

# Articles of the Constitution

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# **1 Article 1 – The Constitution**

## **1.1 Powers of the Council**

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

## **1.2 The Constitution**

1.2.1 This Constitution, and all its appendices, is the Constitution of Somerset West and Taunton Council.

## **1.3 Purpose of the Constitution**

1.3.1 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;
- provide a means of improving the delivery of services to the community.

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

1.4.1 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.

## **2 Article 2 – Members of the Council**

### **2.1 Composition and Eligibility**

#### **(a) Composition**

2.1.1 The Council will comprise of 59 Councillors. One or more Councillors will be elected by the voters of each ward in accordance with a scheme approved by the Secretary of State.

#### **(b) Eligibility**

2.1.2 Any person over 18 who meets the eligibility requirements under Section 79 of the Local Government Act 1972 may stand for election as a Councillor.

### **2.2 Election and Terms of Councillors**

2.2.1 Unless otherwise prescribed by Parliament, the regular election of Councillors will take place every 4 years on the first Thursday in May. The terms of office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

### **2.3 Roles and functions of all Councillors**

#### **(a) Key Roles**

2.3.1 All Councillors will:

- a) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
- b) represent their communities and bring their views into the Council's decision-making process, i.e. become the advocate of and for their communities;

- c) deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
- d) balance different interests identified within the ward or electoral division and represent the ward or electoral division as a whole;
- e) be involved in decision-making, including any scheme of individual decision-making established by the Council or Leader;
- f) be available to represent the Council on other bodies;
- g) maintain the highest standards of conduct and ethics, including compliance with the Councillor Code of Conduct.

### **(b) Rights and Duties**

#### 2.3.2 All Councillors will:

- a) 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;
- b) not disclose to anyone information which is confidential or exempt without the consent of the Council, or divulge information given in confidence to anyone other than a Councillor, Officer or third party entitled by law to know it.

2.3.3 For these purposes, “confidential” and “exempt” information are defined in the Access to Information Rules.

## **2.4 Election of the Chair**

2.4.1 The Chair will be elected by the Councillors at the Annual Council meeting. The term of office for the Chair will be one year. The Councillor will take office immediately upon her/his declaration of acceptance of office of Chair and will continue in office until her/his successor is elected, unless the Councillor ceases to be Chair.

## **2.5 Conduct and Disqualification**

2.5.1 Councillors will at all times observe the Councillors Code of Conduct and the

Protocol on Councillor/Officer Relations.

2.5.2 Councillors are subject to section 85 of the Local Government Act 1972 and therefore any Councillors who fails to attend any meeting of the Council or of any committee, joint committee or sub-committee of which they are a member for more than six months, unless the failure to attend was due to some reason approved by the Council, shall cease to be a Councillor of the Somerset West and Taunton Council.

## **2.6 Allowances**

2.6.1 Councillors are entitled to receive allowances in accordance with the Councillors' Allowances Scheme.

## **3 Article 3 – Citizens and the Council**

### **3.1 Citizens' Rights**

3.1.1 Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules.

#### **(a) Voting and Petitions**

3.1.2 Citizens on the electoral roll for the area have the right to vote and sign a petition to request a referendum for a directly elected Mayor form of executive.

3.1.3 As well as residents those who work or study in the district may present petitions on other matters in accordance with the Council's Petitions Scheme.

#### **(b) Information**

3.1.3 Citizens have the right to:

- a) attend meetings of the Council and its committees except where confidential or exempt information is likely to be disclosed, and the meeting, or part of it, is therefore held in private;
- b) attend meetings of the Executive when key decisions are being considered;
- c) find out from the Forward Plan what key decisions will be taken by the

Executive and when. The Forward Plan is available for inspection at the Council's reception and on its website; see reports and background papers, and any records of decisions made by the Council and the Executive;

- d) inspect the Council's accounts and make their views known to the external auditor;
- e) take part in public consultation processes commenced by the Council.

### **(c) Participation**

3.1.4 Citizens have the right to participate in Council, Executive and Committee meetings (in accordance with procedures set out in this Constitution) and may contribute to investigations by the Scrutiny Committee(s).

### **(d) Complaints**

3.1.5 Citizens have the right to complain to:

- a) the Council itself under its complaints scheme;
- b) the Local Government and Social Care Ombudsman after using the Council's own complaints scheme;
- c) the Council's Monitoring Officer about a breach of the Councillor Code of Conduct.

