



# Birmingham City Council Constitution

## Part A – Summary and Explanation

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## The Council's Constitution

Birmingham City Council has agreed a Constitution which governs how the Council operates, how decisions are made, and the procedures which are followed to ensure efficiency, transparency and accountability to local people. Some of these processes are required by the law, while others are a matter for the Council to choose.

The Council will exercise all its powers and duties in accordance with the law and this Constitution. This Constitution complies with the requirements of the Local Government Act 2000, related regulations and government guidance on constitutional matters.

The purpose of the Constitution is to:

- (i) Enable the Council to provide visible, accountable and effective leadership to the citizens of Birmingham;
- (ii) Support the active involvement of citizens in the process of local authority decision-making;
- (iii) Help Councillors to effectively and efficiently represent and support their constituents;
- (iv) Enable decisions to be taken in an effective and efficient manner having regard to the law, appropriate policies, procedures and ethical standards;
- (v) Create an effective, efficient and appropriate mechanism to hold decision-makers to public account.

For further information regarding the review, revision and suspension of the Constitution, please see [section](#) below.

The Constitution is divided into five parts:

- **Part A – Summary and Explanation:** introduction to the Constitution and how the Council operates;
- **Part B – Roles, Functions and Rules of Procedure:** rules governing the Council's business, how decisions are taken and the rights of citizens;
- **Part C – Codes and Protocols:** Codes of Conduct for Councillors (also known as "Members") and employees, and other codes and protocols;
- **Part D – [Procurement and Contract Governance Rules](#):** rules governing financial, procurement and contract matters;
- **Part E – Schedule of Delegations:** how decisions are delegated to officers.

## How the Council Operates

The Council is composed of 101 [Councillors](#), one of whom is elected as Leader. The **Leader** is elected by the Councillors, normally for a four-year term of office. The overriding duty of Councillors is to

the whole community, but they have a special duty to their constituents, including those who did not vote for them.

All Councillors meet together as the Council. These meetings are normally open to the public. Here Councillors decide the Council's overall policies and set the budget each year. The Council elects a Leader, who appoints the **Cabinet**. Cabinet's main role is to develop and implement policy on behalf of the Council. It constitutes the Executive (decision making) part of the Council, though some decisions, such as the approval of the budget, rest with Full Council. **Overview & Scrutiny Committees** ensure that decision makers within the Council are held accountable and assist in strategic policy development, drive improvement in public services, and ensure that the voice of the public is heard.

The Council has established **Ward Forums** which provide for public participation and representation at a local level.

The Council also appoints **Regulatory Committees** to perform the Council's regulatory functions such as Planning and Licensing. Other specialist committees are appointed by the Council from time to time. As "quasi-judicial" bodies, these Committees are also cross-party and independent of the Executive.

The Council has established a **Standards Committee** to advise on the adoption and implementation of a Code of Conduct for Councillors. All Councillors have agreed to follow the Code so as to ensure high standards in the way they undertake their duties. The Standards Committee ensures there is appropriate training and advice on the Code. Further information can be found in Part B16: *The Standards Committee*.

The Council also employs **officers** to give advice, implement decisions and manage the day to day delivery of its services, as well as taking decisions if responsibility has been delegated to them. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A protocol governs the relationships between officers and Members of the Council (see Part C5 *Member/Officer Protocol*).

## How Decisions are Made

### The Full Council

All Councillors meet together as the Council (sometimes called Full Council). The Council has responsibility for all Non-Executive functions including approving the policy framework and budget. The Council, as a whole, retains responsibility for regulatory functions and has a role in holding the Executive to account.

Meetings of the Council are normally open to the public and are chaired by the **Lord Mayor**.

### Types of Council meetings

There are three types of Council meeting:

- (i) the Annual General Meeting;
- (ii) ordinary meetings;

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- (iii) extraordinary meetings

They will be conducted in accordance with the rules of procedure as set out in Part B4 of the Constitution.

Further information can be found in Part B4: *Full Council Role, Function and Procedure Rules*.

## The Executive

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

The Executive is made up of the following:

- (i) Cabinet
- (ii) Cabinet Committees
- (iii) Cabinet Members

**Key decisions** are made by Cabinet and must first be published in the Cabinet's Forward Plan in so far as they can be anticipated, but at least 28 days in advance (in accordance with statutory requirements).

The Cabinet, acting as a collective and in accordance with the provisions of the Constitution, has to make decisions which are in line with the Council's overall policy framework and budget. If it wishes to make a decision which is a change to the budget or policy framework, this must be referred to the Council to decide.

Non-key decisions are made by **Cabinet Committees**; and by **Cabinet Members with Chief Officers** and by **officers** under delegated authority.

Cabinet comprises ten Councillors, including the Leader and Deputy Leader, as follows:

- Leader
- Deputy Leader
- Cabinet Member – ~~Housing and Homelessness~~
- Cabinet Member – ~~Social Justice, Community Safety and Equalities~~
- Cabinet Member – Finance and Resources
- Cabinet Member – Health and Social Care
- Cabinet Member – ~~Children, Young People and Families~~
- Cabinet Member – ~~Digital, Culture, Heritage, and Tourism~~
- Cabinet Member – ~~Environment~~
- Cabinet Member – Transport

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Deleted: Social Inclusion, Community Safety and Equalities

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Further information can be found in Part B6 *Executive Role, Function and Procedures* and Part B7 *Cabinet Portfolios*.

### Health and Wellbeing Board

The Health and Wellbeing Board is constituted as a Committee under the Chair of the Cabinet Member - Health and Social Care in order to discharge the functions of a Health and Wellbeing Board as set out in the Health and Social Care Act 2012, including the appointment of Board Members as set out in the schedule of required Board Members in the Act.

Further information can be found in Part B6.4 *Health and Wellbeing Board*.

### Overview and Scrutiny

A number of Overview & Scrutiny Committees ensure that decision makers within the Council are held accountable. They assist in strategic policy development, drive improvement in public services, and ensure that the voice of the public is heard. These Committees are not decision making and must be cross-party.

Overview & Scrutiny Committees can “call-in” a decision which has been made by Cabinet but not yet implemented. This enables them to consider whether the decision is appropriate. They may recommend that the Cabinet reconsiders the decision. They also support the work of the Cabinet and the Council as a whole through contribution to policy development. They may submit reports and recommendations which advise the Cabinet and the Council as a whole on its policies, budget and service delivery.

These Committees will, normally, meet in public to discuss and make recommendations on the development of policies and on improving service performance, and to hold the Executive to account for their actions.

Further information can be found in Part B11 *Overview & Scrutiny Committees*.

### Regulatory and Non-Executive Committees

The Council also appoints Regulatory Committees to perform the Council’s regulatory functions such as Planning and Licensing. Other specialist committees are appointed by the Council from time to time. These Committees operate in a “quasi-judicial” manner and are also cross-party and independent of the Executive.

Regulatory and Non-Executive Committees are not part of the Executive functions and neither are they part of the Scrutiny arrangements.

Chairs of these committees are appointed by the Full Council and Deputy Chairs are elected by each committee at its first meeting, for the purpose of substitution for the Chair if absent.

Regulatory and Non-Executive Committees for Birmingham City Council are as follows:

### Regulatory committees

- (i) Planning Committee (see Part B12 *Planning Committee*)
- (ii) Licensing and Public Protection Committee (see Part B13 *Licensing and Public Protection Committee*)

### Non-executive committees

- (i) Council Business Management Committee (see Part B5 *Council Business Management Committee*);
- (ii) Audit Committee (see Part B14 *Audit Committee*);
- (iii) Trusts and Charities Committee (see Part B15 *Trusts and Charities Committee*);
- (iv) Standards Committee (see Part B16 *Standards Committee*).

### Ward Forums

In order to give local citizens a greater say in Council affairs, Ward Forums have been established on the basis of representing all parts of the City. The Cabinet may make arrangements for the discharge of functions for which the Cabinet is responsible by Ward Forums. The Cabinet will identify a number of functions that Ward Forums may exercise. However, the Cabinet remains ultimately responsible for these services and may remove or limit a Ward Forum's powers. As with the Cabinet, in exercising their powers Ward Forums must make decisions which are in line with the Council's overall policies and budget. The Ward Forums involve all the Councillors from the Wards within each Ward Forum area and meetings are held in public.

Further information can be found in Part B10 *Ward Forums*.

### Joint Committees

The City Council has established the following Joint Arrangements:

#### West Midlands Combined Authority (WMCA)

The [West Midlands Combined Authority](#) comprises 18 local authorities, including Birmingham City Council and four Local Enterprise Partnerships (LEPs) including Greater Birmingham & Solihull LEP, working together to move powers from Whitehall to the West Midlands. Individual councils will still deliver services and retain their identity, but on the big decisions the WMCA will have the resources to work together.

### Officers

The title "Officers" refers to all employees and staff engaged by the Council to carry out its functions. This word has also been used instead of "employees" to cover those engaged under short term, agency or other non-employed situations.

The Council's "Officers" give advice to the Councillors, implement decisions and manage the day to day delivery of its services. All Officers serve the whole Council and must ensure that they act within the law when carrying out the Council's work.

For further information in respect of the role of officers, see Part E: *Scheme of Delegations*.

## Citizens' Rights

Citizens have a number of rights in their dealings with the Council. Some of these are legal rights, whilst others depend on the Council's own processes.

Where members of the public use specific Council services, for example as a parent of a school pupil or as a Council tenant, they have additional rights. These are not covered in this Constitution.

Citizens have the right to:

- (i) Vote at local elections if they are registered;
- (ii) Contact their local Councillors about matters of concern to them;
- (iii) Obtain a copy of the Constitution;
- (iv) Attend meetings of the Council, the Cabinet and Committees;
- (v) See reports, background papers and records of decisions made by the Council, the Cabinet and Committees;
- (vi) Complain to the [Council](#) about service delivery;
- (vii) Complain to the [Ombudsman](#);
- (viii) Complain to the Council's [Standards Committee](#) if they have evidence which they think shows that a Councillor has not followed the Council's Code of Conduct;
- (ix) Inspect the Council's accounts during a statutory period and make their views known to the external auditor.

Further information can be found in Part B1.1 *Citizens and the Council*.

## Finance, Contract and Legal Matters

### Financial Management

The management of the Council's financial affairs will be conducted in accordance with the Financial Regulations as set out in Part D of this Constitution.



## Contracts

Contracts relating to the procurement of supplies, works or services entered into by the Council must comply with the Regulations relating to Contracts set out in Part D of this Constitution.

The Council has a statutory duty under Section 135 Local Government Act 1972 to make Standing Orders with respect to the making of contracts for the supply of goods or services or for the execution of works. Sound procurement practices support probity, competition and the discharge of the Council's best value duty. Officers are required to use the Council's corporate contracts where they exist as distinct from procuring a new contract.

## Procurement Governance Arrangements

The purpose of these arrangements is to ensure the required quality of decision making in procurement matters and that the relevant Officers have been engaged or consulted. As a general principle the contract award decision for all contracts where the supplies, materials, services to be purchased or the works to be executed are below £10,000,000, will be delegated to Chief Officers except where it is likely that the award of the contract will result in staff employed by the Council transferring to the successful contractor under TUPE.

The Procurement Governance Arrangements as set out in Part D of this Constitution.

## Legal Proceedings

The City Solicitor is duly authorised to institute, defend or participate in any actual or threatened legal proceedings or settle the same (up to the value of £500,000), if appropriate, in any case where such action is necessary to give effect to decisions of the Council or in any case where the City Solicitor considers that such action is necessary to safeguard and protect the Council's interests. Decisions above this financial threshold will be made by the Chief Finance Officer and/or the Chief Executive in consultation with the City Solicitor.

Part D of this Constitution (Financial Regulations) governs the arrangements for signing of contracts and sealing of relevant documents.

## Common Seal

A decision of the Executive or a resolution of the Council or a committee acting within the powers and duties delegated to it shall be sufficient authority for sealing any deed, instrument, document or writing necessary to give effect thereto.

The Common Seal will be affixed to those documents which in the opinion of the City Solicitor should be sealed. The affixing of the Common Seal will be attested by the City Solicitor or some other person authorised by him/her.

The process for sealing documents shall be determined by the City Solicitor.

# Review, Revision and Suspension of the Constitution

## Duty to monitor and review the Constitution

The Monitoring Officer will monitor and review the effectiveness and operation of this Constitution so as to ensure that the aims and principles of the Constitution are given full effect.

## Changes to the Constitution

The Council has authorised the Council Business Management Committee to take all necessary steps, through the year, to amend, add, substitute or delete any of the City Council's non-Executive Constitutional amendments and refer all changes to Full Council for approval, save that authority to make certain changes is delegated to the Monitoring Officer as set out below.

Changes to the Constitution will be approved by the body or person to whom such authority has been delegated as indicated in the table set out at Annex 1 attached. Where the approval of Full Council is required, then they will only be approved by full Council after consideration of the proposal by the Council Business Management Committee and following advice from the Monitoring Officer.

The Monitoring Officer is authorised to make any changes to any Part of the Constitution which are required:

- as a result of legislative change or decisions of the Council<sup>1</sup> or Executive<sup>2</sup> to enable him/her to maintain it up to date;
- or for the purposes of clarification only.

All changes made by officers under delegated authority will be recorded as delegated decisions.

## Suspension of the Constitution

### Limit to suspension

The Constitution may not be suspended. The Council Procedure Rules set out in Part B4.4 of this Constitution may be suspended by the Full Council to the extent permitted within those Rules and the law.

A motion to suspend any Rules will not be moved without notice unless at least one half of the whole number of Councillors is present. 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 [Part A](#).

The ruling of the Lord Mayor as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in [Part A](#).

<sup>1</sup> Including Council Committees and Officers acting under delegated authority.

<sup>2</sup> Including Committees of the Executive and Officers acting under delegated authority.

## Annex 1

Part of Constitution	Title of Section	Body/Person with authority to change the document <sup>3</sup>
Part A – Summary and Explanations	–	Full Council
Part B – Roles, Functions and Rules of Procedure	B1 Roles B2 Responsibility for functions B3 Decision Making B4 Full Council Role, Function & Procedure Rules B5 Council Business Management Committee Role and Procedure  B6 Executive Role, Functions and Procedure B7 Cabinet Portfolios  B8 Appointments to Outside Bodies  B9 Joint Arrangements B10 Ward Forums B11 Overview & Scrutiny Committees B12 Planning Committee B13 Licensing and Public Protection Committee B14 Audit Committee B15 Trusts and Charities Committee B16 Standards Committee B17 Independent Remuneration Panel B18 Summary of Quoracy	Full Council  Cabinet Leader of the Council  Full Council (Non-Executive) or Cabinet (Executive)  Full Council
Part C – Codes and Protocols	C1 Corporate Governance Code and Framework C2 Meetings and Access to Information Procedure Rules C3 Protocol Regarding the Recording of Council Meetings C4 Code Of Conduct For Members C5 Member / Officer Relations Protocol C6 Employee Code of Conduct C7 Employment Procedure Rules C8 Planning Code of Practice for Members and Officers C9 Licensing Committee Code of Practice for Members and Officers C10 Members Allowance Scheme	Full Council

<sup>3</sup> Subject to delegation to Monitoring Officer [above](#)

Part of Constitution	Title of Section	Body/Person with authority to change the document <sup>3</sup>
Part D – <del>Procurement and Contract Governance Rules</del>	D1 <del>Introduction</del>	Full Council
	D2 <del>Roles and Responsibilities</del>	
	D3 <del>Thresholds</del>	
	D4 <del>Process</del> D5 <del>Definitions</del>	
Part E – Scheme of Delegations	–	Cabinet and Full Council

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Deleted: Rules relating to Contracts

Deleted: Procurement Governance Arrangements



# Birmingham City Council Constitution

## Part B – Roles, Functions and Rules of Procedure

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## B1. ROLES

### 1.1 Citizens and the Council

#### Citizens' Rights

- i. Citizens have general rights with regard to the business of the Council. Their right to information and /or to participate in Council business is explained in more detail in Part C2: Meetings and Access to Information.
  - a) **Voting and petitions:** Citizens on the electoral roll for the area have the right to vote, and all citizens may present petitions.
  - b) **Information:** Citizens have the right to:
    - o Attend meetings of the Council and to film, record and report the proceedings of Cabinet and Committees except where confidential or exempt information is likely to be disclosed, and that part of the meeting is therefore held in private (see Part C2 for rules on accessing meetings and C3 for rules on filming at meetings);
    - o Find out from the Forward Plan which key decisions are likely to be taken and when;
    - o See reports and background papers, and any records of decisions made by the Council and the Executive, except where confidential or exempt information is likely to be disclosed;
    - o Inspect the Council's accounts during any prescribed statutory period(s) and make their views known to the external auditor; and
    - o Such other information as may be specified in the Council's Freedom of Information Act 2000 Publication Scheme.
  - c) **Participation.** Citizens may ask questions at Full Council Meetings having given notice. Citizens may be granted the right, if invited to do so by the Chair of the relevant Committee, to participate and contribute to the discussion, except where confidential or exempt information is likely to be disclosed, and the meeting is held in private.
  - d) **Complaints.** Citizens have the right to complain to:
    - o The [Council](#) about service delivery;
    - o The [Ombudsman](#);
    - o The Council's [Standards Committee](#) if they have evidence which they think shows that a Councillor has not followed the Council's Code of Conduct:

#### Citizens' Responsibilities

- ii. Citizens must not be abusive, threatening, insulting or violent towards Members and Officers and must not wilfully harm or damage property owned by or belonging to the Council, Members or Officers.

## 1.2 Members of the Council (Councillors)

### Composition and Eligibility

- i. *Composition*: The Council comprises 101 Members (otherwise called Councillors) serving 69 wards – 37 single member wards and 32 two-member wards.
- ii. *Eligibility*: Only eligible persons, as defined by elections law, will be permitted to hold the office of Councillor.

### Election and Terms of Councillors

- iii. Birmingham will hold all out elections to the Council every fourth year. The term of office of councillors will normally be four years and four days.

### Roles and Functions of all Councillors

- iv. Key roles:
  - a) Collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions for the City Council;
  - b) Contribute to the good governance of Birmingham and actively encourage community participation and citizen involvement in decision making;
  - c) Responsibility to represent the interests of all the residents of the City Council area with special responsibility to the residents of their Ward;
  - d) Respond to constituents' enquiries and representations, fairly, promptly and impartially;
  - e) Balance different interests identified within the Ward and represent the Ward;
  - f) Maintain high standards of ethical conduct and behaviour.
- v. Rights and duties:
  - a) Councillors will have 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.
  - b) Councillors will not publicise 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.
  - c) For these purposes, "confidential" and "exempt" information are defined in Part C2 of the Constitution: *Access to Information* or as advised by the City Solicitor.

### Conduct

- vi. Councillors will at all times observe the Members' Code of Conduct and the Protocol on Member/Officer Relations set out in Part C of this Constitution.

#### **Allowances**

- vii. Councillors will be entitled to receive allowances in accordance with the Members Allowances Scheme. The [Members Allowances Scheme](#) is Section C10 of the Constitution and can be found on the Council's website.<sup>1</sup>
- viii. Councillors receive allowances to support them in carrying out their work as elected representatives. The size of the allowance for the various Councillor roles is decided by the City Council. In taking this decision, the Council must consider a report from an Independent Remuneration Panel. The Terms of Reference for the Independent Remuneration Panel can be found in [Part B17 Independent Remunerational Panel](#).

### **1.3 The Lord Mayor and the Deputy Lord Mayor**

- i. The Royal Charter of 1896 conferred the right of the First Citizen in Birmingham to be "styled, entitled and called" Lord Mayor of Birmingham.
- ii. The Lord Mayor will be elected annually by the Council. Members who are nominated and elected to the Office of Lord Mayor do so on the understanding that they will serve a full term as Deputy Lord Mayor for the following Municipal Year.

#### **Responsibilities**

- iii. The Lord Mayor will have the following responsibilities:
  - a) To uphold and promote Birmingham, its Constitution, and to give rulings on the Constitution during Council Meetings;
  - b) To preside over meetings of the Council so that its business can be carried out in an effective, orderly and efficient manner and in the interests of the citizens of Birmingham;
  - c) To promote public awareness, knowledge and participation in the business of the Council.

#### **Ceremonial Role**

- iv. The Lord Mayor, as the "First Citizen of Birmingham", will uphold and preserve the dignity and honour of the office. In particular, the Lord Mayor will remain apolitical and attend civic and ceremonial functions.

#### **Chairing the Council Meeting**

- v. The Lord Mayor (and in his/her absence the Deputy Lord Mayor) will chair Full Council meetings, so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the Community.

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<sup>1</sup> [https://www.birmingham.gov.uk/downloads/file/4222/members\\_allowances\\_scheme](https://www.birmingham.gov.uk/downloads/file/4222/members_allowances_scheme)

#### **Appointment of the Deputy Lord Mayor**

- vi. Should a Member due to take up the Deputy Lord Mayoralty fail to be re-elected to the City Council, or an incumbent is unable to complete his or her term, owing to ill health or similar disposition, the Party Group of the outgoing Deputy Lord Mayor will be asked to make an alternative nomination. This will be the last Member of their Group to hold the position of Deputy Lord Mayor prior to the outgoing Deputy Lord Mayor. Should that Member be unwilling to take up the Office, previous Lord Mayors of that Party will be approached, in reverse chronological order, until a Member willing to take on the role can be found.
- vii. Should the Party Group be unable to put forward an alternative name by this process, the Office shall then be offered to the previous Deputy Lord Mayor, regardless of their Party affiliation. If that individual is unwilling to assume the role, the previous Lord Mayors will be approached, again in reverse chronological order, until a Member, regardless of Party affiliation, willing to take on the role can be found.

#### **Consorts to the Lord Mayor and the Deputy Lord Mayor**

- viii. Whilst accompanying the Lord Mayor (or the Deputy Lord Mayor), the consort must support the work of the Lord Mayor (or the Deputy Lord Mayor) during his / her term of Office and uphold and preserve the dignity and honour bestowed upon the Lord Mayor (or the Deputy Lord Mayor) and the political impartiality of the Office.

### **1.4 The Leader of the Council**

- i. The Leader of the Council must be appointed by the Council and is appointed for a four year term or for up to the end of his / her term of office as a Member, whichever is shorter.
- ii. The Leader of the Council will hold office until:
  - a) S/he resigns from Office; or
  - b) S/he is disqualified from being a Councillor (although he/she may resume office at the end of the period of disqualification); or
  - c) S/he is no longer a Councillor; or
  - d) S/he is removed from Office by a resolution of no confidence passed by a simple majority resolution of the Council.
- iii. The Leader of the Council is empowered to make necessary in-year changes to the Cabinet Member Portfolios and appoint members of the Cabinet.
- iv. In the event of the post of the Leader of the Council becoming vacant for any of the reasons stated above, the Council shall appoint another Member of the Council to complete the remainder of the four year term of Office or up to the end of the new Leader's term of Office as a Member, whichever is shorter.
- v. If for any reason the Leader is unable to act, the Deputy Leader will act in his/her place.

vi. If for any reason:

- o the Leader is unable to act; and
- o the Deputy Leader is unable to act or the office of Deputy Leader is vacant

the Cabinet must act in the Leader's place, or arrange for a Cabinet Member to act in his/her place.

## 1.5 Cabinet Members

- i. Only Councillors may be appointed to the Cabinet. There may be no co-optees and no deputies or substitutes for Cabinet Members. Neither the Lord Mayor nor the Deputy Lord Mayor may be appointed to the Cabinet. Cabinet Members may not be Members of any Overview and Scrutiny arrangements although they are permitted to serve on the Regulatory Committees and Ward Forums.
- ii. Up to nine Cabinet Members may be appointed by the Leader of the Council and one should be designated as Deputy Leader. If it becomes necessary to appoint replacement(s) the Leader of the Council shall report his/her decision(s) at the next meeting of the Council. Cabinet Members shall hold office until:
  - a) They resign from Office or they are dismissed, either collectively or individually, by the Leader of the Council; or
  - b) They are disqualified from being Councillors (although they may resume office at the end of the period of disqualification); or
  - c) They otherwise leave or are required to leave office.
- iii. The decision-making role of Cabinet Members is set out in [B6 Executive Roles, Functions and Procedures](#).
- iv. The functions of individual Cabinet Members are set out in [B7 Cabinet Portfolios](#).

## 1.6 Cabinet Advisers

- i. Cabinet Advisers may be appointed by the Leader to support Cabinet Members. The positions will not receive a Special Responsibility Allowance and will not have any delegated decision-making authority. Cabinet Advisers will be invited to attend Cabinet as required.

## 1.7 Officers

- i. The title “Officers” refers to all employees and staff engaged by the Council to carry out its functions. This word has also been used instead of “employees” to cover those engaged under short term, agency or other non-employed situations.
- ii. The Council’s “Officers” give advice to the Councillors, implement decisions and manage the day to day delivery of its services. All Officers must ensure that they act within the law when carrying out the Council’s work.
- iii. The Employee Code of Conduct for Officers can be found in Part C6 *Employee Code of Conduct*.
- iv. The Council is empowered to engage Officers to carry out its functions.

### Statutory Officers

- v. The Statutory Officers of the Council are as follows:
  - a) **Head of Paid Service (Chief Executive)** – This is the Chief Executive of the Council. The Council must approve the appointment of the Head of Paid Service before a final offer of appointment is made to him/her. The Council must approve the dismissal of the Head of Paid Service before notice of dismissal is given to him/her (see Part C7 *Employee Procedure Rules – JNC Officers*).
  - b) **City Solicitor and Monitoring Officer**<sup>2</sup> – This role promotes the legality of decision making, high standards of conduct by Councillors and officers and supports the Standards Committee.
  - c) **Chief Finance Officer** – This role is responsible for ensuring the sound financial administration of the Council.
  - d) **Returning Officer and Electoral Registration Officer** – This will be the Assistant Director, Governance.
  - e) **Scrutiny Officer** – This role promotes the Overview & Scrutiny functions of the Council. This will be the Head of Scrutiny and Committee Services.

### Council Leadership Team (CLT)

- vi. The full Council will engage persons for the following posts, who will be designated Chief Officer and will have the functions and responsibilities set out in Part E of this Constitution. The composition of CLT is a matter for the Chief Executive.
  - o Chief Executive (& Head of Paid Service<sup>3</sup>)
  - o ~~Strategic Director, Council Management~~ (& s151 officer<sup>4</sup>)

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<sup>2</sup> Designated under Section 5 Local Government and Housing Act 1989

<sup>3</sup> Designated under Section 4 Local Government and Housing Act 1989

<sup>4</sup> Appointed in accordance with Section 151 Local Government Act 1972



- o Strategic Director, Adult Social Care (& Director of Adult Social Services<sup>5</sup>)
- o Strategic Director, Place, Prosperity and Sustainability
- o Strategic Director, Children and Families (& Director of Children's Services<sup>6</sup>)
- o Strategic Director, City Operations
- o Strategic Director, City Housing
- o Director of Strategy, Equality and Partnerships
- o Director, Digital & Customer Services
- o Director, Public Health
- o Director, People Services
- o Director, Transformation
- o City Solicitor (Monitoring Officer)
- o Chief Executive, Children's Trust
- o Programme Director, Commonwealth Games
- o Assistant Director, Corporate Communications

vii. Further information regarding the Senior Leadership Team can be found [here](#).

#### Member / Officer Relations Protocol

- viii. Birmingham City Council is committed to promoting a culture that demonstrates its core values and behaviours. Members and Officers in conducting their working relationships with each other are expected to promote this culture and do so by acting in a respectful and professional manner. There is a high standard of conduct expected of both Members and Officers at all times.
- ix. Failure to follow the expected conduct by either Members or Officers is considered a serious issue by the Council and will be dealt with in accordance with the Council's policies and procedures and/or in accordance with the Member's Code of Conduct.
- x. The full Member / Officer Relations Protocol can be found in Part C5 *Member/Officer Protocol*.

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Director, Human Resources¶  
Chief Executive, Children's Trust¶  
Programme Director, Commonwealth Games

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<sup>5</sup> Appointed under Section 6 Local Authority Social Services Act 1970

<sup>6</sup> Appointed under Section 18 Children Act 2004

## B2. RESPONSIBILITY FOR FUNCTIONS

### 2.1 Introduction

- i. Functions fall into the following categories:

#### 1. Local Choice Functions

- ii. These are functions which the authority may treat as the responsibility of the Executive (in part or whole) or as Council (non-executive) functions, at its discretion.
- iii. Section 2.2 sets out these functions and shows who is authorised to discharge them.

#### 2. Council (non-executive) Functions

- iv. These are functions which, under the law, cannot be the responsibility of the Executive. In some cases, such as adopting the Council's budget or the Policy Framework, only full Council may discharge the function. In other cases, the Council may delegate the responsibility for discharging a function to a committee or an officer.
- v. Section 2.3 sets out these functions and shows who is authorised to discharge them.

#### 3. Executive Functions

- vi. All other functions are executive functions. Decisions on these will be taken by the Executive, unless they are dealt with under joint arrangements or delegated to an officer.
- vii. Section B7: [Cabinet Portfolios](#) sets out how these functions are allocated and Section E sets out the Scheme of Delegations for officers.

### 2.2 Local Choice Functions

- i. Local Choice functions are those which the authority may treat as the responsibility of the Executive (in part or whole) or as Council (non-executive) functions, at its discretion. The table below sets out how these are treated in Birmingham.

Local Choice Functions <sup>7</sup>	Decision Making Body	Delegation of functions to Committees or officers
Functions under a local Act (other than one specified or referred to in Reg 2 or Schedule 1 of the Regulations 2000)	Cabinet	The relevant Director for the function concerned.
To determine appeals against any decision of the authority where there is a right of appeal to a council committee (this excludes matters where statutory arrangements exist)	Council Business Management Committee	-

<sup>7</sup> Local Authorities (Functions and Responsibilities) Regulations 2000, Schedule 2

To appoint review boards under the Social Security Act 1998 <sup>8</sup>	Full Council	City Solicitor
To make arrangements for appeals against exclusion of pupils from maintained schools	Cabinet	<u>Strategic Director, Children and Families</u> OR the City Solicitor
To make arrangements for appeals regarding school admissions <sup>9</sup>	Cabinet	<u>Strategic Director, Children and Families</u> OR the City Solicitor
To make arrangements for appeals by governing bodies against a decision of the Local Authority to admit a child to whom s.87 of the School Standards and Framework Act 1998 applies <sup>10</sup>	Cabinet	<u>Strategic Director, Children and Families</u> OR the City Solicitor
To make arrangements for appeals by governing bodies	Cabinet	<u>Strategic Director, Children and Families</u>
Any function relating to contaminated land <sup>11</sup>		<u>Strategic Director, City Operations</u>
a) to the extent that the function involves the formulation of a strategic policy	Cabinet	
b) to the extent that the function does not involve the formulation of strategic policy	Council	
The control of pollution or the management of air quality <sup>12</sup>		<u>Strategic Director, Place, Prosperity and Sustainability and Strategic Director, City Operations</u>
a) to the extent that the function involves the formulation of a strategic policy	Cabinet	
b) to the extent that the function does not involve the formulation of strategic policy	Council	
To serve an abatement notice in respect of a statutory nuisance <sup>13</sup>	Council	Licensing and Public Protection Committee  <u>Strategic Director, City Operations</u>

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<sup>8</sup> s34(4) Social Security Act 1998

<sup>9</sup> S94(1), (1A) and (4) School Standards and Framework Act 1998

<sup>10</sup> S95(2) School Standards and Framework Act 1998

<sup>11</sup> Part IIA Environmental Protection Act 1990 and subordinate legislation

<sup>12</sup> Pollution Prevention and Control Act 1999; Part IV Environment Act 1995; Part I Environmental Protection Act 1990; Clean Air Act 1993

<sup>13</sup> s80(I) Environmental Protection Act 1990

To pass a resolution that Schedule 2 of the Noise and Statutory Nuisance Act 1993 should apply in the authority's area <sup>14</sup>	Council	<u>Strategic</u> Director, <u>City Operations</u>
To inspect the authority's area to detect any statutory nuisance <sup>15</sup>	Cabinet	<u>Strategic</u> Director, <u>City Operations</u>
a) to the extent that the function involves the formulation of a strategic policy	Cabinet	
b) to the extent that the function does not involve the formulation of strategic policy	Council	
To investigate any complaint about the existence of a statutory nuisance <sup>16</sup>	Council	<u>Strategic</u> Director, <u>City Operations</u>
To obtain information about interests in land <sup>17</sup>	Cabinet	<u>Strategic</u> Director, <u>Place, Prosperity and Sustainability</u>
To obtain particulars of persons interested in land <sup>18</sup>	Cabinet	<u>Strategic</u> Director, <u>Place, Prosperity and Sustainability</u>
To make agreements for the execution of highways works <sup>19</sup>	Cabinet	<u>Strategic</u> Director, <u>Place, Prosperity and Sustainability</u> and <u>Strategic</u> Director, <u>City Operations</u>
To make agreements with other local authorities for the placing of staff at the disposal of those other authorities	Cabinet	Chief Executive
To appoint any individual to any office other than an office in which he is employed by the authority and to revoke any such appointment:		Chief Executive
to the extent that appointments are to outside bodies in connection with functions which are the responsibility of the Executive	Cabinet	
to the extent that appointments are not the responsibility of the Executive	Full Council	

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<sup>14</sup> s8 Noise and Statutory Nuisance Act 1993

<sup>15</sup> S79 Environmental Protection Act 1990

<sup>16</sup> s79 Environmental Protection Act 1990

<sup>17</sup> s330 Town and Country Planning Act 1990

<sup>18</sup> s16 Local Government (Miscellaneous Provisions) Act 1976

<sup>19</sup> Section 278 Highways Act 1980

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## 2.3 Council (Non-Executive Functions)<sup>20</sup>

Function	Decision Making Body	Delegation of functions to officers. <sup>21</sup>
Functions relating to planning and development control  (Formulation of a strategic policy sits with the Executive, unless otherwise specified in legislation)	Planning Committee	Strategic Director, <u>Place, Prosperity and Sustainability</u>
Functions relating to licensing and registration  (Formulation of a strategic policy sits with the Executive, unless otherwise specified in legislation)	Licensing and Public Protection Committee	Strategic Director, <u>City Operations</u>
Adoption and revision of the Statement of Licensing Policy (Licensing Act 2003)	Full Council	-
Adoption and revision of the Statement of Gambling Policy (Gambling Act 2005)	Full Council	-
Functions relating to health and safety at work		Director, <u>People Services</u>
Functions relating to Electoral Registration and the holding of elections	Council Business Management Committee	Returning Officer Electoral Registration Officer
Functions relating to name and status of areas and individuals including power to:  change the name of a county, district  confer title of honorary alderman  admit to be an honorary freeman	Council Business Management Committee	Chief Executive
Functions relating to Community Governance	Full Council / Council Business Management Committee	Chief Executive
Power to make, amend, revoke or re-enact byelaws	Full Council	-

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<sup>20</sup> <http://www.legislation.gov.uk/ukxi/2000/2853/schedule/1/made>

<sup>21</sup> As set out in Part E: Scheme of Delegations

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Power to promote or oppose local or personal Bills	Full Council	-
Functions relating to pensions and power to make payments or provide other benefits in cases of maladministration etc	Council Business Management Committee	Chief Finance Officer
To make arrangements for proper administration of financial affairs etc <sup>22</sup>	Audit Committee	Chief Finance Officer
Budget and Policy framework <sup>23</sup> To amend, modify, revise, vary, withdraw or revoke any plan or strategy detailed in the policy framework.  Duty to approve authority's statement of accounts, income and expenditure and balance sheet or record of receipts and payments (as the case may be).	Full Council	<u>Strategic Director, Council Management and Director, Strategy, Equality and Partnerships</u>
Constitution <ul style="list-style-type: none"><li>• To adopt / amend this Constitution</li><li>• Power to make standing orders</li><li>• Power to make standing orders as to contract</li></ul>	Full Council	City Solicitor
Discharge of Functions To make arrangements for the appointment of Committees and discharge of Council's functions	Full Council	City Solicitor
Appointment to Outside Bodies To appoint representatives to outside bodies unless the appointment is an Executive function or has been specifically delegated by the Council	Full Council	-
Members Allowances Scheme To make, amend, revoke or replace a Members' allowances scheme	Full Council	City Solicitor

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<sup>22</sup> Item 39 of Para. I of Schedule 1 of the 2000 Regulations

<sup>23</sup> Regulation 4(4) of the 2000 Regulations

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Functions to be discharged by the authority, by virtue of other enactments. <sup>24</sup>  To discharge any function which by virtue of any enactment passed or made before the making of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, may be discharged only by an authority.	Full Council	-
To appoint officers for particular purposes (appointment of proper officers). <sup>25</sup>	Full Council	Each <u>Chief Officer</u> is appointed as the Proper Officer for matters within his/her remit. The Chief Executive is appointed as the Proper Officer for the purpose of any other matter
To designate an officer as the head of the authority's paid service, and to provide staff etc. <sup>26</sup>	Full Council	The Chief Executive is appointed as Head of Paid Service
To designate an officer as the Monitoring Officer, and to provide staff etc. <sup>27</sup>	Full Council	The City Solicitor is appointed as the Monitoring Officer
To adopt, revise or replace a Members' Code of Conduct. <sup>28</sup>	Full Council	City Solicitor
Exercise the administrative powers and duties of Full Council (as Trustee) in relation to all trusts for which the Council is sole trustee	Trusts & Charities Committee	City Solicitor
Miscellaneous functions:  Power to create footpaths and bridleways.  Power to stop up footpaths and bridleways.  Power to divert footpaths and bridleways.  Duty to assert and protect the rights of the public to use and enjoyment of highways.  Powers relating to the removal of things so deposited on highways as to be a nuisance.	-	<u>Strategic</u> Director, <u>Place, Prosperity and Sustainability</u>

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<sup>24</sup> Regulation 2(11) of the 2000 Regulations

<sup>25</sup> Item 40 of Para. I of Schedule 1 of the 2000 Regulations

<sup>26</sup> Item 43 of Para I of Schedule 1 of the 2000 Regulations

<sup>27</sup> Item 44 of Para I of Schedule 1 of the 2000 Regulations

<sup>28</sup> Section 28 Localism Act 2011

Duty to keep a definitive map and statement under review.		
Duty to reclassify roads used as public paths.		
Powers relating to the preservation of trees.		
Powers relating to the protection of important hedgerows.		
Power to make limestone pavement order.		



