

THE CONSTITUTION OF THE COUNCIL

PART 2 - ARTICLES OF THE CONSTITUTION

		<u>Page No.</u>
Article 1	The Purpose of the Constitution	2-1
Article 2	Members of the Council	2-2 - 2-3
Article 3	Citizens and the Council	2-4 - 2-6
Article 4	The Role of the Council	2-7 - 2-9
Article 5	Chairing the Council	2-10 - 2-11
Article 6	The Executive	2-12 - 2-13
Article 7	Principal Select Committee	2-14 - 2-16
Article 8	Regulatory and other Committees	2-17
Article 9	Joint Arrangements	2-18 - 2-19
Article 10	Employees	2-20 - 2-22
Article 11	Decision Making	2-23 - 2-24
Article 12	Finance, Contracts and Legal Matters	2-25
Article 13	Review and Revision of the Constitution	2-26
Article 14	Suspension, Interpretation and Publication of the Constitution	2-27

Article 1 – The Constitution

1.01 The Council and the Community

Ashfield District Council is democratically elected by and accountable to, the people of Ashfield. The Council is established under law and has a range of legal responsibilities, which it is obliged to carry out and discretionary powers that it can choose to exercise.

1.02 The Purpose of the Constitution

The purpose of this Constitution is to set out in clear terms how the Council works and how its different parts link together. The Council's purpose is to:

1. Serve the communities and residents of Ashfield;
2. Provide good quality, value for money services;
3. Act strategically and plan for the future, working with others to bring about sustainable improvements in people's lives.

In order to achieve its purpose, the Council is:

1. Providing clear leadership to the community in partnership with citizens, businesses and other organisations;
2. Getting local people actively involved in the Council's decision making process;
3. Helping Councillors to represent their constituents more effectively;
4. Enabling decisions to be taken efficiently and effectively;
5. Ensuring that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions;
6. Creating a powerful and effective means of holding decision-makers to public account;
7. Ensuring that no one will review or scrutinise a decision in which they were directly involved;
8. Providing a means of improving the delivery of services to the community.

1.03 Interpretation and Review of the Constitution

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose the 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 14.

Article 2 – Members of the Council

2.01 Composition and Eligibility

1. **Composition.** The Council will comprise 35 Members, otherwise called Councillors. One or more Councillors will be 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 the Secretary of State.
2. **Eligibility.** The law requires that only registered voters of the District, or those living or working there, are eligible to stand for election to serve as a Councillor on the District Council.

2.02 Election and Terms of Councillors

The regular election of Councillors will be held on the first Thursday in May every four years, with the most recent election having been held in May 2023. The terms of office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

2.03 Roles and Functions of all Councillors

1. **Key roles.** All Councillors will:
 - (a) Collectively be the ultimate policy makers and carry out a number of strategic and corporate management functions;
 - (b) Contribute to the good governance of the District as a whole and actively encourage community participation and citizen involvement in decision making;
 - (c) Enable thriving, prosperous and self-sufficient communities where people shape their own futures;
 - (d) Represent and lead their communities and bring their views into the Council's decision-making process, i.e. become the advocates of and for their communities;
 - (e) Deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
 - (f) Respond to constituents' enquiries and representations, fairly and impartially;
 - (g) Balance different interests identified within the ward and represent the ward as a whole;
 - (h) Be involved in decision-making;
 - (i) Participate in the governance and management of the Council;
 - (j) Be available to represent the Council on other bodies; and

(k) Maintain the highest standards of conduct and ethics.

2. Rights and Duties

(a) Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law;

(b) Councillors will not make information which is confidential or exempt public without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or Officer entitled to know it;

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

2.04 Conduct

Councillors will at all times observe the Members' Code of Conduct and the Protocol on Member/Officer Relations set out in Parts 5 and 6 respectively of this Constitution. Complaints that Councillors have breached the Members' Code of Conduct should be referred to the Monitoring Officer by the following link:

<http://www.ashfield.gov.uk/your-council/about-the-council/councillors-and-meetings/complaint-about-a-member/>

or by contacting: democratic.services@ashfield.gov.uk, Tel: 01623 457232

2.05 Allowances

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme, set out in Part 7 of this Constitution.

Article 3 – Citizens and the Council

The Council is the mechanism through which local communities govern themselves. The Council does not exercise its powers and carry out its responsibilities in isolation, but rather seeks to do this in partnership with the local communities, from which it is drawn and which it represents.

