

# **Isle of Wight Council**

## **Property Code of Practice**

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## 1.0 Introduction

- 1.1 Following the restructure within the Council, the corporate property function is now provided by Property Services (property management and ownership issues), Strategic Assets (property acquisitions and disposals, rent reviews, lease renewals and valuations) and Building Maintenance (reactive and planned maintenance and repair, project management and capital building projects). If in doubt regarding which of these teams covers a specific issue then contact should be made with Property Services.

## 2.0 Purpose of the Code

- 2.1 This code has been drawn up to highlight the many intricacies and pitfalls surrounding property matters and to ensure that they are only dealt with by those suitably qualified and with relevant experience, provided by those within the corporate property function.

## 3.0 The Code

- 3.1 Officers within individual services should not attempt to enter into any property negotiations nor indeed should they enter into any seemingly innocuous discussions with landlords or landlord's agents, partner organisations, tenants or tenant's agents, or any others, as all too often it may be deemed that they have entered into an agreement (that could be binding upon the council) without understanding or intending this.
- 3.2 Property occupation costs are one of the major outgoings of the Council (currently in excess of £9m per annum) and a seemingly innocent conversation could lead to an expensive and on-going revenue commitment on premises that are not required and at a time when the Council is actively seeking to reduce such outgoings.
- 3.3 Decisions regarding the future occupation of council premises are taken at a strategic level, encompassing a full overview of all council premises and policies. Such an overview can only be undertaken with all relevant data (including the capacity of utility services, such as electricity, to support the function of the service), by the Strategic Assets Team. Officers within services should not, therefore, attempt to make decisions regarding the future of individual premises.
- 3.4 Property moves and changes will also impact upon the ICT network, and the number of such moves and changes (ranging from individuals through to entire services) at any point in time can be considerable. In order to fully understand these requirements and to be able to prioritise, a Change Request Process has been adopted and the explanatory page can be found at <http://wightnet.iow.gov.uk/moderncouncil/transformation/resources/moverequests.aspx>. The actual change request form itself can be found here: [http://wightnet.iow.gov.uk/shared\\_docs/Change%20request%20form%20-%20moves%20v20100312.docx](http://wightnet.iow.gov.uk/shared_docs/Change%20request%20form%20-%20moves%20v20100312.docx). Without completion of the relevant forms, including Head of Service approval and appropriate budgets in place, changes will not be considered.
- 3.5 A major element of the property occupation costs relates to repair and maintenance, both reactive and planned. Reactive repairs are usually of an urgent nature (following

storm damage, for example) and the need for all such works should be reported as promptly as possible to the Building Maintenance Team in order to ensure that the integrity of the property, and service delivery, are maintained.

- 3.6 Planned repair and maintenance is undertaken in accordance with strategic asset management condition surveys and service needs, and is ranked in order of priority, based on the limited budgets available and the programme within the Strategic Asset Management Plan. To avoid unnecessary works, this can only, therefore, be undertaken by the Building Maintenance Team.
- 3.7 All capital building works (design/construction/project management) must be commissioned through the Building Maintenance Team to ensure that works are not undertaken unnecessarily on premises that are planned for closure or disposal, and no Officers should attempt to commission such works. Commissioning works through the corporate team will also ensure that all projects are managed implementing the correct project management procedures for design and construction works, and that appropriate health and safety files are maintained.
- 3.8 Attention is drawn to the examples detailed below showing why property matters should only be undertaken by those with relevant experience and qualifications.
- 3.9 Any breach of this Code of Practice will be considered a disciplinary offence. Anyone suspected of having breached the Code will be reported to their Line Manager, who may instigate disciplinary proceedings.
- 3.10 If in any doubt as to which of the corporate property teams to address a specific matter please contact Property Services.

## 4.0 Examples

Below are a number of examples (although this is not an exhaustive list) of property matters and potential implications.