## B3. DECISION MAKING

### 3.1 Who Can Take Decisions in the Council?

- i. One of the primary purposes of the Constitution is to make it clear where responsibility for a particular function lies, and which person or body (Full Council, Committee, Sub-Committee, Executive (whether acting individually or collectively) or Officer) makes the decision that will result in an action being taken or not taken.

#### A) Council Decisions

- ii. Council Decisions are made in relation to Council functions, as defined by the Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended; and in accordance with section B4 [Full Council Roles, Functions and Procedure Rules](#) of this Constitution.
- iii. Some functions are delegated to [Council Business Management Committee](#) in accordance with section B5 of this Constitution, or to officers as set out in Part E Scheme of Delegations.

#### B) Executive Decisions

- iv. Executive Decisions are made in relation to Executive functions, as defined by the Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended; and in accordance with section B6 [Executive Roles, Functions and Procedure Rules](#) of this Constitution.
- v. There are three types of Executive decision in Birmingham:
- Key Decisions (see paragraph [vi-vii](#) below);
  - Cabinet Member decisions based on a Chief Officer report (see paragraph [ix](#) below);
  - An executive decision delegated to officers (see paragraph [xii](#) below).
- vi. A decision will be a “**key decision**” if:
- a) it is an Executive decision relating to the discharge of an Executive function
- b) AND is likely to result in the local authority incurring expenditure which is, or the making of savings which are, significant:
- In the case of capital projects, if they involve entering into new commitments and/or making savings in excess of £1M; or
  - In the case of revenue projects, if they involve entering into new commitments and/or making new savings at the value of, or in excess of, £500,000 (gross value).
- OR is significant in terms of its effect on communities living or working in an area comprising two or more Wards in the area of the local authority.
- vii. “Key decisions” ~~taken by Cabinet~~ **must be done so by** acting jointly and in accordance with the provisions of this Constitution as set out in B6.2 [Cabinet](#).

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viii. The following shall be exempt from the definition of a key decision.<sup>29</sup>:

a) Any decision where the expenditure, saving or income will result from:

- o A Treasury Management decision in relation to the making, payment or borrowing of a loan or investment in accordance with the treasury management strategy and policy (see [B4.2i b](#));<sup>30</sup> or
- o A decision to purchase energy under the terms of an energy supply contract which has been awarded following the appropriate procurement process;<sup>31</sup> or
- o A decision to approve a care plan which the Council has a duty or power to provide as defined by s25 of Care Act 2014, s46 of National Health Service and Community Care Act 1990 and s2 of the Chronically Sick and Disabled Persons Act 1970; or ss17 and 20 Children Act 1989;<sup>32</sup> or
- o The settlement of proceedings to which Birmingham City Council is a party;<sup>33</sup> or
- o An urgent decision necessary out of office hours taken in accordance with the Council's Emergency Management Plan by the Officer acting at Gold or Silver level at the relevant time.<sup>34</sup>

**Commented [CS1]:** These first two bullet points have been deleted as per vi) above if they are capital expt under 1m they won't be a key decision, and likewise if no revenue in excess of 500,000. The same applies for the now deleted Gold/Silver decisions bullet point.

**Commented [CS2]:** Bullet point deleted. This is because for confidential settlement proceedings, it doesn't stop reg 8 being engaged as a key decision. It's just that reg 9(1) allows you to withhold particulars about it that are confidential.

**Commented [CS3]:** Deleted for the reasons set out above i.e. Gold/Silver decisions are covered by vi) above.

b) Any decision which is a direct consequence of implementing a previous Key Decision as set out in that report (including where specifically set out as a delegation in a Cabinet report).

c) Any decision covered by the specific delegations set out in Part D (Procurement and Contract Governance Rules) or Part E3.2 of the Constitution (Chief Officer Delegations), providing those decisions do not fall within the definition of a key decision at B3.1 vi) above.

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ix. Executive decisions at or above the Chief Officer limit of £200,000 and under £500,000 (revenue) or £1m (capital) are taken by **Cabinet Members** based on reports from Chief Officers as set out in [B6.5 Cabinet Member and Chief Officer Decision Making](#).

x. Executive decisions may also be taken by a [Cabinet Committee](#).

### C) Committees

xi. Committees will exercise the functions set out in Sections B12-15 (regulatory), and section B11 (Overview & Scrutiny) of the Constitution.

<sup>29</sup> Decisions falling within these exemptions shall be treated as officer delegated decisions following consultation with the relevant Cabinet Member. The Chief Officer must notify the Chief Finance Officer in writing, of the circumstances and financial impact and report formally to the relevant Cabinet Member.

<sup>30</sup> To be reported to Cabinet in the Quarterly Finance Monitoring reports

<sup>31</sup> To be reported to Cabinet in the Quarterly Finance Monitoring reports

<sup>32</sup> To be reported in the half yearly delegations reports (see [B6.8](#))

<sup>33</sup> See Part A: Finance, Contract and Legal Matters – Legal Proceedings; to be reported to the Deputy Leader as required

<sup>34</sup> To be reported to the Cabinet as required

#### **D) Officers**

- xii. Officers will exercise executive or non-executive functions as delegated by Cabinet or by City Council, or as set out in Part E (Scheme of Delegations) of the Constitution.

#### **E) Ward Forums**

- xiii. Ward Forums will exercise the functions set out in Section B10.

#### **F) Urgent Decisions**

- xiv. In an urgent situation, an executive decision may be agreed by the Chief Executive following consultation with the Leaders of the Political Groups.
- xv. An urgent decision is defined as one which could not reasonably have been foreseen or anticipated prior to the most recent Cabinet or Committee meeting, and which needs to be considered before the next meeting of the Cabinet/Committee. Decisions made under this provision will be reported to the next meeting of the Cabinet/Committee.

### **3.2 Principles of decision-making**

- i. Good decision making involves the realistic evaluation of alternatives and public consultation, including public access to decision-making. All decisions of the Council will be made in accordance with the following guiding principles:
  - a) Legality/power to make decisions;
  - b) Proportionality (i.e. the action must be proportionate to the desired outcome);
  - c) A proper consideration of available options for action and/or inaction;
  - d) Due consultation and the taking of professional advice from Officers;
  - e) Due regard to the public sector equality duty and respect for human rights;
  - f) A presumption in favour of openness and transparency of decision making;
  - g) Clarity of aims and desired outcomes (including giving reasons for the decision); and
  - h) Avoidance of conflicts of interest.

### **3.3 General Roles and Responsibilities of Members and Officers**

- i. The effect of these arrangements is that Members set policy priorities and strategies to reflect local interests and needs and are also responsible for allocating funding between individual priority areas. Directors and their staff implement these strategies and policies by delivering services and major initiatives. It is officers, therefore, who have responsibility for managing the Council's day to day operations, within a policy and budgetary framework laid down by Members.

- ii. For further information on the Member Officer Protocol and Codes of Conduct, see Part C of this Constitution.

## **B4. FULL COUNCIL ROLE, FUNCTION AND PROCEDURE RULES**

### **4.1 Role of the Full Council**

- i. The Full Council's primary role is to consider and approve the Council's Policy Framework and Annual Budget and to appoint the Leader of the Council. The Full Council also holds to public account the Members of the Executive, Overview & Scrutiny and Regulatory Committees.
- ii. Some functions are delegated to [Council Business Management Committee](#) (Section B5).
- iii. The meeting of the Full Council will be conducted in accordance with the rules of procedure set out below (see section 4.2).

#### **Policy Framework**

- iv. The Policy Framework means the policies, plans or strategies to be approved or debated by the Full Council as set out below:
  - a) Annual Budget and Pay Policy
  - b) Those required by the Local Authorities (Functions and Responsibilities) (England) 2000 to be adopted by the Council <sup>35</sup>:
    - o Community Safety Strategy.<sup>36</sup>
    - o Statement of Licensing Policy under the Licensing Act 2003
    - o Statement of Licensing Principles under the Gambling Act 2005 <sup>37</sup>
    - o Plans and strategies which together comprise the Development Plan
    - o Youth Justice Plan.<sup>38</sup>
  - c) Other plans and strategies adopted by the City Council:
    - o Birmingham City Council Plan
  - d) Housing Land Transfer: the approval or adoption of applications (whether in draft form or not) to the Secretary of State to dispose of land used for residential purposes where approval is required under sections 32 or 43 of the Housing Act 1985.
  - e) Additional plans and strategies may be approved or adopted as part of the Policy Framework from time to time. These should include those plans or strategies that:
    - o Are significant in terms of the effect on communities living or working across all wards;
    - o Commit the Council to significant expenditure over and above that already in the budget or over a long period of time;

<sup>35</sup> Some elements of the 2000 Regulations have been repealed by subsequent legislation.

<sup>36</sup> This fulfils the requirement to produce a Crime and Disorder Reduction Strategy

<sup>37</sup> This is the policy statement under the Gambling Act 2005

<sup>38</sup> Section 40 Crime and Disorder Act 1998

- Are significant in terms of its effect on the council's priorities;
  - Have regional or national significance.
- v. A forward plan of policies, plans or strategies to be considered by Full Council will be published at each Council Business Management Committee meeting.

## 4.2 Functions of the Full Council

- i. Only the full Council will exercise the following functions:
  - a) Adopting and approving changes to the Constitution (as set out in Part A, Annex A);
  - b) Approving the overall revenue budget, the allocations of revenue resources to Directorates, the initial capital programme at the commencement of each year, the level of Council Tax and Council Tax support, the Prudential indicators, the Prudential borrowing limit, the treasury management strategy and policy;
  - c) Making decisions on matters which could have been (but were not) covered by the Policy Framework;
  - d) Electing the Leader of the Council every four years or as and when required;
  - e) Agreeing and/or amending the terms of reference for committees (other than Cabinet Committees), deciding on their membership and making appointments to them, including the Chair, subject to the legal rules regarding proportionality between the different political parties;
  - f) Appointing representatives to outside bodies unless the appointment is an Executive function or has been specifically delegated by the Council;
  - g) Adopting and revising a Member Code of Conduct;
  - h) To make, amend, revoke or replace a Members' allowances scheme;
  - i) Changing the name of the district;
  - j) Conferring the title of Honorary Alderman or Freedom of the City;
  - k) Confirming the appointment of the Head of Paid Service/Chief Executive;
  - l) Approving the dismissal of the Head of Paid Service/Chief Executive, Chief Finance Officer and Monitoring Officer;
  - m) To appoint an electoral registration officer and returning officer for local government elections;
  - n) Making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or private Bills;
  - o) Receiving statutory officer reports of the Monitoring Officer, Section 151 officer and Head of Paid Service and other external auditor public interest reports;

- p) Receiving and considering reports referred to it from Cabinet Members, Overview and Scrutiny Committees, the Council Business Management Committee and the Standards Committee; and
  - q) All other non-executive matters which by law must be reserved to Council.
- ii. Other non-executive matters are delegated to Council Business Management Committee or any of its sub-committees or to other committees.
- iii. **Recorded vote on the Council's budget and council tax:** In accordance with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014, a recorded vote will be taken at Full Council and Cabinet on any vote in respect of the Council's budget and council tax. The names of Members who voted for or against such a decision or abstained shall be recorded and entered into the minutes of the relevant meeting. A recorded vote shall also be taken on any proposed amendments in relation to the budget and council tax.
- iv. Full Council sitting as "Council as Trustee" will be responsible for decisions concerning the use and/or disposal of charity property and assets, and will delegate the management of any City Trust to the [Trusts and Charities Committee](#) (section B15), with assistance from the Legal Services Team as and when required.

### 4.3 Appointments Reserved to the Full Council

Committee	No. Appointed
Local Government Association (General Assembly)	4
West Midlands Fire & Rescue Authority	10
West Midlands Police and Crime Panel	3
West Midlands Shareholders Airport Committee	1 plus 2 observers
Departmental Consultative Committees	1 on each
National Association of Councillors	1
Joint Scrutiny Committee for Supervisory Board of the Greater Birmingham and Solihull Local Enterprise Partnership	1
West Midlands Combined Authority (WMCA) Board (and Boards as required)	1 (and to Boards as required)
WMCA Overview and Scrutiny Committee	3
Transport Delivery Committee	7
WMCA Audit, Risk & Assurance Committee	1
WM Growth Company – Board of Directors	1
Interim Standing Advisory Council on Religious Education	8
City Housing Liaison Board	3
Safety at Sports Grounds Advisory Groups	Up to 4 members per group <sup>39</sup>

- v. Information on appointments to other outside bodies can be found in Section B8 [Appointments to Outside Bodies](#).

### 4.4 Council Procedure Rules

#### A. Annual Meeting

- i. In a year when there is an ordinary election of Councillors, the annual meeting will take place within 21 days of the retirement of the outgoing Councillors. In any other year, the annual meeting will take place in March, April or May.
- ii. The annual meeting will:
- Receive the annual report of the outgoing Lord Mayor;
  - Elect the Lord Mayor;
  - Make a presentation to the retiring Lord Mayor and Consort;
  - Appoint the Deputy Lord Mayor;
  - Agree the allowances to be made to the Lord Mayor and the Deputy Lord Mayor in office;

<sup>39</sup> Appointments must be in line with agreed policy



- Approve a programme of ordinary meetings of the Council for the year;
- Receive a report from the Returning Officer of the persons elected Councillors of the City at the last election and the making of the declarations of acceptance of office (if applicable);
- Receive the Lord Mayor's announcements and such communications as the Lord Mayor may wish to place before the Council.
- Elect the Leader (every four years or as required) and receive an announcement of Cabinet Members and Cabinet Advisers (as required);
- Receive and deal with petitions in accordance with this Constitution;
- Consider any recommendations made by the Council Business Management Committee;
- Make appointments to Committees and other bodies for the period of the municipal year; and
- Consider any business set out in the notice convening the meeting.

#### **B. Ordinary Council Meeting**

- i. All ordinary meetings shall be held at the **Council House, Birmingham**, at **2.00pm**, unless Full Council or Council Business Management Committee decides otherwise.
- ii. The order of business and the indicative timescales at every ordinary meeting of the Full Council shall usually be:

Standard Item	Time Limits	Indicative Timetable
Minutes, Lord Mayor's Announcements	10 minutes for Lord Mayor's Announcements - no presentations.	2.00 – 2.10 p.m.
Petitions	10 minutes	2.10 – 2.20 p.m.
<b>Holding to Account</b>		
Question time	<p>70 minutes</p> <p>Questions from members of the public to any Cabinet Member or Ward Forum Chair.<sup>40</sup></p> <p>Questions from any Councillor to a Committee Chair, Lead Member of a Joint Board or Ward Forum Chair.<sup>4</sup></p> <p>Questions from Councillors other than Cabinet Members to a Cabinet Member.<sup>41</sup></p> <p>Questions from Councillors other than Cabinet Members to the Leader or Deputy Leader.<sup>5</sup></p>	<p>2.20 – 3.30 p.m.</p> <p>20 minutes</p> <p>1 minute for each question</p> <p>2 minutes for each answer</p> <p>10 minutes</p> <p>1 minute for each question</p> <p>2 minutes for each answer</p> <p>20 minutes</p> <p>1 minute for each question</p> <p>3 minutes for each answer</p> <p>20 minutes</p> <p>1 minute for each question</p> <p>3 minutes for each answer</p>
Executive Business Report / Scrutiny Business Report / Lead Member Report	<p>45 minutes</p> <p>7 minutes presentation</p> <p>4 minutes per speaker</p> <p>5 minutes to respond</p>	3.30 – 4.15 p.m.
BREAK	(the Lord Mayor should have the flexibility to call this earlier or later as the meeting progresses)	4.15 – 4.45 p.m.
<b>Policy Development / Council Business</b>		
Policy Framework Plans; inquiry reports from Scrutiny; reports from CBM or the Executive; appointments; petition debates	<p>60 minutes</p> <p>7 minutes presentation</p> <p>4 minutes per speaker</p> <p>5 minutes to respond</p>	4.45 – 5.45 p.m.
<b>Members' Debate</b>		
Motions submitted by individual Councillors rotated equally between the political groups as determined by CBM	<p>Motions for debate –</p> <p>7 minutes presentation</p> <p>4 minutes per speaker</p> <p>5 minutes to respond</p>	5.45 – 7.15 p.m.

- iii. The business under any notice on the meeting agenda shall not proceed in the absence of the Member under whose name it is proposed, unless they have given authority in writing for it to be taken up by some other Member or Members of the Council;

<sup>40</sup> Where the Chair is not a councillor, the question may be directed to the ward councillor to answer on behalf of the resident Chair.

<sup>41</sup> Each Councillor may ask one question and one supplementary question

- iv. The time allowed for speeches shall be up to 7 minutes for the mover of a Motion or Amendment to the Motion, with up to 4 minutes each for other Members wishing to participate in the debate and a right of reply for the mover of the Motion only of up to 5 minutes.
- v. The Lord Mayor shall have the discretion to allocate unused time to the next item, with the proviso that each item should start no later than the time indicated on the agenda.
- vi. The order of business and the time limit allocated to items on the Agenda may be varied by agreement of the three political groups at Council Business Management Committee or, in the absence of such agreement, by a resolution passed on a Motion which, after being moved and seconded, shall be put to the vote without discussion.
- vii. A motion to extend the time of the meeting may only be moved by the Leader or Deputy Leader (or their nominee) of one of the Party Groups and seconded by the Leader or Deputy Leader (or their nominee) of another Party Group.
- viii. If a meeting of the Council has not come to an end by 7:15p.m and there are items remaining on the agenda, the following procedure shall apply:
  - At the conclusion of the speech then being delivered, the Lord Mayor shall allow the mover of the motion then under debate to exercise his/her right of reply and shall then put the motion to the vote;
  - In respect of any remaining items of business, the Lord Mayor shall allow motions to be moved and seconded formally (without comment) and shall forthwith put the motions to the vote without discussion; and
  - The Lord Mayor shall then close the meeting.
- ix. Question time (including questions from the public) and motions for debate submitted by individual Councillors will be excluded from the agenda at the Annual Meeting and the Annual Budget Meeting of the Council.

#### **C. Extraordinary Meetings of the Council**

- i. Extraordinary meetings of the Council are meetings that take place in addition to an Ordinary Meeting or the Annual Meeting. These may be called by:
  - Resolution of the Council;
  - The Lord Mayor;
  - The Chief Executive and the City Solicitor acting together;
  - Petition of any five Councillors to the Lord Mayor.
- ii. The City Solicitor shall, in calling an Extraordinary Meeting of the Council, restrict the business on the summons to that required by law, any matter or matters that the Chief Executive, Monitoring Officer or Chief Financial Officer wish to raise and the business for which the Extraordinary Meeting has been called. Such business should be relevant to any

of the Council's Policy Framework Plans and/or the Budget Framework and urgent, so cannot be dealt with at the next scheduled meeting.

- iii. The City Solicitor in consultation with the Lord Mayor shall determine the time and day of any Extraordinary Meeting in accordance with the Constitution and following consultation with the group leaders, but shall endeavour to arrange any such meeting to be held, where reasonably practical, at 2:00 pm on a Tuesday, within 10 working days of the request being received, subject to any statutory requirements.

#### D. Record of Attendance and Quorum

- i. The Monitoring Officer shall record the attendance of Councillors.
- ii. A Quorum is 30 Councillors.
- iii. If during any meeting of the Council, any Member draws to the attention of the Lord Mayor that there does not appear to be a quorum present, the Lord Mayor shall direct the Chief Executive to call over the names of the Members of the Council. If there are fewer than 30 members present, the Lord Mayor shall declare the meeting adjourned. The names of the Members present and those absent shall be recorded in the minutes of the Council.

#### E. Petitions

- i. Every petition to the Council meeting shall be in writing presented by a Councillor.
- ii. A Councillor presenting a petition, or the Lord Mayor (on behalf of Councillors who have submitted their petitions to the Monitoring Officer in advance of the meeting), may move without comment that the petition(s) be received and referred to the relevant Chief Officer(s) to examine and respond appropriately.
- iii. At each meeting of the City Council, the Monitoring Officer shall ensure that an "Update Report" is electronically available for Members providing relevant details on the progress, or otherwise, of any petitions received by the City Council since the last Annual General Meeting. Where a petition has been discharged, the Update Report does not need to mention the same.<sup>42</sup>

#### F. Questions (Oral and written)

- i. **All questions**, whether oral or written, must:
  - Refer to an issue which affects Birmingham or its residents, or falls within the Council's responsibilities;

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<sup>42</sup> Petitions in response to licence applications are subject to a statutory process. They must be served upon the Licensing Service without delay in order to ensure statutory deadlines are complied with. They may still be presented to the meeting.

- Not be defamatory, frivolous, vexatious or offensive;
  - Not require the disclosure of confidential or exempt information, or refer to legal proceedings being taken or being anticipated by or against the Council;
  - Not refer to individual planning or licensing matters, or any matter of a personal nature.
- ii. **Written Questions:** any Councillor may ask one written question (with no sub-questions) of any Cabinet Member, Committee Chair, Ward Forum Chair <sup>43</sup>, Lead Councillor for a West Midlands Joint Authority or Ward Forum Chair by submitting the question by email to the Monitoring Officer by no later than 1200 hours on the Tuesday prior to the day of the Council meeting (except at the Council's AGM). A copy of each such question and the written answer shall be supplied to every Councillor at the start of the Council meeting and shall also be annexed to the Minutes of the meeting.
- iii. **Oral Questions – Questions from Members of the Public:** Except at the Annual Meeting and the budget meeting, a member of the public may ask one oral question of any Cabinet Member by submitting the question in writing to the Monitoring Officer no later than 12 noon on the Friday before the Council meeting. No question will exceed 1 minute and no answer will exceed 2 minutes. Members of the public may ask questions as set out in the order of business and in accordance with these rules of procedure. The question must not be substantially the same as a question which has been put at a meeting of the Council in the past 6 months.
- iv. **Oral Questions – Questions from Councillors:** Except at the Annual Meeting and budget meeting, Councillors may ask questions as set out in the order of business above and in accordance with these rules of procedure.
- v. The Leader of the Opposition will be called first to put their question at oral questions with the leaders of other groups also called during the session.

#### G. Notices of Motions

- i. A motion to be submitted to the Council **must:**
- Be relevant to any of the Council's Policy Framework Plans and/or the Budget Framework.
  - Be relevant to some matter in relation to which the Council has powers or duties or which affects Birmingham or its residents;
  - Not seek to take a decision in respect of a matter which is the responsibility of the Executive (other than to make a recommendation);
  - Not require the disclosure of confidential information or refer to legal proceedings being taken or being anticipated by or against the Council.

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<sup>43</sup> Where the Chair is not a councillor, the question may be directed to the ward councillor to answer on behalf of the resident Chair.

- ii. The order of motions submitted for each ordinary meeting will be determined by the Council Business Management Committee at the start of each municipal year. This will be set out on the agenda for each meeting.
- iii. A motion must be in writing and signed by two members and must be delivered to the Monitoring Officer at any time between the end of the previous ordinary Council meeting and seven clear working days before the Council meeting at which it is to be debated.
- iv. These are then reviewed by the Monitoring Officer who will seek appropriate amendments from the proposer of the Motion, so as to ensure compliance with any legal and/or constitutional aspects. In the event that the proposer is unable to agree, the proposed Motion will not appear on the agenda for the Council meeting.
- v. If, at any time during the debate on any Motion before the Council, it appears to the Lord Mayor that the motion (in its original, modified or amended form) would, if carried:
  - have the effect of materially increasing the expenditure, or materially decreasing the revenue, of the Council; or
  - involve capital expenditure not provided for in the Council's approved capital budgetthe Lord Mayor will direct that the motion shall stand adjourned without further debate in order that the Executive may consider any financial, policy or other implications of the motion and request the Executive to submit its recommendations to a future meeting of the Council.
- vi. Two motions for debate will be accepted at each ordinary meeting. No motions for debate under this rule of procedure are permitted for the meeting of the City Council reserved for the Annual Budget debate and at the Annual Meeting.

#### H. Amendments to Motions

- i. The Lord Mayor may permit amendments to be discussed (but not voted on) together if circumstances suggest that this course would facilitate the proper conduct of the business of the Council.
- ii. An amendment shall be relevant to the motion and shall be –
  - To leave out specified words; or
  - To insert or add specified words; or
  - To refer a subject of debate to the Executive or to a committee for consideration or re-consideration.but any omission, insertion or addition of words shall not result in substance in a direct negation of the motion before the Council.
- iii. Every amendment shall, unless the Lord Mayor otherwise indicates, be put into writing, signed by the mover and delivered to the Monitoring Officer before it is moved.

- iv. At the Annual Budget meeting, the main opposition group's amendment should be taken first.
- v. Once voting on any motion or amendment has commenced, there shall be no further debate on the matter under consideration and no further amendments may be moved to the original motion. If an amendment is carried, the motion, as amended, shall take the place of the original motion.
- vi. Not every debating possibility has been covered by these Rules of Procedure and, in the event of anything not being covered in Rules of Procedure, the Lord Mayor's ruling on the matter shall be final and binding on the Council.

#### **I. At the meeting**

- i. A motion or amendment shall not be discussed unless it has been proposed and seconded and is in accordance with these Rules of Procedure.
- ii. Every motion and amendment, except when set out on the agenda or when copies have been supplied to each member at the commencement of the meeting (in which case the motion or amendment shall be taken as read), shall be read by the mover before being spoken upon and no other member shall speak on it until it has been seconded.
- iii. The Motion will be withdrawn from the Agenda if the proposer is not present at the time that it is due to be considered.
- iv. Any member who seconds a motion or amendment may, if he/she then declares his/her intention to do so, reserve his/her speech until a later stage of the debate on that motion or amendment.
- v. A member who has spoken on any motion shall not speak again whilst it is the subject of debate, except:
  - To speak once on an amendment moved by another member;
  - To exercise a right of reply (in the case of the member moving the motion);
  - On a point of order as defined in these Rules of Procedure;
  - By way of personal explanation as defined in these Rules of Procedure.

#### **J. Points of Order**

- i. A member may rise on a point of order or in personal explanation and shall be entitled to be heard forthwith:
  - A point of order shall relate only to an alleged breach of a Rule of Procedure or statutory provision and the member shall specify the Rule of Procedure or statutory provision and the way in which he/she considers it has been broken.

- A personal explanation shall be confined to some material part of a former speech by him/her in the Council Chamber or in relation to a matter outside of the Council Chamber, which may appear to have been misunderstood in the present debate.
- ii. The ruling of the Lord Mayor on a point of order or on the admissibility of an explanation shall not be open to discussion and shall be final. No points of information are permissible under these Rules of Procedure.
- iii. When a motion is under debate no other motion shall be moved except the following:
  - to amend the motion;
  - to proceed to the next business;
  - to adjourn;
  - that the question be now put;
  - that a member (named) under Section M below be not further heard or do leave the meeting;
  - to suspend the rules of procedure;
  - to exclude the public under S.100(A) of the Local Government Act 1972;
  - to re-admit the public.

#### K. Voting

- i. Motions shall be determined (as the Lord Mayor may direct) by a show of hands.
- ii. A recorded vote will take place where a vote is required to be recorded by law, or if, after a vote has been taken by a show of hands, a “named vote” is requested by at least 10 members rising in their place. The following procedure shall then apply:
  - the division bell will be rung for one minute;
  - the doors of the Council Chamber will then be closed;
  - the names of those voting for or against or abstaining will then be ascertained by the use of the vote recorder and included in the Minutes.
- iii. Subject to the provisions of any enactment all voting will be decided by a majority of members present and voting.
- iv. The Chair shall, in case of an equal division of votes, have a second or casting vote.

#### L. Urgent business

- i. Urgent business may be moved or raised at the meeting with the prior agreement of the Lord Mayor.
- ii. Any amendments to urgent business to be moved at Council must be in writing and received by the Monitoring Officer at least 30 minutes prior to the start of the meeting.



- iii. Urgent business is defined as business which could not reasonably have been foreseen or anticipated prior to the deadline for the publication of the agenda and which needs to be considered before the next meeting of the Council.

#### **M. Conduct at meetings of the Council**

- i. Councillors are expected to treat each other with respect and abide by the Code of Conduct.
- ii. The Lord Mayor may, as she/he sees fit, direct a Councillor to discontinue his/her speech.
- iii. If there is more general disorder, the Lord Mayor may direct a Councillor causing such disorder to retire from the meeting.

#### **N. Disturbance by members of the public**

- i. If a member or members of the public present at a meeting of the Council interrupt(s) the proceedings, the Lord Mayor may warn them that on any further interruption they will be required to retire from the Chamber. If the member(s) of the public, after such warning, again interrupt(s) the proceedings the Lord Mayor may instruct them to retire from the Council Chamber and if they fail to comply the Lord Mayor may order their removal from the Chamber.

#### **O. Appointments of Committees**

- i. On the recommendation of Council Business Management Committee, the Council shall establish Committees necessary for the discharge of the Council's functions, along with the membership and Chair of each, for a period ending no later than the next annual meeting of the Council.

#### **P. Conflict resolution between Full Council and the Executive**

- i. The Leader must have at least 5 working days to object to a full Council decision which is contrary to the Executive's proposals for either the budget or a plan or strategy before that decision takes effect.
- ii. If the Leader registers an objection, the full Council must meet to reconsider the issue in light of the objection; ultimately, full Council can insist on its decision.

#### **Q. Previous Decisions**

- i. Decisions of the Council made within the last six months may not be changed, unless these Rules of Procedure are suspended.

- ii. A motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past 6 months cannot be moved, unless this rule is suspended.

#### **R. Suspension of Council Rules of Procedure**

- i. Council rules of procedure (Part B, Section 4.4 of this Constitution) may be suspended by resolution of the Council, provided that a motion to extend the time of the meeting may only be moved by the Leader or Deputy Leader (or their nominee) of one of the Party Groups and seconded by the Leader or Deputy Leader (or their nominee) of another Party Group.

#### **S. Urgency**

- i. An urgent decision which is contrary to the policy framework or which would be contrary or not wholly in accordance with the budget or the capital plan may be taken by the Executive if the chair of a relevant overview and scrutiny committee agrees that the decision may reasonably be regarded as urgent in the circumstances.<sup>44</sup> This should only happen if it is impractical to convene a quorate meeting of the full council in the time available before the decision must be made.
- ii. An urgent decision is defined as one which could not reasonably have been foreseen or anticipated prior to the most recent Council meeting, and which needs to be considered before the next meeting of the Council. Decisions made under this provision will be reported to the next meeting of the Council.

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<sup>44</sup> The regulations require the agreement of only one relevant overview and scrutiny committee chair.

