decisions made.

4.2. Where bidders attempt to influence the outcome of a procurement process other than through proper participation (e.g. by canvassing members), they will be excluded from the procurement process to which such canvassing or approaches relate.

4.3. Every **Member** and officer of the Council shall declare any personal or prejudicial interest in any contract in accordance with the Council's Code of Conduct for Councillors and Code of Conduct for Officers. Such interests should be recorded in the Members' or Employee's Registers of Interest.

4.4. Any potential conflict of interest in relation to a procurement e.g. a relationship with a bidder or a company operating in the market, or a personal interest in the matter, must be identified and recorded at the earliest opportunity to ensure equal treatment of bidders and a fair and transparent procurement process. Advice should be sought from the Head of Procurement and such action should be taken to remove the conflict e.g. employee not taking part in the evaluation of the bid.

4.5. No **Member** or officer of the Council shall in a personal capacity enter into any contract on behalf of the Council.

5. Use of Internal Providers and Council-Wide Contracts

5.1. Where an internal service can provide the goods or service, this must be used in the first instance.

5.2. Where the Council has corporately procured a contract or framework agreement, these contracts should be used as the Council will be obtaining value for money by procuring corporately. The requirements of these rules will have been addressed, value for money ensured, and standard terms and conditions used.

5.3. A list of all corporately procured contracts is maintained by the Corporate Procurement Service and made available on the Council's intranet.

5.4. **As required by the Financial Regulations**, purchase orders must be raised via the Oracle Financials system (SBS). Where possible, Council-wide contracts should be available through catalogues via the Oracle Financials system (SBS).

5.5. Subject to any pre-existing exclusivity arrangements which oblige the Council to use a pre-existing contract, where the appropriate Chief Officer (in consultation with the **Head of Procurement**) considers that there are specific advantages to be obtained by negotiating a separate contract for corporately procured goods or services, then written approval must be sought from the **Head of Procurement** and retained on the appropriate contract file.

5.6. Failure to use existing corporately procured contracts where available can be viewed as a disciplinary offence, unless approval is given as per paragraph 5.5 above.

5.7. Where there are no internal suppliers or existing contracts in place, officers must follow the procedures set out in this document to identify external suppliers.

6. Contracts Relating to Assets

6.1. These Rules do not apply to the sale or disposal of Council owned land or buildings. Transactions of this nature must adhere to the Sale of Land and Buildings Protocol within the Financial Regulations.

6.2. Where the sale of land also specifies works or services to be carried out by the developer then advice should be sought from Legal Services as the land sale could constitute a public works contract or public services contract which would be subject to these Rules as well as the Sale of Land and Buildings Protocol.

6.3. These Rules do apply to the acquisitions, leases, licenses, agreements and other matters relating to land or property, except where they have been expressly varied. Any arrangements must adhere to the Financial Regulations.

7. Procurement Cards

7.1. Procurement cards should be used in the following circumstances:

a) **For all requirements where there is no written contract in place with a maximum transaction value of £500**

and no greater than £1,000 per month; Any spend with a single supplier over £10,000 should follow the procurement process and be contracted.

- b) Where purchase orders cannot be used;
- c) Where there is a requirement to respond to service users' requirements in an emergency or out of normal working hours;
- d) In place of petty cash as far as possible; or
- e) Where online procurement routes offer the only or the most value for money option.

7.2. Procurement cards will be issued subject to the Procurement Card Policy. Before a procurement card will be granted to a card holder, Internal Audit must confirm that there are no significant issues that would identify a high risk of inappropriate use by that individual or that service area.

7.3. Procurement cards will not be used where an internal provider or a corporately procured contract exists, unless this is in the form of an embedded/virtual procurement card.

7.4. Use of procurement cards must be in accordance with the Procurement Card Policy and these Rules, including the use of internal suppliers and corporate contracts (Rule 5) and advertising thresholds (Rule 8). Procurement cards can be used for higher value purchases in emergency situations only.

7.5. Failure to adhere to these procedures will constitute a disciplinary offence.

7.6. Where a procurement card is used, it is the responsibility of the card holder and their budget manager to ensure that value for money is obtained at all times and spend is in line with business need.

8. Values and Advertising Thresholds

8.1. Values (or genuine pre-estimated values) used in the operation of these Rules will normally be the total value of the contract over the whole of the contract term including any extension. **The value will be inclusive of VAT.**

8.2. Where a series of purchases is made for the same or similar purposes, then the value will be the aggregated value of purchases made within any single contract or period of 12 consecutive months. Where a contract is required over a multiple year period, then the total value of that contract must be considered.

8.3. Orders or requirements should not be artificially divided to make two or more orders of a lower value to avoid the requirement to obtain quotations or tenders.

8.4. Advice should be sought from Procurement Services on calculating the estimated value. It may be appropriate to obtain an independently verified estimated before commencing the procurement activity. If an external expert is required, the appointment of that expert must be in line with these rules.

8.5. The value (or genuine pre-estimated value) will determine the procurement method used, as set out in Table 1 below. The value of the contract will depend upon the specification of the goods, services or works required. Details of how estimated figures have been calculated must be kept on the relevant contract file.

8.6. Should the lowest quotation/bid received be above the estimated cost and the value dictates that an alternative procurement method should have been used, Chief Officer approval is required to accept the bids and award the contract after evaluation. Should the lowest tender received be above **£1million** in total value then Cabinet approval will be required to award the contract after evaluation.

8.7 All Contracts and spend with a Supplier in excess of £10,000 needs to be captured on the Councils agreed procurement portal

8.8. Table 1 below sets out the procurement thresholds, minimum number of bids required and the responsibility for obtaining those bids:

Table 1: Advertising Procurement Thresholds

Estimated value of goods, services or works (Including Aggregation)	Minimum number of bid/s required	Method of obtaining bids	Responsibility for obtaining bids	Written Records required
£0-£500	No bids required All noncontractual purchases to be made via procurement card	n/a	n/a Council officers; Purchaser must ensure value for money is being obtained	n/a
£500-£10,000 To be treated as a one-off non-recurring requirement	At least One quotation. Using a Sandwell supplier or if not available a supplier from the West Midlands Combined Authority Area wherever possible.	Verbal enquiries, email confirmation required	Council officers; purchaser must ensure value for money is being obtained	Written quotation from supplier(s) – email acceptable

£10,000-£100,000	Three quotations to be obtained with at least one supplier from Sandwell or if not available a supplier from the West Midlands Combined Authority Area	Advertisement is required via e-Tendering portal for all spend in excess of £25,000 via eTendering portal and Contracts Finder . Specification and selection/award criteria to be included in the invitation to quote (Rule 11)	Council officers	Invitation to Quote, specification documents, quotations and communications from suppliers
£100,001 and above	Three tenders to be obtained In all instances at least one bid should be from a Sandwell Supplier or if not available the West Midlands Combined Authority Area	Advertisement required via eTendering portal and Contracts Finder Sealed or electronic bids	Corporate Procurement Team (excluding Social Care and Public Health Requirements)	Invitation to Tender, tender schedules, bids and communications from suppliers Estimated value of goods, services or works (Including Aggregation) Minimum number of bid/s required Method of obtaining bids Responsibility for obtaining bids Written Records required

8.8. The thresholds set out in Table 1 apply to the procurement of all goods, services or works by the Council

8.9. Where the value determines that a tender is required, advice must be sought from Procurement Services or Legal Services on the most appropriate tendering procedure. Where requirements relate to social care or public health services, then advice must be sought from the delegated teams in those areas.

8.10. If the minimum number of bids required as set out in Table 1 has not been obtained, but at least two bids have been received, approval of the Chief Officer will be required to enable the procurement to proceed. Cabinet approval will be required

for all contracts above **£1million because this is a Key Decision**. Approval must include details on why the bids received represent value for money and any information on process carried out to attract sufficient bids. Details of correspondence must be kept on the relevant contract file to evidence that value for money has still been obtained.

8.11. If only one bid or quotation is received for requirements **over £10,000**, an exemption will be required to award the contract as per Rule 15. The report must set out how the received bid represents value for money.

8.12. If a Framework is used, then the requirements of the mini competition clauses within that agreement must be met.

9. Advertising Requirements and Timescales

9.1. Unless making a call-off from a properly procured Framework Agreement to a single supplier or a direct award, all requirements **above £25,000** in total value must be advertised on the Council's agreed portal. This ensures compliance with the government's Transparency Agenda.

9.2. All adverts for Council requirements will be placed on the Council's e-Tendering portal, which will ensure that the advert is also placed on Contracts Finder. Responsibility for placing the advert will depend on the value and nature of the requirement:

- a) **£25,000-£100,000** – adverts to be placed by the Council officer responsible for procurement;
- b) **£100,000** and above – adverts to be placed by Procurement Services;
- c) Social care and public health – adverts to be placed by designated procurement teams.

9.3. As a minimum, adverts must include the following:

- a) Specification
- b) Selection and award criteria
- c) Closing date and time for responses
- d) Total contract period, including any optional extension period
- e) Whether variant bids will be accepted as part of tender submissions
- f) If the requirements have been divided into lots and if it is the intention to appoint a single supplier or multiple suppliers (Rule10.3).

9.4. Time limits for the return of quotations/tenders will vary dependent upon the value and complexity of the requirements and the process in question. It is the responsibility of the procuring officer, following advice from Procurement Services, to decide the most appropriate timescale for the return of quotations/tenders. However, this must be set to attract the minimum number of quotations/tenders to ensure that

suppliers have a sufficient but not disproportionate period to respond and that value for money has been achieved.

9.5. In all cases, opportunities must be advertised for a minimum of five working days via the Council's e-Tendering Portal. In order to demonstrate value for money, a longer advertising period should be considered. Where the **Public Contracts Regulations 2015** procedure is to be followed, there are prescribed timescales that must be adhered to.

9.6. No quotation/tender/bid received after the closing date/time shall be accepted or considered under any circumstances. Details of the closing date/time must be clearly stated within all invitation to quote/tender documentation.

10. Provisions Applicable to All Procurement Activity and Contracts

10.1. Pre-Market Research, Engagement and Consultation

a) Officers should ensure that the Borough of Sandwell geographical area receives the maximum benefit possible from the expenditure made by the Council.

b) Therefore, an options appraisal should be undertaken by the relevant Service Manager to ascertain what is the most appropriate route to achieving the desired outcomes of the service or project. The appraisal must be approved by the Chief Officer responsible for the service in consultation with the Chief Finance Officer and **Monitoring Officer (Cabinet approval is required for procurement above £1million+, Individual Cabinet Member approval is required for procurement between £500,001 and £1million).**

c) When carrying out this options appraisal full consideration should be given to:

- Vision 2030;
- Public Services (Social Value) Act 2012;
- Working with partners and/or service users through co-design or coproduction.

d) To achieve this, market consultations may be conducted while producing the options appraisal and prior to commencing any procurement exercise, in order to ensure that the best possible outcomes are achieved and benefits to the local community are maximised. Findings from this consultation may be used in the planning and conduct of a procurement procedure, provided that this adheres to the Council's procurement principles of transparency, equal treatment and non-discrimination of all bidders.

e) Independent external organisations may be appointed to assist with market consultations. However, it remains the Council's responsibility to ensure that this does not result in distorted competition (e.g. through the sharing of all relevant information or the setting of adequate timescales for submission of bids).

10.2. Allocation of Resources and Authority to Act

a) Prior to commencing procurement activity, officers must ensure that sufficient resources are in place to cover the life of the contract/requirement. Should additional resources be required, these must be sought in line with Financial Regulations.

b) Prior to commencing procurement activity, officers must ensure that they have sufficient authority to act. This will be dependent upon the value of the requirement, and whether it has been included in the Corporate Procurement Plan. Advice should be sought from Procurement Services and Legal Services on the necessary authority required.

10.3. Specification

a) Officers within the service area must develop a specification for the goods, services or works required prior to commencement of a procurement activity. The level of detail will depend upon the (estimated) value of goods, services or works required commensurate with risk.

b) Specification must include as a minimum:

i. Details of the goods, services or works required, including outcomes to be achieved;

ii. Timescale for delivery/completion;

iii. Expected levels of performance or quality, including links to Social Value that are a requirement; and

iv. Additional desired outcomes to be achieved through Social Value on top of the requirements.

10.4. Division into Lots

a) To make procurement opportunities more accessible to small and medium sized enterprises or to voluntary/community sector organisations, consideration should be made to dividing contracts into separate lots where appropriate.

b) Advice must be sought from the Head of Procurement where consideration is made to dividing contracts into separate lots.

c) Records of all discussions and decisions must be kept on the relevant contract file.

d) The intention to award lots or to award to a single contractor must be specified in the advertisement and all procurement documentation.

10.5. Period of Contract

a) No contract for the supply of goods, services or works shall exceed four years, including any extension, without prior written approval from Cabinet or from the Head of Procurement. This also applies to a framework agreement unless in exceptional circumstances.

b) Details of the total contract period, including any potential extensions, must be included in the initial advertisement and quotation/tender documentation. Allowance

for extension of times to projects with defined Completion Dates must be included in the documentation.

c) Prior to the extension of any contract, officers must ensure that the requirements of Rule 13 have been met.

d) If an additional extension is required, advice must be sought from the Head of Procurement and Legal Services Manager, prior to the submission of an exemption request as per Rule 15.

10.6. Electronic Quotation, Tendering, Communications and Opening of Tenders

a) Unless a requirement of using a Framework stipulates the use of a specific e-procurement tool, all quotations and tendering activity must be via the Council's e-Tendering portal to ensure a fully compliant and auditable quotation and tendering process. This includes the opening of quotations and tenders submitted through the eTendering portal, which ensures sufficient reporting mechanisms and audit trails are in place.

b) Any communication relating to procurement will be via the Councils e-Tendering portal. All documentation relating to contracts procured through a Framework not using the Councils e-Tendering portal are to be uploaded to the Councils e-Tendering portal.

c) This process will be managed by Corporate Procurement Services, with the exception of:

i. Requirements up to a value of £100,000 which will be managed by officers within services; and

ii. social care or public health requirements, which will be managed by those dedicated procurement teams.

d) Where the Council's e-Tendering portal is not used (i.e. for sale of land, assets or property), then tenders for contracts above £100,000 must be opened in the presence of a minimum of two officers, including a nominated officer of the

Democratic Services Unit and an officer of the service area requesting the tender opening delegated this task by the relevant Chief Officer.

e) A record shall be completed at the time of opening tenders detailing:

i. Nature of the goods/materials/services to be supplied or work to be executed, or the title of the land/asset to be disposed of;

ii. Name of each person by on whose behalf the tender was submitted

iii. Date and time of receipt of tender recorded on the envelope/electronic tender system;

iv. Date and time of opening the tenders;

v. Names of all persons present at the opening of the tenders; and

vi. Tender or offer figure (if practicable).

10.7. Risk Assessment

a) Where a contract is awarded with a value in excess of £100,000 or relates to a business critical activity, a risk register should be drawn up for the letting, award and management of the contract in accordance with the [Corporate Risk Management Strategy](#).

b) Further advice should be sought from the Head of Procurement, Risk & Insurance Manager and Legal Services.

10.8. Business Continuity:

a) Evidence of compliant business continuity plans are required for:

i. Any contract in excess of £100,000; or

ii. For any contract identified by the relevant service manager as relating to a business critical activity.

b) Specifications and contracts must include clauses requiring evidence of the contractor's business continuity plans and the Council's right of an independent audit on any or all business continuity.

10.9. Freedom of Information Act 2000:

a) All tender documents shall set out the Council's statement, in a form approved by the Monitoring Officer, concerning the supplier's participating in the tender process and the Council's intention to comply with the Freedom of Information Act 2000.

10.10. Public Services (Social Value) Act 2012:

a) All procurement activity carried out under these rules must consider the inclusion of appropriate social value award criteria, taking into account where social value is incorporated into the requirements of the specification

b) The Act requires these criteria to be relevant to the subject matter of the contract and proportionate to the value and potential impact that could be achieved.

c) Further guidance: [Public Services \(Social Value\) Act Guidance Document](#).

d) Any procurement activity undertaken on behalf of the Combined Authority should follow the approved Policy.

10.11 **UK** General Data Protection Regulation:

a) All tender documents shall set out the requirements, in a form approved by the Monitoring Officer, concerning the expectations relating to the **UK** General Data Protection Regulation (**UK** GDPR).

11 Selection, Contract Award Criteria and Evaluation

11. 1 Use of Selection Questionnaires / Selection Criteria

- a) Selection Questionnaires must not be used for procurements below **the applicable Public Contracts Regulations 2015 Threshold** for supplies and services, other than where deemed appropriate for construction related procurements.
- b) Reasonable and proportionate questions should be asked as part of the tender process to assess the requirements or minimum standards of suitability, capability, legal status or financial standing. of a potential supplier
- c) Where a Selection Questionnaire is required, this must use the Cabinet Office standard documentation,
- d) Selection criteria must be considered prior to publication of quotation/tender and included in the documentation.

11.2 Contract Award Criteria

- a) Where a framework is used, any further competition procedures must adhere to the selection and award criteria set by the framework.
- b) All invitations for quotations or tenders must be in writing and specify whether a contract or offer is to be awarded on the basis of an offer which either:
 - i. Offers the lower price when purchasing goods/services/works, or the highest price when disposing of Council assets/land/property; or
 - ii. Is the most advantageous by reference to price and quality criteria. The criteria could include price, running costs, profitability, period for completion or delivery, technical merit, aesthetic and functional characteristics, after sales service, technical assistance, outcomes for service users, social value impact, etc.
- c) Where bids are evaluated on price and quality, the quality element of the Award Criteria must not exceed 40%, Social Value should account for 5%-30% of this as per Public Services (Social Value) Act Guidance Document (unless the requirement has been included within the specification).
- d) Where the quality element of the Award Criteria needs to be higher, agreement must be sought from the Head of Procurement and records kept on the relevant contract file.
- e) Details justifying all elements of the Award Criteria must be kept on the relevant contract file.
- f) Award Criteria must be set out in the quotation/tender documentation in descending order and must be adhered to without alteration throughout the process.

