

# Part 2

## Articles of the Constitution

# Article I - The Constitution

## 1.01 **Powers of the Council**

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

## 1.02 **The Constitution**

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

## 1.03 **Purpose of the Constitution**

The purpose of the Constitution is to:

1. enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations, as set out in Hart's corporate aims and objectives and its Community Strategy;
2. support the active involvement of people in the process of local authority decision-making;
3. help councillors represent their constituents more effectively in the appropriate forum;
4. enable decisions to be taken efficiently and effectively in the appropriate forum;
5. create a powerful and effective means of holding decision-makers to public account;
6. ensure that no-one will review or scrutinise a decision in which they were directly involved;
7. ensure that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions;
8. provide a means of improving the delivery of services to the community;
9. provide a platform committed to the improvement, quality and equality of service delivery for the people of Hart.

#### **I.04 Interpretation and Review of the Constitution**

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

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

# Article 2 - Members of the Council

## 2.01 **Composition and eligibility**

- (a) **Composition.** The Council will comprise 35 Members, otherwise called Councillors. One or more Councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Commission and approved by the Secretary of State.
- (b) **Eligibility.** Only registered voters of the District or those living or working there (at the time when nominations are made for candidates for election) will be eligible to hold the office of councillor.

## 2.02 **Election and terms of councillors**

**Election and terms.** The ordinary election of a third (or as near as may be) of all councillors is normally held on the first Thursday in May each year (beginning in 2002), except that, in 2005 and every fourth year after, there will be no regular election. The term of office of councillors will be four years, starting on the fourth day after being elected and finishing on the fourth day after the date of the ordinary election.

## 2.03 **Roles and functions of all councillors**

The following sets out the key roles and duties of councillors. All elected councillors have a responsibility for the good governance of the local authority, and act as community leaders and as a link and point of mediation between the local authority and the community.

### (a) **Key roles.**

All councillors will:

- (i) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
- (ii) contribute to the good governance of the District;
- (iii) participate in the governance and management of the Council;
- (iv) deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
- (v) respond to constituents' enquiries and representations fairly and impartially;
- (vi) balance different interests identified within the ward or electoral division and represent as a whole;

- (vii) be involved in decision-making;
- (viii) be available to represent the Council on other bodies;
- (ix) maintain the highest standards of conduct and ethics.

Fuller information about the roles that councillors might expect to undertake is included in Part 8 of this Constitution, in the form of role descriptions. The role descriptions include those of the Chairman of the Council, Leader and Deputy Leader of the Council, Cabinet Member, Portfolio Holder, Overview and Scrutiny Committee Member and Panel Member.

**(b) Rights and duties**

- (i) Councillors will have 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.
- (ii) Councillors will not make information public 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.
- (iii) For these purposes, “confidential” and “exempt” information is defined in the Access to Information Rules in Part 4 of this Constitution.

**2.04 Conduct**

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

**2.05 Allowances**

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

**2.06** A councillor may not hold the office of Chairman or Vice-Chairman of the Council, be the Leader, hold any portfolio in the Cabinet, or be Chairman of any committee of the Council, for more than three consecutive years without the consent of the Council.

# Article 3 – The People of Hart and the Council

## 3.01 Rights

People who live and/or work in Hart have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution:

- (a) **Voting and petitions.** If you are on the electoral roll for the District, you have the right to vote and sign a petition to request a referendum for an elected mayor form of Constitution.
- (b) **Information.** You have the right to:
  - (i) attend meetings of the Council, the Cabinet and committees, except when confidential or exempt information is likely to be disclosed and the meeting is, therefore, held in private;
  - (ii) find out from the forward plan what key decisions will be taken by the Cabinet and when (a definition of a “key decision” is contained in Article 12);
  - (iii) see reports and background papers and any records of decisions made by the Council, its committees, the Cabinet and Policy Panel; and
  - (iv) inspect the Council’s accounts and make their views known to the external auditor.
- (c) **Participation.** You have the right to participate in question time at Council and contribute to investigations by the Overview and Scrutiny Committee. You also have the right to participate in the Council's Planning Committee meetings, in accordance with a public speaking scheme agreed by the Council from time to time.
- (d) **Complaints.** You have the right to complain to:
  - (i) the Council itself under its complaints scheme;
  - (ii) the Ombudsman after using the Council’s own complaints scheme;
  - (iii) the Standards Board for England about a breach of the Councillors’ Code of Conduct.

