

Part 2
Articles of the Constitution

Part 2

Articles of the Constitution

Article 1 – The Constitution

1.01 Powers of the Council

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

1.02 The Constitution

This Constitution in all its parts, is the Constitution of the Ashford Borough Council.

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 Member of the authority 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.

1.03 Interpretation and Review of the Constitution

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

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

Article 2 – Members of the Council (Councillors)

2.01 Composition and Eligibility

(a) Composition

The Council consists of 47 Members (otherwise called Councillors). One or more 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 registered local government electors of the Borough, or those living, working, occupying land as an owner or a tenant will be eligible to hold the office of Councillor.

2.02 Election and Terms of Councillors

Election and Terms. The regular election of Councillors will be held on the first Thursday in May every four years. The current Council was elected in May 2019 and the next election will be in May 2023. The terms of office of Councillors will be four years starting on the fourth day after being elected and will finish on the fourth day after the date of the next regular election four years later.

2.03 Roles and Functions of all Councillors

(a) Key Roles. All Councillors will:

- (i) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
- (ii) contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision making;
- (iii) effectively represent the interests of their ward and of individual constituents;
- (iv) respond to constituents' enquiries and representations, fairly and impartially;
- (v) participate in the governance and management of the Council; in particular regularly attend meetings of the Council and **Committees**, Sub-Committees, Forums, Task Groups, Boards or Panels to which they are appointed;

- (vi) maintain the highest standards of conduct and ethics.

NOTES All Members are therefore expected to make every effort to attend training sessions for Councillors on this subject, and other training events relevant to that role (Minute No. 298/2/16)

- (1) Since Councillors have a duty to regularly attend the meetings referred to in (v) above, it is likely that Group Leaders and/or the Council will wish to remove them from those which they fail to regularly attend.
- (2) Councillors should also consider whether they should stand down if they are unable to continue to effectively represent their constituents.
- (3) Evening briefings and presentations and training events are often held to assist and inform Councillors in their role. Councillors are required to indicate if they are able to attend or not and if they are not, to provide their apologies. It is quite understood that not all Councillors will be able to attend every event due to other commitments, but knowing in advance will allow Officers to only provide for those attending and supply documents to those who cannot, after the event. It will also allow venue size and catering arrangements to be facilitated. Officers will keep a record of attendance and apologies at briefings, presentations and training events.

(b) Rights and Duties.

Councillors:

- (i) 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; (A copy of the 'Rights of Access to Meetings and Documents by Councillors' is contained in Appendix 3 to the 'Access to Information Procedure Rules' as contained in Part 4 of this Constitution) and
- (ii) will not make public, information which is exempt or confidential or without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or Officer entitled to know it.

For these purposes, "exempt" and "confidential" information are defined in the Access to Information Procedure Rules as contained in Part 4 of this Constitution.

2.04 **Conduct**

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

2.05 **Allowances**

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme as contained in Part 6 of this Constitution.

2.06 **Expression of views "on behalf of the Council"**

Expression of opinion or views by Councillors on behalf of the Council to the press, radio or television or to Members of Parliament or other public bodies on matters affecting the work of the Borough Council shall be given only by the Leader (or Deputy Leader in his absence) or relevant **Cabinet Member** (after discussion with the Leader or Deputy Leader), or by the Chairman (or Vice-Chairman in absence of the Chairman) of the appropriate Standing **Committee** after consultation with the Leader (or Deputy Leader in his absence).

This does not prevent Councillors expressing opinions or views on such matters in a personal, Ward Member or Political Group capacity provided this capacity is made clear in the communication. However Councillors will be acting in a public role and therefore at all times there is a responsibility to ensure that opinions or views expressed are expressed in temperate language and are based on accurate facts as failure to do so could bring their office into disrepute.

