

**MID DEVON  
DISTRICT  
COUNCIL**

**CONSTITUTION**

**October 2015**

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# Part 1 - Introduction

This constitution sets out how Mid Devon District Council (“the Council”) operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these procedures are required by the law, while others are a matter for the Council to choose.

The Council comprises 42 Councillors elected every four years. Councillors are democratically accountable to residents of their ward.

The Council operates a “Leader and Cabinet” system. The Council appoints the Leader of the Council, who then appoints between three and eight Cabinet Members to form the Cabinet. The functions for which the Cabinet will be responsible are identified in part three and it will be responsible for most decisions that affect the day-to-day operations of the Council.

The Planning Committee, Licensing Committee and Licensing Regulatory Committee will undertake the regulatory functions of the Council relating to determining planning applications and applications for public licences, e.g. caravan sites, gambling, liquor and public entertainment licenses, hackney carriages, etc. Meetings of all committees will be in public except where personal or confidential information is discussed.

The Council has established a Standards Committee, which oversees compliance with the Code of Conduct for Councillors within the district.

The constitution contains mandatory provisions required by central government and other relevant provisions which have been modified to suit the circumstances relating to this Council. The constitution is a living document intended to facilitate the work of the Council and will evolve and adapt over the years.

# **Part 2 – Articles of the Constitution**



## **Article 1– The Constitution**

### **1.1 Powers of the Council**

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

### **1.2 The Constitution**

This Constitution, and all its appendices, is the Constitution of Mid Devon District Council.

### **1.3 Purpose of the Constitution**

The purpose of the Constitution is to:

- (a) enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
- (b) support the active involvement of citizens in the process of local authority decision-making;
- (c) help Councillors represent their constituents more 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 local people and that they explain the reasons for decisions; and
- (h) provide a means of improving the delivery of services to the community

### **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 14.

## **Article 2 – Members of The Council**

### **2.1 Composition and Eligibility**

#### (a) Composition

The Council will comprise 42 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.

#### (b) Eligibility

Only registered voters of the District or those living or working there will be eligible to hold the office of Councillor.

### **2.2 Election and Terms of Councillors**

The regular election of Councillors will be held on the first Thursday in May every four years beginning in 2011. The Terms of Office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

### **2.3 Roles and functions of all Councillors**

#### Key roles

All Councillors will:

- (a) Irrespective of the ward to which they are elected, have as their over-riding duty the representation of interest of the whole community of Mid Devon collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
- (b) Collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions and will contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision making;
- (c) Represent their communities and bring their views into the Council's decision-making process, i.e. become the advocate of and for their communities and effectively represent the interest of their ward and of individual constituents;
- (d) Deal with individual casework and may act as an advocate for constituents in resolving particular concerns or grievances and respond to constituent's enquiries and representations, fairly and impartially;
- (e) Balance different interests identified within the ward and represent the ward as a whole

- (f) Be involved in decision-making
- (g) Be available, where possible, to represent the Council on other bodies; and
- (h) Maintain the highest standards of conduct and ethics.

## 2.4 **Rights and Duties**

- (a) Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
- (b) ~~Councillors shall not disclose information which is confidential or where disclosure is prohibited by law. If in doubt Councillors should consider the situation carefully and, if appropriate, seek guidance from the Monitoring Officer, before making public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or officer entitled to know it.~~
- (c) For these purposes, “confidential” and “exempt” information are defined in the Access to Information Procedure Rules in Part 4 of this Constitution.

**Comment [AT1]:** This section has been amended to match with the wording in the Members Code of Conduct

## 2.5 **Conduct**

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

Councillors must promote and maintain high standards of behaviour as per the seven Nolan principles:

- Selflessness:** Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.
- Integrity:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in performance of their official duties.
- Objectivity:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- Openness:** Holders of public office should be as open as possible about all the decisions and actions they take. They

should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

**Honesty:**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protect the public interest.

**Leadership:**

Holders of public office should promote and support these principles by leadership and example.

**2.6 Allowances**

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

## **Article 3 – Citizens and The Council**

Citizens have a number of rights and responsibilities. The following list is a general summary of rights in terms of information, the opportunity to participate and the ability to make complaints.

### **3.1 Citizens' Rights**

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

#### (a) Voting and petitions

- (1) Members of the public have the right to vote ~~and sign a petition;~~
- (2) Citizens on the electoral roll may submit a petition requesting a referendum on whether the Council should change to a different form of Governance e.g. Cabinet, Committee or Mayoral system

**Comment [AT2]:** The Local Democracy Economic Development and Construction Act 2009 which required Local Authorities to have a petition scheme was repealed as part of the Localism Act. Members now have a choice as to whether we make a choice locally to retain a petition scheme

#### (b) Information

Citizens have the right to:

- (1) Attend meetings of the Council, the Cabinet and its other Committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
- (2) See agendas, reports and background papers, and any records of decisions made by the Council, the Cabinet and other Committees, except where confidential or exempt information is likely to be disclosed;
- (3) See the Cabinet forward plan containing major decisions to be decided
- (4) Have access to copy of the Council's Constitution
- (5) Contact their Councillor regarding a matter of concern
- (6) Inspect the Council's accounts and make their views known to the external auditor.
- (7) Expect courtesy and respect from officers and Councillors.

#### (c) Participation

Citizens have the right to participate in the Council's question time and contribute to investigations by the Scrutiny Committee in accordance with the procedures for these committees and, in particular:

- (1) Citizens should be helped to gain access to buildings and information

(2) Citizens have the right to record the meeting in accordance with the Local Authorities openness and transparency regulations 2014.

(3) Human Rights issues will be respected in accordance with Schedule 1 Part 1 of the Human Rights Act 1998

(4) Community Call for Action Section 21A of the Local Government Act 2000

(d) Complaint

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) The Monitoring Officer about a breach of the Councillor's Code of Conduct.

(4) Housing Ombudsman Service (Complaints from Council Housing tenants)

### **3.2 Citizens' Responsibilities**

Citizens must not be violent, abusing or threatening to Councillors or officers and must not wilfully harm things owned by the Council, Councillors or officers.

They should not say or publish anything about individual Councillors or officers that is slanderous or libelous

## **Article 4 – The Full Council**

### **4.1 Introduction**

The full Council is a formal meeting of all 42 Councillors. The full Council is required by law to take certain important decisions including setting the Council's Budget and Council Tax and approving a number of key plans and strategies, which together form the Policy Framework (listed below). The full Council must also by law take decisions on a number of specific matters.

The full Council provides a central forum for debate for all Councillors and they are able to ask questions. Members of the public are able, to ask questions about the Council or matters affecting the Council at all full Council meetings with the exception of the Annual Meeting. [For more information about asking a question at a Council meeting please refer to the Council procedure rules – section X](#)

### **4.2 The Council**

#### **(a) Role**

A meeting of the Council is one which all 42 members are entitled to attend and to speak and vote. The Council is responsible for the Budget and Policy Framework of the Council and for all of the functions not the responsibility of the Cabinet. It will carry out some functions itself but others will be delegated to Committees or named officers.

#### **(b) Plans and Budgets**

The Council is responsible for the determination of its Budget and Policy Framework. The Council is responsible for regulatory and other non-Cabinet functions and has a role in holding the Cabinet to account.

### **4.3 Policy Framework**

The Policy Framework means the plans and strategies which are approved by the Council annually and any other such plans and strategies adopted by Council as part of the policy framework:

- (a) those required by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 ~~and regulations proposed under section 32 of the Local Government Act 2000 to be adopted by the Council;~~
- (b) those other plans and strategies which Chapter 2 of Department for Communities Local Government Guidance recommends should be adopted by the Council as part of the Policy Framework;
- (c) other plans and strategies which the Council may decide should be adopted by the Council meeting as a matter of local choice.

**Comment [AT3]:** Deleted section 32 as this has been repealed

### **4.4 Budget**

Responsibility for the Budget includes the allocation of financial resources to different services and projects, proposed contingency funds, determining the Council tax base, setting the Council tax level, decisions relating to the control of the Council's borrowing requirements, investments, the control of its capital expenditure and the setting of expenditure limits and permitted budget transfers.

#### 4.5 Functions of the full Council

Only the full Council will exercise the following functions:

- (a) Adopting and changing the Constitution;
- (b) ~~Amending, approving, or adopting the Policy Framework, the Budget and any application to the Secretary of State in respect of any Housing Land Transfer;~~
- (eb) Subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter where the Cabinet is proposing to make a decision which would be contrary to the Policy Framework or contrary to/or not wholly in accordance with the Budget;
- (dc) Annual election of the Chairman and the Vice Chairman of the Council at the Annual General Meeting
- (ed) Electing the Leader following the ordinary election of Councillors every four years.
- (e) Removing the Leader;
- (f) Annual election of the Chairman of the Scrutiny Committee at the Annual General Meeting
- (g) Determining which Committees, Sub-Committees, Boards, Panels etc. shall be established as standing committees, the terms of reference of each body, the number of members (voting and non-voting) that each consists of and making the necessary appointments to the bodies;
- (h) Appointing representatives to joint authorities, joint committees and other outside bodies unless the appointment is a Cabinet function or has been delegated by the Council;
- (i) Adopting a scheme for members' allowances under article 2.6;
- (j) Changing the name of the Council's area;
- (k) Conferring the title of honorary alderman or Freeman of the District;
- (l) Confirming the appointment of the Head of Paid Service; Chief Finance Officer and ~~designating~~ the Monitoring Officer and the taking of any disciplinary action against the these Officers and the designating of "Proper Officers";

Comment [AT4]: Covered under point (m) below



- (m) The approval or adoption of applications to the Secretary of State for approval of a programme of disposal of 500 or more properties or where consent is required for disposal of land used for residential purposes;
- (n) The approval of an increase in rents for Council housing properties as part of the budget setting process;
- (o) Making, amending, revoking, re-enacting or adopting byelaws and promoting or opposing the making of local legislation or personal Bills;
- (p) Adopting a Code of Conduct for Members (Councillors);
- (q) Taking decisions in respect of functions which are not the responsibility of the Executive or Leader and which have not been delegated by the Council to Committees, Sub-Committees or officers;
- (r) The making of Procedure Rules (except the Cabinet Procedure Rules) including in relation to Contracts and Finance;
- (s) The delegation of non-executive functions to Committees, Sub-Committees and officers, subject to the right to amend the Delegation Scheme from time to time as may be required;
- (t) All other matters which, by law, must be reserved to the decision of the Council as a whole;
- (u) Provide a means whereby councillors may ask questions of matters relevant to the Council's functions and to bring forward motions for debate;
- (v) Receive an Annual Report from the chairmen of the Scrutiny Committee, Policy Development Groups and the Audit Committee and provide an opportunity for members to ask questions on the report;
- (w) Receive reports from the Leader, the Cabinet, the Scrutiny Committee and the Audit Committee which they have referred to Council;
- (x) Consider and decide on recommendations of Committees to Council ~~non-Cabinet functions not within their delegation or which a committee has referred to the Council for decision~~;
- (y) Consider reports on lawfulness and maladministration;
- (z) Consider decisions referred from the Scrutiny Committee in respect of Cabinet functions where decisions have not yet been implemented and the Committee considers the decisions may be contrary to the Budget or Policy Framework; (i.e. through the call-in procedure)
- (aa) Receive reports from the Leader or Cabinet on urgent decisions contrary to the Policy Framework;
- (bb) Take all decisions in respect of delegating non-executive functions to another local authority;

- (cc) Set the Council Tax base and the Council Tax;
- (dd) Any function under a local Act other than a function specified or referred to in Regulation 2 or Schedule 1 of The Local Authorities Functions and Responsibilities (England) Regulations, 2000 as amended;
- (ee) Applications to the Secretary of State under Section 10 of the Representation of the People Act 2000 for an Order to proceed with pilot election arrangements.

#### **4.6 Council Meetings**

There are three types of Council meeting:

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

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

#### **4.7 Responsibility for Functions**

The Council will keep under review the tables in Part 3 of this Constitution setting out the responsibilities for the Council's functions which are not the responsibility of the Cabinet.

## **Article 5 – Chairing The Council**

The Chair and Vice-Chair of the Council will be elected by the Council annually. The Chair and in his absence the Vice-Chair, will have the following responsibilities, to:-

- (a) Uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- (b) Preside over meetings of the Council impartially so that its business can be carried out efficiently and with regard to the rights of councillors and the interests of the community;
- (c) 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 are able to hold the Cabinet to account;
- (d) Promote public involvement in the Council's activities;
- ~~(e) Be the conscience of the Council;~~
- (ef) Attend or be represented at such civic and ceremonial functions as the Council and he/she determines appropriate;
- (gf) Determine any matter referred to him/her under the urgency provisions of the Access to Information Procedure Rules or the Budget and Policy Framework Procedure Rules in Part 4 of the Constitution; and
- (gh) Be consulted on any matter to which consultation with the Chair of the Council is required under this Constitution.

## **Article 6 – Scrutiny Committee, Policy Development Groups (PDGs), Audit Committee and Standards Committee**

### **6.1 Introduction**

- (a) The Council is required by Law to discharge certain overview and scrutiny functions. These functions are an essential component of local democracy. Overview and Scrutiny Committees should be powerful committees that can contribute to the development of Council policies and also hold the Cabinet to account for its decisions. Another key part of the overview and scrutiny role is to review existing policies, consider proposals for new policies and suggest new policies.
- (b) Overview and scrutiny should be carried out in a constructive way and should aim to contribute to the delivery of efficient and effective services that meet the needs and aspirations of local inhabitants. Overview and Scrutiny Committees should not shy away from the need to challenge and question decisions and make constructive criticism.
- (c) Mid Devon District Council has three Policy Development Groups which act as the overview function, developing and reviewing policy.
- (d) Mid Devon District Council also has a Scrutiny Committee which scrutinises internal and external matters as well as holding the Cabinet to account.

### **6.2 Scrutiny Committee: General role**

The Scrutiny Committee will:-

- (a) Review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions whether by the Cabinet or another part of the Council or any of its Committees;
- (b) Make reports and/or recommendations to the Council and/or the Cabinet in connection with the discharge of any functions;
- (c) Consider any matter which affects the Council's area or its citizens;
- (d) Make reports and/or recommendations to the Full Council on any matters of broad local concern or importance not otherwise specified within the remit of the Policy Development Groups; and
- (e) Exercise the right to call in for reconsideration decisions made but not yet implemented by the Cabinet/individual Cabinet Members or key decisions made but not yet implemented by Officers.

The ~~Council or the Leader of the Cabinet or~~ Scrutiny Committee may arrange for the discharge of any of its functions by a sub-committee~~from time to time establish such other committees or sub-committees as it sees fit.~~

### **6.3 Scrutiny Committee: Specific Functions**

The Scrutiny Committee may:-

- (a) Review and scrutinise the decisions made by and performance of the Cabinet and/or Committees and Council Officers in relation to individual decisions and over time;
- (b) Review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
- (c) Question members of the Cabinet and/or Committees and Chief Officers from the Council 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 project;
- (d) Make recommendations to the Cabinet and/or appropriate Committee and/or Council arising from the outcome of the scrutiny process;
- (e) Review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Scrutiny Committee and local people about their activities and performance; and
- (f) Question and gather evidence from any person with a relevant knowledge, expertise or responsibility (with their consent).

### **6.4 Officers**

Scrutiny Committee will have continuity of administrative support and be able to call on other relevant officer support and external expertise where necessary.

### **6.5 Annual Report**

The Scrutiny Committee must report annually to the full Council on their workings with recommendations for its future work programme and amended working methods if appropriate.

### **6.6 Committee and Membership**

The Scrutiny Committee will comprise of 12 Councillors, plus any additional members as the Council may see fit to appoint. Cabinet Members may not be members of the Scrutiny Committee.

### **6.7 Proceedings of Overview and Scrutiny Committee**

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

### **6.8 Policy Development Groups: General role:**

Within their terms of reference Policy Development Groups may:

- (a) Make reports and/or recommendations to the full Council and/or the Cabinet and/or any other bodies of the Council in connection with the discharge of any functions;
- (b) Make reports and/or recommendations to the full Council on any matters of broad local concern or importance within their remit; and
- (c) Undertake the functions below within the thematic areas set out in the table below. These thematic areas will of necessity be broadly defined. Any potential confusion or duplication between the thematic areas of these bodies which may result in duplication of effort or omission will be resolved by the Programming Panel. The Programming Panel will also have discretion in ensuring that there is a reasonable division of issues for consideration between each of the Policy Development Groups.

Group	Thematic area
Managing the Environment	Waste collection and Recycling, Street cleaning, Air quality, Climate Change, Parks and Open Spaces, Cemeteries, Trees, car parking, environmental enforcement, flood defence and drainage, clocks and monuments, public conveniences
Decent and Affordable Homes	Council Housing, Neighbourhood and tenancy management, tenant involvement, homelessness prevention, housing needs and allocations, housing enabling, private sector housing
Community Well Being	Community Engagement and Consultation, Community Development, Grants and Funding, Equalities, Economic Development, Town Centre Regeneration, Tourism, Environmental Health, Health and Safety, Leisure, Anti-Social Behaviour

#### 6.9 **Policy Development Groups: specific functions:**

Policy Development Groups may:

- (a) Assist the Council and the Cabinet in the development of its budget and policy framework by in-depth analysis of current provision, performance and policy issues;
- (b) Instigate and conduct research, community and other consultation in the analysis of policy issues, possible options and the development of policy;

- (c) Regularly involve members of the Cabinet and occasionally members of other bodies of the Council and officers to question them to find out their views on issues, proposals and policy affecting the area;
- (d) Consider reports from any individual councillor on matters relevant to the terms of reference of the group to enable the views of constituents and other organisations to be taken into account; and
- (e) 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.
- (f) Consider the impact of policies to assess if they have made a difference

#### **6.10 Annual report**

The Chairmen of the Policy Development Groups must report annually to full Council on their workings and make recommendations to amended working methods if appropriate.

#### **6.11 Committee and Membership**

The Policy Development Groups will each comprise of 9 Councillors, plus any additional members as the Council may see fit to appoint. Cabinet Members may not be members of a Policy Development Group.

#### **6.12 Proceedings of Policy Development Groups**

Policy Development Groups will conduct their proceedings in accordance with the Procedure Rules set out in Part 4 of this Constitution.

#### **6.13 Audit Committee: General Role**

Within their terms of reference, the Audit Committee may:

- (a) Provide independent assurance of the adequacy of the risk management framework and the associated control environment;
- (b) Provide independent scrutiny of the authority's financial and non-financial performance to the extent that it affects the authority's exposure to risk and weakens the control environment;
- (c) Oversee the financial reporting process;
- (d) Approve the Statement of Accounts, Annual Governance Statement and the Council's Final Accounts
- (e) Make reports and/or recommendations to full Council and/or Cabinet and/or any other bodies of the Council in connection with the discharge of its functions;
- (f) Make reports and/or recommendations to full Council on any matters of broad local concern or importance within their remit.

#### **6.14 Audit Committee: Specific Functions**

The Audit Committee may:-

**Audit Activity:-**

- (a) Consider and approve the strategic audit approach and the annual audit programme;
- (b) Consider the annual internal audit report including an overall opinion on the adequacy of the Council's control environment, the extent to which the audit plan has been achieved, and a summary of any unresolved issues;
- (c) Consider summaries of specific internal audit reports as requested;
- (d) In the event of the audit service being contracted out, consider reports dealing with the management and performance of the providers of internal audit services;
- (e) Consider reports from internal audit on agreed recommendations not implemented within reasonable timescales;
- (f) Consider the external auditor's annual letter, relevant reports and the report to those charged with governance;
- (g) Consider specific reports as agreed with the external auditor;
- (h) Comment on the scope and depth of external audit work and to ensure it gives value for money;
- (i) Liaise with the Audit Commission over the appointment of the Council's external auditor should that become necessary;
- (j) Commission work from internal and external audit.

**Internal Controls**

- (k) Review any issues referred to by the Chief Executive or any Council body;
- (l) Monitor the Council's confidential reporting policies in relation to anti-fraud and anti-corruption, whistle blowing and Anti Money Laundering, including monitoring the use of the Whistle Blowing policy and the Council's Complaint process;
- (m) Annually approve the Council's Risk Management Strategy and review the effectiveness of the Council's Risk Management process on a regular basis and gain assurance that appropriate action is being taken to ensure that corporate risks are being managed, including a report to the Council annually;
- (n) Oversee the production of the Council's Annual Governance Statement and to ensure that relevant and suitable evidence has been obtained to support the disclosures within the Statement;
- (o) Review and approve the Council's Annual Governance Statement and monitor the progress against the Annual Statement action plan on a regular basis;
- (p) Annually review and update the Council's Code of Corporate Governance to ensure compliance with best practice and legislative guidance;
- (q) Consider the Council's compliance with its own and other published standards and controls.

**To review and formally approve the Annual Statement of Accounts**

- (r) Consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from audit



regarding the robustness of the accounts that need to be brought to the attention of the Council;

- (s) Consider the external auditor's reports to those charged with governance on issues arising from the audit of the accounts.

#### **6.15 Annual report**

The Chairman of the Audit Committee must report annually to full Council on their workings and make recommendations to amended working methods if appropriate.

#### **6.16 Committee and Membership**

The Audit Committee will comprise of 7 Councillors, plus any additional members as the Council may see fit to appoint. Cabinet Members may not be members of the Scrutiny Committee.

#### **6.17 Proceedings of the Audit Committee**

The Audit Committees will conduct their proceedings in accordance with the Procedure Rules set out in Part 4 of this Constitution.

#### **6.18 Standards Committee: General role**

The Council shall establish a Standards Committee to carry out its functions relating to ethical matters under the Localism Act 2011.

#### **6.19 Standards Committee: Specific Functions**

The Standards Committee will have the following roles and functions:

- (a) Promoting and maintaining high standards of conduct by Councillors and co-opted Members;
- (b) Assisting the Councillors and co-opted members to observe the Member's 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) Granting some dispensations to Councillors and co-opted Members from requirements relating to interests set out in the Members' Code of Conduct;
- (g) Dealing with any reports from a case and any other report from the Monitoring Officer on any matter;
- (h) Exercising of (i) to (vii) above in relation to the town and parish councils wholly or mainly in its area and the members of those town and parish councils;
- (i) Overview of complaints handling and Ombudsman investigations; and
- (j) Overview of the Constitution
- (k) Consider any recommendations put forward by the Standards Sub-Committee in respect of any hearings

## 6.20 Standards Committee: Composition

- (a) The Standards Committee shall be composed of nine District Councillors
- (b) The Standards Sub-Committee shall be composed of three of the District Councillors on the Standards Committee

## 6.21 Standards Sub Committee: Specific Functions

The Standards Sub-Committee will have the following roles and functions:

(a) To conduct hearings into allegations of the Code of Conduct following referral from the Monitoring Officer

(b) To make any recommendations back to the Standards Committee, such actions to include:

- (1) Publication of the findings of the Standards (Hearing) Sub-Committee in respect of the Subject Member's conduct
- (2) Reporting the findings of the Standards (Hearing) Sub-committee to Council for information
- (3) Recommendation to Council that the Subject Member should be censured
- (4) Recommendation to the Subject Member's Group Leader (or in the case of ungrouped members to Council) that the Subject Member should be removed from any or all Committees or Sub-Committees of the Council for a recommended period
- (5) Recommend to Leader that the Subject Member should be removed from the Cabinet, or removed from their Portfolio responsibilities
- (6) Instructing the Monitoring Officer to arrange training for the Subject Member
- (7) Recommendation to Council that the Subject Member should be removed from all appointments to which the Subject Member has been appointed or nominated by the Council
- (8) Withdrawal of facilities provided to the Subject Member by the Council, such as a computer, website and/or e-mail and Internet access
- (9) Placing such restrictions on the Subject Member's access to council staff, buildings or parts of buildings as may be reasonable in the circumstances

**Comment [AT5]:** Sanction set out as per Knowles on Local Authority Meetings. Require Council to give delegated powers to the Standards Committee to apply these sanctions.

The caveat to the sanctions above is subject to circumstances where the Councillor has acted outside of their role as a Councillor – in this case the Head of Paid Service may

determine a course of action if appropriate, following consultation with the Chairman and Vice Chairman of the Standards Committee.

## **Article 7 – The ~~Cabinet~~Executive (Cabinet)**

### **7.1 Introduction**

The term ‘Executive’ shall be the collective name for the Leader of Council and the members of the Cabinet, unless the context dictates otherwise. The terms ‘executive function’ shall mean those matters and functions that have been delegated to the Executive.

The Executive will exercise all of the local authorities functions that are not the responsibility of any other part of the Council, by law or under this constitution.

~~The Cabinet is appointed to carry out all of the Council’s functions which are not the responsibility of any other part of the Council, whether by law or under this Constitution.~~ Many decisions will be made by the ExecutiveCabinet, rather than the full Council. For ease of reference in this Constitution the Executive will be referred to as the Cabinet

### **7.2 Form and Composition of the ~~Cabinet~~Executive**

The Executive (which is also known as the Cabinet) will consist of:-

- (a) The Leader of the Council (the “Leader”); and
- (b) The Deputy Leader of the Council together with at least three but not more than ~~ten~~eight Councillors appointed to the Cabinet by the Leader.

**Comment [AT6]:** The Legislation states that the number of members on a local authority executive must not exceed 10. Should we change our Constitution to reflect 10 or keep as 8?

### **7.3 Leader**

- (a) Election

The Leader of the Council will be a Councillor elected to the position of Leader by the Council for a period of four years at the Annual Meeting immediately following the local government elections.

- (b) Term of Office

- (1) The Leader of the Council will hold office until:-
  - (i) he/she resigns from the office; or
  - (ii) he/she is disqualified from being a Councillor; or
  - (iii) where the Council passes a resolution removing him/her from office.
- (2) In the event of any casual vacancy in the position of Leader the Deputy Leader shall act in the Leader’s place until the appointment of a new Leader by the Council.

- (3) If for any reason

(a) the executive leader is unable to act or the office of the executive leader is vacant, and

(b) the deputy executive leader is unable to act or the office of the deputy executive leader is vacant,

The Executive must act in the executive leader's place or must arrange for a member of the executive to act in the executive leaders place.

(c) Role of the Leader

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

**7.4 Deputy Leader**

(a) Appointment

The Leader may designate one of the members of the Cabinet as Deputy Leader.

(b) Duties of the Deputy Leader

The Deputy Leader may exercise all the functions of the Leader where the position is vacant or where the Leader is absent or is otherwise unable to act.

(c) Removal from Office

The Leader may, if he/she thinks fit, remove the Deputy Leader from office at any time.

**7.5 Other Cabinet Members**

Other Cabinet Members will be Councillors elected to the position of Cabinet Member by the Leader. Each Cabinet Member shall hold office until:-

(a) He/she resigns from that office; or

(b) They are no longer councillors; or

(c) He/she is disqualified from being a Councillor

(d) He/she is removed from that office by the Leader upon such notice (if any) as the Leader considers appropriate; or

(e) He/she ceases to be a Councillor.

The Leader may at any time appoint a Cabinet Member to fill any vacancies.

**7.6 Proceedings of the Cabinet**

The proceedings of the Cabinet shall take place in accordance with the Cabinet Procedure Rules in Part 4 of this Constitution.

#### **7.7 Delegation of Functions**

The Leader may exercise executive functions himself/herself or may otherwise make arrangements to delegate responsibility for their discharge as set out below:-

The Leader may delegate executive functions to:-

- (a) The Cabinet as a whole;
- (b) A Committee of the Cabinet (comprising executive members only);
- (c) An individual Cabinet Member;
- (d) A joint committee;
- (e) Another local authority or the executive of another local authority;
- (f) A delegated Officer.

## **Article 8 – Regulatory and Other Committees**

### **8.1 Introduction**

The Council will appoint committees to undertake a variety of regulatory and other functions that are the responsibility of the Council but which do not have to be carried out by the full Council.

### **8.2 Regulatory Committees**

The Council will appoint the following bodies:

- (a) Planning Committee
- (b) Licensing Committee
- (c) Licensing Regulatory Committee

### **8.3 Other Committees and Sub-Committees**

- (a) The Council will appoint such other committees as it considers appropriate to exercise any of its functions.
- (b) Any committee appointed by the Council may at any time appoint additional sub-committees and panels throughout the year. Their terms of reference and delegation of powers to them shall be explicit and within the Appointing Committee's terms of reference.
- (c) ~~The Council in the case of Standing Committees or the parent committee in the case of sub-committees or panels will, in the case of sub-committees or panels, appoint the members to serve on the committee, sub-committee or panel subject to the right of a political group within the meaning of the Local Government and Housing Act 1989 and any regulations made under that Act to make nominations for those appointments at the meeting that makes the appointments before the appointments are made.~~

## **Article 9 – Joint Arrangements Area Committees**

### **9.1 Area Committees**

The Council may appoint area committees as it sees fit, if it is satisfied that to do so will ensure improved service delivery in the context of more efficient, transparent and accountable decision making. In the event of area committees being appointed, the following sub articles apply. The Council will consult with relevant Parish and Town Councils and the Chairmen of Parish Meetings when considering whether and how to establish Area Committees.

### **9.2 Conflicts of Interest – membership of Area Committees and Scrutiny Committee**

- (a) **Conflict of Interest** – If the Scrutiny Committee is scrutinising specific decisions or proposals in relation to the business of the Area Committee of which the Councillor concerned is not a member, then the Councillor may not speak or vote at the Scrutiny Committee meeting unless a dispensation to do so is given by the Standards Committee;
- (b) **General Policy Reviews** – Where the Scrutiny Committee is reviewing policy generally the member must declare his interest before the relevant agenda item is reached, but need not withdraw.

### **9.3 Form, Composition and Function**

The Council will determine the form and composition, in accordance with the statutory requirements, and function of the Area Committees following consultation with the community.

### **9.4 Area Committees – Access to Information**

Area Committees will comply with the Access to Information Rules in Part 4 of this Constitution.

### **9.5 Cabinet Members on Area Committees**

A member of the Cabinet may serve on an Area Committee if otherwise eligible to do so as a Councillor.



## **Article 10 – Joint Arrangements**

### **10.1 Introduction**

There are a number of circumstances where the Council or the Cabinet is entitled to carry out certain functions jointly with another local authority.

### **10.2 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. Except as set out below, or as permitted or required by Law, the Cabinet may only appoint Cabinet Members to such joint committees and those Members need not reflect the political composition of the Council as a whole.
- (c) The Cabinet may appoint members to a Joint Committee from outside the Cabinet where the Joint Committee has functions for only part of the area of the Council ~~and that area is smaller than two fifths of that local authority,~~ by area or population. In such cases, the Cabinet may appoint to the Joint Committee any Councillor who is member for a ward contained within the area. Political balance requirements do not apply to such appointments.

### **10.3 Access to Information**

- (a) The Access to Information Procedure Rules apply.
- (b) If all the 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 of any participating authority, then the Access to Information Rules in part VA of the Local Government Act 1972 (as amended) will apply.

### **10.4 Delegation to and from Other Local Authorities**

- (a) The Council can delegate non-executive functions to another local authority or, where those functions are the responsibility of the executive of another local authority, to that executive.
- (b) The Cabinet can 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 is reserved to the full Council.

#### **10.5 Contracting Out**

The Council (in respect of non-executive functions) and the Cabinet (in respect of executive functions) may contract out to another body or organisation functions:-

- (a) 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
- (b) Under contracting arrangements where the Contractor acts as the Council's Agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making.

## **Article 11 - Officers**

### **11.1 Management Structure**

(a) General

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

(b) Chief Officers

The Council will engage persons for the following posts, who will be designated Chief Officers. The Head of Paid Service shall have responsibility and power to amend the functions and areas of responsibility of the Chief Officers as he/she considers necessary to deliver the Council's functions, vision and priorities. Such changes will be carried out in accordance with any relevant Human Resources policies.

#### **Post Functions and Areas of Responsibility**

<b>Post</b>	<b>Duties</b>
Chief Executive	<ul style="list-style-type: none"><li><input type="checkbox"/> Overall corporate management and operational responsibility (including overall management and responsibility for all officers)</li><li><input type="checkbox"/> Principal advisor to the Council on general policy</li><li><input type="checkbox"/> Overall responsibility for delivering the Council's policies and programmes</li><li><input type="checkbox"/> Provision of professional advice to all parties in the decision-making process</li><li><input type="checkbox"/> To act as Head of Paid Service.</li></ul>

(c) Head of Paid Service, Monitoring Officer and Chief Finance Officer

The Council will designate the following posts as shown:

<b>Designation</b>	<b>Post</b>
Head of Paid Service	Chief Executive
Monitoring Officer	Head of Communities and Governance
Chief Finance Officer	Head of Finance

Such posts will have the functions described in 110.2 to 110.4 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.

## **11.2 Functions of the Head of Paid Service**

(a) Discharge of Functions by the Council

The Head of Paid Service will keep under review 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 Financial Officer if a qualified accountant.

## **11.3 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.

(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 a Cabinet function, if he or /she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to

maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

(c) Supporting the Standards Committee

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

Notwithstanding the duty of confidentiality, the Monitoring Officer shall be at liberty to disclose any information relating to the Council's affairs, and provide copies of any records or documents belonging to the Council to the Standards Committee, for the purposes of investigation or determination of a complaint against a Member.

(d) Conducting Investigations

The Monitoring Officer will conduct investigations into matters and carry out any other actions as directed by the Standards Committee and make reports or recommendations in respect of them to the Standards Committee.

(e) 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.

(f) Advising Whether Cabinet 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.

(g) Providing Advice

The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors. Where the Monitoring Officer considers that a Member(s) has acted contrary to his/her advice it is open to him/her to issue a report to the Council under s.5 Local Government and Housing Act 1989, or seek judicial review, as he or she considers appropriate in the circumstances.

(h) Restrictions on Posts

The Monitoring Officer cannot be the Chief Finance Officer.

#### **11.4 Functions of the Chief Finance Officer**

(a) Ensuring Lawfulness and Financial Prudence of Decision Making

If the Chief Financial Officer 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. 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 a Cabinet function and the Council's external auditor. When the report is completed the Chief Finance Officer shall send a copy to: (a) the current auditor of the Council's accounts; and, (b) each Member of the Council.

(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.

**11.5 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.

**11.6 Conduct**

Officers will comply with the Officers' Code of Conduct and the Protocol on Officer/Member Relations set out in Part 4 of this Constitution.

**11.7 Employment**

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

## **Article 12 – Decision Making**

### **12.1 Responsibility for Decision Making**

The Council will issue and keep up to date a record of what part of the Council or which 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.

### **12.2 Principles of Decision Making**

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

- (a) Proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) Due consultation and the taking of professional advice from officers;
- (c) Respect for human rights;
- (d) A presumption in favour of openness;
- (e) Clarity of aims and desired outcomes;
- (f) Consideration of any alternative options; and,
- (g) The giving of reasons for the decision and the proper recording of those reasons.