11.3 Evaluation of Quotations and Tenders

- a) All quotations or tenders submitted in response to an advertisement under Rule 9 must be evaluated in accordance with the principles of transparency equal treatment and non-discrimination, as well as the selection and award criteria disclosed in the invitation as per Rule 11 (Selection Criteria and Award Criteria).

Advice must be sought from Procurement Services on the evaluation and moderation process.

b) Officers must ensure that all evaluations are undertaken in compliance with the Public Contracts Regulations and EU Procurement Directives.

c) Variable bids will not be accepted unless stated within the advertisement and invitation to tender documents.

d) Where examination of quotations/tender submissions reveals an error or omission, the bidder shall be notified only that the submission contains an error or omission. The bidder shall be given the opportunity of either confirming or withdrawing the submission.

12 Construction and Engineering Contracts

12.1 Construction and engineering works valued below the **applicable Public Contracts Regulations 2015** Threshold for Works must make use of Constructionline and contractors approved for health and safety by organisations list by Safety Schemes in Procurement (SSIP).

12.2 Instructions on how to access details of the lists of contractors contained within these databases can be obtained from Corporate Procurement Services.

12.3 Advertisements for these contracts must include:

a) Scope of contract;

b) Registration requirements with Constructionline and SSIP; and

c) How shortlisting will take place

12.4 If the successful company does not meet the required standard, then a suitable time period should be given to ensure compliance during the contract period.

13 Contract Extensions

13.1 Following compliance with instructions on permitted contracting periods for goods, services and works specified in Rule 10, negotiations may only be undertaken to extend contracts provided that the following requirements are met:

a) provision was made in the original advertisement and documentation that it may be subject to an extension – this includes where more than one extension of the contract has been included in the original advertisement;

b) benchmarking with similar organizations has been undertaken to prove that the contract continues to provide value for money;

c) the contract has been monitored and no concerns have been raised with regard to the level of service/quality of goods supplied or sufficient mechanisms, such as a robust improvement plan, are in place that ensure that any identified issues will be resolved;

d) any price increases are in accordance with the relevant contractual provision (e.g. in line with an appropriate published index) and as permitted under **relevant** Procurement Regulations;

e) The appropriate Chief Officer and the Head of Procurement are satisfied that no better terms could be obtained by competitive tendering or that the nature or urgency of the work makes it desirable that the same Contractor is employed. Comments of the Chief Officer and the Head of Procurement are to be kept on the contract file;

f) The Legal Services Manager has been consulted to ensure that the extension does not result in a material change to the Contract; and

g) No variations are being made.

h) Evidence of these requirements being met must be recorded

13.2 The approval to extend any contract should be confirmed in writing by the appropriate Chief Officer and Head of Procurement. If provision to extend the contract was not included in the original advertisement and documentation, and the extension to the contract means that the total contract value is over **£1 million**, then Cabinet authority is required to extend the contract and individual cabinet members at or **above £500,001**.

14 Contract Variations

14.1 Any changes to an existing contract that materially affects the original requirements (whether financial and/or services, goods etc.) may effectively amount to the award of a new contract and so should be subject to a fresh procurement exercise.

14.2 There are six permitted circumstances where variations are permitted to existing contracts and frameworks. Advice should be sought from Legal Services on whether these circumstances apply:

a) Amendments that are clearly provided for in the original procurement and contract documents.

b) Necessary amendments where a change of contractor cannot be made.

c) Unforeseen circumstances have arisen which the authority acting “diligently” could not have foreseen.

d) Amendments to deal with a new contractor replacing the original contractor and this is permitted in the contract or procurement documents.

e) The amendments are “not substantial”.

f) Low value amendments:

i. Falls below the procurement threshold for works and services; and

ii. Is less than 10% of the original contract value for supplies or services and 15% for a works contract;

And

iii. The amendment does not alter the overall nature of the contract.

14.3 The advice of the Legal Services Manager should be sought at an early stage and in any event prior to the submission of any report for an exemption to these rules when any changes to an existing contract are being considered.

14.4 For construction related contracts, paragraph 12 applies unless the terms and conditions of the contract entered into allows for Contract Variations.

14.5 Records of all decisions and supporting evidence must be kept on the contract file.

14.6 Where a variation to a contract increases the total value to £1million+, Cabinet approval is required and between £500,001 and £1million individual Cabinet Member approval is required.

15 Exemptions to the Procurement and Contract Procedure Rules

15.1 An exemption to these rules are not an exemption from the legislative requirements and cannot be granted where a breach of any UK legislation would be incurred.

15.2 Table 2 sets out the authority to grant exemptions to the Contract Procedure Rules and the records required.

Table 2: Authority to Grant Exemptions

Value of Exemption	Authority to Grant Exemption	Records Required
Up to £100,000	Chief Officer following endorsement from Head of Procurement	The request for an exemption must be made in writing setting out the special circumstances justifying the exemption, demonstrate how the action achieves best value for money and indicate any action that may be required to manage risk Approval via email acceptable
£100,000 to £500,000	Chief Officer and Chief Finance Officer following endorsement from Head of Procurement. Where an exemption is for a	The request for an exemption must be made and approved in report format, signed by the Chief Officer and Chief Finance Officer The request must specify the special circumstances justifying the exemption, demonstrate how the action achieves best value for money, and indicate any action that may be required to manage risk

	contract above £100,000, the endorsement of Legal Services is required	Advice must be sought from Procurement and Legal Services at the earliest opportunity. The comments of the Head of Procurement and Legal Services must be included in the report
£500,001 to £1million	Cabinet Member	Report to Cabinet Member including content above
Above £1million+ (Key Decision)	Cabinet	Report to Cabinet including content above

Notice must be included in the Forward Plan within sufficient time to ensure necessary public notice of the decision.

15.3 Any exemption relating to ICT requirements must include comments from the ICT Service Manager.

15.4 An exemption request can only be endorsed / approved by the Chief Finance Officer (S151) where they are independent from the original decision-making process. Where the exemption applies to a service that is the responsibility of the Chief Finance Officer (S151), the exemption must be approved by the Chief Executive.

15.5 Any exemption must be sought within a timescale to allow for the possibility that the request may not be approved. The Head of Procurement will arrange for the exemption request to be presented to the Chief Finance Officer for approval.

15.6 A record of all exemptions approved by the Chief Financial Officer shall be provided to the Cabinet Member for Core Council Services on a quarterly basis for their information.

15.7 Any exceptions to this rule are included in Appendix B, which lists the type of contract/activity where an automatic exemption is given. This list will be updated and approved by the Chief Finance Officer and Monitoring Officer on a quarterly basis and reported to the Cabinet Member for Core Council Services. In general terms, the list includes:

- a) 'genuine sole suppliers' for certain goods, service or works where it can be evidenced that there is no benefit in undertaking a procurement exercise,
- b) Certain social care contracts;
- c) Public health contracts linked to care pathways or patient choice.

Inclusion within this list does not remove the need to ensure that a suitable contract is in place with these suppliers and value for money evidenced (Benchmarking can be undertaken).

15.8 The use of properly procured Framework Agreements meeting the conditions listed in 8.12 and 11.2(a).

16 Contract Award and Contracting Procedures

16.1 Contract Award

a) It is imperative that the appropriate Council authority exists to enter into a contract. This may be a direct authority in the form of a Cabinet decision, or a delegated authority given to a Chief Officer as set out in the Scheme of Delegation.

b) Table 3 sets out the authority to award contracts and the records required:

Table 3: Contract Award Thresholders

Contract Value	Authority to Award Contract	Records Required
Under £100,000	Chief Officer or delegated budget holder in accordance with Financial Regulations (especially 4.12 and 4.13).	Award of contract in email or report format. Under Raising of Purchase Order via SBS will constitute approval to award contract. A record of all contracts awarded must be sent to Head of Procurement for inclusion in the Contracts Register.
£100,000 - £500,000	Chief Officer, in consultation with the Chief Finance Officer	Awarding of a contract must be in report format, setting out the procurement process followed, details of quotations/tenders received, the evaluation methodology and naming the supplier(s) who have made the most economic advantageous offer. Report must be signed by both the Chief Officer(s) set out in this table. Report will also be required in the event that prior authority has been given by Cabinet to a Chief Officer to award a contract above a total value of £250,000.
£500,001 to £1million	Cabinet Member	Report to Cabinet Member including content above, including where any exemptions to these rules are required

£1million+	The relevant Chief Officer/Cabinet Member.	Report to Cabinet including content above, including where any exemptions to these rules are required. Notice must be included in the Forward Plan within sufficient time to ensure necessary public notice of the decision
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16.2 Signing of Contracts

- a) The signing of contracts will be carried out as per the Article 14 of the Council's Constitution (Finance, Contracts and Legal Matters).
- b) Contracts up to the value of £250,000 can be signed by the appropriate Chief Officer. Legal advice must be taken as to whether the contract needs to be sealed with the common seal of the Council.
- c) Contracts of £250,001 or above must be in writing and be signed by the Monitoring Officer or by the Chief Executive and a Legal Services Manager, or sealed with the common seal of the Council.

16.3 Notification to Tenders

- a) Notifications to successful and unsuccessful tendered, including debriefing, must be in writing and adhere to the Public Contracts Regulations. Advice should be sought from Head of Procurement.
- b) Notification of acceptance of a tender which requires a formal contract must be given in writing clearly marked 'subject to contract' and should advise that contract documents are to follow.
- c) All unsuccessful tenderers are to be notified in writing that they have been unsuccessful.

16.4 Standstill Period

- a) For above the applicable Public Contracts Regulations 2015 Threshold procurements, no formal contract or framework agreement shall be entered into before the end of the standstill period of a minimum of 10 days from the date of notification.

17 Contents of Contracts

17.1 Standard terms and conditions of contracts are available; however, each contract should be considered on its own merit. Advice from Legal Services should be sought as to the terms and conditions that should be used.

17.2 The Council shall avoid entering into contracts under a tenderer's/contractor's terms and conditions. However, contractor's own terms may be included in contracts where they are acceptable to the Council

17.3 Contracts must include the following as a minimum:

- a) Specification of goods/services to be supplied or works to be executed or land/asset being disposed of, and the conditions that will apply.
- b) Price to be paid or the rates on which price is calculated, milestones for payments and a statement of discounts or other deductions. If the contract term exceeds 12 months, future pricing structure must be included. If a price fluctuation clause is to be included, then it must make reference to a published index.
- c) Contract period, delivery date or times within which outputs of the contract must be completed.
- d) Details of any extension period and basis upon which this will be agreed.
- e) Required performance levels and details of monitoring/governance arrangements, including those relating to Social Value outcomes.
- f) Details of any indemnities required and how any claims arising will be dealt with and by whom
- g) Provision for audit inspection
- h) Clauses requiring evidence of the contractor's business continuity plans and the Council's right of an independent audit on any or all business continuity
- i) Compliance with the Data Protection Act 2018, Freedom of Information Act 2000, Modern Slavery Act 2015 and UK General Data Protection Regulation.
- j) Contractor to comply with Council's Confidential Reporting Code
- k) Termination of contract, other than through the expiration of the contract term.
- l) Insurance cover requirements

18 Reporting

18.1 Records of all activity and decisions must be retained by the client officer.

18.2 Details of all planned tendering activity must be forwarded to Head of Procurement for inclusion in the Corporate Procurement Plan.

18.3 Details of all contracts awarded over **£10,000** in value must be forwarded to Head of Procurement for inclusion in the contracts register.

18.4 All contracts awarded over **£10,000** in value, and all spend via procurement cards, must be published on the Council's internet. Publishing this information will be the responsibility of the Corporate Procurement Service.

19 Employment of Agency Staff, Consultants and Interim Managers and Use of Personal Service Companies

19.1 All temporary or agency workers must be engaged through the [HR Resourcing](#) team.

19.2 Any agency workers engaged with must be from agencies included on the approved framework used by the Council; failure to comply with this requirement, without approval from the Chief Executive, will be treated as a disciplinary matter.

19.3 All temporary or agency worker engagements, or extensions / redeployments of existing workers, must be approved by the appropriate **Service Manager or above** before being submitted to HR.

19.4 The likelihood of temporary or agency worker engagements being approved will be greatly increased where the following business case is provided, covering:

- a rational explanation as to why the engagement is required;
- an explanation in regard of why a permanent appointment has not been made; and
- what steps will be taken to ensure that the temporary or agency worker engagement is kept to a limited time period.

19.5 Prior to seeking approval to engage temporary or agency workers, managers should liaise with HR Business Partners in regard of identifying/investigating alternative approaches that may be taken to address any resourcing gaps, thus negating the need to engage temporary or agency workers.

19.6 Where the approved framework (as referred to in 19.2) is exhausted, as advised by the HR Resourcing team, the procurement method used for the engagement of agency staff, consultants, interim managers and personal service companies shall comply with the procurement rules as detailed in this document.

19.7 All individual temporary or agency worker engagements will be limited to a period of three months at a time. Periods of longer than three months are only allowed in exceptional circumstances that must be included in the business case provided to HR.

19.8 Any agency staff, consultants, interim managers and personal service companies engaged by the Council shall comply with these rules as though he/she were an officer of the Council.

20 Social Care and Public Health Contracts

20.1 Officers procuring care and public health contracts should follow these rules. The nature of the adult and children's social care and public health services market and commissioning arrangements may require exceptions, as per Appendix A. However, in all instances the procuring/commissioning officer should always ensure that value for money is obtained for both the Council and clients.

20.2 Any Social Services and Public Health related contract, with the total value above the EU threshold for these contracts for must be procured using a procedure that is at least sufficient to ensure compliance with the principles of transparency, equal treatment and non-discrimination. A Notice must be **published on Find a Tender.**

20.3 Residential and nursing care

a) Where there is no standard fee then the service needs to ensure that value for money is provided.

b) Where clients select accommodation costing in excess of the standard fee, placements can be made provided a third party is willing to pay the difference where the service is one where a third-party contribution applies. Suitable records must be maintained demonstrating that the client was given a choice and that it was the client or their authorised representative who exercised that right.

c) Where a placement is to be made where it is not subject to a standard fee, it will not be necessary to obtain competitive quotations provided that the client or his/her representative has chosen the home and/or the social work budget holder (or panel where it exists) has approved the placement. To ensure that value for money is obtained, the Council's approved fee calculating mechanism will be used to determine the cost of the placement. If the fee is more than the fee calculated using the approved mechanism, then this must be justified and approved by an Operations Manager (or equivalent) independent from the original decision-making process. Records must be kept of the circumstances justifying the placement.

d) Where residential placements are made for Public Health services, placement selection must be based on client needs and risk factors. Consideration of market rates for similar provision must also be made to ensure value for money.

20.4 Domiciliary Care

a) It will be necessary to obtain competitive quotations for domiciliary care or non-residential services where there is no standard rate set by the Council. Three quotations should be sought, and the cheapest provider should be used. Where the cheapest provider is not used, the package request must be approved by an Operations Manager (or equivalent) independent from the original decision-making process confirming the package is justified by special circumstances. A record should be kept of the circumstances justifying the package of care.

b) Where the client does not wish to receive a service from the provider deemed the cheapest through the competitive exercise, a direct payment should be offered to the client who will be able to procure the service directly his/herself subject to all of the identified needs being met.

20.5 Specialist Services

a) In some cases, the specialist nature of the assessed service or temporary limitations in the availability of providers will limit the range of alternative suppliers. Where there are no alternative providers such services will be treated as an exception to these rules (Appendix A).

b) It will be the responsibility of the appropriate Chief Officer and Commissioning Manager (or equivalent) to maintain suitable records to demonstrate the appropriateness of this approach and the involvement of more than one officer in the process.

c) Where it is possible to obtain the service from more than one provider, quotations/tenders must be obtained in accordance with Rule 11 and the service commissioned in accordance with Rule 16.

20.6 Public Health Contracts

a) Where the public health service is subject to patient choice from NHS providers and the selection of provider is determined by where patients elect to receive treatment records must be kept to evidence that patients have chosen their healthcare provider. If the expectation is that the provider will deliver services over £100,000 the Council will aim to enter into a contract. Suitable evidence will be kept to substantiate this expectation. Where the Council enters into a contract Rule 16.2 shall apply.

b) Officers should ensure that, where national tariffs are not utilised, that negotiation has been undertaken with healthcare providers to ensure that value for money is achieved. As a minimum, officers should benchmark to give assurances that best value is obtained.

20.7 Sole Provider, Emergency Placements or Emergency Care

a) Where an Exception (Appendix A) has been identified It shall, be the responsibility of the appropriate Chief Officer and Commissioning Manager to regularly review the situation and, should any of the circumstances change, communicate any changes of placement or policy to all appropriate parties.

b) In such cases it shall not be necessary to obtain tenders but the appropriate authorization shall be obtained in accordance with Rule 15.

c) The decision process concerning where the adult or child is to be placed should involve more than one person and this process together with the names of the officers concerned should be evidenced in relevant directorate records.

d) Specifications and agreements should include for exit clauses when it is assessed that the care requirements are no longer required.

e) Agreements should be reviewed on a regular basis and reports placed on the contract file detailing the findings and required action.

21 Procurement Considerations, Social Value and Localism

21.1 The Council is committed to supporting the local economy by ensuring all tendering opportunities are accessible and tenderer friendly.

21.2 Where practical and relevant, tenders should also address the following local social benefits, (as part of the supply chain) through the use of tender quality assessments and method statements.

- employment;
- supply chain;
- apprenticeships;

- community benefit schemes;
- any other benefit that supports the local economy and well-being of Sandwell and the West Midlands Combined Authority Area residents and businesses.

21.4 The Council commits to work with local enterprises through supplier events to offer support and guidance around bidding and working for the Council.

