

# Governance & Constitution Committee

## Agenda

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**Date:** Monday, 8th September, 2008  
**Time:** 6.30 pm  
**Venue:** Tatton Room, Town Hall, Macclesfield, Cheshire SK10 1DP

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The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

### **PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT**

1. Apologies

2. Declarations of Interest

To provide an opportunity for Members and Officers to declare any personal or prejudicial interest in any item on the agenda.

3. Public Question Time/Open Session

In accordance with Rules 11 and 35 a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relating to its work.

Individual members of the public may speak for up to 5 minutes but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers.

(Note: In order for officers to undertake any background research it would be helpful if questions were submitted at least one working day before the meeting.)

4. Minutes (Pages 1 - 6)

To approve the minutes of the meeting held on 14 July 2008.

Minutes attached.

5. Unitary Council Constitution: Summary and Explanation (Pages 7 - 18)

To approve the draft Summary and Explanation of the Constitution.

Report of the Interim Monitoring Officer attached.

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Please contact Carole Roberts on 01270 529733 or 01270 529736  
E-Mail: [carole.roberts@cheshireeast.gov.uk](mailto:carole.roberts@cheshireeast.gov.uk) with any apologies or requests for further  
information or to give notice of a question to be asked by a member of the public

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6. Part 2 of the Constitution (Pages 19 - 58)

To endorse the draft chapters comprising part 2 of the Constitution.

Report of the Interim Monitoring officer attached.

7. Shadow Council's Constitution: Potential Changes (Pages 59 - 64)

To consider changes to the Council's Constitution.

Report of the Interim Monitoring Officer attached.

8. Delegation of Functions to Portfolio Holders, Decision Making Bodies and Officers (Pages 65 - 68)

To consider the delegation of functions.

Report of the Interim Monitoring Officer attached.

9. Code of Corporate Governance (Pages 69 - 72)

To consider requirements for a local code of corporate governance.

Report of the Governance Group attached.

10. Appointments to Cheshire Fire Authority (Pages 73 - 74)

To appoint Members to the Cheshire Fire Authority as representatives of Cheshire East Council.

Report of the Governance Lead Officer attached.

11. Proposals for a Health and Adult Social Care Scrutiny Committee for East Cheshire. (Pages 75 - 80)

To consider a recommendation from the Scrutiny Committee to constitute a Health and Adult Social Care Scrutiny Committee for East Cheshire.

Report of the Governance Lead Officer attached.

12. Date of Next Meeting

To confirm that the next meeting will be held on 6 October 2008 at 2.00 pm

CHESHIRE EAST COUNCIL

Minutes of a meeting of the Governance & Constitution Committee held on Monday,  
14th July, 2008 at East Committee Room, Municipal Buildings, Earle Street, Crewe,  
Cheshire, CW1 2BJ

PRESENT

Councillor A Ranfield (Chairman)  
Councillor D Topping (Vice-Chairman)

Councillors M Asquith, C Beard, Mrs S Bentley, D Cannon, R Cartlidge, Mrs S Jones,  
A Kolker, A Moran, R Walker and P Whiteley

OFFICERS PRESENT

Julie Openshaw - Interim Monitoring Officer  
Brian Reed – LGR Governance Group  
Gerry Budd - LGR Governance Group  
Karen McIlwaine – on behalf of LGR Governance Group  
Carole Roberts – Democratic Services, Cheshire East  
Diane Richardson – Democratic Services, Cheshire East

7 DECLARATIONS OF INTEREST

There were no declarations of interest.

8 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors G Merry and B Moran.

9 PUBLIC SPEAKING TIME/ OPEN SESSION

There were no questions from members of the public.

10 MINUTES OF PREVIOUS MEETING

The Minutes of the meeting held on 9 June were approved as a correct record.

Members requested that in future, the Minutes also record the officers present at meetings.

11 CHESHIRE EAST WORK PLAN

Brian Reed on behalf of the LGR Governance Group presented a plan of work for consideration. The proposed Work Plan was set out in appendix 1 to the report and indicated the breadth of work for the Committee. Members noted that the work plan was very challenging and some flexibility would also be needed as other unknown areas of work were expected to arise during the year.

**RESOLVED**

1. to agree the first version of the Work Plan as the basis for the Committee's work during the remaining life of the Shadow Council; and
- 2 to note that the work plan will be developed and periodically brought back to the Committee for approval.

### 12 MEMBERS' ALLOWANCES SCHEME

The Governance Lead Officer submitted a paper setting out the recommendations of Cheshire County Council's Independent Remuneration Panel for the Members Allowances Scheme for the Shadow period. It was noted that full consideration of the recommendation had been deferred at the last Committee meeting. Members then considered the Panel's recommendations in full and the proposed scheme as set out in the Appendix to the paper. The following matters were raised during the lengthy debate :-

- It was acknowledged, in agreeing the allowances, that a proportion of the County's allowances will be being accepted
- the Special Responsibility Allowance (SRA) for the Chairman should be increased from the suggested £3,000 to £4,000
- Whilst the Committee wanted the offices of Committee and Panel Spokespersons to be left in the list by way of acknowledgement of the role, and that this role would develop, there should be no allowance for either during the Shadow Council period
- There was significant debate on payment of SRA, and the original suggestion of a limit of x1 SRA per member should be applied
- Some clarification should be brought to the occasions upon which travel and subsistence allowances may be claimed. The general consensus of the meeting was that this should be specified as being limited to official Shadow Council business only.

### **RESOLVED**

That this Committee make the following recommendations concerning the appropriate rates and application of allowances for payment from 2 May 2008 to the Council at its meeting to be held on 30 July 2008:-

1. That the report and recommendations of the Independent Remuneration Panel be received and the Panel be thanked for their work.
2. The Shadow Council be recommended to adopt the County Council's Allowances Scheme, as set out in the Independent Panel's report, subject to:
  - a. A proportion of the County Council's Basic and Special Responsibility Allowances being applied to the Shadow Council in the following sums:

	£ (per annum)
Basic Allowance	£4,800
Council Chairman	£4,000
Vice Chairman	£1,500
Council Leader	£15,000
Deputy Leader	£10,000
Cabinet Member	£7,500
<i>Committees (excluding Joint Liaison Committee)</i>	
Chair	£4,000
Vice Chair	£1,500
Spokesperson	No SRA to apply at present but it be noted that this role will develop with time
<i>Panels (Cabinet Advisory and other Panels)</i>	
Chair	£2,000
Vice Chair	£1,000
Spokesperson	No SRA to apply at present but it be noted that this role will develop with time
Opposition Group Leaders	£4,000
Deputy Leaders	Nil
Administration Group Whip	£3,000
Deputy Administration Group Whip	£1,500
Opposition Group Whip	£1,500
Opposition Group Deputy Whip	Nil

- b. The number of Special Responsibility Allowances, which may be claimed by any individual Member of the Shadow Council, be limited to one.
- c. Travelling and Subsistence Reimbursement Allowances and Dependents' Carers' Allowances be paid in accordance with the County Council's arrangements at the rates and in respect of the duties as indicated in the Scheme.
- d. The County Council's Nominated Member Duties allowances provisions should form part of the Shadow Council's Allowances Scheme, so as to enable the Chairman and Vice Chairman, Party Group Leaders and Deputy Leaders and Party Group Whips to claim travel and subsistence allowances for attendance, as required, at the Headquarters buildings of Cheshire County Council, Macclesfield Borough Council, Congleton Borough Council and Crewe and Nantwich Borough Council.
- e. Payment of all of the above allowances be applied retrospectively as appropriate from May 2008.

13 INDEPENDENT REMUNERATION PANEL

Brian Reed on behalf of the Governance Lead Officer advised of the requirement to appoint an Independent Remuneration Panel so that a Scheme of Members Allowances can be brought forward for 2009-10 and beyond.

**RESOLVED**

That arrangements be put in place for a Cheshire East Council Independent Remuneration Panel to be appointed and there be close liaison with the Independent Remuneration Panel for Cheshire West and Chester Council.

14 INDEMNITIES FOR MEMBERS AND OFFICERS

Gerry Budd on behalf of the Governance Group presented a paper setting out the current powers available to local authorities in relation to the provision of indemnities to elected Members and Officers and proposed that prior to Vesting Day, the Shadow Council agree an indemnity. The appendix to the paper set out the Local Authorities (Indemnities for Members and Officers) Order 2004. Members sought clarification of the instances in which the Indemnity may be used.

**RESOLVED**

That those individuals acting in a representative capacity on behalf of the Authority be indemnified to the maximum extent permitted by the Local Authorities (Indemnities for Members and Officers) Order 2004.

15 APPOINTMENTS TO OUTSIDE BODIES

Karen McIlwaine on behalf of the Governance Group presented a paper highlighting issues relating to the appointment to Outside Bodies by Cheshire East Council from 1 April and sought direction for a process to deal with such appointments.

Examples of outside bodies and the number of appointments currently made by existing authorities were set out in Appendix 1 to the paper. Nominees appointed to organisations were usually members but could also include officers. There was no clear definition of an outside body and consideration was given to including joint working arrangements such as shared use agreements so that appointments were not otherwise overlooked. The appointment of representatives to outside bodies could have implications for appointees, particularly those appointed as trustees or company directors. It was essential that members were aware of their roles within outside bodies and their legal responsibilities. A structured approach to appointments following good practice was outlined in Appendix 2 to the paper. The approach would limit potential risk for both elected members and the new authority. Appendix 2 also referred to indemnities for members, which had been addressed in a separate report earlier on the agenda (Minute 14 refers).

It was suggested that as well as reviewing the process of making appointments to outside bodies, changes required to ensure the new authority can continue its involvement should be identified, e.g. amendments to governance arrangements or to exit from the organisation. The paper indicated that members and officers attend various conferences throughout the municipal year – for example the LGA Annual Conference. It was suggested that attendance at conferences be included within the remit of any review to ensure that maximum benefit is derived to officers, members and the new authority. The paper recommended that a link be established with the Performance and Capacity Block looking at Local Strategic Partnerships, to which representatives of some outside bodies are appointed to ensure consistency.

To maximise future benefit to the community and the new authority, it was recommended that a process be developed for making appointments in the future, which is rational, manageable and compatible with corporate objectives. It was also suggested there be identification of legal and other issues to be addressed that will enable representation on key outside bodies to continue. Representations had been made to the Department of Communities and Local Government for regulations to allow existing appointees to continue as representatives of the new authority, post 1 April 2009, to facilitate the transition. Members then considered a number of options open to the new authority and noted that any requests received by the shadow authority to appoint representatives to outside bodies over the next 9 months as part of the transition process should be dealt with as part of the work outlined in the report.

Members considered the various options set out in the report and noted option 4 in particular, a member led review of the appointments process that proposed the establishment of an Advisory or similar committee based on a small number of members set up as a working party to devise a work programme and develop recommendations to deal with appointments and implement best practice. A key advantage of this option was ownership at member level due to involvement in the process.

