

# Part 2: Articles of the Constitution

# Article 1: The Constitution

- 2.1.1. This Constitution, and all its appendices, is the Constitution of Harborough District Council.
- 2.1.2. The Council will exercise all its powers and duties in accordance with the law and this Constitution. In the event that the Constitution conflicts with the law, the law shall prevail.
- 2.1.3. The Constitution sets out everything anyone who has dealings with the Council would need to know about how the Council conducts its business, who takes which decisions and how to work with the Council. The purpose of the Constitution is therefore to:
  - 2.1.3.1. enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
  - 2.1.3.2. support the active involvement of citizens in the process of local authority decision-making;
  - 2.1.3.3. help Councillors represent their constituents more effectively;
  - 2.1.3.4. enable decisions to be taken efficiently and effectively;
  - 2.1.3.5. create a powerful and effective means of holding decision-makers to public account;
  - 2.1.3.6. ensure that no one will review or scrutinise a decision in which they were directly involved;
  - 2.1.3.7. ensure that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions;
  - 2.1.3.8. ensure that high standards of probity and ethics are evident in decision-making and all activities of the Council; and
  - 2.1.3.9. provide a means of improving the delivery of services to the community in accordance with the aims expressed in the Council's Corporate Plan.
- 2.1.4. For the avoidance of doubt, the Constitution will be read, construed and applied in accordance with such legislation as is in force.
- 2.1.5. 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 at paragraph 2.1.3.
- 2.1.6. The Full Council will monitor and evaluate the operation of the Constitution.

2.1.7. The Chairman of the Council shall make any final decision regarding the application of the Constitution, in consultation with the Monitoring Officer.

## Changes to the Constitution

2.1.8. Changes to the Constitution will be made as follows:

2.1.8.1. Substantive changes to the Constitution must be approved by Council after consideration by the Constitution Review Committee must be communicated to Members;

2.1.8.2. The Monitoring Officer<sup>1</sup> has delegated authority to amend the Constitution and make consequential changes in respect of:

2.1.8.2.1. factual references;

2.1.8.2.2. a change in the law;

2.1.8.2.3. when notified of revised arrangements for the distribution of responsibilities and the delegation of powers (such as to Cabinet members by the Leader and Officers by the Head of Paid Service);

2.1.8.3. The Chief Finance Officer<sup>2</sup> has delegated authority under the **Scheme of Delegation** (Part 3 of the Constitution) to amend the Council's **Financial, Procurement and Contract Rules** (see further Part 4 of this Constitution).

2.1.9. Any amendment to the Constitution must be recorded and published<sup>3</sup>. Councillors will be informed of any changes made.

## Suspension of the Constitution

2.1.10. The Constitution of the Council may not be suspended however certain Rules of the Council set out in this Constitution may be suspended:

2.1.10.1. in accordance with any procedures set out in those rules; or

2.1.10.2. by resolution of the full Council to the extent permitted by law.

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<sup>1</sup> See further **Article 9** and the **Officer Delegation Scheme** in Part 3 of the Constitution

<sup>2</sup> See further Article 9 and the Officer Delegation Scheme in Part 3 of the Constitution

<sup>3</sup> Any amendment approved at a meeting of the Council will be recorded in the minutes of the meeting. Any amendment approved by an officer under delegated authority, must be recorded as a written record and published

## Publication

2.1.11. The Monitoring Officer will ensure that:

- 2.1.11.1. the Constitution is brought to the attention of each Councillor upon delivery to them of that individual's declaration of acceptance of office on first being elected to the Council;
- 2.1.11.2. the Constitution is kept up to date and available on the Council's website, together with a log of changes made;
- 2.1.11.3. if a member of the media or public requires a printed copy of the Constitution it will be provided on payment of a reasonable fee to be determined by the Monitoring Officer;
- 2.1.11.4. a summary of the Constitution<sup>4</sup> is made widely available and is updated as necessary.

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<sup>4</sup> i.e. Part 1 of this Constitution

# Article 2: Members of the Council

## Composition and Eligibility

- 2.2.1. The Council has 34 Members, called councillors. One or more councillor will be elected by the voters of each ward in the district in accordance with a scheme drawn up by the Local Government Boundary Commission for England and approved by the Secretary of State.
- 2.2.2. Only registered voters of the District, or those living or working there, who are not disqualified from holding office, will be eligible to hold the office of councillor.

## Election and terms of councillors

- 2.2.3. The regular election of councillors will be held on the first Thursday in May every four years, beginning in 2003. The terms of office of councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.
- 2.2.4. Casual vacancies which may arise as a result of a councillor ceasing to hold office before the end of their term are filled by the holding of a by-election. The by-election shall be held on an appropriate Thursday. However, when a person ceases to be a Member in the final six months of their term of office, the election may be held in abeyance until the normal May election.

## Rights and duties of all councillors

- 2.2.5. All councillors will:
  - 2.2.5.1. have 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;
  - 2.2.5.2. 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 (see further the **Access to Information** Rules in Part 4, Section 2 of this Constitution);
  - 2.2.5.3. at all times observe the **Councillor Codes and Protocols** set out in Part 5 of this Constitution.
  - 2.2.5.4. be entitled to receive allowances in accordance with the **Councillors' Allowances Scheme** set out in Part 6 of this Constitution;
  - 2.2.5.5. not (unless authorised by Council or a Committee) inspect any lands or

premises which the Council have the right or duty to inspect or enter upon or issue any order respecting any works which are being carried out by or on behalf of the Council;

- 2.2.5.6. be able to access committee rooms at The Symington Building, when not otherwise in use, for the purpose of conducting any business or discussing any matter relating to the work of the Council;
- 2.2.5.7. be provided with training and development to enable them to perform their duties as a councillor. Some training will be designated as essential<sup>5</sup> and councillors will be supported and encouraged to take up that training.

## **Roles and Functions**

- 2.2.6. All councillors are accountable to the Full Council and those who live and work in the district. They will:
  - 2.2.6.1. contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision-making (i.e. be an advocate of and for the community);
  - 2.2.6.2. participate effectively in the governance and management of the Council by contributing actively to the formation and scrutiny of the authority's policies, budget, strategies and service delivery by:
    - 2.2.6.2.1. developing and maintaining good working relationships with relevant Officers of the authority; and
    - 2.2.6.2.2. making decisions; and
    - 2.2.6.2.3. liaising with other bodies to promote better understanding and partnership working;
  - 2.2.6.3. balance different interests identified within their ward, and represent the ward as a whole (even if this impinges upon the ability to act as an advocate of an individual constituent);
  - 2.2.6.4. deal fairly with individual casework and act as advocate for constituents in trying to resolve Council related grievances or concerns;
  - 2.2.6.5. champion the causes which best relate to the interests and sustainability of their ward and the local community as a whole, and campaign for the improvement of the quality of life in terms of equity, economy and environment across the District;
  - 2.2.6.6. be available to represent the Council on other bodies and participate in the

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<sup>5</sup> A list of essential training will be maintained by Democratic Services

activities of an outside body to which they are appointed, providing two-way communication between the organisations, developing and maintaining a working knowledge of the Council's policies and practices in relation to that body, and of the community's needs and aspirations in respect of that body's role and functions;

2.2.6.7. maintain the highest standards of conduct and ethics; and

2.2.6.8. participate in the activities of any political group of which they are a member.

2.2.7. Councillors who take on positions of special responsibility (such as the Leader, Chairman of the Council, Cabinet Member etc) will have additional roles and functions to perform, which are set out in the article<sup>6</sup> relevant to that role.

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<sup>6</sup> Leader and Cabinet Members – Article 5  
Chairman of the Council – Article 4 and the Civic Protocol at Part 5 of the Constitution  
Chairman of Committees – Article 7  
Chairman of scrutiny panel – Article 6

# Article 3: Citizens and the Council

## Rights of the public

2.3.1. Members of the public have the following rights<sup>7</sup>:

2.3.1.1. **Voting and petitions** - people on the electoral roll for the district have the right to vote and sign a petition to request a referendum on a different form of governance;

2.3.1.2. **Information** – members of the public and representatives of the media can:

2.3.1.2.1. attend meetings of the Council, Cabinet, Committees and Panels (except where confidential or exempt information is likely to be disclosed and the meeting is held in private);

2.3.1.2.2. find out what Key Decisions will be taken and when;

2.3.1.2.3. see agendas for meetings, reports by officers, background papers and records of decisions (except for those that contain confidential or exempt information); and

2.3.1.2.4. inspect the Council's accounts and make their views known to the external auditor.