Article 3 – Citizens and the Council

3.01 Citizens' Rights

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

- (a) **Voting and Petitions.** Citizens on the Electoral Register for the area have the right to vote and 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, the **Cabinet** and all other **Committees**, subject to the provisions of the General Procedure Rules at **Part 4**, and except where exempt or confidential information is likely to be disclosed, and the meeting is therefore held in private;
 - (ii) Find out from the Schedule of Key Decisions what **key decisions** are to be considered by the **Executive**, Officers, by an Area Committee or under **executive Joint Arrangements**, and when;
 - (iii) See reports and background papers, and any records of decisions made by the Council, its **Committees**, the **Executive** and **key decisions** taken by Officers except where exempt or confidential information is likely to be disclosed; and
 - (iv) Inspect the Council's accounts and make their views known to the external auditor.
- (c) **Participation.** Citizens have the right to participate in the Council's meetings as described in the Council's Scheme of Public Participation as set out in Appendix II to the Access to Information Procedure Rules as contained in Part 4 of this Constitution, and may contribute to investigations by the Overview and Scrutiny Committee at the invitation of that Committee.
- (d) **Complaints.** Citizens have the right to complain to:
 - (i) The Council itself under its Complaints Procedure;
 - (ii) The Local Government Ombudsman after using the Council's Complaints Procedure; and

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- (iii) The Borough Council's Monitoring Officer about the conduct of a Borough, Parish or Town Councillor in the Ashford Borough Area provided the complaint relates to conduct which is, or may be, a breach of the Councillor Code of Conduct.

3.02 **Citizens' Responsibilities**

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

Article 4 –Full Council

4.01 Meanings

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

- Sustainable Community Strategy;
- Crime and Disorder Reduction Strategy;
- Local Transport Plan;
- Plans and strategies which are Local Development Documents and alterations thereto.

The Council can adopt additional plans to form part of the policy framework.

(b) **Budget.** The budget includes:-

- (i) The allocation of financial resources to different services and projects;
- (ii) Provision of contingency funds, such as balances;
- (iii) Council Tax base;
- (iv) Setting the Council Tax;
- (v) Decisions relating to the control of the Council's borrowing requirement;
- (vi) Overall control of the Council's capital expenditure, and funding and
- (vii) Setting of virement limits.

(c) **Housing Land Transfer.** Housing Land Transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval of a programme of disposal of 500 or more properties to a person under Section 35 of the Leasehold Reform, Housing and Urban Development Act 1993 for the inclusion of a disposal in a disposals programme or for consent to that disposal under Section 32 (power to dispose of land held for the purposes of Part II) or Section 43 (consent required for certain disposals not within Section 32) of the Housing Act 1985.

4.02 **Functions of the full Council**

Only the Council will exercise the following functions. A more detailed list of functions is contained in Part 3, Appendix 1.

- (a) Adopting and changing the Constitution;
- (b) Approving or adopting the policy framework, the **budget** and any application to the Secretary of State in respect of any Housing Land Transfer;
- (c) Subject to the urgency procedures contained in the Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget;
- (d) Electing the Leader;
- (e) Agreeing and/or amending the terms of reference for **non-executive Committees**, deciding on their composition and making appointments to them;
- (f) Appointing representatives to outside bodies unless the appointment is a matter for determination by the **Executive** or has been delegated by the Council;
- (g) Changing the name of the area, conferring the title of Honorary Alderman or the Freedom of the Borough;
- (h) Adopting an Allowances Scheme under Article 2.05;
- (i) Confirming the appointment or dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer;
- (j) Making, amending, revoking, re-enacting, adopting or enforcing bylaws and the promotion of opposition to the making of local legislation or personal Bills;
- (k) The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities in relation to the discharge of functions which are not the responsibility of the **Executive**;
- (l) Power to resolve not to issue a Casino Premises Licence;

- (m) Functions in relation to the Council's Licensing Policy. This includes the adoption of statements of principles in relation to Family Entertainment Centre Gaming Machine Permits or Prize Gaming Permits.

4.03 **Council meetings**

There are four types of Council meeting:

- (a) the Annual Meeting;
- (b) Ordinary Meetings;
- (c) Extraordinary Meetings; and
- (d) Special Meetings.

These will be conducted in accordance with the Council's General Procedure Rules in Part 4 of this Constitution.

4.04 **Responsibility for Functions**

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

Article 5 – Chairing the Council

5.01 Role and Function of the Mayor

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

- (a) **The Symbol of the Council and First Citizen.** The Mayor will represent and promote the Council as a whole and its area in all Civic and Ceremonial matters and act as a focal point for the community.
- (b) **The Council Meeting.** The Mayor will preside at meetings of the Full Council, promoting the efficient despatch of business and due observation of the requirements of this Constitution and in particular the Council's General Procedure Rules having due regard to the rights of Councillors and the interests of the public.

