Part 2 – Articles of the Constitution

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1.0 ARTICLE 1 – THE CONSTITUTION

Powers of the Council

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

The Constitution

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

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 councillors represent their constituents more effectively;
4. enable decisions to be taken efficiently and effectively;
5. create a powerful and effective means of holding decision-makers to public account;
6. ensure that no one will review or scrutinise a decision in which they were directly involved;
7. ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
8. provide a means of improving the delivery of services to the community.

Interpretation and Review of the Constitution

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

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

2.0 ARTICLE 2 – MEMBERS OF THE COUNCIL

Composition and eligibility

i. 2.1.1 **Composition.** The Council will comprise 40 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 Commission and approved by the Secretary of State.

ii. 2.1.2 **Eligibilit**y. Only registered voters of the district or those living or working[1] there will be eligible to hold the office of councillor.

Election and terms of councillors

Election and terms. The regular election of councillors will be held on the first Thursday in May every four years beginning in 2003. The terms of office of councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

Roles and functions of all councillors[2]

iii.2.1.3 **Key roles** All councillors will:

1. collectively be the ultimate policy-makers and carry out a number of strategic and corporate functions;

2. contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision making;

3. represent their communities and bring their views into the Council's decision-making process, i.e. become the advocate of and for their communities;

4. deal with individual casework, respond to constituents' enquiries and representations, fairly and impartially, act as an advocate for constituents in resolving particular concerns or grievances;

5. balance different interests identified within the ward and represent the ward as a whole;

6. be involved in decision-making;

7. be available to represent the Council on other bodies; and

8. maintain the highest standards of conduct and ethics.

Rights and duties

1. 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.

2. Councillors will not make public information which is confidential or exempt in breach of the law or of the members' code of conduct and other rules or guidance in this Constitution.

Conduct

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

Allowances

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

3.0 ARTICLE 3 – CITIZENS AND THE COUNCIL

Citizens' rights

Citizens have the following rights.

Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution:

i. 3.1.1 **Voting and petitions** Eligible 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 Constitution.

ii. 3.1.2 **Information** Citizens have the right to:

1. attend meetings of the Council and its committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
2. attend meetings of the Cabinet when key decisions and other non-confidential matters are being considered;
3. find out from the forward plan what key decisions will be taken by the Cabinet and when;
4. see and obtain copies of reports and background papers for public items, and any records of decisions made by the Council and its committees, the Cabinet or Executive Members individually; and
5. inspect the Council's accounts and make their views known to the external auditor.

3.1.3 **Participation.** Citizens have the right to participate in the Council's question time and when invited, contribute to investigations by scrutiny bodies. They also have the right to participate in Community Assembly meetings held throughout the Borough.

3.1.4 **Complaints.** Citizens have the right to complain to:

1 the Council itself under its complaints scheme;
2 the Ombudsman after using the Council's own complaints scheme;[3]
3 the Monitoring Officer about a breach of the Member's Code of Conduct.

There are also citizen rights to appeal decisions relating to freedom of information and other requests.

Citizens' responsibilities

Citizens must not be violent, abusive or threatening to councillors or employees and must not willfully harm things owned by the council, councillors or employees.

4.0 ARTICLE 4 – THE FULL COUNCIL

Meanings

i. 4.1.1 **Policy Framework**

The policy framework means the following plans and strategies:

A **Those required by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 to be adopted by the Council:**

- Crime & Disorder Reduction Strategy
- Plans and alterations which together comprise the Development Plan

B **Those other plans and strategies which Chapter 2 of DETR Guidance recommends should be adopted by the Council as part of the Policy Framework**

- The Plan or Strategy which comprises the Housing Investment Programme (including the HRA Business Plan).

C **Other plans and strategies which the council has decided should be adopted by the Council meeting as a matter of local choice**

- Asset Management Plan (including Property Strategy)
- Capital Strategy
- Chesterfield Cycling Strategy
- Community Infrastructure Levy (CIL) Strategy
- Contaminated Land Inspection Strategy
- Cultural Strategy (including arts and sports)
- Economic Development Strategy
- Energy Strategy
- Fuel Poverty Strategy
- Health and Wellbeing Partnerships
- Housing Strategy
- Information Technology Strategy
- North East Derbyshire Sub Area Waste Management Strategy
- Parks and Open Spaces Strategy
- Per Cent for Art Strategy
- Equality and Diversity Strategy
- Risk Management Strategy
- Customer Engagement Strategy
- Visitor Economy Strategy
- Waste Management Strategy

- Annual Reports and other strategic plans approval of which is not specifically delegated elsewhere in the Constitution.

4.1.2 **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, decisions relating to the control of the Council's borrowing requirement, the control of capital expenditure and the setting of virement limits.

4.1.3 **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.

Functions of the full Council which by law cannot be delegated and which must be carried out by the full Council itself[4]

4.1.4 Adopting executive alternative or different executive arrangements by resolution under Part 2 of the Local Government Act 2000[5] including determining the number of councillors to be appointed to the Cabinet in Leader and Cabinet executive arrangements.[6]

4.1.5 Specifying the minimum value and description of the authorities' contracts (with respect to executive functions) which must be in writing for the purpose of contract standing orders.[7] (see Article 14 of this Constitution).

Plans, Strategies and Finance:

4.1.6 The **adoption** (with or without modification) of the plans and strategies listed in paragraph 4.1.1 above, and any plan or strategy for the control of the council's borrowing, investments[8] or capital expenditure[9]

4.1.7 The **giving of instructions** requiring the Cabinet to reconsider any draft plan or strategy submitted by the Cabinet for the Council's consideration;

4.1.8 The approval, for the purposes of public consultation in accordance with regulation 22 of the Town and Country Planning (Development Plans) (England) Regulations 1999, of draft proposals associated with the preparation of alterations to, or the replacement of, a development plan (Local Plan)[10];

4.1.9 The **amendment** of any **draft** plan or strategy submitted by the Cabinet for the Council's consideration;

4.1.10 The **approval**, for the purpose of its submission to the Secretary of State or any Minister of the Crown for his approval, of any plan or strategy (whether or not in the form of a draft) of which any part is required to be so submitted;

4.1.11 The function of **amending, modifying, varying or revoking** any plan or strategy except to the extent that the making of the amendment, modification, variation or revocation –

is required for giving effect to requirements of the Secretary of State or a Minister of the Crown in relation to a plan or strategy submitted for his approval, or to any part so submitted; or

is authorised by a determination made by the full council when approving or adopting the plan or strategy, as the case may be;[11]

Members' Allowances[12]

4.1.12 The function of making any scheme authorised or required by regulations under section 18 (schemes for basic, attendance and special responsibility allowances for local authority members) of the Local Government and Housing Act 1989, or of amending, revoking or replacing any such scheme;

4.1.13 The function of determining:

the amount of any allowance payable in respect of chair's expenses, vice-chair's expenses, financial loss allowance), and allowances for attending conferences and meetings;

the rates at which payments are to be made for travelling and subsistence allowances,

the amount of any allowance payable pursuant to a scheme under section 18 of the Local Government and Housing Act 1989, or the rates at which payments by way of any such allowance are to be made;

4.1.14 **Appointment of Committees and Delegation to Officers**

Subject to any provision of regulations under section 20 (joint exercise of functions) of the Local Government Act 2000, and subject to any specific provisions elsewhere in this Constitution the functions of:

making arrangements for the discharge of functions by a committee or officer under section 101(5) of the 1972 Act, including agreeing and/or amending their terms of reference; and

making appointments under section 102 (appointment of committees) of the 1972 Act,[13]

establishing a licensing committee in accordance with section 6(1) of the Licensing Act 2003.[14] (alcohol licensing).

4.1.15 **Appointment of Independent Persons for Standards matters**

To approve the appointment of Independent Persons under the Localism Act 2011. Independent persons can be called upon to advise those involved with

a complaint about a member, for example: the Monitoring Officer, Standards and Audit Committee and the member complained about.

4.1.16 **Setting the Budget and Rate**[15]

Making a calculation in accordance with any of sections 32 to 37, 43 to 49, 52I, 52J, 52T and 52U of the Local Government Finance Act 1992, whether originally or by way of substitute; or

Issuing a precept under Chapter IV of Part I of that Act,

Except that the preparation of estimates of amounts to be used in the calculation and amounts to be stated in the precept is for the Cabinet to submit to the full council, and the Cabinet must re-consider those estimates and amounts in accordance with the Council's requirements (see Part 3 of this Constitution – Leader's portfolio);[16]

Disposal of Housing

4.1.17 To authorise the Cabinet to make an application to the Secretary of State in respect of any Housing Land Transfer

4.1.18 **Discharge of certain executive functions by the Council**

In the following circumstances the following executive functions shall be the responsibility of the council:[17]

In relation to <u>any executive function concerned with the budget or with borrowing or capital spending</u>, where an executive decision maker is minded to make a decision which would be inconsistent with the budget or with the strategy for borrowing or for capital spending and which would not be authorised by the council's executive arrangements, standing orders, financial regulations or other rules or procedures.

In relation to <u>any executive function affected by a council approved plan or strategy</u>, where an executive decision maker is minded to make a decision which would be **contrary to** any such plan or strategy, **Except** in any case where the decision is urgent and the chair of Overview and Performance Scrutiny Forum has agreed that it is urgent. (See Budget and Policy Framework Procedures);

4.1.19 **not used**

4.1.20 **Electing the Chair and Vice-Chair of the Council (the Mayor and Deputy Mayor)**

Under section 3 (1) of the Local Government Act 1972, the chair of a principal council (known in Chesterfield as the Mayor) shall be elected annually by the council from among the councillors.

Under section 5 (1), the vice-chair (known in Chesterfield as the Deputy Mayor) shall be appointed by the council.

Under section 5, subject to any standing orders made by the council, anything authorised or required to be done by, to or before the Mayor may be done by, to or before the Deputy Mayor;

4.1.21 **Change of Name of District**

To change the name of the district by a resolution passed by not less than two-thirds of the members voting thereon at a meeting of the council specially convened for the purpose with notice of the object, (section 74 of the 1972 Act).

