



Council
28 July 2014

Subject: Annual Review of the Constitution

Report by:	Monitoring Officer
Contact Officer:	Alan Robinson Head of Central Services and Monitoring Officer 01427 676509 Alan.robinson@west-lindsey.gov.uk
Purpose / Summary:	The purpose of the report is to recommend to Council the proposed amendments to the Constitution, following consideration by the Governance and Audit Committee at its meeting on 26 June 2014.

RECOMMENDATION(S):

- (a) That Members note the outcome of the annual review.**
- (b) That the amendments (No.s 1 - 15.) detailed at Section 2 of the report and Appendix A, B, C be approved for immediate implementation.**
- (c) In light of recent Director appointments and the on-going structure review at a Head of Service Level, the Monitoring Officer, in consultation with the Chairman of the Governance and Audit Committee and the Deputy Leader of the Council, be granted delegated authority to make any required housekeeping amendments to relevant sections of the Constitution.**

IMPLICATIONS

Legal: The Council is required by law to prepare and keep up to date the Constitution.

Financial: FIN/GA/20/15

There are only very limited financial implications as a result of making amendments to the constitution. These relate to the resources needed to make changes to electronic records and to the limited printing costs of producing amended pages for paper copies of the Constitution.

Staffing: None arising from this report but the Constitution sets out the manner in which staffing matters should be dealt with.

Equality and Diversity including Human Rights : None arising from this report.

Risk Assessment: Failure to amend the constitution to reflect changes could lead to a risk of legal challenge and reputational risk for the Council.

Climate Related Risks and Opportunities : None arising from this report.

Title and Location of any Background Papers used in the preparation of this report:

Accessed through WLDC website "[Meetings, agendas, minutes and reports](#)"
[Constitution of the Council | West Lindsey](#)

Call in and Urgency:

Is the decision one which Rule 14 of the Scrutiny Procedure Rules apply?

Yes No

Key Decision:

Yes No

1 Introduction

- 1.1 The Council is required by law to prepare and keep up to date a Constitution which explains how the Council operates, how decisions are made and the procedures which are to be followed to ensure that these are efficient, transparent and accountable to local people.
- 1.2 Article 14 of the Constitution stipulates how such a review should be conducted namely:
 - a) by observing meetings of different parts of the member and officer structure;
 - b) by undertaking an audit trail of a sample of decisions
 - c) by recording and analysing issues raised with Monitoring Officer by members, officers, the public and other stakeholders; and
 - d) by comparing practices in this authority with those in comparable authorities, or national examples of best practice.
- 1.3 Views have also been sought from Heads of Service, Core Management Team and a number of Lead Members.
- 1.5 As a comprehensive review of the Constitution was undertaken in 2011 and in light of a number of mid-year changes having been made, a number of amendments are being proposed as detailed at Section 2 of the report.
- 1.6 Members will be aware that the Chief Officer Employment Committee recently appointed to the posts of Director of Resources and Commercial Director. These appointments will necessitate further amendments to reflect future changes to the Head of Service structure, hence recommendation 3 stated on the front page of this report.

2. Proposed Amendments

- 2.1 In line with my duty to annually review the Constitution, and having undertaken the process set out above, the following additions/amendments are proposed to come into immediate effect.
- 2.2 The table below sets out the proposed amendments for consideration along with the rationale for each.
- 2.3 This report was considered by the Governance and Audit Committee at its meeting on 26 June 2014 in accordance with the agreed process.

