

# Part 2

## Articles of the Constitution

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# Article 1 - The Constitution

## 1.1 Powers of the Council

The Council will exercise all its powers and duties in accordance with the law and this Constitution.

## 1.2 The Constitution

This Constitution, and all its appendices, is the Constitution of Staffordshire Moorlands District Council.

## 1.3 Purpose of the Constitution

The purpose of the Constitution is to:

1. enable the Council to provide clear leadership in partnership with citizens, businesses and other organisations and support for the communities of Staffordshire Moorlands to enhance their economic, social and environmental well-being;
2. support the active involvement of citizens in the process of local authority decision-making;
3. help Councillors represent their constituents more effectively;
4. enable decisions to be taken efficiently and effectively;
5. create a powerful and effective means of holding decision-makers to public account;
6. ensure that no one will review or scrutinise a decision in which they were directly involved;
7. ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
8. provide a means of improving the delivery of services to the community.

## 1.4 Interpretation and Review of the Constitution

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated above.

The Council will monitor and evaluate the operation of the Constitution as set out in Article 14 (Review and Revision of the Constitution).

- 1.5 Unless negated by a provision of the Constitution, any decision made by or on behalf of the Council, and any plan, budget policy or strategy approved by or on behalf of the Council prior to the coming into effect of this Constitution, shall have effect and apply as if it had been made in accordance with the requirements of the Constitution and shall remain in force as a decision, plan, budget, policy or strategy under the Constitution unless and until and to the extent that it is amended, varied or replaced.

## Article 2 - Members of The Council

2.1 (a) **Composition.** The Council will comprise 56 members, otherwise called Councillors. One or more Councillors will be elected by the voters of each ward of the District in accordance with a scheme drawn up by the Local Government Commission and approved by the Secretary of State.

(b) **Eligibility.** Only registered voters of the District or those living, working there or holding land in the District will be eligible to hold the office of Councillor.

### 2.2 Election and Terms of Councillors

The regular election of Councillors will normally be held on the first Thursday in May every four years beginning in 2003. The terms of office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

### 2.3 Roles and Functions of all Councillors

(a) **Key Roles.** All Councillors will:

- (i) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
- (ii) represent their communities and bring their views into the Council's decision-making process, i.e. become the advocates of and for their communities; contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision making;
- (iii) deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances; effectively represent the interests of their ward and of individual constituents;
- (iv) balance different interests identified within the ward and represent the ward as a whole and respond to constituents' enquiries and representations, fairly and impartially;
- (v) be involved in decision-making or participate in the governance and management of the Council;
- (vi) be available to represent the Council on other bodies, and
- (vii) maintain the highest standards of conduct and ethics.

(b) **Rights and Duties**

- (i) Councillors will have such rights of access to such documents, information training, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
- (ii) Councillors will not make public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or Officer entitled to know it.

- (iii) For these purposes, "confidential" and "exempt" information are defined in the Access to Information Rules in Part 4 of this Constitution.

2.4 **Conduct**

Councillors will at all times observe the Members' Code of Conduct and the Protocols set out in Part 5 of this Constitution.

2.5 **Allowances**

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Part 6 of this Constitution.

# Article 3 - Citizens and The Council

## 3.1 Citizens' Rights

Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution:

- (a) **Voting and petitions.** Citizens on the electoral roll for the area have the right to vote and sign a petition to request a referendum for an elected Mayor form of constitution.
- (b) **Information.** In addition to access rights under the Freedom of Information Act 2000, citizens have the right to:
  - (i) attend meetings of the Council and its Overview and Scrutiny Panels and Committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
  - (ii) attend meetings of the Cabinet, which are open to the public.
  - (iii) find out from the Forward Plan what key decisions will be taken to the Cabinet and when;
  - (iv) see reports and background papers, and any records of decisions made by the Council and the Cabinet; and
  - (v) inspect the Council's accounts and make their views known to the external auditor.
- (c) **Participation.** Citizens have the right to attend any Council or Assembly meeting and contribute to investigations by Overview and Scrutiny Panels as permitted in this Constitution or by Law. They also have the right to present their cases, observations or objections to meetings of the Planning Applications Committee and Licensing Sub-Committee.
- (d) **Complaints.** Citizens have the right to complain to:
  - (i) the Council itself under its corporate complaints and appeals procedure;
  - (ii) the Ombudsman after using the Council's own complaints and appeals procedure;
  - (iii) the Council's Monitoring Officer about a breach of the Council's Code of Conduct.