3.01 Citizens' Rights – the Petition Scheme

In order to help achieve this goal of working in partnership with local communities, Citizens have 'rights' when dealing with the Council. One of the most important of these is their right to petition or lobby the Council on specific issues. In particular:

1. 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 Executive.
2. Citizens who live, study or work in the District may submit a petition relating to issues of concern to the Council. Petitions are dealt with in accordance with the Council's Petition Scheme.

Petitions **must** include:

- A clear and concise statement covering the subject of the petition, the area to which the petition relates to, and what action the petitioners want the Council to take;
- The contact details, including the address, of the petition organiser;
- The name, address and signature of any person supporting the petition;
- The date the petition was submitted.

Exclusions

Submitted petitions that are determined by the Chief Executive to be vexatious, discriminatory, abusive, unreasonable, or otherwise inappropriate will not be accepted by the Council.

In the period immediately before an election or referendum the Council may have to deal with your petition differently – if this is the case, the Council will contact the petition organiser to explain why and discuss a revised timescale.

Petitions will not normally be considered if they are received within 6 months of another petition having already been considered by the Council on the same matter.

If the Council receives two or more petitions relating to the same issue(s) it will consider amalgamating them, but only with the approval of the petition organisers.

If the petition applies to a planning or licensing application, is a statutory petition (for example, requesting a referendum on having an elected mayor), or on a matter where there is already an existing right of appeal, such as Council Tax banding and non-domestic rates, other procedures apply. For instance, petitions that relate to planning or licensing applications will be submitted directly to the relevant committees for them to consider.

Council Response

Depending on the number of people that have signed a petition submitted to the Council, it will be dealt with in one of the following ways:

1. If a petition submitted to the Council contains **between 10 and 199 signatures**, it will be responded to in accordance with Ashfield District Council's Compliments and Complaints Procedure;
2. If a petition submitted to the Council contains **between 200 and 749 signatures**, it will be discussed a meeting of the Council's Senior Leadership Team;
3. If a petition submitted to the Council contains **between 750 and 1,499 signatures**, it will be referred to the Principal Select Committee for consideration;
4. If a petition submitted to the Council contains **over 1,500 signatures**, it will be referred to a meeting of the Council for consideration and debate.

3.02 Rights to Information

Citizens also have the right to:

1. Attend or have access to meetings of the Council, the Cabinet and Committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
2. Find out from the Forward Plan what key and exempt decisions will be taken by the Executive and when;
3. See reports and background papers, and any records of decisions made by the Council, its Committees and the Cabinet;
4. Inspect the Council's accounts and make their views known to the external auditor;
5. Register and vote;
6. Respond to consultations;
7. Inform the Council if it is not meeting standards expected or targeted.

3.03 Participation

Citizens have the right to participate in the Council's question time and contribute to reviews by Principal Select Committee, Inward Focus Select Committee, and Outward Focus Select Committee.

Complaints

Citizens have the right to complain to:

1. The Council itself under its complaints scheme. Please click on the following link if you would like to see the Council's complaints scheme:
<https://www.ashfield.gov.uk/your-council/contact-us/complaints/>
2. The Ombudsman after using the Council's own complaints scheme.
The link to the Local Government Ombudsman: <https://www.lgo.org.uk/>
3. The Council about an alleged breach of the Members' Code of Conduct. The link to the Members' complaints scheme is: <https://www.ashfield.gov.uk/your-council/councillors-meetings-governance/complaints-about-councillors/>

Article 4 – The Role of the Council

The Council remains the sovereign body with the final say in determining the overall Budget & Policy Framework in which we operate and in dealing with the other issues specifically reserved for Council approval as identified in this Constitution.

4.01 Meanings

Policy Framework.

The policy framework means the following plans and strategies:

- Ashfield Community Partnership;
- Plans and strategies which together comprise the Local Plan;
- Council's Corporate Plan;
- Medium Term Financial Strategy;
- Licensing Policy Statement.