Ref	Section /Page Ref	Amendment required	Reason for Amendment
No. 1	Chief Officer Employment Committee Procedure Rules Section V Pages 64 -65	<p>Removal of the requirement for an objection period namely: the following paragraph :</p> <p>“4.2 An offer of appointment to a chief officer must not be made by the Chief Officer Employment Committee (the Committee) until</p> <p>(i) the Committee has notified the proper officer of the name of the person to whom the Committee wishes to make the offer and any other particulars which the Committee considers are relevant to the appointment;</p> <p>(ii) the proper Officer has notified every member of the Policy and Resources Committee of:</p> <ul style="list-style-type: none"> • The name of the person to whom the Committee wishes to make the offer; • Any other particulars relevant to the appointment which the Committee has notified to the proper officer; and • The period within which any objection to the making of the offer is to be made by the Leader on behalf of the Policy and Resources Committee to the proper; and <p>(iii) either –</p> <ul style="list-style-type: none"> • The Leader has within the period specified for objection, notified the Committee that neither he nor any member of the Policy and Resources Committee has any objection to the making of the offer; • The proper officer has notified the Committee that no objection was received by him / her within that period from the Leader; 	<p>Creates a delay in the process and of little value in light of objections having to be well founded and material. No constitutional reason for its inclusion. Council have delegated this power to the Committee and they should be able to act without referring their decisions for further “ratification”. (Suggestion has been made through the consultation process)</p>

Ref	Section /Page Ref	Amendment required	Reason for Amendment
		<p>Or –</p> <ul style="list-style-type: none"> The Committee is satisfied that any objection received from the Leader within that period is not material or is not well founded.” 	
No. 2	Responsibility for Functions – Corporate Delegations – Land Transactions Section IV Page 9	<p>Removal of the words “at full market value” from paragraph 14.1.</p> <p>and inclusion of the words</p> <p>“Where a sale is pursuant to Section 123 of the Local Government Act 1972, Section 32 Housing Act 1985 or Section 25 of the Local Government Act 1988, consent to the Secretary of State may be sought as necessary.” To form a new paragraph 14.1.4</p> <p>The words “subject to approval of the Chief Finance Officer” be incorporated into the column entitled “Chief Executive and Director” alongside paragraph 14.1</p> <p>Paragraph 14.2 be deleted in its entirety</p>	<p>Reference to under market value was intended to relate only to the disposal of, not the buying of, assets.</p> <p>This had previously been included as an administrative oversight and whilst it remains within the constitution it is binding on the Council and thus can result in delays or missing out on key opportunities which are time sensitive. (The revised wording simplifies the way we deal with both buying and disposing of assets regardless of whether they are above or below market value.)</p>
No. 3	Procedure Rules Section 5 – Financial Procedure Rules page 35	<p>Removal of the words “at full market value” from paragraph 3.4</p> <p>Paragraph 3.5 – 3.5.4 be deleted in their entirety.</p>	To bring in line with those amendments suggested at 2 above.
No. 4	Responsibility for Functions Section IV page 5 Governance and Audit Committee	Removal of item 3, namely “Determining all matters relating to the adoption and operation of the Members’ Allowance Scheme including recommendation to the Council of the adoption of or amendment to any such scheme.” To be replaced with “to inform the work of the remuneration panel in advance of them making	There is a view that the terms of reference as written takes away from the independency, which the related legislation intended. If agreed the work undertaken by the remuneration panel would be reported direct to Council for consideration but Governance and Audit

Ref	Section /Page Ref	Amendment required	Reason for Amendment
		submissions to Council “	Committee would be provided an opportunity to feed into the Remuneration Panel’s work prior to them making a recommendation to Council.
No. 5	Articles - Section 2, Article 14 pg 33	Paragraph 14.3 - Inclusion of the words. “a review of each committee’s effectiveness will be undertaken annually, the findings of which will be fed into and used to inform the annual review of the Constitution”	To improve the process and make it more robust and informed in future years.
No. 6	Responsibility for Functions – Officer Delegations Section IV pg 37.	<p>Inclusion of the words “and the Chairman of the Prosperous Communities Committee” to the paragraphs that currently read.</p> <p>2. To amend the Code of Practice for Traders, should the need arise, in consultation with the Chairman of the Policy and Resources Committee.</p> <p>(ii) To approve the cancellation of markets in exceptional circumstances in consultation with the Chairman of the Policy and Resources Committee.</p> <p>(iii) To approve the dates of any extra markets in Gainsborough Market Place / Silver Street at any time of the year, in consultation with the Chairman of the Policy and Resources Committee.</p>	This is a service area that can fall across both committees and therefore it is considered that both relevant chairs should be consulted prior to any decisions being made.
No. 7	Procedure Rules – Council	Inclusion of the paragraph:	This became a statutory requirement as at 25 February 2014 through The Local Authorities