5.02 Responsibilities

The Mayor will be elected by the Council annually. S/he will have no authority to take decisions, but will have the following principal 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 so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
3. To ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which Members who are not on the **Cabinet** are able to hold the **Executive** to account.
4. To promote public involvement in the Council's activities;
5. To be the first citizen of the Borough and the focus of local democracy;
6. To attend such civic and ceremonial functions as the Council and s/he determines appropriate; and
7. To determine, in the absence of the Overview and Scrutiny Committee Chairman whether an urgent decision which is contrary to the policy framework may reasonably be regarded as urgent in the circumstances. If the Mayor does not agree, then the matter must be referred to the Full Council for decision;

NB This procedure will only be used if it is impracticable to convene a quorate meeting of the Full Council in the time available before the decision must be made.

Article 6 – Overview and Scrutiny Committee and Task Groups

6.01 Terms of Reference

The Overview and Scrutiny Committee

The Council will appoint an Overview and Scrutiny Committee to discharge the functions conferred by Section 9F1 of the Local Government Act 2000 or Regulations made under that Section.

Overview and Scrutiny Task Groups

The Groups consider issues referred to them by the Council, the **Executive**, or the Overview and Scrutiny Committee and when they have dealt with the specific issues they are disbanded. The recommendations of the Task Group are considered by the Committee which established them.

6.02 General Role

Within their terms of reference:

The Overview and Scrutiny Committee may:

- (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 **Executive** and/or any Joint or Area Committee in connection with the discharge of any functions (the decision making power remains with the original decision taker);
- (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 **Executive** or **key decisions** made by Officers, by an Area Committee, or under **executive Joint Arrangements** .

Task Groups may:

- (i) Support the work of the **Executive**, the Council and Overview and Scrutiny;
- (ii) Make reports and recommendations to the Council, **Executive** and Overview and Scrutiny.

6.03 Specific Functions

- (a) **Overview and Scrutiny Committee may:**
- (i) Review and scrutinise the decisions made by and performance of the **Executive, and key decisions** taken by Officers, by an Area Committee or under **executive Joint Arrangements** 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 **Cabinet Members**, Members of other appropriate Committees and Council Officers 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 **Executive**, other appropriate Committees and/or the Council arising from the outcome of the overview and scrutiny process;
 - (v) Review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the appropriate Overview and Scrutiny Committee and local people about their activities and performance;
 - (vi) Question **Cabinet Members**, Members of other appropriate Committees and Council Officers and gather evidence from any person (with their consent).
 - (vii) **Finance.** The Overview and Scrutiny Committee may exercise via the Senior Policy and Scrutiny Officer overall responsibility for the finances made available to them. This budget is to be used to support scrutiny and policy review work.
 - (viii) **Annual Report.** The Overview and Scrutiny Committee must report annually to full Council on their work and make recommendations for future work programmes and amended working methods if appropriate.
 - (ix) **Officers.** The Overview and Scrutiny Committee may exercise overall responsibility for the work programme of the Officers employed to support their work.

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(b) **Policy Development and Review.**

The Overview and Scrutiny Committee may:

- (i) Assist the Council and the **Executive** 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 **Cabinet Members** and/or Members of other appropriate Committees and Chief Officers about their views on issues and proposals affecting the area;
- (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.

6.04 **Proceedings of the Overview and Scrutiny Committee**

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

Article 7 – The Executive

7.01 Role

The Council has adopted a leader and cabinet “executive” form of governance pursuant to s.9E Local Government Act 2000 as inserted by the Localism Act 2011. This means that the Full Council appoints a Leader of the Council. The person elected as the Leader of the Council is the senior executive member and has responsibility for carrying out and/or organising the carrying out of the executive functions of the Council.

The ‘**Executive**’ is the collective term for the **Leader**, the **Cabinet** individual **Cabinet Members**, and Committees of the Cabinet. Under the arrangements approved by the Leader, the **Cabinet** will ordinarily carry out all of the **executive functions** unless the **Leader** decides to discharge them personally or allocate them to an individual **Cabinet Member**, a Committee of the Cabinet, Officers, an Area Committee or under **executive Joint Arrangements**. The Leader may make such a determination, and give written notice of the same, at any time in accordance with the Executive Procedure Rules at **Part 4**.

