

The Council Meeting

Council Chamber, Town Hall
23 March 2011 at 6.00pm

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at www.colchester.gov.uk or from Democratic Services.

Have Your Say!

The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to meetings, with the exception of Standards Committee meetings. If you wish to speak at a meeting or wish to find out more, please pick up the leaflet called "Have Your Say" at Council offices and at www.colchester.gov.uk

Private Sessions

Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

Mobile phones, pagers, cameras, audio recorders

Please ensure that all mobile phones and pagers are turned off before the meeting begins and note that photography or audio recording is not permitted.

Access

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Toilets with lift access, if required, are located on each floor of the Town Hall. A vending machine selling hot and cold drinks is located on the first floor and ground floor.

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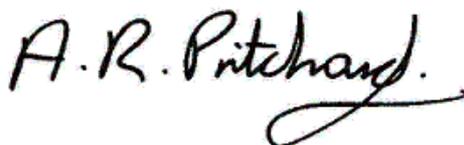
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COLCHESTER BOROUGH COUNCIL

TO ALL MEMBERS OF THE COUNCIL

21 March 2011

You are hereby summoned to attend a meeting of the Council to be held at the Council Chamber, Town Hall on **23 March 2011 at 6:00pm** for the transaction of the business stated below.



Chief Executive

AGENDA

Pages

1. Welcome and Announcements

(a) The Mayor to welcome members of the public and Councillors and to invite the Chaplain to address the meeting. The Mayor to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Mayor's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched to off or to silent;
- location of toilets;
- introduction of members of the meeting.

2. Have Your Say!

(a) The Mayor to ask members of the public to indicate if they wish to ask a question, make a statement or present a petition on any matter relating to the business of the Council – either on an item on the agenda for this meeting or on a general matter not on this agenda (Council Procedure Rule 6(2)).

(b) The Mayor to invite contributions from members of the public who wish to address the Council on a general matter not on this agenda.

(Note: A period of up to 15 minutes is available for general

statements and questions under 'Have Your Say!').

3. Minutes

1 - 7

A...Motion that the minutes of the meeting held on 16 February 2011 be confirmed as a correct record.

4. Mayor's Announcements

Mayor's Announcements (if any) and matters arising pursuant to Council Procedure Rule 8(3).

5. Personal Interests of Members

Disclosures by Members under Council Procedure Rule 9(3) to 9(9) (if any).

6. Prejudicial Interests of Members

Disclosures by Members under Council Procedure Rules 9(10) and 9(11) (if any).

(Note: Members should only declare personal and/or prejudicial interests on items that are to be considered at the meeting).

7. Items (if any) referred under the Call-in Procedure

To consider any items referred by the Strategic Overview and Scrutiny Panel or the Finance and Audit Scrutiny Panel under the Call-In Procedure because they are considered to be contrary to the policy framework of the Council or contrary to, or not wholly in accordance with the budget.

8. Recommendations of the Cabinet, Panels and Committees

i. Honorary Alderman

8

B... Motion that the recommendations contained in minute 18 of the Accounts and Regulatory Committee meeting of 22 February 2011 be approved and adopted.

Please note that if this motion is approved and adopted then the Mayor will move the adjournment of this meeting to convene the Special Meeting of Council to confer the title of Honorary Alderman on former Councillor Hall.

ii. Standards Committee Annual Report 2010/2011.

9 - 15

C... Motion that the recommendation contained in minute 16 of the Standards Committee meeting of 4 March 2011 be approved and adopted.

iii. Revised Anti-Fraud and Corruption Policy

16

D... Motion that the recommendation contained in minute 17 of the Standards Committee meeting of 4 March 2011 be approved and adopted.

9. Notices of Motion pursuant to Council Procedure Rule 11

(i) City Status

Proposer Councillor Barlow

E... Motion that:-

(a) Council notes that the Government is requesting bids for city status to mark the Queen's Diamond Jubilee in 2012. City status merely confers upon a place the right to call itself a city, and does not carry with it any implications as to size and future growth of the area.

(b) Council believes:-

(i) That as well as being Britain's oldest recorded town - Camulodunum

- Colchester is also Britain's first city, and as Colonia Victricensis was the first capital of Britain.

(ii) That Colchester remains a vibrant and dynamic borough as well as being a key regional hub and the largest borough in Essex.

(iii) That there is support from across Colchester for a bid for city status.

(iv) That bidding for city status would provide a great opportunity to promote all that's good about Colchester Borough and allow us to place ourselves in the national spotlight.

(v) That Colchester deserves to be granted city status in 2012 to recognise it's historic status and future potential.

(c) Council resolves

(i) To support in principle a bid for city status for Colchester.

(ii) To work alongside community and business groups to create a bid for city status at no cost to the taxpayer.

(iii) To request the Leader of the Council and group leaders work together to oversee the detail of the bid before it is brought to the

Council meeting in May for a final endorsement.

The motion relates to a non-executive function and therefore will be debated and determined at the meeting.

10. Questions to Cabinet Members and Chairmen pursuant to Council Procedure Rule 10

To receive and answer pre-notified questions in accordance with Council Procedure Rule 10(1) followed by any oral questions (ie not submitted in advance) in accordance with Council Procedure Rule 10 (3).

(Note: A period of up to 60 minutes is available for pre-notified questions and oral questions by Members of the Council to Cabinet Members and Chairmen (or in their absence, Deputy Chairmen)).

The following pre-notified question has been received:-

Questioner: Councillor Bouckley

To the Portfolio Holder for Planning and Sustainability

Whilst the information on acquiring additional home insulation sent to homeowners with their Council Tax demands is always useful, for some residents a more economic deal may be available through energy suppliers, for example, so in future would it not be helpful for CBC to explain this point?

11. Amendments to the Constitution

17 - 101

F... Motion that the recommendations in the Monitoring Officer's report be approved and adopted.

12. Schedules of Decisions taken by Portfolio Holders

102 - 105

To note schedules covering the period 1 February 2011 - 9 March 2011.

13. Urgent items

To consider any business not specified in this summons which by reason of special circumstances the Mayor determines should be considered at the meeting as a matter of urgency.

14. Reports Referred to in Recommendations

106 - 142

The reports specified below are submitted for information and are

referred to in the recommendations specified in item on the agenda:

Honorary Alderman, Accounts and Regulatory Committee, 22
February 2011

Standards Committee Annual Report 2010/2011, Standards
Committee, 4 March 2011

Revised Anti-Fraud and Corruption Policy, Standards Committee, 4
March 2011

15. Exclusion of the Public

In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

COUNCIL

16 FEBRUARY 2011

Present :- Councillor Sonia Lewis (the Mayor) (Chairman)
Councillor Helen Chuah (Deputy Mayor)
Councillors Christopher Arnold, Nick Barlow,
Lyn Barton, Kevin Bentley, Mary Blandon,
Elizabeth Blundell, John Bouckley, Nigel Chapman,
Peter Chillingworth, Barrie Cook, Nick Cope, Mark Cory,
Beverly Davies, Tina Dopson, John Elliott, Andrew Ellis,
Margaret Fairley-Crowe, Stephen Ford, Wyn Foster,
Bill Frame, Christopher Garnett, Martin Goss,
Scott Greenhill, Mike Hardy, Dave Harris, Pauline Hazell,
Peter Higgins, Theresa Higgins, Mike Hogg, Martin Hunt
(Deputy Leader) , John Jowers, Margaret Kimberley,
Justin Knight, Michael Lilley, Sue Lissimore,
Jackie Maclean, Jon Manning, Richard Martin,
Colin Mudie, Kim Naish, Nigel Offen, Beverley Oxford,
Gerard Oxford, Philip Oxford, Ann Quarrie,
Lesley Scott-Boutell, Paul Smith, Henry Spyvee,
Terry Sutton, Colin Sykes, Laura Sykes, Jill Tod,
Anne Turrell (Leader of the Council) , Dennis Willetts,
Julie Young and Tim Young

The meeting was opened with prayers by the Mayor's Chaplain, The Reverend Richard Allen.

51. Minutes

The minutes of the meeting held on 9 December 2010 were confirmed as a correct record.

52. Have Your Say!

Will Quince addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2) about the issue of dog fouling which he believed was a growing problem in Colchester. This was caused by a minority of irresponsible dog owners. As well as being unsightly it was a public health issue. The Council should act to deal with this problem by investigating a Dog Control Order, doubling the fixed penalty notice that could be issued for dog fouling and make a commitment to increase the number of dog waste bins per annum.

Councillor Hunt, Portfolio Holder for Street and Waste Services, agreed to consider the proposals put forward by Mr Quince. He believed that the new zoned approach to Street Services that would result from the implementation of the Fundamental Service Review would help tackle the issue. The use of multi-skilled teams would increase the resources available to deal with this issue.

Eleanor Root addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2) to query the appropriateness of commencing Council meetings with a religious prayer. This might lead those of different faiths or without religious beliefs to feel excluded from the meeting.

