

PART 2: ARTICLES OF CONSTITUTION

Article 1 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, all its contents (Parts 1 – 11) and any schedules and/or appendices is the Constitution of Southampton City 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;
2. support the active involvement and participation of citizens in the process of local authority decision-making;
3. help Councillors represent their constituents more effectively;
4. enable decisions to be taken efficiently and effectively;
5. demonstrate that the Council will operate and approach all issues with responsibility and integrity;
6. create a powerful and effective means of holding decision-makers to public account;
7. ensure that no one will review or scrutinise a decision in which they were directly involved;
8. ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions;
9. provide a means of improving the delivery of services to the community; and
10. enable the Council to design and operate an organisational and management structure that ensures that Citizens receive Best Value services

with the overall aim that the purpose of the Council is to improve the quality of life of our Citizens.

1.04 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 14.

Article 2 Members of the Council

2.01 Composition and eligibility

- a. **Composition.** The Council will comprise 48 Members, otherwise called Councillors. Three Councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Electoral Commission and approved by the Secretary of State.
- b. **Eligibility.** Only registered voters of the City or those living or working there 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 will be held on the first Thursday in May in each year beginning in 2003, except that in 2013 and every fourth year after there will be no regular election. The terms of office of Councillors will normally be four years starting on the fourth day after being elected and finishing on the fourth day after the date of the regular election four years later.

2.03 Roles and functions of all Councillors

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 areas and actively encourage community participation and citizen involvement in decision-making;
- iii. effectively represent the interests of their Ward and of individual constituents;
- iv. respond to constituents' enquiries and representations fairly and impartially;
- v. maintain the highest standards of conduct and ethics;
- vi. be available to represent the Council on other bodies; and
- vii. be available to serve on other bodies.

b. **Rights and duties**

- i. 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.
- ii. Councillors will not make 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.

- iii. For these purposes, “confidential” and “exempt” information are defined in the Access to Information Rules in Part 4 of this Constitution.

2.04 Conduct

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

Article 3 Citizens and the Council

3.01 Citizens' rights

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

- (a) **Voting and petitions.** Citizens on the electoral roll for the area have the right to vote and sign a petition to request a referendum for an elected mayor form of Constitution.
- (b) **Information.** Citizens have the right to:
 - (i) attend meetings of the Council and its committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
 - (ii) attend meetings of the Cabinet when Key Decisions are being considered;
 - (iii) find out from the Forward Plan what Key Decisions will be taken by the Executive and when;
 - (iv) see reports and background papers, and any records of decisions made by the Council and the Executive; and
 - (v) inspect the Council's accounts and make their views known to the external auditor.
- (c) **Participation.** Citizens have the right to participate in the Council meetings by making deputations and asking Councillors questions in accordance with the appropriate procedures and contribute to investigations by overview and scrutiny committees.
- (d) **Complaints.** Citizens 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; or
 - (iii) the Council about a breach of the Councillor's Code of Conduct.

3.02 Citizens' responsibilities

Citizens must not be violent, abusive or threatening to Councillors or Officer and must not willfully 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:

- Annual Library Plan (~~S_{ection} 1(2)~~ Public Libraries and Museums Act 1964)
- Sustainable Community Strategy (~~S_{ection} 4~~ Local Government Act 2000 ~~Issue No.12 (October 2014)~~)
- Local Transport Plan (~~S_{ection} 108(3)~~ Transport Act 2000)
- Local Development Framework and Local Area Action Plans (~~S_{ection} 15~~ Planning and Compulsory Purchase Act 2004)
- ~~Licensing Authority Policy Statements (Section 349 Gambling Act 2005)~~
- Crime & Disorder Reduction Strategy (~~S_{ections} 55~~ and 6 Crime and Disorder Act 1998)
- Youth Justice Plan (~~S_{ection} 40~~ Crime and Disorder Act 1998)
- Statement of Pay Policy (Localism Act 2011);
- Statement of Gambling Policy (Gambling Act 2005)
- Health and Well Being Strategy (S.116A Local Government and Public Involvement in Health Act 2007)

