



Part F – Appendices

Section F5:- Finance and Contract Procedure Rules

F5G:- Collaborative Working and ASDVs

In Part F:-

Section F1 contains the Member Code of Conduct

Section F2 contains the Member Planning Protocol

Section F3 contains the Officer Code of Conduct

Section F4 contains the Officer/Member Relations Protocol

This Section (F5) contains the Finance and Contract Procedure Rules that govern how the council manages its financial affairs. The Rules are split into the following eight parts:-

- **Part F5A** contains an introduction and overview to the principles of good financial management, the roles and responsibilities of Officers and Members and the various documents and processes that form the council's financial management framework.
- **Part F5B** Financial Management
- **Part F5C** Financial Planning
- **Part F5D** Risk Management and Control of Resources
- **Part F5E** Financial Systems and Procedures
- **Part F5F** Contract Procedure Rules
- **This Section (F5G)** Collaborative Working and ASDVs
- **Part F5H** Glossary



Part F – Appendices
Section F5:- Finance and Contract Procedure Rules
F5G:- Collaborative Working and ASDVs

In this Section:-

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G1. General

- G1.1 The term “collaborative working” covers a wide array of joint working arrangements. For the purposes of this section, the term “collaborative working” means working with one or more third parties collectively to achieve a shared objective.
- G1.2 The council’s contribution to collaborative working may be capital, revenue or contributions in kind such as staff time, and contributions of any kind fall within this section.
- G1.3 This section does not cover public-to-public or public to private contractual arrangements. This is covered under section F of the Finance and Contract Procedure Rules.
- G1.4 In any circumstance where the council undertakes procurement in respect of collaborative working, the council’s Finance and Contract Procedure Rules shall apply.
- G1.5 The council will maintain a register of significant partnerships and all significant partnerships will be subject to an annual review that will be reported to Audit and Standards Committee.
- G1.6 As a measure of best practice, all collaboration agreements should be subject to a complete review at least every 4 years.
- G1.7 Any collaboration which involves the creation of or participation in a separate legal entity such as a limited company, trust or charity, must be set up and approved in accordance with the governance arrangements as set out below.

G2. Written Agreement

- G2.1 Collaborative working arrangements must be recorded in writing, the content and format of which must be approved by the Service Director Legal and Governance.
- G2.2 Any collaborative working involving the commitment of significant council resources (be they finance, staff, land, buildings or equipment), or where the council acts as an accountable body, must have a formal agreement in place approved by the Service Director Legal and Governance



G3. Accountable Body

G3.1 Any collaborative working in which the council is to act as Accountable/Responsible Body must be approved by the relevant Service Director and the Section 151 Officer.

G3.2 Where the council does act as the accountable body, the full cost of this service must be charged to the collaborative working arrangement (including a fair share of corporate overheads or equivalent in kind contribution)

G4. Collaborative Working Approval Process

G4.1 The approval process for participation in a collaborative working arrangement is based on:-

- a) compliance with corporate outcomes
- b) the financial contribution of the council

G4.2 If the council's financial contribution has not already been included in the approved budget, further approval will be required. The level of approval required will depend on both the amount, and whether the funding is to come from existing budgets or from reserves. These approval limits are set out in Section F5B (Rule B8.1) of the Finance and Contract Procedure Rules. The financial contribution of the Council should be assessed over the lifetime of the collaborative working arrangement and shall include the all staffing/resource costs as well as any financial contributions provided.

G4.3 Each Service Director is responsible for preparing regular reports for the Cabinet Member outlining the key outcome and achievements of each collaborative working arrangement. The report should also review the affordability and continued relevance of the arrangement to the Council's corporate objectives.

G5. ASDV Background

G5.1 The term Alternative Service Delivery Vehicle (ASDV) refers to a range of different organisations which:-

- a) have been set up by the council, either alone or with a partner (public or private sector)
- b) are legally separate from the council



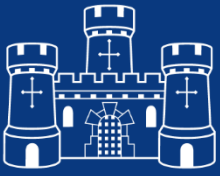
c) are operationally independent of the council, but the council has retained significant control over key strategic issues.

G5.2 ASDVs can take a number of different legal forms. The main types include company limited by shares, company limited by guarantee and Trusts.

G5.3 Each ASDV will have its own governance arrangements, business plans, policies and procedures for managing its business, which can be different to those of the council.

G5.4 In most cases, the council will have at least three distinct relationships with its ASDV. Each of these relationships is subject to different considerations, rules and processes. It is essential when configuring and operating an ASDV that a careful approach is taken to delineating roles and responsibilities to put in place operational safeguards to deal with conflicts that might arise. These conflicts can arise between these distinct relationships or roles, or more generally, where an Officers or Members has a role in respect of the ASDV and in respect of the Council. These roles, relationships and potential conflicts must be kept under constant review.