## 3.02 Your responsibilities

You must not be violent, abusive or threatening to councillors or officers and must not wilfully harm things owned by the council, councillors or officers.

# Article 4 - The Full Council

## 4.01 Meanings

(a) **Policy Framework.**

The policy framework means the following plans and strategies:-

(i)

1. Community Strategy
2. Corporate Plan
3. Local Plan (to be superseded by the Local Development Framework)
4. Housing Investment Strategy
5. Leisure Strategy
6. Waste & Recycling Strategy
7. Crime & Disorder Reduction Strategy
8. Food Law Enforcement Service Plan
9. Best Value Performance Plan
10. Medium Term Information Technology Strategy
11. Race Equality Scheme
12. Equality & Diversity Policy
13. Medium Term Financial Strategy
14. Revenue Budget
15. Capital Programme

(ii) other plans and strategies that the Council may decide should be adopted by the Council meeting as a matter of local choice.

(b) **Budget.** The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the council tax base, setting the council tax, and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.

## 4.02 Functions of the full Council

The Council will exercise the following functions:

- (a) adopting and changing the Constitution;
- (b) approving or adopting the policy framework, the budget and any application to the Secretary of State in respect of any housing land transfer;

- (c) subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function which is covered by the policy framework or the budget, where the decision-maker is minded to make it in a manner which would be contrary to the policy framework or contrary to, or not wholly in accordance with, the budget;
- (d) appointing and removing the leader;
- (e) agreeing and/or amending the terms of reference of committees and deciding on their composition; and (subject to the Council and Committee Procedure Rules (Standing Orders) in Part 4 of this Constitution) making appointments to committees;
- (f) appointing representatives to outside bodies unless the appointment is an executive function or has been delegated by the Council;
- (g) adopting an allowances scheme under Article 2;
- (h) confirming the appointment of the head of paid service;
- (i) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or private Bills;
- (j) all other matters which, by law, must be reserved to Council *including (but not limited to):*

*Statement of Licensing Policy*<sup>1</sup>

*Statement of Licensing Policy (Gambling), and functions relating to a resolution not to issue casino premises licenses*<sup>2</sup>

#### 4.03 **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.

#### 4.04 **Responsibility for functions**

The Council will maintain the tables in Part 3 of this Constitution setting out the responsibilities for the Council's functions.

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<sup>1</sup> SS5 and 7 Licensing Act, 2003

<sup>2</sup> S.154(2)(c) Gambling Act, 2005

# Article 5 - Chairing the Council

## 5.01 **Role and function of the chairman**

The Chairman of the Council will be elected by the Council annually. The chairman (and in his/her absence, the Vice-Chairman) will have the following responsibilities:

1. to uphold and promote the purposes of the Constitution and to interpret it when necessary;
2. to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of councillors and the interests of the community;
3. to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which members who are not part of the Cabinet are able to hold the Cabinet to account;
4. to promote public involvement in the Council's activities;
5. to attend such civic and ceremonial functions as the Council and he/she determines appropriate.

(NB - In accordance with the provisions of the Local Government Act 2000, neither the Chairman nor the Vice-Chairman of the Council can be a member of the Cabinet.)

# Article 6 – Overview and Scrutiny Committee

## Terms of reference

- 6.1** The Council will appoint the Overview and Scrutiny Committees to discharge the functions conferred by section 21 of the Local Government Act 2000 or regulations under section 32 of the Local Government Act 2000.

## General Role

- 6.2** Within its terms of reference, Overview and Scrutiny Committee will:
- (i) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions
  - (ii) make reports and/or recommendations to the full Council and/or the Executive and/or any policy, joint or area Committee in connection with the discharge of any functions
  - (iii) consider any matter affecting the area or its inhabitants; and
  - (iv) exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Executive and/or any policy or area Committees

## Specific Functions

### **6.3 Policy Development and Review**

Overview and Scrutiny Committee may:

- (i) assist the Council and the Executive in the development of its budget and policy framework by in-depth analysis of policy issues
- (ii) conduct research, community and other consultation in the analysis of policy issues and possible options
- (iii) consider and implement mechanisms to encourage and enhance community participation in the development of policy options
- (iv) question members of the Executive and/or Committees and chief officers about their views on issues and proposals affecting the area; and
- (v) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working

### **6.4 Scrutiny**

Overview and Scrutiny Committee may:

(i) review and scrutinise the decisions made by and performance of the Executive and/or Committees and Council officers both in relation to individual decisions and over time

(ii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas.

