

## **PART 2**

# **ARTICLES OF THE CONSTITUTION**

## **ARTICLE 1 – THE CONSTITUTION**

### **1.01 Powers of the Council**

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

### **1.02 Constitution**

This document and all its appendices, is the Constitution of Trafford Council.

### **1.03 Purpose of the Constitution**

The purpose of the Constitution is to:

1. enable the Council to provide clear leadership to the community in partnership with residents, businesses and other organisations;
2. support the active involvement of the community in the process of the Council's decision-making;
3. help councillors represent their constituents more effectively;
4. enable decisions to be taken efficiently and effectively;
5. create a powerful and effective means of holding decision-makers to public account;
6. ensure that no one will review or scrutinise a decision in which they were directly involved;
7. ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
8. provide a means of improving the delivery of services to the community.

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

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

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

## **ARTICLE 2 – MEMBERS OF THE COUNCIL**

### **2.01 Composition and eligibility**

- (a) The Council will comprise 63 members, otherwise called councillors. Three councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Boundary Commission and approved by the appropriate Secretary of State.
- (b) Only registered voters of the Borough of Trafford or those living or working there for a specified period will be eligible to hold the office of Councillor.

### **2.02 Election and terms of Councillors**

The ordinary election of a third of all councillors will be held on the first Thursday in May in each year, except that in 2005, and every fourth year after that, there will be no regular election. The terms of office of councillors will be four years starting on the fourth day after being elected and finishing on the fourth day after the date of the regular election four years later.

### **2.03 Filling of casual vacancies**

Casual vacancies which may arise as a result of a councillor ceasing to be a member before the termination of his/her term of office will be filled by the holding of a by-election. The by-election will be held on an appropriate Thursday. However, in all cases where a person ceases to become a councillor in the final 6 months of their term of office the election will be held in abeyance until the normal May election. The terms of office of councillors elected at a by-election will start on the day they are elected.

### **2.04 Roles and functions of all Councillors**

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

All councillors will:-

- (i) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
- (ii) contribute to the good governance of the area and actively encourage community participation and involvement in decision making;
- (iii) effectively represent the interests of their ward and of individual constituents;
- (iv) respond to constituents' enquiries and representations, fairly and impartially;
- (v) participate in the governance and management of the Council;

- (vi) maintain the highest standards of conduct and ethics; and
- (vii) take part in Member development and training.
- (b) **Rights and duties**
  - (i) Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions.
  - (ii) They will not make public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Councillor, or Officer entitled to know it.
  - (iii) For these purposes “confidential” and “exempt” information are defined in the Access to Information Rules in Part 4 of this Constitution.

## 2.05 **Conduct**

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

## 2.06 **Allowances**

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

## 2.07 **Register of Interests**

- (a) The Council’s Monitoring Officer has established and will maintain a register of such interests of councillors and co-opted voting members of the Council as are specified in the Code of Conduct (see Part 5). All councillors and voting co-opted Members must provide the Monitoring Officer with the relevant information and update this as necessary.
- (b) The Register is available for inspection by members of the public at Trafford Town Hall during usual office hours and declarations by councillors are available on the Council’s website.

## **ARTICLE 3 – THE COUNCIL AND ITS COMMUNITY**

### **3.01 Rights of Members of the Public**

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

#### **(a) Voting and petitions**

Rights for residents on the electoral roll for the area include the right to vote and sign a petition to request a referendum for an elected mayor form of Constitution. People who live and/or work in the area can present petitions to the Council and the Executive as set out in Section 4 of this Constitution.

#### **(b) Information**

Members of the public have the right to:

- (i) attend meetings of the Council and its committees except where confidential or exempt information is likely to be disclosed, and part of the meeting is therefore held in private;
- (ii) attend meetings of the Executive when key decisions are being considered except where confidential or exempt information is likely to be disclosed, and part of the meeting is therefore held in private;
- (iii) find out from Notice of Key Decisions what key decisions will be taken by the Executive and, when it is expected that they will be taken.
- (iv) see the majority of reports and background papers, and any records of decisions made by the Council and the Executive; and
- (v) inspect the Council's accounts and published financial information and make their views known to the external auditor.

#### **(c) Participation**

Any member of the public can ask a question at any meeting of the Executive or at any Committee subject to them complying with the rules set out in part 4 of the Constitution.

Members of the public can participate in, and contribute to investigations by overview and scrutiny committees when appropriate.