(b) **Budget.** For the purposes of the Constitution, the Budget shall be defined as meaning the process whereby the Executive submits to the Full Council for its consideration in relation to the following financial year -

- i. estimates of the amounts to be aggregated in making a calculation (whether originally or by way of substitute) in accordance with any of sections 32 to 37 or 43 to 49, of the Local Government Finance Act 1992;
- ii. estimates of other amounts to be used for the purposes of such a calculation;
- iii. estimates of such a calculation; or
- iv. amounts required to be stated in a precept under Chapter IV of Part I of the Local Government Finance Act 1992,

Note: In connection with the discharge of the function of formulating a plan or strategy for the control of the authority's borrowing, investments or capital expenditure, or for determining the authority's minimum revenue provision, these functions shall not be the sole responsibility of the authority's Executive.

(c) **Housing Land Transfer.** Housing Land Transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval of a programme of disposal of 500 or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under sections 32 or 43 of the Housing Act 1985.

4.02 Functions of the Full Council

Only 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) the election of the Leader;
- (e) agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them;
- (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 2.05;
- (h) changing the name of the area, conferring the title of honorary alderman or freedom of the City;
- (i) confirming the appointment of the Head of Paid Service;
- (j) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;
- (k) all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself rather than a Committee or Sub-Committee of the Council or the Executive; and
- (l) all other matters which, by law, must be reserved to Council.

4.03 Council meetings

There are four types of Council meeting:

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) the budget meeting; and
- (d) 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 which are not the responsibility of the Executive.

Article 5 Chairing the Council

5.01 Role and function of the Mayor and Sheriff (Chair and Vice-Chair of the Council)

The Mayor (Chair of Council) and in his/her absence, the Sheriff (Vice-Chair) will have the following roles and functions:

- (a) Ceremonial role
- (b) Chairing the Council meeting

5.02 The Mayor

The position of Mayor was established by virtue of a Royal Charter and will be elected by the Council annually. The Council wholeheartedly supports the office of Mayor. The Mayor will have the following responsibilities:

1. to uphold and promote the purposes of the Constitution, and to interpret the Constitution, having taken advice from the Head of Legal and Democratic Services 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 on the Executive are able to hold the Executive and committee chairs to account;
4. to promote public involvement in the Council's activities;
5. to be the conscience of the Council; and
6. to attend such civic and ceremonial functions as the Council and s/he determines appropriate.

5.03 The Sheriff

The position of Sheriff will be elected by the Council annually. The Council wholeheartedly supports the office of Sheriff. The Sheriff will have the following responsibilities:

1. to preside at Council Meetings in the absence of the Mayor;
2. to preside at Court Leet; and
3. to deputise generally for the Mayor in such circumstances the Mayor may propose.

5.04 Civic and Ceremonial Protocol

The Civic and Ceremonial Protocol contained in Part 5 of this Constitution, sets out in more detail the roles and responsibilities of the Mayor and Sheriff.

5.05 The Head of Legal and Democratic Services shall convene a meeting of the Group Leaders immediately following the elections to discuss the election of Mayor and Sheriff for the next municipal year.

Article 6 Overview and Scrutiny Committees

6.01 Terms of reference

The Council will appoint an Overview and Scrutiny Management Committee the functions of which are set out in Section 3 of Part 3 of this Constitution. This Committee will have the power to appoint Standing Overview and Scrutiny Panels (Sub-Committees) and other Panels as may be necessary from time to time 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. In the event of any matter falling within the scope of more than one Panel or where it appears to fall outside of the Terms of Reference of any of the Panels, the determination as to the appropriate Panel for dealing with such matters rests with the Overview and Scrutiny Management Committee.

