



# **Eastbourne Borough Council Constitution**

## **Part 2**

### **Articles of the Constitution**

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## **Article 1 - The Constitution**

This Article sets out the fundamental purpose of the Constitution. It confirms that Eastbourne Borough Council will act within the law and the provisions of this Constitution. It defines those documents which comprise the Constitution.

### **1.01 Powers of the Council**

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

### **1.02 The Constitution**

This Constitution, and all its appendices, is the Constitution of Eastbourne Borough Council.

### **1.03 The purpose of the Constitution is to:**

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

### **1.04 Interpretation and Review of the Constitution**

The Council will monitor and evaluate the operation of the Constitution as set out in Article 15.

## Article 2 - Members of the Council (Councillors)

This Article sets out the composition of the Council, eligibility to stand for election as a Councillor and the form of election to be used.

The Article also contains a summary of the roles and functions of Councillors.

The Article also deals with the rights and duties of Councillors, especially as they affect access to land, buildings, documents and information and any confidentiality requirements surrounding the latter.

### 2.01 Composition and eligibility

**Composition.** The Council comprises 27 Councillors. 3 Councillors are elected by the voters of each of 9 wards in accordance with a scheme drawn up by the Electoral Commission and approved by the Secretary of State [The Borough of Eastbourne (Whole Council Elections) Order 2006 is the current scheme].

**Eligibility.** Only registered voters of the Borough or those living or working there will be eligible to hold the office of Councillor.

Note: Certain persons may be disqualified from being Councillors. These include:

- paid employees of the Council;
- anyone holding a "politically restricted post" with any local authority;
- undischarged bankrupts;
- anyone with a conviction within the past 5 years for an offence who received a sentence of imprisonment (whether suspended or not) of not less than 3 months without the option of a fine;
- persons disqualified under sections 17 and 18 of the Audit Commission Act 1998; and
- persons convicted of an illegal or corrupt election practice within the previous 3 to 5 years).

### 2.02 Election and terms of Councillors

Elections are normally held on the first Thursday in May every 4 years. There is provision in electoral law for the date of local government elections to be delayed so that they can be combined with European parliamentary elections which normally take place in the first week of June.

All Councillors are elected at the same time ("whole council elections"). Elections were last held on 7 May 2015. The next elections are due to be held in May 2019. Elections to the County Council also take place every 4 years and the next elections are due to be held in May 2017.

The term of office of Councillors is 4 years starting on the fourth day after being elected and finishing on the fourth day after the date of the ordinary election four years later.

### **2.03 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) Contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision making;
- (iii) Effectively represent the interests of their ward and of individual constituents;
- (iv) Respond to constituents' enquiries and representations, fairly and impartially;
- (v) Participate in the governance and management of the Council; and
- (vi) Maintain the highest standards of conduct and ethics.

(b) Rights and duties.

- (i) Councillors will have such rights of access to such documents, information, 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.

A more detailed statement of the roles, duties and responsibilities of Councillors is given in Part 3, Section E of this Constitution.

### **2.04 Conduct**

Councillors will at all times observe the Members' Code of Conduct, the Protocol on Member/Officer Relations and other local protocols as set out in Part 5 of this Constitution.

### **2.05 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**

(updated April 2011)

This Article sets out what citizens can expect from their Council and what rights they have and is therefore an important part of the Constitution. However, with rights come responsibilities and it is also the role of the Constitution to show how the Council expects to be treated in return.

### **3.01 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 register for the area have the right to vote and sign a petition to request a referendum for an elected Mayor form of Executive. Citizens may sign a petition to request particular actions. Petitions will be managed and responded to in accordance with the Council's petitions scheme set out in Part 4 of the Constitution.

#### **b) Information.**

Citizens have the right to:

- (i) attend meetings of the Council, its committees and the Executive except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
- (ii) find out from the forward plan what key decisions will be taken by the Executive or Officers exercising delegated powers and when;
- (iii) see reports and background papers, and any records of decisions made by the Council, its committees, and the Executive; and
- (iv) inspect the Council's accounts and make their views known to the external auditor.

#### **c) Participation.**

Citizens have the right to participate in Council, Cabinet and Committee meetings in accordance with the Council's Public Address rules as set out in Part 4.