## **3.2 Citizens' Responsibilities**

3.2.1 When participating in meetings, or in dealings with the Council, citizens must not be disruptive, violent, abusive or threatening to Councillors or Officers and must not wilfully damage property owned by the Council, Councillors or Officers.

## **4 Article 4 – The Full Council**

### **4.1 Functions of the Full Council**

4.1.1 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, 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) exercising powers to remove the Leader from office before completion of his/her term of office;
- f) agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them;
- g) appointing representatives to outside bodies unless the appointment is an Executive function or has been delegated by the Council;
- h) adopting and varying a Councillors' Allowances Scheme;
- i) changing the name of the area/council,
- j) conferring the title of honorary alderman or honorary alderwoman, or awarding the Freedom of the Council Area under Sections 248 and 249 of the Local Government Act 1972;
- 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) making a request under Section 14A(1) (requests for single-member electoral areas) of the Local Government Act 1992 for single-member electoral areas;
- n) the passing of resolutions to change a scheme for elections under the Local Government and Public Involvement in Health 2007 Act (Subsections 32(1), 37(1) or 39(1));

- o) the making of orders giving effect to recommendations made in a community governance review under the Local Government and Public Involvement in Health 2007 Act (Section 86);
- p) the duty to make a change in governance arrangements under the Local Government and Public Involvement in Health 2007 Act (Schedule 4 paragraphs 3 and 8);
- q) a decision to accept an invitation to become an 'opted in' Authority, for the purposes of appointing external auditors under the provisions of the Local Audit (Appointing Person) Regulations 2015;
- r) making or revising Council Tax Reductions Scheme under Section 13(A)(2) of the Local Government Finance Act 1992 as amended by the Localism Act 2011;
- s) approving supplementary budget allocations (whether revenue or capital budgets) at or above £250,000.00.
- t) Electing the Chair of the Council and appointing the Vice-Chair.
- u) Confirming the appointment of the Section 151 Officer and Monitoring Officer.
- v) Designating an officer to be the Returning Officer and Electoral Registration Officer.
- w) consider recommendations from the Executive (which will come from Hinkley Point Planning Obligations Board) to allocate contributions for projects seeking funding of over £250,000.
- x) consider recommendations from the Executive (which have not come from Hinkley Point Planning Obligations Board) to allocate contributions for projects seeking funding of over £250,000.
- y) consider recommendations from the Executive (which have come from the internal Planning Obligations Group (to allocate contributions for projects seeking funding of over £250,000))
- z) appoint the Council's representatives to the Hinkley Point Planning

## Obligations Board

- aa) appoint the Council's representative on the Somerset Community Foundation Panel who will consider bids to the EDF Energy Community Fund
- bb) all other matters which, by law, must be reserved to Full Council.

4.1.2 The Council will also exercise the following additional functions which may be discharged by Full Council itself or delegated to a committee or sub-committee of Councillors, an officer of the Council or another authority:

- a) all responsibilities of the Council (as provided by the Local Government Act 2000 and guidance published by the Secretary of State) which must be undertaken by the Council rather than the Executive (see Responsibility for Functions, Table 1); and,
- b) all local choice functions (as provided by the Local Government Act 2000 and guidance published by the Secretary of State) which the Council decides should be undertaken by itself rather than the Executive (see Responsibility for Functions, Table 2).

## 4.2 Meanings

### (a) Policy Framework

4.2.1 The Policy Framework means the following plans and strategies required by law:

- a) Crime and Disorder Reduction Strategy;
- b) Development Plan documents;
- c) Licensing Authority Policy Statement;
- d) Plans and alterations that together comprise the Development Plan.

4.2.2 The Council has also decided to include the following in the Policy Framework:

- a) Corporate Plan;

- b) Housing Investment Programme;
- c) Asset Management Strategy;
- d) Community Strategy.

4.2.3 The Council has the power to vary the Policy Framework from time to time, provided it does so in accordance with any statutory guidance.

#### **(b) Budget**

- i. The Budget includes the allocation of financial resources to different services and projects, proposed reserves and contingency funds, the council tax base, setting the council tax, setting housing rents, decisions' relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.

#### **(c) Housing Land Transfer**

- ii. 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.