(iii) question members of the Executive and/or Committees and chief officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects

(iv) make recommendations to the Council, Executive or Committees arising from the outcome of the scrutiny process

(v) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Overview and Scrutiny Committee and local people about their activities and performance; and

(vi) question and gather evidence from any person (with their consent)

## **6.5 Finance**

Overview and Scrutiny Committee may exercise overall responsibility for any finances made available to them

## **6.6 Annual Report**

Overview and Scrutiny Committee must report annually to full Council on its workings and make recommendations for future work programmes and amended working methods if appropriate

## **6.7 Officers**

Overview and Scrutiny Committee may exercise overall responsibility for the work programme of any officers employed to support their work

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

Overview and Scrutiny Committee will conduct its proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution

## **6.9 Power to co-opt people onto the Committee**

Overview and Scrutiny Committee will have the power to co-opt any person or persons they think appropriate (except for a member of the Executive) onto the Committee, on whatever basis they think appropriate. Co-opted members may speak in debates but not vote.

## **Article 6A - Crime and Disorder functions**

These terms of reference relate to the discharge of functions by the Committee in relation to the duty on the local authority to establish a "Crime and Disorder" (Scrutiny) Committee as required by the Crime and Disorder Act 1998 and amended by the Police and Justice Act 2006 and the Local Government and Public Involvement in Health Act 2007.

### **6.10 Role**

- 6.10.1 The Overview and Scrutiny Committee (or a sub-committee of its Members) shall as the "Crime and Disorder Committee" discharge the following roles:
- 6.10.2 to review and scrutinise decisions made, or other actions taken, in connection with the discharge by the responsible authorities of their crime and disorder functions;
- 6.10.3 to make reports or recommendations to the local authority with respect to the discharge of those functions;
- 6.10.4 The relevant crime and disorder functions for which the Panel or sub-panel will have responsibility refers to those under section 6 Crime and Disorder Act 1998 as amended by the Police and Justice Act 2006 the Local Government and Public Involvement in Health Act 2007 and the Crime and Disorder (Overview and Scrutiny) Regulations 2009.

### **6.11 Definitions**

- 6.11.1 "The responsible authorities" means the bodies, and persons who are responsible authorities within the meaning given by Section 5 Crime and Disorder Act 1998 (authorities responsible for crime and disorder strategies) in relation to the local authority's area.
- 6.11.2 "Regulations" means regulations made or to be made under Section 20(3) and (4) of the Police and Justice Act 2006 including the Crime and Disorder (Overview and Scrutiny) Regulations 2009.
- 6.11.3 "Depersonalised data" means information which does not constitute personal data within the meaning of the Data Protection Act 1998.

- 6.12 The functions undertaken by the Committee or sub-committee when discharging its functions as a Crime and Disorder Committee are subject to the procedure rules of an overview and scrutiny committee of the authority within the meaning of Part 2 of the Local Government Act 2000 (as amended).

## **6.13 Statutory Requirements**

- 6.13.1 Overview and Scrutiny Committee (or Sub-Committee) shall make provisions for undertaking the following specific requirements with regards to crime and disorder:
- 6.13.2 To consider decisions made by the responsible authorities with regards to their crime and disorder functions
- 6.13.3 To consider matters at a meeting of the Committee or Sub-Committee referred by any elected Member of the Council regarding any crime and disorder matter.
- 6.13.4 To make reports or recommendations to the Council, to the Cabinet or any relevant responsible authority in regard to crime and disorder matters.
- 6.13.5 To have regard to any Guidance issued by the Secretary of State in regard to the discharge of functions relating to crime and disorder. (scrutiny) under Section 19 of the Police and Justice Act 2006, (or any regulations made pursuant to the Act) which may include:
  - 6.13.5.1 the means by which information is to be provided to the committee by the responsible authorities and the co-operating persons and bodies including restrictions on the provision of this information;
  - 6.13.5.2 requirements on officers or employees of the responsible authorities and the co-operating persons or bodies to attend the committee to answer questions.
  - 6.13.5.3 Advice specifying how a person is to refer a matter to any member of the authority or to the executive regarding a crime and disorder matter.
  - 6.13.5.4 To take account of equality and diversity issues and consider the needs of high risk and vulnerable groups in all decision making.