## **B5. COUNCIL BUSINESS MANAGEMENT COMMITTEE ROLE AND PROCEDURE**

### **5.1 Role of Council Business Management Committee**

- i. The purpose of the Council Business Management Committee is to support the Council's non-executive functions as delegated by Full Council, and in particular:
- ii. Meetings of the full Council
  - o To be responsible for the planning and preparation of the agenda, papers and other arrangements for meetings of the Council.
  - o To submit recommendations to the Council concerning the appointment of committees and other bodies and their functions and membership.
- iii. Council Appointments to Outside Bodies
  - o To submit recommendations to the Council as to the appointment or nomination of persons to serve on outside bodies. In cases of urgency to make appointments or nominations, subject to reporting the details to the next Council meeting for information.
- iv. Civic/Ceremonial
  - o To submit recommendations to the Council as to the conferment of rights and privileges (Honorary Alderman, Freedom of the City) and to consider and determine applications to use the City's Coat of Arms.
- v. Constitutional Matters
  - o To keep the Council's Constitutional arrangements under review and to approve any in year minor changes relating to the non-Executive arrangements of the Constitution, and to submit recommendations to the Council as to major changes to the Constitution and the adoption of new or amended Standing Orders/ Rules of Procedure.
- vi. Members' Services and Allowances
  - o To be accountable for all aspects of services to Members.
  - o To keep under review the Council's Allowances Scheme and all other matters relating to Members' allowances.
  - o To oversee the Council's relationship with the Independent Remuneration Panel and to submit recommendations to the Council as to both the operation and membership of the Panel.
- vii. Electoral Matters, Parish Councils & Boundary Changes
  - o To discharge the Council's various electoral duties under the Representation of the People Acts.
  - o To discharge the Council's functions in relation to parishes and parish councils;

- To discharge the Council's functions under the Local Democracy, Economic Development and Construction Act 2009 (relating to boundary reviews and alterations) and related Local Government legislation.

viii. Financial & Other Matters

- To consider any recommendations from the Audit Committee relating to the discharge of the Council's duty, under the Accounts & Audits Regulations 2015.
- To discharge the Council's functions, relating to pensions, under the Superannuation Acts.
- To authorise the making of payments, under Section 92 of the Local Government Act 2000, on account of maladministration.
- Foreign travel by Members and Officers of the Council will be reported on a quarterly basis.

ix. Terms and Conditions of Employment

- Holding management to account for implementing agreed terms and conditions of employment of staff.
- Agreeing any changes to terms and conditions of employment (the Birmingham Contract).
- Holding management to account for the effective consultation and negotiation with employees and representatives of regional and national bodies in connection with terms and conditions of employment.

## 5.2 Membership

- i. Members are appointed by Full Council. Chairs are appointed by the Full Council. Membership shall include the Chair of the Co-ordinating O&S Committee.

## 5.3 Sub-Committees

- i. The following Sub-Committees of the Council Business Management Committee are approved for the current Municipal Year:
- Miscellaneous Appeals Sub-Committee:
    - To consider any appeal under the Rules and Regulations for the Operation of the Retail Markets;
    - To consider any other appeal(s) that are not covered by any of the other Committees or Sub-Committees of the City Council.
  - Election Matters Members Forum:
    - To recommend further improvements to the Elections Office and/or the Elections processes;

- To be consulted over relevant consultation papers relating to the Elections process;
  - To discuss issues that the Returning Officer may wish to raise with the Members Forum.
- Chief Officer and Deputy Chief Officer Appointments, Dismissals and Service Conditions (also known as JNC Panel) – see below
- Personnel Appeals:
  - To consider, with delegated power, the appeals relating to the Dismissal of Council managed employees (the process to be followed by appellants shall be as laid down in accordance with City Council's policy with no appeals being submitted direct to this body without first exhausting the prescribed process). In hearing an appeal, the Sub-Committee shall not have the power to award financial compensation to any appellant;
  - To authorise the Chair of the Sub-Committee or any Member thereof to give evidence at any Employment Tribunal should they be required to do so;
  - To recommend to the Council Business Management Committee and oversee any appropriate training and guidance being given to Members and Officers, as necessary, on how to manage Personnel Appeals;
  - To recommend to the Council Business Management Committee any appropriate or desirable improvements for dealing with the effective and efficient administration of future Personnel Appeals arising from case hearings;
  - To make any other recommendations to the Council Business Management Committee.
- Local Authority School Governor Nomination Committee

**Chief Officer and Deputy Chief Officer Appointments, Dismissals and Service Conditions Sub-Committee (JNC Panel)**

- ii. The Sub-Committee for Chief Officers (Officers reporting to the Chief Executive) and Deputy Chief Officers (Officers reporting to Chief Officers) shall comprise the Leaders of the three largest political parties (or their nominees), and two other members subject to the proportionality rules. The functions of this sub-committee are, in accordance with the provisions of Schedule 1 Local Authorities (Standing Orders) England Regulations 2001 (as amended), as follows:
- To consider and determine the form of the employment contracts and other Terms and Conditions (including related structural issues) for the Chief and Deputy Chief Officer Posts as defined in the Constitution of the City Council.
  - To be responsible for making appointments to all posts falling within 1 above and to recommend to the Council the appointment of the Chief Executive.

- To deal with all termination and disciplinary arrangements relating to Chief Officer and Deputy Chief Officer posts (including early retirement and the award of added years)
  - The appointment, termination and disciplinary arrangements of Officers who are NOT Chief Officers or Deputy Chief Officers (other than assistants to political groups) is the responsibility of the Chief Executive as Head of the Paid Service or his/her nominee in line with the Council's normal recruitment, disciplinary and termination policies. Members are not permitted to be involved in these decisions, except insofar as there are arrangements for a member's appeal committee for staff matters.
- iii. The responsibilities of the JNC Panel are set out in the Employment Procedure Rules which can be found in Part C7 of the Constitution.

## B6. EXECUTIVE ROLE, FUNCTIONS AND PROCEDURE

### 6.1 Who may make Executive Decisions

- i. As set out in this Constitution, Executive decisions may be taken by a range of people and bodies:
- The [Cabinet](#) (B6.2);
  - A [Cabinet Committee](#) (B6.3);
  - [Cabinet Member based on Chief Officer report](#) (B6.5);
  - [Jointly with another local authority](#) (B9); or
  - An [officer](#).

### 6.2 Cabinet

#### Role of Cabinet

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

#### Functions of Cabinet

- ii. Cabinet, acting jointly, will exercise the following functions:
- Take "key decisions" in accordance with the provisions of this Constitution.<sup>45</sup>. A [key decision](#) is defined in Section B3 above; further detail on how key decisions must be taken is set out below;
  - Consider the draft Budget and a draft of the Council's "policy framework" plans. The Cabinet's role in relation to these matters will be to consider a draft which will then be presented to the full Council for approval;
  - Consider the changes to the capital budget, subject to limitations and policies in the Council's Financial Plan and Financial Regulations;
  - Consider other decisions which are considered by the Leader of the Council to have significant cross-cutting or corporate implications;
  - Determine appointments to outside bodies and to other bodies (other than those appointed by Full Council) as set out in B8 [Appointments to Outside Bodies](#) and
  - Re-consider any Cabinet, Cabinet Member, or Cabinet Committee decision(s) 'called-in' by any Overview & Scrutiny Committee.
- iii. **Recorded vote on the Council's budget and council tax:** In accordance with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014, a recorded vote

<sup>45</sup> A key decision may also be delegated specifically by Cabinet report to a Cabinet Member or officer (see section B3.1). Where such delegations are made without a clear timescale for implementation, and implementation has not commenced within six months, these should be reviewed by the Cabinet Member to ensure the decision is still in line with Council policy

will be taken at Full Council and Cabinet on any vote in respect of the Council's budget and council tax. The names of Members who voted for or against such a decision or abstained shall be recorded and entered into the minutes of the relevant meeting. A recorded vote shall also be taken on any proposed amendments relation to the budget and council tax.

- iv. The Cabinet is empowered to establish, dissolve and determine the membership and terms of reference of Cabinet Committees (including whether the same should discharge "key decisions").
- v. The Cabinet has the power to make necessary minor changes to any Executive arrangements, through the year, for operational effectiveness and efficiency reasons.

#### Rules of Procedure – Key Decisions

- vi. Before taking a decision:

- **Notification of Proposed Key Decisions:** Key Decisions must be included on the "Forward Plan" not less than 28 clear calendar days in advance of the date of the proposed decision. The Forward Plan will be prepared on a monthly basis (and updated weekly) to cover a period of four months. It will include the following information:
  - a. the matter in respect of which a decision is to be made;
  - b. a brief explanation of why it will be a "key decision";
  - c. where the decision maker is an individual, that individuals name and title and, where the decision maker is a decision-making body, its name, and a list of members;
  - d. the date on which, or period within which, the decision is to be made;
  - e. a list of the documents that will be submitted to the decision maker for consideration in relation to the matter in respect of which the key decision is to be made;
  - f. that other documents relevant to those matters, may be submitted to the decision maker; and
  - g. if other documents are submitted, the procedure for requesting the details of those documents (if any) should they become available;
  - h. the address from which, subject to any prohibition or restriction on their disclosure, copies of, extracts from, any document listed is available;
  - i. who will be consulted before the "key decision" is taken;
  - j. how, to whom and by when representations (about the "key decision") can be made;
  - k. whether the report will have a confidential or exempt appendix with reasons.

Deleted: the Cabinet meeting at which the "key decision" is due to be taken;...

Deleted: <#>what reports/papers are, or will be, available for public inspection;¶



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The [Forward Plan](#) is published ([at least](#)) once a month and is available on the Council's website.

- **Confidential or exempt Information:** Where there is an intention to consider matters in private, i.e. information that is confidential or exempt, then 28 days clear notice must be given through inclusion on the "Notification of intention for Cabinet to consider matters in private". See Section C2 Access to Information for more details.
- **Prior to any decision being taken by the Executive,** the relevant Chief Officer shall ensure that the relevant Cabinet Member, Head of Paid Service, the Monitoring Officer and the Chief Finance Officer are properly consulted, well in advance of any relevant report, for any advice that they may, collectively or individually, wish to give. The Chief Officer shall also ensure such advice is properly reflected in any report to the Executive. In appropriate circumstances, the Chief Officer shall also ensure the Assistant Director, [Corporate](#) Communications is consulted before any Executive decision is taken.

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vii. Taking a decision:

- Executive decisions shall only be taken by Cabinet based on **written report(s)** from Chief Officers and after any appropriate advice from the Head of Paid Service, Monitoring Officer and Chief Finance Officer. All reports are to be presented in the template prescribed by the City Solicitor.
- Cabinet decisions are only effective and actionable provided they are taken in accordance with this Constitution, and when posted on the Council's website by Committee Services and following the call-in process.
- No report to the Executive or any Executive decision shall be deliberately subdivided by any Member/Officer to circumvent the "key decisions" definition.
- Members are reminded of their Corporate Parenting responsibility when considering Cabinet reports. Members should always consider what impact a particular decision may have on children in care, whether this is direct or indirect. If there are likely impacts, the Cabinet report should include this in the body of the report. "What does this mean for children in care?" should be considered at all times when carrying out council business.

viii. **Decisions not on the Forward Plan:** if a matter which is likely to be a key decision has not been included on the [Forward Plan](#) (see above) but it is impracticable to defer the decision,<sup>46</sup> then the decision may still be taken if:

- a) the key decision must be taken because it is impracticable to defer the decision, in the opinion of the [relevant officer](#); and
- b) the relevant Officer (or his/her nominee) has [informed, and received permission in writing from,](#) the Chair of a relevant Overview and Scrutiny Committee [or, if they are unable to act, the Lord Mayor \(in their absence the Deputy Lord Mayor\): and](#)

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<sup>46</sup> Regulation 10, The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

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c) As soon as is reasonably practicable after the proper officer has complied with viii) a-b) above they must:

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(1) Make available at the Council offices a notice setting out the reasons why giving 28 days notice was impracticable; and

(2) Publish that notice on the Council's website.

ix. The report of the decision must be accompanied by a cover sheet stating the reasons for not being included on the Forward Plan, why the decision cannot reasonably be deferred, the date of the Scrutiny Chair's agreement and any comment they wish to add.

x. The Leader of the Council will submit a report to Council on a quarterly basis detailing all reports not on the Forward Plan and urgent reports requiring approval as set out in this constitution and all reports authorised for immediate implementation.

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xi. **Intention to hold part of the meeting in private not notified:** any report containing confidential or exempt information that is not included on the "Notification of intention for Cabinet to consider matters in private" requires agreement from the Chair of the relevant Overview and Scrutiny Committee that the report is urgent and cannot reasonably be deferred.

xii. **Late Reports:** Reports listed on the agenda but not submitted to Committee Services by 1200 hours on the sixth working day before the Cabinet meeting will be late reports.

All late reports will only be submitted to Cabinet if cleared by the Leader and Chief Executive, and must be accompanied by a cover sheet stating the reasons for lateness and why the decision cannot reasonably be deferred.

xiii. Unless the reasons given demonstrate "special circumstances", i.e. the special circumstances should be of a financial or legal nature, or an alternative reason as agreed by the Monitoring Officer, Cabinet may postpone consideration of the report as is required by law. That there simply has not been enough time to finalise the report for a particular Cabinet is NOT a special circumstance.

#### **Rules of Procedure – Cabinet Meetings**

xiv. Cabinet meetings will be called in accordance with Part C2 of the Constitution: Access to Information.

xv. If the Leader is present, s/he will chair any meeting of the Cabinet. If the Leader is not present, s/he will appoint another person to do so. If no appointment has been made, the meeting will elect a Chair for that meeting.

xvi. The quorum for a meeting of the Cabinet shall be four Cabinet Members (inclusive of the Leader of the Council if present).

xvii. Only Cabinet Members are entitled to vote at meetings of the Cabinet.

xviii. **Non-Cabinet Members attending 'Private Sessions' of Cabinet meetings:** A maximum of two of the major Opposition Group members and a maximum of one of the other Opposition Group members – to include their Group Leader(s) – may receive notice of

Cabinet meetings, the relevant papers and remain and participate during the deliberations of the private sessions of the Cabinet, save that they do not have any entitlement to vote on any Cabinet matter.

- xix. The Chairs of any of the Council's Overview & Scrutiny Committees (or their nominee from the relevant committee) shall be entitled to attend Cabinet meetings and to remain and participate during the deliberations of the Cabinet during any of its 'Private Sessions', save that they do not have any entitlement to vote on any Cabinet matter.

#### **Roles and Duties of Cabinet Members**

- xx. Individual Cabinet Members cannot take executive decisions except as part of Cabinet at a formal meeting, or where based on a written report from a Chief Officer (as set out in B3.1 and [B6.5 Cabinet Member and Chief Officer Decision Making](#)). Cabinet Member responsibilities are set out in their respective portfolio ([B7 Cabinet Portfolios](#)).
- xxi. The role of a Cabinet Member is to promote and co-ordinate the Council's activities which contribute towards achieving the Council Plan objectives within their respective portfolio.
- xxii. An appropriate Cabinet Member may direct an officer on a particular matter that his/her delegated authority under the Officer Delegation Scheme should not be exercised, and that it should be referred to Cabinet or to a Cabinet Member for consideration.
- xxiii. A Cabinet Member may be required to attend a hearing of an O&S Committee on matters within their portfolio.

### **6.3 Cabinet Committee – Group Company Governance**

#### **Role of Cabinet Committee – Group Company Governance**

- i. The role of the Committee is to ensure that the Council's strategic objectives are met across the group of companies which either the Council owns or has an interest in, and to support the development of the group in line with the Council's regulations and ambitions.

#### **Functions of Cabinet Committee – Group Company Governance**

- ii. The Committee's responsibilities include (subject to regulations imposed by the Charity Commission, regarding the independence of charitable entities):
- Holding entity Boards to account for their performance with the necessary powers to make and drive immediate change through the Boards;
  - Supporting the development of entities and making recommendations on the disposal/dissolution of companies (below Cabinet limit on value) and matters such as

varying Articles of Association, varying ownership and structure and varying share rights;<sup>47</sup>

- c) Identification of entities' business support requirements;
- d) Providing subsidiaries with clear direction and support in its role as sole shareholder/member, including guidance and training to board members where necessary;
- e) Evaluation of effectiveness of entity board governance structure, processes and recommend changes as required;
- f) Reviewing business plans and strategies of the entities where applicable (to ensure compliance with the Council's strategic direction) to, for example, communicate changing priorities;
- g) Ensuring compliance of the entities with the Council's interests including the Birmingham Business Charter for Social Responsibility;
- h) Oversight of compliance to ensure that taxation, legal and financial interests of the Council together with the Council's Constitution are considered and protected;
- i) Oversight of compliance with procurement rules;
- j) Oversight of compliance to avoid conflict of interest;
- k) Receiving and reviewing entity performance, financial and risk reports;
- l) Advising Cabinet/City Council of issues as appropriate, including on appointments to outside bodies.

#### **Membership**

- iii. The Cabinet Committee – Group Company Governance has been established by Cabinet with the following membership:
  - The Deputy Leader;
  - Another Cabinet Member as deemed appropriate by the Deputy Leader;
  - One Councillor member from each of the Opposition Party Groups.
- iv. The membership of the Committee shall be based on cross party representation.
- v. The quorum for a meeting of a Cabinet Committee shall be two Cabinet Members and a member of the opposition.
- vi. A substitute member shall be entitled to attend in place of a regular Member provided:
  - That a Cabinet Member may only be substituted by another Cabinet Member;

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<sup>47</sup> Note: on 22 January 2018, Council Business Management Committee agreed to disapply sections B6.3ii a) and b) for the Birmingham Children's Trust Community Interest Company during the period of government intervention only

- That Committee Services has been notified of any substitution before the meeting begins.
- vii. Once an agenda item has begun with a substitute member attending, the regular Member in respect of whom notification has been received, shall not be entitled to vote on the agenda item as a Member of the Cabinet Committee.
- viii. A substitute member will be able to vote during the meeting only when s/he is acting as a substitute for a regular Member.

**Rules of Procedure – Cabinet Committee: Group Company Governance**

- ix. Cabinet Committee decisions shall only be taken based on written report(s) from Chief Officers and after any appropriate advice from the Head of Paid Service, Monitoring Officer and Chief Finance Officer. All reports are to be presented in the template prescribed by the City Solicitor.
- x. Cabinet Committee decisions are only effective and actionable provided they are taken in accordance with this Constitution, and when posted on the Council's website by Committee Services and following the call-in process.

## **6.4 Health and Wellbeing Board**

**Role of the Health and Wellbeing Board**

- i. The Health and Wellbeing Board is constituted as a Committee under the Chair of the Cabinet Member for Health and Social Care in order to discharge the functions of a Health and Wellbeing Board as set out in the Health and Social Care Act 2012, including the appointment of Board Members as set out in the schedule of required Board Members in the Act.
- ii. The Health and Wellbeing Board will:
  - a) Promote the reduction in Health Inequalities across the City through the commissioning decisions of member organisations;
  - b) Report on progress with reducing health inequalities to the Cabinet and the various Clinical Commissioning Group Boards;
  - c) Be the responsible body for delivering the Joint Strategic Needs Assessment for Birmingham (including the Pharmaceutical Needs Assessment);
  - d) Deliver and implement the Joint Health and Wellbeing Strategy for Birmingham;
  - e) Participate in the annual assessment process to support Clinical Commissioning Group authorisation;
  - f) Identify opportunities for effective joint commissioning arrangements and pooled budget arrangements;
  - g) Provide a forum to promote greater service integration across health and social care.

- iii. Under the Health and Social Care Act 2012 the composition of the Board must include
  - o The Leader of the Council or their nominated representative to act as Chair of the Board;
  - o The Director for Adult Social Care Directorate (Director for Adult Services);
  - o The Director for Education & Skills (Director for Children's Services);
  - o Nominated Representatives of each Clinical Commissioning Group in Birmingham
  - o The Director of Public Health
  - o Nominated Representative of Healthwatch Birmingham
- iv. Each Local Authority may appoint additional Board Members as agreed by the Leader of the Council or their nominated representative. If additional appointments are made, these will be reported to Cabinet by the Chair of the Board.
- v. For the Board to be quorate at least one third of Board Members and at least one Elected Member must be present.
- vi. Members of the Board will be able to send substitutes with prior agreement of the Chair. Each member is to provide the name of an alternate/substitute member.

## 6.5 Cabinet Member Decision Making

- i. Except in relation to the financial limits applicable to the general delegation to the Leader and Cabinet Member, Finance and Resources in Part E3.2 of the Constitution, decisions with values at or above the Chief Officer limit of £200,000 and below the key decision threshold of £500,000 (revenue) or £1m (capital) are decisions by Cabinet Members based on written reports by Chief Officers. Such decisions shall only be taken after any appropriate advice from the Head of Paid Service, Monitoring Officer and Chief Finance Officer.
- ii. Prior to any decision being taken by the Executive, the relevant Chief Officer shall ensure that the relevant Cabinet Member, Head of Paid Service, the Monitoring Officer and the Chief Finance Officer are properly consulted, well in advance of any relevant report, for any advice that they may, collectively or individually, wish to give. The Chief Officer shall also ensure such advice is properly reflected in any report to the Executive. In appropriate circumstances, the Chief Officer shall also ensure the Assistant Director, Communications & Marketing is consulted before any Executive decision is taken. All reports are to be presented in the template prescribed by the City Solicitor.
- iii. These decisions are only effective and actionable when posted on the Council's website by Committee Services and following the call-in process.
- iv. Where a decision is delegated to Cabinet Members, and is, in the opinion of the Leader, a Cabinet Member, a Director or Head of Service, of such significance that a public discussion of the proposed decision would ensure transparency and accountability in relation to decision making within the authority; then such decisions should be referred to Cabinet.

## 6.6 **Emergency or Urgent Decisions (Special Urgency Decisions)**

- i. In an emergency an executive decision may be agreed by the Chief Executive following consultation with the Leaders of the Political Groups. See Part E: Scheme of Delegations for further details. An emergency decision is defined as one which has to be taken immediately. An emergency decision may still be a key decision pursuant to B3.1 vi) above.
- ii. An urgent decision is defined as one which could not reasonably have been foreseen or anticipated prior to the most recent Cabinet meeting, and which needs to be considered before the next meeting of the Cabinet. Decisions made under this provision will be reported to the next meeting of the Cabinet. An urgent decision may still be a key decision pursuant to B3.1 vi above.

## 6.7 **Officers**

- i. Decision making is also delegated to Officers in accordance with their job description and directorate budget.
- ii. The Schedule of Delegations is set out in Part E of this Constitution. A Chief Officer may make arrangements to sub-delegate their authority to another officer of suitable seniority and experience and any such arrangements are recorded in their sub delegation scheme. However, the officer remains responsible for any decisions made under such arrangements.
- iii. The fact that a function stands delegated to an officer under Part E does not preclude the Council or the Executive from exercising the function directly. Similarly, where a committee has resolved to delegate a function to an officer, it shall remain open to the committee to discharge the function itself.
- iv. Where a decision is delegated to officers, and is, in the opinion of the Leader/Cabinet Member, Director or Head of Service, of such significance that a published record of the proposed decision would ensure transparency and accountability in relation to decision making within the authority; then such decisions should be taken as Cabinet Member Decision.
- v. An officer may be required to respond in writing to a query from, or attend a meeting of, an O&S Committee on decisions they have taken or matters within their area of responsibility.

## 6.8 **Record of Executive Decisions**

### **Cabinet, Cabinet Committee and Cabinet Member/Chief Officer Decisions**

- i. As soon as reasonably practicable (and no more than three working days) after any meeting of the Cabinet or any of its Committees or Cabinet Member/Chief Officer, whether held in public or private, the Committee Services Officer will publish a record of every executive decision taken at that meeting on the Council's website.

- ii. The relevant notice will bear the date on which it is published and will specify that the Executive decision may be implemented, after the expiry of three working days after the publication of the decision, unless a “Request for call-in” is made of the Executive decision, by at least two Councillors (who are not members of the Cabinet).
- iii. The Monitoring Officer is authorised to correct any minor errors in the recording of Executive Decisions but not so as to replace or otherwise substantially amend the decision of the Executive. In the event of a major alteration, the relevant decision-maker or decision body will be asked to make another Executive decision to correct the Executive record.

#### **Officer Delegated Decisions**

- iv. All decisions with a value of £50,000 or more made by Officers under delegated powers should be recorded in writing and a single copy for each Directorate sent to the Chief Executive and the Leader/Deputy Leader on the 30<sup>th</sup> September and 31<sup>st</sup> March of each year.

### **6.9 Immediate Decision Implementation**

- i. If the interests of the Council are jeopardised unless an executive decision is implemented immediately then the Chief Executive in consultation with the Leader (or Deputy Leader in his/her absence) may designate such executive decision as so urgent that its implementation cannot wait until the expiry of the call-in period.
- ii. The exercise of such power shall be clearly noted on the record of the decision.

## **B7. CABINET PORTFOLIOS**

### **7.1 Leader’s Portfolio**

The Leader has ultimate political responsibility for the Council, and accountability for the following strategic functions:

Area	Further detail
Strategic policies	Development and implementation of the Council Business Plan and Medium Term Financial Strategy/Budget
Structure and Governance of the Council	Overall organisational design of the Council, including the Council’s corporate governance arrangements.
Lord Mayor’s office	Appropriate support to the Lord Mayor and other holders of civic office.
Communications	Internal and external stakeholder engagement and formal consultation on Council performance and use of resources.
Financial strategy	In conjunction with the Cabinet Member for Finance & Resources, the Council’s strategic approach to the use of financial resources and budget, including alignment between other local authority bodies (e.g. Combined Authority), partners (e.g. Health, LEP etc), the BCC General Fund, Housing Revenue Account, capital spending and the use of reserves.



Council Wide Efficiency and Improvement	Jointly, with the Deputy Leader, to take a strategic lead in relation to efficiency and improvement across all Council services and to foster lean governance in all areas of Council work.
Policy and Partnerships	Positioning Birmingham as a leader in public policy development at city, regional, national, European and international levels. Representing the Council's policy agenda as appropriate through proactive engagement with Government, national policy networks and relations with the media
West Midlands Combined Authority	Representing the City Council on the West Midlands Combined Authority Board
Major projects	Responsibility for major physical regeneration and infrastructure projects in the city and engagement with key economic growth partners, partnerships, and investors in conjunction with the Cabinet Member for Housing and Homelessness.
Promotion of the city and Inward Investment	Working in conjunction with the Cabinet Member for Digital, Culture, Heritage and Tourism for Promotion of the city and Inward Investment. Promotion of Birmingham regionally, nationally and internationally. This includes work with partners such as West Midlands Growth Company, the universities, and cultural organisations of citywide, regional, or national significance. Marketing Strategies to encourage investment in Birmingham.
Commonwealth Games, Sports and Events Development	Jointly with the Leader & Cabinet Member for Digital, Culture, Heritage & Tourism and Housing and Homelessness
Council land use and property assets including appropriation	Oversight of the Council's land use and property strategy and asset management plan including framework for reuse, disposal and requisition of land and property in the Council's priorities – including assets of heritage and community value. Including oversight of Council owned land and property facilities, amenities and services including markets.
Economic growth and jobs	Strategic approach to economic growth and regeneration programmes and strategic planning policy. Representing the City Council on the Local Enterprise Partnership Board.
Business Improvement Districts	Partnerships with the Business Improvement Districts, including city centre management opportunities.
Land Use Planning	Local Development Plan, Neighbourhood Plans, Development Briefs and Supplementary Guidance; including advice to Planning Committee.
Housing Development	To review the supply of housing and tenure based on an analysis of housing need.
Enforcement	In relation to licensing policy and enforcement
Localisation	Neighbourhood Management – Development of the Council's neighbourhood engagement model and work with wider Council and partners to ensure integration at the local level.

## 7.2 Deputy Leader's Portfolio

The Deputy Leader will act as Council Leader where the Leader is not available and has accountability for the review and improvement of all council services, management of all corporate

resources of the Council, and oversight of the management of services and delivery of outcomes on:

Area	Further detail
Business Change	All major business change programmes.
Efficiency and improvement for the Council – including governance and performance of third-parties	Jointly, with the Leader, to take a strategic lead in relation to efficiency and improvement across all Council services and to foster lean governance in all areas of Council work. Oversight of good governance in relation to Council representation on outside bodies; Trading Services; Council-owned companies; and strong 'client' governance for externalised services (when Executive decisions needed).
Risk Management	Strategic risk management, internal audit and holding senior officers to account on the management of risks.
Customer Services	To take a strategic lead in the provision of the City Council's customer services functions.
External Scrutiny and Local Government Ombudsman	To take appropriate action in response to external scrutiny of the Council through inspectorate, peer or Government improvement and / or local government ombudsman reports.
Whistleblowing and Corporate Complaints Procedure	To take a corporate lead in relation to Whistleblowing and complaints.
Emergency Planning	Arrangements for the Council's response to emergencies including chairing the Contest Board.
Legal	Oversight of the Council's legal services function including political engagement with the Council's Monitoring Officer.
Strategic Partnerships	Promotion of collaborative working relationships with stakeholders and partners as part of the city's 'Civic Family'.
Council's lead on Levelling-Up, Devolution and WMCA	This will include making appropriate arrangements for the Council's response and review to changes in the WMCA constitution, consultation and devolution deals
Employment & Skills	Skills, expansion for key growth sectors enterprise and innovation along with Lifelong Learning (post 14 skills and adult education) Provision of all-age guidance, skills development, training and work experience to meet the economic needs of the city now and in the future Skills and Entrepreneurship in Schools
Employment Opportunities	Enabling all residents to access employment through the development and delivery of local employment plans
<u>Early Intervention and Prevention</u>	<u>To take a strategic lead in the development and implementation of the City Council's Early Intervention and Prevention services.</u>

### 7.3 Cabinet Member for Children, Young People and Families

The Cabinet Member has accountability for:

Area	Further detail
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Lead Member for Children's Services	Political accountability for all the local authority children's services, including education and children's social care. This post is required by law to hold direct local accountability for the effectiveness, availability and value for money of the local authority's children's services (particularly education and children's social care).
Safeguarding Children and Young People	With statutory partners, the safety and wellbeing of all children.
Children's Services	Leadership, strategy and effectiveness of children's services – responding to the needs of all children and young people, especially the most disadvantaged and vulnerable, and their families and carers.
Overseeing the Children's Trust	Oversight of the 'client side' role of the Children's Trust to ensure the delivery of agreed outcomes, KPIs and finances within the legal and contractual framework agreed
Overseeing Early Years	Ensuring a sufficiency of places and a citywide Early Years Health and Wellbeing offer.
Corporate Parenting	Political leadership on improving the lives of looked after children. Ensuring all Council members, officers and services understand and actively promote the Council's responsibilities to looked after children.
Lead Member for Special Educational Needs and Disability (SEND) and Inclusion	Lead Member for Special Educational Needs and Disability (SEND) and Inclusion – Lead Member on the SEND agenda across children's agencies and holding officers and partners to account for the delivery of the Birmingham SEND Strategy.
Education of Children and Young People	Education of Children and Young People - Political leadership on strategic and statutory duties, including school improvement, school places and travel to and from school. Oversight of Dedicated School's Grant
Youth Engagement and Youth Service	Youth Engagement and Youth Service, along with Lifelong Learning (post 14 skills and adult education) – Clear progression and vocational pathways from education into further and higher education and employment. Provision of all-age guidance, skills development, training and work experience to meet the economic needs of the city now and in the future.
Skills and Entrepreneurship in Schools	Development of 14-19 career pathways, enterprise and entrepreneurship in Birmingham schools.

## 7.4 Cabinet Member for Digital, Culture, Heritage and Tourism

The Cabinet Member has accountability for:

Area	Further detail
Arts and Culture and Tourism	Sustaining and promoting art, culture and tourism, including management of grants and associated economic opportunities. Delivery of the Birmingham Visitor Destination Plan
The Library of Birmingham and Community Libraries	Oversight of the regional and city-wide role of the Library of Birmingham and the community library service; including the vital part libraries play in communities, learning and skills.

Museums	Oversight of the provision and activity of the Birmingham Museums Trust.
Promoting the City's Rich Heritage	Promoting our cultural heritage with the public, community and academic partners, ensuring that Birmingham's cultural and civic history is accessible by our children and young people. Maximising our historic architecture and ensuring the stories of Birmingham's history are told.
Commonwealth Games Legacy	Providing strategic leadership to maximise the benefits of hosting the Commonwealth Games through delivery of a Legacy Plan.
Commonwealth Games, Sports and Events Development	Jointly with the Leader & Cabinet Member for Housing and Homelessness
Inward Investment	Working in conjunction with the Leader for Promotion of the city and Inward Investment - Promotion of Birmingham regionally, nationally and internationally. This includes work with partners such as West Midlands Growth Company, the universities and cultural organisations of citywide, regional or national significance. Marketing Strategies to encourage investment in Birmingham
Open data	To provide strategic leadership for open data promoting transparency, building trust and data sharing in everything we do
Information Governance	To provide strategic leadership for information governance, data protection and cyber security protecting our citizens information
Digital Inclusion	To provide strategic leadership to our digital inclusion strategy to deliver a fully inclusive digital city, where everyone has the confidence, skills and capacity to access the services and information they need to thrive and live their lives to their full potential in an increasing digital world.
Digital Birmingham (encompassing our digital strategy and digital city ambitions)	To provide strategic leadership for our Digital Birmingham ambition acting as the Council's Ambassador for Digital & innovation so that we make the best use of data, digital and technology so that we can ensure that our services respond even better to the changing needs and expectations of our citizens and businesses

## 7.5 Cabinet Member for Finance and Resources

The Cabinet Member has accountability for:

Area	Further detail
Finances	Overall financial direction within the Financial Strategy developed by the Leader, including Best Value and appropriate financial, accounting and audit controls and procedures.
Birmingham Business Charter for Social Responsibility	Application of the Birmingham Business Charter for Social Responsibility that requires contractors to offer, inter alia, local employment and training opportunities, and to adopt Birmingham's Living Wage policy.
Commercialisation	To take the strategic lead in the consideration of all commercial opportunities available to the Council

Revenues and Benefits Service	To ensure effective management of the Revenues and Benefits service.
Procurement	Oversight of procurement management.
Contract Management	Strategic approach to and compliance with contract management policy to ensure best value.
Internal Trading Operations	Effectiveness and holding to account the management of all internal trading operations.
Commissioning	Strategic approach to, and compliance with, the commissioning approach. Ensuring that council commissioning supports its wider social objectives such as employment provision, training, encouraging social enterprise and delivering social cohesion, internally and externally in line with the Council's objectives
Rent Service	The Rent Service's primary function is to maximise the collection of rent from Local Authority tenants and the recovery of current/former tenants and Housing Benefit Overpayments for Local Authority tenants.