### **12.3 Type of Decision**

- (a) Decisions reserved to full Council. Decisions relating to the functions listed in Article 4 will be made by the full Council and will not be delegated.
- (b) Key decisions – a “key decision” means a Cabinet decision which is likely:
  - (1) To ~~result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority’s budget for the service or function to which the decision relates involve expenditure or savings in excess of £50,000.00 as well as otherwise being significant having regard to the Council’s budget for the service or function to which the decision relates;~~ or
  - (2) To be significant in terms of its effects on communities living or working in an area comprising two or more wards ~~or electoral divisions in the area of the relevant local authority in the district.~~
    - (i) In accordance with section 38 of the Local Government Act 2000, in determining the meaning of “significant” regard shall be had to any guidance for the time being issued by the Secretary of State.

- (3ii) A decision taker may only make a key decision in accordance with the requirements of the Access to Information Procedure Rules and the Cabinet Procedure Rules set out in Part 4 of this Constitution.

#### **12.4 Decision Making by the Full Council**

Subject to Article 12.8, the Council meeting will follow the Council Procedures Rules 2012 set out in Part 4 of this Constitution when considering any matter.

#### **12.5 Decision Making by the Cabinet**

Subject to Article 12.8, the Council meeting will follow the Cabinet Procedures Rules set out in Part 4 of this Constitution when considering any matter.

#### **12.6 Decision Making by the Scrutiny Committees**

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

#### **12.7 Decision Making by Other Committees and Sub-Committees Established by the Council**

Subject to Article 12.8, 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.

#### **12.8 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.

#### **12.9 Decision making by Officers**

Officers may have delegated powers by the full Council or by the Cabinet to take managerial and operational decisions – see Part 3, Responsibilities for Functions.

#### **12.10 Key decisions – the two tests**

Whether or not a decision is key depends upon the statutory test as set out above in Article 12.03

(1) **Significant expenditure or savings**

To result in a local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates.

~~NB — The District Council's Financial Rules set £50,000~~

(2) **Significant effect on communities**

*The following guidance should be taken into account:*



- |
- (a) Decisions should be treated as key where they are likely to have a significant impact on communities in two or more wards. For example, a council should regard as key a decision to amend the system for collecting recyclable waste or providing a new leisure facility in a neighbourhood, notwithstanding the thresholds of financial significance.
  - (b) Where a decision is only likely to have a significant impact on a very small number of people the decision maker should ensure that those people are nevertheless informed **o**if the forthcoming decision and sufficient time for them to exercise their rights to see the relevant papers and made an input into the decision making process.
  - (c) In considering whether a decision is likely to be significant, the decision maker will need to consider the strategic nature of the decision and whether or not the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality affected. Regard should be given to the underlying principles of accountable decision making to ensure that there is a presumption toward openness. Local authorities should seek, through consultation with other local authorities of the same type and size, to ensure there are not large variations in the level of openness between authorities in the future.

## **Article 13 - Finance, Contracts and Legal Matters**

### **13.1 Financial Management**

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

### **13.2 Contracts**

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

### **13.3 Legal Proceedings**

The Legal Services Manager is authorised to institute, defend, participate in or settle any legal proceedings and take all necessary steps in any case where such action is necessary to give effect to decisions of the Council or in any case where the Legal Services Manager considers that such action is necessary to protect the Council's interests.

The Legal Services Manager has delegated powers to authorise officers to appear in court on the Council's behalf.

### **13.4 Authentication of Documents**

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

Any contract with a value exceeding £50,000.00, entered into on behalf of the Council shall be made in writing. Subject to the Contracts Procedure Rules, such contracts must be signed by at least two officers of the Council or made under common seal of the Council attested by at least one officer if they exceed £50,000.00 in value.

In addition to any other person who may be authorised by resolution of the Council, the proper officer for the purposes of authentication of documents under the Local Government Acts shall be:

- (a) The Chief Executive;
- (b) The Legal Services Manager;
- (c) Any Chief Officer of the Council concerned with the matter to which the document relates; or,
- (d) Any officer authorised in writing by such Chief Officer or by the Legal Services Manager.

### **13.5 Common Seal of the Council**

(a) Common Seal

The Common Seal of the Council shall be kept in a safe place in the custody of the Legal Services Manager.

A decision of the Council, or any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision.

(b) Sealing and Execution of Documents

The common seal of the Council shall be affixed to a document only on the authority of either:-

- (1) A resolution of the Council;
- (2) A resolution of a Committee or Sub-Committee which the Council has empowered to authorise the use of the seal;
- (3) A decision by the Council, or by a Committee, Sub-Committee or officer exercising delegated functions, to do anything where a document under the common seal is necessary or desirable as part of the action.

The affixing of the common seal shall be attested by the Monitoring Officer, the Legal Services Manager or another solicitor authorised by the Legal Services Manager.

(c) Record of Sealing of Documents

Any entry of the sealing of every deed or document to which the Common Seal has been affixed shall be made by the Legal Services Manager and consecutively numbered in a book to be provided for the purpose.

(d) Disposal of Land and Real Property

Every disposal of land and real property made by the Council will comply with the Financial ~~and Contract Procedure Regulation~~ rules set out in an appendix to this Constitution ~~Part 4 of the Constitution~~.

## **Article 14 – Review and Revision of the Constitution**

### **14.1 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. The Chief Finance Officer shall be responsible for keeping under review the Financial Procedure Rules set out in Part 4 of the Constitution and shall make any necessary amendments and revisions as are required from time to time. He/she shall report any amendments made to Part 4 for the next available Council meeting for noting.

### **14.2 Protocol for Monitoring and Review of Constitution by Monitoring Officer**

A key role for the Monitoring Officer is to make recommendations for ways in which the Constitution could be amended in order to better 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/her by Members, officers, the public and other relevant stakeholders; and,
- (d) Compare practices in this Council with those in comparable authorities, or national examples of best practice.

### **14.3 Changes to the Constitution**

#### **(a) Approval**

Subject to 14.3 (b), changes to the Constitution will only be approved by the full Council following discussion by the Standards Committee. Where the table of Chief Officers in Article 11 or the Management Structure section of the Constitution needs to be updated, the Monitoring Officer may make the necessary changes upon receipt of notification from the Chief Executive that he/she has made changes to these structures following Council or relevant committee approval of such changes.

#### **(b) Minor Changes**

If, in the reasonable opinion of the Monitoring Officer, a change is:

- (1) A minor variation; or
- (2) Required to be made to remove any inconsistency or ambiguity; or
- (3) Required to be made so as to put into effect any decision of the Council or its committees or the Cabinet,

in which case the Monitoring Officer may make such a change. Any such change made by the Monitoring Officer shall come into force with

immediate effect and he/she will notify all Councillors of the minor amendments.

(c) Change to a Mayoral Form of Executive

The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals and must hold a binding referendum.

(d) Legislative Change

Any part of the Constitution may be amended by the Monitoring Officer where such amendment is required to be made so as to comply with any legislative provision. Such amendments shall take effect when the Monitoring Officer so decides or the legislation (where relevant) so provides. Such changes shall be notified to all Councillors.

## **Article 15 - Suspension, Interpretation and Publication of the Constitution**

### **15.1 Suspension of the Constitution**

(a) Limit to Suspension

The Articles of this Constitution may not be suspended. The Council Procedure Rules in Part 4 of this Constitution may be suspended by the full Council to the extent permitted within those Rules and the law.

(b) Procedure to Suspend

A motion to suspend any Rules will not be moved without notice unless at least one half of the whole number of councillors is 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.

### **15.2 Interpretation**

The ruling of the Chairman of the Council (or other person presiding) 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.

### **15.3 Publication**

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

# **Part 3 - Responsibility for Functions**

**LOCAL GOVERNMENT ACT 2000 AND  
LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007**

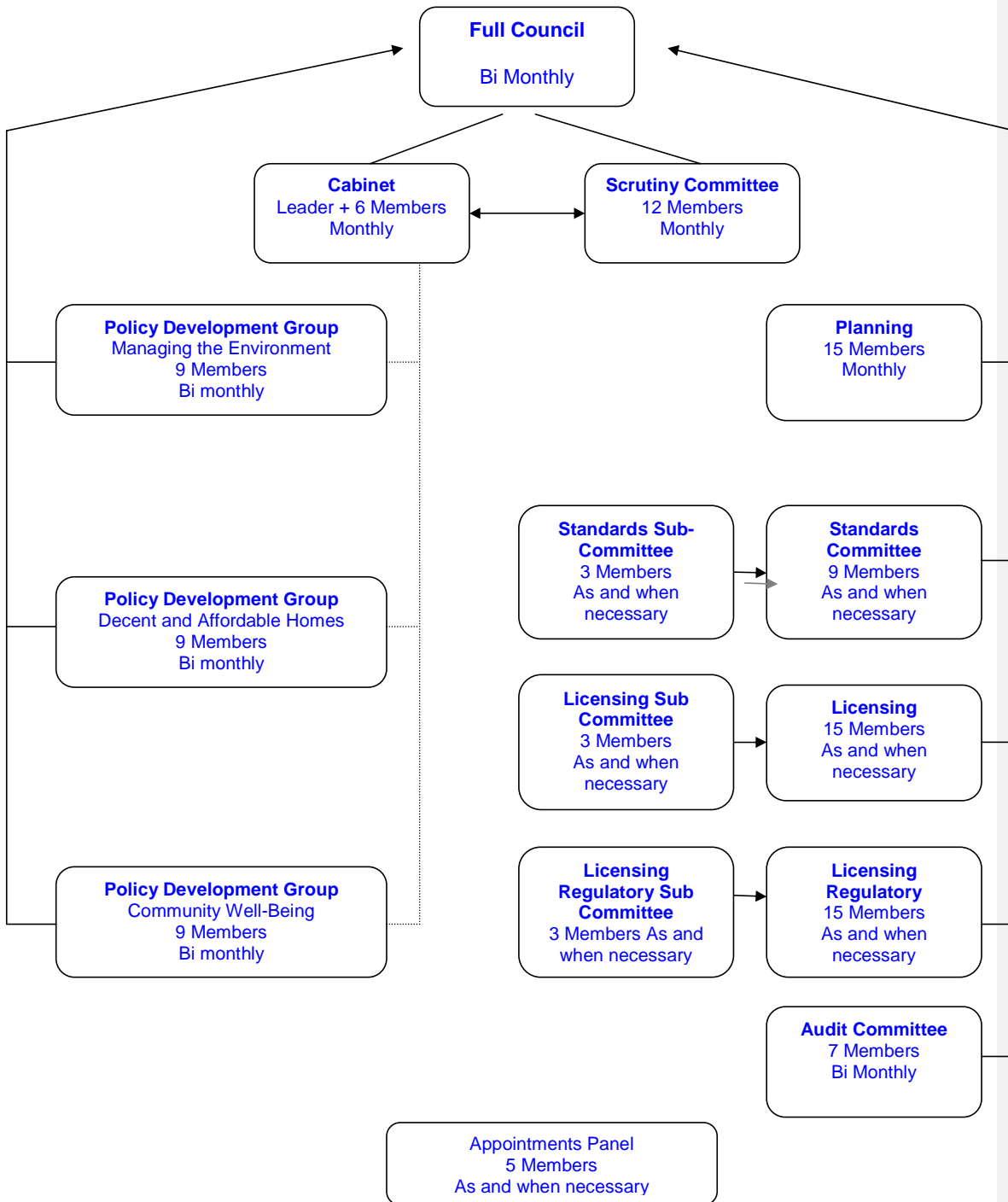
I, ....., Leader of Mid Devon District Council, in accordance with S.14 of the Local Government Act 2000 as amended by Part 3 of the Local Government and Public Involvement in Health Act 2007 **confirm** the arrangements for Responsibility For Functions contained in Part 3 of the Mid Devon District Council Constitution, November 2007, including all the arrangements for delegation of functions to the Cabinet, the arrangements of functions of the Cabinet members and the Scheme of Delegation to officers.

Signed:

Date:



## The Council's Committee Structure



## Scheme of Delegations

### 1. Introduction

- 1.1 Legally a local authority depends upon a series of statutes which in some cases give it a power (ie a discretion) to do something – or – in others – a duty to carry out that function or service. Each power or duty is often made subject to various limits as to just how it is to be exercised.
- 1.2 Because of this statutory foundation for the work of local councils, it is important that we are always clear as to which statute we are using to achieve our purposes. Unless we make that clear then it is difficult, if not impossible, for the community to hold us to account.

1.3 The Localism Act includes a 'general power of competence'. It gives local authorities the legal capacity to do anything that an individual can do that is not specifically prohibited; they will not, for example, be able to impose new taxes, as an individual has no power to tax. The general power of competence does not remove any duties from local authorities – just like individuals they will need to comply with duties placed on them

**Comment [AT7]:** Addition recommended by Legal Services

- 1.34 Apart from “what and how”, we also need to make clear, for transparency and accountability purposes – “who” it is within the Council – that has the power to do something. This means that we must produce a “Delegation Scheme” describing these formal responsibilities.

### 2. Who?

- 2.1 To help understand what follows, there are a number of levels of decision making under our Constitution. Each of these is reflected by the tables which follow later in this section.
- 2.2 First, is **full Council** itself. Full Council retains a range of higher level decisions – many relating to our overall strategies – or to the setting of our annual budget and of council tax. Some of these functions can legally **only** be undertaken at this highest level. With others, it has been this Council's own choice to do so (local choice functions).
- 2.3 Next, is **the Cabinet**. Under the Local Government Act 2000 the great majority of the Council's decisions are made under executive arrangements. The leader (a) may make those decisions or (b) may delegate the decision making to the Cabinet, another member of the Cabinet, a Committee of the executive, an area committee or an officer of the Council. Delegates may also delegate unless the leader otherwise directs, making must only be carried out by or through the Cabinet – either meeting together – or in some cases – to be decided on an individual basis. The Act prevents other councillors making such decisions.
- 2.4 Then – as qualified above – are the **individual Cabinet Councillors** – where powers may be expressly delegated to them.
- 2.5 Next comes a group of “**regulatory functions**”. Broadly, these are roles where the Council has the task of controlling the activities of individuals – often on an application by application basis. To deal with these detailed controls, parliament decided that special committees should be retained – **outside** the Cabinet. In our case this means we have a Planning Committee, a Licensing Committee and a Licensing Regulatory Committee made up of elected members and which meet

**Comment [AT8]:** Addition recommended by Legal Services

in public to hear and make decisions on the individual cases brought before them.

- 2.6 Finally are **the officers**. The great bulk of day to day operational decision making is delegated by the Council or the Cabinet or the Planning Committee to our professional staff. They need these powers so as to enable them to provide the services of the Council in the most economic, efficient and effective way.

### 3. What?

- 3.1 Attached are a number of tables setting out the broad areas of our statutory powers and the activities and functions we are involved in.
- 3.2 **Section 1** is a list of those matters which remain either with the full Council itself for decision or which are within its control – because the 2000 Act either requires it or permits it. The section also shows to whom these powers have been delegated (if at all) – whether to a Committee or to an officer.
- 3.3 **Section 2** sets out those powers and duties which the Act **excludes** from Cabinet decision making – such as Planning, Licensing and Licensing Regulatory issues. These are listed as delegated to a Committee or to an officer with any limits on those delegations also included.
- 3.4 **Section 3** lists those powers and duties which are ones which **only** the Cabinet can deal with – itself – or through officers or its committees. This covers the great majority of our powers and duties – with most operational decision making continuing to be delegated to the officers under Section 5 below.
- 3.5 This part also lists functions across a series of Cabinet Functions. These reflect the current responsibilities of each of the current members of the Cabinet for the setting of the overall direction of these services.
- 3.6 **Section 4** describes the delegation arrangements to councillors and officers. This part also includes individual delegation to Cabinet Councillors. This will only be enforced following a specific resolution of Council. As with our current Delegation Scheme, most of the operational decision making under these powers and duties is delegated on to the officers.
- 3.7 **Section 5** describes the power and duties that are delegated to officers.

## SECTION 1

### 4. The Powers Of The Council

4.1 The functions statutorily reserved to the Council are set out below in column 1. Column 2 shows who else is involved – either as having full statutory powers delegated to them or as being the source of a recommendation to full Council.

4.2 Where the power is shown as delegated to an officer, then that officer shall also have the power to re-delegate that power to another officer of the authority or to refer or to remit to another regulatory body of the Council for it to decide. Details of the delegation shall be recorded in writing and kept by the Monitoring Officer.

	Function	If delegated – then to Whom?
1	To set the <i>Policy Framework</i> and the <i>Budget</i> within which the Cabinet must operate. (Both these terms are defined below)	Council – on the recommendation of the Cabinet
2	In a limited range of cases – to make decisions about the discharge of a “Cabinet function”. This applies <b>only</b> to those cases where the decision maker is considering an issue – which is not only:- (a) covered by the Policy Framework or the Budget, but also - (b) where the decision maker is inclined to make it in a manner which:- <ul style="list-style-type: none"> <li>• would be contrary to that Framework, or</li> <li>• would be contrary to/or not wholly in accordance with the Budget</li> </ul>	Council – on the recommendation of the Cabinet
3	To exercise – through delegated powers – those “regulatory functions” (these are listed in detail at Section 2 of this part of the Constitution) which must not be within the remit of the Cabinet:- (a) Development Control; Building Control	Planning Committee; Chief Executive Head of Planning and Regeneration;

	(b) Licensing and other Regulatory Functions	Licensing Committee; Regulatory Committee; Chief Executive; Head of HR and Development
	(c) Food Safety	Chief Executive; Head of HR & Development
	(d) Health & Safety at Work (this relates only to those functions which the Council exercises <b>other than</b> as employer)	Chief Executive Head of HR & Development
	(e) Electoral services	Returning and Electoral Registration Officer
	(f) Staffing matters (other than those dealt with in the Constitution under Standing Orders as to Employment of Officers)	Head of Paid Service (Chief Executive); Head of HR and Development;
	(g) Ceremonial and those Miscellaneous matters	Council
4	To agree and/or to amend the terms of reference of the Planning Committee, the Licensing Committee and the Regulatory Committee	Council – on the recommendation of the relevant Committee
5	To decide the number of seats to be allocated to each Party Group (or to independent councillors) in accordance with the “proportionality” rules in the Local Government & Housing Act 1989	Council – on the recommendation of the Monitoring Officer

6	To confirm the appointment of the Head of Paid Service	Council – on the recommendation of the relevant Appointments Panel set up for that purpose
7	To appoint the Monitoring Officer and the Section 151 Officer	Council – on the recommendation of the Head of Paid Service
8	To confirm the dismissal of the Head of Paid Service or of the Monitoring Officer or the Section 151 Officer	Council – on the recommendation of the relevant Appointments Panel set up for that purpose and the recommendation of an appointed Independent Person
9	To elect the Leader of the Council	Council – on the recommendation of the controlling political group or groups of the Council
10	To remove the Leader	Council – in accordance with the procedure in Article 7
11	To adopt the Constitution and agree any major changes to it	Council – on the recommendation of the Standards Committee
12	To approve any applications to the Secretary of State in respect of a Housing Land Transfer	Council – on the recommendation of the Cabinet
13	To appoint and dismiss representatives to those outside bodies whose role is <b>not</b> closely linked to an Cabinet function	The Chief Executive acting on the advice of the relevant Committee
14	To adopt/modify a Members' Allowances Scheme	Council – on the recommendation of the Independent Remuneration Panel
15	To change the name of the area	Council
16	To confer the title of honorary alderman	Council
17	To make, amend, revoke, re-enact or adopt bylaws and to promote or oppose the making of local legislation	Council – on the recommendation of the Cabinet

18	To adopt any plan or strategy (whether statutory or non-statutory) which the Council has decided should be undertaken by itself rather than by the Cabinet	Council – on the recommendation of the relevant Committee
19	To deal with any other matter which, by law, must be reserved to Council	Council

- 4.2 **The Council's Policy Framework** is defined in Article 4 of the Constitution. It consists of a series of important plans and strategies which form the basis for many of its services. Each is a substantial document in itself which is regularly reviewed and updated. They are not, therefore, included in this Constitution but current copies are always available at Phoenix House.
- 4.3 **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.
- 4.4 Whilst decisions on the framing of the Budget itself are ones for the full Council, many of the operational issues relating to monitoring and to virement are delegated to either the Cabinet, potentially to Cabinet Councillors or to the officers – subject always to the approval of the Section 151 Officer.

## SECTION 2

### Regulatory Powers Of The Council

5.0 In order to carry out the Council's "regulatory powers" the following Committees be constituted:-

- Planning Committee – 15 members
- Licensing Committee – 15 members
- Licensing Regulatory Committee – 15 members

5.1 The powers and duties of these committees are set out below:-

PLANNING COMMITTEE
<b>Membership – Fifteen Members of the Authority</b>
<b>Function</b>
To exercise <del>quasi-judicial</del> functions on behalf of the Council as set out below.
<b>Matters Delegated to this Committee</b>
<ul style="list-style-type: none"><li>• Planning and conservation functions relating to town and country planning and development control and all matters concerning trees</li><li>• To confirm and consider changes to the existing Scheme of Delegation to the Head of Planning and Regeneration</li><li>• Conservation Policy</li></ul>

LICENSING COMMITTEE
<b>Membership – Fifteen Members of the Authority</b>
<b>Function</b>
To exercise <del>quasi-judicial</del> functions on behalf of the Council as set out below.
<b>Matters Requiring Submission to the Council</b>
<ul style="list-style-type: none"><li>• Statement of Licensing Policy under section 5 of the Licensing Act 2003</li><li>• Licensing Policy</li></ul>
<b>Matters Delegated to this Committee</b>
<ul style="list-style-type: none"><li>• Liquor, Gaming, Entertainment and Licensing;</li><li>• Functions relating to licensing and registration as set out in Schedule 1 to the Functions Regulations.</li><li>• To confirm the scheme of delegation of functions in the Guidance to the Licensing Act 2003 and Gambling Act 2005 see Appendix 1</li></ul>



LICENSING REGULATORY COMMITTEE
<b>Membership – Fifteen Members of the Authority</b>
<b>Function</b>
To exercise <del>quasi-judicial</del> functions on behalf of the Council as set out below.
<b>Matters Requiring Submission to the Council</b>
None
<b>Matters Delegated to this Committee</b>
<ul style="list-style-type: none"> <li>• Taxi, Private Hire and Miscellaneous Licensing</li> <li>• To confirm the scheme of delegation of functions relating to Hackney Carriage and Private Hire Licensing see Appendix 2</li> </ul>

## SECTION 3

### Cabinet Powers

6.0 The majority of the decision making of the Council relates to areas which are defined as "Executive matters" within the 2000 Act and can therefore **only** be dealt with via the Cabinet.

- (a) The Cabinet meeting as a body **can** make Cabinet decisions;
- (b) ~~Under the Local Government Act 2000 the great majority of the Council's decisions are made under executive arrangements. The leader (a) may make those decisions or (b) may delegate the decision making to the Cabinet, another member of the Cabinet, a Committee of the executive, an area committee or an officer of the Council. Delegates may also delegate unless the leader otherwise directs. So too can individual Cabinet Councillors. Council will identify particular powers which should be taken by individual Cabinet Councillors;~~
- (c) The great majority of operation decision making within policy and the budget will, as before, be the responsibility of the officers – through the Delegation Scheme – subject to the limitations included here;
- (d) The need for both transparency and accountability require that decision making of this type under the Act needs to be carefully controlled and recorded and that all councillors together with the press and public have full access to those decisions – not only at the time – but also before and after – they are made;
- (e) ~~Certain types of decisions – key decisions – have great levels of safeguards placed upon them and require (for instance) consultation with the Council's Scrutiny Committee, Audit Committee and Policy Development Groups before being progressed;~~
- (f) Those members who are **not** Cabinet Councillors cannot make those decisions;
- (g) Neither full Council nor Scrutiny Committee, Audit Committee or Policy Development Groups can make Cabinet decisions.

**Comment [AT9]:** Addition recommended by Legal Services

**Comment [AT10]:** Advice from Legal Services is that there is nothing in legislation to require this and therefore it should be removed from the Constit

6.1 ~~The delegation scheme in relation to executive functions is the leader's delegations scheme and is subject to any changes he/she wishes to make. This~~ Delegation Scheme has, therefore, been based on the following features:-

**Comment [AT11]:** Advice from Legal Services to add the wording re the Leader

- (a) Most day to day operational decision making powers are delegated to the Council's officers (see section 7.2);
- (b) the role of the Cabinet – meeting as a body – has been designed to avoid such operational decisions coming to it **unless** they are **key decisions** or are otherwise of real significance across the Council's services;
- (c) the Cabinet's major role will be in defining and reviewing the Council's strategies and significant policies and in advising the Council on these matters and as to the Budget;
- (d) where decisions **can** be made at a lower level, then the Cabinet will ensure that this Scheme is designed, implemented and modified so as to achieve that purpose;

- (e) before accepting an item for the Cabinet's agenda, the Leader or the relevant Cabinet Member, together with the ~~Principal~~ Member Services ~~Manager~~ ~~Officer~~, will satisfy themselves that the issue could not be otherwise properly dealt with under delegated powers;
- (f) where a matter arises which involves a range of detailed issues but is of such significance that it must be taken to the Cabinet – then the Leader or the relevant Cabinet Member responsible for that service must assess whether the matter is of such urgency that it would **not** be practical for the advice to be first obtained from:-
  - (i) the Scrutiny Committee, Audit Committee or the relevant Policy Development Group, or
  - (ii) an officer, or
  - (iii) a committee of the Cabinet itself;
- (g) so as to make sure that its strategic role is clearly identified and maintained, reports to the Cabinet will be written in such a form that ensures that:-
  - (i) unnecessary detail is excluded;
  - (ii) policy factors are clearly identified and analysed;
  - (iii) impact upon our corporate priorities is identified;
  - (iv) all necessary consultation as to its content has taken place, and
  - (v) the issues for decision by the Cabinet are justified as ones which could not reasonably be taken elsewhere.

## SECTION 4

### Delegations To Cabinet Councillors And Officers

The delegation scheme in relation to executive functions is the leader's delegations scheme and is subject to any changes he/she wishes to make.

#### 7.1 Principle 1

The overriding principle upon which the Council's Delegation Scheme is founded is:

All the Council's statutory powers and duties in relation to the functions and activities (listed in the following table) are delegated to either the relevant Cabinet Member or to the Cabinet and from there, as shown, to the Management Team. Those listed include all such incidental and ancillary powers as are needed in order to carry out those functions together with all statutory powers delegated to either Cabinet Member or to the Cabinet by another local authority by virtue of an agreement under the Local Government Acts. Such decisions of the Cabinet may, from time to time, be delegated to the relevant Cabinet Member subject at all times to the following provisos:-

- (a) the decision in question is not a "key decision";
- (b) the power to make the decision has not previously been delegated to an officer;
- (c) the Cabinet Member has considered what consultation is necessary with regard to the proposed decision – including the need to consult with local Ward Members;
- (d) the proposed decision is compliant with the terms and conditions of the existing policy framework;
- (e) receipt and consideration of a written report containing a summary of the legal, financial and all other relevant implications arising from the proposed decision;
- (f) publication of the proposed decision in accordance with the Cabinet Procedure Rules referred to in Part 4 of the Constitution.

#### 7.2 The consequent powers to make all operational decisions as to the Council's services are delegated to the Head of Paid Service, to the Monitoring Officer and to the Section 151 Officer (these are referred to as the "statutory officers"), together with the Heads of Services (who are together known as the "Management Team"), so long as the decision:-

- (a) falls within the Council's Policy Framework, and
- (b) is otherwise within our approved policies, and
- (c) complies with the law, Financial and Contracts Procedure Rules, and other controls within this Constitution, and
- (d) is wholly in accordance with the budget for the current and following year, and
- (e) ~~has not been disapproved by any of the "statutory officers", and~~

**Comment [AT12]:** Advice from Legal Services is to take this wording out

(f) has not been the subject of a request from the responsible Cabinet Member (if any) for the decision to be remitted to the Cabinet.

### 7.3 Principle 2

Even where statutory power has been delegated, the delegatee still retains a discretion as to how the decision is to be taken. Either:-

- (a) to deal with it him/herself;
- (b) to “remit” the decision – “upwards” (ie – in order to seek endorsement of a proposed decision) – in the case of “Cabinet matters” to the Cabinet, or in the case of a non-Cabinet matter to the Council or to the Planning Committee or to the Regulatory Committees; either Licensing or Regulatory;
- (c) to further delegate that power;
- (d) to consult others before exercising the power;
- (e) to take the decision jointly with other Cabinet Member or officers.

### 7.4 Principle 3

It is expected that, within these delegations, the officers will keep Cabinet Member fully briefed as to the services for which they are responsible and that they will consult with the relevant Cabinet Member on issues where either believe that this is needed. Built upon this foundation, it is anticipated that this will mean that a number of otherwise delegated decisions will, in practice, be taken either by – or in consultation with – the Cabinet Member where he/she believes the matter to be one of a particular sensitivity or corporate significance.

### 7.5 Principle 4

So as to avoid any misunderstandings as to the exercise of these powers, each Cabinet Member and/or each member of the Management Team will adopt the following procedure:-

- (a) completion of the Decision Recording Form at Appendix 3 of Part 3 of the Constitution by member of Management Team and/or other officer;
- (b) consultation with the relevant Cabinet Member(s) and Officer(s);
- (c) agree approach as to the scope for joint decisions;
- (d) Cabinet Member to sign Decision Recording Form.

### 7.6 Principle 5

Any further general delegation of specific statutory powers by Management Team to an officer under Principle 2 shall be made in writing and shall record its extent and any limitations on the exercise of those powers.

A copy of any such delegation shall be provided to The Monitoring Officer who, as “proper officer”, when so required has the duty formally to certify the existence and validity of those statutory powers in any legal proceedings or to sign formal agreements on the Council’s behalf giving effect to those decisions.

7.7 Within these principles, the following table lists the range of functions for which all the Council’s statutory powers and duties are delegated to the Cabinet and then to the Management Team. The table shows the current service portfolios each of which is held by a Cabinet Member as responsible for the overall policy direction

for that service. The table also shows the “lead officer” who is primarily responsible for the delivery of that service. Any limits upon the delegations to the officers (other than those listed above) are shown here.

## DELEGATION OF CABINET FUNCTIONS

**General Delegation to all Cabinet Members (subject to requirement that the matter is within the terms and reference of their respective Portfolio – see [Appendix 3 for details](#))**

- 8.0 Authority to issue press releases and deal with the press.
- 8.1 Authority to approve proposals and schemes in respect of operational matters that are required to implement the policy framework.
- 8.2 Authority to accept the lowest tender, provided it falls within the sum set by the Cabinet, if payment is to be made by the Council, or the highest tender, if the payment is to be received by the Council, such acceptance to be reported to the next meeting of the Cabinet where tenders or offers are invited by the Council for:
  - (a) carrying out of works in accordance with the specification and/or bills of quantity (over the sum of £50K), or,
  - (b) purchase or sale of land, premises (over the sum of £100K), vehicles, equipment or machinery surplus to the Council's needs (over the sum of £50K), or,
  - (c) concessions in accordance with detailed particulars to accept a tender provided the accepted sum is within estimates.
- 8.3 Authority to approve alteration and extensions to schedules/specifications to contract that do not have the effect of exceeding a previously approved budget sum, subject to legal advice.
- 8.4 Authority to approve a maximum 5% “overspend” in respect of expenditure on works for a specified project within an approved budget.
- 8.5 Authority to approve acquisitions, disposals and leases where in accordance with the policy framework and subject to relevant terms and conditions being negotiated by the relevant member of the Management Team.
- 8.6 Authority to increase or alter fees and charges, subject to a statutory consultation and/or advertisement procedure where applicable.
- 8.7 Dealing with human resources related issues (except those delegated to the Chief Executive), including organisational reviews but excluding additions to the approved establishment outside the approved budget (that would previously have been a matter for the Cabinet).
- 8.8 Submitting comments on any consultation paper, report, information item, progress item or proposed or actual policy of any external body (for example, government

policies, planning guidance, white and green papers, etc). Such matters will be reported in the Weekly Information Sheet.

- 8.9 Approving all grants within the approved budget but excluding those already delegated to officers.
- 8.10 All decisions necessary to enable the Council to implement the Council's agreed Capital Programme.
- 8.11 Appointments to external bodies (only in relation to Executive Arrangements and Advisory Bodies).

**Comment [AT13]:** Wording amended by Legal Services

## **SECTION 5**

### **Scheme Of Delegation To Officers Only**

#### **1 SUMMARY**

- 1.1 This section describes the Chief Officers and other principal officers and sets out the delegation of functions to them.
- 1.2 The over-riding principle is that (with appropriate consultation requirements and exceptions) each Chief Officer will have delegated authority over all matters within their responsibility.

#### **2 THE PRINCIPAL OFFICERS OF THE COUNCIL**

##### **2.1 Chief Officers**

The Chief Officer of the Council is:-

- (a) The Chief Executive (Head of Paid Service)

##### **2.2 The Management Team**

The Management Team (MT) will comprise the Chief Executive, the Heads of Communities and Governance (Monitoring Officer), Finance (Section 151 Officer) Business Information Service, Planning and Regeneration Service, Housing and Property Services, Human Resources and Development and Customer First.

The purposes of the MT are to ensure:-

- (a) the Council maintains an effective corporate identity and purpose;
- (b) the aims and objectives of corporate policies are achieved;
- (c) there is an effective form of communication and consultation between the Heads of Services;
- (d) there is effective monitoring of the Council's corporate aims and performance; and
- (e) Ensure that the business of the Council is carried out in a proper manner

##### **2.3 "Proper Officers" and the other Statutory Officers**

The law requires the Council to appoint officers in respect of particular responsibilities. The principal appointments are set out in Appendix 6.

## **3 FUNCTIONS DELEGATED TO INDIVIDUAL STATUTORY OFFICERS AND OTHER PRINCIPAL OFFICERS**

### **3.1 THE CHIEF EXECUTIVE (HEAD OF PAID SERVICE)**

#### **Delegation**

All Council functions shall be the corporate strategic management responsibility of the Chief Executive but the processes and operational decisions shall be the responsibility of the appropriate Heads of Service.

The Chief Executive as Head of Paid Service is authorised to exercise the following functions:-



- (a) Corporate Human Resources functions contained in Appendix 2
- (b) Elections
- (c) All functions listed under the Heads of Service in 3.2 to

#### **Exceptions and Conditions**

There is excepted from the delegation to the Chief Executive any matter:-

- (a) reserved to full Council;
- (b) delegated to a committee;
- (c) which comprises or includes a function described in Appendix 1 (functions which cannot be exercised by a delegated officer);
- (d) which is required to be discharged by another officer pursuant to the requirements of statute;
- (e) which is a function which for any other reason cannot be exercised by the Chief Executive.

The Chief Executive must at all times comply with the Council's Constitution and particularly the principles of decision making to be found in Article 12 of the Constitution together with further statements made below.

#### Notes

The terms of reference of committees are set out in Part 3 of the Constitution.

The delegation is subject to and with the benefit of the general provisions highlighted at 5 below.

### **3.2 THE HEAD OF COMMUNITIES AND GOVERNANCE (MONITORING OFFICER)**

#### **Delegation**

The Head of Communities and Governance shall be the Monitoring Officer and is authorised to exercise the following functions:

- (a) Economic Development
- (b) Community Development
- (c) Markets
- (d) Internal Audit
- (e) Risk Management
- (f) Performance Management
- (g) Strategic Corporate Planning
- (h) Safeguarding of Children and Vulnerable Adults
- (i) Member Services
- (j) Legal Services
- (k) As Monitoring Officer, the Head of Communities and Governance is responsible for the legality of the Council's processes and decisions, in particular:-

- (i) to prepare, negotiate and execute documents and otherwise take any action required to give effect to all resolutions and/or decisions of the Council at committee or by a delegated officer;
- (ii) to institute, defend or act in respect of legal proceedings or other determinations involving the Council including power to settle and compromise such matters where necessary to give effect to a resolution and/or decision of the Council at committee or by a delegated officer or where necessary to protect the Council's interest;
- (iii) to make and serve notices and other instruments where necessary to give effect to a resolution and/or decision of the Council at committee or delegated officer or where necessary to protect the Council's interest;
- (iv) To commence proceedings in circumstances that require immediate action in consultation with the relevant Cabinet Member.

#### **Exceptions and Conditions**

There is excepted from the delegation to the Head of Communities and Governance any matter:-

- (a) reserved to the full Council;
- (b) delegated to a committee;
- (c) which comprises or includes a function described in:-
  - (i) appendix 1 (functions which cannot be exercised by a delegated officer);
  - (ii) appendix 2 (corporate personnel functions unless given delegated authority by the Chief Executive);
- (d) which is required to be discharged by another officer pursuant to the requirements of statute;
- (e) which is a function which for any reason cannot be exercised by the Head of Communities and Governance.

The Head of Communities and Governance must at all times comply with the Council's Constitution and particularly the principles of decision making found in Article 12 of this Constitution together with further statements made below.

#### Note

The terms of reference of committees are set out in Part 3 of this Constitution.

The delegation is subject to and with the benefit of the general provisions at 5 below.

### **3.3 HEAD OF FINANCE (SECTION 151 OFFICER)**

#### **Delegation**

The Head of Finance as the Section 151 Officer is authorised to exercise the following functions:-

- (a) Financial Services
- (b) Housing and Council Tax Benefits

- (c) Waste and Recycling Management
- (d) Environmental Enforcement

The Head of Finance shall be the Chief Financial Officer.

**Exceptions and Conditions**

There is excepted from the delegation to the Head of Finance any matter:-

- (a) reserved to the full Council;
- (b) delegated to a committee;
- (c) which comprises or includes a function described in:-
  - (i) appendix 1 (functions which cannot be exercised by a delegated officer);
  - (ii) appendix 2 (corporate personnel functions unless authorised by the Chief Executive);
- (d) which is required to be discharged by another officer;
- (e) which is a function which for any other reason cannot be exercised by the Head of Finance.

The Head of Finance must at all times comply with the Council's Constitution and particularly the principles of decision making found in Article 12 of this Constitution together with further statements made below.

Note

The terms of reference of committees are set out in Part 3 of this Constitution.

The delegation is subject to and with the benefit of the general provisions at 5 below.

**3.4 HEAD OF PLANNING AND REGENERATION**

**Delegation**

The Head of Planning and Regeneration is authorised to exercise the following functions:-

- (a) Development Control
- (b) Forward Planning
- (c) Conservation
- (d) Building Control

**Exceptions and Conditions**

There is excepted from the delegation to the Head of Planning and Regeneration any matter:-

- (a) reserved to the full Council;
- (b) delegated to a committee;
- (c) which comprises or includes a function described in:-
  - (i) appendix 1 (functions which cannot be exercised by a delegated officer);

- (ii) appendix 2 (corporate personnel functions unless authorised by the Chief Executive);
- (d) which is required to be discharged by another officer;
- (e) which is a function which for any other reason cannot be exercised by the Head of Planning and Regeneration.

The Head of Planning and Regeneration must at all times comply with the Council's Constitution and particularly the principles of decision making found in Article 12 of this Constitution together with further statements made below.

Note

The terms of reference of committees are set out in Part 3 of this Constitution.

The delegation is subject to and with the benefit of the general provisions at 5 below.

**Delegation specific to the Planning Function**

To exercise all the powers of the Council as Local Planning Authority (including the conduct of appeals and enquiries) under the Planning Acts, (unless expressly delegated to another officer) except where:-

**In the case of all Applications:**

1. In the opinion of the Head of Planning and Regeneration the application is of a significant controversial or sensitive nature;
2. The application has been submitted by or on behalf of the Council;
3. The application is from an Elected Member or Officer;
4. The application is accompanied by an Environment Impact Assessment (EIA);
5. The application is a significant or major departure and is recommended for approval;
6. The Ward Member; Chairman or Vice-Chairman of Planning Committee requires that the Committee consider an application having given clear planning reasons;
7. Applications will be delegated to the Head of Planning and Regeneration to refuse if Section 106 Agreements are not signed and completed within 8 or 13 week time-scale.

**In the case of re-negotiations on planning obligation (S106 Agreements and Undertakings);**

1. Is submitted under Section 106 BA of the Town and Country Planning Act 1990, if Committee considerations would be outside the date of determination delegated authority is given to the Head of Planning and Regeneration to agree amendments in consultation with the Head of Housing, the Cabinet Member for Housing and the Chair of Planning Committee

2. In the case of renegotiations on other planning obligation issues the Ward Member or Chair or Vice Chair of Planning requires that the Committee consider the proposed changes having given clear planning reasons otherwise they will be delegated to the Head of Planning and Regeneration

**In the case of Enforcement:**

1. Formal enforcement action is proposed other than a Breach of Condition Notice or in the case where urgent action is required to commence enforcement proceedings, consisting of the service of a Temporary Stop Notice, Enforcement Notice, Stop Notice or commence Injunction proceedings. These proceedings to only be instigated in consultation with one or more of the following: Planning Chairman, Vice Chairman, Ward Member;
2. Other than in consultation with the Legal Services Manager prosecution proceedings regarding any unauthorised advertising/fly posting.

(Note: Formal action does not include the service of a Planning Contravention Notice or Section 330 requisition for information)

In the case of the Community Infrastructure Levy Regulations (CIL) and associated enforcement:

1. Formal CIL enforcement action comprising CIL Stop Notice or in the case where urgent action is required to commence enforcement proceedings consisting of the service of a CIL Stop Notice or commence CIL Injunction proceedings. These proceedings only to be instigated in consultation with one or more of the following: Planning Chairman, Vice Chairman, Ward Member.

**In the case of Conservation:**

1. It involves the designation of new, or amendment of existing Conservation Area boundaries;
2. It requires the issue of repair and urgent work notices;
3. It involves the submission of funding bids or schemes that have budgetary implications.

**In the case of the Local Plan:**

Local Plan proposals and policies with reasoned justification for publication and consultation or adoption at the following stages (other than where minor modifications and other minor changes are made).

- Local Plan options consultation
- Publication and consultation of the 'submission' Local Plan
- 
- Local Plan Adoption

**In the case of Planning Policy:**

- 1 Representations to strategic plans and policies at a larger than District scale are to be made
- 2 Supplementary Planning Documents dealing with Mid Devon wide guidance and sites/areas for publication prior to consultation and for adoption (other than where minor modifications and other minor changes are made)

*(Not including updating contributions sought through S106 Agreements to reflect changes in the cost of provision of facilities.)*

### **Building Control And Safety:**

To exercise all the Council's powers under the Building Act 1984 or regulations made there under except where:-

*In the case of charges*

- o The annual review of charge results in increases greater than the rate of inflation.

### **Other Provisions**

1. To authorise caravan rallies in accordance with the requirements of CS and C of DA 1960.
2. To make representations where appropriate and with the agreement of the Chairman and/or Vice Chairman of the Committee and Ward Member's (as appropriate) in respect of new Applications for Goods Vehicles Operators' Licenses, or when a significant variation of an existing licence is proposed.
3. To caution offender where there was evidence of a criminal offence and the offender admitted the commission of the offence but the public interest did not require a prosecution.

## **3.5 HEAD OF HUMAN RESOURCES AND DEVELOPMENT**

### **Delegation**

The Head of Human Resources and Development is authorised to exercise the following functions:-

- (a) Human Resources
- (b) Payroll
- (c) Learning and Development
- (b) Leisure
- (c) Licensing
- (d) Environmental Health
- (e) Private Sector Housing
- (f) Health & Safety

### **Exceptions and Conditions**

There is excepted from the delegation to the Head of Human Resources and Development any matter:-

- (a) reserved to the full Council;
- (b) delegated to a committee;
- (c) which comprises or includes a function described in:-
  - (i) appendix 1 (functions which cannot be exercised by a delegated officer);
  - (ii) appendix 2 (corporate personnel functions unless authorised by the Chief Executive);
- (d) which is required to be discharged by another officer;
- (e) which is a function which for any other reason cannot be exercised by the Head of Human Resources and Development.

The Head of Human Resources and Development must at all times comply with the Council's Constitution and particularly the principles of decision making found in Article 12 of this Constitution together with further statements made below.

#### Note

The terms of reference of committees are set out in Part 3 of this Constitution.

The delegation is subject to and with the benefit of the general provisions at 5 below.

## **3.6 HEAD OF HOUSING AND PROPERTY SERVICES**

### **Delegation**

The Head of Housing and Property Services is authorised to exercise the following functions:-

- (a) Housing Services
- (b) Property Services
- (c) Grounds Maintenance
- (d) Community Safety
- (e) Emergency Planning

### **Exceptions and Conditions**

There is excepted from the delegation to the Head of Housing and Property Services any matter:-

- (a) reserved to the full Council;
- (b) delegated to a committee;
- (c) which comprises or includes a function described in:-
  - (i) appendix 1 (functions which cannot be exercised by a delegated officer);

- (ii) appendix 2 (corporate personnel functions unless authorised by the Chief Executive);
- (d) which is required to be discharged by another officer;
- (e) which is a function which for any other reason cannot be exercised by the Head of Housing and Property Services.

The Head of Housing and Property Services must at all times comply with the Council's Constitution and particularly the principles of decision making found in Article 12 of this Constitution together with further statements made below.

Note

The terms of reference of committees are set out in Part 3 of this Constitution.

The delegation is subject to and with the benefit of the general provisions at 5 below.

### **3.7 HEAD OF CUSTOMER SERVICES**

**Delegation**

The Head of Customer Services is authorised to exercise the following functions:-

- (a) Customer Services
- (b) Communications
- (c) Revenues

**Exceptions and Conditions**

There is excepted from the delegation to the Head of Customer Services any matter:-

- (a) reserved to the full Council;
- (b) delegated to a committee;
- (c) which comprises or includes a function described in:-
  - (i) appendix 1 (functions which cannot be exercised by a delegated officer);
  - (ii) appendix 2 (corporate personnel functions unless authorised by the Chief Executive);
- (d) which is required to be discharged by another officer;
- (e) which is a function which for any other reason cannot be exercised by the Head of Customer Services.

The Head of Customer Services must at all times comply with the Council's Constitution and particularly the principles of decision making found in Article 12 of this Constitution together with further statements made below.

Note

The terms of reference of committees are set out in Part 3 of this Constitution.

The delegation is subject to and with the benefit of the general provisions at 5 below.



### **3.8 HEAD OF BUSINESS INFORMATION SERVICES (BIS)**

#### **Delegation**

The Head of Business Information Services is authorised to exercise the following functions:-

- (a) ICT
- (b) Information Management
- (c) Gazetteer Management
- (d) Land Charges:

All the powers of the Council in relation to Local Land Charges and the Local Land Charges Register.

#### **Exceptions and Conditions**

There is excepted from the delegation to the Head of BIS any matter:-

- (a) reserved to the full Council;
- (b) delegated to a committee;
- (c) which comprises or includes a function described in:-
  - (i) appendix 1 (functions which cannot be exercised by a delegated officer);
  - (ii) appendix 2 (corporate personnel functions unless authorised by the Chief Executive);
- (d) which is required to be discharged by another officer;
- (e) which is a function which for any other reason cannot be exercised by the Head of BIS.

The Head of BIS must at all times comply with the Council's Constitution and particularly the principles of decision making found in Article 12 of this Constitution together with further statements made below.

#### **Note**

The terms of reference of committees are set out in Part 3 of this Constitution.

The delegation is subject to and with the benefit of the general provisions at 5 below.

## **4 FUNCTIONS DELEGATED TO ALL HEADS OF SERVICE**

### **4.1 Delegation**

In addition to the functions specifically delegated by this part of the Constitution, together with those functions contained in the existing register of delegations attached at Appendix 5, all Heads of Service are authorised to exercise any of the Council's functions in relation to the day to day management and delivery of the services for which they are responsible.

### **4.2 Condition**

Each Head of Service Officer must comply with the principles of decision making set out in Article 12 of the Constitution and further set out within this part of the Constitution.

## **5 GENERAL PROVISIONS APPLICABLE TO DELEGATIONS**

### **5.1 Further delegations by officers**

Where:-

- (a) a function has been delegated to an officer; or
- (b) an officer has been appointed to discharge the function of a proper or other statutory officer, that officer may in turn delegate that function to another officer or officers. If they do so then:-
  - (a) the delegation shall be recorded in writing and kept by the Monitoring Officer; and
  - (b) a decision taken pursuant to that delegation shall:-
    - (i) be taken in the name of the officer to whom the function was originally delegated; and
    - (ii) have effect as if it had been taken by that officer.

### **5.2 Additional delegation to officers to accord with responsibilities**

In addition to any other delegation to an officer contained in this part of the Constitution, each officer is authorised to exercise any function as necessary for them to perform such of the duties set out in their job description as they are required to perform by the officer or officers responsible for their management.

### **5.3 Additional delegation in particular circumstances**

The Council, the Cabinet or a committee may (unless prevented by statute, the standing orders, the rules of procedure or the requirement of any subsisting Council policy) delegate to an officer the exercise of a function reserved to them.

**5.4** The discretion conferred by paragraph 5.3 above shall only be exercised where the Council, the Cabinet relevant committee or officer (as appropriate) consider it necessary in particular circumstances for the proper exercise of the relevant function.

### **5.5 Exercise of delegated power by Council/committee**

Notwithstanding a delegation to an officer of any of the Council's functions:-

- (a) the Council, the Cabinet or a committee (where a matter is within the Cabinet or the committee's terms of reference) may exercise the delegated function itself; and

- (b) an officer to whom a function has been delegated may refer the matter for a decision to the Council, the Cabinet or a committee (where the matter is within the Cabinet or the committee's terms of reference).

**5.6** The discretion conferred by paragraph 5.5 shall only be exercised where the Council, the Cabinet, relevant committee or officer (as appropriate) consider it necessary in particular circumstances for the proper exercise of the relevant function.

### **5.7 Inability to Act: Substitute Officers**

If any officer:-

- (a) (i) to whom a function has been delegated; or
- (ii) who has been appointed to discharge the function of a proper or other statutory officer,  
is for any reason unable to act; or
- (b) if the post of any such officer is vacant

then (except where written provision has already been made), the Chief Executive in consultation with the Head of Communities and Governance shall determine who shall act as substitute officer.

## **6 FURTHER GUIDANCE ON PRINCIPLES OF DECISION MAKING**

### **6.1 Summary**

The following paragraphs are to be read in conjunction with Article 12, Paragraph 12.02 of this Constitution and Section 4 of this part of the Constitution.

This section provides direction and guidance to officers involved in the decision making process.

It sets out general requirements, describes the available decision making processes and provides criteria for choosing a process (where it is within an officer's discretion). It also provides a summary of the principal obligations and factors involved in operating the chosen process – including the publication of recording procedures which must be followed where a decision is taken by an officer in consultation with the relevant committee chairman.

## **7 OFFICER DECISION MAKING**

### **7.1 Introduction**

These paragraphs set out the essential requirements of officers and introduce some key issues relevant to the decision making process as a whole.

Section 8 provides the specific criteria for the choice of decision making process and Section 9 provides the protocol for taking decisions within the selection process.

In all decision making, officers must have regard to paragraph 4 of this part of the Constitution.

### **7.2 Essential Requirements**

In participating in the Council's decision making process and in exercising their delegated functions, delegated officers must comply with:-

- (a) The Council's Rules of Procedure;
- (b) The Council's Financial and Contract Procedure Rules;
- (c) The Articles of the Constitution and further guidance contained in this part.

### **7.3 Key Issues; A General Context for Decision Making**

When making a decision delegated officers must consider:-

(1) Effect on Others; Public and Councillor Expectation

- (a) The effect on communities, businesses and individuals.
- (b) The need to ensure democratic accountability through responding to:-
  - (i) the expectation of the public and councillors as to the process of decision making; and
  - (ii) the anticipated interest of the public and councillors in the matter.
- (c) The effect of the matter on the Council's relationship with Government, Government Agencies and other Local Authorities, private, not-for-profit voluntary sector partners or other external bodies.
- (d) The effect of the matter on other Council services and functions.
- (e) Whether the matter is likely to prove controversial or to involve a fine balance between possible alternative decisions.

(2) Budget

- (a) The approved budget and financial plan.

(3) Policies and Plans

- (a) The approved policy framework, which is approved by Council annually.
- (b) Whether the matter would involve a new policy issue.

(4) General Considerations

- (a) General consequences
- (b) Legal consequences
- (c) Personnel consequences
- (d) Human Rights consequences
- (e) Environmental consequences

## **8 SELECTING THE PROCESS OF DECISION MAKING**

### **8.1 Introduction**

The following paragraphs set out the available decision making processes and give direction and guidance on how selection should be made.

Over time, the requirements of this guidance will become familiar to delegated officers. In the meantime, the sequential questions listed below may help officers to decide which is the correct process:-

- (a) Does the decision need to be taken by Full Council?

It does if the subject matter of the decision falls within the terms of reference of the Council

the nature of the decision is such that the delegated officer ought to refer to the Council.

- (b) If not, does the decision need to be taken by the Cabinet or a committee or individual Cabinet Member?

It does if:

- the subject matter of the decision falls within the terms of reference of the Cabinet or the committee or individual Cabinet Member;
- the nature of the decision is such that the delegated officer ought to refer to the Cabinet or committee or individual Cabinet Member.

- (c) If not, then the decision can be taken by the delegated officer appropriate to the subject matter of the decision.

- (d) but before taking the decision, the delegated officer may need to consult with a ward member(s), the Leader and/or relevant Cabinet Member(s), a committee chairman or the relevant Head of Service.

The formal requirements of this guidance of this guidance are set out below.

## 8.2 Decision Making Processes: Options and Uses

Table A below sets out the available decision making processes:-

Column 1 describes each process

Column 2 defines the circumstances in which each is to be used.

Where a matter is before a delegated officer, the delegated officer must ensure that any decision in relation to that matter is taken in accordance with the requirements of Table A below.

<b>TABLE A - DECISION MAKING PROCESSES AND THEIR USES</b>	
Decision making process:	To be used:
Full Council	<p>If the decision would involve any divergence from the current budget and/or policy framework.</p> <p>If the decision would involve determining a new policy of major corporate or strategic significance</p> <p>Note:</p> <p>The decision will also be taken by full Council if:</p> <p>(a) required by law;</p> <p>(b) it is the approval of the budget and policy framework;</p> <p>(c) it has been referred to full Council by the Cabinet or one of the committees of the Council.</p>
The Cabinet or a committee	If the decision falls within the terms of reference of the Cabinet or a committee and (where relevant to the committee in question) has been referred to

	the committee by a delegated officer.
<p>A delegated officer after consultation with one or more (as appropriate to the decision) of the following:-</p> <ul style="list-style-type: none"> <li>- the Cabinet Member</li> <li>- a committee chairman of a relevant committee</li> <li>- ward member(s)</li> <li>- Management Team</li> <li>- one or more Heads of Service</li> </ul>	<ul style="list-style-type: none"> <li>- If (a) the matter would have previously been considered by a relevant policy committee and (b) there are sufficient policy, resource or legal issues and/or significant public/councillor interest.</li> <li>- if (a) the matter would have previously been considered by a committee, and (b) there are significant policy, resource or legal issues and/or significant public/councillor interest.</li> <li>- if there are issues which would have significant impact on the community where it would have previously been considered by the committee in question.</li> <li>- where there are significant cross-department policy issues and/or there would be significant cross-department effects on service delivery</li> <li>- where there would be significant effects on the policies and/or service delivery for a Head of Service responsible</li> </ul>

### 8.3 Decision Making by the Cabinet and Committees

The Cabinet takes a more strategic role and, therefore, operational issues will be determined at officer level.

The few committees which will remain relatively unchanged are

Planning Committee, Licensing Committee and Regulatory Committee

### 8.4 Reporting Matters to the Cabinet

Where a decision in relation to a matter falls to be taken by a delegated officer, the delegated officer may elect to report on the matter (either generally or in relation to some aspect of it) by way of information to the Cabinet if the delegated officer considers this expedient having regard to the nature and significance of the matter, the terms of reference of the Cabinet and the provisions of this part of the Constitution.

### 8.5 Involving Councillors: Supplementing the Formal Process

In addition to the formal requirements set out in Table A, delegated officers should ensure, through informal processes (including member briefing), that the relevant ward councillors and all councillors, if appropriate are kept informed and given the opportunity to contribute.

#### 8.6 Disputes About The Selection of a Decision Making Process

Except as provided by the following paragraph, any disagreement as to which of the decision making processes is appropriate to a matter shall be determined by the Leader in consultation with the Head of Communities and Governance. The decision of the Leader shall be final.

Where the disagreement is as to whether a decision should or should not be made by the Leader, the disagreement shall be determined by Chairman and Vice Chairman of the Council in consultation with the Chief Executive. The collective decision of the Chairman and Vice Chairman of the Council shall be final.

### 9 INTERPRETATION

#### 9.1 Summary

This section contains formal provisions designed to assist in the interpretation of this part of the constitution where there is doubt as to its meaning or application to a particular situation.

#### 9.2 General Interpretation Provisions

A purposeful approach shall be taken in interpreting the delegations contained in this part of the Constitution so as to give effect to the Council's intention that (subject to the requirements of the protocol) all functions of the Council shall be exercised at the appropriate level ~~by a delegated officer~~ and to give effect to the intentions of the Council as set out in the Constitution generally.

##### (a) Validity of Decisions

The validity of a decision of a delegated officer shall not be **questioned** on the grounds that:-

- (i) It ought not to have been made by an officer because the issue is of such significance that it ought to have been referred to the Council or a committee, or because the officer ought to have consulted with one or more other officers and/or councillors;
- (ii) It ought to have been made by a different officer; or
- (iii) The provisions of the protocol contained in this part of the Constitution or of any other directions, rules or guidance made by the Council or an officer have not been wholly or mainly followed.

although the validity of a decision may not be questioned it will be open to any Member of the Council to ask for scrutiny of the decision making process.

##### (b) Unallocated Functions

The exercise of any function which:-

- (i) shall be conferred on the Council after this part of the Constitution comes into effect; or

**Comment [AT14]:** Feedback information to be given at the Standards Committee meeting?

(ii) for any other reason does not fall within the authority of any officer shall be conferred (subject to the requirements of the Protocol) on such officers as shall be determined by the Chief Executive in consultation with the Head of Communities and Governance.

(c) Functions Defined by Example

Where:-

- (i) this part of the Constitution confers any power on any person; and
- (ii) the description of the extent of the functions to which that power applies includes or refers to particular examples of the functions

then

- (i) such examples shall be deemed to be included by way of illustration only and not limitation; and
- (ii) shall not prejudice the generality of the extent of those functions.

(d) Determination of Interpretation Questions

Any question as to the interpretation of this part of the Constitution (other than a disagreement to which the provisions of paragraph 8.6 above apply) shall be determined by the Chief Executive in consultation with the Head of Communities and Governance. The Chief Executive's decision shall be final.

(e) Directions and Guidance

If the Chief Executive considers it necessary or expedient, the Chief Executive may, in consultation with the Head of Communities and Governance, publish directions, rules or guidance relating to the interpretation and/or implementation of these officer delegations and committee terms of reference.



## APPENDIX 1

### FUNCTIONS WHICH CANNOT BE EXERCISED BY A DELEGATED OFFICER

- 1 Consideration of certain Ombudsman Reports  
(S31A Local Government Act 1974)
- 2 Consideration of reports of the Chief Finance Officer  
(S115 Local Government Finance Act 1988)
- 3 Consideration of reports of the Head of Paid Service  
(S4(5) Local Government and Housing Act 1989)
- 4 Consideration of reports of the Monitoring Officer  
(S5(5) Local Government and Housing Act 1989)
- 5 Certain functions relating to non-domestic rating  
(S139 Local Government Finance Act 1988)
- 6 Certain functions relating to Council Tax  
(S67 Local Government Finance Act 1992)
- 7 Making bylaws  
(S235 Local Government Act 1972)
- 8 Promoting legislation  
(S239 Local Government Act 1972)
- 9 **Reports of the External Auditor**  
**(Accounts and Audit Regulations S160 Local Government Act 1972)**

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## APPENDIX 2

### CORPORATE PERSONNEL FUNCTIONS

The following functions will be exercised by the Chief Executive:

- (a) Approval of strategic personnel policies
- (b) Council wide pay and grading structure and the job evaluation process which underpins it
- (c) Re-organisation/restructuring within services which result in a re-allocation of responsibilities and/or change in post titles or redundancies
- (d) Appointment of Heads of Service
- (e) Management competency and appraisal schemes
- (g) Changes in application of discretionary pension provisions for Local Government Pension Scheme (LGPS) and Total Pensionable Service (TPS)
- (f) Approval of early retirements/added years (where award of added years exceeds standard council policy)
- (h) Approval of personnel, employee development and health and safety procedures/codes of practice
- (i) Approval of revisions to conditions of service for employees arising from enhanced local discretion, new employment legislation, EC directives etc (including variations to/departures from National Agreements/Conditions of Service)
- (j) Early retirements (except ill-health) within the Council's Discretionary Pensions Policy
- (k) Trade union (corporate) facility time
- (l) Collective Dispute Hearings
- (m) Personnel/TUPE implications of the externalisation of functions
- (n) Heads of Service pay/gradings (determined by South West Employers and then ratified by Pay & Grading Group)
- (o) Approval of compensation in relation to such issues as the settlement of employment tribunal cases
- (p) Ring fencing for appointments
- (q) Appeals under the Job Evaluation Scheme (delegated to the Pay & Grading Group)
- (r) Payment of salaries above an employee's substantive grade (delegated to the Pay & Grading Group)

#### Note

In accordance with the requirements set out above the functions at (a) to (n) above will be exercised following consultation with the Leader of the Council.

### **Onward Delegation**

The Corporate Personnel Functions are exercised by the Chief Executive and are highlighted in Part 3 of the Constitution.

Attached is an authorisation from the Chief Executive who has determined that certain functions may be further delegated.

### **Onward Delegation to Heads of Service**

- 1 Minor changes to staffing structures within services, including reallocation of responsibilities and/or change of post title. Major reorganisation/restructuring of whole service units will require discussion at ~~Corporate~~ Management Team.
- 2 Management competency and appraisals schemes.  
Involves a decision as to whether or not a relevant qualification is appropriate to a particular job and whether that can be highlighted as an ongoing training need in an appraisal scheme.
- 3 Approval for trade union activities.
- 4 Personnel/~~TUPE~~ implications of any externalisation of functions.
- 5 Approval of compensation in relation to such issues as settlement of employment tribunal cases.
- 6 Ring fencing for appointments.
- 7 Appointment of staff.
- 8 Appointment of temporary staff for contracts less than 12 months within budget
- 9 Overtime payments.
- 10 Incremental increase within grade.
- 11 Bouquet/Merit payments (delegated to the Pay & Grading Group).
- 12 Honorarium payments (delegated to the Pay & Grading Group)

Finally, it should be remembered that decisions taken by Heads of Service are to be taken in the name of the Chief Executive and have the effect as if they had been taken by the Chief Executive. It should be further remembered that a function carried out by the Head of Service in relation to the above mentioned delegations must be recorded in writing.

### **Onward Delegation to the Pay and Grading Group**

The Pay and Grading Group consists of Management and Union representatives and deals with the Job Evaluation Scheme.

1. Appeals under the Job Evaluation Scheme
2. Payment of salaries above an employee's substantive grade
3. Bouquet/Merit payments
4. Honorarium payments
5. Payment of salary above the employee's substantive grade (Market Supplement).

DELEGATION TO OFFICERS THAT IS CONSEQUENTIAL UPON THE ADOPTION  
OF THE NEW CONSTITUTION AND THE RESPONSIBILITY FOR FUNCTIONS  
CONTAINED IN PART 3

POWER	OFFICER
<b>LAND TRANSACTIONS</b>	
Authority to approve the terms on which land development project – other than schemes in the approved Capital Programme of other standing Committees – are undertaken (this to include industrial developments; town centre developments; major land assembly and development projects)	Chief Executive
Provision of valuation services for the Council	Chief Executive
<b>ELECTIONS</b>	
Register of Electors	Chief Executive
Authority to adjust fees in respect of elections	Chief Executive
<b>FINANCE</b>	
Authority to deal with purchase, maintenance and deployment of vehicles where the expenditure is not within an approved budget head	Chief Executive
<b>HEALTH AND COMMUNITY SERVICES</b>	
To deal with Renovation Grants including Disabled Facilities Grants and Minor Works Grants	Head of Human Resources & Development
Houses in Multiple Occupation	Head of Human Resources & Development
Private Sector Housing	Head of Human Resources & Development
Health Education	Head of Human Resources & Development
Pest Control	Head of Human Resources & Development

Food Protection	Head of Human Resources & Development
Control of Pollution (save for dog litter and litter generally)	Head of Human Resources & Development
Control of Pollution (dog litter and litter generally)	Head of Finance
Water Quality	Head of Human Resources & Development
To deal with Infectious (communicable) and notifiable diseases	Head of Human Resources & Development
General health duties	Head of Human Resources & Development
To remove and dispose of abandoned vehicles	Head of Finance
To deal with issues relating to the Sunday Trading Act 1994	Head of Human Resources & Development
To deal with issues relating to Health and Safety at Work (where the Council is the enforcing authority) including such matters within the Council's own buildings	Head of Human Resources & Development
Authority to deal with National Health Service issues	Head of Human Resources & Development
To take legal proceedings in respect of the sale or supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment (currently regulated by the Licensing Act 2003)	Legal Services Manager and Licensing Officer
The Health Act 2006 and associated regulations	Head of Human Resources & Development
<b>HOUSING</b>	

Authority to manage the housing stock including the replacement of existing Woolaway and Airey type houses and the updating of Cornish Unit properties	Head of Housing and Property Services
Authority to maintain and improve the housing stock	Head of Housing and Property Services
'Enabling role' – to act as a catalyst between landowners, private sector builders, housing associations and other agencies to ensure the continued provision of affordable housing in the District	Head of Housing and Property Services
The letting of properties and all matters incidental thereto including the collection of rents and recovery of possession	Head of Housing and Property Services
To deal with issues relating to the Central Alarm System (Piper Life Line)	Head of Housing and Property Services
To liaise with tenants including tenant participation	Head of Housing and Property Services
Authority to act in respect of unlawful eviction/harassment	Head of Housing and Property Services
Housing Advances	Head of Finance
Calculation of Rent Rebates (Housing Benefit)	Head of Finance
Sale of Council Houses	Head of Housing and Property Services
Authority to Repurchase former Council Houses	Head of Housing and Property Services
Management of Council Shops and Commercial Units	Head of Housing and Property Services
Authority in consultation with the appropriate Cabinet Member to acquire sites and affordable housing units for the continued provision of affordable housing in the District	Head of Housing and Property Services
<b>EMPLOYEES</b>	
Authority to deal with membership subscriptions and donations (other than recreation, leisure and arts)	Chief Executive

## PROPER OFFICERS

Earlier local government legislation required local authorities to appoint officers with specified titles but the Local Government Act 1972, in the main, abolished the procedure. This was in order to give local authorities freedom in deciding what officer posts to establish. It follows that the officers responsible for certain statutory duties can no longer be identified by the post they occupy. Consequently, the Act makes provision for certain officers to be designated by their employing authority as the "Proper Officer" to carry out particular functions under various Acts of Parliament.

### 1 CHIEF EXECUTIVE

The Chief Executive is appointed the Proper Officer in relation to:-

- (a) any reference to any enactment passed before or during the 1971-72 session of Parliament other than the Local Government Act 1972 or in any instrument made before 26 October 1972 to the clerk of a Council or the town clerk of a borough which, by virtue of any provision of the said Act, is to be construed as a reference to the Proper Officer of the Council;
- (b) any reference in any local statutory provision to the clerk of the Council or similar which, by virtue of an order made under the Local Government Act 1972 or the Local Government Act 1992 is to be construed as a reference to the Proper Officer of the Council;
- (c) the following provisions:-

<b>Statute</b>	<b>Role/Function/Responsibility</b>	<b>Proper Officer</b>
<b>Local Government &amp; Housing Act 1989</b>		
Section 4	Head of Paid Service	Chief Executive
<b>Local Government Act 1972</b>		
Schedule 12 Para 4(2)(b)	Signature of Summons to Council Meetings	Chief Executive
Sections 83(1) – (4)	Witness and receipt of declarations of acceptance of office	Chief Executive or, in his absence or as instructed by him, the Head of Communities and Governance
Section 84	Receipt of declarations of resignation of office	Chief Executive or, in his absence or as instructed by him, the

		Head of Communities and Governance
Section 88 (2)	Convening Council to fill casual vacancy in the office of Chairman	Chief Executive or, in his absence or as instructed by him, the Head of Communities and Governance
Section 89(1)(b)	Receipt of notice of casual vacancy	Chief Executive or, in his absence or as instructed by him, the Head of Communities and Governance
Sections 100B(2), 100B(7), 100C(2) & 100F(2)	Distribution of summons and proceedings and release of documents to Councillors	Chief Executive or, in his absence or as instructed by him, the <del>Principal</del> Member Services <del>Manager</del> <u>Officer</u>
Schedule 12 4(3)	Receipt of notices regarding address to which summons to meeting are to be sent	Chief Executive or, in his absence or as instructed by him, the <del>Principal</del> Member Services <del>Manager</del> <u>Officer</u>
Schedule 14 25(7)	Certificate of resolutions	Chief Executive or, in his absence or as instructed by him, the



~~Principal  
Member  
Services  
Manager~~  
~~Officer~~

### **Local Government Act 1972**

Section 225(1)	Deposit of Documents	Legal Services Manager
Section 229(5)	Certification of photographic copies of documents	Legal Services Manager
Sections 234(1) & (2)	Authentication of documents: Financial, Rating, Superannuation	Legal Services Manager and S.151 Officer
Sections 236(9) & (10)	Service of Byelaws on other Authorities	Legal Services Manager
Section 238	Certification of Byelaws	Legal Services Manager

### **Local Government Act 1974**

Section 30(5)	Notice of Local Government Ombudsman's report	Legal Services Manager
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### **Local Government (Miscellaneous Provisions) Act 1976**

Section 41	Evidence of resolutions and minutes of proceedings	Legal Services Manager
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### **Local Government and Housing Act 1989**

Section 5(1)(a)	Monitoring Officer	Head of Communities and Governance
Sections 15 & 16	Appointment of Members to Committees	Head of Communities and Governance

Governance

**Representation of the People Act 1983**

Sections 8(1)(2)(a)	Registration Officer	Chief Executive
Sections 28 & 35	Electoral Registration Officer and Returning Officer	Chief Executive

Issues in respect of Elections, etc.

**2 HEAD OF COMMUNITIES AND GOVERNANCE**

The Head of Communities and Governance is the Council's statutory Monitoring Officer and is appointed as the proper Officer in relation to the following:

<b>Statute</b>	<b>Role/Function/Responsibility</b>	<b>Proper Officer</b>
<b>Local Government and Housing Act 1989</b>		
Section 5(7)	Appointment of the Deputy Monitoring Officer	Solicitor
<b>Localism Act 2011</b>		
Chapter 7, Section 29(1)	Keeping record of declarations of pecuniary interest and notices	Head of Communities and Governance (Monitoring Officer) or, in her absence or as instructed by her, the Deputy Monitoring Officer

**3 HEAD OF FINANCE**

The Head of Finance is the Council's statutory Chief Financial Officer and is appointed the Proper Officer in relation to the following:-

- (a) Any reference in any enactment passed before or during the 1971/72 session of Parliament other than the Local Government Act 1972 or in any instrument made before 26 October 1972 to the Treasurer or a Treasurer of a Borough which by virtue of any provision of the said act is to be construed as a reference to the Proper Officer of the Council.

- (b) Any reference in any local statutory provision to the Treasurer of a specified Council which, by virtue of an order made under Section 254 of the Local Government Act 1972, or the Local Government Act 1992 is to be construed as a reference to the Proper Officer of the Council.
- (c) Provisions of the Local Government Act 1972, as follows:-

<b>Statute</b>	<b>Role/Function/Responsibility</b>	<b>Proper Officer</b>
<b>Local Government Act 1972</b>		
Section 115 (2)	Receipt of money due from officers	S. 151 Officer or Chief Executive
Section 146 (1) (a) & (b)	Declarations and certificates with regard to securities	S.151 Officer or Chief Executive
Section 234(1) & (2)	Authentication of documents: Financial, Rating Superannuation	S.151 Officer or Chief Executive

**Local Government Finance Act 1988**

Section 114	Reporting on decisions or actions which may result in unlawful expenditure or loss to the authority	S. 151 Officer or Finance Manager
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**4 HEAD OF PLANNING AND REGENERATION**

The Head of Planning and Regeneration is appointed the Proper Officer in relation to:-

<b>Statute</b>	<b>Role/Function/Responsibility</b>	<b>Proper Officer</b>
<b>Local Government Act 1972</b>		
Section 234(1) & (2)	Authentication of documents: Dangerous Structure Notices Certification of Local Plans	Head of Planning and Regeneration

The Head of Planning and Regeneration is appointed the Proper Officer in respect of powers contained in Section 78 of the Building Act 1984, ie, to act as "the surveyor" empowered to take and authorise emergency action in respect of damage and dangerous buildings, walls, etc, and to order the demolition of buildings rendered dangerous by fire damage, without prior authorisation of the Council.

## 5 HEAD OF HUMAN RESOURCES AND DEVELOPMENT

The Head of Human Resources and Development is appointed Proper Officer in relation to Section 47 National Assistance 1948 and Section 1 National Assistance (Amendment) Act 1951.

<b>Statute</b>	<b>Role/Function/Responsibility</b>	<b>Proper Officer</b>
<b>Local Government Act 1972</b>		
Sections 234(1) & (2)	Authentication of documents: - Notifiable Diseases and Food Poisoning	Head of Human Resources and Development

## 6 HEAD OF HOUSING AND PROPERTY SERVICES

<b>Statute</b>	<b>Role/Function/Responsibility</b>	<b>Proper Officer</b>
<b>Local Government Act 1972</b>		
Sections 234(1) & (2)	Authentication of documents: - Letting of Garages	Head of Housing and Property Services

## 7 HEAD OF BUSINESS INFORMATION SERVICES

<b>Statute</b>	<b>Role/Function/Responsibility</b>	<b>Proper Officer</b>
<b>Data Protection Act</b>		
1998	Data Protection Officer	Head of BIS

## 8 MISCELLANEOUS

<b>Statute</b>	<b>Role/Function/Responsibility</b>	<b>Proper Officer</b>
<b>Local Government Act 1972</b>		
Section 112	Duties to be carried out by a Proper Officer	The Officer responsible for carrying

out the duty

9 **DECISION MAKING**

The report author of any report to be considered by the Council or a Committee / Sub-Committee thereof is appointed as Proper Officer under the Local Government Act 1972 in relation to:-

- (a) the identification of and compilation of lists of background papers to reports;
- (b) the identification of confidential documentation.

10 **OTHER**

The Constitution and / or primary and secondary legislation associated with the Constitution and policy making functions and decision-making contain a range of Proper Officer posts. Except where prescribed in this part of the Constitution, those responsibilities are set out in the remainder of the Constitution, e.g. Council Procedure Rules. In the absence of any identified post holder, the Proper Officer shall be the Chief Executive.

# **Part 4 - Rules of Procedure**

## **CONTENTS**

**Council Procedure Rules**

**Access to Information Procedure Rules**

**Budget and Policy Framework Procedure Rules**

**Cabinet Procedure Rules**

**Overview and Scrutiny Procedure Rules**

**Financial Procedure Rules**

**Contract Procedure Rules**

**Officer Employment Procedure Rules**

## **COUNCIL PROCEDURE RULES**

### **1. Annual Meeting of the Council**

#### **1.1 Timing and business**

In a year when there is an ordinary election of councillors, the annual meeting will take place within 21 days of the retirement (four days after the election) of the outgoing councillors. In any other year, the annual meeting will take place in March, April or May.

The annual meeting will:

- (a) elect a person to preside if the outgoing Chairman of Council or Vice Chairman of the Council is not present;
- (b) elect the Chairman of the Council (subject to the statutory provisions in that behalf, a Councillor who is the present Chairman of the Council and has completed two consecutive years in such office shall not be eligible for re-election as Chairman of the Council for the ensuing year);
- (c) elect the Vice Chairman of the Council;
- (d) approve the minutes of the last meeting;
- (e) receive any announcements from the Chairman and/or the Head of Paid Service;
- (f) elect the Leader (following the ordinary election of councillors);
- (g) **appoint** the Scrutiny Committee Chairman;
- (h) agree the scheme of delegations as set out in Part 3 of this Constitution approve a programme of ordinary meetings of the Council for the year; and
- (i) consider any business set out in the notice convening the meeting.

**Comment [AT15]:** The word appoint is widely used by other Councils in their Constitutions

#### **1.2 Appointment of Committees and Selection of Councillors on Outside Bodies**

At the annual meeting, the Council meeting will:

- (a) decide which committees to establish for the municipal year;
- (b) decide the size and terms of reference for those committees;
- (c) decide the allocation of seats to political groups in accordance with the political balance rules;
- (d) receive nominations of ungrouped Councillors to serve on each committee and vote on each appointment

- (e) make appointments to outside bodies except where appointment to those bodies has been delegated by the Council or is exercisable only by the Cabinet (in respect of executive functions);

## 2. Ordinary Meetings

2.1 Ordinary meetings of the Council will take place in accordance with a programme decided at the Council's annual meeting. The order of business at ordinary meetings will be as follows:

- (a) elect a person to preside if the Chairman and Vice Chairman are not present;
- (b) approve the minutes of the last meeting;
- (c) receive any declarations of interest from Members;
- (d) receive any announcements from the Chairman;
- (e) receive questions from, and provide answers to, the public in relation to matters which in the opinion of the Chairman are relevant to the Council's functions or business of the meeting;
- (f) receive a report from the Leader and receive questions and answers on the report;
- (g) deal with any business remaining from the last Council meeting;
- (h) **receive petitions from members of the public;**
- (i) debate single issues;
- (j) consider Motions;
- (k) consider reports from the Cabinet ;
- (l) consider any reports submitted by the Scrutiny Committee and the other Council committees;
- (m) receive reports about and receive questions and answers on the business of joint arrangements and external organisations;
- (n) receive statement made and notices of future questions given by Members;
- (o) consider any urgent items of business brought forward at the discretion of the Chairman. In respect of any such urgent items of business, the Chairman must be satisfied that the item of business is urgent enough to justify its inclusion on the agenda. The reason for urgency must be announced at the meeting and recorded in the minutes. The discretion as to urgency is entirely with the Chairman; and
- (p) consider any other business specified in the summons to the meeting and reports of the Scrutiny Committee for debate;

**Comment [AT16]:** The Committee must consider whether they wish to continue with a local petition scheme as the statutory requirement



## 2.2 Variation of Order of Business

Business falling under items 2.1 and 2.2 shall not be displaced, but subject thereto the foregoing order of business may be varied:

- (a) by the Chairman at his/her discretion; or
- (b) by a resolution passed on a Motion (which need not be in writing) duly moved and seconded, which shall be moved and put without discussion

## 3. **Extraordinary Meetings**

### 3.1 Calling extraordinary meetings

Those listed below may request the proper officer to call Council meetings in addition to ordinary meetings:

- (a) the Council by resolution;
- (b) the Chairman of the Council;
- (c) the Monitoring Officer; or
- (d) any five Members of the Council if they have signed a requisition presented to the Chairman of the Council and he has refused to call a meeting or has failed to call a meeting within seven days of the presentation of the requisition.

### 3.2 Business

The business to be conducted at an extraordinary meeting shall be restricted to the item of business contained in the request for the extraordinary meeting and there shall be no consideration of previous minutes or reports from committees etc. except that the Chairman may at his absolute discretion permit other items of business to be conducted for the efficient discharge of the Council's business.

## 4. **Appointment of substitute members**

### Cabinet

- 4.1 This rule does not apply to the Cabinet as they are not able to use substitutes

### Scrutiny Committee and Policy Development Groups (PDGs)

- 4.2 Where a member is appointed to the Scrutiny Committee, Policy Development Groups or to serve on any committee or sub-committee of another council on which this council is represented, provided that council's constitution so permits, that member may appoint a substitute member to attend the meeting

### Planning, Licencing, Licensing Regulatory, Audit and Standards Committee

- 4.3 In respect of the Planning, Licensing, Licensing Regulatory, Audit and Standards Committees, each Committee will have a pool of five suitably trained members shall be established and substitutes may only be nominated from that pool

Licensing, Licensing Regulatory and standards sub committees

- 4.4 Substitutes cannot be used in the case of a Licensing, Regulatory or Standards sub committee
- 4.5 Where the Member appointing a substitute is a Member of a Political Group the substitute Member shall be from the membership of that same Group.
- 4.6 Any such substitution shall have effect for the entirety of the meeting in respect of which the Notice has been given.
- 4.7 A substitute Member shall be entitled to vote and shall assume all the responsibilities and rights of a Member of the Scrutiny Committee, Audit Committee, Policy Development Group, Committee, Sub-Committee or other body.
- 4.8 Notice in writing of a substitute shall be given to the Chief Executive (and recorded by him in the order in which they are received) by the Member appointing the substitute before the commencement of the meeting. Notification by a Member purporting to be a substitute Member will not be accepted.
- 4.9 No more than two Members of the same Political Group shall be substituted at any meeting, and no Member shall be substituted at more than two consecutive meetings of the same Scrutiny Committee, Audit Committee, Policy Development Group, Committee, Sub-Committee etc
- 4.10 The Monitoring Officer may consider a request from a Member of a Council Body to appoint a substitute Member, providing that substitute Member is from the same political group.
- 4.11 In order to be eligible to sit as substitutes on regulatory or quasi-judicial committees or panels or staff appointments or disciplinary bodies established by the Council, Members must have received formal training in relevant procedures and the law
- 4.12 Substitute Members will have all the powers and duties of any ordinary Member of the committee but will not be able to exercise any special powers or duties exercisable by the person they are substituting.
- 4.13 Substitute Members may attend meetings in that capacity only:
- a) to take the place of the ordinary Member for whom they are designated substitute;
  - b) where the ordinary Member will be absent for the whole of the meeting;
  - c) where the ordinary Member has notified the Member Services Officer of the intended substitution at least one hour before the start of the relevant meeting; and

provided, in the case of area committees, that the substitution does not alter the balance on that committee between Members from the area and Members from the rest of the District.

## **5. Time, Place and Duration of Meetings**

- 5.1 The time and place of meetings will be determined by the Chief Executive and notified in the summons.

## **6. Notice of and Summons to Meetings**

- 6.1 The Chief Executive will give notice to the public of the time and place of any meeting in accordance with the Access to Information Procedure Rules. At least five clear working days before a meeting, the Chief Executive will send a summons signed by him/her to every Member of the Council. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

## **7. Chair of Meeting**

- 7.1 The person presiding at the meeting may exercise any power or duty of the Chairman. Where these rules apply to committee and sub-committee meetings, references to the Chairman also include the Chair of committees and sub-committees.
- 7.2 The Chairman of the Council, by virtue of office, is not eligible to hold office as a Chairman of any other Committee during his/her term.

## **8. Quorum**

- 8.1 The quorum of a Full Council meeting will be one quarter of the whole number of Members (11 members). During any meeting if the Chairman counts the number of Members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chairman. If he does not fix a date, the remaining business will be considered at the next ordinary meeting.
- 8.2 The quorum for a meeting of the Cabinet, Scrutiny Committee, Audit Committee, Standards Committee, Policy Development Groups, a Committee or a sub-committee of the Council will be one half of the number of members appointed (rounded up) to the Cabinet (four), Scrutiny Committee (six), Audit Committee (four), Standards Committee (five), Policy Development Groups (five), a Committee or a sub-committee. See the procedure Rules for information about quorum per committee

## **9. Single Issue Debate**

- 9.1 Where any five members give notice in writing, delivered at least eight clear days before the next meeting of the Council at the office of the Chief Executive, of request for a single issue debate. Rule 16 (Rules of Debate) shall not apply to any debate under this Procedure Rule.

9.2 A period of not exceeding one hour shall be allowed during which debate may take place. Any recommendations arising from such debate shall be referred to the appropriate committee for consideration.

## **10. Members' Business**

10.1 At each ordinary meeting of the Council, a period not exceeding 15 minutes shall be allowed during which any Member may make a statement or give preliminary verbal notice of a question provided that:-

- (a) such statement or question must be relevant to some matter in relation to which the Council has powers or duties, or which affects the District and ~~has not and had not~~ been otherwise before the Council for consideration at the same meeting;
- (b) no Member may make more than one statement or give notice of more than one question, and no Member shall speak pursuant to this Procedure Rule for longer than two minutes;
- (c) the statement or notice of question shall not be the subject of discussion or reply at that meeting;
- (d) after the expiry of the said period of 15 minutes the Council shall proceed to the next business ~~or (if there be no such business) the meeting shall be closed.~~

## **11. Questions by the Public**

### 11.1 General

- (a) Public Question Time shall apply at all public meetings of the Council with the exception of the Licencing Sub Committee, Licensing Regulatory Sub-committee and Standards Sub Committee.
- (b) Public Question Time shall normally be dealt with at the beginning of the Agenda (i.e. as part of the formal meeting) unless a Committee/Group shall determine otherwise;
- (c) The total time allocated for questions by the public is limited to 30 minutes. In the event that there are no questions, or no further questions, the Chairman shall have the discretion to proceed with the Agenda prior to the expiry of that period. The Chairman also has discretion to extend the time for public questions if he/she deems it to be appropriate
- (d) Residents, electors or business rate payers of the District shall be entitled to ask questions

### 11.2 Asking a question at the meeting

Ideally persons submitting questions should be present at the meeting. It is preferable that notice is given of the question to be asked at the meeting

However, if a questioner who has submitted a question is unable to be present, they may ask the Chairman to put the question on their behalf.

- (a) Questions will be asked in the order they have been received
- (b) Written questions will be dealt with first
- (c) Questions may be verbal or, preferably written
- (d) A question shall not exceed 3 minutes
- (e) Questions must be relevant to an item on the Agenda for that meeting
- (f) The Chairman, following advice from either the Chief Executive, Monitoring Officer or ~~Principal~~–Member Services ~~Manager~~–~~Officer~~, shall have the discretion to reject a question, giving reasons if it:
  - Is not about a matter for which the Council has a responsibility or which affects the District
  - Is in his/her opinion scurrilous, improper, capricious, irrelevant or otherwise objectionable
  - Is substantially the same as a question which has been put at a meeting of the Council in the past six months;
  - requires the disclosure of confidential or exempt information.

### 11.3 Supplementary question

At the discretion of the Chairman of that meeting, questioners may ask one supplementary question

### 11.4 Answers to questions

The chairman of the meeting, or at meetings of the Council the appropriate committee chairman, shall respond to all questions.

Replies to questions may be verbal, or at the discretion of the Chairman, in writing, or by reference to a published document. Written replies shall be reported to the next meeting of the Committee and published alongside the draft minutes when available. Responses will also be sent to all Councillors.

## **12. Petitions from the Public**

**12.1** A petition is a formal, written request made to an official person or organised body, often containing many signatures. Mid Devon District Council welcomes petitions and recognises that they are one way in which citizens of Mid Devon can let us know their concerns. Further details about petitions and petitions for referendum are on the Council's website (include link to page on website).

**Comment [AT17]:** As per earlier comments the legal requirements to have a petition scheme has been repealed by the Localism Act. Do Members still wish to have a local petition scheme?

12.2 We will treat something as a petition if it contains a minimum of 25 signatures and is identified as being a petition, or it seems that it is intended to be so. Any petition containing between 25 and 1499 signatures will be presented to Council and the Council will not automatically debate the petition ~~and~~but will determine how to respond to the petition. If the petition has received 1500 signatures or more it will be scheduled for a Council debate.

#### Notice of Petition

12.3 If a citizen wishes to present a petition to a Council meeting, notice must be given at least 10 working days before the meeting. Petitions to be debated at the Council Meeting will have been selected according to the Petitions Scheme.

#### Presentation of Petitions

12.4 The petition organiser will be allowed 5 minutes to present the petition at the meeting. Only one person may speak to present a petition.

12.5 The Council will then debate the petition for a maximum of 15 minutes (if the petition has 1500 signatures or more).

12.6 The Council's response to the petition will depend on what the petition asks for and how many people have signed it, but it may include one or more of the following:

- (a) taking the action requested in the petition;
- (b) not taking the action requested in the petition;
- (c) considering the petition at a council meeting;
- (d) holding an inquiry into the matter;
- (e) undertaking research into the matter;
- (f) holding a public meeting;
- (g) holding a consultation;
- (h) holding a meeting with the petitioners
- (i) ~~C~~calling a referendum
- (j) referring the petition for consideration by other committees such as the Scrutiny Committee
- (k) where the issue is one on which the Cabinet is required to make the final decision, the Council will decide whether to make recommendations to inform that decision;
- (l) the petition organiser will receive a written acknowledgement of receipt of their petition, details as to when and where their petition will be considered

and a letter giving the outcome which will also be published on the Council website.

#### Number of Petitions

12.7 At any one meeting no person or organisation may present more than one petition.

#### 12.8 Scope of Petitions

The ~~Principal Member Services Manager-Officer~~ may reject a petition if it:

- (a) does not qualify under the scheme i.e. it does not follow the guidelines for submitting a petition;
- (b) it is vexatious, abusive or otherwise inappropriate;
- (c) it is a petition qualifying under another enactment;
- (d) ~~it is excluded by order eg;~~
- ~~(e)~~ it relates to a planning decision;
- ~~(fe)~~ it relates to a licensing decision;
- ~~(ef)~~ it relates to any other matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment.

### **13. Questions by Members**

#### On reports of the Cabinet or committees

13.1 At a meeting of the Council, other than the Annual meeting, a Member of the Council may ask the Leader, Cabinet Members or the chair of a committee any question without notice upon an item of the report of the Cabinet or a committee when that item is being received or under consideration by the Council.

#### Questions on notice at full Council.

13.2 A Member of the Council may, if by not later than noon, one clear working day preceding any ordinary meeting of the Council, notice in writing has been given to the Chief Executive, ask the Chairman of the Council or the Leader, the Cabinet Member or the Chairman of any Committee any question on any matter in relation to which the Council have powers or duties or which affect the District, provided that the subject matter of the particular question shall have first been the subject of discussion at a meeting of the Cabinet or appropriate Committee or Sub-Committee and that, in the particular case the Member who seeks to ask the question is not satisfied with the adequacy of the answer contained in the Minutes of the Cabinet or that Committee or Sub-Committee. If any doubt arises as to whether the particular subject matter has been the subject of discussion at a meeting of the appropriate Committee or Sub-Committee this shall be determined

by the Chairman of the Council whose decision in such regard shall not be open to challenge.

#### Questions relating to urgent business

- 13.3 A Member of the Council may, with the permission of the Chairman, put to him or the Leader, Cabinet Member or Chairman of any committee any question relating to urgent business of which notice has not been given in accordance with paragraph (a) above, provided that the Chairman in his absolute discretion is satisfied that the matter raised in such a question is of such urgency as to preclude the procedure in paragraph (a) above being pursued and that he is also satisfied that it is not appropriate for the matter to await consideration at the next meeting of the Cabinet or the appropriate Committee or Sub-Committee and provided also that a copy of any such question has been delivered to the Chief Executive ~~by notno~~ later than nine o'clock on the morning of the day before the Council Meeting.

#### Order of Questions

- 13.4 Questions under paragraph 13.3 above shall be taken at the appropriate point in the relevant Committee report.
- 13.5 Questions and written answers shall be printed in order of receipt and circulated amongst the Members at the commencement of the Council Meeting and no discussion shall be allowed upon questions or answers save as is permitted under Rule 13.11 below.

#### Content of Questions

- 13.6 Questions under Rule 13.3 or 13.4 must, in the opinion of the Chairman:
- (a) contain no expressions of opinion;
  - (b) relate to matters on which the Council has or may determine a policy;
  - (c) not relate to questions of fact.
- 13.7 If questions or supplementary questions are unsuitable in form, frivolous or derogatory to the dignity of the Council, the Chairman of the Council shall have the right to rule the matter void.

#### Response

- 13.8 The Chief Executive shall arrange for copies of questions and answers to be sent to Members not present at the Meeting of the Council.
- 13.9 An answer may take the form of:
- (a) a direct oral answer at the meeting;
  - (b) where the desired information is in a publication of the Council or other published work, a reference to that publication; or
  - (c) where the reply cannot conveniently be given orally, a written answer circulated within 10 working days to the questioner.



#### Supplementary question

- 13.10 One relevant supplementary question to an answer shall be allowed to the original questioner unless such supplementary question is disallowed by the Chairman of the Council under paragraph 13.8 of this Rule.

#### Length of Speeches

- 13.11 A Member asking a question under Rule 13.3 or 13.4 and a Member answering such a question may speak for no longer than 3 minutes unless the Chairman consents to a longer period.

#### Time Allowed for Questions at Council Meetings

- 13.12 The time allowed for consideration of questions submitted under Rule 13 shall not, without the consent of the Council, exceed 30 minutes.
- 13.13 At the conclusion of the answer to the question under consideration at the expiry of 30 minutes (or such longer period to which the Council has consented) from the time when the first questioner started to speak, the Chairman shall ~~conclude~~continue with the meeting.
- 13.14 Any remaining questions shall be responded to in writing before the next ordinary meeting of the Council with the answers to be forwarded to all Councillors.

### **14. Motions on Notice**

#### Notice

- 14.1 Except for motions which can be moved without notice under Rule 15, written notice of every motion, must be delivered to the Chief Executive via Member Services at least 8 clear working days before the Council meeting at which it is to be considered. Motions received will be entered in a ~~book~~record, in the order they are received, open to public inspection and where they are rejected giving reasons.

#### Motion set out in summons

- 14.2 The Chief Executive shall set out in the Summons for every meeting of the Council all Motions of which notice has been duly given in the order in which they have been received, unless the Member giving such a notice intimated in writing, when giving it, that he proposed to move it at some later meeting, or has since withdrawn it in writing.

#### Motion not moved

- 14.3 If a Motion thus set out in the Summons be not moved either by a Member who gave notice thereof or by some other Member on his behalf it shall, unless postponed by consent of the Council, be treated as withdrawn and shall not be moved without fresh notice.

#### Automatic Reference to Committee

- 14.4 If the subject matter of any Motion, of which notice has been duly given, comes within the province of the Cabinet or any Committee or Committees it shall, upon being formally moved and seconded, stand referred without the

mover or seconder of the Motion speaking on the substance of the Motion and without any other discussion, to the Cabinet or such Committee or Committees, or to such other Committee or Committees as the Council may determine, for consideration and report; and that the mover (or in his absence, the seconder) of the Motion should be invited to the Meeting of the Cabinet, Committee or Committees to amplify the Motion, but without any right to vote except as a Member of such Committee. Provided that the Chairman may, if he considers it convenient and conducive to the despatch of business allow the Motion to be dealt with at the meeting, at which it is brought forward.

#### Scope

- 14.5 Motions must be about matters for which the Council has a responsibility or which affect the District.
- 14.6 If notice is given of any original motion that, in the opinion of the proper officer is out of order, illegal, irregular or improper, then the proper officer shall immediately submit such notice to the Chairman of the Council and it shall not be accepted and placed on the agenda without his sanction. In the event of non-acceptance, the proper officer shall inform the member giving notice as soon as reasonably possible and stating the reason for the rejection.

#### 14.7 Motion to remove the Leader

- (a) A motion to remove the Leader cannot be moved unless the notice of motion is signed by a number of councillors which is at least equivalent to 15% of the total number of councillors on the Council and which includes councillors from at least two political groups.
- (b) In order for such a motion to be carried it must have the support of ~~at least two thirds~~ the majority of those members voting and present in the room at the time the question was put.
- (c) A motion to remove the Leader cannot be moved more than once in any rolling 12 month period.

**Comment [AT18]:** Legal Services to confirm the wording at the Standards meeting

#### Number of Motions per Member

- 14.7 The number of motions submitted by any individual may ~~be no more~~ than one motion for any Council meeting, except with the consent of the Chairman.

**Comment [AT19]:** The number of motions submitted by an individual is to be debated by Full Council

### **15. Motions without Notice**

15.1 The following motions may be moved without notice:

- (a) to appoint a Chair of the meeting at which the motion is moved;
- (b) in relation to the accuracy of the minutes;
- (c) to change the order of business in the agenda;

- (d) to adopt a recommendation on some other course of action arising from a report to the meeting or as a result of a petition submitted to the meeting or recommendation arising from single issue debate
- (e) to refer something to an appropriate body or individual;
- (f) to appoint a committee or member arising from an item on the summons for the meeting;
- (g) to receive reports or adoption of recommendations of committees or officers and any resolutions following from them;
- (h) to withdraw a motion which may be moved in accordance with this procedure rule;
- (i) to amend a motion which may be moved in accordance with this procedure rule, subject to the provisions of the Budget and Policy Framework Procedure Rules in relation to amendment of the Cabinet's proposals for the Council's Budget and Policy Framework;
- (j) to proceed to the next business (such Motion may only be moved by a Councillor who has not spoken in the debate)
- (k) that the question be now put (such Motion may only be moved by a Councillor who has not spoken in the debate)
- (l) to adjourn a debate;
- (m) to adjourn a meeting;
- (n) to suspend a particular Council Procedure Rule;
- (o) to exclude the public and press in accordance with the Access to Information Procedure Rules;
- (p) Not to hear further a Member named under Rule 23.3 or excluded from the meeting under Rule 23.4; and
- (q) to give the consent of the Council where its consent is required by this Constitution.

## **16. Rules of Debate**

- 16.1 No speeches unless the appropriate Notice has been given and until Motion seconded
- 16.2 A Motion or Amendment shall not be discussed unless it has been proposed and seconded, and unless the appropriate Notice has been given:-
  - (a) in the case of a Motion, in accordance with Rule 14; or

- (b) in the case of an Amendment (other than an Amendment moved in accordance with Rule 15), notice in writing of the Amendment shall have been delivered to the office of the Chief Executive of the District Council by no later than 9.30am on the day before the day of the meeting and a copy of it shall be circulated to each Member of the District Council by the Chief Executive at the commencement of the meeting at which it is to be discussed.

Except that where the Chairman is satisfied that, in the context of the debate which has taken place, a further Amendment becomes necessary, he may at his discretion allow such further Amendment to be moved at the meeting. Any such further Amendment shall be put in writing and handed to the Chairman before it is discussed or put to the meeting.

#### Secunder's speech

- 16.3 When seconding a motion or amendment, a member may reserve their speech until later in the debate.

#### Content and length of speeches

- 16.4 Speeches must be directed to the question under discussion or to a personal explanation or point of order. No speech shall exceed:
  - (a) Five minutes in the case of the mover of a Motion
  - (b) Three minutes in the case of the seconder
  - (c) Five minutes in the case of the Leader, the relevant Cabinet Member or the Chairman of a Committee dealing with the matters arising from committee reports except with the consent of the Chairman who shall have discretion to extend that time if it appears prudent in his judgement to do so;
  - (d) Three minutes in all other cases except by consent of the Council.
  - (e) When the Council's annual budget is under discussion, the leader of each political group on the Council may speak for up to five minutes or such longer period as the Chairman shall allow.

#### When a Member may speak again

- 16.5 A member who has spoken on a motion may not speak again whilst it is the subject of debate, except:
  - (a) to speak once on an amendment moved by another member;
  - (b) to move a further amendment if the motion has been amended since he/she last spoke;
  - (c) if his/her first speech was on an amendment moved by another member, to speak on the main issue (whether or not the amendment on which he/she spoke was carried);

- (d) in exercise of a right of reply;
- (e) on a point of order; and
- (f) by way of personal explanation.

#### Amendments to motions

16.6 An amendment to a motion must be relevant to the motion and will either be:

- (a) to refer the matter to an appropriate body or individual for consideration or reconsideration;
  - (1) to leave out words;
  - (2) to leave out words and insert or add others; or
  - (3) to insert or add words
  - (4) as long as the effect of 0 to 0 is not to negate the motion.
- (b) Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of provided that the Chairman may permit two or more Amendments to be discussed (but not voted on) together if circumstances suggest that this course of action would facilitate the proper conduct of the Council's business.
- (c) If an amendment is not carried, other amendments to the original motion may be moved.
- (d) If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.
- (e) After an amendment has been carried, the Chairman will read out the amended motion before accepting any further amendments, or if there are none, put it to the vote.

#### Alteration of motion

16.7 A Member may alter a motion of which he/she has given notice with the consent of the meeting. The meeting's consent will be signified without discussion.

16.8 A Member may alter a motion which he/she has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.

16.9 Only alterations which could be made as an amendment may be made.

#### Withdrawal of motion

- 16.10 A Member may withdraw a motion which he/she has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No member may speak on the motion after the mover has asked permission to withdraw it unless permission is refused.

Right of reply

- 16.11 The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote.
- 16.12 If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it.
- 16.13 The mover of the amendment has no right of reply to the debate on his/her amendment.

Motions which may be moved during debate

- 16.14 When a motion is under debate, no other motion may be moved except the following procedural motions:
- (a) to withdraw a motion;
  - (b) to amend a motion;
  - (c) to proceed to the next business;
  - (d) that the question be now put;
  - (e) to adjourn a debate;
  - (f) to adjourn a meeting;
  - (g) to exclude the public and press in accordance with the Access to Information Procedure Rules; and
  - (h) Not to hear further a Member named under Rule 23.3 or excluded from the meeting under Rule 23.4.

Closure motions

- 16.15 A Member may move, without comment, the following motions at the end of a speech of another Member;
- (a) to proceed to the next business;
  - (b) that the question be now put;
  - (c) to adjourn a debate; or
  - (d) to adjourn a meeting.

- 16.16 If a motion to proceed to next business is seconded and the Chairman thinks the item has been sufficiently discussed, he/she will give the mover of the original motion (if there is one) a right of reply and then put the procedural motion to the vote.
- 16.17 If a motion that the question be now put is seconded and the Chairman thinks the item has been sufficiently discussed, he/she will put the procedural motion to the vote. If it is passed he/she will give the mover of the original motion (if there is one) a right of reply before putting his/her motion to the vote.
- 16.18 If a motion to adjourn the debate or to adjourn the meeting is seconded and the Chairman thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, he/she will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

#### Point of order

- 16.19 A point of order is a request from a member to the Chairman to rule on an alleged irregularity in the procedure of the meeting. A member may raise a point of order at any time. The Chairman will hear them immediately. A point of order may only relate to an alleged breach of these Council Rules of Procedure or the law. The member must indicate the rule or law and the way in which he/she considers it has been broken. The ruling of the Chairman on the matter will be final.

#### Personal explanation

- 16.20 A member may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the member which may appear to have been misunderstood in the present debate. The ruling of the Chairman on the admissibility of a personal explanation will be final.

### **17. State of the District Debate**

#### Calling of debate

- 17.1 The Leader may call a state of the District debate annually on a date ~~and in a form~~ to be agreed with the Chairman.

#### Form of debate

- 17.2 The Leader will decide the form of the debate with the aim of enabling the widest possible public involvement and publicity. This may include holding workshops and other events prior to or during the state of the District debate.

#### Chairing of debate

- 17.3 The debate will be chaired by the Chairman.

#### Results of debate

- 17.4 The results of the debate will be:

- (a) disseminated as widely as possible within the community and to agencies and organisations in the area; and
- (b) considered by the Leader in proposing the Budget and Policy Framework to the Council for the coming year.

17.5 If the Leader fails to call a debate within nine months in any municipal year, it may be called by notice in writing to the Chief Executive signed by any 10 Members of the Council and that the debate shall be heard on the subject and form specified by those 10 Members

## **18. Previous Decisions and Motions**

### Motion to rescind a previous decision

18.1 A motion or amendment to rescind a decision made at a meeting of Council within the past six months cannot be moved unless the notice of motion is signed by at least 10 Members.