## 3.2 Citizens' Responsibilities

Citizens must not be violent, abusive or threatening to Councillors or Officers and must not wilfully harm things owned by the Council, Councillors or Officers.

# Article 4 - The Full Council

## 4.1 Meanings

- (a) **Policy Framework.** The policy framework means the following plans and strategies:-
- Budget Strategy;
  - Sustainable Community Strategy;
  - Plans and strategies which together comprise the Development Plan;
  - Council's Corporate Plan;
  - Housing Strategy;
  - Climate Change Strategy;
  - Sustainable Energy Strategy;
  - Other plans and strategies which the Council may decide should be adopted by the Council.
- (b) **Budget.** The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the Council tax base, setting the Council tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.

## 4.2 Functions of the Full Council

Only the Council will exercise the following functions:

- (a) adopting and changing the Constitution;
- (b) approving or adopting the policy framework and the budget;
- (c) subject to the urgency procedure contained in the access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget;
- (d) appointing and removing the Leader;
- (e) agreeing and/or amending the terms of reference for the Cabinet, Overview and Scrutiny Panels and Committees, and, with the exception of the Cabinet, deciding on their composition and making appointments to them;



- (f) appointing representatives to outside bodies unless the appointment is a Cabinet function or has been delegated by the Council;
- (g) adopting an Allowances Scheme under Article 2.5;
- (h) changing the name of the area,
- (i) confirming the appointment of and dismissing the Head of Paid Service; Chief Finance Officer and Monitoring Officer.
- (j) making , amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills in Parliament;
- (k) all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself rather than the Cabinet; and
- (l) all other matters which, by law, must be reserved to Council.

#### 4.3 **Council Meetings**

There are four types of Council meeting:

- (a) the Annual meeting;
- (b) Ordinary meetings;
- (c) Assembly meetings;
- (d) Extraordinary meetings.

and they will be conducted in accordance with the Procedure Rules in Part 4 of this Constitution.

#### 4.4 **Responsibility for Functions**

The Council will maintain the tables in Part 3 of this Constitution setting out the responsibilities for the Council's functions which are not the responsibility of the Cabinet.

# Article 5 - Chairing The Council and Assembly

## 5.1 Role and Function of the Chairman

The Chairman of the Council and, in his or her absence, the Vice-Chairman will be elected annually by the Council and will have the following responsibilities:-

1. to uphold and promote the purposes of the Constitution, and to interpret the Constitution where necessary;
2. to preside over meetings of the Council and Assembly so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
3. to ensure that the Council/Assembly meeting is a forum for the debate of matters of concern to the local community and the place at which members who are not on the Cabinet are able to hold the Cabinet to account;
4. to promote public involvement in the Council's activities;
5. to be the conscience of the Council;
6. to attend such civic and ceremonial functions as the Council and he/she determines appropriate;
7. to determine any matter referred to him/her in relation to matters requiring an urgent decision pursuant to the Procedure Rules in Part 4 of this Constitution; and
8. to be consulted on any matter where consultation with the Chairman of the Council is required under this Constitution.

## Article 6 - Overview and Scrutiny Panels

### 6.1 Terms of Reference

The Council will appoint the Overview and Scrutiny Panels set out in the left hand column of the table below to discharge the functions conferred by section 21 of the Local Government Act 2000 or regulations under section 32 of the Local Government Act 2000 in relation to the matters set out in the right hand column of the same table within the general role and specific functions set out in Articles 6.2 and 6.3.