Issue	Implications	Property Team
New accommodation	The acquisition of new accommodation is a strategic level decision covered by the Strategic Asset Management Plan. Whilst operational requirements for accommodation are reflected at service level, any decision to acquire new accommodation must come through the relevant Head of Service, be supported by agreed budgets and fall within the strategic asset priorities of the Council. Services should not therefore waste time viewing potential new accommodation and they should especially not enter into discussions with potential vendors or landlords or agents.	Strategic Assets
Relocation	Any need to relocate or take new accommodation should be escalated through the relevant Head of Service via the service asset management process in order to establish whether there is a genuine need and how this might be facilitated. Again, services should not waste time looking at	Strategic Assets

Issue	Implications	Property Team
	alternative accommodation, even within other Council premises or partners premises until the strategic picture has been established.	
Utilisation	As part of the emerging flexible working structure the utilisation of accommodation will be determined in accordance with the corporate office standards and emerging work style assumptions and these will be driven by Senior Officers as part of strategic transformation.	Strategic Assets
Extra Accommodation	No matter how pressed for space, services should not accept additional accommodation from their landlords or those with whom they share the building. This can very easily lead to the presumption of additional rent or other payments being required and a contractual obligation having been entered into.	Strategic Assets
Additional Payments	Services must not agree any additional payments in respect of the accommodation that they occupy, or as above take additional accommodation, as any such commitments can only be made by Strategic Assets or Property Services. Indeed by agreeing to any such payments not only would the service be committing the Council to an additional revenue outgoing, it could also be establishing a rental level that prejudices the Council for future rent reviews on other accommodation.	Strategic Assets
Rent Reviews	Rent reviews can be extremely complex and ensuring the minimal, if any, uplift in rent can depend on a whole series of factors. Services must not enter into any discussions with the landlords or their agents regarding rental matters or any other lease or accommodation issues in order to ensure such negotiations are not prejudiced. Services will obviously be consulted before any negotiations are finalised.	Strategic Assets
Lease Renewals	Services must again not enter into any discussions with landlords or their agents regarding whether the Council is to remain in occupation of a property when the lease expires. The decision regarding on-going occupation is a strategic one (that needs to be agreed at a high level within the service) and the danger of a service entering into any such discussions no matter how innocent might be deemed to have committed the Council to remaining in occupation and renewing the lease for many more years.	Strategic Assets
Licenses	Licenses are an informal occupation arrangement and are often used to keep transactions simple or	Strategic Assets

Issue	Implications	Property Team
	to circumvent the need for an expensive lease. However, in many instances licenses will be construed by the courts to be leases thus committing the Council to a long term and expensive occupation of premises, so should not be discussed accordingly.	
Surrenders	Some leases contain a determination clause allowing the tenant (and sometimes the landlord) to surrender the lease. Such decisions are strategic and are often subject to time being of the essence and no service should ever give any indication to a landlord or indeed tenant of any intention to carry out a surrender.	Strategic Assets
Grants	Services must not enter into any agreement for grant assistance or, indeed, any other monies if these are to be secured against council premises, without the involvement of Strategic Assets, as this could prejudice the strategic asset priorities of the council, or to the service having to repay grant monies in the event that the property is disposed of.	Strategic Assets
Carrying Out Works	Services must not undertake works of any description, be they repair, maintenance, decoration or improvements, as they may be in breach of the lease by doing so, in breach of health and safety requirements (for example, by disturbing encapsulated asbestos), or be committing the Council to an expenditure that has not been prioritised. The need for such works should be conveyed to Building Maintenance.	Building Maintenance
Asbestos	The Council has a responsibility under the Control of Asbestos at Work Regulations to undertake asbestos surveys and undertake any remedial works or management in a prescribed manner. There are asbestos registers for Council premises with copies held by Building Maintenance and at the relevant property. No works are to be undertaken by any party whatsoever without reference to Building Maintenance and the asbestos register.	Building Maintenance
Health and Safety	The Council is responsible for ensuring that any works undertaken on its buildings comply with relevant health and safety legislation, including the Construction and Design Management (CDM) requirements. For this reason services should not instigate any works either directly themselves or through contractors as this could be in breach of health and safety and ultimately lead to a corporate manslaughter charge.	Building Maintenance
Health and Safety	A testing regime exists and is managed by Building	Building