6.02 General role

The terms of reference for the Overview and Scrutiny Panels are:

- i. To review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the Executive, including the power to recommend that a relevant decision be reconsidered by the person who made it [s 21(2)(a) of the 2000 Act]; or
- ii. For a Standing Scrutiny Panel to arrange for full Council to decide whether to recommend that the relevant decision be reconsidered by the person who made it; [s 21(3)] or
- iii. To make reports or recommendations to the Council or the Executive with respect to the discharge of any functions which are the responsibility of the Executive [section 21(2)(b)]; or
- iv. To review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are not the responsibility of the Executive; [section 21(2)(c)] or
- v. To make reports or recommendations to the Council or the Executive with respect to the discharge of any functions which are not the responsibility of the Executive; [section 21(2)(d)] or
- vi. To make reports or recommendations to the Council or the Executive on matters which affect the City of Southampton or its inhabitants; [section 21(2)(e)] or
- vii. To conduct or contribute to the undertaking of Best Value Reviews under Section 5 of the Local Government Act 1999 [section 21(5) of the 2000 Act].

The Overview and Scrutiny Panels will not scrutinise decisions made by specialist committees i.e decisions made in respect of development control, licensing, consents and other decisions where an appeals procedure already exists.

6.03 Proceedings of Overview and Scrutiny Management Committee and its Panels

Overview and Scrutiny Committees will conduct their proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution.

Article 7 The Executive

LEADER WITH CABINET

7.01 Role

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

7.02 Form and composition

The Executive will consist of the Leader together with at least two, but not more than nine Councillors (known as "Cabinet Members") appointed to the Executive by the Leader.

7.03 Leader

The Leader will be a Councillor elected to the position of Leader by the Council annually at the Annual Meeting (or any other meeting in the event of a vacancy). The Leader will hold office until:

- (a) s/he resigns from the office; or
- (b) s/he is no longer a Councillor; or
- (c) until the next Annual Meeting of the Council; or
- (d) s/he is removed from office by resolution of the Council

7.04 Election of the Leader

Council Procedure Rule 17.1 will govern the procedure for the election of the Leader.

7.05 Cabinet Members

Cabinet Members shall hold office until:

- (a) they resign from office; or
- (b) they are no longer Councillors; or
- (c) until the next Annual Meeting of the Council; or
- (d) they are removed from office by the Leader who must give written notice of any removal to the Head of Legal and Democratic Services. The removal will take effect two working days after receipt of the notice by the Head of Legal and Democratic Services.

7.06 Proceedings of the Executive

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

7.07 Responsibility for functions

The Leader will maintain a list in Part 3 of this Constitution setting out who is responsible for the exercise of particular Executive functions.

Article 8
Regulatory and other committees

8.01 Regulatory and other committees

The Council will appoint the committees set out in Section 3 of Part 3 of this Constitution to discharge the functions described in that table.

Article 9 Governance Committee

9.01 Governance Committee

The Council will establish a Governance Committee to carry out functions delegated to it by Council in accordance with the Local Government Acts 1972, 2000 and Localism Act 2011.

9.02 Composition

Political Balance

The Governance Committee has to comply with the political balance rules in section 15 of the 1989 Act.

Membership

The Governance Committee will be composed of elected members and two co-opted members. .

Co-opted Independent Members

Co-opted independent Members will not be entitled to vote at meetings of the Governance Committee. Their role and function is to advise and assist the committee by providing an independent opinion on the matters before the committee.

Article 10 Joint Arrangements

10.01 Arrangements to promote well being

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

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

10.02 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 Executive may establish joint arrangements with one or more local authorities to exercise functions which are Executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities.
- c. Except as set out below, the Executive may only appoint Cabinet Members to a joint committee and those Members need not reflect the political composition of the local authority as a whole.
- d. The Executive may appoint Members to a joint committee from outside the Executive where the joint committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, the Executive may appoint to the joint committee any Councillor who is a Member for a ward which is wholly or partly contained within the area.
- e. Details of any joint arrangements including any delegations to joint committees will be found in the Council's scheme of delegations in Part 3 of this Constitution.

