

## **SECTION 5**

### 5. The Cabinet

#### 5.1 Introduction

The Cabinet is appointed to carry out all of the Council's functions which are not the responsibility of any other part of the Council, whether by Law or under this Constitution. Many decisions will be made by the Cabinet on behalf of the Full Council.

#### 5.2 Form and Composition of the Cabinet

**The Cabinet will consist of:**

5.2.1 the Leader of the Council (the "Leader"); and

5.2.2 at least two but not more than nine (or other parameters set by legislation) Councillors appointed to the Cabinet as Executive Members by the Leader.

#### 5.3 Leader

##### 5.3.1 Election

The Leader will be a Councillor elected to the position of Leader by the Council at an Annual Meeting. An election will be held on the day of the Annual Meeting when the incumbent's term of office as Leader has expired<sup>13</sup>.

##### 5.3.2 Term of Office

The Leader will hold office until the fourth anniversary of their appointment, or until any of the following events arise<sup>14</sup>:

- (a) They resign from the office;
- (b) They are disqualified from being a Councillor;
- (c) They are no longer a Councillor; or
- (d) Where the Council passes a resolution removing them from office.

##### 5.3.3 Role of the Leader

The Leader will carry out all of the Council's Executive Functions which are not the responsibility of any other part of the Council, whether by law or under this Constitution. Further information is contained in Section 14.

##### 5.3.4 The Cabinet Scheme of Delegation

Within two weeks of being elected as Leader the Leader will submit to the Proper Officer a Cabinet Scheme of Delegations setting out the responsibilities and delegated authority of each member of the Cabinet and any other delegation of any Executive Function the Leader chooses to make.

##### 5.3.5 Meetings of the Cabinet

Subject to the requirement to publish notice of each meeting five clear days before it takes place, and other conditions contained in Section 5.10, the Leader can call meetings of the

<sup>13</sup> Subject to Council Procedural Rules – see 4.8.1.

<sup>14</sup> To the extent not covered in (a)-(d), *ibid*.

Cabinet at such times and places as they choose (NB: the Head of Paid Service, the Section 151 Officer, and the Monitoring Officer can all, should the need arise, call meetings of the Cabinet as well).

#### 5.3.6 Chairing Cabinet Meetings

The Leader shall chair Cabinet meetings. In the Leader's absence the Deputy Leader will chair. If the Deputy Leader is not available the Leader will appoint a member of the Cabinet to chair the meeting on their behalf by informing the Proper Officer of the person chosen.

#### 5.3.7 Appointments of Representatives on Outside Bodies

The Leader has authority to appoint representatives of the Council on outside bodies where those outside bodies relate to Executive Functions of the Council.

### 5.4 Deputy Leader

5.4.1 The Leader will appoint a Deputy Leader to act as Leader in the Leader's absence and the appointment will continue unless:

- (a) They resign from office;
- (b) The Leader removes the Deputy Leader from office;
- (c) They are disqualified from being a Councillor; or
- (d) They are no longer a Councillor.

5.4.2 The Deputy Leader may exercise all of the functions of the Leader where the position is vacant or where the Leader is absent or otherwise unable to act.

### 5.5 Other Cabinet Members

Other Cabinet Members will be Councillors appointed to the position of Executive Member by the Leader. Each Executive Member shall hold office until:

- 5.5.1 they resign from that office;
- 5.5.2 they are removed from that office by the Leader upon such notice (if any) as the Leader considers appropriate;
- 5.5.3 they are disqualified from being a Councillor; or
- 5.5.4 they cease to be a Councillor.

The Leader may at any time appoint an Executive Member to fill any vacancies.

5.6 Note that in a joint administration a 'deputy' to an Executive portfolio holder may be appointed. That deputy will be invited to attend relevant meetings of the Executive (formal or informal) where executive functions are discussed, give their opinion and for this to be taken into account by the Executive decision maker or Cabinet, although they are not formally part of the Cabinet Executive nor an Executive decision maker. This does not apply to the Deputy Leader who is appointed to act as per section 5.4.

### 5.7 Functions of Cabinet

The Cabinet may exercise the following functions:

## **By resolution**

- 5.7.1 To prepare and agree to implement policies and strategies other than those reserved to Council.
- 5.7.2 To consider, at least annually, the level of reserves, provisions, and balances held by the Authority and recommend any changes to the Council.
- 5.7.3 To take decisions on resources and priorities, together with other stakeholders and partners in the local community, to deliver and implement the budget and policies decided by the Full Council. To monitor performance and risk in respect of the delivery of those policies and priorities.
- 5.7.4 To exercise the Authority's duty in Section 17 of the Crime and Disorder Act 1998 to reduce crime and disorder.
- 5.7.5 To deal with matters affecting the salaries and conditions of employment of officers covered by the JNC Chief Officers terms and conditions.
- 5.7.6 To consider and respond to recommendations and reports from the statutory officers.
- 5.7.7 To monitor quarterly expenditure on the capital programme and agree adjustments within the overall budgetary framework.
- 5.7.8 To monitor quarterly revenue expenditure and agree adjustments within the overall budgetary framework.
- 5.7.9 To monitor quarterly the Treasury Management Strategy and agree adjustments within the policy framework.
- 5.7.10 To write-off debts in accordance with the Financial Regulations.
- 5.7.11 To approve those major service developments or reductions which also constitute Key Decisions.
- 5.7.12 To be kept informed of any issues raised by the Local (External) Auditor.
- 5.7.13 To consider the reports of external review bodies on key aspects of overall service delivery.
- 5.7.14 To carry out the Authority's responsibilities for the General Power of Competence pursuant to section 1 of the Localism Act 2011 for the benefit of the Authority, its area or persons resident in its area and increasing the availability and equality of access to employment.
- 5.7.15 To oversee the provision of all the Council's services other than those functions reserved to the Council.
- 5.7.16 To manage and maintain the Authority's accommodation.
- 5.7.17 To exercise the Authority's powers in planning for and responding to civil emergencies.
- 5.7.18 To exercise the Authority's functions as Local Planning Authority and to receive reports on: strategic planning matters, applications for, approval/ designation, consultations/referendums revocation (or recommend revocation of) neighbourhood plans, Article 4 Directions and orders, (except to the extent that those functions are by law the responsibility of the Council or delegated to the Service Director: Regulatory).
- 5.7.19 To oversee the Authority's overall policy on the voluntary and community sector.

## **CONSTITUTION**

- 5.7.20 To approve the purchase or appropriation of land and buildings where the sale price, premium or initial annual rent (after the expiry of any rent free period) exceeds £500,000 (or such higher figure as is determined in any adopted Asset Management Strategy) but does not exceed £2,500,000.
- 5.7.21 To dispose of land or buildings where the purchase price, premium or initial annual rent (after the expiry of any rent free period) which exceeds £250,000 but does not exceed £2,500,000.
- 5.7.22 To accept tenders for individual schemes where the estimated expenditure exceeds the budgetary provision by the limits set out in the Financial Regulations .
- 5.7.23 To receive reports on contract overspends on schemes in accordance with limits set out in the Financial Regulations and agree the action to be taken.
- 5.7.24 To promote and develop external partnerships to meet strategic objectives.
- 5.7.25 To exercise the powers and duties of the Authority under Section 13 and 14 of the Public Order Act 1986.
- 5.7.26 To confer with other local authorities, government departments, statutory bodies, voluntary bodies, the police or other external agencies in order to discharge the responsibilities vested in the Cabinet.
- 5.7.27 To deal with all local choice functions set out in the Constitution.
- 5.7.28 To make decisions where a policy or strategy does not exist.
- 5.7.29 To approve any waiver of Contract Procurement Rules referred to it by the Monitoring Officer and section 151 Officer, in accordance with the Rules.
- 5.7.30 To determine charges for car parking.
- 5.7.31 To make a decision or consider any matter referred to it by an Community Forum.
- 5.7.32 To consider or receive presentations from members of the public, community groups and outside bodies on matters relating to the District.
- 5.7.33 To make, renew and revoke Public Spaces Protection Orders.
- 5.7.34 To agree to the establishment or wind up of a Council wholly or partly owned Local Authority Company, and to approve investment, loans, resource arrangements and asset transfers, act as corporate shareholder, save as otherwise delegated to the Cabinet Sub-Committee (Local Authority Trading Companies' Shareholder), Executive Members or Officers under the Sub-Committee terms of reference.
- 5.7.35 To determine those financial matters reserved to Cabinet by the Financial Regulations.
- 5.7.36 To determine those procurement matters reserved to Cabinet by the Contract Procurement Rules.
- 5.7.37 To consider and respond to recommendations from Cabinet Panels.

