

## **Part 2**

### **Articles of the Constitution**

#### **Article 1 - The Constitution**

##### **1.1 Powers of the Council**

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

##### **1.2 The Constitution**

This Constitution, and all its appendices, is the Constitution of Hyndburn Borough Council.

##### **1.3 Purpose of the Constitution**

The purpose of the Constitution is to:

1. enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
2. support the active involvement of citizens in the process of local authority decision making;
3. help Councillors represent their constituents more effectively;
4. enable decisions to be taken efficiently and effectively;
5. 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.

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

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

## Article 2 - Members of the Council

### 2.1 Composition and eligibility

- (a) **Composition.** The Council comprises 35 Councillors. Either two or three Councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Commission and approved by the Secretary of State.
- (b) **Eligibility.** Only those on the Hyndburn electoral register or those living or working in Hyndburn will be eligible to hold the office of Councillor.

### 2.2 Election and terms of Councillors

The election of a third (or as near as may be) of all Councillors will be held on the first Thursday in May in each year, apart from 2013, and every fourth year afterwards, when the Lancashire County Council elections are held.

Usually, the term 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.

### 2.3 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. represent their communities and bring their views into the Council's decision-making process, i.e. become the advocate of and for their communities;
  - III. deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
  - IV. represent the interest of their ward and of individual constituents;
  - V. respond to constituents enquiries and representations;
  - VI. participate in the governance and management of the Council;
  - VII. be available to represent the Council on other bodies
  - VIII. maintain the highest standards of conduct and ethics

(b) **Rights and duties.**

- I. Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
- II. Councillors will not make public any confidential or exempt information without the consent of the Council, nor 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 Procedure Rules in Part 4 of this Constitution.

**2.4 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.

Councillors serving on the Planning Committee must also observe the Planning Code of Conduct and Councillors serving on the Licensing Committee and Judicial Committee (Private Hire and Hackney Carriage Licensing) must also observe the Licensing Code of Conduct.

**2.5 Allowances**

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

**2.6 Role Descriptions**

The Council has agreed “job descriptions” for the following roles undertaken by Councillors:

- Generic Councillor
- Leader of the Council
- Deputy Leader
- Cabinet member
- Scrutiny chair
- Scrutiny member

These job descriptions are set out in the following few pages of this Constitution.

## **Role Title: Leader**

### **Primary objective(s)**

- To provide the Council's overall cohesive corporate and strategic direction and budget, strategy and policy development
- To chair the Cabinet and to be the principal spokesperson for the Council
- To decide the size of the Cabinet (up to a maximum of 9)
- To appoint a Deputy Leader and the Cabinet and to allocate Cabinet portfolio's
- To make arrangements for the discharge of the Council's executive functions (whether by the Cabinet as a whole, by the Leader, by Cabinet committee, by individual Cabinet members or by officers)
- To remove and replace Cabinet members

### **Key Duties and Responsibilities**

- 1) To lead the process of developing the proposed budget and policy framework
- 2) To take overall responsibility for ensuring the delivery of the vision and values of the Council; Council policies and strategic priorities; the performance plan and the community plan
- 3) To develop and promote the reputation and interests of the Council locally and nationally
- 4) To co-ordinate and develop partnership working and community liaison
- 5) To work closely with the Chief Executive and senior officers in developing and reviewing Council performance, policy and practices
- 6) To ensure that good communication links exist between Cabinet, other Council structures and elected members and senior officers
- 7) To hold briefing meetings with officers to provide guidance and develop policy
- 8) To develop portfolios in consultation with the Chief Executive and to allocate responsibilities to Cabinet members
- 9) To ensure that the principles of equality and fairness are integral to all actions and policies of the Council

## **Role Title: Deputy Leader**

### **Primary objective(s)**

- To assist the Leader in providing corporate and strategic direction and budget, strategy and policy development
- To chair the Cabinet and to be the principal spokesperson for the Council in the absence of the Leader
- To act as Leader until the appointment of a new Leader if the post of Leader becomes vacant or if the Leader is unable to act