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

10.06 Role of Members

In performing their roles as part of the joint arrangements, Members of the Council will take into account not only the Members' Code, but also all other protocols and guidance notes, including (but not limited to) the Code for Dealing with Joint Arrangements with Third Parties set out in Part 5 of this Constitution and any guidance issued to Members who sit as representatives on outside bodies by the Monitoring Officer and/or Governance Committee.

**Article 11
Officers**

11.01 Management structure, Functions and Areas of Responsibility

- a. **General.** The full Council may engage such staff (referred to as Officers) as it considers necessary to carry out its functions.
- b. **Chief Officer.** The full Council will engage persons for the following posts, who will be designated Chief Officers and who will have delegated to them the following areas of responsibility in addition to those set out in the Council's Scheme of Delegation:

POST	Functions and Area of Responsibility
Chief Executive and Head of Paid Service	<p>Overall corporate management and operational responsibility including overall management responsibility for all Officers and all services</p> <p>Authority to act: authorised to take all necessary action to implement decisions of the Council, its committees and the Executive within overall remit, including:</p> <ul style="list-style-type: none"> ▪ committing resources within approved budgets and subject to Financial Procedure Rules; ▪ power to nominate or authorise any other officer to act on his or her behalf to action any decision; and ▪ provision of professional advice to all parties in the decision-making process <p>Departmental: all functions of the Council but particularly policy advice and support to Members</p>
Director, People	<p>Overall: participate in the corporate management of the authority as a member of the Council Management Team (CMT)</p> <p>Authority to act: authorised to take all necessary action to implement decisions of the Council, its committees and the Executive within overall remit, including:</p> <ul style="list-style-type: none"> ▪ committing resources within approved budgets and subject to Financial Procedure Rules; ▪ power to nominate or authorise any other officer to act on his or her behalf to action any decision; and ▪ provision of professional advice to all parties in the decision-making process <p>Reporting to the Chief Executive, the Director makes an active contribution to the strategic development of the City, provides a focus for community and other external contacts and provides overall leadership and management for a range of services.</p> <p>Departmental</p> <p>The current service groups in this Directorate are:</p>

POST	Functions and Area of Responsibility
	<p>Children’s Services within the Council, Childrens Trust arrangements; the engagement and encouragement of local communities to improve children’s services and ensure that services both within the City and across partner organisations improve outcomes for all and are organised around children and young people’s needs; leading on safeguarding and promoting the welfare of children across all agencies; leading on learning for all, including adults.</p> <p>The Director, People is also the Council’s statutory Director of Children’s Services and Adult Social Services.</p>
Director of Corporate Services	<p>Overall: participate in the corporate management of the authority as a member of the Council Management Team (CMT).</p> <p>Authority to act: authorised to take all necessary action to implement decisions of the Council, its committees and the Executive within overall remit, including:</p> <ul style="list-style-type: none"> ▪ committing resources within approved budgets and subject to Financial Procedure Rules; ▪ power to nominate or authorise any other officer to act on his or her behalf to action any decision; and ▪ provision of professional advice to all parties in the decision-making process <p>Reporting to the Chief Executive, the Director makes an active contribution to the strategic development of the City, provides a focus for community and other external contacts and provides overall leadership and management for a range of services.</p> <p><u>Departmental:</u></p> <p>The current service groups in this Directorate are: Finance, Legal Services, Strategic HR, Licensing, Land Charges, Elections, Democratic Services, Client IT, Client Procurement, Client Property Services, Transactions, Customer Services, Internal Audit and Risk Insurance, and Partnership Management of the outsourced contracts. The Director of Corporate Services is also the Council’s statutory Monitoring Officer</p>
Director, Place	<p>Overall: participate in the corporate management of the authority as a member of the Council Management team (CMT).</p> <p>Authority to act: authorised to take all necessary action to implement decisions of the Council, its committees and the Executive within overall remit, including:</p>