Any person (or their representative) who submits a planning application which is considered by the Planning and Development Management Committee will have the opportunity to address the Committee for a maximum of 3 minutes subject to having given prior written notice to the Head of Planning and Development.

Similarly, one representative on behalf of any objectors to a planning application which is considered by the Planning and Development Management Committee will have the opportunity to address the Committee for a maximum of 3 minutes subject to having given prior written notice to the Head of Planning and Development.

**(d) Complaints**

Members of the public have the right to complain to:

- (i) the Council itself under its complaints scheme;
- (ii) the Ombudsman after having first raised their complaint with the Council and given the Council a chance to respond;

**3.02 Responsibilities of Members of the Public**

Members of the public must not be violent, abusive or threatening to councillors, officers or others involved in Council business and must not wilfully harm things owned by the Council, councillors or officers.

Eligible local residents are legally required to register to vote and are actively encouraged to exercise their vote.

## ARTICLE 4 – THE COUNCIL MEETING

### 4.01 Meanings

#### (a) Policy Framework

The policy framework means the following plans and strategies:-

(i) those required by law:

- Crime and Disorder Reduction Strategy
- Trafford Local Plan
- Licensing Policy
- Gambling Policy
- Council's Pay Policy

(ii) those which the Council has decided to include:

- Council's Corporate Plan (if produced)
- Equalities framework
- Treasury Management Strategy

#### (b) Budget

The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the Council Tax base, setting the Council Tax and decisions relating to the control of the Council's borrowing requirement, the Council's Investments Strategy, the control of its capital expenditure and the setting of virement limits.

#### (c) Housing Land Transfer

Housing Land Transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval to dispose of land used for residential purposes where approval is required under sections 32 or 43 of the Housing Act 1985.

### 4.02 Functions of the full Council

Only the Council will exercise the following functions:

- (a) adopting and changing the Constitution;
- (b) approving or adopting the policy framework, the budget and any application to the Secretary of State in respect of any Housing Land Transfer;
- (c) subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function which is covered by the policy framework or the budget where the

decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget;

- (d) appointing the Leader from the date of election as Leader to the first annual meeting after their normal day of retirement as a Councillor i.e. up to 4 years (or following the removal, incapacity or resignation of the Leader).
- (e) agreeing and/or amending the terms of reference for committees (other than Executive Committees), deciding on their composition and making appointments to them;
- (f) appointing representatives to outside bodies unless the appointment is an executive function or has been delegated by the Council;
- (g) adopting an allowances scheme under Article 2.06;
- (h) changing the name of the area, conferring the title of honorary alderman or freedom of the borough;
- (i) confirming the appointment of the Head of Paid Service;
- (j) approval of payments of salary and benefit packages or termination payments in excess of £100,000 (with a referral to the Employment Committee in the first instance).
- (k) making, amending, revoking, re-enacting or adopting byelaws and promoting or opposing the making of local legislation or personal Bills;
- (l) all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself rather than the Executive; and
- (m) all other matters which, by law, must be reserved to the Council.

#### 4.03 **Council meetings**

There are three types of Council meeting:

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings.

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

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

The Council will maintain the record in Part 3 of this Constitution setting out the responsibilities for the Council's functions which are not the responsibility of the Executive.

## ARTICLE 5 – CHAIRING THE COUNCIL

### 5.01 Role and function of the Chair

The Mayor and in his or her absence, the Deputy Mayor will have the following roles and functions:

#### (a) Chairing the Council Meeting

The Chair of the Council shall be the Mayor, who will be a Member of the Council, and will be elected annually by the Council. The Mayor and Deputy Mayor will hold office as the Chair and Vice-Chair of the Council until:

- (i) (s)he resigns from the office; or
- (ii) (s)he is disqualified from being a councillor.; or
- (iii) (s)he is no longer a councillor; or
- (iv) the first Annual Meeting after their normal day of retirement as a councillor, save that the Council may by resolution remove the Chair or Vice-Chair from office at an earlier date.

The Chair and in his/her absence, the Vice-Chair will have the following roles and functions:-

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

#### (b) Ceremonial Role

The Mayor is the first citizen of the Borough and shall take precedence in the Borough. The Mayor will represent the Borough at civic functions both locally and nationally and will fulfil all the traditional ceremonial functions that are fundamental to the civic life of Trafford.