### Motion similar to one previously rejected

18.2 A motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past six months cannot be moved unless the notice of motion or amendment is signed by at least ten members. Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

18.3 Provided that the Procedure Rule shall not apply to Motions moved in pursuance of a recommendation of a Committee.

## **19. Voting**

### Majority

19.1 Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those members voting and present in the room at the time the question was put.

### Chairman's casting vote

19.2 If there are equal numbers of votes for and against, the Chairman will have a second or casting vote. There will be no restriction on how the Chairman chooses to exercise a casting vote.

### Method of Voting

19.3 Unless a recorded vote is demanded under Rule 19.4 the Chairman will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting.

### Recorded vote



- 19.4 If ten members present at the meeting demand it, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.

Right to require individual vote to be recorded

- 19.5 Where any member requests it immediately after the vote is taken, their vote will be ~~se~~ recorded in the minutes to show whether they voted for or against the motion or abstained from voting.

Voting on appointments

- 19.6 If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

Voting on the Budget and Council Tax

- 19.7 At a Budget meeting, the vote on any motion or amendment relating to the setting of the Budget (revenue and capital budget) and Council Tax or precept shall be by roll call and the names of Members who voted as for, against or in abstention to any such motion or amendment shall be recorded in the minutes of that meeting.

## **20. Minutes**

Signing the minutes

- 20.1 The Chairman will sign the minutes of the proceedings at the next suitable meeting. The Chairman will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.

No requirement to sign minutes of previous meeting at extraordinary meeting

- 20.2 Where in relation to any meeting, the next meeting for the purpose of signing the minutes is a meeting called under paragraph 3 of Schedule 12 to the Local Government Act 1972 (an extraordinary meeting), then the next following meeting (being a meeting called otherwise than under that paragraph) will be treated as a suitable meeting for the purposes of paragraph 41(1) and (2) of Schedule 12 relating to signing of minutes.

Form of minutes

- 20.3 Minutes will contain all motions and amendments in the exact form and order the Chairman put them.

## **21. Record of Attendance**

- 21.1 Every member of the Council attending a meeting of the Council, the Cabinet, Scrutiny Committee, Audit Committee, Policy Development Groups, Committees and

Sub-Committees of which he/she is a member, shall sign his/her name in the attendance book or sheet provided for that purpose.

21.2 All members present during the whole or part of a meeting must sign their names on the attendance book or sheets before the conclusion of every meeting to assist with the record of attendance.

~~21.2 Every member of the Council attending a meeting of the Council, the Cabinet, Scrutiny Committee, Audit Committee, Policy Development Groups, Committees and Sub-Committees of which he/she is a member, shall sign his/her name in the attendance book or sheet provided for that purpose.~~

## **22. Exclusion of Public**

22.1 Members of the public and press may only be excluded either in accordance with the Access to Information Procedure Rules in Part 4 of this Constitution or Rule 24 (Disturbance by Public).

## **23. Members' Conduct**

### Speaking at meetings

23.1 When a Member speaks at full Council he/she must address the meeting through the Chairman. If more than one member signifies their intention to speak, the Chairman will ask one to speak. Other Members must remain silent whilst a Member is speaking unless they wish to make a point of order or a point of personal explanation.

**Comment [AT20]:** Do Members wish to stand or sit when speaking at meetings? This is a decision that the Committee will need to make

### Chairman speaking

23.2 When the Chairman stands during a debate, any member speaking at the time must stop and sit down. The meeting must be silent.

### Member not to be heard further

23.3 If a Member persistently disregards the ruling of the Chairman by behaving improperly or offensively or deliberately obstructs business, the Chairman may move that the member not be heard further. If seconded, the motion will be voted on without discussion.

### Member to leave the meeting

23.4 If the Member continues to behave improperly after such a motion is carried, the Chairman may move that either the Member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

### General disturbance

23.5 If there is a general disturbance making orderly business impossible, the Chairman may adjourn the meeting for as long as he/she thinks necessary.

## **24. Disturbance by Public**

### Removal of member of the public

- 24.1 If a member of the public interrupts proceedings, the Chairman will warn the person concerned. If they continue to interrupt, the Chairman will order their removal from the meeting room.

### Clearance of part of meeting room

- 24.2 If there is a general disturbance in any part of the meeting room open to the public, the Chairman may call for that part to be cleared.

## **25. Suspension and Amendment of Council Procedure Rules**

### Suspension

- 25.1 All of these Council Rules of Procedure except Rules 19.5, 20.2 and 27 may be suspended by motion on notice or without notice if at least one half of the whole number of members of the Council are present. Suspension can only be for the duration of the meeting.

### Amendment

- 25.2 Any motion to add to, vary or revoke these Council Rules of Procedure will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council.

## **26. Application to Committees and Sub-Committees**

- 26.1 All of the Council Rules of Procedure apply to meetings of full Council.
- 26.2 The Rules which apply to meetings of the Cabinet, Committees and Sub-Committees are as follows:
- (a) Rule 5 – Time and Place of Meetings
  - (b) Rule 6 – Notice and Summons to Meeting
  - (c) Rule 7 – Chairing of the Meeting
  - (d) Rule 8 – Quorum
  - (e) Rule 11 – Public Question Time
  - (f) Rule 16 – Rules of Debate
  - (g) Rule 19 – Voting (with the exception of 19.4 and 19.6)
  - (h) Rule 20.1 – Signing the Minutes
  - (i) Rule 21 – Record of Attendance

- (j) Rule 22 – Exclusion of Public
- (k) Rule 23 – Members Conduct
- (l) Rule 24 – Disturbance by Public
- (m) Rule 25 – Suspension of Procedure Rule

26.3 In applying Rule 16 to meetings of the Cabinet, Committees and Sub-Committees, Rules 16.4, (content and length of speeches) and 16.5 (when a member may speak again) shall not apply.

## **27. Interpretation of Procedure Rules**

27.1 The ruling of the Chairman as to the construction or application of any of these Procedure Rules, or as to any proceedings of the Council, shall not be challenged at any meeting of the Council.

## **ACCESS TO INFORMATION PROCEDURE RULES**

### **1.0 Scope**

- 1.1 Subject to paragraph 1.2 below, these rules apply to all meetings of the Council, the Cabinet, the Scrutiny Committee, area committees (if any) the Audit Committee, Policy Development Groups, Standards Committee and Regulatory Committees (together called meetings).
- 1.2 Where the Standards Sub-Committee is convened to consider or review, as the case may be, an allegation that a member has contravened the Council's Code of Conduct for Members, the provisions set out in the Standards Committee's Procedure for Local Assessment of Complaints shall apply and the meeting and papers will not be open to the public

### **2.0 Additional Rights to Information**

- 2.1 These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law nor do these rules limit or diminish the Council's duties to protect certain information, including personal information. This includes the rights and duties from the provisions of the Freedom of Information Act 2000 and the Data Protection Act 1998.

### **3.0 Rights to attend meetings**

- 3.1 Members of the public may attend all meetings subject only to the exceptions in these Rules.
- 3.2 If a member of the public or press interrupts the proceedings at any meeting the Chairman may warn him/her. If he/she continues the interruption and a warning has been given, the Chairman may order his/her removal from the meeting place.
- 3.3 In the event of a general disturbance in any part of the meeting place open to the public, the Chairman may order that part to be cleared.
- 3.4 If the Chairman considers the orderly dispatch of business impossible, he/she may without question adjourn the meeting.
- 3.5 The above powers of the Chairman are in addition to any other power vested in him/her.

### **4.0 Notices of meeting**

- 4.1 The Council will give at least five clear days notice of any meeting by posting details of the meeting at Phoenix House, Phoenix Lane, Tiverton Devon known as the designated office or on its website at [www.middevon.gov.uk](http://www.middevon.gov.uk).

### **5.0 Access to Agenda and Reports before the meeting**

5.1 The Members of the Scrutiny Committee shall be provided with full copies of the agenda and reports presented to the Cabinet including those containing exempt and/or confidential information.

5.2 The Council will make copies of the agenda and reports open to the public available for inspection at the designated office and available on the website (if any) at least five clear working days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item was added to the agenda (where reports are prepared after the summons has been sent out, the ~~Principal~~ Member Services ~~Manager~~ ~~Officer~~ shall make each such report available to the public as soon as the report is completed and sent to Councillors).

#### 6.0 **Supply of copies**

6.1 The Council will make available to the public present at a meeting a reasonable number of copies of the agenda and of the reports for the meeting (save during any part of the meeting to which the public are excluded)

6.2 The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (c) if the Chief Executive thinks fit, copies of any other documents supplied to Councillors in connection with an item
- (d) to any person on payment of a charge for postage and any other costs.

#### 7.0 **Access to Minutes etc. after the meeting**

7.1 The Council will make available copies of the following for six years after a meeting:

- (a) the minutes of the meeting or records of decisions taken, together with reasons, for all meetings of the Cabinet, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

#### 8.0 **Background Papers**

8.1 The Chief Executive Officer will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
  - (b) which have been relied on to a material extent in preparing the report
- but does not include published works or those which disclose exempt or confidential information.

#### 9.0 **Public inspection of background papers**

9.1 The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

#### 10. **Summary of Public's Rights**

10.1 A written summary of the public's rights to attend meetings and to inspect and copy documents will be kept at and made available to the public at the Council's main offices at Phoenix House, Phoenix Lane, Tiverton, Devon and on the Councils website [www.middevon.gov.uk](http://www.middevon.gov.uk).

#### 11.0 **Exclusion of Access of the Public to Meetings**

##### Extent of Exclusion

11.1 The public may only be excluded under 0 or 0 for the part or parts of the meeting during which it is likely that confidential or exempt information would be divulged.

##### Confidential information – requirement to exclude public

11.2 The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

##### Exempt information – discretion to exclude public

11.3 The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed. Such a decision to exclude the public is to be made by resolution of the relevant decision making body.

11.4 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

##### Meaning of confidential information

11.5 Confidential information means information given to the Council by a Government Service or Agency on terms which forbid its public disclosure or information which cannot be publicly disclosed by any enactment or Court Order.

##### Meaning of exempt information

11.6 Exempt information means information falling within the following categories (subject to any qualification)

Extent of Exclusion

11.7 The public may only be excluded under 0 or 0 for the part or parts of the meeting during which it is likely that confidential or exempt information would be divulged.

[NOTE Information falling within any of paragraphs 1 – 7 is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.]

<b>Category</b>	<b>Qualification</b>	<b>Interpretation</b>
Information relating to any individual	The exemption applies only if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information (see note on public interest at the end of the table).	
Information which is likely to reveal the identity of an individual	The Public Interest Test Qualification applies, as in 1 above.	
Information relating to the financial or business affairs of any particular person (including the authority holding that information).	The Public Interest Test Qualification applies, as in 1 above. "Financial or business affairs" includes contemplated, as well as past or current, activities. Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under -  the Companies Act 2006;  the Friendly Societies Act 1974;  the Friendly Societies	Any reference to "the authority" is a reference to the Council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined.  "person" includes any public authority, company, or other legally constituted organisations and the partners in a partnership or firm.



Category	Qualification	Interpretation
Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connect with any labour relating matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.	<p>Act 1992;</p> <p>the Industrial and Provident Societies Acts 1965 to 1978;</p> <p>the Building Societies Act 1986 ["registered" in relation to information required to be registered under the Building Societies Act 1986, means recorded in the public file of any building society (within the meaning of that Act).];</p> <p>or</p> <p>the Charities Act 2011.</p>	<p>Any reference to "the authority" is a reference to the Council or, as the case may be, the committee or sub-committee in relation to whose proceedings or document the question whether information is exempt or not falls to be determined. "labour relations matter" means-</p> <p>any of the matters specified in paragraphs (a) to (g) of section 218 (1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act); or</p> <p>any dispute about a matter falling within paragraph (a) above;</p>

**Category**

**Qualification**

**Interpretation**

and for the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders under the authority as they apply in relation to employees of the authority;

"employee" means a person employed under a contract of service;

"office-holder", in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority;

Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. The Public Interest Test Qualification applies, as in 1 above.

Information which reveals that the authority proposes- The Public Interest Test Qualification applies, as in 1 above.

to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or

to make an order or direction under any enactment.

Any reference to "the authority" is a reference to the Council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined.

"person" includes any public authority, company, or other legally constituted organizations and the partners in a partnership or

Category	Qualification	Interpretation
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Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	The Public Interest Test Qualification applies, as in 1 above.	firm.
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~~Exempt Information relating to the Standards Committee and any sub-committee thereof ONLY~~

<del>Information which is the subject to any obligation of confidentiality.</del>	<del>The Public Interest Test Qualification applies, as in 1 above.</del>
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<del>Information which relates in any way to matters concerning national security.</del>	<del>The Public Interest Test Qualification applies, as in 1 above.</del>
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<del>Information presented to the Standards Committee or a sub-committee of the Standards Committee set up to consider any matter under regulation 13 or 16 to 20 of the Standards Committee (England) Regulations 2008, or referred under section 58(1)(c) of the Local Government Act 2000.</del>	<del>The Public Interest Test Qualification applies, as in 1 above.</del>
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**Comment [AT21]:** No longer a statutory requirement to have a Standards Committee

NOTE -The Public Interest Test

The Public Interest Test in the Freedom of Information (FOI) Act 2000 is specifically defined –

The Authority must release the information unless “*in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information*”.

The starting point is that there is a general public interest in release and the public authority has to decide whether in any particular case it would serve the interest of the public better to either disclose or withhold the information.

There is no legal definition of what the public interest is, but the following have been identified as some of the relevant considerations.

- There is a distinction between the public interest and what merely interests the public.
- Does it further the understanding of and participation in the public debate of issues of the day?
- Does it promote accountability and transparency by public authorities for decisions taken by them or in the spending of public money?
- Does it allow individuals and companies to understand decisions made by public authorities affecting their lives?
- Does it bring to light information affecting public health and public safety?

#### 12.0 **Exclusion of Access by the Public to Reports**

12.1 If the ~~Legal Services Manager~~Monitoring Officer thinks fit, the Council may exclude access by the public to reports which in his opinion relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed. If the information is exempt information, the category of the exempt information must also be marked on the report.

12.2 The relevant body is requested in the agenda to confirm the action set out in 0 by resolution. Arrangements will be made to recall the press and public immediately should the motion not be passed.

12.3 If the matter is considered in public, any related report will also become available to the public.

#### 13.0 **Application of Rules to the Cabinet**

Rules 0 – 0 apply to the Cabinet and its Committees (if any). If the Cabinet or its Committees meet to take a key decision then it must also comply with Rules 1 – 11 unless Rule 0 (general exception) or Rule 0 (special urgency) apply. A key decision is as defined in Article 12 of this Constitution.

#### 14. **Procedure before taking Key Decisions**

##### Notice of Key Decision

14.1 Subject to Rule 15 (general exception) and Rule 16 (special urgency), a key decision may not be taken unless:

- a) a notice (called here a "Notice of Key Decision") has been published in connection with the matter in question;
- b) at least 28 clear days have elapsed since the publication of the "Notice of Key Decision"; and

- c) where the decision is to be taken at a meeting of the Cabinet or its Committees, notice of the meeting has been given in accordance with Rule 0 (notice of meetings).

#### Contents of Notice of Key Decision

- 14.2 The Notice of Key Decision will state that a key decision is to be taken by the Cabinet, a committee of the Cabinet, individual members of the Cabinet officers, area committees or under joint arrangements in the course of the discharge of an executive function. It will describe the following particulars:
- a) the matter in respect of which the decision is to be made;
  - b) where the decision maker is an individual, his/her name and title, if any and where the decision maker is a body, its name and a list of its membership;
  - c) the date on which, or the period within which, the decision is to be made;
  - d) a list of the documents submitted to the decision maker for consideration in relation to the matter;
  - e) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
  - f) that other documents relevant to those matters may be submitted to the decision maker; and
  - g) the procedure for requesting details of those documents (if any) as they become available.

#### Publication of the Notice of Key Decision

- 14.3 The Notice of Key Decision must be made available for inspection by the public at Phoenix House, Phoenix Lane, Tiverton Devon known as the designated office or on its website at [www.middevon.gov.uk](http://www.middevon.gov.uk).

#### **15. The Forward Plan**

- 15.1 The Council is not required by law to publish a Forward Plan. However, the a Notice of Key Decision and a Notice of Private Meeting of Cabinet published by the Council set out not just details of specific key decisions, but also details of key decisions over a four month period (including decisions to be made by Cabinet, individual Cabinet members or delegated officers, which are not key decisions. In this constitution, such notices are together referred to as the "Forward Plan". The Forward Plan does not have to include exempt information and should not include confidential information.

#### **16. General Exception**

- 16.1 If a Notice of Key Decision has not been published in the Forward Plan, then subject to Rule 16 (special urgency), the decision may still be taken if:

- a) the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next Forward Plan and until the start of the appropriate month to which the next Forward Plan relates;
- b) the Chief Executive has informed the Chair of the Scrutiny Committee, or in his/her absence the Vice-Chair, and the Monitoring Officer in writing, of the matter about which the decision is to be made;
- c) the Chief Executive has made copies of that notice available to the public at the offices of the Council and on the Council's website [www.middevon.gov.uk](http://www.middevon.gov.uk) ; and
- d) at least 5 clear days have elapsed since the Chief Executive complied with b) and c).

16.2 As soon as reasonably practicable after the Chief Executive has complied with Rule 0, he must make available at the Council offices at Phoenix House, Phoenix Lane, Tiverton, Devon and publish on the Council's website [www.middevon.gov.uk](http://www.middevon.gov.uk) (if any) the reasons why compliance with Rule 0 is impractical.

## 17. **Special Urgency**

17.1 If a decision, (whether a key decision or otherwise), is so urgent that Rule 14 cannot be followed the Leader of the Council or the relevant Cabinet Member may take the decision if he has obtained the agreement of the Chairman of the Scrutiny Committee and the Monitoring Officer that the taking of the decision cannot be reasonably deferred. If the Chairman of the Scrutiny Committee is unable to act, then the agreement of the Chairman of the Council, or in his/her absence the Vice-Chairman will suffice.

17.2 A decision taken under this rule will not normally be taken in public by reason of its urgent nature. A decision will be urgent if any delay would seriously prejudice the Council's or the public's interests. The record of the decision shall state why the decision is an urgent one.

17.3 If by virtue of the date by which a key decision must be taken Rule 15 (general exception) cannot be followed, then the key decision can only be taken if the decision maker obtains the agreement of the Chair of the Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chair of the Overview and Scrutiny Committee, or if the Chair of the Overview and Scrutiny Committee is unable to act, then the agreement of the Chairman of the Council, or in his/her absence the Deputy Chairman of the Council will suffice.

17.4 As soon as reasonably practicable after the decision maker has obtained agreement under Rule 0 he must make available at and publish on (if any) a notice setting out the reasons that the meeting is urgent and cannot reasonably be deferred.

## 18. **Report to Council**

18.1 When the Scrutiny Committee can require a report

18.2 If the Scrutiny Committee thinks that a key decision has been taken which was not:

- a) the subject of a Notice of Key Decision; or
- b) the subject of the general exception procedure; or
- c) the subject of an agreement with the Chair of the Overview and Scrutiny Committee, or the Chairman or Deputy Chairman of the Council under Rule 16;

it may require the Cabinet to submit a report to the Council within such reasonable time as the Scrutiny Committee specifies. The report must include details of the decision and the reasons for the decision, the decision maker, and the reasons, if any, for the Cabinet believing that the decision was a key decision. The power to require a report rests with the Scrutiny Committee, but is also delegated to the ~~Legal Services Manager~~Monitoring Officer, who shall require such a report on behalf of the Committee when so requested by the Chair of the Scrutiny Committee or any 5 members of the Committee. Alternatively the requirement may be raised by resolution passed at a meeting of the Scrutiny Committee.

#### Cabinet's report to Council

- 18.3 The Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 -days of receipt of the written notice, or the resolution of the Committee, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the individual member or body making the decision, and Leader of the Council is of the opinion that it was not a key decision the reasons for that opinion.

#### Quarterly reports on special urgency decisions

- 18.4 In any event the Leader of the Council will submit quarterly reports to the Council on the Cabinet decisions taken in the circumstances set out in Rule 16 (special urgency) in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken

### **19. Record of Decisions**

- 19.1 After any meeting of the Cabinet or any of its Committees, whether held in public or in private, the ~~Legal Services Manager~~Monitoring Officer or, where no Officer was present, the person presiding at the meeting, will produce a written record of every decision taken at that meeting as soon as practicable. The record will include:
- (a) a record of the decision including the date it was made;
  - (b) a record of the reason for the decision;
  - (c) details of any alternative options considered and rejected by the decision-making body at the meeting at which the decision was made;
  - (d) a record of any conflict of interest relating to the matter decided which is declared by any member of the decision-making body which made the decision; and

- (e) in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.

20. **Meetings of the Cabinet to be held in public**

20.1 Meetings of the Cabinet and its committees will be held in public, unless it is likely that exempt or confidential information would be disclosed or whenever a lawful power is used to exclude a member or members of the public in order to maintain orderly conduct or prevent misbehaviour at a meeting. The public may only be excluded for the part or parts of the meeting during which it is likely that exempt or confidential information would be disclosed.

21. **Notice of Private Meetings of the Executive**

21.1 Members of the Cabinet or its committees will be entitled to receive five clear working days notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.

21.2 At least 28 clear days before a private meeting, the decision-making body must:-

- a) make available at the offices of the Council a notice of its intention to hold the meeting in private (a "Notice of Private Meeting"); and
- b) publish that notice on the Council's website.

21.3 At least five clear days before a private meeting, the decision-making body must:-

- a) make available at the offices of the Council a further notice of its intention to hold the meeting in private; and
- b) publish that notice on the Council's website.

21.4 A notice under paragraph 0 must include:-

- a) a statement of the reasons for the meeting to be held in private
- b) details of any representations received by the decision-making body about why the meeting should be open to the public; and
- c) a statement of its response to any such representations.

21.5 Where the date by which a meeting must be held makes compliance with this Rule impractical, the meeting may only be held in private where the decision-making body has obtained agreement from:-

- a) the Chair of the Overview and Scrutiny Committee; or
- b) if there is no such person, or if the Chair of the relevant overview and scrutiny committee is unable to act, the Chairman of the Council; or
- c) where there is no chair of either the relevant overview and scrutiny committee or of the Council, the Deputy Chairman of the Council,



that the meeting is urgent and cannot reasonably be deferred

21.6 As soon as reasonably practicable after the decision-making body has obtained agreement under paragraph 0 to hold a private meeting, it must

- a) make available at the office of the Council a notice setting out the reasons why the meeting is urgent and cannot reasonably be deferred; and
- b) publish that notice on the Council's website.

## 22. **Attendance at Private Meetings of the Cabinet**

### 22.1 Notice and Attendance

- a) All members of the Cabinet will be served notice of all private meetings of the committees of the Cabinet, whether or not they are members of that committee.
- b) All members of the Cabinet are entitled to attend private meetings of the Cabinet, and its committees.
- c) Members other than Cabinet members will not be entitled to attend private meetings of the Cabinet and its committees.

### 22.2 Officer Involvement

- a) The Head of Paid Service, the Chief Finance Officer and the Monitoring Officer, and their nominees are entitled to attend any meeting of the Cabinet and its committees. The Cabinet may not meet unless the Head of Paid Service has been given reasonable notice that a meeting is to take place.
- b) The ~~Legal Services Manager~~Monitoring Officer shall arrange for an officer to attend private Cabinet meetings to record and publish the decisions. In the absence of such officer this will be the responsibility of the Chair of the meeting.
- c) There is no requirement for the Cabinet to meet in the presence of the officers named in paragraphs a) and b)

## 23. **Key Decisions By Individual Members of the Cabinet**

### Reports intended to be taken into account

23.1 Where an individual Member of the Cabinet receives a report which he intends to take into account in making any key decision, then he will not make the decision until at least 5 clear working days after receipt of that report.

### Provision of copies of reports to Overview and Scrutiny Committee

23.2 On giving of such a report to an individual decision maker, the person who prepared the report will give a copy of it to the Chair of the Overview and Scrutiny Committee as soon as reasonably practicable, and make it publicly available at the same time.

### 23.3 Record of individual decision

- a) As soon as reasonably practicable after a Cabinet decision has been taken by an individual member of the Cabinet or a key decision has been taken by an officer, he will prepare, or instruct the ~~Legal Services Manager~~Monitoring Officer to prepare, a report containing:
- (1) a record of the decision including the date it was made;
  - (2) a record of the reasons for the decision;
  - (3) details of any alternative options considered and rejected by the member when making the decision;
  - (4) a record of any conflict of interest declared by any executive member who is consulted by the member which relates to the decision; and
  - (5) in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.
- b) The provisions of Rules 0 and 0 (inspection of documents after meetings) will also apply to the making of decisions by individual Members of the Cabinet. This does not require the disclosure of exempt or confidential information or advice from a political or Chairman's assistant.

### 23.4 Inspection of documents following executive decisions

- a) Subject to Rule 0 , after a meeting of a decision-making body at which an executive decision has been made, or after an individual member or an officer has made an executive decision the ~~Legal Services Manager~~Monitoring Officer must ensure that a copy of-
- (1) any records prepared in accordance with Rules 0 or 0; and
  - (a) any report considered at the meeting or, as the case may be, considered by the individual member or officer and relevant to a decision recorded in accordance with Rules 0 or 0 or, where only part of the report is relevant to such a decision, that part,
- must be available for inspection by members of the public, as soon as is reasonably practicable, at the offices of the Council, and on the Council's website.
- b) Where a request on behalf of a newspaper is made for a copy of any of the documents available for public inspection under Rule a), those documents must be supplied for the benefit of the newspaper by the Council on payment by the newspaper to the Council of postage, copying or other necessary charge for transmission.

### 23.5 Inspection of background papers

- a) Subject to Rule 0, when a copy of the whole or part of a report for a meeting is made available for inspection by members of the public in accordance with Rule 0 or 0, at the same time-
  - (1) a copy of a list compiled by the proper officer of the background paper to the report or part of the report, must be included in the report or, as the case may be, part of the report; and
  - (2) at least one copy of each of the documents included in that list,must be available for inspection by the public at the offices of the Council and on .

### 24. **Joint Committees**

#### 24.1 These Rules apply to the Council's Joint Committees as follows:

- (a) If all the 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.
- (b) If the joint committee contains members who are not on the Cabinet of any participating authorities then the access to information rules in Part VA of the Local Government Act 1972, as applicable to meetings of the full Council and its committees will apply.

### 25. **Scrutiny Committee- Access to Documents**

#### 25.1 Rights to copies

Subject to Rule 0 below, the Scrutiny Committee will be entitled to copies of any document which is in the possession or control of the Cabinet or any of its Committees and which contains material relating to:

- a) any business transacted at a meeting of the Cabinet or its Committees;
- b) any decision taken by an individual member of the Cabinet; or
- c) any decision taken by an Officer of the Council in accordance with executive arrangements.

#### 25.2 Limit on rights

The Scrutiny Committee will not be entitled to:

- a) any document that is in draft form;
- b) any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision the Committee are reviewing or scrutinising or intend to scrutinise; or

26. **Additional Rights of Access for Members**

26.1 Material relating to business to be transacted at a Public Meeting

- a) All Members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet or its Committees which contain material relating to any business to be transacted at a public meeting unless a)(1), a)(2) or a)(3) applies:
  - (1) it contains exempt information falling within paragraphs 1, 2, 4, 5 or 7 of the categories of exempt information; or
  - (2) it contains exempt information falling within paragraph 3 of the categories of exempt information and that information relates to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract; or
  - (3) it contains the advice of a Chairman~~al/political assistant~~.
- b) Any document which is required by Rule a) to be available for inspection by any member of the Council must be available for such inspection for at least five (5) clear days before the meeting except that-
  - (1) where the meeting is convened at shorter notice, such a document must be available for inspection when the meeting is convened; and
  - (2) where an item is added to the agenda at shorter notice, a document that would be required to be available under Rule a) in relation to that time, must be available for inspection when the item is added to the agenda.

26.2 Material relating to previous business

- a) All members will be entitled to inspect any document (except those available only in draft form) which is in the possession or under the control of the Cabinet or its committees and contains material relating to any business previously transacted at a private meeting or to any decision made by a Member or Officer in accordance with executive arrangements unless a)(1), a)(2) or a)(3) applies.
- b) Any document required to be made available for inspection under 0 must be made available when the relevant meeting concludes or, where an executive decision is made by an individual member or officer, immediately after the decision has been made, and in any event, within twenty four (24) hours of the conclusion of the meeting or the decision having been made as the case may be.

27. **Nature of rights**

27.1 These rights of a Member are additional to any other right he or she may have.

28. **Members Other Rights to Information**

28.1 A Member of the Council may, for the purposes of his or her duty as a Member and no other, inspect any document that has been considered by a committee or the Council including background papers. Applications should be made to the ~~Legal Services Manager~~Monitoring Officer and, if available, copies will be supplied upon request.

28.2 A member shall not knowingly inspect or request a copy of any document relating to a matter in which he:

- a) is professionally interested; or
- b) has a disclosable pecuniary interest or personal interest within the meaning of the Code of Conduct for Members as set out in this Constitution.

28.3 This shall not preclude the ~~Legal Services Manager~~Monitoring Officer from declining to allow inspection of any document which is or would be protected by privilege in the event of legal proceedings arising from the relationship of solicitor and client and should be exempt under either the Freedom of Information Act or the Data Protection Act.

28.41 All reports, background papers to reports and minutes kept by any committee shall be open for the inspection of any member of the Council, as soon as the committee has concluded action on the matter to which such reports or minutes relate.

29. **Confidential information, exempt information and advice of a political adviser or assistant**

29.1 Nothing in these Rules is to be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence.

29.2 Nothing in these Rules:

- a) authorises or requires the Council to disclose to the public or make available for public inspection any document or part of document if, in the opinion of the ~~Legal Services Manager~~Monitoring Officer, that document or part of a document contains or may contain confidential information; or
- b) requires the Council to disclose to the public or make available for public inspection any document or part of document if, in the opinion of the proper officer, that document or part of a document contains or is likely to contain exempt information or the advice of a political advisers or assistant.

29.3 Where a member of the Cabinet or an officer makes an executive decision in accordance with executive arrangements, nothing in these Rules:

- a) authorises or requires documents relating to that decision to be disclosed to the public, or made available for public inspection where, the documents contain confidential information; or

- b) requires documents relating to that decision to be disclosed to the public, or made available for public inspection where the disclosure of the documents would, in the opinion of the member or officer making the decision, give rise to the disclosure of exempt information or the advice of a political adviser or assistant.

29.4 Nothing in these Rules requires a decision making body to permit the taking of any photographs of any proceedings or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later), or the making of any oral report on any proceedings as they take place.

## **BUDGET AND POLICY FRAMEWORK PROCEDURE RULES**

### **1. The Framework for Cabinet Decisions**

- 1.1 The Council will be responsible for the adoption of its budget and policy framework as set out in Article 4. Once a budget or a policy framework is in place, it will be the responsibility of the Cabinet to implement it.

### **2. Process for developing the framework**

- 2.1 The process by which the budget and policy framework shall be developed is:

- (a) After consulting stakeholders in a manner appropriate to the matter under consideration, the Cabinet will draw up initial proposals in relation to any plan, strategy or budget that forms part of the Council's budget and policy framework. Once drawn up the Chief Executive will serve copies of them on the chairmen of the relevant Scrutiny Committee, Audit Committee and Policy Development Groups together with dates when the Cabinet will consider them further.
- (b) The Scrutiny Committee, Audit Committee and Policy Development Groups will be convened to consider the draft proposals and whether any further consultation is appropriate. If so, the Scrutiny Committee, Audit Committee and Policy Development Groups will carry out any necessary consultation and will reflect any representations made to it in its response to the Cabinet within the time scale set for decision by the Cabinet.
- (c) The Cabinet will finalise its proposals for the Council to consider having taken into account the comments from the Scrutiny Committee, Policy Development Groups and Audit Committee. The report to Council will show the Cabinet response to those comments.
- (d) The Council will consider the proposals of the Cabinet and may adopt them, amend them, refer them back to the Cabinet for further consideration, or substitute its own proposals in their place.
- (e) The Council's decision shall be dated and shall state either that the decision shall be effective immediately (if the Council accepts the Cabinet proposal without Amendment) or (if the Cabinet proposal is not accepted without Amendment), that the Council's decision will become effective on the expiry of 5 working days after the publication of the notice of decision, unless the Leader formally objects in that period.
- (f) If the Leader objects to the decision of the Council, he/she shall give written notice to the Chief Executive to that effect prior to the date upon which the decision is to be effective. The written notification must state the reasons for the objection. Where such notification is received, the Chief Executive shall convene a further meeting of the Council to reconsider its decision and the decision shall not be effective pending that meeting.
- (g) The Council meeting must take place within 10 working days of the receipt of the Leader's written objection. At that Council meeting, the decision of the Council shall be reconsidered in the light of the objection, which shall be available in writing for the Council.

- (h) The Council shall at that meeting make its final decision on the matter on the basis of a simple majority. The decision shall be made public in and shall be implemented immediately.
- (i) In approving the budget and policy framework, the Council will also specify the extent of virement within the budget and degree of in-year changes to the policy framework that may be undertaken by the Cabinet, in accordance with paragraphs 5 and 6 of these Rules (virement and in-year adjustments). Any other changes to the budget and policy framework are reserved to the Council.

NOTE: Rule 2 is a summary of Part II to Schedule 2 of the Local Authorities (Standing Orders) (England) Regulations 2001 to which detailed reference should be made if required.

### **3. Decisions outside the budget or policy framework**

- 3.1 Subject to the provisions of paragraph 0 the Cabinet, committees of the Cabinet, individual members of the Cabinet or any officers or joint arrangements discharging executive functions may only take decisions which are in line with the Budget and Policy Framework. If any of these bodies or persons wishes to make a decision which is contrary to the Policy Framework, or contrary to or not wholly in accordance with the Budget approved by full Council, then that decision may only be taken by the Council, subject to paragraph 0 below.
- 3.2 If the Cabinet, committees of the executive, individual members of the Cabinet or any officers or joint arrangements discharging executive functions want to make such a decision, they shall take advice from the Monitoring Officer and/or the Section 151 Officer as to whether the decision they want to make would be contrary to the Policy Framework, or contrary to or not wholly in accordance with the budget.
- 3.3 If the advice of either of those officers is that the decision would not be in line with the existing Budget and/or Policy Framework, then the decision must be referred by that body or person to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in paragraph 0 shall apply.