POST	Functions and Area of Responsibility
	<ul style="list-style-type: none"> ▪ committing resources within approved budgets and subject to Financial Procedure Rules; ▪ power to nominate or authorise any other officer to act on his or her behalf to action any decision ▪ provision of professional advice to all parties in the decision-making process <p>Reporting to the Chief Executive, the Director makes an active contribution to the strategic development of the City, provides a focus for community and other external contacts and provides overall leadership and management for a range of services.</p> <p><u>Departmental:</u></p> <p>The current service groups in this Directorate are:</p> <p>Flood Risk Management, Waste Policy, Waste Collection and Disposal, Environmental Health including Port Health, Pest Control, Dog Control, Clinical Waste Collection, Consumer Protection, Management of the Crematorium and Cemeteries, Registration Services, Highways Maintenance and Parking Services, Neighbourhood Services [covering Parks, Open Spaces and Street Cleansing, community facilities and involvement and community safety], public sector housing</p> <p>Corporate Policy & Performance; Research & Information; Overview & Scrutiny; Planning; Building Control; Sustainability; Transport Planning, Policy and Management; Housing for the Private Sector; Leisure & Cultural Services [including Arts, Heritage, libraries, events and sports and recreation] and Estate Regeneration</p>
Director of Public Health	<p>Overall: participate in the corporate management of the authority as a member of the Council Management team (CMT).</p> <p>Authority to act: authorised to take all necessary action to implement decisions of the Council, its committees and the Executive within overall remit, including:</p> <ul style="list-style-type: none"> ▪ committing resources within approved budgets and subject to Financial Procedure Rules; ▪ power to nominate or authorise any other officer to act on his or her behalf to action any decision ▪ provision of professional advice to all parties in the decision-making process <p>Reporting to the Chief Executive, the Director makes an active contribution to the strategic development of the City, provides a focus for community and other external contacts and provides overall leadership and management for a range of services</p>

POST	Functions and Area of Responsibility

- c. **Chief Officers: Financial Responsibilities :**
- d. **Head of Paid Service, Monitoring Officer and Chief Financial Officer.** The Council will designate the following posts to undertake the statutory Chief Officer roles as shown:

POST	DESIGNATION
Chief Executive	Head of Paid Service
Director of Corporate Services	Monitoring Officer
Chief Financial Officer	Chief Financial Officer

Such posts will have the functions described in Article below.

- e. **Council Management Team** (the composition of which is a matter for the Chief Executive) consists of the Chief Executive, the Directors and Chief Financial Officer, Assistant Chief Executive and the Head of Strategic HR. In particular, the Board assists the Chief Executive to:
- ◆ pro-actively and reactively formulate advice to Councillors on key policy issues and developments for the City and the Council;
 - ◆ co-ordinate the contributions of the appropriate Directorate to the achievement of the Council's policy priorities;
 - ◆ provide an interface with all Councillors including (but not limited to) the Executive;
 - ◆ set standards for and monitor the development of key corporate requirements;
 - ◆ carry out key aspects of corporate governance, including the monitoring of work of external and internal auditors and inspectorates;
 - ◆ ensure that there is a performance management framework and system and that it is delivered / implemented; and
 - ◆ promote the organisational development and culture of the City Council and its workforce to deliver the Council's objectives.
- f. **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.

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 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.

12.02 Principles of decision making

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

- ◆ proportionality (i.e. the action must be proportionate to the desired outcome);
- ◆ due consultation and the taking of professional advice from officers;
- ◆ respect for human rights;
- ◆ a presumption in favour of openness, accountability and transparency;
- ◆ setting out what options have been considered
- ◆ setting out reasons for the decision; and
- ◆ clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- ◆ understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- ◆ take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- ◆ leave out of account irrelevant considerations;
- ◆ act for a proper purpose, exercising its powers for the public good;
- ◆ not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- ◆ comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- ◆ act with procedural propriety in accordance with the rules of fairness.

To be lawful, a decision:

- ◆ if taken in full Council, Cabinet, Committee or sub-committee must comply with the principle of being reached by a majority of Councillors present and voting at a properly constituted meeting;
- ◆ be one which the decision-maker is empowered or obliged to take, otherwise it is ultra vires;
- ◆ not offend against *Wednesbury* reasonableness;
- ◆ if intended to secure action (as opposed, for example, to a resolution merely expressing the Council's collective view on an issue), be capable of execution

- or will be of no effect; and
- ◆ not purport to undo what has already been done irrevocably (but it can rescind an earlier decision where this is feasible).

