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## Chapter 3 – The Leader / Cabinet Executive

### Part 1 – The Leader / Cabinet Executive

#### Article 7 – The Leader / Cabinet Executive

##### 1. Role

- 1.1 The Council has decided to adopt the Leader and Cabinet form of executive. Chapter 3 sets the rules for how the Leader and Cabinet will operate. These include arrangements for meetings, individual decision-making, and the scheme of delegation and sub-delegation of functions. The Cabinet (meaning the Leader and such other Members of the Council as the Leader may appoint) will carry out all of the Authority's functions which are not the responsibility of any other part of the Authority, whether by law or under the Constitution. The Leader may take decisions on every matter that is not assigned to anyone else by this constitution. The Leader may however, make arrangements to delegate some matters to the Cabinet, a Cabinet Committee, individual Cabinet members, or to employees.

##### 2. Form and composition

- 2.1 The Cabinet will consist of the Leader together with such other number of Councillors as the Leader may determine (being not more than 9) appointed by the Leader. Such appointment as a Cabinet Member shall be effected by notice in writing from the Leader delivered to the Chief Executive. Only Councillors may be appointed to the Cabinet. Neither the Mayor nor Deputy Mayor of the Council may be appointed to the Cabinet. Cabinet members may not be members of an Overview and Scrutiny Committee. The Leader must appoint one Member of the Cabinet to be his/her deputy.

##### 3. Leader

- 3.1 The Leader will be a Councillor elected for a term of 4 years (subject to (a) – (d) below) to the position of Leader by the Council and he or she shall not be the Mayor or Deputy Mayor or a member of a Scrutiny Committee.:
- (a) He/she resigns from the office; or
  - (b) He/she is suspended from being a Councillor under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension); or
  - (c) He/she is no longer a Councillor; except where the Leader fails to be returned as a Councillor following an election . Unless the Leader resigns, is disqualified or is otherwise removed from office he/she shall continue as Leader until the day of the Annual Meeting; or until
  - (d) He/she is removed from office by a resolution of Council on a notice of motion signed by fifteen Members and approved, without amendment, by the Council. Procedure Rule 18 (Chapter 2, Part 2) relating to Notice of Motion, applied to a notice of motion under this Rule.

##### 4. Other Executive / Cabinet Members

- 4.1 Cabinet members appointed by the Leader shall hold office until:
- (a) They resign from office; or
  - (b) They are suspended from being Councillors under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
  - (c) They are no longer Councillors; or

- (d) They are removed from office by the Leader, by notification of removal made in writing by the Leader to the Chief Executive and to the Cabinet member concerned. The removal will take effect immediately after receipt of the notice by the Chief Executive; .

## **5. Deputy Leader**

- 5.1 The Leader shall appoint a Cabinet Member to be Deputy Leader, by notifying the Chief Executive in writing of such appointment, ..
- 5.2 The Leader shall delegate to the Deputy Leader power to exercise any Executive Function which is exercisable by the Leader, to be exercised by the Deputy Leader when the Leader is unable to act by reason of absence or conflict of interest.
- 5.3 The Deputy Leader, unless he/she resigns as Deputy Leader, is removed by the Leader, is suspended following a standards investigation, or ceases to be a Member of the Council, will hold office until the end of term of office of the Leader.
- 5.4 If for any reason the Leader is unable to act or the office of the Leader is vacant the Deputy Leader must act in his place.
- 5.5 If for any reason the Leader is unable to act or the office of the Leader is vacant and the Deputy Leader is unable to act or the office of the 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 his place.

## **6. Vacancies in the Executive / Cabinet**

- 6.1 If at any time a person shall, by virtue of this Article, cease to be a Member of the Cabinet, the responsibilities of that Member shall be carried out by the Leader / Cabinet collectively in so far as permitted by law until such time as the Leader shall have appointed a replacement or, where appropriate, re-appointed the Member concerned.
- 6.2 In the event of there being no Leader, Deputy Leader or Cabinet members, executive functions shall in the interim be carried out by the Chief Executive in so far as is permitted by law.

## **7. Removal from office**

- 7.1 The Leader may be removed from office by resolution of the Council, on a notice of motion signed by fifteen Members and approved, without amendment, by the Council. Procedure Rule 18 (Chapter 2, Part 2) relating to Notice of Motion, will be applied to a notice of motion under this Rule. If the Council passes such a resolution, a new Leader is to be elected:
- (a) At the meeting at which the Leader is removed from office; or
- (b) At a subsequent meeting
- 7.2 In the event that the Leader no longer holds office as described above, the Deputy Leader will carry out the role and duties of the Leader until the new Leader is elected by the Council.
- 7.3 Cabinet Members may be removed from office and a new Member appointed, either individually or collectively upon the decision of the Leader. Where 50% or more of the Membership of the Cabinet is to be changed, the Leader shall take a report to Full Council .
- 7.4 The Leader will notify the Chief Executive (the Proper Officer) and the Cabinet Member affected in writing as soon as it is practicable following the implementation of the decision.

## **8. Proceedings of the Executive / Cabinet**

- 8.1 Proceedings of the Cabinet shall take place in accordance with the Leader / Cabinet Procedure Rules set out in this Chapter.

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**9. Responsibility and delegation of functions of the Leader / Cabinet**

- 9.1 The Leader may discharge any of the functions of the Leader / Cabinet.
- 9.2 The Leader may delegate any of the functions of the Leader to the Cabinet, to a Committee of the Cabinet, to an individual Cabinet Member or to an Officer.
- 9.3 A Cabinet Committee may delegate the discharge of any of its functions to an individual Cabinet Member or to an Officer.
- 9.4 An individual Cabinet Member may delegate the discharge of any of his/her functions to an Officer.
- 9.5 Leader / Cabinet functions may also be delegated to an Area Committee, to a Joint Committee with one or more other authorities, or to another authority.
- 9.6 The Leader or Council may (subject to any regulations made under section 236 of the Local Government and Public Involvement in Health Act 2007) arrange for any Councillor to discharge any of their functions within his/her own ward. Such delegation has not been made.
- 9.7 Where such delegations have been made, the person who made the delegation or the Council, as the case may be, or any other person or Committee which is permitted by or under an enactment to discharge the function, may still exercise that function, notwithstanding the delegation.
- 9.8 The delegations made by the Leader are set out in this Chapter.