Appendix A – Definitions

- Award a contract - to accept an offer by a supplier;
- Budget - means revenue budgets, capital budgets and other spending programmes approved by the Council;
- Cabinet - the Leader of the Council and the other members of the Council's Cabinet;
- Chief Finance Officer - the officer designated under section 151 of the Local Government Act 1972; • Council - means the Sandwell Metropolitan Borough Council, the Cabinet, a Standing Body or person(s) acting in accordance with authority delegated by the Council;
- Contract - means any agreement (Including Framework Agreements) between the Council and a third party for the provision of any goods, materials, services or works for whatever value. All contract documentation shall be worded and in such form so as to protect the Council's interests, in accordance with advice from the Chief Legal Officer and standard contract documentation;
- Contracts Finder – the web-based portal provided by or on behalf of the Cabinet Office for the publication of information about contracts awarded (<https://www.contractsfinder.service.gov.uk>);
- Contract price in relation to all contracts - means the aggregated cost (including fees) for the whole of the period of the contract. Where a Chief Officer knows that a similar service, supply or type of work is to be ordered during a twelve-month period, this should be taken into account and used for the purposes of the estimated contract price;
- Chief Officer - is defined as a Director and above in the Scheme of Delegation;
- Chief Officer and appropriate Chief Officer – means a Chief Officer or any subordinate officer nominated by their Chief Officer, but the Chief Officer is at all times responsible for the actions undertaken by the subordinate officer;
- Chief Financial Officer – an officer of the Council appointed as the section 151 Officer officer The Director of Finance is the Chief Financial Officer
- Concession Contract - a works or services contract for pecuniary interest concluded in writing by means of which one or more contracting authorities entrust the execution of works or the provision and the management of services (other than the execution of works) to one or more economic operators, the consideration for which consists either solely in the right to exploit the works or the services that are the subject of the contract or in that right together with payment; and that meets the requirements of 3(4) of the Concession Contracts Regulations 2016 (CCR 2016).

Regulation 3(4) of the CCR 2016 further defines the necessary characteristics of the arrangement for the purposes of the regime, which are:

- (a) the award of the contract must transfer to the contractor the operating risk in exploiting the works or services encompassing demand or supply risk or both; and

(b) the part of the risk transferred to the concessionaire involves real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire is not merely nominal or negligible.

- Dynamic Purchasing System (DPS) - the system referred to in regulation 34 of the Public Contracts Regulations 2015. A DPS is a procedure available for contracts for works, services and goods commonly available on the market. As a procurement tool, it has some aspects that are similar to an electronic framework agreement, but where new suppliers can join at any time;

- Financial Regulations - the Council's financial regulations which contain all financial accountabilities in relation to the running of the Council, including the Council budget and Council policy framework;

- Grant – Is the payment of money or some other thing, without the expectation of goods or services in return (this could include making a financial contribution to the independent work of the Voluntary or Community Organisation). A grant is usually provided subject to conditions that state how the grant can be used. The grant aided organisation may use or offer to use the grant to provide goods or services that meet their objectives;

- Key Decision - an executive decision which must be made by the Cabinet which is likely:

(a) to result in the Council incurring expenditure which exceeds that included in any approved revenue or capital budget or the limits set out within an approved borrowing or investment strategy and was not the subject of specific grant; or

(b) to result in the Council incurring expenditure, the making of savings or the generation of income amounting to £1m+

(c) to be significant in terms of its effect on communities living or working in an area comprising two or more wards of the Borough.

- Light Touch - the rules and procedures for the Light Touch Regime Services set out in Chapter 3 of the Public Contracts Regulations 2015 (as amended);

- Monitoring Officer - the officer designated under section 5 of the Local Government and Housing Act 1989 to monitor the Council's compliance with the law and rules of administration. The Director of Law & Governance is the Monitoring Officer;

- Programme - A set of component projects/work streams which have been brought together under one management process to achieve an overall strategic objective/beneficial change and ensure robust governance;

- Project - a component of a programme which has a predetermined outcome or result at a pre-specified time using predetermined resources;

- Signing of Contracts – The execution of a contract by authorised parties by Hand, Deed or e-signature.

- Social Value - activities, approaches and services that help to deliver measurable benefits to local communities' safety, health, prosperity and quality of life, particularly:
- Sustainability – environmental impact
- Local economy
- Support of corporate objectives
- Beneficial impact on local communities – including furthering equalities and community cohesion.

Appendix B - Exceptions

As per paragraph 15.7 of these Rules, an automatic exemption is given to the following types of contract or activity:

- A. Social Care and Public Health Contracts where a Care Pathway is in place. Where associated clinical services are already provided by an NHS provider, records must be maintained, demonstrating the connection between the public health service and the associated clinical service(s) within the care pathway.
- B. ICT Licenses and support costs (where systems are already in place)
- C. Patient or Pupil choice
- D. Sole Suppliers/Providers
- E. Emergency Requirements (when a contract cannot be utilized)
- F. Residential, Nursing and Domiciliary and Nursing Care (where the Council pays a standard fee)
- G. Specialist Social/Public Health Services where alternate providers cannot be identified

Appendix C – Applicable Public Contracts Regulations Thresholds

Valid 1 January 2022 – 31 Dec 2023

Supplies & Services (except subsidised services contracts)

£213,477

Subsidised services contracts

All bodies £213,477

Works (including subsidised works contracts)

All bodies £5,336,937

Light Touch Regime for Services

All bodies £663,540

Small lots

Supplies and services £70,778

Works £884,720

The Utilities Contracts Regulations

Supplies and Services

All sectors £426,955

Works

All sectors £5,336,937

Small lots

Supplies and Services £70,778

Works £884,720

The Concession Contracts Regulations

Concession contracts £5,336,937

The Defence and Security Public Contracts Regulations

Supplies and Services

All sectors £426,955

Works

All sectors £5,336,937

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Summary of draft changes to the Contract Procedure Rules - 2018 – 2019

Updates are captured in this change document and highlighted in yellow on the Draft

For reference, current CPRs available at <https://sandwell.moderngov.co.uk/ecSDDisplay.aspx?NAME=SD304&ID=304&RPID=330485>

Rule Number	Summary of Current Wording	Proposed Change	Comments
Covid update 1-6	A range of statutory relaxations to the procurement arrangements.	Deleted.	The temporary legislative change has now expired and will not be renewed.
1 & 2	Introductory section setting out the purpose and scope of Contract Procedure Rules (CPR).	<p>Introduction expanded. Sets out key principles of good procurement practice, for example:</p> <ul style="list-style-type: none"> • Achieves best value for money, including social value; • Furthers the Council's corporate objectives; • Purchases quality goods, services and works; • Safeguards the Council's reputation from any suggestion of dishonesty or corruption; • Incorporates principles of sustainability, efficiency, quality, social value, best value for money and whole life-cycle costing; • Summarises procurement compliance requirements across all areas of Council functions and activities, identifies when CPR doesn't apply; 	Key principles and purpose of CPR now in line with benchmarked best practice.

		<ul style="list-style-type: none"> Added Contracts of Employment as omitted from scope. 	
1.8	Added.	<p>The threshold values, at which public procurement is subject to the full suite of regulations governing public contracts, are revised every two years to take account of currency fluctuations and to ensure the UK complies with its obligations under the World Trade Organisation's Agreement on Government Procurement (GPA).</p> <p>New Appendix C sets out the threshold values for public contracts, utilities contracts, concession contracts and defence and security contracts from 1 January 2022, inclusive of VAT (where applicable).</p>	Not in the current version of CPR. The thresholds at which trigger the application of the PCR 2015 rules now added.
1.9	A glossary of terms is at the end of this document.	Appendix A contains a list of defined words and expressions. This has been expanded.	Added additional definitions to assist users of CPRs
3	The roles of officers, Members and the Cabinet.	<p>Responsibility for setting procurement framework policy is transferred from the Cabinet Member for Core Services to Cabinet;</p> <p>New confirmation added to clarify that Cabinet authorises the commencement of procurement at or above the Key Decision threshold.</p>	Principles in line with best practice and drawn from benchmarking. Change promotes whole Cabinet responsibility for setting Executive Policy.
Throughout	<p>References to the European Union (EU).</p> <p>OJEU.</p>	<p>Updated to refer to UK domestic law following the UK leaving the EU.</p> <p>Replaced with PCR 2015.</p>	Necessary to assist with statutory compliance and the interpretation of CPR. Most Councils have not yet made these changes in their CPRs.

3.2	Addition.	Added ' <i>may require Cabinet member or Cabinet approval</i> '.	For clarification purposes to ensure appropriate approval is obtained.
3.3	Key Decision Threshold (KDT) £250,000; c) Cabinet awards all contracts with total value above KDT.	KDT throughout increased to £1million+; Cabinet authorises the commencement of procurement above the KDT £1million+ and delegates the <i>award</i> of all contracts at or above KDT to the relevant Chief Officer in consultation with the relevant Cabinet Member unless otherwise agreed by Cabinet. e) Individual Cabinet Members authorise the commencement of procurement as it relates to their portfolio for procurement between £500,001 and £1million and may delegate the <i>award</i> of all contracts to the relevant Chief Officer. f) Individual Cabinet Members approves exemption from any part of these rules for contracts with a total value between £500,001 and £1million as it relates to their portfolio.	More efficient/effective decision making for Cabinet Members whilst retaining full Cabinet oversight. Cabinet approves commencement of procurement and award is based on the agreed evaluation criteria with retained Chief Officer and Cabinet Member oversight. The division of procurement decision-making between Cabinet, Cabinet Members and Chief Officers is in line with best practice.
New			
New			
3.3 Cabinet Member for Core Services	Cabinet Member for Core Services - Sets the procurement policy framework across the council.	Substituted: Cabinet approves and maintains the Council's Procurement Policy Framework.	Emphasis the role of the Cabinet as responsible for the setting of Executive Policy.
3.3 Chief Executive	Approves/Endorses any exemption to these rules for contracts up to a total value of £250,000.	Increased to £500,000	Threshold increased to complement increase in KDT.

3.3 Chief Finance Officer	Act as a compulsory consultee on procurement activity above £100,000. Approve/Endorse any exemptions to these Rules for contracts up to a total value of £250,000.	Increased to £250,000 Increased to £500,000	Threshold increased to complement increase in KDT. Thresholds increased to complement increase in KDT.
3.3 Chief Officer	Approve the award of contracts relating to their service areas up to a total value of £100,000.	Increased to £500,000	Thresholds increased to complement increase in KDT.
Comment (g)	Service Manager – Procurement.	Head of Procurement.	Corrected job title.
Comment (i) deleted	In conjunction with the Chief Finance Officer, approves the award of contracts relating to their services up to a total value of £250,000.	Deleted (i) as duplication.	Duplication.
3.3 Director of Law & Governance / Monitoring Officer	Chief Legal Officer. Act as a compulsory consultee on procurement activity above £100,000. Endorses any exemptions to these rules for expenditure above £100,000 in value.	Replaced with Director of Law & Governance. Increased to £250,000 Increased to £250,000	Corrected job title. Thresholds increased to complement increase in KDT Thresholds increased to complement increase in KDT
3.3 Service Manager procurement	Service Manager – Procurement. Endorses any exemptions to these rules, other than those for Minimal Quotes/Tenders.	Head of Procurement. Endorses any exemptions to these rules prior to Chief Finance Officer/Monitoring Office, other than those for Minimal Quotes/Tenders.	Corrected job title. Clarified requirements.

New		e) Ensure the Procurement Team adhere to The Procurement Processes & Guidance Documents on The Sandwell Intranet Procurement Site.	To ensure the latest Procurement guidance is followed.
All officers of the Council	Added	The Procurement Processes & Guidance Documents on The Sandwell Intranet Procurement Site	Need to ensure anyone engaged in procurement only does so after they have undergone appropriate in-house training and follows the guidance on the Procurement intranet site.
4.3 & 4.5	Elected Member.	Member.	Minor amendment for consistency in the constitution.
5.4	As per the Financial Regulations.	As required by the Financial Regulations.	Amended wording.
5.5	Procurement Services Manager.	Head of Procurement.	Corrected job title.
7.1.a New	For all requirements below £250 where there is no contract in place.	For all requirements where there is no contract in place with a maximum transaction value of £500 and no greater than £1,000 per month in aggregate. Any spend with a single supplier over £10,000 should follow the procurement process and be contracted.	Added how the card is intended to be used £500 per transaction / £1,000 per month /no greater than £10,000 with a single supplier. This is intended as a CPR anti-avoidance measure.
7.2	Appendix C PCard Policy.	Removed	Moved to Procurement Policy Framework Definition
8.1	The value will be net of VAT.	The value will be inclusive of VAT.	New rules state that the estimates should include VAT

8.6	Should the lowest tender received be above £250,000 in total value then Cabinet approval will be required to award the contract after evaluation.	Changed to £1million	Consistent with increase in KDT.
8.7 New		All Contracts and spend with a Supplier in excess of £10,000 needs to be captured on the In-tend Portal.	Part of the automation and improved compliance / visibility of spend.
8.8 from 8.7 Table 1	Threshold £250 - £5,000 Service Area. Threshold £5,000 - £50,000 Service Area. £50,001 - £100,000 3 quotes via procurement. £100,001 and above Procurement.	Threshold £250 - £5,000 Service Area. Threshold £5,000 - £50,000 Service Area. £50,001 - £100,000 3 quotes via procurement. £100,001* and above Procurement. *at least one supplier from Sandwell or if not available the West Midlands Combined Authority Area.	Greater focus on " <i>Spend Local</i> ".
.8.8	The thresholds set out in Table 1 apply to all activities carried out by Sandwell Council, including those for construction and works.	The thresholds set out in Table 1 apply to the procurement of all goods, services or works by the Council.	Expanded for clarity and consistency.
8.10	Contracts above £250,000.	Contracts above £1million.	Updated KDT.
8.11	If only one bid is received for requirements over £5,000, an exemption will be required to award the contract as per Rule 15.	If only one bid or quotation is received for requirements over £10,000, an exemption will be required to award the contract as per Rule 15.	Updated in line with the proposed increase in thresholds.
9.1	Unless making a call-off from a properly procured Framework Agreement to a single supplier or a direct award, all requirements above £5,000 in total	Unless making a call-off from a properly procured Framework Agreement to a single supplier or a direct award, all requirements	Changed to the PCR 2015 threshold of £25,000

	value must be advertised on the Council's agreed portal.	above £25,000 in total value must be advertised on the Council's agreed portal.	
9.5	Where the OJEU procedure is to be followed, there are prescribed timescales that must be adhered to.	Changed to The Public Contracts Regulations 2015.	Reflects compliance with UK law after BREXIT.
10.1a	While procurement has been traditionally used as a mechanism to achieve desired outcomes, this may not be the most advantageous route to achieve the ambitions of Vision 2030.	Removed	Removed as wording lacks substantive meaning.
10.1b	An options appraisal should be undertaken by the relevant Service Manager to ascertain what is the most appropriate route to achieving the desired outcomes of the service or project. The appraisal must be approved by the Chief Officer responsible for the service in consultation with the Chief Finance and Monitoring Officer (Cabinet approval is required for requirements above £250k).	Cabinet approval is required for procurement above £1million, Individual Cabinet Member approval is required for procurement between £500,001 and £1million).	Approval track reminder updated in line with KDT
10.3	Added.	Commensurate with risk.	Strengthened.
10.4b	<i>'...especially where the contract value is above the OJEU Threshold'.</i>	Removed.	OJEU no longer applicable.
10.11	New.	UK.	Referenced UK Law after BREXIT.
11.1a	OJEU Threshold for supplies and services.	Changed to: The applicable Public Contracts Regulations 2015 Threshold	OJEU no longer applicable.
12.1	OJEU.	applicable Public Contracts Regulations 2015.	OJEU no longer applicable.

13.1d	Removed EU Procurement Regulations.	Changed to Relevant Procurement Regulations.	EU Procurement Regulations no longer applicable.
13.2 (was 13.3)	If provision to extend the contract was not included in the original advertisement and documentation, and the extension to the contract means that the total contract value is over £250,000, then Cabinet authority is required to extend the contract.	If provision to extend the contract was not included in the original advertisement and documentation, and the extension to the contract means that the total contract value is over £1million, then Cabinet authority is required to extend the contract and individual cabinet members at or above £500,001	Updated with proposed revised thresholds and greater clarity on the approvals.
14.6 was 14.7	Where a variation to a contract increases the total value to £250,000 or above, Cabinet approval is required.	Where a variation to a contract increases the total value to £1million+, Cabinet approval is required and between £500,0001 and £1million individual Cabinet Member approval is required.	Reference to proposed revised thresholds.
15.2	New.	Labelled as Table 2.	To help with understanding.
15	Above £250,000 Cabinet.	Added Cabinet member £500,000 - £1million Increased to £1million+	inserts delegations to the relevant Cabinet Member that would otherwise go the Cabinet. This is in line with best practice & benchmarking.
15.8 (new)	Added.	15.8 The use of properly procured Framework Agreements meeting the conditions listed in 8.12 and 11.2a.	Strengthened wording around Frameworks.
16.1	This may be formal authority granted by the Cabinet or other delegated authority given to Chief Officers as set out in the Scheme of Delegations to Officers.	This may be a direct authority in the form of a Cabinet decision, or a delegated authority given to a Chief Officer as set out in the Scheme of Delegation.	Improved clarity.
Table 2		Now Table 3.	Renumbering.

