

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**CORPORATE LEADERSHIP TEAM'S
REPORT TO**

Council
17 May 2023

Report Title: Updated Finance and Contract Procedure Rules

Submitted by: Monitoring Officer

Portfolios: One Council, People & Partnerships

Ward(s) affected: N/A

Purpose of the Report

To ask Council to adopt a new set of Finance and Contact Procedure Rules

Recommendation

That Council resolves to:-

- 1) adopt the new Finance and Contract Procedure Rules as set out in the appendix;
and,**
- 2) delegate authority to the Monitoring Officer, in conjunction with the Portfolio Holder One Council, People & Partnerships, to make such minor modifications as may be required to finalise the drafting and integrate the same into the Constitution.**

Reasons

The Finance and Contract Procedure Rules (FCPRs) haven't been substantially revised since September 2020. They were not revised alongside the rest of the Constitution when the Constitution was substantially updated at Annual Council in 2022, resulting in the adoption of a bespoke, modern constitution. The adoption of the proposed FCPRs would bring them into line with the rest of the new Constitution, bringing efficiency improvements through clarity and brevity and by updating and streamlining outdated or unnecessarily complex processes. In doing so, the new FCPRs also bring improved governance and provide a clearer, centralised framework in areas such as joint and collaborative working and grant funding.

1. Background

- 1.1 Members will recall that a new Constitution was adopted by unanimous vote of Council at its Annual meeting in 2022. The new Constitution took a completely fresh, bespoke approach to its layout, format and content, significantly updating and modernising it and making it much more user-friendly and accessible.

- 1.2 Constitutions are “living documents” and must change from time to time to reflect how the Council does and would like to work, to make its operations more efficient and to ensure it achieves the correct balance between efficiency and sound governance. It is reviewed on at least an annual basis, with proposed changes being brought to Annual Council for Members to consider.
- 1.3 Members will be aware that whilst the rest of the Constitution was substantially revised and updated during 2022, with a new Constitution being adopted by unanimous vote of Council at its 2022 Annual meeting, the FCPRs were not reviewed as part of that process.
- 1.4 This approach was taken predominantly because a comprehensive review of FCPRs at that time would have delayed the adoption of the rest of the constitution, given the length and complexity of that version of the FCPRs. In addition, there was also significant legislative change to the procurement regime which anticipated, so there was some sense in pausing to evaluate the likely impacts of that development on the FCPRs.
- 1.5 Whilst those legislative changes are still expected, it is likely to be 12 months or more before they take shape and come into force, so it is considered prudent to update our FCPRs in the meantime. There are some significant operational efficiency benefits to be gained in doing so, along with some governance improvements and the additional advantages of the FCPRs moving to a format and drafting style that matches the rest of the new Constitution.

2. **Issues**

- 2.1 The FCPRs set out how the council manages its operational financial processes, and the rules governing how the council procures goods, services and works and manages its contracting arrangements.
- 2.2 The current FCPRs are found in appendices F5 and F6 of the Constitution and run to some 178 pages. They are a direct “lift and shift” (with some formatting changes) of the FCPRs that were in the Council’s old Constitution, last updated in September 2020.

Streamlining the FCPR

- 2.3 The revision of the FCPR has removed rules which are better suited to an operational practice manual as opposed to being in the main body of the rules themselves. These issues are appropriately contained in FCPRs as “headline” considerations only, establishing the principles and the importance of such controls, but with the detail sitting at an operational manual level. These are issues which should not require Council approval to change/update.
- 2.4 The rules which move to operational manuals are:

- Processes to be followed when stocks are delivered (inspection at the time of delivery for quantity/quality etc.; directions as to signing stock sheets, certifying accuracy, collating records, stock taking etc.)
- Provisions relating to ordering and paying for supplies and services, referencing outdated systems and forms.
- Provisions relating to the commercial strategy
- Provisions relating to project governance, partnerships, internal control, risk, audit, insurance, staffing costs & expenses, member allowances, and internal financial reporting.

Correcting Anomalies

2.5 The review of the FCPS identified differences between what the current FCPRs say, and what is actual (and correct) current practice. The new FCPRs have been drafted to reflect actual (and correct) current practice:

- Removing the need for the Section 151 Officer to be consulted/ involved in negotiations in *all* cases where an agreement “or other arrangement” in excess of £50k is “contemplated with external third parties...which may have financial implications for the council”. This is unhelpfully vague and there are other adequate controls within the decision making process which makes this unnecessary.
- Standardising the financial limits which trigger different requirements in the contracting process (credit checks, risk assessments, anti-bribery checks).
- The FCPRs currently have a £10,000 threshold at which contracts must be placed on a regional portal or the Council’s website. That threshold should (in law) be £25,000.
- Aligning to £50,000 the form (terms and conditions) of contracts which must be approved by Legal Services and the size of contract which needs to be put through the formal Legal Services signing/sealing processes to remove an existing misalignment.
- Aligning the requirement to execute under seal with current law. The new FCPRs provide clarity and guidance on this approach and will expedite contract completion arrangements without sacrificing proper governance controls.
- Clarification of arrangements for “performance bonds” when letting contracts such that bonds are not required for contracts up to £250,000, and the advice of the S151 Officer should be sought on a case-by-case basis thereafter.

