

# Public Document Pack

## Cheshire East Council

C/o Congleton Borough  
Council  
Westfields  
Middlewich Road  
Sandbach  
Cheshire  
CW11 1HZ  
  
Telephone  
01270 529529

Your Ref:  
Our Ref: HS  
Please reply to: Helen Stanley  
Direct Dial 01270 529644  
E-mail: Helen.Stanley@congleton.gov.uk  
Date: 9 May 2008

Dear Councillor

### **COUNCIL - TUESDAY, 13TH MAY, 2008**

I am now able to enclose, for consideration at next Tuesday, 13th May, 2008 meeting of the Council, the following reports that were unavailable when the agenda was printed.

<b>Agenda No</b>	<b>Item</b>
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- |     |   |
|-----|---|
| 4.  | Adoption of a Member Code of Conduct (Pages 1 - 14)                           |
| 6.  | Adoption of Constitution (Pages 15 - 146)                                     |
| 7.  | Committee and Other Structures (Pages 147 - 170)                              |
| 9.  | Proper Officers (Pages 171 - 174)   |
| 15. | Calendar of Meetings and Venues for Shadow Council Meetings (Pages 175 - 176) |

Yours sincerely

Helen Stanley  
Democratic Services Officer

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## CHESHIRE EAST

### Cheshire East Shadow Council

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<b>Date:</b>	13 <sup>th</sup> May 2008
<b>Report of:</b>	Cheshire East Joint Committee
<b>Title</b>	Adoption of a Code of Conduct

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#### **1.0 Purpose of Report**

- 1.1 To seek the adoption of a Member Code of Conduct.

#### **2.0 Decision required**

- 2.1 That:

- 2.1.1 the Code of Conduct, as contained in the Appendix, be adopted as the Code of Conduct for Members of the Shadow Council, and be included in the Shadow Council's Constitution;
- 2.1.2 the General Principles of Conduct be included in the Shadow Council's Constitution, but not as part of the Code of Conduct itself.

#### **3.0 Implications for Transitional Costs**

- 3.1 There are no implications for transitional costs.

#### **4.0 Background and Information**

- 4.1 At its meeting on 6<sup>th</sup> May, the Cheshire East Joint Committee recommended that the Shadow Council adopt a Member Code of Conduct as contained in the Appendix to this report.
- 4.2 The main body of the Appendix comprises the Member Code of Conduct, the form of which being prescribed by legislation and which, as a minimum, must be adopted by local authorities.
- 4.3 The General Principles of Conduct, set out at the beginning of the Appendix, are not part of the Code but form the basis upon which the Code has been developed.
- 4.4 The Shadow Council is recommended to adopt the Code of Conduct and that the General Principles, whilst not being part of the Code itself, be included in the Constitution.

## **5 Conclusion**

5.1 A resolution is sought from the Shadow Council upon the adoption of a Member Code of Conduct. Once adopted, the Code will be embodied in the Shadow Council's Constitution.

### ***For further information:-***

Officer: *Brian Reed*  
Tel No: *01244 972205*  
Email: [\*brian.reed@cheshire.gov.uk\*](mailto:brian.reed@cheshire.gov.uk)

### ***Background Documents:-***

- *Notes of the meeting of the Political Structures Sub Group*
- *Model Code of Member Conduct*
- *Principles of Public Life*

*Documents are available for inspection at Joint Committee Support Office:  
Town Hall  
Macclesfield  
SK10 1DX*

## **MEMBERS' CODE OF CONDUCT**

INCLUDING FOR INFORMATION THE  
GENERAL PRINCIPLES OF CONDUCT –  
REPRODUCES THE MODEL CODE OF CONDUCT

**GENERAL PRINCIPLES OF CONDUCT**  
**As enacted by the Relevant Authorities**  
**(General Principles) Order 2001 No 1401**

**(N.B. NOT PART OF CODE)**

Selflessness

- 1 Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

- 2 Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

- 3 Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

- 4 Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

- 5 Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal Judgement

- 6 Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others

- 7 Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to Uphold the Law

- 8 Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

- 9 Members should do whatever they are able to do to ensure that other authorities use their resources prudently and in accordance with the law.

Leadership

- 10 Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

## THE MODEL CODE OF CONDUCT

pursuant to the Local Authorities (Model Code of conduct) Order 2007 (No. 1159)

### Part 1

#### General provisions

##### **Introduction and interpretation**

1. —(1) This Code applies to **you** as a member of an authority.

(2) You should read this Code together with the general principles prescribed by the Secretary of State.

(3) It is your responsibility to comply with the provisions of this Code.

(4) In this Code—

"meeting" means any meeting of—

(a) the authority;

(b) the executive of the authority;

(c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

"member" includes a co-opted member and an appointed member.

(5) In relation to a parish council, references to an authority's monitoring officer and an authority's standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

##### **Scope**

2. —(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or



(b) act, claim to act or give the impression you are acting as a representative of your authority, and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### **General obligations**

**3. —(1)** You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

(3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

**4.** You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

**5.** You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

**6.** You—

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of your authority—

(i) act in accordance with your authority's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

**7.** —(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

- (a) your authority's chief finance officer; or
- (b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

## Part 2

### Interests

#### **Personal interests**

**8.** —(1) You have a personal interest in any business of your authority where either—

- (a) it relates to or is likely to affect—
  - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
  - (ii) any body—
    - (aa) exercising functions of a public nature;
    - (bb) directed to charitable purposes; or
    - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),of which you are a member or in a position of general control or management;
  - (iii) any employment or business carried on by you;
  - (iv) any person or body who employs or has appointed you;
  - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
  - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
  - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a

company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or

(iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or any person with whom you have close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

### **Disclosure of personal interests**

**9.** —(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of

that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

### **Prejudicial interest generally**

**10.** —(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business—

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority in respect of—

(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

- (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

**Prejudicial interests arising in relation to overview and scrutiny committees**

**11.** You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

**Effect of prejudicial interests on participation**

**12.** —(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

- (a) you must withdraw from the room or chamber where a meeting considering the business is being held—
  - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
  - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;

- (b) you must not exercise executive functions in relation to that business; and
- (c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

### Part 3

## Registration of Members' Interests

### **Registration of members' interests**

**13.** —(1) Subject to paragraph 14, you must, within 28 days of—

- (a) this Code being adopted by or applied to your authority; or
- (b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

### **Sensitive information**

**14.** —(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

(3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

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## CHESHIRE EAST

### Shadow Council

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**Date:** 13<sup>th</sup> May 2008  
**Report of:** Cheshire East Joint Committee  
**Title** Cheshire East Shadow Council Constitution

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#### **1.0 Purpose of Report**

- 1.1 To present a recommendation from the Joint Committee to the Cheshire East Shadow Council upon the adoption of a Constitution.

#### **2.0 Decision Required**

- 2.1 That:

2.1.1 the Shadow Council agrees the content of the appended constitutional documents and adopts these as its Constitution; and

2.1.2 the Shadow Council's Interim Monitoring Officer be authorised to make such minor and consequential amendments to the drafting of the constitutional documents as she considers are necessary to facilitate the business of the Shadow Council.

#### **3.0 Implications for Transitional Costs**

- 3.1 There are no implications for transitional costs.

#### **4.0 Background and Information**

- 4.1 Since the decision was made to create unitary local government in Cheshire, the officer Governance Group has worked to develop constitutional documents which will enable the Shadow Council to operate during the period between its first meeting and 31<sup>st</sup> March 2009.
- 4.2 In approaching this work, the Governance Group used the modular constitution document prepared by the DCLG shortly after the Local Government Act 2000 came into being. The Group comprises Monitoring Officers and other senior officers of each Cheshire local authority and, therefore, a variety of inputs have been made during the process.
- 4.3 The Cheshire East Joint Committee appointed a Political Structures Sub-Group to work on the detail of the emerging Constitution. The Sub-Group made its recommendations to the Joint Committee on 6<sup>th</sup> May. The Joint Committee now recommends to the Shadow Council that the appended documents be adopted as its Constitution.

- 4.4 The Joint Committee acknowledges that the Constitution may be developed prior to 31<sup>st</sup> March 2009. It is also understood that much work will need to be carried out by the proposed Governance and Constitution Committee in order to develop a Constitution which will ultimately govern the way in which the Cheshire East unitary authority conducts its business from 1<sup>st</sup> April 2009. However, the Joint Committee is satisfied that the Constitution, which it recommends to the Shadow Council today, is adequate for the purposes of regulating the way in which the Shadow Council's business is conducted.
- 4.5 At the meeting of the Joint Committee on 6<sup>th</sup> May, a number of issues were identified which it was suggested should be given further consideration by the Governance and Constitution Committee:
- The development of an Officer Code of Conduct at the appropriate time.
  - Whether the definition of a Key Decision should include a financial figure as a determinant.
  - The number of Members who would be entitled to call a special meeting of the Shadow Council.
  - Whether 5 minutes is a sufficiently long period for Members to speak at meetings.
  - The terms of reference of the Governance and Constitution Committee.

## **5.0 Conclusion**

- 5.1 The Constitution, once adopted by the Shadow Council, will facilitate the conduct of its business during the period from 13<sup>th</sup> May 2008 to 31<sup>st</sup> March 2009.
- 5.2 The Joint Committee now asks the Shadow Council to adopt the appended documents as its Constitution.
- 5.3 The Shadow Council is also asked to authorise the Interim Monitoring Officer to make such minor and consequential amendments to the constitutional documents as are necessary to facilitate the business of the Shadow Council.

### ***For further information:-***

Officer: *Brian Reed*  
Tel No: *01244 972205*  
Email: *brian.reed@cheshire.gov.uk*

### ***Background Documents:-***

*Constitutions of Cheshire local authorities*

*Documents are available for inspection at Joint Committee Support Offices:*  
*Town Hall*  
*Macclesfield*  
*SK10 1DX*

## **PART 1**

# **THE CONSTITUTION SUMMARY AND EXPLANATION**

## **PART 1 - CONSTITUTION SUMMARY AND EXPLANATION**

### **General**

- 1 As required under the Local Government Act 2000, the Shadow Council has approved this Constitution which details:
  - how the Shadow Council operates
  - how its decisions are made
  - the procedures which will be followed.
- 2 The Shadow Council has to show that its decision-making and the procedures which underpin it, are efficient, transparent and that it is accountable for those decisions to the people it serves.
- 3 Some of the processes in the Constitution are required by law whilst others are considered by the Shadow Council to be necessary to ensure that it operates effectively and efficiently and in the interests of the people it serves.

### **The Constitution and its Content**

- 4 The Constitution is divided into Articles (Part 2) which set out the basic rules governing the Shadow Council's business. The rules are supported by more detailed procedures and codes of practice which are included at the end of this document.

The Constitution includes the following:-

- Article 1-The Constitution
- Article 2-The Shadow Council
- Article 3-Rights and Responsibilities of Citizens
- Article 4-The Full Council
- Article 5-The Role of the Chairman
- Article 6-Scrutiny
- Article 7-The Cabinet
- Article 9-The Standards Committee
- Article 10-Officers
- Article 11-Decision Making
- Article 12-Legal Matters
- Article 13-Review, Revision, Suspension, Interpretation and Publication of the Constitution

Part 3 of the document sets out the responsibility of bodies and individuals for various functions carried out by the Shadow Council in relation to the exercise of its powers.

Part 4 contains Rules of Procedure which are designed to regulate the conduct of the Shadow Council's business to ensure decisions are made in accordance with the law and the wishes of the Shadow Council.

Part 5 includes the Code of Conduct for Members which is designed to ensure that Councillors carry out their duties to the highest ethical standards. It also includes a protocol on Member/Officer Relations.

Part 6 covers the Scheme of Members' Allowances.

Article 11 (2) of the Cheshire (Structural Changes) Order 2008 provides that the Shadow Council shall be treated as if they had adopted the scheme of allowances adopted by Cheshire County Council on 18<sup>th</sup> May 2006.

Article 11 (5) of the Order empowers the Shadow Council to amend or revoke the County Scheme.

### **The Shadow Council and how it operates in making decisions**

There are 81 Councillors who sit on Cheshire East Shadow Council. They were elected by the Cheshire East people for a term of office ending on the fourth day after the ordinary day of election of Councillors in 2011.

On 1<sup>st</sup> April 2009 a new local authority to be known as Cheshire East will be established.

Each Member of the Shadow Council represents a ward in the Council's area. Wards vary in size according to area, population and community links.

The role of the Shadow Council is:

- To prepare for the assumption of local government functions and full local authority powers on 1<sup>st</sup> April 2009.
- To prepare budgets and plans required to be put in place on 1<sup>st</sup> April 2009.
- To liaise with other local authorities in its area, and the other shadow authority in order to ensure continuity of public service delivery on 1<sup>st</sup> April 2009 and thereafter.

The Councillors are directly accountable to citizens for the running of the Shadow Council. Whilst Councillors have this very broad role they have a duty to represent the interests of all the constituents in their ward. They may also represent the Shadow Council on external bodies at national, regional and local levels. They also work closely with officers in developing policies and strategies to give direction to the Shadow Council's vision and to ensure that services are delivered in accordance with the Shadow Council's wishes.

The Shadow Council will meet on a number of occasions during its life. Meetings are open to the public but the public may be excluded where an item of a confidential or exempt nature is being discussed.

The Shadow Council will appoint, at its first meeting, its Chairman and Vice-Chairman, the Leader and Deputy Leader of the Shadow Council, the Members of the Executive, and the Chairmen and Vice-Chairmen of any

Committees, Sub-Committees and Special Committees. It also agrees the range of responsibilities to be exercised by Members individually or collectively. All these individuals and bodies are directly accountable to the Shadow Council.

There are two main areas in the Shadow Council's political structure covering the Executive and Scrutiny. These are covered in more detail throughout this document.

The Executive is that part of the Shadow Council which is responsible for most of the day to day decisions as set out in the Executive's terms of reference. The Executive comprises the Leader of the Shadow Council and other elected Members comprising the 10 Members appointed by the Shadow Council.

The key decisions coming before the Executive for consideration are published on a monthly basis in the Executive's Statutory Forward Plan of Business which looks at the forthcoming four month period. It is not always possible to anticipate all the items to be included in the Plan. However, in cases where this is not possible items will be added to the Plan at the next date of publication. Special arrangements apply where a matter is urgent or cannot be included in the Plan.

Executive decisions are made in accordance with the Executive's terms of reference.

The Shadow Council's Scrutiny arrangements ensure that Members of the Shadow Council who are not on the Executive may be involved in Executive decisions.

The Scrutiny arrangements will reflect as far as practicable the overall political proportionalities of the Shadow Council. Members of the Executive cannot sit on Scrutiny bodies.

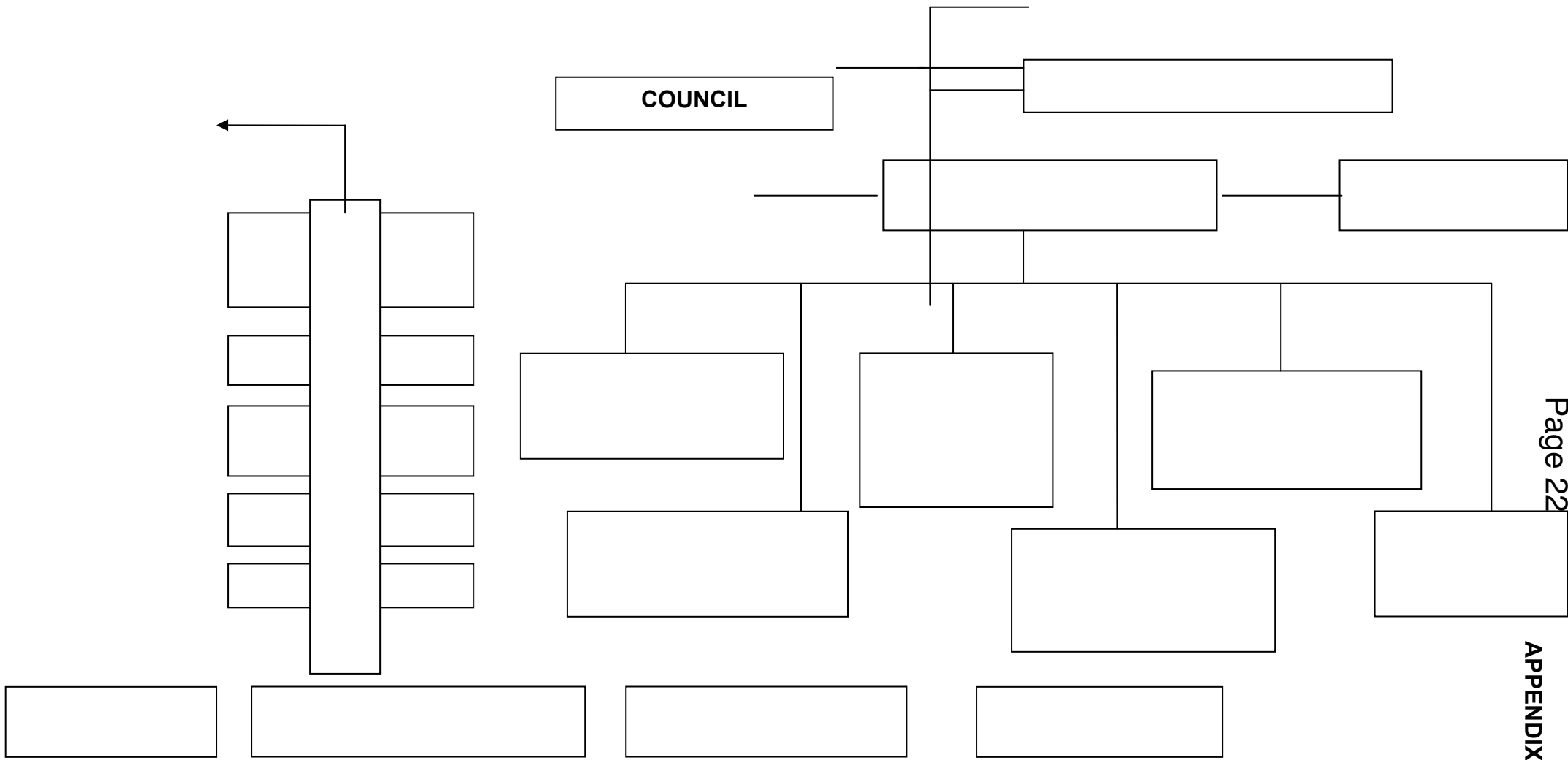
[add details of other committees eg Standards Committee]

In performing their various roles, Councillors are supported by the Officers who give advice, implement decisions and manage the delivery of services. Officers ensure the Shadow Council acts within the law and uses resources efficiently and effectively.

As the Shadow Council is a public body, citizens can expect to have a number of rights in their dealings with it. Whilst some are legal rights, others will depend on the Shadow Council's own processes. These rights are dealt with in more detail later in this Constitution.

The Shadow Council welcomes and encourages participation by the citizens in its work. This applies to individuals, and to bodies and organisations in the public, private and voluntary sectors across the Shadow Council's area.

The Constitution will be updated to reflect changes within the Shadow Council, its procedures and processes.





## PART 2

# ARTICLES OF THE CONSTITUTION

Article 1	-	The Constitution
Article 2	-	The Shadow Council
Article 3	-	Rights and Responsibilities of Citizens
Article 4	-	The Full Shadow Council
Article 5	-	The Role of the Chairman of the Shadow Council
Article 6	-	Scrutiny Committee
Article 7	-	The Cabinet
Article 8	-	Other Committees
Article 9	-	The Standards Committee
Article 10	-	Officers
Article 11	-	Decision Making
Article 12	-	Legal Matters
Article 13	-	Review, Revision, Suspension, Interpretation and Publication of the Constitution



## **THE CONSTITUTION**

## **ARTICLE 1**

### **1 Powers and Duties of the Shadow Council**

- 1.1 The powers and duties of the Shadow Council are set down in a number of Acts of Parliament and supporting legislation. The Shadow Council will exercise its powers and duties in accordance with the law and its Constitution.

### **2 The Constitution**

- 2.1 The Shadow Council's Constitution includes all those parts listed in Part 1 – (The Constitution - Summary and Explanation).

### **3 Purpose of the Constitution**

- 3.1 The objectives of this Constitution are:
- to support the Shadow Council's intentions;
  - to provide a framework for clear leadership to the community in partnership with its people, businesses and other organisations;
  - to support the active involvement of people in its decision-making processes;
  - to help Shadow Councillors to represent their constituents more effectively;
  - to enable decisions to be taken efficiently and effectively;
  - to provide a robust and effective Scrutiny function;
  - to ensure that a decision will not be reviewed or scrutinised by anyone who was directly involved in making the decision;
  - to ensure that those responsible for decision making can be clearly identified by local people and that they can explain the reasons for their decisions;
  - to provide a means of improving the delivery of services to the community
- 3.3 The Shadow Council will ensure that the articles, procedural rules and protocols in this Constitution reflect and deliver the objectives set out above.

### **3.4 Interpretation and Review of the Constitution**

Where the Constitution permits the Shadow Council to choose between different courses of action, the Shadow Council will always choose the option which it considers is closest to meeting the above objectives.

## **THE SHADOW COUNCIL**

## **ARTICLE 2**

### **1 Composition**

- 1.1 The Shadow Council comprises the 81 Members who are elected, as Shadow Councillors, by the voters in the Shadow Council's area. Appendix 1 to this Article lists details of the Shadow Councillors and the area each represents. Further details and information on the Members can be accessed via the Shadow Council's Website.
- 1.2 There are rules about eligibility which must be met before a person can stand for election.

### **2 Elections and Term of Office**

- 2.1 Elections to the Shadow Council took place on 1<sup>st</sup> May 2008. The next election will be in May 2011. Elections normally take place on the first Thursday in that month.
- 2.2 Shadow Councillors' terms of office will commence from the fourth day after the election and end on the fourth day after the date of the election. However, a person is not entitled to serve as a Shadow Councillor until he or she has made a written declaration accepting the office and agreeing to observe the Shadow Council's Code of Conduct for Members.
- 2.3 Where a vacancy occurs in the office of a Shadow Councillor, a by-election will be held and the person elected will serve until the fourth day after the date of the next quadrennial election.

### **3 Role of Shadow Councillors**

- 3.1 Shadow Councillors will undertake the following roles:
  - as a body, they will set the Shadow Council's major plans, policies and strategies as required by law and will perform those functions identified in the Cheshire (Structural Changes) Order 2008; will take decisions on such matters as may be reserved to the full Shadow Council by law or where the Shadow Council has so decided;
  - oversee the Shadow Council's strategic and corporate management;
  - represent their communities and the views of their electorate in the decision making process;
  - support, as appropriate, individuals in their dealings with the Shadow Council and represent them in seeking to resolve particular concerns or grievances;

- balance the different interests of people within their ward with a view to representing their ward as a whole;
- participate, as appropriate, in the decision-making, regulatory and Scrutiny processes;
- represent the Shadow Council on national, regional and local bodies as required;
- maintain the highest standards of conduct and ethics and will observe the Shadow Council's Code of Conduct for Elected Members.

#### **4 Members' Representational Roles**

- 4.1 All Shadow Councillors represent their constituents and the Shadow Council sees this as an important role and responsibility under this Constitution.
- 4.2 Shadow Councillors have an important job in consulting their communities on the development of policies, plans and strategies and other local initiatives.
- 4.3 The Shadow Council will ensure in its processes that appropriate procedures are in place so that Shadow Councillors can contribute to the Shadow Council's business on behalf of their local community both in terms of policy development and decision making.

#### **5 Shadow Councillors' Rights**

- 5.1 Shadow Councillors will have rights of access to any document, information, land or buildings of the Shadow Council where this is necessary for the proper discharge of their functions as a Shadow Councillor and in accordance with the law and this Constitution.
- 5.2 A Shadow Councillor is not permitted to make available to the press or to a member of the public any information which he/she has been sent or given in whatever form and which is exempt or confidential information as defined in the Access to Information Procedure Rules which are set out in Part 4 of this Constitution.
- 5.3 A Shadow Councillor shall not divulge information given in confidence to anyone other than a Shadow Councillor or officer or other person legally entitled to know it.
- 5.4 These requirements shall apply to any person who is co-opted or appointed to serve on a body established by the Shadow Council or in any other capacity.

**6 Chairman and Vice-Chairman of the Shadow Council**

- 6.1 The Shadow Council will elect, from amongst its number, at its first meeting, a Member to serve as Chairman of the Shadow Council for the ensuing year.
- 6.2 Similarly the Shadow Council will appoint the Vice-Chairman of the Shadow Council for the ensuing year.
- 6.3 Where a vacancy occurs in respect of either office the Shadow Council will elect/appoint as appropriate a successor at its next meeting.
- 6.4 A Member of the Cabinet cannot be elected or appointed as Chairman or Vice-Chairman of the Shadow Council while serving on the Cabinet.
- 6.5 Where the Chairman and Vice-Chairman of the Shadow Council are both absent from a meeting of the Shadow Council, or a part of it, the Shadow Council will appoint one of their Members, other than a Member of the Cabinet, to preside.

**7 Leader and Deputy Leader of the Shadow Council**

- 7.1 The Shadow Council will elect, from amongst its number, at its first meeting, the Leader and Deputy Leader of the Shadow Council for the ensuing year.
- 7.2 Where a vacancy occurs in respect of either office the Shadow Council will elect a successor at its next meeting.

**8 Other Offices**

- 8.1 The Shadow Council will elect other Members to fill such other offices as it may determine from time to time paying particular attention to any requirements set out in law or this Constitution.

**9 Conduct of Shadow Councillors**

- 9.1 All Shadow Councillors are required, at all times, to observe the Members' Code of Conduct and to have appropriate regard to such other protocols, policies, guidance and advice as may be issued from time to time through the Shadow Council's formal processes.

**10 Members' Scheme of Allowances**

- 10.1 All Shadow Councillors shall be entitled to receive such allowances as are laid down from time to time in the Members' Scheme of Allowances. The Cheshire (Structural Changes) Order 2008 makes specific provision with regard to allowances which apply to the Shadow Council.