### **4.3 Council Meetings**

- iii. There are four types of Council meeting:
  - 1. the Annual Meeting
  - 2. Ordinary Meetings
  - 3. Extraordinary Meetings
  - 4. Special Meetings

and they will be conducted in accordance with the Council Procedure Rules of this Constitution as may be adopted and amended from time to time.

## **4.4 Responsibility for Functions**

4.4.1 The Council will maintain and publish information on the responsibilities for the Council's functions, which are not the responsibility of the Executive as set out in the Constitution at 'Responsibility for Functions'.

## **5 Article 5 – The Chair**

### **5.1 Role and Functions of the Chair of the Council**

5.1.1 The Chair will be elected by the Council annually and will have the following responsibilities when chairing meetings of the Council to:

- a) uphold and promote the purposes of the Constitution and to interpret the Constitution when necessary;
- b) 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) 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 part of the Executive are able to hold the Leader and other members of the Executive and committee chairs, including chairs of Scrutiny Committee(s), to account;
- d) promote public involvement in the Council's activities;
- e) be the conscience of the Council;
- f) oversee the implementation of any dispute resolution procedures established by the Council and included in the rules of procedure contained in this Constitution.

## **6 Article 6 – Scrutiny Committee(s)**

### **6.1 Terms of Reference**

6.1.1 Scrutiny refers to all the Scrutiny functions within the Council and is used in this Constitution as a collective term for all individual Scrutiny Committees, sub-committees and scrutiny panels and all references to Scrutiny are to be interpreted accordingly, except where otherwise expressly stated.

6.1.2 The Council will appoint at least one Scrutiny Committee to discharge the functions conferred by section 21 of the Local Government Act 2000. Details of the Committee(s), as amended from time to time, are included in the Scrutiny Procedure Rules. Specific terms of reference for the Scrutiny Committee(s) are found in this Constitution.

6.1.3 The Council has a Corporate Scrutiny Committee and Community Scrutiny Committee (please refer to the Scrutiny Committees – Terms of Reference for more information).

## **6.2 General role**

6.2.1 Within their terms of reference, Scrutiny Committee(s) will:

- a) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- b) review and/or scrutinise the performance of external bodies subject to scrutiny by the Council;
- c) in accordance with their remit and terms of reference, make reports and/or recommendations to the full Council and/or the Executive and/or any committee or joint committee in connection with the discharge of any functions;
- d) consider any matter affecting the area or its inhabitants;
- e) exercise the right to Call-In, for reconsideration, decisions made but not yet implemented by the Executive and/or any committee (where exercising Executive functions), as well as pre- scrutinise any proposed decisions published in the Forward Plan. The procedure to be followed when the right to Call-In is exercised is included in the Procedure Rules of this Constitution;

- f) create time-limited panels to consider specific issues.

## **6.3 Specific Functions**

### **(a) Policy Development and Review**

#### 6.3.1 Scrutiny Committee(s) may:

- a) assist the Council and the Executive in the development of its Budget and Policy Framework by in-depth analysis of policy issues;
- b) conduct research, community and other consultation in the analysis of policy issues and possible options;
- c) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
- d) question members of the Executive and/or committees and Chief Officers about their views on issues and proposals affecting the area;
- e) 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**

#### 6.3.2 Scrutiny Committee(s) may:

- a) review and scrutinise the decisions made by and the performance of the Executive and/or committees and Council Officers both in relation to individual decisions and over time;
- b) review and scrutinise the Council's performance in relation to its policy objectives, performance targets and/or particular service areas;
- c) question members of the Executive, committees and Chief Officers and Officers with management responsibilities 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;

- d) make recommendations to the Executive, appropriate committee, officer and the Full Council arising from the outcome of the scrutiny process;
- e) review and scrutinise the performance of other public bodies in the area and call for reports from them and attendance of appropriate representatives to address the Scrutiny Committee(s) and local people about their activities and performance;
- f) question and gather evidence from any person (with their consent).

**c) Finance.**

6.3.3 Scrutiny Committee(s) may:

- A) exercise overall responsibility for the finances made available to them.
- B) scrutinise the overall Council Budget as part of its preparation.

**(d) Annual Report**

6.3.4 The Scrutiny Committee(s) must report annually to Council on their work.

## **6.4 Proceedings of Scrutiny Committees**

6.4.1 The Scrutiny Committee(s) will conduct their proceedings in accordance with the Scrutiny Procedure Rules of this Constitution.