### **Key Duties and Responsibilities**

- 1) To assist in the co-ordination and development of partnership working and community liaison
- 2) To lead on any cross cutting issues of a general nature not already allocated to any other portfolio holder
- 3) To work with the Leader in developing the proposed budget and policy framework
- 4) To assist the Leader in ensuring the delivery of the vision and values of the Council; Council policies and strategic priorities; the performance plan and the community plan
- 5) To work with the Leader to develop and promote the reputation and interests of the Council locally and nationally
- 6) To work with the Leader in developing and reviewing Council performance, policy and practices
- 7) To assist the Leader in ensuring that good communication links exist between Cabinet, other Council structures and elected members and senior officers
- 8) To work with the Leader to ensure that the principles of equality and fairness are integral to all actions and policies of the Council

## **Role Title: Cabinet Member**

### **Primary objective(s)**

- To collectively propose and implement the budget and policy framework
- To work closely with and communicate effectively with other Cabinet members, the Chief Executive and Management Team(s), full Council and its committees

### **Key Duties and Responsibilities**

- 1) To provide political leadership for the designated Cabinet portfolio
- 2) To present and consult with the public, both directly and through appropriate media, regarding the Council's policies in relation to the designated portfolio
- 3) To represent the Council locally, regionally and nationally in relation to the relevant portfolio
- 4) To make recommendations about the implementation of policies within the portfolio
- 5) To report to the Council regarding decisions made, actions taken and progress achieved within the relevant portfolio
- 6) To initiate and promote policies and programmes both within the Council and externally
- 7) To commission and consider reports from officers to help ensure the efficient discharge of duties/responsibilities
- 8) To work closely with relevant senior officers to help ensure the efficient and effective management of the Council and to uphold high standards of performance and conduct
- 9) To maintain awareness of national best practice in the relevant field
- 10) To consult, report and attend relevant scrutiny meetings as required
- 11) To consider and respond to reports and recommendations from Overview and Scrutiny Committee(s)
- 12) To attend Cabinet meetings, as necessary, and to contribute effectively to the corporate development of the Council
- 13) To be accountable, alongside all Cabinet members, for the recommendations and decisions made by Cabinet
- 14) To ensure that the principles of equality and fairness are integral to all actions and policies of the Council

## **Role Title: Scrutiny Chair**

### **Primary objective(s)**

- To manage meetings of the Overview and Scrutiny Committee
- To prepare workplans, in consultation with the Cabinet, elected members, officers and Overview and Scrutiny members

### **Key Duties and Responsibilities**

- 1) To hold briefings with relevant officers, prior to Overview and Scrutiny meetings
- 2) To represent the Overview and Scrutiny Committee's views and recommendations to the Council, Cabinet and Management Team
- 3) To ensure Overview and Scrutiny Committee members receive sufficient information regarding specific areas of work and Council developments in general
- 4) To manage specific projects to completion
- 5) To understand the role of the Overview and Scrutiny Committee in relation to other Council structures
- 6) To act as an advocate for the scrutiny function

## **Role Title: Scrutiny Member**

### **Primary objective(s)**

- To research policy issues and make reports and recommendations to the Cabinet and Council
- To review Cabinet decisions and their subsequent impact, and make reports and recommendations, including proposals for changes to policies and practices, to the Cabinet and Council

### **Key Duties and Responsibilities**

- 1) To attend Overview and Scrutiny Committee meetings as necessary and contribute effectively
- 2) To consider the proposed budget and policy framework and other plans for the Cabinet and report findings to the Cabinet and Council
- 3) To provide advice to the Cabinet on major issues before final decisions are made (at the discretion of the Overview and Scrutiny Committee)
- 4) To commission research, examine alternative propositions and ask questions of relevant Councillors, officers and representatives of outside bodies
- 5) To monitor agenda items and review decisions taken by the executive and call-in where a justifiable public interest issue is at stake
- 6) To review the best value process within the Council and propose changes to policies or practices as appropriate to the Cabinet and Council
- 7) To monitor and advise the Cabinet on performance management processes and achievements within the Council
- 8) To consider inspection reports, external audit reports, the management letter and performance against performance indicators
- 9) To consult with other Council bodies, members, officers and partner organisations and community groups in determining the scrutiny workplan
- 10) To be sufficiently informed to be able to scrutinise the executive, other Council bodies and outside organisations as relevant
- 11) To initiate debate in full Council on scrutiny matters
- 12) To ensure that the principles of equality and fairness are integral to all actions and policies of the Council