Improved Governance

2.6 The revised FCPRs include additions designed specifically to improve governance controls:

- Exceptions to the procurement rules can currently be approved for appropriate reasons (market failure, single supplier, urgency). The revised rules increase controls by allowing approval by the S151 Officer and Monitoring Officer only, rather than any Chief Officer, and use of these “waiver” processes to be reported to the Audit & Standards committee on a regular basis as part of the Council’s performance monitoring practices.
- The revised rules contain sections that provide a clear framework on joint and collaborative working, particularly where the council acts as the “accountable body” in a wider partnership. Whilst we have adequate governance frameworks around the various programmes associated with Levelling Up, it is prudent for the FCPRs to contain an overarching framework in these areas.

Summary

2.7 This report provides an overview of the substantive alterations proposed in the new rules. It is beyond the scope of this report to summarise *all* of the changes made as the new FCPRs are based on a fresh model, rather than being the result of iterative improvements to the existing version. Members can be assured, however, that there have been no changes to the hierarchy of financial limits in terms of when approvals must move from Officer, to Cabinet to Council.

2.8 Members should also keep in mind that as a part of the Constitution, the FCPRs are also a “living document” and should properly be kept under constant review and updated as needs be. A substantive review of the provisions on procurement and contracting will be required when the legislative changes referred to above come into effect, which is anticipated to be mid to late 2024.

3. Proposal

3.1 That Council resolves to:-

- 1) adopt the new Finance and Contract Procedure Rules as set out in the appendix; and,
- 2) delegate authority to the Monitoring Officer, in conjunction with the Portfolio Holder One Council, People & Partnerships, to make such minor modifications as may be required to finalise the drafting and integrate the same into the Constitution.

4. Reasons for Proposed Solution

4.1 The Finance and Contract Procedure Rules (FCPRs) haven’t been substantially revised since September 2020. They were not revised alongside the rest of the Constitution when the Constitution was substantially updated at Annual Council in 2022, resulting in the adoption of a bespoke, modern constitution. The adoption of the proposed FCPRs would bring them into line with the rest of the new Constitution, bringing efficiency improvements through clarity and brevity and by updating and streamlining outdated or unnecessarily complex processes. In doing so, the new

FCPRs also bring improved governance and provide a clearer, centralised framework in areas such as joint and collaborative working and grant funding.

5. **Options Considered**

5.1 An option would be to simply carry on with the existing FCPRs, until the changes to the procurement regime come into effect. Another option would be to explore piecemeal amendments to the existing rules to deal only with some of the more pressing issues, until that time.

5.2 However, there are considerable benefits in terms of operational efficiency and improved governance in the proposed update and revised format that wouldn't be realised if that alternative approach was taken. A piecemeal approach to amendments is likely to be resource intensive and unachievable on any useful timescale.

6. **Legal and Statutory Implications**

6.1 There are no legal implications arising in respect of the first three proposed changes. The review has been very carefully undertaken by the Monitoring Officer, Section 151 Officer, Deputy Section 151 Officer and the Councils' lead Procurement Officer. Great care has been taken to ensure that the proposed new FCPRs are up to date and in accordance with all relevant statutory requirements.

6.2 Through that process, the Officer team has identified (and rectified) some areas where the rules were out of date and have clarified and simplified processes which greatly increases the likelihood of the rules being better understood and followed. This greatly reduces the likelihood of the Council falling into error in the way in which it conducts its financial and procurement/contracting functions.

7. **Equality Impact Assessment**

7.1 There are no equality implications arising from the proposals.

8. **Financial and Resource Implications**

8.1 There are no direct financial or resource implications, but improved clarity and simplicity in the processes governed by the rules will deliver operational efficiencies in day-to-day practice. The governance improvements proposed will ensure better stewardship of council resources and the updates and clarity provided around the procurement and contracting processes in particular will reduce the likelihood of an error leading to potentially significant costs in resolving a governance failure.

9. **Major Risks**

9.1 The greatest risk lies in not updating the rules.

10. **UN Sustainable Development Goals (UNSDG)**

10.1 Contributing to the smoother and more efficient operation of the Council contributes towards the following goals:-



11. **Key Decision Information**

11.1 N/A

12. **Earlier Cabinet/Committee Resolutions**

12.1 Adoption of the new Constitution, Annual Council May 2022.

13. **List of Appendices**

13.1 Proposed new FCPRs

14. **Background Papers**

14.1 N/A