

**Classification:** Public

**Key Decision:** No

## **Gravesham Borough Council**

**Report to:** Cabinet

**Date:** 4 February 2019

**Reporting officer:** Perry Holmes - Monitoring Officer

**Subject:** Proposed amendments to the Constitution  
– Summary & Explanation and The  
Articles

### **Purpose and summary of report:**

To obtain approval of Cabinet and Full Council for the proposed amendments to two sections of the Constitution to bring these sections up to date with legislative changes and to reflect changing roles and responsibilities.

### **Recommendations:**

1. It is recommended that all proposed amendments to the Summary and Explanation section as laid out in the report be approved and determined by full Council on 26 February 2019.
2. It is recommended that the proposed amendments to the Articles as laid out in the report be received by council without debate on 26 February 2019 and referred to the next ordinary council meeting on 16 April 2019 for a decision.

### **1. Introduction**

- 1.1 A full review of the constitution is being undertaken and proposed amendments to various sections are being presented in stages. This report relates to updates to the Summary and Explanation and The Articles sections to reflect changes in legislation and staff roles following a restructure. Recent legislation has been added where appropriate and legislation that has been repealed has been deleted.
- 1.2 The remainder of the suggested updates to the Constitution will be presented to Cabinet and full council once the review has concluded.
- 1.3 Summaries of the key suggested changes to the Summary and Explanation section and the Articles are attached as Appendices 2 and 3, respectively.

- 1.4 The relevant pages of the Constitution have been amended with the proposed new wording in track changes and with track changes accepted for ease of reference and copies are attached as Appendices 4 and 5.
- 1.5 As part of the full review of the constitution proposals are being made to amend the process and procedures of the Standards Committee when dealing with complaints regarding Councillors. Some of the proposed amendments have already been drafted in Article 9 of the Constitution which will be visible in the attached track changes and track changes accepted copies of the constitution. A separate report regarding these proposed changes relating to the Standards Committee will be presented to Cabinet on 4<sup>th</sup> February and full Council on 26<sup>th</sup> February so for the avoidance of doubt it is not necessary for members to consider Article 9 for the purposes of this report.

## **2. Proposal**

- 2.1 The proposed changes in both sections merely reflect changes in legislation, including terminology used to describe strategy documents, and changes in staff roles due to a recent staff restructure.
- 2.2 This report will be presented to Cabinet on 4<sup>th</sup> February and full Council on 26<sup>th</sup> February 2019.
- 2.3 Proposals for changes to the Summary and Explanation section may be considered and determined forthwith by the Council (Article 15.3 (2) of the Constitution).
- 2.4 On the basis of the above it is recommended that the proposed amendments to the Summary and Explanation section may be determined by full Council at the first council meeting it is presented to, which will be on 26<sup>th</sup> February 2019.
- 2.5 The Constitution provides that changes to the Articles of the Constitution can only be made by the full Council, which may not delegate this function. Such proposals for changes may only be considered by the Council on receipt of a written report by the Standards Committee; and/or the Monitoring Officer. Proposals for changes to the Articles of the Constitution will first be received by the Council without debate and referred to the next ordinary meeting of the Council (Article 15.3 (1) of the Constitution).
- 2.6 On the basis of the above it is recommended that the proposed amendments to the Articles be received by Council without debate on 26<sup>th</sup> February 2019 and referred to the next ordinary council meeting on 16<sup>th</sup> April 2019 for a decision.
- 2.7 The following documents are attached hereto:

Appendix 1 – Implications

Appendix 2 – Summary of Key Changes - Summary and Explanation

Appendix 3 – Summary of Key Changes – The Articles

Appendix 4 - Amended pages of the Constitution with track changes

Appendix 5 – Amended pages of the Constitution with track changes  
accepted

### **3. BACKGROUND PAPERS**

3.1 There are no background papers to this report.

Anyone wishing to inspect background papers should, in the first place, be directed to Committee & Electoral Services who will make the necessary arrangements.

**IMPLICATIONS****APPENDIX 1**

<b>Legal</b>	A Local Authority is under a duty to prepare and keep up to date its constitution under s9P of the Local Government Act 2000 as amended.
<b>Finance and Value for Money</b>	There are no financial implications.
<b>Risk Assessment</b>	It is of critical importance that the council has sufficient government arrangements in place which is provided by a constitution that is kept upto date.
<b>Equality Impact Assessment</b>	<b>Screening for Equality Impacts</b>
	<b>Question</b>
	a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community? If yes, please explain answer. No
	b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality? If yes, please explain answer. No
<b>Corporate Plan</b>	Corporate Plan Objective 4 - Sound and Self Sufficient Council
<b>Crime and Disorder</b>	N/A

<b>Digital and website implications</b>	N/A
<b>Safeguarding children and vulnerable adults</b>	N/A

Appendix 2 – Summary of Key changes – Summary and Explanation

Reference	Change	Reason for Change
Paragraph 1.3.7 (a)	Reference to the “Local Development Framework” has been replaced by “Local Plan”.	This change reflects current terminology.
Paragraph 2.1.7	Reference to the Forward Plan has been removed and replaced by the forthcoming notice.	This reflects a change in legislation and the related terminology.
Paragraph 2.2.4	Reference to Best Value Performance Plans have been replaced to reflect changes in legislation.	Best Value Performance Plans have been abolished.
Paragraph 4.3 (d) and (e)	The two paragraphs have been merged.	This reflects current legislation.
Paragraph 4.3 (h)	Reference to the Forward Plan has been removed.	This reflects current legislation.
Paragraph 4.3 (l)	Complaints are now to be made to the Standards Committee.	The Standards Board for England has been abolished.

Appendix 3 – Summary of Key changes – The Articles

Reference	Change	Reason for Change
Front Page .7 (a)	The Service Manager (Communities) now has this responsibility.	This change reflects a recent restructure.
<p>Article 2</p> <p>2.1 (1)</p> <p>2.3 (2) (a)</p> <p>2.4</p>	<p>2.1 (1) The name of the agency and the process to be followed have been updated in accordance with legislation.</p> <p>Reference to the Community Strategy has been replaced with Corporate Plan.</p> <p>Specific reference added regarding the Member/Public Protocol.</p>	<p>This reflects changes in legislation.</p> <p>This reflects changes in legislation.</p> <p>This highlights the existence of the protocol for members of the public</p>

Appendix 3 – Summary of Key changes – The Articles

Reference	Change	Reason for Change
<p>Article 4</p> <p>4.1</p> <p>4.2 (4) (c )</p>	<p>The Policy Framework section has been brought up to date.</p> <p>Reference to the more recent 2015 Regulations has been added.</p>	<p>To reflect changes in legislation and terminology.</p> <p>To reflect changes in legislation.</p>
<p>Article 5</p> <p>5.2</p>	<p>Wording relating to the Mayor being the Monarch's representative in the Borough has been deleted.</p>	<p>This reflects current legislation.</p>

Appendix 3 – Summary of Key changes – The Articles

Reference	Change	Reason for Change
<p>Article 7 7.2  7.7  7.9</p>	<p>The wording has been brought upto date.</p> <p>The Service Manager (Communities) now has this responsibility.</p> <p>Investigations relating to Councillor conduct issues are not undertaken by the Council's Monitoring Officer nor the Standards Committee but by an independent investigator.</p>	<p>This reflects current procedure.</p> <p>This reflects a recent staff restructure.</p> <p>The Standards Committee has been abolished and local authorities are able to create their own processes and procedures for dealing with complaints against councillors. It is recommended in a separate report that GBC adopt Medway Council's process to bring efficiencies given that the two authorities share a monitoring officer.</p>
<p>Article 12 12.2 (3)</p>	<p>Assistant Directors have been added to the list of officers for clarity.</p>	<p>Merely for completeness.</p>

Appendix 3 – Summary of Key changes – The Articles

Reference	Change	Reason for Change
Article 13 13.3 (c)	The section of the Local Government Act 2000 has been amended.	This is to reflect a change in legislation.
Article 15  15.1 (2)  15.3 (1)  15.3 (4)	Reference to Standards for England has been deleted.  The requirement for Council to receive proposed changes to the Articles of the Constitution without debate on the first occasion and referred to the next ordinary meeting of the council when the matter can be debated and a decision made has been removed.  The current paragraph is out of date and has been replaced.	Standards for England has been abolished.  There is no legislative requirement for this two stage process so it has been removed to enable decisions to be made on the first occasion that a matter is presented to council.  This reflects current legislation.
Article 16 16.3	The Service Manager (Communities) will assume responsibility for the distribution of the constitution.	This reflects a recent restructure.



**A Summary and Explanation of**

# **The Constitution of Gravesham Borough Council**

**Adopted by the Council on 23 April 2002**

**Updated and re-issued Spring 2018**

## Summary and Explanation of the Constitution

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## SUMMARY AND EXPLANATION

### 1. Overview

#### 1.1 The Council's Constitution

1.1.1 Gravesham Borough Council has agreed a written Constitution which sets out how the Council operates, how decisions are made and the procedures that are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose.

1.1.2 The Constitution is divided into 16 Articles which set out the basic rules governing the Council's business. More detailed procedure rules, codes of practice and protocols are attached at the end as annexes to the Constitution.

#### 1.2 What is in the Constitution?

1.2.1 Article 1 of the Constitution commits the Council to promoting the well-being of the people of Gravesham by providing community leadership in partnership with government, business, voluntary sector and local people.

1.2.2 In addition to providing vision and leadership for its communities, the Council is committed to:-

- (a) efficient transparent and accountable decision-making; and
- (b) seeking best value by delivering high quality services and securing continuous improvement in the way the Council's functions are carried out.

1.2.3 Articles 2-16 explain the rights of citizens and how the key parts of the Council operate. These are:-

- (a) Members of the Council (Article 2);
- (b) Citizens and the Council (Article 3);
- (c) Meetings of the Council (Article 4);
- (d) Chairing the Council (Article 5);
- (e) Overview and Scrutiny of Decisions (Article 6);
- (f) The Cabinet (Leader and Cabinet style of local governance) (Article 7);
- (g) Other Committees, Boards and Panels of the Council (Article 8);
- (h) The Standards Committee (Article 9);
- (i) Area Committees and Forums (Article 10);
- (j) Joint Arrangements (Article 11);
- (k) Officers (Article 12);
- (l) Decision Making (Article 13);

- (m) Finance, Contracts and Legal Matters (Article 14);
- (n) Review and Revision of the Constitution (Article 15);
- (o) Suspension, Interpretation and Publication of the Constitution (Article 16).

### 1.3 How the Council Operates

- 1.3.1 The Council is composed of 44 Councillors (also referred to as Members) elected every four years.
- 1.3.2 Each Councillor is elected to represent an area of the Borough called a Ward, and is democratically accountable to the residents of their Ward. The overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.
- 1.3.3 As well as representing the local community, Councillors play key roles in running the Council through meetings of the full Council and through its committees, boards and panels. They may also represent the Council on various outside bodies.
- 1.3.4 Councillors have to agree to follow a Members' Code of Conduct [set out in Annex 3.2 of this Constitution] to ensure high standards in the way they carry out their duties. The Council's Standards Committee is responsible for training and advising Councillors on the Code of Conduct.
- 1.3.5 All 44 Councillors meet together as a general assembly of the Council, which is normally referred to as "the Council" or "the full Council". Meetings of the Council are normally open to the public.
- 1.3.6 The full Council remains the ultimate policy-making body of the Council. It can decide to delegate many (though not all) of its powers to smaller groups of Councillors or to individual officers employed by the Council. It can vary or withdraw this delegation of powers at any time.
- 1.3.7 Broadly, the Council has the following functions:
  - (a) Setting Strategy, which means it approves an annual budget, the Council Tax levy and the policy framework. This policy framework includes such things as the Local [Plan Development Framework](#) and other plans, strategies and policy documents (both those required by law and others that the Council chooses to adopt in addition);
  - (b) Procedural, which means it approves the Council's political management processes and appoints:-
    - (i) the Leader of the Executive (and can remove him or her);
    - (ii) people to various groups and outside bodies;
    - (iii) Committees, Boards and Panels.
  - (c) Regulatory, which means it can decide on applications for planning permission and certain types of licenses to do things including alcohol, entertainment and gambling licences. Although it normally delegates these decisions to a Regulatory Board (Planning) or Licensing

Committee, they can be referred to the Council for decision in some circumstances;

- (d) Standards and Ethics, which means approving statements of policy relating to standards in public life; and receiving reports from the Council's Standards Committee, the Monitoring Officer and the Chief Finance Officer and deciding what action to take upon them.

1.3.8 The Cabinet, Committees, Boards and Panels are accountable to the Council as the ultimate decision-making body and have to work within Terms of Reference given to them by the Council. These Terms of Reference specify the functions with which the Cabinet, Committees, Boards and Panels are required to carry out on behalf of the Council and define the limits of their authority.

1.3.9 The Council has adopted a Conflict Resolution Mechanism. This is set out in the Policy and Budget Procedure Rules [Annex 2.3 to this Constitution]. This Mechanism deals with any disputes between the Cabinet and the full Council in matters related to the adoption of the budget or the policy framework. In effect, this mechanism enables the Leader of the Executive to delay a decision of the full Council for a short time and to ask the Council to reconsider the issue.

## **2. How decisions are made**

### **2.1 The Cabinet**

2.1.1 The Cabinet is the part of the Council which is responsible for most day-to-day decisions. In particular, it proposes the policy framework and budget to the Council and then carries on the work of the Council within this approved framework and budget. The Cabinet is also the focus for community planning and leads the search for best value.

2.1.2 The Cabinet is appointed by the Leader of the Executive. It is normally drawn from the majority political party group on the Council, although if no single party has an overall majority, the allocation of places in the Cabinet may be agreed between the various parties.

2.1.3 It comprises Councillors who hold office for a municipal year, commencing with the annual meeting of the Council in May. Meetings are held in public, except where confidential and/or exempt matters are being discussed.

2.1.4 The Leader of the Executive allocates specific roles and responsibilities to Members of the Cabinet. These roles and responsibilities are referred to as 'portfolios'.

2.1.5 Decisions of the Cabinet are reached collectively (i.e. by all Cabinet Members present at the meeting). Individual Members of the Cabinet may have decision-making powers of their own.

2.1.6 Decisions of the Cabinet, and the reasons for those decisions, are recorded and made publicly available together with the background papers that were available to the Cabinet when making its decisions.

- 2.1.7 When major decisions (called 'Key Decisions') are to be discussed or made in the future then, so far as these decisions can be anticipated, they are published 28 days in advance in a forthcoming notice the Cabinet's Forward Plan [see Article 13].
- 2.1.8 The Cabinet has to make decisions which are in line with the Council's overall policies and budget. If the Cabinet wishes to make a decision which is outside the policy framework and budget, this must be referred to the Council to decide.
- 2.1.9 The Cabinet may make an urgent decision which is outside the policy framework and budget agreed by the Council only in cases of special urgency, having first obtained the agreement of the Chair of the Scrutiny Committee whose terms of reference include responsibility for scrutiny of executive decisions in respect of the matter concerned, who must agree that the matter is urgent and that the proposed decision is reasonable.
- 2.1.10 The Cabinet may appoint Cabinet Committees to consider specific policy issues and make recommendations. Cabinet Committee's are made up of Councillors and non-voting persons co-opted to them.

## 2.2. Scrutiny

- 2.2.1 The Council is required to appoint at least one Scrutiny Committee. Within terms of reference set by the Council, the purpose of scrutiny is to assist the Council to improve continuously the performance of its services and the policies and strategies within which the Council operates.
- 2.2.2 Scrutiny has a powerful role in:-
- (a) publicly holding the Cabinet to account for its actions;
  - (b) helping to secure best value in the delivery of Council services;
  - (c) helping to inform policy development and review;
  - (d) examining matters of wider local concern.
- 2.2.3 Within certain guidelines set out in the Scrutiny Procedure Rules [see Annex 2.5], decisions of the Cabinet can be "called in" for closer scrutiny by a Scrutiny Committee whose terms of reference include responsibility for scrutiny of executive decisions in respect of the matter concerned. This is to assess whether those decisions are appropriate and sound.

~~2.2.4 A Scrutiny Committee's terms of reference may also include conducting and overseeing detailed reviews of Council services to ensure they are giving best value and that effective action plans exist to improve services on a continuing basis. Each service shall be reviewed in this way at least once every five years. The review timetable must be agreed annually by the Council when it approves the Best Value Performance Plan as part of the policy framework and budget. A Scrutiny Committee's terms of reference may also include conducting and overseeing detailed reviews of Council services to ensure they are giving best value and that effective action plans exist to improve services on a continuing basis.~~

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2.2.4 A Scrutiny Committee's terms of reference may also include conducting —and overseeing detailed reviews of Council services to ensure they are providing value for money —and that effective action plans exist to improve services on a continuing basis.

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2.2.5 A Scrutiny Committee may review and make recommendations to the Cabinet and/or to the Council to assist in the development of future policies and strategies. A Scrutiny Committee may also be consulted by the Cabinet or the Council on forth-coming issues and policy proposals.

2.2.6 A Scrutiny Committee must be appointed by the Council, and must comprise a number of Councillors (with an appropriate political balance in membership) who hold office for a municipal year commencing with the annual meeting of the Council in May.

2.2.7 Decisions of a Scrutiny Committee must be reached in public, except where confidential and/or exempt matters are being discussed.

2.2.8 The Chair of any Scrutiny Committee whose Terms of Reference include responsibility for scrutiny of executive decisions shall be a Member appointed by Full Council.

2.2.9 Members of the Cabinet cannot be Members of any Scrutiny Committee.

### 2.3 Other Committees, Boards and Panels of the Council

2.3.1 There is a number of functions (such as development control, licensing, appointments of senior Council officers and the maintenance of ethical standards), which cannot be the responsibility of the Cabinet. These functions are delegated by the Council to other Committees, Boards and Panels and to officers of the Council. These delegations are set out in more detail in Article 8 of this Constitution.

2.3.2 The Council is able to appoint any Councillor to other Committees, Boards and Panels that take decisions on functions which are not the responsibility of the Cabinet, except that in some cases there are requirements as to the number of Members of the Cabinet who may be appointed. These requirements are set out in more detail in Article 7 of this Constitution.