Public rights to information and participation are explained in more detail in the [Access to Information Rules](#) in [Part 4, Section 2](#) of this Constitution.

2.3.1.3. **Participation** – members of the public have the right to ask questions and speak at meetings as set out in the [Part 4](#) of this Constitution;

2.3.1.4. **Complaints** - members of the public have the right to complain:

2.3.1.4.1. to the Council under its complaints scheme;

2.3.1.4.2. to the Local Government and Social Care Ombudsman, after using the Council's own complaints scheme;

2.3.1.4.3. about breaches of the [Councillor Code of Conduct](#) (see further Part 5 of

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<sup>7</sup> The rights set out in this article are subject to the [Council Procedure Rules, Executive Procedure Rules, Access to Information Rules and the Scrutiny Procedure Rules](#), set out at Part 4 of this constitution. They are in addition to a citizen's other private rights, such as the right to make a subject access request under the Data Protection Act 2018.



the Constitution) in accordance with the arrangements<sup>8</sup> adopted by the Council for investigating such complaints;

## **Citizens' responsibilities**

- 2.3.2. Members of the public must not be violent, abusive or threatening to councillors or officers and must not wilfully harm things owned by the Council, councillors or officers. Anyone causing a disturbance in a meeting will be removed from that meeting.
- 2.3.3. Members of the public should comply with the law and the Council's procedures when dealing with the Council.

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<sup>8</sup> **The arrangements**

## Article 4: The Council

- 2.4.1. The 'full' Council is a meeting of all 34 elected councillors. It operates in accordance with the **Council Procedure Rules** (see Part 4, Section 1 of the constitution). Each year, at the start of a new municipal year, the councillors meet in the Annual Meeting of Council. Thereafter, they are scheduled to meet a minimum of four times in the year at Ordinary Meetings of Council. If there is special business to transact, an Extraordinary Meeting may be arranged.

### Functions and Powers

- 2.4.2. The Council alone may exercise a number of functions, allocated to it by statute, including:
- 2.4.2.1. adopting and changing the Constitution;
  - 2.4.2.2. approving the policy framework;
  - 2.4.2.3. approving the budget;
  - 2.4.2.4. appointing and removing the Leader of the Council;
  - 2.4.2.5. appointing the Chairman and Vice Chairman of the Council;
  - 2.4.2.6. agreeing and / or amending the terms of reference for committees, deciding on their composition, and making appointments to them;
  - 2.4.2.7. subject to the urgency procedure contained in the **Access to Information Rules in Part 4(2) 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 / not wholly in accordance with, the budget;
  - 2.4.2.8. appointing representatives to outside bodies (unless the appointment is an executive function or has been delegated by the Council);
  - 2.4.2.9. adopting a councillor allowances scheme and amending, revoking or replacing such a scheme;
  - 2.4.2.10. adopting the pay policy statement;
  - 2.4.2.11. confirming and terminating the appointment of the Head of Paid Service;
  - 2.4.2.12. those non-executive functions specified as being the responsibility of the Council in this constitution;

- 2.4.2.13. changing the name of the Council or conferring an honorary title<sup>9</sup>;
  - 2.4.2.14. make, amend, revoke, re-enact or adopt by-laws and promote or oppose the making of local legislation or private bills;
  - 2.4.2.15. all other matters which, by law, must be reserved to the Council; and
  - 2.4.2.16. the local choice functions the Council has reserved to itself (rather than being the responsibility of the Leader of the Council), subject to any delegation of the function set out in this constitution (see further the Local Choice delegations at Part 3 of this constitution).
- 2.4.3. The Council appoints a number of committees to which it delegates the ability to discharge some of its functions. The details of the committees created, and the functions delegated to each, are set out in Part 3, Section XX of this constitution. The Committees are appointed at the Annual Meeting of the Council, and membership may be varied subsequently at an ordinary meeting of the Council.
- 2.4.4. The Council also delegates some of its functions to officers to perform – the nature and extent of the delegations are set out in Part 3, section XX of the constitution.

## Policy Framework

- 2.4.5. The Policy Framework is the plans and strategies that must be approved and or adopted by the full Council:
- 2.4.5.1. the plans and strategies required by law<sup>10</sup> to be approved or adopted by the Council:
    - 2.4.5.1.1 Crime and Disorder Reduction Strategy<sup>11</sup>;
    - 2.4.5.1.2 Local Transport Plan<sup>12</sup>;
    - 2.4.5.1.3 Development Plan Documents, Plans and Alterations<sup>13</sup>;
    - 2.4.5.1.4 Licensing Authority Policy Statement<sup>14</sup>;

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<sup>9</sup> Section 249 of the Local Government Act 1974 (as amended)

<sup>10</sup> Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, and regulations made under section 23 of, or Schedule 2 to the Localism Act 2011

<sup>11</sup> Sections 5 and 6 of the Crime and Disorder Act 1998

<sup>12</sup> Section 108(3) of the Transport Act 2000

<sup>13</sup> Section 15 of the Planning and Compulsory Purchase Act 2004(3), Part 2 of, and Schedule 8 to, the Planning and Compulsory Purchase Act 2004

<sup>14</sup> Section 349 of the Gambling Act 2005

- 2.4.5.1.5 Statement of Licensing Policy<sup>15</sup>; and
- 2.4.5.1.6 Pay Policy Statement;
- 2.4.5.2. the plans which government guidance recommends should be adopted by the Council as part of the policy framework:
  - 2.4.5.1.7 the Corporate Plan;
  - 2.4.5.1.8 any other plan or strategy that may be relevant to such emerging government guidance.
- 2.4.5.3. the plans and strategies over which the Council has the power to choose whether they should be adopted by the Council or left to the Cabinet to adopt, and the Council has determined that they should be adopted by the Council as part of the Policy Framework, as follows:
  - 2.4.5.1.9 Capital Strategy and Programme;
  - 2.4.5.1.10 Financial Strategies;
  - 2.4.5.1.11 Cultural Strategy;
  - 2.4.5.1.12 Consultation and Communication Strategy;
  - 2.4.5.1.13 Supplementary Planning Guidance;
  - 2.4.5.1.14 any other plans and strategies submitted to full Council by the Cabinet; and
  - 2.4.5.1.15 such other plans or strategies that will form a new area of policy for the authority (as decided upon by the Head of Paid Service).
- 2.4.6. The “Budget” includes:
  - 2.4.6.1. the allocation of financial resources to different services and projects;
  - 2.4.6.2. proposed contingency funds;
  - 2.4.6.3. the council tax base;
  - 2.4.6.4. setting the council tax;
  - 2.4.6.5. decisions relating to the control of the Council’s borrowing requirement;
  - 2.4.6.6. decisions relating to the control of the Council’s capital expenditure; and
  - 2.4.6.7. the setting of virement limits.

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<sup>15</sup> Section 5 of the Licensing Act 2033

## Responsibility for functions

- 2.4.7. The Council will maintain the tables in **Section XX of Part 3 of** this Constitution, setting out the responsibilities for exercising the Council's functions which are not the responsibility of the Cabinet.
- 2.4.8.** Meetings of the full Council will be chaired in accordance with the Civic Protocol **(see further Part 5, Section 5 of the Constitution)** by the Chairman of the Council, who is elected at the Annual Meeting of Council, in accordance with the **Council Procedure Rules (see further Part 4 of the Constitution).**

# Article 5: The Leader and Cabinet

## Role

- 2.5.1. The Cabinet will carry out the executive functions<sup>16</sup> of the Council, that is the functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution.

## Form and composition

- 2.5.2. The Cabinet will consist of the Leader and at least two, but not more than nine, councillors appointed by the Leader. Neither the Chairman or Vice-Chairman of the Council may be members of the Cabinet.
- 2.5.3. The Leader shall, from the Cabinet membership, appoint a Deputy Chairman who shall be the Deputy Leader of the Council.
- 2.5.4. The Leader shall take the Chair at meetings of the Executive

## The Leader of the Council

### Appointment and term

- 2.5.5. The Leader of the Cabinet will be elected by the Council and hold office until:
- 2.5.6.1 they resign from the office; or
  - 2.5.6.2 they are no longer a councillor; or
  - 2.5.6.3 they are removed from office by resolution of the Council (provided that notice of the proposed resolution is received by the Head of Paid Service seven clear working days before the meeting, and is signed by at least eight Councillors) during their term of office; or
  - 2.5.6.4 the Annual Council Meeting following the local government elections (being a maximum period of four years).

