

## **Part 2**

### **ARTICLES OF THE CONSTITUTION**

#### **Article 1 – THE CONSTITUTION**

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

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

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

This Constitution, and all its appendices, is the Constitution of the Council of the London Borough of Merton, hereinafter referred to as Merton Council.

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

The purpose of the Constitution is to:

- (a) enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
- (b) support the active involvement of citizens in the process of local authority decision-making;
- (c) help councillors represent their constituents more effectively;
- (d) enable decisions to be taken efficiently and effectively;
- (e) create a powerful and effective means of holding decision-makers to public account;
- (f) ensure that no one will review or scrutinise a decision in which they were directly involved;
- (g) ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
- (h) provide a means of improving the delivery of services to the community.

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

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

## ARTICLE 2 – MEMBERS OF THE COUNCIL

### 2.1 Composition and Eligibility

- (a) **Composition.** The Council comprises 60 members, otherwise called councillors. Three councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Boundary Commission and approved by the Secretary of State.
- (b) **Eligibility.** Only registered voters of the London Borough of Merton or those living or working or occupying property in the Borough will be eligible to hold the office of Councillor.

### 2.2 Election and Terms of councillors

The regular election of councillors will be held on the first Thursday in May every four years beginning in 2002 unless other legislative provision is made. The terms of office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

### 2.3 Roles and Functions of all councillors

- (a) **Key roles.** All councillors will:
  - (i) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
  - (ii) contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision-making;
  - (iii) effectively represent their communities and bring their communities' views into the Council's decision-making process, i.e. become the advocate of, and for, their communities;
  - (iv) respond to constituents' enquiries and representations, fairly and impartially and act as an advocate for constituents in resolving particular concerns or grievances;
  - (v) balance different interests identified within the ward or electoral division and represent the ward or electoral division as a whole;
  - (vi) participate in the governance and management of the Council; and
  - (vii) maintain the highest standards of conduct and ethics.

(b) **Rights and Duties**

- (i) Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
- (ii) Councillors will not make public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or officer entitled to know it.
- (iii) For these purposes, “confidential” and “exempt” information are defined in the Access to Information Procedure Rules in Part 4-B of this Constitution.

**2.4 Conduct**

Councillors shall at all times observe the Members’ Code of Conduct set out in Part 5A of this Constitution and any other member protocols agreed by the Council

**2.5 Allowances**

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

**Article 3 – CITIZENS AND THE COUNCIL**

**3.1 Citizens’ Rights**

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

- (a) **Voting and Petitions.** Citizens on the electoral roll for the Borough of Merton 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 and its committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
  - (ii) attend meetings of the Cabinet when key decisions, as defined in Article 13, are being considered except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;

- (iii) find out from the forward plan what key decisions will be taken by the Cabinet and when;
  - (iv) see reports and background papers, and any records of decisions made by the Council and the Cabinet except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
  - (v) inspect the Council's accounts and make their views known to the external auditor; and
  - (vi) inspect the Councillors' Register of Interests.
- (c) **Participation.** Citizens have the right to participate in the Council's meetings through Question Time and may be invited to contribute to investigations by the Overview and Scrutiny Commission or panels. The Council will also promote a network of community area forums aimed at enabling citizens to express views on local matters as part of its community leadership role. Citizens may also attend and address committees and sub-committees responsible for decisions on planning and licensing matters.
- (d) **Complaints.** Citizens have the right to complain to:
- (i) the Council itself under its complaints scheme;
  - (ii) the Local Government and Social Care Ombudsman after using the Council's own complaints scheme;

### 3.2 Citizens' Responsibilities

Citizens must not be violent, abusive or threatening to councillors or officers and must not willfully harm property things owned by the Council, councillors or officers. Persons who willfully refuse to operate within these "citizens' responsibilities" will be referred to the relevant authorities.

Citizens are encouraged to make conscientious use of their roles as voters and as members of a wider community by:

- (a) voting at every election;
- (b) respecting the expression of differing opinions in public debate;
- (c) promoting tolerance and respect between their fellow citizens; and
- (d) individually and collectively seeking information about the decision-making role of councillors whilst respecting the Council's procedures which give effect to a representative democracy.