Issue	Implications	Property Team
Testing	Maintenance in relation to all manner of accommodation issues (such as asbestos, water hygiene, electrical wiring, plant and machinery, etc) and this testing is undertaken in accordance with prescribed timescales and in accordance with relevant legislation. Services should not attempt to undertake any such testing themselves as this is likely to be a waste of resources and might in some circumstances lead to the invalidation of existing testing certificates. If a service is in doubt as to whether relevant testing has been undertaken it should contact Building Maintenance.	Maintenance
Capital Bids	Building Maintenance submit capital bids as part of the Star Chamber process in accordance with a prioritisation schedule relating to condition surveys. If individual services have specific matters that they wish to submit a capital bid for in relation to premises this must be done jointly with Building Maintenance. If not and the bid is approved there is no guarantee that Building Maintenance has the capacity to deliver.	Building Maintenance
Capital Building Works	If capital building works are commissioned by Officers from other services there is every chance that health and safety rules may not be followed, leaving the council vulnerable to Corporate Manslaughter legislation. Also, correct project management procedures are unlikely to be followed, resulting in poor design and construction, incorrect "as built" details and Health & Safety files being provided, leading to inadequate files being maintained.	Building Maintenance
Accessibility and DDA	The Council is responsible for compliance with the Disability Discrimination Act, which means ensuring fair access to all services. This does not necessarily mean making physical adjustments to buildings, and our Access Officer will advise on such matters.	Building Maintenance
Late Payments	If a landlord or agent contacts a service stating that a rent payment or other payment is late the service should never state that they will ensure the payment is made or give an assurance to this effect. There could be a perfectly valid reason for the rent or other payment not having been made (it could be in dispute for example) and the service could inadvertently prejudice such a situation. If this arises the service should contact Property Services.	Property Services
Sharing Occupation	Services should never share occupation with another party, whether the Council is the landlord or the tenant, even if the other party is one of our	Property Services

Issue	Implications	Property Team
	partner organisations. Sharing occupation can easily lead to a tenancy arising even without any discussions or negotiations. If a situation arises where sharing of occupation is a sensible solution, particularly with partner organisations, then Property Services must be involved.	
Service Transfers	On occasions the Council may take over the running of a service previously provided by a partner organisation or the Government. Whilst there may be TUPE issues in respect of staff transfers, which are legally binding, the accommodation may not have to transfer to the Council. In such circumstances services must involve Property Services to ensure that the Council does not inherit leases or other property agreements that it need not accept.	Property Services
Dilapidations	When a tenant vacates a building at the end of the lease (including following a surrender) the landlord is able to serve a schedule of dilapidations ensuring that the repairing clause within the lease is fully complied with. However, it is not as simple as just carrying out the works required by the landlord as, if there is provably no loss in value, the landlord's claim is likely to fail. Therefore, when services are due to vacate a building they must give no assurances to the landlord, the landlord's agents, or any others regarding the Council undertaking any repair works or reinstatement of improvements that were made during the course of the lease, as these works may not legally be required.	Property Services
Repairs	More often than not tenants are responsible for keeping their accommodation in good and substantial repair and condition. Obviously where the Council is a tenant this will generally apply, but services must not give any assurances to landlords or their agents, if approached, regarding the carrying out of repair, maintenance or decoration works. If any such approach is made by a landlord or agent this must be conveyed to Property Services.	Property Services
Energy Purchasing	The Council purchases gas and electrical supplies on a corporate basis in order to ensure value for money. Individual services should not enter into any energy purchasing negotiations either with utility providers or with specialist agencies. In doing so the Council may end up with two contracts to supply energy for the same premises or a new contract that invalidates a previous better value for money contract.	Property Services
Buildings Insurance	This is arranged corporately by Insurance Services and Property Services. Insurance requirements can vary according to the ownership of individual	Property Services

Issue	Implications	Property Team
	properties, leased in / out, owned, etc. Advice should be sought as the impact on external premiums the Council may become liable for. The Council also needs to keep an accurate inventory of insured property so as not to invalidate cover and fall foul of insurer's requirements, etc where for example empty properties are concerned.	

This is not an exhaustive list but does give examples of some of the pitfalls into which the unwary or unskilled may fall and this is why all property matters must be referred to Strategic Asset Management and not undertaken by individual service areas.