2.3.3 Decisions of other Committees, Boards and Panels are reached in public except where confidential and/or exempt matters are being discussed.

### 2.4 Outside Bodies

2.4.1 Representatives of the Council on key local, regional or national public bodies where joint service planning and operational policy is involved will normally be appointed from amongst the Members of the Cabinet. Exceptionally, however, where it is judged to be in the Council's best interests, such appointments may be drawn from other Councillors. In cases where the Council has more than one nominee on such key bodies, the appointment of a Councillor who is not a Member of the Cabinet to the second place is encouraged, although sometimes the Council's representation may be best secured through an officer appointment.

2.4.2 Other appointments to Outside Bodies are filled by Non-Executive Members (i.e. Councillors who are not Members of the Cabinet) and non-elected representatives on the basis of the following expectations:-

- (a) the Council will consider the expertise, knowledge and interests of Members when considering appointments;
- (b) representatives on outside bodies should be properly briefed and provide feedback to the appropriate part of the Council's organisation;
- (c) representation on an outside body should be taken seriously and every effort made to attend regularly;
- (d) representatives should give a good impression of the Council;
- (e) regular contacts should be made with other representatives of the Council on outside bodies.

2.4.3 To secure maximum Member representation, the Council may appoint any Councillor to School Governing Bodies, whether or not they are Members of the Cabinet.

## **2.5 Area Committees and Joint Arrangements**

2.5.1 The Constitution also allows the Council and the Cabinet, if they wish, to delegate certain functions to:-

- (a) Area Committees or Forums to enable specific issues affecting local neighbourhoods to be considered in more detail; and to
- (b) joint bodies set up together with other local authorities to deal with issues that can be tackled better over a wider area or in a different way.

2.5.2 If any such functions are delegated in to area committees or under joint arrangements, details of those delegations must be shown in Annex 1.8 to this Constitution.

## **2.6 Non-Executive Councillors (i.e. not Members of the Cabinet)**

2.6.1 The roles of a Non-Executive Councillor are:-

- (a) through the scrutiny process to:-
  - (i) represent the community's interest to the Council;
  - (ii) monitor the decisions of the Cabinet;
  - (iii) review public services in the borough and contribute to their improvement.
- (b) to serve on Committees, Boards and Panels of the Council (other than the Cabinet);
- (c) to advise, and to be consulted by, the Cabinet through Cabinet Committees;

- (d) to represent the people of their Ward, both as individuals and collectively, to the Cabinet and departments of the Council and to other public bodies.

2.6.2 The Council is a body corporate and as such individual Councillors have a collective responsibility for the Council's functions. This collective responsibility extends to a duty to ensure that the Council complies with the law and does not act unlawfully. Councillors must think consciously whether what is being done under delegated powers is appropriate.

2.6.3 Non-Executive Councillors can discharge their responsibilities through:-

- (a) holding the Cabinet to account for the discharge of its functions by scrutinising decisions both before and after implementation;
- (b) the right of any five Members to requisition a meeting of the Council;
- (c) inspection of documents under the access to information legislation;
- (d) the power of the Council to appoint and remove the Leader of the Executive and the Cabinet.

### 3. The Council's Officers

3.1 The Council employs professional, administrative, clerical and manual staff referred to as 'officers'.

3.2 The Council is required to designate an officer to act as Head of Paid Service.

3.3 Officers are accountable to the Council as an organisation and serve all Members of the Council. Officers give advice, implement decisions and manage the day-to-day delivery of the Council's services. Some officers (the Head of Paid Service, the Monitoring Officer and the ~~Assistant Director (Finance)~~ S151 Officer) have a specific legal duty to ensure that the Council acts within the law and uses its resources wisely. A code of practice called the Member/Officer Protocol governs the relationship between Officers and Members of the Council. This is set out in Annex 3.54 to this Constitution.

3.4 All officers of the Council have a responsibility to act fairly, honestly, in good faith and in an impartial way to meet the specified objectives of the Council and must not place themselves in a position that would create the least suspicion of being influenced by improper motives. The Officer Code of Conduct (see Annex 3.32) outlines existing laws, regulations and conditions of service and provides further guidance to assist officers in their day-to-day work.

### 4. Citizens' Rights

4.1 Citizens have a number of rights in their dealings with the Council. These are set out in more detail in Article 3 of this Constitution. Some of these are legal rights, whilst others depend on the Council's own processes. The Citizens' Advice Bureau (CAB) can advise on individuals' legal rights.

4.2 Where members of the public have a contract with the Council under which the Council agrees to do certain things, for example as a Council tenant, they have additional rights. These are not covered in this Constitution.

4.3 Citizens have the right to:-

- (a) vote at local elections if they are registered;
- (b) contact their local Councillor about any matters of concern to them;
- (c) have access to a copy of this Constitution;
- ~~(d) attend meetings of the full Council, and its Committees, Boards and Panels except where confidential or exempt matters are being discussed;~~
- ~~(e) attend meetings of the Cabinet when Key Decisions are being decided or discussed;~~
- ~~(d) attend meetings of the full Council, Cabinet, Committees, Boards and Panels except where confidential or exempt matters are being discussed;~~
- (fe) petition to request a referendum on a Mayoral form of executive;
- (gf) attend meetings of any Scrutiny Committee and, by invitation of a committee, contribute to investigations or reviews undertaken by them;
- ~~(h) from the forthcoming notice (published 28 days in advance) yCabinet's Forward Plan, find out what major decisions are to be discussed or decided by the Cabinet and when;~~
- (ig) see agendas reports and background papers and records of decisions made by the Council, Cabinet, Committees, Boards and Panels (but excluding access to confidential/exempt information);
- (jh) complain to the Council about Council services – the Council encourages its customers through its Corporate Complaints Procedure to voice their concerns as an opportunity to put things right for the customer and to improve services;
- (ki) complain to the Local Government Ombudsman if they think the Council has not followed its procedures properly. However, they should only do this after using the Council's Corporate Complaints Procedure;
- (lj) complain to the ~~Standards Board for England~~ Standards Committee Monitoring Officer if they have evidence which they think shows that a Councillor has not followed the Member Code of Conduct;
- (mk) inspect the Council's accounts and to make their views known to the external auditor.

4.4 The Council welcomes participation by its citizens in its work. For further information on your rights as a citizen, please contact the Council's Committee and Electoral Services Department on 01474 33 72 47.

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**The Articles of**

**The Constitution of**

**Gravesham Borough Council**

Adopted by the Council on 23 April 2002

The Articles reflect subsequent amendments made by  
the Council up to and including winter 2014/2015

Re-issued Spring 2018

| The ~~Assistant Director (Communities)~~Service Manager (Communities) is  
responsible for ensuring  
that the Articles of the Constitution are kept up to date

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# The Articles of the Constitution

## Article 1 - The Constitution

### 1.1 Powers of the Council

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

### 1.2 The Constitution

This Constitution and all its annexes is the Constitution of Gravesham Borough Council.

### 1.3 Purposes of the Constitution

The purposes of the Constitution are to:

- (1) enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
- (2) support the active involvement of citizens in the process of local authority decision-making;
- (3) help Councillors represent their constituents effectively;
- (4) enable decisions to be taken efficiently and effectively;
- (5) create a powerful and effective means of holding decision-makers to public account;
- (6) ensure that no-one will review or scrutinise a decision in which they were directly involved;
- (7) ensure that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions;
- (8) provide a means of improving the delivery of services to the community; and
- (9) ensure that the Council's governance arrangements deliver efficient, transparent and accountable decision-making.

### 1.4 Interpretation of the Constitution

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated in Article 1.3 above.

### 1.5 Review of the Constitution

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

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

### **2.1 Composition and Eligibility**

#### **(1) Composition**

The Council will comprise 44 Councillors (also called Members). One or more Councillors will be elected by the voters of each Ward in accordance with the current scheme drawn up by the Local Government [Boundary Commission for England](#), ~~and approved by the Secretary of State and confirmed by a legal order.~~

#### **(2) Eligibility**

Only registered voters of the Borough or those living or working in the Borough (or such other persons as may be qualified under legislation) will be eligible to hold the office of Councillor.

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

#### **(1) Election of the whole Council every four years**

The regular election of Councillors will be held every four years on the first Thursday in May, beginning in 2003.

#### **(2) Terms of Office for Councillors**

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**

#### **(1) Governance**

All Councillors will:-

- (a) collectively be the ultimate policy-makers for the Council and carry out a number of strategic and corporate management functions;
- (b) contribute to the good governance of the Borough and the Council, and actively encourage community participation and citizen involvement in decision-making;
- (c) be involved in decision-making;
- (d) effectively represent their communities, including the interests of their Ward and of individual constituents whilst also balancing the different interests identified within their Ward and representing their Ward as a whole;
- (e) respond to constituents' enquiries and representations, fairly and impartially and assist constituents in resolving particular concerns or grievances;

- (f) be available to represent the Council on other bodies (for example partnerships and Outside Bodies) if appointed to such posts by the Council or the Cabinet; and
- (g) maintain the highest standards of conduct and ethics in order to give expression to the Seven Principles of Public Life and the Member Code of Conduct set out in Annexe 3.1 to this Constitution.

(2) **Community Representation**

- (a) all Councillors represent their constituents and play an important role in consulting and representing their communities on policy matters, ~~such as the Community Strategy Corporate Plan and other Strategy documents such as the Corporate Plan and other Strategy documents~~, Reviews of Services, and matters of concern and interest to their communities generally;
- (b) through the scrutiny process and through Cabinet Committees, Councillors can “feed-in” the views of the community they represent to policy development, decision-making and the setting of objectives.

(3) **Rights and Duties of All Councillors**

- (a) councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law;
- (b) councillors will not make public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or Officer entitled to know it;
- (c) for these purposes “confidential” and “exempt” information are defined in the Access to Information Rules set out in Annex 2.2 to this Constitution.

**2.4 Conduct**

Councillors will at all times observe the Members’ Code of Conduct, [the Member/Public Protocol](#) -and the Member/Officer Protocol set out in Annexes 3.1, [3.3](#) and 3.4 to this Constitution.

**2.5 Remuneration and Allowances**

(1) **Independent Remuneration Panel**

The Council will establish and maintain an Independent Remuneration Panel in accordance with the Protocol for Appointments to the Independent Remuneration Panel set out in Annex 3.7 to this Constitution to provide the Council with advice on its Members’ Allowances Scheme, the amounts to be paid and the pensionability of allowances where relevant, together with any other matters that may be required by law.

(2) **Members’ Allowances**

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Annex 4 to this Constitution.

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

### **3.1 Citizens' Rights**

Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules as set out in Annex 2.2 to this Constitution.

#### **(1) Voting and Petitions**

Citizens who are on the electoral roll for the Borough have the right to vote and to sign a petition, requesting a referendum for an elected Mayor form of constitution. Residents and those who work or study within the Borough also have the right to sign petitions.

#### **(2) Information**

Citizens have the right to:-

- (a) attend meetings of the Council and its Committees, Boards and sub-committees, except where confidential or exempt information is likely to be disclosed and the meeting is therefore held in private;
- (b) attend meetings of the Cabinet when "Key Decisions" are being considered, except where confidential or exempt information is likely to be disclosed and the meeting is therefore held in private;
- (c) find out from the Council's website what "Key Decision(s)" will be taken by the Cabinet, or by any bodies or individuals to whom the Cabinet may have delegated the exercise of any of its functions, and when it is expected those decisions will be taken;
- (d) see reports and background papers (excluding confidential/exempt information) and any records of decisions made by the Council, Cabinet, Committees, Boards and sub-Committees; and
- (e) inspect the Council's accounts and make their views known to the external auditor.

#### **(3) Participation**

Citizens have the right to participate in the Council's question time and (on invitation by the committee or by the committee Chair) to contribute to investigations by a Scrutiny Committee.

Public speaking is allowed at meetings of the Regulatory Board (Planning).

#### **(4) Complaints**

Citizens have the right to complain to:-

- (a) the Council itself under its Complaints Procedure;

- (b) the Local Government Ombudsman, after using the Council's Complaints Procedure;
- (c) the ~~Standards Committee~~ Council's Monitoring Officer about an alleged breach of the Member Code of Conduct set out in Annex 3.1 to this Constitution. These complaints should be addressed to the Monitoring Officer, Gravesham Borough Council, Civic Centre, Windmill Street, Gravesend, Kent, DA12 1AU;

### 3.2 Citizens' Conduct

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

## Article 4 - The Council

### 4.1 Meanings

The terms listed below have the following meanings throughout this Constitution.

#### (1) — Policy Framework

The 'Policy Framework' means the following plans and strategies to be adopted by the Council:-

- (a) — Community Plan or Strategy (for promoting or improving the economic, social and environmental well-being of the local community);
- (b) — Best Value Performance Plan;
- (c) — Community Safety Strategy;
- (d) — Plans and alterations which together form the Local Development Plan;
- (e) — Housing Strategy, Housing Investment Programme and Housing Business Plan;
- (f) — Any other formal Plans or Strategies which the Council may decide, or which legislation requires, should form part of the Policy Framework.

#### **1 Policy Framework**

The 'Policy Framework' means the following Plans and Strategies to be adopted by the Council:

- a) Corporate Plan (or equivalent document);
- b) Equalities Policy (or equivalent document);
- c) Local Plan and all related plans and alterations;
- d) Pay Policy Statement;
- e) Housing Strategy (including the Housing Investment Programme and Housing Business Plan);
- f) Community Safety Strategy.

In addition, the Council meeting can adopt any other formal plans or strategies which the Council may decide, or which legislation requires, should form part of the Policy Framework. This includes but is not exclusive to:

- a) Working in Partnership Framework;
- b) Code of Corporate Governance;
- c) Licensing Policies as required under the Gambling Act 2005.

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(2) **Budget**

The budget is a statement of Council policy in financial terms and includes the overall allocation of financial resources, capital and revenue and the setting of the Council Tax base.

(3) **Housing Land Transfer**

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

## 4.2 **Functions of the Council**

Only the Council will exercise the following functions:-

(1) **Constitutional and Procedural Matters, etc.**

- (a) to adopt and change the Articles of this Constitution;
- (b) to change the name of the area;
- (c) to make, amend or revoke the Procedural Rules set out in Annex 2 to this Constitution;
- (d) to make, amend or revoke the Codes of Conduct and Protocols set out in Annex 3 to this Constitution;
- (e) to confer the Freedom of the Borough or the title of Honorary Alderman.

(2) **Setting the Policy Framework and Related Matters**

- (a) to approve the Council's Policy Framework, except that in-year amendments to Plans or Strategies forming part of the Policy Framework and Budget will be delegated to the Cabinet by the Council;
- (b) to determine each year the Council's revenue and capital budget and Council Tax levy, except that determining the rents of Council dwellings and related properties and the charges to be made for the Council's services, is delegated to the Cabinet;
- (c) subject to the Urgency Procedure contained in the Access to Information Procedure Rules detailed in Annex 2.2 to this Constitution, to make decisions about any matter in the discharge of an executive function which is covered by the Policy Framework or the Budget where the Cabinet is minded to make it in a manner which would be:-

- (i) contrary to the Policy Framework; or
  - (ii) contrary to (or not wholly in accordance with) the Budget.
- (d) to adopt, amend or revoke the Members' Allowances Scheme under Annex 4 of this Constitution, including the levels and pensionability of Councillors' allowances;
  - (e) to make, amend, revoke, re-enact or adopt bylaws and to promote or oppose the making of local legislation or personal Bills;
  - (f) to authorise applications to the Secretary of State for housing land transfers of housing stock.
- (3) **Appointments and Delegations, etc.**
- (a) to appoint (and remove) the Leader of the Executive;
  - (b) to determine the terms of reference, composition and membership of other Committees, Boards and Panels that report directly to the Council, and appointments to them;
  - (c) to adopt and approve amendments to the powers and terms of reference of joint and area committees and to make appointments to them;
  - (d) to appoint representatives to Outside Bodies, except where the appointment has been delegated by the Council;
  - (e) to make or confirm the appointment of the Council's Statutory Officers required under Article 12.5 of this Constitution;
  - (f) subject to the requirements of the law and the Officer Employment Procedural Rules set out in Annex 2.8 to dismiss the Head of Paid Service or other Statutory Officers.
- (4) **Regulatory and Electoral Matters**
- (a) to deal with findings of maladministration (on receipt of a report from the relevant Scrutiny Committee or the Monitoring Officer following a report by the Local Government Ombudsman);
  - (b) to determine the action to be taken on reports by the Monitoring Officer or the Chief Finance Officer (including Section 112 and Section 114 reports);
  - (c) to consider reports concerning the dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer pursuant to the procedures set out in the Local Authorities (Standing Orders) (England) ([Amendment](#)) Regulations [2015 2004](#);
  - (d) to determine matters relating to local elections unless the function has been delegated by the Council;

- (e) to review matters relating to electoral and administrative arrangements and to determine the Council's response to any consultations or proposals by the Electoral Commission relating to the Borough.

(5) **Other Matters**

- (a) to determine any matters referred to the Council for decision by a Committee, Board or Panel that reports directly to the Council;
- (b) to resolve any dispute between any of the subsidiary bodies of the Council if required;
- (c) to deal with all 'local choice functions' set out in Annex 1.14 to this Constitution which the Council decides should be undertaken by itself rather than by the Cabinet or a committee or Board;
- (d) to deal with any other matter which must, by law, be reserved for determination by the Council.

### 4.3 Council Meetings

There are four types of Council meetings:-

- (1) The Annual Meeting;
- (2) Ordinary Meetings;
- (3) Extraordinary Meetings;
- (4) The State of the Borough Debate;

and they will be conducted in accordance with the Council Procedure Rules detailed in Annex 2.1 to this Constitution.

### 4.4 Responsibility for Functions

The Council will review and maintain Annex 1 to this Constitution, setting out the responsibilities for the non-executive functions of the Council, its Committees, Sub-Committees, Boards and Panels and delegations of those functions.

The Leader of the Executive will review and maintain Annex 1 to this Constitution setting out the responsibilities for the executive functions and delegations of those functions.