### **4. Urgent decisions outside the budget or policy framework**

- 4.1 The Cabinet, a committee of the Cabinet, an individual member of the Cabinet or officers or joint arrangements discharging executive functions may take a decision which is contrary to the Council's Policy Framework or contrary to or not wholly in accordance with the budget approved by full Council if the decision is a matter of urgency. However, the decision may only be taken:
  - c) if it is not practical to convene a quorate meeting of the full Council; and
  - d) if the Chair of the Scrutiny Committee agrees that the decision is a matter of urgency.

The reasons why it is not practical to convene a quorate meeting of full Council and the Chair of the Scrutiny Committee's consent to the decision being taken as a matter of urgency must be noted on the record of the decision. In the absence of the Chair of



the Scrutiny Committee the consent of the Chairman and in the absence of both the Deputy Chairman of the Council will be sufficient.

- 4.2 Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

5. **Virement**

- 5.1 Steps taken by the Cabinet, a committee of the Cabinet, individual members of the Cabinet or Officers or joint arrangements discharging executive functions to implement Council policy, shall not exceed those budgets allocated to each budget head. In the event that virement across budget heads or budgets becomes necessary or desirable, it shall be carried out in accordance with the Financial Procedure Rules in Part 4 of this Constitution.

6. **In-year changes to Policy Framework**

- 6.1 The responsibility for agreeing the Budget and Policy Framework lies with the Council and decisions by the Cabinet, a committee of the Cabinet, an individual member of the Cabinet or officers or joint arrangements discharging executive functions must be in line with it. No changes to any policy or strategy which make up the policy framework may be made by those bodies or individuals except those changes:

- (a) which will result in the closure or discontinuance of a service or part of service to meet a budgetary constraint;
- (b) necessary to ensure compliance with the law, ministerial direction or government guidance;
- (c) in relation to the Policy Framework in respect of a policy which would normally be agreed annually by the Council following consultation, but where the existing policy document is silent on the matter under consideration; or
- (d) for which provision is made within the relevant budget or policy.

7. **Call-in of decisions outside the budget or policy framework**

- 7.1 Where the Scrutiny Committee is of the opinion that an executive decision is, or if made would be, contrary to the Policy Framework, or contrary to or not wholly in accordance with the Council's Budget, then it shall seek advice from the Monitoring Officer and/or Section 151 Officer.

- 7.2 In respect of functions which are the responsibility of the Cabinet, the Monitoring Officer's report and/or Section 151 Officer's report shall be to the Cabinet with a copy to every Member of the Council. Regardless of whether the decision is delegated or not, the Cabinet must meet to decide what action to take in respect of the Monitoring Officer's or Section 151 Officer's report and to prepare a report to Council in the event that the monitoring officer or the chief finance officer conclude that the decision was a departure, and to the Scrutiny Committee if the Monitoring Officer or the Section 151 Officer conclude that the decision was not a departure.

- 7.3 If the decision has yet to be made, or has been made but not yet implemented, and the advice from the Monitoring Officer and/or the Section 151 Officer is that the decision is or would be contrary to the Policy Framework or contrary to or not wholly in accordance with the Budget, the Scrutiny Committee may refer the matter to Council. In such cases, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter. The Council shall meet within 20 working days of the request by the Scrutiny Committee. At the meeting it will receive a report of the decision or proposals and the advice of the Monitoring Officer and/or the Section 151 Officer. The Council may either:
- a) endorse a decision or proposal of the executive decision taker as falling within the existing Budget and Policy Framework. In this case no further action is required, save that the decision of the Council be minuted and circulated to all councillors in the normal way; or
  - b) amend the Council's Financial Procedure Rules or policy concerned to encompass the decision or proposal of the body or individual responsible for that executive function and agree to the decision with immediate effect. In this case, no further action is required save that the decision of the Council be minuted and circulated to all councillors in the normal way; or
  - c) where the Council accepts that the decision or proposal is contrary to the Policy Framework or contrary to or not wholly in accordance with the Budget, and does not amend the existing framework to accommodate it, require the Cabinet to reconsider the matter in accordance with the advice of either the Monitoring Officer or Section 151 Officer.

## **CABINET PROCEDURE RULES**

### 1. HOW DOES THE CABINET OPERATE?

#### 1.1 Who may make Cabinet decisions?

The arrangements for the discharge of executive functions are determined by the Leader. The Leader may provide for executive functions to be discharged by:

- a) the Cabinet as a whole;
- b) an individual member of the Cabinet;
- c) an officer;
- d) joint arrangements; or
- e) another local authority.

#### 1.2 Delegation by the Leader

Following the annual meeting of the Council, the Monitoring Officer, at the direction of the Leader, will draw up a written record of Cabinet delegations made by the Leader for inclusion in the Council's scheme of delegation at Part 3 to this Constitution. This will contain the following information about executive functions in relation to the coming year:

- a) the extent of any authority delegated to Cabinet members individually, including details of the limitation on their authority;
- b) the terms of reference and constitution of such Cabinet committees as the Leader appoints and the names of Cabinet members appointed to them;
- c) the nature and extent of any delegation of Cabinet functions to any other authority or any joint arrangements; and
- d) the nature and extent of any delegation to officers with details of any limitation on that delegation, and the title of the officer to whom the delegation is made.

#### 1.3 Sub-delegation of Cabinet functions

- a) Where the Cabinet, a committee of the Cabinet or an individual member of the Cabinet is responsible for an Cabinet function, they may delegate further to joint arrangements or an officer [or another local authority](#).

- b) Unless the Leader directs otherwise, a committee of the Cabinet to whom functions have been delegated by the Leader may delegate further to an officer.
- c) Where executive functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated.

#### 1.4 The Council's scheme of delegation and [Cabinet](#) functions

- a) The Leader may amend the scheme of delegation relating to Cabinet functions at any time. In doing so the Leader will give written notice to the Monitoring Officer and to the person, body or committee concerned. The notice must set out the extent of the amendment to the scheme of delegation, and whether it entails the withdrawal of delegation from any person, body or committee. The Monitoring Officer will present a report to the next ordinary meeting of the Council setting out the changes made by the Leader.
- b) Where the Leader seeks to withdraw delegation from a committee of the Cabinet, notice will be deemed to be served on that committee when he has served it on its chair.

#### 1.5 Conflicts of Interest

- a) Where the Leader has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.
- b) If any member of the Cabinet has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.
- c) If the exercise of an cabinet function has been delegated to a committee of the Cabinet, an individual member or an officer, and should a conflict of interest arise, then the function will be exercised in the first instance by the person or body by whom the delegation was made and otherwise as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.

#### 1.6 Cabinet meetings – when and where?

The frequency and timing of meetings of the Cabinet will be determined by the Leader. The Cabinet will meet at the Council's main offices or another location to be agreed by the Leader.

The Cabinet will meet at least 10 times per year at times to be agreed by the Leader of the Council. In addition:

- (1) the Leader of the Council may also arrange other meetings at his/her discretion;

- (2) The Head of Paid Service may also call for additional meetings at his/her discretion with the approval of the Leader of the Council, or in his/her absence the Deputy Leader of the Council;
- (3) The Monitoring Officer and/or the Section 151 Officer may call an additional meeting if either believes it is necessary to do so in order to fulfil their statutory duties; in other circumstances where any of the Head of Paid Service, Monitoring Officer and Section 151 Officer are of the opinion that a meeting of the Cabinet needs to be called to consider a matter that requires a decision he/she will have the right to call a meeting

#### 1.7 Public or private meetings of the Cabinet?

The Cabinet will hold its meetings in public, except in the circumstances set out in paragraphs (a) to (c) of Regulation 4(2) of the Local Authorities (Executive Arrangements) (meetings and Access to Information) (England) Regulations 2012. Briefly, these circumstances cover:

- a) confidential information;
- b) exempt information; and
- c) disorderly conduct.

#### 1.8 Quorum

The number of members of the Cabinet is seven including the Leader of the Council and Deputy Leader of the Council.

The quorum for a meeting of the Cabinet shall be 4 including the Leader or Deputy Leader, or any 4 members in circumstances to be considered exceptional by any two of the Statutory Officers.

#### 1.9 How are decisions to be taken by the Cabinet?

- a) Cabinet decisions made by the Cabinet as a whole will be taken at a meeting convened in accordance with the Access to Information Procedure Rules in Part 4 of the Constitution.
- b) Where Cabinet decisions are delegated to a committee of the Cabinet, the rules applying to executive decisions taken by them shall be the same as those applying to those taken by the Cabinet as a whole.

### 2. HOW ARE CABINET MEETINGS CONDUCTED?

#### 2.1 Who presides?

The Leader will preside at any meeting of the Cabinet or its committees at which he/she is present. In his/her absence, the Deputy Leader will preside. In his/her absence, then a person appointed to do so by those present shall preside.

## 2.2 Who may attend?

These details are set out in the Access to Information Procedure Rules in Part 4 of this Constitution.

## 2.3 What business?

At each meeting of the Cabinet the following business will be conducted:

- a) consideration of the minutes of the last meeting;
- b) declarations of interest, if any;
- c) matters referred to the Cabinet (whether by Scrutiny Committees or by the Council) for reconsideration by the Cabinet in accordance with the provisions contained in the Overview and Scrutiny Procedure Rules or the Budget and Policy Framework Procedure Rules set out in Part 4 of this Constitution;
- d) consideration of reports from Scrutiny Committee; and
- e) matters set out in the agenda for the meeting, and which shall indicate which are key decisions and which are not in accordance with the Access to Information Procedure rules set out in Part 4 of this Constitution.

## 2.4 Consultation

All reports to the Cabinet from any member of the Cabinet or an officer on proposals relating to the Budget and Policy Framework must contain details of the nature and extent of consultation undertaken with stakeholders and the outcome of that consultation. Reports about other matters will set out the details and outcome of consultation as appropriate. The level of consultation required will be appropriate to the nature of the matter under consideration.

## 2.5 Who can put items on the Cabinet agenda?

- a) The Leader will decide upon the schedule for meetings of the Cabinet. He/she may put any matter on the agenda of any Cabinet meeting whether or not authority has been delegated to the Cabinet, a committee of it or any member or officer in respect of that matter.
- b) Any member of the Cabinet may require the Head of Paid Service to make sure that an item is placed on the agenda of the next available meeting of the Cabinet for consideration. If he/she receives such a request the Head of Paid Service will comply
- c) The Head of Paid Service, the Monitoring Officer and/or the Chief Finance Officer may include an item for consideration on the agenda of a

- Cabinet meeting and may require that such a meeting be convened in pursuance of their statutory duties.
- d) In other circumstances, where any two of the Head of Paid Service, Chief Finance Officer and Monitoring Officer are of the opinion that a meeting of the Cabinet needs to be called to consider a matter that requires a decision they may jointly include an item on the agenda of a Cabinet meeting. If there is no meeting to deal with the issue in question, then the person(s) entitled to include an item on the agenda may also require that a meeting be considered at which the matter will be considered.
  - e) Full Council may require any item to be placed on the agenda of the next reasonably available meeting of the Cabinet
  - f) There will be a standing item on the agenda of each meeting of the Cabinet for matters referred by non-Cabinet bodies of the Council but the amount of business which can reasonably be dealt with at any one meeting of the Cabinet shall be within the discretion of the Leader of the Council.

**SCRUTINY COMMITTEE, AUDIT COMMITTEE, STANDARDS  
COMMITTEE AND POLICY DEVELOPMENT GROUP PROCEDURE  
RULES**

**General arrangements**

- 1.1 The Council will have one Scrutiny Committee, three Policy Development Groups an Audit Committee and a Standards Committee as set out in Article 6 and will appoint to them as it considers appropriate from time to time. Such groups, subject to the approval of the Programming Panel, may appoint working groups which shall be time limited.
- 1.2 The Programming Panel, comprising the Leader of the Council or Deputy Leader, the Chairmen or Vice Chairmen of Scrutiny Committee, Policy Development Groups and Audit Committee, will co-ordinate the forward programme of these five bodies. However Scrutiny Committee will have the primary responsibility for setting its own agenda.
- 1.3 The number of members of the Scrutiny Committee shall be twelve. The number of members of each Policy Development Group shall be nine. The number of members on the Audit Committee shall be seven. The number of members on the Standards Committee shall be nine
- 1.4 Scrutiny Committee, Policy Development Groups, Audit Committee and Standards Committee shall meet in accordance with the Council's Procedure Rules and the Access to Information Rules. Working groups will meet informally, subject to the approval of the Programming Panel, to help inform the Scrutiny and policy development process and may submit reports to the Scrutiny Committee, the Policy Development Groups, Audit Committee and Standards Committee.

**2. Programming Panel**

- (a) The Programming Panel will comprise the Chairmen or Vice Chairmen of the Scrutiny Committee, Policy Development Groups and Audit Committee and the Leader of the Council or Deputy Leader of the Council. The Panel to be chaired by the Chairman of the Scrutiny Committee.
- (b) The panel shall have the following terms of reference:
  - (i) To oversee the workloads of the five bodies to ensure efficiency of the scrutiny and policy development process;
  - (ii) To co-ordinate requests for reviews referred to by the Cabinet or the Council which do not fall within the remit of any one group;
  - (iii) To resolve any disputes between groups.The panel shall not have the power of call in.
- (c) The panel will meet as and when necessary at the request of the Chairman of Scrutiny Committee, the Leader of the Council or Head of Paid Service.

**3 Scrutiny Committee**

The terms of reference of the Scrutiny Committee will be:



- (a) the performance of all Scrutiny Committee functions as defined in Article 6 on behalf of the Council;
- (b) the appointment of such time limited working groups as it considers appropriate to fulfil those functions, subject to approval from the Programming Panel;
- (c) to receive reports from the Leader of the Council at its first meeting after each annual Council meeting on 'the state of the district', the Cabinet's priorities for the coming year and its performance in the previous year;
- (d) to approve its work programme in consultation with the Programming Panel;
- (e) to refer those matters which fall within the remit of the Scrutiny Committee, the Policy Development Groups or the Audit Committee, to the Programming Panel for allocation;
- (f) to review the system of referrals from Scrutiny Committee to the Cabinet to ensure that these are managed efficiently and do not exceed reasonable limits as set out in this Constitution;
- (g) to respond to reasonable requests from the Cabinet to develop or review policy not within the remit of any Policy Development Group;
- (h) in the event of reports to the Cabinet exceeding reasonable limits, or if the volume of such reports creates difficulty for the management of Cabinet business or jeopardises the efficient running of Council business, at the request of the Cabinet, to make decisions about the priority of referrals made.

#### 4 **Policy Development Groups**

The terms of reference of the Policy Development Groups will be:

- (a) The performance of policy development functions as defined in Article 6 on behalf of the Council;
- (b) the appointment of such time limited working groups as it considers appropriate to fulfil those functions, subject to approval from the Programming Panel;
- (c) to approve a work programme on the advice of the Programming Panel;
- (d) to refer those matters which fall within the remit of the Scrutiny Committee, Policy Development Groups or Audit Committee to the Programming Panel for allocation;
- (e) to respond to reasonable requests from the Cabinet to develop or review policy within their remit;

#### 5 **Who may sit on the Scrutiny Committee, Policy Development Groups, Audit Committee and Standards Committee?**

All councillors except members of the Cabinet may be members of the Scrutiny Committee, Policy Development Groups or Audit Committee.

All councillors including members of the Cabinet may be members of the Standards Committee.

#### 6 **Co-optees**

Scrutiny Committee, Policy Development Groups and Audit Committee shall each be entitled to involve up to 3 people at any time as non-voting co-optees. The appointment of co-optees shall be time limited.

**7 Meetings of Scrutiny Committee**

There shall be at least six ordinary meetings of the Scrutiny Committee in each year. In addition, provision for a further six meetings shall be made which may be called when appropriate and specifically where there is a need to call in an Cabinet decision. A Scrutiny Committee meeting may be called by the Chairman of Scrutiny Committee, by any four members of Scrutiny Committee or by the Head of Paid Service if he/she considers it necessary or appropriate. Cancellation of any meeting shall be with the agreement of the Chairman.

**8 Meetings of Policy Development Groups and Audit Committee**

There shall be at least six ordinary meetings of each Policy Development Group and Audit Committee in each year. There shall normally be other informal sessions as necessary to deliver the pre-agreed work programme. The frequency and number of meetings and informal sessions shall not overstretch the resource of the Council. Meetings shall be called by the Head of Paid Service.

**9 Meetings of the Standards Committee**

Meetings of the Standards Committee shall be called as and when appropriate. Meetings shall be called by the Head of Paid Service.

**10 Quorum**

The quorum for Scrutiny Committee shall be six, for Policy Development Groups shall be five, for Audit Committee shall be four and for Standards will be five, normally including the Chairman or Vice Chairman or any five councillors in relation to Scrutiny Committee and Policy Development Groups and any four councillors in relation to the Audit Committee in circumstances considered to be exceptional by any two of the statutory officers.

**11 Who chairs meetings?**

The Chairman of the Scrutiny Committee shall be appointed by the Council. Without limiting the discretion of the Council, consideration shall be given to the selection of a chairman on ability and expertise without reference to party political affiliation. *In these circumstances, there will be a presumption that the chair of Scrutiny Committee will be drawn from the minority group(s).*

**12 Work programme**

The Scrutiny Committee will, subject to co-ordination by the Programming Panel and reasonable request from the Cabinet, be responsible for setting its own work programme and in doing so shall take into account wishes of councillors who are not members of the largest political group on the Council.

Policy Development Groups and Audit Committee will, on the advice of the Programming Panel and in response to reasonable requests from the Cabinet, set a work programme.

**12 Agenda items: Scrutiny Committee**

- (a) Any member of Scrutiny Committee or Policy Development Group shall be entitled to give notice to the Head of Paid Service that he/she wishes an

item relevant to its functions to be included on the agenda for the next available meeting. On receipt of such a request the Head of Paid Service will ensure that it is included on the next reasonably available agenda.

- (b) Any Member of the Council who is not a member of the Scrutiny Committee shall be entitled to refer to that Committee any local government matter which is relevant to the functions of that Committee. On receipt of such a request the Head of Paid Service will ensure that it is included on the next reasonably available agenda.
- (c) Scrutiny Committee shall also respond, as soon as its work programme permits, to requests from the Council and, if it considers it appropriate, the Cabinet to review particular areas of Council activity. Where it does so, Scrutiny Committee shall report its findings and any recommendations back to the Cabinet and/or Council. The Council and/or the Cabinet shall consider the report of Scrutiny Committee within one month of it being submitted to the Head of Paid Service or at the next available meeting thereafter.

### 13 Policy review and development

- (a) The role of the Scrutiny Committee, Audit Committee and Policy Development Groups in relation to the development of the Council's budget and policy framework is set out in detail in the Budget and Policy Framework Procedure Rules and in Article 6.
- (b) In relation to the development of the Council's approach to other matters not forming part of its policy and budget framework, Policy Development Groups (and where relevant Scrutiny Committee) may make proposals to the Cabinet for developments in so far as they relate to matters within their terms of reference.
- (c) Policy Development Groups (and where relevant Scrutiny Committee) may hold enquiries and investigate the available options for future direction in policy development and may appoint advisors and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may pay to any advisors, assessors and witnesses a reasonable fee and expenses for doing so.

### 14 Reports on policy proposals

- (a) Once they have formed recommendations on proposals for policy development, Policy Development Groups (and where relevant Scrutiny Committee) will prepare a formal report and submit it to the Head of Paid Service for consideration by the Cabinet, or to the Council as appropriate (e.g., if the recommendation would require a departure from or a change to the agreed budget and policy framework).
- (b) If Scrutiny Committee or Policy Development Groups cannot agree on one single final report to the Council or Cabinet as appropriate, then up to one minority report may be prepared and submitted for consideration by the Council or Cabinet with the majority report.

- (c) The Council or Cabinet shall consider such report of Scrutiny Committee within 2 months of being submitted to the Head of Paid Service.

**15 Rights of Scrutiny Committee members to documents**

- (a) In addition to their rights as councillors, members of the Scrutiny Committee have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.
- (b) Nothing in this paragraph prevents more detailed liaison between the Cabinet and Scrutiny Committee as appropriate depending on the particular matter under consideration.

**16 Councillors and officers giving account**

- (a) Scrutiny Committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the scrutiny role, it may require a member of the Cabinet, the Head of Paid Service and/or any senior officer to attend before it to explain in relation to matters within their remit:

- (i) any particular decision or series of decisions;
  - (ii) the extent to which the actions taken implement Council policy;
- and/or
- (iii) their performance.

and it is the duty of those persons to attend if so required.

- (b) Where any councillor or officer is required to attend Scrutiny Committee under this provision, the chairman will inform the Head of Paid Service. The Head of Paid Service shall inform the councillor or officer in writing giving at least five working days notice of the meeting at which he/she is required to attend. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced. Where the account to be given to Scrutiny Committee will require the production of a report, then the councillor or officer concerned will be given sufficient notice to allow for preparation of that documentation.
- (c) Where, in exceptional circumstances, the councillor or officer is unable to attend on the required date, then the Scrutiny Committee shall in consultation with the councillor or officer arrange an alternative date for attendance.
- (d) Non-Cabinet members may attend. Non-Cabinet members may speak at the discretion of the chairman.

**17 Attendance by others**

- (a) When discussing policy development and review, Policy Development Groups shall and Scrutiny Committee may invite relevant members of the Cabinet to attend and speak. Other councillors, who are not members of the Scrutiny Committee, or Policy Development Group or invited members of the Cabinet, may attend and may speak at the discretion of the chairman.

- (b) Scrutiny Committee or Policy Development Groups may also invite people other than those people referred to in paragraph 17 (a) above to address them, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and councillors and officers in other parts of the public sector and shall invite such people to attend.
- (c) Cabinet Members shall be required to attend their relevant Policy Development Groups

## 18 **Call-in**

Call-in by Scrutiny Committee should only be used in exceptional circumstances. These are where members of Scrutiny Committee have evidence which suggests that the Cabinet did not take the decision in accordance with the principles set out in Article 12 (Decision Making).

- (a) The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.
- (b) The process begins with the distribution of the Cabinet agenda which will give all councillors the opportunity to examine items for discussion and clarify issues before meetings
- (c) When a decision is made by the Cabinet, or a key decision is made by an officer with delegated authority from the Cabinet, or under joint arrangements, the decision shall be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within three working days of being made. Decisions will be sent to all councillors within the same timescale.
- (d) The decisions will indicate the date on which decisions will come into effect unless:
  - (i) called-in;
  - (ii) they are adjudged to be not in accordance with the Council policy or budget framework (see Budget and Policy Framework Procedure Rules – paragraphs 2 and 3) and the decision falls to be referred to Council or is urgent and otherwise satisfies paragraph 4 of the Policy and Budget Framework Procedure Rules or where paragraph 7 of those Rules has been triggered.
- (e) A decision will normally come into force, and may then be implemented, on the expiry of 5 working days after the publication of the decision, unless Scrutiny Committee objects to it and calls it in (except in cases of urgency and special urgency as defined in the Access to Information Procedure Rules).
- (f) During that period, the Head of Paid Service shall call-in a decision for scrutiny by Scrutiny Committee if so requested by the Chairman or any three members of Scrutiny Committee or four other councillors of the Council, and shall then notify the decision-taker of the call-in. Members who wish to call-in a decision are required to seek guidance from the Monitoring Officer on the veracity of their stated grounds for the call-in and demonstrate that they have been mindful of the advice they have received

when deciding whether or not to proceed. The Head of Paid Service shall refer the matter to the next available meeting of the Scrutiny Committee.

- (g) Those councillors calling-in will need to specify the reasons for the call-in.
- (h) When the relevant Cabinet minutes are put before the Scrutiny Committee, together with the advice from the Monitoring Officer on the grounds for the call-in, the councillors who called in the decision shall have the right to attend and speak. The Leader of the Council and/or relevant Cabinet members shall be invited to attend to explain the basis for the decision but may then be asked to leave. They may choose also to make submissions in writing. Relevant officers shall also be invited to attend.
- (i) If, having considered the decision, Scrutiny Committee is still concerned about it, then it may refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns or refer the matter to the next full Council meeting or, if urgent to a Special Council meeting. If referred to the decision maker they shall then reconsider within a further 10 working days, amending the decision or not, before adopting a final decision.
- (j) If following an objection to the decision, Scrutiny Committee meets but does not refer the matter back to the decision making person or body or refer it to full Council, the decision shall take effect on the date of the Scrutiny Committee meeting, whichever is the earlier.
- (k) If the matter was referred to full Council and the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective in accordance with the provision below. However, if the Council does object, it has no locus to make decisions in respect of an Cabinet decision unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget. Unless that is the case, the Council will refer any decision to which it objects back to the decision making person or body, together with the Council's views on the decision. That decision making body or person shall choose whether to amend the decision or not before reaching a final decision and implementing it. Where the decision was taken by the Cabinet, a meeting will be convened to reconsider within 15 working days of the Council request.
- (l) If Council does not refer the decision back to the decision making body or person, the decision will become effective on the date of the Council meeting.
- (m) The call-in procedure set out above shall not apply where the decision being taken is urgent as defined in the Access to Information Procedure Rules. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.

#### 19 **The party whip**

There is a presumption that a party whip must not be applied to matters considered by Scrutiny Committee.

20 **Procedure at Scrutiny Committee meetings**

- (a) Scrutiny Committee shall consider the following business:
  - (i) minutes of the last meeting;
  - (ii) declarations of interest;
  - (iii) consideration of any matter referred to Scrutiny Committee for a decision in relation to call in of a decision;
  - (iv) responses of the Cabinet, or Council where relevant to reports of Scrutiny Committee; and
  - (v) the business otherwise set out on the agenda for the meeting.

21 **Procedure at Policy Development Group meetings**

- (a) Policy Development Groups shall consider the following business:
  - (i) minutes of the last meeting;
  - (ii) declarations of interest;
  - (iii) responses of the Cabinet or Council where relevant to reports of the Policy Development Group;
  - (iv) requests from the Cabinet for policy development work;
  - (v) the business otherwise set out on the agenda for the meeting.

22 **Conduct towards invitees to Scrutiny Committee and Policy Development Groups meetings**

- (a) Where Scrutiny Committee or Policy Development Groups conduct investigations and ask people to attend to give evidence at meetings these are to be conducted in accordance with the following principles:
  - (i) that the investigation be conducted fairly and all councillors be given the opportunity to ask questions of attendees, and to contribute and speak;
  - (ii) that those assisting by giving evidence be treated with respect and courtesy; and
  - (iii) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
- (a) Following any investigation or review, Scrutiny Committee or Policy Development Groups shall prepare a report, for submission to the Cabinet and/or Council as appropriate and shall make its report and findings public

23 **Procedure at Audit Committee**

- (a) **Audit Committee shall consider the following business:**
  - (i) minutes of the last meeting;
  - (ii) declarations of interest (including whipping declarations);
  - (iii) consideration of any matter referred to Audit Committee for a decision in relation to call in of a decision;
  - (iv) responses of the Cabinet, or Council where relevant to reports of Audit Committee; and
  - (v) the business otherwise set out on the agenda for the meeting.

(b) **Composition**

- (i) The Audit Committee will be appointed in accordance with the statutory requirements to achieve political balance.
- (ii) All Councillors except Members of the Cabinet or the Chairman of the Scrutiny Committee may be Members of the Audit Committee.

(c) **Chairman and Vice Chairman**

The Committee will appoint a Chairman and Vice Chairman at its first meeting in each municipal year which runs from May to April each year. The Chairman will lead the audit committee giving direction and support to ensure a full and meaningful work programme. The role of the Vice Chairman is to support the Chairman.

(d) **Officer Attendance**

The Audit Committee will be attended by the Head of Communities and Governance and Head of Finance or their nominated deputies.

**Specific Functions**

(A) ***Audit Activity:-***

- (i) To consider and approve the strategic audit approach and the annual audit programme;
- (ii) To consider the annual internal audit report including an overall opinion on the adequacy of the Council's control environment, the extent to which the audit plan has been achieved, and a summary of any unresolved issues;
- (iii) To consider summaries of specific internal audit reports as requested;
- (iv) In the event of the audit service being contracted out, to consider reports dealing with the management and performance of the providers of internal audit services;
- (v) To consider reports from internal audit on agreed recommendations not implemented within reasonable timescales;
- (vi) To consider the external auditor's annual letter, relevant reports and the report to those charged with governance;
- (vii) To consider specific reports as agreed with the external auditor;
- (viii) To comment on the scope and depth of external audit work and to ensure it gives value for money;
- (ix) To liaise with the Audit Commission over the appointment of the Council's external auditor should that become necessary;
- (x) To commission work from internal and external audit.

(B) ***Internal Controls***

- (i) To review any issues referred to by the Chief Executive or any Council body;



- (ii) To monitor the Council's confidential reporting policies in relation to anti fraud and anti corruption and whistle blowing, including monitoring the use of the Whistle Blowing policy and the Council's Complaint process;
- (iii) To annually approve the Council's Risk Management Strategy and review the effectiveness of the Council's Risk Management process on a regular basis and gain assurance that appropriate action is being taken to ensure that corporate risks are being managed, including a report to the Council annually;
- (iv) To oversee the production of the Council's Annual Governance Statement and to ensure that relevant and suitable evidence has been obtained to support the disclosures within the Statement;
- (v) To review the Council's Annual Governance Statement and recommend its approval to Full Council and monitor the progress against the Annual Statement action plan on a regular basis;
- (vi) To annually review and update the Council's Code of Corporate Governance to ensure compliance with best practice and legislative guidance;
- (vii) To consider the Council's compliance with its own and other published standards and controls.

(C) ***To review and formally approve the Annual Statement of Accounts***

- (i) To consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from audit regarding the robustness of the accounts that need to be brought to the attention of the Council;
- (ii) To consider the external auditor's reports to those charged with governance on issues arising from the audit of the accounts.

# **Part 5 – Codes and Protocols**

## Member's Code of Conduct

### Introduction

Pursuant to section 27 of the Localism Act 2011, Mid Devon District Council ('the Council') has adopted this Code of Conduct to promote and maintain high standards of behaviour by its members and co-opted members whenever they conduct the business of the Council including the business of the office to which they were elected or appointed or when they claim to act or give the impression of acting as a representative of the Council.

This Code of Conduct is based on the following seven principles:

- Selflessness:** Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.
- Integrity:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in performance of their official duties.
- Objectivity:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- Openness:** Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- Honesty:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protect the public interest.
- Leadership:** Holders of public office should promote and support these principles by leadership and example.

### Definitions

For the purposes of this Code, a 'co-opted member' is a person who is not a member of the Council but who is either a member of any committee or subcommittee of the Council, or a member of, and represents the Council on any joint committee or joint sub-committee of the Council, and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

For the purposes of this Code, a 'meeting' is a meeting of the Council, any of its committees, sub-committees, joint committees or joint sub-committees.

For the purposes of this Code, and unless otherwise expressed, a reference to a member of the Council includes a co-opted member of the Council.

### **Member obligations**

When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/she has the following obligations.

1. He/she shall behave in such a way that a reasonable person would regard as respectful.
2. He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.
3. He/she shall not seek to improperly confer an advantage or disadvantage on any person.
4. He/she shall use the resources of the Council in accordance with its requirements.
5. He/she shall not disclose information which is confidential or where disclosure is prohibited by law.
6. He/she shall not conduct themselves in a manner or behave in such a way so as to bring their office or the Council into disrepute

### **Registration of interests**

7. Within 28 days of this Code being adopted by the Council, or the member's election or the co-opted member's appointment (where that is later), he/she shall register all interests which fall within the categories set out in Appendices A and B.
8. Upon the re-election of a member or the re-appointment of a co-opted member, he/she shall within 28 days re-register any interests in Appendices A and B.
9. A member shall register any change to interests or new interests in Appendices A and B within 28 days of becoming aware of it.
10. A member need only declare on the public register of interests the existence but not the details of any interest which the Monitoring Officer agrees is a

'sensitive interest'. A sensitive interest is one which, if disclosed on a public register, could lead the member or a person connected with the member to be subject to violence or intimidation.

### **Declaration of interests**

11. Where a matter arises at a meeting which relates to an interest in Appendix A (a Disclosable Pecuniary Interest) the member shall not participate in the discussion or vote on the matter. The member must declare that they have an interest and shall withdraw from the room at the commencement of the consideration of that business.
12. Where a matter arises at a meeting which relates to an interest in Appendix A (a Disclosable Pecuniary Interest) which is a sensitive interest, the member shall not participate in a discussion or vote on the matter. The member must declare that they have an interest and shall withdraw from the room at the commencement of the consideration of that business.
13. Where a matter arises at a meeting which relates to an interest in Appendix B (a Personal Interest), the member can participate in the discussion and vote on the matter but must declare that they have a Personal Interest.
14. In relation to points 11, 12 and 13, the member only has to declare the nature of his/her interest if it is not already entered in the member's Register of Interests or if he/she has not notified the Monitoring Officer of it. If it is a sensitive interest which has not already been disclosed to the Monitoring Officer, the member shall disclose he/she has an interest but not the nature of it.

### **Dispensations**

15. Dispensations can be granted where it is considered that:
  - a) Without the dispensation, the number of persons who could not take part due to their disclosable pecuniary interest would be so great as to impede the transaction of the business;
  - b) Without the dispensation, the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;
  - c) Granting the dispensation is in the interests of persons living in the authority's area;
  - d) Without the dispensation, each executive member would be prohibited from participating in any particular business to be transacted by the authority's executive as they would have a disclosable pecuniary interest ; or
  - e) It is otherwise appropriate to grant a dispensation
16. The request for dispensation must be put in writing and must specify the reason for the dispensation and the period for which it has effect. The period specified may not exceed four years."

**MID DEVON DISTRICT COUNCIL**

**MEMBERS' CODE OF CONDUCT**  
**GENERAL NOTICE OF REGISTERABLE INTERESTS**

I,

--

**Being a Member/Co-opted Member of Mid Devon District Council,**

give notice in this form of those interests which I am required to declare under The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and Mid Devon District Council's Code of Conduct:

I understand that in so doing I must declare any interest of my spouse or civil partner or of any person with whom I am living as a husband or wife or if we were civil partners in sections 1-6 of this form as set out in the Council's Code of Conduct for Members. I have also declared my personal interests as required by the Code of Conduct in section 7 of this form.

**APPENDIX A – DISCLOSABLE PECUNIARY INTERESTS**

<b>1. Employment, Office, Trade, Profession or Vocation</b> Please give details of (i) every employment, job, trade, business or vocation you have, for which you receive any benefit or gain (i.e. profit, salary or benefit in kind) including a short description of the activity e.g. 'Accountant' or 'Farmer' and (ii) the name of any employer or body, firm or company which you own or in which you have any beneficial interest.	
Description of employment, job, vocation, trade or business	
Name of Employer, body, firm or company by which you are employed or which you own or in which you have a beneficial interest	
<b>2. Sponsorship</b> Please give details of any person or body (other than the District Council) who has made any payment to you in respect of your election or any expenses you have	

incurred in carrying out your duties as a District Councillor.