Table 3 'Contract award thresholds'	Under £50,000 – Chief Officer or delegated budget holder. £50,000 - £100,000 – Chief Officer or delegated budget holder. £100,000 - £250,000 - Chief Officer, in consultation with the Chief Finance Officer. Above £250,000 Key Decision.	Increased to £100,000 Banding removed as incorporated above. Increased to £500,000 Added Cabinet Member £500,000 to £1million £1million + Cabinet/delegation by Cabinet to Chief Officer/Cabinet Member.	Proposed revised thresholds below and over new KDT. Cabinet approves the commencement of Procurement (above) and delegates authority to <i>award</i> unless otherwise agreed.
16.2	Contracts up to the value of £100,000 can be signed by the appropriate Chief Officer.	Increased to £250,000	Increased the levels for contracts signing to £250k and kept the contracts over £100K to be signed by the Monitoring Officer and a Legal Services Manager.
16.4	OJEU thresholds.	Changed to: the applicable Public Contracts Regulations 2015 Threshold.	Removal of EU Procurements references.
17.1	Chief Legal Officer.	Legal Services.	Corrected to reflect practice.
17.4i	Compliance with Data Protection Act, Freedom of Information Act, Modern Slavery Act and General Data Protection Regulations.	Compliance with the Data Protection Act 2018, Freedom of Information Act 2000, Modern Slavery Act 2015 and UK General Data Protection Regulations.	Corrected references to UK Statute.

18.3	Details of all contracts awarded over £5,000	Details of all contracts awarded over £10,000	To match proposed revised thresholds.
18.4	All contracts over £5,000	All contracts awarded over £10,000	To match proposed revised thresholds.
19.4	Approval of temporary or agency worker engagements, or extensions / redeployments of existing workers, by the appropriate Executive Director	Delegation to the relevant Service Manager or above.	Ability to make temporary changes in a more agile way.
19.5	References to named officers.	Removed officers names and phone numbers.	Names/numbers are soon out of date.
20.2	OJEU Notice (or a PIN) must be published.	Changed to : A Notice must be published on <i>Find a Tender</i> .	Removal of EU Procurement references.
21	New Social Value Commitment.	<p>21.1 The Council is committed to supporting the local economy by ensuring all tendering opportunities are accessible and tenderer friendly.</p> <p>21.2 Where practical and relevant, tenders should also address the following local social benefits, (as part of the supply chain) through the use of tender quality assessments and method statements.</p> <ul style="list-style-type: none"> • employment; • supply chain; • apprenticeships; • community benefit schemes; • any other benefit that supports the local economy and well-being of Sandwell and the West Midlands Combined Authority Area residents and businesses. 	

		21.4 The Council commits to work with local enterprises through supplier events to offer support and guidance around bidding and working for the Council.	
Appendix A	Table of definitions (below).	Expanded to include explanations of words and expressions.	To assist with the interpretation of CPR.
Added	<ul style="list-style-type: none"> • Award a contract - to accept an offer by a supplier; • Cabinet - the Leader of the Council and the other members of the Council's Cabinet; • Chief Finance Officer - the officer designated under section 151 of the Local Government Act 1972; • Contracts Finder – the web-based portal provided by or on behalf of the Cabinet Office for the publication of information about contracts awarded (https://www.contractsfinder.service.gov.uk) • Chief Financial Officer – an officer of the Council appointed as the section 151 Officer officer The Director of Finance is the Chief Financial Officer; • Concession Contract - a works or services contract for pecuniary interest concluded in writing by means of which one or more contracting authorities entrust the execution of works or the provision and the management of services (other than the execution of works) to one or more economic operators, the consideration for which consists either solely in the right to exploit the works or the services that are the subject of the contract or in that right 		Improved definitions to aid understanding.

	<p>together with payment; and that meets the requirements of 3(4) of the Concession Contracts Regulations 2016 (CCR 2016). Regulation 3(4) of the CCR 2016 further defines the necessary characteristics of the arrangement for the purposes of the regime, which are:</p> <p>(a) the award of the contract must transfer to the contractor the operating risk in exploiting the works or services encompassing demand or supply risk or both; and</p> <p>(b) the part of the risk transferred to the concessionaire involves real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire is not merely nominal or negligible.</p> <ul style="list-style-type: none"> • Dynamic Purchasing System (DPS) - the system referred to in regulation 34 of the Public Contracts Regulations 2015. A DPS is a procedure available for contracts for works, services and goods commonly available on the market. As a procurement tool, it has some aspects that are similar to an electronic framework agreement, but where new suppliers can join at any time; • Financial Regulations - the Council's financial regulations which contain all financial accountabilities in relation to the running of the Council, including the Council budget and Council policy framework; • Key Decision - an executive decision which must be made by the Cabinet which is likely: 		
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	<p>(a) to result in the Council incurring expenditure which exceeds that included in any approved revenue or capital budget or the limits set out within an approved borrowing or investment strategy and was not the subject of specific grant; or</p> <p>(b) to result in the Council incurring expenditure, the making of savings or the generation of income amounting to:</p> <ul style="list-style-type: none"> - £250,000 or more where the service area budget exceeds £10m; - £100,000 or more where the service area budget is less than £10m; or <p>(c) to be significant in terms of its effect on communities living or working in an area comprising two or more wards of the Borough.</p> <ul style="list-style-type: none"> • Light Touch - the rules and procedures for the Light Touch Regime Services set out in Chapter 3 of the Public Contracts Regulations 2015 (as amended); • Monitoring Officer - the officer designated under section 5 of the Local Government and Housing Act 1989 to monitor the Council's compliance with the law and rules of administration. The Director of Law & Governance is the Monitoring Officer; • Signing of Contracts – The execution of a contract by authorised parties by Hand, Deed or e-signature. • Social Value - activities, approaches and services that help to deliver measurable benefits to local communities' safety, health, prosperity and quality of life, particularly: 		
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	<ul style="list-style-type: none"> ○ Sustainability – environmental impact; ○ Local economy; ○ Support of corporate objectives; ○ Beneficial impact on local communities – including furthering equalities and community cohesion; 		
Appendix C	Added and referenced in 1.8	<p>Appendix C – Summary of Threshold Levels from 1 January 2022 The Public Contracts Regulations</p> <p><u>Supplies & Services</u> (except subsidised services contracts) £213,477</p> <p><u>Subsidised services contracts</u> All bodies £213,477</p> <p><u>Works</u> (including subsidised works contracts) All bodies £5,336,937</p> <p><u>Light Touch Regime for Services</u> All bodies £663,540</p> <p><u>Small lots</u> Supplies and services £70,778 Works £884,720</p> <p>The Utilities Contracts Regulations</p>	Update thresholds from PCR 2015 regulations.

		<p><u>Supplies and Services</u> All sectors £426,955</p> <p><u>Works</u> All sectors £5,336,937</p> <p><u>Small lots</u> Supplies and Services £70,778 Works £884,720</p> <p>The Concession Contracts Regulations Concession contracts £5,336,937</p> <p>The Defence and Security Public Contracts Regulations</p> <p><u>Supplies and Services</u> All sectors £426,955</p> <p><u>Works</u> All sectors £5,336,937</p> <p>Small lots Supplies and Services £70,778 Works £884,720</p>	
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FINANCIAL REGULATIONS – Appendix 4

PROTOCOL FOR THE DISPOSAL OF COUNCIL OWNED LAND & BUILDINGS

1.0 Introduction

- 1.1** This Protocol governs the disposal of land and property owned by the Council. It applies to all property interests owned by the Council. If a conflict exists between this protocol and statute or guidance (as may be the case, for example, for school properties or for residential properties held in the HRA) then this protocol will be followed to the extent that it does not conflict with statute or guidance.
- 1.2** A disposal of Council-owned land and/or property includes the following:
- Freehold disposal by way of sale;
 - An exchange of Council owned land or buildings.
 - Leasing of Council owned properties on leases in excess of 7 years.
- 1.3** This Protocol applies to every Member and officer of the Council and anyone acting on its behalf. Any exemptions from this Protocol will require approval from Cabinet and should only be sought in exceptional circumstances. If the need for an exemption is urgent and approval cannot be sought from Cabinet in time, approval must be sought from the Leader of the Council, relevant Scrutiny Chairperson and the Chief Executive; and be reported to the next scheduled meeting of the Cabinet.
- 1.4** The document complies with statutory duties and is in line with Government advice recommending that local authorities should have a document of this nature available for inspection and it is intended for use by members, officers, and as a source of information for the public and developers.
- 1.5** It should be read in conjunction with the Council's Responsibility for Functions, the Scheme of Delegation to Officers, Contract Procedure Rules and Financial Regulations, all of which can be found in the Council's Constitution
- 1.6** Failure to follow this protocol may result in disciplinary action or action under the Members' Code of Conduct and Officers' Code of Conduct.

2.0 Legal Background

- 2.1** Section 123 of the Local Government Act 1972 ('LGA 72') states that "a council may dispose of land held by them in any manner they wish" but that "except with the consent of the Secretary of State, a council shall not dispose of land under this section for a consideration less than the best that can reasonably be obtained".
- 2.2** Circular 06/03: "Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained" provides further guidance, and this is referred to in section 7.0 below.
- 2.3** An important distinction exists between the legislation relating to sale of land and property (set out in the LGA 72) and legislation relating to the procurement of services (set out in Public Contract Regulations 2015 'PCR 15'). This distinction is important because the procurement

regime set out in the PCR 15 imposes certain obligations on a public body when entering into contracts for works and services, that do not apply to the disposal of land or real property, and the disposal of land is clearly set out in the legislation and guidance published relating to disposals. The definition of a "*public contract*" identifies four main constituents of such a contract: (1) that it is "*for pecuniary interest*"; (2) that it is "*in writing*"; (3) that it is entered into by an "*economic operator*" and a "*contracting authority*"; (4) that it should have as its "*object*" the "*execution of works*" or the "*supply of products*" or the "*provision of services*" (see *Faraday Developments Ltd v West Berkshire Council* 2016). The sale or disposal of property does not automatically fall into the definition contract for the execution of works, supply of products or provision of services.

- 2.4** Procurement of services generally involves the undertaking of competitive selection processes, and these are not generally necessary or appropriate for land transactions governed by LGA 72. However, where contracts for the sale of land place contractual obligations on the purchaser (other than planning obligations) to undertake activities for the Council's benefit which could be considered to be services, then in certain circumstances, procurement legislation may apply. Legal advice must be sought where such obligations exist or are proposed.

3.0 Roles, Responsibilities and Decision-Making

This section describes the roles and responsibilities of key officers, Council departments, groups, boards, and committees in the disposal of land and buildings:

- 3.1** Full Council: As land disposal is an executive function, decisions to dispose of land & buildings will not normally be referred to a meeting of Council.

- 3.2** Cabinet: Cabinet makes the decision to:

- i. Declare assets Surplus where their value exceeds £1m.
- ii. Dispose of Surplus Assets which exceed £1m in value. In approving disposals, it may delegate to the Director of Regeneration & Growth the responsibility for approving the details of the transaction.

- 3.3** Cabinet Member for Regeneration & Growth (or equivalent Portfolio): Following consultation with the Land & Asset Management Committee, the Cabinet Member for Regeneration & Growth makes decisions to:

- a. Declare assets Surplus where their value is between £500,001 and £1m.
- b. Dispose of Surplus Assets where their value is between £500,001 and £1m. In approving disposals, they may delegate to the Director of Regeneration & Growth the responsibility for approving the details of the transaction.

- 3.3** Director, Regeneration & Growth: The Director of Regeneration & Growth (or equivalent) is responsible for:

- a. As part of Leadership Team, considering proposals to rationalise the operational property estate in response to service needs.

- b. Making recommendations to Cabinet to declare assets in excess of £1m in value surplus.
- c. Making recommendations to Cabinet to dispose of assets over £1m in value.
- d. Making recommendations to the Cabinet Member for Regeneration & Growth to dispose of assets between £500,000 and £1m in value.
- e. In consultation with the Cabinet Member for Regeneration & Growth, with Ward Members as appropriate and with the Director of Finance and s151 Officer, declaring assets between £100,000 and £500,000 in value surplus.
- f. In consultation with the Director of Finance and s151 officer, approving the disposal of assets between £100,000 and £500,000.
- g. In consultation with the Cabinet Member and with Ward Members as appropriate, declaring assets up to £100,000 surplus.
- h. Approving the disposal of assets up to £100,000 in value.
- i. Overseeing the negotiation of property transactions.
- j. Approving the details of transactions in accordance with delegations put in place by Cabinet.

3.4 Audit & Risk Assurance Committee: The Committee reviews policies and procedures, including this document. It is therefore responsible for:

- a. Approving this document as part of the revised Financial Regulations and updates
- b. Reviewing this document periodically as part of their wider review of the Financial Regulations
- c. Reviewing the implementation of this policy and seeking assurance that the policy is followed.

3.5 Scrutiny Panel: Scrutiny Panel has the power to call in and scrutinize individual decisions, including decisions to declare assets surplus and decisions to sell land & buildings (including the terms of transactions).

3.6 Director of Law & Governance and Monitoring Officer:

- a. To execute legal documentation in accordance with instructions received from Cabinet or from the Director of Regeneration & Growth.
- b. To ensure that all transactions are in the Council's best interest, are within the Council's powers and are legal.
- c. To ensure that there are no conflicts of interest arising from a relevant entry in the Members Register of Interests or the Employees Register of Interests.

3.7 Director of Finance and Section 151 Officer

- a. Advising on the financial implications of a property transaction (such as the impact on the revenue budget of selling a capital asset, or the impact on the Council's ledger if a sale price is above or below the most recent asset valuation). Preparing the "Financial Implications" section in Cabinet papers.
- b. Processing any financial receipts and ensuring that they are recorded appropriately in the Council's accounts.

- c. Consulting with the Director of Regeneration & Growth regarding the declaring of assets surplus and the approval of disposal of assets over £100,000 and up to £500,000.

3.8 Leadership Team: Leadership Team has no formal delegations under the Council's constitution, so it does not make decisions as such, but it acts as a forum in which directors can collectively set the direction, including:

- a. Considering whether services can be rationalised, whether buildings can be vacated, and assets declared surplus.
- b. Considering whether proposals should go to Cabinet.

3.9 The Land & Asset Management Committee: has no formal delegations under the Council's constitution, however it will be consulted by and will make representations to the Cabinet Member for Regeneration & Growth prior to decisions being made by that Cabinet Member or Cabinet. It also has the ability to review decisions for consideration and to make recommendations to Cabinet.

3.10 The Land & Asset Management Officers Group has no formal delegations under the Council's constitution, so it does not make decisions as such, but it acts as a forum in which officers from across all the Council's service areas can discuss and agree on proposals to be taken to Leadership Team and to Cabinet.

3.11 Strategic Assets & Land Team will develop proposals to put to the Land & Assets Management Officers Group, to Leadership Team and to Cabinet as appropriate. The team will also be responsible for undertaking negotiations and implementing the decisions made by Cabinet and by the Director of Regeneration & Growth.

4.0 The process of declaring Operational assets 'surplus' to the Council's needs.

4.1 Service Managers will be responsible for defining their service needs as part of the service planning process and agreeing these with their relevant Director. The Strategic Land & Assets Team will support this process by advising on property matters and by identifying the most efficient way of providing for a service area's property needs.

4.2 Where the above process results in property assets being no longer required for service provision (and where this has been confirmed by email by the Director responsible for the service), proposals will be brought to Land & Asset Management Officers Group, which will consider the possible needs of other service areas before recommending that an asset is declared surplus.

4.3 Once a service has declared that they no longer require use of an asset and once the Land & Asset Management Officers Group have considered the needs of other service areas, the decision to declare the asset surplus (if it exceeds £1m in value) will be a decision for Cabinet. For assets between £500,001 and £1m it will be a decision for the Cabinet Member for Regeneration & Growth. For assets between £100,000 and £500,000 in value it will be a decision for the Director of Regeneration & Growth in consultation with the Cabinet Member, with Ward Members as appropriate and with the Director of Finance and s151 officer. For assets below

£100,000 it will be a decision for the Director of Regeneration & Growth in consultation with the Cabinet Member for Regeneration & Growth and relevant Ward Members as appropriate.

- 4.4** Policy decisions which materially affect the delivery of services will usually be made by Cabinet. When such a decision is made it will be good practice to ask Cabinet to delegate responsibility to the Director of Regeneration & Growth, in consultation with the Director of Finance & s151 Officer, to declare surplus any property assets which become surplus as a result of that decision.
- 4.5** Similarly, where policy decisions are made as part of the budget setting process, it will be good practice to ask Cabinet, when they approve the budget, to delegate responsibility to the Director of Regeneration & Growth, in consultation with the Director of Finance & s151 Officer, to declare surplus any property assets which become surplus as a result of the budget setting process.
- 4.6** If Land & Asset Management Officers Group recommends that an asset is declared surplus then a Cabinet paper will be prepared, which will be consulted upon in the usual way with Members and with Leadership Team.
- 4.7** Until an asset is declared surplus in accordance with 4.3 above it remains the budgetary responsibility of the relevant service area. Once it is declared surplus it becomes the responsibility of Strategic Assets & Land who will be charged to dispose of the asset.

5.0 Disposal Method

- 5.1** The Director of Regeneration & Growth will decide on the most appropriate method of disposal taking into account the need to achieve best value, also social value and the corporate priorities of the Council. For assets in excess of £1m in value this decision will be ratified by Cabinet when they approve the disposal. Alternative disposal methods include:
- a. Direct disposal. Where an unsolicited offer is received from a party for an asset, it may be appropriate to negotiate and agree terms with that one party. The Director of Regeneration & Growth will need to be satisfied that the sale complies with the s123 LGA 72 obligation to achieve the best price that can reasonably be obtained, and to that end a Red Book valuation will usually be necessary. Direct disposal is most likely to be appropriate where an offer is made by a special purchaser (eg neighbour), or where there is reason to think that a competitive process is unlikely to achieve a better result. Where there is to be a direct disposal, then the purchaser will be required to formally declare if they have an interest with or are related to an Elected Member or officer of the Council. Where such a relationship is declared, then approval to proceed should be sought from Cabinet regardless of the value of the asset.
 - b. Appointment of agents. Where assets are declared surplus it may be appropriate to appoint a firm of estate agents to market the asset on the Council's behalf.
 - c. Direct Marketing. The Council could itself advertise the asset and deal with enquiries itself.

- d. Sale by tender.
- e. Auction.