## **6.14 Responsible Authorities Group (or equivalent group by whatever title)**

- 6.14.1 The Chairman and Vice-Chairman of the Overview and Scrutiny Committee, or his/her representative, may attend meetings of the Responsible Authorities Group as an observer and shall be invited where considered appropriate.
- 6.14.2 The Responsible Authorities Group shall be requested to inform the Overview and Scrutiny Committee or its sub-committee of all decisions taken regarding crime and disorder functions and shall make available any minutes or notes of relevant meetings.
- 6.14.3 Where the Committee (or sub-committee) has resolved to consider a decision taken by the Responsible Authorities Group relating to crime and disorder functions it may request in writing all relevant background papers

with regards to that decision prior to its consideration at a meeting of the Committee or sub-committee.

## **6.15 Minutes, Reports and Recommendations**

6.15.1 The Committee or sub-Committee shall provide notice in writing to the Council, to the Cabinet or any relevant responsible authority of any report or recommendations produced with regards to any crime and disorder matter.

6.15.2 Where the Committee or Sub-Committee has considered at a meeting a matter referred by any Member who is not a Member of the Overview and Scrutiny Committee or a person resident within the District it shall ensure the recommendations are provided to those persons and any other bodies as it thinks appropriate.

6.15.3 The Committee must notify the authority, body, or person, to whom it makes a report or recommendation or provides a copy of those recommendations that the authority, body or person must within two months beginning with the date on which the authority or executive received the report or recommendations or (if later) the notice:

6.15.3.1 consider the report or recommendations;

6.15.3.2 respond to the committee indicating what (if any) action it proposes to take;

6.15.3.3 have regard to the report or recommendations in discharging its functions.

## **6.16 Co-option**

6.16.1 The Secretary of State may make (and has made) regulations making provision as to the co-option of additional members whom shall have full voting rights on any crime and disorder matter.

6.16.2 Notwithstanding the provisions regarding co-opted members in paragraph 6.9 the following provisions of this paragraph shall apply where the Committee (or sub-committee) is discharging its functions as the Crime and Disorder Committee.

6.16.2.1 The crime and disorder committee of a local authority may co-opt additional members to serve on the committee subject to paragraphs 7.8.3.2, 7.8.3.3, 7.8.3.4 and 7.8.3.5.

6.16.2.2 A person co-opted to serve on a crime and disorder committee shall not be entitled to vote on any particular matter, unless the committee so determines.

- 6.16.2.3 A co-opted person's membership may be limited to the exercise of the Committee's powers in relation to a particular matter or type of matter
- 6.16.2.4 A crime and disorder committee shall only co-opt a person to serve on the committee who—
  - 6.16.2.4.1 Is an employee, officer or member of a responsible authority or of a co-operating person or body; and
  - 6.16.2.4.2 Is not a member of the executive of the committee's local authority (or authorities).
- 6.16.2.5 The membership of a person co-opted to serve on a crime and disorder committee may be withdrawn at any time by the committee.

## **6.17 Frequency of meetings**

- 6.17.1 The Committee shall meet to review or scrutinise decisions made, or other action taken, in connection with the discharge by the responsible authorities of their crime and disorder functions as the committee considers appropriate but no less than once in every twelve month period.

## **6.18 Information**

- 6.18.1 Where the Committee makes a request in writing for information, as defined in section 20(6A) of the 2006 Act(a), to the responsible authorities or the co-operating persons or bodies, the authorities, or persons or bodies (as applicable) must provide such information in accordance with paragraphs 7.10.2 and 7.10.3.
- 6.18.2 The information referred to in paragraph 7.10.1 . must be provided no later than the date indicated in the request save that if some or all of the information cannot reasonably be provided on such date, that information must be provided as soon as reasonably possible.
- 6.18.3 The information referred to in paragraph 7.10.1
  - 6.18.3.1 shall be depersonalised information , unless (subject to subparagraph 7.10.3.2 the identification of an individual is necessary or appropriate in order to enable the Committee to properly exercise its powers; and
  - 6.18.3.2 shall not include information that would be reasonably likely to prejudice legal proceedings or current or future operations of the responsible authorities, whether acting together or individually, or of the co-operating persons or bodies.

## **6.19 Attendance at committee meetings**

- 6.19.1 Subject to paragraph 7.11.2, the Committee may require the attendance before it of an officer or employee of a responsible authority or of a co-operating person or body in order to answer questions.
- 6.19.2 The Committee may not require a person to attend in accordance with paragraph
- 6.19.3 unless reasonable notice of the intended date of attendance has been given to that person.