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## Part 2 – Leader / Cabinet Procedure Rules

### 1. Discharge of Executive Functions

1.1 Executive functions may be discharged by:

- (a) The Leader
- (b) The Cabinet as a body
- (c) A Committee of the Cabinet
- (d) An individual Member of the Cabinet
- (e) An Officer
- (f) Joint arrangements, partnership boards and other such bodies
- (g) Another local authority
- (h) Area Committees

#### Delegation by the Leader / Cabinet portfolios

1.2 At the Annual Meeting of the Council, the Leader once elected will present to the Council a statement comprising:

- (a) the names of the Members whom he/she has appointed as Members of the Cabinet
- (b) the name of the Member whom he/she has appointed as Deputy Leader
- (c) the portfolios or areas of responsibility of each Cabinet Member

#### Leader / Cabinet Scheme of Delegations

1.3 As soon as possible after the Annual Meeting of Council, the Leader shall deliver to the Chief Executive a Scheme of Executive Delegations, which shall set out:

- (a) the Portfolios or areas of responsibility of the respective Cabinet Members, including the Leader
- (b) those powers which have been reserved for decision of the Cabinet
- (c) the composition and terms of reference, including any delegated powers, of any Cabinet Committee
- (d) those powers which have been delegated to Cabinet Members, either generically or to individual Cabinet Members, including any restrictions on such powers
- (e) the names of any Members who have been appointed by the Leader / Cabinet to any Joint Committees, and those powers which have been delegated to Area Committees and/or Joint Committees
- (f) those powers which have been delegated to Officers

1.4 Upon receipt of this Scheme or Delegations, the Chief Executive shall cause this Scheme of Delegations to be included in the Constitution and shall provide a copy thereof to each Member.

1.5 For the avoidance of doubt the Council has adopted the strong leader model and decisions which fall during recess or are required urgently may be made by the Leader subject to compliance with the Access to Information Rules. The Leader has presently delegated

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functions to Portfolio Holders to the extent necessary to permit collective decision making by Cabinet. In the event of there being no Leader, Deputy Leader or Cabinet Members, executive functions shall in the interim be carried out by the Chief Executive subject to the Access to Information Rules.

- 1.6 Nothing above in Part 1 or Part 2 shall fetter or restrict the right of the Leader subject to compliance with the notification requirements in rules 2.1, 7.2 and 7.3 of Article 7 of Part 1 Chapter 3 of this constitution to:
- (a) increase or decrease the size of the Cabinet or to appoint or dismiss members of the Cabinet (subject to a statutory maximum of 9 not including the Leader).
  - (b) to reorganize the portfolios.
  - (c) To reorganize or re-allocate the portfolio theme.
  - (d) To delegate executive functions or withdraw any delegation.
  - (e) To exercise all the executive rights contained in Article 7 of Chapter 3 of this constitution or the Leader / Cabinet Rules.
  - (f) To exercise any other executive rights set out in the constitution

#### **Sub-delegation of Executive Functions**

- 1.7 Where the Leader, Cabinet, a Committee of the Cabinet or an individual Member of the Cabinet is responsible for an Executive function, they may delegate further to joint bodies (in so far as this is permitted by law) or to an Officer.
- 1.8 Unless the Leader / Cabinet directs otherwise, a Committee of the Cabinet or a single Member of the Cabinet to whom functions have been delegated may delegate further to an Officer.
- 1.9 Where Executive functions have been delegated, that does not prevent the discharge of delegated functions by the person or body who delegated them; or the Leader / Cabinet from reviewing decisions made in the discharge of those functions in accordance with the provisions of this Chapter.
- 1.10 All Executive functions not expressed to be within the remit of the Leader / Cabinet, a Committee of the Cabinet or a single Member of the Cabinet is deemed to be delegated to the Chief Executive.
- 1.11 The Leader / Cabinet may appoint such further Committees during the year as they think fit, notifying the Chief Executive as soon as possible.

## **2. Leader / Cabinet Meetings**

### **Dates, time and place**

- 2.1 Ordinary meetings of the Leader / Cabinet will take place in accordance with a programme decided by the Leader. In order to enable the Leader / Cabinet properly to discharge its functions, particularly in relation to service performance and financial monitoring, the Leader / Cabinet shall meet not less than ten times a year.
- 2.2 Meetings of the Leader / Cabinet shall take place at 7.00 pm in the Council Offices at Grays unless the Leader otherwise determines.
- 2.3 The Leader may direct the Chief Executive to call a meeting of the Leader / Cabinet at any time. The summons to that meeting shall set out the business to be considered
- 2.4 Where the Chief Executive, the Chief Finance Officer or the Monitoring Officer is of the opinion that a meeting of the Leader / Cabinet needs to be called to consider a matter that requires a

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decision for reasons related to the effective discharge of the authority's functions, finance, legality or probity, they may call a meeting of the Leader / Cabinet.

- 2.5 Subject to compliance with Rule 2.1 above the Leader may cancel any meeting of the Leader / Cabinet, other than one convened under Rule 2.4 above.

### **Summoning of Meetings**

- 2.6 Meetings of the Leader / Cabinet shall be summoned by the issue of a summons and agenda by the Chief Executive, which agenda shall be accompanied by such reports as are available at the time of issue of the summons and the minutes of the previous meeting.
- 2.7 The Summons and agenda shall be issued to the Leader / all Members of the Cabinet and be available for public inspection at least 5 clear working days in advance of the meeting, except where, for exceptional reason, the meeting is summoned on less than 5 clear working days notice.

### **Public or private meetings of the Leader / Cabinet**

- 2.8 All Leader / Cabinet meetings will be held in public except:
- (a) when the Leader / Cabinet has resolved to exclude the press and public from all or part of a meeting in accordance with the Access to Information Rules.
  - (b) when the business of the Leader / Cabinet comprises receiving a briefing on a matter and no executive decision is to be taken on the matter within the next 28 days, or
  - (c) in circumstances to which Rules 2.38 to 2.40 refer.