Ref	Section /Page Ref	Amendment required	Reason for Amendment
	Procedure Rules Section V Page 11	<p>“ Immediately after any vote is taken at a budget decision meeting of an authority there must be recorded in the minutes of the proceedings of that meeting the names of the persons who cast a vote for the decision or against the decision or who abstained from voting.</p> <p>This paragraph is to be included following paragraph 14.4 which states, for the avoidance of doubt,</p> <p>“Recorded vote If any two members present at the meeting demand it, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.”</p>	(Standing Orders) (England) (Amendment) Regulations 2014
No. 8	Responsibility for Functions – Planning Terms of Reference Section IV Page 9	“Land Charges” be moved from the Planning Committee to the Prosperous Communities Committee	Does not fit with role as a regulatory committee. There is a view that this function is not sitting in the correct area. Land Charges has related fees and charges which need determining annually, fee setting is a policy function whilst planning is not a policy committee hence the proposed change to move this function to a policy committee namely prosperous communities.
No. 9	Responsibility for Functions – Planning Terms of Reference Section IV Page 9	Reference to building control be amended to read “Building Regulations”	Does not fit with role as regulatory committee. For the avoidance of doubt, planning is a regulatory committee and as such should only deal with regulatory matters. Any policy decisions relating to the Building Control Service fall within the remit of the Policy Committees. This amendment is for the avoidance of doubt.

Ref	Section /Page Ref	Amendment required	Reason for Amendment
No. 10	Appendices – Functions of the Monitoring Officer Page 26	That the page be deleted and replaced with that information set out at Appendix B	To reflect changes to legislation and the introduction of a fuller protocol (see below)
No. 11	New Appendices	That the information Contained in appendices A B C be adopted as new sections in the appendices part of the Constitution.	To support good governance and reflect the importance / difference these statutory roles have. Such protocols are common place in other authorities Constitutions and viewed as a way of raising the profile of the statutory posts.
No. 12	Articles - Section 2, Article 11 pages 26 - 29	Subject to 11 above being approved, a footnote to the effect of “this Article should be read in conjunction with the Appendices entitled “Head of Paid Services Protocol, Monitoring Officer Protocol and Section 151 Protocol” be included.	For the avoidance of doubt.
No. 13	Appendices – Role Description Chairman and Role Description Vice-Chairman	That the following be incorporated into the list of duties set out for each role : - “fostering democracy in West Lindsey and especially in our schools.”	Arising from the consultation in undertaking the annual review, lead members would welcome this inclusion. (Suggestion has been made through the consultation process)
No. 14	Procedure Rules – Contract Procedure Rules Section V Page 49	That the words “and the ACOP for Procurement, which is held in the ACOP Library on Minerva” be added to second paragraph, so that it reads “The Contract Procedure Rules advise on procedures for the purchase of goods and services, and should be read together with the financial procedure rules and the Approved Code of Practice (ACOP) for Procurement, which is held in the ACOP Library on Minerva	To ensure the process is as clear and robust as possible.
No. 15	Responsibility for Functions - Scheme of	That the words “following consultation with the Section 151 and Monitoring Officer” be added into the notes column relating to the affixing of the Common Seal of	For increased robustness and added safeguards improving governance.

Ref	Section /Page Ref	Amendment required	Reason for Amendment
	Management Corporate Delegations, Section IV Page 50	the Council to documents (16.1)	

3. Recommendations

- (a) That Members note the outcome of the annual review.
- (b) That the amendments (No's 1 - 15) detailed at Section 2 of the report and Appendix A, B, and C be approved for immediate implementation.
- (c) In light of recent Director Appointments and the on-going, structure review at a Head of Service Level, the Monitoring **Officer in consultation with the Chairman of the Governance and Audit Committee and the Deputy Leader of the Council** be granted delegated authority to make any required housekeeping amendments to relevant sections of the Constitution.

