

# Part 2

## Articles of the Constitution

### 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 constituent parts are the Constitution of Rother District Council.

#### 1.3 Purpose of the Constitution

The purpose of the Constitution is to:

- (a) enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
- (b) support the active involvement of citizens in the process of local authority decision-making through consultation with the community and the Council's partners;
- (c) help Councillors represent their constituents more effectively;
- (d) enable decisions to be taken efficiently and effectively and in an open manner so that all decisions are made in public whenever possible;
- (e) create a powerful and effective means of holding decision-makers to public account;
- (f) ensure that no one will review or scrutinise a decision in which they were directly involved;
- (g) ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions;
- (h) provide a means of improving the delivery of services to the community; and
- (i) promote understanding of the Council and its work.

#### 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 15.

### Article 2 – Members of The Council

#### 2.1 Composition and eligibility

- (a) **Composition.** The Council comprises 38 Members, otherwise called Councillors. 1 or more Councillors are elected by the voters of each Ward in

accordance with a scheme drawn up by the Local Government Boundary Commission for England and approved by Parliament. As guidelines to their duties and responsibilities, job profiles have been prepared for Councillors generally and specifically in relation to those appointed to a particular office or position and are included in Part 5 of this Constitution.

- (b) **Eligibility.** Only registered voters of the District or those living or working there are eligible to hold the office of Councillor.

## 2.2 Election and terms of Councillors

The regular election of Councillors is held on the first Thursday in May every 4 years. The term 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 following 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) 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; and
- (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 Protocol on Member/Officer Relations 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 alternative governance model.
- (b) **Information.** Citizens have the right to:
  - i) attend meetings of the Council, Executive (Cabinet) and its 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 Executive when decisions are being taken, excepting also where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
  - iii) make representations as to why a proposed private meeting or part thereof of a Cabinet meeting should not be held in private;
  - iv) with the knowledge of all persons present at a meeting, record, broadcast and report meetings of the Council that are open to the public;
  - v) speak at Planning Committee meetings in accordance with the provisions of the planning application petitions and speaking at Planning Committee procedure;
  - vi) find out from the forward plan what key decisions will be taken by the Executive and when;
  - vii) see reports and background papers, and any records of decisions made by the Council and the Executive; and
  - viii) inspect the Council's accounts and make their views known to the external auditor.
- (c) **Participation.** Citizens have the right to participate in the Council's question time and may contribute by invitation to investigations by the Overview and Scrutiny Committees and task and finish groups.
- (d) **Complaints.** Citizens have the right to complain to:
  - (i) the Council itself under its complaints scheme;
  - (ii) the Local Government and Social Care Ombudsman in cases of alleged maladministration after using the Council's own complaints scheme and subject to certain exceptions (e.g where a right of appeal exists or when legal proceedings are being progressed); and
  - (iii) the Council's Monitoring Officer about a breach of the Members' Code of Conduct, by an individual councillor.
- (e) **Petition Scheme.** Citizens have the right to submit an electronic or paper petition to the Council, under the Council's Petition Scheme, if it includes 10 or more signatures. A petition may be signed by anyone living, working or studying in the Rother District.

### 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 Council

### 4.1 Meanings

(a) **Policy Framework.** The policy framework means the following plans and strategies:-

(i) those required by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 to be adopted by the Council:

- Community Strategy;
- Annual Performance Plan;
- Crime and Disorder Reduction Strategy;
- Plans and strategies which together comprise the Local Development Framework;

(ii) other plans and strategies which the Ministry of Housing, Communities and Local Government recommends should be adopted by the Council as part of the policy framework:

- Food Law Enforcement Plan;
- The plan and strategy which comprise the Housing Investment Programme; and

(iii) all other plans and strategies which the Council adopts as a matter of local choice.

(b) **Budget.** The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, 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 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 the Leader of the Council;
- (e) agreeing and/or amending the terms of reference for Committees, deciding on their composition and making appointments to them;

- (f) approving the list of outside bodies and making appointments thereto, unless the appointment is an Executive 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 the Head of Paid Service;
- (j) making, amending, revoking, re-enacting or adopting byelaws and promoting or opposing the making of local legislation or personal Bills;
- (k) all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself or its Regulatory Committees rather than the Executive; and
- (l) all other matters which, by law, must be reserved to Council.

#### **4.3 Council meetings**

There are 3 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.