### **Order of Business**

- 2.9 The order of business for each meeting of Leader / Cabinet shall be set out in the agenda for that meeting and shall be as follows:
- (a) Apologies for absence from Members
  - (b) Declarations of interest by Members and Officers
  - (c) Receive for information the minutes of the previous meeting of Leader / Cabinet and of Cabinet Committees, and decision statements of decisions by individual Cabinet Members;
  - (d) Statements by the Leader
  - (e) To receive petitions
  - (f) The Leader and Cabinet Members to respond to questions from Members;
  - (g) Matters referred to the Leader / Cabinet for re-consideration by an Overview and Scrutiny Committee
  - (h) Matters referred to the Leader / Cabinet for consideration by Council, a Committee or Sub-Committee of the Council, and Area Committee or Joint Committee;
  - (i) Consideration of business set out in the agenda for the meeting, comprising:
    - Reports from the Leader
    - Reports from Cabinet Committees
    - Reports from Cabinet Members;

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- Reports from Statutory Chief Officer/Directors
  - Other reports from Officers
    - (j) To receive reports from Cabinet Members and Officers attending as the authority's representatives on outside bodies about the business of joint arrangements, boards and partnership bodies and external organisations;
    - (k) Urgent items of business with the consent of the Leader
    - (l) Briefing on policy, Budget and other issues prior to making decisions on them.
- 2.10 Any of the persons listed at Rule 2.9 (i) may require the Chief Executive to place an item of business on the agenda for the next convenient meeting of the Leader / Cabinet. Other Officers may request the Chief Executive to place an item of business on the agenda for the next convenient meeting of Cabinet.
- 2.11 No item of business shall be considered under agenda items 2.9 (g) to (k) except upon a written report from the person placing the item on the agenda or an Officer.
- 2.12 The order of business may be varied by the Leader.

#### **Reports to Leader / Cabinet, Cabinet Committees and Individual Cabinet Members**

- 2.13 In accordance with these Rules, any written report shall set out:
- (a) who the decision-taker will be
  - (b) the matter to be determined
  - (c) the electoral wards within the authority's area which are particularly affected by the matter
  - (d) whether the report contains confidential or exempt information, or the consideration thereof by the decision-taker is likely to involve the disclosure of confidential or exempt information, and therefore whether the report should be disclosed to press and public, or the decision-taker should exclude press and public before considering the matter
  - (e) a summary of the matter setting out all the material facts upon which the decision will be based
  - (f) any legislative constraints on the decision
  - (g) any relevant provisions from the Policy Framework
  - (h) any relevant policies of partner organisations
  - (i) any relevant national or regional policy
  - (j) the main options available to the decision-taker
  - (k) the staffing and financial implications of any options to be considered
  - (l) any consultations undertaken and a summary of the responses received
  - (m) the implications of the proposed decision on the authority and the authority's services;
  - (n) whether that proposed decision is contrary to the Policy Framework or contrary to or not wholly in accordance with the approved Budget

- (o) a recommendation setting out the proposed decision and the reasons for that recommendation
- (p) the date, time and place where the decision is to be taken
- (q) a list of background papers which have informed the writing of the report

2.14 A report submitted by or on behalf of Leader / Cabinet Member shall clearly distinguish (where relevant) between the Officer advice upon which the report is based and the policy and political considerations upon which the Leader / Cabinet Member proposes that the decision be based.

#### **Quorum**

2.15 The quorum for a meeting of the Leader will consist of the Leader, the quorum for a meeting of Cabinet shall be one third of the members currently appointed to Cabinet by the Leader including either the Leader or Deputy Leader. If the Leader / Cabinet appoints a Cabinet Committee, it shall at the same time determine the quorum of that Committee.

#### **Completion of Business**

2.16 All business which has not been completed by 9.30 pm shall be adjourned to the next meeting of the Leader / Cabinet.

#### **Person presiding**

2.17 The Leader shall preside at meetings of the Leader / Cabinet. Where the Leader is absent or otherwise unable to act in respect of any meeting or part of a meeting, the Deputy Leader shall preside and shall exercise all the powers of the Leader under these Rules. Executive decisions will be taken at a meeting convened in accordance with the Access to Information Rules.

#### **Voting**

2.18 Any matter to be determined by Leader / Cabinet shall be determined by a vote of the majority of Cabinet Members present and voting at the meeting. In the event of an equality of votes, the Leader shall have a second or casting vote.

2.19 Any Member of the Leader / Cabinet may request that the votes of each Member of Cabinet, or that their individual vote, be recorded in the minutes thereof.

#### **Rights of Audience**

2.20 Subject as below, the following persons shall have a right of audience at Leader / Cabinet Meetings:

- (a) All Members of the Cabinet
- (b) Statutory Chief Officer/Directors
- (c) Other Officers in presenting reports
- (d) Other Members
- (e) Members of the public in presenting petitions

2.21 The rights of audience set out under Rule 2.20 shall not apply where the Leader / Cabinet has resolved to exclude press and public from the relevant meeting or part of the meeting.

2.22 The Leader shall be responsible for the effective conduct of the business of Leader / Cabinet and shall, at his/her discretion, limit or exclude the time available for any persons or groups of persons to speak on any item of business.

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### **Petitions**

- 2.23 A petition organiser may request the opportunity to present a petition to Leader / Cabinet. A petition must:
- (a) contain at least 10 signatures of registered local government electors for the administrative area of Thurrock,
  - (b) identify a petition organiser;
  - (c) relate to a matter for which the Leader / Cabinet has responsibility and which affects the authority or its area; and
  - (d) not, in the opinion of the Monitoring Officer, be trivial, defamatory, offensive, be substantially the same as a petition which has been considered under these Rules within the previous 12 months, name or clearly identify an employee of the authority, or involve the disclosure of confidential or exempt information.
- 2.24 A petition may only be presented to Leader / Cabinet when it has been submitted to the Monitoring Officer at least 10 working days before an ordinary meeting of Leader / Cabinet or an extraordinary meeting of the Leader / Cabinet at which the subject matter of the petition is to be considered.
- 2.25 Petitions may be presented to the Leader / Cabinet in accordance with the authority's Petition Scheme by the petition organiser, by another signatory of the petition authorised by the petition organiser or by a Member on behalf of the petition organiser.
- 2.26 Where the Monitoring Officer is of the opinion that the subject matter of the petition relates to a matter which is or will shortly be the subject of statutory or non-statutory consultation by the authority or is to be reported to a forthcoming meeting of the Leader / Cabinet, he/she may elect not to report the petition to Leader / Cabinet directly but to include the petition in the responses to that consultation for consideration in the ordinary determination of that matter.
- 2.27 Any Member or member of the public presenting a petition shall be entitled to address the Leader / Cabinet on the matter which is the subject of the petition for up to two minutes. Unless the petition relates to a matter which is to be determined by Leader / Cabinet, it shall then be referred to the relevant Cabinet Committee, Cabinet Member or Officer, as appropriate, without debate.
- 2.28 Where a petition is referred to a Cabinet Member or a Committee, the Monitoring Officer shall advise the petition organiser accordingly. The petition shall be considered by the Cabinet Committee, Cabinet Member or Committee at their next convenient meeting or occasion, and the relevant Portfolio Holder shall as soon as possible after such consideration notify the petition organiser in writing of what action the authority has taken or is taking on the petition.