## **6.20 Reports and recommendations**

- 6.20.1 Where the Committee makes a report or recommendations to a responsible, authority or to a co-operating person or body in accordance with section 19(8)(b) of the Police and Justice Act 2006, the responses to such report or recommendations of each relevant authority, body or person shall be-
  - 6.20.1.1 in writing; and
  - 6.20.1.2 submitted to the Committee within a period of 28 days from the date of the report-or recommendations or, if this is not reasonably possible, as soon as reasonably possible thereafter.

## **6.21 Review of Terms of Reference (“Crime and Disorder”)**

- 6.21.1 The Responsible Authorities of the Community Safety Partnership having a statutory requirement to consider annually whether the partnership has the requisite knowledge and skills contributing to the partnership, these terms of reference shall be reviewed at least annually.

# Article 7 - The Cabinet

## 7.01 **Executive Functions**

In this Council the functions of the Executive will be discharged by the Cabinet.

## 7.02 **Role**

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

## 7.03 **Form and composition**

The Cabinet will consist of the Leader, a Deputy Leader, together with at least two, but not more than nine such numbers to include the Deputy Leader), councillors appointed by the Leader as the Leader may determine. The Leader of the Council may assign portfolios to individual Cabinet members, and approve the delegation of executive powers to individual Cabinet Members and officers.

## 7.04 **Leader**

The Leader will be a councillor elected annually to the position of Leader by the Council at the Annual General Meeting. The Leader will hold office for a period of four years (or whichever is the shorter period) until:

- (a) he/she resigns from the office; or
- (b) he/she is suspended from being a councillor under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension); or
- (c) he/she is no longer a councillor; or
- (d) he/she is removed from office by resolution of the Council (and the Leader may not be removed from office except by such resolution; or

In the event of the Leader not being able to undertake his/her duties, for any reason, the deputy Leader shall undertake those duties.

## 7.05 **Other Cabinet members**

The Deputy Leader and other Cabinet members shall hold office until:

- (a) they resign from office; or

- (b) they are suspended from being councillors under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
- (c) they are no longer councillors; or
- (d) they are removed from office, either individually or collectively, by the Leader who must give written notice of their removal to the Proper Officer. The removal will take effect two working days after receipt of the written Notice by the Proper Officer.

#### **7.06 Proceedings of the Cabinet**

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

#### **7.07 Responsibility**

The Leader will maintain a list in Part 3 of the Constitution setting out which individual members of the Cabinet, officers or joint arrangements are responsible for the exercise of particular Cabinet functions.

#### **7.08 Political balance**

The Cabinet does not have to comply with the political balance rules in Section 15 of the Local Government and Housing Act 1989.

# Article 8 - Committees of the Council

## 8.01 Committees of the Council

Part 3 of this Constitution contains a section entitled Responsibility for Functions containing three parts entitled Responsibility for Functions, Delegations to individual Cabinet Members, and Delegated powers to Officers.

All “Local Choice” functions (i.e. those specified in regulations under S.13(3) (b) of the Local Government Act 2000 ) are Executive Functions and are set out in Part 3 B.

The Council will appoint the Committees set out in the left hand column of the tables set out in Part 3 A in order to discharge the functions set out in the third column.

In furtherance of these provisions, the Council will:

- (i) appoint the member composition of the Standards Committee (Article 9A)
- (ii) delegate its personnel and audit functions to the Staff and General Purposes Committee (Article 9B)
- (iii) delegate its licensing functions to the Regulatory and other committees (Article 9C)
- (iv) delegate its planning functions to the Planning Committee (Article 9C)
- (v) delegate its staff appeals to an Appeals Committee (Article 9C)

# Article 9A - The Standards Committee

## 9A.01 **Establishing the Standards Committee**

The Council's annual meeting will establish a Standards Committee.

## 9A.02 **Composition**

**Political Balance:** Standards Committees do not have to comply with the political balance rules in section 15 of the Local Government and Housing Act 1989 but shall be appointed as if in accordance with the political balance rules in Section 15 of the Local Government and Housing Act 1989<sup>3</sup>

**Membership:** The Standards Committee will be composed of:

- \* five<sup>4</sup> councillors other than the Leader;
- \* three persons who are not councillors or officers of the council or of any other body having a Standards Committee (independent members);
- \* three members of a town or parish council wholly or mainly in the Council's area (a parish member).