## Article 5 – Chairing the Council

### 5.1 Mayor - Making

The title of 'Mayor' is derived from the Council's status as a Borough and this office is filled annually by a Councillor who is elected by the Council at its Annual Meeting at the start of each municipal year.

Mayor-making is regarded as an important civic and ceremonial event. The election of the Mayor is not decided by the Borough's electorate but by a majority of the Councillors present and voting at the Annual Meeting of the Council in May of each year.

A Deputy Mayor is elected by the Council from among the Councillors.

The Mayor is addressed as 'The Worshipful the Mayor of Gravesham'. The Deputy Mayor is addressed as 'The Deputy Mayor'.

### 5.2 Role and functions of the Mayor

The Mayor is the First Citizen of the Borough of Gravesham ~~and is the Monarch's representative in the Borough.~~

The Mayor, and in his/her absence the Deputy Mayor, have the following roles and functions:-

- (1) to uphold and promote the purposes of this Constitution and to interpret the Constitution where necessary;
- (2) to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
- (3) to ensure that meetings of the Council are forums for the debate of matters of concern to the local community and the place at which Members who are not in the Cabinet, nor hold office of Committee/Board Chair, are able to hold Cabinet Members and Committee/Board Chairs to account;
- (4) together with all Members of the Council, to promote public involvement in the Council's activities;
- (5) to be the conscience of the Council;
- (6) to attend such civic and ceremonial functions as the Council, the Mayor and the Leader of the Executive determines are appropriate.

The Mayor and Deputy Mayor cannot be appointed to the Cabinet.

## **Article 6 – Scrutiny**

### **6.1 Purposes of Scrutiny**

To achieve enhanced accountability and transparency of the decision-making process, effective overview and scrutiny is essential. Scrutiny is a key element of the Council's executive arrangements and is the main way by which executive decision-makers are held to public account for the discharge of the functions for which they are responsible.

The scrutiny process is also a key mechanism for enabling Councillors to represent the views of their constituents and other organisations to the Cabinet and to the Council and, by examining the operation and impact of the Council's policies, are a useful means of improving the development of policies and delivery of services.

### **6.2 Appointment and Terms of Reference**

The Council will, at its Annual Meeting, appoint at least one Scrutiny Committee to discharge the scrutiny functions required by legislation.

No committee appointed under this Article will continue in existence after the next Annual Meeting of the Council following its appointment.

### **6.3 Membership**

Any Scrutiny Committee appointed by the Council must reflect the political balance of the Council.

Members of the Cabinet may not be Members of a Scrutiny Committee.

The Chair of any Scrutiny Committee whose Terms of Reference include responsibility for scrutiny of executive decisions shall be a Member appointed by Full Council.

In deciding the membership of a Scrutiny Committee, the Council shall take into account the particular skills and expertise required to ensure that thorough and informed scrutiny and reviews take place.

A scrutiny committee may co-opt people to act as non-voting members in accordance with the Scrutiny Procedure Rules.

### **6.4 Sub-Committees**

A Scrutiny Committee may delegate any of its functions to a sub-committee of itself, the membership of which must be drawn solely from the Members (including substitutes) of the appointing Scrutiny Committee.

No more than three sub-committees of any one Scrutiny Committee may be in existence at any one time.

Any sub-committee appointed by a Scrutiny Committee must reflect the political balance of the Council unless the Committee determines otherwise with no votes being cast against by any Committee Member present and voting.

#### **6.5 Meetings and Procedure**

A Scrutiny Committee must meet in public except where confidential and/or exempt matters are being discussed.

Meetings must be conducted in accordance with the Scrutiny Procedure Rules set out in Annex 2.5 to this Constitution.

#### **6.6 Scope of external Scrutiny**

Within its Terms of Reference a Scrutiny Committee may examine matters which are not the direct responsibility of the Council where these are relevant to the remit of the Committee (or sub-committee).

A Scrutiny Committee may also make reports or recommendations to the Cabinet and/or to the Council in relation to matters which are not the responsibility of the Council but which nevertheless affect the Borough or its inhabitants.

#### **6.7 Witnesses and Consultees**

A Scrutiny Committee may, within the limitations set in the Scrutiny Procedure Rules in Annex 2.5 to this Constitution, require Members of the Cabinet, or any other Member of the Council or any Director or Chief Officer of the Council to appear before the Committee and answer questions.

Officers are employed by the Council to work for and serve the Council as a whole. Scrutiny Committees will respect the political neutrality of Officers.

The scrutiny process benefits from input from all those with a legitimate interest, including the local community and other local public, private and voluntary organisations. Particular attention should be paid to obtaining views from “hard to reach” groups such as minority ethnic communities and people with disabilities. Where appropriate, representatives of legitimate community groups should be asked to contribute to the review of issues particularly affecting them, for example residents’ and tenants’ associations.

A Scrutiny Committee may, therefore, also invite any other person to appear before it, subject to that person’s consent.

#### **6.8 Limitations**

A Scrutiny Committee can only discharge the following functions and no other functions of the Council:-

- (1) to carry out the scrutiny functions required by legislation, The Scrutiny Procedure Rules and the committee’s Terms of Reference;

- (2) to make reports or recommendations to the Cabinet or the Council on those matters;
- (3) to make reports or recommendations to the Cabinet or the Council in respect of matters which affect the Council's area or its inhabitants.

This is to ensure there is a clear separation between the discharge of functions and the review and oversight of those functions.

## **6.9 Finance and Staffing**

A Scrutiny Committee shall exercise overall responsibility for the expenditure of any budget made available to it and for the use of any officer time allocated to it by the Council.

## Article 7 - Leader and Cabinet Executive

### 7.1 Role and Functions

The Council has adopted a form of executive arrangements known as a new style "Leader and Cabinet Executive". The various parts of this Constitution that together comprise the Council's executive arrangements are set out in Annex 1.18 to this Constitution.

The Executive will exercise all of the Council's functions which are not the responsibility, whether by law or under this Constitution, of any other part of the Council.

### 7.2 Form and Composition

(1) The Executive will comprise:-

- 1.1 [The Leader who will be a Councillor elected by the Council at the Annual Meeting of the full Council following on from the ordinary election of all Councillors; a Leader elected by the Council at its Annual Meeting in May 2011 and at every post election Annual Meeting \(under whole Council elections\) thereafter;](#)
- 1.2 no more than ten Cabinet Members, including the Leader and the Deputy Leader.

### 7.3 Leader of the Executive

- (1) The term of office of the Leader starts on the day of his/her election as Leader and ends on the day of the next post election Annual Meeting (under whole Council elections) unless, before that day, he/she:-
  - 1.1 is removed from office or resigns;
  - 1.2 ceases to be a Councillor; or
  - 1.3 is disqualified from being a Councillor.
- (2) The Leader will be a Councillor of the Borough of Gravesham and will be elected by the Council to serve for a term of four years or until the Annual Meeting following the next ordinary Council elections.
- (3) During his/her term of office the Leader will continue to hold office as a Councillor and accordingly, any enactment which provides for earlier retirement as a Councillor will not apply.
- (4) The Council will have the power to remove the Leader from office before the end of his/her four year term by way of resolution. At any meeting of the Full Council a Councillor may propose that "the Council has no confidence in the Leader". If carried by a simple majority of those Councillors present and voting, the Leader will be removed from office.

- (5) If the Council passes a resolution to remove the Leader, a new Leader will be elected:-
- 5.1 at the same meeting at which the Leader is removed from office; or
  - 5.2 at a subsequent meeting.

#### **7.4 Appointment of the Cabinet and scheme of delegation**

- (1) The Leader will decide the size of his/her Cabinet (subject to a maximum of ten, including the Leader and Deputy Leader) and will appoint Cabinet Members from among the serving Councillors. The Leader may replace or remove Cabinet Members at any time.
- (2) All executive functions of the Council will be vested in the Leader. The Leader may exercise those functions himself/herself, or may delegate specified executive functions to be exercised by the Cabinet collectively, a Cabinet Committee, an individual Cabinet Member or an Officer. The Leader may revoke such delegations at any time.
- (3) Delegation of executive function(s) to be exercised by a Cabinet Member or by a Ward Councillor in accordance with Section 236 of the Local Government and Public Involvement in Health Act 2007; will be at the discretion of the Leader.
- (4) The Leader will report to Council on all appointments and changes to the Cabinet (Executive) and delegation of executive functions of the Council.

Neither the Mayor nor Deputy Mayor may be elected as Leader of the Executive or be appointed to the Cabinet.

The Leader of the Executive may not be appointed to any Scrutiny Committee or to the Standards Committee. Other Members of the Cabinet may not be Chair of the Standards Committee and may not be appointed to any Scrutiny Committee. Not more than two Members of the Cabinet (or the nearest whole number equivalent to 20 per cent of the total membership of the Regulatory Board (Planning), whichever is the lesser figure) may be appointed to the Regulatory Board (Planning) or such other committee or sub-committee as may be appointed to determine matters relating to the grant of licences and statutory consents or enforcement action against persons. No Member of the Cabinet so appointed shall be the Chair or Vice-Chair of the Regulatory Board (Planning) nor of any other committee or sub-committee discharging similar functions.

The nearest whole number equivalent to 50 per cent of the total membership of the Appointments Board will be selected by the Leader of the Executive for appointment to the Appointments Board (or such other committee as may be appointed to determine matters relating to the appointment of officers).

Not less than three Members of the Appointments Board who have been selected by the Leader of the Executive (or the nearest whole number equivalent to 50 per cent

of the total membership of an Appointments Panel constituted from the membership of the Appointments Board, whichever is the lesser figure) will be appointed to an Appointments Panel or any other body authorised to make an appointment to the Council's staff.

There shall not be any co-optees, deputies or substitutes for Members of the Cabinet, excepting that Members of the Cabinet (including the Leader) may be substitutes for each other on any sub-Committees, Panels or Working Groups established by, and reporting to, the Cabinet.

#### **7.5 Deputy Leader**

- (1) The Leader will appoint a Deputy Leader from among the Cabinet Members. The Leader may replace the Deputy Leader at any time, but otherwise the Deputy Leader will remain in post for the duration of the Leader's term of office.
- (2) The Deputy Leader will have authority to exercise the Leader's powers only in the event that the Leader is unable to act at any time or the office of Leader is vacant.
- (3) If the Deputy Leader is unable to act or the office is vacant, the Cabinet (Executive) must act in the Leader's place or arrange for a Member of the Cabinet (Executive) to do so.

#### **7.6 Proceedings of the Cabinet**

Proceedings of the Leader and Cabinet Executive shall take place in accordance with the Executive Procedure Rules set out in Annex 2.4 to this Constitution.

#### **7.7 Delegation of Powers**

The [Service Manager Assistant Director](#) (Communities) shall maintain a list setting out clearly which Members of the Cabinet, sub-committees of the Cabinet, officers of the Council, area committees or joint arrangements with other local authorities carry current responsibilities for the discharge of functions delegated by the Cabinet, together with the current allocation of portfolios amongst Cabinet Members. This list, as amended from time to time, shall be incorporated within Annex 1 to this Constitution and shall be made publicly available.

#### **7.8 Cabinet Committees**

The Leader may appoint Cabinet Committees to advise it about carrying out its functions. Such Committees, and appointments of individuals to them, may exist for a fixed or unspecified period, but in any event will cease upon a change in the political control of the Council or at the Annual Meeting of the Council immediately following a general election of the entire Council.

When establishing a Cabinet Committee, the Leader shall also state the Committee's Terms of Reference and composition, which shall be made publicly available. Appointments and terminations of appointments of individuals to existing committees shall similarly be made public.

Such Committees may be made up of any mixture of Councillors. Council officers may attend meetings of such Committees to provide information.

Cabinet Committees need not comply with the legislation on political proportionality, but they should reflect a broad cross-section of both the Council and the wider community. Committees should be constituted having regard to the particular knowledge and skills of those appointed.

Any written reports made by a Cabinet Committee to the Cabinet shall be made publicly available, except where they contain confidential and/or exempt information.

### **7.9 Ethics and Probity**

Members of the Cabinet will be treated no differently from other Councillors in that they will be subject to the Member Code of Conduct set out in Annex 3.1 to this Constitution, and to investigation ~~by the Council's Monitoring Officer or Standards Committee~~ should any allegations of breaches of the Code be received.

Members of the Cabinet will be required to declare and register their interests and, if appropriate, to seek local dispensations from the Standards Committee.

### **7.10 Officer Support**

Officers are employed by the Council to work for and serve the Council as a whole. The Cabinet will respect the political neutrality of Officers.

## **Article 8 – Regulatory Board (Planning) and other Committees**

### **8.1 Appointment of Committees by the Council**

The Council will appoint a Regulatory Board (Planning) to deal with the Council's development control, licensing and other quasi-judicial functions, together with such other committees, boards and panels as it considers appropriate to discharge its functions, with the exception of any such functions which are reserved to the full Council under Article 4 of this Constitution.

Details of all such committees, boards and panels, their membership and terms of reference, as amended from time to time, shall be set out in Annex 1.2 to this Constitution.

No committee, board or panel appointed under this Article will continue in existence after the next Annual Meeting of the Council following its appointment.  
In respect of any committee, board or panel appointed under this Article, the Council may at any time:-

- (1) dissolve or alter its membership; and/or
- (2) withdraw, extend or modify its terms of reference and powers; and/or
- (3) refer to it any matter not reserved to the full Council.

### **8.2 Meetings of Committees**

Meetings of all committees, boards and panels appointed to discharge the Council's functions will be held in public, except where confidential and/or exempt matters are being discussed.

## Article 9 – The Standards Committee

### Explanatory Comment

Standards Committees have an important role in strengthening and maintaining the high standards of conduct required of Members and officers.

#### 9.1 Standards Committee

The Council has established a Standards Committee.

#### 9.2 Composition

- (a) Membership. The Standards Committee is composed of nine Members.
- (b) Political Balance. The Standards Committee will be politically balanced. Independent Person. The Independent Person is appointed to advise and assist the Monitoring Officer and Members in relation to allegations that the Code of Conduct has been broken. Independent Persons are not members of the Standards Committee. The Monitoring Officer may appoint Independent Persons as vacancies arise and may appoint deputies.
- (c) Quorum. The Quorum of the Councillor Conduct Committee shall be three Councillors.
- (d) Chairing the Committee. A Member of the Executive may not chair the Committee.

#### 9.3 Role and function

For the Standards Committee Terms of Reference see Annex 1.2 of the Constitution.

- 9.4 The Committee will receive allegations that a Councillor or voting or non-voting co-opted member of the Council of the 6 Parish Councils has breached the relevant Members Code of Conduct and decide whether or not an investigation is to be carried out in relation to those complaints. The Monitoring Officer advised by the Independent Person will assess complaints regarding the conduct of Members within the Borough and decide whether or not an investigation is to be carried out in relation to these complaints.

- 9.5 If the Committee decides to refer the allegation to the Monitoring Officer for investigation it shall receive the report of any investigator and the opinion of the Independent Person. The Committee may on receipt of the report, the opinion and any written representations decide whether a breach of the Councillor Code of Conduct has occurred and if so what action to recommend.  
~~Hearings following investigations will be dealt with by a Panel of Members drawn from the Committee. On Parish complaints a Parish Councillor will be a member of the Panel in a non-voting capacity.~~

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

### **10.1 Form and Composition**

The Council may appoint area committees and forums as it sees fit, if it is satisfied that to do so will ensure improved service delivery in the context of best value and more efficient, transparent and accountable decision making.

The Council will consult with relevant Parish Councils when considering whether and how to establish area committees. The objective will be to establish a partnership approach to strengthen the focus of action and to help give local communities a real input into decisions which affect them.

Area committees or forums can take many forms and undertake a variety of roles. For example, they may be made up of Councillors, representatives from other public, private and voluntary sector bodies in the area and members of the public, or they may be made up of Councillors only.

Area committees can be purely advisory and consultative bodies or they can have specific functions and budgets delegated to them by the Council.

Area Forums must be advisory and/or consultative bodies only.

### **10.2 Appointment of Area Committees & Forums**

Where the Council decides to appoint an Area Committee or Forum, it shall detail the Committee or Forum's Terms of Reference and composition (as amended from time to time) in Annex 1.8 to this Constitution.

The composition of Area Committees and Forums must in all cases reflect the law on co-optees and political balance commensurate with their Terms of Reference. In general, however, Area Committees need not reflect the political balance of the Council as a whole if all of the voting Members on the committee represent Wards within its area and that area does not exceed two fifths of the total for the Council by reference to population or area.

Area Committees may also include voting co-optees if the Committee is appointed exclusively to discharge functions relating to:-

- (1) Corporate Property Management;
- (2) Housing Management (of 1,500 dwellings or one quarter of the Council's stock, whichever is the less);
- (3) Promotion of tourism;
- (4) Festival Management;
- (5) Joint County/District Functions discharged by a joint committee.

### **10.3 Delegation of Functions to Area Committees**

The Council may only delegate to Area Committees those functions which are not the functions of the Executive and which are not reserved by law to the Council itself.

Subject to the provisions of Article 7.07 of this Constitution, the Executive may delegate functions to an Area Committee. In deciding to delegate functions for which it is responsible, the Executive must satisfy itself that the delegation will not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that the arrangements will deliver best value. The Executive remains and will be seen to remain, accountable for those functions as the clear, accountable corporate leadership of the Council.

If both executive and non-executive functions are delegated to the same Area Committee, the agendas for, and reports submitted to, the meeting must make it clear whether the decisions required relate to Executive functions or not.

Where the Council decides to appoint an Area Committee, Annex 1.8 to this Constitution must clearly state:-

- (1) which of the Area Committee's powers and functions are the responsibility of the Executive (and therefore exercisable under the supervision of the Executive) and which are not;
- (2) the budgets and limits on authority accompanying a delegation by the Council or the Executive.

Both the Council and the Executive will continue to have powers to discharge the functions which they have delegated to an Area Committee. This ensures that there is sufficient flexibility so that if the Council or the Cabinet need to exercise the powers (for example in consequence of the exercise of another power) then they have the ability to do so.