**11 Member Learning and Development and Support**

- 11.1 The Shadow Council will provide learning and development for Members, within allocated resources, to ensure that all Shadow Councillors can carry out their roles effectively.
- 11.2 The Shadow Council will also provide support to Members as appropriate to enable them to fulfil their roles and responsibilities.



**CHESHIRE EAST SHADOW COUNCIL**  
**MEMBERS OF THE SHADOW COUNCIL – MAY 2008**

<b>NAME</b>	<b>ADDRESS AND TEL. NO.</b>	<b>ELECTORAL WARD</b>	<b>ELECTED</b>
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**[Add details of all elected members]**

Date: May 2008

**ARTICLE 3**

**RIGHTS AND RESPONSIBILITIES OF CITIZENS**

**1 Rights**

1.1 The Shadow Council's citizens have the following rights in regard to the affairs of the Shadow Council

- access to information subject to such constraints as may be imposed, by law and as set out in the Access to Information Procedure Rules in Part 4 of this Constitution
- to attend meetings of the Shadow Council and its Committees and Sub-Committees except where exempt or confidential information is likely to be disclosed
- to attend meetings of the Cabinet except where exempt or confidential information is likely to be disclosed
- to have access to the Shadow Council's Forward Plan of Key Decisions to be taken by the Cabinet
- in accordance with the statutory framework to inspect reports, background papers and any records of decisions made by the Shadow Council, the Cabinet or a Committee or Sub-Committee subject to the provisions on exempt or confidential information applying
- in accordance with the statutory framework to inspect the Shadow Council's Accounts and to make their views known to the external auditors where appropriate
- to ask questions or present petitions at designated meetings in accordance with such procedures as the Shadow Council may determine from time to time.
- to contribute to investigations by a scrutiny or other body where invited to do so
- to complain to the Shadow Council itself, or to the Ombudsman after using this process, or to the Standards Board for England (where there is an alleged breach of the Members' Code of Conduct)
- to contact the Shadow Council to express support for the Shadow Council in the delivery of its services or where the Shadow Council has made a major contribution to the well being of the County or a particular area

**2 Responsibilities of citizens**

- 2.1 The Shadow Council in turn expects those living within the Shadow Council's area and/or receiving services not to use violent, abusive or threatening behaviour in any form against any Shadow Councillor, Officer or persons acting for or on behalf of the Shadow Council.
- 2.2 The Shadow Council also asks that the property, assets and other resources of the authority, Shadow Councillors, Officers or persons

acting for or on behalf of the Shadow Council are not wilfully harmed or damaged.

**THE FULL SHADOW COUNCIL**

**ARTICLE 4**

**1 Functions**

1.1 The functions of the Shadow Council are set out in the Cheshire (Structural Changes) Order 2008. Other Functions reserved to the full Shadow Council are for example as follows:

- Adopting and amending this Constitution
- Electing/Appointing the Chairman and Vice Chairman of the Shadow Council
- Appointing the Leader and Deputy Leader of the Shadow Council
- Appointing the Members of the Cabinet
- Approving the portfolios to be allocated within the Cabinet and the roles and responsibilities of each portfolio holder
- Appointing to such other offices as may be required by the Shadow Council's Constitution
- Agreeing and amending the terms of reference of Committees and Sub-Committees of the Shadow Council
- Agreeing the composition and appointments to Committees and Sub-Committees of the Shadow Council
- Adopting the Members' Scheme of Allowances
- Appointing the head of the paid service and, if appropriate, his/her dismissal
- Designating and appointing the Shadow Council's Interim/Appointed monitoring officer, its Interim/Appointed chief finance officer, its appointed monitoring officer and its appointed chief finance officer and if appropriate approving their dismissal
- Promoting or approving the making of local legislation or Private Bills
- Determining whether functions which are classified as "local choice" functions under the Local Government Act 2000 should be reserved to the Shadow Council for decision or delegated to the Cabinet

- Determining any matter reserved to the Shadow Council by law or which is not the responsibility of the Cabinet, any Committee or Sub-Committee or an officer
- Adopting the Shadow Council's Codes of Conduct for Members and Officers
- Adopting the Shadow Council's Protocol on Member/Officer Relations

The full list of the matters reserved to the Shadow Council appears in Part 3 of this Constitution (Responsibility for Functions).

## **2 Shadow Council Meeting**

- 2.1 The first meeting of the Shadow Council will be held in May.
- 2.2 Ordinary Meetings will be held according to a calendar of meetings to be agreed by the Shadow Council and which will be published once agreed.
- 2.4 Extra-ordinary meetings may be called as and when required as provided in the Shadow Council Procedure Rules.

## **3 Conduct of Shadow Council Meetings**

- 3.1 Shadow Council meetings will be conducted in accordance with the law and the Shadow Council Procedures Rules.

## **4 Responsibility for Functions**

- 4.1 The Shadow Council will maintain a record of those Shadow Council functions which are the responsibility of its subordinate bodies.

## **THE ROLE OF THE CHAIRMAN OF THE SHADOW COUNCIL -ARTICLE 5**

### **1 Civic Role**

- 1.1 The Chairman of the Shadow Council, supported by the Vice-Chairman, and as appropriate other Shadow Councillors, will perform the civic role on behalf of the Shadow Council.
- 1.2 The civic role entails raising and maintaining the profile of the Shadow Council's area, the Shadow Council and its citizens. The office will promote the aims and values of the Shadow Council in an apolitical manner.
- 1.3 The Chairman will promote such civic and ceremonial functions as the Shadow Council or he/she may determine following consultations, where appropriate.
- 1.4 The Chairman will represent the Shadow Council at civic and ceremonial functions of other local authorities or involving other appropriate bodies.

### **2 Shadow Council Role**

- 2.1 The Chairman will be elected by the Shadow Councillors at its first meeting. The Vice Chairman is also appointed at the same meeting.
- 2.2 The Chairman is responsible for the following:-
  - upholding and promoting the purposes of this Constitution and interpreting it with appropriate advice when necessary.
  - presiding over meetings of the full Shadow Council to ensure that business is carried out efficiently and effectively whilst preserving the rights of Shadow Councillors and the interests of citizens.
  - ensuring that at Shadow Council meetings matters of concern to local communities can be debated through the appropriate Shadow Councillors.
  - ensuring that Shadow Councillors who are not on the Cabinet or who do not hold the Chairmanship of a main Committee are able to hold those office holders to account.
  - promoting public involvement in the Shadow Council's affairs and acting as a contact between members of the public and organisations and the Shadow Council.
  - undertaking such other roles as may be placed upon the office from time to time by the Shadow Council.

**3 Vice-Chairman of the Shadow Council**

- 3.1 The Vice-Chairman will support the Chairman in his/her civic role and will carry out civic duties as well on behalf of the civic office.
- 3.2 The Vice-Chairman will also deputise in the absence of the Chairman in carrying out the responsibilities of the office of Chairman.

**4 Eligibility for Office of Chairman or Vice-Chairman of the Shadow Council**

- 4.1 Any elected Member of the Shadow Council shall be eligible for appointment to these offices unless he/she is a Member of the Cabinet.

## **SCRUTINY COMMITTEE**

## **ARTICLE 6**

### **1 Scrutiny**

- 1.1 The Shadow Council has, as required in the Local Government Act 2000, established an effective, robust and constructive Scrutiny function.
- 1.2 The Shadow Council acknowledges and endorses the role of Scrutiny bodies in holding the Cabinet and others to account in discharging their functions. The Shadow Council believes that the important parts of the role are:
- To assist the Shadow Council and Cabinet in the development and review of its major plans, policies and strategies, which will set the climate in which the Cabinet and other decision-making bodies will be required to operate
  - To undertake specific reviews of the Shadow Council's organisation with a view to improving service delivery.
- 1.3 This Article goes on to address the arrangements for Scrutiny in the Shadow Council. It should be read in conjunction with the Scrutiny Procedure Rules.

### **4 Task and Finish Panels**

- 4.1 The Scrutiny Committee may establish such task and finish panels as it considers necessary after taking into account the availability of resources, the work programme and scope of the review. The role of such panels is to carry out an in-depth examination of particular aspects of the Shadow Council's functions, roles, responsibilities and service delivery.
- 4.2 The Committee will appoint the Chairman (and Vice Chairman, if appropriate) of each panel and agree the membership.
- 4.3 These will be established normally on an ad hoc basis with specific time limited tasks. They may vary in size.
- 4.4 The reporting lines from task and finish panels to other bodies shall be set at the scoping report stage.

### **5 Role of the Scrutiny Committee**

- 5.1 The Scrutiny Committee will/may specifically:



1. discharge the Shadow Council's functions under Section 21 of the Local Government Act 2000 (Scrutiny Committees);
2. oversee the Shadow Council's overall scrutiny function including the preparation, implementation, monitoring and review of an annual work programme for scrutiny and arrangements for the scrutiny of other public bodies particularly where required to do so by law and where partners can contribute to the Community Plan and to Local Area Agreement outcomes;
3. establish such task and finish panels, appointing the Chairman in accordance with the Shadow Council's criteria and with such membership as it sees fit, to undertake scrutiny on a task and finish basis;
4. ensure the Shadow Council's officers discharge their responsibilities effectively and efficiently in relation to the Scrutiny function;
5. scrutinise decisions of the Cabinet, and offer advice or make recommendations on the matter under scrutiny once the Committee have considered the issues;
6. refer to the Shadow Council or appropriate Committee/Sub-Committee any matter which, following scrutiny, the Committee determines should be brought to the attention of the Shadow Council or the Committee or Sub-Committee;
7. if requested, offer any views or advice to the Cabinet in relation to any matter referred to the Committee for consideration;
8. undertake general policy reviews with a cross-service and multi-organisational approach wherever possible and make recommendations to the Shadow Council or the Cabinet to assist in the development of future policies and strategies;
9. in performing its role, the Committee may consult and involve the local community and other local public, private and voluntary bodies or organisations;
10. review the Shadow Council's response to its obligations in respect of the overall performance management regime and, where appropriate, to advise the Cabinet and the Shadow Council of its findings;
11. advise the Cabinet and Shadow Council, as appropriate, of any Scrutiny response to budgetary and performance management matters;

12. scrutinise decisions after implementation to examine their effect and outcomes;
13. review and make recommendations in relation to matters which are not the direct responsibility of the Shadow Council but which affect the social, economic or environmental well-being of an area or under any statutory requirement or Shadow Council contract, procedure or practice;
14. develop, maintain and monitor policies and procedures for handling complaints made against the Shadow Council and monitor on a regular basis the level and nature of complaints received and ensure that advice is formulated regarding action to be taken to address areas of concern;
15. monitor the level and nature of Ombudsman complaints and advise the Cabinet, Committees, Sub-Committees and head of paid service on remedial action as appropriate;
16. ensure in conjunction with the Standards and Governance and Constitution Committees that the Shadow Council has in place appropriate mechanisms to protect Organisational Integrity including the development of appropriate policies and guidance.

## **6 Proceedings of Scrutiny Committee**

- 6.1 Conduct of the proceedings at Scrutiny Committee meetings shall be in accordance with the Shadow Council and Scrutiny Procedure Rules as appropriate.

## **THE CABINET**

## **ARTICLE 7**

### **1 Role of the Cabinet**

- 1.1 The Cabinet will specifically carry out all those duties and responsibilities which are allocated to it under the Local Government Act 2000, relevant Regulations and those executive duties and responsibilities which are contained in the Cheshire (Structural Changes) Order 2008.
- 1.2 The Cabinet will also exercise any functions delegated to it by the full Shadow Council by resolution where that function can be delegated and is subject to “local choice”.
- 1.3 It will also carry out any function under the law or this Constitution where that function is not the responsibility of any other part of the Shadow Council.

### **2 Composition of the Cabinet**

- 2.1 The Cabinet will consist of Shadow Councillors including the Leader and Deputy Leader of the Shadow Council, all of whom shall be appointed by the full Shadow Council at its first meeting.
- 2.2 No deputy or substitution arrangements are allowed in respect of the Cabinet. The Chairman and Vice Chairman of the Shadow Council cannot be appointed to the Cabinet.

### **3 The Leader**

- 3.1 The Leader will hold office until
  - he/she resigns from the office of Leader
  - he/she becomes ineligible to be a Shadow Councillor for a specific period or indefinitely
  - he/she ceases to be a Shadow Councillor
  - he/she is removed from office by a resolution of the Shadow Council
- 3.2 Where there is a vacancy in the office of Leader, the Deputy Leader shall assume the responsibilities of the Leader until the next meeting of the Shadow Council, whether that be an Ordinary or Extra-Ordinary meeting of the body.
- 3.3 Where both the Leader and the Deputy Leader cease to hold office at the same time, the Chairman of the Shadow Council shall call a meeting of the full Shadow Council as soon as possible.

**4 Other Cabinet Members**

- 4.1 Other Members of the Cabinet shall hold office until any of the events listed in 3.1 above for ending the term of office of the Leader apply to them collectively or individually as Cabinet Members.

**5 Proceedings of the Cabinet**

- 5.1 All proceedings of the Cabinet shall be conducted in accordance with the Shadow Council and Cabinet Procedure Rules contained within this Constitution.

**6 Responsibility for Functions**

- 6.1 The Leader will ensure that a record is kept of the Cabinet functions which are the responsibility of the individual Cabinet Members, any Cabinet Committee or Sub-Committee, or officers or under any joint arrangements.
- 6.2 The Cabinet may arrange for any of its functions to be discharged in full or in part by a Committee or Sub-Committee of the Cabinet or by an Officer. Where such delegation takes place the Cabinet will set out in writing the precise terms of the delegation to be exercised by the body or individual. A Committee or Sub-Committee of the Cabinet may delegate in writing, the discharge of any its functions, in whole or in part, to an officer.
- 6.4 Where a delegation arrangement is made under 6.2 above, it shall not preclude the body or person delegating the function, or part of it, from exercising that function on giving notice in writing to that body or person.

**OTHER COMMITTEES**

**ARTICLE 8**

**1 Other Committees**

- 1.1 The Shadow Council will appoint such other Committees as it considers appropriate to exercise any of its functions and to take such decisions which are not within the responsibilities of the Cabinet.



## **THE STANDARDS COMMITTEE**

## **ARTICLE 9**

### **1 Establishment of the Committee**

- 1.1 The Shadow Council is required to establish a Standards Committee.

### **2 Composition**

- 2.1 The composition of the Council's Standards Committee will be agreed at its first meeting.
- 2.2 Independent Members on the Committee have voting rights.

### **3 Role and Functions**

- 3.1 The Committee will be responsible for
- discharging the Shadow Council's functions under Part III of the Local Government Act 2000;
  - considering and granting, or otherwise, dispensations in respect of Members' Interests when so enabled under Part III of the Local Government Act 2000;
  - promoting high standards of ethical behaviour by developing, maintaining and monitoring codes of Conduct for Members of the Shadow Council (including Co-opted Members and other persons acting in a similar capacity) and for employees in accordance with best practice and Government guidance;
  - advising the Shadow Council on the adoption or revision of the Codes of Conduct for Members and Officers;
  - ensuring that Members receive advice and training as appropriate on the Members' Code of Conduct;
  - issuing advice to Members on the treatment of personal interests and on conduct matters generally;
  - ensuring that the Shadow Council maintains appropriate links with the Standards Board for England and the Commission for Local Administration in England (Ombudsman);
  - referring issues, which impinge on staff conduct, performance, terms of employment, training and development to the appropriate and responsible Cabinet Member and/or head of paid service;
  - promoting high standards of responsiveness by the Shadow Council to its clients and contacts

- advising other persons/bodies on probity and ethics as appropriate, particularly where that person or body is exercising functions on behalf of the Shadow Council;
- supporting the Shadow Council's statutory officers as appropriate or their authorised deputies, in the performance of their duties; and
- advising the Shadow Council on any local protocols and policies to influence and/or regulate the conduct of Shadow Members.



**OFFICERS**

**ARTICLE 10**

**1 The Cheshire (Structural Changes) Order 2008**

- 1.1.1 The Order makes provision for the Shadow Council to: designate officers to the posts of Interim/Appointed monitoring officer and Interim/Appointed chief finance officer; to appoint officers to the posts of appointed monitoring officer and appointed chief finance officer; and to appoint a head of paid service.
- 1.2 The roles and functions of those officers are set out in the Order.
- 1.3 The Interim/Appointed monitoring officer may appoint, in writing, further deputies as he/she considers appropriate.
- 1.4 The Interim/Appointed chief finance officer may appoint, in writing, a deputy as appropriate.

**7 Functions of the Head of the Paid Service**

- 7.1 The Head of the Paid Service will report to the full Shadow Council on the manner in which the Shadow Council develops its functions and the co-ordination of those functions. He/she also has statutory functions in relation to staff.

**8 Functions of the Interim/Appointed and Appointed Monitoring Officer**

- 8.1 The Interim/Appointed 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.
- 8.2 After consulting with the head of paid service, the Interim/Appointed monitoring officer will report to the full Shadow Council, (or to the Cabinet in relation to an executive function), if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission would give rise to a finding of maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- 8.3 He/she will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- 8.4 He/she will receive and act on reports made by ethical standards officers and decisions of case tribunals.

8.5 he/she will conduct investigations into matters referred by ethical standards officers and make reports or recommendations in respect of them to the Standards Committee.

8.6 He/she will provide advice to all Shadow Councillors on issues in relation to the scope of powers and authority to take decisions, maladministration, financial impropriety and probity.

**9 Functions of the Interim/Appointed and appointed chief finance officer**

9.1 After consulting with the head of paid service and the Interim/Appointed monitoring officer, the Interim/Appointed chief finance officer will report to the full Shadow Council (or to the Cabinet in relation to an executive function) and the Shadow 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 Shadow Council is about to enter an item of account unlawfully.

9.2 He/she in consultation will have overall responsibility for the administration of the financial affairs of the Shadow Council.

9.3 He/she will contribute to the corporate management of the Shadow Council, in particular, through the provision of professional financial advice.

9.4 He/she will provide advice on issues to all Shadow Councillors in relation to the scope of powers and authority to take decisions, maladministration, financial impropriety and probity issues and will support and advise Shadow Councillors and officers in their respective roles.

9.5 He/she will provide financial information to the media, members of the public and the community.

**10 Duty to provide sufficient resources to the Interim/Appointed monitoring officer and Interim/Appointed chief finance officer**

10.1 The Shadow Council will provide these officers with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed in their statutory roles.

**11 Conduct**

12.1 Officers will comply with the Officers' Code of Conduct and any Protocol on Member/Officer Relations.

**13 Employment**

- 13.1 The recruitment, selection and dismissal of officers will comply with the Staff Employment Procedure Rules as set out in this Constitution.

## **DECISION MAKING**

## **ARTICLE 11**

### **1 General**

- 1.1 The Shadow Council will keep an up-to-date record, which shall be available for public inspection, of which part of its organisation at Member and Officer level has responsibility for making decisions in relation to Shadow Council functions and services.
- 1.2 All decisions of the Shadow Council will be made in accordance with the law, this Constitution and the principles set out below.

### **2 Types of Decision and the Decision-Takers**

- 2.1 The Shadow Council will take all decisions which it has reserved to itself or which it is required to take by law.
- 2.2 The Cabinet will take all decisions including key decisions which it is required to determine as required by law or because the Shadow Council has decided to delegate the matter to the Cabinet.
- 2.3 Other Committees, Sub-Committees, Officers of the Joint Implementation Team and Officers of the Shadow Authority will take such decisions as are delegated to them by the Shadow Council or the Cabinet.

### **3 Decision Making Procedures**

- 3.1 In taking decisions the full Shadow Council, the Cabinet, Scrutiny Committee, and other Committees and Sub-Committees will follow the Shadow Council's Procedure Rules and in particular as follows:
  - Shadow Council - Shadow Council Procedure Rules
  - Cabinet - Cabinet Procedure Rules
  - Scrutiny Committee - Scrutiny Procedure Rules
  - Committees and Sub-Committees - Shadow Council Procedure Rules

### **4 Definition Of Key Decision**

- 4.1 The statutory definition, as contained in paragraph 8 of Part III of the Local Authorities (Cabinet Arrangements) (Access to Information) (England) Regulations 2000, is as follows:-

“an executive decision which, is likely –

- (a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority."

**LEGAL MATTERS**

**ARTICLE 12**

**1 Legal Proceedings**

- 1.1 The Interim/Appointed and appointed monitoring officer are authorised to institute, defend or participate in any legal proceedings or to take such other action where such action is necessary to give effect to decisions of the Shadow Council or in any case where he/she considers that such action is necessary to protect or further the Shadow Council's interests.

**2 Document Authentication**

- 2.1 Where any document is necessary to any legal procedure or proceedings on behalf of the Shadow Council, it will be signed by the Interim/Appointed/appointed monitoring officer or other person authorised by him/her unless any enactment otherwise authorises or requires, or the Shadow Council has given requisite authority to some other person.
- 2.2 Any contract entered into on behalf of the Shadow Council. In the absence of any authority given to a specific officer, whether by this Constitution or in any other manner, all contracts entered into on behalf of the Shadow Council must either be signed by the Interim/Appointed/appointed monitoring officer or his authorised deputy or made under the common seal of the Shadow Council.

**3 Common Seal of the Shadow Council**

The Common Seal of the Shadow Council will be kept in a safe place in the custody of the Interim/Appointed/appointed monitoring officer. A decision of the Shadow 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 Interim/Appointed/appointed monitoring officer should be sealed. The affixing of the Common Seal will be attested by the Interim/Appointed/appointed monitoring officer or one of his/her authorised deputies.



**ARTICLE 13**

**REVIEW, REVISION, SUSPENSION, INTERPRETATION AND PUBLICATION OF THE CONSTITUTION**

**1 Review**

- 1.1 The Governance and Constitution Committee, in consultation with other appropriate Members and the Interim/Appointed/appointed monitoring officer and Interim/Appointed/appointed chief finance officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.
- 1.2 In monitoring the Constitution, the Committee will need to be aware of the strengths and weaknesses of the Constitution adopted by the Shadow 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 Committee may require
- meetings of different parts of the member and officer structure to be observed
  - an audit trail of a sample of decisions to be undertaken
  - issues raised by Members, officers, the public and other relevant stakeholders to be recorded and assessed
  - practices in the authority to be compared with those in other comparable authorities, or national examples of best practice.

**2 Changing the Constitution**

- 2.1 Changes to the constitution will only be approved by the full Shadow Council after consideration of the proposal by such bodies as the Shadow Council may from time to time determine.

**3 Suspension of the Constitution**

- 3.1 The Articles of this Constitution may not be suspended. However the Procedure Rules set out in this Constitution may be suspended by the full Shadow Council to the extent permitted within those Rules and the law.
- 3.2 A motion to suspend any rules cannot be moved without notice, unless at least one half of the whole number of Shadow Councillors is present. The extent and duration of suspension will be proportionate to the result to be achieved, taking into account the purposes of the Constitution set out in Article 1.



#### **4 Interpretation**

- 4.1 The ruling of the Chairman of the Shadow Council as to the construction or application of this Constitution or as to any proceedings of the Shadow Council shall not be challenged at any meeting of the Shadow Council. Such interpretation will have regard to the purposes of this Constitution.

#### **5 Publication**

- 5.1 The Interim/Appointed/appointed monitoring officer:
- will give each Member access to an electronic copy of this Constitution
  - will ensure that a copy of the Constitution is made available for inspection via the Shadow Council's website
  - will ensure that copies are available for inspection at Shadow Council offices, and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee
  - will ensure that the summary of the Constitution is made widely available within the area and is updated as necessary
  - will provide to any Member, upon request, a copy of the Constitution.

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# **PART 3**

## **RESPONSIBILITY FOR FUNCTIONS**

## RESPONSIBILITY FOR FUNCTIONS

### 1 General

- 1.1 The Cheshire (Structural Changes) Order 2008 (“the Order”) provides for the establishment, on 1<sup>st</sup> April 2009, of a single tier of local government within the Shadow Council’s area.  
With effect from 1<sup>st</sup> April 2009, the County of Cheshire and all of its districts will be abolished.  
With effect from the date of the Shadow Council elections on 1<sup>st</sup> May 2008, and until 1<sup>st</sup> April 2009, the Council will operate as a “shadow authority”, as defined in the Order, having the functions set out in Part 3 of the Order.  
In particular, the Shadow Council will have the following responsibilities:
- 1.1.1 to commence and sustain its running as a shadow authority;
  - 1.1.2 to prepare the Shadow Council for the assumption of local government functions and full local authority functions and powers on 1<sup>st</sup> April 2009;
  - 1.1.3 to prepare any budgets or plans required beyond 1<sup>st</sup> April 2009 when those functions and powers are assumed;
  - 1.1.4 to liaise with Cheshire County Council and the other shadow authority for the purposes of ensuring continuity of public service delivery on and after 1<sup>st</sup> April 2009;
  - 1.1.5 to take all such practical steps as are necessary or expedient to liaise with the other local authorities within its area for the purposes of ensuring continuity of public service delivery on and after 1<sup>st</sup> April 2009;
  - 1.1.6 to exercise any of the Local Government Act 1972 functions referred to in, and in accordance with, Part 3 of the Order.
- 1.2 The powers and functions of the Shadow Council are therefore limited and, consequently, the powers and functions of its Cabinet, committees, sub committees and other decision making bodies are similarly limited. The responsibilities for functions described in this Part of the Constitution must therefore be considered in this context.  
However, upon the assumption of full local authority functions and powers on 1<sup>st</sup> April 2009, these responsibilities will increase.  
Until that date, Cheshire County Council and the district councils within the Shadow Council’s area will continue to have responsibility for local authority functions within their areas.
- 1.3 The Shadow Council is required in this Constitution to set out the allocation of responsibilities for its functions.
- 1.4 The following paragraphs cover functions which are
- the responsibility of the Shadow Council and/or its Committees/Sub-Committees

- the responsibility of the Cabinet
- the responsibility of Officers

- 1.5 Where a function is not specified as being the responsibility of the Shadow Council, a Committee, Sub-Committee, or officer that function shall, unless otherwise provided to the contrary by law, be the responsibility of the Cabinet.

## **2 Functions Reserved to the Shadow Council**

The following functions are the responsibility of the Shadow Council and will be discharged by the full Shadow Council unless specified to be delegated to another Committee, Sub-Committee or body under this Constitution. The Shadow Council:

1. is accountable to its citizens for the proper discharge of all of its functions and for the delivery of such services as it is responsible for;
2. will keep under review the running of the Shadow Council's affairs and will implement changes where it considers there is a need to do so to improve the way in which the organisation operates, its relationships with the Shadow Council's citizens and the delivery of any services in the most effective and efficient way;
3. will adopt the Shadow Council's Constitution in accordance with the requirements of the Local Government Act 2000 and approve any subsequent amendments to it in whole or in part;
4. will appoint to the following offices
  - Chairman of the Shadow Council
  - Vice Chairman of the Shadow Council
  - Leader of the Shadow Council
  - Deputy Leader of the Shadow Council
  - Members of the Cabinet
  - Chairmen and Vice-Chairmen of Committees, Sub-Committees and Special Committees
  - such other offices as may be required under this Constitution or by the Shadow Council;
5. will decide upon the size of the Cabinet, approve the portfolios to be held within the Cabinet and the allocation of those portfolios;
6. will determine whether functions which are classified as "local choice" functions under the Local Government Act 2000 should be reserved to the Shadow Council or delegated to the Cabinet;
7. will adopt the Shadow Council's Codes of Conduct for Members and Officers and the Protocol on Member/Officer Relations;

8. will agree the establishment and composition of, and make appointments to, Committees, Sub-Committees other than those which may be established within the Cabinet;
9. will agree and amend the terms of reference of its Committees and Sub-Committees;
10. where permitted by the law, will make arrangements for appointments to outside bodies;
11. will carry out all duties specified in and comply with the Cheshire (Structural Changes) Order 2008;
12. will be responsible for any non executive Local Development Framework functions which are given to the Shadow Council by the Secretary of State;
13. will review and decide unless provided to the contrary in the Cabinet Procedure Rules whether any Cabinet decision which has not been implemented and has been referred to the Council under the provisions in this Constitution should be reconsidered by the decision taker in accordance with this Constitution and in such cases the Council may offer its advice on the matter in question;
14. will consider any matter which has been referred or submitted to it by the Cabinet;
15. where a matter is referred to it for determination by a Committee or Sub-Committee other than a Cabinet body, under this Constitution or under some other approved policy or procedure, to determine that matter;
16. will adopt or otherwise, as provided in the Shadow Council Procedure Rules, motions submitted under Standing Order No.12 (Notice of Motion) which do not relate solely to an Cabinet function;
17. will approve the Members Allowance Scheme including any pension provision for elected Members following advice from any Independent Remuneration Panel;
18. will appoint/dismiss the head of paid service, designate an officer to act as Interim/Appointed monitoring officer and Interim/Appointed chief finance officer, and appoint/dismiss a person to the position of appointed monitoring officer and appointed chief finance officer in accordance with the Cheshire (Structural Changes) Order 2008;
19. will approve the Shadow Council's response to any issues or proposals in relation to local government boundaries including Electoral Wards, the conduct of elections and the discharge of local authority functions;

20. may determine other matters which may from time to time be submitted to it for determination, either by resolution or through approved procedures, where such matters do not fall within the functions of the Cabinet.

### **3 General Responsibility of the Cabinet, Committees and Sub-Committees**

- 3.1 These bodies are responsible and accountable to the Shadow Council as appropriate in accordance with this Constitution, their terms of reference and under the approved policies, regulations and procedures of the Shadow Council for:
  1. ensuring the effective and efficient discharge of the functions delegated to them;
  2. ensuring that any Shadow Council services are appropriate for and responsive to the needs and views of the Shadow Council's citizens, and are delivered effectively and efficiently;
  3. ensuring that good external relationships and effective local liaison are promoted in relation to any Shadow Council services;
  6. monitoring the functions of the Shadow Council within their remit and contributing to any Shadow Council aims, objectives and policies;
  7. determining policies and objectives for any Shadow Council services, within their remit, reviewing the extent to which they are met, and agreeing any necessary action;
  8. determining the Shadow Council's views on matters specific to their areas of responsibility and related external matters;
  9. ensuring the effective and efficient management of any services and resources falling within their purview in accordance with this Constitution and, where appropriate, the effective and efficient discharge of the responsibilities of any subordinate bodies or person.

## **4 Responsibility of the Cabinet**

Where the Cabinet is exercising a Cabinet function, in whole or in part, as set out in this Section and in Section 5 below, the Cabinet is empowered to take all necessary and appropriate decisions to fulfil the obligations placed upon it subject to any restrictions or constraints imposed by the law or this Constitution.

### **4.1 The Cabinet**

Is responsible for and accountable to the Shadow Council, where appropriate, for the following functions, recognising that certain functions discharged by officers or services within its remit fall, by virtue of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and any subsequent amendments thereto, to be discharged by the Council:

1. consulting on, developing, monitoring and reviewing the various elements of the Shadow Council's plans and policies;
2. subject to consultation with the appropriate Scrutiny body or bodies, advising on Budget setting, including all other related financial matters, plans and proposals;
3. ensuring that proper arrangements exist for the effective and efficient management of the Council's executive affairs;
4. ensuring that the Shadow Council prepares for the Performance Management regime and any Government initiatives dealing with such matters which have financial implications.
5. monitoring and auditing the lawful, proper and efficient conduct of the Shadow Council's financial affairs, including the extent to which budgets and financial policies are being and will be met, and requiring or approving any remedial action to be taken where it considers it necessary and appropriate;
6. advising the Shadow Council where appropriate, and determining such matters as may be prescribed from time to time, under the Shadow Council's Constitution as the responsibility of the Cabinet;
7. approving, monitoring and reviewing any Shadow Council Corporate personnel and human resources policies;



8. approving, monitoring and reviewing the provision of services to the Shadow Council which are delivered by internal and/or external suppliers;
9. overseeing, approving and co-ordinating policies on national and external communications, public and media relations and public affairs generally;
10. overseeing relationships with, participation in and contribution to external organisations and partnerships, Local Government Association, the North West Regional Assembly or their successors or like bodies;
11. ensuring officers exercising delegated powers on behalf of the Cabinet discharge their responsibilities efficiently and effectively;
12. ensuring that officers discharge their responsibilities efficiently and effectively in relation to Cabinet functions;
13. overseeing the exercise of any Shadow Council powers and duties in relation to Part 1 of the Local Government Act 2000 (Promotion of Economic, Social or Environmental Well Being etc);
14. advising the Shadow Council on strategic matters in relation to corporate governance, community governance and community strategy;
15. monitoring and reviewing issues relating to local working;
16. overseeing the promotion of the Shadow Council's image, role and relationships in the European context, particularly with the European Commission and other European institutions;
17. preparing and approving, as appropriate, Regional and Sub-Regional Plans and Strategies;
18. preparing and approving major planning studies;
19. supporting the North West Regional Assembly or any successors or like body, where appropriate, on regional policy, transportation, planning and environmental issues and related matters and any other matters of relevance to the Shadow Council and ensuring that the Shadow Council's views are made known;
20. promoting employment and investment in the Shadow Council's area, including the preparation and approval of any Economic Development and Tourism Strategies;

21. deciding such other matters as may fall to the Cabinet to determine as required by the law or as delegated to it by the Shadow Council;
22. dealing with any executive Local Development Framework functions which are given to the Shadow Council by the Secretary of State.
23. making decisions upon those executive functions which arise under the Cheshire (Structural Changes) Order 2008.

The Cabinet may discharge these functions itself, through a Task Group/Cabinet Sub-Committee or by delegation to an officer. In addition, the Cabinet may appoint such advisory panels, including any member of the Shadow Council, as it considers appropriate to provide advice to it.

## **5 Responsibilities of Individual Cabinet Members**

It is recognised that certain functions discharged by officers or services within the remit of the Shadow Council fall, by virtue of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and any subsequent amendments thereto, to be discharged by the Council, or its Committees. No individual Cabinet Member decision making powers will exist in the initial stages of the life of the Shadow Council. However, it is possible that this might change.

For the time being the following Cabinet members have portfolio responsibilities.

## **6 Responsibility of Regulatory Committees**

Until the Shadow Council assumes local government functions and full local authority powers on 1<sup>st</sup> April 2009, in accordance with the Cheshire (Structural Changes) Order 2008, the Shadow Council will not exercise regulatory powers and functions. The Shadow Council will, however, take such practical steps as are necessary or expedient to prepare the Shadow Council for the assumption of local government regulatory functions and full local authority regulatory powers.

## **7 Responsibility of the Staffing Committee**

1. Undertaking the selection process for the appointment, and formulating recommendations to the Shadow Council in relation to:
  - the appointment and dismissal of the Head of the Paid Service;
  - the designation of an officer to act as Interim Monitoring Officer and Interim Chief Finance Officer;

- the appointment/dismissal of Appointed Monitoring Officer and Appointed Chief Finance Officer;

in accordance with the Cheshire (Structural Changes) Order 2008 in accordance with the appropriate procedures set out in the Staff Employment Procedure Rules;

2. undertaking the selection, appointment and dismissal processes for any other staff in accordance with the appropriate procedures set out in the Staff Employment Procedure Rules;
3. hearing and determining any appeals by staff under the Shadow Council's approved personnel policies and procedures including through any appointed Sub-Committee;
4. hearing and dealing with disputes registered with the Shadow Council by recognised Trade Unions.

#### **8. Responsibility of the Shadow Council's Scrutiny Committee**

The Shadow Council shall have one Scrutiny committee, and may commission task and finish groups to undertake scrutiny projects.

The Scrutiny Committee will/may specifically:

1. discharge the Council's functions under Section 21 of the Local Government Act 2000 (Scrutiny Committees)
2. oversee the Council's overall scrutiny function including the preparation, implementation, monitoring and review of an annual work programme for scrutiny and arrangements for the scrutiny of other public bodies particularly where required to do so by law and where partners can contribute to Community Plan priorities and to Local Area Agreement outcomes;
3. establish such task and finish groups, appointing the Chairman with such membership as it sees fit, to undertake scrutiny on a task and finish basis;
4. ensure that officers discharge their responsibilities effectively and efficiently in relation to the scrutiny function;
5. scrutinise decisions of the Cabinet, and offer advice or make recommendations on the matter under scrutiny once the Committee have considered the issues;
6. refer to the Shadow Council or appropriate Committee/Sub-Committee any matter which, following scrutiny, the Committee

determines should be brought to the attention of the Shadow Council or the Committee or Sub-Committee;

7. if requested, offer any views or advice to the Cabinet in relation to any matter referred to the Committee for consideration;
8. undertake general policy reviews with a cross-service and multi-organisational approach wherever possible and make recommendations to the Shadow Council or the Cabinet to assist in the development of future policies and strategies;
9. in performing its role, the Committee may consult and involve the local community and other local public, private and voluntary bodies or organisations;
10. review the Shadow Council's response to its obligations in respect of the overall performance management regime and where appropriate advise the Cabinet and the Shadow Council of its findings;
11. scrutinise decisions after implementation to examine their effect and outcomes;
12. review and making recommendations in relation to matters which are not the direct responsibility of the Shadow Council but which affect the social, economic and environmental well-being of an area, or the Shadow Council's area as a whole, or under any statutory requirement or Shadow Council contract, procedure or practice;
13. develop, maintain and monitor policies and procedures for handling complaints made against the Shadow Council and monitor on a regular basis the level and nature of complaints received and ensure that advice is formulated regarding action to be taken to address areas of concern;
14. monitor the level and nature of Ombudsman complaints and advise the Cabinet, Committees, Sub-Committees and officers on remedial action as appropriate;
15. ensure in conjunction with the Standards, and Governance and Constitution Committees that the Shadow Council has in place appropriate mechanisms to protect organisational Integrity including the development of appropriate policies and guidance;

## **9 Responsibility of the Standards Committee**

The Standards Committee is responsible for:-

1. discharging the Shadow Council's functions under Part 3 of the Local Government Act 2000 (via Sub-Committees if necessary);
2. considering and granting, or otherwise, dispensations in respect of Members' Interests under Part 3 of the Local Government Act 2000;
3. promoting high standards of ethical behaviour by developing, maintaining and monitoring codes of Conduct for Members of the Shadow Council (including Co-opted Members and other persons acting in a similar capacity) and for employees in accordance with best practice and Government guidance;
4. advising the Shadow Council on the adoption or revision of the Codes of Conduct for Members and Officers;
5. ensuring that Members receive advice and training as appropriate on the Members' Code of Conduct;
6. issuing advice to Members on the treatment of personal interests and on conduct matters generally;
7. ensuring that the Shadow Council maintains appropriate links with the Standards Board for England and the Commission for Local Administration in England (Ombudsman);
8. referring issues, which impinge on staff, conduct, performance, terms of employment, training and development to the appropriate Cabinet Member and/or officer;
9. promoting high standards of responsiveness by the Shadow Council to its clients and contacts;
10. advising other persons/bodies on probity and ethics as appropriate, particularly where that person or body is exercising functions on behalf of the Shadow Council;
11. in conjunction with the Shadow Council's Scrutiny Committee, supporting the Shadow Council's statutory officers as appropriate, or their authorised deputies, in the performance of their duties.

## **10 Responsibility of the Governance and Constitution Committee**

The Governance and Constitution Committee is responsible for:

1. overseeing, monitoring, co-ordinating and implementing the Shadow Council's administrative and political business, including electoral matters; administrative boundaries; support for and facilities for Members, including Members' learning and development and party groups for the purpose of their duties as councillors; and administrative arrangements for and the conduct of the Shadow Council and other meetings;
2. determining policies and conventions in relation to the political management of the Shadow Council, including statutory requirements concerning political balance and rights to information;
3. reviewing the Shadow Council's Constitution and recommending any changes to the Shadow Council;
4. advising the Shadow Council on, and overseeing the promotion of private legislation on behalf of the Shadow Council;
5. recommending to the Shadow Council, as appropriate, the appointment of Members to Committees and Sub-Committees (including any co-opted members other than in respect of Scrutiny Committees);
6. appointing representatives to serve on outside bodies and organisations (including education bodies and establishments) not falling to the Cabinet to appoint;
7. overseeing and monitoring the Members Allowance budget including pensions and keeping under review the scheme for the payment of allowances to Members;
8. approving annual conference and seminar attendance;
9. recommending to the Shadow Council any issues relating to the Honorary Aldermen;
10. approving reasons for absence for Members;
12. approving the overall seating plan for Shadow Council meetings;
13. overseeing and agreeing the arrangements for Members to be indemnified for and insured against risks and liabilities arising from the performance of their duties as Members of the Shadow Council, and as the Council's representatives on outside bodies.
14. overseeing the Shadow Council's role and responsibilities in respect of Corporate Governance;

15. developing a Code of Corporate Governance and to undertake as appropriate an assessment of wider governance issues;
16. supporting the Shadow Council's audit function, both internal and external;
17. ensuring the Shadow Council has in place appropriate policies and mechanisms to safeguard the Shadow Council's resources;
18. supporting the Interim/Appointed and Appointed Chief Financial Officers in relation to the performance of their duties;
19. approving any Shadow Council Statement of Accounts as may be required by the relevant Account and Audit Regulations;
20. ensuring any Shadow Council's Risk Management process is operating effectively.
21. undertaking work, and making recommendations, upon the Shadow Council's political management structure, and upon that which will operate with effect from 1<sup>st</sup> April 2009.

## **11 Joint Liaison Committee**

11.1 The Joint Liaison Committee is responsible for providing Cheshire West and Chester and Cheshire East Shadow Councils with a forum for the discussion of issues of mutual interest.

11.2 The Committee is to act as an advisory group to both the Cheshire East and the Cheshire West and Chester Shadow Councils on the following matters:

- 11.2.1 Joint projects being undertaken during the period ending on 1<sup>st</sup> April 2009;
- 11.2.2 Potential shared services;
- 11.2.3 Protocols on sharing arrangements and arrangements for assisting each other;
- 11.2.4 Partnership arrangements, the aggregation or disaggregation of which will affect the work of the other Shadow Council;
- 11.2.5 Potential decisions by one Shadow Council which will either have an effect on the decision of the other or which will have a substantial effect on the projected total transition costs;

- 11.3 In the event of any disagreement between the Cheshire East and the Cheshire West and Chester Shadow Councils as to how to proceed on a matter which affects the other, or where there is disagreement as to whether the matter affects the other, the Joint Liaison Committee will have the role of considering the views of both Shadow Councils, and attempting to offer a solution to resolve the disagreement. However, having offered a solution to the Shadow Councils and, in the event of that solution not having resolved the disagreement, the disagreement will be referred, at equal cost to both Shadow Councils, to the Centre for Effective Dispute Resolution ("CEDR"), International Dispute Resolution Centre, 70 Fleet Street, London EC4Y 1EU, to appoint a Neutral Advisor to advise upon the matter. The Neutral Advisor will have experience, at a suitable level, of local authority functions and responsibilities, as well as experience of local government reorganisation.
- 11.4 All negotiations in connection with the disagreement will be conducted in confidence, and the Neutral Advisor will make recommendations in order to resolve the disagreement.
- 11.5 Having considered the advice of the Neutral Advisor, each Shadow Council must decide whether to accept that advice. If either or both of the Shadow Councils do not accept the advice of the Neutral Advisor, they must take such steps as they consider appropriate in the circumstances.
- 11.6 The Shadow Council and its Cabinet may delegate such powers, responsibilities and decisions to any of its own officers, or to any officers of the Joint Implementation Team.

## **12 Powers of Officers**

- 12.2 This Constitution, and the Procedure Rules contained within it, refer to various powers of officers in respect of Shadow Council functions and responsibilities.
- 12.3 The Shadow Council will appoint an Interim/Appointed and Appointed Monitoring Officer, and an Interim/Appointed and Appointed Chief Finance Officer who both have statutory powers which are identified in the Cheshire (Structural Changes) Order 2008.

## **13 Independent Remuneration Panel**

The Cheshire (Structural Changes) Order 2008 ("the Order") provides for Cheshire County Council's scheme of allowances, as adopted by Cheshire County Council on 18<sup>th</sup> May 2006 ("the Scheme"), to apply to the Shadow Council. The Order also provides for the Scheme, as it applies to the Shadow Council, to be amended or revoked by the Shadow Council.



It is, however, anticipated that the Shadow Council will wish to appoint an Independent Remuneration Panel with the responsibilities to make recommendations to the Shadow Council:

- as to the amount of basic allowances that should be paid to Members;
- about the responsibilities or duties which should lead to the payment of a special responsibility allowance and as to the amount of such allowance;
- about the duties for which a travelling and subsistence allowance can be paid and as to the amount of such allowance;
- as to the amount of the co-optees' allowance;
- as to whether the Shadow Council's allowances scheme should include an allowance in respect of the expenses for arranging for the care of children and dependants and, if it does make such recommendation, the amount of such allowance and the means by which it is determined;
- on whether any allowance should be backdated to the beginning of a financial year in the event of the scheme being amended;
- as to whether annual adjustments of allowance levels may be made by reference to an index and, if so, for how long such a measure should run;
- as to which Members of the Council are entitled to pensions, in accordance with a Scheme made under Section 7 of the Superannuation Act 1972;
- as to treating basic allowance and special responsibility allowance as amounts in respect of which such pensions are payable.

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## **ACCESS TO INFORMATION PROCEDURE RULES**

### **1 General**

- 1.1 These rules apply to all meetings of the Shadow Council, its Committees and Sub-Committees and public meetings of the Cabinet.
- 1.2 In these Rules the word “meeting” means a meeting or meetings of any of those bodies unless specifies otherwise.
- 1.3 These rules do not affect any other specific rights to information contained elsewhere in this Constitution or the law.
- 1.4 Members of the public may attend all public meetings subject to the exceptions contained in these Rules.

### **2 Notice of Meetings**

- 2.1 The Shadow Council will give, wherever possible, at least five clear working days notice of any such meeting by publicising, including by electronic means, relevant details.
- 2.2 A copy of the official notice will be sent to main libraries and appropriate information points. The notice will also appear on the Shadow Council’s website.

### **3 Agenda and Supporting Papers - Rights of Access**

- 3.1 Copies of the Agenda and supporting papers will be made available, wherever possible, for inspection by the public at least five clear working days before the meeting. Where an item is added to an Agenda at a later date, a supplementary agenda will be made available, with any supporting papers, to the public as soon as possible. An electronic version of the supplementary agenda and supporting papers will also be made available electronically to Shadow Councillors.
- 3.2 The Shadow Council will supply on request copies of any agenda and reports which are open to public inspection, and if the Interim/Appointed Monitoring Officer thinks fit, copies of any further documents supplied to Shadow Councillors relating to that item.
- 3.3 The Shadow Council may require any person to make a payment in advance covering postage and costs connected to the supply of the papers in 3.2 above.

**4 Access to Decision Records, Minutes, Agenda and Supporting Papers after a meeting**

4.1 The Shadow Council will make electronically available, for a period of six years from the date of the meeting:

- the minutes of the meeting where, under these rules or the Constitution Minutes are required to be made, excluding any part of the minutes relating to the conduct of business when the public were not present or where exempt or confidential information would be disclosed;
- the records of decisions taken, together with reasons by the Cabinet, excluding any part of the record relating to the conduct of business when the public were not present or where exempt or confidential information would be disclosed.
- where information relating to a decision is considered in private, a summary of the proceedings to provide a reasonably fair and coherent record will be provided excluding any information which is of a confidential or exempt nature;
- the agenda and supporting papers covering items which were considered when the public were entitled to be present.

**5 Background Documents**

5.1 The Officer, in whose name an item is to be submitted for decision, will set out in the agenda a list of the background documents which in his/her opinion:

- relates to the subject matter of the item in question;
- discloses any facts or matters on which the agenda item or an important part of it has been based;
- has been relied upon to a material extent in preparing the agenda item.

5.2 The requirements in 5.1 above do not apply to or include any published works or any document in whole or in part which would disclose confidential or exempt information.

5.3 Background documents which have been made available for public inspection will continue to be available for a period of four years from the date the decision is made.

## **6 Exclusion of the Public from Meetings**

### **Confidential Information – Requirement to Exclude**

- 6.1 The public will be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted or the proceedings, that confidential information, as described in 7.2 below, will be disclosed.

### **Exempt Information – Discretion to Exclude**

- 6.2 In the case of exempt information, the public may be excluded from a meeting where the criteria in 7.3 and Appendix 1 applies.
- 6.3 Where a meeting will determine a person's civil rights or obligations or adversely affect their possessions, Article 6 of the Convention of Human Rights as applied by the Human Rights Act 1998 will apply to the extent that it establishes a presumption that a meeting will be held in public unless a private hearing is necessary for one of the reasons specified in the Act or in particular Article 6 of the Convention.

## **7 Definition of Confidential and Exempt Information**

- 7.1 For the purposes of these Rules the definitions of confidential and exempt information are set out below.
- 7.2 **Confidential Information** means information supplied or given to the Shadow Council by a Government Department on terms which forbid its disclosure to the public or is information which cannot be disclosed to the public by Order of the Courts.
- 7.3 Exempt Information is information falling within any of the categories set out in Appendix 1 subject to the conditions noted in that Appendix.

## **8 No Public Right Of Access To Agenda Papers**

- 8.1 The Interim/Appointed Monitoring Officer, where he/she considers it necessary, may refuse access by the public to any agenda or supporting papers which in his/her opinion relate to items during which, in accordance with paragraph 6 above, the meeting is likely not to be open to the public. Any such papers will be clearly marked "Not for Publication" and will contain the category of information to be disclosed as set out in Appendix 1 to these Rules. Similar provisions apply to the disclosures of documents related to decisions of the Shadow Council, including the Cabinet.

**9 The Cabinet: Application of these Rules**

- 9.1 Paragraphs 11 to 20 will apply to the Cabinet and any Committees or Sub-Committees which it may establish from time to time.
- 9.2 Where the Cabinet, including a Committee or Sub-Committee of the Cabinet meet to take a key decision (as defined) then paragraphs 1 to 8 above will apply except when paragraphs 12 or 13 are applicable. A key decision is defined in Article 13 of this Constitution.
- 9.3 Where the Cabinet, including a Committee or Sub-Committee of the Cabinet meet to discuss a key decision, with an officer or officers present, within 28 days of the date according to the Forward Plan by which it is to be decided, then it must comply with paragraphs 1 to 8 above unless paragraphs 12 (general exception) or 13 (special urgency) apply. This requirement does not apply where the sole purpose of the meeting is for officers to brief Members.

**10 Procedure Prior to a Key Decision**

- 10.1 Subject to paragraphs 12 or 13, a key decision cannot be taken unless
- notice has been given of the matter in question in the Forward Plan
  - at least three clear working days have elapsed since publication of the Forward Plan, and
  - where the decision is to be taken at a meeting of the Cabinet, including a Committee or Sub-Committee of the Cabinet, notice of the meeting has been given under paragraph 2 above.

**11 The Forward Plan**

- 11.1 The Forward Plan will be prepared on behalf of the Leader of the Shadow Council on a monthly basis to cover a four month period beginning with the first day of any month. The Plan will be rolled forward and published each month to cover the four month period beginning again with the new date of publication. There will be instances where it is impracticable to include an item in the Plan. In this case paragraph 12 or 13 below will apply
- 11.2 The Plan will contain such matters as the Leader has reason to believe will be classified as a key decision to be taken by the Cabinet, a Committee or Sub-Committee of the Cabinet, an Officer in the course of the discharge of an Cabinet function during the period covered by the Plan.
- 11.3 The Plan will describe in respect of each matter the following particulars where the information is available or might reasonably be obtained:

- the matter relating to the decision to be made;
  - the name and title of the decision taker if an individual, or the name and details of the membership where the decision taker is a body;
  - the date on which, or the period within which, the decision will be taken;
  - the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
  - the means by which any such consultation is proposed to be undertaken;
  - the steps any person might take to make representations to the Cabinet or decision taker about the matter before the decision is made, and the date by which those steps must be taken; and
  - a list of the documents to be submitted to the decision taker for consideration in relation to the matter.
- 11.4 The Forward Plan will be published at least 14 days before the start of the period it is to cover.
- 11.5 The Interim/Appointed Monitoring Officer will publish, once a year, a notice in at least one newspaper circulating in the area, stating that:
- key decisions are to be taken on behalf of the Shadow Council;
  - a Forward Plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis;
  - the plan will contain details of the key decisions to be made for the four month period following its publication;
  - each plan will be available for inspection at all reasonable hours free of charge at the Shadow Council's offices;
  - each plan will contain a list of the documents to be submitted to the decision takers for consideration in relation to the key decisions in the plan;
  - copies of, or extracts from, any document listed in the Forward Plan are available from the Interim/Appointed Monitoring Officer at the Shadow Council's offices, subject to any prohibition or restriction on their disclosure;
  - other documents may be submitted to decision takers;

- details of documents (if any) as they become available can be requested; and
- the dates on each month in the following year on which each forward plan will be published and available to the public.

11.6 Confidential and exempt information will not be included in a Forward Plan.

## **12 General Exception for Key Decisions**

12.1 If a matter which is likely to be a key decision has not been included in the Forward Plan then, subject to paragraph 13, the decision may still be taken if:

- the decision has to be taken by such a date that it is impracticable to defer the decision until it can be included in the next Forward Plan and until the start of the first month to which the next Forward Plan relates;
- the Interim/Appointed Monitoring Officer has informed the Chairman of the Scrutiny Committee, or if there is no such person, each member of that Committee in writing, by notice, of the matter to which the decision is to be made;
- the Interim/Appointed Monitoring Officer has made copies of that notice available to the public at the offices of the Shadow Council; and
- at least five clear working days have elapsed since the Interim/Appointed Monitoring Officer complied with his obligations under this paragraph.

12.2 Where such a decision is taken by the Cabinet, it must be taken in public subject to any requirements relating to the disclosure of confidential or exempt information and the exclusion of the public.

## **13 Special Urgency for Key Decisions**

13.1 If by virtue of the date by which a key decision must be taken, the requirements of paragraph 12 above cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the Chairman of the body taking the decision, obtains the agreement of the Chairman of the Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chairman of the Scrutiny Committee or if he or she is unable to act, then the agreement of the Chairman of the Shadow Council, or in his/her absence the Vice Chairman will suffice.



- 13.2 In addition to the requirement for the Chairman to agree to the matter being dealt with as urgent business, the Chairman and Spokespersons of the Scrutiny Committee will be consulted, and may comment, on the subject matter of the decision itself.

#### **14 Report to Shadow Council**

- 14.1 If the Scrutiny Committee is of the opinion that a key decision has been taken which was not:

- included in the forward plan; or
- the subject of the general exception procedure under paragraph 12 above; or
- the subject of an agreement with the Scrutiny Committee Chairman, or the Chairman/Vice Chairman of the Shadow Council under paragraph 13 above;

the Committee may require the Cabinet to submit a report to the Shadow Council within such reasonable time as the Committee specifies.

- 14.2 In response to any requirement under 14.1 above, the Cabinet will prepare a report for submission to the next available meeting of the Shadow Council. However, if the next meeting of the Shadow Council is within 7 days of the resolution of the Committee, then the report may be submitted to the subsequent meeting. The report to the Shadow Council will set out particulars of the decision, the individual or body taking the decision, and if the Cabinet is of the opinion that it was not a key decision, the reasons for that opinion.

#### **15 Record of Decisions**

- 15.1 After any meeting of the Cabinet or any of its Committees or Sub-Committees, whether held in public or private, the Interim/Appointed Monitoring Officer will normally produce within two clear working days an electronic record of every decision taken at that meeting. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

#### **16 Cabinet Meetings Relating to Matters which are not Key Decisions**

- 16.1 The Cabinet will decide whether meetings relating to matters which are not key decisions will be held in public or private.

**17 Meeting of the Cabinet in Private**

- 17.1 Where a meeting of the Cabinet, including a Committee or Sub-Committee of the Cabinet, is to be held in private under these Rules, all Members of the Cabinet shall be entitled to be given three clear working days notice of the meeting, whether or not they are summoned to attend, unless the meeting is convened at shorter notice on urgency grounds.
- 17.2 A copy of the notice shall be sent to the Chairman of the Scrutiny Committee.

**18 Attendance at Private Meetings of the Cabinet**

- 18.1 Any Member of the Cabinet may attend a private meeting of a Committee or Sub-Committee of the Cabinet whether or not they are Members of that body unless the body determines otherwise.
- 18.2 Any Cabinet Member who is not a Member of such a Committee or Sub-Committee shall be entitled to speak with the consent of the person presiding but not to vote.

**19 Officer attendance at Cabinet Meetings**

- 19.1 The Head of the Paid Service, the Interim/Appointed Chief Finance Officer and the Interim/Appointed Monitoring Officer, or their nominees, are entitled to attend any meeting of the Cabinet. The Cabinet cannot meet unless the Interim/Appointed Monitoring Officer has been given reasonable notice that a meeting is to take place. This provision also applies to Committees and Sub-Committees of the Cabinet.
- 19.2 A private meeting of the Cabinet, including a Committee or Sub-Committee of the Cabinet, may only take place in the presence of the Interim/Appointed Monitoring Officer or his nominee, who shall have responsibility for recording and publicising any decisions.
- 19.3 The provisions in paragraph 15 will apply.

**20 Decisions by Individual Cabinet Members**

- 20.1 There are currently no individual Cabinet member decision making powers.

**21 Access to Documents - Scrutiny Committee**

- 21.1 Subject to paragraph 21.2 below, a Member of the Scrutiny Committee will be entitled to copies of any document which is in the possession or control of the Cabinet including its Committees and Sub-Committees and which contains material relating to:

- any business transacted at a meeting of the Cabinet including any of its Committees and Sub-Committees; or
- any decision taken by an officer in accordance with Cabinet arrangements.

21.2 A Member of the Scrutiny Committee will not be entitled to a copy of:

- any document that is in draft form;
- any such document or part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision he/she is reviewing or scrutinising or any review contained in any programme of work of the Committee.

## **22 Additional Rights of Access for Members**

22.1 All Members will be entitled to inspect any document which is in the possession or under the control of the Cabinet including its Committees or Sub-Committees and contains material relating to any business previously transacted at a meeting unless it contains exempt information falling within the categories of exempt information as set out in the Appendix.

22.2 All Members will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet including its Committees and Sub-Committees which relates to any key decision unless paragraph 22.1 above applies.

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

**APPENDIX 1**

**DESCRIPTIONS OF EXEMPT INFORMATION: ENGLAND**

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes -
  - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - (b) to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

## **CABINET PROCEDURE RULES**

### **1 Composition of the Cabinet**

- 1.1 As provided by Section 11(3) and (8) of the Local Government Act 2000, the Shadow Council's Cabinet shall consist of the Leader of the Shadow Council and two or more Members of the Shadow Council, the number of Members appointed to the Cabinet including the Leader shall not exceed ten.
- 1.2 The Shadow Council has decided that its Cabinet shall consist of ten Members, including a Leader and Deputy Leader. Portfolios of responsibility may be allocated by the Shadow Council to Cabinet members from time to time.
- 1.3 The Leader and other Members of the Cabinet will be appointed by the Shadow Council at its first meeting. The Shadow Council may change the size and composition of the membership of the Cabinet at any time.
- 1.4 Where the Leader or Deputy Leader ceases to hold the office at any time and there is a delay between the date of cessation and the next Shadow Council Meeting then in the wake of the Leader ceasing to hold office, the Deputy Leader will assume the full responsibilities of the Leader in the intervening period. Where both post-holders cease to hold office at the same time, the Chairman will call a Special Meeting of the Shadow Council.
- 1.5 Where a Cabinet Member, other than the Leader or Deputy Leader, ceases to hold the office the Leader will reassign the relevant portfolio within the remaining Cabinet Membership from the date of cessation to the date of the next Shadow Council Meeting. Where the Leader and Deputy Leader hold portfolio responsibilities and either cease to hold their office then the Leader or the Deputy Leader, as the case may be, shall reassign the relevant portfolio.

### **2 Cabinet Functions**

- 2.1 In discharging its functions, the Cabinet will ensure that it is acting within the law and this Constitution.
- 2.2 The functions to be discharged by the Cabinet by law or arising from the functions delegated by the Shadow Council to the Cabinet are set out in Part 3 of this Constitution. That part of the Constitution also sets out the body or individual responsible for taking decisions in respect of Cabinet functions.
- 2.3 The Cabinet may arrange for any of its functions, which are its responsibility under the law to be discharged by a Committee or Sub-Committee of the Cabinet, an individual Cabinet Member, an Officer,

another Local Authority or Shadow Council, or under joint arrangements.

- 2.4 Where the Shadow Council has delegated a function to the Cabinet, that function may in turn be delegated in whole or in part to the bodies or person referred to in 2.3 above.
- 2.5 The Shadow Cabinet may appoint whatever task or advisory groups it deems necessary, comprising some or all of its own membership, any other member or non-member of the Shadow Council.

### **3 Conflicts of Interest**

- 3.1 Where the Leader or any Cabinet Member has a conflict of interest, he will follow the requirements of the Shadow Council's Code of Conduct for Members.
- 3.2 If all (or a majority) of the Members of the Cabinet present have a conflict of interest then consideration will be given to applying to the Standards Committee for a dispensation from the provisions of the Code.
- 3.3 If the discharge of a Cabinet function has been delegated to another body or individual and a conflict of interest arises, then it will fall to the body or individual who delegated the matter to take the decision. Where that body or individual also has a conflict of interest then action set out in 3.2 shall be considered.

### **4 Meetings of the Cabinet**

- 4.1 The Cabinet will meet as indicated in the Shadow Council's programme of meetings. The Cabinet or the Leader may agree to change the date of any programmed meeting, to cancel a meeting or to arrange additional meetings as it/he/she sees fit. Locations of meetings will be published in the calendar of meetings.
- 4.2 The Cabinet may meet in public or in private, subject to legal requirements and the Access to Information Procedure Rules contained in the Constitution.
- 4.3 The Leader will preside at meetings of the Cabinet. If the Leader is absent then the Deputy Leader will preside.
- 4.4 All Members of the Cabinet shall be entitled to attend meetings of the Cabinet unless the Cabinet determine otherwise.
- 4.5 Attendance by other Members of the Shadow Council or the public shall be in accordance with the Access to Information Procedure Rules, by invitation, or as set out in paragraphs 7.1 to 7.4 below.

## **5 Quorum at Cabinet Meetings**

- 5.1 The quorum at a meeting of the full Cabinet, or a Committee or Sub-Committee established by the Cabinet, shall be 50% of its membership.

## **6 Taking of Decisions by the Cabinet**

- 6.1 Decisions by the Cabinet, a committee of the Cabinet, or a sub committee of the Cabinet, will be taken in accordance with the Shadow Council's Access to Information Procedure Rules.

## **7 Members attending and speaking at Cabinet Meetings**

- 7.1 The Chairman and Spokespersons of the Shadow Council's Scrutiny Committee shall be entitled to attend any formal public meeting of the Cabinet and to speak to any matter on the agenda for that meeting.
- 7.2 Other Members not previously described above may also speak at such meetings with the permission of the Leader or person presiding in his/her absence.

## **8 Business at Cabinet Meetings**

- 8.1 The business to be transacted at meetings of the Cabinet will be set out in an Agenda for the meeting in question, subject to any requirements or exemptions under the Access to Information Procedure Rules.
- 8.2 The Agenda may be supported by additional papers prepared by the Officers or by or on behalf of other bodies, subject to requirements about disclosure of confidential or exempt information.
- 8.3 The Cabinet is obliged to consider matters referred to it by an Scrutiny Committee, or by the Full Shadow Council for consideration under the Scrutiny Rules.
- 8.4 Where matters are for decision, the Agenda must stipulate those which are key decisions and those which are not, in accordance with the Access to Information Procedure Rules.
- 8.5 The Cabinet will, at each formal meeting, confirm the record of decisions taken at its previous meeting as a correct record.
- 8.6 The Interim/Appointed Monitoring Officer or his/her nominated Officer shall be responsible for preparing and distributing the Agenda for Cabinet meetings, attending meetings for the purpose of advising the

Cabinet on matters within his/her area of responsibility and recording decisions as required under this Constitution.

- 8.7 In taking decisions, the Cabinet must satisfy itself that it has before it adequate and appropriate advice from its service, legal and financial advisers who shall be present at any meeting where a decision is being taken and that that advice is taken into consideration in determining the matter. Where there is any doubt about vires or probity then advice must be obtained from the Interim/Appointed Monitoring Officer and the Interim/Appointed Chief Finance Officer.
- 8.8 Any Member of the Cabinet may require the Interim/Appointed Monitoring Officer to place an item on the Agenda for a stipulated meeting of the Cabinet.
- 8.9 The Interim/Appointed Monitoring Officer will ensure that any matters referred to the Cabinet by the Shadow Council or the Shadow Council's Scrutiny committee are placed on the Agenda for the next appropriate meeting of the Cabinet.
- 8.10 Any Member of the Shadow Council may request the Leader to place an item on the Agenda of a meeting of the Cabinet. The Leader shall have sole discretion as to whether or not to accede to such a request and, if such a request is granted, whether the Member in question can speak to the item at the meeting in question.
- 8.11 The Head of the Paid Service, the Interim/Appointed Monitoring Officer and/or the Interim/Appointed Chief Finance Officer can include an item for consideration on the Agenda of a Cabinet Meeting. In pursuance of their statutory duties they can require that a special meeting of the Cabinet be convened.
- 8.12 Business cannot be conducted at formal meetings of the Cabinet unless it is included in the Agenda for the meeting. Where it is urgent, the requirements of the Access to Information Procedure Rules must be complied with.
- 8.13 The Cabinet will report to the Shadow Council as required under the Access to Information Procedure Rules on any matter which is classified as a key decision and is dealt with under special urgency procedures.
- 8.14 Questions can be submitted by members of the public at meetings of the Cabinet in accordance with Shadow Council Procedure Rule No.35 and Appendix 7 of the Shadow Council Procedure Rules.

## **9 Voting at Cabinet Meetings**

- 9.1 Voting at Cabinet meetings will be by a show of hands and any Member may require, immediately after the vote is taken, that the



Minutes of the meeting record how he/she voted or abstained. Where there are equal votes cast, the Leader or in his/her absence, the person presiding will have a second and casting vote. Voting for any office or appointment, including any paid appointment, where more than one person is nominated shall be by secret ballot conducted in accordance with Shadow Council Procedure Rule 16.

## **10 Cabinet Committees/Sub-Committees**

- 10.1 The Cabinet may appoint such Committees or Sub-Committees as it considers necessary and appropriate to assist in the discharge of its functions. In making such appointments, the Cabinet must specify the name of the Committee/Sub-Committee, its membership (including its Chairman and, if appropriate, Vice-Chairman) and the terms of reference of the body.

## **11 Motion Under Standing Order 12**

- 11.1 As prescribed in paragraph 45.10 of Part C of the Shadow Council Procedure Rules, a mover of a motion under Standing Order 12 which has been referred to the Cabinet for consideration may attend the meeting of the Cabinet when his/her motion is under consideration and explain the motion. The mover of the motion will be advised of the date and time of the meeting when the matter is to be considered and he/she will be sent a copy of the relevant papers.

## **12 Resolving Disputes**

- 12.1 In the case of any dispute during the proceedings of the Cabinet the relevant parts of this Constitution will apply and after considering the application of the relevant provisions, the person presiding at the meeting will rule on the issue in question and his/her ruling will be final.

## **13 Reserves/substitute members**

- 13.1 There shall be no reserve or substitute members of the Cabinet.

## **14 Approval of Urgent Business**

Where any matter is urgent and cannot await the next meeting, the lead officer of the Joint Implementation Team may take the necessary action, provided that he/she has first consulted the Leader (or Deputy Leader if he/she is not available).

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## **SCRUTINY PROCEDURE RULES**

### **1 Scrutiny Arrangements**

- 1.1 The Shadow Council has established Scrutiny arrangements in accordance with the Local Government Act 2000.
- 1.2 It is recognised that these arrangements are an important and integral part of the Shadow Council's functions, not only in relation to calling the Cabinet to account but in allowing all Members of the Shadow Council to participate in the development of the Shadow Council's policies, plans and strategies, including budgetary work, and to contribute to decision making in the Shadow Council, and to work with partners in developing services and improving outcomes for local people.
- 1.3 The Shadow Council's political structure seeks to provide a wide-ranging, robust and well managed Scrutiny function with particular emphasis on ensuring that the Shadow Council and its successors can meet obligations and deliver services effectively and as efficiently as possible to its people. The monitoring, reviewing and developing of the Shadow Council's policies, plans and strategies is also recognised as a key and important function for the authority on both the Cabinet and Scrutiny sides of the organisation.
- 1.4 The Shadow Council will keep under review its Scrutiny arrangements and will make changes where it considers these are appropriate and will lead to improvements and an improved Scrutiny function.

### **2 Scrutiny Structure**

- 2.1 Subject to any matters reserved to the Shadow Council, the Scrutiny Committee will oversee the discharge of the Shadow Council's Scrutiny functions and responsibilities. The detailed responsibilities of the Committee are set out in Part 3 of this Constitution.
- 2.2 The Committee may appoint such task and finish panels as it considers appropriate to undertake specific tasks on its behalf, with the same powers as the Committee. Whilst these will be on a task and finish basis in most cases, the Committee is not precluded from establishing such Panels on a more permanent basis subject to regular review. Task and finish panel members do not have to be members of the Scrutiny Committee, but may not be members of the Cabinet.
- 2.3 Where the Committee establish any Panel under 2.2 above, it will set out the name of the Panel, its membership (including the Chairman and, if appropriate, the Vice-Chairman) and the terms of reference including relevant dates for completion of the task or review.

- 2.4 The Shadow Council may from time to time, as it considers appropriate, review and change its Scrutiny arrangements.
- 2.5 The functions of the Council's Scrutiny Committee are set out in detail in Part 3 of this Constitution.
- 2.6 Any body established under these Scrutiny arrangements will be a politically proportionate body reflecting the overall political representation on the Shadow Council.
- 2.7 The Shadow Council will appoint the Chairman and Vice-Chairman of the Scrutiny Committee at its first meeting.
- 2.8 A Member who is appointed to and sits on the Cabinet shall not be appointed as a Member of the Scrutiny Committee, or any task and finish panels.
- 2.9 No Member of the Shadow Council shall be involved in scrutinising a decision where he/she has been directly involved.

### **3 Co-option**

- 3.1 The Scrutiny Committee shall be entitled to appoint persons to be non-voting co-optees taking into account any advice or guidelines issued from time to time by the Shadow Council. Such co-options may relate to a prescribed period of office or to specific issues under consideration. Any person co-opted under these arrangements will be entitled to participate fully in the work of the Committee subject to any conflicts of interests.

### **4 Work Programme**

- 4.1 The Scrutiny Committee will consult with other parts of the organisation as appropriate, including the Cabinet, on the preparation of any work programme.
- 4.2 The Committee will take into account any views expressed following consultation under 4.1 above in drawing-up and agreeing any work programme. It should also take into account the resources, both officer and financial, available to support its proposals.
- 4.3 Once any programme has been approved, a copy will be sent to all Members of the Shadow Council and all relevant officers.
- 4.4 The Scrutiny Committee shall respond, as soon as it may consider it is possible to do so, to requests from the Shadow Council and the Cabinet, to review particular areas of Shadow Council activities. Where it does so, it will report its findings and any recommendations back to the Cabinet and/or Shadow Council.

## **5 Agenda for Scrutiny Committee**

- 5.1 Matters to be considered will be set out in an Agenda, together with appropriate and relevant supporting papers.
- 5.2 Any Member of the Committee shall be entitled to require, in writing, that an item be included on the agenda, and such item shall appear on the agenda for the next meeting of the Committee in question. The Committee will decide how the item should be considered and whether or not it can be included in its work programme.
- 5.3 Similarly, the Leader of the Cabinet or a Cabinet Member with specific portfolio responsibilities may give notice in writing requiring an item to appear on an agenda of the Committee, relating to their area of responsibilities. The Committee will decide how the item should be considered and whether or not it can be included in its work programme.
- 5.4 Subject to Council Procedure Rule 34 and Appendix 6 of the Shadow Council Procedure Rules, any other Member may give notice in writing to the Monitoring Officer, requesting an item to appear on an agenda of a Committee. The item shall be included after consulting the Chairman of the Committee.
- 5.5 Any Member raising an item under 5.2, 5.3 and 5.4 above shall be precluded from raising the matter again for a period of six months from the date it is considered by the Committee.

## **6 Policy Review and Development**

- 6.1 The Scrutiny Committee has a key role in policy and budget development in the approach to the creation of the new Unitary Authority.

## **7 Reports from the Scrutiny Committee**

- 7.1 The Shadow Council or Cabinet shall consider any report from the Committee at its next programmed meeting.

## **8 Access to the Forward Plan**

- 8.1 The Scrutiny Committee will have access to the Cabinet's Forward Plan and timetable for decisions and intentions for consultation.

## **9 Rights of Scrutiny Members to documents**

- 9.1 In addition to their rights as Shadow Councillors, Members of the Scrutiny Committee have the additional right of access to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.
- 9.2 Nothing in this paragraph prevents more detailed liaison between the Cabinet and the Scrutiny Committee depending on the particular matter under consideration.

## **10 Members and Officers giving account**

- 10.1 The Scrutiny Committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Shadow Council function. As well as reviewing the documentation, in fulfilling its scrutiny role, it may require any Member of the Cabinet, to attend before it to explain in relation to matters within their remit:

- any particular decision or series of decisions;
- the extent to which the actions taken implement Shadow Council policy; and/or
- their performance.

and it is the duty of those persons to attend if so required.

- 10.2 Where the Scrutiny Committee requires an officer to attend to answer questions or discuss issues, this will be agreed with the lead officer of the Joint Implementation Team.

Where it is agreed that an officer should appear to answer questions, their evidence should, as far as possible, be confined to questions of fact and explanation relating to policies and decisions. Officers may explain:-

- what the policies are;
- the justification and objectives of those policies as the Cabinet sees them;
- the extent to which those objectives have been met; and
- how administrative factors may have affected both the choice of policy measures and the manner of their implementation.

- 10.4 Officers may be asked to explain and justify advice they have given to the Cabinet prior to decisions being taken. They may also be asked to explain and justify decisions they have taken under delegation powers from the Cabinet.
- 10.5 Officers should not be expected and should avoid being drawn into discussions of politically contentious matters and any officer input should be consistent with the requirements for political impartiality.

- 10.6 The requirements of any protocols on Member/Officer relationships and the Officer Code of Conduct must be adhered to where an officer is attending the Scrutiny Committee.
- 10.7 Where any Member or Officer is required to attend the Scrutiny Committee under this provision, the Chairman of that Committee will inform the Interim/Appointed Monitoring Officer, who will inform the Member or Officer in writing giving at least ten clear working days notice of the meeting. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the Committee. Where the account to be given to the Committee or Select Committee will require the production of a report, then the Member or Officer concerned will be given reasonable and sufficient notice to allow for its preparation.
- 10.8 Where, in exceptional circumstances, the Member or Officer is unable to attend on the required date, then the Committee shall, in consultation with the Member or Officer, arrange an alternative date for attendance.

## **11 Attendance by others**

- 11.1 The Scrutiny Committee may invite individuals other than those referred to in paragraph 10.1 and 10.2 above to address it, discuss issues of local concern and/or answer questions.

## **12 Call-in**

- 12.1 When a decision is made by the Cabinet, or a Committee or Sub-Committee of the Cabinet, or a key decision is made by an officer with delegated authority from the Cabinet, the decision shall be published, by electronic means, and shall be available at the main offices of the Shadow Council normally within 2 clear working days of being made. All Members of the Shadow Council will be sent an electronic record of all such decisions within the same timescale.
- 12.2 Subject to paragraphs 12.3 and 12.4 below a decision taken and to which paragraph 12.1 above refers will not come into force, and may not be implemented, until the expiry of 5 clear working days after the decision was made and recorded.
- 12.3 Where a decision referred to in paragraph 12.1 has been made, any 8 or more Members of the Shadow Council may submit a call-in notice, in writing, within the period specified in paragraph 12.2 above, to the Interim/Appointed Monitoring Officer. Where the notice is valid, the decision cannot be implemented until the procedures in this section have been followed. Where a valid notice is received the decision shall stand referred to the Scrutiny Committee for advice.

- 12.4 Where as a result of a corporate electronic system failure or planned shutdown, which prevents the issuing of or access to Cabinet decisions or the submission of a call-in notice by electronic means in accordance with the Shadow Council's call-in provisions, the periods for notification or submission shall be extended by the period of delay, provided that period is in excess of four hours. When, in the opinion of the Interim/Appointed Monitoring Officer, the period of delay is likely to extend beyond two clear working days, he/she shall agree with the Chairman of the Scrutiny Committee, alternative arrangements to avoid any delay in implementing Cabinet decisions not subject to "call-in".
- 12.5 The decision will be referred to the first available meeting of the Scrutiny Committee, subject to the Access to Information Procedure Rules.
- 12.6 The Committee may decide to offer no advice, in which case the decision may be implemented. Where advice is offered, the Cabinet will reconsider the decision as set out in paragraph 12.8 below.
- 12.7 Once the Scrutiny Committee has decided to offer advice or not to offer advice, no further call in notices may be served in respect of that matter subject to the decision in question. This does not prevent the matter being scrutinised further by the Committee after the decision has been implemented in accordance with these rules.
- 12.8 Where a matter is considered and advice is offered by the Scrutiny Committee, its advice will be submitted to the Cabinet for a decision to be made on the matter. The Cabinet shall consider the advice but shall not be bound to accept it in whole or in part. It shall have sole discretion to decide on any further action to be taken in relation to the decisions in question, including confirming with or without amendment, of the original decision or deferment pending further consideration, or making a different decision. There are no further rights to enable a Member of the Shadow Council to submit a call-in notice. The decision may then be implemented.
- 12.9 If under this procedure the Scrutiny Committee, having considered the matter, indicates that it does not wish to offer any advice to the Cabinet, then the decision can be implemented immediately.
- 12.10 A submitted call-in notice can only be withdrawn with the written consent of all of its signatories.
- 12.11 The "call-in" facility does not apply to the determination of a Motion under Standing Order 12 (Notices of Motion) – Appendix 2.