### **Members' Questions**

- 2.29 Any Member may submit a maximum of two questions for the next ordinary meeting of Leader / Cabinet addressed to the Leader or a Member of the Cabinet, by delivering them in writing to the Monitoring Officer, to be received by Democratic Services by 12 Noon 2 working days prior to a meeting of the Leader / Cabinet (for example, as the Cabinet usually meets on a Wednesday, the deadline for receipt of questions will be 12 Noon on the Monday before the day of the meeting). The question must relate to an item on the agenda. A question must relate to a single proposition and may not contain more than one part.
- 2.30 The Monitoring Officer shall copy the question to the person to whom it is addressed and place it on the agenda for the next meeting of Leader / Cabinet unless, in his/her opinion:
- (a) the request does not comply with the requirements of Rule 2.29

- (b) the question is defamatory of an individual, offensive, discloses confidential or exempt information, or otherwise infringes the proper conduct of local government; or
  - (c) the question is substantially the same as a question which has been previously been received and answered within the past twelve months, and there has been no significant and relevant change of circumstances since the previous question was answered.
- 2.31 The Monitoring Officer shall place the questions on the agenda in the order that they have been received. Where the Monitoring Officer considers that the question or the answer is likely to disclose confidential or exempt information, he/she shall place the question on the exempt part of the agenda.
- 2.32 The relevant Cabinet Member shall provide a verbal answer to the question (which may include a promise to provide a more detailed answer in writing). Where the Member who submitted the question is not present, the relevant Cabinet Member may provide a written response as an alternative to a verbal response.
- 2.33 Where the Member who submitted the question is present they may ask one supplementary question arising directly out of the initial question or answer, without notice, and the person who answered the initial question shall respond to the supplementary question.
- 2.34 The person who submitted the original question may request clarification of any answer which they have received.
- 2.35 The time limit for each question under this Rule at any meeting (including supplementary question and response, and any clarification) shall be 5 minutes.

#### **Disturbance at meetings by Members**

- 2.36 If at any meeting any Member of the Leader / Cabinet, in the opinion of the Leader commits an act of misconduct by persistently disregarding a ruling or behaving improperly or offensively or unreasonably obstructing the business of the Leader / Cabinet, the Leader may move that the Member named be not further heard.
- 2.37 If a Member so named continues the act of misconduct after a motion under the foregoing paragraph has been carried, the Leader shall either:
- (a) move 'that the Member(s) named do leave the meeting', in which case that motion shall be put and determined without seconding or discussion, or
  - (b) adjourn the meeting for such period as the Leader may deem expedient.

#### **Disturbance by Public (including Members who are not Cabinet Members)**

- 2.38 The Leader shall warn any member of the public who interrupts the proceedings that they may be excluded from the meeting if the interruption continues.
- 2.39 If that person continues the interruption, the Leader may order the removal of that person from the meeting.

#### **General disturbance**

- 2.40 In the event of a general disturbance, the Leader may adjourn the meeting for such period or to seek other venue as deemed expedient.

#### **Filming, photography**

- 2.41 No filming or photography (except of Councillors) may take place at meetings except with the consent of the Leader prior to the start of the meeting.

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**Minutes**

- 2.42 As soon as practicable after the meeting, the Chief Executive shall produce a minute or record of the proceedings of the Leader / Cabinet, which shall include:
- (a) The names of the Members present at the meeting
  - (b) Any declarations of interest by Members and Officers
  - (c) A statement as to whether any decision was a “Key Decision”
  - (d) Confirmation as to whether any proposed Key Decision had been published in the Forward Plan or notified to the Chair of the relevant Overview and Scrutiny Committee, or made with the consent of the Chair of the relevant Overview and Scrutiny Committee in advance of the meeting
  - (e) Any options which were considered and rejected at the meeting
  - (f) A record of all motions, including amendments, which were put to the meeting
  - (g) A record of all decisions taken at the meeting
  - (h) A statement of whether the Leader / Cabinet has determined that the implementation of any decision is urgent, and the reasons for such urgency
- 2.43 That record shall be signed by the Leader as a correct record as soon as practicable after the meeting, and shall be reported to the next meeting of Leader / Cabinet for information only.

**3. Meetings of Cabinet Committees****Application of Leader / Cabinet Procedure Rules**

- 3.1 The Rules set out in this part of the Constitution shall apply equally to meetings of Cabinet Committees, save that:
- (a) references to Leader / Cabinet shall be taken as references to the Cabinet Committee
  - (b) References to the Leader shall be taken as references to the Chair of the Committee (save where the context otherwise requires)
  - (c) The order of business for the Committee shall exclude items in Rule 2.9 (e), (f) and (g)

**4. Decisions by Individual Cabinet Members****Application of Leader / Cabinet Procedure Rules**

- 4.1 The Cabinet Procedure Rules shall apply to decisions of individual Cabinet Members where this option is adopted subject to the following exceptions:
- (a) Except in cases of genuine urgency, individual Cabinet Members shall take decisions only at a date, time and place set out in the summons for a meeting between the Cabinet Member and the Chief Executive, at which meeting the Chief Executive can record the decisions of the Cabinet Member;
  - (b) References to the meeting shall be taken as references to that meeting between the Cabinet Member and the Chief Executive.
  - (c) In cases of genuine urgency, the Cabinet Member shall seek as far as practicable to consult appropriate Officers before taking the decision, and shall notify the Chief