- a) As an ASDV director. Directors are responsible for the operational leadership and direction of the ASDV and are ultimately accountable to the ASDVs shareholders. Their primary duty is to promote the interests of the ASDV and conflicts can arise where policy or political imperatives do not align with the best interests of the ASDV, and ASDV directors have a lead role in setting or delivering policy/political imperatives and in ensuring the success of the ASDV.
- b) As a shareholder/owner of the business. The shareholder's primary role is to hold the ASDV directors to account for their leadership, direction and success of the ASDV. Conflicts can arise where policy or political imperatives do not align with the best interests of the ASDV and shareholders have a lead role in setting or delivering policy/political imperatives and in ensuring the success of the company.
- c) As a customer of the ASDV or as a supplier of goods or services to the ASDV. Customers commissioning services or acquiring goods from the ASDV or supplying goods or services to the ASDV are primarily concerned with achieving best value for the council. Conflicts can arise where a commissioning/supplying decision taker also has responsibilities to the company as a director or shareholder. There is an inherent conflict in seeking to achieve best value for the Council and promoting the interests of the ASDV.



G6. Approval to set up an ASDV

G6.1 Setting up a new ASDV is likely to be an expensive, complex and time-consuming process requiring significant input from a number of Council services and external specialists. To ensure consistency with corporate priorities and minimise the risk of abortive costs, the set up needs to be in 3 distinct stages:-

- a) approval by the Corporate Leadership Team to develop an Outline Business Case to establish the new ASDV
- b) Production of an outline Business Case (OBC) to support the development of a full business case
- c) Production of a Full Business Case (FBC).

G6.2 Cabinet approval will be required at OBC and FBC stage. Depending on the structure of the proposed ASDV specific Cabinet approval may also be required for:-

- a) Council pension guarantees
- b) Provision of working capital loans
- c) The initial/Year 1 Annual Business Plan (ABP)
- d) Key Reserved Matters.

G6.3 Approval of any working capital loans or pension guarantees shall be undertaken in accordance with the thresholds set out under rule B8.1 above.

G6.4 Scrutiny Committee consideration at FBC stage can also be beneficial

G7. Operational Governance

G7.1 A Member or joint Officer/Member shareholder committee is typically a best practice approach to taking responsible for making decisions that relate to the Council's role as shareholder or owner of the ASDV. Those sitting on a shareholder committee must have sufficient knowledge and experience to be able to hold ASDV Directors to account for performance, and to robustly interrogate and challenge business plans and performance data.



- G7.2 The exact process and range of shareholder decisions will be different for each ASDV. However, as a minimum, a formal Council (as shareholder) decision will be required to approve the annual business plan and any changes to the legal structure of the company (e.g. changes in shares). Any changes to HR and or remuneration policies will be approved by reference to the likely financial impact in line with the thresholds set out in rule B8.1 above.
- G7.3 Council approval to change the scope/range of services should initially be obtained from the Corporate Leadership Team. Further approval will depend on the size and nature of services covered by the proposed change and therefore advice should be obtained from the Service Director Legal and Governance.
- G7.4 Company approval will depend on each company's own governance processes.
- G7.5 If the ASDVs supplies goods or services to the Council, then generally the standard FCPRs applicable to any third party supplier should be applied to decisions affecting the ASDV in its role as a supplier. The primary exception is ASDVs that are Teckal exempt. In these cases, the Council can award contracts to the ASDV without a competitive procurement process. The award of a contract under a Teckal exemption should still be subject to a business case assessment demonstrating value for money is being achieved.
- G7.6 Each ASDV will have its own equivalent of the Councils FCPRs. Changes to these documents will generally not require any approval from the Council.
- G7.7 The ability of the Council to wind-up or liquidate an ASDV will be set out in the Shareholder Agreement or Articles of Association of each ASDV. Putting an ASDV into liquidation is likely to be a significant step with major HR, legal, financial and service delivery implications. It is therefore likely that such a decision will require Cabinet approval.

G8. Reporting

- G8.1 Each ASDV will be required to provide regular shareholder financial and performance reports to the Council. The form and timing of reports will be defined by the Section 151 Officer and Service Director Legal and Governance.
- G8.2 If the ASDV supplies services to the Council, it will also have to provide performance reports in accordance with its contractual obligations. These contractual performance



reports will be incorporated as part of the standard Officer/Member process used for all suppliers.

G8.3 Regular monitoring reports should be taken to the appropriate Scrutiny Committee.

G9. Directors of ASDVs

G9.1 Both Members and Officers may act as a director of one or more of the Councils ASDVs, however many councils have elected not to have Member directors (or for Members to be ex-officio Directors only) to avoid the potential conflict of interest issues described above (political imperative Vs best interests of the ASDV).

G9.2 The role of Director includes some significant personal responsibilities and liabilities, and a significant time commitment to the ASDV and in maintaining the necessary skills to be an effective Director.

G9.3 A Director's primary duty is owed to the ASDV. Directors should be appointed solely based on their skills, knowledge and expertise after undertaking skills matrix analysis to match candidate Directors to the needs of the ASDV from time to time.

G9.4 Regular, robust performance assessment and training of Directors is essential to the success of an ASDV.

G9.5 For all of these reasons, it important that advice from the Service Director Legal and Governance is sought before appointing ASDV Directors

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