

# Part 1 - Summary and explanation

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### 1. The constitution

#### 1.1 Introduction

Hinckley & Bosworth Borough Council's constitution sets out how the council operates, how decisions are made and the procedures which are followed to ensure they are efficient, transparent and accountable to local people. There are other documents which are not included in the constitution, but should be read in conjunction with it, for example the petitions' scheme and the corporate complaints procedure and other policies and procedures. The council will exercise all its powers and duties in accordance with the law and this constitution. Nothing in this constitution supersedes legislation.

#### 1.2 Content of the constitution

The constitution is split into four sections:

Decision making – this includes details of which bodies or officers are responsible for making particular decisions

Procedure rules – this sets out how decisions are taken

Codes and protocols – this section contains the expected standards of behaviour for officers and members

Members allowance scheme.

#### 1.3 Purpose of the constitution

To enable the council to provide clear leadership to the community  
To support the active involvement of citizens in the council's decision-making  
To help councillors represent their constituents more effectively  
To enable decisions to be taken efficiently and effectively  
To create an effective way of holding decision-makers to public account  
To ensure that no one will review a decision in which they were directly involved  
To ensure those taking decisions are clearly identifiable to local people and can explain the reasons for their decisions  
To provide a way of improving the delivery of services  
To enable the council to review its governance arrangements.

#### 1.4 Interpretation of the Constitution

The Monitoring Officer or their nominee will advise the council on interpretation of the constitution in accordance with the principles above. The ruling of the Mayor as to the construction or application of this constitution or as to any proceedings of Council shall not be challenged at any meeting of Council. Such ruling will have regard to any legal or procedural advice given by officers.

#### 1.5 Suspension of the constitution

Only the council procedure rules may be suspended, except those specified within the procedure rules and only where permitted by law or in accordance with this constitution.

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 at the meeting. 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 above.

#### 1.6 Review of the constitution

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

Changes to the constitution will only be approved by Council by a two thirds majority of those members present and voting on a report of the Monitoring Officer or of a working group of councillors appointed for the purpose.

#### 1.7 Publication of the constitution

The Monitoring Officer will make available a copy of this constitution for any member on request and will ensure that copies are available for inspection at Hinckley Hub. The constitution will also be available on the council's website.

### 2. Hinckley & Bosworth Borough Council

Hinckley & Bosworth Borough Council is one of seven district (including borough) councils in Leicestershire, which operate within a two tier system where responsibilities are divided between the district council and Leicestershire County Council.

The district of Hinckley & Bosworth was formed in April 1974 by the merger of the former Hinckley Urban District Council and Market Bosworth Rural District Council. The grant of a charter gave the council "Borough" status and authorised the office of Mayor as first citizen of the borough.

Within the borough are 24 parish councils (including a town council) which exercise very local functions and with which the borough council works closely on a range of issues.

### 3. Councillors

3.1 The Council is composed of 34 councillors elected every four years, usually on the first Thursday in May. A person intending to stand for election must be 18 years old and must be a registered voter of the borough or be living or working in the borough. The term of office of a councillor starts on the fourth day after being elected and will finish on the fourth day after the next regular election. Sometimes a by-election is needed due to a vacancy. Councillors are elected by the voters of each ward and are democratically accountable to residents of their ward. The overriding duty of councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.

### 3.2 Roles and functions of councillors

- To be policy-makers and carry out a number of strategic and corporate functions
- To represent their communities and bring their views into the council's decision-making process and act as an advocate for constituents in resolving particular concerns
- Balance different interests identified within the ward and represent the ward as a whole
- Represent the council on other external bodies and report back to the council
- Actively encourage community participation and citizen involvement in decision-making
- Maintain the highest standards of conduct and ethics (councillors have to agree to follow a code of conduct which they must then observe at all times)
- Participate in the governance and management of the council.

### 3.3 Meetings of Council

All councillors meet together as the Council. Meetings of Council are open to the public, unless confidential information is to be discussed. Council is responsible for deciding on the overall policies and for setting the budget each year. Council appoints the Mayor, the Leader, Scrutiny Commission and committees, and holds them all to account on behalf of the community. There are some matters that only Council can make decisions on and these are set out in the next part of the constitution 'responsibility for functions'. Some decisions are delegated to committees, members or officers.

There are four types of council meeting – the annual meeting; the ordinary business meeting; the extraordinary business meeting and meetings for topic debates (which cannot make decisions).