#### **4.4 Responsibility for functions**

The Council will maintain the schedules 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**

### **5.1 Role and function of the Chairman of Rother District Council**

The Council will elect the Chairman annually. The Chairman will have the following responsibilities:

- (a) to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- (b) 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;
- (c) to ensure that the Council meeting is the forum for debate of matters of concern to the local community and the place at which Members who are not on the Executive are able to hold the Executive to account;
- (d) to promote public involvement in the Council's activities;
- (e) to be the conscience of the Council;
- (f) to attend such civic and ceremonial functions as the Council and the Chairman determines appropriate; and
- (g) to be an ex-officio Member on the Planning Committee, Licensing and General Purposes Committee and the Overview and Scrutiny Committee.

# Article 6 – Overview & Scrutiny Committees

## 6.1 Terms of reference

The Council will appoint at least one Overview and Scrutiny Committee to discharge the following functions conferred by section 21 of the Local Government Act 2000:

- Provision and management of cultural, domestic, housing, leisure and recreational activities and facilities.
- Food Hygiene, Health and Safety and Licensing.
- Crime and Disorder Committee.
- Review of the provision of education, health and social services by other authorities and agencies.
- Economic Growth & Employment.
- Regeneration Partnerships.
- Tourism Promotion.
- Protection & enhancement of the Built and Natural Environment.
- Sustainability issues.
- Planning and Transport.
- Emergency Planning.
- Local democracy and the achievement of effective, transparent and accountable decision making.
- Consultation arrangements.
- Modernisation.
- Corporate strategy - performance management aspects.
- Monitoring of the Council's key plans, policies and strategies.
- Publication of performance information.
- Council's Annual Report.
- Council's significant partnerships - contracts and service level agreements
- Capital and revenue budgets.
- Medium Term Financial Revenue Strategy; the Capital Strategy; the Asset Management Plan; and the Procurement Strategy.
- Development / review of the budget consultation process.

## 6.2 General role

Within their terms of reference, Overview and Scrutiny Committees 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 Council and/or the Executive and/or any joint or area Committee in connection with the discharge of any of the functions of the Council or the Executive, as appropriate;
- (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 and/or any Area Committees appointed.

### 6.3 Specific functions

- (a) **Policy development and review.** Overview and Scrutiny Committees 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) engage with and question Members of the Executive and / or Executive Directors, Heads of Service or such other officers as may be determined by the appropriate Executive Director, about their views 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.** Overview and Scrutiny Committees may:
- (i) review and scrutinise the decisions made by and the performance of the Executive and/or Council officers both in relation to individual decisions and the impact of those decisions 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) engage with and question Members of the Executive, Executive Directors, Heads of Service or such other officers as may be determined by the appropriate Executive Director, 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 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 Overview and Scrutiny Committee and residents about their activities and performance; and
  - (vi) engage with and question and gather evidence from any person (with their consent).
- (c) **Finance.** Overview and Scrutiny Committees may exercise overall responsibility for any finances made available to it
- (d) **Annual report.** Overview and Scrutiny Committees must report annually to the Council on their workings and make recommendations for future work programmes and amended working methods if appropriate.

### 6.4 Proceedings of Overview and Scrutiny Committee

Overview and Scrutiny Committees and any appointed formal Sub-Committees will conduct their proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution.

# Article 7 – The Executive

## 7.1 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.

## 7.2 Form and composition

The Executive will consist of the Executive Leader together with such other number of Councillors as determined and appointed by the Leader of the Council normally at its Annual Meeting, being at least 2 but not more than 10 Councillors. The Executive cannot include either the Chairman or Vice-Chairman of Council.

## 7.3 The Leader

The Leader will be a Councillor elected to the position by the Council at its first Annual meeting following a whole-Council election. The Leader's term of office will be 4 years and starts on the day of his election as Leader and ends on the day of the post-election annual meeting which follows his election as leader; or until:

- (a) he/she resigns from the office; or
- (b) he/she is no longer a Councillor; or
- (c) he/she is removed from office by resolution of the Council.

## 7.4 Other Executive Members

Other Executive Members shall be Councillors appointed annually to the position by the Leader of the Council normally at its Annual meeting, and will hold office until:

- (a) they resign from office; or
- (b) they are no longer Councillors; or
- (c) they are removed from office, either individually or collectively, by the Leader of the Council who must give written notice to the Head of Paid Service. The removal will be effective immediately on receipt of the notice by the Head of Paid Service.