## Article 3 - Citizens and The Council

### 3.1 Citizens right

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

- (a) **Voting and petitions.** Citizens on Hyndburn's register of electors have the right to:
  - i) vote
  - ii) sign a petition to request a referendum for an elected mayor form of constitution
  
- (b) **Information.** Citizens have the right to:
  - I. attend meetings of the Council and its committees, except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private. Although the public do not have a right to speak, they can table questions at meetings of the Council;
  - II. attend meetings of the Cabinet except where confidential or exempt information is likely to be discussed, when the relevant part of the meeting may be held in private;
  - III. find out from the key decision notices published on the Council's website what key decisions will be taken by the executive and when;
  - IV. see reports and background papers, and any records of decisions made by the Council and the Cabinet except where confidential or exempt information is likely to be disclosed; and
  - V. inspect the Council's accounts and make their views known to the external auditor.
- (c) **Participation.** Citizens may be asked to contribute to investigations by the Council's overview and scrutiny committees.
- (d) **Complaints.** Citizens have the right to complain to:
  - I. the Council itself under its complaints procedure;
  - II. the Ombudsman, after using the Council's own complaints procedure;
  - III. the Council's Standards Committee about a breach of the Councillor's Code of Conduct.

### 3.2 Citizens' responsibilities

Citizens must not be violent, abusing or threatening to Councillors or officers and must not wilfully harm things owned by the Council, Councillors or officers.

## Article 4 - The Full Council

### 4.1 Introduction

The full Council is a formal meeting of the Council that all Councillors are entitled to attend and at which all Councillors may speak and vote. The Council meetings provide a central forum for debate and give the opportunity for Councillors and members of the public to ask questions about the Council or matters affecting it.

The full Council is required by law to take some decisions, including the setting of the Council's budget and Council tax levels and approving a number of key plans and strategies.

### 4.2 Meanings

(a) **Policy Framework.** The policy framework means the following plans and strategies:-

- The Council's Corporate Strategy;
- Local Development Plan documents;
- Licensing Act 2003 policy statement ;
- Gambling Act 2005 policy statement;
- Pay Policy under Localism Act 2011

(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, investments, the control of its capital expenditure and the setting of virement limits.

### 4.3 Functions of the full Council

Only the Council will exercise the following functions:

- (a) adopting and changing this Constitution
- (b) approving or making material changes to the policy framework and the budget (including setting the Council tax base and the Council tax);
- (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 which is the responsibility of the executive which is not in accordance, or not wholly in accordance, with the policy framework or the budget;
- (d) appointing and removing the Leader of the Council;
- (e) conferring the title of freedom of the Borough or honorary alderman
- (f) agreeing and/or amending the terms of reference for committees, deciding on their composition, making appointments to them and appointing the chair and vice chair of each;

- (g) appointing representatives to outside bodies unless the appointment has been delegated by the Council;
- (h) adopting a members' allowances scheme under Article 2.05;
- (i) changing the name of the Borough;
- (j) confirming the appointment of the head of paid service;
- (k) making, amending, revoking, re-enacting or adopting bylaws 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 Cabinet;
- (m) receiving statutory reports from the Monitoring Officer (currently the Council's Executive Director Legal & Democratic Services) and section 151 officer (currently the Council's Executive Director (Resources));
- (n) adopting the Councillor Code of Conduct
- (o) 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 or officers;
- (p) delegating non-executive functions to another local authority;
- (q) dismissing the Council's Head of Paid Service, Monitoring Officer and Chief Finance Officer
- (r) all other matters which, by law, must be reserved to Council.

Detailed terms of reference for the full Council are set out in Appendix 1 to Part 3 of this constitution.

#### **4.4 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.

#### **4.5 Responsibility for functions**

The Council will always decide who is responsible for the Council's functions which are not the responsibility of the Cabinet. Some non-executive functions are delegated to committees and the terms of reference of the various committees are set out in Appendix 1 to Part 3 of this constitution. Some non-executive functions are delegated to officers and the Council's scheme of delegation is set out in Appendix 4 to Part 3 of this Constitution.