(Note: for the avoidance of doubt amendments deemed housekeeping would be amending job titles and moving relevant officer delegations under the appropriate service area. Additions or deletions would not be deemed housekeeping and should it be deemed amendments of this nature were required these would be reported back to Council for consideration)

HEAD OF PAID SERVICE PROTOCOL

1. INTRODUCTION TO STATUTORY RESPONSIBILITIES

The Head of Paid Service is a statutory appointment pursuant to Section 4 of the Local Government and Housing Act 1989. This Protocol provides some general information on how those statutory requirements will be discharged at West Lindsey District Council.

The role of Head of Paid Service rests with the Chief Executive, who undertakes to discharge these statutory responsibilities in a positive way and in a manner that enhances the overall reputation of the Council.

A summary list of the Head of Paid Service's statutory responsibilities appears in the attached Appendix. The Head of Paid Service's ability to discharge these duties and responsibilities will depend, to a large extent on Members and Officers:

- a. Addressing the staffing needs of the Council;
- b. Meeting the staffing needs of the Council;
- c. The appointment and proper management of staff;
- d. Complying with the Council's Constitution; and

2. WORKING ARRANGEMENTS

Having excellent working relations with Members and Officers will assist in the discharge of statutory responsibilities by the Head of Paid Service. Equally, a speedy flow of relevant information and access to debate (particularly at the **early stages** of any decision-making by the Council) will assist in fulfilling those responsibilities. Members and Officers must, therefore, work with the Head of Paid Service (and his/her staff) to discharge the Council's statutory and discretionary responsibilities.

The following arrangements and understandings between the Head of Paid Service, Members and the Council's Management Team (or 'CMT') are designed to ensure effective discharge of the Council's business and functions. The Head of Paid Service will:

2.1 RESOURCES

- 2.1.1 Report to the Council as necessary on the staff, accommodation and resources he / she requires to discharge his or her statutory functions;

2.1.2 Have sufficient resources to enable him or her to address any matters concerning his or her Head of Paid Service functions;

2.2 ACCESS TO INFORMATION AND MEETINGS

2.2.1 Be alerted by Members and Officers to any issue(s) that may become of concern to the Council, including in particular the manner in which the discharge by the Council of its different functions is co-ordinated: the number and grades of staff required for the discharge of its functions; the organisation of the Council's staff and the appointment and proper management of the Council's staff;

2.2.2 Will be the lead officer for the Council's Management Team;

2.2.3 Have advance notice (including receiving agendas, minutes, reports and related papers) of all relevant meetings of the Council (including meetings at which 'officer delegated' decisions are taken) at which a binding decision may be made (including a failure to take a decision where one should have been taken);

2.2.4 Have the right to attend (including the right to be heard) any meeting of the Council (including meetings at which 'officer delegated' decisions are taken) before any binding decision is taken (including a failure to take a decision where one should have been taken);

2.2.5 In carrying out any investigation(s) and/or exercising any duties have unqualified and unrestricted access to any information held by the Council and to any Officer or Member who can assist in the discharge of the functions.

2.3 RELATIONSHIPS

2.3.1 Ensure the other Statutory Officers (Monitoring Officer and the Section 151 Officer) are kept up to date with relevant information regarding the manner in which the Council discharges its various functions, the corporate approach of the Council, the staffing needs of the Council, the organisation of the staff and the appointment and proper management of the staff;

2.3.2 Meet regularly with the Monitoring Officer and the Section 151 Officer to consider and recommend action in connection with Corporate Governance issues and other matters of concern;

2.3.3 Develop effective working liaison and relationship with all Members;

- 2.3.4 Have a special relationship of respect and trust with the Leader, Deputy Leader and the Chairs of Committees with a view to ensuring the effective and efficient discharge of Council business;
- 2.3.5 Develop effective working liaison and relationship with the External Auditor (including having authority, on behalf of the Council, to complain to the same, refer any breaches or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary);
- 2.3.6 In consultation, as necessary, with the Leader, Chairman of the Council and the External Auditor, defer the making of a formal report under Section 4 of the Local Government and Housing Act 1989 where another investigative body is involved;

3. MEMBER AND OFFICER RESPONSIBILITIES

To ensure the effective and efficient discharge of the arrangements set out in paragraph 2 above, Members and Officers will report any breaches of statutory duty or procedures and other vices or constitutional concerns to the Head of Paid Service as soon as practicable.