#### **d) Complaints.**

Citizens have the right to complain to:

- (i) the Council itself under its complaints scheme;

- (ii) the Ombudsman after using the Council's own complaints scheme;
- (iii) the Monitoring Officer about a breach of the Members' Code of Conduct.

### **3.02 Citizens' responsibilities**

A healthy democracy depends upon active citizenship. Citizens are encouraged to make conscientious use of their roles as both voters and members of a wider community in particular by voting at every opportunity, respecting the expression of differing opinions in public debate, and promoting tolerance and respect between their fellow citizens. Citizens must not be violent, abusing or threatening to Councillors or Officers and must not wilfully harm things owned by the Council, Councillors or Officers.

## Article 4 – The Full Council

(updated February 2013)

The Local Government Act 2000 and associated guidance and regulations give the Council responsibility for approving the policy framework and budget. A list of the statutory and recommended plans and strategies which will make up the policy framework appears below. The Council as a whole retains responsibility for regulatory functions and has a role in holding the Executive to account.

### 4.01 Meanings

#### a) Policy Framework.

The Policy Framework means the following plans and strategies (or the equivalent or successor plan or strategy to any of the following, however named):

i) those required by Regulation 4 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and specified in Schedule 3 to the regulations:-

- Corporate Plan;
- Sustainable Community Strategy;
- Community Safety Partnership Plan;
- Local development documents which together comprise the Local Development Framework;

Note: The Council's Statements of Licensing Policy and Gambling Policy do not form part of the Policy Framework, however full Council approval is required under the provisions of the Licensing Act 2003 and the Gambling Act 2005.

ii) other plans and strategies, as the Council shall from time to time, determine:

- Currently there are no other plans or strategies specified. There is however a requirement that any other plans and strategies that the authority may have should conform with the policy framework and budget. Responsibility for these other plans and strategies rests with the Executive.

In addition, certain other plans and strategies will form part of the Council's budget if they relate to the criteria set out in (b) below.

#### b) Budget.

The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, setting the council tax, approving the local council tax support scheme and decisions relating to the control of the Council's borrowing requirement;



investments, the control of its capital expenditure and the setting of virement limits.

**c) Housing Land Transfer.**

Housing Land Transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval of a programme of disposal of 500 or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under Sections 32 or 43 of the Housing Act 1985.

The function of modifying, varying or revoking any plan or strategy within categories (a) or (b) above shall be the responsibility of the Executive to the extent that the Council may determine when approving or adopting the plan or strategy or is necessary for giving effect to requirements of the Secretary of State or a Minister of the Crown in relation to a plan or strategy (or any part thereof) submitted for his approval.

The procedures for developing the budget and policy framework, for taking decisions that are outside the framework, for urgent decisions that are outside the framework, for virement and in-year changes and for the call-in of decisions that are considered to be outside the framework are described in the Budget and Policy Framework Procedure Rules in Part 4 of this Constitution.

#### **4.02 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, the budget and any application to the Secretary of State in respect of any Housing Land Transfer;
- (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) electing the Mayor;
- (e) appointing the Deputy Mayor;
- (f) electing the Leader;

- (g) agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them including that of Chairman and Deputy Chairman;
- (h) appointing representatives to outside bodies unless the appointment is an executive function or has been delegated by the Council;
- (i) adopting an allowances scheme under Article 2.05;
- (j) changing the name of the area, conferring Honorary titles or the Freedom of the Borough;
- (k) confirming the appointment of the Head of Paid Service;
- (l) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;
- (m) all local choice functions set out in Part 3 of the Constitution which the Council decides should be undertaken by itself, rather than the Executive;
- (n) to receive the Annual State of the Borough address by the Leader as set out in Part 4 of this Constitution; and
- (o) all other matters which, by law, must be reserved to Council.

#### **4.03 Council meetings and proceedings**

There are three types of Council meeting:

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings.

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

#### **4.04 Responsibility for functions**

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

## **Article 5 – Chairing the Council**

(updated June 2007)

### **5.01 Title of the person chairing Council Meetings**

Council meetings will be chaired by an elected Councillor known as the Mayor.