**3. Securities: Interests in Companies**

Please give details of a body which has a place of business or owns land in the District Council's area and in which you have a beneficial interest (a shareholding) of more than £25,000 (nominal value) or more than 1/100<sup>th</sup> of the total shares issue of that body (whichever is the lower) or if there is more than one class of share, the total nominal value of shares in any class of that body of more than 1/100<sup>th</sup> of the total shares of that class

*Note: It is not necessary to declare the nature or size of the holding, simply the name of the company or other body.*

**4. Contracts: for Goods, Works or Services with the Council**

Please give details of any current, existing contracts for goods, works or services between the District Council and you and any body, firm or company by which you are employed or which you own or in which you have a beneficial interest, as referred to at 3 above.

**5. Landholdings and Licenses in the Area**

Please give the address or other description (sufficient to identify the location) of any land or property in the District Council's area in which you have a beneficial interest, indicating whether you are the owner, lessee or tenant, including land in which you may have a licence, alone or with others, to occupy for a period of one month or longer.

You must include the land and house you live in and for example an allotments you own or use.

<p><b>6. Corporate Tenancies: Land leased from Mid Devon District Council</b>  Please give the address or other description (sufficient to identify the location) of any land leased or licensed from the District Council by a you or any body firm or company by which you are employed or which you own or in which you have a beneficial interest (specified at 3 above).</p>	
<p><b>APPENDIX B – PERSONAL INTERESTS</b>  Please give details of your membership of, or any position of general control or management, of any bodies in the categories listed below, your interests in land in the area of the District Council (other than those set out in sections 5 &amp; 6) and of any gifts and hospitality received worth over £25.</p>	
<p>Membership of any Body or Organisation to which you have been appointed or nominated by the District Council as its representative</p>	
<p>Membership of any other body exercising functions of a public nature  (e.g. County or Parish Council; Health, Police or Fire Authority or Quasi Autonomous Non-Governmental Body)</p>	
<p>Membership of any body directed to charitable purposes  (e.g., an Industrial and Provident Society or Charitable Body)</p>	



<p>Membership of any Body whose principal purpose is to influence public opinion or policy <u>or</u> which, in your view, might create a conflict of interest in carrying out their duties as a District Councillor.  <i>(e.g. Political Party; Trade Union, Professional Association, Local Action Forum, Civic Society or Interest Group (e.g. National Trust; RSPB; Greenpeace or membership of the Freemasons or similar body)</i></p>	
<p>Any land where the landlord is the Council, and you are, or a firm in which you are a partner or a company of which you are a paid director is the tenant</p>	
<p>Any easement, servitude, interest or right in or over land which does not carry with it a right for you (alone or jointly with another) to occupy the land or to receive income. [This includes options to purchase which you have on land in Mid Devon]</p>	
<p>Any gifts or hospitality worth more than an estimated value of £25 which you have received by virtue of your office</p>	
<b>DECLARATION</b>	
<p>I recognise that if I fail to comply with the Code of Conduct for Members of Mid Devon District Council or:</p> <ul style="list-style-type: none"> <li>(i) omit any information that should be included in this Notice;</li> <li>(ii) give false or misleading information; or</li> <li>(iii) do not tell the District Council of any changes to this Notice or new interests I acquire,</li> </ul> <p>there may be a criminal offence and/or the matter may be referred to the Monitoring Officer/Council's Audit Committee for investigation.</p> <p>Signed : ..... Date.....</p>	
<b>FOR OFFICE USE ONLY</b>	
<p>Received: ..... Date .....</p>	

## **OFFICERS CODE OF CONDUCT**

The public is entitled to expect the highest standards of conduct from all employees who work for the Council. This Code of Conduct outlines the existing rules and conditions of service which apply to you as a Council employee and is designed to provide clear guidance to assist you in your day-to-day work.

The Code sets out the standards which are expected of you and provides a framework which will help to promote best practice. Reference should also be made to Nolan's Seven Principles of Public Life which are Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. All employees of the Council are required to observe and uphold the standards of the Code and all policies and procedures of the Council. Failure to do so is a serious matter which could result in disciplinary action, including dismissal.

You should therefore read the document carefully, and if you are uncertain about any aspect of its contents, please contact your immediate manager or supervisor.

### **3. STANDARDS AND ATTITUDE**

- 3.1 All employees of the Council are expected to give the highest possible standard of service to the public, and where it is part of their duties, to provide appropriate advice to councillors and fellow employees with impartiality.
- 3.2 Your attitude in dealing with people reflects on the Council so it is important that you are helpful, polite and courteous.
- 3.3 All employees are expected to report, in the first instance, to their manager or supervisor any illegality, impropriety, breach of procedure or policy of the Council. The line manager must then report to their Head of Service and the Monitoring Officer.
- 3.4 There are a number of mechanisms available to employees to do this including the Council's complaints procedure and also the Whistle-Blowing Policy.
- 3.5 In all cases, it is not enough to avoid actual impropriety, as public perceptions are very important. Employees should at all times avoid any appearance of improper conduct which may give rise to suspicion.

### **4. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION**

- 4.1 The law requires that certain types of information must be available to councillors, auditors, government services, service users and the public. Different rules apply in different situations. Employees must be aware of which information within their authority is open and which is not, and act accordingly. If you are in any doubt as to whether you can release any particular information, always check with your manager or Head of Service first.

- 4.2 The confidentiality of information received in the course of your duties should be respected and must never be used for personal or political gain. Also, of course, you should not knowingly pass information on to others who might use it in such a way.
- 4.3 You should not communicate confidential information or documents to others who do not have a legitimate right to know. Information must only be disclosed in accordance with the requirements of the Data Protection Act 1998, which covers computerised and manual information held on individuals. All staff need to bear in mind that an E-mail is as legally binding as a letter and informal messages sent internally can be used in evidence in court proceedings.
- 4.4 Information given in the course of your duties should be accurate and fair and never designed to mislead.
- 4.5 Any particular information received by an employee from a councillor which is personal to that councillor should not be divulged by the employee without the prior approval of that councillor, except where such disclosure is required by law.

## 5. **POLITICAL NEUTRALITY**

- 5.1 Employees serve the authority as a whole. It follows that you must serve all councillors equally and ensure that the individual rights of all councillors are respected.
- 5.2 From time to time, some employees may also be requested to advise a full meeting of a political group or its executive. You must do so in ways which do not compromise your political neutrality and inform the Chief Executive in advance.
- 5.3 Whether you hold a politically restricted post or not, you must not allow your own personal or political opinions to interfere with your work.

## 6. **RELATIONSHIPS**

### 6.1 **Councillors**

Mutual respect between employees and councillors is essential for good local government. Some employees need to work closely with councillors. Close personal familiarity between employees and individual councillors can damage the relationship and prove embarrassing to other employees and councillors, and should therefore be avoided.

### 6.2 **The Local Community and Service Users**

Employees should always remember their responsibilities to the whole of the community they serve and ensure courteous, effective and impartial service delivery to all groups and individuals within that community in accordance with the policies of the authority.

### 6.3 **Contractors and Suppliers**

- a) All relationships of a business or personal nature with external contractors or suppliers, or potential contractors or suppliers, must be declared to your appropriate manager or supervisor on [The Notice of Personal Interest Form ~~GCE-1~~Appendix ?](#) at the earliest opportunity.
- b) Orders and contracts must be awarded in accordance with the Council's Contract Procedure Rules and no special favour should be shown to anyone, particularly businesses run by, for example, friends, partners or relatives. No part of the community should be discriminated against.

## 7. **APPOINTMENT AND OTHER EMPLOYMENT MATTERS**

- 7.1 It is unlawful for appointments to be made on the basis of anything other than the ability of the candidate to undertake the duties of the post. If you are involved in making appointments you should do everything possible to ensure that these are made on the basis of merit and in accordance with the Council's recruitment and selection policies.
- 7.2 In order to avoid any possible accusation of bias, you must not become involved in any appointment if you are related to an applicant, or have a close personal relationship with him or her.
- 7.3 Similarly, you should not be involved in decisions relating to discipline, promotion or pay adjustments in respect of any other employee who is a relative or with whom you have a close personal relationship; nor should you attempt to influence such decisions.
- 7.4 Senior officers (i.e. Head of Service and above) must disclose to the ~~Legal Services Manager~~[Monitoring Officer/Deputy Monitoring Officer on Form ~~GCE-2~~ details of](#) any relationship known to exist between them and any person they know who is a candidate for an appointment with the Council. [This will include the name and address of the candidate, the post they have applied for and the nature of the relationship.](#)
- 7.5 If you apply for promotion or are seeking another job in the Council, you must not approach any councillor for a reference. Issues relating to your conditions of service, working arrangements or grading should be raised with your manager or Head of Service and not with councillors.

## 8. **OUTSIDE COMMITMENTS**

- 8.1 Your off-duty hours are your own concern, but you should make sure that you do not allow yourself to get into a position where your private interests come into conflict with your contractual obligations or are detrimental to the interests or reputation of the Council.
- 8.2 Employees subject to Green Book conditions and paid from Spinal Point 29 are required to devote their whole-time service to the work of the

Council and obtain written consent before taking any outside employment. If you fall into this category, and want to seek the Council's agreement, you should complete [the notice of personal interest Form CCE-3 Appendix ?](#) and submit it to your [Head of Service and the Monitoring Officer](#)~~Chief Officer~~. The Council will not unreasonably stop officers from undertaking additional employment, but this employment must not, in the Council's view, conflict with or be detrimental to its interests, or weaken public confidence in the conduct of its business.

- 8.3 Even if you are not subject to the Green Book provisions you should ensure that none of your outside activities are detrimental to the Council's interests.
- 8.4 If you write a book or article for payment on subjects relating to your work for the Council, you must seek the permission of the Council through your manager or Head of Service using [the notice of personal interest Form Appendix ?CCE-3](#). The general presumption would be that any fee or royalty payable would be passed over to the Council.
- 8.5 You must not undertake private or personal work of any description in working hours or in the office unless you have been given specific permission by your manager or Head of Service.
- 8.6 Private use of Council facilities and equipment, such as stationery and fax machines, is not allowed. Personal use of the telephone is permitted within reason, provided that calls are properly logged and charges paid back to the Council. Also, you should not arrange to receive correspondence, telephone calls and fax messages in the office related to outside work or private interests.

## 9. **PERSONAL INTERESTS**

- 9.1 You must declare to your manager or Head of Service on [the Notice of Personal Interests Form CCE-4 Appendix ?](#) any financial or non-financial interests which could bring about conflict with the Council's interests. [The Head of Service will then forward this information to the Monitoring Officer](#)
- 9.2 If you are in any doubt about a potential conflict of interest, you should bring the matter to the attention of your manager or Head of Service so that a decision can be made as to how best to proceed.
- 9.3 You must not make, or become involved with any official or professional decisions about matters in which you have a personal interest.
- 9.4 Section 117 of the Local Government Act 1972 requires you to make a formal declaration about *contracts or personal contracts* with the Council in which you have a pecuniary interest. Such declarations should be made on [the Notice of Personal Interests Form CCE-5 Appendix ?](#) and sent to the Monitoring Officer. It is a criminal offence to fail to comply with this provision which is set out in full [at Annex A below:-](#)

a) If it comes to the knowledge of an officer employed, whether under this Act or any other enactment, by a local authority that a contract in which he has an pecuniary interest, whether direct or indirect (not being a contract to which he is himself a party), has been, or is proposed to be, entered into by the authority or any committee thereof, he shall as soon as practicable give notice in writing to the authority of the fact that he is interested therein.

For the purposes of this section, an officer shall be treated as having indirectly a pecuniary interest in a contract or proposed contract if he would have been so treated by virtue of section 95 above had he been a member of the authority.

b) An officer of a local authority shall not, under colour of his office or employment, accept any fee or reward whatsoever other than his proper remuneration.

c) Any person who contravenes the provisions of subsection (1) or (2) above shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

d) References in this section to a local authority shall include references to a joint committee appointed under Part VI of this Act or any other enactment.

9.5 You must declare to the Monitoring Officer *membership of any organisation* not open to the public, requiring any commitment of allegiance, or which has secrecy about rules or membership or conduct, for example, the freemasons. A definition of such an organisation is as follows:

Any lodge, chapter, society, trust or regular gathering or meeting (other than a professional association), which:-

a) is not open to members of the public who are not members of that lodge, chapter, society or trust; or

b) includes in the grant of membership an obligation on the part of the member a requirement to make a commitment (whether by oath or otherwise) of allegiance to the lodge, chapter, society or gathering or meeting; or

c) includes, whether initially or subsequently, a commitment (whether by oath or otherwise) of secrecy about the rules, membership or conduct of the lodge, chapter, society, trust, gathering or meeting.

~~appears at Annex B.~~ Such declarations should be made on The Notice of Personal Interest Form GCE 6Appendix ? and sent to the Monitoring Officer.

## 10. EQUALITY

- 10.1 All members of the local community, customers and other Council employees have a right to be treated fairly and equally. You should become familiar with and observe all Council policies relating to equality issues, e.g. the Council's Equal Opportunities Policy, in addition to the requirements of the law.
- 10.2 Employees should be aware of the provisions of, and their responsibilities under the Equality Act 2010 and that they have a duty to promote this.

## 11. TENDERING PROCEDURES

- 11.1 Employees involved in the tendering process or who have any other official relationship with contractors, must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.
- 11.2 If you are responsible for engaging or supervising contractors and have previously had, or currently have, a relationship in a private or domestic capacity with contractors, you must declare that relationship to your manager or Head of Service using [the Notice of Personal Interest Form GGE-4Appendix ?](#).
- 11.3 If you become privy to confidential information on tenders or costs relating either to internal or external contractors, you must not disclose that information to any unauthorised person.
- 11.4 All employees must ensure that no special favour is shown to current, or recent former, employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in any capacity.

## 12. CORRUPTION

- 10.1 Employees must be aware that it is a serious criminal offence under the Bribery Act 2010 for them to receive or give any gift, loan or reward or advantage in their official capacity “for doing, or not doing, anything”, or “showing favour, or disfavour to any person”. If an allegation is made against you, it will be for you to demonstrate that any such rewards have not been corruptly obtained. The relevant statutory rules ~~are: appear at Annex C.~~

The Bribery Act 2010 creates offences making it unlawful to give or receive financial or other advantages in return for the improper performance of a relevant function or activity. The Act applies to functions and activities of a public nature which an individual is expected to perform in good faith, impartially or in a position of trust.

- 10.2 For your own protection, if anyone makes an approach to you which seems to you, or might seem to a third party, to be aimed at obtaining some form of preferential treatment, or in any suspicious circumstances in connection with a contract, you must report the matter to your ~~Chief Officer~~Head of Service.

### 13. **POSSIBLE INDUCEMENTS**

#### 13.1 **Introduction**

A potential source of conflict between public and private interests is the offer of gifts, hospitality or benefits in kind to employees in connection with their official duties. It is important to avoid any suggestion of improper influence. There is a checklist to help you at the end of this section.

#### 13.2 **Gifts Generally**

- a) Casual gifts offered to employees by contractors, organisations, firms or individuals may not be intended as an inducement or connected in any way with the performance of your official duties so as to involve the Bribery Act 2010. Nevertheless, with the exceptions listed below, you should decline any personal gift offered to you or your partner, or to a member of your family, by any person or organisation having dealings with the Council.
- b) Any such offer should be reported to your ~~manager or~~ Head of Service ~~(or to and~~ the Monitoring Officer) on the Notice of Offer of Gift/Hospitality Form CCE-7 Appendix ?.
- c) When a gift needs to be refused, this should be done with tact and courtesy, because the offer of gifts is common custom and practice in the commercial world, particularly at Christmas time. If the gift is simply delivered to your place of work, there may be a problem returning it, in which case it should be reported immediately to your manager or Head of Service or the Monitoring Officer as appropriate.



### 13.3 **Exceptions**

- a) Gifts of a token value given at Christmas, such as calendars, diaries, blotters, pens or other simple items of office equipment for use in Council offices, but only if it bears the company's name or insignia.
- b) Gifts of a promotional nature on the conclusion of a courtesy visit to a factory or company offices, of a sort normally given by the company to visitors.

### 13.4 **Hospitality**

- a) Offers of hospitality are a normal part of the courtesies of business life but in the public service it is important for employees to avoid creating an appearance of improper influence, thus undermining public confidence.
- b) Hospitality is sometimes offered to representatives of the Council in an official or formal capacity. Normally the only officers who would attend would be Chief Officers and appropriate Heads of Service.
- c) If hospitality is offered to you as an individual employee, special caution is needed, particularly when the host is seeking to do business with the Council or to obtain a decision from it. You must exercise the utmost care in dealing with contractors, developers, etc, who may stand to benefit from the goodwill of the Council.
- d) You should also be careful about attending exhibitions, seminars or visiting manufacturers, etc. There is an increasing trend towards linking such visits to, for example, a major sporting event, show or concert with a view to legitimising offers of hospitality.
- e) In general terms, it is more likely to be acceptable for you to join in hospitality offered to a group, than to accept something unique to yourself. When a particular person or body has a matter currently in issue with the Council, for example, an arbitration arising from a contract, then clearly common sense dictates that offers of hospitality should be refused even if in normal times they would be acceptable.
- f) All offers of hospitality should be reported to your Head of Service, ~~or to~~ the Monitoring Officer on the Notice of Offer of Gift/Hospitality Form *CGE-8Appendix ?*.

### 13.5 **Checklist**

The question in all these cases is one of judgement, and the following checklist of queries should help you to decide whether a gift or an offer of hospitality should be accepted or tactfully declined.

- a) Is the donor, or event, significant in the community or area? If so, is the refusal likely to cause offence?
- b) Are you expected to attend because of your position in the community or area?
- c) Will the event be attended by others of a similar standing in the community or in other communities?
- d) What do you think is the motivation behind the invitation?
- e) Would acceptance of the invitation be, in any way, inappropriate or place you under pressure in relation to any current or future issue involving the Council?
- f) Could you justify the decision to the Council, press and public?
- g) Is the extent of the hospitality, or the nature of the gift reasonable and appropriate?
- h) Are you likely to be expected to respond to the hospitality, and if so, how?
- i) Are you comfortable about the decision?

#### **14. SPONSORSHIP - GIVING AND RECEIVING**

- 14.1 Where an outside organisation wishes to sponsor or is seeking to sponsor a local government activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.
- 14.2 Where the Council wishes to sponsor an event or service, neither an employee nor any partner, spouse or relative must benefit from such sponsorship in a direct way without there being full disclosure to their Head of Service of any such interest. Similarly, where the Council through sponsorship grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.

#### **15. FINANCIAL PROCEDURE RULES**

- 15.1 All employees involved in financial activities and transactions on behalf of the Council, including budgetary control, payments of accounts, payments of salaries and wages, petty cash and orders for works, goods or services must follow the Council's Financial Procedure Rules.
- 15.2 They must ensure that they use public funds entrusted to them in a responsible and lawful manner. They should strive to ensure value for money to the local community and to avoid legal challenge to the authority.

**ANY BREACHES OF THESE INSTRUCTIONS MAY LEAD TO DISCIPLINARY ACTION AND COULD LEAD TO DISMISSAL**

**~~CCE Forms — Please note that supplies of CCE forms are available from your Head of Service. They are also set out in Annex D~~**

**~~CCE 1 Business or Personal Relationships with External Contractor or Supplier~~**

**~~CCE 2 Relationship with a Candidate for Appointment with the Council~~**

**~~CCE 3 Application for Approval of Outside Interests or Employment~~**

**~~CCE 4 Personal Interests~~**

**~~CCE 5 Pecuniary Interests~~**

**~~CCE 6 Membership of Secret Societies/Organisations~~**

**~~CCE 7 Declaration of Offer of Gifts~~**

**~~CPE 8 Declaration of Offer of Hospitality~~**

**ANNEX A**

**LOCAL GOVERNMENT ACT 1972, SECTION 117**

~~16. If it comes to the knowledge of an officer employed, whether under this Act or any other enactment, by a local authority that a contract in which he has an pecuniary interest, whether direct or indirect (not being a contract to which he is himself a party), has been, or is proposed to be, entered into by the authority or any committee thereof, he shall as soon as practicable give notice in writing to the authority of the fact that he is interested therein.~~

~~For the purposes of this section, an officer shall be treated as having indirectly a pecuniary interest in a contract or proposed contract if he would have been so treated by virtue of section 95 above had he been a member of the authority.~~

~~17. An officer of a local authority shall not, under colour of his office or employment, accept any fee or reward whatsoever other than his proper remuneration.~~

~~18. Any person who contravenes the provisions of subsection (1) or (2) above shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.~~

~~19. References in this section to a local authority shall include references to a joint committee appointed under Part VI of this Act or any other enactment.~~

**ANNEX B**

**ORGANISATIONS NOT OPEN TO THE PUBLIC**

**(See paragraph [7.5] of the Code)**

~~Any lodge, chapter, society, trust or regular gathering or meeting (other than a professional association), which:-~~

~~20. is not open to members of the public who are not members of that lodge, chapter, society or trust; or~~

~~21. includes in the grant of membership an obligation on the part of the member a requirement to make a commitment (whether by oath or otherwise) of allegiance to the lodge, chapter, society or gathering or meeting; or~~

~~22. includes, whether initially or subsequently, a commitment (whether by oath or otherwise) of secrecy about the rules, membership or conduct of the lodge, chapter, society, trust, gathering or meeting.~~

**ANNEX C**

**BRIBERY ACT 2010**

~~The Bribery Act 2010 creates offences making it unlawful to give or receive financial or other advantages in return for the improper performance of a relevant function or activity. The Act applies to functions and activities of a public nature which an individual is expected to perform in good faith, impartially or in a position of trust.~~

## Protocol on Member/Officer Relations

[Note: This is based on the existing Code of Local Government Conduct and will need to be revised to reflect the new Members' Code of Conduct once the Government has given the expected guidance.]

### 4 Introduction

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## **1.0 Introduction**

- 1.1 Members and officers must at all times observe this protocol.
- 1.2 The protocol has been approved by the Council's Standards Committee which will monitor the protocol and its operation. The Monitoring Officer will produce an annual report for the Standards Committee highlighting the number of complaints that have been made by staff about Members who breach this protocol, and vice versa, so that the effectiveness of this protocol can be examined.
- 1.3 The protocol seeks to maintain and enhance the integrity (real and perceived) of local government which demands the highest standards of conduct.
- 1.4 Members and officers must always respect the roles and duties of each other. They must show respect in all their dealings by observing reasonable standards of courtesy and by not seeking to take unfair advantage by virtue of their position. There must be mutual respect, trust and courtesy in all meetings and contacts, both formal and informal, between Members and Employees. It is important that both Members and Employees remember their respective obligations to enhance the Council's reputation and to do what they can to avoid criticism of other Members, or other Employees, in public places.
- 1.5 Whilst members and officers are indispensable to one another, their responsibilities are distinct. Members are accountable to the electorate and serve only as long as their term of office lasts. Officers are accountable to the Council as a whole. Their job is to give advice to members (individually and collectively) and to carry out the Council's work under the direction of the Council.
- 1.6 The Council has adopted codes of conduct for both members and officers. Both represent best practice. The members' code follows the legislation set out in the Localism Act and includes the Nolan seven principles of public life.
- 1.7 These principles in the Codes of Conduct underpin this protocol.
- 1.8 Breaches of this protocol by a member may result in a complaint to the Authority's Standards Committee if it appears the members' code has also been breached. Breaches by an officer may lead to disciplinary action.

## **2.0 The Role of Members**

- 2.1 Members represent their ward and are advocates of for the citizens who live in their area but must also have a strategic view of the whole district
- 2.2 Members have a number of roles and need to be alert to the potential for conflicts of interest which may arise between the roles. Where such conflicts are likely, members may wish to seek the advice of senior colleagues, the relevant senior officer(s) and/or the Monitoring Officer.



- 2.3 Collectively, members are the ultimate policy-makers determining the core values of the Council and approving the authority's policy framework, strategic plans and budget.
- 2.4 Members represent the community, act as community leaders and promote the social economic and environmental well-being of the community often in partnership with other agencies.
- 2.5 Every elected member represents the interests of, and is an advocate for, his/her ward and individual constituents. He/she represents the Council in the ward, responds to the concerns of constituents, meets with partner agencies and often serves on local bodies.
- 2.6 Some members may be appointed to represent the Council on local, regional or national bodies. They will be expected to follow their code of conduct and this protocol.
- 2.7 As politicians, members may express the values, policies and aspirations of the party political groups to which they belong whilst recognising that in their role as members they have a duty always to act in the public interest.
- 2.8 Members are not authorised to direct officers other than:-
- through the formal decision-making process;
  - to request the provision of consumable resources provided by the Council for members' use; and
  - where staff have been specifically allocated to give support to a member or group of members
  - to request help from staff on ward issues.
- 2.9 Members are not authorised to initiate or certify financial transactions or to enter into a contract on behalf of the Council.
- 2.10 Members must avoid taking actions which are unlawful, financially improper or likely to amount to maladministration. Members have an obligation under their code of conduct to have regard, when reaching decisions, to any advice provided by the Monitoring Officer or the designated [Section 151 Finance](#) Officer.
- 2.11 Members must respect the impartiality of officers and do nothing to compromise it, e.g. by insisting that an officer change his/her professional advice.
- 3.0 The Role of Officers**
- 3.1 Officers serve the Council as a whole. They have a duty to implement the properly authorised decisions of the Council.
- 3.2 Briefly, Employees have the following main roles:

- Managing and providing the services for which the Council has given them responsibility and being accountable for the efficiency and effectiveness of those services
- Providing advice to the Council and its various bodies and to individual Members in respect of the services provided and council policies
- Initiating policy proposals
- Implementing agreed policy
- Ensuring that the Council always acts in a lawful manner

#### **4.0 The Relationship between Members and Officers: General**

- 4.1 The conduct of members and officers should be such as to instil mutual confidence and trust.
- 4.2 The key elements are a recognition of and a respect for each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other, both publicly and privately.
- 4.3 Informal and collaborative two-way contact between members and officers is encouraged. But personal familiarity can damage the relationship, as might a family or business connection.
- 4.4 Members and officers should inform the Monitoring Officer of any relationship which might be seen as unduly influencing their work in their respective roles.
- 4.5 It is not enough to avoid actual impropriety. Members and officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct. Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be perceived. Specifically, a member should not sit on a body or participate in any decision which directly affects the officer on a personal basis.
- 4.6 Officers work to the instructions of their senior officers, not individual members. It follows that, whilst such officers will always seek to assist a member, they must not be asked to exceed the bounds of authority they have been given by their managers. Except when the purpose of an enquiry is purely to seek factual information, members should normally direct their requests and concerns the relevant officer, at least in the first instance. Where members are not clear who the relevant officer is, they should speak to the Service Manager or Head of Service.
- 4.7 **Officers will respond to members' enquiries within five working days.** If this is not achievable then an acknowledgement be sent indicating how long it will take to provide a response. However, officers should not have unreasonable requests or timescales placed upon them. Their work priorities are set and

**Comment [AT22]:** 5 working days was agreed by Council

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managed by senior managers. Members should avoid disrupting officers' work by imposing their own priorities.

- 4.8 Members will respond to enquiries from officers within five working days.
- 4.9 An officer shall not discuss with a member personal matters concerning him/herself or another individual employee. This does not prevent an officer raising on a personal basis, and in his/her own time, a matter with his/her ward member.
- 4.10 Members and officers should respect each other's free (ie non-Council) time.

## **5.0 The Council's Role as Employer**

- 5.1 In their dealings with Officers, Members should recognise and have regard to the Council's role as employer and the Council's duty of care. Members should be aware that Officers could rely on inappropriate behaviour of a Member in an employment case against the Council.

## **6.0 Chairman and Officers**

- 6.1 Officers will respect the position of Chairman and provide appropriate support.

## **7.0 Provision of Support Services to Members**

- 7.1 The only basis on which the Council can lawfully provide support services (e.g. stationery, word processing, printing, photocopying, transport, etc) to Members is to assist them in discharging their role as Members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes.

### Correspondence

- 7.2 Official letters on behalf of the Council should be sent in the name of the appropriate Employee, rather than over the name of a Member. There are circumstances where a letter sent in the name of a Member is perfectly appropriate, for example, in response to a letter of enquiry or complaint sent direct to that Member. Letters which, for example, create obligations or give instructions on behalf of the Council should never be sent out in the name of a Member.

### Media

- 7.3 Communication with the media can be an important part of a Member's workload. In general, Members provide comments, information and views. If a Member is unsure about the circumstances or facts of a particular issue he/she should contact the appropriate Head of Service or ask the Press Office to do so. Employees must only provide the press with factual information and not give any comments or views.

## **8.0 Party Groups and Officers**

- 8.1 Senior officers may properly be asked to contribute to deliberations of matters concerning Council business by party groups but officers have the right to refuse such requests.
- 8.2 Officers will normally not attend a meeting of a party group where some of those attending are not members of the Council.
- 8.3 Officer support will not extend beyond providing factual information or professional advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business and, therefore, should not be expected to be present at meetings or parts of meetings when such matters are to be discussed.
- 8.4 Party group meetings are not empowered to make decisions on behalf of the Council and conclusions reached at such meetings do not rank as formal decisions. The presence of an officer confers no formal status on such meetings in terms of Council business and must not be interpreted as doing so.
- 8.5 Where officers provide factual information and advice to a party group in relation to a matter of Council business, this is not a substitute for providing all the necessary information and advice when the matter in question is formally considered by the relevant part of the Council.
- 8.6 It must not be assumed that an officer is supportive of a particular policy or view considered at a party group meeting simply because he/she has attended or provided information to the meeting.
- 8.7 Officers will respect the confidentiality of any party group discussions at which they are present and, unless requested to do so by that party group, will not relay the content of such discussions to another party group or to any other members. This shall not prevent an officer providing feedback to other senior officers on a need-to-know basis.
- 8.8 In their dealings with party groups, officers must treat each group in a fair and even-handed manner.
- 8.9 Members must not do anything which compromises or is likely to compromise officers' impartiality.
- 8.10 The duration of an officer's attendance at a party group meeting will be at the discretion of the group, but an officer may leave at any time if he/she feels it is no longer appropriate to be there.
- 8.11 An officer accepting an invitation to the meeting of one party group shall not decline an invitation to advise another group about the same matter. He/she must give substantially the same advice to each.

8.12 An officer who is not a senior officer shall not be invited to attend a party group meeting but a senior officer may nominate another officer to attend on his/her behalf.

8.13 An officer should be given the opportunity of verifying comments and advice attributed to him/her in any written record of a party group meeting.

8.14 ~~No member will refer in public or at meetings of the Council to advice or information given by officers to a party group meeting.~~ If confidential information is referred to by an officer or a member at a group meeting then no member of officer will refer to it in public.

8.15 At party group meetings where some of those present are not members of the Council, care must be taken not to divulge confidential information relating to Council business. Persons who are not members are not bound by the members' code of conduct. They do not have the same rights to Council information as members.

8.16 Any particular cases of difficulty or uncertainty in relation to this part of the protocol should be raised with the Chief Executive and the relevant party group leader.

## **9.0 Political Activity**

9.1 There are a number of constraints that apply to an employee who occupies a post that is designated as "politically restricted" under the terms of the Local Government and Housing Act 1989.

9.2 In summary, such employees are prevented from:

- a) being a Member of Parliament, European Parliament or local authority;
- b) acting as an election agent or sub-agent for a candidate for election as a member of any the bodies referred to in a);
- c) being an officer of a political party or any branch of a political party or a member of any committee or sub-committee of such a party or branch, if his duties would be likely to require him to:-
  - (1) participate in the general management of the party or branch;  
or
  - (2) act on behalf of the party or branch in dealings with persons other than members of the party;
- d) canvassing on behalf of a political party or a candidate for election to any the bodies referred to in a)

- e) speaking to the public with the apparent intent of affecting public support for a political party; and
- f) publishing any written or artistic work of which he is the author (or one of the authors) or acting in an editorial capacity in relation to such works, or to cause, authorise or permit any other person to publish such work or collection - if the work appears to be intended to affect public support for a political party.

9.3 It is common for party groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant decision making body. Employees may properly be called upon to support and contribute to such deliberations by party groups provided they maintain a stance which is politically impartial. Support may include a range of activities including briefings for Members relating to their roles e.g. chairperson or spokesperson. Employees should be required to give information and advice to political groups on Council business only and not on matters which are purely of a party political nature. Such advice should be available to all party groups and not solely to the majority group. It is important that the political neutrality of Employees is preserved and that group confidentiality is maintained by Employees.

9.4 Usually the only Employees involved in attending group meetings will be the Chief Executive, Directors and Heads of Service and they will generally leave the meeting after making their presentation and answering questions.

9.5 Employees are employed by the Council as a whole. They serve the Council and are responsible to the Chief Executive and their respective Directors/Heads of Service, and not to individual Members of the Council whatever office they might hold.

## **10.0 Local Members and Officers**

10.1 To enable them to carry out their ward role effectively, members must be fully informed about matters affecting their ward. Management Team must ensure that all relevant staff are aware of the requirement to keep local members informed, thus allowing members to contribute to the decision-making process and develop their representative role.

10.2 This requirement is particularly important:-

- during the formative stages of policy development, where practicable;
- in relation to significant or sensitive operational matters;
- whenever any form of public consultation exercise is undertaken; and
- during a Scrutiny Committee investigation.

10.3 Issues may affect a single ward. Where they have a wider impact, a number of local members will need to be kept informed.

10.4 Whenever a public meeting is organised by the Council to consider a local issue, all the members representing the wards affected must be invited to

attend the meeting as a matter of course.

10.5 If a ward member intends to arrange a public meeting in their local area on a matter concerning some aspect of the Council's work, he/she should inform the relevant Head of Service or the Chief Executive. Provided the meeting has not been arranged on a party political basis:-

- an officer may attend but is not obliged to do so; and
- the meeting may be held in Council owned premises.

10.6 No such meetings should be arranged or held in the immediate run-up to Council elections. The pre-election period (often referred to as Purdah) is the period of time between an announced election and the final election results. This normally begins six weeks before the election.

10.7 Whilst support for members' ward work is legitimate, officers will not attend Ward Surgeries

10.8 Officers must never be asked to attend ward or constituency political party meetings.

10.9 In seeking to deal with constituents' queries or concerns, members should not seek to jump the queue but should respect the Council's procedures. Officers have many pressures on their time. They may not be able to carry out the work required by members in the requested timescale and may need to seek instructions from their managers.

#### **11.0 Members' access to documents and information**

11.1 This part of the protocol should be read in conjunction with the Access to Information Rules in the Council's constitution.