## **Article 5 – The Mayor**

### **5.1 Role and function of the mayor**

The Mayor and Deputy Mayor will be elected by the Council annually. The Mayor (or the Deputy Mayor in the absence of the Mayor) will have the following responsibilities:

1. to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
2. to preside over meetings of the Council
3. to promote public involvement in the Council's activities;
4. to be the conscience of the Council;
5. to attend such civic and ceremonial functions as the Council as he/she determines appropriate; and
6. ensure that Council meetings are a forum for the debate of matters of concern to the local community and the place at which members who are not on the Cabinet, or do not hold committee chairs, are able to hold the Cabinet and committee chairs to account.

**5.2** The role of the Mayor is further described in the Council's Civic Protocol, which is set out in Part 5 of this Constitution

## Article 6 - Overview and Scrutiny Committees

### 6.1 Terms of reference

The Council has appointed 3 Overview and Scrutiny Committees to discharge the functions conferred by section 21 of the Local Government Act 2000 or regulations under section 32 of the Local Government Act 2000

### 6.2 General role

Within their terms of reference, the Overview and Scrutiny committees will:

- I. review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- II. make reports and/or recommendations to the full Council and/or the Cabinet and/or any policy, joint committee in connection with the discharge of any functions;
- III. consider any matter affecting the area or its inhabitants; and
- IV. exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Cabinet.
- V. consider Councillor "calls for action" in respect of matters affecting a Council ward

### 6.3 Special functions

(a) **Policy development and review.** The Overview and Scrutiny committees may:

- I. assist the Council and the Cabinet in the development of its budget and policy framework by in-depth analysis of policy issues;
- II. conduct research, community and other consultation in the analysis of policy issues and possible options;
- III. consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
- IV. question members of the Cabinet and committees and officers at service head level or above about their views on issues and proposals affecting the area; and
- V. liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.

(b) **Scrutiny.** The Overview and Scrutiny committees may:

- I. review and scrutinise the decisions made by and performance of the Cabinet and or committees and Council officers, both in relation to individual decisions and over time;
- II. review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;

- III. question members of the Cabinet and/or committees and officers at service head level or above about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
  - IV. make recommendations to the Cabinet and / or appropriate committee and/or Council arising from the outcome of the scrutiny process;
  - V. review and scrutinise the performance of other public bodies in Hyndburn and invite reports from them by requesting them to address the overview and scrutiny committee about their activities and performance; and
  - VI. question and gather evidence from any person (with their consent).
- (c) **Finance.** The overview and scrutiny committees exercise overall responsibility for the finances made available to them.

#### **6.4 Proceedings of the overview and scrutiny committees**

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

## **Article 7 - The Executive (or Cabinet)**

### **7.1 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. The executive is usually known as "the Cabinet".

### **7.2 Form and composition**

The Cabinet will consist of the Leader of the Council, together with up to 9 other Councillors appointed by the Leader. The Leader will decide the portfolio's of the members of the Cabinet.

### **7.3 Leader and Deputy Leader**

#### **Leader**

The Leader will be a Councillor elected to the position of Leader by the Council for a term of one year . The Leader will hold office until:

- (a) he/she resigns from the office; or
- (b) he/she is no longer a Councillor; or
- (c) he/she is removed from office by resolution of a simple majority of the Council (for example by the appointment of a successor at a subsequent Annual Meeting of the Council or in the event of a change in political control of the Council)
- (d) the time period for which he / she was appointed has elapsed

#### **Deputy Leader**

The Deputy Leader will be a member of the Cabinet and will be appointed by the Leader. He or she will act as Leader if the Leader is unable to act or the office of Leader is vacant.

The Deputy Leader will hold office until :

- (a) removed by the Leader
- (b) he / she resigns from office
- (c) he / she is no longer a Councillor
- (d) until the end of the term of the Leader

### **7.4 Other Cabinet members**

Other Cabinet members shall hold office until:

- (a) they resign from office; or
- (b) they are no longer Councillors;
- (c) they are removed from office by the Leader
- (d) the appointment of a successor by the Leader

## **7.5 Proceedings of the Cabinet**

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

## **7.6 Responsibility for functions**

The Leader will make delegations to officers and these will be set out in the Council's scheme of delegation to officers (see Part 3 Appendix 4 of this constitution).