### 3.4 Rights and duties of councillors

Councillors will have rights of access to such documents, information, land and buildings of the council as are necessary for them to be able to carry out their role and in accordance with the law

Councillors will not make public information that is exempt or confidential (as defined in the Access to Information Rules) or divulge information given in confidence to anyone other than a councillor or officer entitled to know it.

### 3.5 Allowances

Councillors will be entitled to receive allowances in accordance with the Members' Allowance Scheme.

#### 4. The Mayor

In Hinckley & Bosworth, the role of Mayor is one of civic leader only. The Mayor is elected each year by Council. The Mayor, and in their absence, the Deputy Mayor, will have the following roles and functions:

- First citizen: The Mayor shall take precedence and shall be the first citizen of Hinckley & Bosworth
- Promotion of the council: The Mayor will positively promote the council as a whole and act as the focal point for the community
- Ceremonial matters: The Mayor will carry out all civic and ceremonial functions on behalf of the council.
- To uphold and promote the purposes of the constitution and to interpret the constitution when necessary
- To preside over meetings of Council so that its business can be carried out efficiently, transparently and with good conduct and regard to the rights of councillors and the interests of the community
- To ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which all members are able to hold the Executive and other committees of the council to account
- To promote public involvement in the council's activities.

Whilst holding the position of Mayor or Deputy Mayor, a councillor will not also hold the position of leader or deputy leader of a political group, a member of the Executive, party whip, chairman or vice chairman of a committee or member of an overview & scrutiny body.

#### 5. The overview & scrutiny function

The overview & scrutiny function consists of the Scrutiny Commission and Finance & Performance Scrutiny. These are appointed by Council to discharge functions set out in the Local Government Act 2000.

The terms of reference of the overview & scrutiny bodies, procedure rules for their meetings and membership details are set out in the relevant part of this constitution.

Two or more overview & scrutiny bodies may hold joint meetings from time to time, to which the same procedure rules apply.

The use of the party whip is not appropriate for the business of overview & scrutiny bodies.

#### 6. The Executive, the Leader and members of the Executive

##### 6.1 Responsibilities of the Executive

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

Proceedings of the Executive will be in accordance with relevant legislation and the Executive procedure rules set out in this constitution.

The constitution contains a list which sets out which functions of the Executive are delegated to individual members of the Executive or its committees, or if the function is delegated to an officer or joint arrangement.

The Executive will consist of the Leader of Council together with at least two but not more than nine councillors.

## 6.2 The Leader

The Leader of Council will be a councillor elected to the position by Council. The Leader will hold office until:

- the annual meeting of Council four years from the date of the appointment following a Borough election, subject to the provisions below
  - he/she resigns from the office
  - he/she is no longer a councillor
  - he/she is removed from office by resolution of the Council
  - his/her successor is appointed by Council
- (whichever is the earliest).

In the event of the Leader no longer being a councillor following a borough election, the Chief Executive, in consultation with group leaders, will have delegated authority to take any urgent decisions until such a time that a Leader is appointed at the annual meeting of Council.

## 6.3 Other executive members

Only borough councillors may be appointed to the Executive, but neither the Mayor nor Deputy Mayor may be members of the Executive. The Executive will be appointed by the Leader of Council and one member of the Executive will be appointed Deputy Leader by the Leader.

Executive members will hold office until:

- the annual meeting of Council four years from the date of the appointment following a Borough election, subject to the provisions below
  - they resign from the office
  - they are no longer councillors
  - they are removed from office, either individually or collectively, by the Leader of the Council
- (whichever is the earliest).

## 7. Committees

### 7.1 The Council will appoint the following committees:

Appeals Panel  
Audit Committee  
Ethical Governance & Personnel Committee  
Hinckley Area Committee  
Licensing Committee  
Licensing (Regulatory) Committee  
Planning Committee.

The terms of reference and membership for these bodies are contained in the relevant part of this constitution.

7.2 Council will also appoint the following other bodies:

Asset & Regeneration Strategy Group  
Member Development Group  
Overview & scrutiny bodies

The terms of reference and membership for these groups are contained in the relevant part of this constitution.

8. Decision making

Some decisions may be made by Council or delegated by Council to committees, joint committees, officers or other authorities. Other decisions are for the Executive to make, and it is for the Executive to decide whether to delegate the power to make any of those decisions. Only the Executive may decide to delegate Executive functions to joint arrangements or other local authorities.