4.1.22 **Civic and Ceremonial**

To confer on any person or persons the title of honorary alderman or to admit any person or persons to be honorary freemen (section 249 of the 1972 Act) (two thirds majority of those present and voting at a full council meeting);

4.1.23 **Reports by the Chief Financial Officer/Monitoring Officer**

Consideration of reports by the Chief Financial Officer under Section 115(4) of the Local Government Act 1988, and by the Monitoring Officer under Section 5 of the Local Government and Housing Act 1989 in relation to action taken otherwise than by the Cabinet;[18]

4.1.24 **Reports by the Head of Paid Service**

Consideration of reports by the Head of Paid Service under Section 4(5) of the Local Government and Housing Act 1989 about the manner in which the discharge by the authority of their different functions is co-ordinated; the number and grades of staff required by the authority for the discharge of their functions; the organisation of the authority's staff; and the appointment and proper management of the authority's staff;

4.1.25 **To Appoint and Dismiss the Head of Paid Service**

The full Council is required by law to approve the appointment or dismissal of the Head of Paid Service (see Employment Procedure Rules in Part Four of this Constitution); Full Council would also approve the appointment of an interim head of service;

4.1.26 **Promoting or opposing the making of local legislation or personal bills in parliament.**[19]

4.1.27 **Consideration of reports by the Local Ombudsman where the Council has taken no action (or action other than that recommended) on recommendations in earlier Ombudsman's reports;**[20]

4.1.28 **Consideration of and response to public interest reports by the external auditor;**[21].

4.1.29 **Approval of schemes for local lotteries (Lotteries and Amusements Act 1976, S.6(3));**

4.1.30 **Functions under the Licensing Act 2003 (alcohol licensing):**

Determination and publication of the Council's policy as licensing authority under Section 5 of the Licensing Act 2003 with respect to the exercise of its licensing functions. [22] (alcohol licensing).

Discharging any function of the council's licensing committee under the Licensing Act 2003 where that licensing committee is unable to discharge any function delegated to it in accordance with section 7 of the act because of the number of that licensing committee's members who are unable to take part in the consideration or discussion of any matter or vote on any question with respect to it.[23]

4.1.31 **Functions under the Gambling Act 2005**

Determination, publication and review of the Council's policy under the Gambling Act 2005.

Power to resolve not to issue any casino premises licences.

4.1.32 **Any other function which must, by law, be carried out by the full Council.**

Functions of the full Council which by law can be delegated but which the full Council has reserved to itself:

4.1.33 **Adopting the Constitution**

4.1.34 **Changing the Constitution, except where otherwise provided for in law or in this Constitution**[24]

4.1.35 **Making, amending, revoking, enacting or adopting bylaws under section 236 of the Local Government Act 1972 and any other act**;

4.1.36 **Change of Name of Parish**

At the request of a parish council or, where there is no parish council, at the request of the parish meeting, to change the name of a parish within the Borough (section 75 of the 1972 Act);

4.1.37 **Considering the following reports** from the following bodies and (subject to the provisions of the law and this Constitution) to give advice or directions (as the case may be) arising from such consideration:

The Cabinet (any report)

Overview and Performance Scrutiny Forum (any report)
The Standards and Audit Committee (any report)
The District Auditor's Annual Audit Letter[25]

4.1.38 **Finance**

Insofar as this duty is not delegated to the Standards and Audit Committee (Internal Audit functions) and the Employment and General Committee (designation of Chief Financial Officer), the full Council has the duty to make arrangements for the proper administration of financial affairs etc.[26]

Council Meetings

There are four types of Council Meeting:

The annual business meeting;

The annual meeting (ceremonial);

Ordinary meetings;

Extraordinary meetings.

They are conducted in accordance with the Council Procedure Rules in Part 4 of the Constitution.

4.1.39 **Responsibility for Functions**

The Council will keep Part 3 of the Constitution up to date, setting out the allocation of responsibilities for its functions.

5.0 ARTICLE 5 – CHAIRING THE COUNCIL

The Role and Function of the Mayor

The Mayor will be elected annually by the Council

Without prejudice to 5.1.1 above, it has been agreed between the respective Leaders of the political groups:

- That the Deputy Mayor will be elected as Mayor after his or her year as Deputy Mayor, and

- That the Deputy Mayor will be the councillor with the longest service, and that priority between councillors with equal length of service will be governed by ascending alphabetical order of surname, without regard to membership of political group.

The Mayor will have the following responsibilities:

- to uphold and promote the purposes of the Constitution and to interpret the Constitution where necessary

- to preside over Council meetings in order that its business may be undertaken efficiently and with regard to the rights of Members of the Council and to the interests of the community

- to ensure that the Council meeting is a forum for the debate of matters of concern to the community and the place at which members of the Council who are not members of the Cabinet can hold the Cabinet to account

- to promote public involvement in the Council's activities

- to attend such civic and ceremonial functions as the Council and s/he determines to be appropriate.

6.0 ARTICLE 6 – OVERVIEW AND SCRUTINY

6.1 General Arrangements

The Council will appoint two[27] politically balanced overview and scrutiny select committees as follows:

- Scrutiny Select Committee – Resilient Council
- Scrutiny Select Committee – Economic Growth and Communities

to discharge the scrutiny functions conferred on the Council by law.[28] They are referred to as Overview and Scrutiny Committees in this Constitution.

6.2 Composition

The Chair and the Vice-Chair of each of the Overview and Scrutiny Committees shall be appointed by Council in accordance with the Scrutiny Procedure Rules (Part 4).

Scrutiny Select Committee – Resilient Council

This committee shall consist of 10 non-Cabinet members.

Scrutiny Select Committee – Economic Growth and Communities

This committee shall consist of 10 non-Cabinet members.

6.3 Responsibilities

The two scrutiny select committees have the following responsibilities:

Scrutiny Select Committee – Resilient Council

• Governance and decision making
• Council Plan and performance management
• Finance including Medium Term Financial Plan, Treasury Management, tax, income streams and capital programmes and Housing Revenue Account
• Customer services
• Human resources including people plan and learning and development
• Information technology, data and information assurance and access
• Health and safety
• Risk Management
• Emergency planning and business continuity
• Asset Management
• Communications
• Call In and petitions related to the above

Scrutiny Select Committee – Economic Growth and Communities

- Economic growth and planning
- Visitor economy
- Skills
- Health, wellbeing and cultural offer
- Housing
- Services to vulnerable people including Careline
- Revenues and benefits services
- Community Safety including Crime and Disorder Panel
- Climate Change
- Call In and petitions related to the above

6.5 Review and Scrutiny of Decisions

Scrutiny select committees

- may review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the authority's executive or non-executive functions, except:

  - determining an application from a person for a licence, approval, consent, permission or registration; or
  - direct regulation of a person (with substantial discretion as to the regulatory action); or
  - enforcement of any licence approval, consent, permission or direct regulation.

- make reports and/or recommendations to the full Council, Council committee and/or the Cabinet or any committee or joint committee in connection with the discharge of any of these functions;

6.6 Scrutiny Select Committee Call-in

Each of the two scrutiny select committees exercise the right to call-in, for reconsideration, decisions made but not yet implemented by executive decision makers in accordance with the Scrutiny Procedure Rules in Part 4 of this Constitution. Any call-in must relate to their respective responsibilities (see paragraph 6.3 above).

7.0 ARTICLE 7 – THE CABINET

7.1. Role

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

7.2. Form and composition

The Cabinet will consist of the Leader together with at least two, but not more than nine, Councillors appointed by the Leader at the annual Council meeting, following the local government elections, at which the Leader is appointed.

7.3. Leader

The Leader will be a Councillor elected by the Council at their Annual Business Meeting following the local government elections for a period of four years or until the Leader's term of office as a Councillor ends.

The Leader shall otherwise continue to hold office as above unless:

(a) The Council by resolution removes the Leader during his or her term of office whereupon his or her term of office as Leader shall end on the day of that Council meeting; or

(b) He /she resigns from the office; or

(c) They are suspended from being a Councillor under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension).

If the Council removes a Leader by resolution, the Council must elect a new Leader at the same meeting.

The Leader shall determine the number of Councillors who may be appointed to the Cabinet subject to a maximum of ten, including the Leader. The Leader will appoint Councillors to the Cabinet positions.

The Leader shall appoint one of the Members of the Cabinet to be his or her Deputy.

7.4. Deputy Leader

The Deputy Leader shall hold office for the same term as the Leader unless:

(a) He or she is removed from office by the Leader; or ceases to be a Councillor; or

(b) They resign from the office; or

(c) They are suspended from being a Councillor under Part III of the Local Government Act 2000 (although they may resume the role of Deputy Leader at the end of the period of suspension).

The Leader shall allocate Cabinet portfolios to other Cabinet Members.

The Leader shall report to the Council on all appointments to and changes to the Cabinet.

If for any reason the Leader is unable to act or the office of Leader is vacant, the Deputy Leader must act in place of the Leader.

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

7.5. Other Cabinet Members

Other Cabinet Members will be appointed by the Leader on his appointment at annual Council meeting and shall hold office until:

(a) they are replaced by the Leader at any time; or

(b) they resign from office; or

(c) they cease to be a Councillor; or

(d) they are suspended from being a Councillor under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension).

7.6. Proceedings of the Cabinet

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

7.7. Responsibility for functions

The Leader shall allocate Cabinet portfolios to other Cabinet Members.

The Council (or Standards and Audit Committee, as appropriate – see Article 9 in this part of the constitution) will determine any delegation of responsibility to individual members of the Cabinet, committees of the Cabinet, officers or joint arrangements for the exercise of particular executive functions. The delegations arrangements are set out in Part 3 – Responsibility for Functions of this Constitution.

8.0 ARTICLE 8 – REGULATORY AND EMPLOYMENT AND GENERAL COMMITTEES

REGULATORY AND EMPLOYMENT AND GENERAL COMMITTEES

The Council will appoint the following committees in order to discharge the functions described in Part 3 of this Constitution under "Responsibility for Council Functions":

- Planning Committee
- Appeals and Regulatory Committee
- Employment and General Committee

These committees exercise such of the full Council's functions as the Council may delegate to them (shown in Part 3).

The Licensing Committee is a statutory committee - having functions given to it directly by the Licensing Act 2003 - including alcohol licensing. Its functions are set out in Part 3 of this Constitution.

The Standards and Audit Committee is the committee which is responsible for members' standards and overview of the internal and external audit function, as well as some "local choice" functions which the Council has delegated to it. Its functions are set out in Part 2 of this Constitution (see next page).

9.0 ARTICLE 9 – THE STANDARDS AND AUDIT COMMITTEE

9.1 Standards and Audit Committee

The full Council meeting will confirm the establishment of a Standards and Audit Committee, whose membership is shown at Part 8 of this Constitution.

9.2 Political Balance

The Council shall appoint the Chesterfield Borough Councillor members of the Standards and Audit Committee in accordance with the political balance rules in section 15 of the 1989 Act, as a matter of local choice[29]. However Parish Representatives shall be selected and appointed by the Standards and Audit Committee without regard to the political balance of the Chesterfield Borough Councillors on the Standards and Audit Committee, and those representatives shall be selected and appointed by the Standards and Audit Committee without regard to the political party to which they may belong as Parish or Town councillors.

9.3 Composition and Procedures:

9.3.1 Membership

The Standards and Audit Committee[30] will be composed of eight members as follows:

- six[31] councillors other than the executive leader[32]. No more than one of those six councillors may be a member of the Cabinet[33].

- two parish representative members being one member of Staveley Town Council and one member of Brimington Parish Council[34].

9.3.2 Terms of Office

The Chesterfield Borough Councillor members of the Standards and Audit Committee shall be elected to the Committee at the Annual Business Meeting of the Council for the ensuing municipal year by the Council and shall hold office until:

(a) they resign from office; or

(b) they are suspended from being councillors under Part 3 of the Local Government Act 2000 (although they may resume office at the end of the period of suspension if not otherwise disqualified); or

(c) they are no longer Chesterfield Borough councillors; or

(d) they are removed from office, either individually or collectively, by resolution of the Council, or

(e) the Annual Business Meeting of the Council next following their appointment

The Parish Member(s) of the Standards and Audit Committee shall hold office until:

(a) they resign from office as members of the Standards and Audit Committee; or

(b) they are suspended from being parish or town councillors (for the parish or town in respect of which they were elected when appointed to the committee) under Part 3 of the Local Government Act 2000 (although they may resume office at the end of the period of suspension if not otherwise disqualified); or

(c) they are suspended from being members of the Standards and Audit Committee under Part 3 of the Local Government Act 2000 (although they may resume office at the end of the period of suspension if not otherwise disqualified); or

(d) they are no longer parish or town councillors for the parish or town in respect of which they were elected when appointed to the committee; or

(e) They are removed from office as members of the Standards and Audit Committee, either individually or collectively, by resolution of the Council.

9.3.3 **The Parish Members** are entitled to vote at meetings[35] and at least one parish member must be present when matters relating to Brimington Parish Council or to Staveley Town Council or their members are being considered[36];

Neither of the Parish Members shall be an elected or co-opted member of the Chesterfield Borough Council[37]

9.3.4 **Selection of Parish Members** The Standards and Audit Committee is authorised by the Council to select and appoint the Parish Members in consultation with Brimington Parish and Staveley Town Councils.

9.3.5 **Chairing the Committee** The Committee is chaired by an elected Chesterfield Borough Council member. The vice-chair shall also be an elected Chesterfield Borough Council member.

9.3.6 **Quorum (Validity of Proceedings)**[38] meeting of the Standards and Audit Committee shall not be quorate unless at least three Chesterfield Borough Council elected members of that committee are present for its duration.

9.3.7 **Access to Information Requirements – Meetings of Standards and Audit Committee**[39]

Meetings of Standards and Audit Committees (and Sub-Committees) are subject to most of the Access to Information provisions in the Local Government Act 1972.

The meetings have to be open to the public; agenda and reports have to be open for public inspection and be available for at least five clear days before the meeting. Similarly minutes and other documents, including background papers, need to be available after the meeting.

However the names and addresses of the Parish representatives do not need to be included in the public register of members' names and addresses under section 100G of the 1972 Act;

In addition, Staveley Town and Brimington Parish Councils must be given:

- written notice of the time and place of a Standards and Audit Committee meeting at least five clear days before the meeting (or such shorter time as may be available if a meeting is convened at shorter notice);

- copies of agendas and reports five clear days before the meeting or when they are available; and

- public minutes, agendas and reports.

9.4 Role and Function

The Standards and Audit Committee will have the following roles and functions:

9.4.1 **Mandatory Statutory Functions which are the responsibility of the Standards Committee under the Localism Act 2011**

(a) promoting and maintaining high standards of conduct by councillors and co-opted members of the authority;

(b) assisting the councillors and co-opted members of the authority to observe the Members' Code of Conduct;

(c) advising the Council on the adoption or revision of the Members' Code of Conduct;

(d) monitoring the operation of the Members' Code of Conduct;

(e) advising, training or arranging to train councillors and co-opted members on matters relating to the Members' Code of Conduct;

(f) dealing with any reports from the monitoring officer on any matter relating to the conduct of a member.

(g) from time to time to publicise the Code of Conduct and arrangements for making complaints about members' conduct

(h) to develop and approve assessment and review criteria and administrative processes

(i) in accordance with procedures laid down by the Standards and Audit Committee, to consider reports and conduct hearings in relation to allegations that a member has failed to comply with the Code of Conduct.

Such hearings are conducted by between 3 and 5 members of the Standards and Audit Committee to be selected by its Chair (in consultation with the Monitoring officer); and

The Monitoring Officer and their Deputy may make arrangements for mutual cover with other authorities, in the event of a conflict of interest arising.

(j) granting dispensations to councillors[40] and co-opted members from requirements relating to prohibition on participating in any discussion and/or vote) where they have a disclosable pecuniary interest, as set out in the Localism Act 2011 and the Members' Code of Conduct in the following circumstances[41]:

(1)(a) the transaction of business of the authority would, on each occasion on which the dispensation would apply, otherwise be impeded by, or as a result of, the mandatory provisions (of the Code of Conduct) because -

- without the dispensation the number of persons prohibited from participating would be so great as to impede the transaction of the business
- the representation of different political groups would be so upset as to alter the likely outcome of any vote
- the dispensation is in the interests of persons living in the authority's area
- without the dispensation each member of the authority's executive would be prohibited from participating
- it is otherwise appropriate to grant a dispensation

and

(1)(b) the member has submitted to the Monitoring Officer a written request for a dispensation explaining why it is desirable;

(2) a dispensation must specify the period for which it has effect. This period may be no greater than four years.

A record of dispensations must be kept. The existence, duration and nature of any dispensation will be recorded in writing; and will be kept with the register of interests established and maintained under section 81(1) of the Act.**Constitution of Sub-Committee**

(k) After consultations with Brimington Parish and Staveley Town Councils, to constitute a parish matters sub-committee at such time as the Standards and Audit Committee may decide that the need or circumstances arise.

Parish Council Roles

(l) the exercise of the functions set out at 9.4 1(a) to (i) above in relation to Staveley Town and Brimington Parish Councils and their members[42].

Non-executive[43] Functions delegated to The Standards and Audit Committee as a matter of Local Choice[44]

(a) **Suspension of Membership**

Where a complaint or allegation is made against a member of the Standards and Audit Committee, to suspend that member from membership until the complaint or allegation has been disposed of.

(b) **Code of Conduct for Employees**[45]

On behalf of the authority to respond to government consultations on and approve/recommend to the Council the approval of a code of conduct for local government employees issued under section 82 of the Local Government Act 2000[46] (including any local variations or additions to the national code).

On behalf of the authority, to consult representatives of the council's employees on the national model code of conduct for employees and on any local variations or additions to it.

(c) "**Whistleblowing"**

To respond to consultations on and approve and monitor any code of conduct relating to the Public Interest Disclosure Act 1998 ("whistleblowing") in relation to members or employees.

(d) **Audit and the Control Environment**

1. To consider the effectiveness of:

   - the council's risk management arrangements,
   - the control environment, (including approval of the code of corporate governance and the annual assurance statement) and
   - associated anti-fraud and anti-corruption arrangements (including approval and review of the council's anti-fraud and corruption strategy)

2. To ensure that the council's assurance statements, including the annual assurance statement (former statement on internal control (SIC)), properly reflect the risk environment and to recommend any actions required to improve it

3. To approve (but not direct) the council's internal audit's strategy, workplan and to monitor performance

4. To review reports from internal and external audit and other external inspection agencies and to seek assurance where necessary that appropriate action has been taken, including by calling on Council officers to give assurances and explanations to the committee

5. To ensure that auditors and officers are collaborating effectively and that agreed recommendations arising from audit work are being implemented, if necessary by requiring relevant officers to attend before the committee

6. To receive an annual report from the Head of Internal Audit

7. To ensure that there are effective relationships between external and internal audit, inspection agencies and other relevant bodies, and that the value of the audit process is actively promoted

8. To review the financial statements and the external auditor's opinion and reports to members (including the external auditor's annual management letter), and to monitor management action in response to the issues raised.

Accounts and Publication of Documents

9. On behalf of the Council to approve the Authority's statement of accounts under Regulation 10 (3) of the Accounts and Audit Regulations 2003[47].

The following functions are delegated by the Committee to the Chief Finance Officer:

S000DOfficer Delegations: to the Chief Finance Officer:

Under the Accounts and Audit Regulations 2003, to comply with the requirements for publication of various matters and documents under those regulations

S010DOfficer Delegations to the Chief Finance Officer:

As Chief Financial Officer and under the Accounts and Audit Regulations 2003 to prepare and sign and make available for inspection the statements and other documents required by those regulations:

Treasury Management

On behalf of the Council to review and monitor the authority's treasury management arrangements, including:

- treasury management strategy
- capital strategy
- investment strategy and
- minimum revenue provision

and to make recommendations to full Council as appropriate.

(e) **Risk Management**

In accordance with the Council's Risk Management Strategy[48]:

- To consider the effectiveness of the Council's risk management arrangements;
- To ensure that the Council's assurance statements properly reflect the risk environment
- To seek assurances that action is being taken on risk-related issues identified by auditors and inspectors.

(f) **Complaints and Ombudsman Matters**

1. To monitor compliance with Ombudsman reports following their consideration and resolution and to oversee the Council's procedures for complaints handling and monitoring.

2. Subject to Section 31A, 31(2A) and 31(5A) of the Local Government Act 1974[49], To consider and take appropriate action on cases referred to the Local Ombudsman concerning members' conduct.

3. On behalf of the authority, to approve payments or the provision of other benefits under section 92 Local Government Act 2000)[50] in any case where the committee considers that maladministration has or may have adversely affected any person because of any action or failure to act by the authority in the exercise of any executive or non-executive function.

S011D Officer Delegations: to each Service Manager as appropriate:

Under section 92 of the Local Government Act 2000, to agree any local settlement of any Ombudsman or other complaint where the Service Manager considers:

(a) *that action taken by or on behalf of the council in the exercise of its functions amounts to or may amount to maladministration, and*

(b) *that a person has been, or may have been adversely affected by that action*

by making a payment to or by providing some other benefit for that person - up to a value appropriate in the circumstances and not exceeding £2000 (two thousand pounds) together with any agreed reasonable expenses. [51]

(g) **Exercise of the Council's Powers to Investigate and Impose Sanctions for Misconduct**

Insofar as the Council retains its powers under section 111 of the Local Government Act 1972, to exercise the following powers on behalf of the Council:

To deal with allegations of misconduct in office made against individual Councillors or co-opted members under:

- The Code of Conduct for Members
- The Code of Conduct on Planning Matters
- The Protocol on Member/Officer Relations
- Any rule of law:

by conducting investigations and hearings, or by commissioning or requesting investigations by external and independent agencies, and in appropriate cases after fair and proper investigation and adjudication imposing all or any of the following sanctions on any elected or co-opted member:

- censure;
- a recommendation to the Council or Cabinet that membership of any Council Committee or sub-committee be suspended or

withdrawn, or appointment as Executive Member be suspended or withdrawn;
- a recommendation that a councillor's or co-opted member's appointment or nomination to any outside body be suspended or revoked;
- a report to another enforcement or regulatory body, such as the police, Director of Public Prosecutions, Ombudsman or Auditor.

S020D OFFICER DELEGATIONS: to the Monitoring Officer:

- *To receive allegations and complaints against individual members in relation to matters of conduct.*
- *Unless in the Monitoring Officer's opinion, investigation or proceedings would be prejudiced, to notify the Chair of the Standards and Audit Committee and the person who is the subject of the complaint that the complaint or allegation has been made.*
- *If appropriate to refer the complaint to any authority or to arrange internal or external preliminary investigations into such allegations or complaints.*
- *After consulting the Independent Person , not to pursue or to terminate such preliminary investigations where the Monitoring Officer considers any allegation or complaint to be unfounded.*
- *To report such allegations or complaints to the Standards and Audit Committee.*

(h) **Other Codes and Protocols**

To approve monitor and keep under review and change the Council's Code of Conduct on Planning Matters and Protocol on Member/Officer Relationships, and to recommend to the Council the adoption of any other code or protocol which the Committee may consider necessary to regulate the conduct of members.

(i) **To Approve Amendments to the Constitution**

To approve any proposed amendments to the constitution, unless appropriate, or required by law to be approved by Full Council (or Leader or Cabinet)[52].

9.0 **10.0 Article 10 – *Not Used***

11.0 ARTICLE 11– JOINT ARRANGEMENTS[53]

11.1 Arrangements to promote well being[54]

The Cabinet[55], 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.

11.2 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 Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities.

(c) Except as set out below, the Cabinet may only appoint Cabinet members to a joint committee and those members need not reflect the political composition of the local authority as a whole.

(d) The Cabinet may appoint members to a joint committee from outside the Cabinet in the following circumstances[56]:

1. Where the joint committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, the Cabinet 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 political balance requirements do not apply to such appointment.

2. Where a joint committee is discharging some executive and some non-executive functions of the authority, appointments to the joint committee are made by the council with the agreement of the Cabinet and:

   - Where the there is only one member of that joint committee to be appointed to it, that member may or may not be a member of the Cabinet

- Where there are more than one such members, at least one member must be a member of the Cabinet.

And political balance applies.

3. Where 5 or more authorities are represented on a joint committee, or where functions have by law (rather than by choice) to be dealt with by a joint committee, the Cabinet may appoint a Cabinet member(s) or a non-Cabinet member(s) to the joint committee, and the political balance rules 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.[57]

11.3 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.

11.4 Delegation to and from other local authorities [58]

(a) The Council may delegate non-executive functions to another local authority or, in certain circumstances, the executive of another local authority.

(b) The Cabinet may delegate executive functions to another local authority or the executive of another local authority in certain circumstances.

(c) The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting.

11.5 Contracting out[59]

The Council, for functions which are not executive functions, and the Cabinet, for executive functions, may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an order under section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contacting principles, provided there is no delegation of the Council's discretionary decision making.

11.6 Joint Working Protocol

This protocol sets out the agreed principles for the undertaking of joint working between Chesterfield Borough Council, North East Derbyshire District Council and Bolsover District Council.

1.0 INTRODUCTION

1.1 This protocol forms the basis for joint working and the joint provision of services to the citizens of Chesterfield Borough, North East Derbyshire and Bolsover District Councils. The protocol sets out the framework and key issues to be considered in the development of the joint provision of services.

2.0 INFLUENCES AND DRIVERS

2.1 There are a number of statutory and non-statutory influences/drivers which highlight the need for the joint provision of services[60]:

- White Paper on Strong Local Leadership Quality Public Services.
- Best Value (Local Government Act 1999).
- Community Strategies (LGA 2000).
- Circular 03/03 on Best Value and Performance Improvement.
- Comprehensive Performance Assessment – focus on 'Use of Resources'
- Best Practice in UK (e.g. Beacon Councils) and elsewhere.
- Gershon Report on Public Service Efficiency 2004.
- Government Spending Review 2004 – 2.5% target for efficiency gains and annual efficiency statement (AES).
- Local Strategic Partnerships.
- Development of the role of regional forums.
- Delivering Efficiency in Local Services, 2004.

3.0 CONTEXT

3.1 This protocol has been approved by the Borough/District Councils of Chesterfield, North East Derbyshire and Bolsover. Its implementation will be monitored (and revised as appropriate) by a Steering Group consisting of:-

- The Leaders, Deputy Leaders and Chief Executive Officers of Chesterfield Borough Council, North East Derbyshire and Bolsover District Councils.

- The group will be facilitated and administered by the policy and business transformation Officers of the Councils with other members and officers as appropriate.

- The Directors of each Council as appropriate.

3.2 The members of the Steering Group are committed to the provision of improved services to the citizens of all three Councils. The group considers that this will, in certain instances, be best achieved by the joint provision of services, joint working and the development of common standards and protocols. To assist that aim it requires that all Service Reviews be undertaken with the objective that joint working/service provision between the three Councils could be possible and should therefore be positively promoted.

3.3 Reports on the final outcomes of all joint Service/Efficiency including Best Value Reviews and joint service initiatives are to be submitted for consideration to the Steering Group.

3.4 Joint consultation exercises are to be undertaken on all appropriate Service Reviews whether the reviews are joint or not joint undertakings.

3.5 All proposals for the setting up of any new services are in the first instance to be subject to an investigation into the suitability of providing such services, as a joint service for all three Councils

3.6 All three Councils agree to operate all reviews in an open and transparent manner. This will include the sharing of all information.

4.0 SERVICE/EFFICIENCY REVIEW TEAMS

4.1 Joint Review teams will follow the framework set out in the Service Review 'Toolkit' and include officers from each Council. All Members of the teams will need to work together effectively and pull together a range of expertise and knowledge of each Council.

5.0 EXAMPLES OF JOINT WORKING

5.1 Chesterfield and North East District Derbyshire District Councils having commenced the partnership in 2001 have already undertaken a wide range of joint working initiatives. Examples include: provision of a Joint Tourism Service/Joint Economic Development and Tourism/Joint Land and Property Register Strategy; a Joint Community Strategy; successful joint publicity campaigns e.g. on recycling, healthy communities/youth and grant applications; dog/pest control services; provision of printings function; Joint Best Value Reviews; Adoption of Joint PIs and standards.

5.2 The three Councils have, in April 2005, now commenced a programme of investigating joint working on a number of further service areas including Building Control, Internal Audit, Procurement and Corporate Services.

6.0 **CONCLUSION**

6.1 This protocol is agreed by both Chesterfield Borough Council and North East and Bolsover District Councils as the framework to progress the aims set out in the document.

6.2 It is intended to assist Members and Officers of all three Councils in implementing the provision of joint Best Value Reviews and services.

Signed by

Councillor Ray W. Russell, Leader of Chesterfield Borough Council
Councillor:G. Baxter, Leader of North East Derbyshire District Council
Councillor :E. Watts, Leader of Bolsover District Council

and: David Shaw, CEO of: Chesterfield Borough Council
and: J. Gravenor, CEO of: North East Derbyshire District Council
and: W. Lumley, CEO of Bolsover District Council

Dated March 2006

12.0 JOINT BOARD

INTRODUCTION

12.1 Since the signing of the Protocol, the Executives of Bolsover and North East Derbyshire District Councils and of Chesterfield Borough Council have each agreed that a Joint Board with formal decision making powers should replace the member-level Steering Group referred to in the Protocol.

12.2 Each Council's Executive has authorised its Leader to decide all matters relating to joint working, in consultation with the Leaders of the other two Executives. The scope of this authorisation is set out in Part Three of this constitution. Other Executive members are authorised to act in the absence or unavailability of the Leader as shown in Part Three. The authorisation covers matters leading up to and following any decision to operate joint working or a shared service, but that decision itself is reserved to each authority's full Executive meeting.

12.3 This type of member-level governance for joint working is a variation of the DCLG's option of Simultaneous Executive Meetings (SEM's).

12.4 Any decision of the three Leaders (or their reserve executive members) shall bind the three executives only if all three Leaders (or their reserve executive

members) agree. In the case of any project affecting two of the three councils, both Leaders must agree, and the third Leader has consultative status only.

12.5 The Joint Board shall be the overall member-level governance body for each approved shared service. The Board may approve alternative types of operating model in any appropriate shared service (eg a local authority company).

13. SELECTION OF HOST AUTHORITY: [61] A decision as to which authority will be the host will be determined during the development of the business case for joint working. Each case will be treated on its merits.

Selection criteria will include:

- **Current performance levels and expertise**
- **Joint service needs - e.g. geographical considerations**
- **Financial considerations**
- **Accommodation requirements/availability**
- **Equity of provision across partners**

14. Officer Support and Joint Union Consultation

The Board shall from time to time decide on the nature and resourcing of officer support and union consultation arrangements. These are currently:

14.1 Chief Executive's Joint Working Group

Comprising the chief executive of each authority, other relevant officers and consultants. This Group's function is to discuss and co-ordinate joint working issues and to put forward proposals for the Joint Board's consideration. Administrative services for this group are currently provided by Bolsover District Council at their own expense.

14.2 Other Officer Working Groups

The Joint Board may authorise other officer joint officer working groups in relation to specific joint working proposals and projects.

14.3 Joint Working Consultation Forum

This comprises union and management representatives of the three authorities. Its function is to facilitate the resolution of workforce issues relating to joint working.

Administrative services for this group are currently provided by North East Derbyshire District Council at its own expense.

15. Administrative and Democratic Services for the Joint Board

The Joint Board shall from time to time decide its arrangements for administrative and democratic services consistent with those applying in each authority. At present the arrangements are:

15.1 Pre-Meeting Procedures:

Democratic services are at present provided by Chesterfield Borough Council, at their own expense.

The relevant proper officer (currently Chesterfield) shall determine whether or not any report for the joint board is to be marked as likely to disclose exempt or confidential information, in consultation with the proper officers of the other two authorities.

The responsible Democratic Services Officer (currently Chesterfield) will send to the relevant Democratic Services officer in each of the other 2 authorities:

- the agenda and written reports for Joint Board meetings at least 7 clear days before each meeting of the Joint Board, to allow public reports to be made available to the public under regulation 6

- at least 30 clear days before a private meeting, notice of an intention to hold the meeting of the Joint Board in private and statement of reasons for the meeting to be held in private, unless this is impracticable and the three authorities have obtained agreement, as set out in Regulation 5(6)

of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Any question of exemption from call-in on the grounds of urgency or any other reason (in accordance with each authority's rules) shall be decided before the Joint Board meets by the Chief Executives of each authority in consultation with their Leaders.

15.2 Joint Board Meetings

The Joint Board shall meet every 2 months, unless it decides otherwise. Unless it otherwise decides, the Board shall meet in public, except when consideringexempt or confidential items. In the case of all items, (whether or not exempt or confidential), the Board may invite any person to attend and speak for the purpose of decision making and consultation.

Chesterfield Borough Council's Leader's non-executive support members may attend Board meetings and may speak

For the purposes of consultation, each of the three Leaders (or their reserve executive members) shall chair meetings of the Joint Board held at that Leader's own Council Offices [62].

The three Chief Executives, or their representatives shall attend Board meetings, with appropriate Directors, Strategic Support Policy and Best Value, Quality and Improvement (or equivalent) Officers of the 3 Councils and other members or officers as agreed by the Board.

Overview and Scrutiny members may attend Joint Board meetings as observers as mentioned below.

15.3 Joint Board: Records of Decision and Call-in

Within 2 working days of the date of a decision, the Democratic Services Officer (currently Chesterfield) will forward a formal Record of Executive Decision, signed by each Leader (or reserve member) to a nominated officer in each of the other two authorities. The relevant officers in each authority will then be responsible for:

- Compliance with the access to information regulations on publication of executive decisions
- Reporting the Record of Decision to each authority's executive, and
- Call-in procedures

The decision shall be subject to the call-in procedures in each authority, provided that the decision shall not be implemented by any authority until the expiry of 9 working days from the date of the decision. (9 working days is the call-in period of Bolsover DC, which is the longest of the three authorities' call-in periods).

If no valid request for call-in is received under any of the three authorities' call-in procedures, the decision may then be implemented.

If there is a valid request for call-in under any of the authorities' call-in procedures, the decision shall not be implemented until that authority's call-in procedure has been completed.

16.0 Terms of Reference and Functions of the Joint Board

In general terms these are as described in the Leader's delegation in Part 3 of this constitution. Specific terms of reference within that general delegation include:

- Matters referred to in the Joint Working protocol above,
- Decisions on the operating model for any shared service (e.g. Lead Authority, local authority company)
- Procurement Issues
- Organisational and staffing issues which are executive functions
- Options Appraisal
- Monitoring the operation of approved shared services

The Joint Board may recommend that any issue which is a non-executive function (e.g. terms and conditions of employment of particular staff) be referred to the appropriate authority's non-executive decision-making body (e.g. employment committee).

17.0 Overview and Scrutiny

Each authority may arrange for one of its overview and scrutiny members to attend meetings of the joint Board as an observer, substitutes being allowed. In due course, the authorities may consider joint member-level arrangements for general overview and scrutiny of joint working, so as to avoid duplication of overview and scrutiny functions.

18.0 Dispute Resolution

If there is a dispute or inability to reach a decision on a specific item at any joint officer working group, then that item will be referred to the Chief Executives group for decision. In the event of continuing disagreement the matter would be referred to the Joint Board, and from there if necessary to the respective Councils' Executives.

12.0 ARTICLE 12 - EMPLOYEES

12.1 Management Structure

Appointment of staff cannot be the responsibility of the Cabinet. Appointment of staff below Deputy Chief Executive level must be the responsibility of the head of paid service or their nominee. See Employment Procedure Rules at Part 4 for details.

(a) **General.** The Council may engage such staff (also referred to as employees or officers) as it considers necessary to carry out its functions.

(b) **Chief Executive and One Deputy Chief Executive :** The Council will engage persons for the following posts, who will be designated Chief Executive and Deputy Chief Executive:

Post	**Functions and Areas of Responsibility**
Chief Executive	• Overall corporate management and operational responsibility (including overall management responsibility for all officers) and overall responsibility for external partnerships • To communicate and deliver the Council's vision, long-term and annual priorities for the Borough and to provide leadership for the Council's staff • Overall strategic and line management responsibility for Policy and Performance, I.C.T. and E-Government, Human Resources, Spatial Planning and Building Control, Economic Promotion, Design Services, Accountancy and Internal Audit Services
Deputy Chief Executive	• To communicate and deliver the Council's vision, long-term and annual priorities for the Borough and to provide leadership for the Council's staff • Overall strategic and line management responsibility for council services • To deputise in the Chief Executive's absence

(c) **Head of paid service, monitoring officer and chief financial officer.** The Council will designate the following posts as shown:[63]

Post	**Designation**	**Appointed Deputy**
Chief Executive *Christine Durrant*	Head of Paid Service	None
Director of Governance and Monitoring Officer (the Council's Senior Solicitor) Katherine Hall Marcia Paulucci	Monitoring Officer	Deputy Monitoring Officer

Director – Finance and
151 Officer
Theresa Channell

Such 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 departmental structure of the Council showing the management structure and deployment of officers. This is set out at Part 7 of this Constitution.

12.2 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.

(b) **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.[64]

12.3 Functions of the monitoring officer

(a) **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 Cabinet in relation to an executive function if 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.

(b) **Supporting the Standards and Audit Committee.** The monitoring officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards and Audit Committee.

(c) **Receiving reports.** The monitoring officer will receive and act on reports made by ethical standards officers and decisions of the case tribunals.

(d) **Conducting investigations.** The monitoring officer will conduct investigations into complaints about members and make reports or recommendations in respect of them to the Standards and Audit Committee.

(e) **Advising whether executive decisions are within the budget and policy framework.** The monitoring officer will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.

(f) **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.

(g) **Proper officer for access to information.** The monitoring officer will ensure that Cabinet decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible

(h) **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

(i) **Restrictions on post.** The monitoring officer cannot be the chief finance officer or the head of paid service.

12.4 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 Cabinet 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 councillors and will support and advise councillors 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.

12.5 Duty to provide sufficient resources to the monitoring officer and chief finance officer

The Council will provide the monitoring officer and chief finance officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

12.6 Conduct

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

12. 7 Employment

The recruitment, selection and dismissal of officers will comply with the Employment Procedure Rules set out in Part 4 of this Constitution. (and in Part 3 - Employment and General Committee delegations).

13.0 ARTICLE 13 - DECISION-MAKING

13.1 Responsibility for decision-making

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

13.2 Principles of decision-making

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

(a) proportionality (i.e. the action should be proportionate to the desired outcome);
(b) due consultation and the taking of professional advice from officers;
(c) respect for human rights;
(d) a presumption in favour of openness;
(e) clarity of aims and desired outcomes;
(f) an explanation of the options considered and the reasons for decisions and
(g) compliance with the law about political motives for decisions.

13.3 Politics and decision making

Councillors may lawfully support a policy adopted by their party, but they must not abdicate their responsibility and duty of exercising personal judgement. Elected politicians of course wish to act in a manner which will commend them and their party to the electorate. Councillors do not act improperly or unlawfully if, exercising public powers for a public purpose for which such powers were conferred, they hope that such exercise will earn the gratitude and support of the electorate and thus strengthen their electoral position. But a public power is not exercised lawfully if it is exercised not for a public purpose for which the power was conferred but in order to promote the electoral advantage of a political party.[65]

The Code of Conduct at Part 5 of this Constitution sets out the principles of conduct that all councillors must follow.

13.4 Principles of Consultation [66]

The duty to consult may be imposed by statute or may arise because the parties to be consulted have a legitimate expectation of consultation which arises either from a promise or for an established practice of consultation. What kind and amount of consultation is required in a particular case must depend on the circumstances. A few general principles can, however, be stated.

The process of consultation must be effective; looked at as a whole, it must be fair. This requires that: consultation must take place while the proposals are

still at a formative state; those consulted must be provided with information which is accurate and sufficient to enable them to make a meaningful response; they must be given adequate time in which to do so; there must be adequate time for their responses to be considered; the consulting party must consider responses with a receptive mind and a conscientious manner when reaching its decision.

13.5 Types of decision

13.5.1 Decisions reserved to full Council

Decisions relating to the functions listed in Article 4.2 will be made by the full Council and not delegated.

13.5.2 Key Decisions

A 'Key Decision' will be included in the Forward Plan. It is an executive decision which is likely:

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

(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.[67]

The Council has adopted[68] the following working definition of a "key decision":

A decision on a report or decision by an officer which falls within any of the following working definitions is a Key Decision:

- A decision to spend £100,000 or more from an approved budget
- A decision to transfer funds of more than £50,000 from one budget to another
- A decision which would result in a saving of £50,000 or more to any budget head
- A decision to dispose of or acquire any interest in land or buildings with a value of £50,000[69] or more
- A decision to propose the closure of, or a reduction by, more than ten (10) percent in the level of service (for example in terms of funding, staffing or hours of operation) provided from any facility from which the Council services are supplied

- A decision which will have a significant impact in environmental, physical, social or economic terms on communities living or working in one or more electoral wards

- A decision regarding any plans or strategies which are not within the meaning of the Council's policy framework set out in Article 4 of the Constitution

A decision taker may only make a key decision in accordance with the requirements of the Cabinet Procedure Rules set out in Part 4 of this Constitution.

13.6 Decision-making by the full Council

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

13.7 Decision-making by the Cabinet

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

13.8 Decision-making by Scrutiny Committees

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

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

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

13.10 Decision-making by Council bodies acting as tribunals

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

13.10.2 Article 6 states that *in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the*

interests of juveniles or the protection of private life so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

13.10.3 Though failure to comply with Article 6 by a council body in any particular case may be corrected by a right to appeal to another independent body or to a court, compliance by the council body is still required, since that appeal body will review the entire appeal process including the council's part in it.

13.10.4 In many cases council bodies can conduct a hearings in private in the interests of the private life of the parties, and in the interests of justice, as stated in the qualification to Article 6.

However Article 6 requires that judgement be pronounced publicly and since that requirement (unlike the requirement for a public hearing) is **not** qualified, Council bodies should make public their decisions on appeals. This may often be done by the publication of a Minute or Record of Decision without disclosure of exempt or confidential information or disclosure of information which would run against the purpose of Article 6. Special arrangements for fuller access to the details of a decision may be made for those with a legitimate interest in it.

13.10.5 Case law[70] says that there is a discretion in respect of the method chosen to publish a judgement, but there is no discretion to decide to keep it entirely confidential. The form of publicity given to a judgement must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 taking account of the public interest and the need to safeguard private or confidential information.

14.0 ARTICLE 14 – FINANCE, CONTRACTS AND LEGAL MATTERS

14.1 Financial management

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

14.2 Contracts

Every contract made by the Council will comply with this Article and with the Contracts Procedure Rules set out in Part 4 of this Constitution and with the Procurement code and the Procurement Act 2023 or any Act or Regulation that updates or replaces this Act.

14.3 Legal proceedings

14.3.1 General

Subject to any specific delegations in Part Three of this Constitution, the Director of Governance (as the Council's Senior Solicitor) is authorised to institute, defend or participate in any Legal Proceedings or to take Counsel's opinion on any matter, in any case where such action is necessary to give effect to decisions of the Council or in any case where the Director of Governance considers that such action is necessary to protect the Council's interests. (the meaning of ***"Legal Proceedings"*** is defined in part 3 of this Constitution[71]).

14.3.2 Statements of Truth

The Chief Executive, Deputy Chief Executive , the Chief Finance Officer and each Service Manager (or any other officer authorised by any of them) is authorised to prepare and sign Statements of Truth in connection with any Legal Proceedings.

14.3.3 Authorising Employees to Attend Court

The Director of Governance is authorised to authorise any appropriately qualified employee of the Council to represent the Council in the Magistrates Court or in the County Court pursuant to section 223 and 101 of the Local Government Act 1972, Paragraph 1 of Schedule 3 Legal Services Act 2007 and all other enabling powers.

14.4 Procedural Matters

The Chief Executive, Deputy Chief Executive and each Service Manager are authorised:

- To serve any notice and comply with any statutory procedure (unless otherwise delegated in Part 3 of this Constitution) which is required to give effect to any policy of the authority or any decision made by or on behalf of the authority.
- To serve notices pursuant to Section 16 of the 1976 Act (finding ownership of land etc.) in respect of executive or non-executive functions.
- In any case where entry to premises is required urgently, to exercise any power or duty of the authority, to apply to the Court in order to obtain entry to premises under Section 287 of the 1936 Act, the 1990 Act and the LBA or any other like provision.
- To carry out the certification functions under the Local Government (Contracts) Act 1997 (certification of contracts as within the legal powers of the authority) whenever considered necessary.
- To appoint in writing officers and such other persons as might be necessary for the purpose of exercising the Council's legal powers or duties, unless otherwise delegated in Part 3 of this Constitution (except where such a delegation is given to the Chief Executive, Deputy Chief Executive , Service Director or a Service Manager in which case that delegation may be overridden by this paragraph but only by the Chief Executive, Deputy Chief Executive , Service Director or Service Manager to which that delegation has been given), including (but not limited to) entering and inspecting land and premises, making investigations, obtaining information, obtaining samples, seizing food or any other articles, things or matter and issuing and serving notices (including fixed penalty notices).

14.5 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 Chief Executive, Deputy Chief Executive or appropriate Service Director or Service Manager or by some other person authorised by any of them in writing, (subject to 14.6 below) unless any enactment otherwise authorises or requires, or unless the Council has given requisite authority to some specified person (for example in Part 3 of this Constitution).

14.6 Contracts[72]

All Council contracts shall be in writing or evidenced by writing except those mentioned in Financial Procedure Rule 4.29 (see Part 4 of this Constitution) as exceptions to that rule. Writing includes writing in electronic form provided that a permanent record of the writing is kept either on paper or in electronic form.

Any contract for the supply of goods and materials[73], for the supply of services or for the execution of works for the Council shall be either sealed on behalf of the Council or signed in accordance with the Council's Contract Procedure Rules (see Part 4 of this Constitution). Where available and appropriate the Council's seal and/or a signature may be applied by electronic means.[74]

This paragraph 14.6 applies to contracts in the course of the discharge of both executive and non-executive functions.

14.7 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Director of Governance.

A decision of the authority, 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 Director of Governance should be sealed.

The affixing of the Common Seal will be attested by either:

- the Mayor (or the Deputy Mayor) and by an authorised signatory
  OR
- two authorised signatories[75]

In this paragraph 14.7 “authorised signatory” means the Director of Governance and/or any other person authorised by them in writing and “authorised signatories” shall be interpreted accordingly. Production of a copy of this paragraph 14.7 shall be sufficient authority of these authorisations.

Where available and appropriate the Council’s seal may be applied by electronic means. [76]

15.0 ARTICLE 15 – REVIEW AND REVISION OF THE CONSTITUTION

15.1 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 the 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:

- observe meetings of different parts of the member and officer structure;
- undertake an audit trail of a sample of decisions;
- record and analyse issues raised with them by members, officers, the public and other relevant stakeholders; and
- compare practices in this authority with those in other comparable authorities, or national examples of best practice.

15.2 Changes to the Constitution[77]

(a) **Approval.** Changes to the constitution (other than those changes which the Constitution itself provides may be dealt with otherwise) must be approved by Standards and Audit Committee unless appropriate, or required by law, to be approved by the full Council (or Leader or Cabinet)[78]. Routine updating of the Constitution, including changes to / addition of legislation where it is clear which function and delegation the legislation relates to, is delegated to the Monitoring Officer[79].

(b) **Change to a different form of executive arrangements or to alternative arrangements.** The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals.

16.0 ARTICLE 16 – SUSPENSION, INTERPRETATION AND PUBLICATION OF THE CONSTITUTION

16.1 Suspension of the Constitution[80]

(a) **Limit to suspension.**

The Articles of this Constitution may not be suspended.

Subject to the law and to any specific rules elsewhere in this Constitution providing for suspension (such as suspension of rules relating to competition and tendering for contracts in the contract procedure rules (Part Four) and the rules for suspension of the Standing Orders in the Council Procedure Rules in Part four)), the Rules specified below may be suspended by the full Council.

(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 councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.

(c) **Rules capable of suspension.** The following Rules may be suspended in accordance with Article 16.01:

Council Procedure Rules (Standing Orders) - Part 4

Financial Procedure Rules - Part 4

Contract Procedure Rules - Part 4

16.2 Interpretation

The ruling of the Mayor as to the construction or application of this Constitution or as to any proceedings of the Council 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. Publication

The Constitution is available on the Council's website and will be made available as necessary as required by law.

Schedule 1: Description of Executive Arrangements

The following parts of this Constitution constitute the executive arrangements:

1. Article 6 (Scrutiny) and the Scrutiny Procedure Rules;
2. Article 7 (The Cabinet) and the Cabinet 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).
6. Part 8 Names and details of Cabinet members and other Members of the Council and Committees.

END OF PART TWO OF THE CONSTITUTION

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[1] "principal or only place of work": under s. 79 (1) (c) of the 1972 act, this includes the performance of the duties of a councillor at the council's offices (Parker v. Yeo, Court of Appeal (1992) 90 L.G.R. 645). The term "work" had a wider meaning than "business" or "employment" and in its natural and ordinary meaning covered work as a councillor; there was no good reason for adopting a more restricted meaning. "Employed" means paid or unpaid employment: R v Ealing LBC ex p. Fox (Anthony) 1998 The Times 9 March.

[2] *The following Article is intended to clarify the key roles and duties of councillors. Some Councils have prepared 'job descriptions' for councillors and this approach could be used as well as or instead of the model text provided below. An example of definitions of roles is set out below. Councils should consider the content of these and the suggested text in the Article to determine a locally meaningful and appropriate description of key roles and duties. There are some common elements that should be expressed in the role definition. Local authorities should ensure that it reflects a view of the Council as a corporate body of all elected councillors, and therefore that all councillors have a responsibility for the good governance of the local authority. The definition should reinforce the community leadership role of councillors, for example in the new forms of Council meeting which will develop (see introduction to Article 4) and in agreeing the community strategy. It should reflect the increased potential for the councillor to develop a representational role and to act as a link and point of mediation between the local authority and the community. It should contain a statement of the councillor's duty to adopt high standards of conduct in order to give expression to the General Principles of Conduct and the local authority's own Code of Conduct for councillors. There may be other roles specific to the locality that a local authority will want to include.*

[3] This does not mean that the council's own complaints process must have been exhausted before the ombudsman will consider a complaint. The ombudsman requires complainants to raise their complaint direct with the council, and give the council a chance to respond. The ombudsman will normally allow about 12 weeks for the council to respond, but the ombudsman may get involved earlier if there are extenuating circumstances - letter from ombudsmen June 2002.

[4] Reg. 2(11) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 says *Unless otherwise provided by any other provision of these Regulations, a function of a local authority which, by virtue of any enactment (includes regulations) passed or made before the making of these Regulations, may be discharged only by an authority, is not to be the responsibility of an executive of the authority*.

[5] S. 48 (5) of the LGA 2000*: Section 101 of the Local Government Act 1972 does not apply to the function of the passing of a resolution under any provision made by or under this Part.*

[6] LGA 2000 Sched 1 para. 2(4) *Section 101 of the Local Government Act 1972 does not apply to the function of determining the number of councillors under sub-paragraph (2)(a).*

[7] **Standing orders with respect to local authority contracts:** Regulation 8. of the Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001.

[8] "Investments" added by SI 2004 no.1158.

[9] Local Authorities (Functions and Responsibilities) (England) Regulations 2000 Regs. 4(1), 4 (3) (d) and 4 (8).

[10] The approval for consultation of the Local Plan is a full Council function and is excepted from the Executive Member Planning and Asset Management's portfolio in part 3 of this constitution. See Reg 2 of Statutory Instrument 2001 No. 2212 **The Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001**.
[11] The functions of amending etc. plans in these two circumstances are Cabinet functions – see Cabinet portfolios under Plans and Strategies in Part 3 of this Constitution and reg. 4 (4) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.
[12] Local Authorities (Functions and Responsibilities) (England) Regulations 2000 Reg. 2 (5) (6) and (7). These functions must be exercised by the full council and may not be delegated to any council committee or officer.
[13] This is a non-delegable function of the full Council to the extent established by case law, which is uncertain with respect to the appointment of committees and sub-committees. R v Brent LBC ex p. Gladbaum and Wood, The Times 14.12.1989 established that only the full Council could appoint and remove members from committees. The case also said that subcommittees could only be appointed by committees (not directly by the full council). Where the full Council appoints sub-committees, the parent committee should at least confirm the appointments.
Section 102 (1A) (b) of the 1972 act (inserted by reg. 4 (a) of the Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001 reflects this position by giving area committees the independent statutory right to appoint sub-committees.

[14] Note also the Licensing Act 2003 s. 7(1) *All matters relating to the discharge by a licensing authority of its licensing functions are, by virtue of this subsection, referred to its licensing committee and, accordingly, that committee must discharge those functions on behalf of the authority*.
Exceptions to this are the rule that only the full council shall determine the Council's Licensing Policy, and that the full council must discharge the licensing committee's functions where the licensing committee is unable to discharge any function delegated to it in accordance with this section because of the number of its members who are unable to take part in the consideration or discussion of any matter or vote on any question with respect to it (s.7(9)).
[15] S 67 of the Local Government Finance Act 1992 requires these functions to be exercised by the full Council.
[16] Local Authorities (Functions and Responsibilities) (England) Regulations 2000 Reg. 4(9)(10) and (11).
[17] Local Authorities (Functions and Responsibilities) (England) Regulations 2000 Reg. 5.
[18] These reports must be considered by the full Council in relation to non-executive functions only. For executive (Cabinet) functions, these sections of the acts have been amended by the Local Authorities (Executive and Alternative Arrangement) Modification of Enactments and Other Provisions) (England Order 2001 Regs. 20, 21 and 23, to require these statutory officers to report to the Cabinet (rather than to the Council), and for the Cabinet (rather than the Council) to consider them. Copies must still be sent to all members of the authority individually.
[19] S. 239 LGA 1972 *A resolution of a local authority to promote or oppose a Bill under subsection (1) above shall be—*
(a) passed by a majority of the whole number of the members of the authority at a meeting of the authority held after the requisite notice of the meeting and of its purpose has been given by advertisement in one or more local newspapers circulating in the area of the authority, such notice being given in addition to the ordinary notice required to be given for the convening of a meeting of the authority; and
(b) in the case of the promotion of a Bill, confirmed by a like majority at a further such meeting convened in accordance with paragraph (a) above and held as soon as may be after the expiration of fourteen days after the Bill has been deposited in Parliament and, if the resolution is not confirmed, the local authority shall take all necessary steps to withdraw the Bill.
[20] S 31 A Local Government act 1974. The requirement for the full Council to consider these reports in these circumstances applies also to executive functions (as well as to council functions) under the new s. 31(2A)
[21] Section 8 of the Audit Commission Act 1998 requires the auditor to consider whether in the public interest he should make a report on any matter coming to his notice in the course of the audit in order that it may be considered by the Council or brought to the attention of the public. He is also to consider whether the public interest requires an immediate report rather than a report at the conclusion of the audit. Section 11(8) requires the full council to consider and take any action on the report. This seems to apply to both executive and non-executive functions.
[22] Each licensing authority must in respect of each three year period-

(a) determine its policy with respect to the exercise of its licensing functions, and
(b) publish a statement of that policy (a "licensing statement") before the beginning of the period.

[23] Licensing Act 2003 section 7(9)

[24] Section 37(1) LGA 2000 states that *a local authority which are operating executive arrangements or alternative arrangements must prepare and keep up to date a document (referred to in this section as their constitution)*, but there is no requirement for the full council to approve the document or changes to it. However the approval of the document or changes to it cannot be an executive function, and must therefore be approved either by the full council or by a council committee*: S 48 (6) Any functions conferred on a local authority by virtue of this Part are not to be the responsibility of an executive of the authority under executive arrangements.* Changes to the scheme of delegation of executive functions however may only be made in accordance with s 15 LGA 2000 (scheme of delegation to be approved by full council, Leader or Cabinet) (see Cabinet Procedure Rules) with a statutory default power (and express power) for the Leader to change this scheme of executive delegations in certain circumstances. Major changes to the FORM of executive arrangements require statutory procedures involving the full council and consultation.

[25] The Code of Audit Practice recommends a non-statutory report, called a “management letter”. This is: “addressed to members which will give a summary of the audit activities and details of the significant matters which have arisen from all aspects of the audit” (para. 55(f)). Letters may be issued in full or summary form with all issues of substance or significance (para. 84). While there should normally be one only each year, auditors should consider whether to issue an interim management letter in exceptional circumstances (para. 85). A management letter should be discussed in draft form with the officers and, the auditor having ensured that the final letter is issued to all members, should seek a meeting with members to answer questions.

[26] (s 151 LGA 1972: Financial administration : *(Without prejudice to section 111 above, every local authority shall make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has responsibility for the administration of those affairs).*This covers e.g. the wider aspects of financial management

[27] Reduced from 3 committees (Overview and Performance Scrutiny Forum, Enterprise and Wellbeing Scrutiny Committee, Community, Customer and Organisational Scrutiny Committee) at Council annual business meeting 15/05/23

[28] The requirement for local authorities in England to establish overview and scrutiny committees is set out in sections 9F to 9FI of the Local Government Act 2000 as amended by the Localism Act 2011

[29] LGA 2000 s. 53(10) *A standards committee of a relevant authority… is not to be regarded as a body to which section 15 of the Local Government and Housing Act 1989 (duty to allocate seats to political groups) applies*. The non-statutory Standards Committee at its meeting on 6th November 2001 decided to recommend to the Council that the political balance rules should nevertheless be applied as a matter of local choice. However it also decided no political party considerations should apply to the selection of parish representatives (see below) so far as the Standards Committee is concerned.

[30] The Standards committee recommended to the Council that there should be no sub-committee set up to deal specifically with parish matters, taking account of the consultations carried out with Staveley and Brimington. It is the Council’s final decision (not the Standards Committee’s) whether or not to have a sub-committee, though if the council decides to have one, it is for the Standards Committee to appoint it. LGA 2000 section 55(4): *In deciding whether it will be their standards committee, or a sub-committee of their standards committee, which is to discharge the functions conferred by this section, a district council must consult the parish councils for which they are the responsible authority.* LGA 2000 section 55(3): *A standards committee of a district council...may appoint a sub-committee for the purpose of discharging all of the functions conferred on the standards committee by this section.*

The Standards Committee decided to recommend no sub-committee, but that one representative from each of the parish councils should be appointed to the main Standards Committee. The Standards Committee decided that if in future it considers that a sub-committee is needed, one should be set up.

[31] Increased from 5 to 6 by full council May 2019

[32] Section 55(5) LGA 2000: *A standards committee of a relevant authority in England which are operating executive arrangements- (a) may not include the elected mayor or executive leader*. The Standards Committee decided not to recommend that the Council to extend this statutory prohibition, as a matter of local choice, to the Deputy Leader as well, as some councils have done.

[33] Reg 4(1)(b) Standards Committee (England) Regulations 2008.
[34]. After consultation, the Standards Committee recommended two representatives (one from Staveley and one from Brimington) on the main Standards Committee. Reg 4(2) Standards Committee (England) Regulations 2008 says that a responsible authority must have at least two parish representative members on standards committee, neither of whom must be also members of the responsible authority (i.e. they must not also be members of CBC)
[35] LGA 2000 section 53(8) now repealed) *said a member of a standards committee of a relevant authority in England… who is not a member of the authority is entitled to vote at meetings of the committee. The council has chosen to retain parish members on its standards and audit committee.*
[36] LGA 2000 s.55(6).
[37] Reg 3(2)(b) Relevant Authorities (Standards Committees) Regulations 2000 (repealed)
[38] Reg 6 2001 Regulations– these rules apply despite any other general rules as to quorum elsewhere in his constitution.
[39] Reg. 8 Standards Committee (England) Regulations 2008
[40] That is - councillors of Chesterfield Borough, Brimington Parish and Staveley Town Councils
[41] Section 33 of the Localism Act 2011. This should be distinguished from the statutory role of the head of paid service in granting dispensations for "conflicts of interest" (I.e. wider than dispensations relating to disclosable pecuniary interests under the code of Conduct) in respect of executive decisions to be made by Cabinet, an individual executive member or an officer (see Part 4).+
[42] LGA 2000 s.55(11).
[43] Only non-executive functions may be delegated to the Standards Committee. Therefore the former delegation ***Failure to Attend Meetings*** *S050 To approve or otherwise for the purposes of Section 85 of the Local Government Act, 1972 the reason(s) for the failure of any member to attend meetings of the authority,* which is an executive function, has been transferred to the Cabinet (Corporate Resources Executive Member's portfolio).

[44] Councils may arrange for their Standards Committee to exercise such other functions as the Council considers appropriate. According to local choice, Standards Committees could also undertake roles including:• overview of internal and external audit;• overview of the whistle blowing policy;• overview of complaints handling and Ombudsman investigations; and• oversight of the constitution.
[45] This will replace the existing Standards Committee delegation *S030 To respond to consultations on and approve any revised code of conduct for* ***employees*** *of the Council.* It is assumed that this will be a non-executive function, since it concerns the terms and conditions of employment.
[46] On 8 August 2000, Ministers asked the LGA, the Employers Organisation and the public sector unions to work together on drawing up proposals for such a code of conduct. Their proposals were submitted towards the end of November 2000 and the Government intended to issue a draft code - see Part 5 of this Constitution.
[47] 10 (3) Subject to paragraph (5), in respect of all relevant bodies referred to in regulations 7(1) and 7(6)—(a) the statement of accounts as required by regulation 7(1) or regulation 7(6), as the case may be, shall be approved by a resolution of a committee of the relevant body or otherwise by a resolution of the members of the body meeting as a whole, such approval to take place as soon as reasonably practicable and in any event before the 30th June immediately following the end of a year…

[48] Approved by full council on 15th October 2008 - see para. 2.8
[49] *31A.—(1) Subject to subsection (3) below, any power of authority to have their functions discharged by any person or body of persons acting for the authority shall, as respects the consideration of a further report of the Local Commissioner under section 31(2A) above, be subject to the restriction that, if it is proposed that the authority should take no action on, or not the action recommended in, the report, consideration of the report shall be referred to the authority.*
31 (2A) In the case of a local authority which are operating executive arrangements, consideration of a further report of the Local Commissioner under section 31(2A) above by the executive of that local authority, or any person on behalf of that executive, shall be subject to a corresponding restriction.";
31(5A) In the case of a local authority which are operating executive arrangements -
(a) no member of the executive of that authority shall decide; and
(b) no member of the executive or any body acting on behalf of that executive shall vote on any question with respect to a report or further report under this Part of the Act in which he is named and criticised by a Local Commissioner.".
[50] Section 92 says - *(1) Where a relevant authority consider-*
(a) that action taken by or on behalf of the authority in the exercise of their functions amounts to, or may amount to, maladministration, and

(b) that a person has been, or may have been, adversely affected by that action, the authority may, if they think appropriate, make a payment to, or provide some other benefit for, that person.
Section 92 is a non-executive function and so cannot be carried out by the Cabinet. However the Cabinet can deal with Ombudsman cases which do not involve a section 92 payment or benefit. Part 3 of this Constitution allows the Cabinet (or the appropriate committee for non-executive functions) to deal with ombudsman cases not involving a section 92 payment.

