

■ **PART 2**

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2 – 1 ARTICLE 1 — THE CONSTITUTION

Paragraph	Subject
2 – 1.1	<u>POWERS OF THE LOCAL AUTHORITY</u>
2 – 1.2	<u>THE CONSTITUTION</u>
2 – 1.3	<u>PURPOSE OF THE CONSTITUTION</u>
2 – 1.4	<u>INTERPRETATION AND REVIEW OF THE CONSTITUTION</u>

2 – 1.1 POWERS OF THE LOCAL AUTHORITY

Amber Valley Borough Council ('the Authority') is required to exercise all its powers and duties in accordance with the law and this Constitution.

2 – 1.2 THE CONSTITUTION

This Constitution, and all its appendices, is the Constitution of the Amber Valley Borough

Council.

2 – 1.3 PURPOSE OF THE CONSTITUTION

The purpose of the Constitution is to:

- (a) Enable the Authority (the Council and the Leader and Cabinet Executive) to provide clear leadership to the community in partnership with citizens, other members of the public, businesses and other organisations.
- (b) Support the active involvement of citizens and other members of the public in the process of local Authority decision-making.
- (c) Help Councillors represent their constituents more efficiently and effectively.
- (d) Enable decisions to be taken efficiently and effectively.
- (e) Create a powerful and effective means of holding decision-makers to public account.
- (f) Ensure that no one will review or scrutinise a decision in which they were directly involved.
- (g) Ensure that those responsible for decision making are clearly identifiable to the public and that they explain the reasons for decisions.
- (h) Provide a means of improving the delivery of services for the community.

2 – 1.4 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 – 2 ARTICLE 2 — MEMBERS OF THE COUNCIL

Paragraph	Subject
2 – 2.1	<u>COMPOSITION AND ELIGIBILITY</u>
2 – 2.2	<u>ELECTION AND TERMS OF COUNCILLORS</u>
2 – 2.3	<u>ROLES AND FUNCTIONS OF ALL COUNCILLORS</u>
2 – 2.4	<u>CONDUCT</u>
2 – 2.5	<u>ALLOWANCES</u>

2 – 2.1 COMPOSITION AND ELIGIBILITY

COMPOSITION

The Council comprises 45 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.

ELIGIBILITY

Only registered voters of the Borough or those owning or occupying land or premises, or living or working there will be eligible to be elected to the office of Councillor.

2 – 2.2 ELECTION AND TERMS OF COUNCILLORS

The ordinary election of a third (or as near as may be) of all Councillors will be held on the first Thursday in May in each year (the next being in 2018, then 2019 and 2020) , except every fourth year when there will be no regular election (e.g. 2021 when elections for county councillors occur instead). The terms of office of Councillors will be four years starting on the fourth day after being elected (the Monday) and finishing on the fourth day after the date of the regular election four years later, unless indicated otherwise by the Secretary of State.

Councillors cannot act in that office until the relevant declaration of acceptance of office has been duly made.

2 – 2.3 ROLES AND FUNCTIONS OF ALL COUNCILLORS

KEY ROLES AND FUNCTIONS:

All Councillors will:

- (i) Collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions
- (ii) Represent their communities and bring their views into the Authority's decision-making process, i.e. become the advocate of and for their communities
- (iii) Deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances
- (iv) Balance different interests identified within the ward and represent the ward as a whole
- (v) Be involved in decision-making
- (vi) Be available to represent the Council on other bodies
- (vii) Maintain the highest standards of conduct and ethics

RIGHTS AND DUTIES:

- (viii) 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
- (ix) Councillors will not make public information which is confidential or exempt without the consent of the Authority or divulge information given in confidence to anyone other than a Councillor or Officer entitled to know it
- (x) For these purposes, 'confidential' and 'exempt' information are defined in the [Access to Information Procedure Rules](#) in Part 4 of this Constitution

2 – 2.4 CONDUCT

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

2 – 2.5 ALLOWANCES

Councillors will be entitled to receive allowances in accordance with the [Members Allowances Scheme](#) set out in Part 6 of this Constitution.

2 – 3 ARTICLE 3 —MEMBERS OF THE PUBLIC AND THE COUNCIL

Paragraph	Subject
2 – 3.1	<u>RIGHTS OF MEMBERS OF THE PUBLIC</u>
2 – 3.2	<u>RESPONSIBILITIES OF MEMBERS OF THE PUBLIC</u>
2 – 3.3	<u>ZERO TOLERANCE TO UNJUSTIFIED BEHAVIOUR</u>

2 – 3.1 RIGHTS OF MEMBERS OF THE PUBLIC

Members of the public have the following rights. Their qualified rights to information and to participate are explained in more detail in the [Access to Information Procedure Rules](#) in Part 4 of this Constitution:

2 – 3.1.1 VOTING AND PETITIONS

Members of the public on the electoral register for the area have the right to vote and sign a petition to request a referendum for an elected mayoral form of Constitution.

2 – 3.1.2 INFORMATION:

Members of the public have the right to:

- (i) Attend meetings of the Council and its committees and sub-committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private
- (ii) Attend public meetings of the Cabinet when key decisions are being considered
- (iii) Find out from the Forward Plan what key decisions will be taken by the Leader of the Cabinet, the Cabinet or Officers and when
- (iv) Inspect agendas and see public reports and background papers, and any records of decisions made by the Council, its committees and sub-committees, and the Leader of the Cabinet, the Cabinet, its committees and sub-committees, Officers and by ward councillors
- (v) Inspect the Council's published accounts and make their views known to the external auditor

- (vi) Report on public meetings which is defined as:
 - (i) filming, photographing or audio recording of proceedings
 - (ii) using any other means for enabling people not present at the meeting to see or hear proceedings as it takes place or at a later date
 - (iii) reporting or providing commentary on proceedings orally or in writing so that the report or commentary is available as the meeting takes place or later to persons not present

2 – 3.1.3 PARTICIPATION:

Members of the public have the qualified right to participate in Cabinet question time (see Part 4.4 [Cabinet Procedure Rules](#)).

2 – 3.1.4 COMPLAINTS:

Members of the public have the right to complain to:

- (i) The Authority itself under its complaints scheme
- (ii) The Ombudsman after using the Authority own complaints scheme
- (iii) Council's Standards and Appeals Committee if they have evidence which they think shows that a Councillor has not followed the Council's Members' Code of Conduct
- (iv) The Information Commissioner about the Authority's handling of a request for information if they remain aggrieved following an investigation and review under the Council's internal appeals procedure

2 – 3.2 RESPONSIBILITIES OF MEMBERS OF THE PUBLIC

Whilst rights exist, there are responsibilities too in order to protect the rights of others and the wider public interest.

Members of the public must not be violent, abusing or threatening to Councillors or Officers and must not wilfully harm things owned by the Authority, Councillors or Officers. The Authority keeps a violence and abuse register to record such incidents.

Members of the public are encouraged to (a) vote and participate where appropriate in the democratic processes of the Authority, (b) respect their environment and (c) be good neighbours.

Whilst individual members of the public are positively encouraged to engage with the Authority, the model of democracy is ultimately a representative model with councillors required to have regard to the overall interests of the Authority.

2 – 3.3 ZERO TOLERANCE TO UNJUSTIFIED BEHAVIOUR

Amber Valley Borough Council is committed to a peaceful and dignified work environment.

Verbal or physical assault and threatening behaviour will result in ejection from the premises and may lead to prosecution.

