

30 January 2017 ED/LP Minor

BURNLEY BOROUGH COUNCIL

PART 2

ARTICLES

OF THE CONSTITUTION

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Article 1 – The Constitution

1.01 Powers of the Council

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

1.02 The Constitution

This Constitution, and all its appendices, is the Constitution of Burnley Borough Council.

1.03 Purpose of the Constitution

The purpose of the Constitution is 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 Members represent their constituents more effectively;
4. enable decisions to be taken efficiently and effectively having regard to the law, appropriate policies, procedures and ethical standards;
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 or had a personal or prejudicial interest in;
7. ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
8. provide a means of improving the delivery of services to the community.
9. enable the Council to provide services to the community in an efficient, effective and economical manner

1.04 Interpretation and Review of the Constitution

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

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

2.01 Composition and eligibility

- (a) **Composition.** The Council comprises 45 Members, otherwise called councillors. Three councillors are elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Commission and approved by the Secretary of State.
- (b) **Eligibility.** Only registered voters of the district or those living or working in the district, as defined by election law, will be eligible to hold the office of councillor.

2.02 Election and terms of Members

ELECTION BY THIRDS

Election and terms. The ordinary election of a third (or as near as may be) of all councillors will be held on the first Thursday in May in each year unless changed by Parliament starting in 2005 and every fourth year after there will be no regular election to allow for County Council elections. The terms of office of councillors will be four years starting on the fourth day after being elected and finishing on the fourth day after the date of the regular election four years later.

2.03 Roles and functions of all Members

- (a) **Key roles.** All Members 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 Borough 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 for the benefit of the Borough as a whole;
 - (v) participate in the governance and management of the Council;
 - (vi) maintain the highest standards of conduct and ethics; and
 - (vii) be available to represent the Council on other bodies

- (b) **Rights and duties**
 - (i) Members will have rights of access to 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) Members will not make public information which is confidential or exempt under the Access to Information Rules without the consent of Council

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(iii) For these purposes, "confidential" and "exempt" information are defined in the Access to Information Rules in Part 4 of this Constitution.

2.04 Conduct

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

2.05 Allowances

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

Article 3 – Citizens and The Council

3.01 Citizens' rights

Citizens have the following rights In relation to the business of the Council. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution:

- (a) **Voting and petitions.** Citizens on the electoral roll for the area have the right to vote and sign a petition to request a referendum for an elected mayor form of local governance.
- (b) **Information.** Citizens have the right to:
 - (i) attend meetings of the Council and its committees and any decision making meeting of the Executive except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
 - (ii) find out from the forward plan what key decisions will be taken by the executive and when;
 - (iii) see reports and background papers and any records of decisions made by the Council and the Executive other than exempt or confidential items;
 - (iv) inspect the Council's accounts and make their views known to the external auditor; and
 - (v) such other information as may be specified in the Council's Freedom of Information Act 2000 Publication Scheme
- (c) **Participation.** Citizens have the right to participate at Council, Executive and Committee/Sub-Committee meetings' question time and contribute to investigations by scrutiny committees in accordance with the procedures set out in Part 4 (Council Procedure Rules).
- (d) **Complaints.** Citizens have the right to complain to:
 - (i) the Council itself under its complaints scheme;
 - (ii) the Council's Monitoring Officer in respect of any alleged unlawful or illegal behaviour, action, inaction or decisions of Members and Officers;
 - (iii) the Ombudsman after using the Council's own complaints scheme;
 - (iv) the Standards Board for England about a breach of the Member's Code of Conduct
 - (v) any other relevant regulatory or law enforcement agency

3.02 Citizens' responsibilities

Citizens must obey the law and not be violent, abusive or threatening to Members or officers and must not willfully harm things owned by the council, Members or officers.

Citizens on the electoral roll should exercise their voting rights.