Functions which are the responsibility of the Executive and which are delegated to an Area Committee must be exercised in accordance with the Council's Policy Framework and Budget and any written guidance provided by the Executive in relation to those functions.

Regardless of any other provisions of this Constitution, however, an Area Committee may not take a decision which significantly affects all of the Council's area, or a part of the Council's area in respect of which that Committee does not have functions, though it may make recommendations to the Executive to do so.

### **10.4 Conflicts of Interest: Membership of Area and Scrutiny Committees**

It is a fundamental principle of accountability that a Councillor cannot scrutinise his/her own decisions. Therefore:-

- (1) if the relevant Scrutiny Committee is scrutinising specific decisions or proposals in relation to the business of an Area Committee of which the Councillor concerned is a Member, then the Councillor may not speak or vote at the Scrutiny Committee meeting unless an exemption or dispensation to do

so is given by the Standards Committee in accordance with the Standards Committee Protocol set out in Annex 3.8 to this Constitution;

- (2) where the relevant Scrutiny Committee is reviewing policy affecting the whole or a large part of the Borough generally, the Member must declare his/her interest orally before the relevant agenda item is reached, but need not withdraw from the decision making process.

#### **10.5 Area Committees: Access to Information**

Area Committees will comply with the Access to Information Rules detailed in Annex 2.2 to this Constitution.

Agendas and notices for Area Committee meetings which deal both with functions of the Executive and functions which are not the responsibility of the Executive must identify clearly which items are which.

#### **10.6 Executive Members on Area Committees**

A Member of the Cabinet may serve on an Area Committee if otherwise eligible to do so as a Councillor.

## **Article 11 – Joint Arrangements**

### **11.1 Arrangements to Promote Well-being**

In order to promote the economic, social or environmental well-being of its area, the Cabinet may:-

- (1) enter into arrangements or agreements with any person or body;
- (2) co-operate with, or facilitate or co-ordinate the activities of, any person or body;
- (3) exercise on behalf of that person or body any functions of that person or body.

### **11.2 Joint Arrangements**

The Council may enter into arrangements with one or more other local authorities and/or their Executives to discharge jointly functions which are not functions of the Executive. Those arrangements may include establishing a joint committee either to advise the local authorities on matters of joint interest or to discharge functions on their behalf.

The Executive may establish joint arrangements with one or more other local authorities (including Parish Councils) to exercise functions which are executive functions. Such arrangements may involve the appointment of joint committees with those other local authorities.

Except as set out below, the Executive may only appoint Members of the Cabinet to a joint committee and those appointments need not reflect the political composition of the Council as a whole.

The Executive may appoint Members from outside the Cabinet to a joint committee where the joint committee has functions for only part of the area of the Council and that area is smaller than two-fifths of the Council by area or population. In such cases, the Executive may appoint to the joint committee any Councillor who is a Councillor for a Ward which is wholly or partly contained within the area of the joint committee. The political balance requirements do not apply to such appointments.

When entering into any such joint arrangements the Executive may agree:-

- (1) the number of Members of a joint committee to be appointed from each of the participating local authorities; and
- (2) arrangements for the delegation by joint committees to sub-committees of themselves or to Officers.

In deciding whether to enter into any such joint arrangements in respect of functions for which it is responsible, the Executive must satisfy itself that those arrangements will not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that the arrangements will deliver best value. The

Executive remains and will be seen to remain, accountable for those functions as the clear, accountable corporate leadership of the Council.

The terms of reference and other relevant details of all joint arrangements, as amended from time to time (including the membership of, and any delegations to, joint committees) shall be set out in Annex 1.15 to this Constitution.

### **11.3 Access to Information**

If a joint committee is composed solely of Members who are also Cabinet Members in their own authority, then the access to information regime in the Cabinet Procedure Rules set out in Annex 2.4 to this Constitution apply to the joint committee's business.

However, if any Member of a joint committee is not a Cabinet Member in their own authority, then the Access to Information Rules in Part VA of the Local Government Act 1972, and set out in Annex 2.2 to this Constitution, apply.

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

The Council may delegate non-executive functions to another local authority or, in certain circumstances (see below), to the Cabinet of another local authority (including Parish Councils).

The Executive may delegate executive functions to another local authority or, in certain circumstances (see below), to the Cabinet of another local authority.

The circumstances that determine whether or not a function may be delegated to the Cabinet of another local authority are as follows:-

- (1) The function concerned must be the responsibility of the Cabinet of the authority to which the function is being delegated in circumstances where the function concerned:-
  - (a) is the responsibility of the Cabinet in both authorities;
  - (b) is the responsibility of the Cabinet in the delegating authority, but the function is not a function of the authority to which it is being delegated;
  - (c) is not the responsibility of the Cabinet in the delegating authority, but is the responsibility of the Cabinet in the authority to which it is being delegated;
- (2) The function concerned cannot be the responsibility of the Cabinet of the authority to which the function is being delegated in circumstances where the function concerned:-
  - (a) is not the responsibility of the Cabinet in the delegating authority, and the function is not a function of the authority to which it is being delegated;
  - (b) is not the responsibility of the Cabinet in both the delegating authority and the authority to which it is being delegated.

- (3) It is for the two authorities to choose whether or not the Cabinet in the authority to which it is being delegated should be responsible for the function in circumstances where the function concerned is the responsibility of the Cabinet in the delegating authority, but not in the authority to which it is being delegated.

In all cases, however, the decision as to whether or not to accept such a delegation from another local authority is reserved to the Council.

The Council and/or the Executive (as appropriate) continue to have the power to discharge the functions which are the subject of joint committee arrangements. Functions which are the responsibility of the Executive and which are to be discharged under joint arrangements must be exercised in accordance with the Policy Framework and Budget set by the Council.

In deciding to delegate a function for which it is responsible, the Executive must satisfy itself that the delegation will not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that the arrangements will deliver best value. The Executive remains and will be seen to remain, accountable for those functions as the clear, accountable corporate leadership of the Council.

### **11.5 Contracting Out**

Provided there is no delegation of the Council's statutory decision-making functions, the Executive may contract out to another body or organisation those of its functions which may in law be exercised by an officer of the Council and which are either:-

- (1) subject to an order under Section 70 of the Deregulation and Contracting Out Act 1994; or
- (2) under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles.

In deciding to contract out a function for which it is responsible, the Executive must satisfy itself that contracting out that function will not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that the arrangements will deliver best value. The Executive remains and will be seen to remain, accountable for those functions as the clear, accountable corporate leadership of the Council.

### **11.6 Scrutiny of Joint Arrangements**

A Scrutiny Committee whose Terms of Reference include responsibility for scrutiny of executive decisions in respect of the matter concerned is able to hold the Executive to account both for a decision to delegate or contract out a particular function and for the actual discharge of the function.

## **11.7 Conflicts of Interests – Membership of Joint and Scrutiny Committees**

It is a fundamental principle of accountability that a Councillor cannot scrutinise his/her own decisions. Therefore:-

If the relevant Scrutiny Committee is examining specific matters in relation to the business of a joint committee or joint arrangement of which the Councillor concerned is a Member, then the Councillor may not speak or vote at the Scrutiny Committee meeting unless a local dispensation to do so is given by the Standards Committee in accordance with the Standards Committee Protocol set out in Annex 3.8 to this Constitution.

Where the relevant Scrutiny Committee is reviewing policy generally and where the specific business of a joint committee or joint arrangement of which the Councillor concerned is a Member is not a central or significant feature of that review, then the Member must declare his/her interest orally before the relevant agenda item is reached, but may speak and vote.

## **Article 12 – Officers of the Council**

### **12.1 Terminology**

The term 'officers' means all employees and staff (managerial, professional, technical, administrative, clerical and manual) engaged by the Council to carry out its functions.

### **12.2 General Principles**

In employing and organising officer support for the different roles within the Council, the Council will follow a number of key principles with a view to delivering efficient and effective services:-

- (1) all officers are employed by, and are accountable to, the Council as a whole, and the Council will both expect and respect the political neutrality of officers in the discharge of their functions;
- (2) adequate support from officers is provided for the discharge of all the Council's functions and specifically the roles of the Council, the Cabinet, Scrutiny Committees, other Committees, Boards, Panels and individual Members representing their communities, etc;
- (3) day to day managerial and operational decisions remain the responsibility of the Council's Directors, [Assistant Directors](#), Service Managers and other officers;
- (4) the Council seeks to avoid creating potential conflicts of interests for officers arising from the separation of the Cabinet and Scrutiny roles; and
- (5) all officers have access to appropriate training and development to help them support the various functions of the Council and its Members effectively.

The roles, responsibilities and rights of officers and Members are set out in the Member/Officer Protocol set out in Annex 3.4 to this Constitution.

### **12.3 Appointment of Officers Generally**

The Council will employ such officers as it considers necessary to carry out its functions efficiently and effectively.

Appointments of officers cannot be the responsibility of the Executive.

Appointment of officers other than Directors and Chief Officers is the responsibility of the Head of Paid Service or his/her nominee(s).

### **12.4 Appointment of Directors and Chief Officers**

The Council will employ persons for the posts, functions and areas of responsibility specified in Annex 1.11 to this Constitution (as amended from time to time), who will be designated as Directors and Chief Officers (as appropriate).

Appointments to posts of Directors and Chief Officers will be made by an Appointments Panel constituted from within the membership of an Appointments Board appointed by the full Council.

The composition of the Appointments Board, and any Panel constituted from within its membership, shall comply with Article 7.04-4 of this Constitution.

The political proportionality rules shall apply to the Appointments Board and to any Appointment Panel constituted from within its membership.

## 12.5 Statutory Officers

The Council will designate the posts specified in Articles 12.07 to 12.09 below (as amended from time to time) to discharge the functions set out in those Articles.

## 12.6 Management Structure

The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This is set out in Annex 5 to this Constitution.

## 12.7 Functions of the Head of Paid Service

The Head of Paid Service will report to the Council or to the Executive (as appropriate) on the manner in which the discharge of the Council's functions is co-ordinated, the numbers and grades of officers required for the discharge of functions and the organisation of officers.

The Head of Paid Service may not be designated as the Council's Monitoring Officer but may hold the post of Chief Finance Officer if s/he is a qualified accountant.

## 12.8 Functions of the Monitoring Officer

The Monitoring Officer performs a key function in ensuring lawfulness and integrity in the operation of the Council's decision-making process including investigation and reporting on issues that embrace all aspects of the Council's functions.

In order for the Monitoring Officer to carry out his/her statutory duties and powers, the Council will need to ensure that s/he has access as necessary to meetings and papers and that Members consult with him/her regularly.

The statutory duties and powers of the Monitoring Officer are as follows:-

- (1) **Maintaining the Constitution:** to ensure an up-to-date version of the Constitution is maintained and that it is widely available for consultation by Members, Officers and the public;
- (2) **Ensuring Lawfulness and Integrity of Decision Making:** after consulting with the Head of Paid Service and the Chief Finance Officer, the Monitoring Officer will report to the Council, or to the Cabinet 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. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered;

- (3) **Supporting the Standards Committee:** the Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee;
- (4) **Access to Information:** the Monitoring Officer will make sure that effective arrangements exist to ensure that Cabinet decisions, together with the reasons for those decisions and relevant reports and background papers are made publicly available as soon as possible;
- (5) **Advising whether decisions are within the Policy Framework:** the Monitoring Officer will advise whether the decisions of the Cabinet and Key Decisions by officers are in accordance with the Council's Policy Framework;
- (6) **Providing Advice:** the Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, impropriety, probity and Policy Framework issues to all Councillors;
- (7) **Restrictions on Posts:** the Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

The duties of the Monitoring Officer must be carried out personally but may be carried out by a deputy nominated by him/her to act in the event of absence or illness. It is the function of the Monitoring Officer to appoint a deputy, not the Council.

## 12.9 Functions of the Chief Finance Officer (Section 151 Officer)

The Council recognises the importance of the Chief Finance Officer's key role in providing advice on vires issues (i.e. whether or not the Council has the power to do something), maladministration, financial impropriety, probity and Policy Framework and Budget issues to all Members of the Council.

In particular, the Chief Finance Officer has a statutory responsibility for:-

- (1) **Ensuring Lawfulness and Financial Prudence of Decision Making:** after consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Council, or to the Cabinet in relation to executive functions, 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;
- (2) **Administration of Financial Affairs:** the Chief Finance Officer has responsibility for the administration of the financial affairs of the Council;
- (3) **Contributing to Corporate Management:** the Chief Finance Officer contributes to the Corporate Management of the Council, in particular through the provision of professional financial advice;

- (4) **Providing Advice:** the Chief Finance Officer provides advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Policy Framework and Budget issues to all Councillors and will support and advise Councillors and officers in their respective roles;
- (5) **Provision of Financial Information:** the Chief Finance Officer provides financial information to Councillors and the public.

The duties of the Chief Finance Officer (apart from the administration of the financial affairs of the Council) must be carried out personally, but can be carried out by a deputy nominated by him/her in cases of absence or illness. It is the function of the Chief Finance Officer to appoint a deputy, not the Council.

#### **12.10 Duty to Provide Sufficient Resources to the Monitoring Officer and Chief Finance Officer**

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

#### **12.11 Conduct**

Officers are subject to the Officer Code of Conduct set out in Annex 3.2 to this Constitution, which is included in their terms and conditions of employment. Officers must comply with the Officer Code of Conduct.

#### **12.12 Employment**

The recruitment, selection and dismissal of officers will comply with the Officer Employment Procedure Rules detailed in Annex 2.8 to this Constitution.

## **Article 13 – Decision making**

### **Explanatory note**

The Council is required to keep an up to date record of which part of the Council or which individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Annex 1 of this Constitution.

#### **13.1 Responsibility for decision making**

A purpose of the Executive structure is to expedite decision making. Accordingly the intention of the Council is that decision taking should be delegated in the interests of speed where that is consistent with the democratic process in terms of accountability and openness. References to the Executive include the Leader, Cabinet or any portfolio holder or officer exercising powers individually.

The Leader, or in circumstances set out in the Constitution, the Deputy Leader, will determine the level at which decisions are made, but such decisions will only be effective when notified to and recorded by the Proper Officer unless otherwise provided for within this Constitution.

The separation of powers between the Council and the Executive is fundamental to the operation of modernised local government.

The Local Authorities (Functions and Responsibilities) Regulations 2000 as amended set out what decisions the Council must make itself and these are detailed in Article 4.2.

Annex 1.1 sets out those functions which are reserved to Full Council.

#### **13.2 Principles of decision making**

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

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

#### **13.3 Types of decision**

- (a) Decisions reserved to Full Council – decisions relating to the matters listed in Article 4.2 will be made by Full Council and not delegated.

(b) Decisions made by Committees appointed by the Council – power to make such decisions is delegated by the Council in accordance with the terms of reference contained in Annex 1.2 of this Constitution – (Section 101, Local Government Act 1972).

(c) Decisions of the Executive will comprise:-

- (i) key decisions; and
- (ii) other decisions.

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

- (i) to result in the authority incurring expenditure which is, or the making of savings which are, significant having regard to the Council’s budget for the service or function to which the decision relates;

or

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

A key decision may only be made in accordance with the requirements of Annex 2.2.

In accordance with Section ~~9Q 38~~ of the Local Government Act 2000, in determining the meaning of “significant” the Council shall determine thresholds above which items are significant and will ensure these limits are published. Such thresholds are to be found in Annex 1.17. Any decisions involving expenditure or saving above the published threshold for the service or function concerned will be a key decision. A key decision may not necessarily involve significant expenditure or savings but may however be significant in terms of its effect on communities in two or more wards within the Council’s area.

A decision taker may only make a key decision in accordance with the requirements set out in Annex 2.2.

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

Subject to Article 13.08, when considering any matter, the Council meeting will follow the Council Procedure Rules set out in Annex 2.1 of this Constitution.

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

Subject to Article 13.08, when making an Executive decision the Executive or officer (if appropriate) exercising delegated powers will follow the requirements set out in Annex 2.2.

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

When considering any matter the Overview and the Scrutiny and Audit Committees will follow the overview and scrutiny procedures rule set out in Annex 2.5.

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

Subject to Article 13.08, other Council Committees or Boards will follow those parts of the Council Procedure Rules set out in [Annex 2.1 Part 4](#) of this Constitution as apply to them.

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

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

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

### **14.1 Financial Management**

The management of the Council's financial affairs will be conducted in accordance with the Financial Procedure Rules set out in Annex 2.6 to this Constitution.

### **14.2 Contracts**

Every contract made by the Council will comply with the Contracts Procedure Rules set out in Annex 2.7 to this Constitution.

### **14.3 Legal Proceedings**

In accordance with the Scheme of Delegation to Officers as set out in Annex 1.13 to this Constitution (as amended from time to time) officers of the Council are authorised to institute, to defend or participate in any legal proceedings in any case where such action(s) is necessary to give effect to decisions of the Council or in any case where it is considered that such action is necessary to protect the Council's interests.

### **14.4 Authentication of Documents**

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

Any contract with a value exceeding £25,000 entered into on behalf of the local authority in the course of the discharge of an executive function shall be made in writing. Such contracts must either be signed by at least two officers of the authority or made under the common seal of the Council attested by at least one officer.

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

The Common Seal of the Council will be kept in a safe place in the custody of the Monitoring Officer.

The Common Seal will be affixed to those documents which, in the opinion of the, Monitoring Officer should be sealed. The affixing of the Common Seal will be attested by the Monitoring Officer or some other person authorised by him/her.

A decision of the Council or of the Cabinet or of any subsidiary body or individual authorised by the Council or by the Cabinet to act on their behalf will be sufficient authority for sealing any document necessary to give effect to the decision.

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

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

The Council's Monitoring Officer will monitor the operation of the Constitution to ensure that its aims and principles are given full effect.

The Monitoring Officer will also carry out a general or partial review (as appropriate) of the Constitution in the following circumstances:-

- (1) at the direction of a court or of the Secretary of State;
- (2) on the recommendation of [Standards for England](#), the Local Government Ombudsman, the Council's external auditors or one of the Council's Statutory Officers appointed in accordance with Article 12.05 of this Constitution;
- (3) by a decision of the Council;
- (4) in the event that no general review of the Constitution has taken place within the preceding 10 years then, unless the Council decides otherwise, a general review shall be carried out.

