

Article 1 – The Constitution

1.1 Purpose of the Constitution

The purpose of the Constitution is to:

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

1.2 Powers of the Council

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

1.3 Interpretation and Review of the Constitution

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated above. The Council will monitor and evaluate the operation of the Constitution as set out in Article 15.

Article 2 – Members of the Council

2.1 Composition and Eligibility

- (a) **Composition:** The Council comprises 38 Councillors. One or more Councillors are elected by the voters of each Ward in accordance with a scheme drawn up by the Local Government Boundary Commission for England and approved by Parliament.
- (b) **Eligibility:** Only registered voters of the District or those living or working there are eligible to hold the office of Councillor.

2.2 Election and Terms of Councillors

The regular election of Councillors is held on the first Thursday in May every four years. The term of office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next following regular election.

A councillor shall cease to be a councillor if:

- (a) they resign by giving written notice to the proper officer (such resignation to take effect upon the receipt of such notice by the proper officer); or
- (b) they fail to attend meetings of the Council for a period of six months, unless the failure was due to a reason approved by the authority; or
- (c) they cease to be qualified to be a member of the authority or become disqualified from being a member of the authority; or
- (d) they come to the end of the term of office for which they were elected and have not been re-elected.

2.3 Roles and Functions of all Councillors

- (a) **Key Roles:** All Councillors will:
 - (i) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
 - (ii) contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision making;
 - (iii) effectively represent the interests of their Ward and of individual constituents;
 - (iv) respond to constituents' enquiries and representations, fairly and impartially;
 - (v) participate in the governance and management of the Council;
 - (vi) **be available to represent the Council on other bodies;** and
 - (vii) maintain the highest standards of conduct and ethics.
- (b) **Rights and Duties**
 - (i) Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law;
 - (ii) Councillors will not make public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or officer entitled to know it; and
 - (iii) for these purposes, "confidential" and "exempt" information are defined in the Access to Information Rules in Part 4 of this Constitution.

2.4 Conduct

Councillors will at all times observe the Members' Code of Conduct and the Protocol on Member/Officer Relations set out in Part 5 of this Constitution and **shall have**

regard to the current procedural guidance for members of the Planning and Licensing and General Purposes Committee adopted by the Council.

2.5 Allowances

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Part 6 of this Constitution.

2.6 Recognition of political groups

Members shall be entitled to join political groups. In accordance with the Local Government (Committees and Political Groups) Regulations 1990. A political group shall be treated as constituted when there is delivered to the Proper Officer a notice in writing which:

- (a) is signed by two or more members of the Council who wish to be treated as a political group;
- (b) states that members of the Council who have signed wish to be treated as a political group;
- (c) states the name of the political group;
- (d) states the name of the member who shall be the Leader of the political group.

2.7 Definitions of Controlling and Opposition Groups

The political group or groups of the Council whose members have been appointed to the Cabinet by the Leader of the Council shall be identified as the Controlling Group or Groups. For the purposes of political control, the Cabinet shall collectively be identified as the Executive.

The political group with the largest number of seats on the Council and whose members have not been appointed to the Cabinet by the Leader of the Council shall be identified as the Major Opposition Group.

Other political groups with seats on the Council and whose members have not been appointed to the Cabinet by the Leader of the Council shall be identified as Minor Opposition Groups.

2.8 Leader of the Major Opposition Group's report to Council

The Leader of the Major Opposition Group may make a written report to the Annual Meeting of Council.

Article 3 – Citizens and The Council

3.1 Citizens' Rights

Citizens have the right to:

- vote at local elections if they are registered;

- contact their local Councillor about any matters of concern to them;
- obtain a copy of the Constitution;
- attend meetings of the Council, Cabinet, Committees and Sub-Committees except where, for example, personal or confidential matters are being discussed;
- speak at Planning Committee meetings in accordance with the provisions of the **public speaking procedure**;
- petition to request a referendum on a mayoral form of Executive;
- submit a petition in accordance with the Council's Petition Scheme under the Council's Petition Scheme, if it includes 10 or more signatures. A petition may be signed by anyone living, working or studying in the Rother District;
- participate in the Council's question time and contribute, by invitation, to investigations by Overview and Scrutiny Committees;
- find out, from the Executive's Forward Plan, what key decisions are to be discussed by the Executive or decided by the Executive or officers, and when;
- attend public meetings of the Executive when both key and non-key decisions are being discussed or decided;
- with the knowledge of all persons present at a meeting, record, broadcast and report meetings of the Council that are open to the public;
- make representations about why proposed private Executive meetings or part thereof should be open to the public;
- see reports and background papers, and any records of decisions made by the Council and Executive, excluding exempt or confidential information;
- complain to the Council if they are dissatisfied with the action or lack of action taken by the Council on a matter which is the Council's responsibility in accordance with the Council's Corporate Complaints Procedure;
- complain to the Local Government and Social Care Ombudsman if they think the Council has not followed its procedures properly. However, they should only do this after using the Council's own complaints process;
- complain to the Council's Monitoring Officer if they have evidence which they think shows that a Parish, Town or District Councillor has not observed the relevant Members' Code of Conduct; and
- inspect the Council's accounts and make their views known to the external auditor.

3.2 Citizens' Conduct

Citizens are expected to treat councillors, officers and others providing services with respect. The Council will not tolerate abusive or threatening behaviour or damage to

Council property. The Council asks that citizens remain polite and patient and use the complaints procedure if aggrieved.

Article 4 – The Full Council

4.1 The Full Council

The Full Council is a meeting of the 38 councillors representing Wards in Rother District Council. It is chaired by the Chair of the Council and managed in accordance with the formal Council Procedure Rules in Part 4 of this Constitution.

4.2 Functions of the Council

Only the Council will exercise the following functions:

- (a) adopting and changing the Constitution;
- (b) approving or adopting the policy framework and the budget **with the exception of the calculation and approval of the council tax base, which is delegated to the Chief Finance Officer;**
- (c) subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an Executive function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to or not wholly in accordance with the budget;
- (d) electing appointing the Leader of the Council and, in certain circumstances, removing the Leader;
- (e) agreeing and/or amending the terms of reference for Committees, deciding on their composition and making appointments to them;
- (f) approving the list of outside bodies and making appointments thereto, unless the appointment is an Executive function or has been delegated by the Council;
- (g) adopting an Allowances Scheme under Article 2.5;
- (h) changing the name of the area;
- (i) confirming the appointment of the Head of Paid Service **the Monitoring Officer and the Chief Finance Officer (Section 151 Officer) and taking the final decision to dismiss the Head of Paid Service, Chief Finance Officer and Monitoring Officer;**
- (j) making, amending, revoking, re-enacting or adopting byelaws and promoting or opposing the making of local legislation or personal Bills;
- (k) **adopting a Code of Conduct and agreeing any amendments to it;**
- (l) all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself or its Regulatory Committees rather than the Executive; and
- (m) all other matters which, by law, must be reserved to Council.

4.3 Meanings

- (a) **Policy Framework: The policy framework means those required by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 to be adopted by the Council, other plans and strategies which the Ministry of Housing, Communities and Local Government recommends should be**

adopted by the Council as part of the policy framework and all other policies and strategies which the Council adopts as a matter of local choice, including but not limited to:

- The Corporate Plan, setting out the Council's key objectives
- Environment Strategy
- Crime and Disorder Reduction Strategy
- Plans and strategies which together comprise the Local Development Framework
- Annual Pay Policy Statement
- Food Law Enforcement Plan
- The plan and strategy which comprise the Housing Investment Programme

- (b) Budget: The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, setting the council tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.

4.4 Council Meetings

There are three types of Council meeting:

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

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

4.5 Responsibility for Functions

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

Article 5 - Chairing the Full Council

5.1 Election of the Chair and Vice-Chair

At its annual meeting the full Council will elect one of their number by secret ballot to chair the Council for the ensuing year. It will also elect a deputy. Neither of these offices can be held for more than two terms consecutively. The Councillor elected as Chair will serve as the first citizen of the Rother District.

5.2 Role and Function of the Chair of Rother District Council

The Chair will have the following responsibilities:

- (a) to be the Civic Leader of Rother District Council and to represent the Council at various functions of a civic, community and ceremonial nature;

- (b) to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- (c) to preside over meetings of the **Full Council** so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
- (d) to ensure that the **Full Council** meeting is the forum for debate of matters of concern to the local community and the place at which Members who are not on the Executive are able to hold the Executive to account;
- (e) to promote public involvement in the Council's activities;
- (f) to be the conscience of the Council;
- (g) to attend such civic and ceremonial functions as the Council and the Chair determines appropriate; and
- (h) **to be an ex-officio Member on all Committees (excluding Cabinet) with no rights to move, second or vote on any Committee.**

5.3 Role of the Vice-Chair

The Vice-Chair shall to deputise, as necessary, for the Chair of the Council.

Article 6 – Overview and Scrutiny Committees

6.1 Terms of Reference

The Council will appoint at least one Overview and Scrutiny Committee to discharge the functions conferred by Section 9F-9FI of the Local Government Act 2000.

6.2 General Role

Within their terms of reference, Overview and Scrutiny Committees will:

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

6.3 Specific Functions

(a) Policy Development and Review: Overview and Scrutiny Committees shall may:

- (i) assist the Council and the **Cabinet** in the development of its budget and policy framework by in-depth analysis of policy issues;
- (ii) conduct research, community and other consultation in the analysis of policy issues and possible options;
- (iii) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
- (iv) engage with and question Members of the **Cabinet** and / or **Chief Executive, Deputy Chief Executive, Director of Place and Climate Change** and Heads of

- Service or such other officers as may be determined by the **Chief Executive**, about their views on issues and proposals affecting the area; and
- (v) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.

(b) Scrutiny: Overview and Scrutiny Committees may:

- (i) review and scrutinise the decisions made by and the performance of the **Cabinet** and/or Council officers both in relation to individual decisions and the impact of those decisions over time;
- (ii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
- (iii) engage with and question Members of the **Cabinet, Chief Executive, Deputy Chief Executive, Director of Place and Climate Change** and Heads of Service or such other officers as may be determined by the **Chief Executive**, about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
- (iv) make recommendations to the **Cabinet** and/or Council arising from the outcome of the scrutiny process;
- (v) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Overview and Scrutiny Committee and residents about their activities and performance; and
- (vi) engage with and question and gather evidence from any person (with their consent).
- (c) Finance: Overview and Scrutiny Committees may exercise overall responsibility for any finances made available to it.
- (d) Annual Report: Overview and Scrutiny Committees must report annually to the Council on their workings and make recommendations for future work programmes and amended working methods if appropriate.

6.4 Proceedings of Overview and Scrutiny Committee

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

Article 7 – The Cabinet

7.1 Role

The **Cabinet** will carry out all of the Local Authority's functions which are not the responsibility of any other part of the Local Authority, whether by law or under this Constitution.

7.2 Form and Composition

The **Cabinet** will consist of the **Leader of the Council** together with such other number of Councillors as determined and appointed by the Leader of the Council

normally at its Annual Meeting, being at least two but not more than 10 Councillors. The **Cabinet** cannot include either the Chair or Vice-Chair of Council. **Subsequent changes to the membership of the Cabinet may be made by the Leader and shall take effect immediately upon the receipt of written notice of the appointment by the Chief Executive.**

7.3 The Leader and Deputy Leader

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

- (a) they resign from the office; or
- (b) they are no longer a Councillor; or
- (c) they are removed from office by resolution of the Council.

The Leader shall appoint one member of the Cabinet to be the Deputy Leader to assume the full powers of the Leader in any circumstances in which the Leader is unable to act. The Deputy Leader shall also act as Leader if the post of Leader is vacant. The Deputy Leader shall hold office in accordance with the provisions of Article 7.4 below.

7.4 The Deputy Leader and other Executive Members

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

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

7.5 Vacancies – Leader and Deputy Leader

- (a) **When a vacancy arises in the office of the Leader, the Council shall fill the vacancy at the next ordinary meeting of the Council, or at a subsequent meeting. The councillor appointed to fill the vacancy shall hold office for the remainder of the original term, subject the provisions of Article 7.3 (b) above.**
- (b) **When a vacancy arises in the office of Deputy Leader or a member of the Cabinet, the Leader shall appoint a councillor to fill the vacancy and shall inform the Council of the appointment at the next meeting. The councillor(s) appointed shall be subject to the terms of office in Article 7.4 above.**

7.6 Allocation of Portfolios

The Leader of the Council shall normally at the Annual Council meeting allocate such portfolios as **they** consider appropriate to the Members of the Executive. **The current portfolios and descriptions can be found at the following link: [insert link].**

7.7 Proceedings of the Executive

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

7.8 Responsibility for Functions

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

Article 8 – Regulatory & other Committees

8.1 Regulatory and Other Committees

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

8.2 Mandatory requirement to undertake appropriate training

No Councillor shall be eligible to sit on a regulatory committee, either as a substantive or substitute member and vote unless and until they have undertaken suitable training upon appointment to such committee. To remain eligible Members must undertake both initial and annual suitable refresher training, identified by agreement between the relevant Director/Head of Service and Committee Chair. A record of attendance at training events will be maintained by Democratic Services as evidence that each Member's training requirement has been met.

Article 9 – Ethical Standards function of the Audit and Standards Committee

The roles and functions of the Audit and Standards Committee relating to the Audit function is set out in Part 3 of this Constitution.

9.1 Composition

- a) The Council has established the Audit and Standards Committee to advise it and exercise the functions of the Council in relation to ethical standards, in particular those under Chapter 7 of the Localism Act. The composition is as set out in Part 3 of this Constitution to discharge the functions described in Article 9.3 below.
- b) The Audit and Standards Committee shall make an annual report to Full Council on its business in relation to ethical standards matters.
- c) Independent Person(s):
 - i) The Council shall appoint one or more Independent Persons as required under Section 28(7) of the Localism Act 2011;

- ii) The Independent Person shall have the right to attend meetings of the Audit and Standards Committee when ethical standards matters are on the agenda, and any Sub-Committee / Panel established to consider ethical standards matters, but shall not be entitled to vote at meetings;
- iii) The Independent Persons' view will be sought by the Council's Monitoring Officer before **they** make a decision on an allegation which **they** have decided shall be investigated. The Independent Persons' views may be sought by the Council's Monitoring Officer at any other stage, or by a Subject Member, or a Member or co-opted Member of a Parish or Town Council within the District, against whom an allegation has been made that they have breached the Code of Conduct.
- iv) The term of office for the Independent Persons will be fixed for four years. Independent persons may reapply on expiry of their current term **for a maximum of two terms**.

9.2 Sub-Committee of the Audit and Standards Committee (Hearing Panel)

The Audit and Standards Committee will appoint a sub-committee known as a Hearing Panel for the purpose of:

- (a) considering an Investigating Officer's final report in cases where it is concluded that a councillor has failed to comply with the relevant Code of Conduct; and
- (b) considering what sanctions to impose, if any, in accordance with the Council's Hearing Procedure.

9.3 Role and Function

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

- (a) promoting and maintaining the highest standard of conduct by Councillors and co-opted Members;
- (b) assisting Councillors and co-opted Members to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct **and any other codes and protocols relating to standards of conduct throughout the Council, including the protocol on Member / Officer Protocol and the Officer Code of Conduct;**
- (d) monitoring the operation of the Members' Code of Conduct **and any other codes and protocols relating to standards of conduct throughout the Council, including the protocol on Member / Officer Protocol and the Officer Code of Conduct;**
- (e) advising, training or arranging to train Councillors and co-opted Members on matters relating to the Members' Code of Conduct;
- (f) putting in place arrangements to investigate and make decisions on complaints in relation to allegations that a Member or co-opted Member of the authority as failed to comply with the Code of Conduct;
- (g) the exercise of (a) to (f) above in relation to the Parish and Town Councils wholly or mainly in its area and the Members of those councils;

- (h) maintaining an overview of dispensations granted to councillors and co-opted members from requirements relating to interests set out in Members' Code of Conduct;
- (i) advising the Council on the appointment of Independent Persons; and
- (j) overview of all Council complaints handling and Local Government and Social Care Ombudsman investigations, including the power to make payments or other benefits in cases of maladministration etc. (Section 92 of the Local Government Act 2000).

Article 10 - Area Committees and Forums

10.1 Area Committees

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

Article 11 - Joint Arrangements

11.1 Promoting well-being through partnership

The Council or the Cabinet, in order to promote the economic, health, social or environmental well-being of its area, may:

- (a) enter into arrangements or agreements with any person or body;
- (b) co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
- (c) exercise on behalf of that person or body any functions of that person or body.

11.2 Joint Arrangements

- (a) The Council may establish joint arrangements with one or more local authorities and/or their Cabinets to exercise functions which are not Executive functions in any of the participating authorities, or to advise the Council. Such arrangements may involve the appointment of a joint Committee with these other local authorities.
- (b) The Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are Executive functions. Such arrangements may involve the appointment of joint Committees with these other local authorities.
- (c) The details of any such arrangements entered into will be found on the Council's website at the following link: [INSERT LINK]

11.3 Delegation to and from other Local Authorities

- (a) The Council may delegate non-executive functions to another local authority or, in certain circumstances, the Executive of another local authority.
- (b) The **Cabinet** may delegate executive functions to another local authority or the Executive of another local authority in certain circumstances.
- (c) The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting.
- (d) **The details of any such delegations entered into will be found on the Council's website at the following link: [INSERT LINK]**

11.4 Contracting Out

The Council in relation to functions which are not executive functions, and the **Cabinet** in relation to executive functions, may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an order under section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making. **The details of any such contracting our arrangements entered into will be found on the Council's website at the following link: [INSERT LINK]**

Article 12 - Officers

12.1 Management Structure

- (a) **General:** The Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.
- (b) **Chief Officers:** The Council will engage persons for the following three posts, who will be designated chief officers.

POST	FUNCTIONS AND AREAS OF RESPONSIBILITY
Chief Executive (Head of Paid Service)	<ul style="list-style-type: none">• Overall corporate management and operational responsibility (including overall management responsibility for all officers)• Provision of professional advice to all parties in the decision-making process• Together with the Monitoring Officer, responsibility for a system of record keeping for all the Council's decisions• Representing the Council on partnership and external bodies (as required by statute or the Council)• Executive Support• HR & Policy• CFO and Financial Services• Democratic Services & Elections• Communications
Deputy Chief	<ul style="list-style-type: none">• Revenues and Benefits

Executive (Monitoring Officer)	<ul style="list-style-type: none"> • Housing and Customer Services • Legal Services Contract • Environmental Services, Licensing and Community Safety • ICT Transformation • Internal Audit & Risk Management
Director of Place and Climate Change	<ul style="list-style-type: none"> • Planning Policy and Strategy • Planning DM / Building Control Contract • Regeneration and Major Projects / Estates • Neighbourhood / Commercial Services • Response to climate change

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

POST	DESIGNATION
Chief Executive	Head of Paid Service
Finance Manager	Chief Finance Officer (Section 151 Officer)
Deputy Chief Executive	Monitoring Officer

- (d) **Structure:** The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This is set out at Part 7 of this Constitution.
- (e) **Corporate Management Team:** The senior officer team responsible for the operational management of the Authority is known as the “Corporate Management Team” and comprises the Chief Executive, Deputy Chief Executive and Monitoring Officer, Director – Place and Climate Change, Chief Finance Officer and all Heads of Service.

12.2 Functions of the Head of Paid Service

- (a) **Discharge of functions by the Council:** The Head of Paid Service will report to Council on the manner in which the discharge of the Council’s functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.
- (b) **Corporate Complaints Officer:** The Head of Paid Service will be responsible for the administration of the Corporate Complaints Procedure and for dealing with complaints made to the Local Government and Social Care Ombudsman.
- (c) **Restrictions on functions:** The Head of Paid Service cannot be the Monitoring Officer but may hold the post of Chief Finance Officer, if a qualified accountant.

12.3 Functions of the Monitoring Officer

- (a) **Maintaining the Constitution:** The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for reference by Members, staff and the public.

- (b) **Ensuring Lawfulness and Fairness of Decision Making:** After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the Council or to the Executive in relation to an executive function if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- (c) **Supporting the Audit and Standards Committee:** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Audit and Standards Committee in relation to ethical standards.
- (d) **Code of Conduct Complaints:** The Monitoring Officer will:
- i) adhere to the arrangements put in place by the Council to deal with allegations that a member of the Authority or of a Parish or Town Council within its area has failed to comply with the relevant authority's Code of Conduct.
 - ii) establish and maintain a register of interests of Members and Co-opted Members of the Council and Parish and Town Councils across the district, and to ensure that it is available for public inspection and published on the Council's website.
 - iii) consider all complaints at first instance and decide whether to refer the matter for investigation, to take no action or to seek to resolve the matter through alternative means.
 - iv) receive reports from the Investigating Officer and determine whether to refer the matter to the Audit and Standards Committee for consideration, to take no further action or to seek to resolve the matter through alternative means.
 - v) grant a Member or Co-opted Member of the District Council a dispensation from the restriction on speaking and/or voting when any matter in which that person has a disclosable pecuniary interest is to be considered at a meeting of the Council or any of its committees, sub-committees, joint committees or joint sub-committees.
- (e) **Proper Officer for Access to Information:** The Monitoring Officer will ensure that Executive decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.
- (f) **Advising whether Executive Decisions are within the Budget and Policy Framework:** The Monitoring Officer will advise whether decisions of the Executive are in accordance with the budget and policy framework.
- (g) **Providing Advice:** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors.
- (h) **Restrictions on Posts:** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

- (i) To appoint a deputy (where required) who shall undertake the Monitoring Officer's duties where the Monitoring Officer is unable to act owing to absence or illness. [s5, Local Government & Housing Act 1989].

12.4 Functions of the Chief Finance Officer (Section 151 Officer)

- (a) **Ensuring Lawfulness and Financial Prudence of Decision Making:** After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Council or to the Executive in relation to an Executive function and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully. [s.114 Local Government Finance Act, 1988]. Such a report shall have the effect of stopping the proposal or decision being implemented until the report has been considered.
- (b) **Administration of Financial Affairs:** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to Corporate Management:** The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing Advice:** The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors and will support and advise Councillors and officers in their respective roles.
- (e) **Giving Financial Information:** The Chief Finance Officer will provide financial information to the media, members of the public and the community.
- (f) **Restrictions on Posts.** The Chief Finance Officer cannot be the Monitoring Officer.
- (g) If appropriate, to appoint a deputy who shall undertake the Chief Finance Officer's duties where the Chief Finance Officer is unable to act owing to absence or illness. [s114, Local Government Finance Act 1988].

12.5 Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer

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

12.6 Conduct

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

12.7 Employment

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

Article 13 - Decision Making

13.1 Responsibility for Decision Making

The Council will issue and keep an up to date record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of this Constitution.

13.2 Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:

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

13.3 Types of Decision

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

13.4 Decision Making by the Council

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

13.5 Decision Making by the Executive

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

13.6 Decision Making by Overview and Scrutiny Committees

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

13.7 Decision Making by other Committees and Sub-Committees established by the Council

Subject to Article 13.8, other Council Committees and Sub-Committees will follow those parts of the Council Procedure Rules set out in Part 4 of this Constitution as apply to them.

13.8 Decision Making by Council bodies acting as Tribunals

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

13.9 Appeals

Where any appeal arises from a decision delegated to any officer, committee of the Cabinet or any sub-committee, neither that officer, committee or sub-committee nor any member of that committee or sub-committee nor any person previously having had any part in the relevant decision, shall be involved in the appeal.

Article 14 - Finance, Contracts and Legal Matters

14.1 Financial Management

The management of the Council's financial affairs will be conducted in accordance with the Financial Procedure Rules set out in Part 4 of this Constitution.

14.2 Contracts

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

14.3 Legal Proceedings

The Solicitor to the Council is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Solicitor to the Council considers that such action is necessary to protect the Council's interests.

14.4 Authentication of Documents

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

Any contract with a value exceeding £100,000 and entered into on behalf of the Local Authority in the course of the discharge of an executive function shall be made in writing and must either be signed or made under the Common Seal of the Council attested in accordance with Article 14.6 below.

14.5 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Solicitor to the Council. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Solicitor to the Council should be sealed.

14.6 Attestation

The Seal shall be attested by the following persons present at the sealing, viz. the Chair or Vice-Chair of the Council or other Member of the Council, **the Chief Executive, Deputy Chief Executive**, Solicitor to the Council or **Chief Finance Officer**, and an entry of every sealing of a document shall be made and consecutively numbered in a book kept for the purpose and shall be signed by a person who has attested the Seal.

Article 15 - Review and Revision of the Constitution

15.1 Duty to Monitor and Review the Constitution

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

15.2 Protocol for the Monitoring and Review of the Constitution

A key role for the **Audit and Standards Committee** is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in Article 1. In undertaking this task, the Members of the Committee may:

- (a) observe meetings;
- (b) undertake an audit trail of a sample of decisions;
- (c) record and analyse issues raised with the Committee by Members, officers, the public and other relevant stakeholders; and
- (d) compare practices in this authority with those in other comparable authorities, or national examples of best practice.

15.3 Changes to the Constitution

- (a) **Approval:** Changes to the Constitution, save for delegations to officers, will only be approved by the Council after consideration of the proposal by the **Audit and Standards Committee**.
- (b) **Change from one form of Executive to another:** The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals.
- (c) **The Chief Executive is authorised, in consultation with the Chair and Leader of the Council and Monitoring Officer, to agree and incorporate into the Constitution:**
 - (i) Factual changes, for example to reflect changes in job titles or the management structure; and
 - (ii) Changes which are required by new legislation which the Council has no choice but to make.

Article 16 - Suspension, Interpretation and Publication of the Constitution

16.1 Suspension of the Constitution

- (a) **Limit to Suspension:** The Articles of this Constitution may not be suspended. The Council Procedure Rules may be suspended to the extent permitted within those Rules and the law.
- (b) **Procedure to Suspend:** A motion to suspend any Procedure Rules will not be moved without notice unless at least one half of the whole number of Councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.

16.2 Interpretation

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

16.3 Publication

- (a) The Head of Paid Service shall provide every member of the Council, upon the delivery of the individual's declaration of acceptance of office on the Member first being elected to the Council, with the details of where to view a copy of the Constitution on the Council's website.
- (b) The Chief Executive shall ensure that a copy of the Constitution is available for inspection on the Council's website, at Council offices and other

appropriate locations and may be purchased in hard copy by members of the local media and the public on payment of a reasonable fee.