### Role and function of the Leader

- 2.5.6. The Leader is the senior executive councillor and has responsibility for the discharge of the executive functions of the Council. They are accountable to the

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<sup>16</sup> Part 1A of the Local Government Act 2000

Council, the Cabinet, their nominating group and the public.

2.5.7. The Leader may arrange for the discharge of an executive function by any of the following:

- 2.5.7.1. the Cabinet;
- 2.5.7.2. a committee of the Cabinet,
- 2.5.7.3. a member of the Cabinet,
- 2.5.7.4. a joint committee or under joint arrangements established pursuant to **Article 8**;
- 2.5.7.5. a member in relation to the member's ward; or
- 2.5.7.6. an officer

provided that the executive arrangements are notified to the Monitoring Officer and set out within an Executive Scheme of Delegation (see further **Part 3 of the Constitution**).

2.5.8. The Leader of the Council is responsible for the development and approval of the policies, strategies and plans of the Council, apart from the policies, strategies and plans within the policy framework are subject to approval by the Council under **Article 4** of this constitution.

2.5.9. The main roles and responsibilities of the Leader are to:

- 2.5.9.1. promote and support open and transparent governance that is accessible to all;
- 2.5.9.2. determine any delegations of executive functions;
- 2.5.9.3. lead the Council's overall cohesive, corporate and strategic direction, budget, strategy and policy development;
- 2.5.9.4. liaise with the Chief Executive, Directors and other appropriate officers, on policy development;
- 2.5.9.5. obtain professional advice in advance of decision making.
- 2.5.9.6. preside over meetings of the Cabinet;
- 2.5.9.7. ensure that the decisions of Cabinet are made within the budgetary framework and financial limits set by the Council;
- 2.5.9.8. be the Councillor of first choice to represent and act as principal spokesperson for the Council at Councillor-level meetings with other organisations;
- 2.5.9.9. co-ordinate and develop partnership working and community liaison;

- 2.5.9.10. be the principal contact for the Head of Paid Service;
- 2.5.9.11. seek views and take soundings across all political groups in the Council;
- 2.5.9.12. ensure that Cabinet Members support the Overview and Scrutiny function.

## **Deputy Leader**

- 2.5.10. The Leader may appoint, from within the Cabinet membership, a Deputy Leader who shall hold office until:
  - 2.5.10.1. they resign from the office; or
  - 2.5.10.2. they are no longer a councillor; or
  - 2.5.10.3. the Annual Council Meeting following the Local Government elections (being a maximum period of four years) unless removed from office by the Leader;
  - 2.5.10.4. the Leader removes the Deputy Leader from office.

The Leader may then appoint another person to the role of Deputy Leader.

## **Role and function of the Deputy Leader**

- 2.5.11. The Deputy Leader is accountable to the Council, the Leader, the Cabinet and the public and will:
  - 2.5.11.1. assist the Leader to provide effective political leadership and strategic direction for the council, including developing overall strategy, budgets, policy arrangements and service reviews, and representing the council in the community and in discussions with regional, national and international organisations;
  - 2.5.11.2. represent the Council and the political administration in the community and elsewhere as required by the Leader;
  - 2.5.11.3. deputise for the Leader in their absence and undertake the duties set out in the role profile of the Leader of the Council insofar as it is permitted by law and this Constitution.

## **Cabinet**

- 2.5.12. The Cabinet Members appointed by the Leader shall hold office until they:
  - 2.5.12.1. resign from office; or
  - 2.5.12.2. are no longer Councillors; or
  - 2.5.12.3. are removed from office by the Leader, either individually or collectively.

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2.5.13. Cabinet Members may not be members of an overview and scrutiny panel.

### **Role and function of the Cabinet**

2.5.14. The Cabinet will collectively discharge any functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution, as delegated by the Leader. Cabinet will provide a report to each Full Council meeting of the functions it has discharged since the last Full Council meeting.

2.5.15. The Leader will determine the scope of portfolios and:

2.5.15.1. allocate them to members of the Cabinet;

2.5.15.2. inform the Monitoring Officer of the portfolios.

2.5.16. Cabinet is accountable to the Council, the Leader and the public.

### **Role and function of Cabinet Members**

2.5.17. Cabinet Members are accountable to the Council, the Leader, the Cabinet and the public. They will collectively make decisions as the Cabinet on a wide range of issues and will:

2.5.17.1. lead on developing council policy and make recommendations to the Cabinet;

2.5.17.2. provide guidance to the Cabinet on their portfolios, including budget;

2.5.17.3. monitor performance and make sure policy is delivered;

2.5.17.4. lead on improving council services;

2.5.17.5. make sure that activities meet the council's overall vision, core values and guiding principles;

2.5.17.6. contribute to debate and decision-making;

2.5.17.7. work with councillors who are not members of the Cabinet, members of the opposition and officers to make sure that the overview and scrutiny process works correctly.

2.5.17.8. engage with the overview and scrutiny committee function as regards their portfolio;

2.5.17.9. represent the council at a national and local level;

2.5.17.10. provide leadership, political direction and support to officers working within their portfolio.

## Vacancies or inability to act

- 2.5.18. If for any reason the Leader is unable to act, or the office of Leader is vacant, the Deputy Leader will act in their place;
- 2.5.19. If for any reason:
- 2.5.19.1. the Leader is unable to act or the office of Leader is vacant; and
  - 2.5.19.2. the Deputy Leader is unable to act or the office of Deputy Leader is vacant;
- the Cabinet will act in the Leader's place or arrange for a member of the Cabinet to act in their place.
- 2.5.20. In the case of a vacancy of the Leader, an election to fill the vacancy shall be held not later than the next ordinary meeting of the Council held after the date on which the vacancy occurs, or if that meeting is held within 14 days after that date, then not later than the next following ordinary meeting of the Council. The Proper Officer may convene a meeting of the Council for such an election.
- 2.5.21. The Deputy Leader may, on behalf of the Leader, take day to day decisions:
- 2.5.21.1. during a period of planned absence of the Leader, provided this is notified to the Monitoring Officer in advance; or
  - 2.5.21.2. during unforeseen absence, as confirmed by the Head of Paid Service but may not vary the arrangements made by the Leader in respect of the composition or proceedings of the Cabinet or alter any arrangements made by the Leader under this Constitution for the exercise of executive functions, except:
  - 2.5.21.3. for changes consequent upon the dismissal of a Leader during the period until a new Leader is elected; or
  - 2.5.21.4. where, in the opinion of the Head of Paid Service, the Leader will be incapacitated for such a period of time that the efficient operation of the Council would be significantly impaired.
- 2.5.22. In the event that the Leader is not returned at an election, from the fourth day after the election until a new Leader is appointed at the Annual Meeting of the Council, the Head of Paid Service shall have delegated authority to make executive decisions, in consultation with the Chairman of the Council<sup>17</sup>.

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<sup>17</sup> All councillors retire on the fourth day after the election apart from the Chairman and Vice-Chairman of the Council, who remain in office until the next annual meeting in accordance with ss 3 - 5 of the Local Government Act 1972 even if not re-elected.

# Cabinet Committees and Panels

## Appointment and term

- 2.5.23. Cabinet may appoint a Cabinet Sub-Committee provided that at any one time the total number of Cabinet Committees does not exceed 4. Such Committees will comprise between 2 and 4 Cabinet Members and will stand until either:
- 2.5.23.1. revised by resolution of the Cabinet; or
  - 2.5.23.2. the first meeting of the Cabinet following the next Annual Meeting of the Council after appointment.
- 2.5.24. The Cabinet may appoint a Cabinet Advisory Panel consisting of such Cabinet or other councillors as the Cabinet thinks fit<sup>18</sup>. A Cabinet Advisory Panel will meet over such period (the lifetime of the Panel):
- 2.5.24.1. as the Cabinet thinks fit; or
  - 2.5.24.2. until the Panel considers it has completed the task established by the Cabinet as the remit of the Panel.
- whichever is the shorter.

## Role and function of Cabinet Committees

- 2.5.25. The role of a Cabinet Committee is to provide:
- 2.5.25.1. focused decision-making and leadership of executive matters through the portfolio expertise of Cabinet Members; and
  - 2.5.25.2. a link to a range of portfolio-related issues, debates and concerns.
- 2.5.26. The key purpose of a Cabinet Committee will be to exercise responsibility for executive functions, as delegated by the Cabinet in accordance with the Executive Scheme of Delegation (see further [Part 3, Section XX of this constitution](#)).