Currently the Cabinet makes decisions collectively in respect of matters which haven't been delegated to officers, but the Leader also has the power to delegate decision-making powers to individual members of the Cabinet, committees of the Cabinet and joint arrangements with other local authorities.

## **7.7 Delegation of functions**

The Leader may exercise executive functions himself / herself or may make arrangements to delegate responsibility for their discharge to any of the following

- i) The Cabinet as a whole
- ii) A Cabinet committee (which can only include Cabinet members)
- iii) An individual cabinet member
- iv) A joint committee
- v) Another local authority
- vi) An officer



## Article 8 - Regulatory and other committees

### 8.1 Regulatory and other committees

The Council will appoint the committees set out in the left hand column of the table below to discharge the functions described in the right hand column of the table.

Detailed terms of reference for these committees can be found in Part 3 of this Constitution.

<p><b>Planning Committee</b></p>	<p>To discharge the Council's functions relating to town and country planning and development control</p> <p>To deal with the Council's functions relating to building control</p> <p>To discharge the Council's functions relating to rights of way</p>
<p><b>Licensing Committee</b></p>	<p>To deal with all matters where the Council is required under the Licensing Act 2003 or the Gambling Act 2005 to refer that matter to the Licensing Committee or where it is required to adjudicate between two or more opposing views and reach a decision in a quasi-judicial manner.</p> <p>To discharge the Council's licensing and regulatory functions and determine applications for the grant, renewal, amendment, transfer, revocation and refusal of licences relating to the following</p> <p>Street and house-to-house collections</p> <p>Sex establishments</p>
<p><b>Judicial Committee (Private Hire and Hackney Carriage Licensing)</b></p>	<p>To deal with all matters where the Council is required to adjudicate between two or more opposing views and reach a decision in a quasi judicial manner where such decision is not the function of the Leader and Cabinet</p> <p>This includes granting, suspending and revoking licences relating to (amongst other things):</p> <p>Hackney carriages</p> <p>Private hire vehicles</p>
<p><b>Audit Committee</b></p>	<p>To deal with all matters involving the Council's internal and external auditors</p>

## Article 9 - The Standards Committee

### 9.1 Standards Committee

The Council has established a Standards Committee. The Council has also appointed three “independent persons” in accordance with the Localism Act 2011. The independent persons are not Councillors and they must be consulted before we make any decision in respect of a complaint about a Councillor. The independent persons are not members of Standards Committee, but have a right to attend Standards Committee meetings and to speak (but not to vote).

### 9.2 Sub-Committees and Panels

The Standards Committee will have the following sub-committees and panels:

**Assessment Panel** - this will consider complaints that Councillors may have breached the Council’s code of conduct and decide whether the complaint should be investigated formally or resolved informally by the Monitoring Officer..

**Hearing Sub-Committee** – if a complaint has been referred for investigation, this Sub-Committee will consider the investigation report and decide whether the code has been breached and what, if any, action should be taken against the Councillor(s) concerned.

### 9.3 Role and Function

The Standards Committee will have the following roles and functions:

- (a) promoting and maintaining high standards of conduct by Councillors and co-opted members
- (b) assisting members and any co-opted members to observe the Members’ Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members’ Code of Conduct;
- (d) monitoring the operation of the Members’ Code of Conduct;
- (e) advising, training or arranging to train Councillors and co-opted members on matters relating to the Members’ Code of Conduct;
- (f) granting dispensations to Councillors and co-opted members from requirements relating to interests set out in the Members’ Code of Conduct;
- (g) monitoring the operation of and advising on revisions to the Council’s whistle blowing policy;
- (h) Overview of Ombudsman investigations;
- (i) monitoring the operation of and advising on revision to the Council’s constitution;
- (j) monitoring the operation of and advising on revisions to the Council’s complaints handling procedures
- (k) dealing with complaints that a member of Hyndburn Borough Council or Altham Parish Council has breached their member code of conduct.