### **RESOLVED**

1. That in order to put an effective and manageable process for appointments to outside bodies from 1 April 2009, to agree option 4, a member led review of the appointments process (as set out in paragraph 9.1) as the preferred approach to appointments and outside bodies
2. To agree the actions outlined in paragraph 9.2
3. To agree that the remit of the working party includes attendance at annual conferences, bodies of the nature outlined in paragraph 7.2, 7.3 and 7.5 and the appointment of both officers and members.
4. To agree that the appointment of members to outside bodies by the shadow authority be addressed as part of the work outlined in this report.
5. The membership of the working party consist of the Chairman of Committee – Councillor Tony Ranfield together with Councillors Roy Cartlidge; Shirley Jones; Rodney Walker; Paul Whiteley.

16 CHANGE OF START TIME FOR NEXT MEETING

The Chairman advised members that due to other commitments, both the Lead Officer from the Governance Group and himself would be unable to attend the next meeting of the Committee at the current scheduled time.

**RESOLVED**

that the start time for 8 September 2008 meeting of this Committee be re-arranged to enable the Chairman to attend and all members of the Committee be advised of the revised arrangements.

The meeting commenced at 2.00 pm and concluded at 3.55 pm

CHAIRMAN



## CHESHIRE EAST

### Governance and Constitution Committee

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**Date of meeting:** 8<sup>th</sup> September 2008  
**Report of:** Interim Monitoring Officer  
**Title:** Unitary Council Constitution: Summary and Explanation

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

- 1.1 To seek agreement from the Committee in respect of the content of Part 1 of the Constitution: the Summary and Explanation

#### **2.0 Decision Required**

- 2.1 That the draft Summary and Explanation of the emerging Constitution be agreed and that the Shadow Council be recommended to agree the document for adoption by the unitary Council at its first meeting in April 2009.
- 2.2 That, as the unitary Council's decision-making and management structures emerge, the Interim Monitoring Officer be authorised to make consequential changes to the document.

#### **3.0 Financial Implications for Transition Costs**

- 3.1 There are no financial implications for Transition Costs.

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 There are no financial implications 2009/10 and beyond.

#### **5.0 Legal Implications**

- 5.1 The document will form part of the new unitary Council's Constitution and, therefore, must be adopted at the first meeting in April 2009.

#### **6.0 Risk Assessment**

- 6.1 No risks are associated with agreement of the content of the document.

#### **7.0 Background**

- 7.1 At its first meeting, the Committee agreed a work programme. Officers agreed that certain draft constitutional documents would be brought to the Committee during the period leading up to April 2009 in order for these to be agreed and for

recommendations to be made to the Shadow Council for their inclusion in the unitary Council's constitution.

7.2 Whilst a number of reports will be brought to the Committee, it is proposed that the Shadow Council should make a final recommendation upon the adoption of a Constitution to the new unitary Council's first meeting.

7.3 The Appendix contains the first of a series of constituent parts of the proposed unitary Council's Constitution: the Summary and Explanation.

7.4 The Summary and Explanation comprises Part 1 of the Constitution and, accordingly, is the first body of information which members of the public and others will see when reading the document. The purpose of the Summary and Explanation is to provide basic information about the way in which Council decisions are made, the Council's values, rights of citizens and the Council's staff and management structure.

7.5 Members will see that officers have sought to use plain language in the Summary and Explanation. On a number of occasions, the view has been expressed that every effort should be made to ensure that the Constitution can be easily understood by all those reading it. Whilst, due to the legal content of some Parts of the Constitution, this may be a challenging aspiration, the Summary and Explanation should be one area in which this is achievable.

7.6 Members will also see that officers are seeking to use technology to make the task of providing officer and Member contacts easier for those reading the document. It is suggested that hyperlinks should be inserted in various places to provide members of the public with an immediate link to contact details of officers and Members. The implications of taking this approach are that officers and Members will be likely to receive more e-mails, telephone calls and letters than might otherwise have been the case. But this is likely to be an approach which Members would wish to embrace in order to enhance engagement with the public and others.

7.7 There are also implications for upkeep of the Constitution and officers would need to ensure that changes in officer and Member contact details are kept up to date.

## **8.0 Conclusion**

8.1 Members are asked to make comments on the approach adopted and the contents of the Appendix.

8.2 Once agreed by the Committee, authority is sought for the Interim Monitoring Officer to make changes to the document to reflect the unitary Council's emerging decision-making and officer structure.

8.3 The document, along with others, will then be presented to the Shadow Council for recommendation to the unitary Council's first meeting.

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

*Officer: Brian Reed*

*Tel No: 01244 972205*

*Email: [brian.reed@cheshire.gov.uk](mailto:brian.reed@cheshire.gov.uk)*

***Background Documents:***

*Cheshire Local Authority Constitutions and DETR New Councils Constitutions guidance*

*Documents are available for inspection at:*

*Cheshire East Shadow Council Support Office  
Congleton Borough Council  
Westfields  
Middlewich Road  
Sandbach*

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# **Summary of how Cheshire East Council operates and makes decisions**

## **Summary of how Cheshire East Council operates and makes decisions**

### **Our Constitution**

This document is our Constitution which sets out the basic rules of how the Council operates and makes its decisions.

The Council is responsible for an area of [ ] square miles, for [ ] people and a budget of [ ]. We make thousands of decisions each year affecting local people and have many powers which come from legislation. As a result, our decision-making and the structure of the Council are complex.

This Summary provides a brief guide to how we make our decisions and how we operate. Much more detail is contained in the rest of this Constitution and you should make contact with [ ] by e-mail [Hyperlink] or by telephone [ ] if you need any more information.

The Council is committed to operating in a way which is efficient, transparent and accountable to local people. If you have comments or suggestions, please make contact with [ ].

### **When the Council was established**

The Council started its life on 1<sup>st</sup> April 2009, when the former Cheshire County Council, Macclesfield Borough Council, Congleton Borough Council and Crewe and Nantwich Borough Councils were abolished.

On that date, the Council took responsibility for all local authority functions which had previously been dealt with by the County and district councils.

### **Our Councillors**

We have 81 elected Councillors who are Members of the Council until their terms of office end in 2011. Each Councillor represents the residents in their Ward, of which there are 27 in the Council's area.

The names, addresses and contact details of our Councillors can be found here [hyperlink].

Our Councillors are directly accountable to citizens for the running of the Council. Whilst they have a very broad role, they have a duty to represent the interests of all constituents in their ward. They may also represent the Council on external bodies at national, regional and local levels.

Councillors work closely with employed officers of the Council to develop policies and do other work so that the Council can deliver its vision, and to ensure that services are delivered to residents, businesses and visitors.

Councillors are expected to observe a Code of Conduct and Protocol on Member/officer Relations which are contained in this Constitution (see Part 5). We have a Standards Committee which is responsible for maintaining high standards of conduct amongst Councillors. The Committee also has responsibility for Town and Parish Councillors.

## **The Council and its decision-making structure**

All of our Councillors meet together a number of times each year as the Full Council. The Council has appointed a Cabinet and a number of committees to make decisions. The Council's programme of meetings can be viewed [here](#) [hyperlink].

Full Council appoints a Chairman and Vice Chairman [[hyperlink to Chairman and Vice Chairman's details](#)] of the Council and the Leader of the Council [[hyperlink to Leader's details](#)].

[Council-led model] Council appoints 9 other Members who, along with the Leader, form the Cabinet.

[Strong Leader model] The Leader appoints 9 other Members who, together with him, form the Cabinet. The Cabinet can appoint committees, working groups or panels to carry out work on its behalf.

The following Councillors are Cabinet Members and have responsibilities in the following areas:

[Insert hyperlinks to Members and list their Portfolios].

The law requires many of the Council's decisions to be made by the Council's Cabinet, Cabinet committees, or officers acting on its behalf. Other decisions, such as planning and licensing decisions, have to be made by committees of the Council, or officers acting on their behalf. Part 3 of this Constitution explains where the responsibility for decision-making rests.

We have [ ] Overview and Scrutiny Committees which hold the Cabinet to account. These Committees report direct to the Council.

The Council's decision-making structure is set out in Table 1 below.

## **Your rights**

The Council values its residents, businesses and visitors. Everyone has an equal right to access Council services and to enjoy high standards of service in all that the Council does.

Members of the public have rights to:

- Vote at local elections;
- Attend the Council's meetings except where confidential or exempt information is being discussed;
- Contact local Councillors about any matters of concern;
- Contribute to investigations by the Overview and Scrutiny Committees;
- Complain where there are problems with Council services;
- Complain to the Commission for Local Administration (the Ombudsman) if the Council has not followed its procedures properly;
- Complain to the Council if they believe there is evidence that a Councillor has not followed the Council's Code of Member Conduct;
- Inspect the Council's accounts.

You also have rights to view public reports to the Council, the Cabinet and the Council's Committees. These rights are set out in more detail in the Access to Information Rules in Part 4 of this Constitution.

## **The Council's staff**

Councillors are supported by the Council's employees (officers) who provide advice, implement decisions and manage the day to day delivery of services.

Some officers have specific duties to ensure that the Council acts within the law, and uses resources wisely [[insert hyperlink to Monitoring Officer and S151 Officer contact details](#)].

The Council has a [[Management Team](#)] of the Chief Executive and [[Directors](#)]. The [[Management Team](#)] provides strategic advice to the Council and co-ordinates the Council's activities to ensure high standards of performance. [[Hyperlink to Management Team contacts](#)].

[[Heads of Service](#)] report to the [[Management Team](#)]. [[Hyperlink to Heads of Service contacts](#)].

The Council's management structure is set out in Table 2 below.

## **What's in the Constitution?**

Part 2 of the Constitution contains [ [\]](#) Sections. Each Section provides more information about the way the Council works and its values. The rights



of Councillors and members of the public are also explained, as are the Council's decision-making arrangements.

**Table 1**

**[Insert Council structure chart]**

**Table 2**

[Insert Management Structure chart]

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## CHESHIRE EAST

### GOVERNANCE AND CONSTITUTION COMMITTEE

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**Date of meeting:** 8<sup>th</sup> September 2008  
**Report of:** Interim Monitoring Officer  
**Title:** Part 2 of the Constitution

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

- 1.1 To seek the Committee's endorsement of the draft chapters comprising Part 2 of the emerging new unitary Council's Constitution.

#### **2.0 Decision Required**

- 2.1 That the Committee endorse the draft Part 2 of the Constitution.

#### **3.0 Financial Implications for Transition Costs**

- 3.1 There are no implications for Transition Costs

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 There are no financial implications 2009/10 and beyond, over and above those which would apply to any unitary authority.

#### **5.0 Legal Implications**

- 5.1 The legal implications of Part 2 are contained within the drafting.
- 5.2 In order for Part 2 to form part of the new unitary Council's Constitution, the Shadow Council will need to make a recommendation to the first meeting of the unitary Council in April 2009.

#### **6.0 Risk Assessment**

- 6.1 No risks arise from the adoption of Part 2 of the Constitution, indeed, risks are minimised.

#### **7.0 Background**

- 7.1 Following the introduction of new local authority decision-making arrangements arising from the Local Government Act 2000, the Government Department issued "Modular Constitutions for English Local Authorities". This document provided a model for the constitutions which all local authorities were obliged to adopt under the legislation.

7.2 The Modular Constitution was a helpful model, which appears to have been used by most local authorities.

7.3 However, some of the terminology contained in the model has been said to be a little archaic and, whilst legal terminology cannot always be easily modified, there is a desire to make the new Council's Constitution as "user-friendly" as possible.

7.4 Part 2 of the Constitution provides an overview of the way in which the Council operates. Contained within it is:

- an explanation of the purpose of the Constitution itself and how this is reviewed;
- detail of the composition of the Council and of what Members do;
- information on the rights and responsibilities of citizens;
- detail about Full Council and its responsibilities;
- information about the Chairman and Vice Chairman;
- an explanation of the role of Scrutiny;
- details of the executive function of the authority;
- information on the regulatory committees;
- details of Standards Committee;
- an explanation of area/neighbourhood working;
- information about joint working;
- information about officers of the Council;
- an outline of how the Council's decision-making arrangements work;
- detail of finance, contracts and legal matters;

7.5 The Modular Constitution, produced by the Government Department, suggested that the different sections of Part 2 should be called "Articles" but there is a view that this gives weight to the view that the Constitution is an archaic document.

7.6 It is therefore proposed that the different sections should become chapters of Part 2.

7.7 It is essential for Part 2 to contain key information about the way in which the Council works, and it is impossible to do this without making some references to local authority legislation and jargon. However, wherever possible, an effort has been made within the time available to use plain language which will be relatively understandable to members of the public.

7.8 Members should note that as certain details of the unitary Council are still emerging and it has therefore been impossible to be specific in the information provided in the draft Part 2. As further details become available, this will be inserted and substantive detail will be brought back to the Committee for endorsement.

## **8.0 Conclusions**

8.1 The Committee is asked to endorse the current draft content of Part 2 and note that this will need to be recommended to the first meeting of the unitary Council in April 2009 for adoption as part of its 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:***

- *Modular constitutions*
- *Cheshire local authority Constitutions*

*Documents are available for inspection at:*

Cheshire East Shadow Council Support Office  
Congleton Borough Council  
Westfields  
Middlewich Road  
Sandbach

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## **Chapter 1-The Constitution**

### **Introduction**

Legislation requires the Council to prepare a document known as a “Constitution” which must contain a broad range of information, including details of the way the Council makes decisions and information about its Members (elected Councillors).

### **The Constitution**

This document is the Council’s Constitution which sets out details of how the Council operates, how decisions are made, and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by law, whilst others are chosen by the Council.

The Constitution is a document which explains how the Council’s decisions are made and the rules which apply to the Council’s business. It includes details of:

- the way in which meetings are conducted;
- the responsibilities of the Council, the Cabinet, the scrutiny committees and other committees;
- how Members are appointed to the Cabinet and other decision-making bodies;
- what allowances Members are paid;
- how Members and employed officers should behave;
- the work of the Council in its neighbourhoods, and with partner organisations;
- audit, financial and contract rules and procedures.

The Council will exercise all of its powers and duties according to the law and this Constitution.

### **Purpose of the Constitution**

The Council has a Corporate Plan, which contains details of its aims, objectives and targets.

The objectives of this Constitution are:

- To support the intentions of the Corporate Plan.
- To provide a framework for clear leadership to the community in partnership with its people, businesses and other organisations.
- Encourage the involvement of citizens in the Council’s decision-making.
- To help Councillors effectively represent their constituents.

- To enable decisions to be taken efficiently and effectively.
- To create a powerful and effective means of holding decision-makers to public account.
- To ensure that those responsible for decision-making are identifiable and that the reasons for their decisions are explained.
- To provide a way in which the delivery of services to the community can be improved.
- To ensure that no one will review or scrutinise a decision for which they were responsible.

### **Interpretation**

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose the option which it considers to be closest to the objectives set out above.

## **Chapter 2-Cheshire East Council**

### **Composition of the Council**

The Council has 81 Members who are elected as Councillors. Each of them represents one of the Council's Wards, of which there are 27.

### **Politics**

The political composition of the Council is as follows:

[insert numbers of Members representing the different political groups]

[Insert the following details]

Council Leader and Conservative Group Leader  
Deputy Council Leader  
Labour Group Leader  
Deputy Labour Group Leader  
Liberal Democrat Group Leader  
Deputy Liberal Democrat Group Leader  
Independent Group Leader  
Deputy Independent Group Leader

[Insert table providing hyperlinks to political party, ward and contact details against the name of each Member]

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

The Cheshire (Structural Changes) Order 2008 states that all of the Council's Members will retire in May 2011, after which there will be further elections. Elections will take place every four years afterwards.

### **Role and functions of all Councillors**

Councillors have the following roles:

- Together, they will set the Council's major plans, policies, strategies and the budget. They will take decisions together where required by law, or where the Council decides that collective decisions should be taken.
- To oversee the Council's strategic and corporate management.
- To represent their communities and the views of the people in their Wards, in the decision-making process.
- To support individuals in their dealings with the Council and to represent them in resolving concerns or grievances.
- To balance the different views of people within their Wards, with a view to representing their Ward as a whole.

- Participating in the decision-making and scrutiny processes of the Council.
- Where required, to represent the Council on national, regional and local bodies.
- To maintain the highest standards of conduct, and to observe the Council's Member Code of Conduct.

### **Councillors representing their communities**

All Councillors represent their constituents, and the Council sees this to be an important responsibility under this Constitution.

Councillors have an important job in consulting their communities on the development of policies, plans, strategies and other local initiatives. To enable Councillors to do this, the Council will ensure that suitable procedures and processes are in place.

### **Rights of Councillors**

Councillors will have access to any document, information, land or buildings of the Council where this is necessary to enable them to properly perform their role as a Councillor. This Council will act according to the law and this Constitution in this respect.

Councillors are not permitted to make available to the press or public any confidential or exempt information provided to them. Please see the Access to Information Rules in Part 4 of this Constitution and the Members' Code of Conduct in Part 5 of this Constitution for further information. These rules also apply to any person who is co-opted onto or appointed to serve on a body established by the Council.

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

At its first meeting in April 2009, and at each Annual Council meeting afterwards in May of each year, the Council will elect a Councillor to serve as Chairman of the Council. In the same way, it will also appoint a Vice Chairman.

Where either office becomes vacant, the Council will elect/appoint a successor at its next meeting.

A Member of the Cabinet cannot be elected/appointed to either office.

Where both the Chairman and Vice Chairman of the Council are absent from a meeting of the Council, the Council will appoint one of their non-executive Members to preside.

The Chairman of the Council is [insert hyperlink to name and contact details of the Chairman]. The Vice Chairman of the Council is [insert hyperlink to name and contact details of the Vice Chairman].

**Councillors' Scheme of Allowances**

All Councillors are entitled to receive those allowances which are contained in the Scheme of Allowances which is agreed by Council. The Scheme forms part of this Constitution at Part 6.

## **Chapter 3-Citizens and the Council**

### **Citizens' rights**

Citizens have a number of rights when dealing with the Council. Where dealing with specific services eg applying for a licence or housing benefit, they have additional rights. These are not referred to in this Constitution.

Citizens have the right to:

- Vote at local elections if they are registered to do so.
- Contact their local Councillor about matters of concern to them.
- Obtain a copy of this Constitution (at a reasonable cost).
- Inspect agendas for all Council meetings, either at the Council's offices, or on-line [insert hyperlink to the Council's website].
- Attend meetings all Council meetings, except where these are discussing exempt or confidential information.
- [Subject to agreement] Speak at meetings, subject to certain rules contained in the Council Procedure Rules at Part 4 of this Constitution.
- Find out, from the Forward Plan [insert hyperlink], what major decisions (known as "Key Decisions") are to be discussed by the Cabinet, its committees or by officers.
- Inspect all reports, including background papers used in preparing them, except where they contain exempt or confidential information.
- Inspect all Council decisions [insert hyperlink to minutes pages of website].
- Complain to the Council under the Council's complaints scheme.
- Complain to the Commissioner for Local Administration (the Ombudsman) [insert hyperlink to Ombudsman's website] if they think that the Council has not followed its procedures properly. However, the Ombudsman will usually only deal with complaints where the Council's own complaints process has first been followed.
- Complain to the Council [insert hyperlink to Monitoring Officer] if they have evidence which they think shows that a Councillor has not followed the Council's Members' Code of Conduct.
- Inspect the Council's accounts during the published inspection period each year, and make their views known to the External Auditor.

### **Citizens' Responsibilities**

Citizens must not be violent, abusive or threatening to Councillors or officers of the Council, and must not wilfully harm property of the Council, Councillors or officers.

## Chapter 4-The Full Council

### Policy Framework

- 4.1 By law, the Council must have a Policy Framework. This is a list of plans and strategies which are relevant to the Council's functions:
- 4.1.1 Annual Library Plan
  - 4.1.2 Best Value Performance Plan
  - 4.1.3 Children's Services Plan
  - 4.1.4 Community Care Plan
  - 4.1.5 Community Strategy
  - 4.1.6 Crime and Disorder Reduction Strategy
  - 4.1.7 Early Years Development Plan
  - 4.1.8 Education Development Plan
  - 4.1.9 Local Transport Plan
  - 4.1.10 Development Plan documents
  - 4.1.11 Youth Justice Plan
  - 4.1.12 [Annual Plan] (see Chester)
  - 4.1.13 [Annual Report] (ditto)
  - 4.1.14 [Budget Strategy] (ditto)
  - 4.1.15 Corporate Plan
  - 4.1.16 Housing Investment Programme documents
  - 4.1.17 Local Agenda 21 Strategy
  - 4.1.18 [Treasury Management Policy Statement and Treasury Management Strategy] (ditto)
  - 4.1.19 Licensing Authority Policy Statements under the Licensing Act 2003 and Gambling Act 2005
  - 4.1.20 [Air Quality Strategy] (see VR)
  - 4.1.21 [Art Strategy] (ditto)
  - 4.1.22 [Benefit Fraud Strategy] (ditto)
  - 4.1.23 [Capital Programme] (ditto)
  - 4.1.24 [Capital Strategy and Asset Management Plan] (ditto)
  - 4.1.25 [Cheshire Waste Strategy] (ditto)
  - 4.1.26 [Consultation Strategy] (ditto)
  - 4.1.27 [Cultural Strategy] (ditto)
  - 4.1.28 [Derelict Land Strategy] (ditto)
  - 4.1.29 [Drug Action Strategy] (ditto)
  - 4.1.30 [Energy Efficiency Strategy] (ditto)
  - 4.1.31 [Enforcement Concordat] (ditto)
  - 4.1.32 [Equal Access Policy] (ditto)
  - 4.1.33 [Food Law Enforcement Service Plan] (ditto)
  - 4.1.34 [Health Improvement Plan] (ditto)
  - 4.1.35 [Information Systems Strategy] (ditto)
  - 4.1.36 [Investors in People Strategy] (ditto)
  - 4.1.37 [Lifelong Learning Strategy] (ditto)
  - 4.1.38 [Medium Term Financial Strategy] (ditto)
  - 4.1.39 [Organisational Development Plan] (ditto)
  - 4.1.40 [Play Strategy] (ditto)

- 4.1.41 [Procurement Strategy] (ditto)
- 4.1.42 [Social Inclusion Strategy] (ditto)
- 4.1.43 [Sport strategy] (ditto)
- 4.1.44 [Strategy for Sport] (ditto)
- 4.1.45 [Structure Plan Input] (ditto)
- 4.1.46 [Youth Strategy] (ditto)
- 4.2 The Budget comprises the allocation of financial resources to different services and projects, proposed contingency funds, the Council Tax base, setting the Council Tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure [Council House rents?] and the setting of virement limits.
- 4.3 Decisions to approve or adopt applications (whether in draft form or not) to the Secretary of State for approval of a programme of disposal of 500 or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under Sections 32 or 43 of the Housing Act 1985.

#### **Functions of the Full Council**

- 4.4 Only the Council will exercise the following functions:
  - 4.4.1 electing/appointing the Chairman and Vice Chairman of the Council; adopting and changing the Constitution;
  - 4.4.2 adopting and approving the Policy Framework and any of the policies in it, the Budget and those decisions in 4.3 of this Chapter;
  - 4.4.3 subject to the urgency procedure in the Access to Information Procedure Rules (Part 4 of this Constitution) , making decisions about any matter in the discharge of an executive function which is covered by the Policy Framework or the Budget, where the decision maker is minded to make it in a manner which would be contrary to the Policy Framework or contrary to/or not wholly in accordance with the Budget;
  - 4.4.4 appointing the Leader [add "and Members of the Executive/Cabinet if a Council-led model of arrangements is to be adopted-also add approval of portfolios if the Leader is not to be responsible for this];
  - 4.4.5 taking decisions in respect of functions which are not the responsibility of the Executive, and which have not been delegated by the Council to Committees, officers or elsewhere;
  - 4.4.6 agreeing and/or amending the terms of reference for Committees, deciding on their composition, and making appointments to them;
  - 4.4.7 appointing representatives to outside bodies unless the appointment is an executive function, or has been delegated by the Council;
  - 4.4.8 adopting a Scheme of Member Allowances;
  - 4.4.9 changing the name of the area [conferring the title of Honorary Alderman or Freedom of the District][needs to be confirmed whether these only apply where there is Borough Status];
  - 4.4.10 confirming the appointment of the Head of Paid Service and, if appropriate, his/her dismissal;



- 4.4.11 making, amending, revoking, re-enacting, adopting or enforcing byelaws and promoting or opposing the making of local legislation or personal bills;
- 4.4.12 all local choice functions which the Council decides should be undertaken by itself, rather than the Cabinet;
- 4.4.13 all other matters which, by law, must be reserved to Council;
- 4.4.14 [appointing the Council's Monitoring Officer and Section 151 Officer and, if appropriate, approving their dismissal];
- 4.4.15 adopting the Council's Codes of Conduct for Members and Officers; and
- 4.4.16 adopting the Council's Protocol on Member/Officer Relations.

### **Council Meetings**

4.5 The following are the different types of Council meeting:

- 4.5.1 the Annual Meeting of the Council, which will be held in May;
- 4.5.2 ordinary meetings;
- 4.5.3 extraordinary meetings, which will be called as and when required in accordance with the Council Procedure Rules;

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

### **Responsibility for Functions**

4.6 The Council will keep a record of responsibilities for functions of its decision-making bodies. These are set out in Part 3 of this Constitution.

## **Chapter 5-Chairing the Council**

### **1. Civic Role**

The Chairman of the Council, supported by the Vice Chairman will perform the Council's civic role.

This entails raising and maintaining the profile of the Council's area and its citizens. The aims and values of the Council will be promoted in an apolitical manner.

The Chairman will decide which civic and ceremonial functions to promote following consultations, where appropriate, with officers of the Council. These functions may include representing the Council at events organised by other local authorities or organisations.

### **2. Council Role**

The Chairman of the Council in 2009 was elected at the Council's first meeting in April 2009. In subsequent years, the Chairman will be elected at the Annual Council meeting in May. The Vice Chairman is appointed at the same meeting.

The Chairman is responsible for:

- upholding and promoting the purposes of this Constitution and interpreting it, where necessary, with advice;

- presiding over meetings of the Full Council to ensure that business is carried out efficiently and effectively, whilst preserving the rights of Councillors and the interests of the Council's citizens;

- ensuring that, at Council meetings, matters of concern to local people can be debated through the appropriate Councillors;

- ensuring that Councillors 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 Council's activities and acting as a contact between members of the public and organisations and the Council;

- carrying out other roles on behalf of the Council;

- to be the conscience of the Council.

The Vice Chairman of the Council will:

- support the Chairman in his/her civic role and will also carry out civic duties on behalf of the civic office;

- deputise for the Chairman in his/her absence .

**3. Who may become Chairman or Vice Chairman**

3.1 Any elected Member of the Council shall be eligible for election to the office of Chairman, or appointment as Vice Chairman, except for Members of the Cabinet.

## **Chapter 6-Scrutiny Committees**

- 1.1 As is required by the Local Government Act 2000, the Council has established an effective, robust and constructive overview and scrutiny function. This comprises a number of Scrutiny Committees.
- 1.2 The Council fully supports the role of its Scrutiny Committees in holding the Cabinet and others to account in discharging their functions. The Council believes that the important parts of the role are:
  - To assist the Council and Cabinet in developing and reviewing its major plans, policies and strategies, which will set the climate in which the Cabinet and other decision-making bodies are required to operate
  - To undertake specific reviews of the Council's organisation and service provision so that improvements can be made to service delivery.
- 1.3 The Council's overview and scrutiny functions include responsibility for reviewing the health service provision within its area and beyond, health promotion and the health and well-being of local communities. This may be done in conjunction with other bodies/agencies.
- 1.4 This Chapter goes on to provide details of the Council's overview and scrutiny arrangements. For those seeking further information, this can be found in the Scrutiny Procedure Rules in Part 4 of this Constitution.

### **2 [Chief Scrutiny Committee]**

- 2.1 The Council has established this Committee to oversee and develop the Council's overview and scrutiny function. It is a politically balanced body and will discharge the duties contained in Section 21 of the Local Government Act 2000, and under any relevant Regulations.

### **3 The Council's other Scrutiny Committees**

- 3.1 The Council has established [ ] Scrutiny Committees (each reflecting the political balance of the Council) to cover the following functions:  
*(these could reflect Directorates or work areas of the Council)*
- 3.2 A Health and Adult Social Care Scrutiny Committee has been established to undertake the scrutiny role in relation to health service provision to the Council's people through the National Health Service and associated bodies. The Committee discharges the duties imposed on the Council under the Health and Social Care Act 2001.
- 3.3 The Minutes of meetings of the Scrutiny Committees will be submitted to the full Council at the appropriate meeting. Reporting lines to the full

Council or [Chief Scrutiny Committee] in respect of specific issues will be on an exception basis.

#### **4 Review Panels**

- 4.1 The [Chief Scrutiny Committee] or a Scrutiny Committee may establish Review Panels which it considers necessary, after taking into account the availability of resources, the work programme and scope of the review in question. The role of Review Panels is to carry out in-depth examinations of particular aspects of the 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. This must be politically balanced.
- 4.3 Review Panels 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 Review Panels to other bodies shall be set at the scoping report stage. However, as a principle, major reviews and those of a cross cutting nature will normally be presented to the full Council.

#### **5 Role of the [Chief Scrutiny Committee]**

- 5.1 The [Chief Scrutiny Committee] will/may:
  - 1. discharge the Council's functions under Section 21 of the Local Government Act 2000 (Overview and 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;
  - 3. establish such Review Panels, appointing the Chairman in accordance with the Council's criteria and with such membership as it sees fit, to undertake scrutiny on a task and finish basis;
  - 4. ensure the [Head of Paid Service] and [Management Board] discharge their responsibilities effectively and efficiently in relation to the overview and 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 Council or appropriate Committee/Sub-Committee any matter which, following scrutiny, the Committee determines should be brought to the attention of the 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 approach wherever possible and make recommendations to the 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 Council's response to its obligations in respect of the overall performance management regime and, where appropriate, to advise the Cabinet and the Council of its findings;
11. advise the Cabinet and Council, as appropriate, of the Scrutiny response to the formulation of the Council's Budget and performance management reports [produced on a mid year, three quarterly and final out turn basis];
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 Council but which affect the social, economic or environmental well-being of an area or the Council's area as a whole or under any statutory requirement or Council contract, procedure or practice;
14. develop, maintain and monitor policies and procedures for handling complaints made against the 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 Departments and Services on remedial action as appropriate;
16. ensure in conjunction with the [Standards and Governance Committees] that the Council has in place appropriate mechanisms to protect organisational integrity, including the development of appropriate policies and guidance.

## **6 Role of the Scrutiny Committees – [Insert names]**

*(If there is just one main Scrutiny Committee some of the terms of reference below may need to be added to those above)*

6.1 The [ ] Scrutiny Committees will/may each:

1. propose to the [Chief Scrutiny Committee], areas which it considers should be included in the annual work programme to be prepared by that Committee;
2. undertake such reviews as may be required by the [Chief Scrutiny Committee];
3. offer advice and make recommendations to the appropriate body of the Council on the development and review of policy;
4. review or scrutinise decisions or actions taken in respect of any functions which are the responsibility of the Cabinet;
5. make reports or recommendations to the appropriate body of the Council in respect of any functions which are the responsibility of the Cabinet;
6. review or scrutinise decisions or actions taken in respect of any functions which are not the responsibility of the Cabinet;
7. make reports or recommendations to the appropriate body of the Council in respect of any functions which are not the responsibility of the Cabinet;
8. make reports or recommendations to the appropriate body of the Council in respect of any matters which affect the Council's area or its inhabitants;
9. recommend that a decision made but not implemented and taken in respect of a function which is the responsibility of the Cabinet, be reconsidered by the Cabinet;
10. scrutinise matters coming before the Cabinet for decision and respond appropriately to the Cabinet on the matter once the Committee has considered the issues fully;
11. if requested, offer views and advice to the Cabinet in relation to any matter referred to the Committee for consideration;
12. refer to the [Chief Scrutiny Committee] any matter which, following review or scrutiny, the Committee determines should be brought to the attention of that Committee;

13. undertake general policy reviews in their areas of responsibility with the endorsement of the [Chief Scrutiny] Committee and make reports and recommendations to the appropriate body of the Council to assist in the development of future plans, policies and strategies;
14. consult and involve the local community and other local public, private and voluntary sector bodies of organisation in the performance of its role;
15. review the Council's response to its obligations in respect of the Performance Management Regime within the Committee's area of responsibility and, where appropriate, advise the appropriate body of the Council of its findings.

## **7 Role of the Health and Adult Social Care Scrutiny Committee**

The Health and Adult Social Care Scrutiny Committee will:-

1. fulfil the Health Scrutiny duties falling on the Council by virtue of the Health and Social Care Act 2001;
2. liaise with NHS bodies on any matter relating to the planning, provision and operation of health services in the Council's area, including commenting on the annual "health check" of performance;
3. respond to any formal consultations undertaken by NHS bodies on any substantial development or variation in service;
4. if necessary, report to the Secretary of State for Health or Monitor:
  - where the Committee is concerned that consultation on substantial developments or variations in service has been inadequate;
  - where the Committee considers that the proposal is not in the interests of the Health Service;
5. participate with other relevant local authorities external to Council's area, in joint scrutiny arrangements of NHS Trusts providing cross-border services to the Council's residents;
6. commission scrutiny reviews, to ensure that all sections of the Council's local communities have equal access to health Services and have an equal chance of a successful outcome from those Services;



7. establishing appropriate local Health Scrutiny arrangements from time to time, commissioning work and receiving reports and recommendations as appropriate;
8. provide a programme of training and development for all Members and Co-opted Members involved in Health Scrutiny;
9. deal with any matter referred by the Department of Health, a Patients Forum or by another Scrutiny Committee.

**8 [Sub-Committee of the Chief Scrutiny Committee]**

- 8.1 This Sub-Committee will consider and advise the Executive [(collectively or individually)] in cases of urgency following the service of a “call-in” notice under the Council’s relevant procedures.

**9 Chairmen and Vice Chairmen of [Chief Scrutiny Committee], [its Sub-Committee] and Scrutiny Committees**

- 9.1 Appointments to these offices shall be made by the Council at its first and at each Annual Meeting.

**10 Membership of [Chief Scrutiny Committee]/ Scrutiny Committees/Sub-Committees**

- 10.1 The [Chief Scrutiny Committee] will comprise [ ] Members.
- 10.2 The Scrutiny Committees will each comprise [ ] Members The Health and Adult Social Care Scrutiny Committee will comprise [ ] Members.
- 10.3 [The Sub-Committee of the Chief Scrutiny Committee] will comprise [ ] Members.
- 10.4 The Scrutiny Procedure Rules, contained in Part 4 of this Constitution, set out arrangements for co-option to Scrutiny Committees.

**11 Proceedings of Committees [/Sub-Committees]**

- 11.1 Conduct of the proceedings at [the Chief Scrutiny Committee], and Scrutiny Committees shall be in accordance with the Council and Scrutiny Procedure Rules as appropriate.

## **Chapter 7-The Cabinet**

### **1. Role**

The Cabinet carries out those duties and responsibilities which are not the responsibility of any other part of the Council.

Some of the Cabinet's responsibilities are "local choice" functions, which Council has chosen to delegate to the Cabinet.

Other functions are the responsibility of the Cabinet because the law says so.

### **2. Composition**

The Cabinet consists of the Leader of the Council, and 9 other Councillors. *[strong Leader model]* The Leader of the Council is appointed by Full Council, but the Leader is responsible for appointing the other 9 other Members of the Cabinet.

No deputy or substitution arrangements will apply to the Cabinet, and neither the Chairman nor the Vice Chairman may be appointed to the Cabinet.

### **3. The Leader**

The Leader will hold office until:  
he/she resigns from the office of Leader;  
he/she becomes ineligible to be a Councillor of the Council, either for a specific period, or indefinitely;  
he/she ceases to be a Councillor;  
he/she is removed from office by a resolution of the Council. *[a fixed term of office can be applied here]*

Where there is a vacancy in the office of Leader, the Deputy Leader will assume the responsibilities of the Leader until the next meeting of the Council.

Where both the Leader and Deputy Leader cease to hold office at the same time, the Chairman of the Council shall call a meeting of the Full Council as soon as possible.

### **4. Other Cabinet Members**

Other Members of the Cabinet will hold office until any of the events listed in 3.1 above, which apply to ending the term of office of the Leader, apply to them collectively or individually as Cabinet Members.

### **5. Proceedings of the Cabinet**

Proceedings of the Cabinet shall be conducted in accordance with the Council and Cabinet Procedure Rules, which are part of this Constitution.

## **6. Responsibility for Functions**

The Leader will ensure that a record is kept of the executive functions which are the responsibility of individual Cabinet Members, any Cabinet Committee or Sub-Committee, officers or joint arrangements.

*[As proposals for Cabinet decision making emerge, these need to be outlined in this paragraph]*

## **7. [Policy Advisory Panels]**

The Cabinet is supported on policy development issues by [ ] Policy Advisory Panels, chaired by representatives of the Cabinet.

The role of these Panels is to advise the Cabinet on policy development or strategic issues with policy implications. The focus of their work is upon strategic policy direction rather than operational issues.

The Panels are not decision-making bodies and do not fall within the Access to Information Rules. They report to the Cabinet on an exception basis.

## **8. Cabinet Members**

The following are the Council's Cabinet Members:

*[Insert names and hyperlink to contact details of each Member]*

## **Chapter 8-Regulatory and Other Committees**

### **1. Regulatory Committees**

The Council will appoint those Committees which are listed in Part 3 of this Constitution: Responsibility for Council Functions.

These committees of the Council must be politically balanced.

The powers and duties of these Committees are set out in Part 3.

### **2. Other Committees**

The Council will appoint such other Committees as it considers are needed to exercise any of its functions and take those decisions which are not the responsibility of the Cabinet.

Details of these Committees are also set out in Part 3 of this Constitution.

## **Chapter 9-The Standards Committee**

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

Part III of the Local Government Act 2000 requires the Council to establish a Standards Committee.

### **2. Composition**

The Standards Committee will be composed of:

[            ] Councillors  
[            ] Statutory Independent Members, who will be entitled to vote at meetings, but who are not Councillors or officers of the Council;  
[            ] Parish Members. At least one Parish Member must be present when matters relating to Parish Councils or their Members are being considered [*Town Councils?*];

A Member of the Cabinet may not chair the Standards Committee.

### **3. Role and Functions**

The Committee will be responsible for

- discharging the 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 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 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 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 Executive Member and/or Manager;
- promoting high standards of responsiveness by the Council to its clients and contacts

(a) advising other persons/bodies on probity and ethics as appropriate, particularly where that person or body is exercising functions on behalf of the Council; and

(b) supporting the Council's statutory officers as appropriate or their authorised deputies, in the performance of their duties.

#### **4 Standards Complaints Sub-Committee**

- 4.1 The Standards Committee may delegate the conduct of a local standards hearing to a Standards Complaints Sub-Committee in accordance with the Council's approved procedure.

## **Chapter 10-[Area][Neighbourhood] Working**

*[As Area/Neighbourhood working arrangements emerge, full details need to be provided here. These should include:*

- *Core Purpose*
- *Operating Principles*
- *Terms of Reference*
- *Public Involvement*
- *Conflicts of Interest*
- *Access to Information]*

## **Chapter 11-Joint Arrangements**

### **11.1 ARRANGEMENTS TO PROMOTE WELL BEING**

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

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

### **11.2 JOINT ARRANGEMENTS**

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

The political balance requirements do not apply to such appointments.

- (e) Details of any joint arrangements including any delegations to joint committees will be found in the Council's scheme of



delegations in Part 3 of this Constitution.

### **11.3 ACCESS TO INFORMATION**

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

### **11.4 DELEGATION TO AND FROM OTHER LOCAL AUTHORITIES**

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

### **11.5 CONTRACTING OUT**

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

## **Chapter 12-Officers of the Council**

### **1 Definition**

- 1.1 The term “officers” means all employees and staff employed or engaged by the Council to carry out its functions. It includes those under short-term, agency or other non-employed situations. It does not apply to any person employed by contractors who are carrying out work or duties for the Council under contracts.

### **2 Management Structure**

- 2.1 The Council will employ/engage such officers as it considers necessary to carry out its functions.

### **3 Management [Board][Team]**

- 3.1 The Council’s Management [Board][Team] comprises the following officers who shall be regarded as “Chief Officers”
- Chief Executive
  - Director of *[List titles of all Directors as structure emerges]*

### **4 Head of the Paid Service**

- 4.1 The Head of the Paid Service is the Chief Executive.
- 4.2 The Head of the Paid Service cannot be appointed as the Council’s Monitoring Officer.
- 4.3 The Head of the Paid Service may hold the position of the Section 151 Officer if he/she is a qualified accountant.

### **5 Monitoring Officer**

- 5.1 The [Council Solicitor and Monitoring Officer] is designated as the Council’s Monitoring Officer.
- 5.2 The [insert titles] are designated as the Deputy Monitoring Officers.
- 5.3 The Monitoring Officer may appoint, in writing, further deputies as he/she considers appropriate.

### **6 Section 151 Officer**

- 6.1 The [insert title] is designated as the Section 151 Officer. He or she 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 Council on the manner in which the Council develops its functions and the co-ordination of those functions as well as the number and grade of officers, (and their organisation), required to support the Council in delivering its services. He/she also has statutory functions in relation to staff.

## **8 Functions of the Monitoring Officer**

- 8.1 The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available to Members, staff and the public.
- 8.2 After consulting with the Head of Paid Service and the S151 Officer, the Monitoring Officer will report to the full Council, (or to the Cabinet in relation to an executive function), if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission 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 The Monitoring Officer will help to promote and maintain high standards of conduct by providing support to the Standards Committee.
- 8.4 The Monitoring Officer will receive and act on reports made by ethical standards officers and decisions of case tribunals.
- 8.5 The Monitoring Officer will conduct investigations into matters referred by ethical standards officers and make reports or recommendations in respect of them to the Standards Committee.
- 8.6 The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the Policy Framework.
- 8.7 The Monitoring Officer will provide advice to all councillors on issues in relation to the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy and Planning Framework.
- 8.8 The Monitoring Officer cannot be the Section 151 Officer or the Head of Paid Service.
- 8.9 The Monitoring Officer will ensure that executive decisions, the reasons for those decisions, relevant officer reports and background papers are made publicly available as soon as possible.

**9 Functions of the [Insert title] (Section 151 Officer)**

- 9.1 After consulting with the Head of Paid Service and the Monitoring Officer, the [Insert title] will report to the full Council (or to the Cabinet in relation to an executive function) and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- 9.2 The [Insert title] in consultation with the [appropriate finance officer if applicable] will have overall responsibility for the administration of the financial affairs of the Council.
- 9.3 The [Insert title] will contribute to the corporate management of the Council, in particular, with the [appropriate finance officer if applicable], by providing professional financial advice.
- 9.4 He/she will provide advice on issues to all councillors in relation to the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework issues and will support and advise councillors and officers in their respective roles.
- 9.5 He/she will provide, in consultation with the [appropriate finance officer if applicable], as appropriate, financial information to the media, members of the public and the community.

**10 Duty to provide sufficient resources to the Monitoring Officer and Section 151 Officer**

- 10.1 The Council will provide the Monitoring Officer and S151 Officer 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 Returning Officer**

- 11.1 [ ] was appointed by the Council on [ ] as the Returning Officer for Council Elections.

**12 Conduct**

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

**13 Employment**

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

## **Chapter 13-Decision-making**

### **1. Responsibility for decision-making**

The Council makes many decisions relating to matters within its area. So that members of the public are clear about what decisions are made and what part of the Council or individual has responsibility for particular types of decisions, the Council will keep a record of these things. This record is set out in Part 3 of this Constitution.

The Council, the Cabinet and any Committee or Sub-Committee of the Council may delegate a function or decision to a Committee, Sub-Committee or officer on a permanent or one-off basis. Permanent delegations are explained in Part 3 of this Constitution, including in various Schemes of Delegation which can be found there.

*The Cabinet [has delegated decision-making powers to individual members of the Cabinet, and details can also be found in Part 3]*

### **2. Principles of decision-making**

The following principles will apply to the way in which the Council makes its decisions:

- The Council will take into account all relevant considerations and will ignore those which are not relevant.
- A realistic evaluation of alternatives will be made and consultation will take place through access by the public to those making decisions.
- The Council will take decisions which are proportionate to the desired outcome.
- When it makes decisions, the Council will take professional advice from officers.
- Human rights will be respected.
- The Council makes a presumption that its decision-making processes will be open.
- The Council will be clear in its aims and desired outcomes.
- When executive decisions are taken, the options available will be explained, as well as the reasons for the decision.

### **3. Types of decision and the decision-takers**

Decision-making by the Full Council

When the Council makes decisions, it will follow the Council Procedure Rules which can be found in Part 4 of this Constitution.

#### Decision-making by the Cabinet

Part 4 of this Constitution contains the Cabinet Procedure Rules, which will be complied with when the Cabinet makes decisions.

#### Decision-making by Scrutiny Committees

The Council's Scrutiny Committees must follow the Scrutiny Procedure Rules when they make decisions. These Rules are contained in Part 4 of this Constitution.

#### Decision-making by other Committees and Sub-Committees established by the Council

The Council Procedure Rules, contained in Part 4 of this Constitution, will be followed when Committees and Sub-Committees of the Council make decisions.

#### Decision-making by Council bodies acting as tribunals

On occasions, the Council, a Councillor or officer act as a tribunal or in a quasi-judicial manner when they determine the civil rights, obligations or criminal responsibility of individuals. When this happens, they will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

### **4. Key decisions**

4.1 Certain types of decisions made by the Cabinet, individual Cabinet Members, Committees or Sub-Committees of the Cabinet are "Key Decisions". Except in cases of urgency, these types of decision receive special advance publicity so that members of the public and Councillors are able to consider the implications of the decision. They may also seek to influence the decision by making contact with the decision-maker. Key Decisions appear on the Council's Forward Plan, which can be viewed on the Council's website, or in hard copy form at the Council's offices.

4.2 The statutory definition of a Key Decisions, as contained in paragraph 8 of Part III of the Local Authorities (Executive 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.”

*[The following paragraphs are optional and apply useful mechanisms to exclude certain decisions from the definition]*

- 4.3 Under part (a) of the definition and subject to 4.4 below, the Council has decided that any expenditure or savings of £1m or more shall be significant for the purposes of that part of the definition.
- 4.4 The Council has decided that the letting of any contract by the Council’s [Business Services Officer] or the Council’s [Policy Officer], which involves the provision of services to, or the purchase of goods and services by the Council shall be excluded from the definition of a Key Decision where such contracts relate mainly to the internal workings of the authority and do not therefore have a significant impact directly on local communities in the same way as other Key Decisions. Such contracts include advertising, library books, vehicles, consumables, food, gas, electricity and cleaning of Council premises.

## **Chapter 14-Finance, Contracts and Legal Matters**

### **1. Financial Management**

The Council has agreed certain financial rules which are contained in Part 4 of this Constitution. The Council will manage its financial affairs in accordance with these rules.

### **2. Contracts**

The Council has also agreed a set of rules for contracts. Every contract made by the Council will comply with these rules, which can be found in Part 4 of this Constitution.

*[This assumes that the Contract Procedure Rules will be a separate document to the Finance Procedure Rules]*

### **3. Legal Proceedings**

- 3.1 The [Council Solicitor and Monitoring Officer] is authorised to institute, defend or participate in any legal proceedings or to take other action where this is necessary to give effect to decisions of the Council or in any case where he/she considers that it is necessary to protect or further the Council's interests.

### **4. Signing etc of documents**

- 4.1 Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the [Council Solicitor and Monitoring Officer] or other person authorised by him/her unless any enactment otherwise authorises or requires, or the Council has given the required authority to some other person.
- 4.2 Any contract entered into on behalf of the Council shall be made in accordance with the Council's Finance Procedure Rules. In the absence of any authority given to a specific officer all such contracts must either be signed by at least the [Council Solicitor and Monitoring Officer] or his/her authorised deputy, plus another of his/her authorised deputies or be made under the common seal of the Council.

### **5. The Council's Common Seal**

The Common Seal of the Council will be kept in a safe place in the custody of the [Council Solicitor and Monitoring Officer]. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will



be affixed to those documents which, in the opinion of the [Council Solicitor and Monitoring Officer], should be sealed. The affixing of the Common Seal will be attested by the [Council Solicitor and Monitoring Officer] or one of his/her authorised deputies.

## **Chapter 15-Management of the Constitution**

### **1 Review**

- 1.1 The Governance and Constitution Committee, in consultation with other appropriate Members, the Monitoring Officer and Section 151 Officer, will monitor and review the Constitution to make sure that its aims and principles are given full effect.
- 1.2 In doing this, the Committee will need to be aware of the strengths and weaknesses of the Constitution, and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in Article 1. To do this, the Committee may require:
  - meetings between Members and officers of the Council;
  - an audit-trail of a sample of decisions to be carried out;
  - issues raised by Members, officers, the public and other relevant stakeholders to be recorded and assessed;
  - the Council's practices to be compared with those in other local authorities, or national examples of best practice.

### **2 Changing the Constitution**

- 2.1 Changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Governance and Constitution Committee.
- 2.2 The Council will take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals to change the "Leader and Cabinet" style of government set out in this Constitution.

### **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 Council to the extent permitted by 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 councillors are 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 Council as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution.

#### **5 Publication**

- 5.1 The [Council Solicitor and Monitoring Officer]:

- will give a printed copy of this Constitution to each Member of the authority upon delivery of that individual's declaration of acceptance of office on the Member first being elected to the Council;

*[should it be the Council's practice to offer a printed copy to each Member?]*

- will ensure that copies are available for inspection at council offices, libraries and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee;
- will ensure that the summary of the Constitution is made widely available within the area and is updated as necessary.

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## CHESHIRE EAST

### GOVERNANCE AND CONSTITUTION COMMITTEE

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**Date of meeting:** 8<sup>th</sup> September 2008  
**Report of:** Interim Monitoring Officer  
**Title:** Shadow Council's Constitution: potential changes

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

- 1.1 To report to the Committee upon potential changes to the Shadow Council's Constitution.

#### **2.0 Decision Required**

- 2.1 For consideration to be given to whether changes should be made to the Shadow Council's Constitution.

#### **3.0 Financial Implications for Transition Costs**

- 3.1 There are no financial implications for Transition Costs.

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 There are no financial implications 2009/10 and beyond.

#### **5.0 Legal Implications**

- 5.1 If the Committee decides that changes should be made to the Shadow Council's Constitution, these will need to be recommended to the Full Shadow Council.

#### **6.0 Risk Assessment**

- 6.1 No risks appear to arise from the potential changes to the Constitution.

#### **7.0 Background**

- 7.1 At its first meeting on 13<sup>th</sup> May 2008, the Shadow Council adopted its Constitution. In doing so, it accepted a recommendation of the Cheshire East Joint Committee which, in turn, had appointed a Sub Group of Members to carry out detailed work on the Constitution.
- 7.2 During debate on the draft Constitution at the final meeting of the Joint Committee, a number of issues were raised which it was agreed would be given further thought at a later date.

- 7.3 At the first meeting of the Governance and Constitution Committee on 14<sup>th</sup> July, the Committee asked for a report to be presented to its next meeting on these issues. The following is a list of the issues raised, together with comment.
- 7.2 Officer Code of Conduct: A question was raised at the Joint Committee meeting as to when an officer Code of Conduct would be included in the Constitution. Whilst the unitary Council's constitution will contain an Officer Code of Conduct, it was thought that it would not be appropriate to prepare a similar document for the Shadow Council, since only a very small number of officers would be employed during the shadow period. Some officers eg a Head of Paid Service will, of course, be employed by the Shadow Council, but they will be employed subject to the usual terms and conditions of employment, and general employment law. **In the circumstances, and in view of the limited period of employment of such a small number of individuals, it is felt that the preparation of an Officer Code of Conduct for the Shadow Council's Constitution would not be the best use of resources.**
- 7.3 Key Decisions-use of a financial threshold: The Shadow Council's Constitution uses the statutory definition of Key Decision:

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."

In addition to the above criteria, some local authorities use a financial threshold, above which a decision of the Executive automatically becomes a Key Decision, which must then be published on the Forward Plan. There are some advantages with this approach in that it provides officers with certainty as to the significance of financial decisions.

**However, in view of the fact that only very few operational decisions will be being made by the Shadow Council's Cabinet during the Shadow Period, it is suggested that the above definition of Key Decisions should be adequate.**

It is clear, however, that consideration will need to be given to the definition of Key Decisions for the new unitary Council, and this will form part of another report to the Committee in due course.

- 7.4 Number of Members required to call a special meeting of Council: The Shadow Council's existing rules (Rule 1.3, pg 81) require a request from at least 8 Members before a special meeting of Council can be called. This supplements a provision which allows a special meeting to be called by resolution of the Council or by the Chairman. The figure of 8 Members was thought, by the Joint Committee's sub-group of Members to be a suitable number as it represents approximately 10% of the Council Membership.  
**The Committee is asked to consider whether this figure should be changed, or whether this should be reviewed in the light of experience as the business of the Shadow Council progresses.**
- 7.5 Time limit on Members speaking at meetings: Whilst a protocol may be agreed in respect of speaking at Budget Council which would apply different time constraints, the general time limit on Member speeches during debate is 5 minutes (Appendix 3 to Council Procedure Rules, pg 107).  
In deciding what time limit should apply to Members speaking at Shadow Council and Committee meetings, a balance needs to be struck between ensuring that Members have an adequate opportunity to express their views, and that the business of the decision-making body can be carried out expeditiously. It should also be borne in mind that the Chairman of the meeting has discretionary powers to allow a longer period of time for Members to speak if he/she chooses to do so.  
**The Committee is asked to consider whether a change should be made to the Shadow Council's Procedure Rules at this stage, or whether the time limit on Members speaking should be reviewed in the light of experience as the business of the Shadow Council progresses.**
- 7.6 Council seating plan: One of the Governance and Constitution Committee's responsibilities is to approve the overall seating plan for Shadow Council meetings. Comment was made at the Joint Committee meeting that this, perhaps, was not something which should be agreed by a Committee of the Shadow Council.  
**However, it would seem to be beneficial to retain this responsibility to be retained by the Committee in case there is any need for a Member decision to be made on seating plan issues.**
- 7.7 Confirmation of minutes etc at Council meetings: Council Procedure Rule 7, pg 82 of the Constitution deals with the way in which the Shadow Council meeting confirms the minutes of its last meeting. Only matters relating to the accuracy of the minutes may be raised by way of a motion.  
Rule 8 deals with the record of decisions of the Cabinet and minutes of any other committees. Any question about accuracy must be considered and determined by the Cabinet or that committee at its next meeting.

An issue has arisen as to whether Members should be allowed to raised questions or make comments upon the record of decisions of the Cabinet or minutes of any other committees.

**If the Committee considers that this should be allowed, a recommendation should be made to the Shadow Council to allow questions or comments upon the record of decisions of Cabinet and minutes of any other committees to be put to any Cabinet Member, Chairman or Vice Chairman of the Committee as appropriate. The following Constitutional provision could be recommended to the Shadow Council for adoption as part of Rule 8:**

“A Member may ask a Cabinet Member or a Committee Chairman (or in his/her absence the Vice Chairman) a question, or comment on any Record of Decision or Minute. The Cabinet Member or the Chairman or in his/her absence the Vice Chairman will respond using their reasonable endeavours to provide a response which addresses the matters raised in reply to the question as put by the Member. The provisions in Procedure Rule 11.4 in relation to replies shall also apply here. There will be no debate on any question, comment or response under this procedure and no further motions can be moved.

“Where a Member wishes to ask a question or comment on any Part 2 matter before the Council, the question or comment must be given, in writing, to the Council’s Monitoring Officer at least one hour before the start of the Council meeting.



## **8.0 Conclusion**

- 8.1 This report summarises those constitutional issues which have been informally raised in the period immediately before the Shadow Council's Constitution was adopted.
- 8.2 The report contains various recommendations which should be considered.
- 8.3 If the Committee agrees that changes should be made to the Shadow Council's Constitution, these will need to be recommended to the Full Shadow Council.

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

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

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

*Documents are available for inspection at:*

*Cheshire East Shadow Council Support Office  
Congleton Borough Council  
Westfields  
Sandbach*

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## CHESHIRE EAST

### GOVERNANCE AND CONSTITUTION COMMITTEE

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**Date of meeting:** 8<sup>th</sup> September 2008  
**Report of:** Interim Monitoring Officer  
**Title:** Delegation of Functions to Portfolio Holders, Decision-Making Bodies and officers

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

- 1.1 To inform the Committee of work which will need to be carried out to ensure that decision-making powers are properly delegated to the relevant decision-making individual or body of the new unitary Council.

#### **2.0 Decision Required**

- 2.1 That the Committee note the contents of this report; provide comment upon the proposed decision-making structure of the unitary Council; and decide whether the detailed arrangements should be given consideration via informal Member working arrangements.

#### **3.0 Financial Implications for Transition Costs**

- 3.1 There are no implications for Transition Costs.

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 It is difficult to identify the financial implications of a decision-making structure which is presently at an early formative stage. As the structure emerges, officers will report to Members upon the financial implications.

#### **5.0 Legal Implications**

- 5.1 The arrangements for delegation of functions to decision-making bodies and individuals must be carefully incorporated into the new unitary Council's Constitution.
- 5.2 Other legal implications are contained in the main body of this report.

#### **6.0 Risk Assessment**

- 6.1 Local government legislation provides for decisions to be made by various decision-making bodies and by individuals appointed by Council. There are no risks associated with such decision-making arrangements, over and above those which would apply to any local authority.

## **7.0 Information**

- 7.1 Arrangements will need to be developed by which the new Unitary Council's executive and non-executive decisions can be made. Such decisions will need to be taken in a variety of ways: by the Cabinet, perhaps by individual Portfolio Holders, by committees and sub-committees appointed by Council, and by officers. Schemes of delegation and other constitutional provisions which identify decisions to be taken by officers and committees, and details of decision-making powers of Portfolio Holders will also need to be developed and adopted.
- 7.2 Decision-making bodies will need to be established with responsibilities in the following areas of the unitary Council's non-executive business:
- Development Control
  - Building Control
  - Licensing
  - Environmental Health
  - Housing
  - Staffing
  - Education Appeals
  - Highways and Transportation
  - Rights of Way
  - Governance/Audit
  - Standards
- 7.3 It is clear that the new unitary Council will be responsible for making a vast number of decisions. As is the case with any local authority, if all of these decisions were to be made at Member level, the business of the authority would grind to a halt.
- 7.5 All local authorities therefore rely upon arrangements by which some decisions, within specific limits, are delegated to officers, whilst others are delegated to committees and sub committees. Of course, executive decisions may be taken by individual Portfolio Holders, again subject to certain limitations.
- 7.6 I am not aware of any available statistics which provide evidence of the proportion of local authority decisions commonly made by officers, as opposed to those made at Member level, but it is suggested that approaching 90% may not be uncommon. In the case of each decision-making body or individual, the Council will need to decide the threshold beyond which decisions cease to be officer decisions, and become Member decisions.

- 7.7 This will be an important issue to resolve as it will dictate the amount of work for each Portfolio Holder (where appropriate) and each committee and sub-committee.
- 7.8 A number of key questions need to be answered in order to provide direction to officers, who are responsible for progressing the constitutional work. It is suggested that the detail of these issues is addressed through informal Member working arrangements, with reports being brought back to the Committee at an appropriate time.

## **9.0 Conclusion**

- 9.1 Much work needs to be carried out to ensure that the new Unitary Council will have robust and well documented delegations to individuals and decision-making bodies. The initial work may be carried out through informal Member working arrangements.

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

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

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

*Documents are available for inspection at:*

Cheshire East Shadow Council Support Team  
Congleton Borough Council  
Westfields  
Middlewich Road  
Sandbach

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## CHESHIRE EAST

### GOVERNANCE AND CONSTITUTION COMMITTEE

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<b>Date of meeting:</b>	8 September 2008
<b>Report of:</b>	Governance Group
<b>Title:</b>	Code of Corporate Governance

---

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

- 1.1. The purpose of this report is to outline the requirements for a local code of corporate governance which the new authority will need to develop and to propose the actions required to implement a local code.

#### **2.0 Decision Required**

- 2.1 To endorse the approach set out in this report.
- 2.2 To call for a report back on progress in due course with a view to signing off the local code before 31 March 2009.

#### **3.0 Financial Implications for Transition Costs**

- 3.1 None directly. This work will be carried out through internal resources within the Cheshire authorities.

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 None directly. This work will be carried out through internal resources.

#### **5.0 Legal Implications**

- 5.1. The legal implications are set out in the body of this report.

#### **6.0 Risk Assessment**

- 6.1 Any risks to the authority are managed and minimised by producing a comprehensive code of corporate governance and reviewing compliance with it each year.

#### **7.0 Background**

- 7.1. The Code of Corporate Governance is about how local government bodies ensure they are doing the right things, in the right way, for the right people in a timely, inclusive, open, honest and accountable manner.

- 7.2. In 2007 CIPFA/SOLACE produced a Framework “Delivering Good Governance in Local Government” (the Framework) and guidance which it is intended local authorities follow as best practice for developing and maintaining a local code of corporate governance. Accountability for the proper conduct of public business will be achieved through the publication of an annual governance statement that will make the adopted practice open and explicit.
- 7.3. The annual governance statement (AGS) is the formal statement that records and publishes an authority’s governance arrangements. It sets out how the authority has complied with its code, including how it has monitored the effectiveness of its governance arrangements. Preparation and publication of the AGS in accordance with the Framework is required to comply with the Accounts and Audit Regulations 2003 as amended by the Accounts and Audit (England)(Amendment) Regulations 2006. Note; with effect from 2007/08 the production of the AGS has replaced the requirement for a specific statement of internal control.
- 7.4. Producing and disseminating a local Code of Corporate Governance simplifies the production of the AGS because all the expected core principles in the Framework should be present in the local code. Therefore, evidencing compliance with the local code will also provide significant evidence to support the AGS. The degree to which the authority follows the principles in the Framework should be declared in its AGS.
- 7.5. The authority is required to include the AGS document in the approval process of the statement of accounts – the statutory deadline for which is the end of June in each financial year.

## **8.0 Link to Comprehensive Performance Assessment (CPA)**

- 8.1. The system of internal control is one of the key lines of enquiry for the use of resources assessment under CPA and is to be retained under Comprehensive Area Assessment (CAA). If the new authority desires to achieve a high rating under CAA, it is vital that a local code of corporate governance is in place to form the basis of the system of internal control.

## **9.0 What is good governance?**

- 9.1. Good governance is based on 6 core principles each with supporting principles which translate into a range of specific requirements that should be reflected in the local code of governance.

- 9.2. For example,

Core principle - developing the capacity and capability of members and officers to be effective;



Supporting principle - ensure members and officers have the skills, knowledge, experience and resources they need to perform their roles;

Requirements within local code – provision of induction programmes tailored to individual needs and opportunities for members and officers to update their knowledge on a regular basis;

Evidence – training and development plan, induction programme, update courses and information.

## **10.0 Introducing a local code of corporate governance**

10.1. To implement a local code the following process is recommended;

- a. Use the self-assessment schedule produced within the Framework, to identify the requirements which make up the code, together with the processes and documentation that provide evidence of compliance;
- b. Identify the individuals or project teams which are responsible for the various elements within the code and obtain a position statement from them;
- c. Identify issues that have not been addressed adequately and considering how they should be addressed;
- d. Identifying the individuals who should be responsible for undertaking actions required and plan accordingly.

10.2. It is recommended that areas of best practice be identified not just across the Cheshire authorities but nationally and reflected in the code wherever possible. Officers are actively pursuing opportunities to meet with the Audit Commission and work with them to gain their views on best practice.

## **11.0 Overview of Day One, Year One and Term One Issues**

11.1 A local code of corporate governance needs to be in place by 1 April 2009. The AGS which includes the system of internal control should be included with the statement of accounts, which must be published by 30 June 2010.

## **12.0 Reasons for Recommendation**

12.1 To ensure the new authority meets its legal requirements to put in place and annually review compliance with it's local code of corporate governance.