### **5.02 Role and function of the Mayor in chairing Council Meetings**

The Mayor will be elected by the Council annually. As chairman of Council meetings, the Mayor and in his/her absence, the Deputy Mayor will have the following responsibilities:

- (1) to uphold and promote the purposes of the Constitution, and to interpret the Council Procedure Rules when necessary;
- (2) to preside over meetings of the Council 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 meeting is a forum for the debate of matters of concern to the local community and the place at which Councillors who are not on the Cabinet or hold Committee chairs are able to hold the Cabinet and Committee chairmen to account;
- (4) to promote public involvement in the Council's activities.

### **5.03 Ceremonial role**

The Mayor will act as the Sovereign's Representative and First Citizen of the Borough and will attend such civic and ceremonial functions as the Council and the Mayor determines appropriate.

## **Article 6 – Overview and Scrutiny of Decisions**

The overview and scrutiny function is a central element to this Constitution. The Scrutiny Committee will meet in public to discuss and make recommendations on the development of policies and hold the Executive to account for their actions. It will also have a key role in considering other matters of local concern.

### **6.01 Structure**

The Council will appoint a Scrutiny Committee to promote consideration of cross cutting issues, inside and outside the Council. Membership of the Scrutiny Committee will be balanced to the overall political proportions of the Council. The Chairman will be appointed from the largest opposition political group and the Deputy Chairman will be appointed from the controlling political group.

### **6.02 General role**

Within its terms of reference, the Scrutiny Committee will:

- (i) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (ii) make reports and/or recommendations to the full Council and/or the Executive in connection with the discharge of any functions;
- (iii) consider any matter affecting the area or its inhabitants; and
- (iv) exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Executive.

### **6.03 Specific functions**

#### **a) Policy development and review.**

The Scrutiny Committee may:

- (i) assist the Council and the Executive in the development of its budget and policy framework by in-depth analysis of policy issues;
- (ii) conduct research, community and other consultation in the analysis of policy issues and possible options;
- (iii) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
- (iv) question Councillors or the Executive and Chief Officers on issues and proposals affecting the area; and

- (v) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.

**b) Scrutiny.**

The Scrutiny Committee may:

- (i) review and scrutinise the decisions made by and performance of the Executive and council officers both in relation to individual decisions and over time;
- (ii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
- (iii) question Councillors or the Executive and Chief Officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
- (iv) make reports or recommendations to the Executive and/or Council arising from the outcome of the scrutiny process;
- (v) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Scrutiny Committee and local people about their activities and performance; and
- (vi) question and gather evidence from any person (with their consent).

**c) Finance.**

The Scrutiny Committee may exercise overall responsibility for any finances made available to it.

**d) Annual Programme.**

The Scrutiny Committee must submit its minutes to Full Council.

**6.04 Proceedings of Scrutiny Committee**

The Scrutiny Committee will conduct its proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution.

## **Article 7 – The Executive (Cabinet)**

(updated May 2011)

The Executive is at the heart of the day-to-day decision-making process. It also has a key role in proposing the budget and policy framework to the Council.

### **7.01 Role**

The Executive 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.

### **7.02 Form and composition**

The Executive will consist of the Leader together with at least 2, but no more than 9 Councillors appointed to the Cabinet by the Leader.

### **7.03 Leader**

The Leader will be a Councillor elected to the position of Leader by the Council (normally at the Annual Meeting of the Council following the ordinary election of Councillors). The Leader will hold office for a 4-year term or 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) he/she is removed from office by resolution of the Council.

### **7.04 Deputy Leader**

The Leader shall appoint one of the members of the Cabinet to be the Council's Deputy Leader who shall hold office until the end of the Leader's term of office. The rules relating to the retirement, resignation or removal from office of the Deputy Leader shall be the same as those for other Cabinet Members set out below.

If a vacancy occurs in the position of Deputy Leader, the Leader shall appoint another Deputy Leader.

The Deputy Leader shall be able to exercise all the functions of the Leader when the Leader is absent. The Deputy Leader may represent the Leader at meetings, discussions and briefings unless another member of the Cabinet has been nominated by the Leader to attend.

If for any reason the Leader and Deputy Leader are both unable to act or their offices are vacant, then the Cabinet must act in the Leader's place or arrange for a Member of the Cabinet to do so.