There can be no substitute for appropriate advice on a matter by matter basis. This Guidance cannot and does not purport to be comprehensive or replace that professional advice.

Note: “*Wednesbury* reasonableness”. This relates to the actions of a local authority or other public body in exercising its discretion, and relates to whether the body has acted irrationally (rather than ultra vires). The definition was given by Lord Greene in the *Wednesbury Case* (1948):

'When an executive discretion is entrusted by Parliament to a body such as the local authority in this case, what appears to be an exercise of that discretion can only be challenged in the courts in a limited class of case ... When discretion of this kind is granted, the law recognises certain principles upon which that discretion must be exercised, but within the four corners of those principles the discretion, in my opinion, is an absolute one and cannot be questioned in any court of law ... If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject matter and the general interpretation of the Act makes it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters. There have been in the cases expressions used relating to the sort of thing that authorities must not do ... bad faith, dishonesty - those of course stand by themselves ... Discretion must be exercised reasonably. He must call his own attention to the matters which he is bound to consider, and exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he must truly be said, and often is said, to be acting unreasonably.'

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 delegated.
- b. Key decisions
In this Constitution, a “Key Decision” shall mean an Executive decision which is likely:
 - i. to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the City Council’s budget for the service or function to which the decision relates;
 - ii. to be significant in policy or strategic terms as regards its effects on communities living or working in an area comprising two or more wards or electoral divisions in the City; or
 - iii. to have a particularly significant impact on any community as experiencing social exclusion or discrimination, whether that community is defined by geography or interest and even if that community is only located in one ward or electoral division in the area of the local authority.

Notes

1. *In relation to paragraph (i) above, the term “significant” shall be construed as meaning £500,000 (except that this does not apply to care packages where the value of the care package exceeds £500,000). For the purposes of this paragraph, the term “care package” is defined as a package of personal care, support or education purchased as a consequence of an assessment of a child’s needs within the Children Act 1989, Children (Leaving Care) Act 2000 and the Education Act 1981 and the relevant guidance is contained in the Special Education Needs Revised Code of Practice. The decision to provide the care package is for the duration of the individual’s childhood, up to the age of 18 years, 19 years or 21 years according to the relevant legislation or guidance.*
 2. *In relation to paragraph (ii) above, the Council will, unless it is impracticable to do so, treat as if they were Key any decisions which are likely to have a significant impact on communities in one ward or electoral division. Where a decision is only likely to have a significant impact on a very small number of people in one ward or electoral division, the decision-maker should ensure that those people are nevertheless informed of the forthcoming decision in sufficient time for them to exercise their right to see the relevant papers and make an input into the decision-making process.*
 3. *In considering whether a decision is likely to be significant, a decision-maker will also need to consider the strategic nature of the decision and whether 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 or people living or working the locality affected. Regard should again be given to the underlying principles of open, transparent and accountable decision-making of this Constitution to ensure that there is a presumption towards openness.*
 4. *In interpreting after the event whether or not a decision should or should not have been classified as a Key Decision, the following will be taken into account:*
 - a. *the issue must be assessed on the basis of the information which could reasonably have been available to the decision-maker at the time;*
 - b. *the “de minimus” rule will be applied;*
 - c. *the level and nature of advice sought by the decision-maker. The Monitoring Officer and Chief Financial Officer will have significant roles to play in this.*
- c. A decision-taker may only make a Key Decision in accordance with the requirement of the Executive Procedure Rules set out in Part 4 of this Constitution.
- d. No treasury management decisions, as defined by the Chief Financial Officer, shall be deemed to be Key Decisions.

Note: “De minimus” means that (in this context) this rule does not apply to trifling, minor or insignificant variations, departures or breaches.