Where the **Cabinet** is exercising these functions, it may delegate those functions to a Committee of the Cabinet, to Officers or to an Area Committee, but not to an individual **Cabinet Member**.

Where an individual **Cabinet Member** is exercising these functions, they may delegate those functions to Officers or to an Area Committee.

Where **executive functions** have been delegated, that does not prevent the discharge of those functions by the person or body who delegated them.

The **Cabinet** is responsible for making proposals to the Full Council about what its policy priorities should be and how it should use its financial resources. Once approved by the Full Council, these proposals become the Council’s **Budget and Policy Framework**.

The **Executive** is responsible for making all of the necessary arrangements to ensure that the priorities identified by the Council are delivered within the **Budget and Policy Framework** set by the Full Council. If the Executive wishes to make a decision which is not in line with the budget or policy framework, this must be referred to the Full Council as a whole to decide. This is subject to the urgency provisions contained in the Procedure Rules in **Part 4** of the Constitution.

Functions that are not stated in the Local Authorities (Functions and Responsibilities) Regulations 2000 or in other legislation to be non-executive functions are, by default, executive functions. Set out elsewhere in this Constitution are the “local choice” functions, which the authority has

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determined are to be the responsibility of either the Executive or the Council.

Members of the **Cabinet**, including the **Leader**, may not be members of the Overview and Scrutiny Committee.

7.02 **The Leader**

The **Leader** will be a Councillor elected to the position of Leader by a simple majority of the Council. The term of office of the Leader is one year (although the Leader may serve consecutive one year terms up to a maximum of four years following each local election if so elected at each Annual Meeting). The Leader will hold office unless he/she:-

- (i) resigns from the office;
- (ii) is no longer a Councillor (otherwise than by expiration of office);
- (iii) is removed from office by resolution of the Council on the basis of a motion signed by five Members of the Council and included on the agenda for a Council Meeting. Such motion must be given in writing to the Proper Officer at least 14 days prior to the relevant meeting and shall indicate the reasons for the motion. The motion shall take precedence over any other item of business.

If the Full Council passes a resolution to remove the **Leader**, the Full Council shall elect another Councillor as Leader at the meeting at which the Leader is removed from office, or at a subsequent meeting of the Full Council. If there is a vacancy in the office of Leader for any other reason, the Full Council shall elect another Councillor as Leader at the first Full Council meeting after the vacancy occurs.

The **Leader** may determine to exercise any of the **Council's executive functions** personally, or may arrange for the exercise of those functions by:

The **Cabinet**;
An individual **Cabinet Member**;
A Committee of the Cabinet;
An Officer of the Council;
An Area Committee; or
Executive Joint Arrangements.

The Leader may make such a determination, and give written notice of the same, at any time in accordance with the Executive Procedure Rules at **Part 4.**

7.03 **The Deputy Leader**

The Leader will appoint one of the Members of the Cabinet to be his/her Deputy and carry out the functions of the **Leader** in periods of their absence or where the Leader is otherwise unable to act.

The Deputy Leader shall hold office until such time as the term of office of the Leader who appointed him/her comes to an end, or until they:

- (i) resign from the office;
- (ii) cease to be a Councillor; or
- (iii) are removed from office by the Leader.

If for any reason the **Leader** is unable to act or the office of Leader is vacant, the Deputy Leader must act in his/her place. If the Deputy Leader is unable to act or the office is vacant, the **Cabinet** must act in the Leader's place or arrange for a Member of the Cabinet to do so.

7.04 **Cabinet Members**

Each **Cabinet Member** will be appointed by the Leader to cover one of the specific portfolio responsibilities (other than those reserved to the **Leader**) determined by the Leader.

Cabinet Members shall hold office until such time as the term of office of the **Leader** who appointed him/her comes to an end or until they:

- (i) resign from the office;
- (ii) cease to be a Councillor; or
- (iii) are removed from office by the Leader.

7.05 **The Cabinet**

The **Cabinet** will consist of the Leader together with between two and nine other Councillors appointed to the Cabinet by the **Leader**. The Cabinet may be composed of Councillors who are members of any or no political group(s).