## Role and function of Cabinet Advisory Panels

- 2.5.27. The role and purpose of a Cabinet Advisory Panel is to support the Cabinet. A Cabinet Advisory Panel will be time or task limited, whichever is the shorter.
- 2.5.28. Cabinet will determine the remit of any Cabinet Advisory Panel it establishes.

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<sup>18</sup> As this is an executive panel there is no requirement for political balance

## Responsibility for functions

- 2.5.29. The Council has allocated the responsibility for exercising some local choice functions to the Leader, as set out at [Part 3 of this Constitution](#).
- 2.5.30. The Leader will maintain an Executive Scheme of Delegation, as set out in [Part 3 of this Constitution at Section XX](#), setting out who will exercise executive functions. Executive functions can be exercised by the Leader, Cabinet, Individual Cabinet Members or Officers as determined by the Leader. The Leader must notify the Monitoring Officer promptly of any changes to the Executive Scheme of Delegation.

## Proceedings of the Cabinet, Cabinet Committees and Cabinet Advisory Panels

- 2.5.31. The exercise of all executive functions will be in accordance with::
- 2.5.31.1. the [Access to Information Rules](#) set out in [Part 4 of this Constitution](#); and
  - 2.5.31.2. the [Executive Procedure Rules](#) set out [in Part 4 of this Constitution](#).

# Article 6: Overview and Scrutiny Arrangements

## Role

- 2.6.1 The Council will appoint at least one, but not more than three, Overview and Scrutiny Panels to discharge the functions conferred by section 21 of the Local Government Act 2000, or any regulations made under section 32 of the Local Government Act 2000.
- 2.6.2 The Panels must report annually to full Council on their workings and make recommendations for future work programmes and amended working methods as appropriate.

## Form and Composition

- 2.6.1.1 Each Overview and Scrutiny Panel will consist of at least 7 councillors, appointed by Council in accordance with the political balance rules;
- 2.6.1.2 will be chaired by a councillor appointed by Council in accordance with the **Council Procedure Rules (Part 4, Section 1 of the Constitution)**;
- 2.6.1.3 may appoint a Vice-Chairman;
- 2.6.1.4 may co-opt members in accordance with the **Overview and Scrutiny Procedure Rules**;
- 2.6.1.5 may invite councillors or a member of the community, professional bodies, institutions or organisations to assist with consideration of items relevant to that person or persons; and
- 2.6.1.6 may invite the Leader and up to 2 other Cabinet Members to attend a meeting.
- 2.6.2 Each Overview and Scrutiny Panel shall have 6 scheduled meetings in a municipal year, and unlimited task and Finish groups, provided that only one task and finish group should meet on any given day. The Panels may meet jointly.

## Functions

- 2.6.3 Within their terms of reference, the Overview and Scrutiny Panels will contribute to:
- 2.6.3.1 policy development and review by:

- 2.6.3.1.1 assisting Council and Cabinet in the development of the Policy Framework and Budget by in-depth analysis of policy issues;
  - 2.6.3.1.2 conducting research, community and other consultation in the analysis of policy issues and possible options;
  - 2.6.3.1.3 considering and implementing mechanisms to encourage and enhance community participation in the development of policy options;
  - 2.6.3.1.4 questioning members of Cabinet or Committees and Chief or Statutory Officers about their views on issues and proposals affecting the area;
  - 2.6.3.1.5 liaising 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; and
  - 2.6.3.1.6 questioning and gathering evidence from any person (with their consent).
- 2.6.3.2 scrutiny by:
- 2.6.3.2.1 questioning and gathering evidence;
  - 2.6.3.2.2 reviewing and scrutinising the performance of the Council and other public bodies in the area, inviting them to address the panel and local people about their activities and performance;
  - 2.6.3.2.3 making reports or recommendations to Council, the Cabinet or appropriate committees arising from the outcome of a scrutiny process;
  - 2.6.3.2.4 considering any matter affecting the area or its inhabitants; and
  - 2.6.3.2.5 exercising the right to call-in, for reconsideration, decisions made by the Cabinet but not yet implemented.
- 2.6.4 An Overview and Scrutiny Panel may make reports or recommendations to either the Cabinet, Council or a committee regarding:
- 2.6.4.1 the discharge of any functions which are the responsibility of the Cabinet;
  - 2.6.4.2 the discharge of any functions which are not the responsibility of the Cabinet; or
  - 2.6.4.3 matters which affect the District or its inhabitants.
- 2.6.5 The Overview and Scrutiny panels will comply with the Overview and Scrutiny Procedure Rules set out at **Part 4 of this constitution** and operate within the resources provided by the Council.
- 2.6.6 Each Overview and Scrutiny panel may appoint a 'Task and Finish' group to assist it, or by agreement undertake joint specific activities. Such groups are time and or task limited working groups.

## **Task and Finish Groups**

- 2.6.7 Each Overview and Scrutiny Panels may appoint a Task and Finish Group to contribute to the work of the Panel.
- 2.6.8 There shall be a maximum of two Task and Finish Groups operating at any one time, and they cannot meet on the same date.
- 2.6.9 Task and Finish Groups are working groups and not subject to the Access to Information Rules **in Part 4, Section 2 of this Constitution.**

## **Interests**

- 2.6.10 In addition to any interest a councillor may have to declare in accordance with the Council's Code of Conduct, no councillor may participate in any business before an Overview and Scrutiny Panel if they were party to the decision made in respect of that item, except as specified within the Overview and Scrutiny Procedure Rules.

# Article 7: Regulatory and Other Committees

## Background

- 2.7.1. Unless legislation directs otherwise, the Council may arrange for the discharge of any of its functions by:
- 2.7.1.1. appointing a committee or sub-committee of the authority; or
  - 2.7.1.2. with one or more other local authorities appointing a joint committee of those authorities;
- and delegating the discharge of functions to those committees, which may also appoint one or more sub-committees.
- 2.7.2. The law requires the Council to establish certain committees and prescribes how they will operate and which functions they discharge. The Council is otherwise free to decide on the size, terms of reference and level of delegation of each committee or sub-committee it establishes.
- 2.7.3. The Council will establish a number of standing committees which will meet regularly to discharge the functions delegated to them. It must also establish a number of occasional or ad hoc committees, which meet infrequently as and when required.
- 2.7.4. The Committees can be broadly separated into three categories – statutory, regulatory or other committees but may belong to more than one category. All committees are politically balanced unless otherwise specified<sup>19</sup>.
- 2.7.5. The committees regulate the conduct of the Council’s business and make decisions in relation to regulatory, administrative and corporate governance matters. A high level summary of the functions of each Committee is provided for identification purposes however the detailed terms of reference, functions and powers delegated to each of these committees are more particularly set out in **Part 3, section XX of the** Constitution.

## Statutory Committees

- 2.7.6. The following are standing Statutory Committees the Council is required to establish.

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<sup>19</sup> Local Government and Housing Act 1989



## **Statutory Licensing Committee**

- 2.7.7. This statutory committee is established under the Licensing Act 2003 and discharges the Council's functions as the licensing authority under the Licensing Act 2003 and the Gambling Act 2005. It therefore undertakes regulatory functions.
- 2.7.8. The Licensing Act 2003 dictates the membership of the committee (minimum of 10 and maximum of 15 councillors), and the composition of sub-committees (3 councillors).
- 2.7.9. The committee operates in accordance with statutory rules of procedure.

## **Audit and Standards Committee**

- 2.7.10. This committee has a broad governance remit, not all of which is statutory in nature (See Part 3 of the Constitution).
- 2.7.11. Membership of the committee is 7 councillors who are not members of the Cabinet.
- 2.7.12. This committee is responsible for discharging obligations in respect of alleged breaches of the Councillor Code of Conduct under the Localism Act 2004. It achieves this through a Standards sub-committee which may have local councillors co-opted onto it if the complaint relates to a local councillor.
- 2.7.13. Standards sub-committees shall comprise 5 councillors from the membership of the committee and 3 local councillors from town or parish councils wholly or mainly in the council's area if the complaint relates to a local councillor.

## **Investigating and Disciplinary Committee**

- 2.7.14. This committee is an occasional committee of 5 councillors. The Council is required to have a committee to deal with allegations raised against the Statutory Chief Officers. It may be required to convene as a matter of urgency and will comprise the councillors nominated to the Employment Committee.