#### **7.05 Other Cabinet Members**

Only Councillors may be appointed to the Cabinet. There may be no co-optees and no substitutes for Cabinet Members. Neither the Mayor nor Deputy Mayor may be appointed to the Cabinet and Members of the Cabinet (including the Leader) shall not be Members of the Scrutiny Committee.

Other Cabinet Members will be appointed by the Leader and 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 from office by the Leader who must give written notice of any removal to the Chief Executive. The removal will be effective immediately upon receipt of the notice by the Chief Executive.

Appointments to the Cabinet by the Leader shall have effect from the date of the Annual Meeting of the Council, or if the appointment is at some other time, immediately upon receipt by the Chief Executive of written notice of the appointment.

#### **7.06 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.

#### **7.07 Responsibility for functions**

The Leader will maintain a list in Part 3 of this Constitution setting out which individual Cabinet Members, committees of the Cabinet, officers or bodies acting under joint arrangements are responsible for the exercise of particular executive functions.

## **Article 8 – Regulatory and Other Committees**

(updated May 2019)

Committees have been created to undertake Non-Executive functions under powers delegated from Full Council.

### **8.01 Regulatory committees (and panels)**

The Council will appoint the committees set out in the Responsibility for Council Functions in Part 3 of this Constitution to discharge the stated functions.

These include:

- Planning Committee with responsibility for development control and other planning functions.
- Audit and Governance Committee dealing with financial governance, risk management and audit, ethical standards for councillors and general governance matters.
- Licensing Committee dealing with the Council's functions under the Licensing Act 2003 in relation to the sale of alcohol, entertainment and late night refreshment houses and the Gambling Act 2005 and all other licensing and regulatory matters which fall outside the delegated powers of officers. (The Licensing Committee may appoint sub-committees to deal with licensing applications and related matters).
- Panels, established on an ad hoc basis, to deal with staffing matters, appointments and appeals.

Full details are given in Part 3 of this Constitution.

### **8.02 Other bodies**

In addition the Council will establish such other committees, advisory groups, task groups, panels, fora as may be deemed necessary to undertake particular roles.

Full details are given in Part 3 of this Constitution.



## **Article 9 – Standards**

(updated June 2023)

### **9.01 Standards**

The Full Council will establish a Committee to advise it and exercise the functions of the Council in relation to ethical standards, in particular those under Chapter 7 of the Localism Act.

### **9.02 Structure**

The Audit and Governance Committee as part of its remit will promote and maintain high standards of conduct within the Council and monitor the operations of the Council's codes of conduct and registers of interests, and will make recommendations to Full Council in relation to revisions to the Constitution as set out in Article 15.

It can delegate to a Standards Panel, arrangements for investigating and making decisions on allegations that a member or co-opted member has failed to comply with the Members' Code of Conduct.

Full details are given in Part 3 of this Constitution.

### **9.03 Independent Persons**

Independent Persons will be appointed in accordance with the Localism Act 2011 and shall have the right to attend meetings of the Committee and any Panel established for the purposes of dealing with matters relating to any allegation against a member or co-opted member of the authority in a non-voting capacity.

### **9.04 Role and Function of Standards**

- (a) promoting and maintaining high standards of conduct by Councillors, co-opted Members and representatives on Outside Bodies;
- (b) assisting the Councillors, co-opted Members and representatives on Outside Bodies to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) monitoring the operation of the Members' Code of Conduct;
- (e) advising, training or arranging to train Councillors and co-opted Members on matters relating to the Members' Code of Conduct.

- (f) putting in place arrangements to grant dispensations, in appropriate cases, for members or co-opted members with pecuniary interests from the restrictions on speaking and/or voting.
- (g) in relation to allegations that a member or co-opted member has failed to comply with the Members' Code of Conduct, putting in place arrangements to investigate and make decisions on complaints.

## **Article 10 – Area Committees and Forums**

(updated July 2003)

### **10.01 Area Working Arrangements**

No decisions have been taken by the Council in respect of area working arrangements.

## **Article 11 – Joint Arrangements**

(updated May 2011)

The Local Government Act 2000 and regulations enable local authorities to make use of joint arrangements with other authorities or persons and delegate to other local authorities.