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

7.06 **Responsibility for Functions**

Under the arrangements approved by the Leader, the **Cabinet** will ordinarily carry out all of the Council's **executive functions** unless the **Leader** decides to discharge them personally or allocate them to an individual **Cabinet Member**, a Committee of the Cabinet, Officers, an Area Committee or under **executive Joint Arrangements**. The Leader may make such a determination, and give written notice of the same, at any time in accordance with the Executive Procedure Rules at **Part 4**.

Part 3 of this Constitution contains delegations relating to **executive functions**, as updated from time to time.

7.7 **Deputy Portfolio Holders**

The **Leader** may appoint Deputy Portfolio Holders. Deputy Portfolio Holders may not take decisions on behalf of the **Cabinet Member** nor vote at a Cabinet meeting.

NB: Details of the roles and responsibilities of Deputy Portfolio Holders are set out in Part 3, Appendix 2 - Functions and Powers of the Executive: the Leader, the Cabinet, Cabinet Members and Committees of the Cabinet.

7.08 **Committees of the Executive**

The **Leader** or the **Cabinet** may delegate any of its functions to a Committee of the Cabinet. **Committees** of the Cabinet shall report to the Cabinet. The Leader or the Cabinet may establish decision-making Committees which may only include **Cabinet Members**. The Leader or the Cabinet may establish groups or advisory committees, the membership of which need not be limited to Cabinet members. The Leader or the Cabinet may change them, abolish them, or create further ones, at its own discretion. Further detail can be found at **Part 3**.

7.09 **Formation of Cabinet Task Groups, Cabinet Working Groups, Cabinet Steering Groups and Cabinet Forums**

The **Cabinet** will be responsible for the formation of Cabinet approved Task Groups, Cabinet Working Groups, Cabinet Steering Groups and Cabinet Forums. The Cabinet shall approve the Terms of Reference of such Groups and determine the membership and the appointment of the Chairman.

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Article 8 – Regulatory and Other Committees

8.01 Regulatory and Other Committees

The Council will appoint the Committees set out in Part 3 of this Constitution to discharge the functions described beneath each of them.

Article 9 –Standards Committee

9.01 Standards Committee

The Council will establish a Standards Committee, to deal with local assessments, determinations, investigations etc.

9.02 Composition

(a) **Membership.** The Standards Committee will be composed of:

8 Members – broadly reflecting current political balance: 5 Conservative (to include at least one **Cabinet Member**), Chair and Vice chair of O&S (assuming these are appointments from within opposition groups) and 1 Member from a political group not represented above; plus 2 non-voting Parish Council representatives.

(b) **Chairing the Committee**

The Chairman of the Committee will be appointed at the Annual Council Meeting.

9.03 Role and Function

The Standards Committee will have the following roles and functions:

To discharge the functions of the Council relating to Standards as follows, including those contained in Part 1, Chapter 7 of the Localism Act 2011 (other than those which are reserved to Council by law):

1. To promote and maintain high standards of conduct by Members and Co-opted Members of the Borough Council and to make recommendations to Council on improving standards.
2. To advise and assist Town and Parish Councils and Town and Parish Councillors to observe their respective codes of conduct and to maintain high standards of conduct and to make recommendations to Town and Parish Councils on improving standards.
3. To advise the Borough Council on the adoption of or revisions to its Code of Conduct.
4. To advise, train or arrange to train Members, Co-opted Members and Town and Parish Councillors on matters relating to the Code of Conduct.

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5. To monitor and assess the operation and effectiveness of the Code of Conduct and to review and manage the Arrangements for dealing with Code of Conduct Complaints.
6. To advise on local ethical governance protocols and procedures.
7. To monitor and review the procedures for the Register of Members' Interests and declaring gifts and hospitality.
8. To receive periodic reports from the Monitoring Officer on the number and nature of complaints received and action taken as a result in consultation with the Independent Person.
9. To receive an annual report on the Borough Council's ethical governance arrangements.
10. To grant dispensations pursuant to S33(2) of the Localism Act 2011 where:
 - (i) without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter.
 - (ii) that the authority considers that the dispensation is in the interests of persons living in its area; or
 - (iii) where the Committee considers that it is otherwise appropriate to grant a dispensation.
11. Oversight of the Constitution in relation to ethical matters and overview of complaints handling and Ombudsman investigations where probity issues are raised.
12. Determination of written complaints to any Statutory Officer about alleged breaches of Local Protocols adopted by the Council.
13. The consideration of applications received from any officers of the Authority for exemption from political restriction under Section 1 and 2 of the Local Government Act 1989 in respect of the post held by that Officer and can direct the Authority that the post shall not be considered to be a politically restricted post and that the post be removed from the list maintained by the Authority under Section 2(2) of the Act.