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Executive of the decision as soon as possible after taking the decision, providing the Chief Executive with:

- The date, time and place at which the decision was taken
- The names of the Members present when the decision was taken
- Any personal interest which the Cabinet Member had in the decision
- Any declarations of interest by Members who were present when the decision was taken

Note: a Cabinet Member with a prejudicial interest should not be present when a Cabinet Member takes a decision in accordance with paragraph 12(1)(b) and (c) of the Code of Conduct for Members

- A statement of any Members or Officers whom the Cabinet Member consulted before taking the decision
- A statement as to whether any decision was a “Key Decision”
- Confirmation as to whether any proposed Key Decision had been published in the Forward Plan or notified to the Chair of the relevant Overview and Scrutiny Committee, or made with the consent of the Chair of the relevant Overview and Scrutiny Committee in advance of the meeting
- A copy of any documents which the Cabinet Member relied upon in coming to the decision
- Any options which were considered and rejected at the meeting
- A statement of all decisions taken by the Cabinet Member
- A statement of whether the Cabinet Member has determined that the implementation of any decision is urgent, and the reasons for such urgency

4.2 That record shall be signed by the Chief Executive or by the Cabinet Member as a correct record as soon as practicable after the meeting, and shall be reported to the next meeting of Cabinet for information only.

## **5. Implementing Executive Decisions**

5.1 In order to allow for Call-In, no key decision shall be implemented until 5 working days after the decision has been published, subject to Rule 5.3 below. The Leader’s decisions as to the form and composition of Cabinet and the appointment of a Deputy Leader are at his or her discretion and cannot be called in under the Scrutiny Rules.

5.2 Where a request for a Call-In is received within 5 working days of the decision being published, the decision shall not be implemented until the relevant Overview and Scrutiny Committee has resolved not to call the decision in or the Decision-taker has reconsidered the decision in the light of any recommendation from the relevant Overview and Scrutiny Committee.

5.3 This deferment of implementation shall not apply where the decision-taker resolves that the implementation of the decision is urgent, in that delaying such implementation would give rise to an unacceptable risk of damage to the authority or its area or inhabitants, and such reason for urgency is recorded in the minutes of the decision.

## **6. Conflicts Of Interest**

- 6.1 If the exercise of an Executive function has been delegated to an individual Cabinet Member or an Officer, and should that person have a prejudicial interest in the decision on the matter, then the function may be exercised in the first instance by the person or body by whom the delegation was made, or by such other Cabinet Member as may be appointed for this purpose by the Leader.
- 6.2 If the Leader and every Member of the Cabinet has a prejudicial interest in a matter as defined in the Council's Code of Conduct for Members, a decision in relation to that matter will be taken by the Chief Executive.

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## Part 3 – Budget and Policy Framework Procedure Rules

### 1. The Framework for Executive Decisions

- 1.1 The Council will be responsible for the adoption of the Budget and of the Policy Framework as set out in Article 4 (The Council). Once the framework is in place, it will be the responsibility of the Leader / Cabinet to implement it.

### 2. Process for Developing the Policy Framework

- 2.1 The Council shall from time to time review which plans and strategies shall comprise the Policy Framework, and may determine that:
- (a) it is minded to remove a plan or strategy from the Policy Framework
  - (b) an existing plan or strategy which forms part of the Policy Framework shall be reviewed
  - (c) that an additional plan or strategy shall be included in the Policy Framework.
- 2.2 In the case of Rule 2.1 (a) above, unless such resolution arises from a recommendation from the Leader / Cabinet, the Council shall consult the Leader / Cabinet before taking a decision whether to remove the plan or strategy from the Policy Framework.
- 2.3 In the case of Rule 2.1(b) and (c) above, the Council shall instruct the Leader / Cabinet to prepare and recommend a draft policy or strategy, or a draft amended policy or strategy, setting out the issues to be covered by the new policy or strategy, or the broad manner in which the Council wishes to amend the plan or strategy, and any matters which the Council would wish the Leader / Cabinet to take into account in preparing a draft, or draft amended, policy or strategy, including any urgency, and stating whether the draft plan or strategy, or draft amended plan or strategy shall be referred on receipt to a particular Overview and Scrutiny Committee.
- 2.4 Upon receipt of such instruction, the Leader / Cabinet shall prepare a draft plan or strategy, or draft amended plan or strategy in response to such instruction and shall submit it to Council.
- 2.5 In preparing such draft plan or strategy, or draft amended plan or strategy, the Leader / Cabinet may undertake such consultation with partner organisations and with the public as it considers to be appropriate.
- 2.6 Where the Council has resolved that the draft plan or strategy, or draft amended plan or strategy, shall be referred to a particular Overview and Scrutiny Committee, the Chief Executive shall report the draft plan or strategy, or draft amended plan or strategy to that Committee, and that Committee shall then consider the same and prepare a recommendation to Council subject to Rule 2.7 below. In such consideration, the Committee may undertake such consultation as it considers appropriate, having regard to any consultation previously undertaken by the Leader / Cabinet.
- 2.7 Where such recommendation to Council is that the draft plan or strategy, or draft amended plan or strategy, should be adopted as proposed by the Leader / Cabinet, that recommendation shall proceed directly to Council. Where such recommendation is that the draft plan or strategy, or draft amended plan or strategy should be adopted subject to any amendment, that recommendation shall be reported by the Chief Executive to the Leader / Cabinet and shall be deemed to be a resolution that Council proposes to adopt the draft plan or strategy, or draft amended plan or strategy, subject to an amendment.
- 2.8 Where Council receives a recommendation from an Overview and Scrutiny Committee as set out in Rule 2.7 above, the Chief Executive shall report to Council the Leader / Cabinet's original proposal, the Overview and Scrutiny Committee's recommendation and the Leader / Cabinet's response to that recommendation.