The Mayor responded that it was usual practice for the Mayor to appoint a Chaplain for their period of office. The Constitution provided for Council meetings to commence with a prayer, at the discretion of the Mayor. As Mayor, she had attended services of many different faiths and respected the views of others. In return, she hoped that her views would be similarly be respected.

Andy Hamilton addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2) to express his concern about the Visual Arts Facility and the Council's decision not to provide a mobility scooter service at the bus station. The proposed budget cuts were deliberately targeted at the most vulnerable in society. For instance travel tokens for disabled passengers were being withdrawn and the Shopmobility grant was under threat.

Councillor Smith, Portfolio Holder for Resources and Diversity, responded that decision to withdraw travel tokens had been taken by Essex County Council.

53. Mayor's Announcements

The Mayor announced that she had recently attended the funerals of former Councillor David Adams and former Mayoress Mary Wilkin. Council stood for a minute to show its respect for David Adams and Mary Wilkin and for the soldiers from Colchester Garrison recently killed on active service.

The Mayor had attended the cutting of turf for the new Army Recovery Centre, which was a significant joint venture between the Ministry of Defence, Help for Heroes and The Royal British Legion.

The Mayor announced the following forthcoming events:-

The Bach Choir Concert at St Botolphs Church on 26 March 2011;
Boxted Methodist Silver Band Gala Concert at Langham Community Centre on 12 March 2011;
A Paranormal Event at the Town Hall on 7 April 2011;
An Antiques Valuation hosted by James Grinter in the Mayoral Suite on 28th April 2011.

54. Suspension of Council Procedure Rules

RESOLVED that Council Procedure Rule 14(3) be suspended for the following item to allow a nominated member of each political group to speak untimed and all other speakers to be limited to five minutes.

Councillor Elizabeth Blundell (in respect of her membership of Marks Tey Parish Council) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

Councillor Colin Sykes (in respect of his membership of Colchester Association of Local Councils) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

Councillor John Jowers (in respect of his role in funding the Essex Association of Local Councils) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

55. 2011/12 Revenue Budget and Medium Term Financial Forecast

Andy Abbott addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2). He drew comparisons between the political situation now and with those in 1945. Even though the country had been in a worse financial position than it was now, social reform such as the NHS and the Welfare State had been introduced. In the 1970s the political agenda had changed with an increased emphasis on market forces and this had led to the problems faced today. The purpose of Colchester Against Cuts was to remind those at the top of society of their responsibility to make compromises to protect all of society.

Marcus Harrington addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2) to express concern about the impact of the proposed reduction in parish grants. As these were used to provide facilities in parished areas that would otherwise be funded by the borough, parished areas were hit disproportionately hard by the reduction. Particular concern was expressed about the scope and imminence of the reductions. Council was urged to amend the budget accordingly.

Rafe Pigott addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2) to stress the need for politicians to vote honestly and to take responsibility for their actions. If they opposed the cuts in the budget, they should vote against it and not vote with party loyalties.

Nick Simpson addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2). He believed that the budget cuts would particularly affect the poorest and most vulnerable in society. The Council could refuse to set a budget, or Councillors could accept reductions in their allowances in order to demonstrate that they cared about the impact of the cuts.

Tim Oxtan addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2). He had addressed the Cabinet on 26 January 2011 and invited the administration to make a public declaration that it deplored the cuts made by central government. He hoped that the administration would make such a declaration at this

meeting. However he had been heartened by the Leader of the Council's support for the public letter to the government condemning the impact of the reduction of central government funding of local authorities.

Jed Miller addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2). He explained that UK debt as a percentage of Gross Domestic Product was approximately 50%. The figure for the United States, France and Germany was double that. Budget cuts would only harm the economy. The Council was urged not agree to the proposed budget.

Nathan Bolton, National Union of Students Campaigns Officer at Essex University, addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2). He considered that there was a groundswell of opinion that the consensus that the cuts were necessary was breaking up. The reductions in funding were ideologically driven and would affect the poorest in society most, rather than those who had caused the financial crisis. Councillors were urged to support the campaigns and actions by students against the cuts.

It was PROPOSED by Councillor Smith that recommendations contained in minute 52 of the Cabinet meeting of 26 January 2011 and the recommendations contained in the Head of Resource Management's report entitled Precept and Council Tax Levels 2011/12 be approved and adopted.

A MAIN AMENDMENT was proposed by Councillor Bentley as follows:-

"That the recommendations contained in minute 52 of the Cabinet meeting of 26 January 2011 and the recommendations contained in the Head of Resource Management's report entitled Precept and Council Tax Levels 2011/12 be approved and adopted subject to:

(i) In Appendix C to the Head of Resource Management's report the figure for the reduction in parish grants be amended to £50,000 so that the diminution of grant to third tier Councils broadly matches that of Colchester Borough Council over a 3-year period, and consequently;

(ii) The addition of the following text to Appendix C to the Head of Resource Management's report:-

"that this be financed by a corresponding £50,000 adjustment to the budget by transferring Colchester Borough Council responsibility for support of Neighbourhood Action Panels and associated functions in parished areas to the Parish/Town Councils".

(iii) The addition of the following text to Appendix G to the Head of Resource Management's report (Medium Term Financial Forecast) :-

"a reduction in Colchester Borough Council headcount of 100 per year in each of the next 3 years, by means of reducing the number of management layers, transferring operations along with their personnel to trusts or independent companies, and efficiency reviews", and consequently:-

(iv) Table 1 of the Medium Term Financial Forecast be adjusted to show additional saving in successive years, starting from 2012/13, of £2.5m, £5.0m and £7.5m respectively."

Pursuant to the provisions of Council Procedure Rule 14(11) Councillor Smith indicated that the MAIN AMENDMENT was not accepted.

On being put to the vote, the MAIN AMENDMENT was lost (TWENTY-THREE voted FOR, THIRTY-THREE voted AGAINST and TWO ABSTAINED from voting).

A named vote having been requested pursuant to the provisions of Council Procedure Rule 15(2), the voting was as follows:-

Those who voted FOR were:-

Councillors Arnold, Bentley, Blundell, Bouckley, Chapman, Chillingworth, Davies, Elliott, Ellis, Fairley-Crowe, Foster, Garnett, Hardy, Hazell, Jowers, Kimberley, Lissimore, Maclean, Martin, Quarrie, Sutton, Tod and Willetts.

Those who voted AGAINST were:-

Councillors Barlow, Barton, Blandon, Cook, Cope, Cory, Dopson, Ford, Frame, Goss, Greenhill, Harris, P. Higgins, T. Higgins, Hogg, Hunt, Knight, Lilley, Manning, Mudie, Naish, Offen, B. Oxford, G. Oxford, P. Oxford, Scott-Boutell, Smith, Spyvee, C. Sykes, L. Sykes, Tod, J. Young and T. Young.

Those who ABSTAINED from voting were:-

The Deputy Mayor (Chuah) and the Mayor (Lewis).

The SUBSTANTIVE MOTION was thereupon put and CARRIED (TWENTY-THREE voted FOR, THIRTY-THREE voted AGAINST and TWO ABSTAINED from voting).

56. Revised Whistleblowing Policy

RESOLVED that the recommendations contained in minute 55 of the Cabinet meeting of 26 January 2011 be approved and adopted (MAJORITY voted FOR).

57. Statement of Licensing Policy

RESOLVED that the recommendation contained in minute 15 of the Licensing Committee meeting of 12 January 2011 be approved and adopted (MAJORITY voted FOR).

58. Braintree District Council and Colchester Borough Council Shared

Management Arrangements - Issues and Challenges

RESOLVED that the recommendations contained in the Chief Executive's report be approved and adopted (MAJORITY voted FOR).

59. Questions to Cabinet Members and Chairmen pursuant to Council Procedure Rule 10

Questioner	Subject	Response
Pre-Notified Questions		
Councillor Cook	<p>During the winter months across Colchester irresponsible drivers are parking their vehicles on council owned grass verges and greenswards causing, or contributing to, considerable damage to the greens.</p> <p>As this is an offence of "criminal damage" to council property, what action against the offending culprit will the officers and portfolio holder take to recover the cost of repair of the damage that they have caused, providing that:-</p> <p>(a) The offending vehicle and its registration number, having parked on the damaged area can be recorded by photographic evidence and presented to the council for action by a member of the public?</p> <p>(b) From this photographic evidence the owner and/or driver of the offending vehicle can be traced and identified then presented with the damage recovery cost, to be paid in full.</p> <p>Or will this Council and Essex</p>	<p>Direct verbal response given by the Portfolio Holder for Communities.</p>

County council continue as in the past to use tax payer's money to repair such damage at no cost to the offender?