### **13 Call-in and Urgency**

- 13.1 The call-in procedure set out above shall not apply where the decision being taken by the Cabinet is urgent. A decision will be urgent if any



delay, caused by the call-in process, would be likely to seriously prejudice the Shadow Council's or the public's interests. The Chairman of the Scrutiny committee or, in his/her absence, the Chairman of the Shadow Council must agree that the decision should be treated as urgent, and that the call-in procedure should not apply. In the absence of the Chairman, the Vice-Chairman's consent shall be required. In the absence of both, the Head of Paid Service or his/her nominee's consent shall be required.

#### **14 The Party Whip**

- 14.1 It is generally accepted that the Party Whip should be suspended in respect of Scrutiny matters. However, when considering any matter in respect of which a Member of the Scrutiny Committee is subject to a formal party whip, the Member must declare the existence of the whip, and the nature of it before the commencement of the Committee's deliberations on the matter. The declaration, and the detail of the whipping arrangements, shall be recorded in the Minutes of the meeting.

#### **15 Procedure at Scrutiny Committee Meetings**

- 15.1 The Scrutiny Committee shall consider the following business:
- record of the last meeting;
  - consideration of any matter referred to the Committee by the Shadow Council or by the Cabinet;
  - consideration of any matter referred to the Committee for advice in relation to call-in or a decision;
  - responses of the Cabinet on reports of the Scrutiny Committee; and
  - the business otherwise set out on the agenda for the meeting.
- 15.2 Where the Scrutiny Committee conducts investigations (e.g. with a view to policy development), the Committee may also ask people to attend to give evidence at its meetings, which are to be conducted in accordance with the following principles:
- the investigation be conducted fairly and all Members of the Committee be given the opportunity to ask questions of attendees, and to contribute and speak;
  - those assisting the Committee by giving evidence be treated with respect and courtesy; and
  - the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
- 15.3 Following any investigation or review, the Committee shall prepare a report, for submission to the Cabinet and/or Shadow Council as

appropriate and shall, unless there are exceptional reasons, make its report and findings public.

## **PROCEDURE RULES**

### **PART A –SHADOW COUNCIL’S PROCEDURE RULES**

#### **1 Shadow Council meetings**

- 1.1 The Shadow Council will decide when its meetings will take place. Details will be contained in a calendar of meetings which will be approved by the Shadow Council.
- 1.2 Meetings will be held at a time and a place (or places) to be agreed by the Shadow Council. The Chairman, or the Shadow Council, can agree to hold a meeting at a different place or time.
- 1.3 A special meeting can be called by resolution or by the Chairman, or 8 members of the Shadow Council can ask the Chairman, in writing, to call a special meeting. If the Chairman does not agree, then those Members can call the meeting by giving written notice to the Interim/Appointed Monitoring Officer. The Interim/Appointed Monitoring Officer, in consultation with the Chairman, may also call a special meeting.
- 1.4 Before the start and at the end of each meeting, Members and Officers will stand whilst the Chairman and the Vice-Chairman enter and leave the room.

#### **2 Chairman and Vice Chairman of the Shadow Council**

- 2.1 At its first meeting, the Shadow Council will elect its Chairman and appoint its Vice-Chairman for the life of the Shadow Council.
- 2.2 The Chairman of the Shadow Council, or in his absence the Vice-Chairman (who will have the same powers and duties as the Chairman), will preside at meetings of the Shadow Council. Where both the Chairman and Vice-Chairman are absent, the Shadow Council will appoint another Member, other than a Member of the Cabinet, to chair the meeting, who will have the same powers and duties as the Chairman.

#### **3 Quorum**

- 3.1 No business shall be dealt with at a Shadow Council meeting if there are fewer than 21 Councillors present. Where the meeting has started, and the number of Shadow Councillors present is fewer than 21, the Chairman will adjourn the meeting. Where the Chairman does not give a date and/or time, all business not completed will be considered at the next meeting.

**4 What the Shadow Council can decide**

- 4.1 The Shadow Council will decide such matters as required by the law, and those matters set out in Part 3 of this Constitution.

**5 Order Of Business**

- 5.1 Business shall be dealt with in the order in which it is set out in the agenda unless the Council decides otherwise.

**6 Urgent Business**

- 6.1 Business cannot be dealt with at a Shadow Council meeting unless it is included in the Summons or unless the Chairman has agreed that it is urgent and cannot wait until the next meeting. The Chairman must give the reasons for urgency, which must be recorded in the Minutes of the meeting.

**7 Confirmation of Minutes**

- 7.1 Minutes of the last Shadow Council meeting must be confirmed at the next ordinary meeting of the Shadow Council.
- 7.2 Only matters relating to the accuracy of the Minutes can be raised, which must be done by way of a motion which is proposed, seconded and voted upon. Where no issues are raised, or after the motion has been dealt with, the Chairman shall sign the Minutes.

**8 Record of Cabinet Decisions and Minutes of Committees and Sub - Committees**

- 8.1 The Record of Decisions of the Cabinet and the Minutes of any other Committees will be submitted to the next ordinary meeting of the Shadow Council.
- 8.2 The Record of Decisions will be noted and the Minutes will be received by a decision of the Shadow Council.
- 8.6 Any question about the accuracy of any matter before the Shadow Council from the Cabinet or a Committee must be considered and determined by the Cabinet or that Committee at its next meeting. It is not a matter for the Shadow Council.

**9 Matters for Decision by the Shadow Council**

- 9.1 All matters for decision by the Shadow Council (except any Notices of Motion under Procedure Rule 12 and any urgent items) shall be included with the agenda.
- 9.2 When the item is reached on the agenda, the appropriate Cabinet Member or the Chairman of the relevant Committee will, where appropriate, move the recommendation or advice of the Cabinet or Committee, or endorsement of a Cabinet or a Committee decision. Another Member may second the motion and may reserve the right to speak until later in the debate.
- 9.3 The Chairman cannot ask the Shadow Council to agree to withdraw a recommendation of the Cabinet or a Committee under, Appendix 3, paragraph No.10, unless new and relevant information has become available after the decision of the body concerned. The information must be disclosed to the Shadow Council.

**10 Motions Moved Without Notice**

- 10.1 Appendix 1 lists those motions and amendments which can be moved at a Shadow Council meeting without notice.

**11 Public speaking and questions at Shadow Council meetings**

- 11.1 A Member of the Shadow Council may ask the Chairman, the appropriate Cabinet Member or the Chairman of a Committee any question about a matter which the Shadow Council, the Cabinet or the Committee has powers, duties or responsibilities.
- 11.2 Questions must be sent in writing to the Interim/Appointed Monitoring Officer at least three clear working days before the meeting.
- 11.3 The Chairman may agree to take urgent questions where he considers that it has not been possible for a Member to give the required notice, provided that a copy of the question is given to the Interim/Appointed Monitoring Officer before the meeting starts.
- 11.4 Questions will be asked and answered without discussion. In replying, the Member responding will use their reasonable endeavours to address the matters raised in the question. The Member responding may decline to answer any question or may: reply direct, reply by reference to a publication, or reply by written answer with a copy to such other Members of the Shadow Council as the Shadow Council agrees, or refer the question to an appropriate committee or to the Cabinet.
- 11.5 Following the answer to each question, the questioner may ask a supplementary question which relates to the initial answer. A reply may

not be given if the question is: not related to the initial answer; is unduly lengthy; or is inappropriate. The Member answering the supplementary question will decide whether or not to reply.

- 11.6 Where a question submitted under this Procedure Rule relates to a matter that appears on the agenda for that meeting, the question shall be put and answered in accordance with this Procedure Rule, at the start of the consideration of that matter.
- 11.7 A public speaking time and public question facility will apply to Shadow Council meetings, as detailed in Appendix 7.

## **12 Notices of Motion**

- 12.1 A notice of motion must relate to matters for which the Shadow Council has responsibility or which affect its area.
- 12.2 The arrangements for submitting and dealing with notices of motion are set out in Appendix 2.

## **13 Rules of Debate**

- 13.1 The rules of debate to be followed at Shadow Council meetings are set out in Appendix 3.

## **14 Rescission of Earlier Resolution**

- 14.1 Subject to Rule 14.2, at a meeting of the Shadow Council, no motion or amendment shall be moved to rescind any resolution of the Shadow Council which was passed within the preceding six months or which is to the same effect as one which has been rejected within that period.
- 14.2 Such a motion may be moved if:
  - (a) it is recommended by the Cabinet or a Committee; or
  - (b) notice of such motion has been given under Procedure Rule 12 and signed by at least 8 elected Members of the Shadow Council.

## **15 Voting**

- 15.1 Voting will be by a show of hands.
- 15.2 When a Member asks for a recorded vote to be taken, and 8 other Members stand in their places to support the request, the vote will be recorded to show whether each Member voted for or against the motion or abstained.

- 15.3 A recorded vote will not be taken if the vote has already begun to be taken by a show of hands.
- 15.4 Members must be in their designated seats for their vote to be counted. The Chairman may agree to waive this requirement before the vote is taken.
- 15.5 A Member may require, after a vote is completed, that the Minutes of the meeting record how he/she voted or abstained.
- 15.6 A Member may, immediately after the item of business is voted upon, request that a lost motion or amendment be recorded in the minutes.
- 15.7 Where there are equal votes cast for a motion or amendment the Chairman or the person presiding will have a second or casting vote.

## **16 Offices and Appointments**

- 16.1 A secret ballot will be held to elect or appoint the Chairman and Vice-Chairman of the Shadow Council, the Leader and Deputy Leader of the Shadow Council or Members to any office or position where more than one person is nominated.
- 16.2 If a secret ballot is held and no person receives more than half of the votes cast, the name of the person with the least number of votes will be withdrawn. Further ballots will be held until one person receives a clear majority.
- 16.3 The Chairman, or person presiding, will have a second or casting vote where the votes are equal.

## **17 Election of Chairman of Committees and Sub-Committees**

- 17.1 The Chairman and Vice-Chairman of every Committee and Sub-Committee will be elected at the first meeting of the Shadow Council where possible.
- 17.2 The Member elected to each office must be a Member of the relevant Committee or Sub-Committee.
- 17.3 Where a vacancy occurs in any office, an election will be held at the next ordinary meeting of the Shadow Council unless the Shadow Council decides otherwise.
- 17.4 Unless the Shadow Council decides otherwise, the election will be conducted by a show of hands and may relate to a number of offices. Procedure Rule 16 will apply.

- 17.5 Where a Chairman and Vice-Chairman are absent from a meeting of the relevant body, a Chairman will be appointed from those Members of the body present, provided the meeting is quorate and subject to any restrictions on the eligibility of Cabinet Members for appointment.

**18 Urgent Business – Non executive Matters**

- 18.1 An item of urgent business which has to be decided before the next meeting of the Shadow Council and which does not fall within the Cabinet's functions and responsibility can be determined by the lead officer of the Joint Implementation Team, subject to the procedure in Appendix 4.





## **PART B – COMMITTEE AND SUB-COMMITTEE PROCEDURE RULES**

### **19 Committees and Sub-Committees**

19.1 The Committees and Sub-Committees the Shadow Council and their membership size will be:-

Committees	Shadow Councillors
<b>Scrutiny Committee</b>	<b>[List numbers]</b>
<b>Staffing Committee</b>	
<b>Standards Committee *</b>	
<b>Governance and Constitution Committee</b>	
<b>Independent Remuneration Panel *</b>	
<b>Joint Liaison Committee</b>	

\* **[Stipulate the composition]**

### **19.2 Other Committees and Sub-Committees**

The Shadow Council may appoint other Committees, Sub-Committees and Special Committees with delegated powers to act under specific terms of reference which must be set out in the Minutes.

### **20 Co-option**

- 20.1 A Committee or Sub-Committee may co-opt any person as a Member.
- 20.2 An Scrutiny Committee or Sub-Committees may co-opt persons to advise and/or assist in the scrutiny of particular areas of the Shadow Council's functions.
- 20.3 Co-optees must not be elected Members of the Shadow Council. They shall not be entitled to vote at any meeting.

### **21 Appointment to Committees and Sub-Committees**

- 21.2 Where a by-election takes place during the year, the Shadow Council will decide upon the composition of Committees and Sub-Committees to reflect any change in political balance in order to comply with legal requirements.

**22 Term of Office – Committees and Sub-Committees**

- 22.1 Committee and Sub-Committee Members will remain in office until their day of retirement as set out in the Cheshire (Structural Changes) Order 2008. The Shadow Council may, at any time, dissolve, alter or amend the membership of a Committee or Sub-Committee.

**23 Change of Committee and Sub-Committee Places**

- 23.1 A Political Group may vary its representation on a Committee or Sub-Committee as set out in Appendix 5.

**24 Powers of Committees, Sub-Committees and Officers**

- 24.1 Subject to Procedure Rule 4.1 relating to the Shadow Council (Matters Reserved for Decision by the Shadow Council), the functions, powers and duties to be exercised by Committees, Sub-Committees and Officers on behalf of the Shadow Council are set out in Part 3 of this Constitution (Responsibility for Functions).
- 24.2 In discharging those functions, powers and duties, the Committees, and Officers have full delegated powers to take those decisions, subject to any specific reservations or exceptions contained in Part 3.
- 24.3 A Committee, Sub-Committee, or Officer may, at any time, decline to exercise a delegated power. The matter must then be considered and determined by the Shadow Council, Committee or Sub-Committee, as appropriate.
- 24.4 Part C of these Procedure Rules and Part 3 of the Constitution deal with those functions which are the responsibility of the Cabinet.

**25 Urgent Business – Committees, Sub-Committees and Cabinet**

- 25.1 An item of urgent business which has to be decided before the next meeting of a Committee or Sub-Committee can be determined by the Lead Officer of the Joint Implementation Team, subject to the provisions of Appendix 4.
- 25.2 Appendix 4, suitably amended, will also apply to urgent Decisions in respect of all executive functions, including Key Decisions and non Key Decisions.

**26 Changes to the Programme of Meetings**

- 26.1 Meetings of Committees and Sub-Committees will be set out in the calendar of meetings approved by the Shadow Council under Procedure Rule 1.1. There will be a presumption against alterations to the date, time and venue for meetings.

26.2 When it is necessary to alter the date, time and/or venue of a meeting, or to arrange a special meeting, the Interim/Appointed Monitoring Officer will consult the Chairman and Spokesmen of the relevant Committee or Sub-Committee before any action is taken.

26.3 The Chairman of the Committee or Sub-Committee will then determine the matter.

## **27 Quorum at Committees and Sub-Committees**

27.1 Business cannot be transacted at meetings of Committees and Sub-Committees unless there are at least one quarter of the Members of the body present. However, where the total membership of any Committee or Sub-Committee comprises eleven or fewer Members, the quorate number shall be 3. For the Standards Committee and Sub-Committees, other provisions will apply. The Interim/Appointed Monitoring Officer will provide further information where this is required.

27.2 This may be varied because of a legal requirement or by the Shadow Council.

## **28 Minutes of Committees and Sub-Committees**

28.1 The Minutes of a Committee or Sub-Committee must be confirmed at its next meeting.

28.2 Only matters relating to the accuracy of the Minutes can be raised. Where accuracy is questioned, this must be by a motion which is proposed, seconded and voted upon.

28.3 Where no issues of accuracy are raised, or after any motion has been dealt with, the Chairman shall sign the Minutes.

28.4 The Minutes of any Sub-Committee must be submitted to the next meeting of the parent Committee by the Sub-Committee Chairman.

28.5 Members may ask a question or comment on any Minute. The Chairman of the Sub-Committee will then reply. There will be no debate on any question or comment raised under this procedure and no further motions can be moved.

28.6 Where a Member has a question or comment on an exempt, private or confidential Minute, the question or comment must be given in writing to the Interim/Appointed Monitoring Officer at least one hour before the start of the meeting.

28.7 Any question about the accuracy of any Minute of a body must be considered and determined by that body at its next meeting.

**29 Motions moved without Notice at Committees and Sub-Committees**

- 29.1 Appendix 1 lists those motions and amendments which can be moved without notice.

**30 Rules of Debate at Committees and Sub-Committees**

- 30.1 Appendix 3 sets out the rules of debate.

**31 Voting**

- 31.1 Voting at Committee and Sub-Committee meetings will be by a show of hands.
- 31.3 A recorded vote will not be taken if the vote has already begun to be taken by a show of hands.
- 31.4 A Member may require, after a vote is completed, that the Minutes of the meeting record how he/she voted or abstained.
- 31.5 A Member may request that a lost motion or amendment be recorded in the minutes by requesting this immediately after the vote is taken.
- 31.6 Where there are equal votes cast for a motion or amendment, the person presiding at the meeting will have, and must exercise, a second or casting vote.

**32 Offices and Appointments**

- 32.1 A secret ballot will be held to elect or appoint Members to any office or position where more than one person is nominated.
- 32.2 If a secret ballot is held where more than two nominations are made and no person receives more than half the votes cast, the name of the person with the least number of votes will be withdrawn. Further ballots will be held until one person receives a clear majority.
- 32.3 Procedure Rule 31.6 will apply in cases where the votes are equal.

**33 Mover of a Motion at Shadow Council under Procedure Rule 12: Attendance at Committee and Sub-Committee**

- 33.1 Where a motion has been referred under Procedure Rule 12 from the Shadow Council to a Committee or Sub-Committee for consideration and report, the mover of the motion has the right to attend the meeting and to explain the motion.

- 33.2 The mover of the motion will be advised of the date and time of the meeting at which the matter is to be considered and he/she will be sent a copy of the relevant papers.

**34 Requests by Members for items of business to be included on agendas of a Committee or Sub-Committee**

Appendix 6 to these Procedure Rules sets out details of the process by which a Member of the Shadow Council can ask for an item of business to be included on the agenda of Committee or Sub-Committee meeting.

**35 Questions Submitted by Members of the Public**

- 35.1 The Shadow Council has a procedure to enable members of the public to submit questions at ordinary meetings of its Committees and Sub-Committees. This is set out in Appendix 7.

**36 Reference of a Decision to the Parent Committee or Council**

- 36.1 Where a decision is made by a Committee or Sub-Committee, the resolution may be referred, by notice, to the Shadow Council or parent Committee, as appropriate, for reconsideration.
- 36.2 The notice must be in writing and be signed by 8 Members of the Shadow Council. The notice must be given to the Interim/Appointed Monitoring Officer, in writing, not later than 5.00pm on the fifth full working day after the meeting.
- 36.3 No action must be taken on the decision prior to its determination by the Council or Committee. Where action is necessary before the relevant meeting, the lead officer of the Joint Implementation Team will consider whether a special meeting of the Committee or the Council, as appropriate, should be convened.
- 36.4 No resolution of a Committee or Sub-Committee can be subject to a notice under this Standing Order if, in the preceding twelve months, a similar resolution had been the subject of a notice under this Standing Order.
- 36.5 These provisions do not apply to decisions taken by the Executive where the 'call in' procedure is set out in the Scrutiny Procedure Rules.

**37 Committee and Sub-Committee Agenda - Urgent Items of Business**

- 37.1 Generally, business will only be transacted at meetings of Committees and Sub-Committees which appears in the agenda and which has been available for public inspection at least five clear working days

before the meeting or, where the meeting is convened at short notice, from the time the meeting is convened.

- 37.2 The Chairman of the Committee or Sub-Committee may agree to deal with an item of business at the meeting if, in his/her opinion, the matter is urgent given the circumstances requiring a decision. The Chairman's ruling and the reasons for urgency will be recorded in the Minutes of the meeting.

**38 Attendance of Members at Committees and Sub-Committees of which they are not Appointed Members**

- 38.1 Notwithstanding their rights as a member of the public, a Member may attend any meeting of a Committee or Sub-Committee to which he/she has not been appointed, for the purposes of performing his/her duties as a Shadow Councillor, including when exempt or private and confidential business is transacted.
- 38.2 A Member will be given, when he/she arrives at the meeting a copy of the agenda and relevant papers, subject to any restrictions imposed under Procedure Rule 49.
- 38.3 The Member has no right to vote, but may speak with the consent of the Chairman of the meeting.

**39 Scrutiny Committees/Sub-Committees**

- 39.1 In applying these Procedure Rules to Scrutiny Committees and Sub-Committees, regard shall be had to the Scrutiny Procedure Rules which are contained in Part 4 of this Constitution.

## **PART C – PROCEDURE RULES RELATING TO EXECUTIVE ARRANGEMENTS**

### **General**

This Part sets out the Shadow Council's executive arrangements. It should be read in conjunction with the appropriate Articles and the Cabinet Procedure Rules contained in the Constitution.

#### **40 The Executive Framework**

- 40.1 The Shadow Council shall have a Leader and Deputy Leader who will be Members of the Cabinet. The Shadow Council will make these appointments at its first meeting.
- 40.2 The Cabinet's responsibilities will consist of the following portfolios as agreed by the Shadow Council:-
- Leader (Community Leadership and Partners)
  - Deputy Leader (Community Empowerment)
  - Performance
  - Finance and Assets
  - Human Resources
  - Community Safety
  - Environment and Prosperity
  - Health and Wellbeing
  - Older and Vulnerable People
  - Children, Young People and Families
- 40.3 The Cabinet will comprise ten Members including the Leader and Deputy Leader. The Shadow Council will appoint an elected Member of the Shadow Council to each of the portfolios and will fill any vacancies which may arise from time to time.
- 40.4 The Leader and Deputy Leader may take a portfolio responsibility.
- 40.5 The Leader will chair meetings of the full Cabinet or in his/her absence, the Deputy Leader will preside. Where both the Leader and Deputy Leader are absent, the Members present, may appoint one member of the Cabinet to chair that meeting.
- 40.6 The Cabinet cannot vary the portfolio responsibilities as listed in 40.2 above without the consent of the Shadow Council.
- 40.7 A member of the Cabinet can only be removed from office in year by a resolution of the Shadow Council. This does not preclude an office



holder from resigning his/her position at any time. Where there is a delay between a resignation being tendered and the date of the next Shadow Council meeting in the case of the Leader's resignation, the Deputy Leader will chair Cabinet meetings. Where both the Leader and the Deputy Leader resign, the Interim/Appointed Monitoring Officer in consultation with the Chairman of the Shadow Council will call a special meeting of the Shadow Council. Where a Member of the Cabinet resigns and holds a portfolio responsibility, the Cabinet will reallocate that responsibility within its number until the Shadow Council has appointed a replacement.

#### **41 The Executive Role**

- 41.1 The executive functions will comprise the executive responsibilities under the Local Government Act 2000, and associated legislation.
- 41.2 The role and responsibilities of the Cabinet are set out in more detail in Part 3 of the Shadow Council's Constitution.

#### **42 Business Process and Decisions of the Cabinet**

- 42.1 The Cabinet, must ensure, and be satisfied, that they have appropriate and adequate legal, financial and other relevant professional advice from officers before taking a decision on any matter before them. Advice from the Shadow Council's Interim/Appointed Monitoring Officer and Interim/Appointed Chief Finance Officer should always be obtained where there is doubt about vires or probity.
- 42.2 All items for decision by the Cabinet will be contained in a formal agenda as required by the Local Government Acts and Regulations in relation to confidential and exempt information.
- 42.3 Full agendas for meetings of the Cabinet will be made available, electronically, in advance of the respective meeting to all Members of the Shadow Council and in accordance with the Shadow Council's current policy.
- 42.4 Cabinet decisions, including those taken under delegated powers, shall not take effect until they have been recorded in writing, as required under the Shadow Council's procedures, and shall not be implemented where the right of call-in has been exercised until the call-in process has been concluded.
- 42.5 A written record will be kept of all Cabinet decisions by the Interim/Appointed Monitoring Officer and these will be made available publicly as soon as practicable after the decision has been taken (excluding the disclosure of confidential and exempt information and in accordance with the Scrutiny Procedure Rules).

**43 Procedural Matters Relating To Cabinet Meetings**

- 43.1 No items of business shall be conducted at a Cabinet meeting where, at the beginning or during the meeting, there are fewer than 50% of Cabinet Members present.
- 43.2 Meetings of the Cabinet will be programmed into the Shadow Council diary prepared under Procedure Rule 1.1. The Cabinet can agree to change the date of any programmed meeting, to cancel a meeting or to arrange additional meetings as it sees fit.
- 43.3 The order of business at Cabinet meetings is a matter for the Cabinet to determine.
- 43.4 Records of Cabinet decisions must be confirmed at the next meeting.
- 43.5 In recording decisions of the Cabinet under paragraph 42.4, the Interim/Appointed Monitoring Officer will set out the decision, the reasons for the decisions and alternative options considered as required under the Access to Information Procedure Rules in the Constitution.
- 43.6 An item of business which requires a decision cannot be dealt with by the Cabinet at a meeting unless it is included in the agenda for the meeting, or the Leader (or the person presiding) has agreed that it is urgent and cannot await the next meeting of the Cabinet. The reasons for taking the item as urgent business must be recorded in the Record of the Cabinet's meeting.
- 43.7 Voting at Cabinet meetings will be by a show of hands and any Member may require, after the vote is completed, that the Record of the meeting shows how he/she voted or abstained. Where there are equal votes cast, the Leader or the person presiding will have a second and casting vote. Voting for any office or appointment, including any paid appointment, where more than one person is nominated shall be by secret ballot conducted in accordance with Procedure Rule 16 in the Shadow Council Procedure Rules.
- 43.8 The Cabinet Procedure Rules set out the rights of the Chairmen and Spokespersons of Scrutiny Committees to attend Cabinet meetings and to speak.
- 43.9 The Cabinet may invite any person it/he/she consider appropriate, to its meetings to discuss matters of mutual interest or concern or to advise. Such persons may only be given access to confidential and/or exempt information on terms to be decided by the Interim/Appointed Monitoring Officer so as to ensure that the Shadow Council's obligations under the Local Government Acts in respect of Access of Information are observed.