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Article 4 – The Full Council

4.01 Meanings

- (a) **Policy Framework.** The policy framework means the following plans and strategies to be approved by the Full Council either as required by law or decision of the Council:-
- Sustainable Community Strategy;
 - Crime and Disorder Reduction Strategy;
 - Local Transport Plan;
 - Plans and strategies which together comprise the Development Plan;
 - Council's Strategic Plan;
 - Food Law Enforcement Service Plan
 - The Housing Strategy;
 - Economic Vision Strategy
 - Corporate Community Engagement Strategy
 - Equal Opportunities Policy, Single Equality Scheme and Equality Action Plan
 - Statement of Licensing Policy regarding the Licensing Act 2003
 - Statement of Principles regarding the Gambling Act 2005
 - Matters related to local government pensions
 - Data Protection and Freedom of Information Policy
 - Pay Policy Statement - Localism Act 2011
- (b) **Budget.** The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the council tax base, 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.
- (c) **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.

4.02 Functions reserved to the full Council

Only the Council will exercise the following functions:

- (a) adopting and approving changes to the Constitution or any that are likely to have a significant impact;
- (b) approving or adopting the policy framework and the budget and any application to the Secretary of State in respect of any Housing Land Transfer;

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- (c) subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget;
- (d) appointing the Leader;
- (e) agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them;
- (f) appointing representatives to outside bodies unless the appointment is an executive function or has been delegated by the Council (see Part 3 of the Constitution – Local Choice Functions);
- (g) adopting an allowances scheme under Article 2.05;
- (h) changing the name of the area, conferring the title of honorary alderman/alderwoman or freedom of the borough
- (i) confirming the appointment of the head of paid service;
- (j) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or Private Bills;
- (k) all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself rather than the executive; and
- (l) all other matters which, by law, must be reserved to Council.

4.03 **Council meetings**

There are three types of Council meeting:

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings/special meetings.

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

4.04 **Responsibility for functions**

The Council will maintain the tables 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

TITLE OF THE PERSON CHAIRING COUNCIL MEETINGS

5.01 Role and function of the Mayor

The Mayor will be elected by the Council annually. The Mayor and in his/her absence the Deputy Mayor will have the following responsibilities:

- (1) to uphold and promote the Borough , its Constitution, and to give rulings on the Constitution during Council meetings (when necessary and following appropriate advice from relevant Officers);
- (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 the Council meeting is a forum for the 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 and committee chairs to account;
- (4) to promote public involvement in the Council's activities;
- (5) to be an ambassador for the Borough; and
- (6) to attend such civic and ceremonial functions as the Council and he/she determines appropriate
- (7) if necessary to chair meetings between the Leader and the Leaders of all other political groups represented on the Council to plan for the efficient transaction of the Council's business.

Ceremonial role

In this role the Mayor, as the first citizen of Burnley, during his/her term of office, must uphold and preserve the dignity and honour bestowed upon him/her during the term of his/her office and take extra care to ensure that the office of Mayor and the Council are not brought into disrepute. In particular the Mayor must remain apolitical during his/her term of office and avoid taking or making decisions that may be seen by a reasonable person to be politically motivated.

Burnley Borough Council's Code of Conduct for Members applies to the Mayor and the Deputy Mayor.

SCRUTINY

6.01 Terms of reference

The Council will appoint the scrutiny committee set out in the left hand column of the table below to discharge the functions conferred by section 21 of the Local Government Act 2000 or regulations [proposed] under section 32 of the Local Government Act 2000 in relation to the matters set out in the right hand column of the same table.

Committee	Scope
(From May 2014) Scrutiny Committee	To Scrutinise all actions which fall within the remit of any Service Unit or Directorate.