Overview and Scrutiny Panel	Scope
<b>Resources</b>	Budget and policy framework, service improvement and performance monitoring, resource allocation, accessibility of services, co-ordination of scrutiny work programme, Strategic Alliance and efficiencies, overview and scrutiny of all functional responsibilities of the portfolios covering finance and resources, customer services and performance management.
<b>Service Delivery</b>	The delivery of council services including environment, planning (including development and property), housing and regeneration, culture (arts, leisure, sports, parks, countryside, tourism), overview and scrutiny of the portfolio(s) covering regeneration, environment, culture, leisure and planning, development and property.
<b>Health</b>	Scrutiny of health service provision in the Staffordshire Moorlands (as defined in the Code of Joint Working with Staffordshire County Council) contributing to the work of the Healthy Staffordshire Select Committee, which has overall responsibility for health scrutiny.
<b>Community</b>	Democratic and community engagement, equalities and diversity, sustainability & climate change, community safety, the Council's Community Leadership Scheme, locality working, the councillor call for action, the Local Strategic Partnership (LSP) and other partnerships. The commissioning/delivery of services by Staffordshire County Council, parish/town councils and the voluntary/third sector.

Panels should meet at least six times per year (bi-monthly or approximately bi-monthly). With regard to the duration of meetings, a target of 2½ hours maximum should be the aim. Guidelines should be produced for the focus of meetings and included in training for chairs of scrutiny panels.

### 6.3 **Working Groups**

- (i) Working groups set up for a specific review generally need to be task and finish – i.e. they have a conclusion to their work with a view to submitting a report and recommendation(s) to the parent panel and then Cabinet; they should not be permanent bodies.
- (ii) Other groups may need to be more development-orientated – e.g. member development and training, but must not become self-perpetuating bodies.
- (iii) The working group chair need not always be the chair or vice-chair of the parent panel. However, the chair/vice-chair of the parent panel must be kept informed if they are not members of the working group. A record of meetings of working groups should also be maintained, recording who attends, sends apologies, and agreed action points. Members of the working group need not all come from the parent panel.

### 6.4 **Number of Members per Panel**

The main scrutiny panels should contain 19 members each which, along with other standing committees and other established bodies (e.g. Constitution Review, LDF, JCC) would entitle all non-executive members of the council to be able to serve on at least two of its various bodies.

### 6.5 **Training and Chairmanship**

Considered to be very important. The induction programme already makes provision for specific scrutiny training, as well as training for scrutiny chairs. Support is needed for scrutiny chairs in their mentoring and guiding role – not just chairing of meetings. The role description for chairs of scrutiny panels needs to be emphasised. Panel members also need ongoing support in the conduct of scrutiny reviews.

### 6.6 **Officer Support**

Sufficient support must be provided by service areas. Heads of Service, Corporate Service Managers and other staff, as appropriate, should be included in scrutiny training.

### 6.7 **Proceedings of Overview and Scrutiny Panels**

Overview and Scrutiny Panels will conduct their proceedings in accordance with the Overview and Scrutiny Panel Procedure Rules set out in Part 4 of this Constitution.

## Article 7 - The Cabinet

### 7.1 **Role**

The Cabinet will carry out all of the local authority's functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution.

### 7.2 **Form and Composition**

The Cabinet will consist of the Leader of the Council together with no fewer than two nor more than ten Councillors appointed by the Leader.

### 7.3 **Leader**

The Leader will be a Councillor elected to the position of Leader by the Council. The Leader will hold office until:

- (a) he/she resigns from the office; or
- (b) he/she is suspended from being a Councillor under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension); or
- (c) he/she is no longer a Councillor; or
- (d) the annual meeting of the Council next following the regular election of Councillors every four years commencing with the Annual Meeting in May 2011 save that the Council may remove the Leader from office at an earlier date.

### 7.4 **Other Cabinet Members**

Other Cabinet Members shall hold office until:

- (a) they resign from office; or
- (b) they are suspended from being Councillors under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
- (c) they are no longer Councillors; or
- (d) they are removed by the Leader.

### 7.5 **Proceedings of the Cabinet**

Proceedings of the Cabinet shall take place in accordance with the Cabinet Procedure Rules set out in Part 4 of this Constitution.

### 7.6 **Responsibility for Functions**

- (a) The leader will maintain a list in Part 3 of this Constitution setting out which individual members of the Cabinet, Committees of the Cabinet, Officers or joint arrangements are responsible for the exercise of particular Cabinet functions.
  