## **7 Article 7 – The Executive (Leader and Executive)**

### **7.1 Role**

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

### **7.2 Form and Composition**

7.2.1 The Council has adopted the Leader and Executive (England) model of executive.

7.2.2 The Executive will consist of the Council Leader together with an Executive

of at least 2 but not more than 9 other Councillors appointed by the Leader.

**(a) The Leader**

7.2.3 The Leader will be a Councillor elected by the Council at the Annual Council Meeting in the year of the Council elections. The Leader will hold office for the term of four years until the next post-election Annual Council Meeting, or unless:

- a) the Councillor resigns from the office; or
- b) the Councillor is suspended from being a Councillor under Part III of the Local Government Act 2000 (although the Councillor may resume office at the end of the period of suspension); or
- c) the Councillor is removed from office by resolution of the Council.

7.2.4 In the event of the office of Leader becoming vacant before expiration of their Term of Office, the Council will elect a new Council Leader at its next meeting or at a meeting called for that purpose. The new Leader will serve for the period of office remaining (i.e. until the next post-election Annual Council Meeting).

**(b) The Deputy Leader**

7.2.5 The Leader shall appoint an Executive Councillor to serve as Deputy Leader.

7.2.6 The Deputy Leader of the Council will hold office until the end of the term of office of the Leader unless:

- a) the Councillor resigns from the office; or
- b) the Councillor 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) the Councillor is no longer a Councillor; or
- d) the Councillor is removed from that office by the Leader

7.2.7 Where a vacancy occurs in the office of Deputy Leader, the Leader of the

Council must appoint another Executive Councillor to that role.

### **7.3 Other Executive Councillors**

7.3.1 The Leader must appoint between two and nine Executive Councillors including the Deputy Leader.

7.3.2 The Leader shall determine the terms of office of Executive Councillors, which shall be no longer than the end of the term of office of the Leader. An Executive Councillor shall cease to hold that office if:

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

### **7.4 Proceedings of the Executive**

7.4.1 Proceedings of the Executive shall take place in accordance with the Executive Procedure Rules of this Constitution.

### **7.5 Responsibility for Functions**

7.5.1 The Leader has responsibility for the exercise of all the functions of the Executive (executive functions) under this Constitution and in law.

7.5.2 The Leader may discharge any executive function or delegate their exercise to:

- a) the Executive as a whole (Leader and Executive),
- b) an individual Executive Councillor,
- c) a committee of the Executive,
- d) an officer,
- e) an area committee established under section 18 of the Local Government Act 2000,

- f) be exercised under joint arrangements
- g) Individual non-executive Councillors where a scheme under the Local Government and Public Involvement in Health Act 2007 has been established.

7.5.3 Those persons or bodies exercising executive functions may delegate those powers so far as allowed by law.

7.5.4 A list of responsibilities for Executive functions will be maintained by the Monitoring Officer and published on the Council's website.

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

### **8.1 Regulatory and Other Committees**

8.1.1 The Council will appoint certain committees to deal with statutory or regulatory functions. Some committees may be set up as consultation or advisory forums (i.e. without decision-making powers). A list of these committees as amended or added to from time to time will be maintained by the Monitoring Officer.

### **8.2 Audit and Governance Committee and Standards Committee**

8.2.1 The Council will appoint one or more committees that between them will undertake (a) the role of an Audit and Governance Committee, (b) Standards Committee and (c) ensure compliance in decision-making in respect of the Council's political management arrangements and constitutional procedures. The latter role includes all parts of the Council that are responsible for making decisions including full Council, Executive, Officers under delegated authority, the Planning and Licensing Committees and other Council bodies, including joint bodies with other agencies and partnerships.

## **9 Article 9 – Ethical Standards Arrangements**

### **9.1 Establishment**

9.1.1 The Council will appoint a committee to ensure the Council meets its duty to promote and maintain high standards of conduct by Councillors and co-opted

Councillors of the authority under s.27 (1) of the Localism Act 2011, and to determine complaints and appeals under the Councillor Code of Conduct.

9.1.2 The Council has designated these functions to the Standards Committee.

**a) Independent Person**

9.1.3 The Council has made provision under s.7 of the Localism Act 2011 to appoint at least one independent person:

- whose views are to be sought and taken into account before decisions are made on an allegation about a Councillor's conduct;
- whose views may be sought by a Councillor or co-opted member of the authority if that person's behaviour is the subject of an allegation; and
- who will be invited to attend any panel meetings to determine the outcome of an investigation into an allegation about a Councillor's conduct or to appeal the outcome of a previous determination and, if present, may advise the panel and the Councillor who is the subject of the hearing or appeal.