6.02 General role

Within their terms of reference, 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 full Council and/or the executive and/or any committee in connection with the discharge of any functions;
- iii) consider any matter affecting the area or its inhabitants; and
- iv) exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the executive

6.03 Specific functions

- (a) **Policy development and review** –scrutiny committees may:
 - i) assist the Council and the Executive in the development of its budget and policy framework by in-depth analysis of policy issues;
 - ii) conduct research, community and other consultation in the analysis of policy issues and possible options;
 - iii) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
 - iv) question members of the Executive and/or committees, Management Team and Service Managers about their views on issues and proposals affecting the policy area; and
 - v) liaise with other external organisations operating in the policy area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.
- (b) **Scrutiny**- scrutiny committees may:
 - i) review and scrutinise the decisions made by and performance of the Executive and/or committees and council officers both in

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relation to individual decisions and 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) question members of the Executive and Regulatory committees, Management Team and Service Managers 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. Other officers will only attend with the consent of the appropriate Service Manager (not to be unreasonably withheld);
 - iv) make recommendations to the Executive and/or appropriate committee and/or Council arising from the outcome of the scrutiny process including addressing any consequential financial implications;
 - v) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the scrutiny committee and local people about their activities and performance, including the statutory requirement to scrutinize the Crime and Disorder Reduction Partnership by a designated Scrutiny committee at least once a year i.e. the Scrutiny Committee; and
 - vi) question and gather evidence from any person (with their consent).
- (c) **Finance-** scrutiny committees may exercise overall responsibility for any finances which may be made available to them.
- (d) **Annual report-** scrutiny committees must report annually to full Council on their workings and make recommendations for future work programmes and amended working methods if appropriate.

6.04 **Proceedings of scrutiny committees**

The Scrutiny committee will conduct its proceedings in accordance with the Scrutiny Procedure Rules set out in Part 4 of this Constitution.

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Article 7 – The Executive

THE ROLE OF THE EXECUTIVE

7.01 Role

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

7.02 Form and Composition

LEADER APPOINTS EXECUTIVE

The Executive will consist of the Executive Leader together with at least 2, but not more than 9, Members appointed to the Executive by the Leader (one of whom will be appointed by the Leader to act as the Deputy Leader).

7.03 Leader

The Leader will be a Member elected to the position of leader by the Council. The Leader's term of office will end on the day when the Council holds its first Appointment Council Meeting after the Leader's normal day of retirement as a Member, unless:

- (a) he/she resigns from the office; or
- (b) he/she is suspended from being a councillor under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension); or
- (c) he/she is no longer a Member; or
- (d) he/she is removed by resolution of Council provided that no such resolution may be moved unless a Notice of Motion is delivered to the Head of Governance, Law, Property & Regulation not later than 7 days before the meeting at which it is to be debated, and signed by one third of the Members (for the time being) of the Council (which will also meet signing requirements in Part 4.1 Council Procedure Rule 15 Previous Decisions and Motions), and that this particular Motion be exempt from Council Procedure Rule 22 relating to waiving of Standing Orders

7.04 Deputy Leader

(a) The Leader will appoint one of the Members of the Executive to act as Deputy Leader. The Leader must give written notice of such appointment to both the person who he/she is appointing as Deputy Leader and the Head of Governance, Law, Property & Regulation.. The appointment of the Deputy Leader will take effect on receipt of the Leader's written notice by both the person who the Leader is appointing as Deputy Leader and the Head of Governance, Law, Property & Regulation. The Head of Governance, Law, Property & Regulation will keep a written record of the appointment of the Deputy Leader, and the Leader will report the appointment to Council and the Executive at the earliest opportunity.

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(b) The Deputy Leader will hold office until the end of the Leader's term of office unless;

- (i) he/she resigns from the office; or
- (ii) he/she is suspended from being a Member under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension); or
- (iii) he/she is no longer a Member; or
- (iv) he/she is no longer a member of the Executive; or
- (v) he/she is removed by the Leader who must give written notice of such removal to both the Deputy Leader and the Head of Governance, Law, Property & Regulation. The removal of the Deputy Leader will take effect on receipt of the Leader's written notice by both the Deputy Leader and the Head of Governance, Law, Property & Regulation. The Head of Governance, Law, Property & Regulation will keep a written record of any removal of the Deputy Leader, and the Leader will report any such removal of the Deputy Leader to Council and the Executive at the earliest opportunity.

(c) Where a vacancy occurs in the office of Deputy Leader, the Leader must appoint another person in his/her place. The Leader must give written notice of such appointment to both the person who he/she is appointing as Deputy Leader and the Head of Governance, Law, Property & Regulation. The appointment of the Deputy Leader will take effect on receipt of the Leader's written notice by both the person who the Leader is appointing as Deputy Leader and the Head of Governance, Law, Property & Regulation. The Head of Governance, Law, Property & Regulation will keep a written record of the appointment of the Deputy Leader, and the Leader will report the appointment to Council and the Executive at the earliest opportunity

(d) If for any reason:

- (i) The Leader is unable to act or the Office of Leader is vacant, the Deputy Leader will act in his/her place; and
- (ii) The Deputy Leader is unable to act or the Office of Deputy Leader is vacant, the Executive must act in the Leader's place, or arrange for an Executive Member to act in his/her place

7.05 Other Executive members

In addition to the Deputy Leader, the Leader will appoint between 1 and 8 further Executive Members to hold such portfolios as the Leader shall determine. When appointing an Executive Member the Leader must give written notice of such appointment and of the Portfolio to both the person who he/she is appointing as an Executive Member and the Head of Governance, Law, Property & Regulation. The appointment of the Executive Member will take effect on receipt of the Leader's written notice by both the person who the Leader is appointing as an Executive Member and the Head of Governance, Law, Property & Regulation. The Head of Governance, Law,

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Property & Regulation will keep a written record of the appointment of an Executive Member, and the Leader will report the appointment of an Executive Member to Council and the Executive at the earliest opportunity.

An Executive Member shall hold office until the end of the Leader's term of office unless:

- (a) he /she resigns from office; or
- (b) he/she is suspended from being a Member under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension); or
- (c) he/she is no longer a Member; or
- (d) he/she is removed by the Leader who must give written notice of such removal to both the Executive Member and the Head of Governance, Law, Property & Regulation. The removal of an Executive Member will take effect on receipt of the Leader's written notice by both the Executive Member and the Head of Governance, Law, Property & Regulation. The Head of Governance, Law, Property & Regulation will keep a written record of any removal of an Executive Member, and the Leader will report any such removal of the Executive Member to Council and the Executive at the earliest opportunity.

7.06 Remits of Executive Members

Within the above framework and any statutory requirements, the Leader will determine the detailed remits of Executive Members (including the Deputy Leader) and report such detailed remits (and any changes thereto) to the Executive Members concerned, the Head of Governance, Law, Property & Regulation, Council and the Executive at the earliest opportunity.

7.07 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.

7.08 Responsibility for functions

(a) Until the Appointments Council in 2011 the Leader will maintain a list in Part 3 of this Constitution setting out which individual Members of the Executive, committees of the Executive, officers or joint arrangements are responsible for the exercise of particular Executive functions.

(b) From the Appointments Council in 2011 the Leader may determine to exercise any of the Executive functions of the Council personally, or may arrange for the exercise of any of the Council's Executive functions by:

- (i) the Executive
 - (ii) by another Member of the Executive
 - (iii) by a Committee of the Executive
 - (iv) by an Officer of the Council or joint arrangements
- (c) The Head of Governance, Law, Property & Regulation will maintain a

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Register of the Delegation of Executive Functions and will record any alterations to the allocation of responsibility for the discharge of Executive functions.

(d) At the earliest opportunity following the election of a Leader, the Leader will review the allocation of responsibilities for the discharge of Executive functions recorded in Part 3 of this Constitution. Any alterations that the Leader wishes to make to the allocation of responsibility for the discharge of Executive functions will be dealt with in accordance with Executive Procedure Rule 1.4 in Part 4.4 of the Constitution

Article 8 – Regulatory and other committees

8.01 Regulatory and other committees

The Council will appoint the committees set out in the left hand column of the table Responsibility for Council Functions in Part 3 of this Constitution to discharge the functions described in column 3 of that table.

- Development Control
- Licensing
- Appeals
- Audit and Standards

Article 9 - The Audit and Standards Committee

9.01 Audit and Standards Committee

The Council has established an Audit and Standards Committee

9.02 Membership

- a) The Audit and Standards Committee will comprise nine Councillors as Members, as well as 2 co-opted independent members and 2 co-opted parish members.
- b) The nine Members to be appointed by Council.
- c) The external members to be approved by a majority of the Council.
- d) The Committee to be Chaired by a Member.

9.03 Role and Functions relating to Standards

That the terms of reference of the Committee are-

- To promote and maintain high standards of conduct by Members, Co-opted Members and employees of the Council
- To support Members, Co-opted members and employees to observe the Council's Code of Conduct
- To advise, train or arrange to train Members, Co-opted Members, Parish and Town Council Members and employees of the Council on the Council's Codes
- To monitor and advise the Council about the operation of its Code of Conduct for Members and Employees in light of best practice, changes in the law, and government guidance
- To advise the Council on the adoption or revision of the Codes of Conduct, including the adoption of Protocols which support high standards of conduct by Members and employees of the Council
- To actively engage with the Borough, Parish and Town Councils on the role and purpose of the Committee, governance and standards
- To actively engage with the public, the media and key partners on the role and purpose of the Committee, governance and standards to promote public confidence in the Council
- To grant dispensations to Members with disclosable interests
- To grant exemptions for politically restricted posts
- To determine complaints about Members in accordance with the Localism Act 2011 and associated Regulations and local procedures

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- To adopt and keep under review policies and procedures for the determination of complaints about Members
- To have oversight of the Council's Whistleblowing Policy

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Article 10– Area Structures

Details to be inserted when agreed by the Council.

11.01 Arrangements to promote well being

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

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

11.02 Joint arrangements

- (a) The Council may establish joint arrangements with one or more local authorities and/or their Executives to exercise functions which are not executive functions in any of the participating authorities, or advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities.
- (b) The Executive may establish joint arrangements with one or more local authorities to exercise functions which are executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities.
- (c) Except as set out below, the Executive may only appoint Executive members to a joint committee and those members need not reflect the political composition of the local authority as a whole.
- (d) The Executive may appoint Members to a joint committee from outside the Executive in the following circumstances:
 - the joint committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, the Executive may appoint to the joint committee any Member who is a Member for a ward which is wholly or partly contained within the area;The political balance requirements do not apply to such appointments.
- (e) Details of any joint arrangements including any delegations to joint committees will be found in the Council's scheme of delegations in Part 3 of this Constitution.

11.03 Access to information

- (a) The Access to Information Rules in Part 4 of this Constitution apply.
- (b) If all the Members of a joint committee are Members of the Executive in each of the participating authorities then its access to information regime is the same as that applied to the Executive.
- (c) If the joint committee contains Members who are not on the Executive of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

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11.04 Delegation to and from other local authorities

- (a) The Council may delegate non-Executive functions to another local authority or, in certain circumstances, the executive of another local authority.
- (b) The executive may delegate Executive functions to another local authority or the Executive of another local authority in certain circumstances.
- (c) The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting.

11.05 Contracting out

The Council, for functions which are not Executive functions, or the Executive 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.

Article 12 – Officers

TERMINOLOGY

12.01 Management structure

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

Post	Functions and areas of responsibility
1. Chief Executive	<p>Overall corporate management and operational responsibility (including overall management responsibility for all officers)</p> <p>Undertake the duties associated with the statutory role of Head of Paid Service (see 12.02 below)</p> <p>Provision of professional advice to all parties in the decision making process.</p> <p>Together with the monitoring officer, responsibility for a system of record keeping for all the Council’s decisions.</p> <p>Representing the Council on partnership and external bodies (as required by statute or the Council).</p> <p>Oversee the activities of the following Service Unit or Team:</p> <ul style="list-style-type: none"> • Governance, Law , Property & Regulation • Policy and Performance Team
Post	Functions and areas of responsibility
2. Chief Operating Officer	<p>Provision of professional advice to all parties in the decision making process.</p> <p>Contribute to the overall corporate management and operational responsibility and offer corporate advice and personal leadership to specific tasks and projects</p> <p>Representing the Council on partnership and</p>

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	<p>external bodies (as required by statute or the Council).</p> <p>Oversee the activities of the following Service Units:</p> <ul style="list-style-type: none"> • Green Spaces & Amenities • Streetscene • Housing & Development Control • Revenues and Benefits • Finance • Regeneration & Planning Policy • People & Development • Customer and IT Services
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(c) **Head of paid service, monitoring officer and chief financial officer.** The Council will designate the following posts as shown:

Post	Statutory Designation
Chief Executive	Head of Paid Service
Head of Governance, Law, Property & Regulation	Monitoring Officer
Head of Finance	Chief Finance Officer - Undertake the duties associated with the statutory role of Chief Finance Officer (see 12.04 below)

These posts will have the functions described in Article 12.02–12.04 below.

(d) **Structure.** The head of paid service will determine and publicise a description of the overall structure of the Council showing the management structure and deployment of officers. This is set out at Part 7 of this Constitution.

12.02 Functions of the head of paid service

- (a) **Discharge of functions by the Council.** The head of paid service will report to full 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, and the appointment and proper management of Officers
- (b) **Protocols.** The head of paid service's activities will be in accordance with the relevant legislation and the Protocol set out in Part 5 of this constitution consistent with that legislation
- (c) **Restrictions on functions.** The head of paid service may not be the monitoring officer but may hold the post of chief finance officer if a qualified accountant.

12.03 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 consultation 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 full 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 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.
- (d) **Receiving reports.** The monitoring officer will receive and act on reports made by ethical standards officers and decisions of the case tribunals.
- (e) **Conducting investigations.** The monitoring officer will conduct investigations into matters referred by ethical standards officers and make reports or recommendations in respect of them to the Standards Committee.
- (f) **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.
- (g) **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.
- (h) **Providing advice.** The monitoring officer will provide advice on the scope of powers and authority to take decisions, maladministration,

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financial impropriety, probity and budget and policy framework issues to all councillors.

- (i) **Restrictions on posts.** The monitoring officer cannot be the chief finance officer or the head of paid service
- (j) **Protocols.** The monitoring officer's activities will be in accordance with the relevant legislation and the Protocol set out in Part 5 of this Constitution consistent with that legislation

12.04 **Functions of the chief finance 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 full Council, or to the executive in relation to an executive function, and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- (b) **Administration of financial affairs.** The chief finance officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management.** The chief finance officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing advice.** The chief finance officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Members and will support and advise Members and officers in their respective roles.
- (e) **Give financial information.** The chief finance officer will provide financial information to the media, members of the public and the community.
- (f) **Protocols.** The chief finance officer's activities will be in accordance with the relevant legislation and the Protocol set out in Part 5 of this Constitution consistent with that legislation

12.05 **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 officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

12.06 **Conduct**

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

12.07 **Employment**

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

13.01 Responsibility for decision making

The Council will issue and keep up to date a 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.

13.02 Principles of decision making

All decisions of the Council, the Executive, Committees/Sub Committees and Officers 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 below for further details);
- (d) a presumption in favour of openness; and
- (e) clarity of aims and desired outcomes.
- (f) explaining what options were considered and giving the reasons for the decision
- (g) taking account of all relevant considerations and discounting all irrelevant considerations.

13.03 Types of decision

- (a) Decisions reserved to full Council. Decisions relating to the functions listed in Article 4.02 will be made by the full Council and not delegated.
- (b) Key decisions.
 - (i) Key decision means an Executive decision which is likely:
 - (a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant i.e £100,000 having regard to the local authority's budget for the service or function to which the decision relates; or
 - (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the Borough
 - (ii) A decision taker may only make a decision in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of this Constitution.

13.04 Decision making by the full Council

Subject to Article 13.08, the Council meeting will follow the Council Procedures Rules set out in Part 4 of this Constitution when considering any matter.

13.05 Decision making by the executive

Subject to Article 13.08, the executive will follow the Executive Procedures

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Rules set out in Part 4 of this Constitution when considering any matter.

13.06 Decision making by scrutiny committees

scrutiny committees will follow the Scrutiny Procedures Rules set out in Part 4 of this Constitution when considering any matter.

13.07 Decision making by other committees and sub-committees established by the Council

Subject to Article 13.08, other Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in Part 4 of this Constitution as apply to them.

13.08 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.

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Article 14– Finance, Contracts and Legal Matters

14.01 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.

14.02 Contracts

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

14.03 Legal proceedings

The Head of Governance, Law, Property & Regulation 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 Head of Governance, Law, Property & Regulation considers that such action is necessary to protect the Council's interests.

14.04 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 Head of Governance, Law, Property & Regulation 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.

Arrangements for the authentication of contracts are set out in the Contract Procedure Rules.

14.05 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Head of Governance, Law, Property & Regulation or Senior Solicitor. 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 Head of Governance, Law, Property & Regulation should be sealed. The affixing of the Common Seal will be attested by any two persons from the group consisting of the Council's Solicitors and Fellows of the Chartered Institute of Legal Executives or by one of that group and either the Chief Operating Officer or the Chief Executive and an entry of every sealing of a document shall be made in a book to be provided for the purpose and shall be signed by the person or persons who have attested the seal."

Article 15 -Review and Revision of the Constitution

15.01 Duty to monitor and review the constitution

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

Protocol for monitoring and review of constitution by monitoring officer

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

1. observe meetings of different parts of the member and officer 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 relevant stakeholders; and
4. compare practices in this authority with those in other comparable authorities, or national examples of best practice.

15.02 **Changes to the Constitution**

- (a) **Approval.** Changes to the constitution will only be approved by the full Council after consideration of the proposal by the Monitoring Officer and the Member Structures & Support Working Group. This consideration will include any requirements for consultation or for a referendum to be held under current legislation or statutory guidance.

15.03 Any Member, the Executive or a Committee may propose changes to the Constitution which must be submitted in writing to the Monitoring Officer who will report to the next available Council meeting after consulting the Member Structures & Support Working Group

Article 16 – Suspension, Interpretation and Publication of the Constitution

16.01 Suspension of the Constitution

- (a) **Limit to suspension.** The Articles of this Constitution may not be suspended. The Rules specified below may be suspended by the full Council to the extent permitted within those Rules and the law.
- (b) **Procedure to suspend.** A motion to suspend any rules will not be moved without notice unless at least one half of the whole number of Members are present, failing which a notice of motion must previously have been given in writing under Rule 11.1. 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 and cannot exceed the duration of the meeting.
- (c) **Rules capable of suspension.** The following Rules may be suspended in accordance with Article 16.01:

Council Procedure Rules

- Rule 9 - Public Question Time
- Rule 10 - Questions by Members
- Rule 11 - Motions on Notice
- Rule 13 - Motion without Notice
- Rule 14 - Rules of Debate
- Rule 15 - Previous Decisions and Motions

16.02 Interpretation

The ruling of the Mayor 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.

16.03 Publication

- (a) The Head of Governance, Law, Property & Regulation will give a printed copy of this Constitution to each member of the authority upon delivery to him/her of that individual's declaration of acceptance of office on the member first being elected to the Council.
- (b) The Head of Governance, Law, Property & Regulation will ensure that copies are available for inspection at council offices, on the internet and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee.
- (c) The Head of Governance, Law, Property & Regulation will ensure that the summary of the Constitution is made widely available within the area and is updated as necessary.

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Schedule 1: Description of Executive Arrangements

The following parts of this Constitution constitute the executive arrangements:

1. Article 6 (scrutiny committees) and the Scrutiny Procedure Rules;
2. Article 7 The Executive and the Executive Procedure Rules;
3. Article 11 Joint arrangements;
4. Article 13 Decision making and the Access to Information Procedure Rules;
5. Part 3 Responsibility for Functions.