Notes

- (i) The procedure rules applying to Committee meetings also apply to meetings of the Standards Committee except where otherwise required in order to comply with adopted procedures or statutory requirements.
- (ii) The Access to Information Procedure Rules apply to meetings of the Committee and Hearings Panels.

Article 10 – Area Committees and Forums

10.01 Area Committees and Forums

The **Leader** or the **Cabinet** may appoint Area Committees or Forums as it sees fit, if it is satisfied that to do so will ensure improved service delivery in the context of Best Value and efficient, transparent and accountable decision making.

The Council will consult with relevant Parish and Town Councils and the Chairmen of relevant Parish Meetings when considering whether and how to establish Area Committees or Forums within parished areas.

10.02 Community Forums

The Council may facilitate or contribute to the establishment and running of Community Forums including those currently in existence: Central Ashford Community Forum and South Ashford Community Forum.

From the May 2019 elections two new Parish Councils – namely The Kennington Community Council and the South Willesborough and Newtown Community Council were established.

NB: In the event that Area Forums are reconstituted as Area Committees this Article of the Constitution will be amended.

Article 11 – Joint Arrangements

11.01 Joint Arrangements

- (a) The Full Council may establish joint arrangements with one or more local authorities to exercise functions which are **non-executive functions**, in any of the participating authorities, or to advise the Council. .
- (b) The **Leader** may establish **executive joint arrangements** with one or more local authority **Executives** for **executive functions**.
- (c) Such arrangements may involve the appointment of a **Joint Committee** with those other local authorities. Joint arrangements will normally take one of two forms: the appointment of a joint committee of two or more authorities, or the delegation of functions by one authority to another.
- (d) If the **joint committee** is to discharge **non-executive functions**, it must be appointed by Full Council and appointments must reflect the political balance on the Council as a whole. If it is to discharge **executive functions**, it must be appointed by the **Leader**. He or she can only appoint **Cabinet Members** to the joint committee (except where the joint committee involves five or more authorities or has to be set up under specific legislation). If it is to discharge a mix of **non-executive** and executive functions, it must be appointed by Full Council with the agreement of the Leader. In that case, if only one Member is appointed, he or she can be, but need not be, a Cabinet Member, but if more than one Member is appointed then those appointed must include at least one Cabinet Member, and the political balance rules do not apply.
- (e) Details of joint arrangements including any delegations to Joint Committees and Officers are contained in Part 3 of this Constitution.
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- (f)

11.02 **Access to Information**

- (a) The Access to Information Procedure Rules as contained in Part 4 of this Constitution apply to **executive and non-executive joint arrangements**.
- (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.

11.03 Delegation To and From Other Local Authorities

- (a) The Full 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 as to whether or not to accept a delegation of **non-executive functions** from another local authority shall be reserved to the Full Council.
- (d) The decision as to whether or not to accept a delegation of **executive functions** from another local authority shall be reserved to the **Cabinet**.

11.04 Contracting Out

- (a) The Full Council for **non-executive functions** and the **Cabinet** for **executive functions** may contract out functions to another body or organisation. The functions must be those which can 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 arrangements where the contractor acts as the Council's agent under usual contracting principles.
- (b) There must be no delegation of the Council's discretionary decision making.
- (c) The Full Council for **non-executive functions** and the **Cabinet** for **executive functions** may revoke any such an arrangement or authorisation.

Article 12 – Officers

12.01 Management Structure

- (a) **General.** The Chief Executive will submit to the Full Council for approval a staffing structure which he considers appropriate 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 (Head of Paid Service)	<p>To provide strong managerial leadership, motivating and inspiring the Council's staff in ensuring that all members of the Council are fully supported in their various roles and that Council policies are effectively implemented in order to achieve the Authority's strategic and corporate objectives as efficiently and economically as possible.</p> <p>To ensure that the Council is organised effectively and is able to respond to changing needs, that operational accountabilities are clearly defined and appropriately managed and that all services and staff have clear objectives that relate directly to the delivery of the Corporate Plan.</p>

- (c) **Head of Paid Service, Monitoring Officer and Chief Finance Officer.**

The Council will designate the following posts as shown:

Post	Designation
Chief Executive	Head of Paid Service
Corporate Director of Law and Governance	Monitoring Officer
Director of Finance and Economy	Chief Finance (Section 151) Officer
Head of Finance and IT	Deputy Section 151 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.