Oral Questions

Councillor Sutton	Timescale for response to a question asked previously at Council.	Direct verbal response given by the Leader of the Council and Portfolio Holder for Strategy and Performance and by the Portfolio Holder for Economic Development, Culture and Tourism.
Councillor Bentley	Whether arrangements could be made for residents to be able to obtain clear recycling sacks from libraries.	Direct verbal response given by the Portfolio Holder for Street and waste Services.
Councillor Lissimore	The nature of evidence required to bring a prosecution for damage to a grass verge and the damage done to a grass verge in Lexden Court by a refuse collection lorry.	Direct verbal response given by the Portfolio Holder for Communities.

60. Schedules of Decisions taken by Portfolio Holders

RESOLVED that the Schedule of Portfolio Holder decisions for the period 27 November 2010 -31 January 2011 be noted.

Extract from the minute of the meeting of the Accounts and Regulatory Committee on 22 February 2011

Councillor Nick Cope (in respect of being a neighbour of Christopher Hall) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

18. Honorary Alderman

The Committee was requested to consider a proposition that former Councillor Chris Hall be appointed an Honorary Alderman.

The Committee was also requested to recommend that a special meeting of the Council be convened for the purpose of passing the following resolution:

- i) That in pursuance of the provisions of Section 249 of the Local Government Act 1972, this Council confers the title of "Honorary Alderman" on former Councillor Christopher Basil Hall in recognition of his loyal and eminent service as a Member of the Council and its constituent authority.
- ii) An illuminated transcript of the resolution is given to former Councillor Christopher Basil Hall.

Councillor Manning addressed the Panel and paid tribute to former Councillor Hall who he first met at a group meeting. Councillor Manning said former Councillor Hall had always been someone respected by Councillors and would meet all the requirements of an Honorary Alderman. Councillor Manning said he could not think of anyone more deserving of this award and supported the proposition. Councillor Cope concurred with Councillor Manning's comments and also supported the proposition.

RESOLVED that the Committee recommended to the Council the following:-

- i) That a special meeting of the Council be convened for the purpose of passing the following resolution:

That in pursuance of the provisions of Section 249 of the Local Government Act 1972, this Council confers the title of "Honorary Alderman" on former Councillor Christopher Basil Hall in recognition of his loyal and eminent service as Member of the Council and its constituent authority

- ii) An illuminated transcript of the resolution is given to former Councillor Christopher Basil Hall.

Extract from the draft minutes of the Standards Committee meeting of 4 March 2011

Standards Committee Annual Report 2010/11

The Committee considered a report from the Monitoring Officer recommending that the Committee approve its Annual Report for 2011/12.

In discussion a number of minor amendments were suggested to the Annual Report. The Committee endorsed the report, which it considered was a report to be proud of and expressed its thanks to all those who worked on and supported the Committee. The Monitoring Officer, in consultation with the Chairman, was authorised make any amendments that were necessary to report on the Committee's activities up to the end of March 2011.

RESOLVED that:-

(i) the Standards Committee Annual Report 2010/11 be approved subject to the following amendments:-

- the addition of the words "did not meet" after the words in brackets in the final sentence in paragraph 5.1;
- the final sentence of the first paragraph of paragraph 5.4 to be amended to read:

"The Independent Members ensured that at least one of them were present at each session".

- the first sentence of the second paragraph of paragraph 5.4 to be amended to read:

"The Committee was concerned that all Councillors should receive adequate training on the Code of Conduct to ensure that they are up to date with developments and able to fulfil the functions for which they are elected in a proper manner."

(ii) the Monitoring Officer in consultation with the Chairman be authorised to make any necessary changes in the Annual Report to give effect to the Committee's activities up to the end of March 2011.

RECOMMENDED to Council that the Standards Committee Annual Report 2010/2011 be noted.

Please note that the amended final version of the Standards Committee Annual Report 2011/12 report is attached.



COLCHESTER BOROUGH COUNCIL

STANDARDS COMMITTEE

Annual Report 2010/2011

1. Introduction

This is the third Annual Report of Colchester Borough Council's Standards Committee and covers the period from 1 April 2010 to 31 March 2011. In reviewing the activities and looking back at issues highlighted in 2010/11, it also looks forward to next year.

The Borough Council is required by law to establish a Standards Committee which has an important role to play in providing training for and maintaining ethical conduct of Councillors. Article 9 and Part 3 of the Council's Constitution contain the requirements for and composition of the Standards Committee.

2. Roles and functions of the Standards Committee

The Committee's roles and functions are as follows:

- (a) To promote and maintain high ethical standards of conduct for elected and co-opted Members.
- (b) To help elected and co-opted Members to observe the Members' Code of Conduct.
- (c) To give the Council advice on adoption or revision of the Members' Code of Conduct and on informal codes/protocols covering matters such as planning and Member/officer relations.
- (d) To monitor the effectiveness of the Members' Code of Conduct.
- (e) To train or arrange training for elected and co-opted Members on matters relating to the Members' Code of Conduct.
- (f) To assess and review complaints that elected and co-opted Members have breached the Members' Code of Conduct and in connection with this function.
- (g) To develop and adopt:
 - (i) Assessment criteria for dealing with complaints;
 - (ii) Policies for dealing with vexatious, persistent and anonymous complaints and requests by complainants for confidentiality;
 - (iii) Arrangements for dealing with complaints and publicising the arrangements;
 - (iv) Procedures for dealing with local investigations; and
 - (v) Such other provisions and procedures as may be required.
- (h) To establish and maintain the following three sub-committees each with their own terms of reference:
 - Allegations Sub-Committee
 - Allegations Appeals Sub-Committee
 - Hearings Sub-Committee

- (i) To conduct Hearings and make determinations in respect of complaints that elected and co-opted Members have breached the Members' Code of Conduct in accordance with relevant statutory requirements and guidance issued by the Standards for England and in connection with this function; and
- (j) To develop and adopt procedures for dealing with such Hearings.
- (k) To grant dispensations to elected and co-opted Members with prejudicial interests.
- (l) To grant exemptions from politically restricted posts.
- (m) To maintain an overview of the Council's arrangements for dealing with complaints and Local Government Ombudsman investigations.
- (n) To undertake the functions set out at (a) to (k) above in respect of all Parish and Town Councils wholly or mainly within the Borough of Colchester and the Members of those Parish or Town Councils.

Part 5 of the Borough Council's Constitution contains its Ethical Framework comprising various Codes and protocols relevant to the functions of the Committee and in respect of which the Committee has previously given advice and made recommendations.

3. Composition

The Committee comprises Independent Members, Parish Representatives and Borough Councillors. The Borough Council agreed, at its meeting on 20 May 2009, the membership of the Committee for the 2010/2011 municipal year as follows:

Independent Members;

- Mr D Coe (Chairman)
- Mr P Fitton (Deputy Chairman)
- Mr I Andrews
- Mr S Farmer
- Mr S Roberts-Mee

Parish Representatives;

- Councillor M Bartier
- Councillor V Eden
- Councillor T Abnett

Borough Councillors;

- Councillor N Chapman
- Councillor R Gamble
- Councillor H Chuah
- Councillor T Sutton

The Independent Members were appointed by the Borough Council following a public recruitment process and provide a valuable pool of experience. The Parish Representatives are nominated annually to the Council by the Colchester Association of

Local Councils. The Borough Councillors are appointed annually and are senior members who have had/are soon to have mayoral responsibilities.

The Committee wishes to express its appreciation for the high level of support it receives from the Monitoring Officer, Andrew Weavers and Democratic Services Officer, Richard Clifford.

4. The Committee's Work Programme

The Committee agreed a work programme for 2010/2011 which covered:

- Review of the Local Assessment process
- Review of the Council's Local Code of Corporate Governance
- Review and provision of training for Members on the Members Code of Conduct
- Review of the Whistleblowing Policy
- Review of the Council's Anti- Fraud and Corruption Policy
- Consideration of the Local Government Ombudsman's Annual Letter
- Scheduled meetings so as to be able to respond to complaints within time limits

5. Main Areas of Work

5.1 Implementation of Local Assessment of Allegations Process

In May 2008 the responsibility for the initial assessment of allegations whether or not councillors had failed to follow the Members Code of Conduct was transferred from Standards for England to local Standards Committees.

Following recommendations from Standards for England, the Committee created three Sub-Committees; Allegations Sub-Committee, Allegations Appeals Sub-Committee and the Hearings Sub-Committee. The Committee itself and each of its Sub-Committees are chaired by an Independent Member.

The Committee has a duty to ensure adequate publicity for the Local Assessment process and has kept this under review.

The Local Assessment process has required meetings of the Allegations Sub-Committee (which deals with the initial assessment of allegations) to be diarised monthly. In accordance with the law these meetings are held in private.

During 2010/2011:

The Allegations Sub-Committee met twice and considered two complaints both of which were in relation to Town and Parish Councillors.

The Sub Committee made the following decisions:

- 3 complaints - no further action.

The Allegations Sub-Committee was able to consider the complaints within the recommended time limit of 20 days from receipt.

The Allegations Appeals Sub-Committee, (which hears requests for a review following a finding of no further action by the Allegations Sub-Committee) did not need to meet as there were no requests for reviews.