Derbyshire Constabulary is supportive of the stance taken by the Authority and have stated that they will take positive action to enforce the law when called upon to do so.

2 – 4 ARTICLE 4 — THE FULL COUNCIL

Paragraph	Subject
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2 – 4.1	<u>MEANINGS</u>
2 – 4.2	<u>FUNCTIONS OF THE FULL COUNCIL</u>
2 – 4.3	<u>COUNCIL MEETINGS</u>
2 – 4.4	<u>RESPONSIBILITY FOR FUNCTIONS</u>

2 – 4.1 MEANINGS

2 – 4.1.1 POLICY FRAMEWORK

The policy framework means the following plans and strategies:

- Annual Audit Plan
- Asset Management Plan
- Capital Plan/Programme
- Council's Corporate Plan
- Crime and Disorder Reduction Strategy
- Development plan documents and plans and strategies which together comprise the Development Plan
- Economic Development Strategy
- Regulatory Enforcement Service Delivery Plan (including the Health & Safety Service Delivery Plan)
- Licensing Authority Policy Statement under the Gambling Act 2005
- The plan and strategy which comprise the Housing Strategy
- Statement of Licensing Policy
- Major New Service Provision/Discontinuance/Major Existing Service Change Policy
- Treasury Management Strategy
- Any other plan or strategy for the time being reserved for adoption or approval as a matter of local choice by Full Council

2 – 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 and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.

2 – 4.1.3 HOUSING LAND TRANSFER

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

2 – 4.2 FUNCTIONS OF THE FULL COUNCIL

Only the Council as a whole (the 'Full Council') will exercise the following functions:

- a) The provision of a major new service.
- b) The discontinuance or major change to an existing service.
- c) Adopting and changing the Constitution.
- d) Approving or adopting the policy framework unless at the time of approving the plan or strategy the Full Council has delegated freedom to make such 'in year' modifications to the Executive where permitted by law.
- e) Approving or adopting the budget and the authorisation of any application to the Secretary of State in respect of any Housing Land Transfer.
- f) Subject to the urgency procedure contained in the [Access to Information Procedure Rules](#) in Part 4 of this Constitution, making decisions about any matter in the discharge of an 'executive function' which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget:
 - (i) Taking decisions in respect of functions which are the responsibility of the Executive which are not in accordance with the policy framework or budget agreed by the Full Council
 - (ii) Taking decisions in respect of functions which are not the responsibility of the Executive and which have not been delegated by the Council to Committees, Sub-Committees or Officers
- g) Electing, and removing the Leader of the Council/Cabinet and noting appointments of Members of the Cabinet made from time to time by the Leader of the Cabinet.
- h) Agreeing and/or amending the terms of reference for Committees, deciding on their composition and making appointments to them.
- i) Appointing representatives to outside bodies unless the appointment is an executive function or has been delegated by the Council.
- j) Adopting an allowances scheme under [Article 2.5 \(Members Allowances\)](#).
- k) Changing the name of the area, conferring the title of honorary alderman or alderwoman or freeman or freewoman.
- l) Making or confirming the appointment or dismissal of the Head of Paid Service and approving the dismissal of the Authority's Monitoring Officer or Chief Finance Officer.

- m) Making, amending, revoking, re-enacting or adopting byelaws and promoting or opposing the making of local legislation or personal bills.
- n) All [local choice functions](#) set out in Part 3 of this Constitution which the Council decides should be undertaken by itself rather than the Leader of the Cabinet or Cabinet unless duly delegated to Officers.
- o) All other matters which, by law, must be reserved to Council including:
 - The election of the Mayor (the Chairman of the Council)
 - The appointment of the Deputy Mayor (the Vice-Chairman of the Council)
 - Consideration of statutory reports by the Head of Paid Service, the Monitoring Officer and the Chief Financial Officer
 - Adopting or revising a Code of Conduct for Members
 - Approving a Pay Statement under the Localism Act 2011
 - The appointment of an external auditor to audit its accounts

2 – 4.3 COUNCIL MEETINGS

There are four types of Council meeting:

- The Annual meeting
- Ordinary meetings
- Extraordinary meetings
- Special meetings

and they will be conducted in accordance with the [Council Procedure Rules](#) in Part 4 of this Constitution.

2 – 4.4 RESPONSIBILITY FOR FUNCTIONS

The Council will maintain the tables in [Part 3](#) of this Constitution setting out the responsibilities for the Council's functions which are not the responsibility of the Executive.

2 – 5 ARTICLE 5 — CHAIRING THE COUNCIL

Paragraph	Subject
2 – 5.1	<u>ROLE AND FUNCTION OF THE MAYOR</u>
2 – 5.2	<u>CEREMONIAL ROLE</u>
2 – 5.3	<u>CHAIRING THE COUNCIL MEETING</u>

2 – 5.1 ROLE AND FUNCTION OF THE MAYOR

The Mayor and, in the Mayor’s absence, the Deputy Mayor, will have the following roles and functions.

2 – 5.2 CEREMONIAL ROLE

The Mayor is a symbol of the Authority and shall carry out the ceremonial duties of the Council. The Mayor shall take precedence (i.e. shall be the first citizen of the Borough of Amber Valley).

2 – 5.3 CHAIRING THE COUNCIL MEETING

The Mayor will be elected by the Council at the Annual Meeting from among its councillors and, in the case of a casual vacancy in the office during the year, the Council shall elect a successor at the next available ordinary, extraordinary or special meeting of the Council to serve until the election of a successor at the Annual Meeting. The Mayor will have the following responsibilities:

- (a) To uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary.
- (b) To preside over meetings of the Council (with a second or casting vote in the event of an equality of votes) so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community.
- (c) To ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which Members who are not on the Cabinet or hold positions as Committee Chairmen are able to hold the Cabinet and Committee Chairmen to account.
- (d) To promote public involvement in the Council’s activities.
- (e) To respond to consultation under the procedure for urgent items set out in Part 4 [Rules of Procedure](#).

- (f) To attend such civic and ceremonial functions as the Council and the Mayor determines appropriate.

NB. A Member of the Cabinet cannot by law be elected as the Mayor (or appointed as the Deputy Mayor).

2 – 6 ARTICLE 6 — OVERVIEW & SCRUTINY COMMITTEES

Paragraph Subject

2 – 6.1 [TERMS OF REFERENCE](#)

2 – 6.2 [GENERAL ROLE](#)

2 – 6.3 [SPECIFIC FUNCTIONS](#)

2 – 6.4 [PROCEEDINGS OF OVERVIEW & SCRUTINY COMMITTEES](#)

OVERVIEW & SCRUTINY – GENERAL COMMENTS

2 – 6.1 TERMS OF REFERENCE

The Council will appoint at least one overview and scrutiny Committee to discharge the functions conferred by Section 9F of the Local Government Act 2000. The Council has established the Improvement and Scrutiny Committee to discharge these functions (together with those under Section 19 of the Police and Justice Act 2006 as its crime and disorder committee) and all other statutory functions which an overview and scrutiny committee may exercise.

NB. No overview and scrutiny committee/sub-committee may include a member of the Cabinet.

2 – 6.2 GENERAL ROLE

Within its terms of reference, the Improvement and Scrutiny Committee has power to:

- (a) Review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the functions of the Authority, whether council or executive functions.
- (b) Make reports and/or recommendations to the full Council and/or the Executive in connection with the discharge of any functions, of the Authority, whether council or executive functions.
- (c) Make reports and/or recommendations to the Council or the Executive on any matter affecting the area of the Borough or its inhabitants.
- (d) Exercise the right to call-in, for reconsideration, decisions made but not yet

implemented by the Executive and will deal with call-ins generally.