**Article 10 – Not in use**

## **Article 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 executive 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 if the joint committee has functions for only part of Hyndburn, and that area is smaller than two fifths of Hyndburn's 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 (to a body other than a local authority)**

The Council (in respect of non-executive functions) and the Cabinet (in respect of executive functions) may contract out to another body any functions:

- i) which may be exercised by an officer and which are subject to an order under section 70 Deregulation and Contracting Out Act 1994; or
- ii) under contracting arrangements where the contractor acts as the Council's agent under usual contract principles provided there is no delegation of the Council's discretionary decision making

## Article 12 - Officers

### 12.1 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) **Chief Officers.** The full Council will engage persons for the following posts, who will be designated chief officers:

Post	Functions and areas of responsibility
Chief Executive	<p>To act as head of paid service</p> <p>Overall corporate management and operational responsibility (including overall management responsibility for all officers)</p> <p>Provision of professional advice to all parties in the Council's decision making process.</p> <p>Principal advisor to the Council on general policy</p> <p>Representing the Council on partnership and external bodies (as required by statute or the Council).</p>
Executive Director (Resources)	<p>Chief Finance Officer</p> <p>Section 151 officer</p> <p>Overall operational responsibility for accountancy services, benefits and customer services, internal audit, IT services and corporate property</p>
Executive Director (Legal & Democratic Services)	<p>Monitoring Officer</p> <p>Returning Officer</p> <p>Data Protection Officer</p> <p>Overall operational responsibility for legal services, democratic services, human resources, planning, highways, building control, civic services, and electoral services and licensing</p>
Executive Director (Environment)	<p>Levelling Up Fund / UK Shared Prosperity Fund</p> <p>Town Centres</p> <p>Overall operational responsibility for parks and open spaces, cemeteries and crematoria, waste services and recycling, vehicle maintenance</p>

- (c) **Head of paid service, monitoring officer and chief financial officer.** The Council will designate the following posts as shown:

Post	Functions and areas of responsibility
Chief Executive	Head of Paid Service
Executive Director (Legal & Democratic Services)	Monitoring Officer
Executive Director (Resources)	Chief Finance Officer

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

- (d) **Structure.** The head of paid service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This is set out at Part 7 of this Constitution.

## 12.2 Functions of the head of paid service

- (a) **Discharge of functions by the Council.** The head of paid service will report to full 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 function.** The head of paid service may not be the Monitoring Officer, but may hold the post of Chief Finance Officer if a qualified accountant.

## 12.3 Functions of the Monitoring Officer

- (a) **Maintaining the Constitution.** The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, staff and the public.
- (b) **Ensuring lawfulness and fairness of decision making.** After consulting with the head of paid service and Chief Finance 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 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) **Supporting the Standards Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- (d) **Conducting investigations.** The Monitoring Officer will conduct investigations into matters referred by the Council's Standards Committee and make reports or recommendations in respect of them to the Standards Committee.
- (e) **Proper officer for access to information.** The Monitoring Officer will 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) **Advising whether executive decisions are within the budget and policy framework.** The Monitoring Officer will advise whether decisions of the executive are in accordance with the budget and policy framework.
- (g) **Providing advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors.
- (h) **Restrictions on posts.** The Monitoring Officer cannot be the Chief Finance Officer or the head of paid service.
- (i) **RIPA.** To act as the Senior Responsible Officer for the purpose of Part II Regulation of Investigatory Powers Act 2000

#### 12.4 Functions of the Chief Finance Officer

- (a) **Ensuring lawfulness and financial prudence of decision making.** After consulting with the head of paid service and the Monitoring Officer, the Chief Finance Officer 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 is the Council is about to enter an item of account unlawfully.
- (b) **Administration of financial affairs.** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management.** The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing advice.** The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors and will support and advise Councillors and officers in their respective role.
- (e) **Give financial information.** The Chief Finance Officer will provide financial information to the media, members of the public and the community.