4. MISCELLANEOUS

The Head of Paid Service will:

- 4.1 Be available for Members and Officers to consult on any issues of the corporate approach of the Council, staffing needs, appointment and management of staff;
- 4.2 Ensure adequate insurance and indemnity arrangements are in place for the same to protect and safeguard the interests of the Council and the proper discharge of the Head of Paid Service role.

5. SANCTIONS FOR BREACH OF PROTOCOL

Complaints of a breach of this Protocol by an Officer will be referred to the relevant Director and/or Chief Executive for appropriate action to be considered, including disciplinary investigation if appropriate.

**SUMMARY OF STATUTORY DUTIES OF
HEAD OF PAID SERVICE FUNCTION**

Description		Source
1.	Lead Officer for the Council's Management Team	
2.	<p>Report to the Council where it is appropriate to do so on the following matters:</p> <ul style="list-style-type: none"> • The manner in which the discharge by the authority of their different functions is co-ordinated; • The number and grades of staff required by the authority for the discharge of their functions; • The organisation of the authority's staff; and • The appointment and proper management of the authority's staff. 	Section 4 Local Government and Housing Act 1989
3.	Duty, along with the Monitoring Officer, to be consulted by the Section 151 Officer on particular reports.	Section 114 (3A) Local Government Finance Act 1988

MONITORING OFFICER PROTOCOL

1. INTRODUCTION TO STATUTORY RESPONSIBILITIES

The Monitoring Officer is a statutory appointment pursuant to Section 5 of the Local Government and Housing Act 1989. This Protocol provides some general information on how those statutory requirements will be discharged at West Lindsey Council.

The role of the Monitoring Officer rests with the Head of Central Services.

The Monitoring Officer has a broad role in ensuring the lawfulness and fairness of corporate decision making, ensuring compliance with Codes and Protocols, promoting good governance and high ethical standards.

A summary list of the Monitoring Officer's responsibilities appears in the attached Appendix. The Monitoring Officer's ability to discharge these duties and responsibilities will depend, to a large extent on Members and Officers:

- e. Complying with the law (including any relevant Codes of Conduct);
- f. Complying with any general guidance, codes or protocols issued from time to time, by the Standards Committee and the Monitoring Officer;
- g. Making lawful and proportionate decisions;
- h. Complying with the Council's Constitution; and
- i. Generally not taking action that would bring the Council, their offices or professions into disrepute.

2. WORKING ARRANGEMENTS

Having excellent working relations with Members and Officers will assist in the discharge of statutory responsibilities by the Monitoring Officer. Equally, a speedy flow of relevant information and access to debate (particularly at the **early stages** of any decision-making by the Council) will assist in fulfilling those responsibilities. Members and Officers must, therefore, work with the Monitoring Officer (and her staff) to discharge the Council's statutory and discretionary responsibilities.

The following arrangements and understandings between the Monitoring Officer, Members and the Council's Management Team (or 'CMT') are designed to ensure effective discharge of the Council's business and functions. The Monitoring Officer will:

2.2 RESOURCES

- 2.1.1 Report to the Council as necessary on the staff, accommodation and resources she requires to discharge his or her statutory functions;
- 2.1.2 Have sufficient resources to enable him or her to address any matters concerning her Monitoring Officer functions;
- 2.1.3 Have control of a budget sufficient to enable him or her to seek Counsel's opinion on any matter concerning her functions;
- 2.1.4 Appoint a deputy and keep him or her briefed on any relevant issues that s/he may be required to deal with in the absence of the Monitoring Officer.