## 7.5 Allocation of Portfolios

The Leader of the Council shall normally at the Annual Council meeting allocate such portfolios as he / she considers appropriate to the Members of the Executive.

## 7.6 Proceedings of the Executive

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

## 7.7 Responsibility for functions

The Leader will maintain a list in Part 3 of this Constitution setting out which Committees of the Executive, officers or joint arrangements, if any, are responsible for the exercise of particular Executive functions.



# Article 8 – Regulatory & other Committees

## 8.1 Regulatory and Other Committees

The Council will appoint the Committees set out in Part 3 of this Constitution - Responsibility for Functions - to discharge the functions described therein.

# Article 9 - Standards

## 9.1 Standards

The 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.

## 9.2 Structure

The Audit and Standards 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.

## 9.3 Independent Persons

Independent Persons will be appointed in accordance with [s28(7)] of the Localism Act 2011 and shall have the right to attend meetings of the Audit and Standards Committee and any Sub-Committee established for the purposes of dealing with matters relating to any allegations against a Member or co-opted Member of the authority or Town or Parish Council within the district, in a non-voting capacity.

The Independent Persons' view will be sought by the Council's Monitoring Officer before he / she makes a decision on an allegation which he / she has decided shall be investigated. The Independent Persons' views may be sought by the Council's Monitoring Officer at any other stage, or by a Subject Member, or a Member or co-opted Member of a Parish or Town Council within the District, against whom an allegation has been made that they have breached the Code of Conduct.

The term of office for the independent persons will be fixed for 4 years. Independent persons may reapply on expiry of their current term.

## 9.4 Role and Function

The Audit and Standards Committee when fulfilling the ethical standards matters will have the following roles and functions:

- (a) promoting and maintaining the highest standard of conduct by Councillors and co-opted Members;
- (b) assisting Councillors and co-opted Members 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 investigate and make decisions on complaints in relation to allegations that a Member or co-opted Member of the authority as failed to comply with the Code of Conduct;
- (g) the exercise of (a) to (f) above in relation to the Town and Parish Councils wholly or mainly in its area and the Members of those councils;
- (h) advising the Council on the appointment of Independent Persons; and
- (i) overview of complaints handling and Local Government and Social Care Ombudsman investigations, including the power to make payments or other benefits in cases of maladministration etc (Section 92 of the Local Government Act 2000).

## Article 10 - Area Committees and Forums

### 10.1 Area Committees

The Council may appoint Area Committees and forums as it sees fit, if it is satisfied that to do so will ensure improved service delivery in the context of best value and more efficient, transparent and accountable decision making. The Council will consult with relevant Parish and Town Councils and the Chairmen of relevant Parish meetings when considering whether and how to establish Area Committees.

## Article 11 - Joint Arrangements

### 11.1 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 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.

#### **Joint Waste Committee**

- (c) In October 2010 the Council, together with Eastbourne Borough Council, Hastings Borough Council, Wealden District Council and East Sussex County Council signed a Memorandum of Understanding to advance a Single Waste Collection Contract across the 4 District and Borough Local Authority areas. In order to procure and subsequently manage the process, a Joint Waste Committee was established, comprising executive Members from each partner authority. The current contract will come to an end in June 2019.
- (d) Rother District Council was appointed as the Administering Authority and its role is:
  - to administer and support the Joint Waste Committee;

- to appoint a Project Manager (on a fixed-term contract) and Senior Waste Officer (seconded from one of the authorities) to manage the procurement process;
- to provide the support services to the procurement process; legal, finance, printing, HR, etc;
- to appoint the staff to manage the contract once the contractor is appointed and continue to support the Joint Waste Committee in the role of 'overseeing' the contract.
- to determine through the business case, such issues as to what staff reside within the Administering Authority and what staff reside with each Council.

### **Joint Waste and Recycling Committee**

- (e) In September 2017, the Council, together with East Sussex County Council, Hastings Borough Council and Wealden District Council established the Joint Waste and Recycling Committee (JWRC).
- (f) The JWRC is established under Sections 101(5) and 102 of the Local Government Act 1972, Section 20 of the Local Government Act 2000 and Regulation 11 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 by the Executives of East Sussex County Council, Hastings Borough Council, Rother District Council and Wealden District Council.
- (g) The JWRC have been established to enable a clear distinction between matters concerning the current Joint Waste Contract and the future procurement decisions for HBC, RDC and WDC. The JWRC operates concurrently to the existing JWC and will succeed the JWC from June 2019.