8.1 Principles of decision making

All decisions will be made in accordance with the following principles

- Having regard to all relevant principles
- Operating within the law
- Observing any procedural requirements (unless a decision is made to suspend these)
- Carrying out a realistic evaluation of alternatives
- Taking professional advice from officers
- Having clear aims and desired outcomes
- Carrying out appropriate consultation
- Observing proportionality
- Having respect for human rights
- Having a presumption in favour of openness
- Having due regard to the likely effect on crime & disorder within the area
- Having due regard to the needs of all citizens and communities
- Having due regard to the impact of decisions on rural areas
- Pursuing the aims and objectives of the community, corporate plan, strategies and policies
- Having regard to the Nolan Principles.

8.2 Types of decision

- Decisions reserved to Council as listed in this constitution will be made by Council and not delegated
- Key decisions. These are defined as a decision which involves expenditure (or reduction of income over £50,000) on any particular scheme or project (totalled across financial years); involves the adoption or amendment of a policy or strategy which the Executive has power to adopt; involves the adoption or amendment of the scale of fees & charges; affects the whole of the borough and is one which the residents of Hinckley & Bosworth would normally expect to be notified or consulted; or involves a recommendation by Executive to a partnership organisation which will take the ultimate decision. A decision taker may only make a key decision in accordance with the Executive Procedure Rules in this constitution
- Non-key decisions taken by the Executive, Council, its committees or officers.

### 8.3 Decision making by council bodies acting as tribunals (Appeals, Planning, Licensing (including Licensing (Regulatory)) and Ethical Governance & Personnel Committees)

The Council, a councillor or an officer acting as a tribunal or in a quasi-judicial manner in 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. Advice on such procedure, including having regard to human rights, can be obtained from the Monitoring Officer.

## 9. Joint arrangements and partnerships

A partnership has an agreed framework for jointly delivering common goals, shared risks and resources, identified added value and measurable impact and shared accountability for outcomes. The council has a number of formal and informal partnership arrangements with other local authorities and may enter further joint arrangements as it sees fit. Such arrangements may involve the appointment of joint committees with these other local authorities. Formal partnerships must be approved by the appropriate body, member or officer.

Details of current joint committees in operation can be found on our website or provided on request.

### 9.1 Appointments to joint bodies

Where joint arrangements involve a joint committee to discharge a number of functions on behalf of the council, some of which are the responsibility of the Executive and some which are the responsibility of the local authority as a whole, appointment of members to that joint committee are made by the Council with agreement of the Leader. Where there is more than one member of Council appointed, at least one member will be an executive member and political balance requirements will apply.

The Executive may appoint members to a joint committee from outside the Executive if 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 any ward which is wholly or partly contained within the area.

### 9.2 Delegation of functions to other local authorities

The council may delegate functions to another local authority or, in certain circumstances, to the Executive of another local authority. The Executive may delegate Executive functions to another local authority or the Executive of another local authority in certain circumstances. The decision whether or not to accept a delegation from another local authority shall be reserved to Council or to the Executive if it is an Executive function.

### 9.3 Access to information procedure rules

The access to information rules in this constitution apply to joint committees. If all 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, otherwise the rules in the Local Government Act 1972 will apply.

### 9.4 Contracting arrangements

The Council, for functions which are not 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, provided there is no delegation of the Council's discretionary decision making.

## 10. Officers

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

Council will engage persons for the following posts which will form the Strategic Leadership Team:

- Chief Executive
- Director (Community Services)
- Director (Corporate Services)
- Director (Environment & Planning).

The Council must designate a Head of Paid Service, Monitoring Officer and Proper Officer for Financial Affairs (Section 151 Officer).

### 10.1 Functions of the Head of Paid Service

The Head of Paid Service will report to Council on the manner in which the discharge of the council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.

The Head of Paid Service may not be the Monitoring Officer but may hold the post of Proper Officer for Financial Affairs if a qualified accountant.

At Hinckley & Bosworth Borough Council, the Chief Executive is the Head of Paid Service.

### 10.2 Functions of the Monitoring Officer

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.

The Monitoring Officer will ensure lawfulness and fairness of decision making. After consulting with the Head of Paid Service and Proper Officer for Financial Affairs, the Monitoring Officer will report to Council, or to the Executive 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. All members of Council must receive a copy of such a report. Where the report is considered by the Executive, it must report to Council and the Monitoring Officer explaining what, if any, action is to be taken.