12.02 **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 co-ordinated, the number and grade of Officers required for the discharge of functions and the organisation of Officers.
- (b) **Restrictions on Functions.** The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance (Section 151) Officer if a qualified accountant.

12.03 **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 (Section 151) Officer, the Monitoring Officer will report to the Full Council or to the **Cabinet** in relation to an **executive function** if s/he considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration following a report by a Local Commissioner. 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 or make arrangements for investigations into Code of Conduct complaints 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, authority to take decisions, maladministration, probity and policy framework issues to all Councillors and Co-opted Members.
- (h) **Restrictions on Posts.** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

12.04 **Functions of the Chief Finance (Section 151) 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 (Section 151) 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 considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- (b) **Administration of Financial Affairs.** The Chief Finance (Section 151) Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to Corporate Management.** The Chief Finance (Section 151) 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 (Section 151) 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 roles.

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- (e) **Give Financial Information.** The Chief Finance (Section 151) Officer will provide financial information to the media, members of the public and the community.

12.05 **Duty to Provide Sufficient Resources to the Monitoring Officer and Chief Finance (Section 151) Officer**

The Council will provide the Monitoring Officer and Chief Finance (Section 151) Officer with such Officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

12.06 **Conduct**

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

12.07 **Employment**

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

Article 13 – Decision Making

13.01 Responsibility for Decision Making

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

13.02 Principles of Decision Making

All decisions of the Council including all **Committees**, the **Executive** and Officers will be made in accordance with the following principles where required by law:

- (a) take into account all relevant considerations and ignore those which are irrelevant;
- (b) undertake appropriate consultation where required and take appropriate professional advice from Officers;
- (c) respect Human Rights (see below for further details);
- (d) act for proper purposes, in good faith in a "Wednesbury reasonable" manner; and
- (e) act in accordance with all relevant overarching duties (including but not limited to fiduciary, best value, crime and disorder reduction, equalities, health and wellbeing and other relevant duties).

The record of decisions will include details of the options considered and the reasons for the decision. More information can be found in **Part 4**.

13.03 Types of Decision

- (a) **Decisions Reserved to Full Council.** Decisions relating to the functions listed in Article 4.02 and Part 3 of this Constitution will be made by the Full Council and not delegated.
- (b) **Key Decisions.**
 - (i) A 'Key Decision' is an **Executive decision** (that is, taken by the **Leader**, the **Cabinet**, individual **Cabinet Members**, any Committees of the Cabinet, or delegated to an Officer, Area Committee or under executive Joint Arrangements where the Council has delegated **executive functions**) which is likely to:

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- Result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or
 - Be significant in terms of its effects on communities living or working in an area comprising two or more wards of the Council's area.
 - In accordance with Section 38 of the Local Government Act 2000, in determining the meaning of "significant" for the purposes of the above, regard shall be had to any guidance for the time being issued by the Secretary of State.
- (ii) Under the arrangements approved by the Leader, ordinarily the Cabinet will take **key decisions**. A decision taker may only make a 'Key Decision' in accordance with the requirements of the Access to Information Procedure Rules and the Executive Procedure Rules as contained in **Part 4** of this Constitution.

13.04 **Decision Making by the Full Council**

Subject to Article 13.08, the Full Council will follow the Council Procedure Rules as contained in **Part 4** of this Constitution when considering any matter.

13.05 **Decision Making by the Executive**

Subject to Article 13.08, the **Executive** will follow the Executive Procedure Rules as contained in **Part 4** of this Constitution when considering any matter.

13.06 **Decision Making by the Overview and Scrutiny Committee**

The Overview and Scrutiny Committee will follow the Overview and Scrutiny Procedure Rules as contained in **Part 4** of this Constitution when considering any matter.