On completion of a review, the Monitoring Officer will submit his/her recommendations to the Council's Standards Committee, who will then consider the report and recommend proposals to the Council. The Monitoring Officer will submit a further report to the Council if s/he considers it appropriate.

### **15.2 Monitoring & Review of the Constitution by the Monitoring Officer**

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Council's Constitution and to make recommendations to the Council for ways in which it could be amended in order better to achieve the purposes set out in Article 1 of the Constitution.

In undertaking this task the Monitoring Officer may:-

- (1) observe meetings of different parts of the Member structure;
- (2) undertake an audit trail of a sample of decisions;
- (3) record and analyse issues raised with him/her by Members, officers, the public and other bodies or persons with a legitimate interest; and
- (4) compare practices in the Council with those in other comparable authorities, or national examples of best practice.

### **15.3 Procedures for Changes to the Constitution**

- (1) **Changes to the Articles, Procedural Rules and Protocols, etc.**

Changes to the Articles of the Constitution; the Procedural Rules set out in Annex 2; the Codes of Practice and Protocols set out in Annexes 3; and the

Members' Allowances Scheme set out in Annex 4 can only be made by the full Council, which may not delegate this function.

Such proposals for changes may only be considered by the Council on receipt of a written report by:-

- (a) the Standards Committee; and/or
- (b) the Monitoring Officer.

~~Proposals for changes to the Articles of the Constitution will first be received by the Council without debate and referred to the next ordinary meeting of the Council.~~

- (2) Proposals for changes to any of the Procedural Rules set out in Annexes 2; to any of the Codes of Practice and Protocols set out in Annexes 3; and/or to the Members' Allowances Scheme set out in Annex 4 may be considered and determined forthwith by the Council. The Proper Officer shall be authorised to make minor textual changes to the Articles and Annexes to the Constitution where this is necessary as a consequence of:-

- (a) a decision properly made by the full Council to amend any part of them (for example cross-references, paragraph numbering, nomenclature, etc.);
- (b) legislation or a court order.

(3) **Changes to Other Parts of the Constitution**

To ensure transparency and accountability in the Council's decision-making processes, the Proper Officer shall ensure that the following parts of the Constitution are at all times kept up to date and accurately reflect the relevant decisions of the Council, its committees and sub-committees and of the Cabinet:-

- (a) Summary and Explanation: giving a summary and brief explanation of the main provisions of the Constitution;
- (b) Annex 1: setting out the responsibilities for functions and the delegations of those responsibilities;
- (c) Annex 5: setting out the current organisational structure of the Council.

(4) **Change in the Form of Executive Governance Arrangements**

~~When drawing up any proposals for changing the form of executive arrangements, the Council must take reasonable steps to consult with local electors and other interested persons in the Borough, and have due regard to:-~~

~~(a) the extent to which the change (if implemented) is likely to assist in securing improvement in the way in which the Council's functions are exercised in the interests of the well-being of the Borough's inhabitants; and~~

~~(b) guidance issued by the Secretary of State in relation to these matters.~~

~~A change from the present 'Leader and Cabinet' form of executive arrangements to a form with an elected Mayor will require the Council to hold a referendum that will be binding on the Council.~~

The Council may change its existing form of governance. A resolution is required to make such a change. A document setting out the new arrangements must be available for inspection and public notice must be given in local newspapers, The Council may be required to hold a referendum.

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#### (5) Consultation on Other Constitutional Changes

Where a proposal to change this Constitution does not involve a change in the form of ~~executive governance~~ arrangements (whether from a Leader and Cabinet form to an elected Mayoral form, or vice-versa), there will not normally be a requirement to consult with local electors and other interested persons in the Borough, unless the changes proposed will have substantial implications for all or a significant proportion of them.

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

### 16.1 Suspension of the Constitution

#### (1) Limits to Suspension

The Articles of this Constitution may not be suspended.

Certain of the Procedure Rules set out in Annexes 2 to this Constitution may be suspended. Those Procedure Rules may be suspended by the Council to the extent detailed in the table set out in sub-paragraph (3) of this Article 16.01 below and permitted by the law.

#### (2) Procedure to Suspend

A motion to suspend any Rules at a meeting of the Council 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 which it is intended to achieve, taking account of the purposes of the Constitution set out in Article 1.

#### (3) Rules Capable of Suspension

The following Procedure Rules may be suspended to the extent indicated below:

Rules that may be Suspended	Limitations on Suspension
<b>Annex 2.1 - Council Procedure Rules:</b> all except paragraphs 20.5 (Right to Require an Individual Vote to be Recorded) and 21.2 (No Requirement to Sign Minutes of Previous Meeting at Extraordinary Meeting)	Suspension may only be exercised by the full Council for the consideration of specified business at a single meeting only.
<b>Annex 2.6 – Financial Procedure Rules</b>	Suspension may only be exercised by the full Council to the extent permitted by law. The reasons for suspension shall be stated in each case.
<b>Annex 2.7 - Contract Procedure Rules</b>	Suspension may only be exercised by the full Council or the Cabinet in respect of a single contract or category of contract to the extent permitted by law. The reasons for suspension shall be stated in each case.

## 16.2 Interpretation

The ruling of the Mayor as to the construction or application of this Constitution, or as to any proceedings of the Council, will not be challenged at any meeting of the Council.

Such interpretation will have regard to the purposes of the Constitution contained in Article 1.

## 16.3 Publication

The ~~Assistant Director (Communities)~~ Service Manager (Communities) will:-

- (1) ~~provide~~ give a ~~printed~~ copy of this Constitution to each Member of the Council upon delivery to him/her of that individual's declaration of acceptance of office when the Member is first elected to the Council;
- (2) ensure that copies of this Constitution are available for inspection at the Council's offices, at libraries and other appropriate locations and can be purchased by the local press and members of the public on payment of a reasonable fee;
- (3) ensure that the Summary and Explanation of this Constitution is made widely available within the Borough and is updated as necessary.



**A Summary and Explanation of**

**The Constitution of**

**Gravesham Borough Council**

**Adopted by the Council on 23 April 2002**

**Updated and re-issued Spring 2018**

# Summary and Explanation of the Constitution

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# SUMMARY AND EXPLANATION

## 1. Overview

### 1.1 The Council's Constitution

1.1.1 Gravesham Borough Council has agreed a written Constitution which sets out how the Council operates, how decisions are made and the procedures that are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose.

1.1.2 The Constitution is divided into 16 Articles which set out the basic rules governing the Council's business. More detailed procedure rules, codes of practice and protocols are attached at the end as annexes to the Constitution.

### 1.2 What is in the Constitution?

1.2.1 Article 1 of the Constitution commits the Council to promoting the well-being of the people of Gravesham by providing community leadership in partnership with government, business, voluntary sector and local people.

1.2.2 In addition to providing vision and leadership for its communities, the Council is committed to:-

- (a) efficient transparent and accountable decision-making; and
- (b) seeking best value by delivering high quality services and securing continuous improvement in the way the Council's functions are carried out.

1.2.3 Articles 2-16 explain the rights of citizens and how the key parts of the Council operate. These are:-

- (a) Members of the Council (Article 2);
- (b) Citizens and the Council (Article 3);
- (c) Meetings of the Council (Article 4);
- (d) Chairing the Council (Article 5);
- (e) Overview and Scrutiny of Decisions (Article 6);
- (f) The Cabinet (Leader and Cabinet style of local governance) (Article 7);
- (g) Other Committees, Boards and Panels of the Council (Article 8);
- (h) The Standards Committee (Article 9);
- (i) Area Committees and Forums (Article 10);
- (j) Joint Arrangements (Article 11);
- (k) Officers (Article 12);
- (l) Decision Making (Article 13);

- (m) Finance, Contracts and Legal Matters (Article 14);
- (n) Review and Revision of the Constitution (Article 15);
- (o) Suspension, Interpretation and Publication of the Constitution (Article 16).

### **1.3 How the Council Operates**

- 1.3.1 The Council is composed of 44 Councillors (also referred to as Members) elected every four years.
- 1.3.2 Each Councillor is elected to represent an area of the Borough called a Ward, and is democratically accountable to the residents of their Ward. The over-riding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.
- 1.3.3 As well as representing the local community, Councillors play key roles in running the Council through meetings of the full Council and through its committees, boards and panels. They may also represent the Council on various outside bodies.
- 1.3.4 Councillors have to agree to follow a Members' Code of Conduct [set out in Annex 3.2 of this Constitution] to ensure high standards in the way they carry out their duties. The Council's Standards Committee is responsible for training and advising Councillors on the Code of Conduct.
- 1.3.5 All 44 Councillors meet together as a general assembly of the Council, which is normally referred to as "the Council" or "the full Council". Meetings of the Council are normally open to the public.
- 1.3.6 The full Council remains the ultimate policy-making body of the Council. It can decide to delegate many (though not all) of its powers to smaller groups of Councillors or to individual officers employed by the Council. It can vary or withdraw this delegation of powers at any time.
- 1.3.7 Broadly, the Council has the following functions:
- (a) Setting Strategy, which means it approves an annual budget, the Council Tax levy and the policy framework. This policy framework includes such things as the Local Plan and other plans, strategies and policy documents (both those required by law and others that the Council chooses to adopt in addition);
  - (b) Procedural, which means it approves the Council's political management processes and appoints:-
    - (i) the Leader of the Executive (and can remove him or her);
    - (ii) people to various groups and outside bodies;
    - (iii) Committees, Boards and Panels.
  - (c) Regulatory, which means it can decide on applications for planning permission and certain types of licenses to do things including alcohol, entertainment and gambling licences. Although it normally delegates these decisions to a Regulatory Board (Planning) or Licensing

Committee, they can be referred to the Council for decision in some circumstances;

- (d) Standards and Ethics, which means approving statements of policy relating to standards in public life; and receiving reports from the Council's Standards Committee, the Monitoring Officer and the Chief Finance Officer and deciding what action to take upon them.

1.3.8 The Cabinet, Committees, Boards and Panels are accountable to the Council as the ultimate decision-making body and have to work within Terms of Reference given to them by the Council. These Terms of Reference specify the functions with which the Cabinet, Committees, Boards and Panels are required to carry out on behalf of the Council and define the limits of their authority.

1.3.9 The Council has adopted a Conflict Resolution Mechanism. This is set out in the Policy and Budget Procedure Rules [Annex 2.3 to this Constitution]. This Mechanism deals with any disputes between the Cabinet and the full Council in matters related to the adoption of the budget or the policy framework. In effect, this mechanism enables the Leader of the Executive to delay a decision of the full Council for a short time and to ask the Council to reconsider the issue.

## **2. How decisions are made**

### **2.1 The Cabinet**

2.1.1 The Cabinet is the part of the Council which is responsible for most day-to-day decisions. In particular, it proposes the policy framework and budget to the Council and then carries on the work of the Council within this approved framework and budget. The Cabinet is also the focus for community planning and leads the search for best value.

2.1.2 The Cabinet is appointed by the Leader of the Executive. It is normally drawn from the majority political party group on the Council, although if no single party has an overall majority, the allocation of places in the Cabinet may be agreed between the various parties.

2.1.3 It comprises Councillors who hold office for a municipal year, commencing with the annual meeting of the Council in May. Meetings are held in public, except where confidential and/or exempt matters are being discussed.

2.1.4 The Leader of the Executive allocates specific roles and responsibilities to Members of the Cabinet. These roles and responsibilities are referred to as 'portfolios'.

2.1.5 Decisions of the Cabinet are reached collectively (i.e. by all Cabinet Members present at the meeting). Individual Members of the Cabinet may have decision-making powers of their own.

2.1.6 Decisions of the Cabinet, and the reasons for those decisions, are recorded and made publicly available together with the background papers that were available to the Cabinet when making its decisions.

- 2.1.7 When major decisions (called 'Key Decisions') are to be discussed or made in the future then, so far as these decisions can be anticipated, they are published 28 days in advance in a forthcoming notice [see Article 13].
- 2.1.8 The Cabinet has to make decisions which are in line with the Council's overall policies and budget. If the Cabinet wishes to make a decision which is outside the policy framework and budget, this must be referred to the Council to decide.
- 2.1.9 The Cabinet may make an urgent decision which is outside the policy framework and budget agreed by the Council only in cases of special urgency, having first obtained the agreement of the Chair of the Scrutiny Committee whose terms of reference include responsibility for scrutiny of executive decisions in respect of the matter concerned, who must agree that the matter is urgent and that the proposed decision is reasonable.
- 2.1.10 The Cabinet may appoint Cabinet Committees to consider specific policy issues and make recommendations. Cabinet Committee's are made up of Councillors and non-voting persons co-opted to them.

## **2.2. Scrutiny**

- 2.2.1 The Council is required to appoint at least one Scrutiny Committee. Within terms of reference set by the Council, the purpose of scrutiny is to assist the Council to improve continuously the performance of its services and the policies and strategies within which the Council operates.
- 2.2.2 Scrutiny has a powerful role in:-
- (a) publicly holding the Cabinet to account for its actions;
  - (b) helping to secure best value in the delivery of Council services;
  - (c) helping to inform policy development and review;
  - (d) examining matters of wider local concern.
- 2.2.3 Within certain guidelines set out in the Scrutiny Procedure Rules [see Annex 2.5], decisions of the Cabinet can be "called in" for closer scrutiny by a Scrutiny Committee whose terms of reference include responsibility for scrutiny of executive decisions in respect of the matter concerned. This is to assess whether those decisions are appropriate and sound.
- 2.2.4 A Scrutiny Committee's terms of reference may also include conducting and overseeing detailed reviews of Council services to ensure they are providing value for money and that effective action plans exist to improve services on a continuing basis.
- 2.2.5 A Scrutiny Committee may review and make recommendations to the Cabinet and/or to the Council to assist in the development of future policies and strategies. A Scrutiny Committee may also be consulted by the Cabinet or the Council on forth-coming issues and policy proposals.

- 2.2.6 A Scrutiny Committee must be appointed by the Council, and must comprise a number of Councillors (with an appropriate political balance in membership) who hold office for a municipal year commencing with the annual meeting of the Council in May.
- 2.2.7 Decisions of a Scrutiny Committee must be reached in public, except where confidential and/or exempt matters are being discussed.
- 2.2.8 The Chair of any Scrutiny Committee whose Terms of Reference include responsibility for scrutiny of executive decisions shall be a Member appointed by Full Council.
- 2.2.9 Members of the Cabinet cannot be Members of any Scrutiny Committee.

### **2.3 Other Committees, Boards and Panels of the Council**

- 2.3.1 There is a number of functions (such as development control, licensing, appointments of senior Council officers and the maintenance of ethical standards), which cannot be the responsibility of the Cabinet. These functions are delegated by the Council to other Committees, Boards and Panels and to officers of the Council. These delegations are set out in more detail in Article 8 of this Constitution.
- 2.3.2 The Council is able to appoint any Councillor to other Committees, Boards and Panels that take decisions on functions which are not the responsibility of the Cabinet, except that in some cases there are requirements as to the number of Members of the Cabinet who may be appointed. These requirements are set out in more detail in Article 7 of this Constitution.
- 2.3.3 Decisions of other Committees, Boards and Panels are reached in public except where confidential and/or exempt matters are being discussed.

### **2.4 Outside Bodies**

- 2.4.1 Representatives of the Council on key local, regional or national public bodies where joint service planning and operational policy is involved will normally be appointed from amongst the Members of the Cabinet. Exceptionally, however, where it is judged to be in the Council's best interests, such appointments may be drawn from other Councillors. In cases where the Council has more than one nominee on such key bodies, the appointment of a Councillor who is not a Member of the Cabinet to the second place is encouraged, although sometimes the Council's representation may be best secured through an officer appointment.
- 2.4.2 Other appointments to Outside Bodies are filled by Non-Executive Members (i.e. Councillors who are not Members of the Cabinet) and non-elected representatives on the basis of the following expectations:-
- (a) the Council will consider the expertise, knowledge and interests of Members when considering appointments;
  - (b) representatives on outside bodies should be properly briefed and provide feedback to the appropriate part of the Council's organisation;

- (c) representation on an outside body should be taken seriously and every effort made to attend regularly;
- (d) representatives should give a good impression of the Council;
- (e) regular contacts should be made with other representatives of the Council on outside bodies.

2.4.3 To secure maximum Member representation, the Council may appoint any Councillor to School Governing Bodies, whether or not they are Members of the Cabinet.

## **2.5 Area Committees and Joint Arrangements**

2.5.1 The Constitution also allows the Council and the Cabinet, if they wish, to delegate certain functions to:-

- (a) Area Committees or Forums to enable specific issues affecting local neighbourhoods to be considered in more detail; and to
- (b) joint bodies set up together with other local authorities to deal with issues that can be tackled better over a wider area or in a different way.

2.5.2 If any such functions are delegated in to area committees or under joint arrangements, details of those delegations must be shown in Annex 1.8 to this Constitution.

## **2.6 Non-Executive Councillors (i.e. not Members of the Cabinet)**

2.6.1 The roles of a Non-Executive Councillor are:-

- (a) through the scrutiny process to:-
  - (i) represent the community's interest to the Council;
  - (ii) monitor the decisions of the Cabinet;
  - (iii) review public services in the borough and contribute to their improvement.
- (b) to serve on Committees, Boards and Panels of the Council (other than the Cabinet);
- (c) to advise, and to be consulted by, the Cabinet through Cabinet Committees;
- (d) to represent the people of their Ward, both as individuals and collectively, to the Cabinet and departments of the Council and to other public bodies.

2.6.2 The Council is a body corporate and as such individual Councillors have a collective responsibility for the Council's functions. This collective responsibility extends to a duty to ensure that the Council complies with the law and does not act unlawfully. Councillors must think consciously whether what is being done under delegated powers is appropriate.

2.6.3 Non-Executive Councillors can discharge their responsibilities through:-

- (a) holding the Cabinet to account for the discharge of its functions by scrutinising decisions both before and after implementation;
- (b) the right of any five Members to requisition a meeting of the Council;
- (c) inspection of documents under the access to information legislation;
- (d) the power of the Council to appoint and remove the Leader of the Executive and the Cabinet.