The Hearings Sub-Committee, (which hears and determines the findings of an investigating officers report where it is found that a Councillor has not followed the Code of Conduct) did not need to meet as there were no reports to be determined.

5.2 Review of the Local Assessment Process

The Committee undertook a review of its experiences in operating the process and was satisfied that it was functioning correctly. It will keep this under annual review.

5.3 Review of Ethical Governance

The Committee undertook a review of the Council's Anti-Fraud and Corruption Policy and Whistleblowing Policy which was subsequently endorsed by the full council.

5.4 Training for Members on the Code of Conduct

The Committee reviewed the level of training that should be provided throughout the year for both the 60 Borough and the 255 Town and Parish Councillors in the 27 Town and Parish Councils situated in the Borough. The Independent Members ensured that at least one of them were present at each session.

The Committee were concerned that all Councillors receive adequate training on the Code of Conduct to ensure that they were up to date with developments and able to fulfil the functions for which they were elected in a proper manner. In the coming year the Committee will be facilitating further training and will be monitoring attendance particularly where there has been evidence of non-compliance with the Code.

6. Localism and the future of the Standards Regime

The Committee is mindful of the Coalition Government's commitment via the Localism Bill to overhaul the standards regime. The Committee is keeping a watching brief on the Governments intentions and the Bill as it progresses through Parliament and will offer advice to the Council once the future is clear. Any changes to the standards regime are not expected to come into effect until 2012 and until that time the Ethical Framework remains in force, Councillors remain subject to the Code of Conduct and the Standards Committee responsible for it's monitoring and enforcement.

7. Work Programme for 2011/2012

The main focus of the Committee in the coming year will be on the impact of the Localism Bill on the Borough Council's ethical governance arrangements, continue to monitor the Local Assessment process and also review the Borough Council's Ethical Framework and governance arrangements.

8. Conclusions

In a busy year, the Committee has completed its work programme and is well placed to continue to face the continuing challenges of handling the initial assessment of allegations and progressing matters that it considers necessary to investigate. Colchester Borough Council and the Town and Parish Council's with the Borough continues to have a sound record in ensuring good standards of conduct and it is our intention to promote, maintain and enhance those standards whilst looking forward to the challenges that the Localism Bill will bring.

Dated March 2011

Derek Coe
Chairman

Extract from the draft minutes of the Standards Committee meeting of 4 March 2011

Revised Anti-Fraud and Corruption Policy

The Committee considered a report from the Head of Resource Management proposing a revised Anti-Fraud and Corruption Policy. Hayley McGrath, Risk and Resilience Manager, attended to assist the Committee.

It was confirmed that the Anti-Fraud and Corruption Policy had been reviewed. The only amendment had been the inclusion of details relating to the Bribery Act 2010 and the updated version of the Benefits Sanctions Policy. In discussion a number of amendments were proposed to the policy were proposed, as follows:-

- in the first sentence of the second paragraph on page 2 the replacement of the word "that" with the words "those who";
- in the first sentence of the section entitled "Culture" the reference to "prevention/detection" to be amended to read "prevention and detection". The third sentence of this paragraph needed to be define more clearly the circumstances in an allegation would be treated in confidence. In the third paragraph of this section it was suggested that a reference should be made to the screening process to which allegations were subject.
- any references to "fraud/corruption" to be amended to read "fraud or corruption";
- in the section entitled "Responsibilities of the Head of Resource Management" at page 4 the phrase "wide range of delegated powers both formal and informal" was too open ended and needed to be more closely defined.
- in the section entitled "Official Guidance" on page 6 the phrase "due regard" needed to be defined.

RESOLVED that the Revised Anti-Fraud and Corruption Policy be agreed subject to the amendments set out above.

RECOMMENDED to Council that the Revised Anti-Fraud and Corruption Policy be included in the Council's Policy Framework.

23 March 2011

Report of	Monitoring Officer	Author	Andrew Weavers
Title	Amendments to the Constitution		
Wards affected	Not applicable		

**This report requests Council to
approve amendments to the Constitution**

1. Decision(s) Required

1.1 To approve the amended Constitution set out in this report and for it to come into effect on 8 May 2011.

2. Background

2.1 At its meeting on 9 December 2010 Council formally resolved to adopt the Leader and Cabinet Executive (England) model of executive arrangements in accordance with section 11 of the Local Government Act 2000 (as amended) and that the revised arrangements come into effect on 8 May 2011

2.2 Council also resolved that the Monitoring Officer submit a report to this meeting containing the necessary changes to the Constitution to reflect the adoption of the revised executive arrangements. This report details those changes.

2.3 Attached to this report are revised:

- Summary and Explanation
- Articles
- Council Procedure Rules
- Responsibility for Functions

3. Explanation of amendments

3.1 Attached to this report at Annex 1 is a table which details the amendments, provides a commentary and the implications of some of the provisions contained in the Localism Bill.

4. Strategic Plan References

4.1 The manner in which Council governs its business forms parts of the Council's commitment to customer excellence which underpins the Council's Strategic Plan vision.

5. Financial Considerations

5.1 No direct implications.

6. Equality, Diversity and Human Rights Implications

6.1 An Equality Impact Assessment Statement has been prepared on the Constitution and is available on the Council website. The following link is to the Equality Impact Assessment: http://www.colchester.gov.uk/Info_page_two_pic_2_det.asp?art_id=8004&sec_id=1988

7. Publicity Considerations

7.1 The amendments to the Council's Constitution and will be placed on the Council's website.

8. Consultation Implications

8.1 No direct implications.

9. Community Safety Implications

9.1 No direct implications.

10. Health and Safety Implications

10.1 No direct implications.

11. Risk Management Implications

11.1 No direct implications.

Table of Amendments to the Constitution as reported to Council 23 March 2011

Part	Commentary /Reason
Summary and Explanation	Updated general overview of the Constitution and how the Council operates
Article 1 The Constitution	A new Article 1.07 has been inserted as the Statement of Executive Arrangements which has enabled the deletion of the same information previously included as a separate Schedule 1.
Article 2 Members of the Council	Updated roles and responsibilities for all Councillors have been included which reflect current good practice and legislation. Article 2.07 reflects the new executive structure.
Article 3 The Public and the Council	This now clarifies citizens rights under the law in relation to requests for information.
Article 4 The Full Council	The opportunity has been taken to make the explanation of the Policy Framework much clearer and for it to reflect current statutory requirements.
Article 7 The Cabinet	This Article is the key to the implementation of the Leader and Cabinet Executive (England) model of executive arrangements. Article 7.03 makes it clear that the Leader will be elected by the full council at an Annual meeting for a term of four years or for the remainder of his/her term of office as a councillor (whichever is the shorter). In practice this means that the Leader of the Council appointed at the May 2011 Annual Meeting will (if he/she has a four year term of office as a Councillor) be appointed as Leader of the Council (subject to the conditions set out in the Article) until the day of the Annual Meeting in 2015. The Government via the Localism Bill is expected to repeal this requirement in due course and the Constitution will be required to be amended again to reflect this. The Council can remove the Leader by a simple majority vote. A new Leader may be appointed at the same or subsequent meeting. Should the Council fail to appoint a Leader, the Chief Executive will discharge the functions of the Leader in consultation with the Group Leaders. It is anticipated that this provision will not be used however in circumstances where it proves necessary this will enable executive functions to continue to operate. Article 7.04 requires the Leader to appoint a Deputy who will hold office for the duration of the term of office of the Leader (subject to the conditions set out). The Deputy Leader must act in the Leaders absence. The Leader can also remove the Deputy Leader. Article 7.05 states that the Leader will appoint and can remove Cabinet Members. Articles 7.07, 7.08 and 7.09 contain roles and responsibilities of the Leader, Deputy Leader and Cabinet Members which reflect good practice and legislation.