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;

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 of the Council

Only the Council will exercise the following functions:

1. Adopting and changing the Constitution;
2. Electing the Chairman and Vice Chairman;
3. Receiving reports from the Leader setting out the composition and responsibilities of the Executive and the current scheme of delegations;
4. Approving or adopting the policy framework, budget and any application to the Secretary of State in respect of any Housing Land Transfer;

5. Making decisions about any Executive function which is covered by the Budget and Policy Framework where the decision is wholly or partly contrary to the Budget or Policy Framework (subject to Part 16 of the Access to Information Rules (Special Urgency) or **Parts 3 and 4** of the Budget and Policy Framework Procedure Rules);
6. Agreeing and/or amending the terms of reference for Committees and Sub Committees and deciding on their composition;
7. Appointing the Leader of the Council;
8. Adopting a Code of Conduct for Members and Officers and Member/Officer protocols;
9. Making appointments to outside bodies;
10. Considering reports from the Executive and any other groups;
11. Considering any matters referred to the Council for decision;
12. Adopting a Members' Allowances Scheme under Article 2.05;
13. Appointing the Chief Executive, the Monitoring Officer and the Chief Finance Officer;
14. Keeping under review ward boundaries and deciding the Council's response to any proposals by the Boundary Committee for England which affect the District;
15. Making, amending, revoking, re-enacting or adopting bylaws and public space protection orders (Anti-Social Behaviour, Crime and Policing Act 2014) and promoting or opposing the making of local legislation or personal Bills (Section 239, Local Government Act 1972);
16. Determining motions of confidence in the Leader of the Council;
17. Carrying out functions relating to elections including appointing an Electoral Registration Officer and Returning Officer for local elections;
18. Resolving conflicts under the Budget and Policy Framework Procedure Rules;
19. Accepting delegations from another Local Authority;
20. All other matters which, by law, must be reserved to the Council, including setting the Council Tax;
21. Receiving any reports by the Monitoring Officer or the Chief Finance Officer.

4.03 Council Meetings

There are three types of Council meeting:

1. The Annual Meeting;
2. Ordinary meetings (including any meeting specifically reserved for an opposition debate);
3. Extraordinary meetings.

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

4.04 Annual State of the District

The Council may hold an Annual State of the District debate in accordance with the Rules of Procedure set out in Part 4 of this Constitution.

4.05 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 Council

5.01

The Chairman of Ashfield District Council is the ‘first citizen’ or civic leader of the District. By this we mean that he or she represents the whole of our community. The Chairman is a unifying figure, who can speak on behalf of all – especially at times of great celebration or when tragedy has struck.

As part of their civic leadership role, the Chairman of the Council attends many events in the District. These involve different groups and people from all walks of life.

The Chairman is elected annually at the Annual Council meeting, along with the Vice Chairman (who will usually serve as Chairman the following year).

As well as being civic leader, the Chairman has the following responsibilities:

1. Upholding and promoting the purposes of the Constitution, and interpreting the Constitution when necessary, whose ruling and decision shall be final;
2. Presiding 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. Ensuring 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 in the Executive or hold Committee Chairs are able to hold the Executive and Committee Chairs to account;
4. Promoting public involvement in the Council’s activities;
5. Acting as the conscience of the Council;
6. Attending such civic and ceremonial functions as the Council and he/she determines appropriate (the Council may also be represented on occasions by the Leader); and
7. Undertaking the role identified within the dispute procedure (conflict resolution).

5.02

The Chairman presides 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, which shall include the following:

1. To determine that the meeting is properly constituted and that a quorum is present;
2. To inform himself/herself as to the business and objects of the meeting;
3. To preserve order and good conduct of those present;

4. To confine discussion within the scope of the meeting and reasonable limits of time;
5. To decide whether proposed motions and amendments are in order;
6. To formulate for discussion and decision questions which have been moved for the consideration of the meeting;
7. To decide points of order and other incidental questions which require decision at the time;
8. To ascertain the sense of the meeting by putting relevant questions to the meeting and taking a vote thereon (and, if so minded, giving a casting or second vote) and declaring the result;
9. To adjourn the meeting when circumstances justify or require that course;
10. To declare the meeting closed when the business has been completed.

5.03

The Vice Chairman of the Council will, in the absence of the Chairman of the Council OR as requested by him/her (it being noted that any such requests may for a variety of reasons be made at short notice) carry out the above-mentioned tasks and responsibilities and in addition will give unequivocal support to the role and responsibilities of the office of Chairman of the Council.

Article 6 – The Executive

THE ROLE OF THE EXECUTIVE (THE ‘CABINET’)

6.01

The Council operates a Strong Leader and Cabinet form of governance as set out in the provisions of the Local Government Act 2000 (as amended). The Executive, or as it is usually known ‘the Cabinet’, will carry out all of the Council’s functions which are not the responsibility of any other part of the Council, whether by law or under this Constitution.