6.0 Valuation

- 6.1** For all property disposals a formal written valuation will be obtained and attached to the Cabinet or Individual Cabinet Member report . All valuations must be in line with Royal Institute of Chartered Surveyors professional standards.
- 6.2** The Director of Regeneration & Growth will approve the appointment of a valuer, decide whether the valuation should be conducted internally or by an external valuer, and satisfy himself that no conflicts of interest exist.
- 6.3** If the disposal of an asset has an impact on the value of any retained assets (for example, granting of a lease might have an impact on the value of the retained freehold) then this should be assessed, and it should be explained in the report which seeks approval to the disposal. Advice from Finance should be sought regarding the impact on the Council's annual asset valuations and whether a write-down is necessary.

7.0 Sale at less than Best Value

- 7.1** Circular 06/03: *"Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained"* provides guidance on the circumstances in which assets can be sold for less than Best Consideration Reasonably Obtainable. The Consent removes the requirement for authorities to seek specific consent from the Secretary of State for any disposal where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted ("the undervalue") is £2m or less.
- 7.2** It is Government guidance that local authorities and other public bodies should dispose of surplus land wherever possible. Generally, it is expected that land should be sold for the best consideration reasonably obtainable. However, it is recognised that there may be circumstances where an authority considers it appropriate to dispose of land at an undervalue. Authorities should clearly not divest themselves of valuable public assets unless they are satisfied that the circumstances warrant such action.
- 7.3** The Consent was issued to give local authorities autonomy to carry out their statutory duties and functions, and to fulfil such other objectives as they consider to be necessary or desirable. However, when disposing of land at an undervalue, authorities must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people.
- 7.4** In determining whether to dispose of land for less than the best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the Consent, the authority should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue.
- 7.5** When disposing of land at less than best consideration authorities are potentially providing a subsidy to the purchaser. Legal advice should be sought and consideration should be given to

relevant state aid legislation and to government guidance including the Government's Summary Guidance to Awarding Subsidies.

7.6 Where an asset is being sold at less than Best Consideration then:

- a. If the difference between the unrestricted value of the interest to be disposed of and the consideration accepted (ie the "undervalue") is £50,000 or less, then the decision to sell at less than Best Consideration, together with an explanation as to the rationale, must be made in writing by the Director of Regeneration & Growth, the Section 151 officer and the Monitoring Officer.
- b. If the Undervalue is more than £50,000, then the decision to sell at less than Best Consideration must be made by Cabinet.
- c. If the Undervalue exceeds £2m then the approval of the Secretary of State is required.

7.7 In considering the legal and financial considerations of any disposal at an undervalue and/or granting of a lease, there must be demonstrable evidence that the outcome will be equally beneficial as compared to a disposal at market value and will be for the well-being of the whole or part of the area. If possible, the social, economic or environmental benefits, which are argued to be the justification for a disposal at an undervalue, and/or lease should be quantified in monetary terms.

7.8 Where leases are granted as part of a number of linked transactions, ie where a separate service contract is being entered into between the Council and the lessee, simultaneously with the lease, under which the lessee commits to provide certain services to the Council or to residents, the nature and value of this commitment should be taken into account in (a) assessing whether the disposal is at an undervalue and (b) justifying the undervalue if it exists. Advice from Legal and Finance should be sought in this scenario, and care should be taken to ensure that CIPFA, RICS and other appropriate guidance regarding the treatment of Linked Transactions is followed, and that the Community Asset Transfers will only be undertaken on a leasehold basis. When they do occur they will be undertaken in accordance with the Council's protocol on Community Asset Transfers and in accordance with this protocol.

7.9 In all cases, where a disposal and/or granting of a lease is undertaken at less than best consideration, then to protect the Council's interest in the event of subsequent sales, it must include, where appropriate, an asset lock, clawback, overage or uplift clause, restrictive covenants, ransom strip retention, user rights, forfeiture or break clause or right of pre-emption. This is to ensure that the Council eventually obtains best value and a purchaser does not profit excessively at the expense of the Council.

8.0 Complex Contractual Arrangements

8.1 This section sets out a protocol for undertaking discussions and negotiations with developers relating to Council-owned land. In particular it focuses on the circumstances in which the Council might enter into complex contractual arrangements with property developers relating to land. It defines, purely for the purposes of this document, what we mean by 'complex contractual arrangements', it highlights the risks to be considered and it sets out clear guidance which officers must follow in negotiating and agreeing such arrangements.

8.2 Complex Contractual Arrangements: For the purposes of this document Complex Contractual Arrangements are contracts which commit the Council to dispose of land but where the receipt of purchase monies is delayed and/or is conditional on a future event. Such arrangements include:

- Option agreements which give a developer the right to acquire land at a future date, either at a pre-agreed price, a price to be fixed by a formula (such as a development appraisal) or a price to be fixed by independent valuation.
- Sale contracts or agreements for lease, which are conditional on receipt of a planning approval, on satisfactory due diligence (eg site investigations), funding or other matters.
- Sale contracts or lease agreements where payment of purchase monies is delayed until a future event takes place such as Practical Completion of a development project, completion of other adjoining site acquisitions, future property sales, funding agreements.
- CPO Indemnity Agreements where developers reimburse CPO costs
- Contracts with Overage or profit-share clauses
- Joint Ventures
- Exclusivity agreements
- Promotion agreements
- Release of restrictive covenants.

8.3 Circumstances in which Option Agreements or Conditional Contracts are appropriate: From time to time the Council will want to encourage and promote property development in order to promote regeneration & renewal or to contribute to strategic targets such as housing numbers – and to this end working with, negotiating with and entering into contracts with property developers is an important part of Council business.

8.4 Promoting complex property development schemes is time-consuming and expensive. Developers often spend years promoting schemes through the planning process, incurring large costs in professional fees, only to find that schemes fail to obtain planning approval or they become unviable as costs and values change. It is common therefore for developers to seek to manage their exposure by securing the right to acquire a site (without which they could not justify the expenditure on fees) but preserving their ability to withdraw, or delaying payments for land, until key risks (such as planning) have been mitigated. To a degree, the Council needs to recognise this in its dealings with developers. It does however need to protect its own interests at the same time.

8.5 Risks for the Council: In entering into complex contractual arrangements the Council must take care that it does not:

- a. Find itself unable to terminate an agreement with a developer who is not performing, or where it has become apparent that the scheme cannot be delivered.
- b. Find that the developer is deliberately delaying (for example by delaying signature of a section 106 agreement) and the Council is unable to terminate.

- c. Finds itself under undue pressure to renegotiate the terms of a transaction because the alternative would be non-delivery and political embarrassment, because the agreement cannot be terminated.
- d. Find that it is committed to sell a site for a price which, because of the valuation mechanism employed or because of the outcome of due diligence work, is significantly less than the Council was expecting and/or less than the existing use value of the site.
- e. Find that the conditions in a conditional sale agreement are such that the purchaser is in complete control, and so the conditional contract effectively functions as an option agreement. An example of this is where a contract is conditional on receipt of a 'Satisfactory Planning Permission' and that is defined as 'A permission which the purchaser in their absolute discretion finds satisfactory'.
- f. Find that it is due substantial payments from a corporate entity that has insufficient financial strength, and no bonds or guarantees are in place.

Other risks for the Council include:

- g. Lack of clear distinction between the Council's statutory role as planning authority and its role as landowner and financial beneficiary. A clear distinction is essential from a probity perspective and to avoid Judicial Review of decisions.
- h. Lack of an appropriate competitive process in selecting developers to work with, resulting in procurement challenges and/or best value not being achieved.

8.6 Mitigations: To mitigate these risks the Council should:

- a. Only enter into exclusive discussions with a developer about a development project where that developer has an exclusive position relating to the project, such as ownership of an adjoining site, access rights or other rights which mean only they can deliver the scheme. 'Exclusive discussions' include informal meetings with officers and Members.
- b. Not enter into option agreements which are longer than reasonably necessary. Only under exceptional circumstances should options be more than 18 months long, and they should never be more than five years long. Any extensions beyond the original option period (apart from automatic extensions linked to Judicial Review) must be subject to Cabinet approval at the time that the original option period expires.
- c. Only enter into Option Agreements which have clearly set out milestones which the developer must achieve, and the ability for the Council to terminate if they are not achieved. They might include:
 - i. A timescale for formal planning pre-application discussions
 - ii. A timescale for development of design to each of the RIBA stages
 - iii. A public consultation strategy, with timescales
 - iv. A timescale for submitting planning applications, outline and/or detailed.
 - v. A timescale for satisfactory conclusion of due diligence (site investigations, discussions with the Environment Agency etc) and the ability to terminate if the results are unsatisfactory.

- vi. A timescale for entering into funding agreements
- vii. A timescale for signing section 106 agreements etc.
- d. Only enter into Conditional sale contracts which have similar milestones (and similar ability for the Council to terminate) as set out in c. above. The Conditional Period should not be longer than reasonably necessary. Only under exceptional circumstances should it be more than 18 months long, and it should never be more than five years long. Any extensions beyond the original conditional period (apart from automatic extensions linked to Judicial Review) must be subject to Cabinet approval at the time that the original conditional period expires.
- e. Ensure that before entering into any complex contractual arrangement, it has had sight of the developer's financial appraisals and cost plans, it has had obtained its own professional advice on these and is satisfied that the scheme is viable. If the scheme is not viable then it is inevitable that the developer will delay or will seek to renegotiate, and the Council's expectations will not be met.
- f. Does not enter into contracts for the sale of land where purchase monies are delayed beyond Completion unless:
 - i. There is a guaranteed minimum purchase price (which is not dependent on a future valuation or appraisal) which is equal to or greater than the Open Market Value of the site at the date of the contract, that this is payable unconditionally and that it is suitably secured against the appropriate assets of the purchaser.
 - ii. Payment of the guaranteed minimum purchase price must not be delayed more than 2 years beyond Completion.
 - iii. There is an appropriate drop-dead date by which all purchase monies must be paid regardless of any other factors.
 - iv. The Council retains a charge over the land until all purchase monies are paid.
- g. Only enters into Complex Contractual Arrangements with companies of suitable financial standing or where suitable guarantees are in place.

8.7 The decision to enter into a Complex Contractual Arrangement is a decision for Cabinet if the likely end sale price of the land (including any uplift resulting from change of use) exceeds £1m. If the likely price is between £500,001 and £1m it will be a decision for the Cabinet Member for Regeneration & Growth. If the likely price is between £100,000 and £500,000 it will be a decision for the Director of Regeneration & Growth in consultation with the Cabinet Member, with Ward Members as appropriate and with the Director of Finance and s151 officer. If it is below £100,000 it will be a decision for the Director of Regeneration & Growth in consultation with the Cabinet Member and Ward Members as appropriate.

9.0 Legal Documentation

9.1 For Complex Contractual Arrangements or for transactions with a consideration in excess of £1 million, the Director of Regeneration & Growth, in consultation with the Director of Law & Governance, will approve the selection and appointment of an appropriate firm of lawyers to represent the Council.

9.2 Documents will be executed in accordance with the Scheme of Delegations, including affixing the Council's common seal when necessary. Documents prepared by external legal representatives will be reviewed by the Director of Law & Governance and Monitoring Officer, to ensure they comply with the Council's legal duties and responsibilities and in accordance with the Council's Constitution (including this protocol, to the extent that it is relevant).

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	Existing Protocol	Proposed New Protocol	Reasons for Change
1	A disposal of council-owned land and/or property includes the following: <ul style="list-style-type: none"> • Freehold disposal by way of sale; • An exchange of council owned land or buildings. 	<p>This Protocol governs the disposal of land and property owned by the Council. It applies to all property interests owned by the Council. If a conflict exists between this protocol and statute or guidance (as may be the case, for example, for school properties or for residential properties held in the HRA) then this protocol will be followed to the extent that it does not conflict with statute or guidance.</p> <p>A disposal of Council-owned land and/or property includes the following:</p> <ul style="list-style-type: none"> • Freehold disposal by way of sale; • An exchange of Council owned land or buildings. • Leasing of Council owned properties on leases in excess of 7 years. 	More precise language. Clarity about the relationship between this Protocol and other guidance & legislation.
2	The protocol applies to every Member and Officer of the Authority and anyone acting on its behalf. Any exemptions from this protocol will require approval from Cabinet.	This Protocol applies to every Member and officer of the Council and anyone acting on its behalf. Any exemptions from this Protocol will require approval from Cabinet and should only be sought in exceptional circumstances	To emphasize the status of the protocol and the need to follow it.
3	The document complies with statutory duties and is in line with Government advice recommending that local authorities should have a document of this nature available for inspection and it is intended for use by Council Officers, Local Councillors, members of the public and developers.	The document complies with statutory duties and is in line with Government advice recommending that local authorities should have a document of this nature available for inspection and it is intended for use by members, officers, and as a source of information for the public and developers.	No change
4	It should be read in conjunction with the Council's Responsibility for Functions, the Scheme of Delegation to Officers, Standing Orders,	It should be read in conjunction with the Council's Responsibility for Functions, the Scheme of Delegation to Officers, Contract Procedure Rules and Financial	More precise language

	Procurement and Contract Procedure rules and Financial Regulations.	Regulations, all of which can be found in the Council's Constitution	
5	Failure to adhere to this protocol may result in disciplinary action and / or a standards investigation.	Failure to follow this protocol may result in disciplinary action or action under the Members' Code of Conduct.	More precise language
	Not Covered	<p>Legal Background</p> <p>Section 123 of the Local Government Act 1972 ('LGA 72') states that "a council may dispose of land held by them in any manner they wish" but that "except with the consent of the Secretary of State, a council shall not dispose of land under this section for a consideration less than the best that can reasonably be obtained"</p> <p>Circular 06/03: "Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained" provides further guidance, and this is referred to in section 7.0 below.</p> <p>An important distinction exists between the legislation relating to sale of land and property (set out in the LGA 72) and legislation relating to the procurement of services (set out in Public Contract Regulations 2015 'PCR 15'). This distinction is important because the procurement regime set out in the PCR 15 imposes certain obligations on a public body when entering into contracts for works and services, that do not apply to the disposal of land or real property, and the disposal of land is clearly set out in the legislation and guidance published relating to disposals. The definition of a "public contract" identifies four main constituents</p>	To ensure that the Protocol is closely aligned with the relevant legislation and government guidance.

		<p>of such a contract: (1)that it is "<i>for pecuniary interest</i>"; (2)that it is "<i>in writing</i>"; (3) that it is entered into by an "<i>economic operator</i>" and a "<i>contracting authority</i>"; (4) that it should have as its "<i>object</i>" the "<i>execution of works</i>" or the "<i>supply of products</i>" or the "<i>provision of services</i>" (see Faraday Developments Ltd v West Berkshire Council 2016). The sale or disposal of property does not automatically fall into the definition contract for the execution of works, supply of products or provision of services.].</p> <p>Procurement of services generally involves the undertaking of competitive selection processes, and these are not generally necessary or appropriate for land transactions governed by LGA 72. However, where contracts for the sale of land place contractual obligations on the purchaser (other than planning obligations) to undertake activities for the Council’s benefit which could be considered to be services, then in certain circumstances, procurement legislation may apply. Legal advice must be sought where such obligations exist or are proposed.</p>	
6	<p>In determining whether or not to dispose of land for less than the best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the Consent, the authority should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a</p>	<p>Sale at less than Best Value</p> <p>Circular 06/03: "<i>Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained</i>" provides guidance on the circumstances in which assets can be sold for less</p>	<p>Improved alignment to the relevant law & guidance.</p>

	<p>professionally qualified valuer as to the likely amount of the undervalue.</p>		
<p>7</p>	<p>All disposals need to comply with the European Commission's State aid rules. The Commission's Communication on State aid elements in sales of land and buildings by public authorities (97/C 209/03) provides general [ILO: UNCLASSIFIED] guidance on this issue. When disposing of land at less than best consideration authorities are providing a subsidy to the owner, developer and/or the occupier of the land and property, depending on the nature of the development. Where this occurs authorities must ensure that the nature and amount of subsidy complies with the State aid rules, particularly if there is no element of competition in the sale process. Failure to comply with the rules means that the aid is unlawful, and may result in the benefit being recovered with interest from the recipient.</p> <p>Before disposing of any interest in land for a price which may be less than the best consideration reasonably obtainable, local authorities are strongly advised in all cases to ensure that they obtain a realistic valuation of that interest. This applies even for disposals by means of formal tender, sealed bids or auction. By following this advice, an authority will be able to demonstrate that it has adopted a consistent approach to decisions about land disposals by carrying out the same step by step valuation process on each occasion. Supporting documents should provide evidence that an</p>	<p>than Best Consideration Reasonably Obtainable. The Consent removes the requirement for authorities to seek specific consent from the Secretary of State for any disposal where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted ("the undervalue") is £2m or less. It is Government guidance that local authorities and other public bodies should dispose of surplus land wherever possible. Generally, it is expected that land should be sold for the best consideration reasonably obtainable. However, it is recognised that there may be circumstances where an authority considers it appropriate to dispose of land at an undervalue. Authorities should clearly not divest themselves of valuable public assets unless they are satisfied that the circumstances warrant such action.</p> <p>The Consent was issued to give local authorities autonomy to carry out their statutory duties and functions, and to fulfil such other objectives as they consider to be necessary or desirable. However, when disposing of land at an undervalue, authorities must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people.</p> <p>In determining whether to dispose of land for less than the best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the Consent, the authority should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally</p>	