Part	Commentary /Reason
Article 9 The Standards Committee	<p>No changes have been made to this Article. The Government via the Localism Bill will be abolishing the “standards board regime”. This means Standards for England, the mandatory code of conduct for members and Standards Committee. The Council’s Ethical Framework will require reviewing in light of the Localism Bill and the regulations to be made once it is enacted probably in late 2011. Amendments to the Constitution will be brought forward in due course once it is known what the new conduct requirements will be. In the meantime the existing regime remains in full force and effect.</p>
Article 11 Joint Arrangements	<p>This Article will be amended to reflect the North Essex Parking Partnership Joint Committee once it has been formally constituted.</p>
Article 13 Decision Making	<p>The opportunity has been taken to generally tidy up the wording and to clearly list the principles of decision making in Article 13.02. It also clarifies that all decisions made by formal meetings shall be recorded.</p>
Article 14 Finance, Contracts and Legal Matters	<p>The opportunity has been taken to amend Article 14.06 in relation to the signing of legal documents where the Council’s seal has been affixed. In future in line with most other Local Authorities, the seal will be attested by an Authorised Signatory. This can be an authorised officer (ie the Chief Executive, Legal Services Manager or Principal Lawyer) or the Mayor or Deputy Mayor. This will relieve the Mayor of having to attend regularly at the office to sign routine legal documents.</p>
Council Procedure Rules	
Rule 1 (5) State of the Borough debate	<p>This has been removed as this has not been used and the debating item could be utilised for this purpose.</p>
Rule 2 Order of Business at the Annual Meeting	<p>This has been amended to reflect that the Annual Meeting will appoint the Leader of the Council only in year that the Leader’s term of office expires. The Leader will inform the Annual Meeting who he/she has appointed as the Deputy Leader, to the Cabinet and the extent of their delegated authorities.</p>
Rule 5 Appointment of Leader, Panels and Committees	<p>This reflects that the Annual Meeting will only be appointing the Leader in accordance with Rule 2. The members of the Panels and Committees will continue to be appointed annually.</p>
Rule 14 (3) and (16) Speaking time limits	<p>The time allocated for the reply by a proposer of a main amendment has been increased from two to five minutes in line with the time limit for speakers in a debate.</p>
Old Rule 14 (10) Amendments	<p>This rule stated “Only one amendment may be proposed and discussed at a time. No further amendment shall be proposed until the amendment under discussion has been disposed of. A Councillor may indicate an intention subsequently to propose a further amendment” and has been deleted and replaced with a new 14 (10)</p>
New Rule 14 (10) Amendments	<p>The new wording enables the meeting to have a proper joined up debate on both a motion and any amendments. It does not change the requirement for the proposer of the motion to be asked whether they accept an amendment. However if they do not the merits of both the.</p>

Part	Commentary /Reason
	<p>motion and amendment(s) can be debated together. The amendment(s) would then be voted on separately in the order that they were received and the motion voted upon in accordance with the Rules as happens now.</p>
Responsibility for Functions	<p>The only change here is to reflect the fact that the Leader is responsible for the discharge of executive functions either through the Cabinet, individual Cabinet Member, Committee of Cabinet or by and Officer. The schedule of Local Choice Functions and Responsibility for Council Functions remain unaltered.</p>

Summary and Explanation

1. THE COUNCIL'S CONSTITUTION

This is the Constitution of Colchester Borough Council.

The Council has adopted the Constitution which sets out how the Council works, how decisions are made and the procedures that are followed to ensure that these are efficient, transparent and that the Council is accountable to local people. Some of these procedures are required by law, while others are a matter of choice for the Council.

The Constitution provides a framework which:

- enables the Council to provide clear leadership to the community in partnership with members of the public, business and other organisations;
- supports the active involvement of members of the public in the process of local authority decision-making;
- helps Councillors represent their constituents more effectively;
- enables decisions to be taken efficiently and effectively in line with the Council's Budget and Policy Framework;
- creates a powerful and effective means of holding decision-makers to public account;
- ensures that no one will review or scrutinise a decision in which they were directly involved;
- ensures that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
- provides a means of improving the delivery of the services to the community.

2. WHAT IS IN THE CONSTITUTION?

This Constitution is divided into 16 Articles which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules and protocols at the end of this document.

Article 1 commits the Council to enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations. The remaining Articles explain the rights of citizens and how the key parts of the Council operate.

These are:

- Members of the Council (Article 2)
- The Public and the Council (Article 3)
- The Council meeting (Article 4)
- Chairing the Council (Article 5)
- Overview and scrutiny of decisions (Article 6)
- The Cabinet (Article 7)

- Regulatory and other committees (Article 8)
- The Standards Committee (Article 9)
- Area committees (Article 10)
- Joint arrangements (Article 11)
- Officers (Article 12)
- Decision making (Article 13)
- Finance, contracts and legal matters (Article 14)
- Review and revision of the Constitution (Article 15)
- Suspension, interpretation and publication of the Constitution (Article 16)

3. HOW THE COUNCIL OPERATES

The Council is composed of sixty Councillors (also known as Members) with one-third elected three years in four. Councillors are democratically accountable to residents of their ward. The overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.

Councillors have to agree to follow a code of conduct to ensure high standards in the way they undertake their duties. The Standards Committee trains and advises them on the code of conduct.

All Councillors meet together as the Council. Meetings of the Council are held regularly and are normally open to the public unless items to be discussed are of a confidential nature. Here, Councillors decide the Council's overall policies and set the budget each year.

The Council at the appropriate Annual Meeting will appoint the Leader of the Council for a term of office for four years (or for the remainder of his/her term of office as a Councillor if this is shorter). The Leader appoints a Councillor to be the Deputy Leader and also appoints Councillors to the Cabinet (also known as the Executive) for the duration of the Leaders term of office. The Cabinet comprises of the Leader and up to nine other Councillors (known as Cabinet Members) who each have specific areas of responsibility known as portfolios which are determined from time to time by the Leader of the Council.

The Annual Meeting appoints Councillors to the other Committees and Panels of the Council.

All public meetings of the Council, Cabinet, Committees and Panels (with the exception of the Standards Committee) have an agenda item for public participation known as "Have Your Say". This enables the public to address the meeting on a particular agenda item or on a matter within the remit of the meeting.

4. HOW DECISIONS ARE MADE

The Cabinet is the part of the Council which is responsible for most day-to-day decisions.

When major decisions (called "Key Decisions") are to be discussed or made, these are published in the Forward Plan in so far as they can be anticipated. This plan must include at least those decisions which the Cabinet anticipates it will have to make over the next four months. If a Key Decision needs to be made which is not in the Forward Plan, special provisions exist to make this happen. If these major decisions are to be discussed with Council Officers at a meeting of the Cabinet, this will generally be open for the public to attend except where personal or confidential matters are being discussed.

The Cabinet has to make decisions which are in line with the Council's overall policies and budget. If it wishes to make a decision which is outside the budget or the policy framework, this must be referred to the Council as a whole to decide.

5. OVERVIEW AND SCRUTINY OF DECISIONS

The role of overview and scrutiny is performed by the Strategic Overview and Scrutiny Panel and the Finance and Audit Scrutiny Panel. They allow citizens to have a greater say in Council matters by holding public inquiries or establishing task and finish groups into matters of local concern. These lead to reports and recommendations which advise the Cabinet and the Council as a whole on its policies, budget and service delivery.

The Strategic Overview and Scrutiny Panel primarily monitors the decisions of the Cabinet and the Finance and Audit Scrutiny Panel monitors the decisions of Portfolio Holders. They can 'call-in' a decision which has been made by the Cabinet or Portfolio Holders (as appropriate) but not yet implemented.

This enables them to consider whether the decision is appropriate. They may recommend that the Cabinet or Portfolio Holder reconsiders the decision. The Strategic Overview and Scrutiny Panel, Finance and Audit Scrutiny Panel or Policy Review and Development Panel may be consulted by the Cabinet or the Council on forthcoming decisions and the development of policy.

6. THE COUNCIL'S EMPLOYEES

The Council has people working for it (called 'Officers') to give advice, implement decisions and manage the day-to-day delivery of its services. Some Officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A code of practice governs the relationships between Officers and Councillors.

7. CITIZENS' RIGHTS

Citizens have a number of rights in their dealings with the Council. These are set out in more detail in Article 3. Some of these are legal rights, whilst others depend on the Council's own processes. The local Citizens' Advice Bureau can advise on individuals' legal rights.

Citizens have the right to:

- vote at local elections if they are registered;
- contact their local Councillor about any matters of concern to them;
- obtain a copy of the Constitution;

- attend meetings of the Council, Cabinet , Committees and Panels except where, for example, personal or confidential matters are being discussed;
- petition to request a referendum on a mayoral form of Constitution;
- participate in the Council's "Have Your Say" question time and contribute to investigations by the Strategic Overview and Scrutiny Panel and the Finance and Audit Scrutiny Panel;
- find out, from the Forward Plan, what major decisions are to be discussed by the Cabinet or decided by the Cabinet or Officers, and when;
- see reports and background papers, and any record of decisions made by the Council, Cabinet, Committees and Panels together with Key Decisions taken by Portfolio Holders or Officers;
- complain to the Council about any aspect of the delivery of the Council's services in accordance with its complaints procedure;
- complain to the Local Government Ombudsman if they think the Council has not followed its procedures properly. However, they should only do so after first raising their complaint using the Council's own complaints procedure and giving the Council a chance to respond. The Ombudsman may, however, get involved earlier in extenuating circumstances;
- 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;
- inspect the Council's accounts and make their views known to the external auditor; and
- submit a petition in accordance with the Council's Petitions Scheme.

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

Colchester Borough Council

Article 1 – The Constitution

INTRODUCTION

This Constitution has been produced in accordance with the Local Government Act 2000. Apart from describing the structure of the Council, it sets out the ways in which it takes the many decisions it makes annually which affect the lives of the citizens of the Borough of Colchester.