9.1.4 A vacancy for an independent person must be sought by advertisement in such manner as the authority considers is likely to bring it to the attention of the public (s.28(8)(c)(i) Localism Act 2011).

9.1.5 The Council may only consider and approve candidates who have submitted to the authority an application to fill the vacancy (s.28(8)(c)(ii) Localism Act 2011);

9.1.6 Independent person appointments must be approved by a majority of the members of the Council (i.e. 30 Councillors) (s.28(8)(c)(iii) Localism Act 2011 – Appointments will be for a term of office determined by Full Council.

9.1.7 An independent person does not cease to be independent as a result of being paid any amounts by way of allowances or expenses in connection with performing the duties of the appointment.

9.1.8 A person is not independent if the person is

- a) a Councillor, co-opted Councillor or officer of the authority, or was a Councillor, co-opted Councillor or officer of the authority at any time during

- the 5 years ending with the appointment; or
- b) a relative (as defined in s28(8) Localism Act 2011), or close friend, of a Councillor, co-opted Councillor or officer of the authority.

## **10 Article 10 – Community Councils and Forums (AREA COMMITTEES UNDER SECTION 18 OF THE LOCAL GOVERNMENT ACT 2000)**

10.1 The Council may establish Community Councils and Forums in accordance with such determinations as it may later make.

## **11 Article 11 – Joint Arrangements and Partnerships**

### **11.1 Joint Arrangements**

11.1.1 The Council may establish joint arrangements with one or more local authority to exercise functions that are not Executive functions in any of the participating authorities. Such arrangements may involve the appointment of a joint committee with these other local authorities.

11.1.2 The Executive may establish joint arrangements with one or more local authority to exercise functions that are Executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities.

11.1.3 Details of any joint arrangements including any delegations to joint committees will be found in the Council's scheme of delegations, as amended from time to time.

### **11.2 Access to Information**

11.2.1 The Access to Information Rules apply to joint arrangements.

11.2.2 If all the members of a joint committee are members of the Executive in each of the participating authorities, then the access to information regime for the joint committee is the same as that applied to the Executive.

11.2.3 If the joint committee contains members who are not on the Executive of

any participating authority, then the Access to Information Rules in Part V of the Local Government Act 1972 will apply.

### **11.3 Delegation To and From Other Local Authorities**

11.3.1 The Council may delegate non-Executive functions to another local authority or, in certain circumstances where permitted by law, to the Executive of another local authority.

11.3.2 The Executive may delegate Executive functions to another local authority or the Executive of another local authority.

11.3.3 The decision whether or not to accept such a delegation from another local authority shall be reserved to Council.

## **12 Article 12 – Officers**

### **12.1 Management Structure**

#### **(a) General**

12.1.1 The Full Council may engage such staff (referred to as Officers) as it considers necessary to carry out its functions.

#### **(b) Chief Officers and Heads of Functions/Directors**

12.1.2 The Chief Executive shall have the responsibility and the power to amend the portfolios of Chief Officers as he/she considers necessary to deliver the Council's functions, vision and priorities. Such changes shall be carried out in accordance with the relevant HR policies applicable. The Chief Executive shall consult the Executive before such changes and report them to Full Council as soon as practicable thereafter

#### **(c) Head of Paid Service, Monitoring Officer and Section 151 Officer**

12.1.3 Council officers are required to be appointed to these posts by law undertaking specified functions. The Council has designated the following posts as set out below.

<b>Post</b>	<b>Designation</b>
Chief Executive	Head of Paid Service
Governance Manager	Monitoring Officer
Strategic Finance Advisor and S151 Officer	Section 151 Officer

#### **(d) Structure**

12.1.4 The Head of Paid Service will maintain and publicise a description of the overall functional structure of the Council showing the management structure and deployment of Officers. This is set out in Chapter 25 of this Constitution (Management Structure).

### **12.2 Functions of the Head of Paid Service/Returning Officer**

#### **(a) Discharge of Functions by the Council**

12.2.1 The Head of Paid Service will report to Council on the manner in which the discharge of the Council's functions is coordinated, the number and grade of Officers required for the discharge of functions and the organisation of Officers.