## **ARTICLE 6 – OVERVIEW AND SCRUTINY COMMITTEES**

### **6.01 Terms of reference**

The Council will appoint the overview and scrutiny committees set out in Section 6.05 to discharge the functions conferred by the Local Government Act 2000, the Health and Social Care Act 2001, Police and Justice Act 2006, National Health Service Act 2006, Local Government and Public Involvement in Health Act 2007, Local Democracy, Economic Development and Construction Act 2009, the Flood and Water Management Act 2010 and the Health and Social Care Act 2012.

These committees are collectively referred to in this Constitution as overview and scrutiny committees.

### **6.02 General role**

Within their terms of reference, overview and scrutiny committees will:

- i) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Authority's functions.
- ii) make reports and/or recommendations to the full Council and/or the Executive and/or any joint committee or area board in connection with the discharge of any functions;
- iii) consider any matter affecting the area or its inhabitants; and
- iv) have the right to request the exercise of the right to call-in, for reconsideration, executive decisions made but not yet implemented by the Executive and key decisions made but not yet implemented by officers.

### **6.03 Specific functions**

These are set out in the terms of reference for each overview and scrutiny committee which are set out in Part 4 of this Constitution.

### **6.04 Proceedings of overview and scrutiny committees**

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

### **6.05 Overview and Scrutiny Committees**

The Council will appoint the following overview and scrutiny committees:-

- Scrutiny Committee
- Health Scrutiny Committee
- Children and Young People's Scrutiny Committee

The Children and Young People's Scrutiny Committee shall deal with all functions of the Council as an education authority under the Education Acts, School Standards and Framework Act 1998 and all other relevant legislation in force from time to time.

Where the Children and Young People's Scrutiny Committee considers education matters, the Committee will include an additional 5 non-elected voting co-opted members as follows:-

- 1 Church of England representative,
- 1 Roman Catholic Church representative,
- 3 parent governor representatives,

and 3 non-elected, non-voting co-opted members who are teacher representatives.

The Scrutiny Committee shall deal with all functions relating to the Crime and Disorder Reduction Partnership in order to discharge the relevant functions as laid out in the Police and Justice Act 2006.

The Health Scrutiny Committee shall deal with all functions of the Council under the Health and Social Care Act 2012 to review and scrutinise matters relating to the health service in Trafford and make reports and recommendations to local NHS bodies.

## **ARTICLE 7 – THE EXECUTIVE**

### **7.01 Role**

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

### **7.02 Form and composition**

The Executive will consist of the Executive Leader together with at least 2, but not more than 9, councillors appointed to the Executive by the Leader of the Council.

### **7.03 Leader**

The Leader will be a councillor elected to the position of leader by the Council. The term of office of the Leader is from the date of election as Leader to the first annual meeting after their normal day of retirement as a councillor i.e. up to 4 years. The Leader will hold office until:

- (a) (s)he resigns from the office; or
- (b) (s)he is disqualified from being a councillor; or
- (c) (s)he is no longer a councillor; or
- (d) the first Annual Meeting after their normal day of retirement as a councillor save that the Council may by resolution remove the Leader from office at an earlier date.

### **7.04 Deputy Leader**

The Leader of the Council shall appoint an Executive Member as Deputy Leader with power to act in the Leader's absence.

### **7.04 Executive members**

Executive members appointed by the Leader of the Council (including the Executive Member appointed as Deputy Leader) shall hold office until:

- (a) they resign from office; or
- (b) (s)he is disqualified from being a councillor; or
- (c) they are no longer councillors; or
- (d) the Annual General Meeting following the meeting at which they are appointed to the Executive save that the Leader of the Council may remove them from office either individually or collectively at an earlier date.

### **7.05 In the event that the office of Leader becomes vacant the following procedure shall be followed:**

- (a) if the vacancy arises as a result of a Council resolution, the Council will appoint a replacement at the same meeting;

- (b) if the vacancy arises at any other time the Chief Executive will call a meeting of Council to be held on a date agreed with the Chair of the Council if no ordinary meeting of Council is due to be held within a reasonable time. At this meeting the Council shall appoint a councillor to the vacant office.

#### **7.06 Deputy Executive Members**

Members may be appointed to act as Deputies for the Executive Members but will not be members of the Executive nor serve on the Scrutiny Committees. The Deputy Executive Members will support the Executive Members in their role and will be able to attend Executive meetings. They will be able to speak at Executive meetings in the absence of the Executive Member, however, they will not have any decision making powers.

#### **7.07 Proceedings of the Executive**

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

#### **7.08 Responsibility for functions**

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

## **ARTICLE 8 – REGULATORY AND OTHER COMMITTEES**

### **8.01 Regulatory and other committees**

- (a) The Council will appoint the committees set out in the left hand column of the table “Responsibility for Council Functions” in Part 3 of this Constitution to discharge the functions described in column 3 of that table.
- (b) These Committees will conduct their proceedings in accordance with Article 13.
- (c) The Council will appoint a Health and Wellbeing Board with the membership and terms of reference as set out in the table “Responsibility for Council Functions” in Part 3 of this Constitution. The Board will conduct their proceedings in accordance with the procedure rules in Part 4 of the Constitution.

## **ARTICLE 9 – THE STANDARDS COMMITTEE**

### **9.01 Standards Committee**

The Council will appoint a Standards Committee as required under the provisions of the Localism Act 2011.

### **9.02 Composition**

#### **(a) Membership**

The Standards Committee will be composed of:

- Eleven councillors (other than the Chair of the Council and the Leader);
- three people who are not councillors or officers of the Council or any other body having a standards committee (Independent members);
- two members of a parish council wholly or mainly in the Council's area (Parish members).

#### **(b) Independent members**

Independent members are not entitled to vote at meetings.

#### **(c) Parish members**

A Parish member may be present when matters relating to those parish councils or their members are being considered.

Parish members are not entitled to vote at meetings.

#### **(d) Chairing the Committee**

A member of the Executive may not chair the Committee.

### **9.03 Role and Function**

The Standards Committee will have the following roles and functions:

- To promote and maintain high standards of conduct;
- To make recommendations to Council on the council's code of conduct and its register of interests;
- To determine by way of its Hearing Panel whether a breach of the code has occurred; if so, whether to take any action and, if so, what action to take,
- To determine appeals from the Monitoring Officer's decision on dispensations.

- To grant general dispensations and to determine requests for dispensations either referred from the monitoring officer or received from a member or co-opted member.

The Council has delegated to the Monitoring Officer the following:-

- Decisions on whether to investigate or reject or informally resolve a complaint and the power to arrange an investigation (having consulted with the Independent Person);
- Power to refer an investigation finding of breach to the Standards Committee for hearing (having consulted with the Independent Person);
- Power to determine requests for dispensation on grounds 1-3 below, subject to a member's right to appeal to the Standards Committee.

The grounds are:

- (1) So many members have disclosable personal interests (dpi's) that it would impede the transaction of the business;
- (2) Without the dispensation the strengths of political groups on the body would be so upset as to alter the likely outcome of any vote on the matter;
- (3) Without the dispensation, every member of the Executive would have a (dpi) prohibition from participating;

## **ARTICLE 10 – NOT USED**

## **ARTICLE 11 – JOINT ARRANGEMENTS**

### **11.01 Arrangements to promote well being**

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

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

### **11.02 Joint arrangements**

- (a) The Council may make arrangements, as necessary, with one or more local authorities to carry out such functions as it considers appropriate. These arrangements may involve the appointment of a joint committee.
- (b) The Executive, as defined in Article 7, may make joint arrangements, as necessary, to carry out functions for which it is responsible. These arrangements may involve the appointment of a joint committee.

### **11.03 Appointments to a Joint Committee**

- (a) Except as set out below, the Executive shall only appoint executive members to a joint committee and those members need not reflect the political composition of the local authority as a whole.
- (b) The Executive may appoint members to a joint committee from outside the Executive where –
  - the joint Committee is discharging a function in relation to five or more authorities, or
  - the function discharged is a function which is required by statute to be discharged by a joint Committee, or
  - the joint Committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, the Executive may appoint to the joint committee any councillor who is a member for a ward which is wholly or partly contained within the area.

In these circumstances the political balance requirements do not apply to such appointments.

### **11.04 Information on Joint Arrangements**

Details of any joint arrangements including any delegations to joint committees are set out in the Council's scheme of delegation.

### **11.05 Access to information**

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

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

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

### **11.07 Contracting out**

Provided there is no delegation under 11.06 of the Council's discretionary decision making the Council (for non executive functions) and the Executive (for executive functions) may contract out to another body or organisation functions

- which may be exercised by an officer and which are subject to an order under Section 70 of the Deregulation and Contracting Out Act 1994, or
- under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles.

## ARTICLE 12 – OFFICERS

### 12.01 Management structure

#### (a) General

The full Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.