This Constitution should be interpreted in the light of all other relevant legislation.

1.01 Powers of the Council

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

1.02 The Constitution

This Constitution is the Constitution of the Colchester Borough Council.

1.03 Purpose of the Constitution

The Constitution provides a framework which:

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

1.04 Principles of the Constitution

In seeking to reinforce local democracy, the Constitution is founded on the following

principles:-

- (a) The creation of an easily understood system of political management which will provide a clear and accountable leadership balanced and challenged in its activities by other Councillors.
- (b) The establishment of an open and streamlined decision making process within which the views of local people are given full consideration.
- (c) The Council as leader in the local community, working on behalf of the citizens of Colchester.

1.05 Interpretation and Review of the Constitution

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

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

1.06 Flexibility and Review

This Constitution is intended to be sufficiently flexible to meet changing needs, and will be reviewed regularly to ensure that it continues to meet these basic principles, in the light of experience.

The following sections give information on the structure of the Council and a framework of rules to meet the central principles.

1.07 Executive Arrangements

The following parts of this Constitution shall constitute the executive arrangements:

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

Colchester Borough Council

Article 2 – Members of the Council

INTRODUCTION

This Article sets out the composition of the Council, eligibility to stand for election as a Councillor and the form of election to be used.

The Article contains a section on the roles and functions of Councillors.

The Article also deals with the rights and duties of Councillors, especially as they affect access to land, buildings, documents and information and any confidentiality requirements surrounding the latter.

2.01 Composition and Eligibility

- (a) **Composition** The Council comprises of sixty Councillors. One or more Councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Commission and approved by the Secretary of State. They serve for four years before coming up for re-election and each represents a particular area or ward of the Borough. As a locally elected representative, the main duty of a Councillor is as a community leader, speaking and acting for all local people, assisting them as individuals and seeing that their area gets fair and proper treatment. As a member of the Council, a Councillor represents the interests of the Borough of Colchester as a whole and, by serving on one or more of the bodies described below, takes decisions on the policies of and services provided by the Council.
- (b) **Eligibility** Only registered voters of the Borough of Colchester or those living or working, or owning land or premises in the Borough are eligible to hold the office of Councillor.

2.02 Election and term of office of Councillors

Regular elections of a third (or as near as may be) of all Councillors will be held annually on the first Thursday in each May (unless Parliament determines otherwise). There will be no regular election when there are elections to Essex County Council. The term of office of Councillors will be four years starting on the fourth day after being elected and finishing on the fourth day after the date of the regular election four years later.

2.03 The Mayor

The Mayor is the "First Citizen" of the Borough and a Councillor. The post should not be confused with that of an elected mayor who, under the organisational arrangements adopted in some council's, is the political leader.

In Colchester, the Mayor is the ceremonial head of the Council and is elected by the other members of the Council at the Annual Meeting to serve for twelve months. The main roles of the Mayor are to represent the Council and the Borough at official functions both at home and abroad and to chair meetings of the full Council.

2.04 Roles and Responsibilities of all Councillors

Purpose

- (a) participate fully in the good governance of the Borough;
- (b) contribute actively to the formation and/or scrutiny of the Council's policies, budgets, strategies and service delivery;
- (c) represent effectively the interests of the Ward for which the Councillor was elected and deal promptly with constituents' enquiries and representations;
- (d) promote Council engagement with all citizens and groups and ensure that there are opportunities for all views to be heard;
- (e) champion the continuous improvement of the quality of life of the community in terms of equity, economy and environment;
- (f) ensure that the Council's resources are used to achieve the maximum benefit for the people of Colchester;
- (g) represent the Council effectively, when appointed to an outside body, such as a charitable trust or association, etc;
- (h) act at all times with probity and propriety in the best interest of the Council and in accordance with the Code of Conduct and;

Duties and Responsibilities

Councillors shall be responsible for the following duties and responsibilities.

- (a) To fulfil the statutory and locally determined requirements of an elected member, including compliance with all relevant codes of conduct, and participation in those decisions and activities reserved to the full Council.
- (b) participate effectively as a member of any Committee or Panel to which the Councillor is appointed, including related responsibilities for the services falling within the Committee's (or Panel's) terms of reference, and its liaison with other public bodies to promote better understanding and partnership working.
- (c) participate in the activities of an outside body to which the Councillor is appointed, providing two-way communication between the organisations and representing the policies and practices of the Council. Also, for this purpose, to develop and maintain a working knowledge of the Council's policies and

practices in relation to that body and of the community needs and aspirations in respect of that body's role and functions.

- (d) participate in the scrutiny or performance review of the services of the Council including, where the Council so decides, the scrutiny of policies and budget, and their effectiveness in achieving the strategic objectives of the Council.
- (e) participate, as appointed, in consultative processes with the community and with other organisations.
- (f) provide a link between the Council and the community, through the various forums available.
- (g) develop and maintain a working knowledge of the Council's services, management arrangements, functions/duties and constraints, and to develop good working relationships with relevant officers of the authority.
- (h) develop and maintain a working knowledge of the other organisations and services which serve the Borough.
- (i) contribute constructively to open government and democratic renewal through active encouragement to the community to participate generally in the democratic process.
- (j) maintain confidentiality in all relevant Council business.
- (k) find a suitable substitute and to brief them on the meeting due to be attended, on occasions when personal attendance is not possible and where substitutes are permissible.
- (l) identify individual learning and development needs and participate fully in training opportunities provided.
- (m) maintain the highest standards of conduct and ethics in accordance with the Code of Conduct.

2.05 Conduct

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

2.06 Allowances

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

2.07 Role of the various meetings of the Council

Each of the various meetings of the Council has a role to play within the Authority.

Full Council

The main role of the full Council is to, decide the key policies and plans within which the Council's functions will be carried out, and to set the Council's budget and Council Tax levels and approve the Constitution

The Committees and Panels are appointed annually by the Council. The Leader is appointed by the Council for a term of four years (or for the remainder of his/her term in office as a Councillor whichever is the shorter). The Leader appoints the Deputy Leader and the Cabinet. Reports on new or existing policies may be initiated or drawn up by the Cabinet as a whole or by an individual Cabinet member, a Panel of the Cabinet or a Panel.

The Cabinet makes recommendations on policy to the full Council, although in the case of non-statutory plans and strategies (ie those that do not fall within the policy framework of the Council), the Panels may report direct to the full Council. It also receives reports from the Strategic Overview and Scrutiny Panel, Finance and Audit Scrutiny Panel and the other Panels on the effectiveness of existing policies and in both cases makes decisions in the light of the actions recommended and the views expressed. Its meetings also provide a forum for Councillors to question the Cabinet on the performance of its duties and for the public to ask questions or make statements on any of the functions of the Council.

Cabinet

The Cabinet is appointed by the Leader of the Council and comprises the Leader and up to nine other Councillors. The broad areas of responsibility are as follows:-

Environment	Community Safety	Strategy
Transport	Housing	Regeneration
Employment	Health	Partnerships
Economic Development	Resources	Licensing
Leisure	Customer Services	Young People
Tourism	Planning	Procurement
Communications	Waste	
Information Technology	Rural Issues	

The Leader allocates to each member of the Cabinet responsibility for one or more of the broad areas described above (known as a portfolio) and may group those areas by type or similarity of function. The Cabinet therefore forms a readily identifiable body and it will be clearer to the public who is responsible for decisions.

The Cabinet appoints a Councillor to act as Deputy Chairman of the Cabinet for the forthcoming municipal year. The Deputy Chairman may or may not be responsible for specific functions or areas within the Cabinet.

There is a presumption that delegations to and powers of the Cabinet are to the body as a whole and that decisions are reached collectively. However, in certain

circumstances it may be appropriate for the Cabinet to authorise its members to take decisions on their own, within any limits that may be set and having received the necessary Officer advice.

The responsibility of the Cabinet is to take decisions within the budgetary and the policy frameworks set by the full Council and must take into account the views of the local people, consultees, the Strategic Overview and Scrutiny Panel and the Finance and Audit Scrutiny Panel. It meets regularly and in public, except for a limited amount of business such as that which is by its nature is commercially sensitive or concerns members of staff, which will be dealt with in confidence. Representatives of the media will be positively encouraged to attend, and the opportunity will be taken to publish details of meetings on the Council's web site.

Meetings of the Cabinet will provide an opportunity for Councillors who are not Cabinet members and the public to ask questions or make statements on any items under discussion.

Overview and Scrutiny

As a balance to the powers and activities of the Cabinet, the Strategic Overview and Scrutiny Panel and the Finance and Audit Scrutiny Panel have been established to hold the decision-makers to account and to review the Council's policies.

The functions for which each is responsible are:-

Strategic Overview and Scrutiny Panel

- To review corporate strategies;
- To ensure that actions of the Cabinet accord with the policies and budget of the Council;
- To monitor and scrutinise the financial performance of the Council, initial best value reports and performance reporting, and to make recommendations to the Cabinet particularly in relation to annual revenue and capital guidelines, bids and submissions;
- To link the Council's spending proposals to the policy priorities and review progress towards achieving those priorities against the Strategic and Implementation Plans;
- To scrutinise executive decisions made by Cabinet, the Parking Joint Committee and the Colchester and Ipswich Joint Museums Committee which have been made but not implemented referred to the Panel pursuant to the Call-In Procedure;
- To monitor the effectiveness and application of the Call-In Procedure, to report on the number and reasons for Call-In and to make recommendations to the Council on any changes required to ensure the efficient and effective operation of the process;

- To scrutinise the Cabinet's performance in relation to the Forward Plan;
- To scrutinise the performance of Portfolio Holders;
- At the request of the Cabinet, to make decisions about the priority of referrals made in the event of the volume of reports to the Cabinet or creating difficulty for the management of Cabinet business or jeopardising the efficient running of Council business.

Finance and Audit Scrutiny Panel

- To review all existing service plans and associated budget provisions against options for alternative levels of service provision and the corporate policies of the Council and make recommendations to the Cabinet;
- To have an overview of the Council's internal and external audit arrangements and in particular with regard to the annual audit plan, the audit work programme and progress reports and to make recommendations to Cabinet as appropriate;
- To monitor the financial performance of the Council and to make recommendations to the Cabinet in relation to financial outturns, revenue and capital expenditure monitors;
- To scrutinise the Audit Commission's annual audit letter;
- To scrutinise progress made on best value action plans;
- To scrutinise executive decisions made by Portfolio Holders and officers taking key decisions which have been made but not implemented referred to the Panel pursuant to the Call-In Procedure.

Their purpose is to review decisions, those policies of the Council already in place, the work of Cabinet and non-Cabinet bodies and, where appropriate or necessary, to require the Council's decision-makers to account for and justify their decisions and the way in which those decisions are implemented. They may carry out consultations with and receive evidence from the public and local organisations during reviews of those functions for which they are responsible. They may, if they wish, appoint for the duration of a review on a particular matter advisors or specialists from outside the Council who have a particular knowledge of the subject. Members of the Cabinet cannot serve on the Panels, although they are entitled to, and will normally, attend their meetings.

Planning Committee

The Committee deals with all applications for planning permission and other development control matters and other minor highway matters that are not delegated to Officers.

Local Development Framework Committee

The Committee deals with the Council's responsibilities relating to the Local Development Framework.

Licensing Committee

The Committee deals with all of the Council's licensing functions that are not delegated to Officers.

Accounts and Regulatory Committee

The Committee deals with the consideration and approval of the Council's Statement of Accounts and other regulatory matters.

Standards Committee

The Committee comprises three Councillors, three parish council representatives and five independent people from outside the Council. Its role is to ensure that the highest ethical standards are maintained by all members of the Council. It takes a proactive role in this respect. From 8 May 2008 the Committee became responsible for the local assessment of complaints against Councillors.

Policy Review and Development Panel

The Panel's role is to review policies on behalf of the Cabinet and to advise Cabinet accordingly.

Officers of the Council

The Officers are directly employed by the Council in a variety of administrative, professional, technical and operational roles. Depending on their individual roles, they advise the Council on all aspects of its functions, put into effect decisions that are taken by Councillors, and provide to the public the services for which the Council is responsible. The Officers are grouped into service groups and all are ultimately responsible to the Chief Executive. The Executive Directors act as co-ordinating managers and perform a strategic operational role. Heads of Service are responsible for the day to day operation of their services.

Statutory Officers

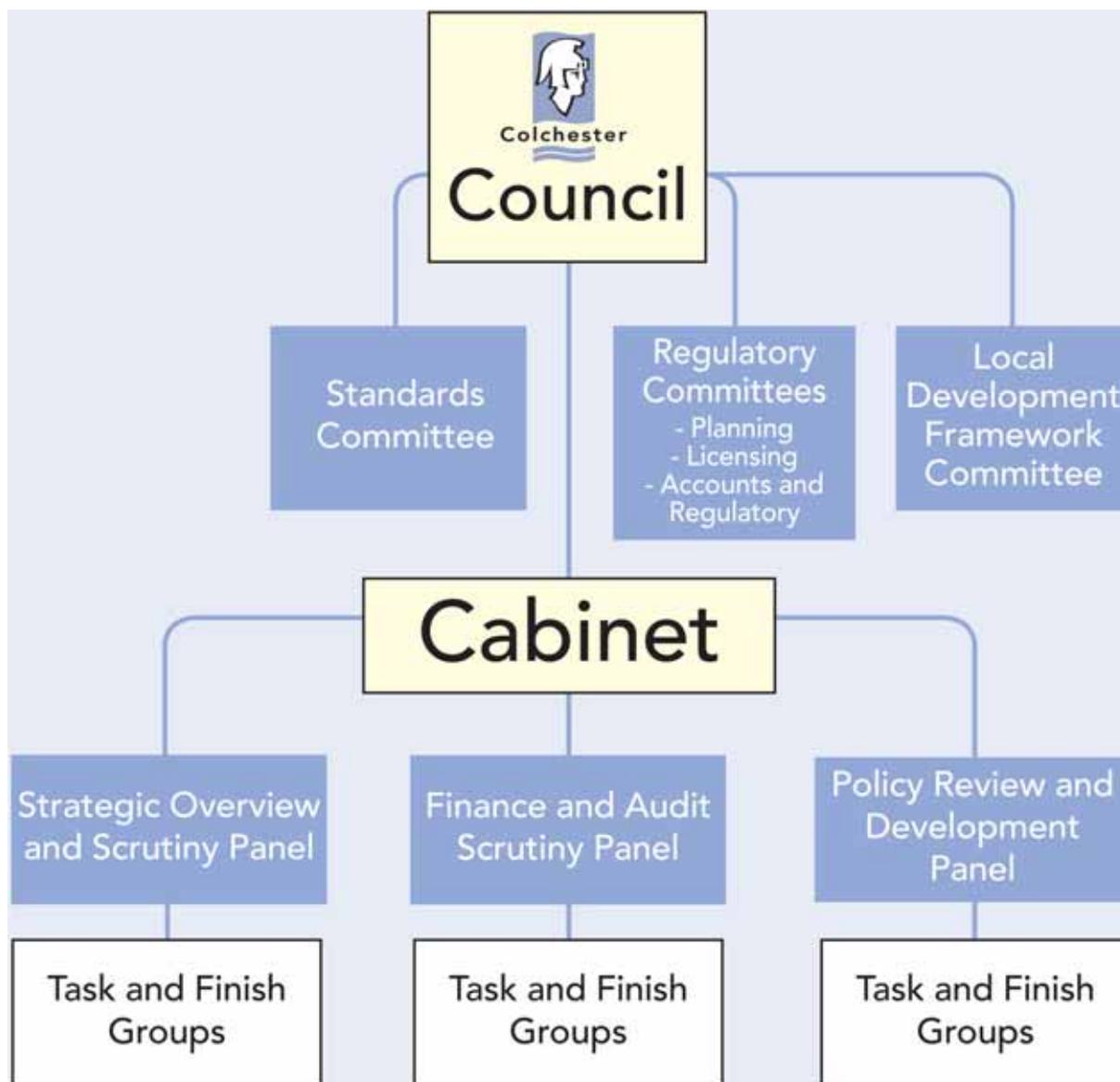
The Council is required by law to make certain statutory appointments, which must be held by different individuals:-

- (a) The Head of the Paid Service – Adrian Pritchard
Chief Executive

The principal officer adviser to the Council, responsible for ensuring that the Council's resources and procedures are effectively and properly provided and used.

- (b) The Monitoring Officer – Andrew Weavers
 Legal Services Manager
 Responsible for ensuring that the decisions and actions of the Council are lawful and in accordance with the adopted policy framework.

- (c) Chief Finance Officer – Charles Warboys
 (Section 151 Officer) Head of Resource Management
 Responsible for ensuring the proper administration of the Council’s financial affairs and that actions and decisions are in accordance with the Council’s budget.



Colchester Borough Council

Article 3 – The Public and The Council

INTRODUCTION

This Article sets out what citizens can expect from the Council and what rights they have. The Constitution also shows how the Council expects to be treated by citizens in return.

This Article also sets out what local councils can expect from the Council.