12.2.2 The Head of Paid Service will be the Returning Officer and Electoral Registration Officer

#### **(b) Restrictions on Functions**

12.2.3 The Head of Paid Service may not be the Monitoring Officer but may hold the post of Section 151 Officer if a qualified accountant.

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

#### **(a) Maintaining the Constitution**

12.3.1 The Monitoring Officer will maintain an up-to-date Constitution and will ensure that it is widely available for consultation by Councillors, staff and the public.

#### **(b) Ensuring Lawfulness and Fairness of Decision-Making**

12.3.2 After consulting with the Head of Paid Service and Section 151 Officer, the Monitoring Officer will report in writing to the Full Council (or to the Leader or Executive in relation to an Executive function) if s/he considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration.

12.3.3 Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

**(c) Conducting investigations**

12.3.4 The Monitoring Officer will conduct investigations into allegations of misconduct by Councillors and make reports or recommendations in respect of them to a panel of the Standards Committee.

**(d) Proper Officer for Access to Information**

12.3.5 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.

**(e) Advising Whether Executive Decisions Are Within the Budget and Policy Framework**

12.3.6 The Monitoring Officer will advise whether decisions of the Executive are in accordance with the Budget and Policy Framework.

**(f) Providing Advice**

12.3.7 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.

**(g) Restrictions on Posts**

12.3.8 The Monitoring Officer cannot be the Section 151 Officer or the Head of Paid Service.

## **12.4 Functions of the Section 151 Officer**

**(a) Ensuring Lawfulness and Financial Prudence of Decision-Making**

12.4.1 After consulting with the Head of Paid Service and the Monitoring Officer, the Section 151 Officer will report to the Council, or to the Executive in relation to an Executive function, and the Council's external auditor if s/he 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**

12.4.2 The Section 151 Officer will have responsibility for the administration of the financial affairs of the Council.

**(c) Contributing to Corporate Management**

12.4.3 The Section 151 Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.

**(d) Providing Advice**

12.4.4 The Section 151 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) Give Financial Information**

12.4.5 The Section 151 Officer will provide financial information to the media, members of the public and the community.

**12.5 Duty to Provide Sufficient Resources to the Monitoring Officer and Section 151 Officer**

12.5.1 The Council will provide the Monitoring Officer and Section 151 Officer with such Officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

**12.6 Conduct**

12.6.1 Officers will comply with the Officer Code of Conduct and the Protocol for Councillor-Officer Relations in this Constitution.

## 12.7 Employment

12.7.1 The recruitment, selection and dismissal of Officers will comply with the Officer Employment Procedure Rules of this Constitution.

## 13 Article 13 – Decision-Making

### 13.1 Responsibility for Decision-Making

13.1.1 The Council will issue and keep an up-to-date record of which Council body or which individual Councillor or officer has responsibility for particular types of decisions or decisions relating to particular areas or functions.

13.1.2 It will establish the threshold levels for key decisions as defined in paragraph 13.3(b) below.

### 13.2 Principles of Decision-Making

- a) All decisions of the Council will be made in accordance with the following principles:
- b) proportionality (i.e. reasonableness of action);
- c) due consultation and the taking of professional advice from officers;
- d) respect for human rights;
- e) a presumption in favour of openness;
- f) clarity of aims and desired outcomes;
- g) a statement of all options considered;
- h) a statement of the reasons for the decision.

### 13.3 Types of Decision

- a) **Decisions reserved to full Council:** Decisions relating to the functions listed in Article 4.1 will be made by the Council and not delegated.
- b) **Key Decisions:** A key decision is an Executive decision, which is likely:
  - i. to be significant in terms of its effects on communities living or

- working in an area comprising one or more wards in the District; and / or
- ii. 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 functions to which the decision relates.

Key decisions can generally be considered to be decisions which involve one or more of the following:

- Decisions involving significant expenditure as set out in the Financial Thresholds in the Executive Procedure Rules;
- Decisions having a "significant impact" on people in one or more wards; and/or
- Decisions which are politically sensitive and which the Executive wishes to take rather than delegate to officers.

A decision maker may only make a Key Decision in accordance with the requirements of the Executive Procedure Rules of this Constitution (and therefore should follow the Access to Information Rules).

### **13.4 Decision-Making by the Full Council**

13.4.1 Subject to the principles of natural justice and respecting Human Rights, the Council meeting will follow the Council Procedure Rules of this Constitution when considering any matter.