- (e) Deal with Councillor Call for Action (CCfA) in accordance with the regulations and procedures agreed by the Committee.
- (f) Review and/or scrutinise decisions made or actions taken in connection with the discharge of crime and disorder functions by the responsible authorities listed in section 5 of the Crime and Disorder Act 1998 (including the police and any provider of probation services) and make resulting reports and/or recommendations to the Authority.
- (g) Make a report and/or recommendation to the Authority with respect to any matter which is a local crime and disorder matter which means a matter concerning:
 - (i) crime and disorder (including particular forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment), or
 - (ii) the misuse of drugs, alcohol and other substances,

which in either case affects all or part of the electoral area for which the member is elected or any person who lives or works in that area and must make arrangements to enable any member of the Authority who is not a member of the crime and disorder committee to refer any such local crime and disorder matter to the committee.

2 – 6.3 SPECIFIC FUNCTIONS

2 – 6.3.1 POLICY DEVELOPMENT AND REVIEW

The Improvement and Scrutiny Committee may:

- (i) Assist the Council and the Executive/Cabinet in the development of its budget and policy framework by in-depth analysis of policy issues
- (ii) Conduct research, community and other consultation in the analysis of policy issues and possible options
- (iii) Consider and implement mechanisms to encourage and enhance community participation in the development of policy options

- (iv) Question Members of the Cabinet and/or Committees and Executive Directors about their views on issues and proposals affecting the area and
- (v) Liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working

2 – 6.3.2 SCRUTINY

The Improvement and Scrutiny Committee may:

- (i) Review and scrutinise the decisions made by and performance of the Leader of the Cabinet, Cabinet and Committees and Council Officers both in relation to individual decisions and over time, but shall not examine individual planning, licensing or appeal decisions
- (ii) Review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas
- (iii) Require the attendance of and question Members of the Cabinet and/or Committees and Executive Directors about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects
- (iv) Make recommendations to the Leader of the Cabinet, Cabinet and/or appropriate Committee and/or Council arising from the outcome of the scrutiny process
- (v) Review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Improvement and Scrutiny Committee and local people about their activities and performance and
- (vi) Question and gather evidence from any person (with their consent)
- (vii) Scrutinise decisions made, or other action taken, in connection with the discharge by the responsible authorities of their crime and disorder functions and make reports or recommendations to the Council.
- (viii) Receive requests to consider issues through local Councillors. Further details of how this works in practice are set out in the [Overview and Scrutiny Procedure Rules](#).

2 – 6.3.3 FINANCE

The Improvement and Scrutiny Committee may exercise overall responsibility for the finances made available to it/them.

2 – 6.3.4 ANNUAL REPORT

The Improvement and Scrutiny Committee must report annually to Full Council on its/their workings including future work programmes and amended working methods if appropriate.

2 – 6.3.5 OFFICERS

The Improvement and Scrutiny Committee may exercise overall responsibility for the work programme of the Officers employed to support its/their work.

2 – 6.3.6 TASK AND FINISH PANELS

The Improvement and Scrutiny Committee may appoint Task and Finish Panels as and when required to deliver the Committee's work programme.

2 – 6.4 PROCEEDINGS OF OVERVIEW & SCRUTINY COMMITTEES

The Improvement and Scrutiny Committee will conduct its/their proceedings in accordance with the [Overview and Scrutiny Procedure Rules](#) set out in Part 4 of this Constitution.

2 – 7 ARTICLE 7 — THE CABINET EXECUTIVE

Paragraph	Subject
2 – 7.1	ROLE
2 – 7.2	FORM AND COMPOSITION
2 – 7.3	LEADER
2 – 7.4	OTHER CABINET MEMBERS
2 – 7.5	DEPUTY LEADER
2 – 7.6	PROCEEDINGS OF THE CABINET
2 – 7.7	RESPONSIBILITY FOR FUNCTIONS

2 – 7.1 ROLE

The Cabinet will carry out all of the Authority’s functions which are not the responsibility of the Executive Leader (i.e. the Leader of the Cabinet) or any other part of the Authority, whether by law or under this Constitution, unless such functions have been duly delegated to officers.

The Cabinet will be responsible for guiding the Council in the formation of its corporate plan of objectives and key priorities. Within the policy framework, budgets and major plans approved by the Full Council, the Cabinet will have responsibility for the implementation of the Council’s key goals and objectives.

Within the agreed budget and policy framework, the Cabinet has delegated powers to deal with the functions detailed in Part 3 ([Local Choice Functions](#)) and may subsequently delegate as set out below, subject to any limits it determines to be necessary.

2 – 7.2 FORM AND COMPOSITION

The Cabinet will consist of the Leader of the Cabinet together with at least two, but not more than nine, other Councillors appointed to the Cabinet by the Leader.

NB. The Mayor and Deputy Mayor cannot be appointed to serve on the Cabinet.

2 – 7.3 LEADER

2 – 7.3.1 The Executive Leader is known as the Leader of the Cabinet and will be a Councillor elected to the position of Leader of the Council and the Leader of the Cabinet by the Full Council.

2 – 7.3.2 The term of office of the Leader of the Cabinet shall be from the date of election until the next Annual Council following his or her normal date of retirement and the Leader of the Cabinet will hold office until:

- (a) He/she resigns from the office or
- (b) He/she ceases to be a Councillor otherwise than by retirement or
- (c) The Full Council by resolution removes the Leader from office at an earlier date. Where the Leader is removed by the Council a new Leader shall be elected either at that meeting or at a subsequent meeting.

2 – 7.4 OTHER CABINET MEMBERS

Other Cabinet Members shall hold office until:

- (a) They resign from office or
- (b) They are no longer Councillors or
- (c) Until the Leader removes them from office.

2 – 7.5 DEPUTY LEADER

The Leader of the Cabinet shall appoint one Member of the Cabinet to be the Deputy Leader.

The Deputy Leader shall hold office until the expiry of the term of office of the Leader of the Cabinet unless:

- (a) He/she resigns from office or
- (b) He/she ceases to be a Councillor or
- (c) The Leader of the Cabinet removes him/her from office.

2 – 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.

2 – 7.7 RESPONSIBILITY FOR FUNCTIONS

The Leader of the Cabinet has the power to carry out any executive function personally, to delegate it to the Cabinet, a Sub-Committee of the Cabinet, an individual Member of the Cabinet, an Officer or to be carried out under joint arrangements except where the law

otherwise provides. The Leader of the Cabinet may also delegate functions to an individual Councillor to exercise in relation to his or her ward under Section 236 of the Local Government and Public Involvement in Health Act 2007.

Where the Leader of the Cabinet has delegated a function he or she retains the power to carry out that function personally.

The Leader of the Cabinet will create and maintain a list in an [appendix](#) to Part 3 of this Constitution setting out which, if any, individual Members of the Cabinet, Committees of the Cabinet, Officers or joint arrangements are responsible for the exercise of particular Cabinet functions and a list of any joint arrangements for the exercise of Cabinet functions i.e. 'executive functions'. Such list(s) will be supplied forthwith to the Monitoring Officer and be published on the Authority's website.

Such list shall be incorporated by reference into this Constitution, with the Monitoring Officer being authorised and required to place a copy of this list in an [appendix](#) to Part 3 as soon as practicable after the supply of that list to him/her.

2 – 8 ARTICLE 8 — REGULATORY AND OTHER COMMITTEES

2 – 8.1 REGULATORY AND OTHER COMMITTEES

The Council will appoint the Committees set out in [Part 3](#) of this Constitution, Responsibility for Council Functions, to discharge the functions indicated.

2 – 9A ARTICLE 9A — THE STANDARDS AND APPEALS COMMITTEE

Paragraph Subject

2 – 9A.1	<u>STANDARDS AND APPEALS COMMITTEE</u>
2 – 9A.2	<u>COMPOSITION</u>
2 – 9A.4	<u>ATTENDANCE AT MEETING</u>
2 – 9A.5	<u>ROLE AND FUNCTION</u>
2 – 9A.6	<u>ADDITIONAL ROLES OF THE STANDARDS AND APPEALS COMMITTEE</u>
2 – 9A.7	<u>HEARINGS PANEL</u>
2 – 9A.8	<u>GRANTING OF DISPENSATIONS</u>
2 – 9A.9	<u>ABSENCE OF THE MONITORING OFFICER</u>

2 – 9A.1 STANDARDS AND APPEALS COMMITTEE

The Council meeting will establish a Standards and Appeals Committee.

2 – 9A.2 COMPOSITION

2 – 9A.2.1 MEMBERSHIP:

The Standards and Appeals Committee will be composed of at least:

- (i) Three councillors appointed on the basis of political balance (unless duly disapplied)
- (ii) One Member of a Parish Council wholly or mainly in the Council's area (a Parish Member) who shall be co-opted as a non-voting Member

2 – 9A.2.2 CHAIRING THE COMMITTEE:

The chairman of The Standards and Appeals Committee shall be appointed by the Council.

2 – 9A.2.3 THE INDEPENDENT PERSON:

The Council shall appoint following public advertisement an Independent Person to be consulted in relation to allegations of a breach of the Council's Members' Code of Conduct.

2 – 9A.3 ATTENDANCE AT MEETINGS

Meetings of the Standards and Appeals Committee shall normally be held in public.

2 – 9A.4 CIRCULATION OF PAPERS

- (a) Papers for The Standards and Appeals Committee shall be circulated to all Members of the Council except where restricted due to confidential/exempt information.
- (b) Parish Council Clerks shall be notified electronically that the public papers are available on the Council's website.
- (c) Papers for Hearing Panels shall not be circulated to Members other than the Members attending the meeting (hearing).
- (d) Where the Hearing Panel comes to the decision that a breach of the Code has occurred details of the allegation shall normally be made public on the Council's website and circulated to all Members.
- (e) Where the Hearing Panel comes to the decision that a breach of the Code has not occurred details of the allegation will only be made public if the Member against whom the allegation was made requests it.
- (f) In the case of miscellaneous appeals the details will remain confidential.

2 – 9A.5 ROLE AND FUNCTION

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

- (a) Promoting and maintaining high standards of conduct by Councillors and co-opted Members.
- (b) Assisting Councillors and co-opted Members to observe the Code of Conduct for Members.
- (c) Advising the Council on (i) the adoption of a Code of Conduct for Members and supporting protocols and (ii) their revision or replacement.
- (d) Monitoring the operation of the Code of Conduct for Members.
- (e) Advising, training or arranging to train Councillors and co-opted Members on matters relating to the Code of Conduct for Members.
- (f) Granting dispensations to Councillors and co-opted Members from requirements relating to pecuniary interests under section 31 of the Localism Act 2011 set out in

the Code of Conduct for Members, unless delegated to the Monitoring Officer and hearing appeals against decisions made by the Monitoring Officer in relation to such dispensations.

- (g) Considering matters referred by the Monitoring Officer including those matters where he considers it is inappropriate for him to take the decision.
- (h) Considering the minutes and reports of the Parish/Town Clerks' Network.
- (i) Receiving reports on findings of Hearing Panels.
- (j) Entering into joint arrangements with other Standards Committees.
- (k) Monitoring performance.

2 – 9A.6 ADDITIONAL ROLES OF THE STANDARDS AND APPEALS COMMITTEE

The Committee will also be responsible for:

- (a) Overview of the whistle blowing policy and raising concerns at Amber Valley.
- (b) Overview of complaints handling and Ombudsman investigations.
- (c) Oversight of the Constitution in respect of standards and related matters.
- (d) Overview of the [Code of Planning Conduct and Practice](#)
- (e) Overview of the Council's policy on bullying and harassment.
- (f) The approval or otherwise for the purposes of Section 85 of the Local Government Act, 1972 ('Vacation of office by failure to attend meetings') of the reason(s) for the failure of any Member to attend meetings of the Council or its committees/sub-committees etc. or of the Cabinet.
- (g) Reporting annually to the Full Council on their workings including future work programmes and making recommendations for amended methods of working.
- (h) Dealing with the following appeals (the miscellaneous appeals):
 - (i) Appeals against disciplinary (including dismissal) and redundancy matters by

employees of the Council

- (ii) Appeals about housing matters
- (iii) Discretionary housing payment matters
- (iv) Discretionary rate relief and business rate hardship relief
- (v) Appeals against Rural Rate Relief
- (vi) Appeals in relation to empty property Council Tax Discount

2 – 9A.7 HEARINGS PANEL

2 – 9A.7.1 The Monitoring Officer shall be authorised to establish a Hearings Panel for the purposes of conducting hearings into allegations which have not been dismissed or resolved informally or to hear the miscellaneous appeals.

2 – 9A.7.2 The Hearings Panel shall be made up of three Councillors drawn from the whole Council but who will normally be Members of the Standards and Appeals Committee, taken from at least two political groups and including not more than one Member of the Cabinet.

2 – 9A.7.3 When the allegation is against a Parish Councillor the Hearings Panel will also include a co-opted Parish Council Representative.

2 – 9A.7.4 When the hearing is into an allegation against a Member the Independent Person shall be invited to attend the hearing but will not be a Member of the Hearing Panel.

2 – 9A.7.5 The Hearings Panel shall be conducted in accordance with the procedure Rules adopted by the Council and the Panel shall consult the Independent Person (or in the event that he/she is unable to act the Reserve Independent Person) before coming to a decision on any allegation.

2 – 9A.7.6 The Hearings Panel shall have the power (upon one or more breaches of the Code of Conduct for Members being found on the particular facts) to impose one or more of the following sanctions, namely to:

- (i) Publish the findings and decision by way of a report to the Council and the public in respect of the Member's act(s) and/or omission(s);

- (ii) Censure or reprimand the Member where a Member of the Authority;
- (iii) Request, where a Member of the Authority, the Member's Group Leader to ask the Council to remove the Member from any or all committees or sub-committees of the Council for a specific period;
- (iv) Remove, where the Member is a Member of the Authority and is a non-aligned councilor, the Member from any or all committees or sub-committees of the Council;
- (v) Advise that the Member attends approved training;
- (vi) Remove, where the Member is a Member of the Authority, the Member from all outside appointments to which he/she has been appointed or nominated by the Authority; and/or
- (vii) Exclude (unless the Head of Paid Service has given prior consent to permit specific attendance) the Member from the Authority's offices or other premises, with the exception of:
 - Meeting rooms as necessary for attending Council, Cabinet, committee and sub-committee meetings; and
 - Other facilities required for the effective conduct of official Authority business.

2 – 9A.7.7 The miscellaneous appeals shall be conducted in accordance with their own procedure Rules.

2 – 9A.8 GRANTING OF DISPENSATIONS

2 – 9A.8.1 Under Section 31 of the Localism Act 2011, where a Member has a Disclosable Pecuniary Interest (DPI), that Member must withdraw from the meeting considering the relevant item of business, unless a dispensation has been duly granted.

2 – 9A.8.2 A dispensation can upon request be granted under section 33 of the Localism Act 2011 to a Member or Co-opted Member to a Member with a DPI allowing them to participate in the discussion on a matter and/or vote at a meeting. Such a dispensation must specify the period for which it has effect and the period specified cannot exceed 4 years. The circumstances in which a dispensation may be granted are:

- (i) Where so many of the members of the decision-making body have DPIs in a matter that it would 'impede the transaction of the business'. In practice, this means that the decision-making body would be inquorate as a result
- (ii) That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter
- (iii) That the Authority considers that the dispensation is in the interests of persons living in

the Authority's area

- (iv) That, without a dispensation, no Member of the Cabinet would be able to participate on this matter or
- (v) That the Authority considers that it is otherwise appropriate to grant a dispensation

2 – 9A.8.3 Applications falling within criteria (i) and (iv) are delegated to the Monitoring Officer and (ii) (iii) and (v) require determination by the Standards and Appeals Committee or a Dispensation Sub-Committee.

2 – 9A.9 ABSENCE OF THE MONITORING OFFICER

The Monitoring Officer undertakes a number of functions including those under section 5 and 5A of the Local Government and Housing Act 1989 (the duty to report). Where the Monitoring Officer is unable to personally discharge his/her duties due to absence or illness, the Monitoring Officer shall nominate a member of his/her staff as his/her deputy to act.

A written record of such nomination shall be made.

2 – 9B ARTICLE 9B — GOVERNANCE AND AUDIT BOARD

Paragraph	Subject
2 – 9B.1	<u>GOVERNANCE AND AUDIT BOARD</u>
2 – 9B.2	<u>COMPOSITION</u>
2 – 9B.3	<u>ROLE AND FUNCTION</u>
2 – 9B.4	<u>AUDIT ACTIVITY</u>
2 – 9B.5	<u>REGULATORY FRAMEWORK</u>
2 – 9B.6	<u>ACCOUNTS</u>
2 – 9B.7	<u>TERMS OF REFERENCE</u>

2 – 9B.1 GOVERNANCE AND AUDIT BOARD

The Council will establish a Governance and Audit Board.

2 – 9B.2 COMPOSITION

The Governance and Audit Board will be comprised of at least three Councillors, none of whom shall be Members of the Cabinet.

2 – 9B.3 ROLE AND FUNCTION

The Governance and Audit Board will have the following roles and functions.

To make recommendations to the Full Council on:

- The effectiveness, review and approval of the Council's system for risk management,
- Internal and external audit reports/plans and associated matters and the implementation/ monitoring of recommendations contained in such reports and/or those made by this Board
- Securing an monitoring the achievement of value for money
- Review, monitoring and approval of the Authority's 'Framework for Delivering Good Governance'

2 – 9B.4 AUDIT ACTIVITY

- To consider the external auditor's annual report and opinion, and a summary of internal audit activity (actual and proposed) and the level of assurance it can give over the Council's Corporate Governance arrangements
- To consider summaries of specific internal audit reports as requested

- To consider reports dealing with the management and performance of the providers of internal audit services
- To consider a report from internal audit on agreed recommendations not implemented within a reasonable timescale
- To consider the external auditor's annual letter, relevant reports, and the report to those charged with governance
- To consider specific reports as agreed with the external auditor
- To comment on the scope and depth of external audit work and to ensure it gives value for money
- To liaise with the Council over the appointment of the full Council's external auditor
- To commission work from internal and external audit

2 – 9B.5 REGULATORY FRAMEWORK

- To maintain an overview of the Council's Constitution in respect of contract procedure Rules and financial regulations
- To review any issue within its terms of reference referred to it by the Head of Paid Service or a Director or a statutory Officer, or any Council body which shall include the Full Council, Cabinet, Scrutiny Committee, Licensing Board, Planning Board and the Standards and Appeals Committee
- To monitor the effective development and operation of risk management and corporate governance in the Council
- To monitor Council policies on anti-fraud and anti-corruption strategy and the Council's complaints process
- To oversee the production of the Council's Statement on Internal Control and to recommend its adoption
- To consider the Council's arrangements for corporate governance and agreeing necessary actions to ensure compliance with best practice
- To consider the Council's compliance with its own and other published standards and controls on these matters

2 – 9B.6 ACCOUNTS

- To review the annual statement of accounts. Specifically, to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the Council
- To consider the external auditor's report to those charged with governance on issues arising from the audit of the accounts

2 – 9B.7 TERMS OF REFERENCE:

- To conduct an annual review of these terms of reference

2 – 10 ARTICLE 10 — PARTNERSHIPS

- 2 –10.1** The Council will exercise its powers of general competence under the Localism Act 2011 to further the economic social and environmental wellbeing of the Borough.
- 2–10.2** The Council believes that partnership working between local public, private and voluntary sector bodies is essential for the effective delivery of services and for effective communication between such bodies, for example, as part of the community planning process.
- 2 –10.3** The Council does not have sole responsibility for the preparation of many plans and strategies, even though it may have the lead role in co-ordinating them. A number of plans (such as the Crime and Disorder Reduction Strategy) are now prepared under partnership arrangements and include action and targets to which other bodies will be contributing.
- 2 –10.4** Such plans need to be negotiated and agreed by the relevant partners, and as part of this process the Council will ensure that there is effective and regular consultation and communication between the Cabinet, **relevant overview and scrutiny committee** and other Members of the local Authority during the development of plans and strategies which need the agreement of partner organisations.
- 2 –10.5** Any Councillor may therefore feed their views into the development of any such plan or strategy unless that councillor is a member of the Cabinet or a member of the partnership responsible for developing the plan or strategy.
- 2 –10.6** Given the Council’s commitment to open and accessible decision making, the same principles have been extended to cover partnership working.
- 2 –10.7** To demonstrate this openness the activities of the Partnership will be subject to the [Access to Information Procedure Rules](#) in Part 4 of this Constitution. These Rules provide for a public right of attendance at meetings and access to Minutes and other papers subject to the usual Rules of confidentiality. Additionally, the Council has developed a [Code of Practice](#) to cover partnership working so that there is clarity about the roles and responsibilities of the Council and its partners. See Part 5 — Codes and Protocols for further details.

2 – 11 ARTICLE 11 — JOINT ARRANGEMENTS

Paragraph	Subject
2 – 11.1	JOINT ARRANGEMENTS
2 – 11.2	ACCESS TO INFORMATION
2 – 11.3	DELEGATION TO AND FROM OTHER LOCAL AUTHORITIES
2 – 11.4	CONTRACTING OUT

2 –11.1 JOINT ARRANGEMENTS

COUNCIL FUNCTIONS

- (a) The Council may establish joint arrangements with one or more local authorities, and/or their Cabinets, to exercise functions which are not ‘executive functions’ in any of the participating authorities, or advise the Council. Such arrangements may involve the appointment of a joint Committee with these other local authorities.

EXECUTIVE FUNCTIONS

- (b) The Leader of the Cabinet and, unless otherwise directed by the Leader of the Cabinet, 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. The number of members to be appointed, their term of office, and the area (if restricted) within which the committee is to exercise its authority, are to be fixed, under section 102(2) of Local Government 1972 Act by the Leader of the Cabinet or by the Cabinet. Every such person appointed must be a member of that Cabinet and the political balance requirements do not apply to the appointment of such members. However, there are a number of exceptions to the requirement to appoint a member of that Cabinet. For example, a person appointed does not have to be a member of that Cabinet provided they are a member of that authority where (a) the joint committee is discharging a function in relation to five or more relevant authorities; or (b) the function which the joint committee is discharging is a function which is required by statute to be discharged by a joint committee (and in either case, the political balance requirements do not apply to the appointment of such members). Another exception is where (a) the joint committee has functions in respect of part only of the area of one of the local authorities concerned and (b) those functions are the responsibility of the executive of the authority in which case the representatives of that authority on the joint committee may include any members of that authority who have been elected for electoral divisions or wards which are wholly or partly within that part of the authority's area (and the political balance requirements do not apply to the appointment of such members).

ONE OR MORE BUT NOT ALL EXECUTIVE FUNCTIONS

- (c) Where one or more, but not all, of the functions to be discharged by a joint committee are the responsibility of the Executive, the appointment of such a joint committee shall be made by the Council with the agreement of the Executive. The number of members to be appointed, their term of office, and the area (if restricted) within which the committee is to exercise its authority, are to be fixed, under section 102(2) of Local Government 1972 Act by the Council with the agreement of the Executive.
- (d) 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.

2-11.2 ACCESS TO INFORMATION

- (a) The [Access to Information Procedure Rules](#) in Part 4 of this Constitution apply.
- (b) If all Members of a joint Committee are Members of the Cabinet in each of the participating authorities then its access to information regime is the same as that applied to the Cabinet.
- (c) If the joint Committee contains Members who are not on the Cabinet or its equivalent of any participating Authority then the Access to Information Rules in Part VA of the Local Government Act 1972 will apply.

2-11.3 DELEGATION TO AND FROM OTHER LOCAL AUTHORITIES

- (a) The Council may delegate non-executive functions to another local Authority or, in certain circumstances, the Cabinet or its equivalent of another local Authority.
- (b) The Cabinet may delegate executive functions to another local Authority or the Cabinet 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 full Council meeting.

2-11.4 CONTRACTING OUT

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.

In the absence of statutory Authority permitting another body or organisation to discharge such

functions, the Authority can make contracting arrangements whereby the contractor acts as the Council's agent under usual contracting principles, but the contractor cannot exercise any of the Authority's discretionary decision-making powers which must still be made by an Officer. There is thus a clear distinction between service provision and the exercise of decision-making in respect of functions.

2-12 ARTICLE 12 — OFFICERS

Paragraph	Subject
2 – 12.1	<u>MANAGEMENT STRUCTURE</u>
2 – 12.2	<u>FUNCTIONS OF THE HEAD OF PAID SERVICE</u>
2 – 12.3	<u>FUNCTIONS OF THE MONITORING OFFICER</u>
2 – 12.4	<u>FUNCTIONS OF THE CHIEF FINANCE OFFICER</u>
2 – 12.5	<u>DUTY TO PROVIDE RESOURCES TO THE HEAD OF PAID SERVICE, MONITORING OFFICER AND CHIEF FINANCE OFFICER</u>
2 – 12.6	<u>CONDUCT</u>
2 – 12.7	<u>EMPLOYMENT</u>

2-12.1 MANAGEMENT STRUCTURE

(a) **GENERAL:**

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

(b) **CHIEF OFFICERS:**

The Full Council will engage persons for the following posts, who will be designated chief officers:

POST	FUNCTIONS AND AREAS OF RESPONSIBILITY
<p>HEAD OF THE PAID SERVICE</p>	<p>Operational responsibility and overall management responsibility for all employees including reporting to the Council from time to time on the overall numbers and grades of staff required for the discharge of the Authority's functions and their organisations and proper management.</p> <p>Overall responsibility for health and safety.</p> <p>In consultation with the Monitoring Officer, matters relating to restrictions on political activities of employees including, in particular, the following:</p> <ul style="list-style-type: none"> ■ Considering applications from employees for exemption from political restriction in respect of their posts ■ Where appropriate, issuing directions requiring the Council to include a post in the list of politically restricted posts it maintains ■ Giving general advice, following consultation with appropriate parties, on the application of criteria for designation of a politically restricted post <p>Acting as the Proper Officer in accordance with statutory requirements.</p>
<p>MONITORING OFFICER</p>	<p>Provision of professional advice to all parties in the decision making process (the Leader of the Cabinet, Cabinet, Overview and Scrutiny, Full Council and other Committees) and acting as the Council's legal advisor.</p> <p>Responsibility for monitoring and maintaining the Constitution.</p> <p>Responsibility for a system of record keeping for all the Authority's decisions.</p> <p>Responsible for determining applications for dispensations in relation to Members' Disclosable Pecuniary Interests to disapply the restrictions contained within section 31(4) of the Localism Act 2011 but only in respect of Section 33(2)(a) and 33(2)(d) of that Act.</p> <p>Responsible to the Executive Director (Resources) for:</p> <ul style="list-style-type: none"> ■ Democratic Services ■ Local Land Charges ■ Law and Assets

POST	FUNCTIONS AND AREAS OF RESPONSIBILITY
<p>EXECUTIVE DIRECTOR (RESOURCES)</p>	<p>Overall corporate management and policy development, in particular through the provision of professional financial advice.</p> <p>Managing the following services:</p> <ul style="list-style-type: none"> ■ Financial Services ■ Revenue and Benefits ■ Risk Management ■ Communications and Information ■ Personnel and Development ■ Policy and Improvements ■ Law and Assets ■ Local Land Charges ■ Democratic Services <p>Supporting and advising Members and Officers in their respective roles. Providing financial information to the media, members of the public and the community.</p> <p>Together with the Monitoring Officer responsibility for a system of record keeping for all of the Authority's decisions.</p> <p>Acting as the Proper Officer in accordance with statutory requirements. Representing the Council on partnership and external bodies.</p> <p>Acting as the Head of Paid Service in rotation with the Executive Director (Operations).</p>

POST	FUNCTIONS AND AREAS OF RESPONSIBILITY
EXECUTIVE DIRECTOR (OPERATIONS)	<p>Overall corporate management and policy development.</p> <p>Responsible for the following:</p> <ul style="list-style-type: none"> ■ Housing ■ Pollution (contaminated land) ■ Food Safety ■ Health and Safety ■ Waste Management and Recycling ■ Leisure and Cultural Development ■ Public Health ■ Landscape Services ■ Community Safety ■ Community Planning ■ Regeneration ■ Development Management ■ Building Control ■ Licensing <p>Supporting and advising Members and Officers in their respective roles. Acting as the Proper Officer in accordance with statutory requirements. Representing the Council on partnership and external bodies.</p> <p>Acting as the Council's Head of Paid Service in rotation with the Executive Director (Resources).</p>

(c) **HEAD OF PAID SERVICE, MONITORING OFFICER AND CHIEF FINANCIAL OFFICER:**

The Council will designate the following posts as shown:

POST	DESIGNATION
EXECUTIVE DIRECTOR (EXECUTIVE DIRECTOR (OPERATIONS) EXECUTIVE DIRECTOR (RESOURCES)) BY ROTATION	Head of Paid Service
ASSISTANT DIRECTOR (LEGAL AND DEMOCRATIC SERVICES)	Monitoring Officer
EXECUTIVE DIRECTOR (RESOURCES)	Chief Finance Officer

Such posts will have the functions described respectively in Articles 2 – 12.2, 2 – 12.3 and 2 – 12.4.