6.02 Form and Composition

The Executive will consist of the Leader of the Council together with at least 2, but not more than 9, Councillors appointed by the Leader. Political balance rules do not apply.

6.03 Leader

The Leader will be a Councillor elected to the position of Leader by the Council. The Leader will hold office until:

1. The expiry of four years from the date of his/her election to the office of Leader of the Council or until the first Council meeting after he/she stands for re-election as a District Councillor, whichever is the sooner; or
2. He/she resigns from the office; or
3. He/she is no longer a Councillor; or
4. He/she is removed from office by resolution of the Council.

6.04 Appointment of Executive and Scheme of Delegation

The Leader determines the size of Executive and may remove them from the Executive at any time. The Leader allocates areas of responsibility (portfolios).

6.05 Executive Members

Executive Members shall hold office until:

1. They resign from office; or
2. They are no longer Councillors; or
3. They are removed from office by the Leader who must give written notice of any removal to the Chief Executive. The removal will take effect two working days after receipt of the notice by the Chief Executive.

6.06 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.

6.07 Responsibility for Functions

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.

6.08 Absent Leader

The Leader will nominate a member of the Cabinet to act as Deputy Leader in his/her absence.

If for any reason the Leader is unable to act or the office of Leader is vacant, the Executive Member nominated to act as Deputy Leader must act in his/her place.

If for any reason the Leader and Deputy Leader are unable to act or their offices are vacant, then the Executive must act in the Leader's place or arrange for a member of the Executive to do so.

Article 7 – Principal Select Committee

7.01 Terms of Reference

The Council will appoint a Principal Select Committee and additional Select Committees as required. The Council has currently appointed two additional Select Committees; the Inward Focus Select Committee and Outward Focus Select Committee

Committee Scope

Principal Select Committee

In accordance with paragraph 8.02 of this constitution, to review and scrutinise individual decisions before or after implementation. To undertake such other Overview and Scrutiny functions as may be required. The Committee does not have the powers to call-in decisions of the non-executive committees.

Inward Focus Select Committee, and Outward Focus Select Committee:

To undertake such tasks as may be requested by the Council or the Executive or as agreed by the Principal Select Committee.

General Role

Within its terms of reference, the Principal Select Committee, Inward Focus Select Committee, and Outward Focus Select Committee will:

1. Review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
2. Make reports and/or recommendations to the Council and/or the Executive in connection with the discharge of any functions;
3. Consider any matter affecting the area or its inhabitants; and exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Executive, but not decisions of the non-executive committees;
4. Agree an annual Select Work Programme which will allow overview and scrutiny responsibilities to be exercised in an effective manner;
5. Review, scrutinise, and report on the decisions made and action taken by responsible authorities under the Crime and Disorder Act 1998 i.e. 'Ashfield Community Partnership';
6. Review, scrutinise and report on housing performance;
7. Consider petitions and Councillor Calls for Action referred to it.

7.02 Specific Functions

Policy Development and Review

The Principal Select Committee, Inward Focus Select Committee, and Outward Focus Select Committee may:

1. Assist the Council and the Executive in the development of its policy framework by in-depth analysis of policy issues;
2. Conduct research, community and other consultation in the analysis of policy issues and possible options;
3. Consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
4. Question members of the Executive and/or Committees and Chief Officers or their representatives about their views on issues and proposals affecting the area;
5. Require Executive Lead Members to report on the implementation and/or progress of approved scrutiny review recommendations (within their areas of responsibility) no less than 3 months after completion of the review and agreement from the Executive; and
6. 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.

Scrutiny

The Principal Select Committee, Inward Focus Select Committee, and Outward Focus Select Committee may:

1. Review and scrutinise the decisions made by and performance of the Executive and/or Committees and Council Officers both in relation to individual decisions and over time;
2. Review and scrutinise the performance of the Council in relation to its policy objectives and targets, including crime and disorder and housing performance;
3. Question members of the Executive and/or Committees and Chief Officers 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;
4. Make recommendations to the Executive and/or appropriate Committee and/or Council arising from the outcome of the scrutiny process;

5. Review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Principal Select Committee and local people about their activities and performance; and;
6. Question and gather evidence from any person (with their consent).