### **3. The Council's Officers**

3.1 The Council employs professional, administrative, clerical and manual staff referred to as 'officers'.

3.2 The Council is required to designate an officer to act as Head of Paid Service.

3.3 Officers are accountable to the Council as an organisation and serve all Members of the Council. Officers give advice, implement decisions and manage the day-to-day delivery of the Council's services. Some officers (the Head of Paid Service, the Monitoring Officer and the S151 Officer) have a specific legal duty to ensure that the Council acts within the law and uses its resources wisely. A code of practice called the Member/Officer Protocol governs the relationship between Officers and Members of the Council. This is set out in Annex 3.4 to this Constitution.

3.4 All officers of the Council have a responsibility to act fairly, honestly, in good faith and in an impartial way to meet the specified objectives of the Council and must not place themselves in a position that would create the least suspicion of being influenced by improper motives. The Officer Code of Conduct (see Annex 3.2) outlines existing laws, regulations and conditions of service and provides further guidance to assist officers in their day-to-day work.

### **4. Citizens' Rights**

4.1 Citizens have a number of rights in their dealings with the Council. These are set out in more detail in Article 3 of this Constitution. Some of these are legal rights, whilst others depend on the Council's own processes. The Citizens' Advice Bureau (CAB) can advise on individuals' legal rights.

4.2 Where members of the public have a contract with the Council under which the Council agrees to do certain things, for example as a Council tenant, they have additional rights. These are not covered in this Constitution.

4.3 Citizens have the right to:-

- (a) vote at local elections if they are registered;
- (b) contact their local Councillor about any matters of concern to them;
- (c) have access to a copy of this Constitution;

- (d) attend meetings of the full Council, Cabinet, Committees, Boards and Panels except where confidential or exempt matters are being discussed;
- (e) petition to request a referendum on a Mayoral form of executive;
- (f) attend meetings of any Scrutiny Committee and, by invitation of a committee, contribute to investigations or reviews undertaken by them;
- (g) from the forthcoming notice (published 28 days in advance) y, find out what major decisions are to be discussed or decided by the Cabinet and when;
- (h) see agendas reports and background papers and records of decisions made by the Council, Cabinet, Committees, Boards and Panels (but excluding access to confidential/exempt information);
- (i) complain to the Council about Council services – the Council encourages its customers through its Corporate Complaints Procedure to voice their concerns as an opportunity to put things right for the customer and to improve services;
- (j) complain to the Local Government Ombudsman if they think the Council has not followed its procedures properly. However, they should only do this after using the Council's Corporate Complaints Procedure;
- (k) complain to the Standards Committee if they have evidence which they think shows that a Councillor has not followed the Member Code of Conduct;
- (l) inspect the Council's accounts and to make their views known to the external auditor.

4.4 The Council welcomes participation by its citizens in its work. For further information on your rights as a citizen, please contact the Council's Committee and Electoral Services Department on 01474 33 72 47.



**The Articles of**

**The Constitution of**

**Gravesham Borough Council**

**Adopted by the Council on 23 April 2002**

**The Articles reflect subsequent amendments made by  
the Council up to and including winter 2014/2015**

**Re-issued Spring 2018**

**The Service Manager (Communities) is responsible for ensuring  
that the Articles of the Constitution are kept up to date**

## The Articles of the Constitution

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# The Articles of the Constitution

## Article 1 - The Constitution

### 1.1 Powers of the Council

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

### 1.2 The Constitution

This Constitution and all its annexes is the Constitution of Gravesham Borough Council.

### 1.3 Purposes of the Constitution

The purposes of the Constitution are to:

- (1) enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
- (2) support the active involvement of citizens in the process of local authority decision-making;
- (3) help Councillors represent their constituents effectively;
- (4) enable decisions to be taken efficiently and effectively;
- (5) create a powerful and effective means of holding decision-makers to public account;
- (6) ensure that no-one will review or scrutinise a decision in which they were directly involved;
- (7) ensure that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions;
- (8) provide a means of improving the delivery of services to the community; and
- (9) ensure that the Council's governance arrangements deliver efficient, transparent and accountable decision-making.

### 1.4 Interpretation of the Constitution

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated in Article 1.3 above.

### 1.5 Review of the Constitution

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

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

### **2.1 Composition and Eligibility**

#### **(1) Composition**

The Council will comprise 44 Councillors (also called Members). One or more Councillors will be elected by the voters of each Ward in accordance with the current scheme drawn up by the Local Government Boundary Commission for England and confirmed by a legal order.

#### **(2) Eligibility**

Only registered voters of the Borough or those living or working in the Borough (or such other persons as may be qualified under legislation) will be eligible to hold the office of Councillor.

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

#### **(1) Election of the whole Council every four years**

The regular election of Councillors will be held every four years on the first Thursday in May, beginning in 2003.

#### **(2) Terms of Office for Councillors**

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**

#### **(1) Governance**

All Councillors will:-

- (a) collectively be the ultimate policy-makers for the Council and carry out a number of strategic and corporate management functions;
- (b) contribute to the good governance of the Borough and the Council, and actively encourage community participation and citizen involvement in decision-making;
- (c) be involved in decision-making;
- (d) effectively represent their communities, including the interests of their Ward and of individual constituents whilst also balancing the different interests identified within their Ward and representing their Ward as a whole;
- (e) respond to constituents' enquiries and representations, fairly and impartially and assist constituents in resolving particular concerns or grievances;

- (f) be available to represent the Council on other bodies (for example partnerships and Outside Bodies) if appointed to such posts by the Council or the Cabinet; and
- (g) maintain the highest standards of conduct and ethics in order to give expression to the Seven Principles of Public Life and the Member Code of Conduct set out in Annexe 3.1 to this Constitution.

**(2) Community Representation**

- (a) all Councillors represent their constituents and play an important role in consulting and representing their communities on policy matters, such as the Corporate Plan and other Strategy documents, Reviews of Services, and matters of concern and interest to their communities generally;
- (b) through the scrutiny process and through Cabinet Committees, Councillors can “feed-in” the views of the community they represent to policy development, decision-making and the setting of objectives.

**(3) Rights and Duties of All Councillors**

- (a) councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law;
- (b) councillors will not make public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or Officer entitled to know it;
- (c) for these purposes “confidential” and “exempt” information are defined in the Access to Information Rules set out in Annex 2.2 to this Constitution.

**2.4 Conduct**

Councillors will at all times observe the Members’ Code of Conduct, the Member/Public Protocol and the Member/Officer Protocol set out in Annexes 3.1, 3.3 and 3.4 to this Constitution.

**2.5 Remuneration and Allowances**

**(1) Independent Remuneration Panel**

The Council will establish and maintain an Independent Remuneration Panel in accordance with the Protocol for Appointments to the Independent Remuneration Panel set out in Annex 3.7 to this Constitution to provide the Council with advice on its Members’ Allowances Scheme, the amounts to be paid and the pensionability of allowances where relevant, together with any other matters that may be required by law.

(2) **Members' Allowances**

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Annex 4 to this Constitution.

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

### **3.1 Citizens' Rights**

Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules as set out in Annex 2.2 to this Constitution.

#### **(1) Voting and Petitions**

Citizens who are on the electoral roll for the Borough have the right to vote and to sign a petition, requesting a referendum for an elected Mayor form of constitution. Residents and those who work or study within the Borough also have the right to sign petitions.

#### **(2) Information**

Citizens have the right to:-

- (a) attend meetings of the Council and its Committees, Boards and sub-committees, except where confidential or exempt information is likely to be disclosed and the meeting is therefore held in private;
- (b) attend meetings of the Cabinet when “Key Decisions” are being considered, except where confidential or exempt information is likely to be disclosed and the meeting is therefore held in private;
- (c) find out from the Council’s website what “Key Decision(s)” will be taken by the Cabinet, or by any bodies or individuals to whom the Cabinet may have delegated the exercise of any of its functions, and when it is expected those decisions will be taken;
- (d) see reports and background papers (excluding confidential/exempt information) and any records of decisions made by the Council, Cabinet, Committees, Boards and sub-Committees; and
- (e) inspect the Council’s accounts and make their views known to the external auditor.

#### **(3) Participation**

Citizens have the right to participate in the Council’s question time and (on invitation by the committee or by the committee Chair) to contribute to investigations by a Scrutiny Committee.

Public speaking is allowed at meetings of the Regulatory Board (Planning).

#### **(4) Complaints**

Citizens have the right to complain to:-

- (a) the Council itself under its Complaints Procedure;

- (b) the Local Government Ombudsman, after using the Council's Complaints Procedure;
- (c) the Standards Committee about an alleged breach of the Member Code of Conduct set out in Annex 3.1 to this Constitution. These complaints should be addressed to the Monitoring Officer, Gravesham Borough Council, Civic Centre, Windmill Street, Gravesend, Kent, DA12 1AU;

### **3.2 Citizens' Conduct**

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

## **Article 4 - The Council**

### **4.1 Meanings**

The terms listed below have the following meanings throughout this Constitution.

#### **1 Policy Framework**

The 'Policy Framework' means the following Plans and Strategies to be adopted by the Council:

- a) Corporate Plan (or equivalent document);
- b) Equalities Policy (or equivalent document);
- c) Local Plan and all related plans and alterations;
- d) Pay Policy Statement;
- e) Housing Strategy (including the Housing Investment Programme and Housing Business Plan);
- f) Community Safety Strategy.

In addition, the Council meeting can adopt any other formal plans or strategies which the Council may decide, or which legislation requires, should form part of the Policy Framework. This includes but is not exclusive to:

- a) Working in Partnership Framework;
- b) Code of Corporate Governance;
- c) Licensing Policies as required under the Gambling Act 2005.

#### **(2) Budget**

The budget is a statement of Council policy in financial terms and includes the overall allocation of financial resources, capital and revenue and the setting of the Council Tax base.

#### **(3) Housing Land Transfer**

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

### **4.2 Functions of the Council**

Only the Council will exercise the following functions:-

#### **(1) Constitutional and Procedural Matters, etc.**

- (a) to adopt and change the Articles of this Constitution;

- (b) to change the name of the area;
- (c) to make, amend or revoke the Procedural Rules set out in Annex 2 to this Constitution;
- (d) to make, amend or revoke the Codes of Conduct and Protocols set out in Annex 3 to this Constitution;
- (e) to confer the Freedom of the Borough or the title of Honorary Alderman.

**(2) Setting the Policy Framework and Related Matters**

- (a) to approve the Council's Policy Framework, except that in-year amendments to Plans or Strategies forming part of the Policy Framework and Budget will be delegated to the Cabinet by the Council;
- (b) to determine each year the Council's revenue and capital budget and Council Tax levy, except that determining the rents of Council dwellings and related properties and the charges to be made for the Council's services, is delegated to the Cabinet;
- (c) subject to the Urgency Procedure contained in the Access to Information Procedure Rules detailed in Annex 2.2 to this Constitution, to make decisions about any matter in the discharge of an executive function which is covered by the Policy Framework or the Budget where the Cabinet is minded to make it in a manner which would be:-
  - (i) contrary to the Policy Framework; or
  - (ii) contrary to (or not wholly in accordance with) the Budget.
- (d) to adopt, amend or revoke the Members' Allowances Scheme under Annex 4 of this Constitution, including the levels and pensionability of Councillors' allowances;
- (e) to make, amend, revoke, re-enact or adopt bylaws and to promote or oppose the making of local legislation or personal Bills;
- (f) to authorise applications to the Secretary of State for housing land transfers of housing stock.

**(3) Appointments and Delegations, etc.**

- (a) to appoint (and remove) the Leader of the Executive;
- (b) to determine the terms of reference, composition and membership of other Committees, Boards and Panels that report directly to the Council, and appointments to them;

- (c) to adopt and approve amendments to the powers and terms of reference of joint and area committees and to make appointments to them;
- (d) to appoint representatives to Outside Bodies, except where the appointment has been delegated by the Council;
- (e) to make or confirm the appointment of the Council's Statutory Officers required under Article 12.5 of this Constitution;
- (f) subject to the requirements of the law and the Officer Employment Procedural Rules set out in Annex 2.8 to dismiss the Head of Paid Service or other Statutory Officers.

**(4) Regulatory and Electoral Matters**

- (a) to deal with findings of maladministration (on receipt of a report from the relevant Scrutiny Committee or the Monitoring Officer following a report by the Local Government Ombudsman);
- (b) to determine the action to be taken on reports by the Monitoring Officer or the Chief Finance Officer (including Section 112 and Section 114 reports);
- (c) to consider reports concerning the dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer pursuant to the procedures set out in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ;
- (d) to determine matters relating to local elections unless the function has been delegated by the Council;
- (e) to review matters relating to electoral and administrative arrangements and to determine the Council's response to any consultations or proposals by the Electoral Commission relating to the Borough.

**(5) Other Matters**

- (a) to determine any matters referred to the Council for decision by a Committee, Board or Panel that reports directly to the Council;
- (b) to resolve any dispute between any of the subsidiary bodies of the Council if required;
- (c) to deal with all 'local choice functions' set out in Annex 1.14 to this Constitution which the Council decides should be undertaken by itself rather than by the Cabinet or a committee or Board;
- (d) to deal with any other matter which must, by law, be reserved for determination by the Council.

### **4.3 Council Meetings**

There are four types of Council meetings:-

- (1) The Annual Meeting;
- (2) Ordinary Meetings;
- (3) Extraordinary Meetings;
- (4) The State of the Borough Debate;

and they will be conducted in accordance with the Council Procedure Rules detailed in Annex 2.1 to this Constitution.

### **4.4 Responsibility for Functions**

The Council will review and maintain Annex 1 to this Constitution, setting out the responsibilities for the non-executive functions of the Council, its Committees, Sub-Committees, Boards and Panels and delegations of those functions.

The Leader of the Executive will review and maintain Annex 1 to this Constitution setting out the responsibilities for the executive functions and delegations of those functions.

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

### **5.1 Mayor - Making**

The title of 'Mayor' is derived from the Council's status as a Borough and this office is filled annually by a Councillor who is elected by the Council at its Annual Meeting at the start of each municipal year.

Mayor-making is regarded as an important civic and ceremonial event. The election of the Mayor is not decided by the Borough's electorate but by a majority of the Councillors present and voting at the Annual Meeting of the Council in May of each year.

A Deputy Mayor is elected by the Council from among the Councillors.

The Mayor is addressed as 'The Worshipful the Mayor of Gravesham'. The Deputy Mayor is addressed as 'The Deputy Mayor'.

### **5.2 Role and functions of the Mayor**

The Mayor is the First Citizen of the Borough of Gravesham.

The Mayor, and in his/her absence the Deputy Mayor, have the following roles and functions:-

- (1) to uphold and promote the purposes of this Constitution and to interpret the Constitution where necessary;
- (2) to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
- (3) to ensure that meetings of the Council are forums for the debate of matters of concern to the local community and the place at which Members who are not in the Cabinet, nor hold office of Committee/Board Chair, are able to hold Cabinet Members and Committee/Board Chairs to account;
- (4) together with all Members of the Council, to promote public involvement in the Council's activities;
- (5) to be the conscience of the Council;
- (6) to attend such civic and ceremonial functions as the Council, the Mayor and the Leader of the Executive determines are appropriate.

The Mayor and Deputy Mayor cannot be appointed to the Cabinet.

## **Article 6 – Scrutiny**

### **6.1 Purposes of Scrutiny**

To achieve enhanced accountability and transparency of the decision-making process, effective overview and scrutiny is essential. Scrutiny is a key element of the Council's executive arrangements and is the main way by which executive decision-makers are held to public account for the discharge of the functions for which they are responsible.

The scrutiny process is also a key mechanism for enabling Councillors to represent the views of their constituents and other organisations to the Cabinet and to the Council and, by examining the operation and impact of the Council's policies, are a useful means of improving the development of policies and delivery of services.

### **6.2 Appointment and Terms of Reference**

The Council will, at its Annual Meeting, appoint at least one Scrutiny Committee to discharge the scrutiny functions required by legislation.

No committee appointed under this Article will continue in existence after the next Annual Meeting of the Council following its appointment.

### **6.3 Membership**

Any Scrutiny Committee appointed by the Council must reflect the political balance of the Council.

Members of the Cabinet may not be Members of a Scrutiny Committee.

The Chair of any Scrutiny Committee whose Terms of Reference include responsibility for scrutiny of executive decisions shall be a Member appointed by Full Council.

In deciding the membership of a Scrutiny Committee, the Council shall take into account the particular skills and expertise required to ensure that thorough and informed scrutiny and reviews take place.

A scrutiny committee may co-opt people to act as non-voting members in accordance with the Scrutiny Procedure Rules.

### **6.4 Sub-Committees**

A Scrutiny Committee may delegate any of its functions to a sub-committee of itself, the membership of which must be drawn solely from the Members (including substitutes) of the appointing Scrutiny Committee.

No more than three sub-committees of any one Scrutiny Committee may be in existence at any one time.

Any sub-committee appointed by a Scrutiny Committee must reflect the political balance of the Council unless the Committee determines otherwise with no votes being cast against by any Committee Member present and voting.

#### **6.5 Meetings and Procedure**

A Scrutiny Committee must meet in public except where confidential and/or exempt matters are being discussed.

Meetings must be conducted in accordance with the Scrutiny Procedure Rules set out in Annex 2.5 to this Constitution.

#### **6.6 Scope of external Scrutiny**

Within its Terms of Reference a Scrutiny Committee may examine matters which are not the direct responsibility of the Council where these are relevant to the remit of the Committee (or sub-committee).

A Scrutiny Committee may also make reports or recommendations to the Cabinet and/or to the Council in relation to matters which are not the responsibility of the Council but which nevertheless affect the Borough or its inhabitants.

#### **6.7 Witnesses and Consultees**

A Scrutiny Committee may, within the limitations set in the Scrutiny Procedure Rules in Annex 2.5 to this Constitution, require Members of the Cabinet, or any other Member of the Council or any Director or Chief Officer of the Council to appear before the Committee and answer questions.