(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.

2-12.2 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 OFFICER DESIGNATED:

The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if a duly qualified accountant.

2-12.3 FUNCTIONS OF THE MONITORING OFFICER

(a) MAINTAINING THE CONSTITUTION:

The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by Members, staff and the public. The Monitoring Officer is responsible for recommending to the Council amendments and improvements to the Constitution.

(b) ENSURING LAWFULNESS AND FAIRNESS OF DECISION MAKING:

After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the Full Council or to the Cabinet in relation to an 'executive function' if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

(c) SUPPORTING THE STANDARDS AND APPEALS COMMITTEE:

The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards and Appeals Committee.

(d) RECEIVING REPORTS:

The Monitoring Officer will receive allegations of breaches of the Members' Code of Conduct and, in consultation with the Independent Person, will decide whether or not they should be investigated. Where appropriate the Monitoring Officer may seek to resolve a complaint informally without the need for an investigation. Where necessary the Monitoring Officer will appoint a suitable person as an Investigating Officer to carry out an investigation into an allegation. On receipt of the Investigator's report the

Monitoring Officer may, after consultation with the Independent Person, seek to resolve the matter informally but otherwise he or she will arrange a meeting of a Hearings Panel to determine the complaint.

(e) HEARINGS PANELS:

The Monitoring Officer will have delegated power to constitute a Hearings Panel of three Members taken from the whole Council and taken from at least two political parties, who shall normally be Members of the Standards and Appeals Committee and who shall not include more than one Member of the Cabinet.

When any allegation involves a Parish Councillor, the Panel shall include a co-opted Parish Council representative.

(f) PROPER OFFICER FOR DISCLOSURE OF PECUNIARY INTERESTS:

The Monitoring Officer will maintain the Council's Register of Interests and arrange for its publication in accordance with statutory requirements. The Monitoring Officer will also consider applications for interests to be treated as 'sensitive' and to be excluded from publication.

(g) PROPER OFFICER FOR ACCESS TO INFORMATION:

The Monitoring Officer will ensure that 'executive decisions', together with the reasons for those decisions and relevant Officer reports and background papers are made publicly available as soon as possible.

(h) ADVISING WHETHER CABINET DECISIONS ARE WITHIN THE BUDGET AND POLICY FRAMEWORK:

The Monitoring Officer will advise whether 'executive decisions' are in accordance with the budget and policy framework.

(i) 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.

(j) RESTRICTIONS ON OFFICER DESIGNATED:

The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

2 -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.

(f) RESTRICTIONS ON OFFICER DESIGNATED:

The Chief Finance Officer cannot be the Monitoring Officer.

2 -12.5 DUTY TO PROVIDE RESOURCES TO THE HEAD OF PAID SERVICE, MONITORING OFFICER AND CHIEF FINANCE OFFICER

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

2-12.6 CONDUCT

Officers will comply with the Officers' Code of Conduct and the [Protocol on Officer/Member relations](#) set out in Part 5 of this Constitution.

2-12.7 EMPLOYMENT

The recruitment, selection and dismissal of Officers will comply with the [Officer Employment Rules](#) set out in Part 4.6 of this Constitution.

2-13 ARTICLE 13 — DECISION MAKING

Paragraph	Subject
2 – 13.1	<u>RESPONSIBILITY FOR DECISION MAKING</u>
2 – 13.2	<u>PRINCIPLES OF DECISION MAKING</u>
2 – 13.3	<u>TYPES OF DECISION</u>
2 – 13.4	<u>DECISION MAKING BY THE FULL COUNCIL</u>
2 – 13.5	<u>DECISION MAKING BY THE CABINET</u>
2 – 13.6	<u>DECISION MAKING BY OVERVIEW & SCRUTINY COMMITTEES</u>
2 – 13.7	<u>DECISION MAKING BY OTHER COMMITTEES AND SUB-COMMITTEES ESTABLISHED BY THE COUNCIL</u>
2 – 13.8	<u>DECISION MAKING BY COUNCIL BODIES ACTING AS TRIBUNALS</u>
2 – 13.9	<u>DECISION MAKING AND THE PARTY WHIP</u>

2-13.1 RESPONSIBILITY FOR DECISION MAKING

The Council 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.

2-13.2 PRINCIPLES OF DECISION MAKING

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

- (a) Proportionality (i.e. the action must be proportionate to the desired outcome).
- (b) Due consultation and the taking of professional advice from Officers.
- (c) Respect for human rights to include giving particular consideration to ways in which human rights can be considered at an early stage in the decision making process.
- (d) A presumption in favour of openness.
- (e) Clarity of aims and desired outcomes.
- (f) An examination of the options available.
- (g) The giving of written reasons.

- (h) Taking account of the legal and resource (i.e. financial and personnel) implications. Account shall also be taken of any Forward Plan (where applicable) and strategic implications by reference to statements included in any statutory or voluntary Community Strategy and any environmental implications. All relevant reports must specifically indicate whether the item relates to a 'key decision' and whether it has been included in the Forward Plan.
- (i) Any discretion shall be exercised rationally and not for an improper purpose or not in bad faith.

2-13.3 TYPES OF DECISION

(a) 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.

(b) KEY DECISIONS:

A 'Key Decision' (which the intention to make must normally be included in the Forward Plan) is an 'executive decision' which is likely:

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

**(This financial limit is currently set at £10,000 or 5% of the budget whichever is the greater).*

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.

2-13.4 DECISION MAKING BY THE FULL COUNCIL

Subject to [Article 13.8](#) the Council meeting will follow the [Council Procedures Rules](#) set out in Part 4 of this Constitution when considering any matter.

2-13.5 DECISION MAKING BY THE CABINET

Cabinet will follow the [Cabinet Procedure Rules](#) set out in Part 4 of this Constitution when

considering any matter.

2-13.6 DECISION MAKING BY OVERVIEW & SCRUTINY COMMITTEES

Overview and Scrutiny Committees will follow the [Overview and Scrutiny Procedures Rules](#) set out in Part 4 of this Constitution when considering any matter.

2-13.7 DECISION MAKING BY OTHER COMMITTEES AND SUB-COMMITTEES ESTABLISHED BY THE COUNCIL

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

2-13.8 DECISION MAKING BY COUNCIL BODIES ACTING AS TRIBUNALS

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

2-13.9 DECISION MAKING AND THE PARTY WHIP

Whipping is incompatible with some functions of the Council, particularly those relating to quasi-judicial or formal administrative matters. Whipping will not therefore be permitted when functions relating to standards, appeals, scrutiny, the determination of planning applications and/or licensing matters are being considered.

For such matters there shall be no pre-meetings to brief Members of a single political group. 'The party whip' means 'any instruction given by or on behalf of a political group to any Councillor who is a Member of that group as to how that Councillor shall speak or vote on any matter before the Council/Cabinet or any Committee or Sub-Committee, or the application or threat to apply any sanction by the group in respect of that Councillor should he/she speak or vote in any particular manner'.