## 7.6 Cabinet Member for Health and Social Care

The Cabinet Member has accountability for:

Area	Further detail
Adult Social Care and Health	Development of the Health and Wellbeing Board and relationships with the NHS and private providers. Strategic leadership of social care services and safeguarding for adults. Development of an integrated health and social care economy in Birmingham and neighbouring local authorities around the relevant Sustainability and Transformation Plan.
Public Health	Leadership on public health services, working with the Health and Wellbeing Board to reduce health inequalities.
Healthy Communities	Championing healthy living through sport and leisure services and influencing resident choices through proactive behaviour change initiatives.
<b>Birmingham and Solihull Integrated Care System</b>	Providing place leadership for Birmingham within the statutory partnership to meet health and care needs across Birmingham and Solihull.

## 7.7 Cabinet Member for Housing and Homelessness

The Cabinet Member has accountability for:

Area	Further detail
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Council housing management services	Oversight and direction of estate management services and best use of housing stock (across all housing providers). Repairs and maintenance programmes.
Registered Social Landlords	Liaison with the Birmingham Social Housing Partnership on neighbourhood management initiatives and the housing growth agenda.
Private Rented Sector	Licensing and regulation. Private Tenancy Unit activities.
Tenant engagement in social housing	Tenant engagement in the management and development of social housing and Housing Liaison Boards.
Exempt Accommodation	Strategic Leadership of the response to Exempt Accommodation
Housing Options	Housing Options – Assessing housing need, options for vulnerable adults, children and young people and offenders. Temporary accommodation provision. A coherent strategy to address homelessness, including short-term engagement, education and enforcement with rough sleeping.
Commonwealth Games, Sports and Events Development	Jointly with the Leader & Cabinet Member for Digital, Culture & Tourism

## 7.8 Cabinet Member for Social Justice, Community Safety and Equalities

The Cabinet Member has accountability for the following:

Area	Further detail
Safer Communities	Strategic citywide leadership to community safety in Birmingham, including anti-social behaviour, fear of crime and public spaces and ensuring effective support for victims of crime. Effective relationships and clear shared priorities with the Police and Crime Commissioner and West Midlands Police. Leadership on youth offending issues. CCTV and liaison with Police. Strategic leadership in relation to Prevent.  Responsibility for refugees, migration and City of Sanctuary
Social Cohesion and Inclusion	Approaches to ensure that all Birmingham citizens have opportunity across the social and economic life of the city, within a safe city - including in education, employment, housing, health and social care, civil society and political participation – whether these are delivered by the City Council itself, partner agencies, or by private or third sector organisations. Holding to account other relevant Cabinet Members and officers for the delivery of those functions that impact on social cohesion and inclusion.
Tackling Inequality	Strategic approaches to reduce inequalities including around health, education and employment outcomes; 'access to services'; and participation in civic life. Neighbourhood advice and information services. Holding to account other relevant Cabinet Members and officers for the delivery of those functions that impact on inequalities and inclusion.

Equalities within the Community	Development and promotion of shared values and mutual respect across the diverse communities of Birmingham. Ensuring that community and cultural events promote social cohesion and inclusion
Third Sector Partnership and Engagement	Working with, and coordination of, third sector and partner agencies around equalities, cohesion and inclusivity.
Domestic Violence	All Council activity relating to domestic violence, its impact on families and children and implementing a city-wide domestic violence strategy with partners including advice to the Cabinet Member for Housing and Homelessness on the provision of accommodation and taking advice from the Cabinet Member for Health and Social Care on the health implications of domestic violence.
Bereavement Services and Register Office	Strategic leadership for the development of Cemeteries, Crematoria and Mortuary and Coroners Court Services; and Register Office services.
Human Resources (including Member Development Programmes)	An effective organisational development function for shaping the future workforce of the Council. Development of effective change/transformational programmes deployed corporately. Member development programmes. Processes and procedures to support good staff performance development and equality objectives. Staffing structures at JNC level and personnel procedures that comply with good practice and natural justice (in consultation with the Leader). [The Council Business Management Committee deals with issues around the employment of staff and their terms and conditions of employment].
Oversight of Consultants	Oversight of the use of consultants with particular focus on their duration, renewal and cost
External Challenge	Ensuring that partner agencies, private or third sector organisations are challenged on their contribution to improving social cohesion and inequalities.

## 7.9 Cabinet Member for Environment

The Cabinet Member has accountability for:

Area	Further detail
Waste Strategy and Services	Development of a financially and environmentally sustainable waste strategy for the city and ensuring delivery. Collection and sustainable disposal of waste from residential and other properties within the city and street cleansing.
Pest Control	Provision of the Pest Control Service.
Cleaner Neighbourhoods	Street cleansing, litter prevention, fly tipping, graffiti, placarding, scrap yards and motor salvage operators.
Recycling	Development of a robust re-use and recycle strategy for the city and ensuring delivery.

Area	Further detail
Parks and Allotments	Provision and usage of facilities including grounds maintenance.
Green City	Working with partners to develop a strategy for sustainability, liveability, and environmental improvement for the city.
Climate Change	Engaging in proactive citywide and national policy development to tackle the causes and consequences of climate change



## 7.10 Cabinet Member for Transport

The Cabinet Member has accountability for:

Area	Further detail
Transport Strategies	Sustainable transportation policy and strategy, programmes, projects and initiatives to improve connectivity and road safety for the city across all modes of travel.
Highways	Strategic highways matters. Maintenance of roads and streets, traffic management and car parks and enforcing rights of way.
Advice to Planning Committee (Highways)	Providing advice, where appropriate, including the effect of proposed developments in relation to roads and transport and working in cooperation with the West Midlands Combined Authority and Mayor in relation to the key route network.
Air Quality	Leading the development and delivery of an Air Quality Strategy for Birmingham, to comply with national and pan-national regulations together with key partners.

## B8. APPOINTMENTS TO OUTSIDE BODIES

### 8.1 Appointments to Outside Bodies

- i. Appointments that are reserved to the Full City Council to determine can be found in [B4.3](#) above and the proportionality rules shall apply where three or more members are appointed.
- ii. All other appointments of members and officers to outside bodies shall be within the remit of Cabinet to determine, and the proportionality rules will not automatically apply.

## B9. JOINT ARRANGEMENTS

### 9.1 Joint Arrangements

- i. The Council may establish joint arrangements with one or more local authorities or other public bodies and/or their Executives to exercise functions which are not Executive functions in any of the participating authorities or advise the Council. Such arrangements may involve the appointment of a joint committee or board with these other local authorities or bodies.
- ii. The Cabinet may establish joint arrangements with one or more local authorities or public bodies to exercise functions which are Executive functions. Such arrangements may involve the appointment of joint committees or boards with these other local authorities or bodies.
- iii. The Cabinet may only appoint Cabinet Members to a joint committee or board established under (ii) above and those Members need not reflect the political composition of the local authority as a whole.
- iv. If a joint committee exercises an executive function, then a Cabinet Member must be appointed. If a joint committee *includes* executive functions and Cabinet appoints three or more members, the proportionality rules will apply and a at least one Cabinet Member must be appointed.

### 9.2 Joint committees

- i. The City Council has established the following Joint Arrangements for the current Municipal Year:  
  
**West Midlands Combined Authority (WMCA)**
- ii. The [West Midlands Combined Authority](#) comprises 18 local authorities, including Birmingham City Council and four Local Enterprise Partnerships (LEPs) including Greater Birmingham & Solihull LEP, working together to move powers from Whitehall to the West Midlands. Individual councils will still deliver services and retain their identity, but on the big decisions the WMCA will have the resources to work together.
- iii. More detailed information can be found on the [West Midlands Combined Authority \(WMCA\) website](#).

## **B10. WARD FORUMS**

### **10.1 Role**

- i. Ward Forums will be constituted to encourage and facilitate dialogue between the Council and local people within their area.
- ii. The Council will establish (or dissolve) Ward Forums on the recommendation of the Council Business Management Committee.
- iii. Members will provide community leadership at the ward level, in particular through engaging the local community and identifying very local issues and priorities (for example through Neighbourhood Tasking meetings).

### **10.2 Functions**

- i. In conjunction with the relevant Cabinet Members, the role of Ward Forums is to:
  - a) Develop through local engagement and discussion and then adopt and approve a “Ward Plan and Priorities” setting out locally determined priorities and issues.
  - b) Provide a forum for community engagement in decisions affecting the local area (through regular meetings including neighbourhood forums, residents’ associations, parish, community or neighbourhood councils and other local organisations).
  - c) To advise or make representations to the Council, the Executive or an Overview and Scrutiny Committee on all matters affecting community interests, working in conjunction with Cabinet Members to provide improved accountability in council and other public services within the area and to support the work of Overview and Scrutiny committees as appropriate.
  - d) Make comments on behalf of residents on significant planning applications within the ward or which have an impact on the ward, subject to the appropriate planning timescales.
  - e) Co-ordinate the work of councillors with neighbourhood forums, residents associations and neighbourhood, community or parish councils to enable local community engagement, debate and action in relation to local issues and priorities.
  - f) Plan work with the other wards or ward clusters to engage with partners such as the police and to work on matters that must be addressed over a larger geographical area.
  - g) Develop and support the community leadership role of councillors and others in the area. This includes in relation to governance, commuting planning, local dialogue, partnership, commissioning and accountability.
  - h) Work with appropriate ward contact officers to ensure that council services are responsive to local needs and priorities.
  - i) Promote and influence service improvement, service integration and a focus on prevention across the whole of the local public sector and to consider the performance,

integration and co-ordination of public services in the area and make recommendations to the Executive and to the council's partners as appropriate.

- j) Work in partnership with all local stakeholders to further the needs and priorities of local residents.
  - k) Ensure that city wide and city regional levels of decision making have a good understanding of local needs and priorities in different parts of the city.
  - l) Promote community empowerment and active citizenship and a diversity of local service provision, including community and voluntary organisations and social enterprises and to develop positive working relationships with parish, neighbourhood or community councils.
  - m) To promote and improve the economic, social and environmental well-being of the area.
  - n) Working to advance the council's policies on local leadership and with other Ward Forums to progress issues across a larger geographical area.
- ii. Members should hold at least four ward forum meetings per year.

### 10.3 Membership

- i. Membership of Ward Forums must include the local Councillor(s) and may include any local resident or stakeholder groups.
- ii. The Councillor(s) may appoint a councillor or another stakeholder as Chair of their Ward Forum.

## B11. OVERVIEW AND SCRUTINY COMMITTEES

### 11.1 Principles of Good Scrutiny

- i. Good Overview and Scrutiny adds value to Councils as it:
  - a) Amplifies public voice and concerns;
  - b) Drives improvement in public services;
  - c) Provides constructive “critical friend” challenge;
  - d) Is led by ‘independent minded people’ who take responsibility for their role.

### 11.2 Role

- i. Overview and Scrutiny Committees will:
  - Make reports and/or recommendations to the full Council, the Executive and / or other organisations in connection with the discharge of the functions specified in their terms of reference;
  - Consider any matter covered in their terms of reference that may affect or be likely to have an effect on the citizens of Birmingham; and
    - is relevant to the Council’s strategic objectives; and/or
    - is relevant to major issues faced by officers in managing a function of the Council; and/or
    - is likely to make a contribution to moving the Council forward and achieving key performance targets.
  - Exercise the “request for call-in” and “call-in” any Cabinet, Cabinet Committee or Cabinet Member decisions made but not yet implemented by the Executive.
  - Overview and Scrutiny Chairs should maintain regular engagement with Cabinet Members to enable flexibility to be built into the Overview and Scrutiny work programme, so as to respond to the Council’s policy priorities in a timely way.

### 11.3 Functions

- i. *Policy development and review:* Overview and Scrutiny Committees may:
  - Assist the Council and / or the Executive in the development of its budget and policy by appropriate analysis of policy and budget issues;
  - Conduct appropriate research, community and other consultation in the analysis of policy and budget issues and possible options;
  - Consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
  - Question Members of the Executive and/or Chief Officers about their views on issues and proposals affecting their areas of responsibility; and

- Liaise with other external organisations operating in the city, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.
- ii. *Scrutiny: Overview and Scrutiny Committees may:*
  - Review and scrutinise the Executive decisions made by and performance of the Executive and/or Chief Officers in relation to decisions taken by them or in relation to their areas of responsibility / department;
  - Review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and / or particular service areas – including the areas of responsibility of the Regulatory and Non-Executive Committees, but not the actual decisions of the Regulatory and Non-Executive Committees;
  - Make recommendations to the Executive, Chairmen of Committees, Chief Officers and/or Council arising from the outcome of the scrutiny process;
  - Review and scrutinise the performance of other relevant public bodies in Birmingham (including Health Authorities) and to invite reports from them by requesting them to attend and engage with the Overview and Scrutiny Committee about their activities and performance;
  - Question and gather evidence from any person (with their consent); and
  - Establish sub-committees to undertake aspects of that committee's remit, or Task and Finish Committees to carry out specific time limited enquiries as agreed with the eight Overview and Scrutiny Committee Chairs and subject to available resources.
- iii. Any member of an overview and scrutiny committee (or sub-committee) may ensure that any matter relevant to the remit of the committee (or sub-committee) be placed on the agenda and discussed at a meeting of the committee (or sub-committee) ("Councillor Call for Action").

#### 11.4 Membership

- i. All Councillors, except Cabinet Members (and the Lord Mayor) can be members of an Overview and Scrutiny (O&S) Committee. Members are appointed by Full Council. Chairs of these committees are appointed by the Full Council and Deputy Chairs are elected by each committee at its first meeting, for the purpose of substitution for the Chair if absent.
- ii. Membership of each of the O&S Committees will be eight; with the exception of the Co-ordinating Overview and Scrutiny Committee, which will consist of 12 members: the chair of the committee and the seven other Overview and Scrutiny Committee chairs along with four places for opposition group members to ensure proportionality. Education and Children's Social Care O&S Committee will have an additional four co-opted places, as set out below.
- iii. Quorum for the Co-ordinating O&S Committee and Education and Children's Social Care O&S Committee shall be four; and three for the other O&S Committees.
- iv. No substitute members shall be appointed to an Overview & Scrutiny meeting.

- v. Where a member stands down from a Cabinet role, that member should not be appointed to the O&S Committee scrutinising the portfolios to which that role related for a period of six months.
- vi. A Chair of an Overview & Scrutiny Committee should not be appointed to serve as a Director on any of the City Council's wholly owned companies where the activities of that company overlap with the remit of that Overview & Scrutiny Committee.

### 11.5 Terms of Reference of Overview and Scrutiny Committees

- i. There shall be eight Overview and Scrutiny Committees as set out in the terms of reference below.

#### **Co-ordinating Overview and Scrutiny Committee**

- ii. To plan and co-ordinate the work of all the Overview & Scrutiny Committees. To fulfil the functions of an Overview and Scrutiny Committee as they relate to any policies, services and activities concerning governance (including transparency, regional working and partnerships); citizens (including communications and public engagement); performance; customer services; social cohesion; equalities and emergency planning.
- iii. These functions include:
  - a) giving such guidance to the Overview and Scrutiny Committees in any cases of uncertainty, as to work which they should or should not be undertaking, as may be necessary to achieve such co-ordination, including the allocation of "call-in" to the appropriate Committee;
  - b) determining, in any cases of uncertainty, the allocation of responsibility for specific tasks between the Overview and Scrutiny Committees;
  - c) ensuring (by means, for example, of issuing appropriate guidance and/or instructions) that the Overview & Scrutiny Committees pay proper attention in their work to the consideration of key cross cutting issues, in particular equalities, transparency and improvement;
  - d) publishing each year an Annual Programme of major scrutiny inquiries as suggested by individual Overview and Scrutiny Committees following consideration of the Council Plan and priorities;
  - e) agreeing the establishment of any task & finish groups; and
  - f) considering overview and scrutiny development, working practices and constitutional arrangements.
- iv. Membership of the Co-ordinating Overview and Scrutiny Committee will consist of 12 members: the chair of the committee and the seven other Overview and Scrutiny Committee chairs along with four places for opposition group members to ensure proportionality.

#### **Resources Overview and Scrutiny Committee**

- v. To fulfil the functions of an Overview and Scrutiny Committee as they relate to any policies, services and activities concerning finance (including strategic finance, budget setting and financial monitoring); revenues and benefits; treasury management; Council land use and property assets; human resources; contracting, commissioning and commercialisation.

#### **Education & Children's Social Care Overview and Scrutiny Committee**

- vi. To fulfil the functions of an Overview and Scrutiny Committee as they relate to any policies, services and activities concerning schools and education, the Children's Trust, vulnerable children, corporate parenting, children and young people's health and wellbeing and other child social care and safeguarding functions of the council.
- vii. The Overview and Scrutiny Committee dealing with education matters shall include in its membership the following voting representatives:
- a) Church of England diocese representative (one);
  - b) Roman Catholic diocese representative (one); and
  - c) Parent Governor representatives (two).

#### **Economy and Skills Overview and Scrutiny Committee**

- viii. To fulfil the functions of an Overview and Scrutiny Committee as they relate to any policies, services and activities concerning strategic economy; skills and apprenticeships; inward investment; land use planning; business improvement districts and the Local Enterprise Partnership.

#### **Health and Social Care Committee**

- ix. To fulfil the functions of an Overview and Scrutiny Committee as they relate to any policies, services and activities concerning adult safeguarding, social care and public health; and to discharge the relevant overview and scrutiny role set out in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012, including:
- The appointment of Joint Overview and Scrutiny Committees with neighbouring authorities; and
  - The exercise of the power to make referrals of contested service reconfigurations to the Secretary of State as previously delegated to the Health and Social Care Overview and Scrutiny Committee by the Council.

#### **Housing and Neighbourhoods Overview and Scrutiny Committee**

- x. To fulfil the functions of an Overview and Scrutiny Committee as they relate to any policies, services and activities concerning housing; waste management; neighbourhood management; parks and allotments localisation; bereavement services and community safety.
- xi. This Committee shall be the Crime and Disorder Committee (Police and Justice Act 2006).



#### **Commonwealth Games, Culture and Physical Activity Overview and Scrutiny Committee**

- xii. To fulfil the functions of an Overview and Scrutiny Committee as they relate to any policies, services and activities concerning Commonwealth Games; arts and culture; libraries and museums; sport; events.

#### **Sustainability and Transport Overview and Scrutiny Committee**

- xiii. To fulfil the functions of an Overview and Scrutiny Committee as they relate to any policies, services and activities relating to sustainability; air pollution; transport strategy and highways.
- xiv. The Committee shall undertake the authority's statutory functions in relation to the scrutiny of flood risk management (Flood and Water Management Act 2010).

### **11.6 Rules of Procedure**

- i. A Scrutiny meeting may be called by the Chair of the relevant Overview & Scrutiny Committee.
- ii. All meetings of an Overview & Scrutiny Committee shall be open to the public in accordance with Section C2 *Access to Information*. In addition to their rights as Councillors, Members on an Overview & Scrutiny Committee have additional rights to documents as set out in Section C2 *Access to Information*.
- iii. No Overview & Scrutiny Committee may undertake a review into:
- Any decision of the Planning Committee, the Licensing and Public Protection Committee or a Licensing sub-committee;<sup>48</sup>
  - Any decisions which may be appealed against under the terms of reference of the Licensing Sub-Committees;
  - Any decision taken by an officer under delegated authority which falls within the terms of reference of the Planning Committee, the Licensing and Public Protection Committee or a Licensing sub-committee;<sup>49</sup>
  - Any code of conduct matter or employment appeals;
  - Except in exceptional circumstances, any decision in respect of which there are:
    - a) Ongoing judicial proceedings, Ombudsman or audit inquiry or complaint under the Council's formal complaints procedure; or
    - b) Individual personnel issues.
- iv. An Overview & Scrutiny Committee may require any Cabinet Member, or Member in relation to a matter where the Member has exercised functions, the Chief Executive and/or

<sup>48</sup> In respect of a licence or permission granted to an individual or in respect of an individual premises

<sup>49</sup> In respect of a licence or permission granted to an individual or in respect of an individual premises

any senior officer to attend before it to answer questions and provide information about any matter within its terms of reference..<sup>50</sup>

### 11.7 Conflicts of interest

- i. If an Overview and Scrutiny Committee is scrutinising specific decisions in relation to the business of another committee or forum of the City Council of which an Overview and Scrutiny Committee Councillor is a Member, then that Councillor must withdraw from the meeting during the consideration of such matter.
- ii. Where, however, the Overview and Scrutiny Committee is reviewing policy matters, generally, as opposed to a specific decision of another committee or forum of the City Council, the Member must declare his/her interest before the relevant agenda item is reached but need not withdraw.
- iii. If a Cabinet Adviser (or former Cabinet Adviser) is a member of an Overview & Scrutiny Committee and is scrutinising matters to which their role relates, then that Councillor must withdraw from the meeting during the consideration of such matter.
- iv. If an Overview and Scrutiny Committee is scrutinising the work of a relative of a member of the Committee, then that Councillor must withdraw from the meeting during the consideration of such matter.

### 11.8 Overview and Scrutiny Work and Non-Executive Committees

- i. Overview and Scrutiny Committees are only permitted by law to scrutinise the Executive decisions of the Council – Cabinet, Cabinet Committees, Cabinet Members, and officers.
- ii. In terms of the Regulatory Committees, these carry out administrative functions and, as such, appropriate appeal rights and procedures apply to the same, which do not involve the Overview and Scrutiny Committees arrangements.

### 11.9 “Request for Call-In” and “Call-In”

- i. When an Executive decision is taken by the Cabinet, Cabinet Committees, or Cabinet Member(s), the decision shall be published on the website, and copies of it shall be available at the main offices of the Council, normally within three days of being made. All Members and Chief Officers will be sent a notification of all such decisions within the same timescale, by the Committee Services Officer responsible for publishing the decision.
- ii. The relevant notice will bear the date on which it is published and will specify that the Executive decision may be implemented, after the expiry of three working days after the

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<sup>50</sup> A Member or officer is not obliged to answer any question which he would be entitled to answer in or for the purposes of proceedings in a Court Section 9FA of the 2000 Act.

publication of the decision, unless a “Request for call-in” is made of the Executive decision, by at least two Councillors (who are not members of the Cabinet). The “Request for Call In” should state the reason for call-in.

- iii. Once a “Request for Call In” has been received, the Chair of Co-ordinating O&S Committee will agree which Overview and Scrutiny Committee should hear the call-in. That Committee must meet to consider the request. The meeting should take place not later than 15 clear working days after the original publication of the decision.
- iv. It is for the Committee to decide whether to Call In a decision or not. The Council does not expect an Overview and Scrutiny Committee to Call In an Executive decision unless one or more of the following criteria applies.
- v. Where the Committee does decide to call in a decision, the “re-consideration” which is then required must take place at a meeting of the full Cabinet – irrespective of who made the original decision on behalf of the Executive.

#### Call-In Criteria

	(a) Is the Executive decision within existing policy?
1	the decision appears to be contrary to the Budget or one of the ‘policy framework’ plans or strategies;
2	the decision appears to be inconsistent with any other form of policy approved by the full Council, the Executive or the Regulatory Committees;
3	the decision appears to be inconsistent with recommendations previously made by an Overview and Scrutiny body (and accepted by the full Council or the Executive);
	(b) Is the Executive Decision well-founded?
4	the Executive appears to have failed to consult relevant stakeholders or other interested persons before arriving at its decision;
5	the Executive appears to have overlooked some relevant consideration in arriving at its decision;
6	the decision has already generated particular controversy amongst those likely to be affected by it or, in the opinion of the Overview and Scrutiny Committee, it is likely so to do;
7	there is a substantial lack of clarity, material inaccuracy or insufficient information provided in the report to allow the Overview and Scrutiny Committee to hold the Executive to account and/or add value to the work of the Council.
	(c) Has the Executive decision been properly taken?
8	the decision appears to give rise to significant governance, legal, financial or propriety issues;
9	the notification of the decision does not appear to have been in accordance with council procedures;

## **B12. PLANNING COMMITTEE**

### **12.1 Role**

- i. To exercise the powers and duties of the Council with regard to development control and planning matters, and, in particular, to:
  - exercise all the powers and duties of the Council as a local planning authority (apart from any Executive functions);
  - exercise the powers and duties of the Council with respect to building control;
  - be accountable for the Local Land Charges service.
- ii. The full Planning Code of Practice for Councillors and Officers can be found in Part C8 of the Constitution.

### **12.2 Membership**

- i. Members of the Planning Committee, and its Chair, are appointed by Full Council. There are fifteen members of the committee, and the quorum is five.

## **B13. LICENSING AND PUBLIC PROTECTION COMMITTEE**

### **13.1 Role**

- i. To exercise the powers and duties of the Council with regard to regulatory, licensing and registration matters under all relevant legislation relating to the Licensing service, waste enforcement, Trading Standards service and Environmental Health Service;
- ii. Exercise and monitor the Council's powers; in respect of regulation and enforcement, monitoring performance of the Councils regulation and enforcement services as well as any hosted regional or national programmes;
- iii. Set fees, as applicable, in respect of trading standards, environmental health, licensing, highways skip permits, street trading, registration of births deaths and marriages (all services); private rented services.
- iv. Set conditions relating to Hackney carriage and private hire matters.
- v. Set conditions for any licensable activity allowed by legislation as appropriate
- vi. To exercise the powers and duties of the Council with regard to public protection matters which are non-executive functions.

### **13.2 Functions**

- i. The Licensing and Public Protection Committee is authorised to discharge the following functions:
  - Set fees and charges, grant, refuse Issue, renew, suspend, revoke, or otherwise control any licences, authorisations, permits, registrations as appropriate under the scheme of delegations or powers provided to the council through enactments, regulations or bylaws;
  - Where applicable approve any pre application tests and requirements, in relation to any licences, authorisations or registrations issued by the Licensing Service
- ii. Members of Licensing Sub-Committees will sit as a statutory Licensing Committee as defined by the Licensing Act 2003 and the Gambling Act 2005 when carrying out functions of and ancillary to those Acts and is not required to observe political balance. Members of the Licensing & Public Protection Committee will sit as a general Licensing Committee when dealing with any other licensing functions of the Council and appointments must be politically proportionate.
- iii. The Committee is authorised to exercise the powers and duties of the Council under all relevant legislation and relating to the non-executive functions of the Committee except where
  - Any function of the licensing authority under the Licensing Act 2003 the 2003 Act), the Gambling Act 2005 (the 2005 Act), or the Police Reform and Social Responsibility Act 2011 (the 2011 Act) has been reserved to full Council; or

- Any licensing function where Council has referred a matter to another committee.
  - Functions relating to any other hearings required under the 2003 Act or the 2005 Act that have not been reserved to the Licensing Committee.
  - The function of determining any matter where an officer has considered they should not exercise their delegated authority and has referred the matter to the sub-committee for determination.
- iv. A Sub Committee is not authorised to discharge functions where the application relates to an event in the open air, in a temporary structure and where the proposed capacity of the event exceeds 30,000 people.

### 13.3 Membership

- i. Members of the Licensing and Public Protection Committee, and its Chair, are appointed by Full Council. There are fifteen members of the committee, and the quorum is five.
- ii. Substitute Members: no substitute Members are appointed for the Licensing and Public Protection Committee. In relation to each ordinary business Licensing Sub-Committee, the Licensing Committee has appointed substitute Members, comprising all other suitably trained members of the Licensing and Public Protection Committee.
- iii. A substitute Member shall be entitled to attend in place of a regular Member provided that Committee Services has been notified of this before the meeting begins. Once the meeting has begun, the regular Member in respect of whom notification has been received, shall no longer be entitled to attend that agenda item as a Member of the Licensing Sub-Committee concerned.
- iv. A substitute Member will have all the powers and duties of any regular Member of the Licensing Sub-Committee but will not be able to exercise any special powers or duties exercisable by the person for whom s/he is substituting.
- v. The Licensing Committee Code of Practice for Councillors and Officers can be found in Part C9 of the Constitution.

### 13.4 Procedure Rules

- i. Committee meetings will be called in accordance with Part C2 of the Constitution: *Access to Information*.
- ii. The provisions of the Licensing Act 2003 (Hearings) Regulations 2005 shall apply to any hearings conducted under the provisions of the Licensing Act 2003 and in the event of any conflict between the Relevant Regulations and the Council Procedure Rules/Access to Information Procedure Rules in relation to such hearings the provisions of the Relevant Regulations shall prevail. Licensing Act 2003 matters fall outside of the remit of the Local Government Act 1972.

- iii. The provisions of the Gambling Act 2005 (Proceedings of Licensing Committees and Sub Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 shall apply to the exercise of functions under Section 162 (1) and (2) and Section 201 (4) of the Gambling Act 2005 and in the event of any conflict between the Relevant Regulations and the Council Procedure Rules/Access to Information procedure rules in relation to the exercise of such functions the provisions of the Relevant Regulations shall prevail.
- iv. The Licensing functions of the Council shall be carried out by the following bodies:
  - Licensing and Public Protection Committee (15 Members with a quorum of 5)
  - Sub-Committees to be established by the Licensing and Public Protection Committee, comprising three Members drawn from the full Committee, to deal with matters under the Licensing Act 2003 and the Gambling Act 2003 as assigned and matters in respect of hackney carriages, private hire, vehicles drivers and operators. The Chairs of the Licensing and Public Protection (Licensing Sub)-Committee's role is to chair the licensing sub-committee meetings, deal with subsequent actions of appeals and assist in finding substitutes for members as required.
- v. Before any Councillor who is a member of the Licensing Committee can attend a meeting and participate in the determination of an application or appeal by any individual or body, that Councillor must have attended a suitable training course dealing with the quasi-judicial nature of the role of the Committee.
- vi. Except where authorised by statute, business shall not be transacted at a meeting unless a quorum is present.

## **B14. AUDIT COMMITTEE**

### **14.1 Purpose**

- i. The purpose of the Audit Committee is to support the Council's Corporate Governance responsibilities and to provide independent assurance to the Council in relation to internal control, risk management and governance.

### **14.2 Functions**

- a) To review the City Council's Annual Accounts and Annual Governance Statement (AGS). This will include advising on significant changes throughout the year to financial regulations and policies.
- b) To monitor progress in addressing control or governance issues identified in the AGS.
- c) To review and provide the Executive with assurance on the embedding and maintenance of an effective system of corporate governance, including the Council's Corporate Governance Code and Framework, risk management framework, and the associated control environment.
- d) To consider the Council's framework of assurance and ensure that it adequately addresses the risks and priorities of the Council.
- e) To review the adequacy of treasury risk management arrangements as set out in the Treasury Management Policy, Strategy and treasury management practices.
- f) Responsibilities as set out in the terms of reference in relation to external audit including reviewing the planned programme of work, noting fees and terms of engagement of the external auditor, considering and advising the executive on responses to audit management letters, reports and investigations and reviewing whether agreed external audit or inspection recommendations have been implemented as timetabled.
- g) To review and make recommendations to the executive regarding the effectiveness of internal audit to include ensuring the internal audit function is adequately resourced, to review its strategy, receive, challenge and approve its annual plan and monitor its delivery and to review significant audit findings and monitor progress by managers in implementing agreed recommendations.
- h) To consider and make recommendations to the executive on the Council's arrangements for deterring, preventing, detecting and investigating fraud.
- i) To consider reports from the Ombudsman and monitor management response in relation to these.
- j) To consider, approve or make recommendations in respect of any other matters at the request of the Council.



### 14.3 Membership

- i. Members of the Audit Committee, and its Chair, are appointed by Full Council. There are eight members of the committee, and the quorum is three.
- ii. The Chair of Audit Committee should not be appointed to serve as a Director on any of the City Council's wholly owned companies.
- iii. An Independent Technical Advisor should be appointed to support the Committee.

### 14.4 Conflicts of interest

- iv. If a Cabinet Adviser (or former Cabinet Adviser) is a member of the Audit Committee when it is considering matters to which their role relates, then that Councillor must withdraw from the meeting during the consideration of such matter.
- v. If the Audit Committee is considering items relating to the work of a relative of a member of the Committee, then that Councillor must withdraw from the meeting during the consideration of such matter.

## B15. TRUSTS AND CHARITIES COMMITTEE

### 15.1 Role

- i. The Trusts and Charities Committee will exercise the administrative powers and duties of Full Council as trustee ("Council as Trustee") in relation to all trusts for which the Council is sole corporate trustee (the "City Trusts").

### 15.2 Functions

- i. The Trusts and Charities Committee is authorised to discharge the following functions:
  - To advise Council as Trustee in all matters relating to the Trusts and Charities under the control of the Council;
  - To receive and discuss all audit reports on Trusts and Charities and recommend actions to the Council as Trustee where required;
  - To review and approve the City Trusts annual accounts and final accounts; and recommend actions to the Council as Trustee where required;
  - To approve Charity Commission returns and all other regulatory documents;
  - To inquire of and respond to the Charity Commission and any other regulatory bodies;
  - To respond to enquiries from Auditors or Independent Examiners;
  - To be responsible for ensuring that legal responsibilities are met;
  - To ensure the objects and purposes of each individual City Trust are properly promoted in accordance with charity law;
  - To ensure (through the Finance Department and Accounting systems) that there is an appropriate system of control over income and expenditure, and that there are robust governance arrangements in place;
  - To have oversight of allocation of funds, donations and investment income, to ensure these are accounted for accordingly.
  - To be responsible for advising Council as trustee on all matters relating to the investments of the funds. This will include the appointment, and subsequent performance monitoring of the official Investment Advisers;
  - To take any other action deemed appropriate or necessary to ensure the proper management and administration of the City Trusts.
- ii. Full Council sitting as "Council as Trustee" will be responsible for decisions concerning the use and/or disposal of charity property and assets, and will delegate the management of any City Trust to the Trusts and Charities Committee, with assistance from the Legal, Finance and Property Services team as and when required.

### 15.3 Membership

- i. Members of the Trusts and Charities Committee, and its Chair, are appointed by Full Council. There are eight members of the Committee, and the quorum is three members.

## B16. THE STANDARDS COMMITTEE

### 16.1 Role

- i. The Standards Committee's role is:
  - a) Advising the City Council on the adoption or revision of the Code of Conduct;
  - b) Monitoring the operation of the Code of Conduct and the arrangements for how the Council will deal with any complaints;
  - c) Advising, training or arranging to train members and co-opted members on matters relating to the City Council's Code of Conduct.
  - d) Determining complaints brought by members of the public alleging a breach of the Code of Conduct by Councillors.
  - e) Determining the penalty to be imposed in the event of a breach of the Code being upheld.
  - f) Hearing appeals as may be necessary.
  - g) Granting any dispensations and dealing with any other powers granted to Standards Committees by legislation.
  - h) To submit an Annual report on the work of the Standards Committee and, generally, promoting the standards of ethical conduct and behaviour expected of Councillors.
- ii. The Standards Committee shall also determine under Sections 1 and 2 of the Local Government and Housing Act 1989: -
  - a) any application received from any officer of the Council for exemption from political restriction; and
  - b) any application to consider whether a post should be included in the list maintained by the Council under Section 2(2) of the 1989 Act, and may direct the Council to include a post in that list.