### **13.5 Decision-Making by the Executive**

13.5.1 Subject to the principles of natural justice and respecting Human Rights, the Executive will follow the Executive Procedures Rules of this Constitution when considering any matter.

### **13.6 Decision-Making by Scrutiny Committee(s)**

13.6.1 Subject to the principles of natural justice and respecting Human Rights, the Scrutiny Committee(s) will follow the Scrutiny Procedures Rules of this Constitution when considering any matter.

### **13.7 Decision-Making by Other Committees and Sub-Committees**

## **Established by the Council**

13.7.1 Subject to the principles of natural justice and respect for human rights, other Council committees and sub committees will follow those parts of the Council Procedures Rules, as apply to them.

### **13.8 Decision-Making by Council Bodies Acting as Tribunals**

13.8.1 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.

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

### **14.1 Financial Management**

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

### **14.2 Contracts**

14.2.1 Every contract made by the Council will comply with the Contracts Procedure Rules of this Constitution.

### **14.3 Legal Proceedings**

14.3.1 The Monitoring Officer is authorised to institute, defend or participate in any legal proceedings (whether actual or contemplated) in any case where such action is necessary to give effect to decisions of the Council or in any case where s/he considers that such action is necessary to protect the Council's interests. The Monitoring Officer may further delegate these powers, in so far as is legally permissible.

### **14.4 Authentication of Documents**

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

14.4.2 Any contract with a value exceeding £500,000 entered into on behalf of the Council in the course of the discharge of an Executive function shall be made in writing and under the Common Seal of the Council.

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

14.5.1 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 also to those documents, which in the opinion of the Monitoring Officer or an officer authorised by him/her, should be sealed.

14.5.2 The Monitoring Officer (or such other person(s) authorised by him/her) will attest the affixing of the Common Seal. 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.

14.5.3 The Monitoring Officer shall keep a list of those persons/posts authorised to attest the affixing of the Common Seal.

## **14.6 Custody of the Seal**

14.6.1 The Common Seal of the Council shall be kept in a safe place in the custody of the Monitoring Officer or their deputy.

## **14.7 Authentication of Documents for Legal Proceedings**

14.7.1 Where any document will be a necessary step in legal proceedings on behalf of the Council, it shall be signed by the Monitoring Officer or an officer authorised by him/her, unless any enactment otherwise requires or authorises, or the Council or a Committee acting under delegated powers gives the necessary authority to some other person for the purpose of such proceedings.

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

## **15.1 Duty to Monitor and Review the Constitution**

15.1.1 A key role of 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:

- i. attend and observe meetings of different parts of the Councillor and Officer structure;
- ii. undertake an audit trail of a sample of decisions;
- iii. record and analyse issues raised with her/him by Councillors, Officers, the public and other relevant stakeholders;
- iv. without any reduction or restriction on the lawful requirements of the role of the Monitoring Officer, s/he will work in co-ordination with the Section 151 Officer and the Chief Executive;
- v. compare practices in this Council with those in other comparable authorities, or national examples of best practice;
- vi. amend the Constitution to rectify any typographical or grammatical errors or to delete or update any obsolete terms or references or officer designations;
- vii. make minor detailed changes of a limited significance (as agreed by the Monitoring Officer and the appropriate Portfolio Holder ) subject to obtaining the written agreement of the Portfolio Holder and such agreed changes and the reasons for the change to be subsequently notified to all Councillors.

## **16 Article 16 – Suspension, Interpretation and Publication of the Constitution**

### **16.1 Suspension of the Constitution**

#### **(a) Limit to Suspension**

16.1.1 The Articles of this Constitution may not be suspended. The Rules

specified in (c) below may be suspended by the Council to the extent permitted within those Rules and the law.

### **(b) Procedure to Suspend**

16.1.2 A motion to suspend any 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.

### **(c) Rules Capable of Suspension**

16.1.3 The Council may decide to suspend any rule, other than any rule which is prescribed by law and cannot be so suspended.

## **16.2 Interpretation**

16.2.1 The ruling of the Chair, having received legal advice, 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**

16.3.1 The Monitoring Officer will ensure that a copy of this Constitution is available to each Councillor of the authority upon delivery to her/him of that individual's Declaration of Acceptance of Office, on the Councillor first being elected to the Council.

16.3.2 The Monitoring Officer will ensure that the Constitution is available for inspection on the Council's website, at Council offices, all libraries and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee.