

## Cheshire East Council – New Constitution

### Explanatory note to new Part 3 - Procedure Rules

#### Structure of Part 3

Part	Title	Contents
A	<a href="#">Rules of Procedure</a>	Set out the rules of procedure relating to meetings and decisions of the Council covering <ul style="list-style-type: none"> <li>• Full Council Meetings</li> <li>• Committees and Sub Committee Meetings</li> <li>• Cabinet Meetings</li> <li>• General Provisions relating to Procedure Rules</li> <li>• Overview and Scrutiny Procedure Rules</li> </ul>
B	<a href="#">Access to Documents and Information</a>	Sets out the rights to access documents and information of the Council and the obligations to publish and make information available.
C	<a href="#">Budget and Policy Framework Procedure Rules</a>	Set out the Council's budget and policy framework rules.
D	<a href="#">Finance Procedure Rules</a>	Set out the rules relating to the financial operation of the Council.  (These will be subject to a more detailed review in due course)
E	<a href="#">Contract Rules</a>	Set out the rules relating to the way in which the Council contracts with other organisations.
F	<a href="#">Employment Rules</a>	Set out the rules relating to the recruitment, appointment and dismissal of senior staff.

## Substantive Changes

This Part largely follows the form of the current constitution and contains sets of various Procedure Rules dealing with the operation of the Council and its decision making.

We describe the changes that we have made in three categories:

- I. Substantive changes required by law for approval
- II. Substantive changes based on best practice recommended for approval
- III. Substantive changes for consideration by the Sub-Committee

**Please Note:** The table of Financial Limits is currently presented separately and the relevant extract may will form part of these Rules once finalised.

### I. Substantive changes required by law for approval

Page	Section	Comment and/or area for consideration
Procedure Rules		
	Throughout	All references have been updated dates to ensure compliance with the latest legislation including the Accounts and Audit Regulations and Procurement Regulations.

### II. Substantive changes based on best practice recommended for approval

Page	Section	Comment and/or area for consideration
Committee and Sub Committee Procedure Rules		
11	Attendance of Members at Committees and Sub-Committees of which they are not Appointed Members	<p>The Current Constitution allows members to attend committees of which they are not members where private and confidential or exempt business is to be conducted.</p> <p>Following feedback from the Working Group, we have suggested introducing a "need to know" basis, whereby the Member's attendance at such a meeting would have to be agreed in advance by the Monitoring Officer and the Chair of the Meeting.</p>
15	Attending and speaking at Cabinet Meetings	<p>The current Constitution states that questions will not be allowed which repeat or are substantially the same as questions asked at a meeting of Council or Cabinet within the preceding 3 months.</p> <p>We have changed this to 6 months (and have standardised this time scale for all other similar references throughout the Constitution).</p>

Page	Section	Comment and/or area for consideration
52	Members Access to exempt or confidential documents	We have added the words "of that body" to the end of paragraph 19.2 for clarity.
65	Petitions	Proposed new procedure rule for petitions in place of the petitions scheme
	Councillor Call for Action	Reflected in procedure rules at Appendix 6
<b>Access to Information Procedure Rules</b>		
13.1	Period of Forward Plan	<p>The period of the Forward Plan has been reduced from 4 months to read: "<i>Forward plans will be prepared by the Leader to cover a period of 28 clear days (longer where this is possible) beginning with the first day of any month. They will contain outstanding matters from the previous forward plan</i>"</p> <p>This is to ensure that the Forward Plan is kept up to date on a shorter timeline to reflect the 2012 Regulations.</p>
13.2.2(c)	Publication in newspapers	Recommended for removal as no longer a legal requirement
16	Reports to Council	This section has been significantly shortened, with the procedure for the OSC requiring a report and the Cabinet's report to Council being taken out.
19	Members access to Exempt or Confidential Documents	<p>The words in italics below have been added. This is part of a wider review of access to information, and Bevan Brittan have produced an advice note which addresses concerns about the possible risks to the Council of not taking sufficient steps to control the circulation of exempt and confidential documents.</p> <p>We recommend removal of "<i>In addition, the following categories of Member shall automatically receive copies of confidential or exempt executive reports:</i></p> <ul style="list-style-type: none"> <li>▪ <i>Group Leaders</i></li> <li>▪ <i>Local Ward Members for the Ward affected, in accordance with the Ward Member Protocol</i></li> <li>▪ <i>Relevant overview and scrutiny committee Chairmen and Vice-Chairmen</i></li> <li>▪ <i>Members visiting the meeting in question (with the agreement of the Monitoring Officer and Chairman of</i></li> </ul>

Page	Section	Comment and/or area for consideration
		<i>the meeting) who would receive the papers upon arrival"</i>
	Scheme of Delegation to Senior Officers	<p>Whilst strictly part of WP2, this is part of a wider consideration of access to information.</p> <p>The current constitution has at paragraph 1.28 of the delegation to Senior Officers the following wording:</p> <p><i>"Chief Officers shall implement and ensure compliance with the Authority's procedures relating to data protection, Environmental Information Regulations, freedom of information, human rights and surveillance activities and shall only withhold the publication of requested information with the permission of the relevant Portfolio Holder, whose refusal shall not override the Scheme of Publication"</i></p> <p>None of this provision appears in the draft constitution in this form. Bevan Brittan believes that it is covered by a general requirement to follow "any appropriate legislative, regulatory, consultation, equalities, or procedural requirements that may be required" which does appear in the Scheme of Delegation at paragraph 2.9.5, but if members require it to be made more explicit then this can be achieved.</p> <p>If members require the need for Portfolio Holders to permit the withholding of information then this can also be reinserted. Bevan Brittan advise that any judgement on these matters is a professional and technical one, and there are risks if members seek to take such decisions. We advise that this requirement is not re-inserted.</p>
<b>Contract Rules</b>		
General	All	Following Officer feedback, references to "the Authority" are now references to "The Council" – this is consistent throughout the document.
Definitions	Definition of Chief Officer	Following Officer feedback references to The Chief Officer are now references to the "Executive Director". This is to ensure consistency with the Finance Procedure Rules and the rest of the constitution.
1.1.1	Introduction	We understand that the Procurement Board has

Page	Section	Comment and/or area for consideration
		changed to the Commissioning and Procurement Board. We have defined the board and included a hyperlink to the detailed terms of reference.
1.5.1	Contracts Register	Following Officer feedback we have made it clear that all contracts with a value above £5,000 must be recorded in the Contracts Register. This is required by the Government's Transparency Agenda.
2.1.4	Best and Final Offer	Following Officer Feedback we have made it clearer that Legal Services must be involved in the decision to include a Best and Final Offer (BAFO) stage in procurement process.
4.3.1	Method of Opening Bids	Following Officer feedback we have amended this section to include provisions that in addition to the Procurement Manager, a Category Manager can verify bids from the EU threshold up to £1,000,000 provided that they have not been involved in the tender in question.
5.1.8	Monitoring Contracts	We have included a requirement for monitoring of insurance.
6.1	Waiver Process/Breach	We understand that the Procurement Board will be changing to the Commissioning and Procurement Board. We have left in reference to the Procurement Board for now.
<b>Employment Rules</b>		
	Throughout	All unnecessary references which simply repeated the legal and statutory basis for the procedures and the relevant regulations have been stripped out
6.0	Other Chief Officers and Deputy Chief Officers	We have inserted a section relating to the executive objection process relating to the appointment and dismissal of those Chief Officers and Deputy Chief Officers who are not covered by paragraphs 4 and 5. This rectifies an omission in the current constitution.

### III. Substantive changes for consideration by the Sub-Committee

Page	Section	Comment and/or area for consideration
Council Procedure Rules		

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Page	Section	Comment and/or area for consideration
2	Council Procedure Rule	<p>Five members can call a Special Council – it has been queried as to whether this number is too low.</p> <p>This number cannot be increased as it is specified by Paragraph 3 of Schedule 12 of the Local Government Act 1972.</p>
28	Notices of Motion	<p>An issue has been raised as to whether motions should always be debated or at least should the proposer be able to explain it.</p> <p>At the moment the wording has been left as in the previous Constitution. Practice varies in councils as to how motions are dealt with. The risk of allowing them to be debated in detail is that (1) the Full Council may not be (and often is not) the correct decision making body to deal with the issue so the matter will have to be re-run and (2) the debate will not be informed by a report setting out the issues, implications and options.</p> <p>However, it is not unreasonable for consideration to be given to the proposer of the motion to be able to explain it briefly – for discussion.</p>
29	Rules of Debate	<p>An issue has been raised requesting that members should have the Right to Speak at Council at any point, and not only as determined by the Chair</p> <p>This is not usual practice and would potentially cause an unmanageable meeting. The Constitution has not been changed in this respect.</p>
	Council Procedure Rule – Appendix 4	<p>The definition of an urgent decision, for the purposes of this section, has been widened following feedback from the Chief Operating Officer. It was previously defined as where "any delay likely to be caused by following the usual procedures would seriously prejudice the Council's or the Public's interest." It now reads:</p> <p><i>"A decision will be urgent in the case of: civil emergency; natural or man-made disaster; matter of serious public health; matters regarding safeguarding of people; or where the Council is at risk of serious reputational damage; loss or claims; or any other matters where the CE or in his/her absence the CFO has declared that an urgent decision is required"</i></p>
Finance Procedure Rules		

Page	Section	Comment and/or area for consideration
	<u>General</u>	References to Authority amended to Council throughout.
	<u>General</u>	References to Cabinet Member for Finance and Assets amended to Cabinet Member for Finance and Communications throughout.
	<u>Foreword – Paragraph 1</u>	Decision makers required to check that they have authority to incur financial consequences arising from any decisions they may make.
	Foreword – Paragraph 2	A requirement to maintain a written record of delegated decision making has been added – covered in detail at A24 and A26 to A27.
	Foreword – Paragraph 4	Responsibility of COO to report breaches of FCPRs amended from Cabinet and Council to Audit & Governance Committee.
	Foreword – Paragraph 6	Amended to remove reference to role of internal audit and Corporate Governance and Audit Manager (covered in detail under internal audit and risk management section of FPRs)
	Foreword – Paragraph 7	Clarifies that advice should be sought from COO before decisions are taken where the interpretation of the FPRs is unclear.
	Section A – Financial Management – A5	Additional wording to clarify that when making decisions Members must check they have authority to incur financial consequences arising from their decisions.
	Section A – Financial Management – A7	Clarifies that A&G Committee has right of access to information required for the effective discharge of its responsibilities.
	Section A – Financial Management – A16	Expanded commentary on actions that may be considered contrary to budget
	Section A – Financial Management – A20	Designated Deputy s151 Officer amended from Finance Manager to Head of Finance & Performance
	Section A – Financial Management – A23	Members of Corporate Leadership Team updated
	Section A – Financial Management – A26	Expanded commentary on objectives of Schemes of Financial Delegation
	Section A – Financial Management – A31	Additional bullet point clarifying that administrative virements do not require Member approval.
	Section A – Financial Management – A33	Supplementary Estimates section split into revenue and capital
	Section A – Financial Management – A35	New table added with separate approval limits for SREs funded from earmarked reserves and contingencies
	Section A – Financial Management – A36	Clarifies that SREs funded wholly or in part from general reserves or general purpose funding require Council approval regardless of value.
	Section A – Financial	Clarifies that Supplementary Capital Estimates

Page	Section	Comment and/or area for consideration
	Management – A38	funded wholly or in part from additional Council resources such as capital reserves, borrowing and capital receipts, regardless of value, must be approved by Council. Council approval also required where there are significant revenue implications for future year's budgets.
	Section A – Financial Management – A42	Clarifies that requests for carry forward of underspends should not be submitted where directorate budgets as a whole are overspent.
	Section B – Financial Planning – B15	Clarifies that Council should not amend revenue or capital budgets without first having considered advice of Cabinet and COO on financial implications arising.
	Section B – Financial Planning – B17	Reinforces responsibility of CLT to alert the COO in a timely manner to any potential overspending.
	Section B – Financial Planning – B26	Removes reference to lower limit of £10,000 for capital expenditure
	Section B – Financial Planning – B35	Reference to Portfolio Holder for Corporate Policy and Legal Services needs to be checked for accuracy.
	Section B – Financial Planning – B42	Amended wording to clarify that Council will decide how capital receipts should be used when setting the annual revenue budget and capital programme and remove reference to repayment of debt.
	<u>Section C – Risk Management and Control of Resources – C2 and throughout</u>	Reference to Corporate Manager Governance and Audit needs to be updated to reflect current management arrangements
	<u>Section C – Risk Management and Control of Resources – C27</u>	Clarifies internal audit rights of access apply equally to Council ASDVs and these rights should be documented in management agreements.
	<u>Section C – Risk Management and Control of Resources – C28</u>	Additional paragraph citing statutory basis of external audit.
	<u>Section C – Risk Management and Control of Resources – C29</u>	Updated to reference new arrangements for appointment of external auditors under Local Accountability and Audit Act 2014.
	<u>Section C – Risk Management and Control of Resources – C46</u>	Additional wording to make clear that cash held on Council premises should not exceed insurance limits.
	<u>Section C – Risk Management and Control of Resources –</u>	Additional wording to clarify that relevant Director (or Chief Exec) should approval all requests for early retirement or severance.



Page	Section	Comment and/or area for consideration
	<u>C61</u>	
	Section D – Financial Systems and Procedures – D50	Requirement for trading accounts where turnover exceeds £1m deleted.
	Section D – Financial Systems and Procedures – D52	This section on ASDVs will need to be updated in light of the ongoing ASDV review.
	<u>Section E – Partnerships and Jointly Funded Projects – E24</u>	Clarifies that the Cabinet Member for Finance & Communities will periodically set out policy on approach to be taken to the allocation of grants, donations and other contributions to outside bodies, in consultation with the Chief Operating Officer and Head of Legal Services.