**Independent members:** Independent members will be entitled to vote at meetings.

**Parish Members:** The town or parish members must be present when matters relating to town or parish councils or their members are being considered.

**Chairing the Committee:** It is mandatory that the Chairman and Vice Chairman of the Standards Committee be Independent Members.

**Parish Council Sub-Committee:** There will be no Parish Sub-Committee.

## 9A.03 **Role and function**

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 councillors and co-opted members to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct;

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<sup>3</sup> Council Resolution 30 October 2003 Minute 51

<sup>4</sup> Ibid; membership increased from three

- (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 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 tribunal or interim case tribunal, and any report from the monitoring officer on any matter which is referred by an ethical standards officer to the monitoring officer;
- (h) the exercise of (a) to (g) above in relation to the town and parish councils wholly or mainly in its area and the members of those parish councils.

#### **9A.04 Additional Roles of Standards Committee**

The Standards Committee will undertake the following additional roles:-

- (a) overview of the whistle-blowing policy;
- (b) overview of complaints-handling and Ombudsman investigations;
- (c) advising the Council on the monitoring and review of the Constitution.

## Article 9B – The Audit Committee

### 9B.01 **Establishment**

The Council will at its Annual Meeting establish an Audit Committee.

### 9B.02 **Membership**

The Membership shall consist of seven Members appointed in accordance with the political balance rules in Section 15 of the Local Government and Housing Act 1989.

No Members of the Committee will be Members of the Cabinet.

### 9B.03 **Role and Function**

#### *Audit*

- (i) To receive the Annual Audit Letter and make recommendations thereon to the Council.
- (ii) To receive all other reports from the Council's external auditors and make recommendations thereon to Council.
- (iii) To determine the work programme for internal audit activity.
  - i. To receive summaries of all internal audit reports and such additional information as may be required.
  - ii. To receive reports on risk management and fraud.
  - iii. To receive and sign off the annual Statement of Accounts.

# Article 9C – Regulatory and Other Committees

## **Regulatory and Other Committees**

9C.01 The Council will appoint the Committees and sub-Committees set out in the two left hand columns of the table Responsibility for Council Functions in Part 3 of this Constitution to discharge the functions described in column 4 of that table.

## **Committee Membership**

9C.02 Membership of these committees will be as set out in Column 3 of the Table. The appointment of members to these committees will be made in accordance with the Council Procedure Rules in Part 4 of this Constitution and the rules relating to political balance.

## Article 9D – The Staffing Committee

### 9D.01 **Establishment**

The Council will at its Annual Meeting establish a Staffing Committee.

### 9D.02 **Membership**

The Membership shall consist of five Members appointed in accordance with the political balance rules in Section 15 of the Local Government and Housing Act 1989. Any member may sit on the Staffing Committee but it will include the Cabinet Member responsible for staffing matters.

### 9D.03 **Role and Function**

#### *Personnel*

- (i) Subject to the appropriate statutory provisions and the Officer Employment Procedure Rules, to exercise the powers of the Council in relation to the appointment and dismissal of staff.
- (ii) To exercise the Council's functions in relation to staff pensions.
- (iii) To set tasks and targets for the Chief Executive and to appraise the performance of the Chief Executive.
- (iv) To recommend the Chief Executive's remuneration to full Council.
- (v) To appoint officers for particular purposes (appointment of "proper officers").

# Article 10 - Joint Arrangements

## 10.01 Arrangements to promote well being

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

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

## 10.02 Joint arrangements

- (a) The Council may establish joint arrangements with one or more local authority and/or their executives to exercise functions (which are not executive functions in any of the participating authorities) or to 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 authority to exercise functions that are executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities.
- (c) Except as set out below, the Cabinet may appoint only Cabinet members to a joint committee, and those members need not reflect the political composition of the Council as a whole.
- (d) The Cabinet may appoint members to a joint committee from outside the Cabinet in the following circumstances:
  - (i) the joint committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, the Cabinet may appoint to the joint committee any councillor who is a member for a ward that is wholly or partly contained within the area;
  - (ii) the joint committee is between a county council and a single district council and relates to functions of the executive of the county council. In such cases, the executive of the county council may appoint to the joint committee any councillor who is a member for an electoral division that is wholly or partly contained within the area.