The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Ethical Governance & Personnel Committee. He or she will receive and act on complaints received regarding member conduct and will conduct investigations and make reports or recommendations in respect of them to the Ethical Governance & Personnel Committee.



The Monitoring Officer will ensure that Executive, Council and delegated decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available.

The Monitoring Officer will advise whether decisions of the Executive are in accordance with the policy framework.

The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, impropriety, probity and budget and policy framework issues to all councillors.

The Monitoring Officer cannot be the Proper Officer for Financial Affairs or the Head of Paid Service.

### 10.3 Functions of the Proper Officer for Financial Affairs (Section 151 Officer) and his/her Deputy

The Proper Officer for Financial Affairs will ensure lawfulness and financial prudence of decision making. After consulting with the Head of Paid Service and the Monitoring Officer, the Proper Officer for Financial Affairs will report to Council, or to the Executive 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 occurring 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. All members of Council must receive a copy of such a report. Where a report is considered by the Executive, it must report to Council and the Proper Officer for Financial Affairs and the council's auditor, explaining what action, if any, is to be taken.

The Proper Officer for Financial Affairs will have responsibility for the administration of the financial affairs of the council.

The Proper Officer for Financial Affairs will contribute to the corporate management of the council, in particular through the provision of professional financial advice.

The Proper Officer for Financial Affairs will advise whether decisions of the Executive are in accordance with the financial and budget framework.

The Proper Officer for Financial Affairs will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and budget and policy framework issues to all councillors and the mayor and will support and advise councillors and officers in their respective roles.

The Proper Officer for Financial Affairs will provide such financial information as he or she considers appropriate to the media and members of the public.

### 10.4 Duty to provide sufficient resources to the Monitoring Officer and Proper Officer for Financial Affairs

The council will provide the Monitoring Officer and Proper Officer for Financial Affairs with such officers, accommodation and other resources as are, in their opinion, sufficient to allow their duties to be performed.

### 10.5 Conduct

Officers will comply with the officers' code of conduct and the protocol on member/officer relations. These are available on request.

## 10.6 Employment

The recruitment, selection and dismissal of officers will comply with the council's policies and procedures.

## 10.7 Politically restricted posts

Under section 2(2) of the Local Government and Housing Act 1989, certain posts are required to be included on a list of politically restricted posts which precludes the post holder from holding any political office. The list of politically restricted posts can be found in this constitution.

## 10.8 Officer scheme of delegation

The areas of responsibility of certain officers and decisions that they have authority to take can be found in the officer scheme of delegation in this constitution.

## 11. Finance, contracts and legal matters

### 11.1 Financial management

The management of the council's financial affairs will be conducted in accordance with the financial procedure rules.

### 11.2 Contracts

Every contract made by the council will comply with the contract procedure rules.

### 11.3 Legal proceedings

The Legal Services Manager is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary.

### 11.4 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 proper officer 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 with a value exceeding £50,000 entered into on behalf of the local authority in the course of the discharge of an executive function shall be made in writing. Such contracts must either be signed by at least two officers of the authority or made under the common seal of the council attested by the proper officer.

### 11.5 Common seal of the council

The common seal of the council will be kept in a safe place in the custody of the Legal Services Manager. 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 proper officer, should be sealed. The affixing of the common seal will be attested by the proper officer or some other person authorised by him or her.

## 12. Citizens and the council

Citizens have a number of rights in their dealings with the council – some of these are legal rights, others depend on the council's own processes. Their rights and responsibilities are set out below.

### 12.1 Voting

Citizens on the electoral roll for the area have the right to vote at council elections.

### 12.2 Information

Citizens have the right to:

- Attend meetings of the Council, Executive and committees, except where confidential or exempt information is likely to be disclosed
- Find out what decisions will be taken by the Executive and when
- See reports and background papers and records of decisions made by Council, committees, the Executive and certain decisions made under delegated powers
- Inspect the council's accounts and make their views known to the external auditor.

### 12.3 Participation

Citizens have the right to participate in the council's business by

- Signing a petition to request a referendum on a mayoral form of Executive
- Asking questions at Executive or meetings of any committee (in accordance with the rules set out in this constitution) or to speak against a planning application being considered by Planning Committee
- Submitting a petition in accordance with the council's petitions scheme
- Joining our citizens' panel
- Becoming a councillor.

### 12.4 Citizens' responsibilities

Citizens must not be violent, abusive or threatening to councillors or officers.