- 43.10 A mover of a motion under Procedure Rule 12 which has been referred to the Cabinet for consideration shall have the right to attend the meeting when the motion is under consideration and to explain the motion. The mover of the motion will be advised of when the matter is to be considered and will be sent a copy of the papers. This does not affect the right of the mover of the motion to attend a Scrutiny body when his/her motion is being considered.
- 43.11 In the case of any dispute during the proceedings of any Cabinet meeting, the Shadow Council's Constitution will apply and, after considering the application of the relevant Procedure Rule, the person presiding at the meeting will rule on the issue in question as set out in Procedure Rule 55.

#### **44 The Forward Plan and Key Decisions**

- 44.1 The Leader will ensure that the requirements of the Access to Information Procedure Rules in relation to the publication of the Cabinet's Forward Plan of Key Decisions are met.
- 44.2 Those decisions which are Key Decisions are defined in Article 11.
- 44.3 Where the Cabinet as a body is making Key Decisions, that meeting shall be held in public. Where a matter is to be considered and Regulation 7 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 is applicable then the meeting will be held in public. In both cases the public may be excluded from the meeting where confidential or exempt information is likely to be disclosed.
- 44.4 Where an officer exercising an executive function under delegated powers, receives a report which he/she intends to take into consideration when making a Key Decision that decision shall not be taken until the report has been made available for inspection by the public for three clear working days following receipt of the report by the decision taker. A copy of such report must be supplied as soon as reasonably practicable to the Chairman of the relevant Scrutiny Committee. The report must also include the list of background papers.
- 44.5 Where the inclusion of a matter in the Forward Plan is impracticable and the matter would be a Key Decision, that decision shall only be made:-
- (a) where the Interim/Appointed Monitoring Officer has informed the Chairman of the relevant Scrutiny Committee of the matter about which the decision is to be made;
  - (b) where the Interim/Appointed Monitoring Officer has made available for public inspection a copy of the notice given under (a) above; and

- (c) after five clear working days have elapsed following the day on which the Interim/Appointed Monitoring Officer made available the notice referred to in (b) above.

44.6 Where the date by which a Key Decision must be made makes compliance with the requirements under 44.5 above impracticable, the decision shall only be made where the decision maker has obtained agreement from:-

- (a) the Chairman of the relevant Scrutiny Committee; or
- (b) if there is no such person, or if the Chairman of the relevant Scrutiny Committee is unable to act, the Chairman of the Shadow Council; or
- (c) where there is no Chairman of either the relevant Scrutiny Committee or of the Shadow Council, the Vice-Chairman of the Shadow Council.

that the making of the decision is urgent and cannot reasonably be deferred. Such decisions when made are not subject to the provisions relating to call-in.

44.7 The Leader shall submit a quarterly report to the Full Shadow Council containing details of each Key Decision taken during the preceding three months under 44.6 above and agreed as urgent. The report will include particulars of each such Key Decision and a summary of the matters in respect of which each decision was made.

44.8 Where an executive decision which was not classified as being a Key Decision has been made and the relevant Scrutiny Committee is of the opinion that the decision should have been so classified that Committee may require the Cabinet to submit a report to the Full Shadow Council within such reasonable period as the Committee may specify, containing the following details:-

- (i) the decision and the reasons for it;
- (ii) the decision maker; and
- (iii) if the Cabinet is of the opinion that the decision was not a Key Decision, the reasons for it.



## **PART D – PROCEDURE RULES: GENERAL PROVISIONS**

### **45 Records of Attendance**

- 45.1 Members of the Shadow Council attending a meeting of which they are a Member must sign their name on the attendance sheet provided.

### **46 Disclosure of Confidential/Exempt Matters**

#### **46.1 Matters not open to the Public or Press**

No Member shall disclose to any person the whole or any part of the contents of any agenda, report or other document which is marked “confidential” or “not for publication” unless and until the document has been made available to the public or the press by or on behalf of the Shadow Council, the Cabinet, a Committee or Sub-Committee.

#### **46.2 Matters which may prejudice the interest of the Shadow Council**

No Member shall disclose to any person other than a Member of the Shadow Council any matter arising during the proceedings of the Shadow Council, the Cabinet, any Committee, Sub-Committee, Panel or Board and which comes to his/her knowledge by virtue of his/her office as a Member where such disclosure would prejudice the interest of the Shadow Council or would be contrary to law.

#### **46.3 Decisions or Proceedings of the Shadow Council, the Cabinet, Committees, Sub-Committees, Panels and Boards**

No Member shall, without the consent of the Chairman of the appropriate body, disclose to any person any decision or proceedings of that body except:

- (a) when a report on the matter has been circulated to the Shadow Council by that body; or
- (b) when the decision has become public knowledge; or
- (c) when the matter comes within the powers of that body and a final decision has been made upon it;

provided that this paragraph shall not authorise any disclosure which would contravene paragraphs 46.1 or 46.2.

#### **46.4 Prohibited Disclosure**

The press and public shall be excluded during the consideration of any item of business which would be likely to disclose information which:-

- (a) has been furnished to the Shadow Council by a Government Department on terms which forbid disclosure; or

- (b) would be prohibited by law or by an order of the Court.

## **47 Disorderly Conduct**

### **47.1 Motion to end Disorderly Conduct**

If at a meeting any Member of the Shadow Council, in the opinion of the person presiding, misconducts themselves in any way, the person presiding or any other Member may move "That the Member be not further heard". The motion, if seconded, shall be put and determined without discussion.

### **47.2 Persistent Misconduct**

If the Member continues the misconduct after a motion under the foregoing paragraph has been carried, the person presiding may:  
either move "That the Member do leave the meeting" (in which case the motion shall be put and determined without seconding or discussion);

OR adjourn the meeting.

### **47.3 General Disturbance**

In the event of general disturbance at any meeting which, in the opinion of the person presiding, renders the due and orderly dispatch of business impossible, the person presiding, will have the power to adjourn the meeting.

## **48 Disturbance by Members of the Public**

- 48.1 If a member of the public interrupts the proceedings at any meeting the person presiding shall warn him/her. If he/she continues, the person presiding shall order his/her removal from the meeting. In cases of general disturbance in any part of the meeting room open to the public, the person presiding shall order that part to be cleared.

## **49 Inspection of Documents**

### **49.1 Supply of Agenda and Minutes to those Members who are not Members of that particular body**

To help a member perform his/her duties as a member, agenda and records of decisions, or minutes of decision making bodies will be made available to them electronically. Private, confidential and exempt reports will not be made available but may be requested from the Interim/Appointed Monitoring Officer who will have discretion to provide or withhold such reports.

**49.2 Minutes of the decision making bodies - Open for Inspection**

Subject to Procedure Rules 46 and 49.1 the Minutes of the Shadow Council, Committees or Sub-Committees, and Cabinet Decision Records shall be open for inspection by any Member of the Shadow Council.

**50 Provisions relating to Personnel Matters**

- 50.1 The recruitment and appointment of staff and the responsibilities for Personnel matters will be governed by the Staff Employment Procedure Rules.

**51 Sealing of Documents**

**51.1 Authority**

The Common Seal of the Shadow Council shall not be affixed to any document unless the sealing has been properly and lawfully authorised. A resolution of the Shadow Council (or of a Committee or Sub-Committee where such body has the power) or a decision of the Cabinet authorising the acceptance of any tender, the purchase, sale, letting, or taking of any property, the issue of any stock, the presentation of any petition, memorial or address, the making of any rate of contract, or any other matter or thing, shall be a sufficient authority for sealing any document necessary to give effect to the resolution.

**51.2 Attestation**

The seal shall be attested by the Interim/Appointed Monitoring Officer or his/her authorised deputy, designated for this purpose, as required by this Constitution and a record of the sealing of every document shall be kept.

**52 Signature of Documents**

- 52.1 Subject to special requirements relating to Contracts, where any document will be a necessary step in any legal process or proceedings on behalf of the Shadow Council it shall, unless any enactment otherwise requires or authorises, or the Shadow Council shall have given the necessary authority to some other person for the purpose of such process or proceedings, be signed by the Interim/Appointed Monitoring Officer or his/her authorised deputy (designated for this purpose).

**53 Variation and Revocation of Procedure Rules**

- 53.1 Any motion to vary or revoke these Rules shall, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Shadow Council.



## **54 Suspension of Procedure Rules**

### **54.1 Motion Required**

Subject to paragraph 54.2 of this Procedure Rule, any of the preceding Procedure Rules may be suspended in respect of any business at a meeting of the Shadow Council, a Committee or Sub-Committee where its suspension is moved.

### **54.2 Notice of Motion**

A motion to suspend Procedure Rules shall not be moved without notice (that is under Procedure Rule 10) unless there shall be present at least one-third of the Members of the Shadow Council or that Committee or Sub-Committee respectively.

## **55 Interpretation of Procedure Rules**

56.1 The ruling of the person presiding as to the construction or application of any of these Procedure Rules, or as to any proceedings of the Shadow Council, shall not be challenged at any meeting.

## **56 Submission of Notices by Members – Electronic Means**

56.1 A Member of the Shadow Council may communicate, by electronic means, any notice under any of the Constitution's Procedural Rules to initiate any process or procedure provided it is clear that the notice has been originated by that Member.



**APPENDIX 1**

**PROCEDURE RULES RELATING TO THE SHADOW COUNCIL:  
PROCEDURE RULES 10 AND 29 - MOTIONS WHICH MAY BE MOVED  
WITHOUT NOTICE**

1. Appointment of a Chairman of the meeting at which the motion is made.
2. Motions relating to the accuracy of the minutes of the Shadow Council, a Committee or Sub-Committee.
3. That an item of business specified in the summons should have precedence.
4. Reference to the Shadow Council, a Committee, Sub-Committee, or the Cabinet.
5. Appointment of or appointment to Committees, Sub-Committees, or the Cabinet occasioned by an item mentioned in the summons to the meeting.
6. Receipt of Records of Decisions and Minutes of Committees and Sub-Committees
7. Adoption of recommendations of the Cabinet, Committees and Sub-Committees and any consequent resolutions.
8. That leave is given to withdraw a motion.
9. Receipt of reports of officers and any consequent resolutions.
10. Extending the time limit for speeches.
11. Amendment to motions.
12. That the Shadow Council proceed to the next business.
13. That the question be now put.
14. That the debate be now adjourned.
15. That the Shadow Council do now adjourn.
16. Authorising the sealing of documents.
17. Suspending Procedure Rules, in accordance with Procedure Rule 57.
18. Motion under Section 100A(4) of the Local Government Act 1972 to exclude the press and public.

19. That a Member named under Procedure Rule 48 should not be heard further or should leave the meeting.
20. Giving consent of the Shadow Council where consent of the Shadow Council is required by these Procedure Rules.

**APPENDIX 2****PROCEDURE RULES RELATING TO THE SHADOW COUNCIL:  
PROCEDURE RULES 12 - NOTICES OF MOTION****1 Procedure**

Notice of every motion (other than a motion which under Procedure Rule 10 may be moved without notice) shall be given in writing, signed by the Member(s) of the Shadow Council giving the notice, and delivered, at least seven clear working days before the next meeting of the Shadow Council, to the office of the Interim/Appointed Monitoring Officer by whom it shall be dated, in the order in which it is received.

**2 Motions to be set out in Summons**

The summons for every ordinary meeting of the Shadow Council will set out all motions of which notice has been duly given, unless the Member giving the notice has intimated in writing, when giving it, that he/she proposed to move it at some later meeting, or has since withdrawn it. The motions will be listed in the summons according to whether they relate to executive or non-executive functions but otherwise in the order in which they have been received.

**3 Withdrawal of Motion which is before the Shadow Council**

Where a notice of motion is before the Shadow Council having been formally moved and seconded and the mover wishes subsequently to withdraw it, he/she with the consent of the seconder may do so in writing and with the consent of the Chairman of the Shadow Council again in writing.

**4 Motions Not Moved**

If a motion set out in the summons is not moved either by a Member who gave notice of it or by some other Member on his/her behalf it shall, unless postponed by consent of the Shadow Council, be treated as withdrawn and shall not be moved without fresh notice.

**5 Automatic reference to Cabinet, Committee/Sub-Committee – Non executive Function**

If the subject of any motion (which does not relate solely to any executive function or part of a function) comes within the powers, duties and responsibilities of any Committee or Sub-Committee or the Cabinet, it shall, when it has been moved and seconded, stand referred without discussion to such of those bodies as the Chairman may determine, for consideration and report. However, if the Chairman considers it conducive to the despatch of business, the motion may be dealt with at the meeting at which it is brought forward. Unless the Chairman has indicated that he/she proposes to deal with the motion at the meeting, the mover may formally move the motion and

reserve the right to speak until the report on the motion comes before the Shadow Council.

Advice to the Shadow Council on any referred Notice of Motion under this section will be formulated by the Cabinet and by such other bodies (Committees, Sub-Committees, or Panels) as are deemed appropriate. The report to Shadow Council will set out the views of all bodies consulted on the Notice of Motion. The Minutes of a Committee or Sub-Committee containing advice to the Shadow Council on any referred Notice of Motion shall be dealt with separately from the other Minutes of those bodies.

## **6 Automatic reference to the Cabinet – executive Function**

If the subject of any motion of which notice has been duly given comes solely within the powers, duties and responsibilities of the Cabinet, it shall, when it has been moved and seconded, stand referred to the Cabinet to determine subject to the advice from any other body whose views are sought as determined by Shadow Council. The mover on formally moving the motion has the right to speak to the Motion. The seconder may also speak to the Motion. The Chairman will allow a period of fifteen minutes for a debate on any such notices of motion. This period shall include any speeches made by the mover and seconder of the motion in question. At the end of the debate if sooner or upon the expiration of the fifteen minutes, the appropriate Cabinet Member shall have an opportunity to respond. No speeches including the response shall exceed five minutes. No amendments to the motion may be moved. The motion will then stand referred to the Cabinet.

There are no rights of “call in” or “reference to the Shadow Council” where the Cabinet has discharged a motion submitted under this Procedure Rule.

## **7 Deferment of a Notice of Motion**

Where a notice of motion has been moved and seconded, and referred for advice, the consideration of the motion may be deferred where the mover and seconder signify in writing his/her agreement to the deferral and the Chairman of the Shadow Council indicates, in writing, his/her agreement on behalf of the Shadow Council. The matter would then come to a subsequent meeting of the Shadow Council for report and decision.



**APPENDIX 3**

**PROCEDURE RULES RELATING TO THE SHADOW COUNCIL:  
COMMITTEES AND SUB-COMMITTEES PROCEDURE RULES 13 AND 30  
- RULES OF DEBATE**

**1 Motions and Amendments**

No motion or amendment shall be discussed unless it has been proposed and seconded. Where required by the Chairman, motions or amendments shall be put in writing and handed to the Chairman before they are further discussed or put to the meeting. At meetings other than those of the full Shadow Council, the Chairman of that meeting may, at his/her discretion, allow a motion or amendment to be put which is not in writing, provided that the Chairman has concluded that the wording of the motion or amendment is understood by all members of the body concerned. This requirement does not apply to motions submitted under Procedure Rule 12.

**2 Seconders' Speech**

When seconding a motion or amendment a Member may advise the Chairman that he/she will reserve his/her right to speak until a later period in the debate.

**3 Only One Member to Stand at a Time**

When speaking at a Shadow Council meeting a Member shall stand and address the Chairman. While a Member is speaking the other Members will remain seated, unless rising on a point of order or in personal explanation.

**4 Content and Length of Speeches**

A Member will confine his/her speech to the question under discussion, a personal explanation or a point of order. Except as indicated below, in the case of speeches made by Members when the Shadow Council is agreeing a budget, or where the Shadow Council, Committee or Sub-Committee otherwise agrees, no speech will exceed five minutes.

In advance of the meeting at which the Shadow Council is due to agree a budget, the Shadow Council's Political Groups may agree a protocol which makes provision for a limited number of speeches to be made on behalf of each Political Group, and which exceed the five minute limitation contained in these Rules. The Chairman will have discretion as to how such a protocol will be implemented at the meeting and, where no agreement can be reached between the Political Groups, whether and (if so) how any extension of the five minute limitation might be permitted to operate.

**5 When a Member may speak again**

At a Shadow Council meeting a Member who has spoken on any motion shall not speak again whilst it is the subject of debate, except:



- (a) to speak once on an amendment moved by another Member;
- (b) if the motion has been amended since he/she last spoke, to move a further amendment;
- (c) if his/her first speech was on an amendment moved by another Member, to speak on the main issue, whether or not the amendment on which he/she spoke was carried;
- (d) in exercise of a right of reply given by paragraph 11 or 13 of this Appendix;
- (e) on a point of order referring to the specific Procedure Rule;
- (f) by way of personal explanation;
- (g) to move one of the motions specified in 12(b) to (j), below when the procedure in those paragraphs shall be followed.

At Committees or Sub-Committees Members may, at the discretion of the Chairman, speak more than once.

## **6 Amendments to Motions**

An amendment must be relevant to the motion and shall be either:

- (a) to leave out words;
- (b) to leave out words and add others;
- (c) to insert or add words;

but such amendment shall not have the effect of negating the motion before the Shadow Council.

## **7 Number of Amendments**

Only one amendment may be moved and discussed at a time. No further amendment shall be moved until the amendment under discussion has been disposed of, although the Chairman may allow two or more amendments to be discussed (but not voted on) together if this would facilitate the proper conduct of the business before the meeting.

## **8 Status of Amendments**

If an amendment is lost, another amendment may be moved on the original motion. If an amendment is carried, the motion as amended shall take the place of the original motion and shall become the motion upon which any further amendment may be moved.

## **9 Alterations to Motions or Amendments**

A Member may alter a motion or amendment of which he/she has given notice and may also, with the consent of the seconder, alter a motion or amendment which he/she has moved. In both cases, the consent of the Shadow Council (the Committee or Sub-Committee) is required. There should be no discussion on whether consent should or should not be given.

## **10 Withdrawal of Motion**

A motion or amendment may be withdrawn by the mover provided the seconder and the meeting, without discussion, agree. Once the mover has asked for permission to withdraw, there should be no further discussion, unless the meeting refuses to agree to the request.

## **11 Right of Reply**

The mover of the motion shall have a right to reply at the close of the debate on the motion, immediately before it is put to the vote. If an amendment is moved, the mover of the original motion shall have a right of reply at the close of the debate on the amendment but shall not otherwise speak on it. The mover of the amendment shall have no right of reply to the debate on his/her amendment.

## **12 Motions which may be moved during debate**

When a motion is under debate no other motion shall be moved except the following:

- (a) to amend the motion;
- (b) to adjourn the meeting;
- (c) to adjourn the debate;
- (d) to proceed to the next business;
- (e) to suspend Procedure Rules;
- (f) to refer a matter to the Shadow Council, Cabinet, a Committee or Sub-Committee for consideration or reconsideration;
- (g) that the question be now put;
- (h) that a Member be not further heard;
- (i) by the Chairman under Procedure Rule 48, that a Member do leave the meeting;

- (j) a motion under Section 100A(4) of the Local Government Act 1972 to exclude the public.

### **13 Closure Motions**

A Member may move, without comment, at the conclusion of a speech of another Member, "That the Shadow Council proceed to the next business", "That the question be now put", "That the debate be now adjourned", or "That the Shadow Council do now adjourn". When one of these Motions has been seconded the Chairman shall proceed as follows:

- (a) on a motion to proceed to next business - unless in his/her opinion the matter before the meeting has been insufficiently discussed, he/she shall first give the mover of the original motion the right of reply, and then put to the vote the motion to proceed to next business;
- (b) on a motion that the question be now put - unless in his/her opinion the matter before the meeting has been insufficiently discussed, he/she shall put to the vote the motion that the question be now put and, if it is passed, give the mover of the original motion the right of reply before putting the motion to the vote;
- (c) on a motion to adjourn the debate or the meeting - if in his/her opinion the matter before the meeting has been insufficiently discussed on that occasion he/she shall put the adjournment motion to the vote without giving the mover of the original motion the right of reply on that occasion.

### **14 Points of Order**

A Member may rise on a point of order or in personal explanation and shall be entitled to be heard immediately. A point of order shall relate only to an alleged breach of a Procedure Rule or statutory provision and the Member shall specify the Procedure Rule or statutory provision and the way in which he/she considers it has been breached. A personal explanation shall be confined to some material part of a former speech by him/her which may appear to have been misunderstood in the current debate.

### **15 Ruling of Chairman on a Point of Order/Personal Explanation**

The ruling of the Chairman of the meeting on a point of order or on the admissibility of a personal explanation shall not be open to discussion and shall be final.

### **16 Respect for the Chair**

At the Shadow Council meeting whenever the Chairman rises during a debate a Member then standing shall sit down and the Shadow Council shall be silent. In Committee or Sub-Committee meetings, whenever the Chairman rises from his/her seat, the Members should remain in their seats and the Committee or Sub-Committee shall be silent.

## APPENDIX 4

**PROCEDURE RULES RELATING TO THE SHADOW COUNCIL,  
COMMITTEES AND SUB-COMMITTEES: PROCEDURE RULES 18 AND 25  
- URGENT BUSINESS**

**Non-executive Functions****1 Approval of Urgent Business**

Where any matter is urgent and cannot await the next meeting, the lead officer of the Joint Implementation Team may take the necessary action, provided that he/she has first consulted the relevant Chairman (or Vice-Chairman if he/she is not available).

**2 Consultation**

A copy of the consultation document shall be sent to the appropriate Cabinet Member, the Chairman and Spokespersons of the appropriate Scrutiny Committee, the party group leaders and the local Member.

**3 Written Approval**

Any such approval shall be in writing, consideration being given after consultation with the Interim/Appointed Chief Finance Officer and the Interim/Appointed Monitoring Officer.

**4 Obligations of the Interim/Appointed/Appointed Monitoring Officer**

The Interim/Appointed Monitoring Officer shall forthwith supply a copy of any approval requiring a report to a Committee or Sub-Committee which has been given by him/her to the lead officer of the Joint Implementation Team and the Interim/Appointed Chief Finance Officer.

**5 Report to Committee**

A report of any action under paragraphs 1 to 4 above of this Procedure Rule shall be made available by electronic means to all Members of the Shadow Council.

**6 Consultation**

The lead officer of the Joint Implementation Team shall have sole discretion to decide the matter, having first taken into account any views of Members consulted under this procedure. A copy of the consultation document under this Procedure Rule shall also be sent to the Chairman and Spokespersons of the appropriate Scrutiny Committee, the appropriate Cabinet Member and the local Member.

**7 Written Approval**

Any such approval shall be in writing, and shall only be given after consultation with the Interim/Appointed Chief Finance Officer and the Interim/Appointed Monitoring Officer.

**8 Obligations of the Interim/Appointed Monitoring Officer**

A copy of any approval which has been obtained under paragraphs 6 to 8 above shall be supplied forthwith to the Interim/Appointed Monitoring Officer and Interim/Appointed Chief Finance Officer.

**9 Report to Cabinet**

A report of any decision under paragraphs 6 to 8 above shall be made available by electronic means to all Shadow Council Members.

**10 Access to Information**

In processing and deciding any matter under paragraphs 6 to 10 above, the relevant requirements of the Access to Information Procedure Rules will apply, as set out in this Constitution.



**APPENDIX 5**

**PROCEDURE RULES RELATING TO COMMITTEES AND SUB-COMMITTEES: PROCEDURE RULE NO 23**

**Procedure Rule 23 - Change of Committee/Sub-Committee Places**

- 1 A Political Group may, by notice to the Interim/Appointed Monitoring Officer, vary its representation on a Committee or Sub-Committee.
- 2 The Shadow Council may, from time to time, approve lists of reserve Members for each political group who may act as reserve members for each Committee and Sub-Committee. The following arrangements shall apply.
- 3 Members of the Cabinet shall not be nominated substitutes/reserve members for any Scrutiny bodies.
- 4 Where a political group intends to vary its representation on a committee or sub committee, the reserve member shall inform the chairman at the beginning of the meeting. The outgoing member shall cease to be the Political Group's representative on that Committee or Sub-Committee for the duration of that meeting or any adjournment of it, and that reserve Member shall become the representative on the Committee or Sub-Committee for the same period. At the end of the meeting, the outgoing Member shall resume his/her representation on the Committee or Sub-Committee in question and the reserve Member who had been appointed in his/her place shall revert to being a reserve Member.
- 5 The Interim/Appointed Monitoring Officer shall give notice and distribute agendas to all members of the Committee or Sub-Committee. Agendas will be made available to all other members by electronic means. Agendas will also be made available at the meetings in question.
- 6 On receipt of a Notice under this Procedure Rule the Interim/Appointed Monitoring Officer shall, at the meeting (prior to the commencement of the main business) inform the Committee or Sub-Committee.
- 7 Members of the Cabinet are not permitted to sit on any Scrutiny Committee or to be appointed as reserve Members.
- 8 For the avoidance of doubt, there are no change of places arrangements in respect of the Cabinet.



**APPENDIX 6**

**PROCEDURE RULES RELATING TO COMMITTEES AND SUB  
COMMITTEES: PROCEDURE RULE NO 34 - AGENDA ITEMS  
SUBMITTED BY MEMBERS**

- 1 This facility does not apply to special meetings of Committees and Sub-Committees or to the Cabinet.
- 2 A Member of the Shadow Council may, by notice given to the Interim/Appointed Monitoring Officer no later than ten clear working days before the appropriate meeting, request that an item of business be included on the agenda of a Committee or Sub-Committee.
- 3 A Member may not give notice of more than one item of business for any one meeting. The notice shall state the nature of the business and shall include the signature of that Member.
- 4 This procedure shall not apply where the item of business, if agreed, would have the effect of rescinding or amending any resolution passed by a Committee or Sub-Committee of the Shadow Council within the preceding 12 months.
- 5 Items arising from such notices shall appear on the agenda at the end of the Part 1 or 2 business.
- 6 This procedure will apply to Members of Scrutiny Committees or Sub-Committees exercising their rights under Section 21(8) of the Local Government Act 2000 to have an item, within the remit of that particular body, included on the Agenda and discussed at the next meeting of that body. Where a Member is exercising their rights under Section 21(8), the restrictions in paragraph 3 on the number of items shall not apply.