13.07 **Decision Making by other Committees and Sub-Committees Established by the Council**

Subject to Article 13.08, other Council Committees and Sub-Committees will follow those parts of the Council Procedure Rules as contained in **Part 4** of this Constitution as apply to them.

13.08 **Decision Making by Council Bodies Acting as Tribunals**

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

Article 14 – Finance, Contracts and Legal Matters

14.01 Financial Management

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

14.02 Contracts

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

14.03 Legal Proceedings

The Head of Legal and Democracy 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 Head of Legal and Democracy considers that such action is necessary to protect the Council's interests.

14.04 Authentication of Documents

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Head of Legal and Democracy or other person authorised by him, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

Any contract with a value exceeding that specified within the Financial Procedure Rules 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 at least two Officers of the authority or made under the Common Seal of the Council attested by the Head of Legal and Democracy or other authorised signatory.

14.05 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Head of Legal and Democracy. 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 Head of Legal and Democracy should be sealed. The affixing of the Common Seal will be attested by the Head of Legal and Democracy or another solicitor employed by the Council.

Article 15 – Review and Revision of the Constitution

15.01 Duty to monitor and review the constitution

The Selection and Constitutional Review Committee will consider any recommended revision to the Constitution and make recommendations to the Council in respect thereof.

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

- (a) Observe meetings of different parts of the Member and Officer structure;
- (b) Undertake an audit trail of a sample of decisions;
- (c) Record and analyse issues raised with him by Members, Officers, the public and other relevant stakeholders; and
- (d) Compare practices in this Council with those in other comparable Councils, or national examples of best practice.

15.02 Changes to the Constitution

- (a) **Amendments to the Constitution.** The **Leader** may amend and/or update the way **Executive** functions are discharged at any time in accordance with the Executive Procedure Rules at **Part 4** and shall notify the Monitoring Officer of any changes. Should the Leader wish, he/she may take this through the Cabinet.

Any other change to the Constitution will only be approved by the full Council after consideration of a proposal by the Overview and Scrutiny Committee, the Selection and Constitutional Review Committee or the Monitoring Officer.

The Monitoring Officer may amend the Constitution in order to update any references to amended or superseded legislation and to make minor amendments or corrections (of a clerical, grammatical or editorial nature only).

- (b) **Change from a Leader and Cabinet form of Executive to a Mayoral form of Executive.** The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals and must hold a binding referendum.

Article 16 – Suspension, Interpretation and Publication of the Constitution

16.01 Suspension of the Constitution

- (a) **Limit to Suspension.** The Articles of this Constitution may not be suspended. The Council Procedures Rules; Contract Procedures Rules and Financial Procedures Rules 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 Procedure Rules will not be moved without notice unless at least one half of the whole number of Councillors are 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 as contained in Article 1.
- (c) **Rules Capable of Suspension.** Only the Council's Procedure Rules, Contract Procedures Rules and Financial Procedure Rules may be suspended in accordance with Article 16.01.

16.02 Interpretation

Interpretation of the Constitution will have regard to the purposes of the Constitution as contained in Article 1.03. The ruling of the Mayor 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 as contained in Article 1.

16.03 Publication

- (a) The Proper Officer will provide a link to the Council's website for the Constitution to each Member of the authority on the Member first being elected to the Council.
- (b) The Proper Officer will ensure that copies of this Constitution are available for inspection at council offices, and/or on the Council's internet site and other appropriate locations, and it can be purchased by members of the local press and the public on payment of a reasonable fee.

Schedule 1: Description of Executive Arrangements

The following parts of this Constitution constitute the Executive arrangements:

		Page No(s)
Article 6:	Overview and Scrutiny Committee and the Overview and Scrutiny Procedure Rules as contained in Part 2 and Part 4 of this Constitution;	20 and 478
Article 7:	The Executive and the Executive Procedure Rules as contained in Part 2 and Part 4 of this Constitution;	23 and 470
Article 10:	Area Committees and Forums (when the Council decides upon the final form of Area Forums);	29
Article 11:	Joint Arrangements as contained in Part 2 and Part 3 of this Constitution;	30 and 172
Article 13:	Decision Making and the Access to Information Procedure Rules as contained in Part 2 and Part 4 of this Constitution;	37 and 362
Part 3:	Responsibility for Functions as contained in Part 3 of this Constitution.	43