	<p>authority has acted reasonably and with due regard to its fiduciary duty.</p>	<p>qualified valuer as to the likely amount of the undervalue.</p> <p>When disposing of land at less than best consideration authorities are potentially providing a subsidy to the purchaser. Legal advice should be sought and consideration should be given to relevant state aid legislation and to government guidance including the Government’s Summary Guidance to Awarding Subsidies.</p> <p>Where an asset is being sold at less than Best Consideration then:</p> <ol style="list-style-type: none"> a. If the difference between the unrestricted value of the interest to be disposed of and the consideration accepted (ie the “undervalue”) is £50,000 or less, then the decision to sell at less than Best Consideration, together with an explanation as to the rationale, must be made in writing by the Director of Regeneration & Growth, the Section 151 officer and the Monitoring Officer. b. If the Undervalue is more than £50,000, then the decision to sell at less than Best Consideration must be made by Cabinet. c. If the Undervalue exceeds £2m then the approval of the Secretary of State is required. <p>In considering the legal and financial considerations of any disposal at an undervalue and/or granting of a lease, there must be demonstrable evidence that</p>	
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		<p>the outcome will be equally beneficial as compared to a disposal at market value and will be for the well-being of the whole or part of the area. If possible, the social, economic or environmental benefits, which are argued to be the justification for a disposal at an undervalue, and/or lease should be quantified in monetary terms.</p> <p>Where leases are granted as part of a number of linked transactions, ie where a separate service contract is being entered into between the Council and the lessee, simultaneously with the lease, under which the lessee commits to provide certain services to the Council or to residents, the nature and value of this commitment should be taken into account in (a) assessing whether the disposal is at an undervalue and (b) justifying the undervalue if it exists. Advice from Legal and Finance should be sought in this scenario, and care should be taken to ensure that CIPFA, RICS and other appropriate guidance regarding the treatment of Linked Transactions is followed.</p> <p>Community Asset Transfers will only be undertaken on a leasehold basis. When they do occur they will be undertaken in accordance with the Council's protocol on Community Asset Transfers and in accordance with this protocol.</p> <p>In all cases, where a disposal and/or granting of a lease is undertaken at less than best consideration, then to protect the Council's interest in the event of subsequent sales, it must include, where appropriate, an asset lock, clawback, overage or uplift clause, restrictive covenants, ransom strip retention, user rights, forfeiture or break clause or</p>	
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		right of pre-emption. This is to ensure that the Council eventually obtains best value and a purchaser does not profit excessively at the expense of the Council.	
8	The Full Council is responsible for: <ul style="list-style-type: none"> • Adopting the Council's Constitution and Members Code of Conduct and for approving the policy framework, budget and borrowing within which the Cabinet operates; • Approving and monitoring compliance with the Authority's overall framework of accountability as set out in its Constitution; • Monitoring compliance with agreed policy and reporting decisions taken; • Making or amending Procurement and Contract Procedure Rules and Financial Regulations, including this appendix to Financial Regulations. 	<i>Full Council:</i> As land disposal is an executive function, decisions to dispose of land & buildings will not normally be referred to a meeting of Council.	To set out functions specifically in relation to disposals of land & assets, rather than describing general functions.
9	Audit Committee provides independent assurance to elected members of the adequacy of the risk management framework and the internal control environment. This appendix to Financial Regulations has been developed following a recommendation by Audit Committee and will be subject to regular monitoring by that committee.	<i>Audit & Risk Assurance Committee:</i> The Committee reviews policies and procedures, including this document. It is therefore responsible for: <ul style="list-style-type: none"> d. Approving this document as part of the revised Financial Regulations and updates e. Reviewing this document periodically as part of their wider review of the Financial Regulations f. Reviewing the implementation of this policy and seeking assurance that the policy is followed. 	To set out functions specifically in relation to disposals of land & assets, rather than describing general functions.
10	The Land and Asset Management Committee provides the strategic direction for all matters relating to the effective use of land and property	<i>The Land & Asset Management Officers Group</i> has no formal delegations under the Council's constitution, so it does not make decisions as such,	To describe the decision-making process more accurately and to

	assets within the borough to maximise social and economic benefits and regeneration; and makes recommendations to Cabinet about the use of those assets.	but it acts as a forum in which officers from across all the Council's service areas can discuss and agree on proposals to be taken to Leadership Team and to Cabinet.	ensure alignment to the Council's Scheme of Delegations.
11	Not Covered	<p><u>Leadership Team:</u> Leadership Team has no formal delegations under the Council's constitution, so it does not make decisions as such, but it acts as a forum in which directors can collectively set the direction, including:</p> <ul style="list-style-type: none"> g. Considering whether services can be rationalised, whether buildings can be vacated, and assets declared surplus. h. Considering whether proposals should go to Cabinet. 	To describe the decision-making process more accurately and to ensure alignment to the Council's Scheme of Delegations.
12	<p>Director – Regeneration & Economy (Chief Property Officer) • To negotiate and agree terms for the disposal of land and property by the most appropriate method of sale and in accordance with such policy as may be determined by the Council. That the Monitoring Officer be consulted by the Director – Regeneration and Economy on terms for the disposal of land and property in the event that there is a potential conflict including where there is a relevant entry in the Members Register of Interests and the Employees Register of Interests. • To negotiate and agree, terms for the disposal by the most appropriate method of sale of areas of land and premises up to a value of £100,000. That the Monitoring Officer be consulted by the Director – Regeneration and Economy to negotiate and</p>	<p><i>Director, Regeneration & Growth: The Director of Regeneration & Growth is responsible for:</i></p> <ul style="list-style-type: none"> i. As part of Leadership Team, considering proposals to rationalise the operational property estate in response to service needs. j. Making recommendations to Cabinet to declare assets in excess of £1m in value surplus. k. Making recommendations to Cabinet to dispose of assets over £1m in value. l. Making recommendations to the Cabinet Member for Regeneration & Growth to dispose of assets 	To describe the decision-making process more accurately and to ensure alignment to the Council's Scheme of Delegations.

	<p>agree, terms for the disposal by the most appropriate method of sale of areas of land and premises up to a value of £100,000 in the event that that there is a potential conflict including where there is a relevant entry in the Members Register of Interests and the Employees Register of Interests. [ILO: UNCLASSIFIED] • In consultation with the appropriate Director, to offer land and/or premises for disposal at auctions where the estimate of value does not exceed £100,000. That the Monitoring Officer be consulted by the Director – Regeneration and Economy on the offer land and/or premises for disposal at auctions where the estimate of value does not exceed £100,000 in the event that that there is a potential conflict including where there is a relevant entry in the Members Register of Interests and the Employees Register of Interests.</p>	<p>between £500,000 and £1m in value.</p> <ul style="list-style-type: none"> m. In consultation with the Cabinet Member for Regeneration & Growth, with Ward Members as appropriate and with the Director of Finance and s151 Officer, declaring assets between £100,000 and £500,000 in value surplus. n. In consultation with the Director of Finance and s151 officer, approving the disposal of assets between £100,000 and £500,000. o. In consultation with the Cabinet Member and with Ward Members as appropriate, declaring assets up to £100,000 surplus. p. Approving the disposal of assets up to £100,000 in value. q. Overseeing the negotiation of property transactions. <p>Approving the details of transactions in accordance with delegations put in place by Cabinet.</p>	
13	<p>Monitoring Officer • To sign off and authorise on behalf of the Council any express or implied undertakings for the disposal and acquisition of land to be given by a Council officer. • To acquire and dispose of land and property upon receipt of instructions from the Director - Regeneration and Economy, on terms to be agreed in accordance with authority delegated to him, and being satisfied that all necessary statutory or other authorities in connection with the acquisition or disposal have</p>	<p>1.2 <u>Director of Law & Governance and Monitoring Officer:</u></p> <ul style="list-style-type: none"> a. To execute legal documentation in accordance with instructions received from Cabinet or from the Director of Regeneration & Growth. b. To ensure that all transactions are in the Council’s best interest, are 	

	<p>been agreed. • To dispose of land and/or premises at auction where the Director – Regeneration and Economy estimates the value of the land/property being offered for sale is less than £100,000 but the bid price exceeds that amount. • To dispose of land up to a value of £100,000 on terms agreed by the Director - Regeneration and Economy, in accordance with the authority delegated to him.</p>	<p>within the Council’s powers and are legal.</p> <p>c. To ensure that there are no conflicts of interest arising from a relevant entry in the Members Register of Interests or the Employees Register of Interests.</p>	
14	<p>Chief Finance Officer (Section 151 Officer) The Chief Finance Officer is responsible for maintaining a continuous review of Financial Regulations and Procedures, including this protocol, and submitting any additions or changes to the full council for approval. The Chief Finance [ILO: UNCLASSIFIED] Officer is also responsible for reporting breaches of Financial Regulations and Procedures to the Council and/or to Cabinet Members</p>	<p><u>Director of Finance and Section 151 Officer</u></p> <p>d. Advising on the financial implications of a property transaction (such as the impact on the revenue budget of selling a capital asset, or the impact on the Council’s ledger if a sale price is above or below the most recent asset valuation). Preparing the “Financial Implications” section in Cabinet papers.</p> <p>e. Processing any financial receipts and ensuring that they are recorded appropriately in the Council’s accounts.</p> <p>f. Consulting with the Director of Regeneration & Growth regarding the declaring of assets surplus and the approval of disposal of assets over £100,000 and up to £500,000.</p>	
15	<p>Corporate Landlord (part of Assistant Chief Executive) Corporate Landlord is responsible for the management of land and premises required for operational purposes. This includes: • Ensuring that</p>	<p>Not Covered</p>	<p>This is a general description of the property function, and it is not specifically relevant to the disposal</p>

	<p>the council's operational property portfolio is fit for purpose, sustainable and in good repair; • Identifying assets surplus to council requirements; • The formulation of business cases relating to the rationalisation and continued improvement of the council's operational property portfolio.</p>		<p>of assets, so it is not included in the proposed new protocol.</p>
16	<p>Property Services (part of Regeneration & Economy) Property Services is responsible for: • The disposal of any parcel of land or property which is surplus to council requirements; • The grant of leases to third parties and/or organisations; and • The management of the council's commercial estate e.g. shops, industrial units, ground leases etc.</p>	<p><u>Strategic Assets & Land Team</u> will develop proposals to put to the Land & Assets Management Officers Group, to Leadership Team and to Cabinet as appropriate. The team will also be responsible for undertaking negotiations and implementing the decisions made by Cabinet and by the Director of Regeneration & Growth.</p>	<p>To describe the decision-making process more accurately and to ensure alignment to the Council's Scheme of Delegations.</p>
17	<p>Legal Services (part of Assistant Chief Executive) Legal Services is responsible for: • Completion of all legal paperwork including contract documentation for the acquisition and/or disposal of land and/or property whether the transaction is on a freehold or leasehold basis.</p>	<p>For Complex Contractual Arrangements or for transactions with a consideration in excess of £1 million, the Director of Regeneration & Growth, in consultation with the Director of Law & Governance, will approve the selection and appointment of an appropriate firm of lawyers to represent the Council.</p> <p>Documents will be executed in accordance with the Scheme of Delegations, including affixing the Council's common seal when necessary. Documents prepared by external legal representatives will be reviewed by the Director of Law & Governance and Monitoring Officer, to ensure they are comply with the Council's legal duties and responsibilities and in accordance with the Council's Constitution (including this protocol, to the extent that it is relevant).</p>	<p>The Director of Regeneration & Growth will decide whether to use internal or external lawyers to complete legal paperwork / contract documentation. The Monitoring Officer has responsibility for ensuring that all transactions are in the Council's best interest, are within the Council's powers and are legal.</p>

<p>18</p>	<p>Strategic Finance (part of Assistant Chief Executive) Strategic Finance is responsible for: • Ensuring transactions relating to the disposal of land and/or property are properly recorded in the financial records of the Council.</p>	<p><u>Director of Finance and Section 151 Officer</u></p> <ul style="list-style-type: none"> g. Advising on the financial implications of a property transaction (such as the impact on the revenue budget of selling a capital asset, or the impact on the Council’s ledger if a sale price is above or below the most recent asset valuation). Preparing the “Financial Implications” section in Cabinet papers. h. Processing any financial receipts and ensuring that they are recorded appropriately in the Council’s accounts. i. Consulting with the Director of Regeneration & Growth regarding the declaring of assets surplus and the approval of disposal of assets over £100,000 and up to £500,000. <p>If the disposal of an asset has an impact on the value of any retained assets (for example, granting of a lease might have an impact on the value of the retained freehold) then this should be assessed, and it should be explained in the report which seeks approval to the disposal. Advice from Finance should be sought regarding the impact on the Council’s annual asset valuations and whether a write-down is necessary.</p>	<p>To describe the decision-making process more accurately and to ensure alignment to the Council’s Scheme of Delegations.</p>
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<p>19</p>	<p>Corporate Landlord is responsible for determining whether operational land or buildings are potentially surplus to requirements and for reporting their availability to the Land and Asset Management Officer Group. The report will include: • An initial estimate of valuation • Proof of Ownership • Title issues • Restrictive covenants • Ransom strip issues • Rights of way and other easements • Retaining rights over adjoining land • Potential for grant repayment • The relevant entry in the asset management system • The relevant entry in the asset register, including the valuation currently assigned to that asset.</p>	<p>Service Managers will be responsible for defining their service needs as part of the service planning process and agreeing these with their relevant Director. The Strategic Land & Assets Team will support this process by advising on property matters and by identifying the most efficient way of providing for a service area’s property needs.</p> <p>Where the above process results in property assets being no longer required for service provision (and where this has been confirmed by email by the Director responsible for the service), proposals will be brought to Land & Asset Management Officers Group, which will consider the possible needs of other service areas before recommending that an asset is declared surplus.</p> <p>Once a service has declared that they no longer require use of an asset and once the Land & Asset Management Officers Group have considered the needs of other service areas, the decision to declare the asset surplus (if it exceeds £1m in value) will be a decision for Cabinet. For assets between £500,001 and £1m it will be a decision for the Cabinet Member for Regeneration & Growth. For assets between £100,000 and £500,000 in value it will be a decision for the Director of Regeneration & Growth in consultation with the Cabinet Member, with Ward Members as appropriate and with the Director of Finance and s151 officer. For assets below £100,000 it will be a decision for the Director of Regeneration & Growth in consultation with the Cabinet Member for</p>	<p>Clarifying the fact that the purpose of the property function is to support the delivery of services.</p>
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		<p>Regeneration & Growth and relevant Ward Members as appropriate.</p> <p>Policy decisions which materially affect the delivery of services will usually be made by Cabinet. When such a decision is made it will be good practice to ask Cabinet to delegate responsibility to the Director of Regeneration & Growth, in consultation with the Director of Finance & s151 Officer, to declare surplus any property assets which become surplus as a result of that decision.</p> <p>Similarly, where policy decisions are made as part of the budget setting process, it will be good practice to ask Cabinet, when they approve the budget, to delegate responsibility to the Director of Regeneration & Growth, in consultation with the Director of Finance & s151 Officer, to declare surplus any property assets which become surplus as a result of the budget setting process.</p> <p>If Land & Asset Management Officers Group recommends that an asset is declared surplus then a Cabinet paper will be prepared, which will be consulted upon in the usual way with Members and with Leadership Team.</p> <p>Until an asset is declared surplus in accordance with 4.3 above it remains the budgetary responsibility of the relevant service area. Once it is declared surplus it becomes the responsibility of Strategic Assets & Land who will be charged to dispose of the asset.</p>	
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20	The Land and Asset Management Officer Group will consider the report presented by Corporate Landlord and will make recommendations on all property transactions prior to disposal. The Group membership will include the following officers or their representatives: • Director – Regeneration & Economy • Corporate Landlord • Monitoring Officer • Section 151 Officer	<p><i>The Land & Asset Management Officers Group</i> has no formal delegations under the Council's constitution, so it does not make decisions as such, but it acts as a forum in which officers from across all the Council's service areas can discuss and agree on proposals to be taken to Leadership Team and to Cabinet.</p>	To ensure alignment to the Council's Scheme of Delegations.
21	The Land and Asset Management Officer Group will consider the report and determine whether or not the sale will proceed.		
22	If approval for disposal is given a valuation will be obtained. All valuations will be in line with Royal Institute of Chartered Surveyors professional standards.	<p>For all property disposals a formal written valuation will be obtained and attached to the Cabinet or Individual Cabinet Member report. The exception to this will be where properties are sold at auction or by formal tender. All valuations must be in line with Royal Institute of Chartered Surveyors professional standards.</p> <p>The Director of Regeneration & Growth will approve the appointment of a valuer, decide whether the valuation should be conducted internally or by an external valuer, and satisfy himself that no conflicts of interest exist.</p> <p>If the disposal of an asset has an impact on the value of any retained assets (for example, granting of a lease might have an impact on the value of the retained freehold) then this should be assessed, and it should be explained in the report which seeks approval to the disposal. Advice from Finance</p>	<p>To delegate decisions regarding the appointment of valuers, as appropriate, in line with the Scheme of Delegations.</p> <p>Conflicts of Interest are adequately covered by the responsibilities of the Director of Law & Governance and Monitoring Officer, and beyond this there is no need to be prescriptive as to how sales to employees or council Members etc will be dealt with.</p>
23	<p>Internal valuations will be undertaken where: [ILO: UNCLASSIFIED] - the value of the site does not exceed a de-minimis threshold that will initially be set at £50,000 that will be reviewed after 12 months of operation; - an open market sale is to be undertaken.</p> <p>In those cases where a valuation is difficult but is anticipated to not exceed £100,000 the sale will be conducted in compliance with procurement and contract procedure rules with the bids received being used to set the market valuation. 4.7 External valuations will be obtained for all other land sales; sales to a council employee and/or local councillor; where a sale at less than best is being considered; or if the land is to be sold subject to a restrictive covenant affecting its value.</p>		