2.2 ACCESS TO INFORMATION AND MEETINGS

- 2.2.1 Be alerted by Members and Officers to any issue(s) that may become of concern to the Council, including in particular issues around legal powers to do something or not, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
- 2.2.2 Have advance notice (including receiving agendas, minutes, reports and related papers) of all relevant meetings of the authority (including meetings at which 'officer delegated' decisions are taken) at which a binding decision may be made (including a failure to take a decision where one should have been taken);
- 2.2.3 Have the right to attend (including the right to be heard) any meeting of the Council (including meetings at which 'officer delegated' decisions are taken) before any binding decision is taken (including a failure to take a decision where one should have been taken);
- 2.2.4 Be a member of the Council's Management Team and have advance notice of those meetings, agenda and reports and the right to attend and speak;
- 2.2.5 In carrying out any investigation(s) (whether under Regulations or otherwise), have unqualified and unrestricted access to any information held by the Council and to any Officer or Member who can assist in the discharge of her functions.

2.3 RELATIONSHIPS

- 2.3.1 Ensure the other Statutory Officers (Head of Paid Service and the Section 151 Officer) are kept up to date with relevant information regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;

- 2.3.2 Meet regularly with the Head of Paid Service and the Section 151 Officer to consider and recommend action in connection with Corporate Governance issues and other matters of concern regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
- 2.3.3 Have a close working relationship with the Leader, Deputy Leader and the Chairs of Committees with a view to ensuring the effective and efficient discharge of Council business;
- 2.3.4 Develop effective working liaison and relationship with the District Auditor and the Local Government Ombudsman (including having the authority, on behalf of the Council, to complain to the same, refer any breaches or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary);
- 2.3.5 In consultation, as necessary, with the Leader, Standards Committee and Standards for England, defer the making of a formal report under Section 5 of the Local Government and Housing Act 1989 where another investigative body is involved;
- 2.3.6 Make arrangements to ensure effective communication between his or her office and clerks to Parish Councils on Monitoring Officer and Standards Committee issues.

2.4 STANDARDS MATTERS

- 2.4.1 Give informal advice and undertake relevant enquiries into allegations of misconduct and, if appropriate, make a written report to Standards Committee (unless the Chair of Standards Committee agrees a report is not necessary) if in the opinion of the Monitoring Officer, there is a serious breach of the Members' Code of Conduct;
- 2.4.2 Subject to the approval of Standards Committee, be responsible for preparing any training programme for Members on ethical standards and Code of Conduct issues;
- 2.4.3 Provide information in response to a contact from a member of the public about an elected member provided that it would not compromise the Monitoring Officer should a formal complaint be made subsequently by the member of the public.

2.5 CONSTITUTION

The Monitoring Officer will be consulted on reports to the Council concerning changes to the Constitution.

3. MEMBER AND OFFICER RESPONSIBILITIES

To ensure the effective and efficient discharge of the arrangements set out in paragraph 2 above, Members and Officers will report any breaches of statutory duty procedures and other vices or constitutional concerns to the Monitoring Officer as soon as practicable.

4. MISCELLANEOUS

The Monitoring Officer will:

- 4.1 Establish and maintain the Register of Members' Interests and the Register of Gifts and Hospitality;
- 4.2 Receive copies of certificates under the Local Authorities (Contracts) Regulations 1997.

5. SANCTIONS FOR BREACH OF PROTOCOL

Complaints of a breach of this Protocol by an Officer will be referred to the relevant Director and/or Chief Executive for appropriate action to be considered, including disciplinary investigation if appropriate.

SUMMARY OF STATUTORY DUTIES OF MONITORING OFFICER FUNCTION

Description		Source
1	Report on contraventions or likely contraventions of any enactment or rule of law	Section 5 Local Government and Housing Act 1989
2	Report on any maladministration or injustice where the Ombudsman has carried out an	Section 5 Local Government and Housing Act 1989
3	Appointment of Deputy Monitoring Officer	Section 5 Local Government and Housing Act 1989
4	Report on resources	Section 5 Local Government and Housing Act 1989
5	Receive copies of whistleblowing and allegations of misconduct	Members' & Co-opted Members' Code of Conduct of West Lindsey District Council
6	Investigate misconduct in compliance with Regulations and directions of Ethical Standards Officers	local adopted standards arrangements made under the Localism Act 2011
7	Establish and maintain registers of members interests and gifts and hospitality	Members' & Co-opted Members Code of Conduct of West Lindsey District Council
8	Advice to members on interpretation of Code	Members' & Co-opted Members' Code of Conduct , regulations & Standards for England guidance – Standards for England is no longer in existence
9	Key role in promoting and maintaining high standards of conduct through support to the Standards Committee	s27 Localism Act 2011
11	Ethical framework functions in relation to Parish Councils	Localism Act 2011
12	Compensation for maladministration	Section 92 LGA 2000
13	Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all	Legislation, legal advice and DCLG (& predecessors) guidance