#### 12.5 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.

#### 12.6 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.

#### 12.7 Employment

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



## **Article 13 - Decision Making**

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

### **13.2 Principles of decision making**

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

- (a) decisions will be proportionate (i.e. actions must be proportionate to the desired outcome);
- (b) decisions will be made after due consultation and taking of professional advice from officers;
- (c) decisions will show respect for human rights (see below for further details);
- (d) decisions will be made with a presumption in favour of openness;
- (e) decisions will be made which show a clarity of aims and desired outcomes.
- (f) decisions will explain what options were considered and give the reasons for the decision

### **13.3 Types of decision**

(a) Decisions reserved to full Council. Decisions relating to the functions listed in Article 4.2 will be made by the full Council and not delegated.

(b) Key decisions.

I. A key decision is one which:

(i) results in the Council incurring expenditure which is, or making savings which are, significant having regard to the Council's budget for the service or the function to which it relates (and currently significant expenditure is taken to be revenue expenditure over £150 000 and capital expenditure over £200 000); or

(ii) is likely to be significant in terms of its effect on communities in two or more wards of the Council.

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.

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

Subject to Article 13.8, the Council meeting will follow the Council Procedure Rules set out in Part 4 of this Constitution when considering any matter.

### **13.5 Decision making by the Cabinet**

Subject to Article 13.8, the Cabinet will follow the Cabinet Procedures Rules set out in Part 4 of this Constitution when considering any matter.

### **13.6 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.

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

Subject to Article 13.8, 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.

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

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

### **13.9 Following up decisions**

Those who make decisions will monitor and review their implementation and the officers who implement decisions will report on progress to the decision makers.

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

### **14.1 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.

### **14.2 Contracts**

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

### **14.3 Legal proceedings**

The Executive Director (Legal & Democratic Services) is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Executive Director (Legal & Democratic Services) considers that such action is necessary to protect the Council's interests.

### **14.4 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 Executive Director (Legal & Democratic Services) or other person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

Any contract entered into on behalf of the Council in the course of the discharge of an executive function shall be made in writing. Such contracts must either be signed by the relevant chief officer of the Council or made under the common seal of the Council attested by the Executive Director (Legal & Democratic Services).

### **14.5 Common Seal of the Council**

The Common Seal of the Council will be kept in a safe place in the custody of the Executive Director (Legal & Democratic Services). A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Executive Director (Legal & Democratic Services) should be sealed. The affixing of the Common Seal will be attested by the Executive Director (Legal & Democratic Services) or some other person authorised by him/her.

## Article 15 - Review and Revision of the Constitution

### 15.1 Duty to monitor and review the constitution

The Standards Committee will monitor and review the operation of this Constitution to ensure that the aims and principles of the Constitution are given full effect. A review will be undertaken if recommended by the Monitoring Officer or the Ombudsman or at the request of full Council.

### 15.2 Changes to the Constitution

- (a) **Approval.** Subject to (c) below changes to the Constitution will only be approved by the full Council.
- (b) **Change from a leader and cabinet form of executive to alternative arrangements, or vice versa.** The Council must take reasonable steps to consult with local electors and other interested persons in Hyndburn when drawing up proposals.
- (c) If in the reasonable opinion of the Monitoring Officer a change is:
  - required to remove an inconsistency, error or ambiguity; or
  - required to put into effect a Council decision; or
  - required to give effect to a change in the law

the Monitoring Officer may make such a change. Such changes shall take effect immediately but shall be reported to the next Council meeting for information purposes.

## Article 16 - Interpretation and Publication of the Constitution

### 16.1 Suspension of the Constitution

- (a) **Limit to suspension.** The Articles of this Constitution may not be suspended. The Rules specified below may be suspended by the full Council to the extent permitted within those Rules and the law.
- (b) **Procedure to suspend.** A motion to suspend any rules will not be moved without notice unless at least one half of the whole number of Councillors is present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in article 1.

### 16.2 Interpretation

The ruling of the Chair 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 in Article 1.

### 16.3 Publication

- (a) The Executive Director (Legal & Democratic Services) will ensure that copies are available for inspection at Council offices and on the Council's website, and can be purchased by members of the local press and the public on payment of a reasonable fee.
- (c) The Executive Director (Legal and Democratic Services) will ensure that the summary of the Constitution is updated as necessary.