24	Where the valuation does not exceed £100,000 the Director – Regeneration & Economy will negotiate and agree terms for the disposal by the most appropriate method of sale. The Monitoring Officer will be consulted in the event that there is a conflict arising from a relevant entry in the Members Register of Interests and the Employees Register of Interests.	should be sought regarding the impact on the Council’s annual asset valuations and whether a write-down is necessary.	
25	Where the value of the asset being considered for disposal exceeds £100,000 the matter will be submitted to the Land & Asset Management Committee and to Cabinet approval.	<p>Cabinet makes the decision to:</p> <p>Declare assets Surplus where their value exceeds £1m.</p> <p>Dispose of Surplus Assets which exceed £1m in value. In approving disposals it may delegate to the Director of Regeneration & Growth the responsibility for approving the details of the transaction.</p>	
26	Not Covered	<p><u>Cabinet Member for Regeneration & Growth</u> makes decisions to:</p> <p>a. Declare assets Surplus where their value is between £500,001 and £1m .</p> <p>b. Dispose of Surplus Assets where their value is between £500,001 and £1m. In approving disposals, they may delegate to the Director of Regeneration & Growth the responsibility for approving the details of the transaction.</p>	To reflect new Scheme of Delegations
27	Not Covered	<u>Scrutiny Panel:</u> Scrutiny Panel has the power to call in and scrutinize individual decisions, including	To describe the decision-making process more accurately and to

		<p>decisions to declare assets surplus and decisions to sell land & buildings (including the terms of transactions).</p>	<p>ensure alignment to the Council's Scheme of Delegations.</p>
<p>28</p>	<p>The Land & Asset Management Committee will consider the report prepared by the officer group and determine whether or not the sale will proceed. The report will include: • The valuation; • Legislation and Secretary of State guidance governing the disposal process; • The proposed method of disposal and explanation as to why that option has been chosen; • General guidelines which are applicable, e.g. the Crichel Down rules which apply to most disposals by the Council of property acquired using compulsory purchase or under threat of compulsory purchase. Where the rules are applicable, there is an obligation to offer the property back to the original owner before it can be placed on the open market; [ILO: UNCLASSIFIED] • Confirmation as to whether or not the transaction is caught by the public procurement rules; • Confirmation as to whether or not the transaction is caught by the State Aid rules; • An indicative location plan highlighting the land/property to be sold; • Financial implications.</p>	<p><i>The Land & Asset Management Officers Group</i> has no formal delegations under the Council's constitution, so it does not make decisions as such, but it acts as a forum in which officers from across all the Council's service areas can discuss and agree on proposals to be taken to Leadership Team and to Cabinet.</p> <p>Disposal Method</p> <p>The Director of Regeneration & Growth will decide on the most appropriate method of disposal taking into account the need to achieve best value, also social value and the corporate priorities of the Council. For assets in excess of £1m in value this decision will be ratified by Cabinet when they approve the disposal. Alternative disposal methods include:</p> <p>Direct disposal. Where an unsolicited offer is received from a party for an asset, it may be appropriate to negotiate and agree terms with that one party. The Director of Regeneration & Growth will need to be satisfied that the sale complies with the s123 LGA 72 obligation to achieve the best price that can reasonably be obtained, and to that end a Red Book valuation will usually be necessary. Direct disposal is most likely to be appropriate where an offer is made by a special purchaser (eg</p>	<p>To describe the decision-making process more accurately and to ensure alignment to the Council's Scheme of Delegations.</p> <p>There is no need to be prescriptive in the Protocol as to what headings must be included in a report, as officers will make this judgement on a case-by-case basis.</p>

		<p>neighbour), or where there is reason to think that a competitive process is unlikely to achieve a better result. Where there is to be a direct disposal, then the purchaser will be required to formally declare if they have an interest with or are related to an Elected Member or officer of the Council. Where such a relationship is declared, then approval to proceed should be sought from Cabinet regardless of the value of the asset.</p> <p>Appointment of agents. Where assets are declared surplus it may be appropriate to appoint a firm of estate agents to market the asset on the Council's behalf.</p> <p>Direct Marketing. The Council could itself advertise the asset and deal with enquiries itself.</p> <p>Sale by tender.</p> <p>Auction.</p>	
29	If the proposed sale price is less than the valuation, then Cabinet approval will be required.	<p>Sale at less than Best Value</p> <p>Circular 06/03: <i>“Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained”</i> provides guidance on the circumstances in which assets can be sold for less than Best Consideration Reasonably Obtainable. The Consent removes the requirement for authorities to seek specific consent from the Secretary of State for any disposal where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted (“the undervalue”) is £2m or less.</p>	<p>To describe the decision-making process more accurately and to ensure alignment to the Council's Scheme of Delegations.</p> <p>To align the protocol more closely with legislation and government guidance.</p>
30	In considering the legal and financial considerations of any disposal at an undervalue, there must be demonstrable evidence that the outcome will be equally beneficial as compared to a disposal at market value and will be for the well-being of the whole or part of the area. If possible, the social, economic or environmental benefits, which are argued to be the justification for a disposal at an undervalue, should be quantified in monetary terms		
31	In all cases, where a disposal is undertaken at less than best consideration, then to protect the Council's interest in the event of subsequent sales, it will include, where appropriate, an asset lock,		

	<p>clawback, overage or uplift clause, restrictive covenants, ransom strip retention, user rights, forfeiture or break clause or right of pre-emption. This is to ensure that the Council eventually obtains best value and a purchaser does not profit excessively at the expense of the Council.</p>	<p>It is Government guidance that local authorities and other public bodies should dispose of surplus land wherever possible. Generally, it is expected that land should be sold for the best consideration reasonably obtainable. However, it is recognised that there may be circumstances where an authority considers it appropriate to dispose of land at an undervalue. Authorities should clearly not divest themselves of valuable public assets unless they are satisfied that the circumstances warrant such action.</p> <p>The Consent was issued to give local authorities autonomy to carry out their statutory duties and functions, and to fulfil such other objectives as they consider to be necessary or desirable. However, when disposing of land at an undervalue, authorities must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people.</p> <p>In determining whether to dispose of land for less than the best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the Consent, the authority should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue.</p> <p>When disposing of land at less than best consideration authorities are potentially providing</p>	
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		<p>a subsidy to the purchaser. Legal advice should be sought and consideration should be given to relevant state aid legislation and to government guidance including the Government’s Summary Guidance to Awarding Subsidies.</p> <p>Where an asset is being sold at less than Best Consideration then:</p> <ul style="list-style-type: none"> j. If the difference between the unrestricted value of the interest to be disposed of and the consideration accepted (ie the “undervalue”) is £50,000 or less, then the decision to sell at less than Best Consideration, together with an explanation as to the rationale, must be made in writing by the Director of Regeneration & Growth, the Section 151 officer and the Monitoring Officer. k. If the Undervalue is more than £50,000, then the decision to sell at less than Best Consideration must be made by Cabinet. l. If the Undervalue exceeds £2m then the approval of the Secretary of State is required. <p>In considering the legal and financial considerations of any disposal at an undervalue and/or granting of a lease, there must be demonstrable evidence that the outcome will be equally beneficial as compared to a disposal at market value and will be for the</p>	
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		<p>well-being of the whole or part of the area. If possible, the social, economic or environmental benefits, which are argued to be the justification for a disposal at an undervalue, and/or lease should be quantified in monetary terms.</p> <p>Where leases are granted as part of a number of linked transactions, ie where a separate service contract is being entered into between the Council and the lessee, simultaneously with the lease, under which the lessee commits to provide certain services to the Council or to residents, the nature and value of this commitment should be taken into account in (a) assessing whether the disposal is at an undervalue and (b) justifying the undervalue if it exists. Advice from Legal and Finance should be sought in this scenario, and care should be taken to ensure that CIPFA, RICS and other appropriate guidance regarding the treatment of Linked Transactions is followed.</p> <p>Community Asset Transfers will only be undertaken on a leasehold basis. When they do occur they will be undertaken in accordance with the Council’s protocol on Community Asset Transfers and in accordance with this protocol.</p> <p>In all cases, where a disposal and/or granting of a lease is undertaken at less than best consideration, then to protect the Council’s interest in the event of subsequent sales, it must include, where appropriate, an asset lock, clawback, overage or uplift clause, restrictive covenants, ransom strip</p>	
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		retention, user rights, forfeiture or break clause or right of pre-emption. This is to ensure that the Council eventually obtains best value and a purchaser does not profit excessively at the expense of the Council.	
32	Files will be maintained for every disposal by the Director – Regeneration & Economy (property file) and the Director – Governance (legal file) and these files will be accessible by Internal/External audit.	Not covered	Maintaining of appropriate records is an officer responsibility across all service areas, and it is the responsibility of management to ensure that appropriate record-keeping is in place. It is not necessary or appropriate for this protocol to be prescriptive.
33	The property file will contain all correspondence to verify how the authority made the decision to dispose, including a copy of the appropriate minute authorising the sale or a signed delegation form, verification of value in the form of a formal written valuation in line with Royal Institute of Chartered Surveyors professional standards, signed instructions to Legal Services, completion statement and actions taken by the case officer in relation to the matter.	Not covered	
34	The legal file will contain a copy of the Legal Instructions (Legal Instructions should contain a surveyor certificate of best consideration, written valuation in line with Royal Institute of Chartered Surveyors professional standards, reason for any discrepancies in final sale price and valuation, the contract documentation, confirmation of all checks in relation to the title of the property, money laundering compliance, best value confirmation from the instructing officer and member involvement information); any correspondence in relation to the matter and a completion statement.	Not Covered	

35	A completion statement will be passed to: - Director – Regeneration & Economy - Corporate Landlord - Monitoring Officer - Section 151 Officer	Not Covered	
36	Receipts from the disposal of assets will be treated as a corporate resource.	<p><u>Director of Finance and Section 151 Officer</u></p> <p>Advising on the financial implications of a property transaction (such as the impact on the revenue budget of selling a capital asset, or the impact on the Council’s ledger if a sale price is above or below the most recent asset valuation). Preparing the “Financial Implications” section in Cabinet papers.</p> <p>Processing any financial receipts and ensuring that they are recorded appropriately in the Council’s accounts.</p> <p>Consulting with the Director of Regeneration & Growth regarding the declaring of assets surplus and the approval of disposal of assets over £100,000 and up to £500,000.</p>	
37	Not Covered	<p>Complex Contractual Arrangements</p> <p>This section sets out a protocol for undertaking discussions and negotiations with developers relating to Council-owned land. In particular it focuses on the circumstances in which the Council might enter into complex contractual</p>	To provide guidance and to protect the Council’s interests in its dealings with property developers.

		<p>arrangements with property developers relating to land. It defines, purely for the purposes of this document, what we mean by ‘complex contractual arrangements’, it highlights the risks to be considered and it sets out clear guidance which officers must follow in negotiating and agreeing such arrangements.</p> <p>Complex Contractual Arrangements: For the purposes of this document Complex Contractual Arrangements are contracts which commit the Council to dispose of land but where the receipt of purchase monies is delayed and/or is conditional on a future event. Such arrangements include:</p> <ul style="list-style-type: none"> • Option agreements which give a developer the right to acquire land at a future date, either at a pre-agreed price, a price to be fixed by a formula (such as a development appraisal) or a price to be fixed by independent valuation. • Sale contracts or agreements for lease, which are conditional on receipt of a planning approval, on satisfactory due diligence (eg site investigations), funding or other matters. • Sale contracts or lease agreements where payment of purchase monies is delayed until a future event takes place such as Practical Completion of a development project, completion of other adjoining site acquisitions, future property sales, funding agreements. • CPO Indemnity Agreements where developers reimburse CPO costs • Contracts with Overage or profit-share clauses 	
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		<ul style="list-style-type: none"> • Joint Ventures • Exclusivity agreements • Promotion agreements • Release of restrictive covenants. <p>Circumstances in which Option Agreements or Conditional Contracts are appropriate: From time to time the Council will want to encourage and promote property development in order to promote regeneration & renewal or to contribute to strategic targets such as housing numbers – and to this end working with, negotiating with and entering into contracts with property developers is an important part of Council business. Promoting complex property development schemes is time-consuming and expensive. Developers often spend years promoting schemes through the planning process, incurring large costs in professional fees, only to find that schemes fail to obtain planning approval or they become unviable as costs and values change. It is common therefore for developers to seek to manage their exposure by securing the right to acquire a site (without which they could not justify the expenditure on fees) but preserving their ability to withdraw, or delaying payments for land, until key risks (such as planning) have been mitigated. To a degree, the Council needs to recognise this in its dealings with developers. It does however need to protect its own interests at the same time.</p>	
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		<p>Risks for the Council: In entering into complex contractual arrangements the Council must take care that it does not:</p> <ul style="list-style-type: none"> m. Find itself unable to terminate an agreement with a developer who is not performing, or where it has become apparent that the scheme cannot be delivered. n. Find that the developer is deliberately delaying (for example by delaying signature of a section 106 agreement) and the Council is unable to terminate. o. Finds itself under undue pressure to renegotiate the terms of a transaction because the alternative would be non-delivery and political embarrassment, because the agreement cannot be terminated. p. Find that it is committed to sell a site for a price which, because of the valuation mechanism employed or because of the outcome of due diligence work, is significantly less than the Council was expecting and/or less than the existing use value of the site. q. Find that the conditions in a conditional sale agreement are such that the purchaser is in complete control, and so the conditional contract effectively 	
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		<p>functions as an option agreement. An example of this is where a contract is conditional on receipt of a 'Satisfactory Planning Permission' and that is defined as 'A permission which the purchaser in their absolute discretion finds satisfactory'.</p> <p>r. Find that it is due substantial payments from a corporate entity that has insufficient financial strength, and no bonds or guarantees are in place.</p> <p>Other risks for the Council include:</p> <p>s. Lack of clear distinction between the Council's statutory role as planning authority and its role as landowner and financial beneficiary. A clear distinction is essential from a probity perspective and to avoid Judicial Review of decisions.</p> <p>t. Lack of an appropriate competitive process in selecting developers to work with, resulting in procurement challenges and/or best value not being achieved.</p> <p>Mitigations: To mitigate these risks the Council should:</p>	
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		<ul style="list-style-type: none"> u. Only enter into exclusive discussions with a developer about a development project where that developer has an exclusive position relating to the project, such as ownership of an adjoining site, access rights or other rights which mean only they can deliver the scheme. 'Exclusive discussions' include informal meetings with officers and Members. v. Not enter into option agreements which are longer than reasonably necessary. Only under exceptional circumstances should options be more than 18 months long, and they should never be more than five years long. Any extensions beyond the original option period (apart from automatic extensions linked to Judicial Review) must be subject to Cabinet approval at the time that the original option period expires. w. Only enter into Option Agreements which have clearly set out milestones which the developer must achieve, and the ability for the Council to terminate if they are not achieved. They might include: <ul style="list-style-type: none"> i. A timescale for formal planning pre-application discussions 	
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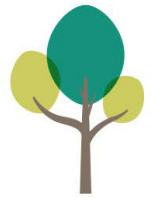
		<ul style="list-style-type: none"> ii. A timescale for development of design to each of the RIBA stages iii. A public consultation strategy, with timescales iv. A timescale for submitting planning applications, outline and/or detailed. v. A timescale for satisfactory conclusion of due diligence (site investigations, discussions with the Environment Agency etc) and the ability to terminate if the results are unsatisfactory. vi. A timescale for entering into funding agreements vii. A timescale for signing section 106 agreements etc. x. Only enter into Conditional sale contracts which have similar milestones (and similar ability for the Council to terminate) as set out in c. above. The Conditional Period should not be longer than reasonably necessary. Only under exceptional circumstances should it be more than 18 months long, and it should never be more than five years long. Any extensions beyond the original conditional period 	
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		<p>(apart from automatic extensions linked to Judicial Review) must be subject to Cabinet approval at the time that the original conditional period expires.</p> <ul style="list-style-type: none"> y. Ensure that before entering into any complex contractual arrangement, it has had sight of the developer’s financial appraisals and cost plans, it has had obtained its own professional advice on these and is satisfied that the scheme is viable. If the scheme is not viable then it is inevitable that the developer will delay or will seek to renegotiate, and the Council’s expectations will not be met. z. Does not enter into contracts for the sale of land where purchase monies are delayed beyond Completion unless: <ul style="list-style-type: none"> i. There is a guaranteed minimum purchase price (which is not dependent on a future valuation or appraisal) which is equal to or greater than the Open Market Value of the site at the date of the contract, that this is payable unconditionally and that it is suitably secured against 	
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		<ul style="list-style-type: none"> the appropriate assets of the purchaser. ii. Payment of the guaranteed minimum purchase price must not be delayed more than 2 years beyond Completion. iii. There is an appropriate drop-dead date by which all purchase monies must be paid regardless of any other factors. iv. The Council retains a charge over the land until all purchase monies are paid. aa. Only enters into Complex Contractual Arrangements with companies of suitable financial standing or where suitable guarantees are in place. <p>The decision to enter into a Complex Contractual Arrangement is a decision for Cabinet if the likely end sale price of the land (including any uplift resulting from change of use) exceeds £1m. If the likely price is between £500,001 and £1m it will be a decision for the Cabinet Member for Regeneration & Growth. If the likely price is between £100,000 and £500,000 it will be a decision for the Director of Regeneration & Growth in consultation with the Cabinet Member, with Ward Members as appropriate and with the</p>	
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The following items set out key decisions to be taken by the Executive in public session:-

	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
1	<p>Award of Minor Adaptation/ Handyperson Service 2022-2026</p> <p>Contact Officer: Charlotte Leadbeater-Chase</p> <p>Director of Adult Social Care: Rashpal Bishop</p>	<p>Adult Social Care and Health (Cllr Hartwell)</p>	<p>20 July 2022</p>		<p>Report to Cabinet</p>



Title/Subject		Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
2	<p>Special Educational Needs and Disabilities Information and Advice and Support Services Contract</p> <p>Contact Officer: Peter Forth</p> <p>Director of Finance - Simone Hines</p>	Children & Education (Cllr Hackett)	20 July 2022		Report
3	<p>Exemption from Procurement and Contract Procedure Rules for Post-16 High Needs Education Provision</p> <p>Contact Officer: Erroll Blackwood</p> <p>Director of Children and Education: Michael Jarrett</p>	Children & Education (Cllr Hackett)	20 July 2022		