#### (b) Head of Paid Service, Monitoring Officer and Chief Finance Officer.

The Council will designate the following posts as shown:

Post	Designation
Chief Executive	Head of Paid Service
Corporate Director of Governance and Community Strategy	Monitoring Officer
Director of Finance and Systems	Chief Finance Officer (Section 151 Officer)

Such posts will have the functions described in Article 12.02–12.04 below.

#### (c) Structure

The Head of Paid Service will determine, publicise and amend the officer structure of the Council in accordance with Council and Joint Negotiating Committee (JNC) Conditions of Service and Council and national policies and procedures.

### 12.02 Functions of the Head of Paid Service

#### (a) Discharge of functions by the Council

The Head of Paid Service will provide a regular report (at least annually) to Employment Committee and/or to Council on the manner in which the discharge of the Council's functions is coordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.

#### (b) Restrictions on functions

The Head of Paid Service may hold the post of Chief Finance Officer if a qualified accountant, but may not be the Monitoring Officer.

- (c) The core role of the Chief Executive is:
- to have overall corporate management and operational responsibility (including overall management responsibility for all officers);
  - to provide professional advice to all parties in the decision making process (the Executive, overview and scrutiny, full council and other committees);
  - together with the Monitoring Officer to be responsible for a system of record keeping for all the authority's decisions; and
  - to represent the authority on partnership and external bodies (as required by statute or the Authority). The Chief Executive may delegate this function where necessary and appropriate.

### 12.03 Functions of the Monitoring Officer

The Monitoring Officer will:-

- (a) maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, staff and the public.
- (b) after consulting with the Head of Paid Service and Chief Finance Officer, report to the full Council, or to the Executive in relation to an executive function, if (s)he considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- (c) contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- (d) conduct investigations into complaints and make reports or recommendations in respect of them to the Standards Committee.
- (e) ensure that executive decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.
- (f) advise whether decisions of the Executive are in accordance with the budget and policy framework.
- (g) provide advice to all councillors on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues.

The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

#### **12.04 Functions of the Chief Finance Officer**

The Chief Finance Officer will

- (a) after consulting with the Head of Paid Service and the Monitoring Officer, report to the full Council or to the Executive in relation to an executive function and the Council's external auditor if (s)he considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- (b) have responsibility for the administration of the financial affairs of the Council.
- (c) contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) provide advice to all councillors on 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.
- (e) provide financial information to the media, members of the public and the community.

#### **12.05 Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer**

The Council will provide the Monitoring Officer and Chief Finance Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

#### **12.06 Conduct**

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

#### **12.07 Employment**

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

#### **12.08 Conflicts of Interest**

- (a) If, having regard to the particular circumstances it appears that the Monitoring Officer has a clear and substantial conflict of interest, any reference to the Monitoring Officer in any guidance, protocol or procedure approved by the Council dealing with standards and conduct shall be substituted by reference to the Chief Finance Officer.

- (b) If, having regard to the particular circumstances it appears that the Chief Finance Officer has a clear and substantial conflict of interest, any reference to the Chief Finance Officer in any guidance, protocol or procedure approved by the Council dealing with standards and conduct shall be substituted by reference to the Monitoring Officer.
  
- (c) If, having regard to the particular circumstances it appears that the Chief Executive has a clear and substantial conflict of interest, any reference to the Chief Executive in any guidance, protocol or procedure approved by the Council dealing with standards and conduct shall be substituted by reference to the Monitoring Officer.

## **ARTICLE 13 – DECISION MAKING**

### **13.01 Responsibility for decision making**

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

### **13.02 Principles of decision making**

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

- (a) Proportionality (meaning the action must be proportionate to the results to be achieved)
- (b) Due consultation (including the taking of relevant professional advice)
- (c) Respect for human rights
- (d) The public sector equality duty and general equality duties.
- (e) Presumption in favour of openness
- (f) Clarity of aims and desired outcomes
- (g) Due consideration to be given to alternative options
- (h) Reasons for the decisions to be given provided there is no breach of confidentiality

### **13.03 Types of decision**

#### **(a) Decisions reserved to full Council**

Decisions relating to the functions listed in Article 4.02 will be made by the full Council and not delegated.

#### **(b) Key decisions**

- (i) An executive decision taken by the Executive, an Executive Member or an officer will be a Key Decision if it comes within one or more of the following categories:
  - i) It is likely to result in the Council incurring expenditure or making of savings which are significant having regard to the Council's budget for the service or function to which the decision relates; or

- ii) to be significant in terms of its effects on communities living or working in 2 or more Trafford wards.
  - iii) It forms part of the development of, or the development of a change to, the Policy Framework or Budget.
  - iv) It involves securing approval in principle to the acquisition or disposal of land or property the value of which is estimated to exceed £500,000.
  - v) It involves securing approval in principle to the taking of, or the granting, renewal, assignment, transfer, surrender, taking of surrenders, review, variation or termination of any leases, licenses, easements or wayleaves, at considerations in excess of £250,000 per annum or a premium of £500,000
  - vi) Its consequences are likely to result in compulsory redundancies or major changes to the terms and conditions of employment of a significant number of Council employees.
- (ii) A decision taker may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of this Constitution.

#### **13.04 Decision making by the full Council**

Subject to Article 13.08, the Council meeting will follow the Council Procedures Rules set out in Part 4 of this Constitution when considering any matter.

#### **13.05 Decision making by the Executive**

Subject to Article 13.08, the Executive will follow the Executive Procedures Rules set out in Part 4 of this Constitution when considering any matter.

#### **13.06 Decision making by overview and scrutiny committees**

Overview and scrutiny committees will follow the Overview and Scrutiny Procedures Rules set out in Part 4 of this Constitution when considering any matter.

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

Subject to Article 13.08, other Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in Part 4 of this Constitution as apply to them.

### **13.08 Decision making by Council bodies acting as tribunals**

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

## **ARTICLE 14 – FINANCE, CONTRACTS AND LEGAL MATTERS**

### **14.01 Financial management**

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

### **14.02 Contracts**

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

### **14.03 Legal proceedings**

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

### **14.04 Authentication of documents**

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

Contracts for the supply of goods, materials and services or for the execution of works which exceed £50,000 in value shall be entered into formally in writing and signed by at least two officers of the Council.

Every such contract which exceeds £250,000 in value shall be entered into formally in writing and shall as considered appropriate by the Corporate Director of Governance and Community Strategy either be under the common seal of the Council and attested by the Corporate Director of Governance and Community Strategy or by an officer nominated by him/her, or shall be signed by two officers nominated by the Corporate Director of Governance and Community Strategy (which may include the Corporate Director of Governance and Community Strategy).

### **14.05 Common Seal of the Council**

The Common Seal of the Council will be kept in a safe place in the custody of the Corporate Director of Governance and Community Strategy. 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 Corporate Director of Governance and Community Strategy should be sealed. The affixing of the Common Seal will be attested by the Corporate Director of Governance and Community Strategy or some other person authorised by him/her.

## **ARTICLE 15 – REVIEW AND REVISION OF THE CONSTITUTION**

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

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

#### **Protocol for Monitoring and Review of Constitution by the Monitoring Officer**

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

1. observe meetings of different parts of the member and officer structure;
2. examine the audit trail relating to a sample of decisions;
3. record and analyse issues raised with him/her by members, officers, the public and other relevant stakeholders; and
4. compare practices in this authority with those in other comparable authorities, or national examples of best practice.
5. Take such other action as (s)he considers appropriate.

Before making any recommendations or suggesting significant amendments to the Constitution the Monitoring Officer will consult the Standards Committee, the Scrutiny Committee and the Executive.

### **15.02 Changes to the Constitution**

#### **(a) Approval**

Changes to the Constitution will only be approved by the full Council after consideration of the proposals by the Monitoring Officer.

#### **(b) Change from a leader and cabinet form of executive to Mayoral arrangements, or vice versa**

The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals and must hold a binding referendum.

## **ARTICLE 16 – SUSPENSION, INTERPRETATION AND PUBLICATION OF THE CONSTITUTION**

### **16.01 Suspension of the Constitution**

- (a) The Articles of this Constitution may not be suspended.
- (b) Any suspension of any of the Rules set out in this Constitution must be in accordance with the procedures set out in those Rules.

### **16.02 Interpretation**

The ruling of the Chair 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 contained in Article 1.

### **16.03 Publication**

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

## **SCHEDULE 1: DESCRIPTION OF EXECUTIVE ARRANGEMENTS**

The following parts of this Constitution constitute the Executive arrangements:

1. Article 6 (Overview and Scrutiny committees) and the Overview and Scrutiny Procedure Rules;
2. Article 7 (The Executive) and the Executive Procedure Rules;
3. Article 11 (Joint Arrangements) insofar as any joint committee is determining matters delegated to it by the Executive;
4. Article 13 (Decision Making) and the Access to Information Procedure Rules;
5. Part 3 (Responsibility for Functions).
6. Part 4 . Procedure rules