Officers are employed by the Council to work for and serve the Council as a whole. Scrutiny Committees will respect the political neutrality of Officers.

The scrutiny process benefits from input from all those with a legitimate interest, including the local community and other local public, private and voluntary organisations. Particular attention should be paid to obtaining views from “hard to reach” groups such as minority ethnic communities and people with disabilities. Where appropriate, representatives of legitimate community groups should be asked to contribute to the review of issues particularly affecting them, for example residents’ and tenants’ associations.

A Scrutiny Committee may, therefore, also invite any other person to appear before it, subject to that person’s consent.

#### **6.8 Limitations**

A Scrutiny Committee can only discharge the following functions and no other functions of the Council:-

- (1) to carry out the scrutiny functions required by legislation, The Scrutiny Procedure Rules and the committee’s Terms of Reference;

- (2) to make reports or recommendations to the Cabinet or the Council on those matters;
- (3) to make reports or recommendations to the Cabinet or the Council in respect of matters which affect the Council's area or its inhabitants.

This is to ensure there is a clear separation between the discharge of functions and the review and oversight of those functions.

## **6.9 Finance and Staffing**

A Scrutiny Committee shall exercise overall responsibility for the expenditure of any budget made available to it and for the use of any officer time allocated to it by the Council.

## **Article 7 - Leader and Cabinet Executive**

### **7.1 Role and Functions**

The Council has adopted a form of executive arrangements known as a new style "Leader and Cabinet Executive". The various parts of this Constitution that together comprise the Council's executive arrangements are set out in Annex 1.18 to this Constitution.

The Executive will exercise all of the Council's functions which are not the responsibility, whether by law or under this Constitution, of any other part of the Council.

### **7.2 Form and Composition**

(1) The Executive will comprise:-

1.1 The Leader who will be a Councillor elected by the Council at the Annual Meeting of the full Council following on from the ordinary election of all Councillors;

1.2 no more than ten Cabinet Members, including the Leader and the Deputy Leader.

### **7.3 Leader of the Executive**

(1) The term of office of the Leader starts on the day of his/her election as Leader and ends on the day of the next post election Annual Meeting (under whole Council elections) unless, before that day, he/she:-

1.1 is removed from office or resigns;

1.2 ceases to be a Councillor; or

1.3 is disqualified from being a Councillor.

(2) The Leader will be a Councillor of the Borough of Gravesham and will be elected by the Council to serve for a term of four years or until the Annual Meeting following the next ordinary Council elections.

(3) During his/her term of office the Leader will continue to hold office as a Councillor and accordingly, any enactment which provides for earlier retirement as a Councillor will not apply.

(4) The Council will have the power to remove the Leader from office before the end of his/her four year term by way of resolution. At any meeting of the Full Council a Councillor may propose that "the Council has no confidence in the Leader". If carried by a simple majority of those Councillors present and voting, the Leader will be removed from office.

- (5) If the Council passes a resolution to remove the Leader, a new Leader will be elected:-
- 5.1 at the same meeting at which the Leader is removed from office; or
  - 5.2 at a subsequent meeting.

#### **7.4 Appointment of the Cabinet and scheme of delegation**

- (1) The Leader will decide the size of his/her Cabinet (subject to a maximum of ten, including the Leader and Deputy Leader) and will appoint Cabinet Members from among the serving Councillors. The Leader may replace or remove Cabinet Members at any time.
- (2) All executive functions of the Council will be vested in the Leader. The Leader may exercise those functions himself/herself, or may delegate specified executive functions to be exercised by the Cabinet collectively, a Cabinet Committee, an individual Cabinet Member or an Officer. The Leader may revoke such delegations at any time.
- (3) Delegation of executive function(s) to be exercised by a Cabinet Member or by a Ward Councillor in accordance with Section 236 of the Local Government and Public Involvement in Health Act 2007; will be at the discretion of the Leader.
- (4) The Leader will report to Council on all appointments and changes to the Cabinet (Executive) and delegation of executive functions of the Council.

Neither the Mayor nor Deputy Mayor may be elected as Leader of the Executive or be appointed to the Cabinet.

The Leader of the Executive may not be appointed to any Scrutiny Committee or to the Standards Committee. Other Members of the Cabinet may not be Chair of the Standards Committee and may not be appointed to any Scrutiny Committee. Not more than two Members of the Cabinet (or the nearest whole number equivalent to 20 per cent of the total membership of the Regulatory Board (Planning), whichever is the lesser figure) may be appointed to the Regulatory Board (Planning) or such other committee or sub-committee as may be appointed to determine matters relating to the grant of licences and statutory consents or enforcement action against persons. No Member of the Cabinet so appointed shall be the Chair or Vice-Chair of the Regulatory Board (Planning) nor of any other committee or sub-committee discharging similar functions.

The nearest whole number equivalent to 50 per cent of the total membership of the Appointments Board will be selected by the Leader of the Executive for appointment to the Appointments Board (or such other committee as may be appointed to determine matters relating to the appointment of officers).

Not less than three Members of the Appointments Board who have been selected by the Leader of the Executive (or the nearest whole number equivalent to 50 per cent of the total membership of an Appointments Panel constituted from the membership of the Appointments Board, whichever is the lesser figure) will be appointed to an

Appointments Panel or any other body authorised to make an appointment to the Council's staff.

There shall not be any co-optees, deputies or substitutes for Members of the Cabinet, excepting that Members of the Cabinet (including the Leader) may be substitutes for each other on any sub-Committees, Panels or Working Groups established by, and reporting to, the Cabinet.

## **7.5 Deputy Leader**

- (1) The Leader will appoint a Deputy Leader from among the Cabinet Members. The Leader may replace the Deputy Leader at any time, but otherwise the Deputy Leader will remain in post for the duration of the Leader's term of office.
- (2) The Deputy Leader will have authority to exercise the Leader's powers only in the event that the Leader is unable to act at any time or the office of Leader is vacant.
- (3) If the Deputy Leader is unable to act or the office is vacant, the Cabinet (Executive) must act in the Leader's place or arrange for a Member of the Cabinet (Executive) to do so.

## **7.6 Proceedings of the Cabinet**

Proceedings of the Leader and Cabinet Executive shall take place in accordance with the Executive Procedure Rules set out in Annex 2.4 to this Constitution.

## **7.7 Delegation of Powers**

The Service Manager (Communities) shall maintain a list setting out clearly which Members of the Cabinet, sub-committees of the Cabinet, officers of the Council, area committees or joint arrangements with other local authorities carry current responsibilities for the discharge of functions delegated by the Cabinet, together with the current allocation of portfolios amongst Cabinet Members. This list, as amended from time to time, shall be incorporated within Annex 1 to this Constitution and shall be made publicly available.

## **7.8 Cabinet Committees**

The Leader may appoint Cabinet Committees to advise it about carrying out its functions. Such Committees, and appointments of individuals to them, may exist for a fixed or unspecified period, but in any event will cease upon a change in the political control of the Council or at the Annual Meeting of the Council immediately following a general election of the entire Council.

When establishing a Cabinet Committee, the Leader shall also state the Committee's Terms of Reference and composition, which shall be made publicly available. Appointments and terminations of appointments of individuals to existing committees shall similarly be made public.

Such Committees may be made up of any mixture of Councillors. Council officers may attend meetings of such Committees to provide information.

Cabinet Committees need not comply with the legislation on political proportionality, but they should reflect a broad cross-section of both the Council and the wider community. Committees should be constituted having regard to the particular knowledge and skills of those appointed.

Any written reports made by a Cabinet Committee to the Cabinet shall be made publicly available, except where they contain confidential and/or exempt information.

## **7.9 Ethics and Probity**

Members of the Cabinet will be treated no differently from other Councillors in that they will be subject to the Member Code of Conduct set out in Annex 3.1 to this Constitution, and to investigation should any allegations of breaches of the Code be received.

Members of the Cabinet will be required to declare and register their interests and, if appropriate, to seek local dispensations from the Standards Committee.

## **7.10 Officer Support**

Officers are employed by the Council to work for and serve the Council as a whole. The Cabinet will respect the political neutrality of Officers.

## **Article 8 – Regulatory Board (Planning) and other Committees**

### **8.1 Appointment of Committees by the Council**

The Council will appoint a Regulatory Board (Planning) to deal with the Council's development control, licensing and other quasi-judicial functions, together with such other committees, boards and panels as it considers appropriate to discharge its functions, with the exception of any such functions which are reserved to the full Council under Article 4 of this Constitution.

Details of all such committees, boards and panels, their membership and terms of reference, as amended from time to time, shall be set out in Annex 1.2 to this Constitution.

No committee, board or panel appointed under this Article will continue in existence after the next Annual Meeting of the Council following its appointment. In respect of any committee, board or panel appointed under this Article, the Council may at any time:-

- (1) dissolve or alter its membership; and/or
- (2) withdraw, extend or modify its terms of reference and powers; and/or
- (3) refer to it any matter not reserved to the full Council.

### **8.2 Meetings of Committees**

Meetings of all committees, boards and panels appointed to discharge the Council's functions will be held in public, except where confidential and/or exempt matters are being discussed.

## **Article 9 – The Standards Committee**

### **Explanatory Comment**

Standards Committees have an important role in strengthening and maintaining the high standards of conduct required of Members and officers.

#### **9.1 Standards Committee**

The Council has established a Standards Committee.

#### **9.2 Composition**

- (a) Membership. The Standards Committee is composed of nine Members.
- (b) Political Balance. The Standards Committee will be politically balanced.
- (c) Quorum. The Quorum of the Councillor Conduct Committee shall be three Councillors.
- (d) Chairing the Committee. A Member of the Executive may not chair the Committee.

#### **9.3 Role and function**

For the Standards Committee Terms of Reference see Annex 1.2 of the Constitution.

**9.4** The Committee will receive allegations that a Councillor or voting or non-voting co-opted member of the Council of the 6 Parish Councils has breached the relevant Members Code of Conduct and decide whether or not an investigation is to be carried out in relation to those complaints.

**9.5** If the Committee decides to refer the allegation to the Monitoring Officer for investigation it shall receive the report of any investigator and the opinion of the Independent Person. The Committee may on receipt of the report, the opinion and any written representations decide whether a breach of the Councillor Code of Conduct has occurred and if so what action to recommend.

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

### **10.1 Form and Composition**

The Council may appoint area committees and forums as it sees fit, if it is satisfied that to do so will ensure improved service delivery in the context of best value and more efficient, transparent and accountable decision making.

The Council will consult with relevant Parish Councils when considering whether and how to establish area committees. The objective will be to establish a partnership approach to strengthen the focus of action and to help give local communities a real input into decisions which affect them.

Area committees or forums can take many forms and undertake a variety of roles. For example, they may be made up of Councillors, representatives from other public, private and voluntary sector bodies in the area and members of the public, or they may be made up of Councillors only.

Area committees can be purely advisory and consultative bodies or they can have specific functions and budgets delegated to them by the Council.

Area Forums must be advisory and/or consultative bodies only.

### **10.2 Appointment of Area Committees & Forums**

Where the Council decides to appoint an Area Committee or Forum, it shall detail the Committee or Forum's Terms of Reference and composition (as amended from time to time) in Annex 1.8 to this Constitution.

The composition of Area Committees and Forums must in all cases reflect the law on co-optees and political balance commensurate with their Terms of Reference. In general, however, Area Committees need not reflect the political balance of the Council as a whole if all of the voting Members on the committee represent Wards within its area and that area does not exceed two fifths of the total for the Council by reference to population or area.

Area Committees may also include voting co-optees if the Committee is appointed exclusively to discharge functions relating to:-

- (1) Corporate Property Management;
- (2) Housing Management (of 1,500 dwellings or one quarter of the Council's stock, whichever is the less);
- (3) Promotion of tourism;
- (4) Festival Management;
- (5) Joint County/District Functions discharged by a joint committee.

### **10.3 Delegation of Functions to Area Committees**

The Council may only delegate to Area Committees those functions which are not the functions of the Executive and which are not reserved by law to the Council itself.

Subject to the provisions of Article 7.07 of this Constitution, the Executive may delegate functions to an Area Committee. In deciding to delegate functions for which it is responsible, the Executive must satisfy itself that the delegation will not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that the arrangements will deliver best value. The Executive remains and will be seen to remain, accountable for those functions as the clear, accountable corporate leadership of the Council.

If both executive and non-executive functions are delegated to the same Area Committee, the agendas for, and reports submitted to, the meeting must make it clear whether the decisions required relate to Executive functions or not.

Where the Council decides to appoint an Area Committee, Annex 1.8 to this Constitution must clearly state:-

- (1) which of the Area Committee's powers and functions are the responsibility of the Executive (and therefore exercisable under the supervision of the Executive) and which are not;
- (2) the budgets and limits on authority accompanying a delegation by the Council or the Executive.

Both the Council and the Executive will continue to have powers to discharge the functions which they have delegated to an Area Committee. This ensures that there is sufficient flexibility so that if the Council or the Cabinet need to exercise the powers (for example in consequence of the exercise of another power) then they have the ability to do so.

Functions which are the responsibility of the Executive and which are delegated to an Area Committee must be exercised in accordance with the Council's Policy Framework and Budget and any written guidance provided by the Executive in relation to those functions.

Regardless of any other provisions of this Constitution, however, an Area Committee may not take a decision which significantly affects all of the Council's area, or a part of the Council's area in respect of which that Committee does not have functions, though it may make recommendations to the Executive to do so.

### **10.4 Conflicts of Interest: Membership of Area and Scrutiny Committees**

It is a fundamental principle of accountability that a Councillor cannot scrutinise his/her own decisions. Therefore:-

- (1) if the relevant Scrutiny Committee is scrutinising specific decisions or proposals in relation to the business of an Area Committee of which the Councillor concerned is a Member, then the Councillor may not speak or vote at the Scrutiny Committee meeting unless an exemption or dispensation to do

so is given by the Standards Committee in accordance with the Standards Committee Protocol set out in Annex 3.8 to this Constitution;

- (2) where the relevant Scrutiny Committee is reviewing policy affecting the whole or a large part of the Borough generally, the Member must declare his/her interest orally before the relevant agenda item is reached, but need not withdraw from the decision making process.

#### **10.5 Area Committees: Access to Information**

Area Committees will comply with the Access to Information Rules detailed in Annex 2.2 to this Constitution.

Agendas and notices for Area Committee meetings which deal both with functions of the Executive and functions which are not the responsibility of the Executive must identify clearly which items are which.

#### **10.6 Executive Members on Area Committees**

A Member of the Cabinet may serve on an Area Committee if otherwise eligible to do so as a Councillor.

## **Article 11 – Joint Arrangements**

### **11.1 Arrangements to Promote Well-being**

In order to promote the economic, social or environmental well-being of its area, the Cabinet may:-

- (1) enter into arrangements or agreements with any person or body;
- (2) co-operate with, or facilitate or co-ordinate the activities of, any person or body;
- (3) exercise on behalf of that person or body any functions of that person or body.

### **11.2 Joint Arrangements**

The Council may enter into arrangements with one or more other local authorities and/or their Executives to discharge jointly functions which are not functions of the Executive. Those arrangements may include establishing a joint committee either to advise the local authorities on matters of joint interest or to discharge functions on their behalf.

The Executive may establish joint arrangements with one or more other local authorities (including Parish Councils) to exercise functions which are executive functions. Such arrangements may involve the appointment of joint committees with those other local authorities.

Except as set out below, the Executive may only appoint Members of the Cabinet to a joint committee and those appointments need not reflect the political composition of the Council as a whole.

The Executive may appoint Members from outside the Cabinet to a joint committee where the joint committee has functions for only part of the area of the Council and that area is smaller than two-fifths of the Council by area or population. In such cases, the Executive may appoint to the joint committee any Councillor who is a Councillor for a Ward which is wholly or partly contained within the area of the joint committee. The political balance requirements do not apply to such appointments.

When entering into any such joint arrangements the Executive may agree:-

- (1) the number of Members of a joint committee to be appointed from each of the participating local authorities; and
- (2) arrangements for the delegation by joint committees to sub-committees of themselves or to Officers.

In deciding whether to enter into any such joint arrangements in respect of functions for which it is responsible, the Executive must satisfy itself that those arrangements will not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that the arrangements will deliver best value. The

Executive remains and will be seen to remain, accountable for those functions as the clear, accountable corporate leadership of the Council.

The terms of reference and other relevant details of all joint arrangements, as amended from time to time (including the membership of, and any delegations to, joint committees) shall be set out in Annex 1.15 to this Constitution.

### **11.3 Access to Information**

If a joint committee is composed solely of Members who are also Cabinet Members in their own authority, then the access to information regime in the Cabinet Procedure Rules set out in Annex 2.4 to this Constitution apply to the joint committee's business.

However, if any Member of a joint committee is not a Cabinet Member in their own authority, then the Access to Information Rules in Part VA of the Local Government Act 1972, and set out in Annex 2.2 to this Constitution, apply.

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

The Council may delegate non-executive functions to another local authority or, in certain circumstances (see below), to the Cabinet of another local authority (including Parish Councils).

The Executive may delegate executive functions to another local authority or, in certain circumstances (see below), to the Cabinet of another local authority.

The circumstances that determine whether or not a function may be delegated to the Cabinet of another local authority are as follows:-

- (1) The function concerned must be the responsibility of the Cabinet of the authority to which the function is being delegated in circumstances where the function concerned:-
  - (a) is the responsibility of the Cabinet in both authorities;
  - (b) is the responsibility of the Cabinet in the delegating authority, but the function is not a function of the authority to which it is being delegated;
  - (c) is not the responsibility of the Cabinet in the delegating authority, but is the responsibility of the Cabinet in the authority to which it is being delegated;
- (2) The function concerned cannot be the responsibility of the Cabinet of the authority to which the function is being delegated in circumstances where the function concerned:-
  - (a) is not the responsibility of the Cabinet in the delegating authority, and the function is not a function of the authority to which it is being delegated;
  - (b) is not the responsibility of the Cabinet in both the delegating authority and the authority to which it is being delegated.