## **Overview and Scrutiny Panels**

- 2.7.15. The Council is required to have at least one overview and scrutiny committee. Further details of the overview and scrutiny function are found [in Article 6](#) and the [Scrutiny Procedure Rules at Part 4 of this constitution](#).

## **Regulatory Committees**

- 2.7.16. The Council has established a number of committees which discharge it's

regulatory functions. Regulatory<sup>20</sup> functions stem from statutory provisions which:

- 2.7.16.1. impose or amend requirements, restrictions or conditions, or set or amend standards or gives or amends guidance, in relation to the activity; or
  - 2.7.16.2. relates to securing compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which relate to the activity.
- 2.7.17. Regulatory Committees make determinations on behalf of the Council where the matters can be delegated under section 101 of the Local Government Act 1972 and are not:
- 2.7.17.1. executive or overview and scrutiny functions;
  - 2.7.17.2. already delegated elsewhere by the Council, or are statutory committee functions (such as those matters under the Licensing Act 2003);
  - 2.7.17.3. already delegated by Council to officers of the Council;
  - 2.7.17.4. exercisable only by Council itself; or
  - 2.7.17.5. exercised in a way which breaches or has the effect of breaching policies, strategies and overall budgets approved by Council or have adverse legal implications.
- 2.7.18. The discharge of regulatory matters can impact upon the economy as well as health and safety. Appeals against decisions made by these committees tend to proceed via the courts or tribunals, which can award costs against the Council. To ensure quality of decision making, members of this committee are required to complete mandatory training prior to attending the committee and to ensure they read all information provided within the agenda pack in advance of the committee meeting.

## **Planning Committee**

- 2.7.19. The discharge of planning functions can have a substantial and emotive impact on the community. The Council has therefore determined that not all planning matters should be delegated to officers. It has established the committee to make decisions on behalf of the local planning authority on the most impactful planning applications and related similar regulatory matters. The committee comprises 9 councillors, who are not members of Cabinet.
- 2.7.20. The Council has chosen not to have planning area or sub-committees.

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<sup>20</sup> Section 22 of the Small Business, Enterprise and Employment Act 2015

## **Regulatory Committee**

- 2.7.21. This committee discharges licensing, registration and regulatory functions of the Council that are not discharged by the Statutory Licensing Committee, including site and premises licences (caravans, taxis, sex shops, tattooing etc), animal licences (zoos, pet shops, wild animals etc), food licences (food preparation, fishing etc) and health and safety matters.
- 2.7.22. This committee comprises 10 councillors, who will be those councillors nominated to the Statutory Licensing Committee.

## **Other Committees**

- 2.7.23. Committees that are neither statutory nor regulatory in nature fall into this category. Some of these are standing committees meeting regularly, while others are required on an ad hoc basis.

## **Statutory Disciplinary Committee**

- 2.7.24. The primary purpose of the Statutory Disciplinary Committee is to consider a proposal made by the Investigating and Disciplinary Committee to dismiss a Statutory Chief Officer<sup>21</sup>. It is an ad hoc committee comprised of 5 councillors plus two independent persons.

## **Appeals Committee**

- 2.7.25. The primary purpose of Appeals Committee is to consider any appeal made by a Statutory Officer against disciplinary action ( short of dismissal). It is an ad hoc committee comprised of 5 councillors.

## **Constitutional Review Committee**

- 2.7.26. The primary purpose of the Constitutional Review Committee is to advise on the aims, principles and workings of the Constitution. It can convene task and finish groups and is a standing committee which makes recommendations to Council. It comprises 7 councillors.

## **Employment Committee**

- 2.7.27. The primary purpose of the Employment Committee is to consider the terms and

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<sup>21</sup> appointed under s.102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority in accordance with the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended).

conditions of employment of the officers of the Council and to make recommendations to the Council for consideration as appropriate. It is an ad hoc committee of 5 councillors. The Chief Officer Appointment Panel will be appointed by the Employment Committee.

### **Area Committees**

- 2.7.28. Council and Cabinet may appoint area committees as appropriate to improve service delivery in the context of best value and more efficient, transparent and accountable decision making. The members of an area committee will be those councillors elected for electoral Wards which fall wholly or partly within that part of the area of the authority. Cabinet Members may serve on area committees if eligible as a ward member.
- 2.7.29. Area committees will comply with the **Access to Information Rules** in Part 4 of this Constitution, and either the **Council Procedure Rules** or the **Executive Procedure Rules**, depending on the function being discharged by the area committee.
- 2.7.30. Agendas and notices for area committee meetings which deal with executive and non-executive function will state clearly which items are which.

# Article 8: Joint Arrangements

## Arrangements to promote well being

- 2.8.1. Council or the Cabinet, in order to promote the economic, social or environmental well-being of its area may:
- 2.8.1.1. enter into arrangements or agreements with any person or body;
  - 2.8.1.2. co-operate with, or facilitate or co-ordinate the activities of any person or body; and
  - 2.8.1.3. exercise, on behalf of that person or body, any function(s) of that person or body.

## Joint arrangements

- 2.8.2. Council may establish Joint Arrangements<sup>22</sup> with one or more local authorities and / or their Executives, to exercise functions which are not executive functions in any of the participating authorities.
- 2.8.3. Cabinet may establish Joint Arrangements with one or more local authorities to exercise functions which are executive functions.
- 2.8.4. Council or the Cabinet may, subject to restrictions and limitations, exercise the general power of competence<sup>23</sup> to make joint arrangements.
- 2.8.5. A list of current joint arrangements the Council is party to is set out at paragraph 2.8.27.

## Joint Committee

- 2.8.6. The number of councillors to be appointed, their term of office, and the area (if restricted) within which a joint committee with other local authorities is to exercise its authority shall be fixed, and the councillors appointed to that joint committee shall be made:
- 2.8.6.1. where the joint committee is to discharge functions which are all the responsibility of Council, by Council;
  - 2.8.6.2. where the joint committee is to discharge functions, some of which are the

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<sup>22</sup> Section 101(5) of the Local Government Act 1972 for the exercise of certain of its functions

<sup>23</sup> Section 1 Localism Act 2011.

responsibility of Council and some of which are the responsibility of the Cabinet, by Council with the agreement of the Cabinet; and

- 2.8.6.3. where the joint committee is to discharge functions which are all the responsibility of the Cabinet, by the Cabinet.
- 2.8.7. Where appointments to a joint committee are made by Council under paragraph 2.8.6.1 and 2.8.6.2 , and those appointments are made from members of the Council, the appointments must reflect the political composition of the local authority as a whole.
- 2.8.8. Where appointments to a joint committee are made by Council under paragraph 2.8.6.2:
  - 2.8.8.1. where only one councillor of the authority is a member of the joint committee, that person may be, but need not be, a member of the Cabinet; and
  - 2.8.8.2. where more than one councillor of the authority is a member of the joint committee, at least one of those members must be a member of the Cabinet.
- 2.8.9. Where appointments to a joint committee are made by the Cabinet under paragraph 2.8.6.3, those appointments need not reflect the political composition of the local authority as a whole, and the Cabinet may only appoint Cabinet Members. However, 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, the Cabinet may appoint to the joint committee any councillor for a Ward which is wholly or partly contained within the area. Political balance requirements do not apply to such appointments.
- 2.8.10. Details of delegations to joint committees, will be found in the Council's scheme of delegations in Part 3 of this Constitution.

## Partnerships

- 2.8.11. The Council will maintain and regularly review a register of partnerships in which the Council participates. Reviews will be undertaken in accordance with a partnership performance management framework to assess and evaluate the governance and effectiveness of each partnership

## Companies, Trusts and Charities

- 2.8.12. The Chief Finance Officer and Monitoring Officer should be contacted for assistance at an early stage to discuss proposals for the formation of a new company, trust, charity or other legal entity.