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- 2.9 Council shall then consider the draft plan or strategy, or draft amended plan or strategy, together with any recommendation and response. The Council may take one of the following steps:
- (a) If Council wishes to adopt the draft plan or strategy, or draft amended plan or strategy as originally recommended by Leader / Cabinet, without amendment, it may do so forthwith;
  - (b) If Council wishes to adopt the draft plan or strategy, or draft amended plan or strategy, subject to any of the amendments recommended by the Overview and Scrutiny Committee, it may do so forthwith after consideration of the Leader / Cabinet's response thereto;
  - (c) If Council wishes to adopt the draft plan or strategy, or draft amended plan or strategy, subject to any amendment which was not recommended by the Overview and Scrutiny Committee, it shall resolve accordingly "in principle", and the Chief Executive shall forthwith notify the Leader and all Members of the Cabinet of that resolution together with the legal and financial implications of the resolution. The Leader may submit to the Chief Executive the Leader / Cabinet's response to the proposed amendment and the following options take effect:
    - (i) If such response is received within 5 working days of such notification, or such longer period as Council may resolve, the Chief Executive shall report the response to the next convenient meeting of Council and the "in principle" resolution shall not take effect.
    - (ii) Where no such response is received within the set period, the "in principle" resolution shall take full effect at the expiry of that set period, unless there are significant legal and financial implications, in which case the Chief Executive shall make a report including those implications to the Council for its next convenient meeting.
- 2.10 Where a particular plan or strategy is required by statute to be subject to consultation, examination in public, or submitted to the Secretary of State for approval, this procedure shall apply in respect of the approval of the plan or strategy at each such stage.

### **3. Process for Setting the Budget**

- 3.1 For each municipal year, the Leader / Cabinet shall prepare a draft Budget for the authority and shall submit it to the Chief Executive for report to Council for approval.
- 3.2 In preparing such draft Budget, the Leader / Cabinet may undertake such consultation with partner organisations and with the public as it considers to be appropriate or required by law.
- 3.3 The Leader / Cabinet shall refer the draft Budget to the relevant Overview and Scrutiny Committee or Committees, in which case the Chief Executive shall report the draft Budget to that Committee or Committees, and that Committee shall then consider the same and prepare a recommendation to Leader / Cabinet. In such consideration, the Committee may undertake such consultation as it considers appropriate, having regard to any consultation previously undertaken by the Leader / Cabinet.
- 3.4 If Council wishes to adopt the draft Budget as recommended by Leader / Cabinet, without amendment, it may do so forthwith.
- 3.5 In reaching a decision, the Council may adopt the Leader / Cabinet's proposals, but if the Council has any objections to the Leader / Cabinet's proposals, then before it amends, approves or adopts any plan, strategy or Budget, it must inform the Leader of those objections and require the Leader / Cabinet to reconsider. The Leader / Cabinet may, within such reasonable period as the Monitoring Officer may determine (but which shall be not less than 5 working days) submit revised proposals or inform the Council of the Leader / Cabinet's disagreement with the Council's objections and the reasons for this. Once that period has

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expired, the Council in amending, approving or adopting any plan, strategy or Budget, must take into account any revised proposals and the views of the Leader / Cabinet.

- 3.6 In the case of Budget proposals submitted to the Council after 8 February in the preceding financial year, or any Budget proposals submitted following designation or nomination by the Secretary of State, the Council may amend, approve or adopt the Leader / Cabinet's proposals without requiring the Leader / Cabinet to reconsider them.
- 3.7 In approving the Budget and Policy Framework, the Council will also specify the extent of in-year changes to the Policy Framework which may be undertaken by the Leader / Cabinet, in accordance with paragraph 7 of these Rules (in-year adjustments). The extent of virement within the approved Budget is set out in the financial regulations in Chapter 9 of this Constitution. Any other changes to the policy and Budgetary framework are reserved to the Council.

#### **4. Decisions outside the Budget or Policy Framework**

- 4.1 Subject to Rule 5 below, the Leader / Cabinet, Committees of the Cabinet, individual Cabinet Members or any Officers, Area Committees or Joint Committees discharging Executive functions may only take Executive decisions to the extent that they are not contrary to the Policy Framework or the Budget. If any of these bodies or persons wishes to make a decision which is contrary to the Policy Framework, or contrary to or not wholly in accordance with the Budget approved by the Council, then that decision shall be a "Departure Decision" and may only be taken by the Council. Note that such Departure Decisions must be taken by Council and cannot be delegated to any other person or body.
- 4.2 If the Leader / Cabinet, a Committee of the Cabinet, an individual Member of the Cabinet or any Officer, any Area Committee or Joint Committee wants to make an executive decision and apprehends that it may be contrary to the Policy Framework or contrary to, or not wholly in accordance with the Budget (and thus to constitute a "Departure Decision"), they shall take advice from the Monitoring Officer and/or the Chief Executive and/or the Chief Finance Officer as to whether the decision they want to make would be contrary to the Policy Framework, or contrary to or not wholly in accordance with the Budget. If the advice of any of those Officers is that the decision would be contrary to the Policy Framework, or contrary to or not wholly in accordance with the Budget, then the decision-taker may take an "in principle" decision but must refer the matter as a recommendation or as an "in principle" decision to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in Rule 5 shall apply.

#### **5. Urgent Decisions outside the Budget or Policy Framework**

- 5.1 Notwithstanding Rule 4 above, the Leader / Cabinet, a Committee of the Cabinet, an individual Member of the Cabinet, an Officer, an Area Committee or a Joint Committee, who or which is exercising Executive functions may take a decision which is contrary to the Council's Policy Framework or contrary to or not wholly in accordance with the Budget approved by full Council, if the decision is a matter of urgency. A decision will be urgent if any delay involved in convening a quorate meeting of the full Council within the Access to Information Rules to take the decision would or would be likely to seriously prejudice the Council's or the public interests.
- 5.2 The Chair of the relevant Overview and Scrutiny Committee must agree in writing that the decision be taken as a matter of urgency before it may be taken. In the absence or inability to act of the Chair, the consent of the Mayor, or in his or her absence or inability to act, the Deputy Mayor, shall suffice. The reasons why it is not practical to convene a quorate meeting of Council and the consent to the decision being taken as a matter of urgency must be noted on the record of the decision.
- 5.3 Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

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## **6. Financial Regulations and Budget Management**

- 6.1 The Council's Financial Regulations are included in Chapter 9 of this Constitution. The Council has approved a Budget management scheme that is included in that Chapter. The Budget management scheme lists the Rules for managing the capital and revenue Budget. This includes limits on virement between capital projects and cash limits.
- 6.2 Steps taken by the Leader / Cabinet, a Committee of the Cabinet, an individual Member of the Cabinet, or Officers discharging Executive Functions to implement Council policy will not exceed those Budgets allocated to each cash limit. However, such bodies or individuals will be entitled to vire across cash limits and capital projects as set out in the Budget management scheme. Exceeding those limits will require the approval of the full Council.