- (3) It is for the two authorities to choose whether or not the Cabinet in the authority to which it is being delegated should be responsible for the function in circumstances where the function concerned is the responsibility of the Cabinet in the delegating authority, but not in the authority to which it is being delegated.

In all cases, however, the decision as to whether or not to accept such a delegation from another local authority is reserved to the Council.

The Council and/or the Executive (as appropriate) continue to have the power to discharge the functions which are the subject of joint committee arrangements. Functions which are the responsibility of the Executive and which are to be discharged under joint arrangements must be exercised in accordance with the Policy Framework and Budget set by the Council.

In deciding to delegate a function for which it is responsible, the Executive must satisfy itself that the delegation will not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that the arrangements will deliver best value. The Executive remains and will be seen to remain, accountable for those functions as the clear, accountable corporate leadership of the Council.

## **11.5 Contracting Out**

Provided there is no delegation of the Council's statutory decision-making functions, the Executive may contract out to another body or organisation those of its functions which may in law be exercised by an officer of the Council and which are either:-

- (1) subject to an order under Section 70 of the Deregulation and Contracting Out Act 1994; or
- (2) under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles.

In deciding to contract out a function for which it is responsible, the Executive must satisfy itself that contracting out that function will not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that the arrangements will deliver best value. The Executive remains and will be seen to remain, accountable for those functions as the clear, accountable corporate leadership of the Council.

## **11.6 Scrutiny of Joint Arrangements**

A Scrutiny Committee whose Terms of Reference include responsibility for scrutiny of executive decisions in respect of the matter concerned is able to hold the Executive to account both for a decision to delegate or contract out a particular function and for the actual discharge of the function.

## **11.7 Conflicts of Interests – Membership of Joint and Scrutiny Committees**

It is a fundamental principle of accountability that a Councillor cannot scrutinise his/her own decisions. Therefore:-

If the relevant Scrutiny Committee is examining specific matters in relation to the business of a joint committee or joint arrangement of which the Councillor concerned is a Member, then the Councillor may not speak or vote at the Scrutiny Committee meeting unless a local dispensation to do so is given by the Standards Committee in accordance with the Standards Committee Protocol set out in Annex 3.8 to this Constitution.

Where the relevant Scrutiny Committee is reviewing policy generally and where the specific business of a joint committee or joint arrangement of which the Councillor concerned is a Member is not a central or significant feature of that review, then the Member must declare his/her interest orally before the relevant agenda item is reached, but may speak and vote.

## **Article 12 – Officers of the Council**

### **12.1 Terminology**

The term 'officers' means all employees and staff (managerial, professional, technical, administrative, clerical and manual) engaged by the Council to carry out its functions.

### **12.2 General Principles**

In employing and organising officer support for the different roles within the Council, the Council will follow a number of key principles with a view to delivering efficient and effective services:-

- (1) all officers are employed by, and are accountable to, the Council as a whole, and the Council will both expect and respect the political neutrality of officers in the discharge of their functions;
- (2) adequate support from officers is provided for the discharge of all the Council's functions and specifically the roles of the Council, the Cabinet, Scrutiny Committees, other Committees, Boards, Panels and individual Members representing their communities, etc;
- (3) day to day managerial and operational decisions remain the responsibility of the Council's Directors, Assistant Directors, Service Managers and other officers;
- (4) the Council seeks to avoid creating potential conflicts of interests for officers arising from the separation of the Cabinet and Scrutiny roles; and
- (5) all officers have access to appropriate training and development to help them support the various functions of the Council and its Members effectively.

The roles, responsibilities and rights of officers and Members are set out in the Member/Officer Protocol set out in Annex 3.4 to this Constitution.

### **12.3 Appointment of Officers Generally**

The Council will employ such officers as it considers necessary to carry out its functions efficiently and effectively.

Appointments of officers cannot be the responsibility of the Executive.

Appointment of officers other than Directors and Chief Officers is the responsibility of the Head of Paid Service or his/her nominee(s).

### **12.4 Appointment of Directors and Chief Officers**

The Council will employ persons for the posts, functions and areas of responsibility specified in Annex 1.11 to this Constitution (as amended from time to time), who will be designated as Directors and Chief Officers (as appropriate).

Appointments to posts of Directors and Chief Officers will be made by an Appointments Panel constituted from within the membership of an Appointments Board appointed by the full Council.

The composition of the Appointments Board, and any Panel constituted from within its membership, shall comply with Article 7.4 of this Constitution.

The political proportionality rules shall apply to the Appointments Board and to any Appointment Panel constituted from within its membership.

## **12.5 Statutory Officers**

The Council will designate the posts specified in Articles 12.7 to 12.9 below (as amended from time to time) to discharge the functions set out in those Articles.

## **12.6 Management Structure**

The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This is set out in Annex 5 to this Constitution.

## **12.7 Functions of the Head of Paid Service**

The Head of Paid Service will report to the Council or to the Executive (as appropriate) on the manner in which the discharge of the Council's functions is co-ordinated, the numbers and grades of officers required for the discharge of functions and the organisation of officers.

The Head of Paid Service may not be designated as the Council's Monitoring Officer but may hold the post of Chief Finance Officer if s/he is a qualified accountant.

## **12.8 Functions of the Monitoring Officer**

The Monitoring Officer performs a key function in ensuring lawfulness and integrity in the operation of the Council's decision-making process including investigation and reporting on issues that embrace all aspects of the Council's functions.

In order for the Monitoring Officer to carry out his/her statutory duties and powers, the Council will need to ensure that s/he has access as necessary to meetings and papers and that Members consult with him/her regularly.

The statutory duties and powers of the Monitoring Officer are as follows:-

- (1) **Maintaining the Constitution:** to ensure an up-to-date version of the Constitution is maintained and that it is widely available for consultation by Members, Officers and the public;
- (2) **Ensuring Lawfulness and Integrity of Decision Making:** after consulting with the Head of Paid Service and the Chief Finance Officer, the Monitoring Officer will report to the Council, or to the Cabinet 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. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered;

- (3) **Supporting the Standards Committee:** the Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee;
- (4) **Access to Information:** the Monitoring Officer will make sure that effective arrangements exist to ensure that Cabinet decisions, together with the reasons for those decisions and relevant reports and background papers are made publicly available as soon as possible;
- (5) **Advising whether decisions are within the Policy Framework:** the Monitoring Officer will advise whether the decisions of the Cabinet and Key Decisions by officers are in accordance with the Council's Policy Framework;
- (6) **Providing Advice:** the Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, impropriety, probity and Policy Framework issues to all Councillors;
- (7) **Restrictions on Posts:** the Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

The duties of the Monitoring Officer must be carried out personally but may be carried out by a deputy nominated by him/her to act in the event of absence or illness. It is the function of the Monitoring Officer to appoint a deputy, not the Council.

## 12.9 Functions of the Chief Finance Officer (Section 151 Officer)

The Council recognises the importance of the Chief Finance Officer's key role in providing advice on vires issues (i.e. whether or not the Council has the power to do something), maladministration, financial impropriety, probity and Policy Framework and Budget issues to all Members of the Council.

In particular, the Chief Finance Officer has a statutory responsibility for:-

- (1) **Ensuring Lawfulness and Financial Prudence of Decision Making:** after consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Council, or to the Cabinet in relation to executive functions, 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;
- (2) **Administration of Financial Affairs:** the Chief Finance Officer has responsibility for the administration of the financial affairs of the Council;
- (3) **Contributing to Corporate Management:** the Chief Finance Officer contributes to the Corporate Management of the Council, in particular through the provision of professional financial advice;

- (4) **Providing Advice:** the Chief Finance Officer provides advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Policy Framework and Budget issues to all Councillors and will support and advise Councillors and officers in their respective roles;
- (5) **Provision of Financial Information:** the Chief Finance Officer provides financial information to Councillors and the public.

The duties of the Chief Finance Officer (apart from the administration of the financial affairs of the Council) must be carried out personally, but can be carried out by a deputy nominated by him/her in cases of absence or illness. It is the function of the Chief Finance Officer to appoint a deputy, not the Council.

#### **12.10 Duty to Provide Sufficient Resources to the Monitoring Officer and Chief Finance Officer**

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

#### **12.11 Conduct**

Officers are subject to the Officer Code of Conduct set out in Annex 3.2 to this Constitution, which is included in their terms and conditions of employment. Officers must comply with the Officer Code of Conduct.

#### **12.12 Employment**

The recruitment, selection and dismissal of officers will comply with the Officer Employment Procedure Rules detailed in Annex 2.8 to this Constitution.

## **Article 13 – Decision making**

### **Explanatory note**

The Council is required to keep an up to date record of which part of the Council or which individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Annex 1 of this Constitution.

#### **13.1 Responsibility for decision making**

A purpose of the Executive structure is to expedite decision making. Accordingly the intention of the Council is that decision taking should be delegated in the interests of speed where that is consistent with the democratic process in terms of accountability and openness. References to the Executive include the Leader, Cabinet or any portfolio holder or officer exercising powers individually.

The Leader, or in circumstances set out in the Constitution, the Deputy Leader, will determine the level at which decisions are made, but such decisions will only be effective when notified to and recorded by the Proper Officer unless otherwise provided for within this Constitution.

The separation of powers between the Council and the Executive is fundamental to the operation of modernised local government.

The Local Authorities (Functions and Responsibilities) Regulations 2000 as amended set out what decisions the Council must make itself and these are detailed in Article 4.2.

Annex 1.1 sets out those functions which are reserved to Full Council.

#### **13.2 Principles of decision making**

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

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

#### **13.3 Types of decision**

- (a) Decisions reserved to Full Council – decisions relating to the matters listed in Article 4.2 will be made by Full Council and not delegated.

- (b) Decisions made by Committees appointed by the Council – power to make such decisions is delegated by the Council in accordance with the terms of reference contained in Annex 1.2 of this Constitution (Section 101, Local Government Act 1972).
- (c) Decisions of the Executive will comprise:-
  - (i) key decisions; and
  - (ii) other decisions.

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

- (i) to result in the authority incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates;
- or
- (ii) to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the Council's area.

A key decision may only be made in accordance with the requirements of Annex 2.2.

In accordance with Section 9Q of the Local Government Act 2000, in determining the meaning of “significant” the Council shall determine thresholds above which items are significant and will ensure these limits are published. Such thresholds are to be found in Annex 1.17. Any decisions involving expenditure or saving above the published threshold for the service or function concerned will be a key decision. A key decision may not necessarily involve significant expenditure or savings but may however be significant in terms of its effect on communities in two or more wards within the Council's area.

A decision taker may only make a key decision in accordance with the requirements set out in Annex 2.2.

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

Subject to Article 13.8, when considering any matter, the Council meeting will follow the Council Procedure Rules set out in Annex 2.1 of this Constitution.

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

Subject to Article 13.8, when making an Executive decision the Executive or officer (if appropriate) exercising delegated powers will follow the requirements set out in Annex 2.2.

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

When considering any matter the Overview and the Scrutiny and Audit Committees will follow the overview and scrutiny procedures rule set out in Annex 2.5.

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

Subject to Article 13.8, other Council Committees or Boards will follow those parts of the Council Procedure Rules set out in Annex 2.1 of this Constitution as apply to them.

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

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

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

### **14.1 Financial Management**

The management of the Council's financial affairs will be conducted in accordance with the Financial Procedure Rules set out in Annex 2.6 to this Constitution.

### **14.2 Contracts**

Every contract made by the Council will comply with the Contracts Procedure Rules set out in Annex 2.7 to this Constitution.

### **14.3 Legal Proceedings**

In accordance with the Scheme of Delegation to Officers as set out in Annex 1.13 to this Constitution (as amended from time to time) officers of the Council are authorised to institute, to defend or participate in any legal proceedings in any case where such action(s) is necessary to give effect to decisions of the Council or in any case where it is considered that such action is necessary to protect the Council's interests.

### **14.4 Authentication of Documents**

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

Any contract with a value exceeding £25,000 entered into on behalf of the local authority in the course of the discharge of an executive function shall be made in writing. Such contracts must either be signed by at least two officers of the authority or made under the common seal of the Council attested by at least one officer.

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

The Common Seal of the Council will be kept in a safe place in the custody of the Monitoring Officer.

The Common Seal will be affixed to those documents which, in the opinion of the, Monitoring Officer should be sealed. The affixing of the Common Seal will be attested by the Monitoring Officer or some other person authorised by him/her.

A decision of the Council or of the Cabinet or of any subsidiary body or individual authorised by the Council or by the Cabinet to act on their behalf will be sufficient authority for sealing any document necessary to give effect to the decision.

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

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

The Council's Monitoring Officer will monitor the operation of the Constitution to ensure that its aims and principles are given full effect.

The Monitoring Officer will also carry out a general or partial review (as appropriate) of the Constitution in the following circumstances:-

- (1) at the direction of a court or of the Secretary of State;
- (2) on the recommendation of the Local Government Ombudsman, the Council's external auditors or one of the Council's Statutory Officers appointed in accordance with Article 12.05 of this Constitution;
- (3) by a decision of the Council;
- (4) in the event that no general review of the Constitution has taken place within the preceding 10 years then, unless the Council decides otherwise, a general review shall be carried out.

On completion of a review, the Monitoring Officer will submit his/her recommendations to the Council's Standards Committee, who will then consider the report and recommend proposals to the Council. The Monitoring Officer will submit a further report to the Council if s/he considers it appropriate.

### **15.2 Monitoring & Review of the Constitution by the Monitoring Officer**

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Council's Constitution and to make recommendations to the Council for ways in which it could be amended in order better to achieve the purposes set out in Article 1 of the Constitution.

In undertaking this task the Monitoring Officer may:-

- (1) observe meetings of different parts of the Member structure;
- (2) undertake an audit trail of a sample of decisions;
- (3) record and analyse issues raised with him/her by Members, officers, the public and other bodies or persons with a legitimate interest; and
- (4) compare practices in the Council with those in other comparable authorities, or national examples of best practice.

### **15.3 Procedures for Changes to the Constitution**

#### **(1) Changes to the Articles, Procedural Rules and Protocols, etc.**

Changes to the Articles of the Constitution; the Procedural Rules set out in Annex 2; the Codes of Practice and Protocols set out in Annexes 3; and the Members' Allowances Scheme set out in Annex 4 can only be made by the full Council, which may not delegate this function.

Such proposals for changes may only be considered by the Council on receipt of a written report by:-

- (a) the Standards Committee; and/or
- (b) the Monitoring Officer.

#### **(2) Proposals for changes to any of the Procedural Rules set out in Annexes 2; to any of the Codes of Practice and Protocols set out in Annexes 3; and/or to the Members' Allowances Scheme set out in Annex 4 may be considered and determined forthwith by the Council. The Proper Officer shall be authorised to make minor textual changes to the Articles and Annexes to the Constitution where this is necessary as a consequence of:-**

- (a) a decision properly made by the full Council to amend any part of them (for example cross-references, paragraph numbering, nomenclature, etc.);
- (b) legislation or a court order.

#### **(3) Changes to Other Parts of the Constitution**

To ensure transparency and accountability in the Council's decision-making processes, the Proper Officer shall ensure that the following parts of the Constitution are at all times kept up to date and accurately reflect the relevant decisions of the Council, its committees and sub-committees and of the Cabinet:-

- (a) Summary and Explanation: giving a summary and brief explanation of the main provisions of the Constitution;
- (b) Annex 1: setting out the responsibilities for functions and the delegations of those responsibilities;
- (c) Annex 5: setting out the current organisational structure of the Council.

#### **(4) Change in the Form of Governance Arrangements**

The Council may change its existing form of governance. A resolution is required to make such a change, A document setting out the new arrangements must be available for inspection and public notice must be given in local newspapers, The Council may be required to hold a referendum.

**(5) Consultation on Other Constitutional Changes**

Where a proposal to change this Constitution does not involve a change in the form of governance arrangements (whether from a Leader and Cabinet form to an elected Mayoral form, or vice-versa), there will not normally be a requirement to consult with local electors and other interested persons in the Borough, unless the changes proposed will have substantial implications for all or a significant proportion of them.

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

### 16.1 Suspension of the Constitution

#### (1) Limits to Suspension

The Articles of this Constitution may not be suspended.

Certain of the Procedure Rules set out in Annexes 2 to this Constitution may be suspended. Those Procedure Rules may be suspended by the Council to the extent detailed in the table set out in sub-paragraph (3) of this Article 16.1 below and permitted by the law.

#### (2) Procedure to Suspend

A motion to suspend any Rules at a meeting of the Council 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 which it is intended to achieve, taking account of the purposes of the Constitution set out in Article 1.

#### (3) Rules Capable of Suspension

The following Procedure Rules may be suspended to the extent indicated below:

Rules that may be Suspended	Limitations on Suspension
<b>Annex 2.1 - Council Procedure Rules:</b> all except paragraphs 20.5 (Right to Require an Individual Vote to be Recorded) and 21.2 (No Requirement to Sign Minutes of Previous Meeting at Extraordinary Meeting)	Suspension may only be exercised by the full Council for the consideration of specified business at a single meeting only.
<b>Annex 2.6 – Financial Procedure Rules</b>	Suspension may only be exercised by the full Council to the extent permitted by law. The reasons for suspension shall be stated in each case.
<b>Annex 2.7 - Contract Procedure Rules</b>	Suspension may only be exercised by the full Council or the Cabinet in respect of a single contract or category of contract to the extent permitted by law. The reasons for suspension shall be stated in each case.

## **16.2 Interpretation**

The ruling of the Mayor as to the construction or application of this Constitution, or as to any proceedings of the Council, will not be challenged at any meeting of the Council.

Such interpretation will have regard to the purposes of the Constitution contained in Article 1.

## **16.3 Publication**

The Service Manager (Communities) will:-

- (1) provide a copy of this Constitution to each Member of the Council upon delivery to him/her of that individual's declaration of acceptance of office when the Member is first elected to the Council;
- (2) ensure that copies of this Constitution are available for inspection at the Council's offices, at libraries and other appropriate locations and can be purchased by the local press and members of the public on payment of a reasonable fee;
- (3) ensure that the Summary and Explanation of this Constitution is made widely available within the Borough and is updated as necessary.