**APPENDIX 7**

**PROCEDURE RULES RELATING TO SHADOW COUNCIL MEETINGS,  
COMMITTEES AND SUB-COMMITTEES: PROCEDURE RULES NO 11  
AND 35**

1. A total period of 15 minutes will be allocated for members of the public to speak at Shadow Council meetings.
2. A total period of 10 minutes will be allocated for members of the public to speak at meetings of the Cabinet, committees and sub committees.
3. Members of the public may speak on any matter relating to the work of the Shadow Council.
4. Members of the public will normally be allowed up to 5 minutes each to speak, but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers.
5. During public speaking time, members of the public may ask questions of the appropriate Cabinet member or Chairman of the committee or sub committee which has responsibility for the matter in question.
6. The Member responding to the question may answer the question, may decline to do so, may agree to reply at a later date or may refer the question to an appropriate committee, or to the Cabinet. Questions will be asked and answered without discussion.

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## **STAFF EMPLOYMENT PROCEDURES**

### **1 General**

- 1.1 The Shadow Council has limited powers in connection with the employment and designation of staff. It relies upon staff resources provided by all of the Cheshire local authorities to carry out its work. These Rules must therefore be read in that context.
- 1.2 Staff within the organisation are employed, appointed, designated or engaged on behalf of the whole Shadow Council and not by parts of the organisation or individuals.
- 1.3 The employment, appointment, designation or engagement of all staff will be in compliance with the law and any policies and practices of the Shadow Council.
- 1.4 Persons employed, appointed, designated or engaged by contractors under specific agreements or contracts are not staff of the Shadow Council, but are employees engaged by the contractor.
- 1.5 The Shadow Council will provide the necessary resources to support the appointed officer structure.
- 1.6 Generally (except for certain senior staff appointments) the function of appointment and dismissal of, and taking disciplinary action against a member of staff of the Shadow Council must be discharged on behalf of the authority by the Head of the Paid Service or by an officer nominated by him.

### **2 Recruitment and Appointment of Staff**

- 2.1 Subject to the provisions of these Procedures, the recruitment, designation and appointment of staff will be conducted in accordance with the law and the Shadow Council's policies and procedures.
- 2.2 Any candidate for any designation or appointment with the Shadow Council who knows that he/she is related to a Member or employee of the Shadow Council shall, when making application, disclose, in writing, that relationship to the Joint Implementation Team Lead Officer for HR. A person who deliberately fails to disclose such a relationship shall be disqualified from designation or appointment and, if designated or appointed, shall be liable to dismissal.
- 2.3 Every Member and employee of the Shadow Council shall disclose to the Joint Implementation Team Lead Officer for HR any relationship known to him/her to exist between him/herself and any person he/she knows is a candidate for a designation or appointment by the Shadow Council.

- 2.4 Any candidate for designation or appointment who directly or indirectly seeks the support of a Shadow Councillor or officer of the Shadow Council in any designation or appointment shall be disqualified and, if designated or appointed, shall be liable to dismissal. A Shadow Councillor shall not solicit for any person in respect of any designation or appointment with the Shadow Council, but may give a written testimonial of a candidate's ability, experience or character.
- 2.5 Persons shall be deemed to be related to a candidate or officer if they are a spouse, partner (i.e. member of a couple living together) parent, parent-in-law, grandparent, child, stepchild, adopted child, grandchild, child of partner, brother, sister, uncle, aunt, nephew or niece or the spouse or partner of any of the preceding persons.
- 2.6 In the case of a dispute under paragraph 2.5 above about the status of a relationship in relation to an appointment, the Joint Implementation Team Lead Officer for HR will rule and such ruling will be applied.
- 2.7 The Joint Implementation Team Lead Officer for HR will ensure that the provisions of these Rules are reflected, as appropriate, in application forms or in any accompanying detailed procedures for each post, following advertisement.

### **3 Responsibilities for Human Resources Matters**

- 3.1 Subject to any matters reserved to the Shadow Council, the Cabinet is responsible for the development of corporate personnel policies and for determining and monitoring such policies and for the operational implementation of those policies, including the development of practices and procedures to support those policies.

### **4 Responsibility of the Staffing Committee**

- 4.1 The responsibilities of the Staffing Committee are set out in this Constitution within "Responsibility for Functions" and these Rules.
- 4.2 Subject to the provisions of these Rules, the Committee is also responsible for hearing and determining appeals under the Shadow Council's employment-related policies, the suspension of sick pay and the review and determination of matters relating to any fixed term contracts. In determining these matters the Committee will have regard to the appropriate provisions of this procedure. The Committee may agree to discharge some of these functions through a Sub-Committee.
- 4.3 The Cabinet Member with responsibilities for individual Departments or Services and the associated resources is required to ensure that corporate personnel policies and procedures are applied by the Shadow Council, including training, matters relating to discipline, workforce performance management, and grievance (other than determining appeals).

## **5 Appointment of Head of the Paid Service**

- 5.1 The appointment of head of the paid service is subject to specific requirements as set out below.
- 5.2 Where the Shadow Council proposes to appoint to the Head of the Paid Service, the Staffing Committee will oversee the arrangements for filling the vacancy. For this purpose the Committee shall include at least one Member of the Cabinet in its membership.
- 5.3 The Staffing Committee shall:
- draw up a statement specifying the duties of the officer concerned and any qualifications or guidelines to be sought in the person to be appointed;
  - make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it;
  - make arrangements for a copy of the statement mentioned above to be sent to any person on request;
  - where a post has been advertised as required above, the Committee will select from the applications a short list of qualified candidates and will then interview those included in the short list.
- 5.4 Following the interview of candidates, the Committee will come to a view as to the most suitable person for the position.
- 5.5 The Committee must advise the Joint Implementation Team Lead Officer for HR of:
- the name of the person in question;
  - any other particulars which the Committee consider are relevant to the appointment.
- 5.6 Within two clear working days of receiving the notification in 5.5 above, the Joint Implementation Team Lead Officer for HR will notify each Member of the Cabinet of:
- the information notified under paragraph 5.5 above;
  - the period within which any objection to the making of the offer is to be made by the Leader on behalf of the Cabinet to the Joint Implementation Team Lead Officer for HR; such period shall not exceed five clear working days.

5.7 An offer of appointment must wait until:

- the Leader has, within the period of the notice under paragraph 5.6 above, notified the Committee through the Joint Implementation Team Lead Officer for HR that neither he/she nor any Member of the Cabinet has any objection to the making of the offer; or
- the Joint Implementation Team Lead Officer for HR has notified the Committee that no objections have been received by her within the period of the notice under 5.6 above; or
- the Committee is satisfied that any objection received from the Leader within the notice period is not material or is not well founded. In this regard, where necessary, the advice of the County Solicitor and Monitoring Officer should be sought.

5.8 Where following the above procedure there are no objections to the proposed appointment or any objections are not up-held, the Committee will recommend that person for appointment at the next meeting of the full Shadow Council or at a specially convened meeting of the Shadow Council. If the Shadow Council approve the recommendation, then a formal offer of appointment can be made.

5.9 Where following the interviews the Committee are of the view that there is no suitable candidate, it will re-advertise the post.

5.10 Where the Shadow Council do not approve the recommendation of the Committee, it shall indicate how it wishes to proceed.

## **6 Appointment/dismissal of Head of Paid Service, Statutory Chief Officers, Non-Statutory Chief Officers and Deputy Chief Officers**

The requirements of the Local Authorities (Standing Orders)(England) Regulations 2001 ("the Regulations") will be adhered to in respect of those posts which fall within the definitions of Head of paid Service, Statutory Chief Officer, Non-Statutory Chief Officer and Deputy Chief Officer. The requirements of the Regulations include the following, which is an extract from those Regulations:

### ***Part II***

#### ***Authority with Leader and Cabinet Executive***

##### ***1***

*In this Part--*

*"the 1989 Act" means the Local Government and Housing Act 1989;*



*"the 2000 Act" means the Local Government Act 2000;*

*"disciplinary action" has the same meaning as in the Local Authorities (Standing Orders) (England) Regulations 2001;*

*"executive" and "executive leader" have the same meaning as in Part II of the 2000 Act;*

*"member of staff" means a person appointed to or holding a paid office or employment under the authority; and*

*"proper officer" means an officer appointed by the authority for the purposes of the provisions in this Part.*

## 2

*Subject to paragraphs 3 and 7, the function of appointment and dismissal of, and taking disciplinary action against, a member of staff of the authority must be discharged, on behalf of the authority, by the officer designated under section 4(1) of the 1989 Act (designation and reports of head of paid service) as the head of the authority's paid service or by an officer nominated by him.*

## 3

*Paragraph 2 shall not apply to the appointment or dismissal of, or disciplinary action against--*

- (a) the officer designated as the head of the authority's paid service;*
- (b) a statutory chief officer within the meaning of section 2(6) of the 1989 Act (politically restricted posts);*
- (c) a non-statutory chief officer within the meaning of section 2(7) of the 1989 Act;*
- (d) a deputy chief officer within the meaning of section 2(8) of the 1989 Act; or*
- (e) a person appointed in pursuance of section 9 of the 1989 Act (assistants for political groups).*

## 4

*(1) Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the appointment or dismissal of an officer designated as the head of the authority's paid service, the authority must approve that appointment before an offer of appointment is made to him or, as the case may be, must approve that dismissal before notice of dismissal is given to him.*

*(2) Where a committee or a sub-committee of the authority is discharging, on behalf of the authority, the function of the appointment or dismissal of any officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3, at least one member of the executive must be a member of that committee or sub-committee.*

5

(1) *In this paragraph, "appointor" means, in relation to the appointment of a person as an officer of the authority, the authority or, where a committee, sub-committee or officer is discharging the function of appointment on behalf of the authority, that committee, sub-committee or officer, as the case may be.*

(2) *An offer of an appointment as an officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3 must not be made by the appointor until--*

(a) *the appointor has notified the proper officer of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment;*

(b) *the proper officer has notified every member of the executive of the authority of--*

(i) *the name of the person to whom the appointor wishes to make the offer;*

(ii) *any other particulars relevant to the appointment which the appointor has notified to the proper officer; and*

(iii) *the period within which any objection to the making of the offer is to be made by the executive leader on behalf of the executive to the proper officer; and*

(c) *either--*

(i) *the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the appointor that neither he nor any other member of the executive has any objection to the making of the offer;*

(ii) *the proper officer has notified the appointor that no objection was received by him within that period from the executive leader; or*

(iii) *the appointor is satisfied that any objection received from the executive leader within that period is not material or is not well-founded.*

6

(1) *In this paragraph, "dismissor" means, in relation to the dismissal of an officer of the authority, the authority or, where a committee, sub-committee or another officer is discharging the function of dismissal on behalf of the authority, that committee, sub-committee or other officer, as the case may be.*

(2) *Notice of the dismissal of an officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3 must not be given by the dismissor until--*

- (a) *the dismissor has notified the proper officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;*
- (b) *the proper officer has notified every member of the executive of the authority of--*
  - (i) *the name of the person who the dismissor wishes to dismiss;*
  - (ii) *any other particulars relevant to the dismissal which the dismissor has notified to the proper officer; and*
  - (iii) *the period within which any objection to the dismissal is to be made by the executive leader on behalf of the executive to the proper officer; and*
- (c) *either--*
  - (i) *the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the dismissor that neither he nor any other member of the executive has any objection to the dismissal;*
  - (ii) *the proper officer has notified the dismissor that no objection was received by him within that period from the executive leader; or*
  - (iii) *the dismissor is satisfied that any objection received from the executive leader within that period is not material or is not well-founded.*

**7**

*Nothing in paragraph 2 shall prevent a person from serving as a member of any committee or sub-committee established by the authority to consider an appeal by--*

- (a) *another person against any decision relating to the appointment of that other person as a member of staff of the authority; or*
- (b) *a member of staff of the authority against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.*

**7 Less senior appointments/dismissals**

Where any appointments are made to less senior positions than those referred to in paragraph 6 above, or where such persons are dismissed, these shall be the responsibility of the head of the paid service, or another officer to whom he/she has delegated that responsibility.

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## CHESHIRE EAST

### Cheshire East Shadow Council

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**Date:** 13<sup>th</sup> May 2008  
**Report of:** Cheshire East Joint Committee  
**Title** Committee and Other Structures

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#### **1.0 Purpose of Report**

- 1.1 To seek agreement of the Shadow Council upon its proposed Committee and other structures.

#### **2.0 Decision required in respect of the Shadow Council's committee and other structures**

- 2.1 That the following bodies be appointed with the terms of reference and powers set out in Appendix B to this report, subject to any amendments which the Shadow Council may have agreed as part of the earlier report on Adoption of the Constitution:

- 2.1.1 Cabinet
- 2.1.2 Staffing Committee
- 2.1.3 Scrutiny Committee
- 2.1.4 Standards Committee
- 2.1.5 Governance and Constitution Committee
- 2.1.6 Joint Liaison Committee

- 2.2 That a Member Learning and Development Panel be appointed to oversee and agree the Shadow Council's Member learning and development programme, and to develop the approach towards Member learning and development which may be adopted by the Cheshire East unitary authority.

- 2.3 That three Cabinet advisory panels be appointed, chaired by a portfolio holder, with a cross-party politically-proportional membership, having responsibility to provide advice to the Cabinet in the following areas of the implementation project:

- People
- Places
- Performance and Capacity.

- 2.4 That the size and composition of the committees and bodies referred to above be agreed as a separate item of agenda business.

**3.0 Decision required in respect of the Standards Committee**

- 3.1 That, in respect of the Shadow Council's Standards Committee, and following on from the recommendations contained in paragraphs 6.1 and 6.2 of the report to the Political Structures Sub-Group, the Standards Committee shall comprise:

5 Statutory Independent Members (including Chairman);  
3 parish/town Council representatives; and  
8 Elected Members;

- 3.2 That two Sub-Committees of the Standards Committee be established to deal with the various roles, both chaired by Independent Members and drawn, from time to time, from the pool of 16 Members, and constituted in accordance with relevant legal requirements (eg with a Parish/town Council Representative as necessary).
- 3.3 That the recruitment process for Parish/Town Council representatives and Independent Members be taken forward by the Interim Monitoring Officers as soon as possible.

**4.0 Decision required in respect of the Cabinet**

- 4.1 That the Shadow Council be recommended to appoint a Leader, a Deputy and 8 other Cabinet Members, and that portfolios be allocated to them in due course by the Shadow Council.

**5.0 Background and Information**

- 5.1 Following work by the Governance Group of officers, the Political Structures Sub-Group, and the Cheshire East Joint Committee, recommendations are now made upon the Shadow Council's Committee and other structures, Standards Committee and the Cabinet.

Shadow Council's committee structure

- 5.2 As a separate item of business, the Shadow Council will be asked to adopt its Constitution.
- 5.3 However, this report sets out the proposed structure of the Shadow Council's Cabinet, committees and other bodies, and seeks a resolution that this structure be adopted.

- 5.4 The recommendations contained in paragraph 2 of this report list the various bodies which have been considered by the Joint Committee. Appendix B contains the proposed terms of reference of the majority of the listed bodies. This also appears as an appendix to the report on Adoption of Constitution, which is dealt with as a separate item of business elsewhere on the agenda. Comments are not sought on the terms of reference as part of this report, but they are reproduced as part of this paper for ease of reference.
- 5.5 This report asks the Shadow Council to agree that the listed decision making bodies be appointed with the terms of reference and powers to be agreed.
- 5.6 The Shadow Council is also asked to agree that a Member Learning and Development Panel be appointed to oversee and agree the Shadow Council's Member learning and development programme, and to develop the approach towards Member learning and development which may be adopted by the Cheshire East unitary authority.
- 5.7 The Joint Committee has also given consideration to the appointment of Cabinet advisory panels. Whilst no firm view was expressed upon the number of such panels, the Joint Committee recommends to the Shadow Council that initially three Cabinet advisory panels be appointed, and chaired by a portfolio holder, with a cross-party politically proportional membership. The panels would have responsibility to provide advice to the Cabinet in the following areas of the governance structure of the implementation project:
- People
  - Places
  - Performance and Capacity.
- 5.8 If the need arose in the future to establish more advisory panels, this could be done.
- 5.9 The composition of these bodies will be subject to a separate item on the agenda of the first Shadow Council meeting.

#### Standards Committee

- 5.10 The Shadow Council is referred to a report which was presented to the Political Structures Sub-Group on 15<sup>th</sup> April 2008. This resulted in the recommendations contained in paragraph 3 of this report in respect of the composition of the Standards Committee. The report to the Political Structures Sub-Group is appended for information as Appendix A.

- 5.11 However, it should be noted from the recommendation at paragraph 3.1, that the Joint Committee recommends that an additional Statutory Independent Member be appointed to the Standards Committee, to the effect that there will be 5 Statutory Independent Members of the Committee, and that it will therefore comprise a total of 16 Members.

#### Cabinet portfolios

- 5.12 At its meeting on 6<sup>th</sup> May, the Joint Committee recommended to the Shadow Council that there should be 10 Cabinet Members, including a Leader and Deputy. The Joint Committee recommended that Cabinet Members should not, initially, be allocated a portfolio but that the Shadow Council should do so in due course.

5.12 Members will see that the recommendations, contained in the report on the Shadow Council Constitution, propose that there should (at least initially) be no individual Cabinet Member decision making powers, and that Cabinet decisions will therefore be made collectively.

5.13 It is anticipated that, during the shadow period, the Governance and Constitution Committee will wish to review and develop the Shadow Council's decision-making arrangements and other political structures. In particular, proposals will be brought to the Shadow Council in respect of individual Cabinet Member decision-making and schemes of delegation. This will include the remit of each portfolio area of responsibility.

5.15 Members will also note, from the report on the Shadow Council's Constitution, that the Shadow Council is recommended to adopt executive arrangements, whereby the Shadow Council sets the portfolios, and appoints the Leader, Deputy Leader and Members to the executive portfolios.

## **6. Conclusion**

6.1 Agreement is sought from the Shadow Council upon its committee and other structures. Once adopted, they will be embodied in the Shadow Council's Constitution.

#### ***For further information:-***

Officer: *Brian Reed*  
Tel No: *01244 972205*  
Email: [brian.reed@cheshire.gov.uk](mailto:brian.reed@cheshire.gov.uk)

#### ***Background Documents:-***

- *Draft Cheshire East Shadow Council Constitution*
- *Notes of the meeting of the Political Structures Sub Group*

*Documents are available for inspection at Joint Committee Support Office:  
Town Hall  
Macclesfield, SK10 1DX*



## Appendix A

## CHESHIRE EAST

**Political Structures Sub Group**

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**Date:** 15<sup>th</sup> April 2008  
**Report of:** Governance Group  
**Title** Establishment of Standards Committee etc for Shadow and New Council

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**1.0 Purpose of Report**

- 1.1 To secure approval for the composition of the Standards Committee and the ancillary issues arising, as required, by the Cheshire (Structural Changes) Order 2008.

**2.0 Decision Required**

- 2.1 To agree the options for the constitution of the Standards Committee and its Sub-Committees for adoption by the Shadow Council at its first meeting.

**3.0 Implications for Transitional Costs**

- 3.1 The costs associated with the establishment of the Standards Committee arrangements will fall within the general costs of Member Support/Allowances Scheme.

**4.0 Introduction and Background**

- 4.1 The Cheshire (Structural Changes) Order applied the requirements of the Local Government Act 2000 to Shadow Councils, but in a modified form. Since the Shadow Councils are not “principal authorities” for all purposes there has only been a partial introduction of the requirement to constitute a Standards Committee. For example, there is no requirement during the Shadow Council period for the Standards Committee to deal with issues relating to Parish matters since these will continue to be within the province of every Standards Committee for the existing District Councils but the Standards Committee of the Shadow Council will need to appoint Statutory Independent Members.
- 4.2 However, this requirement will be introduced from 1 April 2009 when the Standards Committees for the New Council will have responsibilities for dealing with complaints relating to Members of the new Councils and for Parish matters. They will also have the

responsibility, as trailed in the forthcoming Draft Regulations, for operating the “local filter” arrangements where complaints are received and decisions are taken as to whether they should be investigated. This is currently a responsibility of the Standards Board for England. In Regulations which are promised this summer, it is currently understood that this responsibility is to be given to all existing principal Councils in Cheshire (until their abolition) and also the new Councils.

- 4.3 Therefore, although the Committee need not be fully constituted to deal with all of the forthcoming functions, it is considered appropriate to seek to identify the Parish/Town Council nominees which might sit on the Committee, plus any Independent Members required, and to carry out the selection processes for these office holders following the Shadow Elections on 1 May 2008. Having identified these as soon as possible, it would also afford these office holders the ability to join in with the Member induction/training programme which is currently in the process of being finalised and which will run from May 2008 onwards. It would be particularly helpful for these individuals to have been identified to attend specific training events on Local Determinations and operation of the local filter which are due to be held in June and where an external facilitator has already been identified.

## **5.0 Composition**

- 5.1 The following proposals provide the options for the composition of the Standards Committee. A balance needs to be struck between having a Standards Committee small enough to be able to acquire the necessary knowledge and expertise to deal with a range of standards matters (and potentially expand its remit into other areas dealing with corporate governance generally) but also being large enough to address the requirements to carry out local hearings/determinations and also to act as the local filter. In relation to the local filter, Standards Board guidance makes it clear that authorities should establish at least two Sub-Committees. One Sub-Committee to deal with the receipt of initial allegations and to determine whether they merit investigation or other action; and another Sub-Committee to deal with the results of any investigation and to carry out local hearings and determinations. An aggrieved complainant also has the right to seek a review of the preliminary decisions referred to in the first instance and that needs to be conducted by a Sub-Committee which had not been involved in the “filter” decision in any form. Standards Board guidance indicates that this may be able to be done by the Sub-Committee responsible for Local Determinations.
- 5.2 In addition, whenever matters touching upon Parish/Town Council issues are being discussed, then at least one Parish/Town Council representative needs to be sitting on the Committee/Sub-Committee. Section 55 of the Local Government Act 2000 requires Councils to consult the Parish/Town Councils in its area before deciding upon the details of Parish/Town Council representation on its Standards Committee/Sub-Committee. In addition, the Committee and any Sub-

Committees will need to be chaired by Independent Members. Independent Members who are to serve on new Authorities in that role are required to be recruited in accordance with the relevant Regulations, and this includes advertising for applications and a selection process. The Standards Board for England and the DCLG are currently being requested to allow Independent Members who have already gone through this process as members of the existing District or County Councils to be available for selection as the Independent Members on the new Standards Committees for the Shadow/New Council. A response is awaited as to whether this will be permitted. If it will, this will considerably speed up the process for the selection of Independent Members.

- 5.3 It is clear that in order to accommodate sickness absences, conflicts of interest and to deal with the required number of Independent Members and Parish/Town Council representatives, the minimum size of the Standards Committees needs careful consideration. At least 25% of the total places on the Committee need to be filled by statutory Independent Members. There is also the issue as to whether there should be a majority of elected Members on the Committee (the political proportionality requirements do not apply but in order to secure all Party support and ownership of standards issues, many authorities have applied these principles and also appointed one Executive/Cabinet Member as is permitted by law).

### **Options**

- 5.4 Bearing in mind the constraints therefore a number of options emerge:

Option A1 – Establish a Standards Committee with composition which ensures a majority of elected Members.

Option A2 – Establish the Committee with elected Members in the minority.

Option B1 – Having chosen A1 or A2, establish the Committee on the basis that no Parish/Town Council representatives sit upon it, but sit on a Sub-Committee which specifically deals with Parish/Town Council matters either generally or in relation to Parish/Town Council complaint cases.

Option B2 – Have Parish/Town Council representatives on the full Committee.

Option C1 – To deal with (a) Local Filtering Decisions (b) Reviews of such decisions and (c) Hearing of Complaints/Determinations establish three separate Sub-Committees of three Members (each must have an Independent Chairman); or

Option C2 – As in Option C1 but only establish two Sub-Committees drawn from the pool of the full Standards Committee, in line with Standards Board Guidance (see para 5.1 above).

## **6.0 Possible Way Forward**

- 6.1 Bearing in mind the potential volume of complaints business the Standards Committee for an authority of the size of the New Council one solution may be to constitute the Committee on the following basis:

4 Statutory Independent Members (including Chairman);  
3 parish/town Council representatives;  
8 Elected Members;

giving a total Committee of 15, with two Sub-Committees being established to deal with the various roles, both chaired by Independent Members and drawn, from time to time, from the pool of 15 Members, and constituted in accordance with relevant legal requirements (eg with a Parish/town Council Representative as necessary). This would represent a combination of Options A1, B2, and C2.

- 6.2 It is therefore proposed that the Shadow Authorities consider the Options and agree the composition and also agree that the recruitment process for Parish/Town Council representatives and Independent Members be taken forward by the Interim Monitoring Officers of both Authorities as soon as possible. Views on the extent of Member involvement in the selection process for these office holders would be welcomed.