### **11.2 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.

### **11.3 Contracting out**

The Council in relation to functions which are not executive functions, and the Executive in relation to 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.

### **Contracting out of Allocation of Housing and Homelessness Functions**

- (a) In March 2018 the Council's executive agreed that the Council's functions under Part VII of the Housing Act 1996, save for those set out in Schedule 2 to The Local Authorities (Contracting out of Allocation of Housing and

Homelessness Functions) Order 1996 be contracted out to the London Borough of Southwark until 1 March 2023, as follows:

- conducting reviews of any decision referred to in s.202 of the Housing Act 1996;
- making inquiries for the purposes of conducting such reviews;
- carrying out any other functions which are incidental to the conduct of such reviews, including, but not limited to, writing review decision letters and agreeing with applicants to extend the period within which notice of review decisions shall be given.

#### 11.4 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.

## Article 12 - Officers

### 12.1 Management structure

- (a) **General.** The Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.
- (b) **Chief Officers.** The Council will engage persons for the following 3 posts, who will be designated chief officers. The 2 Executive Directors will, on a 6 monthly rotational basis, assume the designation and responsibilities of the Head of Paid Service in addition to the functions and areas of responsibility allocated to them as Executive Directors.

Post	Functions and Areas of Responsibility
Head of Paid Service (to be fulfilled by Executive Directors on a 6 month rotational basis)	<ul style="list-style-type: none"> <li>• Overall corporate management and operational responsibility (including overall management responsibility for all officers)</li> <li>• Provision of professional advice to all parties in the decision-making process</li> <li>• Together with the Monitoring Officer, responsibility for a system of record keeping for all the Council's decisions</li> <li>• Representing the Council on partnership and external bodies (as required by statute or the Council)</li> </ul>
Executive Director	<ul style="list-style-type: none"> <li>• Housing and Community</li> <li>• Environmental Health, Licensing and Community Safety</li> <li>• Corporate Core</li> </ul>
Executive Director	<ul style="list-style-type: none"> <li>• Acquisitions, Transformation and Regeneration</li> <li>• Strategy and Planning</li> <li>• Corporate Core</li> </ul>
Assistant Director	<ul style="list-style-type: none"> <li>• Resources</li> </ul>

- (c) **Head of Paid Service, Monitoring Officer and Chief Financial Officer (Section 151 officer) roles.** The Council will designate the following posts as shown:

Post	Designation
Executive Directors	Head of Paid Service
Assistant Director – Resources	Chief Finance Officer (Section 151 Officer)
Democratic Services Manager	Monitoring Officer

- (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 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) **Corporate Complaints Officer.** The Head of Paid Service will be responsible for the administration of the Corporate Complaints Procedure and for dealing with complaints made to the Local Government and Social Care Ombudsman.
- (c) **Restrictions on functions.** The Head of Paid Service cannot 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 reference 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 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 the Audit and Standards Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Audit and Standards Committee in relation to ethical standards.

- (d) **Code of Conduct Complaints.** The Monitoring Officer will:
- i) adhere to the arrangements put in place by the Council to deal with allegations that a member of the Authority or of a Parish or Town Council within its area has failed to comply with the relevant authority's Code of Conduct.
  - ii) establish and maintain a register of interests of Members and Co-opted Members of the Council and Parish and Town Councils across the district, and to ensure that it is available for public inspection and published on the Council's website.
  - iii) consider all complaints at first instance and decide whether to refer the matter for investigation, to take no action or to seek to resolve the matter through alternative means.
  - iv) receive reports from the Investigating Officer and determine whether to refer the matter to the Audit and Standards Committee for consideration, to take no further action or to seek to resolve the matter through alternative means.
  - v) grant a Member or Co-opted Member of the District Council a dispensation from the restriction on speaking and/or voting when any matter in which that person has a disclosable pecuniary interest is to be considered at a meeting of the Council or any of its committees, sub-committees, joint committees or joint sub-committees.
- (e) **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.
- (f) **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.
- (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 issues 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 (Section 151 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 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 will support and advise Councillors and officers in their respective roles.
- (e) **Giving financial information.** The Chief Finance Officer will provide financial information to the media, members of the public and the community.
- (f) **Restrictions on posts.** The Chief Finance Officer cannot be the Monitoring Officer.