**By recommendation to Council**

- 5.7.38 To advise the Council in the formulation of those policies within the Council's terms of reference.
- 5.7.39 The annual budget, including the capital and revenue budgets.

5.7.40 The treasury management strategy (as may be incorporated in an integrated investment strategy);

5.7.41 To make proposals for the purchase, sale or appropriation of land which exceeds Cabinet limits.

5.7.42 To advise on the senior management structure of the Council.

5.7.43 To advise on the promotion, adoption or opposition to local legislation.

5.7.44 The Council Tax Reduction Scheme.

## 5.8 Delegation of Functions

The Leader may exercise Executive Functions or may otherwise make arrangements to delegate responsibility for their discharge. The Leader may delegate Executive Functions to:

5.8.1 the Cabinet as a whole;

5.8.2 a Committee of the Cabinet (comprising executive members only);

5.8.3 an individual Cabinet Member;

5.8.4 a joint committee;

5.8.5 another local authority or the executive of another local authority;

5.8.6 A delegated Officer.

## 5.9 Proceedings of the Cabinet

The proceedings of the Cabinet shall take place in accordance with the Cabinet Procedure Rules in Section 5.10.

## 5.10 Rules for Conducting Meetings - Cabinet Procedure Rules

### 5.10.1 How does the Cabinet Operate?

#### (a) Who May Make Executive Decisions?

The arrangements for the discharge of Executive Functions may be set out in the executive arrangements adopted by the Council. If they are not set out there, then the Leader may decide how they are to be exercised. In either case, the arrangements or the Leader may provide for Executive Functions to be discharged by<sup>15</sup>:

- (i) the Cabinet as a whole;
- (ii) a committee of the Cabinet;
- (iii) an individual member of the Cabinet;
- (iv) an Officer;
- (v) joint arrangements; or
- (vi) another local authority.

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<sup>15</sup> Functions may be discharged by an Area Committee if the Council has Area Committees

(b) Delegation by the Leader

Following the annual meeting of the Council, the Leader will present to the Council a written record of executive delegations made by them for inclusion in the Council's Scheme of Delegation at Section 14 to this Constitution. This document presented by the Leader will contain the following information about Executive Functions in relation to the coming year:

- (i) The names, addresses and Wards of the people appointed to the Cabinet by the Leader;
- (ii) the extent of any authority delegated to Cabinet members individually, including details of the limitation on their authority;
- (iii) the terms of reference and constitution of such Cabinet committees as the Leader appoints and the names of Cabinet members appointed to them;
- (v) the nature and extent of any delegation of Executive Functions to any Community Forum or Panel (for recommendation only), any other authority or any joint arrangements and the names of those Cabinet members appointed to any joint committee for the coming year; and
- (vi) the nature and extent of any delegation to Officers with details of any limitation on that delegation, and the title of the Officer to whom the delegation is made.

(c) Sub-Delegation of Executive Functions

- (i) Where the Cabinet, a committee of the Cabinet or an individual member of the Cabinet is responsible for an Executive Function, they may delegate further any recommendation (not decision) to an Community Forum, joint arrangements or an Officer.
- (ii) Unless the Council directs otherwise, if the Leader delegates functions to the Cabinet, then the Cabinet may delegate further to an Officer.
- (iii) Unless the Leader directs otherwise, a committee of the Cabinet to whom functions have been delegated by the Leader may delegate further to an Officer.
- (iv) Where Executive Functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated.

(d) The Council's Scheme of Delegation and Executive Functions

- (i) Subject to below, the Council's Scheme of Delegation will be subject to adoption by the Council and may only be amended by the Council.
- (ii) If the Leader is able to decide whether to delegate Executive Functions, they may amend the Scheme of Delegation relating to Executive Functions at any time. In doing so the Leader will give written notice to the Proper Officer and to the person, body or Committee concerned. The notice must set out the extent of the amendment to the Scheme of Delegation, and whether it entails the withdrawal of delegation from any person, body or Committee. The Proper Officer will present a report to the next ordinary meeting of the Council setting out the changes made by the Leader.
- (iii) Where the Leader seeks to withdraw delegation from a Committee, notice will be deemed to be served on that Committee when they have served it on its Chair.