### **11.01 Arrangements to promote well-being**

The Council or the Executive in order to promote the economic, social or environmental well-being of its 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.

### **11.02 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 advise the Council. Such arrangements may involve the appointment of joint committees with these other local authorities.
- (b) The Executive 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 Executive may only appoint Cabinet Members to a joint committee and those Councillors need not reflect the political composition of the local authority as a whole.
- (d) The Executive may appoint members to a joint committee from outside the Cabinet where 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 Executive may appoint to the joint committee any councillor who is a member for a ward which is wholly or partly contained within the area. The political balance requirements do not apply to such appointments.

- (e) Details of any joint arrangements including any delegations to joint committees will be found in the Council's Scheme of Delegations in Part 3 of this Constitution.

#### **11.03 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 Executive 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 Councillors who are not on the Executive of any participating authority then the Access to Information Rules in Part VA of the Local Government Act 1972 will apply.

#### **11.04 Delegation to and from other local authorities**

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

#### **11.05 Contracting out**

The Council, for functions which are not executive functions, or the Executive 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

(updated November 2020)

The use of the word “Officers” means all employees and staff engaged by the Council to carry out its functions.

The appointment of staff cannot be the responsibility of the Executive. Appointments below chief officer level are the responsibility of the Head of Paid Service or nominee.

### 12.01 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 Chief Officers:

<b>Post</b>	<b>Functions and areas of responsibility</b>
<b>Chief Executive (and Head of Paid Service)</b>	Provides overall strategic leadership of Eastbourne Borough Council in line with the policies and decisions of the elected Councillors.  Provision of professional advice to all parties in the decision-making process.  Responsibility for ensuring that the Council delivers quality services to Eastbourne’s residents and visitors according to its statutory obligations and stated objectives and in line with Government legislation.  Responsibility for legal, democratic services, local democracy and member services.
<b>Director of Regeneration and Planning (and Deputy Chief Executive)</b>	Responsibility for planning, assets and property, regeneration, energy and sustainability.
<b>Director of Tourism and Enterprise</b>	Responsibility for tourism, events, marketing, sports, seafront, cultural centre and the Devonshire Park facilities.

<b>Post</b>	<b>Functions and areas of responsibility</b>
Director of Service Delivery	Responsibility for Service delivery, Customer First, EHL, Bereavement services, Waste services, strategic partnerships, voluntary sector, community engagement, town and parish liaison, community safety, community grants, youth strategy and equality.
Assistant Director of Human Resources and Transformation	Responsibility for human resources, organisational development, Chief Executive's Office, internal and external communications.

**c) Statutory Posts**

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

<b>Post</b>	<b>Designation</b>
Chief Executive	Head of Paid Service (Local Government and Housing Act 1989, Section 4(1))
Head of Democratic Services	Monitoring Officer (Local Government and Housing Act 1989, Section 5(1))
Chief Finance Officer	Chief Finance Officer (Local Government Act 1972, Section 151)

Such posts will have the functions described in Article 12.02 – 12.04 below. The duties of both the Monitoring officer and the Chief Finance Officer (apart from the administration of the financial affairs of the Council) are to be undertaken personally, but can be carried out by a deputy nominated by them in cases of absence.

A full listing of designated and proper officer posts is given in Section D of Part 3 of the Constitution.

**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 in Part 7 of this Constitution.

## **12.02 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.

## **12.03 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 Councillors, Officers 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 Executive in relation to an executive 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 Standards of Conduct.**

The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Panel.

### **d) Dispensations.**

The Monitoring Officer may grant dispensations from the restrictions on speaking or voting at meetings for members or co-opted members with pecuniary interests in appropriate cases.

### **e) Conducting investigations.**

The Monitoring Officer will conduct investigations into allegations of misconduct by Councillors and may make reports in respect of them to the Standards Panel.



**f) Proper Officer for access to information.**

The Monitoring Officer will ensure that executive decisions, together with the reasons for those decisions and relevant Officer reports and background papers are made publicly available as soon as possible.

**g) Advising whether Executive decisions are within the budget and policy framework.**

The Monitoring Officer will advise whether decisions of the Executive are in accordance with the budget and policy framework.