[51] Approved by Standards Committee on 22/12/06, threshold updated by Standards and Audit Committee 25/07/18

[52] *Approved by Full Council 17th December 2014*

[53] *The Local Government Act 2000 and regulations enable local authorities to make use of joint arrangements with other authorities and delegate to other local authorities. Joint arrangements (including joint committees) are well established within local government, although their use has tended to be concentrated on facilities where economies of scale make sharing practicable – for example crematoria or laboratories. Delegation to other local authorities is not widely employed. The regulations under the Local Government Act 2000 specify the different permutations for the delegation of executive functions depending on the types of local authorities involved. However, there are new possibilities for joint arrangements as a result of changes taking place in the relationship between health and social services, including provision for pooled budgets and the creation of new joint agencies. Similarly, Part I of the Local Government Act creates greater flexibility for partnership arrangements in the promotion of economic, social and environmental well-being. To avoid frequent amendments to this Article as new possibilities become available, authorities may wish to build up relevant protocols in later sections of the Constitution.*
See S 2, 19 and 20 LGA 2000 Chapters 6 and 9, DETR Guidance, The Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000

[54] The Annex to the DETR Guidance on the power of well-being (March 2001) says: *Under a new constitution which includes executive arrangements, the executive – as the clear, accountable, corporate leadership for the council – will lead the search for best value and be the focus for partnership working with other local public, private and voluntary sector bodies. As such, the power in section 2 of the 2000 Act is the responsibility of the executive under executive arrangements, and is subject to all the same legislation as any other function which is the responsibility of the executive. This means that, unless the executive is minded to use the power in a manner which is contrary to the council's policy or budgetary framework, then* ***only the executive can determine how the power is to be exercised****. Decisions which are contrary to the policy and budgetary framework must, under executive arrangements, be taken by the full council.*

[55] This paragraph has also been included in Part 3 – Responsibility for functions – as a general Executive Member delegation.

[56] the Local Authorities (Arrangements for the Discharge of Functions) (England) (Amendment) Regulations 2001 in force on 1st January 2002.

[57] The only formal joint committee is the Joint Crematorium Committee, with North East Derbyshire and Bolsover District Councils s.101(5A) LGA 1972 added by reg 3(b) of the Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001 says *Arrangements made under subsection (5) above by two or more local authorities with respect to the discharge of any of their functions shall* ***cease to have effect*** *with respect to that function if, or to the extent that, the function becomes the responsibility of an executive* ***of any*** *of the authorities.* This means that the joint committee ceased to be able to operate on the adoption of executive arrangements by the first authority in time to adopt executive arrangements. The Joint Committee has been re-constituted under Section 20 of the 2000 act, as a joint arrangement between executives of the constituent authorities. The arrangements should be set out in full either here or in Part 3 of the Constitution.

[58] The Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001 says ***Performance of sewerage undertaker's functions by local authorities etc. 27.*** *In section 97 of the Water Industry Act 1991 (performance of sewerage undertaker's functions by local authorities etc.) -*
(a) after subsection (4), there shall be inserted -
" (4A) Where arrangements entered into for the purposes of this section provide for a local authority which are operating executive arrangements to carry out the sewerage functions of a sewerage undertaker on that undertaker's behalf -
(a) those sewerage functions shall be treated as functions of the authority for the purposes of section 13 of the Local Government Act 2000; and

(b) if or to the extent that those sewerage functions are the responsibility of the executive of that authority -
(i) subsection (4) above shall not apply; and
(ii) sections 14 to 16 of the Local Government Act 2000 and any regulations made under sections 17 to 20 of that Act shall apply in relation to those sewerage functions only in so far as the arrangements do not provide otherwise.";
The Council's arrangements with Yorkshire Water may be affected by this provision.

[59] Councils may wish to make clear those functions to which this section currently or potentially applies.
[60] Some of these are now historic
[61] This is section 2 of the Protocol on Arrangements for Employees who transfer under Joint Working - authorised to be added to the constitution by a decision of the Joint Board on 20/12/06
[62] The originally approved arrangements for chairing consultation between the Leaders were that the Chair should rotate every 12 months. The Board changed these arrangements to each leader being chair at meetings held at his or her own council offices at the Board's meeting on 15/01/07
[63] *The chief executive should always be the head of paid service and cannot also be the monitoring officer. The monitoring officer and chief finance officer may not necessarily be chief officers but regardless of their status, councils will need to ensure they have access, as necessary, to meetings and that members consult them regularly. The duties of both the monitoring officer and chief finance officer (apart from the administration of the financial affairs of the council) must be carried out personally, but can be carried out by a deputy nominated by them in cases of absence or illness. Councils may also wish to show the identity of the deputies in the table, noting that it is the function of the relevant officer to appoint each deputy, not the council.*
[64] *References: Sections 4 and 5, Local Government and Housing Act 1989*

[65] Porter and Magill (HL) The following part of the Court of Appeal judgement also refers: "Some of the submissions advanced on behalf of the auditor have been framed in such a way as to suggest that any councillor who allows the possibility of electoral advantage even to cross his mind before he decides upon a course of action is guilty of misconduct. That seems to me to be unreal. In local, as in national, politics many if not most decisions carry an electoral price tag, and all politicians are aware of it. In most cases they cannot seriously be expected to disregard it, but they know that if the action which they take is to withstand scrutiny (to be 'judge-proof') there must be sound local government reasons, not just excuses, on which they can rely."
[66] *R v Camden London Borough Council ex parte Cran* (1995) 94L.G.R. 8, 38, and *R v Brent London Borough Council ex p Gunning* (1985) 84LGR 168 at 189
[67] These are the definitions of key decision in Regulation 8 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. Under reg. 8 (2), in determining the meaning of "significant", regard shall be had to any guidance for the time being issued by the Secretary of State. Guidance includes the following:*7.22 The Secretary of State is of the view that any decision made by an executive in the course of developing proposals to the full council to amend the policy framework would be a key decision within the definition in regulation 8. Nevertheless, if a decision maker is of the view that any such decision does not fall within the regulation 8 definition then that decision should be treated as a key decision.*
Recent government guidance states *2.28 It is important that local authorities continue to operate transparently and increase the openness with which they do business. Authorities already operating executive arrangements must publish a forward plan containing details of key decisions they are going to take and they must take such collective decisions in public. We have defined key decisions as those which will result in significant savings or expenditure or which are likely to have a significant impact on two or more electoral divisions or wards within the local authority, or both. 2.29 Following consultation, we believe local authorities are best placed to make the choice as to what constitutes a key decision for this purpose. We plan to review the access to information regime for councils during 2002 at the same time as we are preparing for implementation of the Freedom of Information Act in local government. As part of this, we will work with authorities and the LGA to identify best practice in defining what is a key decision. Comparative information on different authorities' working definitions was issued by LGIU on 8/10/02 Policy Briefing 138/02*
[68] Approved by Cabinet on 17/12/01 with changes approved in March 2002
[69] Revised amount approved by Cabinet on 27th March 2002
[70] B v. The United Kingdom and P. v. The United Kingdom 24 April 2001

[71] *Prosecutions and Taking Legal Proceedings*-includes reference both to the decision to prosecute or to take or defend proceedings and to the taking of legal proceedings before any Court, tribunal or other judicial or quasi-judicial body and includes full power to institute, compromise and conduct proceedings; to issue cautions; to appeal or further appeal against or apply for judicial review of any judgement or decision; to defend any legal action; to apply for and deal with any question of costs; to appear in proceedings either personally or by any employee of the Council or by agents or by Counsel; and to serve any notice or other process or take any other steps whether of a preliminary, final or provisional nature.

[72] Regulation 8. of the Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001 says: *(1) Before a local authority operate executive arrangements under Part II of the 2000 Act they shall make standing orders under section 135 of the 1972 Act (contracts of local authorities) with respect to the making of contracts on their behalf in the course of the discharge of functions which are the responsibility of the executive of that authority. (2) The standing orders shall include provision for securing that any contract which - (a) is of or above a value specified in the standing orders by the authority; or(b) is of a description specified in the standing orders by the authority, must be in writing.(3) The function of specifying a value or a description of contracts for the purposes of the provisions required by paragraph (2) shall be discharged by the authority themselves and section 101 of the 1972 Act (arrangements for the discharge of functions by local authorities) shall not apply to that function.(4) The standing orders shall include provision for securing that any contract to which the provisions required by paragraph (2) apply must - (a) be made under the authority's seal and be attested by at least one officer of the authority…, whether or not the seal is also attested by any member of the authority..; or (b) be signed by at least two officers of the authority, whether or not the contract is also signed by any member of the authority.*

[73] This does not include contracts for the investment or management of funds by the Head of Finance.

[74]*Approved by Standards and Audit Committee 12/07/23 and see Part 3 Paragraph 1.4 - Definitions and Interpretation*

[75] *Council 12th October 2016*

[76]*Approved by Standards and Audit Committee 12/07/23 and see Part 3 Paragraph 1.4 - Definitions and Interpretation*

[77] *There is a difference in the process required for change to the executive arrangements than other aspects of the constitution. Proposals to change from one form of executive to another require proper consultation, and change from leader/cabinet or alternative arrangements to an elected mayor form, or vice versa, requires a referendum. However, other changes may require limited or no consultation. The DETR Guidance makes clear that the consultation required should be proportionate to the scale, scope and extent of the change proposed. This Article sets out minimum requirements for Constitutional changes, but councils should be aware that such changes may be prompted not from internal reviews and evaluation of their governance, but from changes in public opinion triggering a mayoral referendum. Local authorities may also wish to adopt procedural rules to ensure that individual members have a clear procedure when they wish to propose to Council that the constitution is changed. Similarly, there will need to be procedures to ensure that proposals for constitutional change are not used to overcome disputes between the executive and other councillors, or even within the executive itself.*

[78] *Delegation to Standards and Audit Committee approved by Full Council 17th December 2014*

[79] Standards and Audit Committee 20th April 2022

[80] *This Article ensures that the articles of the Constitution may not be suspended. This provides certainty and stability to the fundamental aspects of the Council's governance. However, it does provide for rules of procedure to be suspended provided this is to achieve an effect consistent with the purposes of the Constitution set out in Article 1. This might apply, for example, to rules of debate in Council where particular circumstances arise. However, Councils should design their Constitution to be sufficiently flexible, and in the light of experience with transitional arrangements.*