## Article 4 - THE FULL COUNCIL

### 4.1 Functions of the Full Council

Only the Council will exercise the following functions:

- (a) adopting and changing the Constitution;
- (b) approving or adopting the policy framework, the budget and any application to the Secretary of State in respect of any housing land transfer;
- (c) subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function which is covered by the policy framework or the budget where the decision-maker is minded to make it in a manner which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget;
- (d) electing the Leader;
- (e) agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them;
- (f) appointing representatives to outside bodies unless the appointment is an executive function or has been delegated by the Council;
- (g) adopting an allowances scheme under Article 2.5;
- (h) changing the name of the area, conferring the title of Honorary Alderman or Freedom of the Borough;
- (i) confirming the appointment of the Head of Paid Service and the Council's Monitoring Officer.
- (j) agreeing which local choice functions shall be the responsibility of the executive (part 3A)
- (k) making, amending, revoking, re-enacting or adopting bylaws and promoting, or opposing, the making of local legislation or private Bills;
- (l) all other matters which, by law, must be reserved to Council.

### 4.2 Meanings

- (a) **Policy Framework.** The following plans and strategies constitute the Policy Framework. The Council by resolution may, from time to time (and without prior consideration by the Standards and General Purposes Committee, the Head of Paid Service or the Monitoring Officer in accordance with Article 15.2), add other plans and strategies to the Policy Framework.

- Business Plan
- Community Plan
- Equality and Community Cohesion Strategy
- Housing Strategy
- Local Plan
- Children and Young People's Plan
- Climate Change Strategy
- Wimbledon Town Centre Masterplan

(b) **Budget.** The budget is the Council's formally adopted financial plan for the year and includes the allocation of financial resources to different services and projects, proposed contingency funds, the Council Tax base, setting the Council Tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.

#### 4.3 Council Meetings

There are four types of Council meetings:

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings;
- (d) budget/council tax meetings.

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

#### 4.4 Responsibility for Functions

The Council has set out in, Part 3, of this Constitution the delegation of responsibility for the Council's functions to committees. The scheme of delegation of those functions to officers is set out in Part 3E.

## **Article 5 - CHAIRING THE FULL COUNCIL**

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

The Mayor, or in the Mayor's absence, the Deputy Mayor will have the following roles and functions:

- (a) to be the ceremonial representative of the Council, taking precedence on all such occasions;
- (b) to attend such civic and ceremonial functions as the Council and he/she determines appropriate.

### **5.2 Selection of The Mayor and Deputy Mayor**

The Mayor will be elected by the Council annually. Vacancies occurring during the year will be filled for the remainder of the municipal year.

The Deputy Mayor will be appointed by the incoming Mayor at the Annual Meeting each year.

### **5.3 Responsibilities**

The Mayor, and in his or her absence the councillor chairing the meeting will have the following responsibilities:

- (a) to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- (b) 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;
- (c) 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 councillors who are not in the Cabinet are able to hold the Cabinet to account;
- (d) to promote public involvement in the Council's activities;
- (e) to be the conscience of the Council; and
- (g) to establish, following consultation, a timetable for meetings of the full Council and to manage the business of the meeting, so as to adhere so far as possible, to the timetable and to ensure the completion of business within the time available.

## **Article 6 – OVERVIEW AND SCRUTINY COMMISSION AND PANELS**

### **6.1 Appointment of the Overview and Scrutiny Commission and Panels**

The Council will establish Overview and Scrutiny bodies to discharge the functions conferred by Section 21 of the Local Government Act 2000 and any Regulations made under Section 32 of that Act, the Local Government Act 2003, the Health and Social Care Act 2001, the Police and Justice Act 2006, the Local Government and Public Involvement in Health Act 2007, which may include:

- (i) Overview and Scrutiny Commission;
- (ii) Sustainable Communities Overview and Scrutiny Panel;
- (iii) Healthier Communities and Older People Overview and Scrutiny Panel;
- (iv) Children and Young People Overview and Scrutiny Panel;

### **6.2 General functions**

Within their terms of reference, the Overview and Scrutiny Commission and Panels may:

- (a) Review and scrutinise decisions after they are made by the Cabinet, Cabinet committees, sub-committees, Cabinet members and Council officers;
- (b) Make reports and/or recommendations to the full Council and/or the Cabinet and/or community forums in connection with the discharge of any functions;
- (c) Make reports or recommendations on any matter affecting the Council area or its inhabitants;
- (d) Participate in and make recommendations on the development of Council policy;
- (e) Be consulted as appropriate on key decisions, and on such other decisions as those making them see fit before these are made by the Cabinet, Cabinet committees, sub-committees, Cabinet members or Council officers;
- (f) Exercise the right to call-in, for reconsideration of decisions made but not yet implemented by the Cabinet and Officers in the case of key and non-key executive decisions (as defined by article 13(c));
- (g) In accordance with statutory regulations, review and scrutinise matters relating to the health service within the Council's area and to make reports and recommendations thereon to local NHS bodies;



- (h) In accordance with statutory regulations, review and scrutinise matters relating to local improvement targets within the Council's area and to make reports and recommendations thereon to Cabinet and/or the local strategic partnership;
- (i) In accordance with statutory regulations, review and scrutinise matters relating to the crime and disorder matters within the Council's area and to make reports and recommendations thereon to Cabinet and/or the community safety partnership;
- (j) To receive deputations in accordance with the Overview and Scrutiny Procedure Rules;
- (k) Appoint non-voting co-optees to the Overview and Scrutiny Commission and/or Policy Review Panels; and
- (l) Represent to the Council the interests of Merton people.
- (m) Receive references from councillors under the statutory Councillor's Call for Action, consider whether such matters should be the subject of formal scrutiny, and carry out scrutiny or refer appropriate matters to relevant scrutiny panels.

### 6.3 Specific functions

- (a) **Co-ordination.** The Overview and Scrutiny Commission shall co-ordinate the functions and work programs of its panels.
- (b) **Policy Development.** The Overview and Scrutiny Commission and Panels may participate in policy development. They may:
  - (i) Assist the Council and the Cabinet in the development of its budget and policy framework by in-depth analysis of policy issues;
  - (ii) Conduct research, community and other consultation in the analysis of policy issues and possible options;
  - (iii) Consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
  - (iv) Question members of the Cabinet, Chief Officers, Heads of Service or their nominees about their views on issues and proposals affecting the service area; and
  - (v) Liase with external organisations operating in the Council's area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.

- (c) **Review & Scrutiny.** The Overview and Scrutiny Commission and Panels may:
- (i) Review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
  - (ii) Review and scrutinise decisions made by the Cabinet, Cabinet Members, committees and council officers;
  - (iii) Question members of the Cabinet, chairs of committees, Chief Officers and Heads of Service or their nominees 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 as set forth in Part 4 of this Constitution;
  - (iv) Make recommendations to the Cabinet, Cabinet members and/or appropriate committee and/or Council arising from the outcome of the scrutiny process;
  - (v) Review and scrutinise the performance of public bodies in the area and invite reports from them all by requesting them to address the Overview and Scrutiny Commission and local people about their activities and performance; and
  - (vi) Question and gather evidence from any person (with their consent).
- (d) **Finance.** The Overview and Scrutiny Commission may exercise overall responsibility for the finances made available to it.
- (e) **Annual report.** The Overview and Scrutiny Commission must report annually to full Council on its workings and the workings of its panels, make recommendations for future work programs and amended working methods, if appropriate.
- (f) **Officers.** The Overview and Scrutiny Commission may exercise overall responsibility for the work programme of the officers allocated by the Chief Executive to support its work.

#### 6.4 Proceedings of Overview and Scrutiny Commission

The Commission and its panels will conduct their proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4-E of this Constitution.

## Article 7 – THE CABINET

### 7.1 Role

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

### 7.2 Form and Composition

The Cabinet will consist of a maximum of 10 councillors, including the Leader elected by the Council and Deputy Leader(s), appointed by the Leader. The Cabinet may not include the Mayor or Deputy Mayor of the Council.