11.2 Members may request senior officers to provide them with such information, explanation and advice as they may reasonably need to assist them to discharge their roles as members. This may range from general information about some aspect of the Council's services to specific information on behalf of a constituent. Where information is requested on behalf of a third party, it will only be provided if:-

- it is in the public domain; and
- it is not barred by the Data Protection Act from being given.

11.3 All Members will receive agendas and documents for the Committees that they are on. Members may also have access to documents for committees they are not on provided:-

- he/she can demonstrate a reasonable need to see the documents in order to carry out his/her roles as a member (the "need to know" principle); and
- the documents do not contain "confidential" or "exempt" information as defined by the law.

**Comment [AT23]:** This is not clear – really badly phrased. Need to check on this – query logged with Legal

- 11.4 Disputes as the validity of a member's request to see a document on a need to know basis will be determined by the Monitoring Officer. Officers should seek his/her advice if in any doubt about the reasonableness of a member's request.
- 11.5 A member should obtain advice from the Monitoring Officer in circumstances where he/she wishes to have access to documents or information:-
- where to do so is likely to be in breach of the Data Protection Act;
  - where the subject matter is one in which he/she has a pecuniary or personal interest as defined in the members' code of conduct; or
  - Where it is specified that the matter is "confidential" or "exempt".
- 11.6 Information given to a member must only be used for the purpose for which it was requested.
- 11.7 It is an accepted convention that a member of one party group will not have a need to know and, therefore, a right to inspect a document which forms part of the internal workings of another party group.
- 11.8 Members and officers must not disclose information given to them in confidence without the consent of a person authorised to give it, or unless required by law to do so.
- 11.9 When requested to do so, officers will keep confidential from other members advice requested by a member.
- 11.10 Where an item is discussed that is Part Two (i.e. excludes the press and public) Members must ensure that they do not share the confidential information with anyone outside of the Council Chamber, until otherwise directed by the Chief Executive or Head of Service.
- 11.11 Members and officers must not prevent another person from gaining access to information to which that person is entitled by law.

## **12.0 Media Relations**

- 12.1 All formal relations with the media must be conducted in accordance with the Council's agreed procedures and the law on local authority publicity.
- 12.2 Press releases or statements made by officers must promote or give information on Council policy or services. They will be factual and consistent with Council policy. They cannot be used to promote a party group.
- 12.3 Officers will keep relevant members informed of media interest in the Council's activities, especially regarding strategic or contentious matters.
- 12.4 Before responding to enquiries from the media, officers shall ensure they are authorised to do so.



- 12.5 Likewise, officers will inform the Council's public relations co-ordinator of issues likely to be of media interest, since that officer is often the media's first point of contact.
- 12.6 If a member is contacted by, or contacts, the media on an issue, he/she should:-
- indicate in what capacity he/she is speaking (eg as ward member, in a personal capacity, as Cabinet member, as Chairman of Policy Development Group, as committee chairman, on behalf of the Council, or on behalf of a party group);
  - be sure of what he/she wants to say or not to say;
  - if necessary, and always when he/she would like a press release to be issued, seek assistance from the Council's public relations co-ordinator and/or relevant senior officer, except in relation to a statement which is party political in nature;
  - consider the likely consequences for the Council of his/her statement (eg commitment to a particular course of action, image, allegations of jumping to conclusions);
  - never give a commitment in relation to matters which may be subject to claims from third parties and/or are likely to be an insurance matter;
  - consider whether to consult other relevant members: and
  - take particular care in what he/she says in run up to local or national elections to avoid giving the impression of electioneering, unless he/she has been contacted as an election candidate or political party activist.
- 12.7 If a Member or officer shares information with the media that is confidential they will be subject to further action under the code of conduct or disciplinary procedure.

### **13.0 Correspondence**

- 13.1 Correspondence between an individual member and an officer or member should not be copied to another member unless the author expressly intends and states that this is the case or consents. Where correspondence is copied, this should always be made explicit, ie there should be no "blind" copies.
- 13.2 Official letters written on behalf of the Council should normally be in the name of the relevant officer. It may be appropriate in some circumstances (eg representations to a Government Minister) for letters to appear in the name of an Cabinet member, a Chairman of a Policy Development Group or the chairman of the Scrutiny Committee or Audit Committee.
- 13.3 The Chairman may initiate correspondence in his/her own name.
- 13.4 Letters which create legally enforceable obligations or which give instructions on behalf of the Council should never be sent in the name of a member.

13.5 When writing in an individual capacity as a ward member, a member must make clear the fact.

#### **14.0 Access to Premises**

14.1 Officers have the right to enter Council land and premises to carry out their work. Some officers have the legal power to enter property in the ownership of others.

14.2 Members have a right of access to Council land and premises to fulfil their duties.

14.3 When making visits as individual members, members should:-

- whenever practicable, notify and make advance arrangements with the appropriate manager or officer in charge;
- comply with health and safety, security and other workplace rules;
- not interfere with the services or activities being provided at the time of the visit;
- if outside his/her own ward, notify the ward member(s) beforehand; and
- take special care at schools and establishments serving vulnerable sections of society to avoid giving any impression of improper or inappropriate behaviour.

#### **15.0 Use of Council Resources**

15.1 The Council provides all members with services such as photocopying and goods such as stationery and computer equipment to assist them in discharging their roles as members of the Council. These goods and services are paid for from the public purse. They should not be used for private purposes or in connection with party political or campaigning activities.

15.2 Members should ensure they understand and comply with the Council's own rules about the use of such resources, particularly:-

- where facilities are provided in members' homes at the Council's expense;
- in relation to any locally agreed arrangements, eg payment for private photocopying; and
- regarding ICT security.

15.3 Members should not put pressure on staff to provide resources or support which officers are not permitted to give. Examples are:-

- business which is solely to do with a political party;
- work in connection with a ward or constituency party political meeting;
- electioneering;
- work associated with an event attended by a member in a capacity other than as a member of the Council;
- private personal correspondence;
- work in connection with another body or organisation where a member's

- involvement is other than as a member of the Council; and
- support to a member in his/her capacity as a councillor of another local authority.

## **16.0 Interpretation, Complaints and Allegations of Breaches**

- 16.1 This part of the protocol should be read in conjunction with the “whistleblowing” policy of the Council.
- 16.2 Members or officers with questions about the implementation or interpretation of any part of this protocol should seek the guidance of the Monitoring Officer.
- 16.3 A member who is unhappy about the actions taken by, or conduct of, an officer should:-
- avoid personal attacks on, or abuse of, the officer at all times;
  - ensure that any criticism is well founded and constructive;
  - never make a criticism in public, and
  - take up the concern with the officer personally, if appropriate.
- 16.4 If direct discussion with the officer is inappropriate (eg because of the seriousness of the concern) or fails to resolve the matter, the member should raise the issue with the officer’s manager or the relevant Head of Service.
- 16.5 A serious breach of this protocol by an officer may lead to an investigation under the Council’s disciplinary procedure.
- 16.6 An officer who believes a member may have acted other than in accordance with this protocol should raise his/her concern with the Monitoring Officer. He/she will consider how the complaint or allegation should be dealt with. At a minor level, this may be no more than informally referring the matter to the leader of the relevant party group.
- 16.7 A serious breach of this protocol by a Member may lead to investigation by the Monitoring Officer and could result in a referral to the Authority’s Standards Committee.

## **Guidance for Members on Hospitality and Gifts**

### **1 Introduction**

- 1.1 This guidance is ancillary to guidance in the Code of Conduct and explanatory text.
- 1.2 Members should treat with extreme caution any “offer or gift, favour or hospitality” that is made to them personally.
- 1.3 People or bodies may have contractual relationships with the Council which they may seek to influence, or which it might be suspected they were attempting to influence, even if the gift was offered innocently. The same would apply within contexts such as applications for planning permission.
- 1.4 There are no hard and fast rules, but a working lunch which is approved by the authority and where there is no extravagance, or representing the council at a social function or event organised by an outside body or person would be regarded as acceptable.
- 1.5 Members are personally responsible for all decisions connected with the acceptance or offer of gifts or hospitality and for avoiding the risk of damage to public confidence in local government. Paragraph 17 of the Code provides that the receipt of gifts or hospitality over the value of £25 should always be reported to the appropriate senior officer for the council.
- 1.6 Members should avoid impropriety and the appearance of it. Members should never use their position to benefit themselves, their family or friends with any financial benefits, preferential treatment or other advantage. On hospitality, members should record all gifts and hospitality received in connection with membership of the Council and, in particular, should not accept gifts or hospitality that might reasonably be thought to influence or be intended to influence the members’ trust or bring discredit on the Council.

### **2 General Guidance on Gifts and Hospitality**

- 2.1 When to accept hospitality is a matter of judgement for each individual member.
- 2.2 It would be wrong to produce an atmosphere where even members acting in a representative capacity for the council refuse all invitations for social involvement with those who have or who seem to have business or other dealings with the Council. Contacts established through a social environment are often helpful to the Council’s interests. Members have as a key part of their role the establishment of the standing of the Council in the community.
- 2.3 Any suggestion of improper influence or giving others the opportunity reasonably to impute improper influence must be avoided.
- 2.4 Extravagance can be damaging to the reputation of the authority.

### **3 Registration**

- 3.1 The Monitoring Officer maintains the Members’ Register of Interests which records all gifts and hospitality received.

- 3.2 Whenever members are offered hospitality or a gift not officially arranged through the authority but in the broad context of their role as a councillor, they should ensure that the register is completed.
- 3.3 The register should be completed whether or not the gift or hospitality in question is accepted.
- 3.4 The only exceptions to registration would be very small gifts in kind, below the value of £25, e.g. a diary or calendar.
- 3.5 The Monitoring Officer will make regular checks to ensure that the register is properly completed.

#### 4 **Examples of what is Acceptable/Unacceptable**

- 4.1 The following general guidelines are examples only, which will assist members in exercising their discretion appropriately.

#### 5 **Acceptable**

- 5.1 Working lunch of a modest standard provided to allow a member to discuss matters in which he is involved on behalf of the authority or which arise out of his work as a “constituency” member.

[If there is a series of meetings requiring hospitality, the Council and the other party should alternate on an approximately equal basis.]

- 5.2 An invitation to a professional society dinner or one associated with a body with whom the elected member may have been working in his capacity as such. For example, Royal Garden parties or the annual dinner of the Magistrates’ Association.
- 5.3 An invitation to join other guests in Devon or neighbouring counties as the Council representative at a jubilee or other special occasion for a statutory, charitable or other body (including commercial organisation) with whom the member may expect to work in their role as such.

#### 6 **Unacceptable**

- 6.1 Paid holiday or leisure travel or accommodation.
- 6.2 Tickets for premium events (eg Wimbledon) which are offered on a personal basis.
- 6.3 Use of an individual or organisation’s flat or hotel.
- 6.4 Discounted services, material, labour etc from contractors or suppliers which are not normally equally available on the same basis to others not having an actual or potential business link with them. (Members should not procure or encourage any such provision to family, friends or business associates.) Members should consider it appropriate to get more than one quote on private works, e.g. on their own house, if a supplier to the Council is involved.
- 6.5 Non-reciprocal invitations to high-profile or prestige events, particularly outside Devon, unless specifically authorised on behalf of the Council.
- 6.6 Cash gifts.
- 6.7 Significant gifts in kind (e.g. a case of whisky but not a company calendar or diary).

## 7 **Additional Points**

- 7.1 An important criterion in exercising judgement as to what is acceptable is what interpretation those in the community or the press might reasonably put upon acceptance.
- 7.2 Repeated offers of gifts or hospitality from one person, firm or organisation made by repetition render unacceptable what would otherwise be acceptable.
- 7.3 Particular care should be taken where a member has any involvement in making a decision for placement of a contract, or for any decision carrying value for the person or organisation offering the gift or hospitality (e.g. the granting of planning permission), or is involved in a Scrutiny Committee examination which could have an impact on the person or the outcome of the organisation concerned.
- 7.4 If you are offered a gift which you do not think you should accept personally but you feel is well intentioned, and particularly if it may cause offence if refused, you have the option, with the agreement of the donor, of passing it to the Chairman of the Council, who may place it with an appropriate charity. You should still record the offer and the action taken.

## 8 **Advice**

- 8.1 If a member is in any doubt about the propriety of accepting a particular offer of a gift or hospitality, they should consult the Monitoring Officer before accepting.

## **Monitoring Officer Protocol**

### **1 General Introduction to Statutory Responsibilities and Functions**

- 1.1 The Monitoring Officer is a statutory designation pursuant to section 5 of the Local Government and Housing Act 1989. That Act and the Local Government Act 2000 makes the appointed officer responsible for performing a number of functions in respect of the Council.
- 1.2 The duties placed upon the Monitoring Officer in exercising these functions must be performed by him or her personally, unless:-
- (a) the Monitoring Officer is unable to act owing to absence or illness – whereupon those duties are to be performed personally during that period by a member of the Monitoring Officer’s staff that he or she has for the time being nominated as his or her deputy (the ‘Deputy Monitoring Officer’); or
  - (b) in respect of functions under 60(2) or 64(2) of the Local Government Act 2000, he or she considers that in a particular case the functions should not to be performed by him or herself – those functions are to be performed personally by a person nominated by the Monitoring Officer (or Deputy Monitoring Officer as the case may be) for that purpose.

For the purposes of this Protocol, the term ‘Monitoring Officer’ thus includes those persons when carrying out those personal duties.

- 1.3 To enable these functions to be carried out the Council is also placed under a number of duties. These include a duty to provide the Monitoring Officer with such staff, accommodation and other resources as are, in the Monitoring Officer’s opinion, sufficient to allow him or her to perform those duties.
- 1.4 The object of this Protocol is therefore to provide some general information on how those statutory duties upon the Monitoring Officer and the Council, which are summarised as a schedule annexed to this document, will be discharged at this Council.
- 1.5 Functions 6 to 11 of the attached schedule are functions to be carried out by the Monitoring Officer in respect of the town and parish councils within the Council’s area, as relevant authority, as well as for the Council.
- 1.6 The Council has also placed ‘proper officer’ and other obligations on the Monitoring Officer, through the Council’s Constitution and elsewhere, but these are delegated functions of the authority rather than personal duties under statute. Whilst the exercise of these functions equally require good working arrangements, they differ slightly from authority to authority and, for the sake of commonality and clarity, they are not directly addressed here.
- 1.7 In general terms, the Monitoring Officer’s ability to discharge his or her duties and responsibilities will depend, to a large extent, on Members and officers:-
- complying with the law of the land (including any relevant Codes of Conduct);

- complying with any General Guidance issued, from time to time, by the Audit Committee and the Monitoring Officer;
- making lawful and proportionate decisions; and
- generally, not taking action that would bring the Council, their offices or professions into disrepute.

## **2 Working Arrangements**

- 2.1 Having excellent working relations with Members and officers will assist in the discharge of the statutory responsibilities on the Monitoring Officer and keep the Council out of trouble. Equally, a speedy flow of relevant information and access to debate (particularly at the early stages of any decision-making by the Council) will assist in fulfilling those responsibilities. Members and officers must, therefore, work with the Monitoring Officer (and his or her staff) to discharge the Council's statutory and discretionary responsibilities.
- 2.2 Having effective working liaison and relationships with the the District Auditor and the Local Government Ombudsman will also assist in the discharge of those statutory responsibilities. This will include having the authority, on behalf of the Council, to complain to the same, refer any breaches to the same or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary.

## **3 Monitoring Officer's Rights**

The following arrangements and understandings between the Monitoring Officer, Members and officers are designed to ensure the effective discharge of the Council's business and functions. The Monitoring Officer will have the right to:-

- 3.1 be advised by Members and officers of any issue(s) that may become of concern to the Council, including, in particular issues around legal powers to do something or not, ethical standards, probity, policy, procedural or other constitutional issues that are likely to (or do) arise;
- 3.2 access to any meetings of officers or Members (or both) of the authority, whether or not such meetings include any other persons. (For the purpose of clarification, this right does not extend to any meetings held by or on behalf of any political party represented on the Council);
- 3.3 receive advance notice (including receiving Agendas, Minutes, Reports and related papers) of all relevant meetings of the Council at which a decision of the Council may be made, formulated or briefed upon (including a failure to take a decision where one should have been taken) at or before the Council, Cabinet Member, committee meetings and Corporate Management Teams (or equivalent arrangements);
- 3.4 require when carrying out any investigations(s):-
- (a) advice and assistance from the authority that he or she considers is reasonably needed to assist him or her;



- (b) unqualified access to any officer or Member who the Monitoring Officer wishes to make inquiries of or who he or she believes can assist in the discharge of his/her functions; and
  - (c) any information and documents held by the Council;
- 3.5 ensure or facilitate that the other statutory officers (Head of Paid Service and S.151/Chief Finance Officer) are kept up-to-date with relevant information regarding any legal, ethical standards, probity, procedural or other constitutional issues that are likely to (or do) arise;
  - 3.6 meet with the Head of Paid Service and the S.151/Chief Finance Officer or Electoral Registration & Returning Officer to consider and recommend action in connection with corporate governance issues and other matters of concern regarding any legal, ethical standards, probity, procedural or other constitutional issues that arise or are likely to arise;
  - 3.7 report on ethical governance issues and on the Constitution following consultation, where appropriate, with the Head of Paid Service and S.151/Chief Finance Officer;
  - 3.8 report to the authority, as necessary on the staff, accommodation and resources he or she requires to discharge his or her statutory functions and to be provided with the same;
  - 3.9 obtain legal advice (either internally or externally) on any matter which he or she believes may be a reportable incident at the authority's expense;
  - 3.10 defer the making of a formal report under Section 5 of the Local Government and Housing Act 1989 where another investigative body is involved, subject to any necessary consultation with all or any of Head of Paid Service, S.151/Chief Finance Officer, Leader and Audit Committee.
  - 3.11 notify (after consultation with the Head of Paid Service and the S.151/Chief Finance Officer) the police, the authority's auditors and other regulatory agencies of his or her concerns in respect of any matter and to provide them with information and documents in order to assist them with their statutory functions;
  - 3.12 seek to resolve potential reportable incidents by avoiding or rectifying the illegality, failure of process or breach of code, or by identifying alternative and legitimate methods to proceed whilst retaining the right to make a statutory report where, after consultation with the Head of Paid Service and the S.151/Chief Finance Officer, he or she is of the opinion that such is necessary in order to respond properly to such an incident; and
  - 3.13 prepare any training programme for Members or officers on ethical standards and Code of Conduct issues.

#### **4 Conflicts of Interest**

- 4.1 Where the Monitoring Officer is aware he or she has a potential conflict of interest in performing his or her duties he or she shall consult the Head of Paid Service
- 4.2 The Monitoring Officer may then either refer the matter to the Deputy Monitoring Officer for investigation, request a neighbouring authority to make their Monitoring Officer available to this Council or nominate another

person to investigate the matter and report the results to the Monitoring Officer to allow him to carry out his duties and, as may be appropriate, to the Head of Paid Service and/or the authority.

**5 Insurance and Indemnity Arrangements**

- 5.1 The S.151/Chief Finance Officer will ensure adequate insurance and indemnity arrangements are in place for the same to protect and safeguard the interests of the Council and the proper discharge of the Monitoring Officer role.

**6 Sanctions for Breach of the Council's Codes of Conduct and this Protocol**

- 6.1 Complaints against any breach of the Council's Code of Conduct for Members must be referred to the Monitoring Officer. Complaints against any breach of this Protocol by a Member will be referred to the Audit Committee and to the relevant Leader and/or Whip of the Political Party Group. Complaints against any breach of this Protocol by an officer may be referred for disciplinary action.

### Schedule Of Monitoring Officer Functions

Description		Source
1.	Report on contraventions or likely contraventions of any enactment or rule of law.	Section 5 Local Government and Housing Act 1989.
2.	Report of any maladministration or injustice where Ombudsman has carried out an investigation.	Section 5 Local Government and Housing Act 1989.
3.	Report on resources.	Section 5 Local Government and Housing Act 1989.
4	Nomination of officer(s) as Deputy.	Section 5 Local Government and Housing Act 1989.
5.	Receive copies of whistle-blowing allegations of misconduct.	Public interest disclosure (whistle-blowing policy)
6(a)	Investigate allegations of misconduct of councillors under their authority's Code through the Local Assessment of Complaints procedure	<ul style="list-style-type: none"> <li>- LGA 2000 Section 60(2) or 64(2) and 66</li> <li>- Standards Committee (England) Regulations 2008</li> <li>- Local Government and Public Involvement in Health Act 2007</li> <li>- Directions when made in individual cases.</li> </ul>
6(b)	Advise and refer complaints to the Audit Committee in determining allegations of misconduct of councillors under their authority's Code as referred by the Local Assessment of Complaints procedure	
6(c)	Nomination of a person to carry out LGA 2000 Section 60(2) or 64(2) functions where M.O. ought not to	LGA 2000 Section 82A
7.	Establish and maintain registers of members' interests and of gifts and hospitality.	Section 81 LGA 2000 and Code of Conduct.
8.	Key role in support of the Audit Committee in its functions of (a) promoting and maintaining high standards of conduct; and	New council constitutions guidance for English Authorities paragraph 8.20 (published 20.6.02)

	(b) assisting observance of the Code of Conduct by the members and co-opted members of the Council and the town and parish councils within the Council's area	
9.	Advice to members on interpretation of Code of Conduct.	Code of Conduct
10.		
11.	New ethical framework functions in relation to Parish Councils.	Section 83(12) LGA 2000
12.	Advising on appropriateness of compensation for maladministration.	Section 92 LGA 2000
13.	Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all members.	New council constitutions guidance for English Authorities paragraph 8.21 (published 20.6.02)

The Officer holding the designation Monitoring Officer also holds certain Proper Officer appointments as detailed in the Constitution.

# **Part 6 - Members' Allowances Scheme**

## **MEMBERS' ALLOWANCES SCHEME**

**2015 - 2016**

**The Mid Devon District Council, in exercise of the powers conferred by the Local Authorities (Members' Allowances) Regulations 2003, hereby makes the following scheme:**

1. This scheme may be cited as the Mid Devon District Council Members' Allowances Scheme, and shall have effect for the period 1<sup>st</sup> August 2015 until the 31<sup>st</sup> July 2016.
2. In this scheme  
  
"Councillor" means a Member of the Mid Devon District Council who is Councillor;

### **Basic Allowance**

3. Subject to paragraph 8, from 1<sup>st</sup> August 2015 a Basic Allowance of £4,645 shall be paid to each Councillor. Any increases thereafter will be linked to the staff pay award until the next fundamental review.

### **Special Responsibility Allowances**

4. (i) For each year a Special Responsibility Allowance shall be paid to those Councillors who hold the Special Responsibilities in relation to the Authority that are specified in the Schedule to this scheme. These Allowances shall be calculated based upon a weighting applied to the Basic Allowance, therefore any increase in the Basic Allowance as a result of a staff pay award shall also result in an increase to the Special Responsibility Allowances.  
  
(ii) Subject to paragraph 6, the amount of each such Allowance shall be the amount specified against that Special Responsibility in that Schedule.  
  
(iii) No Councillor is entitled to claim more than one Special Responsibility Allowance.

### **Renunciation**

5. A Councillor may, by notice in writing given to the Head of Finance, elect to forego any part of his/her entitlement to an Allowance under this scheme.

### **Part-Year Entitlements**

6. (i) The provisions of this paragraph shall have effect to regulate the entitlements of a Councillor to Basic and Special Responsibility Allowances where, in the course of a year, this scheme is amended or that Councillor becomes, or ceases to be, a Councillor, or accepts or relinquishes a Special

Responsibility in respect of which a Special Responsibility Allowance is payable.

(ii) If an amendment to this scheme changes the amount to which a Councillor is entitled by way of a Basic Allowance or a Special Responsibility Allowance, then in relation to each of the periods:

(a) Beginning with the year and ending with the day before that on which the first amendment in that year takes effect; or

(b) Beginning with the day on which an amendment takes effect and ending with the day before that on which the next amendment takes effect, or (if none) with the year.

7. The entitlement to such an Allowance shall be to the payment of such part of the amount of the Allowance under this scheme as it has effect during the relevant period as bears to the whole the same proportion as the number of the days in the period years to the number of days in the year.

(iii) Where the term of office of the Councillor begins or ends otherwise than at the beginning or end of a year, the entitlement of that Councillor to a Basic Allowance shall be to the payment of such part of the Basic Allowance as bears to the whole the same proportion as the number of days during which his term of office subsists bears to the number of days in that year.

(iv) Where this scheme is amended as mentioned in sub-paragraph (ii), and the term of office of the Councillor does not subsist throughout the period mentioned in sub-paragraph (ii)(a), the entitlement of any such Councillor to a Basic Allowance shall be to the payment of such part of the Basic Allowance referable to each such period (ascertained in accordance with that sub-paragraph) as bears to the whole the same proportion as the number of days during which his term of office as a Councillor subsists bears to the number of days in that period.

(v) Where a Councillor has during part of, but not throughout a year, such Special Responsibilities as entitle him or her to a Special Responsibility Allowance, that Councillor's entitlement shall be to payment of such part of that Allowance as bears to the whole the same proportion as the number of days during which he has such Special Responsibilities bears to the number of days in that year.

*(vi) Where this scheme is amended as mentioned in sub-paragraph (ii), and a Councillor has during part, but does not have throughout the whole, of any period mentioned in sub-paragraph (ii)(a) of that paragraph any such Special Responsibilities as entitle him or her to a Special Responsibility Allowance, that Councillor's entitlement shall be to payment of such part of the Allowance referable to each such period (ascertained in accordance with that sub-paragraph) as bears to the whole the same proportion as the number of days in that period during which he or she has such Special Responsibilities bears to the number of days in that period.*

### **Carers' Allowance**

8. A Carers' Allowance of the actual expenditure incurred up to a maximum of the minimum wage of a person over 21 years of age or the actual cost of childcare at an accredited Nursery, will be paid for care of dependants whether children, elderly people or people with disabilities to Members whilst carrying out approved duties. The maximum period of the entitlement will be the duration of the approved duty and reasonable travelling time. The Allowance will not be payable to a Member of the claimant's own household. The Carers' (reasonable) expenses will be paid.

### **Travelling and Subsistence Allowances**

9. Travelling and subsistence allowances will be paid in accordance with the scales of allowance set out in schedule to this scheme in connection with or relating to such duties as are within one or more of the following categories:
- (a) the attendance at a meeting of the authority or of any committee or sub committee of the authority, or of any other body to which the authority makes appointments or nominations, or of any committee or sub committee of such a body;
  - (b) the attendance at any other meeting, the holding of which is authorised by the authority, or a committee or sub-committee of the authority, or a joint committee of the authority and one or more local authority within the meaning of section 270(1) of the Local Government Act 1972, or a sub-committee of such a joint committee provided that it is a meeting to which members of at least two such groups have been invited,
  - (c) the attendance at a meeting of any association of authorities of which the authority is a member;
  - (d) the performance of any duty in pursuance of any standing order made under section 135 of the Local Government Act 1972 requiring a member or members to be present while tender documents are opened;
  - (e) the performance of any duty in connection with the discharge of any function of the authority conferred by or under any enactment and empowering or requiring the authority to inspect or authorise the inspection of premises;
  - (f) any conference or meeting of any body where the Council or a Committee have agreed to send a representative;
  - (g) as a member of a deputation approved by the authority, a committee or sub committee;



- (h) the Chairman or Vice Chairman of the authority, Committees or Policy Development Groups at meetings with a Chief Officer where Council or Committee business is discussed;
- (i) the Chairman of the Council and Chairmen of Committees acting in such capacity at meetings of Parish Councils;
- (j) Civic Receptions and other social functions;
- (k) Members attending meetings of Parish Councils within their Wards, or as Ward Member at meetings at the request of a Parish Council; and
- (l) the carrying out of any other duty approved by the authority, or any duty of a class so approved, for the purpose of, or in connection with, the discharge of the functions of the authority or of any of its committees or sub-committees.

### **Payments**

10. (i) Payments shall be made in respect of Basic and Special Responsibility Allowances, subject to sub-paragraph (ii), in instalments of one twelfth of the amount specified in this scheme on the 22<sup>nd</sup> day of each month.
- (ii) Where a payment of one twelfth of the amount specified in this scheme in respect of a Basic Allowance or a Special Responsibility Allowance would result in the Councillor receiving more than the amount to which, by virtue of paragraph 8, he or she is entitled, the payment shall be restricted to such amount as will ensure that no more is paid than the amount to which he or she is entitled.
- (iii) Members who have their own IT equipment will receive a one-off payment of £75 per year. Members who use Council IT equipment will not receive a one-off payment.

### **Claims**

11. Claims for the payment of dependent carers' allowance and travelling and subsistence allowances must be made by the person to whom they are payable within two months of the date on which an entitlement to such allowance arises. Such claims must be evidenced by relevant receipts.

### **Pensions**

12. None of the allowances contained within this scheme shall be eligible for inclusion within the Local Government Pension Scheme.

### **Tax and Benefits**

13. Income Tax

- a) Basic, Special Responsibility and Carers Allowances are subject to Income Tax as they are payments made in respect of the duties of an office.
- b) The HMRC is notified of the names and addresses of all Members who claim taxable allowances. Tax is deducted at basic rate until the HMRC notified the Council of the appropriate tax code for each Member.
- c) Some expenses incurred by Members in the course of their Council duties may be deductible against tax. Any Member who believes that some of his/her expenses as a Member may be tax deductible should contact his/her Tax Office.

14. National Insurance Contributions

- a) Basic, Special Responsibility and Carers Allowance payments will attract National Insurance (NI) Contributions at levels that vary depending on the total earnings of Members.
- b) Some Members may not be liable to any NI Contributions on Allowances if they are over the state retirement age; in accordance with prevailing legislation. See the Government website for more information. <https://www.gov.uk/tax-national-insurance-after-state-pension-age>
- c) Some Members, who are married women or widows who have elected to pay reduced rate NI Contributions may also need to have the NI Contributions on Allowances calculated at a reduced rate.
- d) Members who are self-employed may also be subject to different levels of NI Contributions.
- e) Members who believe that they fall into any of the above categories should contact the Head of Finance who will seek further information to assist with the query. Members should also obtain the appropriate certificates from the Department of Work and Pensions (DWP).

**Chairman's Civic Budget**

15. A small budget (not exceeding £2,000 and to be agreed each year during the budget setting process) be allocated to the Chairman of the Council for civic functions.

Payments with regard to his or her Civic role should be paid retrospectively and only on production of a receipt/s

**IT Allowances**

16. Until 31<sup>st</sup> July 2016 IT allowances will be paid as follows:

- a) For Members using either a Council iPad or their own digital device there shall be a payment of £75 per annum plus a Broadband payment of £15 per month.
- b) For Members receiving paper copies of minutes and agendas but using their own equipment to communicate with the Council and their electorate by email, a payment of £75 per annum will be made plus a Broadband payment of £15 per month.
- c) Members who use a Council laptop will not receive an annual payment of £75 but will have their Broadband costs paid directly by the Council.

**DATED** this 15<sup>th</sup> day of July 2015

## SCHEDULE

With effect from 1<sup>st</sup> August 2015, the following are specified as Special Responsibilities in respect of which Special Responsibility Allowances are payable, and the amounts of those Allowances:

Leader of the Council	£13,935
Deputy Leader of the Council	£6,968
Cabinet Member	£5,806
Chairman of Scrutiny Committee	£5,806
Chairmen of Policy Development Groups	£3,484
Chairman of Audit Committee	£3,484
Chairman of the Planning Committee	£5,806
Chairman of the Licensing/Regulatory Committee	£2,323
Chairman of the Standards Committee	£1,125
Chairman of the Council	£2,323

With effect from 1<sup>st</sup> August 2015, the following amounts are specified as the amounts of allowance payable in respect of travelling and subsistence arising from those approved duties set out within this scheme:

(a) Travelling Allowances:

- 45p per mile for the first 10,000 miles
- 25p per mile thereafter
- 5p per mile per passenger carried (up to a maximum of 4 passengers, payable to the driver)
- 20p per mile for bicycles

(b) Subsistence Allowances

Breakfast	£6.83
Lunch	£9.43
Tea	£3.71
Dinner	£11.68

All claims for subsistence must be accompanied by a receipt. The maximum allowance will only be paid where the cost of subsistence is equal to, or

greater than, the maximum allowance.

**FOR INFORMATION AND CLARIFICATION - NOT PART OF THE APPROVED SCHEME**

**ELIGIBILITY TO ALLOWANCES AND EXPENSES**

**ALLOWANCES CLAIMABLE**

Description of Approved Duty	Carers' Allowance	Travel & Subsistence
1. (a) Meetings of Council, Cabinet, Policy Development Groups, Audit, Scrutiny and Regulatory Committees (Members of Committees or Substitutes)	YES	YES
(b) Non-Committee Members attending	YES	YES
2. Meetings of bodies to which the Authority makes appointments, or of Cabinet, Policy Development Groups, Audit, Scrutiny and Regulatory Committees	YES	YES
3. Any meeting authorised by the Authority, Cabinet, Policy Development Groups, Audit, Scrutiny or Regulatory Committees to which duly appointed representatives of more than one Political Group have been appointed	YES	YES
Non-duly appointed Members	NO	YES
4. A meeting of a Local Authority Association	YES	YES
5. Any conference or meeting of any body where the Council or a Committee have agreed to send a representative	YES	YES
6. (a) Any visits or inspections undertaken by Members, approved by the Authority or any Cabinet, Policy Development Groups, Audit, Scrutiny or Regulatory	YES	YES

	Committees. (Members of Committee or Substitutes)		
	(b) Non-Committee Members attending by invitation of the Cabinet, Policy Development Group, Audit, Scrutiny and regulatory Committees.	YES	YES
	(c) Non-Committee Members attending uninvited	NO	YES
7.	As a Member of a deputation approved by the Authority, the Cabinet, Policy Development Group, Audit, Scrutiny or Regulatory Committees.	YES	YES
8.	By Chairman or Vice-Chairman of the Authority, Cabinet, Policy Development Group, Audit, Scrutiny and Regulatory Committees at meetings with a Chief Officer where Council or Committee business is discussed	YES	YES
9.	By Chairman of the Council and Chairman of Committees acting in such capacity at meetings of Parish Councils	YES	YES
10.	For any particular duty for which express authority from time to time is given by the Authority or in case of emergency by the Chairman or Vice-Chairman of the Authority	NO	YES
11.	Civic Receptions and other social functions	NO	YES
12.	Members attending meetings of Parish Councils within their Wards, or as Ward Member at meetings at the request of a Parish Council	NO	YES

Notes:

- (1) In all cases, the duties for which claims are made must have been approved prior to the event.

(2) Meetings (3 above) includes Working Groups, approved seminars, and Briefing meetings where more than one Political Group is invited

(3) Other Briefing meetings fall within (8) above.

(Councillors\Members' Allowances Scheme)  
15/16

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# Part 6 – Management Structure