### 16.2 Membership

- i. The Standards Committee will be composed of 14 Members, as follows:
  - 6 Councillors, which will be made up of 2 Councillors from each of the 3 largest political parties represented on the City Council;
  - 6 Independent lay members
  - 1 Member of New Frankley in Birmingham Parish Council
  - 1 Member of Sutton Coldfield Parish Council
- ii. **Independent Lay Members:** Independent Lay Members are not entitled to vote at meetings;

- iii. **Parish Members:** The Parish Member(s) must be present when matters relating to the parish council or their Members are being considered but shall have no voting rights;
- iv. **Chairing the Committee:** Standards Committee will appoint an Independent Lay Member as Chair and Deputy Chair of Standards Committee. In the absence of the appointed Chair/Deputy Chair the Committee will be chaired by another Independent Lay Member or if none available the Committee will be chaired as determined by the Committee.
- v. **Quorum:** The quorum for the Standards Committee shall be five, including at least three Birmingham Councillors, one of the Independent Lay Member and the Parish Councillor if it relates to a Parish Council matter.
- vi. **Independent Person:** There will be at least 1 Independent who will have no voting rights although Standards Committee has the discretion to appoint an additional person if required.
- vii. **Delegation:** The Standards Committee may appoint one or more sub-committees for the purpose of discharging any of the Committee's functions as set out in 1.1 above. A sub-committee shall have a quorum of at least three voting members and one Independent Lay Member.
- viii. **Arrangements for Dealings with Standards Allegations under the Localism Act 2011:** The Monitoring Officer will set out the procedure for the arrangements as to how complaints under the Code of Conduct are dealt with. Any changes to those arrangements may only be made following consultation with the Standards Committee.

## **B17. INDEPENDENT REMUNERATION PANEL**

### **17.1 Panel Composition**

- i. In Birmingham the Panel comprises:
  - a) 4 members selected from a public advertisement;
  - b) 2 “invited” members (from August 2017, preference to be given to candidates representing trade unions or business);
  - c) 2 co-optees (non-voting members) drawn from former Councillors of the City Council who are no longer Members of the Council.
- ii. Panel Members are usually appointed for a 4-year term of office.

### **17.2 Terms of Reference**

- i. The terms of reference for the Panel are:
- ii. To consider and keep under review and, as and when appropriate, to submit reports (containing recommendations) to the Council on:
  - a) The amount of Basic Allowance payable to all members;
  - b) The responsibilities or duties in respect of which Special Responsibility, Travelling, Subsistence and Co-optees’ should be available and the amounts of such allowances;
  - c) Whether Dependants’ Carers’ Allowance should be payable and the amount of such an allowance;
  - d) Whether there is any backdating of allowances payable for the year in which an amendment is made;
  - e) Whether adjustments to the allowances are to be determined according to an index and if so, how long the index shall apply before review [maximum of four years];
  - f) Any proposals for the introduction of an Allowances Scheme for members of a Parish Council.

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## B18. SUMMARY OF QUORACY

CABINET / COMMITTEE	No. of Members	Quorum
<a href="#">City Council</a>	101	30
<a href="#">Council Business Management Committee</a> (and Sub-Committees as Determined by the Constitution and the Committee)	9	3
<a href="#">Chief Officer and Deputy Chief Officer Appointments, Dismissals and Service Conditions Sub-Committee</a>	5	3 including member of main opposition party
<a href="#">Cabinet</a>	10	4
<a href="#">Cabinet Committee – Group Company Governance</a>	4	3 (inc. 2 Cabinet Members)
<a href="#">Health &amp; Wellbeing Board</a> * including one elected member	16	6*
<a href="#">Overview &amp; Scrutiny</a>		
Co-ordinating Overview & Scrutiny Committee	12	4
Education & Children's Social Care Overview & Scrutiny Committee (Contains Governor and Parent Representatives)	8 + 4	4
All Other Overview & Scrutiny Committees	8	3
<b>Regulatory and Non-Executive</b>		
<a href="#">Planning Committee</a>	15	5
<a href="#">Licensing &amp; Public Protection Committee</a> (and Sub-Committees)	15 3	5 3
<a href="#">Trusts &amp; Charities Committee</a>	8	3
<a href="#">Audit Committee</a>	8	3
<a href="#">Standards Committee</a>	14	5

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# Birmingham City Council Constitution

## Part C – Codes and Protocols

July 2022

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## C1. CORPORATE GOVERNANCE CODE AND FRAMEWORK

### Introduction

- i. Corporate governance is a phrase used to describe how organisations direct and control what they do. For local authorities this also includes how a council relates to the communities that it serves.
- ii. Our [Birmingham City Council Plan](#) articulates ambitions framed around our Birmingham City Council Plan 2018 -2022 as a city of growth where every child, citizen and place matters.
- iii. The purpose of our corporate governance arrangements is to devise and deliver services to the citizens of Birmingham in a way that demonstrates accountability, transparency, effectiveness and value for money, integrity, and inclusivity and which reflects corporate values.

### Corporate Governance Code

- i. Our Corporate Governance Code and Framework is based upon seven Principles.
- ii. We will:
  - a) Behave lawfully, with integrity and in the public interest and demonstrate this through our conduct and behaviour.
  - b) Be open and engage with local communities, service users and our other stakeholders.
  - c) Focus our resources on outcomes and ensure council tax payers and service users receive excellent value for money.
  - d) Ensure we have clear responsibilities and arrangements for transparent and effective accountability.
  - e) Take informed and transparent decisions.
  - f) Ensure that we have robust and effective audit, scrutiny, information governance, risk and financial management controls.
  - g) Develop our capacity and capability to be effective.
- iii. It is the role of our Audit Committee to oversee and receive assurances relating to our governance arrangements and also to provide challenge on how our arrangements can be continually improved.

### Principles

**We will behave lawfully, with integrity and in the public interest, and will demonstrate this through our conduct and behaviour**

<i><b>And commit to</b></i>	<i><b>Supported and evidenced by our</b></i>
Embed values and codes of conduct for both employees and councillors. Ensure that those who provide services on our behalf act in accordance with these principles. Deal with breaches of legal and regulatory requirements and ensure fraud, corruption and allegations of misuse of public funds are dealt with effectively.	Values and behaviours Members' Code of Conduct Officer Code of Conduct Partnership agreements Procurement Terms and Conditions Arrangements for the registration and declaration of interests (including gifts and hospitality) Anti-Fraud and Corruption Policy Complaints and Compliments procedures

**We will be open and engage with local communities, service users and our other stakeholders**

<i><b>And commit to</b></i>	<i><b>Supported and evidenced by our</b></i>
Ensuring that service users, local communities and other stakeholders have access to the council and are involved and consulted about major changes that may affect them. Welcome peer challenges, reviews and inspections from regulatory bodies and implement recommendations which arise from them.	Consultation Approach to restorative practice Ward Forums Parish and Town Council arrangements Birmingham Citizens Panel (when active) Use of Overview and Scrutiny Inquiries Deputations to full Council and ward forums Consideration of and response to Petitions

**We will focus our resources on outcomes and ensure council tax payers and service users receive excellent value for money**

<i><b>And commit to</b></i>	<i><b>Supported and evidenced by our</b></i>
<p>Ensure that services put the needs of the public first, are non-discriminatory and are appropriate to different needs in the community.</p> <p>Make best use of resources and ensure that the People of Birmingham receive excellent value for money.</p> <p>Consider and balance the combined economic, social and environmental impact of policies and plans when taking decisions.</p>	<p>City Council Plan for Birmingham</p> <p>Equality and Diversity Policy</p> <p>Safeguarding arrangements</p> <p>Safer Birmingham Strategy</p> <p>Youth Justice Plan</p> <p>Children and Young Peoples Plan</p> <p>Annual Performance Report</p> <p>Financial Strategy and Medium Term Financial Plan</p> <p>State of the City Events</p> <p>Performance Management Framework</p> <p>Annual Internal Audit Report</p> <p>External Audit Value for Money opinion</p>

**We will ensure we have clear responsibilities and arrangements for transparent and effective accountability**

<i><b>And commit to</b></i>	<i><b>Supported and evidenced by our</b></i>
<p>Document who is responsible for our functions and will ensure reports on our performance, delivery of value for money and stewardship of resources are routinely reported.</p> <p>Review on a regular basis the vision for the city and its implications for the authority's governance arrangements.</p> <p>Have in place effective arrangements to identify and deal with failure in service delivery.</p> <p>Ensure that relationships and accountabilities between the authority, its partners and the public are clear.</p>	<p>Constitution</p> <p>Executive Portfolios</p> <p>Monitoring of Revenue and Capital expenditure</p> <p>Delegation and sub delegation arrangements</p> <p>Committee Terms of Reference</p> <p>Protocol for the roles of Members and officers in Decision Making</p> <p>Annual Internal Audit Report</p> <p>Customer service standards and dispute resolution arrangements</p> <p>Annual Accounts</p> <p>Access to Information Procedure Rules</p> <p>Executive and Decision Making Procedure Rules</p> <p>Annual Governance Statement</p> <p>Annual Scrutiny Report</p> <p>Annual Standards Report</p> <p>Partnership arrangements</p> <p>Information Governance arrangements</p> <p>Health Safety and Wellbeing</p> <p>Annual Pay Policy Statement</p>

**We will take informed and transparent decisions**

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<b><i>And commit to</i></b>	<b><i>Supported and evidenced by our</i></b>
<p>Ensure that all decisions are taken which are proportionate, respect human rights and natural justice, are open and transparent with clear aims and desired outcomes and promote equality of opportunity.</p> <p>Consider and balance the economic, social and environmental impacts of policies and plans.</p> <p>Ensure that:</p> <p>those making decisions are provided with information that is relevant, timely and gives clear explanations of technical issues and their implications;</p> <p>appropriate legal, financial and other professional advice is considered as part of the decision-making process; and</p> <p>decision-makers can be held to account for the decisions they take through effective overview and scrutiny arrangements.</p>	<p>Executive/Cabinet arrangements</p> <p>Committee Terms of Reference</p> <p>Access to Information Procedures</p> <p>Delegation and sub delegation arrangements</p> <p>Procedures for decision making</p> <p>Provision of effective, timely, responsive and highly regarded legal, financial and professional services</p> <p>Equality and Diversity Policy</p> <p>Use of data to support decision making and effectively target resources</p>

**We will ensure that we have robust and effective audit, scrutiny, information governance, risk and financial management arrangements.**

<i><b>And commit to</b></i>	<i><b>Supported and evidenced by our</b></i>
<p>Embed a risk management framework to achieve our priorities and protect the Council's reputation and assets.</p> <p>Collect, use and store information and data appropriately.</p> <p>Maintain a prudential financial framework which balances our commitments with available resources, monitors income and expenditure and ensures corrective action when necessary.</p>	<p>Overview and Scrutiny Committee arrangements</p> <p>Vision for Overview and Scrutiny</p> <p>Medium Term Financial Plan</p> <p>Capital Programme and Treasury Management Strategy</p> <p>Financial Regulations and Contract Procedure Rules</p> <p>Performance and risk management arrangements</p> <p>Compliance with the Code of Practice on Data Transparency and the General Data Protection Regulation</p> <p>Business Continuity arrangements</p> <p>A 'Public Sector Internal Audit Standard' compliant Internal Audit function</p>

**We will develop our capacity and capability to be effective**

<i><b>And commit to</b></i>	<i><b>Supported and evidenced by our</b></i>
<p>Improving the use of our people resource by developing and maintaining an effective workforce plan.</p> <p>Continually review our performance, including how the organisation is led, how we work, and how we make the most efficient use of our resources assets (including data) to ensure our continuing effectiveness.</p> <p>Ensuring that all councillors and employees have the skills, knowledge and experience they need to perform their roles effectively.</p>	<p>Code of practice for Member-Officer relations.</p> <p>Our values and behaviours</p> <p>Appraisal arrangements</p> <p>Staff surveys</p> <p>Training and development programmes for Councillors</p> <p>Training and development programmes for staff</p> <p>Participation in peer reviews</p> <p>Recognition of colleagues through our awards for excellence</p> <p>Workforce development plan</p> <p>Graduate and apprenticeship programmes</p>



## C2. MEETINGS AND ACCESS TO INFORMATION PROCEDURE RULES

### Scope

- iv. These rules apply to all meetings of the Council, its Committees and Sub-Committees (including but not limited to Overview and Scrutiny Committees, area committees (if any), regulatory committees, and meetings of the Executive (together called "meetings").

### Principles

- i. These rules will be interpreted, where possible, in accordance with the following guiding principles / presumptions:
  - a) Openness: the right of the public to gain access to meetings and documents;
  - b) Transparency: the provision of information so that the public know who is responsible for making a particular decision, when and where, and have an explanation or justification for a decision;
  - c) Accountability: the public can measure the actions taken against policies and plans on which those responsible were elected to office.

### Notice of Meetings

- i. The Council will give at least 5 clear working days' notice of any non-urgent meeting and for urgent meetings at least 3 clear days' notice will be given. Details of the meeting will be posted at the Council House, Victoria Square, Birmingham B1 1BB and on the Council's website.

### Access to Agendas, Reports and Decision Records

- i. The Council will make the Agenda and relevant Reports available to the public on its website at least five clear working days before the meeting or as much time as is available for an urgent item of business. Where Reports are prepared after the Agenda has been sent out, the Committee Services Officer shall make such report(s) available for inspection to the public as soon as the Report is completed and sent to the relevant Councillors.
- ii. For the avoidance of doubt, "working days" does not include weekends, statutory holidays, the day of the notice or the actual day of the meeting.

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- iii. Agendas, Reports and Decision Records, save for those which contain exempt or confidential information will be found on the Council's [website](#).<sup>1</sup>

#### Background Papers

- iv. The author of a report will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:
- disclose any facts or matters on which the report or an important part of the report is based; and
  - have been relied on to a material extent in preparing the report.
- v. This does not include those which disclose confidential or exempt information (as defined in B2.5); nor does this include the advice of a political adviser<sup>2</sup>; nor any draft report or document.

#### Exclusion of Access by the Public to Meetings

- i. Members of the public may attend all meetings subject only to the exceptions set out below. Attendance shall include viewing the meeting via video conferencing or live webcast as government guidance/regulation allows.

#### Confidential information – requirement to exclude public

- ii. The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.
- iii. Confidential information means information provided to the Council by a Government Department upon terms (however expressed) which forbid the disclosure of the information to the public or other information the disclosure of which is prohibited by any enactment or Court Order.

#### Exempt information – discretion to exclude public

- iv. The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.
- v. Exempt information relates to the access to information requirements covered by Section 100I and Schedule 12 A of the Local Government Act 1972 (as amended) as set out in the table below, and related Regulations. Information is also exempt if it is advice of a Political

<sup>1</sup> <https://birmingham.cmis.uk.com/birmingham/Committee.aspx>

<sup>2</sup> "political adviser or assistant" means a person appointed pursuant to section 9 of the Local Government and Housing Act 1989(b)

Adviser or Political Assistant, as defined by the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended).

<b>Category</b>	<b>Condition</b>
1. Information relating to any individual.	This means any living individual person and relates back to data protection legislation i.e. the General Data Protection Regulation 2016/ 679 (GDPR) & the Data Protection Act 2018 (DPA).
2. Information which is likely to reveal the identity of an individual.	This again relates back to data protection legislation
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).	Includes information relating to the Authority's own financial or business affairs. It does not include information which is required to be registered under the Companies Act 1985, the Friendly Society Acts 1974 and 1992, the Industrial and Provident Societies Acts 1965-1978, the Building Societies Act 1986 or the Charities Act 1993 as such information will be in the public domain in any event. The "financial affairs or business affairs" include past, present and contemplated activities.
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office-holders, under the authority.	"Employee" means a person employed under a contract of service with the Council and would not therefore include a consultant or a temporary member of staff employed through an agency or a company. Information about such a person, however, may well be covered under the exemptions in paragraphs 1, 2 and 3 but it will depend on the individual matter. "Labour relations matter" means matters which may be the subject of a trade dispute within the meaning of Section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 or any dispute about such a trade dispute. This is therefore fairly narrow and does not appear to include normal staff negotiations which are not part of a dispute.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	
6. Information which reveals that the authority proposes – (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or	

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<i>Category</i>	<i>Condition</i>
(b) to make an order or direction under any enactment	
7.Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	

- vi. Information is not exempt if it relates to proposed development for which the Local Planning Authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning (General) Regulations 1992.

#### Public Interest Test

- vii. Paragraphs 1-7 of the exemptions above are subject to the public interest test. In determining whether this information should remain exempt, the report writer and the decision-maker will have to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. All report writers will, therefore, give consideration to this and explain why they consider the public interest test is best served by the information remaining exempt. This determination, together with reasons, will appear in the report and the agenda in relation to that item.

#### Cabinet: Notification of Intention to Consider Matters in Private

- viii. Where there is a proposal for a meeting of Cabinet to consider part of a report in private, Part 2 of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 requires the Council to provide notification of its intention to do so.
- ix. A notification of intention to consider matters in private will be published on the meeting page on the website 28 days ahead of that meeting.

#### Appeals Where Public Access is Denied to a Report

- x. If a member of the public is denied access to a report or background papers under the rules set out above, they may appeal at the relevant meeting by giving notice in writing to the Assistant Director Governance, such notice to be received not less than seven working days before the relevant meeting is due to be held. Any such appeal will be considered by the Assistant Director Governance in conjunction with the chair of that meeting.
- xi. The person making the appeal may provide written submissions to the Assistant Director Governance who will supply copies of the same to the relevant Chief Officer and each member of the meeting before the date of the meeting.
- xii. The Assistant Director Governance will collate responses to the submission and agree a response with the Chair ahead of the meeting. The decision will be announced at the start of the meeting.

**Disorderly Conduct – Discretion to Exclude Public**

- i. The public may also be excluded from meetings, where the meeting so resolves, in the exercise of a lawful power of exclusion in order to maintain orderly conduct or to prevent misbehaviour at a meeting.

**Attendance at Private Meetings of the Executive**

- i. All Members of the Executive are entitled to attend a private meeting of any committee of the Executive.
- ii. The Head of the Paid Service, the Chief Finance Officer and the Monitoring Officer, and their nominees, are entitled to attend any meeting of the Executive and its committees.
- iii. A maximum of two of the major Opposition Group Members and a maximum of one of the other Opposition Group Members – to include their Group Leader(s) – may receive notice of Cabinet meetings, the relevant papers and remain and participate during the deliberations of the private sessions of the Cabinet.
- iv. The Chairs of any of the Council's Overview & Scrutiny Committees (or their nominee from the relevant committee) shall be entitled to attend Cabinet meetings and to remain and participate during the deliberations of the Cabinet during any of its 'Private Sessions'.

**Members Access – Statutory Rights****Material relating to forthcoming business**

- i. All Members are entitled to inspect any document which is in the possession or under the control of the Executive or its committees and contains material relating to any business to be transacted at a public meeting unless
  - a) It contains exempt information falling within Rules B2.5v(1), B2.5v(2), B2.5v(4), B2.5v(5), and B2.5v(7), above; or
  - b) It contains exempt information falling within Rule B2.5v(3), above to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract; or
  - c) It contains the advice of a political adviser; or
  - d) It is a draft report or draft background paper; or
  - e) It is not a report or a background paper.

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- ii. All Members are entitled to inspect any document which is in the possession of or under the control of the Council and contains material relating to any business to be transacted at a meeting of the Council or any of its committees or sub-committees unless
  - a) It contains exempt information falling within Rules B2.5v(1), B2.5v(2), B2.5v(4), B2.5v(5), and B2.5v(7) above or
  - b) It contains exempt information falling within Rule B2.5v(3) above to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract.
- iii. Members of the Audit Committee shall have access to any information that is relevant to their role as an Audit Committee members, save where legal privilege applies or where sharing information will result in a breach of contract or confidentiality, or otherwise is judged by the City Solicitor to put the Council at risk.

#### Scrutiny Members Access – Additional Statutory Rights

- iv. Members of an Overview and Scrutiny Committee will be entitled to copies / inspect documents in respect of matters under scrutiny by those members, which are in the possession or control of the Executive or its Committees and which contain material relating to:
  - a) Any business transacted at a public or private meeting of the Executive or its Committees; or
  - b) Any decision taken by an individual Cabinet Member.
- v. An Overview and Scrutiny Committee will **not** be entitled to:
  - a) Any document that is in draft form;
  - b) Any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise; or
  - c) The advice of a Political Adviser or Assistant (if any have been appointed).
- vi. Copies of documents requested under this section must be supplied within 10 clear days of receipt of the request. Reasons must be given if copies of the documents are refused.

#### Members Access – Need to Know

- vii. **Meaning of the Need to Know:** Members have the right to seek information, explanation and advice which they may reasonably need in order to assist them in properly discharging their duties as a Member of the Council. This can range from a request for general information about some aspect of the Council's activities to a request for specific information on behalf of a constituent. Such approaches should normally be made to the relevant Chief Officer.

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- viii. The Nature of Requests: Members should:
- a) Avoid over-involvement in issues raised by individual constituents;
  - b) Be particularly careful when having direct contact with relatively junior officers, to avoid the appearance of abusing their position;
  - c) Justify the request in specific terms, unless circumstances exist where a Member's need to know will be presumed – for example where a Member is on a committee and wants to inspect documents relating to that committee's business, or where the information requested is already in the public domain;
  - d) Only use the information for the purpose for which it was provided and get the prior agreement of the relevant Chief Officer to any disclosures to the press or the public.
- ix. **Limit on rights:** there are a number of factors which may limit or outweigh a Member's need to know, including:
- a) The need to know does not extend to a 'roving commission' through Council documents;
  - b) The need to know would only extend to personal information in exceptional cases;
  - c) Draft documents compiled in the context of emerging Council policies, and draft reports will not usually be disclosed;
  - d) A Member of one party group will not have a need to know in relation to a document prepared for another party group;
  - e) Documents prepared specifically for one Member will not, unless he/she agrees, normally be provided to another Member;
  - f) Documents will not be disclosed where the relevant Chief Officer believes that use of those documents by a Member may prejudice the Council's or the public interest;
  - g) The level of resources required to deal with locating and supplying documents.
- x. **Procedure:** Whether a Member has a need to know will be determined initially by the Chief Officer who holds the document in question (with advice from the Monitoring Officer). The Chief Officer must not have regard to party political advantage, nor must the Chief Officer's determination have the effect of preventing the Member concerned from giving evidence in Court, or of penalising the Member for so doing.
- xi. All internal documents and copies produced to any Member for inspection in accordance with this Rule will be produced on the basis that, in the absence of malice, officers are expressly indemnified in respect of any claim in litigation that may result from such publication.

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**Public Access to Other Information – Freedom of Information**

- i. Where a member of the public makes a request for information under the Freedom of Information (FOI) Act 2000, they will be informed in writing by the Council whether it holds such information, and if that is the case, they will have that information communicated to them, unless an exemption applies.
- ii. An FOI request must be in writing, state the name of the applicant and an address for correspondence, and describe the information requested. A request will be treated as made in writing where the text is transmitted by electronic means (e-mail), is received in legible form, and is capable of being used for subsequent reference.
- iii. FOI requests will be dealt with by the FOI practitioner for the relevant service area.
- iv. FOI requests must generally be dealt with promptly, and no later than 20 working days of receipt.
- v. Further details about how to make an FOI request can be found on the [website](https://www.birmingham.gov.uk/info/20154/foi_and_data_protection/408/make_a_freedom_of_information_request).<sup>3</sup>

<sup>3</sup> [https://www.birmingham.gov.uk/info/20154/foi\\_and\\_data\\_protection/408/make\\_a\\_freedom\\_of\\_information\\_request](https://www.birmingham.gov.uk/info/20154/foi_and_data_protection/408/make_a_freedom_of_information_request)



### C3. PROTOCOL REGARDING THE RECORDING OF COUNCIL MEETINGS

- i. For the purposes of this section, recording includes webcasting, filming and photography.
- ii. The Council is committed to openness and transparency in its decision making. Recording is permitted at Council meetings that are open to the public. The Council understands that some members of the public attending its meetings may not wish to be recorded and will seek to ensure that any such requests are respected.
- iii. The rules that the Council will apply are:
  - a) All recordings must be overt (clearly visible to anyone at the meeting) and must not disrupt proceedings. Where meetings are recorded by the Council, this will be stated at the start of each meeting.
  - b) The Chair of the meeting has absolute discretion to stop or suspend recording if, in their opinion, continuing to do so would prejudice proceedings at the meeting or if the person recording is in breach of these rules.
  - c) Recording must stop if the meeting goes into private session where the public is excluded for confidentiality or exempt reasons. In such a case, the person filming should leave the room ensuring all recording equipment is switched off.
  - d) Any member of the public has the right not to be recorded. Agendas for, and signage at, Council meetings should make it clear that recording can take place – anyone not wishing to be recorded must advise the Chair at the earliest opportunity.
  - e) The recording should not be edited in a way that could lead to misinterpretation or misrepresentation of the proceedings or in a way that ridicules or shows a lack of respect for those in the recording. The Council would expect any recording in breach of these rules to be removed from public view.
- iv. If someone refuses to stop recording when requested to do so by the Chair of the meeting, then the Chair will ask the person to leave the meeting. If the person refuses to leave, then the Chair may adjourn the meeting.
- v. If media outlets wish to record meetings, then it is helpful to have some advance notice to ensure space is available.
- vi. The use of social media in council meetings is permitted for members of the public and media so long as this does not cause any disruption or disturbance. The Chair's decision on this point is final. (Councillors are not permitted to use social media during the private part of any council meeting).

## C4. CODE OF CONDUCT FOR MEMBERS

### Introduction

- i. It is important that councillors can be held accountable and all adopt the behaviours and responsibilities associated with the role. Your conduct as an individual councillor affects the reputation of all councillors. The role of councillor should be one that people aspire to and individuals from a range of backgrounds and circumstances should be putting themselves forward to become councillors.
- ii. This Code has been designed to protect your democratic role, encourage good conduct and safeguard the public's trust in local government.

### Definitions

- i. For the purposes of this Code of Conduct, a "councillor" means a member or co-opted member of a local authority or a directly elected mayor. A "co-opted member" is defined in the Localism Act 2011 Section 27(4) as "a person who is not a member of the authority but who
  - a) is a member of any committee or sub-committee of the authority, or;
  - b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;
- ii. and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee".
- iii. For the purpose of this Code of Conduct, "local authority" includes district councils, parish councils and town councils.

### Purpose of the Code of Conduct

- i. The purpose of the Code is to assist you, as a councillor, in modelling the behaviour that is expected of you to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, officers and the reputation of the council.
- ii. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

### General principles of councillor conduct

- i. Everyone in public office at all levels, all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers, should uphold

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the Seven Principles of Public Life, also known as the Nolan Principles (see section 4.6 below).

- ii. Building on these principles, the following general principles have been developed specifically for the role of councillor.
- iii. In accordance with the public trust placed in me, on all occasions:
  - I act with integrity and honesty;
  - I act lawfully;
  - I treat all persons fairly and with respect; and
  - I lead by example and act in a way that secures public confidence in the role of councillor.
- iv. In undertaking my role:
  - I impartially exercise my responsibilities in the interests of the local community;
  - I do not improperly seek to confer an advantage, or disadvantage, on any person;
  - I avoid conflicts of interest;
  - I exercise reasonable care and diligence;
  - I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest;
  - I affirm my commitment to and encouragement of others to promote Corporate Parenting (including their safeguarding and welfare) in respect of the City Council's children in care;
  - I will take into account and abide by all other relevant council policies and procedures.

#### **Application of the Code of Conduct**

- i. This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor or co-opted member.
- ii. This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:
  - you are acting in your capacity as a councillor and /or as a representative of your council;
  - you are claiming to act as a councillor and/or as a representative of your council;

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- you are giving the impression, or the circumstances may give rise to the perception, that you are acting as a councillor and/or as a representative of your council;
- you refer publicly to your role as a councillor and/or as a representative of your council.

iii. This Code applies to all forms of communication and interaction, including:

- at face to face meetings;
- at online or telephone meetings;
- in written communication;
- in verbal communication;
- in non-verbal communication; and
- in electronic and social media communication, posts, statements and comments.

iv. You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

v. The Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

#### **The Nolan Principles**

vi. Everyone in public office at all levels, all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers, should uphold the Seven Principles of Public Life, also known as the Nolan Principles. These are:

#### **Selflessness**

Holders of public office should act solely in terms of the public interest.

#### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

**Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

**Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

**Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

**Honesty**

Holders of public office should be truthful.

**Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

**Standards of Conduct**

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken. Guidance is included to help explain the reasons for the obligations and how they should be followed. Guidance is shown in italics.

- i. Respect

**As a councillor:****1.1 I treat other councillors and members of the public with respect.****1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.**

*Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack. As part of this you should not swear or use inappropriate language during any meetings. In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.*

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*In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor-officer protocol.*

ii. Bullying, harassment, discrimination and victimisation

**As a councillor:**

**2.1 I do not bully any person.**

**2.2 I do not harass any person.**

**2.3 I promote equalities and not discriminate unlawfully against any person.**

**2.4 I do not victimise any person.**

*The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as “offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient”. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or during phone calls, in the workplace or at work-related social events. Such behaviour may not always be obvious or noticed by others.*

*The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.*

*Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.*

*The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.*

iii. Impartiality of officers of the council

**As a councillor**

**3.1 I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.**

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*Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants)<sup>4</sup>. They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.*

iv. Confidentiality and access to information

**As a councillor:**

**4.1 I do not disclose information:**

- a. given to me in confidence by anyone;
- b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless:
  - i) I have received the consent of a person authorised to give it;
  - ii) I am required by law to do so;
  - iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or
  - iv) the disclosure is:
    - 1) reasonable and in the public interest; and
    - 2) made in good faith and in compliance with the reasonable requirements of the local authority; and
    - 3) I have consulted the Monitoring Officer prior to its release.

**4.2 I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.**

**4.3 I do not prevent anyone from getting information that they are entitled to by law.**

*Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.*

v. Disrepute

<sup>4</sup> Officers of the Council must abide by the Employee Code of Conduct- set out in part C of the constitution

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**As a councillor:****5.1 I do not bring my role or local authority into disrepute.**

*As a councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in your or your local authority's ability to discharge your or its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.*

*You are able to hold the local authority and fellow councillors to account and are able to challenge constructively and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.*

## vi. Use of position

**As a councillor:****6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.**

*Your position as a member of the local authority provides you with certain opportunities, responsibilities and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.*

## vii. Use of local authority resources and facilities

**As a councillor:****7.1 I do not misuse council resources;****7.2 I will, when using the resources of the local authority or authorising their use by others:****a. act in accordance with the local authority's requirements; and****b. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.**

*You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor.*

*Examples include:*

- office support
- stationery
- equipment such as phones and computers



- transport
- access and use of local authority buildings and rooms.

*These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.*

#### viii. Complying with the Code of Conduct

##### As a councillor:

**8.1 I undertake Code of Conduct training provided by the local authority;**

**8.2 I cooperate with any Code of Conduct investigation and/or determination;**

**8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings;**

**8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.**

*It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.*

#### Protecting your reputation and the reputation of the local authority

#### ix. Interests

##### As a councillor:

**9.1 I register and disclose my interests.**

*Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority.*

*You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as*

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*open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.*

*You should note that failure to register or disclose a disclosable pecuniary interest as set out in Table 1, is a criminal offence under the Localism Act 2011.*

*Appendix B sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.*

x. Gifts and hospitality

**As a councillor:**

**10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage;**

**10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt;**

*In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.*

**Conduct at Meetings of the Council**

- i. Councillors are expected to treat each other with respect and abide by the Code of Conduct when attending meetings of the council.
- ii. The Chair may, as she/he sees fit, direct a Councillor to discontinue his/her speech.
- iii. If there is more general disorder, the Chair may direct a Councillor causing such disorder to retire from the meeting.

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## APPENDIX TO CODE

### Registering interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in Table 1 (Disclosable Pecuniary Interests) which are as described in "The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012". You should also register details of your other personal interests which fall within the categories set out in Table 2 (Other Registerable Interests).

**"Disclosable pecuniary interest"** means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

**"Partner"** means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A 'sensitive interest' is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.
3. Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

### Non-participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
5. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

### Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which **directly relates** to the financial interest or well-being of one of your Other Registerable Interests (as set out in Table 2), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

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**Disclosure of Non-Registerable Interests**

7. Where a matter arises at a meeting which ***directly relates*** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.
8. Where a matter arises at a meeting which ***affects*** –
- a) your own financial interest or well-being;
  - b) a financial interest or well-being of a friend, relative, close associate; or
  - c) a financial interest or well-being of a body included under Other Registerable Interests as set out in Table 2
- you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied
9. Where a matter (referred to in paragraph 8 above) ***affects*** financial interest or well-being:
- d) to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision; and
  - e) a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest.
- You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.
- If it is a 'sensitive interest', you do not have to disclose the nature of the interest.
10. Where you have an Other Registerable Interest or Non-Registerable Interest on a matter to be considered or is being considered by you as a Cabinet Member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

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**Table 1: Disclosable Pecuniary Interests**

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses.  This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council —  (a) under which goods or services are to be provided or works are to be executed; and  (b) which has not been fully discharged.
Land and Property	Any beneficial interest in land which is within the area of the council.  'Land' excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners (alone or jointly with another) a right to occupy or to receive income.
Licenses	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer.
Corporate tenancies	Any tenancy where (to the councillor's knowledge)—  (a) the landlord is the council; and

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Subject	Description
	(b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.
Securities	Any beneficial interest in securities* of a body where—  (a) that body (to the councillor's knowledge) has a place of business or land in the area of the council; and  (b) either—  (i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or  (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

'director' includes a member of the committee of management of an industrial and provident society.

\* 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

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**Table 2: Other Registerable Interests**

You must register as an Other Registerable Interest:

- a) Any unpaid directorships
- b) any body of which you are in general control or management and to which you are nominated or appointed by your authority;
- c) any body
  - i. exercising functions of a public nature
  - ii. directed to charitable purposes or
  - iii one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).

of which you are a member or in a position of general control or management.

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## C5. MEMBER / OFFICER RELATIONS PROTOCOL

### Introduction

- i. The purpose of this Protocol is to guide Members and officers of the Council in their relations with one another in such a way as to ensure that the Council is not brought into disrepute, that a high standard of conduct is maintained and to ensure the business of the Council is transacted in a transparent, effective and efficient manner.
- ii. Birmingham City Council is committed to promoting a culture that demonstrates its core values and behaviours. Members and officers in conducting their working relationships with each other are expected to promote this culture and do so by acting in a respectful and professional manner. There is a high standard of conduct expected of both Members and officers at all times.
- iii. Failure to follow the expected conduct by either Members or officers is considered a serious issue by the Council and will be dealt with in accordance with the Council's policies and procedures and/or, in accordance with the Member Code of Conduct, as set out in the Constitution.
- iv. This Protocol seeks to promote greater clarity and certainty as to working relationships between Members and officers. If the Protocol is followed it should ensure that Members receive objective and impartial advice and that officers are not subject to accusations of bias, and any undue influence from Members.
- v. The Protocol is to a large extent a written statement of current practice and convention and given the variety and complexity of such relations, this Protocol does not seek to be either prescriptive or comprehensive. It offers guidance on some of the issues which most commonly arise and serves as a guide to dealing with other circumstances as they arise.
- vi. It also seeks to reflect the principles underlying the Code of Conduct for Members ("the Members' Code") and the Code of Conduct for Employees ("the Employees' Code"). The shared objective of these codes is to enhance and maintain the integrity (real and perceived) of local government and the Codes, therefore, demand very high standards of personal conduct.
- vii. Members do not have any special immunity from civil or criminal wrongs that they may commit against any fellow Members, officers or members of the public.
- viii. This Protocol should be read in conjunction with the Members' Code and the Employees' Code, the Council's Constitution and any guidance issued by the Standards Committee and/or Monitoring Officer.

### Roles of Members and Officers

- i. The Elected Members are responsible for:
  - a) Initiation and direction of policy;
  - b) Democratic accountability to the electorate for policies and for service delivery;



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- c) Scrutiny of Council services;
  - d) Community leadership; and
  - e) Promotion of partnership working.
- ii. The officers are responsible for:
  - a) Providing the professional advice that Members must have before them when formulating policy and when taking decisions;
  - b) Implementing Members' decisions that have followed due process;
  - c) Running the Council's services and day-to-day administration;
  - d) Taking managerial and operational decisions in accordance with the Council's schemes of delegation; and
  - e) Providing information regarding Council services and approved Council policies.

#### **Working Relationships**

- i. Both Members and officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Members are responsible to the electorate and officers are responsible to the Council as a whole. The conduct of Members and officers should be such as to instil mutual confidence and trust. The key elements are recognition of and a respect for each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other, both publicly and privately.
- ii. An informal and collaborative approach to working between Members and officers is encouraged. Members and officers should overall treat each other as they would wish to be treated.
- iii. However, both Members and officers should be guarded as personal familiarity can damage the relationship, as might a family or business connection. Inappropriate relationships can be inferred from language/behaviour. Close personal familiarity between individual Members and officers can damage the relationship of mutual respect and prove embarrassing to other Members and officers.

#### **Constructive Criticism and Redress**

- i. Challenge in a constructive and non-confrontational way is important in ensuring that policies and service performance are meeting the Council's strategic objectives. Nothing in this protocol is therefore intended to stop Members holding officers to account for decisions made under delegated powers. Officers are accountable to the Council for any decision they make and may be required to report to and answer questions from a Scrutiny Committee. Nothing herein is intended to inhibit constructive criticism delivered with courtesy and officers should not feel their employment is at risk as a result of such intervention.

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- ii. Members should guard against putting inappropriate pressure, in particular, on junior officers and need to be aware that it is easy for junior officers to feel at a disadvantage in their interactions with Members.
- iii. Members should not pressurise any Officer to change his/her professional opinion on any Council business matter or do anything that compromises the impartiality of officers.
- iv. If a Member considers that he or she has not been treated with proper respect or courtesy by an Officer, he or she may raise it with the Officer's line manager or Chief Officer or the Monitoring Officer without delay if it is not possible to resolve it through direct discussion. If the issue still remains unresolved appropriate action may be taken by the Chief Officer in accordance with the Council's normal procedures, should the allegations be proved to be true. Feedback should be given to the Member on the outcome and confidentiality, unless otherwise agreed, must be maintained by all parties.
- v. If an Officer considers that he or she has not been treated with proper respect or courtesy by a Member, and a direct discussion is impractical or fails to resolve the matter, he or she has the option of raising the matter in private with the Monitoring Officer in the knowledge that the matter will be handled with sensitivity and in confidence. In such circumstances, the Monitoring Officer will take such action as is appropriate either by approaching the Member and/or Party Group Leader and also advising the Chief Executive as Head of Paid Service. It may also be appropriate to advise the Chief Officer. Unless otherwise expressly agreed between parties, confidentiality including the identity of the Officer will be maintained at all times. This protocol does not affect the Officer's right to raise the matter via the Council's usual grievance procedures.
- vi. Members should not raise matters relating to the conduct or capabilities of an Officer at meetings held in public or before the Press as officers have no means of responding in public.
- vii. Nothing in this protocol shall prevent a Member or Officer expressing a relevant concern under the Council's Whistleblowing Policy.

#### **Officer Reports and Advice**

- i. The Chief Officer /Head of Service where they are named in a report to the Council (or any part of its formal decision-making structure) will always be fully responsible for the contents of it.
- ii. A report will only be amended where the suggested amendment also reflects the professional judgement of the author of the report. On occasions, officers will need to express a professional view on a matter which may not support the view of the Executive and/or the relevant Chief Officers of the Council. However, it remains for Members to determine the Council's policies and for officers to act on those policies.

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**Officer Advice to Party Groups**

- i. It must be recognised by all officers and Members that in discharging their duties and responsibilities, officers serve the Council as a whole and not any political group, combination of groups or any individual Member of the Council. The assistance provided by senior officers can take many forms ranging from a briefing meeting with an Executive Member, Lead Member, Chair or other Members prior to a meeting, to a presentation, to a full political group meeting. It is an important principle that such assistance is available to all political groups and individual Members. All officers must, in their dealings with political groups and individual Members, maintain political neutrality and treat them in a fair and even-handed manner.
- ii. Officers must respect the confidentiality of any party group discussions at which they are present. When information is disclosed to an Officer during discussions with a party group, that information should not be passed on to other groups. However, Members should be aware that this would not prevent officers from disclosing such information to other officers of the Authority in so far as that is necessary to perform their duties.
- iii. This Protocol can be revised or amended at any time in accordance with Constitutional requirements.

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## C6. EMPLOYEE CODE OF CONDUCT

The Employee Code of Conduct can be found here: [Birmingham City Council Code of Conduct | Birmingham City Council](#)

## C7. EMPLOYMENT PROCEDURE RULES – JNC OFFICERS

### General Notes

- i. These Rules shall be regarded as Standing Orders of the Council for the purposes of The Local Authorities (Standing Orders) (England) Regulations 2001 ('the 2001 Regulations') and Local Authorities (Standing Orders) (England)(Amendment) Regulations 2015 ('the 2015 Regulations').
- ii. Full Council has delegated to the Chief Officer and Deputy Chief Officer<sup>5</sup> Appointments, Dismissals and Service Conditions Sub-Committee (the 'JNC Panel') the responsibilities set out in these employment procedure rules.

### Recruitment and Appointment

#### Declarations

- i. The Council will draw up a statement requiring any candidate for appointment as a Chief Officer or Deputy Chief Officer (Statutory or Non-Statutory) to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or officer of the Council, or of the partner of such persons. A candidate who fails to declare such relationship will be automatically disqualified from such appointment with immediate effect.
- ii. No candidate so related to a Councillor or an officer will be appointed without the authority of the Head of Paid Service or an officer nominated by him/her for that purpose.
- iii. Every Member and senior officer of the Council shall disclose to the Head of Paid Service or relevant officer any relationship known to that person to exist with a candidate for any appointment. It shall be the duty of the relevant Chief Officer or Deputy Chief Officer (Statutory and Non Statutory) to report to the Council or to the JNC Panel including any Member or officer to whom power has been delegated to make an appointment, any such disclosure made by a candidate, Member, or senior officer.
- iv. The HR Director shall record in a book to be kept for the purpose particulars of such disclosure made under this Rule.
- v. Where relationship to a Member of the Council is disclosed, that Member shall withdraw from the meeting while the appointment is under consideration.

<sup>5</sup> Chief Officers are defined in Part B1.7; Deputy Chief Officers are officers Assistant Directors or equivalent

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**Seeking support for appointment**

- vi. Subject to paragraph viii below, the Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- vii. Subject to paragraph viii below no Councillor will seek support for any person for any appointment with the Council.
- viii. Nothing in paragraphs 7.2i and 7.2ii above will preclude a Councillor from giving a written reference for a candidate for submission with an application for appointment.

**Equal Opportunities**

- ix. The Council will not unlawfully discriminate in the recruitment and appointment of officers and all appointments shall be made on merit.

**Recruitment of Chief Officers and Deputy Chief Officers**

- i. The Council has appointed a JNC Panel to exercise all of its powers in relation to the appointment, discipline, grievances and dismissal of Chief Officer and Deputy Chief Officer posts, where not restricted or prohibited by law. References to the Panel include a sub-committee of the Panel established by it to carry out its functions. The Panel must include at least one member of the Cabinet.
- ii. Where the Council proposes to appoint a Chief Executive (Head of Paid Service) or a Chief Officer or Deputy Chief Officer (Statutory and Non Statutory) the Council will:
  - a) Draw up a statement specifying:
    - o The duties of the officer concerned; and
    - o Any qualifications or qualities to be sought in the person to be appointed;
  - b) Make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
  - c) Make arrangements for a copy of the statement mentioned in paragraph a) to be sent to any person on request.
- iii. Where a post has been advertised as provided in rule 7.3i b) the Council shall:-
  - Interview all qualified applicants for the post, or
  - Select a shortlist of such qualified applicants and interview those included on the shortlist and
  - Give the JNC Panel the names of those candidates to be interviewed.

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- iv. Where no qualified person has applied, the Council shall make further arrangements for advertisement in accordance with Rule 7.3i.b.

#### **Appointment of Chief Executive (Head of Paid Service)**

- i. Following a recommendation of the JNC Panel that a particular candidate should be appointed to the post of Chief Executive (Head of Paid Service), the Director of HR shall notify every member of the Cabinet of the following:
  - a) The name of the person to whom the JNC Panel recommends that the post be offered;
  - b) Any other particulars relevant to the appointment which the JNC Panel has notified to the Director of HR;
  - c) The period within which any objection to the making of the offer is to be notified to The Director of HR. The standard period will be three working days, but may be shortened by the Chair of the JNC Panel/Leader where necessary for the proper discharge of the Council's functions, subject to a minimum period of 24 hours.
  - d) The Director of HR has, within the period specified in the notice under paragraph c), notified the Leader that each member of the Cabinet has stated that they do not have any objection to the making of the offer; or
  - e) The Director of HR has notified the Leader that no objection was received from any member of the Cabinet within the specified period; or
  - f) The Leader is satisfied that any objection which has been received from any member of the Cabinet within the specified period is not material and/or is not well-founded or does not outweigh the other factors taken into consideration by the JNC Panel.
- ii. Where following the above procedure there are no objections to the proposed appointment or any objections are not upheld, the JNC Panel will recommend that person for appointment at the next meeting of the Full Council or at a specially convened meeting of the Council. If the full Council approves the recommendation, then a formal offer of appointment can be made.
- iii. Where following the interviews the JNC Panel is of the view that there is no suitable candidate, it will re-advertise the post.
- iv. Where full Council does not approve the recommendation of the JNC Panel, they shall indicate how they wish to proceed.

#### **Appointment of Chief Officers (Statutory and Non-Statutory) and Deputy Chief Officers**

- i. The JNC Panel will appoint all Chief Officers and Deputy Chief Officers (including the Chief Finance Officer (Section 151 Officer) and the Monitoring Officer) in accordance with the Council's recruitment and selection process.

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- ii. Following a recommendation of the JNC Panel that a particular candidate should be appointed; the Director of HR shall notify every member of the Cabinet of the following:
  - a) The name of the person to whom the JNC Panel recommends that the post be offered;
  - b) Any other particulars relevant to the appointment which the Employment Committee has notified to the Director of HR;
  - c) The period within which any objection to the making of the offer is to be notified to The Director of HR. The standard period will be three working days but may be shortened by the Chair of the JNC Panel/Leader where necessary for the proper discharge of the Council's functions, subject to a minimum period of 24 hours.
- iii. The Director of HR has, within the period specified in the notice under paragraph 7.5ii.c, notified the Leader that each member of the Cabinet has stated that they do not have any objection to the making of the offer; or
- iv. The Director of HR has notified the Leader that no objection was received from any member of the Cabinet within the specified period; or
- v. The Leader is satisfied that any objection which has been received from any member of the Cabinet within the specified period is not material and/or is not well-founded or does not outweigh any other factors taken into consideration by the JNC Panel.
- vi. In the event that a reasoned objection is received, the Director of HR shall refer the matter to a specially convened meeting of the JNC Panel (the members of the specially convened Panel must be the same members who recommended the appointment of the Director) and the decision of this specially convened Panel will be final.

**Disciplinary Action – Chief Executive (Head of Paid Service), Monitoring Officer and Chief Finance Officer (The S151 Officer)**

- i. The JNC Panel has power to decide whether to investigate any allegation of misconduct by a statutory chief officer and all matters relating to the conduct of the investigation and/or any subsequent disciplinary process.
- ii. These rules are in accordance with the 2015 Regulations.

**Suspension**

- iii. The Chief Executive (Head of Paid Service), Monitoring Officer and Chief Finance Officer may be suspended on full pay whilst an investigation takes place into alleged misconduct. The decision to suspend the Chief Executive (Head of Paid Service), Monitoring Officer and Chief Finance Officer shall be made by the JNC Panel.
- iv. The responsibility for implementing the suspension of the Chief Executive will be the Director of HR with the Leader of the Council and the responsibility for implementing the



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suspension of the Monitoring Officer and Chief Finance Officer will be the Chief Executive and the Director of Human Resources.

#### **Disciplinary Action and Dismissal**

- v. The JNC Panel may take disciplinary action short of dismissal or recommend to full Council that the Chief Executive (Head of Paid Service) or the Chief Finance Officer (S151 Officer) or the Monitoring Officer be dismissed. Only full Council can approve the dismissal of the Chief Executive (Head of Paid Service), the Chief Finance Officer (S151 Officer) or the Monitoring Officer.
- vi. An independent panel must be appointed by the authority at least 20 days before the relevant meeting and should comprise a minimum of two independent panel members appointed under s28(7) of the Localism Act 2011.
- vii. Before taking a vote at the relevant Council meeting on whether or not to approve such a dismissal, the Council must take into account, in particular-
  - a) Any advice, views or recommendations of the independent panel;
  - b) The conclusions of any investigation into the proposed dismissal; and
  - c) Any representations from the officer concerned.

#### **Disciplinary Action – Chief Officers and Deputy Chief Officers (Statutory and Non-Statutory)**

- viii. The JNC Panel has power to decide whether to investigate any allegation of misconduct by a non-statutory chief officer or deputy chief officer and all matters relating to the conduct of the investigation and/or any subsequent disciplinary process.

#### **Suspension**

- i. Chief Officers and Deputy Chief Officers may be suspended whilst an investigation takes place into alleged misconduct. The decision to suspend on full pay shall be made by the Chief Executive (Head of Paid Service) in consultation with the Leader of the Council and/ Deputy Leader and the Director of HR.
- ii. The responsibility to implement the suspension or to implement action short of dismissal shall be the responsibility of the Head of Paid Service or their designated nominee

#### **Disciplinary Action and Dismissal**

- iii. The JNC Panel may dismiss or take disciplinary action short of dismissal.
- iv. Dismissal or disciplinary action short of dismissal can only take effect where no well-founded objection has been made by any member of the Cabinet. Any objection needs to relate to the Council's disciplinary, capability and related procedures and policies.

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- v. In the event that a reasoned objection is received, the Director of HR shall refer the matter to a specially convened meeting of the JNC Panel (the members of the specially convened Panel must be the same members who recommended the dismissal/disciplinary action) and the decision of this specially convened Panel will be final.

#### **Grievances**

- i. Grievances made by all Chief Officers and Deputy Chief Officers including the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer will be dealt with in accordance with the Council's relevant procedures at the relevant time or as set out in the Chief Officer Handbook Joint Negotiation Committee in force at the relevant time.

#### **Political Assistants**

- i. Not more than one political assistant's post shall be allocated by the Council, from time to time, to each of the qualifying political groups into which the Council is divided.
- ii. No appointment to a political assistant's post shall be made until the Council has allocated such a post to each qualifying political group.
- iii. For the purpose of this Rule, a "qualifying political group" means a political group which qualifies for the allocation to it of a political assistant's post in accordance with sub-sections 6 and 7 of Section 9 of the Local Government and Housing Act

#### **Terms and Conditions and Remuneration**

- i. Terms and Conditions of employment including remuneration of all Chief Officers and Deputy Chief Officers will be approved by the JNC Panel.

#### **Annual Pay Policy Statement**

- ii. Section 38 of the Localism Act 2011 requires the Council to prepare and publish a pay policy statement for the following financial year. This annual statement will set out the Council's policies relating to the remuneration of Chief officers and its lowest paid officers and the relationship between the remuneration of its Chief Officers and that of its employees who are not Chief Officers. The annual pay policy statement will be adopted by Council before the end of March of each year. The Council has the power to amend the statement in year.

#### **Appointments and Dismissal – Other Officers**

- i. Appointment, and Dismissal and Disciplinary action of officers below Directors who are not Chief Officers or Deputy Chief Officers (other than assistants to political groups) are the

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responsibility of the Chief Executive (Head of Paid Service) or his/her nominee and may not be made by Councillors.

- ii. Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group. Dismissal and Disciplinary action of an assistant to a political group is the responsibility of Chief Executive (Head of Paid Service) or his/her nominee, and may not be made by Councillors
- iii. Councillors will not be involved in the disciplinary process in respect of any officer below Chief Officers or Deputy Chief Officers except where such involvement is necessary for any investigation or inquiry into alleged misconduct or appeal process.

#### **Membership of Committee and Virtual Meetings**

- i. Membership of the JNC Panel shall comprise the Leaders of the three main political parties (or their nominees), and two other members subject to the proportionality rules. The Chair of the Panel will be the Leader of the Council or his/her nominated deputy.
- ii. The quorum for each meeting of the JNC Panel is three, including a member of the main opposition party.
- iii. There may be circumstances when a decision of the JNC Panel may be agreed by all five members of that Panel in consultation with the Chief Executive and Director of Human Resources and Monitoring Officer or their nominated deputies without an actual meeting of that Panel taking place. The exercise of such decision shall be noted on the record of decision including setting out the reasons for the urgent circumstances.

#### **Definitions**

- i. In these Rules :
  - “the 1989 Act” means the Local Government and Housing Act 1989;
  - “the 2000 Act” means the Local Government Act 2000;
  - “the 2001 Regulations” means the Local Authorities (Standing Orders) Regulations 2001;
  - “Chief Finance Officer” has the same meaning as set out in Regulation 2 of the 2001 Regulations;
  - “disciplinary action” has the same meaning as set out in Regulation 2 of the 2001 Regulations;
  - “Director” means a Chief Officer, a Statutory Chief Officer, a Deputy Chief Officer or Deputy Statutory Chief Officer as set out below and includes the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer.
  - “Head of the Paid Service” has the same meaning as set out in Regulation 2 of the 2001 Regulations;

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“member of staff” means a person appointed to or holding paid office or employment to the Council;

“Independent Person” means a person appointed under section 28(7) of the Localism Act 2011 by the Council or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the Council considers appropriate;

“Independent Persons Panel” means a committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority in accordance with Schedule 3 to the 2001 Regulations, including or comprising at least two Independent Persons who have accepted an invitation to be considered for appointment to the Panel and who have been appointed to it in accordance with the following priority order

(a) an independent person who has been appointed by the authority and who is a local government elector in the Council’s area;

(b) any other independent person who has been appointed by the authority;

(c) an independent person who has been appointed by another authority or authorities.

“Monitoring Officer” has the same meaning as set out in Regulation 2 of the 2001 Regulations;

“Statutory Chief Officer” has the meaning as set out in section 2 (6) of the 1989 Act and for this Council will be the Director of Adult Social Care, the Director of Children’s Services, the Chief Finance Officer/section 151 Officer, the City Solicitor and Monitoring Officer, the Director of Public Health and for this Council are also known as Directors.

“Non-Statutory Chief Officer” means a person who reports to the Head of the Paid Service or who is directly accountable to the local authority or any committee or subcommittee of the authority as set out in Section 2 (7) of the 1989 Act and for this Council will be any other Director appointed by the Council who are not Statutory Chief Officers.

“Deputy Chief Officer” means a person who for most or all of his/her duties is required to report direct, or is directly accountable, to a statutory or non-statutory Chief Officer as set out in section 2 (8) of the 1989 Act.

## C8. PLANNING CODE OF PRACTICE FOR MEMBERS AND OFFICERS<sup>6</sup>

### Purpose of this Code

- i. This Planning Code of Practice ('the Planning Code') has been prepared to guide Members and officers in the discharge of the City Council's statutory planning functions. This Code will also inform potential developers and the public generally of the high standards of ethical conduct adopted by the Council in the exercise of its planning powers.
- ii. The Planning Code is in addition to Birmingham's adopted Code of Conduct for Members and subject to the responsibilities and requirements as set down by the Monitoring Officer from time to time. The responsibility for declaring an interest rests with individual Members and officers. Members should seek legal advice if they are unsure as to whether they have an interest which may prevent them from taking part in a discussion or vote on a particular planning application. Planning Committee Members must exercise an independent mind on issues before the Committee.
- iii. The provisions of this Planning Code are designed to ensure that planning decisions are taken on proper planning grounds, are applied in a consistent and open manner and that Members and officers making such decisions are held accountable for those decisions. The Planning Code is also designed to assist Members and officers in dealing with approaches from property owners.
- iv. If you have any doubts about the application of this Planning Code, you should seek early advice, preferably well before any meeting takes place, from the Director (Planning, Transport & Sustainability) and/or the Assistant Director Planning/Assistant Director Development.

### Roles and responsibilities

- i. Members and officers have different but complementary roles in the planning process. Members have more than one role in the process – as Ward Members and as Planning Committee Members.

### Ward Members not on the Planning Committee

- ii. Ward Members who are not on the Planning Committee are in a position to represent the interests of their Ward when it comes to planning and related applications. Ward Members may:
  - Observe virtual meetings of the Planning Committee

<sup>6</sup> As amended by Planning Committee on 24th February 2022

- Submit written representations to the Planning Committee, subject to the provisions in the public participation protocol;
- consultations on the draft heads of terms for section 106 agreements;

#### Members who are on the Planning Committee

- iii. The role of Members who are involved in the planning decision making process is to exercise their judgment properly on the planning application before them – and be seen to do this. In coming to a decision on a planning application Members should make this decision based solely on material planning considerations. Officer reports to the Planning Committee will identify what is regarded as material to a decision and if Members are unclear on what matters may or may not be material to a decision they should seek advice from officers.
- iv. Whilst Members must act within the law, the exercise of planning judgment is theirs and theirs alone. The Planning Committee must take into account all relevant ministerial guidance, local plans (and related documents) and the advice of officers. The weight Members attach to the relevant considerations is a matter of their planning judgment and Members should not give weight to non-planning related matters that may be raised by members of the public.
- v. Planning Committee Members often receive correspondence from constituents, applicants and developers asking them to support or oppose a particular proposal. Members should electronically forward a copy of the correspondence to the Director (Planning, Transport & Sustainability) or Assistant Director Planning/Assistant Director Development or inform them at the Planning Committee if time is short. Merely forwarding the correspondence onto the relevant officer would not prevent the Member being involved in determining the application.
- vi. Where Planning Committee Members are involved in pre-application discussions, they should be advised by the appropriate officers of the Council, which should always include a senior planning officer. The involvement of Planning Committee Members in such discussions should be recorded as a written file record of the meeting.
- vii. Planning Committee Members should not, whether orally or in writing, organise support or opposition to a proposal, lobby other Councillors, act as advocate or put pressure on officers for a particular recommendation.
- viii. Members are democratically accountable to their electors and to the wider public on whose behalf they act.

#### Officers

- ix. The Director (Planning, Transport & Sustainability) or Assistant Director Planning/Assistant Director Development have a dual role in the decision making process:
  - Making decisions on the majority of planning applications under delegated powers.

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- Making recommendations on planning matters which are determined by Members at Planning Committee. When making such recommendations the function of officers is to support and advise Members, ensure that any decision they make is lawful and identify any possible consequences of taking decisions.

#### **Predetermination and Bias**

- In making their decisions, Members of the Planning Committee should not be seen to side with either the applicant or the objector/s prior to the hearing of the application when all the relevant facts are known. Members are required to keep an open mind. This is a requirement of the law and a separate guidance note on predetermination and bias to assist Members in complying with this complex area of legislation and case law is set out in [Section C8.13](#) below.

#### **Development Proposals submitted by Members and Employees**

- Where development proposals are submitted by Members and employees in respect of their own property or land it is particularly important that the Council ensures that such applications are handled in a way that gives no grounds for accusations of favouritism.
- Serving Members of Council who submit applications or act as agents should play no part in the decision making process for that application. Further, they should not take part in the processing of the application nor should they lobby employees or officers either directly or indirectly.
- Any planning officer who submits an application for their own property or on behalf of a friend or family member will inform the Director (Planning, Transport & Sustainability) or Assistant Director Planning/Assistant Director Development in writing and such applications will be determined in accordance with the Scheme of Delegation.
- Officers are required under the Employee Code of Conduct to make a declaration by completing the Register of Interests/Conflict of Interest Form, declaring any matters which may conflict with duties as an employee and their personal interests such as:
  - Any financial interest in any planning application;
  - Other interest where others may think that a conflict of interest may arise, such as for proposals near their residence.
- In circumstances where there is a conflict of interest, the officer has no involvement in any part of the decision making process. If there is doubt about any conflict it is better to be cautious and for the officer to have no involvement.

#### **Member contact with applicants and developers**

- The Government encourages applicants to enter into pre-application discussions. Such discussions are a normal part of the planning process to seek further information and to seek to identify improvements to proposals at an early stage. These discussions and meetings provide an opportunity for the potential applicant to receive advice and

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information about the policy and technical requirements that must be met and advice on design, on community engagement and other issues which may improve the chances of an application being acceptable to the Local Planning Authority (LPA). However, it should be made clear that any guidance given will not bind the LPA to making a particular decision.

ii. To minimise the prospect of challenges based on predetermination and bias, the guidelines below should be followed:

- It will always be made clear that any information or statements made cannot bind the LPA to making a particular decision.
- Wherever possible, Members should be accompanied by an officer when meeting with applicants.
- Members should refer applicants who approach them for advice to officers.
- A written record of the discussion should be made by the officer.
- Planning Committee Members are free to take part in meetings with potential applicants or their agents but extra care is needed to avoid any perception of predetermination or bias.

#### **Pre-application presentations**

iii. Agents or prospective applicants have the opportunity to present their proposals to members of the Planning Committee at presentations organised in accordance with the 'Protocol for Pre-application Presentations to Planning Committee'.

#### **Planning Committee meetings**

##### **Attendance at meetings**

- i. It is important to ensure that Members taking planning decisions are in possession of all the relevant facts, including matters pointed out or that come to light during a site visit by Planning Committee, matters that may have been raised during public speaking and matters that may have been discussed and considered by Planning Committee on earlier occasions. Attendance of Members on all occasions during the application phase, i.e. once the application has been submitted, will not only demonstrate that Members are fully informed but will also ensure that high quality, consistent and sound decisions are made, and that the risks of legal challenge are minimised.
- ii. A Planning Committee Member should not vote in relation to any planning application unless he or she has been present in the meeting of the Planning Committee for the whole of the deliberations on that particular application. In the case of a virtual committee meeting that means having listened to the entire presentation and debate relating to a particular application. By taking part in the vote on a particular item, members will be deemed to have made a declaration to that effect.



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- iii. In cases where an application has been discussed at Planning Committee on more than one occasion, if a Member has not attended on each occasion during the application phase and wants to take part in the decision on an application, he or she should consider whether or not they are fully appraised of all the facts and relevant information necessary to properly reach a decision. If there is any doubt, legal advice should be sought by the Member concerned.

#### **Conduct at meetings**

- iv. The Chair of the Planning Committee is responsible for the conduct of the meeting in accordance with the relevant Council procedure rules and for the effective delivery of business.
- v. The Planning Committee meetings are open to the public and they are often well attended particularly when there is a contentious application on the agenda. Meetings are also attended by the applicants/agents and/ or other parties supporting an application and/or objectors against an application. It is important to demonstrate that decisions have been made fairly and transparently and in the correct manner. Any debate should be confined to the planning merits of the matter.
- vi. A legal officer should always attend meetings of the Planning Committee to ensure the probity and propriety of the planning and decision-making processes.
- vii. Where there is any doubt as to the voting or of the actual counting of votes in relation to any particular application, clarification should be immediately sought by the Chair prior to dealing with the next agenda item, and if considered necessary this may include requesting from each Member as to how they have voted, noting this and the Member's name.

#### **Decisions different to the officer recommendation**

- i. Decisions on planning applications must be taken in accordance with the Development Plan unless material considerations indicate otherwise. From time to time the Committee may attach different weight to the potential planning considerations and, therefore, take a decision which differs from the officer recommendation.
- ii. Where this occurs, Members must be able to give a clear basis and reason for not taking the officer recommendation. It is important to ensure, as far as possible, that any decision made will be capable of surviving a legal challenge or appeal. This could mean deferring consideration for a further report addressing the provisional reasons for refusal. However, if the reasoning is clear and the officers are satisfied that reasons for refusal can be satisfactorily drafted then it will not always be necessary to defer an application. In the event that an application is deferred, the Chair will ensure that the following principles are followed:-
- When a planning application has been deferred following a resolution not to accept the officer recommendation, the Chair shall put to the meeting a proposed statement

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of why the recommendation is not considered acceptable, which, when agreed by the Committee, will be formally recorded in the minutes.

- In these circumstances, at a subsequent meeting, the Director (Planning, Transport & Sustainability) or Assistant Director Planning/Assistant Director Development will respond in a further written report the provisional reasons formulated by the Committee for granting or refusing permission. If the Planning Committee is still of the same view, then it shall again consider its reasons for the decision and a summary of those planning reasons shall be given. The reasons will then be recorded in the minutes of the meeting.
- The officer attending the meeting should be given the opportunity to explain the implications of the decision.
- Members should ensure they clearly identify and understand the planning reasons leading to this conclusion. These reasons must be given before the vote and be recorded.

- iii. Where an appeal to the Secretary of State is subsequently lodged against a decision which was different to the officer's recommendation, planning officers will act as a professional witness at the inquiry or hearing unless there is reason to suggest that this would prejudice the outcome. However, it should be noted that where the Planning Officer giving evidence is the officer that recommended approval, then their role is that of advocate for the Council's case.

#### Deferred applications

- i. In some cases, planning applications may come before the Committee on more than one occasion. This is particularly the case with larger schemes where a pre-application presentation is presented to the Planning Committee, or when an application is differed for a site visit or further information. Where an application is deferred then the reasons for deferral will be clearly stated and minuted.

#### Public speaking

- i. Any ward members or members of the public wishing to make representations to the committee following the publication of an agenda can do so by registering to speak at Planning Committee in accordance with the **Planning Committee Public Speaking Protocol**.
- ii. Where Members have a disclosable pecuniary interest in the application then they must not submit representations in relation to the application, even as a member of the public, unless they have a dispensation from the Head of Paid Service.
- iii. Speakers will only be entitled to address the Committee on one occasion unless otherwise agreed by the Chair of Planning Committee on the grounds that the application has been significantly changed or amended or significant new information has been produced raising new material planning considerations. In these circumstances, speakers will only be able

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to speak about new matters or the amended details and not about matters which have been previously considered by the Committee.

- iv. Speakers should not raise any substantial new information (including correspondence, other documents, photographs or models) at the Planning Committee meeting, as this does not give all parties adequate time to consider and respond to the submissions, and Members of the Committee will not be able to give proper consideration to issues raised in the material.
- v. It is important that members of the public are not permitted to communicate with or pass messages to individual Committee Members as this may give the appearance of partiality.

#### Site Visits

- i. Planning Committee site visits shall be arranged and take place in accordance with the Planning Committee Site Visit Protocol.

#### Member training

- i. It is important that all Members involved in the planning process are aware of their role in the process and the policy and legal framework in which they operate.
- ii. Therefore, Members serving on Planning Committee should participate in, where possible, the following training each year:
  - For Members new to the Planning Committee two sessions comprising a governance and conduct session and mid-year update session;
  - For experienced Members of the Planning Committee, a single mid-year update session.
- iii. A record of attendance for the compulsory training will be maintained by Planning Officers and a list provided to Party Whips and Democratic Services for monitoring.
- iv. Other specialised training will be offered periodically throughout the year which will enhance and extend Members' knowledge of planning matters. These are not compulsory but will assist Members in carrying out their role on the Planning Committee

#### Reviewing and Updating this Guide

- i. The responsibility for reviewing and updating this Planning Code of Good Practice will be undertaken by the Director (Planning, Transport & Sustainability) or Assistant Director Planning/Assistant Director Development in consultation with a meeting of the Planning Committee on an annual basis. Ad hoc reviews may occur if there are significant changes to be made; again these will be considered by a meeting of the Planning Committee.

**Guidance Note on Bias and Predetermination in the Planning Process****What is Bias and Predetermination?**

- i. The law on bias and predetermination (which is a particular form of bias) is part of the general legal obligation on public authorities to act fairly.
- ii. Decision makers are entitled to be predisposed to particular views. However, predetermination occurs where someone closes their mind to any other possibility beyond that predisposition, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision.
- iii. The leading case on local authority bias and predetermination acknowledges the difference between judges sitting judicially and councillors making decisions in a democratic environment. Given the role of councillors, there must be 'clear pointers' before predetermination is established.

**Section 25 Localism Act 2011**

- iv. Section 25(2) of the Localism Act 2011 provides that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because –
  - a) the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take in relation to a matter, and
  - b) the matter was relevant to the decision.
- v. The section makes it clear that if a councillor has given a view on an issue, this, considered in isolation, does not show that the councillor has a closed mind on that issue. So, the mere fact that a councillor has campaigned on an issue or made public statements about their approach to an item of council business does not prevent that councillor from being able to participate in discussion of that issue and to vote on it.
- vi. Having said this, the use of the words 'just because' in section 25 suggest that other factors when combined with statements made etc. can still give rise to accusations of predetermination. This has also been the approach that the courts have taken to this issue. When considering whether predetermination has taken place they will consider all events leading to the decision (and also, where appropriate, those following the decision) rather than looking at individual events in isolation.
- vii. The case law has also made it clear that the words used by particular Members and the interpretation put on those words is of particular importance. So care still needs to be taken when making statements in advance of the determination of planning applications as there is a risk that they can be misinterpreted or taken out of context.