### ***For further information:-***

Officer:       Gerry Budd, County Solicitor & Monitoring Officer  
Tel No:       01244 972239  
Email:       gerry.budd@cheshire.gov.uk

### ***Background Documents:-***

## **PART 3**

# **RESPONSIBILITY FOR FUNCTIONS**

## RESPONSIBILITY FOR FUNCTIONS

### 1 General

- 1.1 The Cheshire (Structural Changes) Order 2008 (“the Order”) provides for the establishment, on 1<sup>st</sup> April 2009, of a single tier of local government within the Shadow Council’s area.  
With effect from 1<sup>st</sup> April 2009, the County of Cheshire and all of its districts will be abolished.  
With effect from the date of the Shadow Council elections on 1<sup>st</sup> May 2008, and until 1<sup>st</sup> April 2009, the Council will operate as a “shadow authority”, as defined in the Order, having the functions set out in Part 3 of the Order.  
In particular, the Shadow Council will have the following responsibilities:
- 1.1.1 to commence and sustain its running as a shadow authority;
  - 1.1.2 to prepare the Shadow Council for the assumption of local government functions and full local authority functions and powers on 1<sup>st</sup> April 2009;
  - 1.1.3 to prepare any budgets or plans required beyond 1<sup>st</sup> April 2009 when those functions and powers are assumed;
  - 1.1.4 to liaise with Cheshire County Council and the other shadow authority for the purposes of ensuring continuity of public service delivery on and after 1<sup>st</sup> April 2009;
  - 1.1.5 to take all such practical steps as are necessary or expedient to liaise with the other local authorities within its area for the purposes of ensuring continuity of public service delivery on and after 1<sup>st</sup> April 2009;
  - 1.1.6 to exercise any of the Local Government Act 1972 functions referred to in, and in accordance with, Part 3 of the Order.
- 1.2 The powers and functions of the Shadow Council are therefore limited and, consequently, the powers and functions of its Cabinet, committees, sub committees and other decision making bodies are similarly limited. The responsibilities for functions described in this Part of the Constitution must therefore be considered in this context.  
However, upon the assumption of full local authority functions and powers on 1<sup>st</sup> April 2009, these responsibilities will increase.  
Until that date, Cheshire County Council and the district councils within the Shadow Council’s area will continue to have responsibility for local authority functions within their areas.
- 1.3 The Shadow Council is required in this Constitution to set out the allocation of responsibilities for its functions.
- 1.4 The following paragraphs cover functions which are
- the responsibility of the Shadow Council and/or its Committees/Sub-Committees
  - the responsibility of the Cabinet

- the responsibility of Officers
- 1.5 Where a function is not specified as being the responsibility of the Shadow Council, a Committee, Sub-Committee, or officer that function shall, unless otherwise provided to the contrary by law, be the responsibility of the Cabinet.

## **2 Functions Reserved to the Shadow Council**

The following functions are the responsibility of the Shadow Council and will be discharged by the full Shadow Council unless specified to be delegated to another Committee, Sub-Committee or body under this Constitution. The Shadow Council:

1. is accountable to its citizens for the proper discharge of all of its functions and for the delivery of such services as it is responsible for;
2. will keep under review the running of the Shadow Council's affairs and will implement changes where it considers there is a need to do so to improve the way in which the organisation operates, its relationships with the Shadow Council's citizens and the delivery of any services in the most effective and efficient way;
3. will adopt the Shadow Council's Constitution in accordance with the requirements of the Local Government Act 2000 and approve any subsequent amendments to it in whole or in part;
4. will appoint to the following offices
  - Chairman of the Shadow Council
  - Vice Chairman of the Shadow Council
  - Leader of the Shadow Council
  - Deputy Leader of the Shadow Council
  - Members of the Cabinet
  - Chairmen and Vice-Chairmen of Committees, Sub-Committees and Special Committees
  - such other offices as may be required under this Constitution or by the Shadow Council;
5. will decide upon the size of the Cabinet, approve the portfolios to be held within the Cabinet and the allocation of those portfolios;
6. will determine whether functions which are classified as "local choice" functions under the Local Government Act 2000 should be reserved to the Shadow Council or delegated to the Cabinet;
7. will adopt the Shadow Council's Codes of Conduct for Members and Officers and the Protocol on Member/Officer Relations;

8. will agree the establishment and composition of, and make appointments to, Committees, Sub-Committees other than those which may be established within the Cabinet;
9. will agree and amend the terms of reference of its Committees and Sub-Committees;
10. where permitted by the law, will make arrangements for appointments to outside bodies;
11. will carry out all duties specified in and comply with the Cheshire (Structural Changes) Order 2008;
12. will be responsible for any non executive Local Development Framework functions which are given to the Shadow Council by the Secretary of State;
13. will review and decide unless provided to the contrary in the Cabinet Procedure Rules whether any Cabinet decision which has not been implemented and has been referred to the Council under the provisions in this Constitution should be reconsidered by the decision taker in accordance with this Constitution and in such cases the Council may offer its advice on the matter in question;
14. will consider any matter which has been referred or submitted to it by the Cabinet;
15. where a matter is referred to it for determination by a Committee or Sub-Committee other than a Cabinet body, under this Constitution or under some other approved policy or procedure, to determine that matter;
16. will adopt or otherwise, as provided in the Shadow Council Procedure Rules, motions submitted under Standing Order No.12 (Notice of Motion) which do not relate solely to an Cabinet function;
17. will approve the Members Allowance Scheme including any pension provision for elected Members following advice from any Independent Remuneration Panel;
18. will appoint/dismiss the head of paid service, designate an officer to act as Interim/Appointed monitoring officer and Interim/Appointed chief finance officer, and appoint/dismiss a person to the position of appointed monitoring officer and appointed chief finance officer in accordance with the Cheshire (Structural Changes) Order 2008;
19. will approve the Shadow Council's response to any issues or proposals in relation to local government boundaries including Electoral Wards, the conduct of elections and the discharge of local authority functions;



20. may determine other matters which may from time to time be submitted to it for determination, either by resolution or through approved procedures, where such matters do not fall within the functions of the Cabinet.

### **3 General Responsibility of the Cabinet, Committees and Sub-Committees**

- 3.1 These bodies are responsible and accountable to the Shadow Council as appropriate in accordance with this Constitution, their terms of reference and under the approved policies, regulations and procedures of the Shadow Council for:
  1. ensuring the effective and efficient discharge of the functions delegated to them;
  2. ensuring that any Shadow Council services are appropriate for and responsive to the needs and views of the Shadow Council's citizens, and are delivered effectively and efficiently;
  3. ensuring that good external relationships and effective local liaison are promoted in relation to any Shadow Council services;
  6. monitoring the functions of the Shadow Council within their remit and contributing to any Shadow Council aims, objectives and policies;
  7. determining policies and objectives for any Shadow Council services, within their remit, reviewing the extent to which they are met, and agreeing any necessary action;
  8. determining the Shadow Council's views on matters specific to their areas of responsibility and related external matters;
  9. ensuring the effective and efficient management of any services and resources falling within their purview in accordance with this Constitution and, where appropriate, the effective and efficient discharge of the responsibilities of any subordinate bodies or person.

## **4 Responsibility of the Cabinet**

Where the Cabinet is exercising a Cabinet function, in whole or in part, as set out in this Section and in Section 5 below, the Cabinet is empowered to take all necessary and appropriate decisions to fulfil the obligations placed upon it subject to any restrictions or constraints imposed by the law or this Constitution.

### **4.1 The Cabinet**

Is responsible for and accountable to the Shadow Council, where appropriate, for the following functions, recognising that certain functions discharged by officers or services within its remit fall, by virtue of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and any subsequent amendments thereto, to be discharged by the Council:

1. consulting on, developing, monitoring and reviewing the various elements of the Shadow Council's plans and policies;
2. subject to consultation with the appropriate Scrutiny body or bodies, advising on Budget setting, including all other related financial matters, plans and proposals;
3. ensuring that proper arrangements exist for the effective and efficient management of the Council's executive affairs;
4. ensuring that the Shadow Council prepares for the Performance Management regime and any Government initiatives dealing with such matters which have financial implications.
5. monitoring and auditing the lawful, proper and efficient conduct of the Shadow Council's financial affairs, including the extent to which budgets and financial policies are being and will be met, and requiring or approving any remedial action to be taken where it considers it necessary and appropriate;
6. advising the Shadow Council where appropriate, and determining such matters as may be prescribed from time to time, under the Shadow Council's Constitution as the responsibility of the Cabinet;
7. approving, monitoring and reviewing any Shadow Council Corporate personnel and human resources policies;
8. approving, monitoring and reviewing the provision of services to the Shadow Council which are delivered by internal and/or external suppliers;

9. overseeing, approving and co-ordinating policies on national and external communications, public and media relations and public affairs generally;
10. overseeing relationships with, participation in and contribution to external organisations and partnerships, Local Government Association, the North West Regional Assembly or their successors or like bodies;
11. ensuring officers exercising delegated powers on behalf of the Cabinet discharge their responsibilities efficiently and effectively;
12. ensuring that officers discharge their responsibilities efficiently and effectively in relation to Cabinet functions;
13. overseeing the exercise of any Shadow Council powers and duties in relation to Part 1 of the Local Government Act 2000 (Promotion of Economic, Social or Environmental Well Being etc);
14. advising the Shadow Council on strategic matters in relation to corporate governance, community governance and community strategy;
15. monitoring and reviewing issues relating to local working;
16. overseeing the promotion of the Shadow Council's image, role and relationships in the European context, particularly with the European Commission and other European institutions;
17. preparing and approving, as appropriate, Regional and Sub-Regional Plans and Strategies;
18. preparing and approving major planning studies;
19. supporting the North West Regional Assembly or any successors or like body, where appropriate, on regional policy, transportation, planning and environmental issues and related matters and any other matters of relevance to the Shadow Council and ensuring that the Shadow Council's views are made known;
20. promoting employment and investment in the Shadow Council's area, including the preparation and approval of any Economic Development and Tourism Strategies;
21. deciding such other matters as may fall to the Cabinet to determine as required by the law or as delegated to it by the Shadow Council;

22. dealing with any executive Local Development Framework functions which are given to the Shadow Council by the Secretary of State.
23. making decisions upon those executive functions which arise under the Cheshire (Structural Changes) Order 2008.

The Cabinet may discharge these functions itself, through a Task Group/Cabinet Sub-Committee or by delegation to an officer. In addition, the Cabinet may appoint such advisory panels, including any member of the Shadow Council, as it considers appropriate to provide advice to it.

## **5 Responsibilities of Individual Cabinet Members**

It is recognised that certain functions discharged by officers or services within the remit of the Shadow Council fall, by virtue of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and any subsequent amendments thereto, to be discharged by the Council, or its Committees. No individual Cabinet Member decision making powers will exist in the initial stages of the life of the Shadow Council. However, it is possible that this might change.

## **6 Responsibility of Regulatory Committees**

Until the Shadow Council assumes local government functions and full local authority powers on 1<sup>st</sup> April 2009, in accordance with the Cheshire (Structural Changes) Order 2008, the Shadow Council will not exercise regulatory powers and functions. The Shadow Council will, however, take such practical steps as are necessary or expedient to prepare the Shadow Council for the assumption of local government regulatory functions and full local authority regulatory powers.

## **7 Responsibility of the Staffing Committee**

1. Undertaking the selection process for the appointment, and formulating recommendations to the Shadow Council in relation to:
  - the appointment and dismissal of the Head of the Paid Service;
  - the designation of an officer to act as Interim Monitoring Officer and Interim Chief Finance Officer;
  - the appointment/dismissal of Appointed Monitoring Officer and Appointed Chief Finance Officer;

in accordance with the Cheshire (Structural Changes) Order 2008 in accordance with the appropriate procedures set out in the Staff Employment Procedure Rules;

2. undertaking the selection, appointment and dismissal processes for any other staff in accordance with the appropriate procedures set out in the Staff Employment Procedure Rules;
3. hearing and determining any appeals by staff under the Shadow Council's approved personnel policies and procedures including through any appointed Sub-Committee;
4. hearing and dealing with disputes registered with the Shadow Council by recognised Trade Unions.

## **8. Responsibility of the Shadow Council's Scrutiny Committee**

The Shadow Council shall have one Scrutiny committee, and may commission task and finish groups to undertake scrutiny projects.

The Scrutiny Committee will/may specifically:

1. discharge the Council's functions under Section 21 of the Local Government Act 2000 (Scrutiny Committees)
2. oversee the Council's overall scrutiny function including the preparation, implementation, monitoring and review of an annual work programme for scrutiny and arrangements for the scrutiny of other public bodies particularly where required to do so by law and where partners can contribute to Community Plan priorities and to Local Area Agreement outcomes;
3. establish such task and finish groups, appointing the Chairman with such membership as it sees fit, to undertake scrutiny on a task and finish basis;
4. ensure that officers discharge their responsibilities effectively and efficiently in relation to the scrutiny function;
5. scrutinise decisions of the Cabinet, and offer advice or make recommendations on the matter under scrutiny once the Committee have considered the issues;
6. refer to the Shadow Council or appropriate Committee/Sub-Committee any matter which, following scrutiny, the Committee determines should be brought to the attention of the Shadow Council or the Committee or Sub-Committee;
7. if requested, offer any views or advice to the Cabinet in relation to any matter referred to the Committee for consideration;
8. undertake general policy reviews with a cross-service and multi-organisational approach wherever possible and make

recommendations to the Shadow Council or the Cabinet to assist in the development of future policies and strategies;

9. in performing its role, the Committee may consult and involve the local community and other local public, private and voluntary bodies or organisations;
10. review the Shadow Council's response to its obligations in respect of the overall performance management regime and where appropriate advise the Cabinet and the Shadow Council of its findings;
11. scrutinise decisions after implementation to examine their effect and outcomes;
12. review and making recommendations in relation to matters which are not the direct responsibility of the Shadow Council but which affect the social, economic and environmental well-being of an area, or the Shadow Council's area as a whole, or under any statutory requirement or Shadow Council contract, procedure or practice;
13. develop, maintain and monitor policies and procedures for handling complaints made against the Shadow Council and monitor on a regular basis the level and nature of complaints received and ensure that advice is formulated regarding action to be taken to address areas of concern;
14. monitor the level and nature of Ombudsman complaints and advise the Cabinet, Committees, Sub-Committees and officers on remedial action as appropriate;
15. ensure in conjunction with the Standards, and Governance and Constitution Committees that the Shadow Council has in place appropriate mechanisms to protect organisational Integrity including the development of appropriate policies and guidance;

## **9 Responsibility of the Standards Committee**

The Standards Committee is responsible for:-

1. discharging the Shadow Council's functions under Part 3 of the Local Government Act 2000 (via Sub-Committees if necessary);
2. considering and granting, or otherwise, dispensations in respect of Members' Interests under Part 3 of the Local Government Act 2000;

3. promoting high standards of ethical behaviour by developing, maintaining and monitoring codes of Conduct for Members of the Shadow Council (including Co-opted Members and other persons acting in a similar capacity) and for employees in accordance with best practice and Government guidance;
4. advising the Shadow Council on the adoption or revision of the Codes of Conduct for Members and Officers;
5. ensuring that Members receive advice and training as appropriate on the Members' Code of Conduct;
6. issuing advice to Members on the treatment of personal interests and on conduct matters generally;
7. ensuring that the Shadow Council maintains appropriate links with the Standards Board for England and the Commission for Local Administration in England (Ombudsman);
8. referring issues, which impinge on staff, conduct, performance, terms of employment, training and development to the appropriate Cabinet Member and/or officer;
9. promoting high standards of responsiveness by the Shadow Council to its clients and contacts;
10. advising other persons/bodies on probity and ethics as appropriate, particularly where that person or body is exercising functions on behalf of the Shadow Council;
11. in conjunction with the Shadow Council's Scrutiny Committee, supporting the Shadow Council's statutory officers as appropriate, or their authorised deputies, in the performance of their duties.

## **10 Responsibility of the Governance and Constitution Committee**

The Governance and Constitution Committee is responsible for:

1. overseeing, monitoring, co-ordinating and implementing the Shadow Council's administrative and political business, including electoral matters; administrative boundaries; support for and facilities for Members, including Members' learning and development and party groups for the purpose of their duties as councillors; and administrative arrangements for and the conduct of the Shadow Council and other meetings;

2. determining policies and conventions in relation to the political management of the Shadow Council, including statutory requirements concerning political balance and rights to information;
3. reviewing the Shadow Council's Constitution and recommending any changes to the Shadow Council;
4. advising the Shadow Council on, and overseeing the promotion of private legislation on behalf of the Shadow Council;
5. recommending to the Shadow Council, as appropriate, the appointment of Members to Committees and Sub-Committees (including any co-opted members other than in respect of Scrutiny Committees);
6. appointing representatives to serve on outside bodies and organisations (including education bodies and establishments) not falling to the Cabinet to appoint;
7. overseeing and monitoring the Members Allowance budget including pensions and keeping under review the scheme for the payment of allowances to Members;
8. approving annual conference and seminar attendance;
9. recommending to the Shadow Council any issues relating to the Honorary Aldermen;
10. approving reasons for absence for Members;
12. approving the overall seating plan for Shadow Council meetings;
13. overseeing and agreeing the arrangements for Members to be indemnified for and insured against risks and liabilities arising from the performance of their duties as Members of the Shadow Council, and as the Council's representatives on outside bodies.
14. overseeing the Shadow Council's role and responsibilities in respect of Corporate Governance;
15. developing a Code of Corporate Governance and to undertake as appropriate an assessment of wider governance issues;
16. supporting the Shadow Council's audit function, both internal and external;
17. ensuring the Shadow Council has in place appropriate policies and mechanisms to safeguard the Shadow Council's resources;



18. supporting the Interim/Appointed and Appointed Chief Financial Officers in relation to the performance of their duties;
19. approving any Shadow Council Statement of Accounts as may be required by the relevant Account and Audit Regulations;
20. ensuring any Shadow Council's Risk Management process is operating effectively.
21. undertaking work, and making recommendations, upon the Shadow Council's political management structure, and upon that which will operate with effect from 1<sup>st</sup> April 2009.

## **11 Joint Liaison Committee**

11.1 The Joint Liaison Committee is responsible for providing Cheshire West and Chester and Cheshire East Shadow Councils with a forum for the discussion of issues of mutual interest.

11.2 The Committee is to act as an advisory group to both the Cheshire East and the Cheshire West and Chester Shadow Councils on the following matters:

11.2.1 Joint projects being undertaken during the period ending on 1<sup>st</sup> April 2009;

11.2.2 Potential shared services;

11.2.3 Protocols on sharing arrangements and arrangements for assisting each other;

11.2.4 Partnership arrangements, the aggregation or disaggregation of which will affect the work of the other Shadow Council;

11.2.5 Potential decisions by one Shadow Council which will either have an effect on the decision of the other or which will have a substantial effect on the projected total transition costs;

11.3 In the event of any disagreement between the Cheshire East and the Cheshire West and Chester Shadow Councils as to how to proceed on a matter which affects the other, or where there is disagreement as to whether the matter affects the other, the Joint Liaison Committee will have the role of considering the views of both Shadow Councils, and attempting to offer a solution to resolve the disagreement. However, having offered a solution to the Shadow Councils and, in the event of that solution not having resolved the disagreement, the disagreement will be referred, at equal cost to both Shadow Councils, to the Centre for Effective Dispute Resolution ("CEDR"), International

Dispute Resolution Centre,  
70 Fleet Street, London EC4Y 1EU, to appoint a Neutral Advisor to advise upon the matter. The Neutral Advisor will have experience, at a suitable level, of local authority functions and responsibilities, as well as experience of local government reorganisation.

11.4 All negotiations in connection with the disagreement will be conducted in confidence, and the Neutral Advisor will make recommendations in order to resolve the disagreement.

11.5 Having considered the advice of the Neutral Advisor, each Shadow Council must decide whether to accept that advice. If either or both of the Shadow Councils do not accept the advice of the Neutral Advisor, they must take such steps as they consider appropriate in the circumstances.

11.6 The Shadow Council and its Cabinet may delegate such powers, responsibilities and decisions to any of its own officers, or to any officers of the Joint Implementation Team.

## **12 Powers of Officers**

12.2 This Constitution, and the Procedure Rules contained within it, refer to various powers of officers in respect of Shadow Council functions and responsibilities.

12.3 The Shadow Council will appoint an Interim/Appointed and Appointed Monitoring Officer, and an Interim/Appointed and Appointed Chief Finance Officer who both have statutory powers which are identified in the Cheshire (Structural Changes) Order 2008.

## **13 Independent Remuneration Panel**

The Cheshire (Structural Changes) Order 2008 ("the Order") provides for Cheshire County Council's scheme of allowances, as adopted by Cheshire County Council on 18<sup>th</sup> May 2006 ("the Scheme"), to apply to the Shadow Council. The Order also provides for the Scheme, as it applies to the Shadow Council, to be amended or revoked by the Shadow Council.

It is, however, anticipated that the Shadow Council will wish to appoint an Independent Remuneration Panel with the responsibilities to make recommendations to the Shadow Council:

- as to the amount of basic allowances that should be paid to Members;
- about the responsibilities or duties which should lead to the payment of a special responsibility allowance and as to the amount

of such allowance;

- about the duties for which a travelling and subsistence allowance can be paid and as to the amount of such allowance;
- as to the amount of the co-optees' allowance;
- as to whether the Shadow Council's allowances scheme should include an allowance in respect of the expenses for arranging for the care of children and dependants and, if it does make such recommendation, the amount of such allowance and the means by which it is determined;
- on whether any allowance should be backdated to the beginning of a financial year in the event of the scheme being amended;
- as to whether annual adjustments of allowance levels may be made by reference to an index and, if so, for how long such a measure should run;
- as to which Members of the Council are entitled to pensions, in accordance with a Scheme made under Section 7 of the Superannuation Act 1972;
- as to treating basic allowance and special responsibility allowance as amounts in respect of which such pensions are payable.

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## CHESHIRE EAST

### Shadow Council

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**Date:** 13 May 2008  
**Report of:** Interim Monitoring Officer  
**Title** Appointment of Proper Officers

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#### **1.0 Purpose of Report**

- 1.1 To appoint the designated officers as Proper Officers under legislative requirements.

#### **2.0 Decision Required**

- 2.1 To approve the appointment of the appended designated officers to the office of Proper Officer under each of the stated legislative provisions.

#### **3.0 Implications for Transitional Costs**

- 3.1 None.

#### **4.0 Background and Options**

- 4.1 Various legislative provisions require local authorities to appoint Proper Officers to receive various notices etc. These are all administrative provisions and give the Proper Officer responsibility to keep proper records and receive notices. The Shadow Authority needs to appoint its Proper Officers for these various legislative requirements to ensure that the administration of the Authority can proceed. The list of required appointments is appended.

#### ***For further information:***

*Officer: Julie Openshaw*  
*Tel No: 01625 504250*  
*Email: [j.openshaw@macclesfield.gov.uk](mailto:j.openshaw@macclesfield.gov.uk)*

#### ***Background Documents:***

*Documents are available for inspection at:*  
*Town Hall*  
*Macclesfield*  
*SK10 1DX*

## APPENDIX

## PROPER OFFICER PROVISIONS

<b>LOCAL GOVERNMENT ACT 1972</b>		
<b>SECTION</b>	<b>SUBJECT MATTER</b>	<b>PROPER OFFICER</b>
83	Declaration of acceptance of office by chairman, vice-chairman or councillor	Lead Officer of Joint Implementation Team
84	Receipt of resignation of office by person elected	Lead Officer of Joint Implementation Team
88(2)	Convening of meeting of Shadow Council to fill casual vacancy in office of chairman	Interim Monitoring Officer
89(1)(b)	Receipt of notice of casual vacancy of councillor from two local government electors	Lead Officer of Joint Implementation Team
96(1)	Receipt of notice of interests in contracts or proposed contracts	Interim Monitoring Officer
96(2)	Recording of disclosures of interests made under section 94 and of notices under section 96(1)	Interim Monitoring Officer
100B(7)(c)	Supply of documents to press	Interim Monitoring Officer
100C(2)	Written summary of exempt proceedings	Interim Monitoring Officer
100D(1)(a)	Compilation of list of and inspection of background papers	Each Member of Joint Implementation Team
100F(2)	Exclusion of document containing exempt information	Interim Monitoring Officer
151	Arrangements for proper administration of Shadow Council's financial affairs	Interim Chief Finance Officer

223(1)	Appearance of Council in legal proceedings	Interim Monitoring Officer
225	Deposit of documents	Interim Monitoring Officer
228(3)	Accounts to be open to inspection	Interim Chief Finance Officer
229(5)	Certification of photographic copies of documents	Interim Monitoring Officer
234(1) and (2)	Authentication of documents	Interim Monitoring Officer
Schedule 12 para 4(2)(b)	Signature of summons to council meeting	Interim Monitoring Officer
Schedule 12 para 4(3)	Receipt of notices regarding address to which summons to meeting is to be sent	Interim Monitoring Officer
Schedule 14 para 25(7)	Certification of resolutions under para 25	Interim Monitoring Officer
<b>LOCAL GOVERNMENT FINANCE ACT 1988</b>		
114	Officer responsible as regards reports	Interim Chief Finance Officer
<b>LOCAL GOVERNMENT AND HOUSING ACT 1989</b>		
2(4)	Deposit of list of politically restricted posts	Lead Joint Implementation Team Officer for Human Resources
15-17	Receipt of various notices relating to political groups under relevant Regulations	Interim Monitoring Officer
	Local Authorities (Standing Order) England Regulations 2001	Lead Joint Implementation Team Officer for Human Resources

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# CHESHIRE EAST CALENDAR OF PUBLIC MEETINGS 2008/9 Version 3

	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
<b>Council</b> First meeting 2pm, at Crewe. Future meeting times to be agreed.	13		15			20		9		24		6	5
<b>Implementation Cabinet</b> First meeting 2.30pm, at Macclesfield Future dates and times to be agreed	21												
<b>Governance</b>		9	14		8	6	3	1	12	9	9	20	
<b>Standards Committee</b>			8			14					10		
<b>Scrutiny (first meeting only then as required)</b>			3										
<b>Staffing Committee</b> (All day)	20												

At the last meeting of the Cheshire East Joint Committee it was agreed that it be recommended to the Shadow Council that the meeting of the Shadow Council to take place on 15 July should commence at 6.00pm, with the venue to be agreed and that the Shadow Council should then agree times and venues for future meetings.

Dates and times for the Implementation Cabinet meetings will be agreed at the first Implementation Cabinet meeting.

Start times and venues for other meetings will be notified.

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