**h) 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 issues to all Councillors.

**i) Restrictions on posts.**

The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

**12.04 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 Executive 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 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, probity and budget and policy framework issues to all Councillors and the Mayor 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.

**12.05 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 the opinion of those officers sufficient to allow their duties to be performed.

**12.06 Conduct**

Officers will comply with the Officers' Code of Conduct and the Protocol on Member/Officer Relations set out in Part 5 of this Constitution.

**12.07 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**

(updated May 2011)

The Council is required to keep up to date a record of what part of the Council or which individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is referred to in Part 3 of this Constitution.

### **13.01 Responsibility for decision making**

A purpose of the Executive structure is to expedite decision making. Accordingly the intention of the Council is that decision taking should be delegated in the interests of speed where that is consistent with the democratic process in terms of accountability and openness.

### **13.02 Principles of decision making**

All decisions of the Council, its committees, the Executive and those under delegated powers shall have regard to the following principles of good practice:

- consideration of all options available;
- having regard to due consultation;
- consideration of professional advice from Officers;
- clarity of aims and desired outcomes;
- the action proposed must be proportionate to the desired outcome;
- having respect and regard for human rights;
- presumption for openness;
- only relevant matters taken into account;
- due weight to all material considerations;
- proper procedures will be followed.

### **13.03 Types of decision**

#### **a) Decisions reserved to Full Council –**

Decisions relating to the functions listed in Article 4 will be made by the Full Council and not delegated.

#### **b) Decisions made by committees appointed by the Council –**

Power to make such decisions is delegated by the Council in accordance with Part 3 of this Constitution. (Section 101, Local Government Act 1972).

#### **c) Decisions of the Executive -**

Will comprise key decisions (see 13.04 below) and other decisions.

### 13.04 Meaning of Key Decision

“Key decisions” relate to an executive decision, which is likely:-

- i) 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
- ii) to be significant in terms of its effects on communities living or working in an area comprising one or more wards in the Council’s area.

A key decision will relate to a decision on a matter identified in the forward plan, except in cases of urgency when the provisions contained within the Budget and Policy Framework procedure Rules will apply.

A decision taker may only make a key decision in accordance with the requirements of the Cabinet Procedure Rules set out in Part 4 of this Constitution.

Decisions which will not be key decisions under (1) above will include the utilisation of approved annual revenue and capital budgets for the purposes intended and in accordance with approved policies, plans and strategies.

Decisions which will be a key decision include:

- (a) Approval of a new policy, plan or strategy or amendment to an existing one.
- (b) Approval to any service proposal likely to or expected to give rise to a variation in the service’s base budget of 25% or more.
- (c) Approval to any service proposal entailing a significant change in the level or character of the service provided or in the means of its delivery.
- (d) A decision to undertake a new service or to cease to operate an existing service.
- (e) Response to consultations from Government departments and other bodies where the Council is a statutory consultee and where the outcome of the matter upon which views are sought would have like effect to those matters listed at (c) and (d) above.
- (f) The Executive’s recommendations to Council in respect of the policy framework, budget or land transfer (as defined in paragraph 4.01 of Article 4 of this Constitution).
- (g) Setting Council house rents and associated service charges.

- (h) Virement on revenue accounts of £50,000 or more.
- (i) Use of the contingency fund for amounts of £50,000 or more.
- (j) Release of capital resources of £50,000 or more for a scheme not within the approved capital programme.
- (k) Approval to an increase of 10% or greater in the cost of an approved capital scheme and the subsequent release of the required capital resources.

The financial limits indicated above are for the purposes of identifying a key decision. Reference should be made to the Financial Procedure Rules in Part 4 of this Constitution for details of the delegation arrangements to officers and the powers of the Executive in respect of capital and revenue expenditure in the course of the year.

### **13.05 Decision making by the full Council**

Subject to Article 13.09, the Council meeting will follow the Council Procedures Rules set out in Part 4 of this Constitution when considering any matter.

### **13.06 Decision making by the Executive**

Subject to Article 13.09, the Executive will follow the Cabinet Procedures Rules set out in Part 4 of this Constitution when considering any matter.