- (b) Without prejudice to the generality of paragraph 7.6 (a) above, the Leader may designate a Cabinet Member as Deputy Leader to act in his/her absence and the Leader may determine which portfolio is to be the responsibility of each Cabinet Member.

# Article 8 - Licensing and Regulatory and Planning Applications Committees and Appeals Board

## 8.1 Licensing and Regulatory and Planning Applications Committees

- (a) The Council will appoint the Committees set out in the middle column of the table of Responsibility for Council Functions in Part 3 of this Constitution to discharge the functions described in the left hand column of that table.
- (b) The functions to be discharged by the Licensing and Regulatory Committee include:-
  - (i) determining and imposing any condition, limitation or other restriction on an approval, consent, licence, permission or registration granted in the exercise of those functions; and
  - (ii) determining any other terms to which any such approval, consent, licence, permission or registration is subject; and
  - (iii) determining whether, and in what manner, to enforce:-
    - (a) any failure to comply with an approval, consent, licence, permission or registration; or
    - (b) any failure to comply with a condition, limitation or term to which such approval, consent, licence, permission or registration is subject; and
    - (c) any other contravention in relation to a matter with regard to which function of determining an application for approval, consent, licence, permission or registration would not be the responsibility of the Cabinet.
  - (iv) amending, modifying or varying any such approval, consent, licence, permission or registration or any condition, limitation or term to which it is subject; and
  - (v) to make recommendations to Council on certain election functions and undertake Health and Safety as identified in Table 2.
- (c) The Licensing and Regulatory Committee has delegated power to its Licensing Sub-Committee to decide all issues covered in 8.1(b)(i) to (iv) above.
- (d) The functions to be discharged by the Planning Applications Committee include (b)(i to iv). If the Planning Portfolio holder is a member of the Committee, he/she should not be the Chair of the Committee.

## 8.2 Appeals Board

- (a) The Council has appointed an Appeals Board from which individual Panels will be selected to undertake appeals and reviews of certain decisions taken by the Council.
- (b) The functions to be discharged by the Appeals Board and its Panels will include the internal appeal process for:
  - (i) Corporate Complaints;
  - (ii) Staff Grievances;
  - (iii) Staff Disciplinary Appeals;
  - (iv) Certain Licensing Decisions.
  - (v) Any other matter involving a regulatory or quasi judicial function which by law cannot be the responsibility of the Cabinet and for which no other provision is made in the Constitution.
- (c) The Board is required to satisfy the independence criteria contained in the Human Rights Act 1998. Accordingly, individual Panels of 3 -5 members will contain no members who were part of the decision making process which is under review. No Cabinet member may be a member of the Appeals Board.



## Article 9 - The Standards Committee

### 9.1 **Standards Committee**

The Council has established a Standards Committee.

### 9.2 **Composition**

(a) **Membership.** The Standards Committee will comprise:

- seven elected members of the Council, appointed proportionally;
- up to two Town or Parish Council members may be co-opted on to the Committee as non-voting members.

(b) **Independent Person.** The Council's Independent Person and their substitutes will be invited to attend and participate at committee meetings but will not be entitled to vote at meetings.

### 9.3 **Role and Function**

The Standards Committee will have the following roles and functions:

- To promote high standards of conduct by elected and co-opted members and staff of Staffordshire Moorlands District Council.
- To advise the District Council on the adoption or revision of local codes of conduct, protocols or other ethical guidance for Members and staff.
- To monitor the operation of the Council's codes of conduct, protocols or other ethical guidance.
- To provide briefings, training or advisory notes to elected and co-opted Members and staff relating to the Council's codes of conduct, protocols or other ethical guidance.
- Where appropriate, granting dispensations to District Councillors from requirements relating to interests set out in the Members Code of Conduct.
- To consider and where necessary take action regarding complaints for breaches of the Code of Conduct by the District Council's members and have arrangements in place to deal with complaints for Parish and Town Councils.
- To promote Member development and training on ethics and standards generally within the District Council.