### 7.3 Leader

- (a) **Selection.** The Leader will be a Councillor elected to the position of Leader by the Council for a four year term. The Leader will be elected at the Annual Council Meeting or at the next meeting of the Council after a vacancy arises. The Leader shall hold office for four years or until:
- (i) they resign from office; or
  - (ii) they are no longer a Councillor; or
  - (iii) they are removed from office by resolution of the Council at an earlier date.
- (b) **Responsibility for Functions.** The Leader has responsibility for deciding which individual members of the Cabinet, Cabinet committees, officers or joint arrangements are responsible for the exercise of particular executive functions. Part 3-C sets out those matters for which the Cabinet or individual councillors have responsibility. The scheme of delegation of such executive functions to officers is in Part 7.
- (c) The Leader will determine the number of councillors who may be appointed to the Cabinet;
- (d) **Power to Reallocate.** The Leader will have the power to vary the allocation of portfolios held by Cabinet members meeting and to determine which Cabinet Member shall hold a lead role in respect of any cross cutting policy matter.

### 7.4 Deputy Leader

- (a) **Selection.** The Deputy Leader will be a Councillor appointed to the position of Deputy Leader by the Leader for a four-year term. The Deputy Leader shall hold office until the end of the term of office of the Leader or until:

- (i) they resign from office;
- (ii) they are no longer a Councillor; or
- (iii) the Leader, if he/she thinks fit, removes the Deputy Leader from office

Where a vacancy occurs in the office of Deputy Leader, the Leader must appoint another person in his/her place.

The Leader may choose to appoint two deputy leaders.

- (b) **Role.** The Deputy Leader is a Member of the Cabinet and will deputise for the Leader during his or her absence,

- (c) **Other provisions**

If for any reason:

- (i) the Leader is unable to act or the office of Leader is vacant, the Deputy Leader must act in his/her place; and
- (ii) no Deputy Leader is able to act or the office of Deputy Leader is vacant, the Cabinet must act in the Leader's place or must arrange for a member of the Cabinet to act in the place of the leader.

## 7.5 Other Cabinet Members

The members of the Cabinet shall be councillors appointed by the Leader. They will include the Deputy Leader. The Leader shall allocate specific portfolio responsibilities to the Members of the Cabinet who shall hold office until the next Annual Council meeting or until:

- (a) they resign from office;
- or
- (b) they are no longer councillors; or
- (c) they are removed from office by the Leader.

## **7.6 Assistant Cabinet members**

The Leader may appoint assistant Cabinet members. The appointment of an Assistant Cabinet member will specify the areas of responsibility of the member and identify the Cabinet member whom the office holder is to assist. (Assistant Cabinet members are not members of the Executive and are not entitled to a special responsibility allowance under the Members Allowance Scheme in Part 6

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

### **8.1 Regulatory and other committees**

The Council has established committees to discharge some of its non-executive functions. These committees are listed in Responsibility for Council Functions in Part 3B of this Constitution. The committees will follow the Council's Rules of Procedure set out in Part 4-A of this Constitution.

## **Article 9 – THE STANDARDS AND GENERAL PURPOSES COMMITTEE**

### **9.1 Standards and General Purposes Committee**

The Council has established a Standards and General Purposes Committee with membership, role and functions as set out in paragraph 1.1 of Part 3-B of this constitution. The Standards and General Purposes Committee may appoint a Hearings Subcommittee to hear complaints that councillors have breached the Code of Conduct

### **9.2 Proceedings**

Proceedings of the Standards and General Purposes Committee and any Hearings Subcommittee shall take place in accordance with the relevant part of the procedure rules set out in Part 4 of this Constitution. The Standards and General Purposes Committee may agree procedures specifically for dealing with member complaints which differ from those procedure rules provided they comply with any statutory requirements.

## **Article 10 – COMMUNITY INVOLVEMENT AREA COMMITTEES AND COMMUNITY FORUMS**

### **10.1 Creation**

- (a) The Council will create, facilitate or participate in community partnerships, community forums, focus groups and service or user based consultative groups as part of its community leadership role and in order to aid transparent and accountable decision-making

- (b) The Council may appoint Area Committees as it sees fit if it considers that to do so will ensure improved service delivery in the context of best value and more efficient transparent and accountable decision-making

## 10.2 Form, Composition and Function

- (a) The community forums will be advisory and consultative in nature but will not have decision-making powers. They will have no budgets and will not be able to incur expenditure.
- (b) As the community forums will be advisory only, their composition need not reflect political balance.
- (c) The Council and the Cabinet will include details (if any) of the delegations to area forums in Part 3 of this Constitution, including the functions delegated, the composition and membership of the forums, budgets and any limitations on delegation.