CHIEF FINANCE OFFICER (SECTION 151 OFFICER) PROTOCOL

1. INTRODUCTION TO STATUTORY RESPONSIBILITIES

The Chief Finance Officer is a statutory appointment pursuant to Section 151 of the Local Government Act 1972. This Protocol provides some general information on how those statutory requirements will be discharged at West Lindsey District Council.

At West Lindsey District Council the role of Chief Finance Officer (Section 151 Officer) rests with the Director of Resources, who undertakes to discharge these statutory responsibilities in a positive way and in a manner that enhances the overall reputation of the Council. In doing so, s/he will also safeguard, so far as is possible, Members and Officers, whilst acting in their official capacities, from financial difficulties.

A summary list of the Chief Finance Officer's statutory responsibilities appears in the attached Appendix. The Chief Finance Officer's ability to discharge these duties and responsibilities will depend, to a large extent on Members and Officers:

- j. Complying with the Council's financial procedures;
- k. Making lawful payments;
- l. Not taking action that would result in unlawful payments or unlawful action.

2. WORKING ARRANGEMENTS

Having excellent working relations with Members and Officers will assist in the discharge of statutory responsibilities by the Chief Finance Officer. Equally, a speedy flow of relevant information and access to debate (particularly at the **early stages** of any decision-making by the Council) will assist in fulfilling those responsibilities. Members and Officers must, therefore, work with the Chief Finance officer (and her staff) to discharge the Council's statutory and discretionary responsibilities.

The following arrangements and understandings between the Chief Finance Officer, Members and the Council's Management Team (or 'CMT') are designed to ensure effective discharge of the Council's business and functions. The Chief Finance Officer will:

2.3 RESOURCES

- 2.1.1 Report to the Council as necessary on the staff, accommodation and resources she requires to discharge his or her statutory functions;

- 2.1.2 Have sufficient resources to enable him or her to address any matters concerning his or her Chief Finance Officer functions;
- 2.1.3 Nominate a suitably qualified deputy and keep him or her briefed on any relevant issues and s/he may be required to deal with in the absence of the Chief Finance Officer.
- 2.1.4 In the unusual event that the Chief Finance Officer is precluded from offering advice and the deputy is unable to advise, appoint an appropriate external adviser.

2.2 ACCESS TO INFORMATION AND MEETINGS

- 2.2.1 Be alerted by Members and Officers to any issue(s) that may become of concern to the Council, including in particular issues around financial management, accounts and audit regulations, proposed expenditure or proposed actions which might lead to a loss or a deficit;
- 2.2.2 Have advance notice (including receiving agendas, minutes, reports and related papers) of all relevant meetings of the Council (including meetings at which 'officer delegated' decisions are taken) at which a binding decision may be made (including a failure to take a decision where one should have been taken);
- 2.2.3 Have the right to attend (including the right to be heard) any meeting of the Council (including meetings at which 'officer delegated' decisions are taken) before any binding decision is taken (including a failure to take a decision where one should have been taken);
- 2.2.4 Be a member of the Council's Management Team and have advance notice of those meetings, agenda and reports and the right to attend and speak;
- 2.2.5 In carrying out any investigation(s) and/or exercising his or her fiduciary duties have unqualified and unrestricted access to any information held by the Council and to any Officer or Member who can assist in the discharge of his or her functions.