- (h) To monitor the Council's corporate complaints procedure including any references to the Local Government or Housing Ombudsman and to consider any implications for the Council's codes, protocols or ethical guidance.
- (i) To advise the Council on the adoption or revision of the Constitution in accordance with Article 14.

#### 9.4 **Delegated Powers**

The Standards Committee has full delegated power to act within its defined role and function.

## Article 10 - Audit & Accounts Committee

### 10.1 **Composition**

(a) **Membership.** The Committee shall consist of the following Members:-

- 9 Councillors appointed by the Council for such term of office as determined by the Council.

The Council's Independent Person and their substitutes will be invited to attend and participate at committee meetings but will not be entitled to vote at meetings.

(b) The Committee shall report direct to the Council on the matters contained in its Terms of Reference (below) in accordance with the Council's Constitution and Procedure Rules contained therein.

### 10.2. **Terms of Reference**

#### **Statement of Purpose**

- (a) To provide independent assurance of the adequacy of the risk management framework and the associated control environment.
- (b) To provide independent review of the Council's financial and non-financial performance to the extent that it affects the Council's exposure to risk and weakens the control environment.
- (c) To provide assurance that any issues arising from the process of drawing up, auditing and certifying the Council's annual accounts are properly dealt with and that appropriate accounting policies have been applied.

### 10.3. **Core Functions**

#### **Audit Activity**

- (a) To consider but not direct Internal Audit's strategic audit plan.
- (b) To consider the head of Internal Audit's annual report and opinion and the level of assurance it can give over the Council's corporate governance arrangements.
- (c) To consider reports dealing with the management and performance of Internal Audit.
- (d) To consider reports from internal audit summarising activity and implementation of agreed audit recommendations and seek assurance that action has been or will be taken where necessary.
- (e) To consider summaries of other reports from internal audit as considered necessary.

- (f) To consider the external auditor's annual audit and inspection letter, relevant reports, and the report to those charged with governance (ISA 260 Report).
- (g) To consider and comment on the appointment, scope and depth of external audit work and to ensure it gives value for money.

#### 10.4 **Regulatory Framework**

- (a) To maintain an overview of the Council's constitution including contract procedure rules, financial procedure rules and codes of conduct.
- (b) Monitor the effective development and operation of risk management and corporate governance in the Council and make recommendations to Council on necessary actions to ensure compliance with best practice. To take responsibility for Corporate Governance overall, including the monitoring of the Local Code.
- (c) To monitor Council policies and arrangements for anti-fraud and corruption and whistleblowing.
- (d) To oversee production of the Council's Annual Governance Statement and to review and recommend/approve its adoption as necessary.
- (e) To consider the Council's compliance with its own and other published standards and controls and consider any relevant issue referred to it by the Chief Executive, Directors or Council body.
- (f) To scrutinise the Treasury Management Function of the Council including the approval of the Annual Treasury Management Strategy Statement and the scrutiny of all treasury management reports, including the Annual Report, reporting to the Council thereon as necessary.

#### 10.5 **Accounts**

- (a) To review and approve the adoption of the annual statement of accounts and to consider the external auditor's report to those charged with governance on issues arising from the audit of the accounts.
- (b) In relation to the approval of the annual statement of accounts, only the elected members of the Council shall be entitled to vote upon any such resolution, in accordance with the relevant statutory provisions concerning the regulation and control of an Authority's finances by elected members alone.

## Article 11 - Joint Arrangements

### 11.1 Arrangements to Promote Well Being

The Council or the Cabinet, in order to promote the economic, social or environmental well-being of the area, may:

- (a) enter into arrangements or agreements with any person or body;
- (b) co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
- (c) exercise on behalf of that person or body any functions of that person or body.

### 11.2 Joint Arrangements

- (a) The Council may establish joint arrangements with one or more local authorities and/or their executives to exercise functions which are not executive functions in any of the participating authorities, or to advise the Council. Such arrangements may involve the appointment of a Joint Committee with these other local authorities.
- (b) The Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are executive functions. Such arrangements may involve the appointment of Joint Committees with these other local authorities.
- (c) Except as set out below, the Cabinet may only appoint Cabinet members to a Joint Committee and those Members need not reflect the political composition of the local authority as a whole.
- (d) The Cabinet may appoint Members to a Joint Committee from outside the Cabinet in the following circumstances:
  - the Joint Committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, the Cabinet may appoint to the Joint Committee any Councillor who is a Member for a ward which is wholly or partly contained within the area;
- (e) Details of any joint arrangements including any delegations to Joint Committees will be included in the Council's Scheme of Delegation in Part 3 of this Constitution.