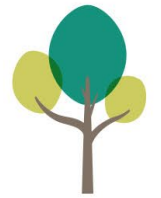
Title/Subject		Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
4	<p>Schools Condition Report 2022</p> <p>Contact Officer: Martyn Roberts</p> <p>Director of Children and Education: Michael Jarrett</p>	Children and Education (Cllr Hackett)	20 July 2022		
5	<p>Award of Contract for Local Welfare Provision</p> <p>Contact Officer: Ian Dunn</p> <p>Director: Simone Hines – Director of Finance</p>	Finance and Resources (Cllr Piper)	20 July 2022		



Title/Subject		Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
6	<p>Harmful Gambling Workplace Charter, Policy and Guidance</p> <p>Contact Officers: Victoria Lee/Ian Markham</p> <p>Director of Business Strategy & Change: Neil Cox</p>	Finance and Resources (Cllr Piper)	20 July 2022		<p>Harmful Gambling Workplace Charter</p> <p>Harmful Gambling Policy – HR88</p> <p>Harmful Gambling Guidance – HR88.1</p>
7	<p>Sandwell Museums Accreditation Submission</p> <p>Contact Officer: Jane Lillystone</p> <p>Director: Alice Davey, Borough Economy</p>	Leisure and Tourism (Cllr Rollins)	20 July 2022	N/A	<ul style="list-style-type: none"> - Forward Plan - Collections Documentation Policy - Collections Review & Rationalisation Policy - Documentation Plan - Collection Management Policy - Access, Learning and Engagement Policy



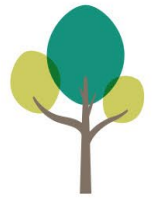
Title/Subject		Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
8	<p>Draft Statement of Community Involvement 2022</p> <p>Contact Officer: Zoe Wilson</p> <p>Director of Regeneration & Growth Tony McGovern</p>	Regeneration & Growth (Cllr Hughes)	20 July 2022		
9	<p>Land at Cranford Street, Smethwick – Compulsory Purchase Order</p> <p>Contact Officer: Hayley Insley</p> <p>Director of Regeneration & Growth Tony McGovern</p>	Regeneration & Growth (Cllr Hughes)	20 July 2022		



Title/Subject		Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
10	<p>Brandhall – Options</p> <p>Contact Officer: Tammy Stokes</p> <p>Director: Tony McGovern – Director of Regeneration and Growth</p>	Regeneration & Growth (Cllr Hughes)	20 July 2022		
11	<p>Smethwick Enterprise Centre – declaration surplus to requirements</p> <p>Contact Officer: Hayley Insley</p> <p>Director of Regeneration & Growth Tony McGovern</p>	Regeneration & Growth (Cllr Hughes)	20 July 2022		



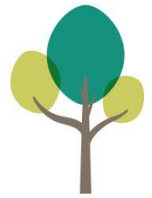
Title/Subject		Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
12	<p>Designation of Nature Conservation Sites</p> <p>Contact Officer: Zoe Wilson</p> <p>Director of Regeneration & Growth Tony McGovern</p>	Regeneration & Growth (Cllr Hughes)	20 July 2022		
13	<p>Flare Civica Upgrade to CX system</p> <p>Contact Officer: Alasdair Morrison/Nicola Plant</p> <p>Director: Alice Davey – Director of Borough Economy</p>	Communities (Cllr Millard)	20 July 2022		



	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
14	<p>Supported Housing for Adults at Risk of Homelessness</p> <p>Contact Officer: Craig Stevens/Justin Haywood</p> <p>Director: Rashpal Bishop - Director of Adult Social Care</p>	<p>Adults, Social Care and Health (Cllr Hartwell)</p>	<p>20 July 2022</p>		



	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
15	<p>Suicide Prevention Strategy and Action Plan</p> <p>Contact Officer: Lina Martino</p> <p>Director: Lisa McNally – Director of Public Health</p>	Adults Social Care and Health (Cllr Hartwell)	20 July 2022		
16	<p>Adult Weight Management Service</p> <p>Contact Officer: Ricky Byrnes/Anna Blennerhasset</p> <p>Director: Lisa McNally – Public Health</p>	Adults Social Care and Health (Cllr Hartwell)	20 July 2022		



	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
17	<p>The Review of the Generic Advocacy Service in Sandwell</p> <p>Contact Officer: Beverley Stevens/Justin Haywood</p> <p>Director: Rashpal Bishop - Director of Adult Social Care</p>	<p>Adults Social Care and Health (Cllr Hartwell)</p>	<p>20 July 2022</p>		



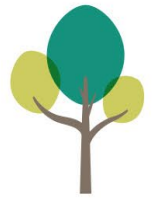
	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
18	<p>Authority to procure Accommodation based support services for victims of domestic abuse</p> <p>Contact Officer: Craig Stevens/Justin Haywood</p> <p>Director: Rashpal Bishop, Adult Social Care</p>	Adults, Social Care and Health (Cllr Hartwell)	20 July 2022		



	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
19	<p>Health Checks Service</p> <p>Contact Officer: Liann Brookes-Smith</p> <p>Director: Lisa McNally – Director of Public Health</p>	<p>Adults, Social Care and Health (Cllr Hartwell)</p>	<p>20 July 2022</p>		
20	<p>Procurement Exemption – Sandwell Urban Bike Park</p> <p>Contact Officer: Matthew Huggins</p> <p>Director: Alice Davey – Director of Borough Economy</p>	<p>Leisure and Tourism (Cllr Rollins)</p>	<p>20 July 2022</p>		



Title/Subject		Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
21	<p>Review of Parking Charges Policy</p> <p>Contact Officer: Robin Weare</p> <p>Director: Alice Davey, Director of Borough Economy</p>	Environment Services (Cllr Ahmed)	20 July 2022		
22	<p>Improvement Plan Progress</p> <p>Contact Officer: Rebecca Jenkins</p> <p>Director: Neil Cox, Director of Business Strategy and Change</p>	Finance & Resources (Cllr Piper)	20 July 2022		



Title/Subject		Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
23	<p>Queens Square Shopping Centre – Lease Assignment</p> <p>Contact Officer: Chris Hilton</p> <p>Director: Tony McGovern</p>	Regeneration & Growth (Cllr Hughes)	20 July 2022 (private item)		Report (private)
24	<p>Fair Cost of Care and other Adult Social Care Market Pressures</p> <p>Contact Officer: Christine Guest</p> <p>Director: Rashpal Bishop Director of Adult Social Care</p>	Adults, Social Care and Health (Cllr Hartwell)	20 July 2022 (private item)		Report (private)



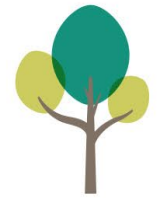
	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
25	2021/22 Financial Outturn Report Contact Officer: Rebecca Maher Director of Finance – Simone Hines	Finance and Resources (Cllr Piper)	20 July 2022		
26	Stock Condition Surveys Contact Officer: J. Rawlins Director: Gillian Douglas	Housing (Cllr Padda)	28 September 2022		



	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
27	<p>City Region Sustainable Transport Settlement and Local Transport Capital Programme Update</p> <p>Contact Officer: Andy Miller</p> <p>Director: Tony McGovern - Director of Regeneration & Growth</p>	Regeneration and Growth (Cllr Hughes)	28 September 2022		



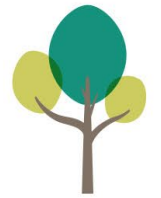
	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
28	<p>The Appropriation of Various Disused Former Garages in the Borough</p> <p>Contact Officer: Paul Evans</p> <p>Director: Tony McGovern - Director for Regeneration and Growth / Gillian Douglas - Director of Housing</p>	<p>Regeneration & Growth (Cllr Hughes)</p> <p>Housing (Cllr Padda)</p>	<p>28 September 2022 (private item)</p>		<p>Cabinet Report And Site Plans</p>



	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
29	<p>Friar Park Residential Development</p> <p>Contact Officer – Chris Hilton</p> <p>Director: Tony McGovern – Director of Regeneration and Growth</p>	Regeneration and Growth (Cllr Hughes)	28 September 2022		<p>Site Appraisals and MasterPlan</p> <p>Funding approval for support</p> <p>Approval for informal public consultation</p>



	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
30	<p>Sandwell Children’s Trust – Contract Review</p> <p>Contact Officer: Mandip S. Chahal</p> <p>Director: Michael Jarrett, Director of Children’s Services and Education</p>	Children & Education (Cllr Hackett)	28 September 2022		<p>Report by:</p> <p>Director of Children and Education</p> <p>Contract Review Report</p>
31	<p>Residential Education Service Tutorial Staffing</p> <p>Contact Officer: Richard Oakes</p> <p>Director of Children’s Services and Education, Michael Jarrett</p>	Children & Education (Cllr Hackett)	28 September 2022		Report



	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
32	<p>Application to Secretary of State for Education for change of use/appropriation of Denbigh Drive</p> <p>Contact Officer: Rachel Hill</p> <p>Director of Children and Education, Michael Jarrett</p>	Children & Education (Cllr Hackett)	28 September 2022		Report
33	<p>Sandwell Residential Education Centres Fees & Charges 2023-2024</p> <p>Contact Officer: Richard Oakes</p> <p>Director of Children’s Services and Education, Michael Jarrett</p>	Children & Education (Cllr Hackett)	28 September 2022		Report



	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
34	<p>School Organisation Plan 2021-26: outcome of consultation and approval to publish</p> <p>Contact Officer: Rachel Hill</p> <p>Director of Children and Education, Michael Jarret</p>	<p>Children & Education (Cllr Hackett)</p>	<p>28 September 2022</p>		<p>Report</p>
35	<p>Land off Danks Way, West Bromwich</p> <p>Contact Officer: Stefan Hemming</p> <p>Director of Regeneration and Growth – Tony McGovern</p>	<p>Regeneration & Growth (Cllr Hughes)</p>	<p>28 September 2022</p>		



	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
36	<p>Flat 28 Parsonage Street, West Bromwich</p> <p>Contact Officer: Stefan Hemming</p> <p>Director of Regeneration and Growth = Tony McGovern</p>	<p>Regeneration & Growth (Cllr Hughes)</p>	<p>28 September 2022</p>		
37	<p>Land at Lower High Street, Cradley Heath</p> <p>Contact Officers: Stefan Hemming/ Jenna Langford</p> <p>Director of Regeneration and Growth - Tony McGovern</p>	<p>Regeneration & Growth (Cllr Hughes)</p>	<p>28 September 2022</p>		



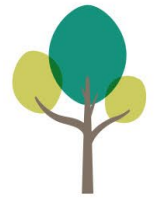
	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
38	<p>Council new build homes on land at Garratts Lane, Cradley Heath</p> <p>Contact Officer: Alan Martin</p> <p>Director: Tony McGovern, Director – Regeneration and Growth/ Gillian Douglas – Director of Housing</p>	Housing (Cllr Padda)	28 September 2022		



	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
39	<p>Provision of 15 new council homes at Hawes Lane, Rowley Regis</p> <p>Contact: Alan Martin</p> <p>Director: Tony McGovern – Director of Regeneration and Growth/Gillian Douglas – Director of Housing</p>	Housing (Cllr Padda)	28 September 2022		
40	<p>Serco Annual Report</p> <p>Contact Officer: Gary Charlton</p> <p>Director – Borough Economy, Alice Davey</p>	Environment Services (Cllr Ahmed)	28 September 2022		



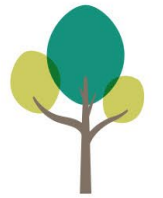
	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
41	<p>Memorandum of Understanding between SMBC and Chance Heritage Trust re Heritage related regeneration in the Borough</p> <p>Contact Officer: Tony McGovern</p> <p>Director: Tony McGovern – Director of Regeneration and Growth</p>	Regeneration and Growth (Cllr Hughes)	28 September 2022		



	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
42	<p>Review of the Council’s Surplus Property Assets</p> <p>Contact Officer: Chris Hilton</p> <p>Director: Tony McGovern, Director of Regeneration and Growth</p>	Regeneration & Growth (Cllr Hughes)	28 September 2022 (private item)	tbc	<p>Report</p> <p>Surplus Assets List (to be annexed to Cabinet paper)</p>

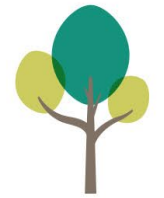


	Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
43	<p>2023-24 Asset Management and Housing December 2022 Maintenance Investment Programme</p> <p>Contact Officer: J Rawlins</p> <p>Director: Gillian Douglas, Director of Housing</p>	Housing (Cllr Padda)	7 stockDecember 2022		



Annual Programme Reminder (these items are not added automatically)

Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
Review of Fees and Charges		January		
Determination of Admission Priorities for Sandwell's Community and Voluntary Controlled Schools		January/February		
Schools Funding		December/January		
Quarter 3 Budget Monitoring		February		
Council Finances		February		
Financial Regulations		February		
Business Plans		February		
Highways Asset Management Plan		March		



Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
Local Transport Settlement		March		
Revenues and Benefits Policy framework 2022/23		March		
Schools Capital Programme		April to June		
Financial Outturn		May		
Procurement and Contract Procedure Rules		July		
Review of Fees and Charges Sandwell Residential Education Services Centre Charges		May – July		
Childcare Sufficiency Report		July - September		



Title/Subject	Cabinet Portfolio Area	Decision Date	Pre-decision Scrutiny to be carried out? (Board and date)	List of documents to be considered
Quarter 1 Budget Monitoring		August		
Model Schools Pay Policy		October/November		
Winter Service Operational Plan		October/November		
Road Safety Plan		November		
Quarter 2 Budget Monitoring		November		
Council Tax Base Calculation		December		
Business Rates Retention Estimates		December		
Council Tax Reduction Scheme		December		



The following items set out key decisions to be taken by the Executive in private session:-

Title/Subject	Cabinet Portfolio Area	Decision Date	Reason for Exemption	List of documents to be considered
<p>The Appropriation of Various Disused Former Garages in the Borough</p> <p>Contact Officer: Paul Evans</p> <p>Director: Tony McGovern - Director for Regeneration and Growth / Gillian Douglas - Director of Housing</p>	<p>Regeneration & Growth (Cllr Hughes)</p> <p>Housing (Cllr Padda)</p>	<p>28 September 2022 (private item)</p>	<p>Commercial sensitivity</p>	
<p>Review of the Council's Surplus Property Assets</p> <p>Contact Officer: Chris Hilton</p>	<p>Regeneration & Growth (Cllr Hughes)</p>	<p>28 September 2022 (private item)</p>	<p>tbc</p>	<p>Report Surplus Assets List (to be</p>



Title/Subject	Cabinet Portfolio Area	Decision Date	Reason for Exemption	List of documents to be considered
Director: Tony McGovern, Director of Regeneration and Growth				annexed to Cabinet paper)
<p>Queens Square Shopping Centre – Lease Assignment</p> <p>Contact Officer: Chris Hilton</p> <p>Director: Tony McGovern</p>	Regeneration & Growth (Cllr Hughes)	20 July 2022 (private item)	Commercial sensitivity	Report
<p>Fair Cost of Care and other Adult Social Care Market Pressures</p> <p>Contact Officer: Christine Guest</p> <p>Director: Rashpal Bishop</p>	Adults, Social Care and Health (Cllr Hartwell)	20 July 2022 (private item)		



Title/Subject	Cabinet Portfolio Area	Decision Date	Reason for Exemption	List of documents to be considered
Director of Adult Social Care				



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Audit and Risk Assurance Committee Work Programme 2022/2023

Date of Meeting	Item	Responsible Officer
28 June 2022 (Reports due 15 June)	Strategic Risk Register	Narinder Phagura
	Council Improvement Plan	Kate Ashley
	Improvement Plan Risk Register	Kate Ashley
21 July 2022 (Reports due 11 July)	Counter Fraud Annual Report	Oliver Knight
	Annual Internal Audit Report 2021/22	Peter Farrow
	Auditors Annual Report 2020-21	Mark Stocks
	Directorate Risk Register – Children’s Services	Michael Jarrett

Date of Meeting	Item	Responsible Officer
22 September 2022 (Reports due 9 September)	Annual Audit Letter 2022/23	Grant Thornton
	Council Improvement Plan Update	Kate Ashley/ Rebecca Jenkins
	Improvement Plan Risk Register	Kate Ashley/Rebecca Jenkins
	Local Government and Social Care Ombudsman's Annual Report 2021/22	Neil Cox
	Audit and Risk Assurance Committee Annual Report	Chair/Peter Farrow
	Strategic Risk Register Update	Narinder Phagura
	Surjit Tour/Elaine Newsome	Code of Corporate Governance
	Directorate Risk Registers (x2) -	TBC
15 November 2022 (Reports due 2 November)	Corporate Risk Management Strategy	Narinder Phagura
	Internal Audit Update	Peter Farrow
	Council Improvement Plan Update	Kate Ashley/Rebecca Jenkins
	Improvement Plan Risk Register	Kate Ashley/Rebecca Jenkins
	Directorate Risk Registers (x2)	TBC
	Internal Audit Charter	Peter Farrow

Date of Meeting	Item	Responsible Officer
19 January 2023 (Reports due 9 January)	Council Improvement Plan Update	Kate Ashley/ Rebecca Jenkins
	Directorate Risk Registers (x2)	TBC
	Counter Fraud Update	Oliver Knight
	Internal Audit Update	Peter Farrow
16 March 2023 (Reports due 3 March)	Strategic Risk Register Update	Narinder Phagura
	Council Improvement Plan Update	Kate Ashley/Rebecca Jenkins
	Directorate Risk Registers (x2)	TBC
	Internal Audit Update	Peter Farrow
	Internal Audit Plan 2023/24	Peter Farrow
	Financial Management Code Action Plan Update	Rebecca Maher
	Audit and Risk Assurance Committee Terms of Reference Review	Peter Farrow

Items – date to be determined:
Statement of Accounts 2020/21 and 2021/22
Grant Thornton Updates i.e. External Audit Plan, External Audit Updates, Informing the Risk Assessment etc.
Financial Management Code
Governance Statement 2022/23
Estimates Letter for 2022/23'