12.04 Decision making by the full Council

Subject to Article 12.08, the Council meeting will follow the Council Procedure Rules set out in Part 4 of this Constitution when considering any matter.

12.05 Decision making by the Executive

Subject to Article 12.08, the Executive will follow the Executive Procedure Rules set out in Part 4 of this Constitution when considering any matter.

12.06 Decision making by overview and scrutiny committees

Overview and Scrutiny Committees 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 Procedure Rules 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 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 Head of Legal and Democratic Services 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 (including the Executive) or in any case where the Head of Legal and Democratic Services considers that such action is necessary to protect the Council or City'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 Head of Legal and Democratic Services or other person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

All contracts – whether entered into on behalf of the local authority in the course of the discharge of an Executive or non-Executive function – shall be made in writing. The Contracts Procedure Rules, set out in Part 4 of this Constitution, prescribe the circumstances when a contract shall be made under the Common Seal of the Council.

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 Head of Legal and Democratic Services. 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 Head of Legal and Democratic Services should be sealed. The affixing of the Common Seal will be attested by the Head of Legal and Democratic Services or some other person authorised by him/her.

Article 14

Review and Revision of the Constitution

14.01 Duty to monitor and review the Constitution

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

The Monitoring Officer shall monitor the strengths and weaknesses of the Constitution adopted by the Council, and make recommendations to the Governance Committee as to ways in which it could be amended in order better to achieve the purposes set out in Article 1 of this Constitution.

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; and
5. report such findings to the Governance Committee.

14.02 Changes to the Constitution

- a. **Approval.** Changes to the Constitution arising either from a review, a motion from Council or from the Head of Legal and Democratic Services will only be approved by the full Council after consideration of the proposal by the Governance Committee.
- b. **Minor or inconsequential changes.** The Head of Legal and Democratic Services has delegated authority to update the Constitution arising from decisions of the Council or Executive or where legislation requires a change in wording or terminology, such changes to be reported to members of the Governance Committee.
- c. **Changes in the form of Executive.** Special Procedures apply to changes in the form of Executive including (but not limited to) binding referendums when the law requires.
- d. **Delegations.** To reflect delegations lasting six months or more where a delegation is made to an Officer by the Council, a Committee, a Sub-Committee or the Executive, that delegation may need to be reflected within the Constitution (normally Part 3 or one of the Appendices) in which case the Head of Legal and Democratic Services has authority to update the Constitution to reflect that change.
- e. **Changes that are predominantly managerial in their nature:** the Head of Legal and Democratic Services has the authority to amend the Constitution in relation to matters that are predominantly managerial in their nature where there is agreement from the other two statutory officers, namely the Chief

Executive (Head of Paid Service) and Chief Financial Officer and where the matter has been subject to consultation with the appropriate Members (normally the relevant Cabinet Member and opposition spokespersons). Any such changes will be reported subsequently to Governance Committee.

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 Council Procedure Rules 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 Council Procedure Rule in accordance with Article 15.01 must be moved in accordance with the Council Procedure Rules. 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 of this Constitution.
- c. **Rules capable of suspension.** Only those Council Procedure Rules specified within the Council Procedure Rules as being capable of suspension, may be suspended.

15.02 Interpretation

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

15.03 Publication

- a. The Head of Legal and Democratic Services will make the Constitution available in Members' Rooms and will maintain the Constitution on the internet for public access.
- b. The Head of Legal and Democratic Services will ensure that copies are available for inspection at the Council's principal office (the Civic Centre), and can be purchased by members of the local press and the public on payment of a reasonable fee.

Schedule 1

Description of Executive Arrangements

The following parts of the Constitution shall constitute the Executive arrangements:

1. Article 6 (Overview and Scrutiny Committee) and the Overview and Scrutiny Procedure Rules;
2. Article 7 (The Executive) and the Executive Procedure Rules;
3. Article 11 (Joint Arrangements);
4. Article 12 (Decision-making) and the Access to Information Procedure Rules;
5. Part 3 (Responsibility for Functions)