### 11.3 Access to Information

- (a) The Access to Information Rules in Part 4 of this Constitution apply.
- (b) If all the Members of a Joint Committee are Members of the Cabinet in each of the participating authorities then its access to information regime is the same as that applied to the executive.

- (c) If the Joint Committee contains Members who are not on the Cabinet of any participating authority then the Access to Information Rules in Part VA of the Local Government Act 1972 will apply.

11.4 **Delegation to and from other Local Authorities**

- (a) The Council may delegate non-executive functions to another local authority or, in certain circumstances, the Cabinet of another local authority.
- (b) The Cabinet may delegate executive functions to another local authority or the Cabinet of another local authority in certain circumstances.
- (c) The decision whether or not to accept such delegation from another local authority shall be reserved to the Council.

11.5 **Contracting Out**

The Council, for functions which are not executive functions and the Cabinet for executive functions, may contract out to another body or organisation functions which may be exercised by an Officer and which are subject to an order under Section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making.

## Article 12 - Officers

### 12.1 Management Structure

- (a) **General.** The full Council may engage such staff (referred to as Officers) as it considers necessary to carry out its functions.
- (b) **Chief Officers.** The full Council will engage persons for the following posts, who will be designated Directors:

Post	Functions and areas of responsibility
Chief Executive	Head of Paid Service
Executive Director and Monitoring Officer	Responsible for Customer Services, Democratic & Community Services, Legal Services and Monitoring Officer
Executive Director	Responsible for Regulatory Services, Regeneration, Assets and Visitor Services.
Executive Director and Chief Finance Officer	Deputy to Chief Executive Responsible for Operational Services, Finance & Procurement, OD & Transformation, Audit Services and Chief Finance Officer

- (c) **Head of Paid Service, Monitoring Officer and Chief Finance Officer.** The Council will designate the following posts as shown:

Post	Designation
Chief Executive	Head of Paid Service
Executive Director and Monitoring Officer	Monitoring Officer
Executive Director and Chief Finance Officer	Chief Finance Officer

Such posts will have the functions described in Articles 11.02-11.04 below.

- (d) **Structure.** The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This is set out at Part 7 of this constitution.

### 12.2 Functions of the Head of Paid Service

- (a) **Discharge of functions by the Council.** The Head of Paid Service will report to full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.
- (b) **Restrictions on functions.** The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if a qualified accountant.

### 12.3 **Functions of the Monitoring Officer**

- (a) **Maintaining the Constitution.** The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by Members, staff and the public.
- (b) **Ensuring lawfulness and fairness of Decision Making.** After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the full Council or to the Cabinet in relation to a Cabinet function if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- (c) **Supporting the Standards Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- (d) **Conducting Investigations.** The Monitoring Officer will conduct investigations and make reports or recommendations in respect of them to the Standards Committee.
- (e) **Proper Officer for Access to Information.** The Monitoring Officer will ensure that Cabinet decisions, together with the reasons for those decisions and relevant Officer reports and background papers are made publicly available as soon as possible.
- (f) **Advising whether Cabinet decisions are within the budget and policy framework.** The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.
- (g) **Providing Advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework to **all** Councillors.
- (h) **Restrictions on Posts.** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service

### 12.4 **Functions of the Chief Finance Officer**

- (a) **Ensuring lawfulness and financial prudence of Decision Making.** After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the full Council or to the Cabinet in relation to an executive function and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- (b) **Administration of Financial Affairs.** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.



- (c) **Contributing to Corporate Management.** The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional and financial advice.
- (d) **Providing Advice.** The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and budget and policy framework issues to all Councillors and will support and advise Councillors and Officers in their respective roles.
- (e) **Give Financial Information.** The Chief Finance Officer will provide financial information to the media, members of the public and the community.