## **7. In-Year Changes to Policy Framework**

- 7.1 The responsibility for agreeing the Budget and Policy Framework lies with the Council, and decisions by the Leader / Cabinet, a Committee of the Cabinet, an individual Member of the Cabinet or Officers discharging Executive Functions must be in line with it. No changes to any policy and strategy that make up the Policy Framework may be made by those bodies or individuals except those changes:
- (a) which will result in the closure or discontinuance of a service or part of a service to meet a Budgetary constraint
  - (b) which are necessary to ensure compliance with the law, ministerial direction or government guidance
  - (c) in relation to the Policy Framework in respect of a policy, when the framework would normally be agreed annually by the Council following consultation, but where the existing policy document is silent on the matter under consideration.

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## Part 4 – Functions which the Leader has allocated to the Cabinet, Cabinet Committees or Individual Cabinet Members

By the Local Government Act 2000 as amended, the Leader may discharge any Executive Functions in person and may make overall arrangements for the discharge of all Executive Functions, or may make arrangements for the discharge of any of those functions by the Cabinet, by a Committee of the Cabinet, by another Cabinet Member or by an Officer. This Part of the Constitution sets out the arrangements which the Leader has made for the discharge of Executive Functions by the Leader / Cabinet and by individual Cabinet Members.

### 1. The Leader / Cabinet

1.1 The following functions shall be discharged by the Leader / Cabinet:

- (a) All “Key Decisions”
- (b) All Executive Functions which have not been delegated to a Cabinet Committee, a Cabinet Member, an Officer, an Area Committee, a Joint Committee or another local authority
- (c) Any Executive Function which has been delegated to a Cabinet Committee, and Cabinet Member, or an Officer, where the person or body to whom the decision is delegated refers the matter back to the Cabinet for determination
- (d) To approve all virements between Cost Centres and/or Budget Heads or within the Capital programme where the sum to be vired exceeds £500,000
- (e) “Local Choice Functions” - These are functions where the Council has a discretion as to whether the function should be discharged by the Council or by the Leader / Cabinet and has determined that they shall be discharged by the Leader / Cabinet. The functions concerned are as follows:
  - (i) Any function under a local Act other than:
    - a function specified or referred to in Regulation 2 or Schedule 1 (of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000)
    - Part VI of the Essex Act 1987 and in relation to the making of byelaws under the Act
  - (ii) The appointment of review boards under regulations under subsection (4) of section 34 (determination of claims and reviews) of the Social Security Act 1998
  - (iii) The making of arrangements pursuant to section 52 of the Education Act 2002 and Regulation 6 of the Education (Pupil Exclusion and Appeal) (Maintained Schools) (England) Regulations 2002 (SI 2002/3178).
  - (iv) The making of arrangements pursuant to section 94(1) and (4) of the School Standards and Framework Act 1998 (admission appeals) and the Education (Admissions Appeals Arrangements) (England) Regulations 2002 (SI 2002/2899).
  - (v) The making of arrangements pursuant to section 95(2) of the School Standards and Framework Act 1998 (children to whom section 87 applies: appeals by governing bodies) and Schedule 2, paragraph 2, Education (Admissions Appeals Arrangements) (England) Regulations 2002 (SI 2002/2189).
  - (vi) The making of appointments under paragraphs 2 to 4 (appointment of Members by relevant Councils) of Schedule 2 (police authorities established under section 3) to the Police Act 1996
  - (vii) Any function relating to contaminated land

- (viii) The discharge of any function relating to the control of pollution or the management of air quality
- (ix) The service of an abatement notice in respect of a statutory nuisance
- (x) The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area
- (xi) The inspection of the Authority's area to detect any statutory nuisance
- (xii) The investigation of any complaint as to the existence of a statutory nuisance
- (xiii) The obtaining of information under section 330 of the Town and Country Planning Act 1990 as to interests in land insofar as it relates to the Cabinet's other functions
- (xiv) The obtaining of particulars of persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976 insofar as it relates to the Cabinet's other functions
- (xv) The making of agreements for the execution of highways works.
- (xvi) Except insofar as is specifically reserved to the Council by resolution of the Council, the appointment of any individual:
  - to any office other than an office in which he is employed by the Authority
  - to any body other than:
    - the Authority
    - a Joint Committee of two or more authorities
  - to any Committee or Sub-Committee of such a body, and the revocation of any such appointment
- (xvii) The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities
- (xviii) Any function of the Authority in its capacity as a harbour authority.

## **2. Individual Cabinet Members**

- 2.1 Under the Local Government Act 2000 as amended, the Leader has allocated a "Portfolio" to each Cabinet Member and delegated to each "Portfolio Holder" responsibility for the discharge of the functions specified below. The powers delegated to individual Cabinet Members specifically exclude "Key Decisions" and "Local Choice Functions" which have been allocated to the Cabinet.

### **3. Leader and Cabinet Member for Strategic and Finance**

#### **3.1 Portfolio**

- (a) Corporate Strategy
- (b) Finance Strategy & Performance
- (c) Revenue and Capital Budgets – Development and Monitoring
- (d) Medium Term Financial Planning
- (e) Treasury Management Accounting Arrangements
- (f) Corporate Improvement Programmes
- (g) Strategic Property
- (h) Regional Issues
- (i) Business & Inward investment
- (j) Corporate Communications
- (k) External Strategic Relations
- (l) Local Strategic Partnerships (LSP)
- (m) Strategic Programme Delivery – Local Area Assessment (LAA)

#### **3.2 Delegated Powers**

##### **Urgent Decisions**

- (a) By virtue of section 15(9) of the Local Government Act 2000, the Leader may exercise any Executive Function which has been delegated to the Cabinet or to an individual Cabinet Member or to an Officer.
- (b) By convention, the Leader will only exercise such powers where:
  - (i) Deferring the decision until the next meeting of Cabinet would carry such unreasonable risk of damage to the authority or its area that it would be unreasonable to defer the decision until the next meeting of Cabinet
  - (ii) An Officer possessing a delegated power has referred the matter to the Leader for determination
  - (iii) In any case, the Leader has consulted the Deputy Leader and the relevant Cabinet Member(s).