## 10.3 Conflicts of Interest – Membership of Area Forums, Overview and Scrutiny Commission and Panels

- (a) **Conflict of interest.** If the Overview and Scrutiny Commission, or one of the Overview and Scrutiny Panels is scrutinising specific decisions made by a community forum of which the Councillor concerned is a member, then the Councillor may not speak or vote at the Overview and Scrutiny Commission or Panel meeting unless a dispensation to do so is given by the Standards Committee. This paragraph would only apply if a community forum were given decision-making powers.
- (b) **General policy activity.** Where the Overview and Scrutiny Commission or Panels are engaged in policy development or general review of a matter relating to a community forum of which a councillor is a member, s/he must declare his/her interest before the relevant agenda item is reached, but need not withdraw and may participate in the debate

## 10.4 Community Forums – Access to Information

- (a) Community Forums will comply with the Access to Information Rules in Part 4 of this Constitution.
- (b) Agendas and notices for Community Forum meetings which deal with both executive and non-executive functions, will state clearly which items are which.

## 10.5 Cabinet Members on Community Forums

A member of the Cabinet may serve on a Community Forum if otherwise eligible to do so as a Councillor.

## **Article 11 – JOINT ARRANGEMENTS**

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

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

### **11.2 Joint Arrangements**

- (a) The Council may establish joint arrangements with one or more local authorities and/or their executives to exercise functions that are not executive functions in any of the participating authorities, or to advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities.
- (b) The Cabinet may establish joint arrangements with one or more local authorities to exercise functions that are executive functions. Such arrangements may involve the appointment of joint committees with those other local authorities.
- (c) The Cabinet may only appoint members of the Cabinet to a joint committee where the joint committee exercises executive functions.
- (d) The Cabinet may appoint members to a joint committee from outside the Cabinet where the joint committee exercises non-executive functions.
- (e) Details of any joint arrangements including any delegations to joint committees will be found in Part 3-C of this Constitution.

### **11.3 Access to Information**

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

#### **11.4 Delegation to and from other Local Authorities**

- (a) The Council may delegate non-executive functions to another local authority or, in certain circumstances, the executive of another local authority, or to a health service body.
- (d) The Cabinet may delegate executive functions to another local authority or the executive of another local authority in certain circumstances.
- (c) The Cabinet may delegate executive functions to a health service body in accordance with the Health Act 1999 as amended
- (d) The decision whether or not to accept such a delegation from another local authority or health service bodies shall be reserved to the full Council.

#### **11.5 Contracting Out**

The Council and/or the Cabinet may contract or arrange for another body or organisation to carry out 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 contacting principles, provided there is no delegation of the Council's discretionary decision making power.

### **Article 12 – OFFICERS**

12.1 The Council shall appoint such staff as the Council thinks necessary for the proper discharge by the Council of its functions.

- a) Appointment of staff cannot be the responsibility of the Cabinet. Appointment of staff at Director and Chief Officer level is delegated to the Appointments Committee and appointments of officers below that level must be the responsibility of the Head of Paid Service or his/her nominee(s).
- b) Proper Officers have been appointed for the purposes of a number of specified statutory functions and a list of all such proper officers forms an appendix to the Scheme of Delegation to officers in Part 7 C of this Constitution



**12.2 Chief Officers.** The following posts are designated Chief Officers of the Council:

Post	Functions areas of responsibility
Chief Executive (and Head of Paid Service)	<p>Overall corporate management and operational responsibility (including overall management responsibility for all officers)</p> <p>Provision of professional advice to all parties in the decision-making process</p> <p>Together with the Monitoring Officer, responsibility for a system of record keeping for all the Council's decisions.</p> <p>Representing the Council on partnership and external bodies (as required by statute or the Council ) Policy best value and scrutiny</p> <p>Returning Officer at Local Elections and Acting Returning Officer at UK Parliamentary Elections</p>
Director of Corporate Services	Finance, ICT, Corporate Governance, Human Resources, Audit, Communications, Council Tax, Business Rates Council Tax and Housing Benefit and Customer Services
Director of Environment and Regeneration	Development control, the local plan, regeneration, highways and transportation, waste management, regulatory services
Director of Children, Schools and Families	Social and welfare services, child protection, Education and Children
Director of Community and Housing Services	Adult Education, training. Libraries, Housing and Adult Social Services

### 12.3 Head of Paid Service, Monitoring Officer and Chief Financial Officer.

- (a) The Council has designated the following posts as shown:

Post	Designation
Chief Executive	Head of Paid Service
Director of Corporate Services	Chief Finance Officer and Section 151 Officer
Managing Director of the South London Legal Partnership	Monitoring Officer Chief Legal Officer

- (b) Such posts will have the functions described in Article 12.4–12.6 below.
- (c) **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 7B of this Constitution.