12.5 **Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer.**

The Council will provide the Monitoring Officer and Chief Finance Officer with such Officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

12.6 **Conduct**

Officers will comply with any Officers' Code of Conduct set out in Part 5 of this Constitution.

12.7 **Employment**

The recruitment, selection and dismissal of Officers will comply with the Officer Employment Rules set out in Part 4 of this Constitution.

# Article 13 - Decision Making

## 13.1 Responsibility for Decision Making

The Council will issue and keep up to date a record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of this Constitution.

## 13.2 Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:

- taking due regard of all relevant considerations and disregarding irrelevant considerations;
- proportionality (i.e. the action will be proportionate to the desired outcome);
- taken on the basis of due consultation and professional advice from Officers;
- respect for human rights and equalities;
- a presumption in favour of openness; and
- clarity of aims and desired outcomes.

13.3 (a) **Types of Decision.** Decisions relating to the functions listed in Article 4.2 will be made by the full Council.

### (b) Key Decisions

- (i) A key decision is a decision by or on behalf of the Cabinet which is likely:-
  - to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or
  - to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the District.
- (ii) A decision taker may only make a key decision in accordance with the requirements of the Procedure Rules set out in Part 4 of this Constitution.
- (iii) For the purposes of paragraph 12.3 (b)(i) above, the incurring of expenditure is not significant having regard to the Council's budget for services or functions to which the decision relates, and is not therefore a key decision, if it is:-
  - to implement or give effect to a provision of the Council's budget or Policy Framework and, where appropriate, for which financial provision has been made;

- to implement nationally or provincially agreed pay awards for Officers of the Council in accordance with the terms of such award;
- expenditure incurred by the Executive Director and Chief Finance Officer in the exercise of Treasury Management powers delegated to him/her under this Constitution;
- expenditure incurred by the Chief Executive in the exercise of powers delegated to him relating to an emergency or disaster to which Section 138 of the Local Government Act 1972 applies.

(iv) For the purposes of sub-paragraph (i) above, the making of savings is not significant having regard to the Council's budget for the service or function to which the decision relates, and is not therefore a key decision, if it relates to the closure or discontinuance of a Council service or part of a service to meet a budgetary constraint.

**13.4 Decision making by the Full Council**

Subject to Article 12.8, the Council or Assembly meeting as necessary will follow the Procedures Rules set out in Part 4 of this Constitution when considering any matter.

**13.5 Decision making by the Cabinet**

Subject to Article 12.8, the Cabinet will follow the Procedure Rules set out in Part 4 of this Constitution when considering any matter.

**13.6 Decision making by Overview and Scrutiny Panels**

Overview and Scrutiny Panels will follow the Procedures Rules set out in Part 4 of this Constitution when considering any matter.

**13.7 Decision making by other Committees and Sub-Committees established by the Council**

Subject to Article 12.8, other Council Committees and Sub-Committees will follow those parts of the Procedures Rules set out in Part 4 of this Constitution as apply to them.

**13.8 Decision making by Council Bodies acting as Tribunals**

The Council's Appeals Board, Standards Committee, Licensing and Regulatory Committee and Licensing Sub Committee, a Councillor or an Officer acting as a tribunal or in a quasi judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair hearing contained in Article 6 of the European Convention on Human Rights.

# Article 14 - Finance, Contracts and Legal Matters

## 14.1 **Financial Management**

The management of the Council's financial affairs will be conducted in accordance with the Financial Procedure Rules set out in Part 4 of this Constitution.

## 14.2 **Contracts**

Every contract made by the Council will comply with the Contracts Procedure Rules set out in Part 4 of this Constitution.

## 14.3 **Legal Proceedings**

The Executive Director and Monitoring Officer, in accordance with delegations in Part 3 of the Constitution, is authorised to institute, defend, settle or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Executive Director and Monitoring Officer considers that such action is necessary to protect the Council's interests.