The political balance requirements do not apply to such appointments.

- (e) Details of any joint arrangements, including any delegations to joint committees, will be found in the Council's Statement of Functions of Decision-making Bodies in Part 3 of this Constitution.

#### **10.03 Access to information**

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

#### **10.04 Delegation to and from other local authorities**

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

#### **10.05 Contracting out**

The Council and the Cabinet, as regards their respective functions, may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an order under section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision-making.

# Article 11 - Officers

## TERMINOLOGY

The use of the word “officers” means all employees and staff engaged by the Council to carry out its functions. This word has also been used instead of “employees” to cover those engaged under short- term, agency or other non- employed situations.

### 11.01 Management structure

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

<b>Post</b>	<b>Designation</b>
Chief Executive	Head of Paid Service
Solicitor to the Council	Monitoring Officer
Head of Finance	Chief Finance Officer (“S.151 Officer”)

Such posts will have the functions described in Article 11.02 – 11.04 below.

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

### 11.02 Functions of the head of paid service

- (a) **Discharge of functions by the Council.** The head of paid service will report to full Council on the manner in which the discharge of the Council’s functions is co-ordinated, and the number, grade and organisation of officers required for the discharge of functions.
- (b) **Restrictions.** The head of paid service may not be the monitoring officer or the chief finance officer.

### 11.03 Functions of the monitoring officer

- (a) **Maintaining the Constitution.** The monitoring officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, staff and the public.
- (b) **Ensuring lawfulness and fairness of decision-making.** After consulting with the head of paid service and chief finance officer, the monitoring officer

will report to the full Council or to the executive in relation to an executive function if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

- (c) **Supporting the Standards Committee.** The monitoring officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- (d) **Receiving reports.** The monitoring officer will receive and act on reports made by ethical standards officers and decisions of the case tribunals.
- (e) **Conducting investigations.** The monitoring officer will conduct investigations into matters referred by ethical standards officers and make reports or recommendations in respect of them to the Standards Committee.
- (f) **Proper officer for access to information.** The monitoring officer will ensure that Cabinet decisions, together with the reasons for those decisions, and relevant officer reports and background papers are made publicly available as soon as possible.
- (g) **Advising whether executive decisions are within the budget and policy framework.** The monitoring officer will advise whether executive decisions are in accordance with the budget and policy framework.
- (h) **Providing advice.** The monitoring officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues.
- (i) **Restrictions.** The monitoring officer cannot be the chief finance officer or the head of paid service.

#### 11.04 **Functions of the chief finance officer**

- (a) **Ensuring lawfulness and financial prudence of decision making.** After consulting with the head of paid service and the monitoring officer, the chief finance officer will report to the full Council or to the executive in relation to an executive function and to the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- (b) **Administration of financial affairs.** The chief finance officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management.** The chief finance officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.

- (d) **Providing advice.** The chief finance officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all councillors, and will support and advise Councillors and officers in their respective roles.
- (e) **Give financial information.** The chief finance officer will provide financial information to the media, members of the public and the community.

**11.05 Duty to provide sufficient resources to the monitoring officer and chief finance officer**

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

**11.06 Conduct**

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

**11.07 Employment**

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

# Article 12 - Decision-making

## 12.01 **Responsibility for decision-making**

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

## 12.02 (a) **Principles of decision-making**

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

- (i) proportionality (i.e. the action must be proportionate to the desired outcome);
- (ii) due consultation and the taking of professional advice from officers;
- (iii) respect for human rights (see below for further details);
- (iv) a presumption in favour of openness;
- (v) clarity of aims and desired outcomes.

## (b) **Recording of Decisions**

- (i) As soon as reasonably practicable after a meeting of a decision-making body at which any executive decisions have been made, a written statement will be produced in respect of same, containing:
  - (a) a record of the decision, signed by the Leader or Chairman of the decision-making body;
  - (b) a record of the reasons 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 in relation to the matter decided which is declared by any member of the body which made the decision;
  - (e) a note of any dispensation granted by the Standards Committee in respect of any declared conflict of interest.
- (ii) As soon as is reasonably practicable after an officer has made a decision which is a key decision, a written statement will be produced containing:

- (a) a record of the decision, signed by the officer who made it (the decision);
- (b) a record of the reasons for the decision;
- (c) details of any alternative options considered and rejected by the officer at the time he made the decision;
- (d) a record of any conflict of interest declared, in relation to the decision, by any Cabinet member who was consulted by the officer who made the decision;
- (e) a note of any dispensation granted by the Standards Committee in respect of any declared conflict of interest in relation to the decision.