### 12.4 Functions of the Head of Paid Service

- (a) **Discharge of functions by the Council.** The Head of Paid Service will if required report to Full Council on the manner in which the discharge of the Council's functions is coordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.
- (b) **Restrictions on functions.** The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if a qualified accountant.

### 12.5 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 councillors, officers and the public.
- (b) **Ensuring lawfulness and fairness of decision-making.** After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the Full Council or to the Cabinet in relation to an executive function if he or she considers that any proposal, decision or omission would give rise to unlawfulness. 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 and General Purposes 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) **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.
- (e) **Advising whether executive decisions are within the budget and policy framework.** The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.
- (f) **Providing advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all councillors.
- (g) **Dispensations to Members under Section 33 Localism Act 2011.** The Monitoring Officer shall have delegated authority to grant a dispensation to members allowing them to refrain from declaring a disclosable pecuniary interest and to participate in discussions in and vote on matters in which they have such an interest.
- (h) **Restrictions on posts.** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

## 12.6 Functions of the Chief Finance Officer

- (a) **Ensuring lawfulness and financial prudence of decision-making.** After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Full Council or to the Cabinet in relation to an executive function and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- (b) **Administration of financial affairs.** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management.** The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing advice.** The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy

framework issues to all councillors and the Council Chair and will support and advise councillors and officers in their respective roles.

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

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

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

#### **12.8 Conduct**

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

#### **12.9 Employment**

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

### **Article 13 – DECISION-MAKING**

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

#### **13.2 Principles Of Decision-Making**

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

- (a) proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) due consultation and the taking of professional advice from officers;
- (c) respect for human rights and equalities
- (d) a presumption in favour of openness;
- (e) clarity of aims and desired outcomes;

- (f) consideration and evaluation of alternatives;
- (g) irrelevant matters must be ignored.

### 13.3 Types Of Decision

#### (a) Decisions reserved to Full Council.

- (i) Decisions relating to the functions listed in Article 4.1 will be made by the Full Council and not delegated, except on grounds of urgency in cases where the law permits, in which case the Chief Executive shall be the decision maker,
- (ii) Urgency means a decision that is required where the interests of the Council would be prejudiced if a decision were not to be taken prior to the next scheduled ordinary meeting of the Full Council.
- (iii) If the Chief Executive takes a decision in accordance with this article 13.3, she shall report such instances to Full Council as soon as practicable

#### (b) Key Decisions

- (i) **Definition.** A key decision means an executive decision which is likely
  - a) to result in Merton 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
  - b) to incur expenditure valued at £500,000 or above; or
  - c) to be significant in terms of its effects on communities and groups of service users living or working in an area comprising one or more wards or electoral divisions in Merton; or
- (ii) **Procedure.** A decision taker may only make a key decision in accordance with the requirements of the Cabinet Procedure and Access to Information Rules set out in Part 4 of this Constitution.

#### (c) Non Key Executive Decisions

- (i) **Definition.** A non-key executive decision is an executive decision that:
  - Incurs expenditure of between £250,000-£499,999 or

- Is a significant one-off decision that would be a variation from council policy in respect of
  - a) the granting of a permission or licence; or
  - b) affecting the rights of an individual

**(ii) Procedure.** A decision maker may only make a non-key executive decision in accordance with the requirements of the Access to Information Procedure rules set out in Part 4B of this Constitution.