## 14.4 **Authentication of Documents**

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Executive Director and Monitoring Officer or other person, authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

Any contract with a value exceeding £30,000 entered into on behalf of the local authority in the course of the discharge of an executive function shall be made in writing. Such contracts must be made under the common seal of the Council attested by the Chairman or Vice-Chairman and Chief Executive or Deputy Chief Executive or Monitoring Officer, or by any two of the Chief Executive, Deputy Chief Executive, Monitoring Officer or Chief Finance Officer.

## 14.5 **Common Seal of the Council**

The Common Seal of the Council will be kept in a safe place in the custody of the Chief Executive. A decision of the Council, or any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Chief Executive, Deputy Chief Executive or Monitoring Officer should be sealed. The affixing of the Common Seal will be attested by the Chairman or Vice Chairman and the Chief Executive or the Deputy Chief Executive or Monitoring Officer or some other person authorised by him/her.

# Article 15 - Review and Revision of the Constitution

## 15.1 **Duty to monitor and review the Constitution**

The Standards Committee advised by the Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

The Constitution Review Working Party will review the workings of the Constitution to ensure it is relevant and up-to-date, any recommendations for change being referred to the Standards Committee and the Cabinet.

## 15.2 **Protocol for monitoring and reviewing the Constitution by the Monitoring Officer**

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order to achieve the purposes set out in Article 1. In undertaking this task the Monitoring Officer may:

1. observe meetings of different parts of the member and officer structure;
2. undertake an audit trail of a sample of decisions;
3. record and analyse issues raised with him/her by Members, Officers, the public and other relevant stakeholders; and
4. compare practices in this authority with those in other comparable authorities, or national examples of best practice.

## 15.3 **Changes to the Constitution**

(a) **Approval.** Changes to the constitution will only be approved by the full Council after consideration of the proposal by the Cabinet in consultation with the Standards Committee and the Constitution Review Working Party as appropriate, other than consequential amendments, in the opinion of the Monitoring Officer, required to give effect to decisions of the Council.

(b) **Change from a Leader and Cabinet form of executive to another form of executive, or vice versa.** The Council will take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals.

# Article 16 - Suspension, Interpretation and Publication of the Constitution

## 16.1 Suspension of the Constitution

- (a) **Limit to suspension.** The Articles of this Constitution may not be suspended. The Rules specified below may be suspended by the full Council to the extent permitted within those Rules and the law.
- (b) **Procedure to suspend.** A motion to suspend any Procedure Rules will be effected as set out in these rules. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.
- (c) **Rules capable of suspension.** The following Rules may be suspended in accordance with Council Procedure Rule No. 26.

*"Council Procedure Rule No. 26 - Suspension and amendment of Council Procedure Rules*

*26.1 Subject to paragraph (26.2) any of the preceding Rules, except Rule No. 25, may be suspended so far as regards any item of business at the meeting where its suspension is moved.*

*26.2 A motion to suspend Procedure Rules shall not be moved without notice (i.e. under Procedure Rule No. 9) unless there shall be present at least one half of the whole number of the Members of the Council. Suspension can only be for the duration of the meeting.*

## 16.2 Interpretation

The ruling of the Chairman of the Council as to the constitution or application of this Constitution or as to any proceedings of the Council or Assembly shall not be challenged at any meeting of the Council or Assembly. Such interpretation will have regard to the purpose of this Constitution contained in Article 1.

## 16.3 Publication

- (a) The Monitoring Officer will give a printed copy of this Constitution to each Member of the authority upon delivery to him/her of that individual's declaration of acceptance of office on the member first being elected to the Council.
- (b) The Monitoring Officer will ensure that copies are available for inspection at Council Offices, Libraries and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee.
- (c) The Monitoring Officer will ensure that the summary of the Constitution is made widely available within the area and is updated as necessary.

# **Schedule 1: Description of Executive Arrangements**

The following parts of this Constitution constitute the executive arrangements:

1. Article 6 (Overview and Scrutiny Panels) and the Overview and Scrutiny Panel Procedure Rules (Part 4 of the Constitution);
2. Article 7 (The Cabinet) and the Cabinet Procedure Rules (Part 4 of the Constitution);
3. Article 13 (Decision making) and the Access to Information Procedure Rules (Part 4 of the Constitution);
4. Part 3 (Responsibility for Functions)