### 12.03 **Types of decision**

- (a) **Decisions reserved to full Council.** Decisions relating to the functions listed in Article 4.02 will be made by the full Council and not be delegated.
- (b) **Key decisions.**
  - (i) A key decision means an executive decision which is likely to:
    - (a) result in the Council incurring expenditure or making savings which amount to either £30,000 or 25% (whichever is the larger) of the budget for the service or function to which the decision relates; or
    - (b) be significant in terms of its effect on communities living or working in an area comprising two or more wards within the district of Hart.
  - (ii) A decision-maker may make a key decision only in accordance with the requirements of the Cabinet and Executive Procedure Rules set out in Part 4 of this Constitution.

### 12.04 **Decision-making by the full Council**

Subject to Article 12.08, the Council meeting will follow the Council and Committee Procedures Rules (Standing Orders) set out in Part 4 of this Constitution when considering any matter.

### 12.05 **Decision-making by the Cabinet.**

Subject to Article 12.08, executive decisions will be made in accordance with the Cabinet and Executive Procedure Rules set out in Part 4 of this Constitution when considering any matter.

**12.06 Decision-making by Overview and Scrutiny Committee**

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

**12.07 Decision-making by other committees and sub-committees established by the Council**

Subject to Article 12.08, other Council committees and sub-committees will follow those parts of the Council and Committee Procedure Rules (Standing Orders) set out in Part 4 of this Constitution as apply to them.

**12.08 Decision-making by Council bodies acting as tribunals**

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

# Article 13 - Finance, Contracts and Legal Matters

## 13.01 **Financial management**

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

## 13.02 **Contracts**

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

## 13.03 **Legal proceedings**

The Solicitor to the Council is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Solicitor to the Council considers that such action is necessary to protect the Council's interests.

## 13.04 **Authentication of documents**

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

## 13.05 **Common Seal of the Council**

The Common Seal of the Council will be kept in a safe place in the custody of the Solicitor to the Council. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Solicitor to the Council should be sealed. The affixing of the Common Seal will be attested by the Chief Executive or Solicitor to the Council or some other person authorised by either of them.

# Article 14 - Review and Revision of the Constitution

## 14.01 **Duty to monitor and review the constitution**

The Monitoring Officer, in consultation with the Standards Committee, will monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect.

### **Protocol for monitoring and review of constitution by monitoring officer**

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

1. observe meetings of different parts of the Member and officer structure;
2. undertake an audit trail of a sample of decisions;
3. record and analyse issues raised with him/her by Members, officers, the public and other relevant stakeholders;
4. compare practices in this authority with those in other comparable authorities, or national examples of best practice.

## 14.02 **Changes to the Constitution**

- (a) **Approval.** Changes to the Constitution can be made in accordance with the terms of Standing Order No. 116 - see Part 4 of this Constitution (Rules of Procedure – Council and Committee Procedure Rules (Standing Orders)).
- (b) **Change from a Leader and Cabinet to a mayoral form of executive.** This will require a referendum.

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

## 15.01 Suspension of the Constitution

- (a) **Limit to suspension.** The Articles of this Constitution may not be suspended. The Rules specified below may be suspended by the full Council or other decision-making body to the extent permitted within those Rules and the law.
- (b) **Procedure to suspend.** A motion to suspend any of the 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.
- (c) **Rules capable of suspension.** The Rules which may be suspended in accordance with Article 15.01, are those Rules of Procedure contained in Part 4 that Members consider it appropriate to suspend, in order to facilitate the conduct of meetings or the discharge of the Council's functions.

## 15.02 Interpretation

The ruling of the Chairman of Council, as to the construction or application of this Constitution or as to any proceedings of the Council, shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

## 15.03 Publication

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

# Schedule I: Description of Executive Arrangements

The following parts of this Constitution constitute the executive arrangements:

1. Article 6 (Overview and Scrutiny) and the Overview and Scrutiny Procedure Rules in Part 4.
2. Article 7 (The Cabinet) and the Cabinet and Executive Procedure Rules in Part 4.
3. Article 10 (Joint Arrangements)
4. Article 12 (Decision-Making) and the Access to Information: Procedure Rules in Part 4.
5. Part 3 (Responsibility for Functions).