(e) Conflicts of Interest

- (i) Where the Leader has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Section 17 of this Constitution.
- (ii) If any member of the Cabinet has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Section 17 of this Constitution.
- (iii) If the exercise of an Executive Function has been delegated to a Committee of the Cabinet, an individual member or an Officer, and should a conflict of interest arise, then the function will be exercised in the first instance by the person or body by whom the delegation was made and otherwise as set out in the Council's Code of Conduct for Members in Section 17 of this Constitution.

(f) Frequency and location of Cabinet Meetings

The Cabinet will have a minimum of six regular meetings each year, to be agreed by the Leader. The Cabinet shall meet at the Council offices, Gernon Road, Letchworth Garden City or some other location agreed by the Leader.

(g) Transparency of Cabinet Meetings

The Cabinet will hold its meetings in public, except in the circumstances set out in the Access to Information Rules in Section 15, for example where confidential or exempt information is being discussed.

(h) Quorum

The quorum for a meeting of the Cabinet or a committee of it shall be three, and shall include the Leader or Deputy Leader or such member of the Cabinet as the Leader has appointed to chair the meeting in the absence of the Leader or Deputy Leader.

(i) Decision making

- (i) Executive Decisions which have been delegated to the Cabinet as a whole will be taken at a meeting convened in accordance with the Access to Information Rules in Section 15 of this Constitution.
- (ii) Where Executive Decisions are delegated to a Committee of the Cabinet, the rules applying to Executive Decisions taken by them shall be the same as those applying to those taken by the Cabinet as a whole.

#### 5.10.2 How are Cabinet Meetings Conducted?

(a) Who Presides?

If the Leader is present, they will preside. In their absence, the Deputy Leader will preside.

(b) Who May Attend?

Members may attend in accordance with rule 3.3.2(a). For the public these details are set out in the Access to Information Rules in Section 15 of this Constitution.

(c) What is considered?

At each meeting of the Cabinet the following business will be conducted:

- (i) consideration of the minutes of the last meeting;
- (ii) declarations of interest, if any;
- (iii) matters referred to the Cabinet, by the Overview and Scrutiny Committee, Finance, Audit and Risk Committee or by the Council, for reconsideration by the Cabinet in accordance with the provisions contained in the Overview and Scrutiny Procedure Rules or the Budget and Policy Framework Procedure Rules set out in Sections 6.3 and 16 of this Constitution;
- (iv) consideration of referrals from the Overview and Scrutiny Committee, Finance, Audit and Risk Committee, or any other Committee able to refer matters to Cabinet;
- (v) Matters set out in the agenda for the meeting, which shall indicate within the report which are Key Decisions and which are not, in accordance with the Access to Information Rules set out in Section 15 of this Constitution.

(d) Consultation

All reports to the Cabinet from any member of the Cabinet or an Officer on proposals relating to the Budget and Policy Framework must contain details of the nature and extent of consultation undertaken with stakeholders and with the Finance, Audit and Risk Committee and the outcome of that consultation. Reports about other matters will set out the details and outcome of consultation as appropriate. The level of consultation required will be appropriate to the nature of the matter under consideration.

(e) Who can put Items on the Cabinet Agenda?

- (i) The Leader will decide upon the schedule for meetings of the Cabinet. They may put any matter on the agenda of any Cabinet meeting any matter which they wish, whether or not authority has been delegated to the Cabinet, a Committee of it or any Member or Officer in respect of that matter, subject to the procedures set out in rule 4.8.5.
- (ii) Items for consideration by the cabinet may also be included by the Proper Officer in the following circumstances set out in 5.10.2(e)(iii) to (vi) below.
- (iii) Any member of the Cabinet may require the Proper Officer to make sure that an item is placed on the agenda of the next available meeting of the Cabinet for consideration.
- (iv) The Head of Paid Service, the Monitoring Officer and/or the Chief Finance Officer may include an item for consideration on the agenda of a Cabinet meeting and may require that such a meeting be convened in pursuance of their statutory duties.
- (v) The Council, the Overview and Scrutiny Committee, the Finance, Audit and Risk Committee or an Community Forums may request the Proper Officer to include an item on the agenda of the next available meeting of the Cabinet for consideration.
- (vi) A Member may request the Proper Officer to include an item on the agenda of the next available meeting of the Cabinet for consideration, subject to the Leader's consent.