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

*Officer: Jon Robinson*

*Email: j.robinson@macclesfield.gov.uk*

**Background Documents:**

*CIPFA/SOLACE Framework “Delivering Good Governance in Local Government”  
CIPFA Finance Advisory Network Rough Guide for Practitioners – The Annual  
Governance Statement*

*Documents are available for inspection at:  
Cheshire East Shadow Council Support Office  
Congleton Borough Council  
Westfields  
Middlewich Road  
Sandbach*

## CHESHIRE EAST

### GOVERNANCE AND CONSTITUTION COMMITTEE

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**Date of meeting: 8 September 2008**

**Report of: Governance Lead Officer**

**Title: Appointments to the Cheshire Fire Authority**

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

- 1.1 To make appointments to the Cheshire Fire Authority.

#### **2.0 Decision Required**

- 2.1. The appointment of 8 members to the Cheshire Fire Authority as representatives of Cheshire East Council from 1 April 2009 for a period of 3 years (to 2011) acting as observers prior to that date.

#### **3.0 Financial Implications for Transition Costs**

- 3.1 None

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 None

#### **5.0 Legal Implications**

- 5.1 The Fire Authority is currently the Combined Fire Authority for Cheshire, Halton and Warrington in accordance with the Cheshire Fire Services (Combination Scheme) Order 1997. In the light of LGR a new combination order is required to create the Combined Fire Authority of Cheshire West and Chester, Cheshire East, Halton and Warrington.

#### **6.0 Risk Assessment**

- 6.1 Delay in appointing members to the Fire Authority may limit opportunities for members to familiarise themselves with their role prior to 1 April 2009 and engage in budget and strategy planning for 09/10.

#### **7.0 Background and Options**

- 7.1 The constitution of the Cheshire Fire Authority currently requires the appointment of 14 representatives from Cheshire County Council, 4 from Warrington Borough Council and 3 from Halton Borough Council

- 7.2. A new combination order is currently being drafted to reflect the changes implemented by LGR. The Fire Authority is proposing that the overall size of the Authority should be increased to 23 places, and that 8 elected members be appointed by both Cheshire West and Chester and Cheshire East from 1 April 2009. Prior to that date those members will have observer status.
- 7.3. The Fire Authority has requested nominations be made as soon as possible to enable those members to engage in budget and strategy setting for 09/10.
- 7.4. The term of office is at the discretion of this authority. It is recommended that appointments are made for 3 years to 2011 to tie in with member's term of office.

## **8.0 Overview of Day One, Year One and Term One Issues**

- 8.1 Representatives of Cheshire East Council to the Fire Authority need to be in place by 1 April 2009.

## **9.0 Reasons for Recommendation**

- 9.1 Appointment of members to the Cheshire Fire Authority is a legal requirement. Early appointment of members as observers will enable them to become familiar with their role and facilitate any necessary training.

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

*Officer: Mike Flynn, Governance Lead Officer*

*Tel No: 01244 972260*

*Email: [mike.flynn@cheshire.gov.uk](mailto:mike.flynn@cheshire.gov.uk)*

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

*Nil*

## CHESHIRE EAST

### GOVERNANCE AND CONSTITUTION COMMITTEE

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**Date of meeting:** 8 September 2008  
**Report of:** Governance Lead Officer  
**Title:** Proposals for a Health and Adult Social Care Scrutiny Committee for East Cheshire

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

- 1.1 To consider a recommendation from the Scrutiny Committee that the Council constitute a Health and Adult Social Care Scrutiny Committee for East Cheshire.

#### **2.0 Decision Required**

- 2.1 That the Committee:

- 1) recommend the Council that a separate Health and Adult Social Care Scrutiny Committee be established within the Council's Political Structure with terms of reference as set out in Appendix 1
- 2) recommend that the proposed Committee consist of 14 Members but that no action be taken as regards Cooption for the time being
- 3) support the principle of continuing Joint Scrutiny arrangements of the Cheshire and Wirral Partnership NHS Trust and authorise further discussions with the Authorities concerned with a view to bringing forward more detailed proposals

#### **3.0 Financial Implications for Transition Costs**

- 3.1 There are no implications for transition costs, except the funding of appropriate Member development in view of the new roles and responsibilities involved.

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 To be considered as part of the overall support to be provided to the Scrutiny function.

## **5.0 Information**

- 5.1 The Scrutiny Committee has considered a paper on Key Issues for Scrutiny which inter alia reminded Members that, as from 1 April, the East Cheshire Council, as a Social Services Authority, would have a statutory responsibility to have machinery in place to respond to consultations by NHS bodies about “substantial variations and developments” to Health Services locally. Taking into account the anticipated workload, the Committee has agreed unanimously to recommend the establishment of a separate Scrutiny Committee to exercise this function. This paper makes proposals for how such a Committee might operate.
- 5.2 Draft Terms of Reference for the proposed Committee are attached in the Appendix. Members will note that the Terms of Reference include scrutiny of the Authority’s own Social Care Services. This is in acknowledgement of the Government’s expectations for the integration of Commissioning between Health and Social Care, and that Health Scrutiny Committees can best add value with a focus on that Commissioning.
- 5.3 Members will appreciate that Health (and indeed Social) Care is increasingly regulated and inspected. In order to be clear where Scrutiny can add value, it is important for the OSC to have a good understanding of how the NHS works and the key policies and drivers. Time therefore should be set aside regularly for building and maintaining relationships with key partners to enable the Committee to be a “critical friend” and help achieve the desirable outcomes for the health of the local population. Similar considerations apply to the relationship with the Local Involvement Network (LiNK). Experience suggests that early work in drawing up agreed Protocols will assist this.
- 5.4 The Terms of Reference allude to the scrutiny of Health issues which span PCT or local authority boundaries, sometimes on a sub-regional or regional basis – eg Ambulance Services, Cancer Networks, Specialised Commissioning. The activities of the Cheshire and Wirral Partnership Foundation Trust – the provider of mental health, learning disability, and drug and alcohol services – is a prime example. A Joint Committee currently exists with Wirral MBC to scrutinise the delivery of those services and which has been influential in sustaining the profile of mental health issues.
- 5.5 Although Government Guidance stipulates that Health Trusts must bring significant proposals for change to Scrutiny, there is no similar requirement that major changes within Social Care be brought to Scrutiny. Nevertheless it would be good practice for the Scrutiny Committee to act as even-handedly as possible, and therefore to use internal mechanisms such as the Forward Plan, Call-In etc to achieve this.

- 5.6 To put the above into context Appendix 2 lists the business dealt with by the Cheshire Health and Adult Social Care Scrutiny Committee relating to Cheshire East.

#### Membership of Committee

- 5.7 On the assumption that a Health and Adult Social Care Scrutiny Committee would be a separate Committee within the Authority's formal structure, a Committee of 14 would be appropriate. Consideration would need to be given to:-
- extent of cross representation with the membership of the Council's main Scrutiny Committee,
  - representation on any external Joint Health Scrutiny Committee to be drawn from the H&ASC Scrutiny Committee.
- 5.8 Also important will be the issue of Cooption. There is no requirement in this respect. Experience suggests that limited cooption of non-voting sector representatives can bring a useful perspective to the Committee's deliberations. However, not all Health Scrutiny Committees operate Cooption arrangements and some restrict Cooption to Task and Finish Panels. The Scrutiny Committee feel that there may be advantages in leaving this issue "on the table" for the time being.

### **6.0 Conclusion**

- 6.1 Much will need to be done to enable the Authority to assume its statutory responsibility for Health Scrutiny as seamlessly as possible from 1 April and to function effectively thereafter. The Scrutiny Committee was unanimous in its recommendations set out in para 2.1 above.

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

*Officer: Robin Roberts*  
*Tel No: 01244 972213*  
*Email: robin.roberts@cheshire.gov.uk*

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

*Documents are available for inspection at:*

*Cheshire East Shadow Council Support Office*  
*Congleton Borough Council*  
*Westfield*  
*Middlewich Road*  
*Sandbach*

**Draft**

**EAST CHESHIRE COUNCIL  
HEALTH AND ADULT SOCIAL CARE SCRUTINY SELECT COMMITTEE**

The Health and Adult Social Care Scrutiny Committee will:

1. fulfil the Health Scrutiny duties falling on the Authority by virtue of the Health and Social Care Act 2001 (consolidated into the NHS Act 2006) and subsequent relevant legislation and Government Guidance;
2. liaise with NHS Trusts on any matter relating to the planning, provision and operation of Health services in East Cheshire, including commenting on the annual “health check” of the performance of those Trusts;
3. respond to any formal consultations undertaken by relevant NHS Trusts on any substantial development or variation in service;
4. participate with other relevant local authorities in joint scrutiny arrangements of NHS Trusts providing cross-border services to East Cheshire residents, in particular the Cheshire and Wirral Partnership Foundation Trust;
5. prepare an annual Work Programme and commission scrutiny reviews to ensure that all sections of East Cheshire’s local communities have equal access to Health services and have an equal chance of a successful outcome from those services;
6. liaise with the Local Involvement Network (LiNK) for East Cheshire, commissioning work and receiving reports and recommendations as appropriate;
7. deal with any matter referred by the Department of Health, the Local Involvement Network or by the Council;
8. offer advice to the Cabinet on Key Decisions relating to the operation of the Council’s Adult Social Care functions;
9. receive reports from the Council’s external inspectors on its Adult Social Care responsibilities and to offer advice thereon to the Cabinet;
10. keep under review the Council’s performance management arrangements in relation to its Adult Social Care responsibilities and offer advice as appropriate;



11. deal with any Health or Adult Social Care matter which is the subject of a Call-In, a Councillor Call for Action or Local Petition;
12. provide a regular programme of training and development for all Members and Co-opted Members involved in the work of the Committee;

CHESHIRE HEALTH AND ADULT SOCIAL CARE SCRUTINY  
SELECT COMMITTEE

“CHESHIRE EAST” BUSINESS DEALT WITH SINCE APRIL 2007

April 2007 – March 2008

PCT Fitness for Purpose  
Review of Services for Children, Young People, Parents and Babies in Eastern Cheshire  
North West Ambulance Service  
LINKs  
Young People's Mental Health (NoM)  
Alcohol Services  
Foundation Trust Applications  
Healthcare Services in a Community Setting  
Secondary Spinal Services in Central Cheshire  
Funding of Crisis and Home Resolution Teams  
Community Support Centres  
Community Equipment  
Community Services Dept: Complaints/Compliments  
Cheshire Public Health Report 2006/07  
Joint Commissioning  
Older People's Respite Care (NoM)  
NHS Dignity Challenge (NoM)  
Safeguarding Older People (NoM)  
Alzheimer's Inhibitor Drugs (NoM)  
People with Learning Difficulties (NoM)  
Social Care Redesign  
Stroke Services  
Healthcare Commission Annual Health Check of NHS Trusts

April 2008 –

CSCI Inspection Report on Independence, Well Being and Choice  
Community Day Care Services  
Budget Outturn  
Mental Health Needs Assessment  
Community First Responder Scheme  
World Class Commissioning  
Joint Strategic Needs Assessment  
Water Fluoridation  
Tobacco Control Consultation  
Continuing Health Care  
Dementia Services  
Domiciliary Care