2.3 RELATIONSHIPS

- 2.3.1 Ensure the other Statutory Officers (Head of Paid Service and Monitoring Officer) are kept up to date with relevant information regarding financial management, accounts and audit regulations, proposed expenditure or proposed actions which might lead to a loss or deficit;

- 2.3.2 Meet regularly with the Head of Paid Service and the Monitoring Officer to consider and recommend action in connection with Corporate Governance issues and other matters of concern regarding any financial management, accounts and audit regulations, proposed expenditure or proposed actions which might lead to a loss or deficit;
- 2.3.3 Have a special relationship of respect and trust with the Leader, Deputy Leader and the Chairs of Committees with a view to ensuring the effective and efficient discharge of Council business;
- 2.3.4 Develop effective working liaison and relationship with the External Auditor, and as necessary, the Local Government Ombudsman, (including having authority, on behalf of the Council, to complain to the same, refer any breaches or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary);
- 2.3.5 After consulting with the Head of Paid Service and Monitoring Officer, the Chief Finance Officer must make a formal report to the Council under S114 of the Local Government and Finance Act 1988 where a decision has been, or is about to be, made which will result in unlawful expenditure, unlawful loss or deficiency or an unlawful entry in the Council's accounts. The Chief Finance Officer must also make a formal report to Council if it appears that the Council's expenditure is likely to exceed its resources in any financial year.
- 2.3.6 In consultation, as necessary, with the Leader, Chairman of the Council and the External Auditor, defer the making of a formal report under Section 114, 114A, 115 and 116 of the Local Government and Finance Act 1988 where another investigative body is involved;

3. MEMBER AND OFFICER RESPONSIBILITIES

To ensure the effective and efficient discharge of the arrangements set out in paragraph 2 above, Members and Officers will report any breaches of statutory duty or procedures and other vices or constitutional concerns to the Chief Finance Officer, as soon as practicable.

4. MISCELLANEOUS

The Chief Finance Officer will:

- 4.1 Be available for Members and Officers to consult on any issues of the Council's financial powers, possible unlawful payments, or general advice on the financial arrangements;

- 4.2 Be expected to make enquiries into allegations of financial irregularity or misappropriation of Council funds or resources. This may be undertaken jointly with the Monitoring Officer where there is an overlap of responsibilities;
- 4.3 Be the responsible officer for the provision of internal audit services to the Council. S/he will report to Members on a regular basis on the services provided and audit findings;
- 4.4 Ensure adequate insurance and indemnity arrangements are in place for the same to protect and safeguard the interests of the Council and the proper discharge of the Chief Finance Officer role;
- 4.5 The Chief Finance Officer or the deputy will record details of advice given.

5. SANCTIONS FOR BREACH OF PROTOCOL

Complaints of a breach of this Protocol by an Officer will be referred to the Chief Executive for appropriate action to be considered, including disciplinary investigation if appropriate.

**SUMMARY OF STATUTORY DUTIES OF
CHIEF FINANCE OFFICER FUNCTION**

Description		Source
1.	Responsible Officer for the proper administration of the financial affairs of the Authority.	Section 151 Local Government Act 1972 Section 114 Local Government Finance Act 1988.
2.	Appoint a Deputy	
3.	Report on resources needed to perform duties.	Section 114 (7) Local Government Finance Act 1988.
4.	Reports under specified circumstances, namely (a) decisions which involve or would involve the authority incurring expenditure which is unlawful; (b) action taken or about to be taken which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the authority; (c) entering item(s) of account which are unlawful.	Section 114 (2) Local Government Finance Act 1988
5.	Report if it appears that expenditure of the authority (including that it proposes to incur) in a financial year is likely to exceed the resources available.	Section 114 (3) Local Government Finance Act 1988
6.	Duty to consult with Head of Paid Service & Monitoring Officer in respect of 4 (a) – (c) above	Section 114 (3A) Local Government Finance Act 1988
7.	Conduct the role and responsibilities in line with statutory and professional requirements as may be laid down from time to time (including but not restricted to CIPFA Codes of Practice and the Institute's Statement on the "Role of Finance Director in Local Government".	Relevant Codes of Practice Accounts & Audit Regulations 1996