## 5.11 Cabinet Sub-Committee (Council Charities)

5.11.1 Membership: The Sub-Committee shall comprise three (3) Executive members nominated by the Leader.

5.11.2 Quorum: 3

5.11.3 Meetings: Ad Hoc

5.11.4 Roles and Functions

- (a) To act on behalf of the Council as a Corporate Trustee for all assets of the Council that are held on a charitable trust.
- (b) In the capacity of Corporate Trustee, to consider all matters relating to those trusts, including the use, operation and management of trust assets and the preservation of the objectives of those trusts so instituted.
- (c) To consider all proposals and representations from and on behalf of the Council or any third party, in connection with the use, operation, management and ownership of trust assets.
- (d) To secure all necessary advice and assistance, including, where necessary, external advice and assistance, to ensure that the interests of those trusts are protected and preserved.
- (e) To receive reports on any matter, including the property and financial implications concerning those trust's assets.

<b>Delegated powers</b>	<b>Delegated Members and Officers</b>
To authorise the entering into any agreement, contract, lease, consent, or deed to surrender or termination for administrative or minor matters (including minor amendments).	Sub-Committee Chair in consultation with lead Officer for the Trust concerned and Trust lawyer.
In cases of emergency or urgency to carry out any of the Sub-Committee functions, powers, or duties.	Lead Officer for the Trust concerned in consultation with the Chair of Sub-Committee where possible.

## 5.12 Cabinet Sub-Committee (Local Authority Trading Companies' Shareholder)

5.12.1 Membership: The Sub-Committee shall comprise three (3) Executive members nominated by the Leader. Substitutes may be permitted at the discretion of the Leader.

5.12.2 Quorum: 3

5.12.3 Meetings: Ad Hoc

5.12.4 Roles and Functions

- (a) To represent the Council's interests as shareholder in wholly owned and other companies.
- (b) To undertake all functions of the Council as shareholder under the Company Act, unless delegated otherwise.
- (c) To ensure that actions taken by the companies accord with the interests of the Council as shareholder and contribute to the Council's objectives.

- (d) To consider (and approve in principle where appropriate) any proposed or amended company documentation (save minor administrative documentation) including Memorandum and Articles of association and shareholder agreements.
- (e) To undertake the actions, activities and responsibilities as shareholder provided for and required by any Memorandum and Articles of Association and shareholder agreements.
- (f) To provide, or withhold, consent as appropriate (in principle, where formal company ratification is required) on those matters requiring shareholder consent as defined in the Memorandum and Articles of Association and shareholders agreements.
- (g) In the specific case of a wholly owned company to:
  - (i) review the Business Plan prepared by the Company prior to its adoption by the company.
  - (ii) Oversight of performance and financial delivery against business plan;
  - (iii) review and agree (in principle where formal company ratification is required) any proposals to undertake activities outside of the District, unless already allowed for within Memorandum and Articles of association;
  - (iv) to agree to appoint or dismiss (in principle in so far as company ratification is required) any Director of the company (where power is reserved to the shareholder).
- (h) To make recommendations to Cabinet on the investment, loans, resource arrangements and asset transfers to companies;
- (i) Prior to the creation of any wholly or partly owned company:
  - (i) to consider options for activities which are for a commercial purpose and would need to be undertaken by such a company;
  - (ii) to make recommendation to Cabinet to establish such a company
- (j) Delegating specific functions, other than those listed below to Officers of the Council to increase commercial flexibility.

<b>Delegated Powers</b>	<b>Delegated Members and Officers</b>
Approval of minor administrative documentation	Chair of Sub-Committee in consultation with the Client Lead Officer for the Company concerned (in default of nominated officer this shall be Service Director: Resources).
Signing of documentation on behalf of the Council	Lead Client Officer for the Company concerned (in default of nominated officer this shall be Service Director: Resources).
In cases of emergency or urgency to carry out any of the Sub-Committee functions, powers or duties	Chief Finance Officer or Monitoring Officer in consultation with the Chair of Sub-Committee where possible.