**Guidance**

- viii. With this in mind:-

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- It is always advisable to avoid giving the impression that you have made up your mind prior to the decision making meeting and hearing the officer's presentation and any representations made on behalf of the applicant and any objectors.
- It is advisable not to give a view in advance of the decision. If you do comment on a development proposal in advance of the decision, consider using a form of words that makes it clear that you have yet to make up your mind and will only do so at the appropriate time and in the light of the advice and material put before you and having regard to the discussion and debate in the Committee meeting.
- Particular care should be taken where there are chance encounters with objectors to development proposals or in the context of meetings which are not formally minuted. These are situations where the risk of what you say being misrepresented or taken out of context is particularly high.

#### Concluding Comments

- ix. Councillors should avoid giving a view/making statements in advance of determination of a planning application. If such views are given, these should be declared to the Planning Committee and legal advice should be sought if necessary as to whether that particular Member can continue to be part of the decision-making process. Any views given in advance should avoid giving the impression that you have already made up your mind and that your part in the decision is a foregone conclusion.

#### Protocol for public speaking at the Planning Committee meetings

##### Introduction

- i. This Protocol sets out the procedures to allow public speaking at the meetings of the Planning Committee.
- ii. Subject to the exceptions below, public speaking does not apply where Members are considering a report for information or where Members are considering detailed reasons for refusal or conditions of approval following a decision of an earlier Committee not to accept the Director (Planning, Transport & Sustainability) or Assistant Director Planning/Assistant Director Development recommendation. It also does not cover applications subject to non-determination appeals, where Members' views may be sought.

##### Matters for determination or other matters requiring a decision:

- iii. Any members of the public wishing to make representations to the committee following the publication of an agenda can only do in accordance with the public speaking protocol below.
- iv. Applicants, supporters and objectors to an application or other form of consent before the Committee for determination or other matter requiring a decision, will normally be allowed to speak to the Committee, subject to the details of the procedure set out herein and on

giving notice of their wish to do so by completing an online form no later than 12 noon on the Friday immediately preceding the Committee.

- v. When an objector has registered to speak in accordance with point (iv), applicants will have an automatic right of reply even when they have not given notice of their wish to do so beforehand.
- vi. If a speaker does not attend the meeting or is not available to speak at the allotted time, the meeting will go ahead nonetheless.
- vii. Applicants, supporters or objectors will have the equivalent of a maximum of three minutes to address the Committee
- viii. In the event of more than one applicant, supporter or objector wishing to submit written representations, a spokesperson should be nominated who will submit written representations on behalf of all registered speakers. If there is no spokesperson nominated, the written submission will be equally divided between the registered speakers.
- ix. Where an application is recommended for approval, objectors to an application will be heard first.
- x. Where an application is recommended for refusal, the objector will only be allowed to speak if the applicant or supporter has registered their intention to address the Committee, except in circumstances outlined in paragraph xv.
- xi. The applicant, supporter and objectors shall take no further part in the Committee debate.
- xii. If the applicant or supporters do not speak in relation to an application recommended for refusal the objectors will not normally be invited to speak.
- xiii. If no objector wishes to speak to an application for approval, the applicant or supporter will not normally be invited to speak.
- xiv. In the circumstances where the officer's recommendation of **approval** is not accepted by Committee and the applicant or supporters have not been given an opportunity to speak, they shall be given the opportunity to address the Committee for up to three minutes when detailed reasons for refusal are reported.
- xv. In the circumstances where the officer's recommendation of **refusal** is not accepted by Committee and the objectors have not been given the opportunity to speak they shall be given an opportunity to address the Committee for up to three minutes when detailed conditions for approval are reported.
- xvi. For the avoidance of doubt applicants, supporters or objectors will only be entitled to address the Committee on one occasion unless otherwise agreed by the Chair on the basis that the application has been significantly changed or amended or significant new information has been produced raising new material planning considerations. In these circumstances, speakers should only speak about new matters or the amended details, not about matters which have been previously considered by the Committee.

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**Passing around of information**

- xvii. The circulation of display materials will not be accepted during the meeting. Public speaking is an opportunity to highlight important points already made in representations, rather than to introduce new information. Members of the Committee will not be able to give proper consideration of any new issues raised in the material.

**Members of Planning Committee**

- xviii. A Member of the Planning Committee having a disclosable pecuniary interest in an application must either declare that interest or bring it to the attention of the meeting and may not participate in the discussion or vote on the matter and must leave the room.
- xix. In line with the Birmingham Code of Conduct for Members, a Member must declare any interest in an application and complete the Register of Interest/Conflict of Interest Form.
- xx. No Members with a disclosable pecuniary interest (whether they are a member of the Planning Committee or not) are entitled to address the Committee in accordance with the terms of this protocol for public speaking.

**Review**

- xxi. This Protocol may be reviewed, revised or revoked by the Director (Planning, Transport & Sustainability) or Assistant Director Planning/Assistant Director Development in consultation with a meeting of the Planning Committee at any time.

## C9. LICENSING COMMITTEE CODE OF PRACTICE FOR MEMBERS AND OFFICERS

### Purpose of This Code

- i. This Licensing Code of Practice ('the Licensing Code') has been prepared to guide Members and officers in the discharge of the City Council's statutory Licensing functions. This Code will also inform potential applicants and the public generally of the high standards of ethical conduct adopted by the Council in the exercise of its Licensing powers.
- ii. The Licensing Code is in addition to Birmingham's Code of Conduct for Members, which was adopted by the City Council in June 2012. For the avoidance of doubt, when an Executive Member attends and participates in the decision-making of the Licensing Committee, s/he does so as a Member of the Committee and not as a Member of the Executive. Accordingly, s/he must, along with other Members of the Committee, exercise an independent mind on issues before the Committee.
- iii. The provisions of this Licensing Code are designed to ensure that Licensing decisions are taken on proper grounds, are applied in a consistent and open manner and that Members making such decisions are held accountable for those decisions. The Licensing Code is also designed to assist Members and officers in dealing with approaches from applicants or those who already have a relevant Licence/permit, etc.
- iv. Throughout this Code, reference is made to the Licensing Committee. This refers to the Licensing and Public Protection Committee ("LPPC"), in the context of its determination of applications for licences i.e where the Committee performs the functions of the Licensing Authority, rather than in the context of non-Licensing Authority decisions.
- v. Any reference to Licensing Committee equally refers to any Licensing Sub-Committee.

### Context

- i. This Licensing Code applies to both Councillors and officers– it is not therefore restricted to Licensing Committee members. The successful operation of the Licensing system relies on mutual trust and understanding of each other's role. It also relies on both Members and officers ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.
- ii. The Human Rights Act provides additional safeguards for citizens, and encourages the application of best practice. Article 6 is concerned with guaranteeing a right to procedural fairness, transparency and accountability in the determination of civil rights and obligations.
- iii. This code must be read in conjunction with (where appropriate):
  - The LPPC Policies, Procedures and Delegations;



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- The Statement of Licensing Policy;
- Home Office Guidance (s182) – issued under S182 Licensing Act 2003;
- The Statement of Gambling Principles and relevant guidance issued by the Gambling Commission;
- The Sexual Entertainment Venue Policy;
- Code of Conduct for Members;
- Code of Conduct for officers.

#### General Considerations

- i. In relation to Hackney Carriage and Private Hire applications (generally speaking) the Licensing Authority MUST NOT issue a licence to a driver, operator or vehicle proprietor unless they are satisfied the applicant is a fit and proper person.
- ii. In relation to Licensing Act matters, where an application has been properly made and no responsible authority or other person has made a relevant representation or where representations are made and subsequently withdrawn, the licensing authority MUST grant the application in the terms sought, subject only to conditions which are consistent with the operating schedule and relevant mandatory conditions under the 2003 Act.
- iii. If the licensing authority decides that representations are relevant, it must hold a hearing to consider them. The need for a hearing can only be avoided with the agreement of the licensing authority, the applicant and all of the persons who made relevant representations.
- iv. Birmingham City Council's [Code of Conduct for Members](#) (section C4) must be complied with throughout the decision making process, which includes mandatory requirements with regard to Member interests.
- v. The responsibility for declaring an interest rests with individual Members and officers of the Council. This Licensing Code outlines further rules applicable to the Licensing process in Birmingham.
- vi. Councillors and officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate, whilst officers are responsible to the Council as a whole. This applies equally to traditional forms of political management based on Committees and to models based on forms of executives or elected mayors. Officers advise Councillors and the Council and carry out the Council's work. They are employed by the Council, not by individual Councillors, and it follows that instructions may only be given to officers through a decision of the Council, the Executive or a Committee. A successful relationship between Councillors and officers can only be based upon mutual trust, respect,

courtesy and understanding of each other's positions. This relationship, and the trust which underpins it, should never be abused or compromised.

- vii. Both Councillors and officers are guided by Codes of Conduct, Birmingham's [Code of Conduct for Members](#) (section C4) provides standards and guidance for Councillors. Employees are subject to the [Employees' Code of Conduct](#) (sections C6). In addition to these codes, a Council's standing orders set down rules which govern the conduct of Council business. There is also a Member / Officer Protocol that assists in defining the relation with both.
- viii. Birmingham's Code of Conduct for Members sets out the requirements on Councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to Council business, including the need to register and declare interests, but also appropriate relationships with other Members, staff and the public, which will impact on the way in which Councillors participate in the Licensing process. Of particular relevance to Councillors serving on the Licensing Committee or Executive, or who become involved in making a Licensing decision, is the requirement that a Member must not use their position improperly for personal gain or to advantage friends or close associates.
- ix. The basis of the Licensing system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved.
- x. From time to time applicants or other parties may submit confidential information, for example a financial appraisal, or evidence from an ongoing criminal matter in relation to an application. Such information will be taken into account in relation to determination of the application, but such information may be exempt from the requirement from disclosure.

#### Public Speaking

- xi. During public speaking at Licensing Committee, the following should not occur:-
- Members should not cross-examine members of the public at any time;
  - Members should not ask leading questions of officers or members of the public as by way of introducing new facts to the debate;
  - Members should only ask relevant questions; and
  - Late evidence should not be introduced by speakers at Committee – unless authorised at the discretion of the Chairperson with the agreement of all parties.

#### Conflicts of Interest

- xii. Some Members in general are more likely than others to be uncomfortable in the role of Licensing Committee Member owing to the combined pressures of their local business interests, the Ward Member advocate role, and the constraints of the Licensing system.

Any potential licence-related background may also give rise to a perception by the public that they are more likely to be in favour of an application, even where they are determining cases completely impartially. In order to minimise the risk for the Council and the Member concerned, the Member in question should discuss their position carefully with the Assistant Director of Regulation and Enforcement and Monitoring Officer for the Council, to see whether it would be suitable for him/her to become a Member of Licensing Committee or if already a Member take part in the determination of any applications before them.

### Lobbying and Attendance at Public Meetings

#### General

- i. Given the requirement that Members of the Licensing Committee should exercise an independent mind to applications in accordance with the relevant considerations, Members must not favour any person, company, group or locality. Members can, of course, form and express a personal opinion on Licensing applications but they are advised to indicate that they will only form a final opinion about an application after full consideration of all the evidence, representations and submissions made. Members should be careful not to publicly commit themselves to a particular outcome on an application prior to its full consideration at Committee, as to do so could be perceived by others as the Member having closed his/her mind to hearing all the relevant considerations. If that were to happen, he/she should be asked by the Chairman of the Committee, the Assistant Director of Regulation and Enforcement and/or the Monitoring Officer (or their representatives) not to:
  - a) Take any further part in the consideration of the application; and
  - b) Vote on the application. This can only be transparently demonstrated by the relevant Member not attending the meeting or leaving the Committee Room in order to ensure the integrity of the whole decision making process. If the relevant Member wishes to speak at Committee then they should declare their pre-determined position and withdraw from the meeting. This is to ensure Members of the Licensing Committee do not, by their presence, influence or seek to influence the remainder of the decision making body. Members should always notify Committee of any approach by any group, person or company prior to the discussion of the relevant matter.
- ii. Members of the Committee who may be involved in the determination of an application are, of course, free to listen to a point of view about a proposal, give procedural advice and agree to forward any comments, but should then refer the person to officers. Members in this situation may indicate (or give the impression of) support for or opposition to a proposal, but should avoid giving the impression of a closed mind.

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- iii. Whilst Members involved in making decisions on applications may begin to form a view as more information and opinions become available, a decision can only be taken by the Committee after all available information is to hand and has been duly considered. In this regard, any political group meetings prior to the Committee meeting should not be used to determine how Councillors should vote. Decisions can only be taken after full consideration of the evidence, representations and submissions made.
- iv. The Chairman of the Committee should attend a briefing with officers prior to a Full Committee meeting, to help give an effective lead in the Committee.
- v. Councillors involved in decision making on Licence applications should not, whether orally or in writing, organise support or opposition to a proposal, lobby other Councillors, act as advocate or put pressure on officers for a particular recommendation. However, other Councillors (who are not part of the decision making process) within that Committee Member's Ward, can make written representations to the Licensing Committee.
- vi. A Member involved in determining applications may respond to lobbying by openly expressing an opinion prior to the full report of the Assistant Director of Regulation and Enforcement to a Committee meeting (and there may be particular local circumstances where this is considered appropriate) but should indicate they will not make a final decision until after full consideration of all the evidence, representations and submissions.
- vii. If a Member involved in determining applications goes so far as to make it clear beyond doubt that they have a completely closed mind which could not be shifted, this would amount to predetermination and the Member concerned should respond as in C9.4i.
- viii. Where Members involved in the determination of applications are in attendance at public meetings or Ward meetings they may listen to the debate on current applications, provide advice about procedures involved in determining an application and express a view about an application but should respond as in C9.4vi.

#### Members Predetermination of Applications

- ix. Section 25 of the Localism Act 2011 states that prior indications of a view of a matter do not amount to predetermination in the following situations:
  - (2) A decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because-
    - (a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter and
    - (b) the matter was relevant to the decision.
- x. The advice provided by the Monitoring Officer is that this is the present position with regard to the Legislation but, whilst Members are entitled to express a view in relation to

an application, Members should indicate they still have an open mind in relation to an application until they have had the opportunity to consider the report of the Assistant Director of Regulation and Enforcement and that the final decision in relation to the application can only be made by Committee. This caveat is intended to safeguard so far as possible the decision made by Committee from Judicial Review until further case law and guidance has assisted with the interpretation of Section 25 of the Localism Act 2011.

#### Dealing with Correspondence

- xi. Members of the Committee and Executive often receive correspondence from constituents, applicants and other interested parties asking them to support or oppose a particular proposal. Members should forward a copy of the correspondence to the Director of Regulation and Enforcement or inform him/her at the Committee if time is short. Merely forwarding the correspondence onto the relevant officer would not prevent the Member being involved in determining the application.
- xii. Communication which is intended to be an objection to (or support for) a licence application MUST be properly served on the Licensing Service, not with elected members or other Council Officers. Such communication should be forwarded immediately to the Licensing Offices.

#### Pre-Application Discussions

- xiii. When involved in pre-application discussions, officers should always act fairly to all and completely impartially by providing accurate advice and assistance when required or requested by the general public, applicants or Members. A written record of all such discussions must be retained on the Licensing file.

#### Site Visits by Members with Officers (Uncommon)

- xiv. The deferral of a relevant application for a site visit should not be on the basis of exposing members of the Committee to local opinion, but should be on sound and proper Licensing reasons, which shall be recorded in the minutes of the meeting.
- xv. Under the Chairman's guidance the role of the Licensing Officer attending the site visit will be:
  - a) To brief Members on the Licensing applications(s), the subject of the visit and explain the reasons why the application was deferred for a visit;
  - b) To ensure that the views of all interested parties are heard by all Members on the site visit and accurately recorded. Officers will prepare a written report of the site visit which will be taken back to Licensing Committee to form the basis of a further discussion at a subsequent meeting.
- xvi. The Chairman (or Member chairing the visit) shall explain the purpose of the visit and how it will be conducted to all persons present at the site visit.

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- xvii. Officers shall ensure, where practical, that applicants, Members and interested parties are invited to attend the visit and that they are able to view all key parts of the site, which is the subject of the Applications.
- xviii. The purpose of a site visit conducted by Members and officers is to gain information relating to the land or buildings which are the subject of the Licensing application and which would not be apparent from the Licensing application to be considered by the Committee. A site visit may also assist Members in matters relating to the context of the application in relation to the characteristics of the surrounding area, and is an opportunity to hear the views of the members of the public, applicants and other interested parties. Discussions on site visits shall be confined to the application as currently submitted. A Member of Committee who has an interest in a Licensing application, or who has acted in a way that amounts to predetermination, cannot attend the site visit in his or her capacity as a Member of Licensing Committee. However, the Member concerned would be entitled to attend the site visit in his or her personal capacity as a member of the public.
- xix. Whilst on site visits, Members of Committee can express an opinion on the application or its merits, but should avoid making comments or acting in a way which makes it clear beyond doubt that they have a completely closed mind, as this would amount to predetermination. Whilst Members of Committee are not prevented from engaging individually in discussion with applicants or objectors, to ensure transparency of public dealing by Members and effective /orderly management of the site visit, it is recommended that any question of the applicant(s) / objector(s) by the Licensing Officer and/or Members should be made in the presence of the other parties (or their representatives if there is a large scale public interest).
- xx. Members and officers are obligated not to waste Council resources and, as such, a site visit is only likely to be necessary if:
- the impact of the proposed application is difficult to visualise from the plans and any supporting material, including photographs taken by officers (although if that is the case, additional illustrative material should have been requested in advance); or
  - there is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or the proposal is particularly contentious.
- xxi. Where there is substantial public interest in a proposal and relevant representations have been made, the Council may invite all parties to visit the site so that they may point out all the areas of contention to Members of the Licensing Committee and give their views. A note of proceedings will be taken at these meetings and minutes kept as part of the official record.
- xxii. Results of the site visit will be reported to the next available meeting of the Committee.

- xxiii. Once the results of a site visit have been reported back to Committee, Members of the Committee who were not present at the site visit can ask questions, offer opinions, take part in discussions and vote in relation to that Licensing application.

#### The Role of Ward Councillors and MPs on Site Visits

- xxiv. Where relevant representations have been made, Ward Councillors and MPs may attend and participate in site visits putting forward their point of view. However, the determination of Licensing applications rests solely with the Licensing Committee and no indication should be given by Members of the Committee of the likely decision during the course of the site visit.

#### Meetings of the Licensing Committee

- i. A Member shall not vote in relation to any Licensing application unless he or she has been present in the meeting of the Licensing Committee for the whole of the deliberations on that particular application.
- ii. A senior legal officer should always attend meetings of the Licensing Committee to ensure the probity and propriety of the Licensing and decision-making processes.
- iii. Where there is any doubt as to the voting or of the actual counting of votes in relation to any particular application, clarification should be immediately sought by the Chairman prior to dealing with the next agenda item, by requesting from each Member as to how they have voted, noting this and the Member's name.
- iv. Chairmanship: the chairman should ensure
  - Members' comments at Committee only relate to the relevant merits of the application before them;
  - Reference at Committee to matters which are not relevant should be disregarded;
  - The cross-questioning of speakers should only take place if there is need for clarification of what a speaker has already outlined; and done in accordance with the appropriate Procedural Rules for the Hearing in question.

#### Training

- i. Members dealing with Licensing issues will attend such training sessions as required each year to receive guidance in relation to Licensing matters and processes and on procedural matters such as declaration of pecuniary or non-pecuniary interests. Training will be conducted in accordance with the training for Councillors standard. Members who fail to attend such training will be excluded from meetings of Licensing Committee. This training should include a balance of the following:-
  - Short (half day) sessions on special topics of interest or where appeals have indicated problems with Licensing policy;

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- Special topic groups to consider thorny issues in depth;
- Formal training by internal and external speakers;
- Quick presentations by officers on hot topics, e.g. new legislation, white papers and their impacts, followed by a brief question and answer session.

#### **Licence Applications Submitted by Councillors and Officers**

- Serving Councillors or their relatives who act as agents for people pursuing a Licensing matter will not be permitted to play any part in the decision making process for that proposal. Similarly, should they or their relatives submit their own proposal to the Council, they will take no part in its processing, as in both cases they will have an interest in the matters.
- In cases where officers of this Department or members of their family submit a licence application, or where they have an interest in a particular application they should inform the Assistant Director of Regulation and Enforcement and Monitoring Officer accordingly (e.g. where an application is submitted by a limited company and an Officer is a director (or similar) of the company).

#### **Registration and Declaration of Interests**

- The Localism Act 2011 and the Birmingham Code of Conduct for Members place requirements on Members on the Registration and Declaration of their interests and the consequence for the Members' participation in consideration of an issue in the light of those interests. These requirements must be followed scrupulously and Members should review their situation regularly. Guidance on the registration and declaration of interests is dealt with by the Birmingham Code of Conduct for Members.

#### **Complaints about the Determination of Licensing Applications**

- Whatever procedures the City Council operates, it is likely that complaints will be made. However, the adoption of the advice in this guidance should greatly reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.
- There is a city-wide procedure for dealing with complaints, as well as customer comments and compliments. Complaints alleging a breach of the Birmingham's Code of Conduct for Members must be reported to the Monitoring Officer.
- So that complaints may be fully investigated and, in any case, as a matter of general good practice, record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. The guiding rule



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is that every application file should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, why and how it had been reached. Particular care needs to be taken with applications determined under the powers delegated to the Assistant Director of Regulation and Enforcement, where there is no report to a Committee. Such decisions should be well documented and form part of the case file.

- iv. It is preferable to use the complaints procedure prior to any recourse to the Local Government Ombudsman.
- v. Where any right of appeal exists against a decision of the Licensing Committee, that right is to be communicated at the time of the notification of decision.
- vi. Where the complaint relates to the decision made by the Licensing Committee, this decision cannot be overturned other than by following the statutory appeal process if one exists. No complaint procedure can overturn the decision of the Committee.

#### 10. Concluding Remarks

- vii. Maintaining high ethical standards enhances the general reputation of the City Council, its Members and its officers. Open and transparent decision making enhances local democracy and should lead to better informed citizens. A common understanding of the various roles, responsibilities and accountabilities should also enhance citizen participation. This Licensing Code, along with Birmingham City Council's Code of Conduct for Members, therefore, serves an essential part in the local and corporate governance of Birmingham City Council.
- viii. The City Council's Head of Paid Service, the Monitoring Officer and the Section 151 Officer have been consulted over this Licensing Code.
- ix. If any person believes that a Member or Officer has breached any aspect of this Licensing Code, s/he should refer the matter to the City Council's Monitoring Officer.

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## C10. MEMBERS ALLOWANCE SCHEME

- i. The City Council's Members Allowances Scheme, made under Section 18 of the Local Government and Housing Act 1989 and as amended on 30th April 2001, was agreed by the City Council at the meeting on 13 April 2021.
- ii. The Scheme can be found [here](#).<sup>7</sup>

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<sup>7</sup> [https://www.birmingham.gov.uk/downloads/download/910/members\\_allowances](https://www.birmingham.gov.uk/downloads/download/910/members_allowances)

## C11. PROTOCOL ON SUBSTITUTE MEMBERS

### Key Principles

- i. Formal substitutes are not appointed by Full Council for Birmingham City Council committees.
- ii. Formal substitutes are appointed for some joint committees:
  - West Midlands Police and Crime Panel
  - West Midlands Combined Authority Board
  - WMCA Overview and Scrutiny Committee
  - WMCA Audit, Risk & Assurance Committee
- iii. For how these committees operate substitute members, see the rules of procedure for each committee.
- iv. A committee may have substitute members if the Constitution allows it – currently Health and Wellbeing Board, Cabinet Committee Group Company Governance and Licensing Sub-Committees.
- v. Members are responsible for finding their own substitutes.
- vi. A substitute member shall be entitled to attend in place of a regular Member provided:
  - That the Chair and Committee Services has been notified of any substitution before the meeting begins.
  - That a Cabinet Member may only be substituted by another Cabinet Member.
- vii. The substitute arrangement must be announced at the beginning of the meeting and recorded in the minutes.
- viii. A substitute member will be able to vote during the meeting only when s/he is acting as a substitute for a regular Member.
- ix. If the substitution is for a committee where political proportionality rules apply, the substitute member must be a member of the Council drawn from the same political group as the ordinary member who is unable to attend the meeting and must not already be a member of the Committee concerned.
- x. With the exception of Licensing sub-Committee, a member acting as a substitute for the Chair or Vice-Chair of a committee will not, by virtue of that substitution, be entitled to act in either capacity. In the absence of both the Chair and Vice-Chair from a meeting (and the appointment of substitute members to attend in their place) the meeting shall appoint a Chair for the meeting who may be drawn from any members (including any substitute member) present and with voting rights.

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- xi. The substitute member may speak and vote in their own capacity and is not constrained by the views of the ordinary member they are replacing.
- xii. Once an agenda item has begun with a substitute member attending, the regular Member in respect of whom notification has been received, shall not be entitled to vote on the agenda item as a Member of the Committee.
- xiii. Once a meeting has started with the ordinary member in place, no substitution can then be made during the course of the meeting to replace that member.
- xiv. If the substitute member fails to attend and the ordinary member is present, then the ordinary member may take their place on the committee with full voting rights.
- xv. Where a substitute member has attended a meeting which is adjourned, the ordinary member may attend the reconvened meeting as the voting member, provided that the meeting is not part way through the consideration of an item or issue.
- xvi. Substitute members must receive copies of agendas and reports of the committees they are assigned to at the same time as ordinary members.

**Licensing Sub-Committees**

- xvii. In relation to each ordinary business Licensing Sub-Committee, the Licensing Committee has appointed a pool of substitute Members, comprising all other suitably trained members of the Licensing and Public Protection Committee. As the pool of members is therefore limited, whilst every effort will be made to ensure proportionality, it may not always be possible.
- xviii. A substitute Member will have all the powers and duties of any regular Member of the Licensing Sub-Committee but will not be able to exercise any special powers or duties exercisable by the person for whom s/he is substituting.
- xix. No substitute member at Licensing Sub- Committees may vote unless they have been present for the entire consideration of the item under discussion.



# Birmingham City Council

## Constitution

### Part E – Scheme of Delegations

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## E1. SUMMARY AND EXPLANATION

1. Each Chief Officer/Chief Officer has a number of delegations which are set out below. The following sections set out the delegations to officers:

- Officer delegated decision making – setting out general notes on the parameters of the delegations and the process for taking officer delegated decisions;
- Financial delegations to Chief Officers – setting out the financial and governance delegations to all Chief Officers (including the Chief Executive, Strategic Directors and Director of Strategy, Equality and Partnerships);
- Functional Delegations to each of the Chief Officers.

2. Each of these may be supplemented by a Scheme of Sub-Delegations.

## E2. OFFICER DELEGATED DECISION MAKING

### 2.1 General Notes

1. All delegated functions shall be deemed to be exercised on behalf of and in the name of the Council.

2. The exercise of a delegated power, duty or function shall:

- (i) be subject to the City Council's Policy Framework and/or Budget;
- (ii) be subject to the requirements of the Constitution including the Council Procedure (B4), Executive Procedures (B6) Financial Procedure Rules (Part D), Procurement and Contract Governance Rules (Part D) Corporate Standards (C1) and any delegations contained therein.

3. An officer to whom a power, duty or function is delegated may authorise another officer to exercise that power, duty or function, subject to the requirements that follow:

- (i) such authorisations shall be in writing and shall only be given to an officer over which the officer with the original delegated power etc. has control;
- (ii) such authorisations should only be given where there is significant administrative convenience in doing so;
- (iii) the officer authorised by the other should act in the name of the officer who received the original delegation;
- (iv) no authorisation may be given if the statute or the law prohibits it.

Authorisations of this kind should not be considered to be the norm but used only in appropriate circumstances and after careful thought. There can be no additional such delegation.

Any mis-categorisation of a delegation as being Executive, non-Executive or anything else shall not invalidate the delegation.

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4. References to any Act, Regulation, Order or Byelaw shall be construed as including any re-enactment or re-making of the same, whether or not with amendments.
5. Any reference to any Act of Parliament includes reference to Regulations or subordinate legislation upon which either UK legislation is based, or from which powers, duties and functions of the Council are derived.
6. Where the exercise of powers is subject to prior consultation with another officer, that officer may give his or her views in general terms in advance to apply to any particular circumstances, to remove the need for consultation for each proposal.
7. Subject to any express instructions to the contrary from the delegating body, any power to approve also includes the power to refuse, and the power to impose appropriate conditions.
8. Delegations to officers are subject to:
  - (i) The right of the delegating body to decide any matter in a particular case;
  - (ii) The officer may, in lieu of exercising his/her delegated power, refer to the delegating body for a decision; and
  - (iii) Any restrictions, conditions or directions of the delegating body.
9. In exercising delegated powers, the officer shall:
  - (i) Take account of the requirements of this Constitution and shall address all legal, financial and other professional safeguards as if the matter were not delegated;
  - (ii) Shall exercise the delegation so as to promote the efficient, effective and economic running of that Directorate and the Council, and in furtherance of the Council's visions and values; and
  - (iii) Where and when appropriate, report back to the appropriate delegating body as to the exercise of those delegated powers.
10. Except where otherwise expressly provided either within the Scheme of Delegation or by resolution of the delegating body, the exercise of any delegated power, duty or function is subject to having the appropriate and necessary budgetary provision in place to take the action in the name of and/or on behalf of the Council.
11. Save in respect of any statutory roles that are not capable of delegation, any power conferred on a subordinate officer shall be exercisable by the Director.
12. The Scheme of Delegations is maintained by the City Solicitor, and delegations are added to it as they are made by delegating bodies. Officers should take care to inform themselves of any subsequent changes to the Scheme before solely relying on this document.
13. The City Solicitor shall have the power to amend the Scheme of Delegations to reflect re-organisations, changes in job titles and vacancies, where said changes result in re-distributing existing delegations and not the creation of new ones.
14. Any post specifically referred to in the Scheme of Delegations shall be deemed to include any successor post, or a post which includes within the job description, elements relevant to any

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particular delegation, which were also present in the earlier post and shall include anyone acting up or seconded. Any power contained within this Scheme in anticipation of any reorganisation may be exercised in accordance with the preceding Scheme to the date of that reorganisation.

15. Any reference to a Committee, Panel or Sub-Committee shall be deemed to include reference to a successor Committee or Sub-Committee provided that the subject matter of a particular delegation can be found within the terms of reference of both the earlier and the successor Committee or Sub-Committee.
16. Where a power or duty is delegated to an officer, and the exercise of that power or duty is contingent upon the opinion of the Council that particular conditions or factual circumstances exist, then the officer in question has the power to determine whether or not those circumstances exist or those conditions have been fulfilled in the name of and with the authority of the Council.
17. All enquiries about the Scheme of Delegations should be made to the City Solicitor.
18. All matters of interpretation of this document will be determined by the City Solicitor.
19. If a matter is delegated to an officer, but that delegation cannot be implemented, that should be reported to the delegating body.
20. Functions, matters, powers, authorisations, delegations, duties and responsibilities etc within this Scheme shall be construed in a broad and inclusive fashion and shall include the doing of anything which is calculated to facilitate or is conducive or incidental to the discharge of anything specified.
21. Non-executive functions are specified in Schedules 1 and 2 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended. Any function that is not therefore specified must be assumed to be executive.
22. Advice on procedures and matters to be taken into account in exercising officer delegated powers, is set out in the guidance on decision-making issued by the City Solicitor.
23. This Scheme of Delegations was approved as part of the Council's Constitution on 10<sup>th</sup> September 2019. Ad hoc additional revisions will be considered by the Council as appropriate.
24. For the avoidance of doubt, where a power or duty delegated under this scheme includes at source a power to recover costs, fees or charges, the delegation shall include the power to take all necessary action to recover such fees cost or charges by way of civil debt or otherwise and shall be without prejudice to any other power to charge or recover costs that the Council may have under legislation.
25. Where there is doubt over the responsibility for the exercise of the delegated power, the Chief Executive or his or her nominee is authorised to act.

## 2.2 Process and Recording of Delegated Decisions

Officers should ensure that delegated powers are exercised in accordance with relevant Council policies and procedures and also put appropriate systems in place for recording the exercise of delegated powers in the following manner and circumstances:

- (i) All decisions with a value of £50,000 or more made by Officers under delegated powers should be recorded in writing and a single copy for each Directorate produced to the Chief Executive and the Leader/Deputy Leader on the 30<sup>th</sup> September and 31<sup>st</sup> March of each year.
- (ii) Additionally, all decisions taken by Cabinet Members (based on a written report by the Chief Officer) should be recorded using the prescribed template. These decisions are only effective and actionable when posted on the Council's website by Committee Services and following the call-in process.

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## E3. DELEGATIONS TO CHIEF OFFICERS<sup>1</sup>

### 3.1 Summary

The Council, its Committees and the Executive will make decisions on matters of significant policy. The Chief Executive and Directors are given express authority to take all necessary actions to implement Council, Committee and Executive decisions that commit resources within agreed budgets in the case of financial resources, as set out below.

In relation to all delegated authorities conferred on Chief Officers, the Chief Executive may allocate or reallocate responsibility for exercising particular powers in the interests of effective corporate management as he or she thinks fit.

Chief Officers may take all routine and day-to-day operational service decisions within agreed policies provided they are met from within overall approved budgets in relation to the services for which they are responsible, subject to any other requirements imposed by the Constitution.

Chief Officers may take all decisions necessary to give effect to implement the contents of any approved Policy Framework plan, in relation to the services for which they are responsible, and within agreed budgets in the case of financial resources, as necessary and appropriate.

### 3.2 General Delegations

The Chief Executive and Chief Officers have the following delegated powers in respect of all matters which are not “key decisions” and not reserved for decision by the Council or by a Committee of the Council:

- (i) To make decisions and approve expenditure relating to the functions of their Directorate providing that:
  - The sum expended is within the approved budget for the Directorate and/or relevant portfolio, and
  - The amount in relation to any single matter does not equal or exceed £200,000 or
  - The amount in relation to any single matter that is at or above £200,000 and below £500,000 (revenue) or £1m (capital) is a Cabinet Member(s) decision (based on a written report from the Chief Officer).
  - The requirements of the Financial Approvals Framework in this Constitution and other requirements in the Constitution are complied with.
- (ii) Determine employment matters relating to staff including all changes to staffing structures below JNC level and the annual implementation of the contractual pay increment system. These powers will not include changes to terms and conditions of

<sup>1</sup> Chief Officers are those officers reporting to the Chief Executive (Director of [Strategy, Equality and Partnerships](#) and all [Strategic](#) Directors).

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employment (the Birmingham Contract) or additional payments to any individual member of staff above the general financial threshold delegated to officers (£200k).