2.8.13. Cabinet is responsible for:

- 2.8.13.1. approving the establishment and viability (including the business case) of all new companies, trusts and charities;
- 2.8.13.2. appointing and removing directors of companies, trusts and charities in which the Council has an interest, having regard to the advice of the Chief Finance Officer given that, upon appointment, they have a statutory duty to the company, trust or charity and must therefore act in accordance with the Companies and / or Charities Acts where applicable;
- 2.8.13.3. exercising the Council's rights in any company or other form of corporate body of which the Council is a shareholder or member, unless alternative arrangements are specified in the relevant body's articles of association, other governing instrument, any shareholders' agreement or any specified delegations in relation to particular bodies
- 2.8.13.4. approving investments in other companies, trusts and charities in which the Council has a financial interest except where the investment is within criteria Cabinet has previously delegated to a Chief Officer;
- 2.8.13.5. taking decisions as shareholder and sole trustee where appropriate;
- 2.8.13.6. monitoring and receiving reports on the Council's companies;
- 2.8.13.7. dissolution of Council's companies, trusts, and charities.

2.8.14. Chief Officers are responsible for:

- 2.8.14.1. informing the Monitoring Officer and Chief Finance Officer of any new proposals, to ensure that legal and financial considerations are properly considered before any arrangements with an outside body or creation of a new company, trust or charity are considered;
- 2.8.14.2. ensuring tight controls are in place for the financial management of loan and guarantor arrangements with Council owned companies. This includes ensuring the Chief Finance Officer is presented with robust business cases and signed loan agreements.

2.8.15. The Chief Finance Officer is responsible for reviewing the ongoing viability of such entities and regularly reporting the performance of their activities, with a view to ensuring that the Council's interests are being protected.

2.8.16. The Monitoring Officer is responsible for:

- 2.8.16.1. appointing officers as proxies to attend and vote at shareholders meetings of any company of which the Council is a shareholder;
- 2.8.16.2. appointing a company secretary for any company for which the Council provides secretarial or administrative services;

- 2.8.16.3. maintaining a record of the governance arrangements of each partnership, joint body and other joint working arrangements in which the Council participates, including requiring any officer involved with such a body to provide information as to the governance arrangements of it.

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

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

## **Contracting out**

- 2.8.20. Provided that there is no delegation of the Council's discretionary decision making, the Cabinet may contract out to another body or organisation functions which:
- 2.8.20.1. 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
- 2.8.20.2. under contracting arrangements, where the contractor acts as the Council's agent under usual contracting principles.

## **Informal Joint Working Groups**

- 2.8.21. The Council may also enter into informal "working group" arrangements where it considers it beneficial to do so. These working groups are not formal decision-making bodies, they make recommendations to the relevant Cabinet member as appropriate. They need not be politically balanced, although the Council will aim for cross party representation in line with political balance requirements.

## **Access to information**

- 2.8.22. The **Access to Information Rules** in Part 4(2) of this Constitution apply to Joint Committees.
- 2.8.23. If the joint committee comprises only executive members of the participating authorities then its access to information regime is the same as that applied to the Cabinet.



# Appointments

## Internal Bodies

2.8.24. In addition to the committees, sub committees and joint committees set out above, the Council also establishes and appoints to a number of panels, boards and working groups. Save for appointments reserved to Council, the Council has delegated to the Leader of the Council the authority to appoint to these bodies.

## External Bodies

2.8.25. The Council is represented on several external organisations by both officers and councillors. This reflects the Council's community leadership role. The Council has delegated authority to appoint to these bodies to the Leader of the Council. The appointments will usually be from the cabinet or councillors who hold a special responsibility for the relevant area. Guidance for serving on outside bodies will be provided to those councillors appointed or interested in being appointed to external organisations.

2.8.26. The Leader shall consider:

2.8.26.1. any new request for the Council to appoint to an outside body; and

2.8.26.2. any changes to appointments that may be required such as arising from a councillor resigning their position as the Council's representative.

## Current joint arrangements

2.8.27. The Council is engaged in the following joint arrangements:

2.8.27.1. Harborough District Commercial Services Limited;

2.8.27.2. Foxton Lock Partnership;

2.8.27.3. Police and Crime Panel;

2.8.27.4. Leicestershire Safer Communities Strategy Board

2.8.27.5. Harborough District Community Safety Partnership

2.8.27.6. Leicestershire Partnership for Revenues and Benefits;

2.8.27.7. LANRAC – Leicestershire and Northampton Rail Action Committee

2.8.27.8. SPARSE

2.8.27.9. Market Harborough and the Bowdens Charity

2.8.27.10. Robert Monk's Foxton Charity Board of Trustees

2.8.27.11. North Kilworth Townland Charities



## Article 9: Officers

- 2.9.1. The Council may engage such staff (Officers) as it considers necessary to carry out its functions.
- 2.9.2. The most senior staff employed by the Council are Chief Officers<sup>24</sup>:
  - 2.9.2.1. Chief Executive;
  - 2.9.2.2. Deputy Chief Executive;
  - 2.9.2.3. Director of Resources;
  - 2.9.2.4. Director of Law and Governance;
  - 2.9.2.5. Director of Communities and Well-being;
  - 2.9.2.6. Director of Planning;
- 2.9.3. Chief Officers have executive and non-executive functions and responsibilities as set out in the **Officer Scheme of Delegation at Part 3** of this constitution.
- 2.9.4. Chief Officers are assisted by Deputy Chief Officers<sup>25</sup>, who report or are accountable directly to one or more Chief Officer. Councillors have no role in the appointment of Deputy Chief Officers, who are appointed by the Head of Paid Service.
- 2.9.5. The number and responsibilities of Chief Officers are determined by the Head of Paid Service.
- 2.9.6. All Chief Officers are responsible for:
  - 2.9.6.1. supporting and advising the Council, Cabinet, Overview and Scrutiny Panels and other Committees on policy and service delivery in order that councillors' decisions are well informed;
  - 2.9.6.2. ensuring that the policies and decisions of the Council and Cabinet are formulated and delivered effectively and efficiently;
  - 2.9.6.3. providing strong managerial leadership and direction, fostering cross-departmental working and implementing organisational improvement;
  - 2.9.6.4. setting high standards and driving up the performance, effectiveness and reputation of the Council;

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<sup>24</sup> Section 43(2) of the Localism Act 2011

<sup>25</sup> Section 2(8) of the Local Government and Housing Act 1989

- 2.9.6.5. working with outside bodies and accessing additional funding opportunities and resources in order to support the Council's programmes of work;
- 2.9.6.6. recruiting, developing, motivating and inspiring staff.
- 2.9.7. Each Chief Officer has a different portfolio of responsibilities as designated from time to time and particularised in the **Officer Scheme of Delegation at Part 3** of this constitution.

## **Statutory Chief Officers**

- 2.9.8. The Council is required to appoint or designate the following statutory chief officers<sup>26</sup>, the functions of which are set out within this article:
  - 2.9.8.1. Head of Paid Service<sup>27</sup>;
  - 2.9.8.2. Chief Finance Officer <sup>28</sup>;
  - 2.9.8.3. Monitoring Officer<sup>29</sup>
- 2.9.9. The Council will provide all Statutory Chief Officers with such officers, accommodation and other resources as are sufficient, in the view of those officers, to allow their duties to be performed.
- 2.9.10. The Head of Paid Service is accountable to Cabinet and full Council for the coordination of the discharge of the Council's functions.
- 2.9.11. By law, some functions of the Monitoring Officer and Chief Finance Officer must be carried out personally, or carried out by a deputy nominated by them in the event of absence or illness. The current deputy arrangements for the statutory officer functions are as follows:

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<sup>26</sup> Section 2(6) of the Local Government and Housing Act 1989

<sup>27</sup> Designated under Section 4 of the Local Government and Housing Act 1989

<sup>28</sup> Designated under Section 151 of the Local Government Act 1972

<sup>29</sup> Designated under Section 5 of the Local Government and Housing Act 1989

<b>Statutory Officer</b>	<b>Post-holder</b>	<b>Deputy</b>
Head of Paid Service	Chief Executive	Deputy Chief Executive
Monitoring Officer	Head of Legal Services	As nominated by the Head of Legal Services <sup>30</sup>
Chief Finance Officer	Director of Resources	Head of Financial Services <sup>31</sup>

2.9.12. Throughout this constitution, the “Statutory Chief Officer” title may be used rather than the substantive post title. This does not mean that all functions attributed to the statutory chief officers in this constitution are statutory chief officer functions. The statutory functions of each statutory officer are summarised below.

### **Head of Paid Service**

2.9.13. The Head of Paid Service will:

2.9.13.1. **Structure** – determine and publish a description of the overall management structure of the Council, showing the management structure and deployment of Officers. The Head of Paid Service will set this out in **Part 7** of this Constitution.