2 –14 ARTICLE 14 — FINANCE, CONTRACTS AND LEGAL MATTERS

Paragraph	Subject
2 – 14.1	FINANCIAL MANAGEMENT
2 – 14.2	CONTRACTS
2 – 14.3	LEGAL PROCEEDINGS
2 – 14.4	AUTHENTICATION OF DOCUMENTS
2 – 14.5	COMMON SEAL OF THE COUNCIL

2 –14.1 FINANCIAL MANAGEMENT

The management of the Council’s financial affairs will be conducted in accordance with the [Financial Regulations](#) set out in Part 4.7 of this Constitution.

2 –14.2 CONTRACTS

Every contract made by the Council will comply with the [Contracts Procedure Rules](#) set out in Part 4.8 of this Constitution.

2 –14.3 LEGAL PROCEEDINGS

Except where the law otherwise requires, the Chief Finance Officer and the Monitoring Officer are each separately authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Authority or in any case where the Chief Finance Officer or the Monitoring Officer considers that such action is necessary to protect the Authority’s interests. The term ‘such action’ shall be extended to include reasonable proactive steps designed to obviate the need for legal proceedings. The words ‘legal proceedings’ shall be interpreted widely and shall for the avoidance of any doubt include any planning appeal or inquiry.

Section 38 of the Health and Safety at Work etc Act 1974, for example, imposes restrictions on the institution of legal proceedings, so certain proceedings must be initiated by a health & safety inspector.

Certain matters are ‘reserved legal activities’ under the Legal Services Act 2007 and cannot be undertaken by a person except where authorised under the law.

The Council’s [Scheme of Delegation](#) is set out in Part **3 – 4**.

2-14.4 AUTHENTICATION OF DOCUMENTS

Where any document is necessary to any legal procedure or proceedings on behalf of the Authority, it will be signed by the Monitoring Officer or the Chief Finance Officer or other person authorised by either of them, unless any enactment otherwise authorises or requires, or the Authority has given requisite permission to some other person to the express exclusion of any other officer.

2-14.5 COMMON SEAL OF THE COUNCIL

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

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 Chief Finance Officer should be sealed. The affixing of the Common Seal will be attested by the Mayor or Deputy Mayor, Chief Finance Officer or another Officer authorised by the Chief Finance Officer.

2 –15 ARTICLE 15 — REVIEW AND REVISION OF THE CONSTITUTION

Paragraph	Subject
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2 – 15.1	<u>DUTY TO MONITOR AND REVIEW THE CONSTITUTION</u>
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2 – 15.2	<u>PROTOCOL FOR MONITORING AND REVIEW OF THE CONSTITUTION BY THE MONITORING OFFICER</u>
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2 – 15.3	<u>CHANGES TO THE CONSTITUTION</u>
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2 –15.1 DUTY TO MONITOR AND REVIEW THE CONSTITUTION

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

2 –15.2 PROTOCOL FOR MONITORING AND REVIEW OF THE CONSTITUTION BY THE MONITORING OFFICER

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the 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:

- (a) Observe meetings of different parts of the Member and Officer structure.
- (b) Undertake an audit trail of a sample of decisions.
- (c) Record and analyse issues raised with him by Members, Officers, the public and other relevant stakeholders.
- (d) Compare practices in this Authority with those in other comparable authorities, or national examples of best practice.

2 –15.3 CHANGES TO THE CONSTITUTION APPROVAL

Changes to the Constitution must by law be approved by the Full Council after consideration of the proposal by the Standards and Appeals Committee or on recommendation by the Head of Paid Service, the Chief Finance Officer, the Executive Director (Operations) or the Monitoring Officer.

Any changes within the limits of the law shall be agreed by a simple majority of those Members present and voting.

2 –1 ARTICLE 16 — SUSPENSION, INTERPRETATION AND PUBLICATION OF THE CONSTITUTION

Paragraph	Subject
2 – 16.1	<u>SUSPENSION OF THE CONSTITUTION</u>
2 – 16.2	<u>INTERPRETATION</u>
2 – 16.3	<u>PUBLICATION</u>

2 –16.1 SUSPENSION OF THE CONSTITUTION

(a) LIMIT TO SUSPENSION

The Articles of this Constitution may not be suspended.

The Rules specified below may be suspended by the Full Council to the extent permitted within those Rules and the law by the majority of those present and voting.

(b) PROCEDURE TO SUSPEND

Any 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 shall be proportionate to the result to be achieved, taking into account 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 :

All of Part 4.1 ('Council Procedure Rules') except the following rules which shall not be suspended:

- 4.1 – 16.5 (Right to require individual vote to be recorded)
- 4.1 – 16.6 (Recorded votes at a Budget Meeting)
- 4.1 – 17.2 (No requirement to sign minutes of previous meeting at Extraordinary Meeting)
- 4.1 – 24 (Resolving Cabinety/Council conflict)
- 4.1 – 26 (Suspension and Amendment of Council Procedure Rules)
- 4.1 – 27 (Disclosure of Pecuniary, Personal and Prejudicial Interests).

2 –16.2 INTERPRETATION

The ruling of the person presiding at Council, Cabinet, Committee or Sub-Committee as to the

construction or application of this Constitution, or as to any proceedings of the Authority, shall not be challenged at any meeting of the Authority at which the ruling is given. Such interpretation will have regard to the purposes of this Constitution contained in [Article 1](#). Where rulings are made reasons shall be given where practicable.

2-16.3 PUBLICATION

- (a) The Monitoring Officer will make an electronic copy of this Constitution available or, upon specific request, give a printed copy of this Constitution to each Member of the Authority upon delivery to him/her of that individual's declaration of acceptance of office on the Member first being elected to the Council (together with any subsequent updates of this Constitution).
- (b) The Monitoring Officer will ensure that copies of this Constitution are available at reasonable hours for inspection at Council offices, libraries and other appropriate locations, and can be purchased upon request by members of the press and the public on payment of a reasonable fee determined by the Authority.
- (c) The Monitoring Officer will ensure that the summary of the Constitution is made widely available within the Borough and is updated as necessary.
- (d) The Monitoring Officer will ensure that this Constitution is accessible on the Authority's website.

2 – S1 SCHEDULE 1 — DESCRIPTION OF ‘EXECUTIVE ARRANGEMENTS’

The Authority operates the Leader and Cabinet Executive form of ‘executive arrangements’ as its form of governance.

The following parts of this Constitution constitute the Executive arrangements:

- [Article 6](#) (Overview & Scrutiny Committees) and Part 4.5 ([Overview & Scrutiny Procedure Rules](#))
- [Article 7](#) (The Cabinet) and Part 4.4 (the [Cabinet Procedure Rules](#))
- Article 11 (Joint Arrangements) in so far as they concern ‘executive functions and responsibilities’
- [Article 13](#) (Decision making) and Part 4.2 (the [Access to Information Procedure Rules](#))
- [Part 3](#) (Responsibility for Functions —Executive Functions)

RIGHT TO CHANGE GOVERNANCE ARRANGEMENTS

Under section 9K (‘Changing from one form of governance to another’) of the Local Government Act 2000, a local authority may cease to operate its existing form of governance, and start to operate a different form of governance.

A resolution under section 9KC (‘Resolution of local authority’) of the Local Government Act 2000 is required by Full Council in order for the Authority to make a change in governance arrangements.

Such a resolution cannot be changed for five years unless a referendum is held in accordance with Chapter 4 of Part 1A of the Local Government Act 2000.