Finance

The Principal Select Committee, Inward Focus Select Committee, and Outward Focus Select Committee will exercise overall responsibility for the finances made available to them.

Annual Report

The Principal Select Committee's Annual report to Council will report on the work undertaken by all Select Committees and make recommendations for future work programmes and amended working methods if appropriate.

Petitions

In accordance with the Council's Petition Scheme the Principal Select Committee will:

1. Receive and consider petitions submitted to the Council containing **between 750 and 1,499** signatories; and
2. Review the Council's response to petitions when a formal request to do so has been made by the petition organiser.

7.03 Proceedings of the Principal Select Committee

The Principal Select Committee, Inward Focus Select Committee, and Outward Focus Select Committee will conduct their proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution.

Article 8 – Regulatory and other Committees

8.01 Regulatory and Other Committees

The Council will appoint Committees to carry out a range of specific functions delegated to them as set out in Part 3 paragraph 1.2 of the Constitution. In summary, the Council will delegate:

1. Its planning functions to the Planning Committee;
2. Its licensing functions to the Licensing Committee and Sub-Committees (as appropriate);
3. Its employee related appeals and matters relating to the ethical framework and conduct of Members/Co-opted Members to its Standards and Personnel Appeals Committee;
4. In respect of those posts for which the Council is responsible for interviewing and appointing as outlined in the Employment Procedure Rules as set out in Part 4 of this Constitution to the Chief Officers' Employment Committee;
5. Its audit issues to the Audit Committee.

Article 9 – Joint Arrangements

9.01

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

1. Enter into arrangements or agreements with any person or body;
2. Co-operate with, facilitate or co-ordinate the activities of, any person or body; and
3. Exercise on behalf of that person or body any functions of that person or body.

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.

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.

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.

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 Councillor who is a member for a ward which is wholly or partly contained within the area;
- The joint committee is between a county council and a single district council and relates to functions of the Executive of the county council. In such cases, the Executive of the county council may appoint to the joint committee any Councillor who is a member for an electoral division which is wholly or partly contained within the area.

In both of these cases the political balance requirements do not apply to such appointments.

Details of any joint arrangements including any delegations to joint committees will be found in the Council's Scheme of Delegation in Part 3 of this Constitution.

9.02 Access to Information

1. The Access to Information Rules in Part 4 of this Constitution apply.

2. 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 (as determined by the participating authorities).
3. If the joint committee contains members who are not on the Executive of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

9.03 Delegation to and from Other Local Authorities

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

9.04 Contracting Out

1. The Council and Executive may discharge functions by contracting out to another body or organisation.

The Council has contracted out the management of its leisure centres.

Article 10 – Employees

10.01 Management Structure

General.

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

Chief Officers.

The Council will engage persons for the following posts, who will be designated Chief Officers:

Chief Executive and Head of Paid Service
Executive Director of Governance
Executive Director of Place
Executive Director of Operations
Executive Director of Transformation
Corporate Resource Director

Head of Paid Service, Monitoring Officer and Chief Finance Officer

Council will designate the following posts as shown:

Post	Designation
Chief Executive	Head of Paid Service
Executive Director of Governance	Monitoring Officer
Corporate Resource Director	Chief Finance Officer

Such posts will have functions described in Article 11.02-11.04 below:

Structure.

The Head of Paid Service will determine and publicise a description of the overall structure of the Council showing management structure and deployment of employees. A structure showing the Senior Leadership Team structure is set out at Part 8 of this Constitution.

10.02 Functions of the Head of Paid Service

1. **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.
2. **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.

10.03 Functions of the Monitoring Officer

1. **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, Officers and the public.
2. **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/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.
3. **Supporting the Standards and Personnel Appeals Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards and Personnel Appeals Committee.
4. **Receiving Reports.** The Monitoring Officer will receive and act on reports made by investigating officers appointed by him/her and decisions of the Hearings Sub Committee.
5. **Dealing with Complaints regarding Breaches of the Members' Code of Conduct.** The Monitoring Officer in conjunction with the Independent Person will take any action and conduct investigations into matters referred to him/her and take any action authorised by the Hearings Sub Committee.
6. **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.
7. **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.
8. **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.
9. **Restrictions on Posts.** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

10.04 Functions of the Chief Finance Officer

1. **Ensuring Lawfulness and Financial Prudence of Decision Making.** After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Council, or to the Executive in relation to an Executive function and the Council's external auditor if he/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.