##### **Consultations**

- (c) Approving the authority's response to consultation from neighbouring authorities, regulatory agencies, Government Departments and other bodies.

##### **Personnel and Human Resource Policies**

- (d) To approve personnel and human resources policies and strategies in so far as they are Executive Functions.
- (e) To determine the staffing requirements for the proper discharge of Executive Functions.

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## Finance

- (f) To approve the writing off of debts in cases where an Officer has no delegated power to do so.
- (g) To approve virement between Cost Centres and/or Budget Heads or within the Capital Programme (all such virements and transfers in excess of £500,000 by convention being referred to Cabinet for determination).

## Land and Property

- (h) Approving minor departures from the authority's Asset Management Plan.
- (i) Approving the acquisition or disposal of land or property up to the value of £500,000, on advice from the Monitoring Officer and the Section 151 Officer, and in consultation with the Corporate Property Officer (who for this purpose is the Director of Finance and Corporate Governance), the Director of Sustainable Communities and ward members. Any decision relating to the acquisition or disposal of land or property above £500,000 be taken by the Cabinet.

## Communications and the Media

- (j) To approve press releases and statements in relation to his/her Portfolio or which are of particular importance to the authority.

## 4. Deputy Leader and Cabinet Member for Environment

### 4.1 Portfolio

- (a) Parking Provision
- (b) Parking Enforcement
- (c) Street Services
- (d) Green Services
- (e) Waste and Recycling
- (f) Highways Gritting, Maintenance and Repairs by In-house Team
- (g) Environmental Enforcement

### 4.2 Delegated Powers

- (a) As Deputy Leader, to exercise the Portfolio functions of the Leader when he/she is absent or otherwise unable to act.
- (b) To take any decision within this Portfolio where that decision was within powers delegated to an Officer but that Officer has referred the matter to the Portfolio Holder for determination.
- (c) To approve press releases and statements in relation to his/her Portfolio.

## 5. Cabinet Member for Adult Social Care

### 5.1 Portfolio

- (a) Adult care
- (b) Older people

- (c) Disability Services
- (d) Occupational Therapy
- (e) Carer Support
- (f) Supporting People
- (g) Commissioning

5.2 Delegated Powers

- (a) To take any decision within this Portfolio where that decision was within powers delegated to an Officer but that Officer has referred the matter to the Portfolio Holder for determination.
- (b) To approve press releases and statements in relation to his/her Portfolio.

**6. Cabinet Member for Children's Social Care & Health**

6.1 Portfolio

- (a) Corporate Parenting
- (b) Children's Social Care
- (c) Public Health and Health Transition

6.2 Delegated Powers

- (a) To take any decision within this Portfolio where that decision was within powers delegated to an Officer but that Officer has referred the matter to the Portfolio Holder for determination except in the case of functions under sections 18 and 19 of the Children's Act 2004
- (b) To approve press releases and statements in relation to his/her Portfolio.

**7. Cabinet Member for Education**

7.1 Portfolio

- (a) Schools
- (b) Life Long Learning
- (c) Educational Attainment & School Improvement
- (d) Services to Schools
- (e) 14-19 & Integrated Youth Services
- (f) Early Years

7.2 Delegated Powers

- (a) To take any decision within this Portfolio where that decision was within powers delegated to an Officer but that Officer has referred the matter to the Portfolio Holder for determination except in the case of functions under sections 18 and 19 of the Children's Act 2004
- (b) To approve press releases and statements in relation to his/her Portfolio.

- (c) To make any appointments on behalf of the authority to governing bodies of schools and educational institutions.

## **8. Cabinet Member for Housing and Regeneration**

### **8.1 Portfolio**

- (a) Housing Strategy
- (b) Landlord Services
- (c) Homelessness
- (d) Private Sector Housing
- (e) Operational Transport & Highways Strategy
- (f) Public Transport
- (g) Regeneration
- (h) Strategic Planning

### **8.2 Delegated Powers**

- (a) To take any decision within this Portfolio where that decision was within powers delegated to an Officer but that Officer has referred the matter to the Portfolio Holder for determination.
- (b) To approve press releases and statements in relation to his/her Portfolio.

## **9. Cabinet Member for Central Services**

### **9.1 Portfolio**

- (a) Internal and External Audit Arrangements
- (b) Corporate Governance Matters
- (c) Strategic Risk Management and Business Continuity
- (d) Data Protection
- (e) Insurance Arrangements
- (f) Corporate and Strategic Human Resources
- (g) Organisational Development
- (h) ICT
- (i) Procurement
- (j) Legal Services
- (k) Democratic Services
- (l) Registrars
- (m) Electoral Services
- (n) Member Development

- (o) Corporate/Strategic Contracts
- (p) Customer Access/Service Strategy
- (q) Housing Benefits

9.2 Delegated Powers

- (a) To take any decision within this Portfolio where that decision was within powers delegated to an Officer but that Officer has referred the matter to the Portfolio Holder for determination.
- (b) To approve press releases and statements in relation to his/her Portfolio.

**10. Cabinet Member for Community Culture and Leisure**

10.1 Portfolio

- (a) Libraries
- (b) Sports & Leisure
- (c) Culture
- (d) Community Cohesion
- (e) Diversity
- (f) Voluntary Sector & Community Forums
- (g) Civil Protection & Emergency Planning
- (h) Community Safety
- (i) Animal Welfare
- (j) Trading Standards
- (k) Licensing

10.2 Delegated Powers

- (a) To take any decision within this Portfolio where that decision was within powers delegated to an Officer but that Officer has referred the matter to the Portfolio Holder for determination.
- (b) To approve press releases and statements in relation to his/her Portfolio