**(d) Administrative Decisions (Non-key)**

**(i) Definition.** A non-key administrative decision is an executive decision that:

- Incurs expenditure of less than £250,000
- has not been defined as a non-key delegated executive decision

**13.4 Decision-Making by the Full Council**

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

**13.5 Decision-Making by the Cabinet**

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

**13.6 Decision-Making by the Overview and Scrutiny Commission**

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

**13.7 Decision-Making by other Committees and Sub-Committees established by the Council**

Subject to Article 13.8, other Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in Part 4 of this Constitution as apply to them.

### **13.8 Decision-Making by Council Bodies acting as Tribunals**

The Council, a Councillor or an officer acting as a tribunal or 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 process contained in Article 6 of the European Convention on Human Rights.

### **13.9 Access to information**

All decision makers will follow the rules set out in Part 4B of the Constitution as far as those rules apply to them.

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

### **14.1 Financial Management**

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

### **14.2 Contracts**

Every contract made by the Council will comply with the Contract Standing Orders set out in Part 4 of this Constitution. Any contract entered into on behalf of the Council 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 at least one officer. Such signatures may be applied electronically where the law permits.

### **14.3 Legal Proceedings**

The Managing Director of the South London Legal Partnership 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 Managing Director of the South London Legal Partnership considers that such action is necessary to protect the Council's interests.

### **14.4 Authentication of Documents**

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Managing Director of the South London Legal Partnership 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.

## 14.5 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Managing Director of the South London Legal Partnership. 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 Managing Director of the South London Legal Partnership should be sealed. The affixing of the Common Seal will be attested by the Managing Director of the South London Legal Partnership or another officer authorised by him/her.

14.6 In addition to the Seal being attested by any one of the officers referred to above documents of a ceremonial nature of those carrying some prestige (including Long Service Awards) shall also, if appropriate bear the signature of the Mayor or the Deputy Mayor in addition to that of the Chief Executive.

14.7 Except for documents sealed in accordance with 14.6, the entry of every sealing of a document shall be made and consecutively numbered in a book kept for that purpose and shall be signed by the person who has attested the Seal.

14.8 The Common Seal of the Council shall not be affixed to any document unless such sealing has been authorised by a resolution of the Council or a Committee to which the Council has delegated its powers in this behalf or by a decision of an officer authorised by the Council. A written instruction by an authorised officer shall be a sufficient authority for sealing any document necessary to give effect to such resolution or decision.

## Article 15 – REVIEW AND REVISION OF THE CONSTITUTION

### 15.1 Duty To Monitor And Review The Constitution

The Head of Paid Service, the Monitoring Officer, and the Standards and General Purposes Committee will jointly and severally monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect.

### 15.2 Changes To The Constitution

(a) **Approval.** Subject to (b) below, changes to the Constitution will only be approved by the Full Council following consideration of any recommendation or representation made by:

- the Head of Paid Service;
- the Monitoring Officer and/or;



- the Standards and General Purposes Committee
- (b) Monitoring Officer may make minor or consequential changes to this constitution including to ensure legislative references are up-to-date and to ensure consistency of language.
- (c) **Change from a Leader and Cabinet form of executive to alternative arrangements, or vice versa.** The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals.
- (d) **Change from a mayoral form of executive to another form of executive or to alternative arrangements, or from alternative arrangements 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**

### **16.1 Suspension of The Constitution**

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

### **16.2 Interpretation**

The ruling of the Mayor or the Chair of any committee, subcommittee commission or panel as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

### **16.3 Publication**

- (a) The Head of Democracy and Electoral Services will give a printed copy of this Constitution to each member of the authority upon delivery to him/her of that individual’s declaration of acceptance of office on the member first being elected to the Council.

- (b) The Head of Democracy and Electoral Services will ensure that copies are available for inspection at Council offices, libraries and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee.
- (c) The Head of Democracy and Electoral Services will ensure that the summary of the Constitution is made widely available within the area including the Council's website and is updated as necessary.

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

The following parts of this Constitution constitute the executive arrangements:

1. Article 6 (Overview and Scrutiny Commission and Panels and the Overview and Scrutiny Procedure Rules);
2. Article 7 (The Cabinet) and the Cabinet Procedure Rules;
3. Article 10 (Area Forums);
4. Article 11 (Joint Arrangements);
5. Article 13 (Decision-Making) and the Access to Information Procedure Rules;
6. Part 3 Responsibility for Functions.
7. Part 7 B Scheme of Delegation to Officers

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