2. **Administration of Financial Affairs.** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
3. **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.
4. **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.
5. **Give Financial Information.** The Chief Finance Officer will provide financial information to the media, members of the public and the community.

10.05 Duty to Provide Sufficient Resources to the Monitoring Officer and Chief Finance Officer

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

10.06 Conduct

Officers will comply with the Code of Conduct for Employees set out in Part 9 of the Constitution and the Member/Officer Protocol set out in Part 6 of this Constitution.

10.07 Employment

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

Article 11 – Decision Making

11.01 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.

11.02 Principles of Decision Making

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

1. Proportionality (i.e. the action must be proportionate to the desired outcome);
2. Due consultation and the taking of professional advice from Officers;
3. Respect for human rights (see below for further details);
4. A presumption in favour of openness; and
5. Clarity of aims and desired outcomes.

11.03 Types of Decision

1. **Decisions reserved to Council.** Decisions relating to the functions listed in Article 4.02 will be made by the Council and not delegated.
2. **Key decisions**
 - (a) A key decision is one which is likely to:-
3. Result in the Council making savings or incurring expenditure exceeding £50,000 revenue or £1m capital;

or
4. Have a significant effect, either positive or negative, on communities living or working in an area comprising two or more wards or electoral divisions in the Council's area.
5. A decision taker may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of this Constitution.

11.04 Decision Making by the Council

Subject to Article 11.08, the Council meeting will follow the Council Procedure Rules set out in Part 4 of this Constitution when considering any matter.

11.05 Decision Making by the Executive

Subject to Article 11.08 (Decision Making by Council Bodies Acting as Tribunals), the Executive will follow the Executive Procedure Rules set out in Part 4 of this Constitution when considering any matter.

11.06 Decision Making by the Principal Select Committee

The Principal Select Committee, Inward Focus Select Committee, and Outward Focus Select Committee will follow the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution when considering any matter.

11.07 Decision Making by Other Committees and Sub-Committees Established by the Council

Subject to Article 11.08, 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.

11.08 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.

Article 12 – Finance, Contracts and Legal Matters

12.01 Financial Management

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

12.02 Contracts

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

12.03 Legal Proceedings

The Executive Director of Governance 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 Executive Director of Governance considers that such action is necessary to protect the Council's interests.

12.04 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 Executive Director of Governance 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 £50,000 entered into on behalf of the Council in the course of the discharge of Executive functions shall be made in writing. Such contracts must be entered into in accordance with the Contract Procedure Rules contained in Part 4 of this Constitution.

12.05 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Executive Director of Governance. 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 Executive Director of Governance should be sealed. The affixing of the Common Seal will be attested by the Chairman or Vice Chairman of the Council and the Chief Executive or some other person authorised by the Chief Executive.

Article 13 – Review and Revision of the Constitution

13.01 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

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 Council with those in other comparable local authorities, or national examples of best practice.

13.02 Changes to the Constitution

1. **Approval.** Substantive changes to the Constitution will only be approved by the Council after due consideration of any proposals (subject to the Council first taking advice from the Standards and Personnel Appeals Committee if it feels that such would be appropriate).

The Monitoring Officer may make such minor alterations or changes to reflect in year decisions (for example changes to job titles and structures or by reason of changes to legislation) as he/she deems necessary.

2. **Change from a Leader and Cabinet Form of Executive to Alternative Arrangements, or Vice Versa.** The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals.

Article 14 – Suspension, Interpretation and Publication of the Constitution

14.01 Suspension of the Constitution

Whilst the Articles of the Constitution may not be suspended to ensure certainty and stability to the fundamental aspects of the Council's governance, there is provision for rules of procedure to be suspended provided the effect is consistent with the purposes of the Constitution. The Rules and Procedures of this Constitution may be suspended by the Council or other decision-making body to the extent permitted within the provisions and the law.

14.02 Interpretation

The ruling of the Chairman 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.

14.03 Publication

1. The Monitoring Officer will provide electronically a 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.
2. The Monitoring Officer will ensure that the Constitution is available for inspection on the Council's website and that copies can be purchased by members of the local press and the public on payment of a reasonable fee to be determined by the Monitoring Officer.
3. The Monitoring Officer will ensure that the summary of the Constitution is made widely available within the area and is updated as necessary.