2.9.13.2. **Discharge of Functions** – report to Council on the manner in which the discharge of the Council’s functions are co-ordinated, the number and grade of Officers required for the discharge of functions and the organisation of Officers;

2.9.13.3. **Politically restricted posts** - grant and supervise exemptions from political restriction<sup>32</sup>, in consultation with the Monitoring Officer;

2.9.14. The Head of Paid Service may not be the Monitoring Officer, but may hold the post of Chief Finance Officer if a qualified accountant.

### **Monitoring Officer**

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<sup>30</sup> Nominated by the Monitoring Officer under Section 5(7) of the 1989 Act

<sup>31</sup> Nominated by the Section 151 Chief Finance Officer under Section 114(6) of the 1988 Act

<sup>32</sup> Section 3A Local Government and Housing Act 1989

2.9.15. The Monitoring Officer will:

- 2.9.15.1. **Maintain the Constitution** – making sure that it is kept up to date and widely available for consultation by Members, staff and the public.
- 2.9.15.2. **Ensure lawfulness and fairness of decision making** - after consulting with the Head of Paid Service and Chief Finance Officer, report to Council (or to Cabinet in relation to an executive function) if they consider that any proposal, decision or omission would give rise to unlawfulness, or maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- 2.9.15.3. **Report on maladministration or injustice** - prepare reports as required by law in relation to complaints which have been the subject of investigation by the Local Government and Social Care Ombudsman and which have revealed maladministration, whether or not that maladministration has caused injustice.
- 2.9.15.4. **Support the Audit and Standards Committee** – contribute to the promotion and maintenance of high standards of conduct through provision of support to the Audit and Standards Committee<sup>33</sup>.
- 2.9.15.5. **Register Interests** - establish, maintain and publish a Register of Interests of the councillors and voting co-opted members of the authority, and of the Town and Parish Councillors throughout the district.
- 2.9.15.6. **Conduct investigations** - conduct investigations into matters referred by the Audit and Standards Committee, and make reports or recommendations in respect of them to the Audit and Standards Committee.
- 2.9.15.7. **Deal with matters in accordance with directions given by the Audit and Standards Committee** - deal with matters referred by the Audit and Standards Committee (other than for the conduct of an investigation) in accordance with directions given by that Committee (e.g. to arrange for training for a Member or Members), or to arrange for a Member and a complainant to engage in a process of reconciliation.
- 2.9.15.8. **Be the Proper Officer for access to information** - ensure that executive decisions, the reasons for those decisions, relevant Officer reports and background papers, are made publicly available as soon as possible.

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<sup>33</sup> Including any action under the procedure for considering complaints alleging a failure to comply with the Councillors' Code of Conduct

- 2.9.15.9. **Advise whether executive decisions are within the Budget and Policy Framework** – following consultation with the Chief Finance Officer.
- 2.9.15.10. **Corporate management** – contribute to the corporate management of the Council, particularly in the provision of professional legal advice.
- 2.9.15.11. **Provide advice** - advise on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors, and support and advise Councillors and Officers in their respective roles.
- 2.9.15.12. **Report on resources** – report to Council as necessary in respect of the staff, accommodation and resources they require to discharge their statutory duties.
- 2.9.15.13. **Dispensations- following consultation with the Chair of the Audit and Standards Committee, consider and determine written requests for dispensations.**
- 2.9.16. The Monitoring Officer cannot be the Chief Finance Officer, or the Head of Paid Service.
- 2.9.17. The functions of the Monitoring Officer are supported by a Protocol agreed by the Council and set out at Part 5, Section 6 of this Constitution.

### **Chief Finance Officer**

- 2.9.18. The Chief Finance Officer will:
- 2.9.18.1. **Ensure lawfulness and financial prudence of decision making** – consult with the Head of Paid Service and the Monitoring Officer before reporting to Council (or to Cabinet in relation to an executive function) and the Council’s external auditor if they consider that any proposal, decision or course of action:
- 2.9.19.1.1 involves incurring unlawful expenditure; or
- 2.9.19.1.2 is unlawful; or
- 2.9.19.1.3 is likely to cause a loss or deficiency to the Council; or
- 2.9.19.1.4 will result in the Council entering an item of account unlawfully.
- 2.9.18.2. **Administration of financial affairs** - administer the financial affairs of the Council in accordance with section 151 of the Local Government Act 1972.
- 2.9.18.3. **Contribute to corporate management** - contribute to the corporate management of the Council, in particular through the provision of professional financial advice.

- 2.9.18.4. **Provide advice** - advise 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.
- 2.9.18.5. **Give financial information** - provide financial information about the Council to the media, members of the public and the community as appropriate.
- 2.9.18.6. **Report on resources** – report to Council as necessary in respect of the staff, accommodation and resources they require to discharge their statutory duties.

## Statutory Officers

### Data Protection Officer

2.9.19. The Data Protection Officer will:

- 2.9.19.1. **Inform and advise** the organisation and its employees about their obligations to comply with the General Data Protection Regulations (GDPR) and other data protection laws;
- 2.9.19.2. **Monitor compliance** with the GDPR and other data protection laws, including managing internal data protection activities, advise on data protection impact assessments; train staff and conduct internal audits;
- 2.9.19.3. **Point of Contact** - be the first point of contact for supervisory authorities and individuals whose data is processed (employees, residents etc).

### Proper Officers

- 2.9.20. The Chief Officers are the Proper Officers for all purposes relating to their areas of responsibility.
- 2.9.21. The Council's designation of Proper Officers is set out in the **Officer Scheme of Delegation at Part 3** of this Constitution.
- 2.9.22. The Head of Paid Service shall, where necessary, appoint a Proper Officer for the discharge of Council functions where any appointment is required.
- 2.9.23. Where in any legislation reference is made to a Proper Officer of the Council and no officer has been appointed by the Council to act for that purpose, the Head of Paid Service will be deemed to be the Proper Officer until a particular officer is appointed for that purpose. If the Head of Paid Service is unable to act, this power shall be delegated to the Deputy Chief Executive. If neither the Head of Paid Service or Deputy Chief Executive are available to act, the power shall be



delegated to the Monitoring Officer.

## Officers

2.9.24. All Officers will comply with the **Employee Code of Conduct** and the **Councillor and Employee Protocol** set out in Part 5 of this constitution.

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

## Internal Audit

2.9.26. In addition to the statutory and chief officer posts, the Head of Internal Audit provides objective assurance on the Council's internal control arrangements (both financial and non-financial) and plays a key part in promoting good corporate governance in accordance with proper internal audit practices. The Head of Internal Audit provides the Council with independent and objective assurance that there are strong arrangements in place for controlling its resources and for delivering its objectives by:

2.9.26.1. formulating the internal audit strategy, charter and plan;

2.9.26.2. providing an annual audit opinion on all aspects of governance, risk management and internal control to be used as a primary source of evidence for the annual governance statement;

2.9.26.3. championing best practice in governance, objectively assessing the adequacy of governance and management of existing risks, commenting on responses to emerging risks and proposed developments

# Article 10: Decision-making

- 2.10.1. There are a number of different categories of decisions which will be made by or on behalf of the Council which are described in this Article.
- 2.10.2. Decision takers are described in the appropriate article as follows:
- 2.10.2.1. Council – Article 4
  - 2.10.2.2. Committees – Article 7
  - 2.10.2.3. Cabinet – Article 5
  - 2.10.2.4. Leader – Article 5
  - 2.10.2.5. Officers – Article 9
- 2.10.3. A record of what part of the Council or individual has responsibility for particular types of decisions, as well as decisions relating to particular areas or functions, will be maintained by the Monitoring Officer and set out in Part 3 of this Constitution.

## Types of Decisions

### Executive and Non-Executive Decisions

- 2.10.4. The Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended, set out which decisions are made by the Executive of a local authority, and which are made by the Non-Executive parts of the Council.
- 2.10.5. The articles specific to each decision taker, as summarised at 2.10.2, and Part 3 of this constitution, set out the extent of decision taking authority but generally Cabinet and the Leader take Executive Decisions, while Council and its committees take Non-Executive Decisions. Officers can take both Executive and Non-Executive Decisions if delegated to them.