#### 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 the Officers' Code of Conduct and the Protocol on Officer/Member Relations 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 an up to date 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:

- (a) proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) due consultation and the taking of professional advice from officers;
- (c) respect for human rights (see Article 13.8 below for further details);
- (d) a presumption in favour of openness;
- (e) clarity of aims and desired outcomes; and
- (f) an explanation of the options which were considered and the reasons for the decision will be included as part of the record of any decision.

### 13.3 **Types of decision**

- (a) **Decisions reserved to Council.** Decisions relating to the functions listed in Article 4.2 will be made by the Council and not delegated.
- (b) **Key decisions:**
  - (i) Any Executive decision which is likely to result in the local authority incurring expenditure which is, or the making of savings which are, significant (£100,000) having regard to the local authority's budget for the service or function to which the decision relates; or be significant in terms of its effect on communities living or working in an area comprising 2 or more Wards in the area of the local authority shall be treated as a key decision.
  - (ii) A decision taker may only make a key decision in accordance with the requirements of the Access to Information Procedure Rules as set out in Part 4 of this Constitution.

### 13.4 **Decision making by the Council**

Subject to Article 13.8, the Council meeting will follow the Council Procedure Rules set out in Part 4 of this Constitution when considering any matter.

### 13.5 **Decision making by the Executive**

Subject to Article 13.8, the Executive will follow the Executive Procedure Rules set out in Part 4 of this Constitution when considering any matter.

### 13.6 **Decision making by Overview and Scrutiny Committees**

Overview and Scrutiny Committees will follow the Overview and Scrutiny Procedure 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 13.8, other Council Committees and Sub-Committees will follow those parts of the Council Procedure 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, 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

## 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 Procurement Procedure Rules set out in Part 4 of this Constitution.

## 14.3 Legal proceedings

The Solicitor to the Council is authorised to institute, defend 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 Solicitor to the Council 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 Solicitor to the Council 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 £100,000 and entered into on behalf of the local authority in the course of the discharge of an executive function shall be made in writing and must either be signed or made under the Common Seal of the Council attested in accordance with Article 14.6 below.

## 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 Solicitor to the Council. 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 Solicitor to the Council should be sealed.

## 14.6 Attestation

The Seal shall be attested by the following persons present at the sealing, viz. the Chairman or Vice-Chairman of the Council or other Member of the Council, and either Executive Director, Solicitor to the Council, Assistant Director - Resources, and an entry of every sealing of a document shall be made and consecutively numbered in a book kept for the purpose and shall be signed by a person who has attested the Seal.

# Article 15 - Review and Revision of the Constitution

## 15.1 Duty to monitor and review the constitution

The Overview and Scrutiny Committee will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

## 15.2 Protocol for the monitoring and review of the constitution

A key role for the Overview and Scrutiny Committee 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 Members of the Committee may:

- (a) observe meetings;
- (b) undertake an audit trail of a sample of decisions;
- (c) record and analyse issues raised with the Committee by Members, officers, the public and other relevant stakeholders; and
- (d) 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, save for delegations to officers, will only be approved by the Council after consideration of the proposal by the Overview and Scrutiny Committee.
- (b) **Change from one form of Executive to another.** 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

## 16.1 Suspension of the Constitution

- (a) **Limit to suspension.** The Articles of this Constitution may not be suspended. The Council Procedure Rules may be suspended to the extent permitted within those Rules and the law.
- (b) **Procedure to suspend.** A motion to suspend any Procedure Rules will not be moved without notice unless at least one half of the whole number of Councillors are 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.

## 16.2 Interpretation

The ruling of the Chairman of the Council as to the construction or application of this Constitution or 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.

## 16.3 Publication

- (a) The Head of Paid Service will make available a printed copy of the Articles 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 Head of Paid Service will ensure that copies are available for inspection at Council offices 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 Head of Paid Service 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:

- Article 6** (Overview and Scrutiny Committees) and the Overview and Scrutiny Procedure Rules;
- Article 7** (The Executive) and the Executive Procedure Rules;
- Article 10** (Area Committees and Forums) – to the extent that any area committees and forums may have functions delegated to them by the Executive;
- Article 11** (Joint arrangements) – to the extent that any area committees and forums may have functions delegated to them by the Executive;
- Article 13** (Decision making) and the Access to Information Procedure Rules;
- Part 3** (Responsibility for Functions).