- (iii) To approve tender strategies and award contracts in accordance with the Procurement Governance Arrangements where the supplies, materials, or services to be purchased or the works to be executed are between the Procurement Threshold (see Procurement and Contract Governance Rules set out in Part D of the Constitution) and £10,000,000 in value, over the contract length.

- (iv) Where no other viable alternative exists to approve contract extensions, where no extension option in the contract exists, in accordance with the Procurement Governance Arrangements where the supplies, materials, or services to be purchased or the works to be executed do not exceed £500,000.

- (v) To write off any individual debts of income (including any associated court costs and bailiffs' fees) within their service directorate responsibility, and after consultation with the Director of Council Management, up to the sum of £25,000 per individual or organisation, which in the opinion of the Director, is considered to be uneconomical to collect or is irrecoverable. *All individual debts above this amount can only be written off by the Director of Council Management.*

- (vi) The Chief Executive and Chief Officers have delegated authority to approve and make payments in connection with the duties of the council where it holds monies in the capacity of an "Accountable Body". In all such cases where the Council is the Accountable Body, the Chief Executive or any Chief Officer has authority to make lawful payments in compliance with the terms under which the Council holds monies as the Accountable Body and in accordance with any requirements approved by the Council as Accountable Body, up to but not exceeding the total amount held under each agreement with the grant giver.

- (vii) The Chief Executive has all the above delegated authority in respect of all executive and non-executive expenditure, and as may be necessary, determine which Directorate discharges any particular Council function if this is not clear.

#### Chief Executive and the Strategic Director of Council Management

- (viii) The Chief Executive and the Strategic Director of Council Management may exercise voting rights at general meetings of companies of which the Council is a member or by written resolution and may take any necessary action to protect, safeguard and effectively manage the Council's interest in such companies.

- (ix) The Chief Executive and the Strategic Director of Council Management together (and no other Director) without financial limit have the following additional powers to make decisions in relation to:

- All future forms of indemnity on behalf of the Council including the signing of certificates under the Local Government (Contracts) Act 1997.
- The Council's loan and investment portfolios in accordance with the statutory borrowing limits determined by the Council and the Council's Treasury Policy

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Statement and Management Strategy as approved from time to time by the Council and all such decisions are exempt from the reporting requirements.

- Trust fund and accountable body investments;
- Banking arrangements including opening bank accounts and credit card facilities;
- Non land and building leases;
- The application for financial assistance to the City Council and the authorisation of any grant claims;
- The administration of the Housing Rents, Council Tax and Housing Benefit systems and the collection of Community Charge, Council Tax, Housing Rents and Non-Domestic Rates (including setting Non-Domestic rates and applications for relief or reduction in accordance with the criteria and policy guidance approved from time to time by the Cabinet);
- Matters relating to the transfer of pension rights.

#### Chief Executive and the Strategic Director of Place, Prosperity and Sustainability

- (x) The Chief Executive and the Strategic Director of Place, Prosperity and Sustainability have the following additional powers to make decisions in relation to:
- The acquisition and disposal of leasehold interests for rent (including the granting and surrendering of any rights over such land and property) provided that any rental does not exceed £200,000 p.a.;
  - The acquisition and disposal of freehold and leasehold interests at a premium, provided that the premium does not exceed £1,000,000;
  - The management of all of the Council's land and properties, including the authorising and payment of discretionary contributions towards trade/loss and or removal expenses and all payments due under an approved Compulsory Purchase Order, provided that the cost does not exceed £200,000;
  - Save that land and property held by the Council as Trustee shall be the responsibility of the Trusts and Charities Committee.

#### Strategic Director of Place, Prosperity and Sustainability, Strategic Director of Council Management and City Solicitor

- (xi) The Leader and Cabinet Member, Finance and Resources, jointly with the Strategic Director of Place, Prosperity and Sustainability, Strategic Director of Council Management and the City Solicitor (or their delegates as set out in the Scheme of Sub-Delegations) have the following additional powers to make decisions in relation to the approval of acquisitions to, and disposals from, the Investment Property portfolio up to a limit of £25m in any one transaction.

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- (xii) These decisions will take the form of Cabinet Member decisions based on written reports from Chief Officers and as such are subject to the provisions in Part B6.5 of the Constitution.

**City Solicitor**

- (xiii) The City Solicitor may exercise all proper Officer and any other functions of the Council which do not fall within the Directorate or budget responsibility of a Director and has the powers set out in the Legal Proceedings section of the Constitution.

**Strategic Director of Children and Families**

- (xiv) The Strategic Director of Children and Families (and in their absence the Strategic Director of Council Management) has the authority to authorise and approve the completion of (but not limited to) the grant of long term leases, commercial transfer agreements and any other ancillary documentation relating to the changing status of schools pursuant to the Academies Act 2010 or any associated legislation relating to the changing status of schools, as well as requesting the making and varying of Instruments of Government for maintained schools, subject to the agreement of the City Solicitor.

**3.3 Emergency Plan/Business Continuity**

- (i) Chief Officers and Statutory Officers (or deputising officers) are empowered to authorise all necessary actions in relation to disasters and emergencies as designated under the Council's Emergency Plan when activated; or under Business Continuity Plans in the event of a business continuity disruption.
- (ii) In the event of the Emergency Plan being activated, and following action taken, the Chief Officer must notify the Director of Council Management in writing of the circumstances and estimated financial impact and report formally to the relevant Cabinet Member or, for non-executive matters, to the next available meeting of the relevant committee.
- (iii) The principles of decision-making set out in Part B3.2 will apply.

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## E4. CHIEF EXECUTIVE

### 4.1 Overall Responsibility

The Chief Executive shall be the Head of Paid Service and be provided by the authority with such resources as s/he deems necessary to perform that role. The Head of Paid Service shall have overall corporate management and operational responsibility for the way in which the organisation delivers its services.

### 4.2 Emergency Reports

Part B6.6 of the Constitution provides that the Chief Executive may make decisions that are of special urgency.

The Chief Executive may decide that a special urgency situation arises when:

- (i) A decision **must** be made before the next scheduled meeting of the Cabinet; or
- (ii) A recommendation to the Cabinet should be implemented prior to the next scheduled meeting of the Cabinet by which it could be approved.

In either case, if the Chief Executive is satisfied that the making of the decision is urgent and cannot reasonably be deferred, then the following shall apply:

#### Urgent Key Decisions

Where the decision is a "key decision" pursuant to B3.1 vi) the Chief Executive, (or may designate a Chief Officer) shall obtain agreement that the making of the decision is urgent and cannot be reasonably deferred, from the following:

- (i) the Leaders of each of the Political Groups; and
- (ii) the Chair of the relevant Overview and Scrutiny Committee; or
- (iii) if there is no such person, or if the Chair of the relevant Overview and Scrutiny Committee is unable to act, the Lord Mayor (or in their absence the Deputy Lord Mayor).

As soon as is reasonably practicable after the Chief Executive, or delegated Chief Officer, has obtained agreement pursuant to (i) – (iii) above they must:

- (i) Make available at the Council offices a notice setting out the reasons that the decision is urgent and cannot be reasonably deferred; and
- (ii) Publish that notice on the Council's website.

#### Further:

- (i) that the Chief Executive, or designated Chief Officer, before making a decision shall consult with the City Solicitor and the Chief Finance Officer or their nominated deputies;

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The exercise by the Chief Executive, Director of Council Management and Director of any powers under this delegation shall be subject to the following conditions: ¶

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that the Chief Executive, Director of Council Management or designated Director before making a decision shall consult with the Leader (or in his/her absence the Deputy Leader); ¶

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- (ii) that a record of all decisions made or recommendations implemented, together with the consultations referred to above shall be published on the Council's website within 10 working days; and
- (iii) that any decisions made or recommendations implemented under this provision shall be reported to the next scheduled meeting of the Cabinet (for noting).

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#### ***Urgent Non-Key Decisions***

Where the decision is not a "key decision" pursuant to B3.1 vi) the Chief Executive shall have the power (or may designate a Chief Officer who will then have power) to determine the question or matter or to implement the recommendation (as the case may be) in the name of and without further reference to the Executive.

The exercise by the Chief Executive, or designated Chief Officer, of any powers under this delegation shall be subject to the following conditions:

- (i) that the determination of the question or other matter or implementation of the recommendation is capable of determination under law in this manner;
- (ii) that the Chief Executive, or designated Chief Officer, before making a decision shall consult with the Leaders of each of the Political Groups;
- (iii) that the Chief Executive, or designated Chief Officer, before making a decision shall consult with the City Solicitor and the Chief Finance Officer or their nominated deputies;
- (iv) that a record of all decisions made or recommendations implemented, together with the consultations referred to in (ii) and (iii) above shall be published on the Council's website within 10 working days; and
- (v) that any decisions made or recommendations implemented under this provision shall be reported to the next scheduled meeting of the Cabinet (for noting).

Each Chief Officer (in their service area) and City Solicitor (all areas) may exercise the powers of the Chief Executive in the event of his/her incapacity, absence or unavailability.

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### **4.3 Immediate Implementation**

If the interests of the Council are jeopardised unless an executive decision is implemented immediately then the Chief Executive in consultation with the Leader (or Deputy Leader in his/her absence) may designate such executive decision as so urgent that its implementation cannot wait until the expiry of the call-in period.

The exercise of such power shall be clearly noted on the record of the decision.

### **4.4 Extraordinary Meetings**

The Chief Executive and the City Solicitor acting together may call an extraordinary meeting of the Council (see Part B4.4C). The City Solicitor shall, in calling an Extraordinary Meeting of the Council, restrict the business on the summons to that required by law, any matter or matters that the Chief

Executive, Monitoring Officer or Chief Financial Officer wish to raise and the business for which the Extraordinary Meeting has been called.

#### 4.5 Executive Functions

In the event of the Emergency Plan being activated, the Chief Executive (or deputising officer) is empowered to authorise all necessary actions as the Local Authority Strategic Commander. All authorities relevant to the management of the incident are delegated to duty officers as set out in the plan.

#### 4.6 Non-Executive Functions

The Chief Executive is authorised to discharge the following non-Executive functions:

- The appointment, termination and disciplinary arrangements of Officers who are not Chief Officers or Deputy Chief Officers (other than assistants to political groups) in line with the Council's normal recruitment, disciplinary and termination policies;
- Community Governance: proposals for a change in governance arrangements or complying with a duty to make a change in governance arrangements, approving the proposals, deciding whether the change should be subject to approval;
- Reorganisation orders implementing recommendations of a community governance review.

#### 4.7 Local Choice Functions

The Chief Executive is authorised to discharge the following Local Choice Functions which have been assigned to full Council and Cabinet (see Part B2 of the Constitution):

- To appoint any individual to any office other than an office in which he is employed by the authority and to revoke any such appointment:
  - to the extent that appointments are to outside bodies in connection with functions which are the responsibility of the Executive (Cabinet)
  - to the extent that appointments are not the responsibility of the Executive (Full Council).
- To make agreements with other local authorities for the placing of staff at the disposal of those other authorities (Cabinet).

### E5. **DIRECTOR OF STRATEGY, EQUALITY AND PARTNERSHIPS**

#### 5.1 Summary

The Director of Strategy, Equality and Partnerships leads the Directorate.

#### 5.2 Non-Executive Functions

The Director of Strategy, Equality and Partnerships is authorised to discharge the following functions:

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1. Joint coordination of the Council Plan (with the Strategic Director of Council Management).

### 5.3 Executive Functions

The Director of Strategy, Equality and Partnerships is authorised to discharge the following functions:

2. Insight, partnerships and strategy, including:

- (i) Strengthening the Council's use of evidence to generate insight, inform decision making and drive improvements across services;
- (ii) Developing the Council's policy agenda;
- (iii) Promotion of collaborative working with stakeholders and partners, including the West Midlands Combined Authority and Core Cities;
- (iv) Strengthening the Council's approach to public participation;
- (v) Third sector partnership and engagement.

4. Corporate communications services, including:

- (i) the council's communications strategy and policy;
- (ii) internal and external communications; and
- (iii) Press and media relations.

### 5.4 Director of Public Health (DPH)

The Director of Public Health is a statutory appointment as a Chief Officer of the Council appointed jointly with the Secretary of State for Health and Social Care.

The DPH has to be a professionally registered Public Health Consultant.

The DPH is accountable for appropriate use of the ring-fenced public health grant and ensuring the Council delivers the mandated public health services.

The DPH leads the Public Health Division.

The DPH has specific statutory responsibilities; the DPH's specific responsibilities and duties arise directly from Acts of Parliament – mainly the NHS Act 2006 and the Health and Social Care Act 2012 – and related regulations including:

- Responsibility to protect and improve the health of the local population;
- Responsibility to ensure arrangements for planning for, and responding to, emergencies;
- Ensuring co-operation with police, probation and prison services in relation to violent and sexual offenders;

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Supporting arrangements in relation to

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ensure the council meets its duties to improve public health¶  
ensure the delivery of public health protections and health improvement responsibilities¶  
ensure the council plans and responds to emergencies that present a risk to public health¶  
ensure the council meets other local government public health responsibilities¶  
setting, supporting and monitoring the council's policy on community safety including:¶  
after communities;¶  
domestic violence;¶  
social cohesion and inclusion;¶  
prevent and counter-terrorism;¶

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- Provide public health response as a responsible authority to Licensing applications;
- Responsibility for ensuring provision of Healthy Start vitamins where child health clinics and maternity services are commissioned by the local authority;
- Write an annual Director of Public Health report;
- Be an active member of the Health and Wellbeing Board.

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**E6. STRATEGIC DIRECTOR OF COUNCIL MANAGEMENT****6.1 Summary**

The Strategic Director of Council Management is the responsible officer for the proper administration of the Council's financial affairs under the Local Government Act 1972, Section 151. The Strategic Director of Council Management Protocol is set out in Part D of this Constitution.

In addition, the post holds overall responsibility for Digital & Customer Services, Performance Management, Procurement, HR functions and management of the Council's Programme Management Office. The City Solicitor also reports into the Strategic Director of Council Management.

**6.2 Section 151 Officer Functions**

The Strategic Director of Council Management is authorised to take all action as is necessary or expedient to fulfil the statutory obligations under Section 151 Local Government Act 1972.

1. Ensuring effective financial management and controls, including:
  - Reporting on the robustness of the Council's financial plans;
  - Managing the Council's borrowing and investment requirements;
  - Managing and monitoring the Council's revenue budget and capital programme;
  - Preparation and closure of the Council's financial accounts;
  - Managing the Council's tax affairs; and
  - Internal audit.
2. Setting, supporting and monitoring the council's policies and procedures for managing:
  - Budgets;
  - Procurement and purchasing;
  - Commissioning;
  - Contract management;
  - Internal trading operations;
  - Business Charter for Social Responsibility;
  - Risk management.
3. To make standing orders in relation to Finance and contracts.<sup>3</sup>

<sup>3</sup> Section 106 of, and paragraph 42 of Schedule 12 to the Local Government Act 1972 and Section 135 of the Local Government Act 1972

## 4. Setting, supporting and monitoring the council's policies and procedures for managing:

- Performance and service improvement;
- Projects and programmes.

**6.3 Non-Executive Functions**

The **Strategic** Director of Council Management is authorised to discharge the following Council (non-executive) functions:

1. Joint coordination of the Council Plan (with the **Director of Strategy, Equality and Partnerships**).

**6.4 Director, Digital and Customer Services**

The Director, Digital & Customer Services is authorised to discharge the following functions in line with the provisions of this Constitution:

1. The Council's Information and Communications Technology Strategy and Citizen Access strategy;
2. Information and Communications Technology Service including:
  - Deliver a reliable, flexible, integrated, secure, accessible and well managed service;
  - Create the capability to turn information into insight;
  - Deliver 'Value for Money' services through the commissioning of excellent ICTD;
  - Be innovative; to make changes to what's established, by introducing new methods, ideas, and solutions.
3. The Council's corporate customer services and business support functions including:
  - The telephone contact centre;
  - Digital access including the council's website and e-services;
  - Business support functions supporting all Directorates
4. Revenues, Benefits and Rents services including:
  - Council tax processing and billing arrangements;
  - Local Council Tax Support and recoverability of excess Council Tax Support payments;
  - National non domestic rates;
  - Local hardship schemes;
  - Housing benefit, including recoverability of overpayments, and education benefit services;
  - Financial and social inclusion initiatives;
  - Collection of Housing Rents.

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## 6.5 Director of People Services

### Executive

The Director of People Services is authorised to discharge the following functions:

1. Setting, supporting and monitoring the council's policies and procedures for managing human resources and effective organisational development (including Occupational Health, Safety and Wellbeing).

### Non-Executive

2. Employment of staff and terms and conditions.
3. Functions relating to local government pensions, including:
  - To make arrangements to consider and determine employee appeals in relation to grievances, grading and dismissal
  - To determine employee terms and conditions
  - To make standing orders in relation to Officer Employment

## E7. CITY SOLICITOR

### 7.1 Executive Functions

The City Solicitor is authorised to take any action intended to give effect to a decision of the Council (including decisions taken by a Council committee in accordance with its terms of reference or by a Director in accordance with this scheme of delegation).

The City Solicitor is authorised to institute, defend or participate in any legal proceedings or settle (up to the value of £500,000), if appropriate, any actual or threatened legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the City Solicitor considers that such action is necessary to safeguard and protect the Council's interests. Decisions above this financial threshold will be made by the Director of Council Management and/or the Chief Executive in consultation with the City Solicitor.

### 7.2 Non-Executive Functions: Monitoring Officer

The City Solicitor is the Monitoring Officer for the Council. The Monitoring Officer is a statutory appointment and provides advice to protect and safeguard the Council. The functions are summarised below.

	Description	Source
a)	Report on contraventions or likely contraventions of any enactment or rule of law	Section 5 and Section 5A Local Government and Housing Act 1989
b)	Report on any maladministration or injustice where Ombudsman has carried out an investigation	Section 5 and Section 5A Local Government and Housing Act 1989

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	<i>Description</i>	<i>Source</i>
c)	Appointment of Deputy	Section 5 and Section 5A Local Government and Housing Act 1989
d)	Report on resources	Section 5 and Section 5A Local Government and Housing Act 1989
e)	Receive copies of whistleblowing allegations of misconduct	Public Interest Disclosure Act 1998 and Whistleblowing Code of Practice
f)	Arrange investigations of complaints of any Member misconduct	Section 28 Localism Act 2011
g)	Establish and maintain registers of Members' interests and gifts and hospitality	Section 29 Localism Act 2011 and Code of Conduct for Members
h)	Advise on disclosable pecuniary interests	Section 30 Localism Act 2011
i)	Advise on sensitive interests	Section 32 Localism Act 2011
j)	Grant of dispensations re: restrictions on Members' participation in meetings	Section 33 Localism Act 2011
k)	Advice to Members on interpretation of Code of conduct for Members	Section 28 Localism Act 2011 and Code of Conduct for Members
l)	New ethical framework functions in relation to Parish Councils	Section 27 Localism Act 2011
m)	Compensation for maladministration	Section 92 LGA 2000
n)	Advice on vires issues, maladministration, probity and policy framework to all Members	DCLG guidance
o)	Advise on any indemnities and insurance issues for Members / Officers	Section 101 LGA 2000 and Local Authorities (Indemnities for Members and Officers) Order 2004 (SI 2004/3082)

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### 7.3 Non-Executive Functions: Other

The City Solicitor is authorised to discharge the following Council (non-executive) functions:

1. Supporting the corporate governance of the council, particularly in respect of:
  - (i) Monitoring and reviewing the effectiveness and operation of the constitution;
  - (ii) The requirements of the Members' Code of Conduct;
  - (iii) Setting, supporting and monitoring the council's policies and procedures for managing and access to information including data protection laws;
  - (iv) The appointment of committees and discharge of Council functions;
  - (v) The appointments to outside bodies;
  - (vi) The Members' Allowance Scheme;



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(vii) The power to make, amend or revoke byelaws.

## 2. Legal and Governance services including

- (i) Legal advice and related support services;
- (ii) Functions relating to the role of Solicitor to the Council including:
  - o taking any action intended to give effect to a decision of the Executive;
  - o the commencement, defence, withdrawal or settlement of proceedings;
  - o the authorisation of Council officers to conduct legal matters in court<sup>4</sup>
- (iii) Governance Services including support to elected members in their responsibilities, particularly in respect of:
  - o The Leader and Deputy Leader of the Council and Cabinet Members;
  - o The Lord Mayor;
  - o Councillors via group support offices;
  - o The full Council meeting;
  - o Cabinet;
  - o Committees appointed by full Council;
  - o Overview & Scrutiny;
  - o Training and development of councillors.

## 7.4 Local Choice

The City Solicitor is authorised to discharge the following Local Choice Functions which have been assigned to full Council (see Part B2 of the Constitution):

- To appoint review boards under the Social Security Act 1998;<sup>5</sup>
- To amend this Constitution (as set out in Part A6 of this Constitution);
- To make arrangements for the appointment of Committees and discharge of Council's functions.

<sup>4</sup> "Court" to be construed widely including but not limited to tribunals, inquiries and other quasi-judicial hearings.

<sup>5</sup> s34(4) Social Security Act 1998

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## E8. RETURNING OFFICER AND ELECTORAL REGISTRATION OFFICER

The Assistant Director Governance is the Returning Officer and Electoral Registration Officer and is authorised to discharge the following Council (non-executive) functions:

No	Function	Reference
a)	To assign officers in relation to requisitions of the registration officer	Section 52(4) of the Representation of the People Act 1983
b)	To provide assistance at European Parliamentary elections	Section 6(7) and (8) of the European Parliamentary Elections Act 2002
c)	To divide constituency into polling districts	Section 18A to 18E of and Schedule A1 to the Representation of the People Act 1983
d)	To divide electoral divisions into polling districts at local government elections	Section 31 of the Representation of the People Act 1983
e)	Powers in respect of holding of elections	Section 39(4) of the Representation of the People Act 1983
f)	To pay expenses properly incurred by electoral registration officer	Section 54 of the Representation of the People Act 1983
g)	To fill vacancies in the event of insufficient nominations	Section 21 of the Representation of the People Act 1985
h)	To declare vacancy in office in certain cases	Section 86 of the Local Government Act 1972
i)	To give public notice of a casual vacancy	Section 87 of the Local Government Act 1972
j)	To submit proposals to the Secretary of State for an order under section 10 (pilot schemes for local elections in England and Wales) of the Representation of the People Act 2000	Section 10 of the Representation of the People Act 2000

## E9. **STRATEGIC DIRECTOR OF ADULT SOCIAL CARE**

### 9.1 Summary

The Strategic Director of Adult Social Care, is the responsible officer for the Adult Social Services.<sup>6</sup>

### 9.2 Executive Functions

The Strategic Director of Adult Social Care, is authorised to discharge the following functions:

#### 1. Services to support adults including:

- Integration and personalisation of health and social care services across the city for the benefit and health and well-being of Birmingham citizens;
- Information, advice and advocacy;
- Prevention and Recovery: to take steps to prevent, reduce or delay the need for care and support for all people including:
  - Preventative Services: Provision or arrangement of community and home based services to adults with less intensive needs; and
  - Re-ablement Services: Provision or arrangement of early intervention time-limited services to meet the immediate requirements of adults with short-term social care needs.

#### 2. Safeguarding including:

- Co-ordination of multiagency arrangements to ensure that resources are deployed in safeguarding vulnerable adults;
- Delivery of safeguarding training; and
- To promote and enable identification of and appropriate action for vulnerable adults at risk of abuse or neglect.

#### 3. Assessment and eligibility

#### 4. Charging and financial assessments including undertaking financial assessments and the provision of deferred payments.

<sup>6</sup> Appointed under Section 6 Local Authority Social Services Act 1970

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**E10. STRATEGIC DIRECTOR OF CHILDREN AND FAMILIES****10.1 Summary**

The Director, Education & Skills, is the responsible officer for the Children's Services.<sup>7</sup>

**10.2 Executive Functions**

The Strategic Director of Children and Families is authorised to discharge the following functions:

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1. Education of Children and Young People including:
  - School improvement;
  - School places and travel to and from school;
  - Oversight of the Dedicated Schools Grant.
2. Special Educational Needs and Disability (SEND).
3. Early Years Provision
4. Children's Services and Safeguarding, including:
  - Overseeing the Children's Trust;
  - Safeguarding and Child Protection;
  - Youth Offending Services
5. Corporate Parenting.
6. Skills and employability
  - Skills and entrepreneurship in schools;
  - Youth engagement and youth services;
  - Employment Opportunities.
7. Library of Birmingham and community libraries.

**10.3 Local Choice Functions**

The Strategic Director of Children and Families is authorised to discharge the following Local Choice Functions which have been assigned to Cabinet (see Part B2 of the Constitution):

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- To make arrangements for appeals against exclusion of pupils from maintained Schools;
- To make arrangements for appeals regarding school admissions;<sup>8</sup>

<sup>7</sup> Appointed under Section 18 Children Act 2004

<sup>8</sup> s94 (1), (1A) and (4) School Standards and Framework Act 1998

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- To make arrangements for appeals by governing bodies.<sup>9</sup>

## E11. **STRATEGIC DIRECTOR OF PLACE, PROSPERITY AND SUSTAINABILITY**

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### 11.1 Executive Functions

The **Strategic Director of Place, Prosperity and Sustainability** is authorised to discharge the following functions in line with the provisions of this Constitution:

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1. International and domestic inward economic investment including tourism and the visitor economy.
2. Economic growth, including:
  - Development programmes;
  - Land use planning;
  - Housing development.
3. Transport & Connectivity including:
  - Development of the Council's transport strategies and programmes;
  - The authority's strategic traffic management role and network planning;
  - Street naming and numbering;
  - Design of minor and major transport and highways projects;
  - The making of agreements for the execution of highways works under S278 Highways Act 1980;
  - Powers and duties relating to rights of way (including closures) under the Wildlife and Countryside Act, Highways Act, Town and Country Planning Act or Clean Neighbourhoods Act;
  - Air Quality via the Clean Air Zone.
4. Local Land Charges functions including:
  - Maintenance of the Local Land Charges Register; and
  - Responsibility for processing local authority searches.
5. Planning functions including:

<sup>9</sup> s95 (2) School Standards and Framework Act 1998

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- Deal with any applications for planning permission or other consents (including demolitions);
- Development of the Council's planning and transport policies;
- Management of the planning service;
- Building conservation and urban design; and
- Obtaining of information as to interests in land.

## 6. Property Services including:

- Council land use and property;
- Operational Property Management
- Asset Management;
- Central Administration Building (CAB) Accommodation and Management;
- Valuations and Acquisitions;
- Property Sales;
- Property Strategy Delivery;
- Investment Estate & Property Management;
- Property Asset Management and Income;
- Strategic Investment Property Management;
- Property Development;
- Security Services.

**11.2 Non-Executive functions**

The ~~Strategic~~ Director ~~of Place, Prosperity and Sustainability~~, and ~~Strategic Director of City Operations~~ are authorised jointly to discharge the following functions in line with the provisions of this Constitution:

- Power to create footpaths and bridleways;
- Power to stop up footpaths and bridleways;
- Power to divert footpaths and bridleways;
- Powers relating to the preservation of trees;
- Powers relating to the protection of important hedgerows.

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### 11.3 Local Choice Functions

The Strategic Director of Place, Prosperity and Sustainability is authorised to discharge the following Local Choice Functions which have been assigned to full Council (see Part B3 of the Constitution):

- The control of pollution or the management of air quality jointly with the Strategic Director, City Operations;<sup>10</sup>
- To obtain information about interests in land;<sup>11</sup>
- To obtain particulars of persons interested in land;<sup>12</sup>
- To make agreements for the execution of highways works jointly with the Strategic Director, City Operations;<sup>13</sup>

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<sup>10</sup> Pollution Prevention and Control Act 1999; Part IV Environment Act 1995; Part I Environmental Protection Act 1990; Clean Air Act 1993

<sup>11</sup> s330 Town and Country Planning Act 1990

<sup>12</sup> s16 Local Government (Miscellaneous Provisions) Act 1976

<sup>13</sup> Section 278 Highways Act 1980

## **E12. STRATEGIC DIRECTOR OF CITY HOUSING**

### **12.1 Executive Functions**

1. Housing Services including:

- Council housing management services;
- Liaison with Registered Social Landlords;
- Housing Options;
- Tenant engagement in social housing;

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## **E13. STRATEGIC DIRECTOR OF CITY OPERATIONS**

### **13.1 Executive Functions**

1. Waste Strategy and Services including:

- Waste collection;
- Waste disposal;
- Recycling.

2. Cleaner Neighbourhoods including:

- Street cleansing;
- Pest control;
- Litter bin provision and maintenance;
- Provision and cleaning of public conveniences;
- Graffiti removal;
- Dog control and dog warden service.

3. Arts, Culture and Sports, including:

- Museums and galleries;
- Arts;
- Sporting events;
- Leisure centres and community sports facilities.

4. Parks and Allotments including:

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- Creation, management and enhancement of green spaces<sup>14</sup>;
  - Creation, management and enhancement of related visitor attractions and facilities;
  - Public rights of way and provision and maintenance of footpaths and bridleways;
  - Woodland and tree management;
  - Provision of educational events and programmes;
  - Grass cutting and grounds maintenance;
  - Management of designated conservation sites.
5. Bereavement Services including:
- Cemeteries, crematoria, burial grounds and mortuaries including the authority's role as burial authority;
6. To discharge the Council's statutory obligations in relation to the operation of the Community Right to Bid for Assets of Community Value and the Community Right to Challenge.
7. To exempt the Illegal money lending team from provisions in Part D2 in relation to FinditinBirmingham (as per the footnotes in that section), if it is prudent to do so for operational, geographical and policy reasons. Value for money will also be a consideration in line with the ringfenced grant agreement.
8. Highways and Infrastructure including:
- The authority's role as a highways, traffic and streetworks authorities;
  - Maintenance of highway assets of roads, bridges, retaining walls, street lighting and associated infrastructure;
  - Design and delivery of major and minor highway schemes;
  - The making of agreements for the execution of highways works under S278 Highways Act 1980;
  - Powers and duties relating to rights of way (including closures) under the Wildlife and Countryside Act, Highways Act, Town and Country Planning Act or Clean Neighbourhoods Act;
  - To act as the Authority's Representative on behalf of the Council in accordance with the terms of the Highway Maintenance and Management Service PFI Contract;
  - Discharging statutory duties with respect to the delivery of operational parking functions, including Civil Parking Enforcement
  - Flood and water management including:

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<sup>14</sup> Including parks & city centre beds, nature reserves & woodlands, playgrounds, allotments

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- Discharging duties as Lead Local Flood Authority and other duties and responsibilities associated with the Flood Water Management Act;
- Land drainage activities;
- The delivery and maintenance of flood alleviation schemes
- Flood response.

9. The council's city-wide resilience and emergency planning functions.

10. Neighbourhood Management.

### 13.2 Non-Executive Functions

The ~~Strategic~~ Director, City Operations is authorised to discharge the following functions:

1. Regulation and Enforcement, including
  - Environmental Health Service, Trading Standards Service, England Illegal Money Lending Team, Regional Investigation team, the Licensing Service, the Waste Enforcement Unit (street scene) and the private rented sector (housing);
  - Enforcement activities, including the authorisation of proceedings and defending proceedings on behalf of the council in relation to civil and criminal matters in respect of these services and other services as appropriate.
2. Licensing functions including:
  - Functions of a licensing authority including (but not restricted to):
    - The administration of licenses for entertainment, gambling and the sale of alcohol;
    - Taxi and Private Hire;
    - Miscellaneous licensing functions;
    - Private Rented Sector licensing and regulation.
  - Adoption and revision of the Statement of Licensing Policy (Licensing Act 2003)
  - Adoption and revision of the Statement of Gambling Policy (Gambling Act 2005)
3. Environmental Health including:
  - Food hygiene and safety;
  - Health and safety at work<sup>15</sup>;
  - Monitoring and control of infectious diseases;

<sup>15</sup> other than in relation to Birmingham City Council staff or activities

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- Private water supply monitoring; and
- Animal health and welfare enforcement<sup>16</sup>.

## 4. Trading Standards including:

- Tackling rogue traders
- Product safety
- Misleading claims, scams and illegal trading practices.
- Underage sales
- Illegal advertising

## 5. Registrars functions including:

- Registration of births, deaths, marriages and civil partnerships; and
- Provision of civic weddings, civil partnerships and citizenship ceremonies.

## 6. Public Health Protection and Control of Statutory Nuisance including:

- Flytipping, commercial and household Duty of Care and rubbish accumulations;
- Domestic, commercial and industrial noise, fumes and odours;
- Air quality management; and
- Other forms of pollution harmful to public health.

## 7. To authorise action and exercise powers in relation to the Anti-Social Behaviour, Crime &amp; Policing Act 2014. · Setting, supporting and monitoring the council's policy on Community Safety including:

- Safer communities;
- Domestic abuse;
- Prevent and Counter-terrorism;
- To discharge local authority approvals for S35 Dispersal Orders and other statutory instruments relating to local community safety;
- To Host the Community Safety Partnership and produce a Community Safety Strategy including reducing reoffending and serious violence strategies.

## 8. Highways:

- Duty to assert and protect the rights of the public to the use and enjoyment of highways;

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<sup>16</sup> including livestock markets and animal breeding and boarding establishments

- Powers relating to the removal of things so deposited on highways as to be a nuisance;
- Duty to keep a definitive map and statement under review;
- Duty to reclassify roads used as public paths;
- Power to make limestone pavement order.

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### 13.3 Local Choice Functions

The [Strategic](#) Director, City Operations is authorised to discharge the following Local Choice Functions which have been assigned to full Council:

- Any function relating to contaminated land;<sup>17</sup>
- To serve an abatement notice in respect of a statutory nuisance;<sup>18</sup>
- To pass a resolution that Schedule 2 of the Noise and Statutory Nuisance Act 1993 should apply in the authority's area;<sup>19</sup>
- To inspect the authority's area to detect any statutory nuisance;<sup>20</sup>
- To investigate any complaint about the existence of a statutory nuisance.<sup>21</sup>
- The control of pollution or the management of air quality;<sup>22</sup>
- To make agreements for the execution of highways works.<sup>23</sup>

<sup>17</sup> Part IIA Environmental Protection Act 1990 and subordinate legislation

<sup>18</sup> s80(l) Environmental Protection Act 1990

<sup>19</sup> s8 Noise and Statutory Nuisance Act 1993

<sup>20</sup> s79 Environmental Protection Act 1990

<sup>21</sup> s79 Environmental Protection Act 1990

<sup>22</sup> Pollution Prevention and Control Act 1999; Part IV Environment Act 1995; Part I Environmental Protection Act 1990; Clean Air Act 1993

<sup>23</sup> Section 278 Highways Act 1980