### Key Decision

- 2.10.6. Key Decisions are decisions relating to an executive function which are likely to:
- 2.10.6.1. result in the Council incurring expenditure or making savings (including the receipt or loss of income) over £50,000; or

2.10.6.2. Have a significant<sup>34</sup> effect on communities living or working in two or more wards in the district.

2.10.7. The following shall be exempt from the definition of a Key Decision:

2.10.7.1. any decision where the expenditure, saving or income will result from:

2.10.7.1.1. a treasury management decision in relation to the making, payment or borrowing of a loan; or

2.10.7.1.2. a decision to purchase energy under the terms of an energy supply contract which has been awarded following the appropriate procurement process; or

2.10.7.1.3. the settlement of proceedings to which the Council is a party; or

2.10.7.1.4. an urgent decision necessary out of office hours taken in accordance with the Council's Emergency Management Plan by the Officer acting at Gold or Silver level at the relevant time;

2.10.7.2. any decision in relation to which a further report will be submitted for approval of the proposal before the Council is committed to proceed;

2.10.7.3. any decision which is a direct consequence of implementing a previous Key Decision<sup>35</sup> and was in the contemplation of the decision maker at the time the decision was taken; and

2.10.7.4. any decision which is the result of varying a previous Key Decision following a Call In of that decision.

2.10.8. A decision taker may only make a Key Decision in accordance with the requirements of **the Executive Procedure Rules and Access to Information Rules set out in Part 4 of this Constitution.**

### **Significant Operational Decision**

2.10.9. A Significant Operational Decision (executive or non-executive) is a decision which is not a Key Decision and which:

2.10.9.1. does not fall within the definition of an Administrative decision; or

2.10.9.2. would have been a Key Decision but for the exemptions set out at

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<sup>34</sup> in determining the meaning of "significant" for the purposes of (ii) above, regard shall be had to any guidance for the time being issued by the Secretary of State.

<sup>35</sup> Where a scheme or proposal changes following the original decision to the extent that the additional spend or save, or the additional impact of the decision, reaches the threshold for a Key decision it shall be treated as a new Key decision.

2.10.7 above; or

2.10.9.3. results in the authority incurring expenditure or making savings (including the receipt or loss of income) **over £50,000**; or

2.10.9.4. is, in the opinion of the decision taker<sup>36</sup>, of such significance that a published record of the decision would ensure transparency and accountability in relation to decision making within the authority.

2.10.10. Decisions taken:

2.10.10.1. under a specific express authorisation from Council or one of its committees; or

2.10.10.2. in accordance with the **Council Non-executive Functions Scheme of Delegation at Part 3** of this constitution where the effect of the decision is to:

2.10.10.2.1. grant a permission or licence; or

2.10.10.2.2. affect the rights of an individual; or

2.10.10.2.3. award a contract or incur expenditure which, in either case, materially affects the financial position of the Council

are Significant Operational Decisions<sup>37</sup>.

### **Administrative Decision**

2.10.11. An Administrative Decision may be in relation to an executive or non-executive function which is not a Key Decision or a Significant Operational Decision and which:

2.10.11.1. is within an approved budget; and

2.10.11.2. is not in conflict with the Budget and Policy Framework or other policies approved by the Council; and

2.10.11.3. does not raise new issues of policy.

### **Decision Taking**

2.10.12. A decision taker will have regard to the definitions of Key, Significant Operational and Administrative decisions set out above, the responsibility for functions set out at Part 3 of this Constitution, and the requirements of the Rules set out in Part 4

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<sup>36</sup> Having taken into account the provisions of the Constitution together with other policy, procedure and guidance available

<sup>37</sup> pursuant to regulation 7 of the Openness of Local Government Bodies Regulations 2014

of this Constitution.

### **Non-executive Decisions**

- 2.10.13. Decisions relating to the functions listed in paragraph 2.4.2 or reserved to full Council in Part 3 of this constitution will be made by the Full Council and not delegated.
- 2.10.14. Council meetings will follow the **Council Procedures Rules set out in Part 4 of this Constitution** when considering any matter.
- 2.10.15. 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**.
- 2.10.16. Officers will follow the **Access to Information Rules set out at Part 4 of this Constitution when** considering any matter.

### **Executive Decisions**

- 2.10.17. The Leader, Cabinet and any body or individual acting under authority delegated by the Leader or the Cabinet, as set out in Part 3 of this Constitution, will follow the **Executive Procedure Rules set out in Part 4 of this Constitution** when considering any matter.

### **Overview and Scrutiny Panels**

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

### **Principles of decision-making**

- 2.10.19. All decisions made by and on behalf of the authority will be made in accordance with the **Access to Information Rules set out in Part 4 of this Constitution**, and the following principles:
  - 2.10.19.1. proportionality (i.e. the action must be proportionate to the desired outcome);
  - 2.10.19.2. due consultation and the taking of professional advice from officers;
  - 2.10.19.3. respect for human rights (see paragraph 2.10.22 below);
  - 2.10.19.4. a presumption in favour of openness;
  - 2.10.19.5. clarity of aims and desired outcomes;
  - 2.10.19.6. an explanation of the options considered and details of the reasons for the

decision<sup>38</sup>;

2.10.19.7.natural justice;

2.10.19.8.positive promotion of equality of opportunity

## Recording Decisions

- 2.10.20. All Non-Executive Decisions will be recorded in accordance with the provisions of the **Access to Information Rules in Part 4 of this Constitution**.
- 2.10.21. All Executive Decisions will be recorded in accordance with the provisions of the Executive Procedure Rules set out in **Part 4 of this Constitution**.
- 2.10.22. The Council, a Councillor or an Officer acting as a tribunal or in a quasi-judicial manner or determining or 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.

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<sup>38</sup> A statement or publication is required following the making of an executive decision in accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, as amended from time to time

# Article 11: Finance, Contracts and Legal Matters

## Financial management

- 2.11.1. The management of the Council's financial affairs will be conducted in accordance with the **Finance, Procurement and Contract Rules** set out in Part 4 of this Constitution.

## Contracts

- 2.11.2. Every contract entered into by the Council will comply with the **Finance, Procurement and Contract Rules** set out in Part 4 of this Constitution.

## Legal Proceedings

- 2.11.3. The Monitoring Officer 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 any part of it, or in any case where the Monitoring Officer considers that such action is necessary to protect the Council's interests.
- 2.11.4. Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by either the Head of Paid Service or the Monitoring Officer, or other person authorised by them, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to another person for the purpose of those proceedings.
- 2.11.5. **No officer shall commission legal advice from outside the Council without the explicit consent of the Monitoring Officer.**

## Common Seal of the Council

- 2.11.6. The Common Seal of the Council will be kept in a safe place in the custody of the Monitoring Officer.
- 2.11.7. 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 Monitoring Officer, should be sealed.
- 2.11.8. The affixing of the Common Seal will be attested by the Head of Paid Service or the Monitoring Officer, or such other person authorised by them.
- 2.11.9. Details of every deed and other document to which the Common Seal is affixed shall be entered, at the time of its sealing or as soon as practicable thereafter, in

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a central register maintained for that purpose and the register shall be signed by the person attesting the affixation of the Common Seal.

- 2.11.10. The Common Seal of the Council may be affixed electronically in accordance with the Electronic Communications Act 2000 provided that the Monitoring Officer is satisfied that proper arrangements are in place for the use and application of an electronic version of the Common Seal of the Council.

## **Signature of Documents**

- 2.11.11. Electronic signatures and seals are permissible<sup>39</sup> to execute a document, including a deed, provided that:
- 2.11.12. the Monitoring Officer is satisfied that the proper arrangements are in place for the use and application of electronic signatures.
- 2.11.12.1. the person signing the document intends to authenticate the document;  
and
- 2.11.12.2. any formalities relating to execution of that document are satisfied.
- 2.11.13. Any contract with a value exceeding £500 entered into on behalf of the Council in the course of the discharge of an executive function shall be made in writing. If, in accordance with the Finance Procurement and Contract Rules, a formal agreement is unnecessary, the contract may be concluded by the sending of an award letter and the subsequent issuing of a purchase order.
- 2.11.14. Any contract entered into on behalf of the Council with a value exceeding the amount specified in the Finance, Procurement and Contract Rules (see Part 4 of this Constitution) 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.
- 2.11.15. Where a contract is in the form of a deed, it must be made under the Council's seal and attested in accordance with the provisions of this article.
- 2.11.15 Chief Officers shall determine which persons within their service areas are authorised to sign contracts on behalf of the Council and shall notify the Monitoring Officer. A list of officers authorised to sign contracts shall be maintained by the Monitoring Officer.

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<sup>39</sup> Section 7(1) of the Electronic Communications Act 2000 as amended