### **13.07 Decision making by Scrutiny Committee**

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

### **13.08 Decision making by other Committees established by the Council**

Subject to Article 13.09, other Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in Part 4 of this Constitution as apply to them.

### **13.09 Decision making by Council bodies acting as tribunals**

The Council, 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 trial contained in Article 6 of the European Convention on Human Rights.

## **Article 14 – Finance, Contracts and Legal Matters**

(updated May 2015)

This article refers to the authority's Financial and Contract Rules, which are contained in Part 4 of this Constitution.

### **14.01 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.

### **14.02 Contracts**

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

### **14.03 Legal proceedings**

The Head of Legal 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 Head of Legal considers that such action is necessary to protect the Council's interests.

### **14.04 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 Head of Legal 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 £75,000 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 either be signed by at least two Officers of the authority or made under the common seal of the Council attested by at least one Officer.

### **14.05 Common Seal of the Council**

The Common Seal of the Council will be kept in a safe place in the custody of the Head of Legal. A decision of the Council, or of 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 Head of Legal should be sealed. The affixing of the Common Seal will be attested by the Head of Legal or some other person authorised by him/her.

## **Article 15 – Review and Revision of the Constitution**

(updated May 2015)

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

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.

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 better 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 Council and Officer structure;
2. undertake an audit trail of a sample of decisions;
3. record and analyse issues raised with him/her by Councillors, Officers, the public and other relevant stakeholders; and
4. compare practices in this authority with those in other comparable authorities, and national examples of best practice.

### **15.02 Role of others in initiating a review of the Constitution**

A review of any part of the Constitution shall be undertaken by the Monitoring Officer following resolution to that effect by the Council, Cabinet or any Committee of the Council. The Monitoring Officer shall advise the body concerned of the outcome of the review and if necessary submit a report to the Council to agree any change of substance.

Any individual Councillor, officer or any other person or body may inform the Monitoring Officer that in their opinion some part of the Constitution requires review or revision. They should give their reasons and proposals for any change. The Monitoring Officer shall consider such requests and decide whether or not to conduct a review. If the Monitoring Officer decides that a review is not required or, if after review, no changes to the Constitution are considered necessary, the person requesting the review shall be notified and given reasons for the decision.

### **15.03 Changes to the Constitution**

#### **a) Review and Approval.**

The Constitution Review Working Party will:

- a. Review sections of the constitution to ensure that they are complete, accurate, up to date, clear, lawful and fit for purpose.
- b. Receive and consider requests from the Monitoring Officer, Members, the Council or Committees, Directors or Heads of Service to review specific parts of the constitution.
- c. Consider recommendations on proposed amendments to sections from the constitution from the Monitoring Officer, Members, the Council, Committees Directors or Heads of Service.
- d. Make recommendations on proposed amendments to the constitution to the Audit and Governance Committee, another committee of the Council (where appropriate) or to Cabinet (in relation to executive matters) as appropriate depending upon the subject matter, and for final recommendations to Full Council.

All changes of substance to the Constitution will be approved by the Full Council.

#### **b) Minor or Inconsequential Changes.**

The Monitoring Officer has delegated authority to update the Constitution arising from decisions of the Council, or the Executive, or where legislation requires a change in wording or terminology, such changes to be reported to Councillors.

#### **c) Change from a Leader and Cabinet form of Executive to alternative arrangements, or vice versa.**

The Council must 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**

(updated May 2015)

### **16.01 Suspension of the Constitution**

**a) Limit to suspension.**

The Articles of this Constitution may not be suspended. The Rules relating to meetings of the Council may be suspended by the full Council to the extent permitted within the Council Procedure Rules contained in Part 4 of this Constitution and the law.

**b) Procedure to suspend.**

A motion to suspend any rules will not be moved without notice unless at least one half of the whole number of Councillors is present. 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.

### **16.02 Interpretation**

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

### **16.03 Publication**

- a) The Monitoring Officer will advise Councillors that access to the Constitution can be made via the Council's website.
- 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 the local press and the public on payment of a reasonable fee. A copy of the Constitution shall be maintained on the Council's website.
- c) The Monitoring Officer will ensure that the summary of the Constitution is made widely available within the area and is updated as necessary.