3.01 Citizens' rights

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

- (a) **Voting and petitions** Citizens on the electoral roll for the Borough have the right to vote for their local Councillor(s) and sign a petition to request a referendum for an elected mayor form of Constitution. For a petition to be valid to require a referendum, the number of signatures to it must equate to not less than five percent of the electorate of the Borough. (*As at February 2011 this amounted to 6,270 signatures.*)
- (b) **Information** Citizens have the right to:
 - (i) attend meetings of the Council the Cabinet , Committees and Panels except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
 - (ii) find out from the Forward Plan what Key Decisions will be taken by the Cabinet and when;
 - (iii) see reports and background papers, and any records of decisions made by the Council , Committees, Panels and the Cabinet together with Key Decisions taken by Portfolio Holders and Officers except where these comprise confidential or exempt information; and
 - (iv) request information in the possession of the Council under the Freedom of Information Act 2000 and Environmental Information Regulation 2004, subject to defined exceptions in the Act and the Regulations
 - (v) inspect the Council's accounts and make their views known to the external auditor.
- (c) **Participation** Citizens have the right to participate in the public question time ("Have Your Say") at meetings, contribute to investigations by the Panels and to submit a petition in accordance with scheme which is set out in Part 4 of the Constitution. The Council has also established a Citizens Panel comprising of residents of the Borough which the Council consults regularly.

- (d) **Treatment by the Council** Citizens have the right to be treated impartially and fairly by the Council.
- (e) **Human Rights Act** Citizens have the right to expect the Council to adhere to the Human Rights Act 1998.
- (f) **Complaints** Citizens have the right to complain to:
 - (i) the Council under its own complaints scheme;
 - (ii) the Local Government Ombudsman, after first raising their complaint using the Council's own complaints procedure and giving the Council a chance to respond. The Ombudsman may, however, get involved earlier in extenuating circumstances;
 - (iii) the Council's Standards Committee Allegations Sub-Committee about a breach by a Councillor of the Council's Code of Conduct.

3.02 Citizens' responsibilities

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

3.03 Local Councils Rights

- (a) The Council believes in the importance of working in partnership with local councils, recognising the important role they play in representing the views of local communities. The Council has agreed a Right to Consultation and Information Charter with the Colchester Association of Local Councils and this is included in Part 8 of this Constitution.
- (b) The Council has also agreed a Charter on Development Control with the Colchester Association of Local Councils and this is included in Part 8 of the Constitution.

Colchester Borough Council

Article 4 – The Full Council

INTRODUCTION

The Local Government Act 2000 gives the Council responsibility for approving the policy framework, the budget and any housing land transfer. A list of the statutory and non-statutory plans which fall within this policy framework appear below. The Council as a whole retains responsibility for regulatory functions and has a role in holding the Cabinet to account.

4.01 The Policy Framework

The Policy Framework means the following plans and strategies:

(a) Mandatory Plans and Strategies:

- Community Strategy
- Crime and Disorder Reduction Strategy; (Community Safety Strategy)
- Local Transport Plan;
- Plans and strategies which together comprise the Development Plan;
- Licensing Authority Policy Statement under the Licensing Act 2003

(b) The following plans and strategies that the Council has adopted as part of the Policy Framework:-

- The Council's Strategic Plan ;
- The plan and strategy which comprise the Housing Investment Programme;
- Local Agenda 21 Strategy;
- Waste Strategy
- Genetically Modified Crops Policy
- Leisure Policy Framework
- Economic Development Strategy
- Information, Communication and Technology Strategy
- Electronic Service Delivery Strategy
- Personnel Policies
- Local Code of Corporate Governance
- Risk Management Strategy
- Anti-Fraud and Corruption Policy
- Travellers Policy
- Tackling Homelessness - Colchester's Review and Strategy
- The Corporate Diversity Policy and Plan
- Licensing Authority Policy Statement under the Gambling Act 2005

4.02 The Budget

The Budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the Council Tax base, setting the Council Tax and decisions relating to the control of the Council's borrowing requirements, the control of its capital expenditure and the setting of virement limits.

4.03 Housing Land Transfer

Housing Land Transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval of a programme of disposal of five hundred or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under sections 32 or 43 of the Housing Act 1985.

4.04 Functions of the Full Council

Only the Full Council will exercise the following functions:

- (a) adopting and changing the Constitution;
- (b) approving or adopting the Policy Framework, and the Budget,;
- (c) approving any application to the Secretary of State in respect of any Housing Land Transfer;
- (d) subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function which is covered by the Policy Framework or the Budget where the decision maker is minded to make it in a manner which would be contrary to the Policy Framework or contrary to/or not wholly in accordance with the Budget;
- (e) electing the Mayor and Deputy Mayor at the Annual Meeting of the Council;
- (e) appointing the Leader of the Council;
- (f) agreeing and/or amending the terms of reference for Committees and Panels, deciding on their composition and making appointments to them;
- (g) appointing representatives to outside bodies unless the appointment is a Cabinet function or has been delegated by the Council;
- (h) adopting an allowances scheme under Article 2.06;
- (i) changing the name of the area, conferring the title of honorary alderman, high steward or freedom of the Borough;

- (j) confirming the appointment of the Head of Paid Service, Monitoring Officer and Section 151 Officer;
- (k) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;
- (l) all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself rather than the Cabinet;
- ;
- (m) considering the annual report from the Strategic Overview and Scrutiny Panel;
- (n) all those functions detailed in Parts C,D,E,F,G,H and I of Schedule 1 of The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 (as amended) .
- (o) all other matters which, by law, must be reserved to Council including the making of a Compulsory Purchase Order.
- (p) The following Local Development Framework responsibilities:
Adoption of Development Plan Documents in accordance with the Local Development Framework.

4.03 Council Meetings

There are three types of Council meeting:

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings.

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

4.04 Responsibility for Functions

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

Colchester Borough Council

Article 5 – Chairing The Council

INTRODUCTION

Meetings of the Council will be chaired by the Mayor.

5.01 ROLE AND FUNCTION OF THE MAYOR

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

5.02 CHAIRING THE COUNCIL MEETING

The Mayor shall, if present, take the Chair at meetings of the Council. In the absence of the Mayor, the Deputy Mayor shall take the Chair. In the absence of both the Mayor and the Deputy Mayor, a Chairman for the meeting shall be elected by the Council from amongst the Councillors present.

The Mayor or in his /her absence, the Deputy Mayor will act as a non-political chairman of the meetings of the Council.

The chairman will have the following responsibilities:

- (a) to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- (b) to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the Borough;
- (c) to ensure that the Council meeting is a forum for the debate of matters of concern to the Borough and the place at which members who are not on the Cabinet are able to hold the Cabinet to account;
- (d) to promote public involvement in the Council's activities; and
- (e) to be the conscience of the Council;

5.03 CEREMONIAL ROLE

The Mayor is the "First Citizen" of the Borough and a member of the Council. The Mayor is the ceremonial head of the Council and is elected by the other members of the Council at the Annual Meeting to serve for twelve months.

The Mayor will also attend such civic and ceremonial functions as the Council and

he/she determines appropriate.

The Mayor and the Deputy Mayor shall ensure that they act in a non-political manner at all times.

Colchester Borough Council

Article 6 – Overview and Scrutiny of decisions

INTRODUCTION

The overview and scrutiny function is a central element to this Constitution. The Strategic Overview and Scrutiny Panel will meet in public to discuss and scrutinise and review corporate strategies, policies and the development of policies holding the Cabinet to account for their actions. It also has a key role in considering other matters of local concern.

The Finance and Audit Scrutiny Panel also meets in public to discuss detailed budgetary and financial performance matters and hold Portfolio Holders to account for their actions.

Overview and scrutiny applies to policies of the Council and performance of Executive functions by the Council. It does not extend to Non-Executive functions undertaken by the Council itself or by Committees of the Council exercising delegated powers. In particular it cannot review quasi judicial decisions taken by the Planning Committee, the Licensing Committee and the Accounts and Regulatory Committee.

6.01 Terms of Reference

The Council has appointed the Strategic Overview and Scrutiny Panel and the Finance and Audit Scrutiny Panel to discharge the functions conferred by section 21 of the Local Government Act 2000 in relation to the matters set out in the table below.

Panel	Scope
Strategic Overview and Scrutiny Panel	<ul style="list-style-type: none">• To ensure that the actions of the Cabinet accord with the policies and budget of the Council.• Monitor the financial performance of the Council and link spending proposals to the Council's policy priorities and review progress.• To review decisions of the Cabinet, the Parking Joint Committee and the Colchester and Ipswich Joint Museums Committee via the Call-In Procedure.• To deal with any Councillor Call for Action matter• To act as the Council's Crime and Disorder Committee under the Police and Justice Act 2006
Finance and Audit Scrutiny Panel	<ul style="list-style-type: none">• To review service plans and budgetary priorities.• To review decisions by Portfolio Holders via the Call-In Procedure

The terms of reference for the Panels are included in the Overview and Scrutiny Procedure Rules contained at Part 4 of the Constitution.

6.02 Functions of the Strategic Overview and Scrutiny Panel

- (a) **Overview (policy development and review)** The Strategic Overview and Scrutiny Panel may:
- (i) assist the Council and the Cabinet in the development of its budget and the policy framework;
 - (ii) conduct research, community and other consultation in the analysis of policy issues and possible options of the functions of the Council;
 - (iii) consider and implement mechanisms to encourage and enhance community participation in the development of policy options of the functions of the Council;
 - (iv) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working;
 - (v) make recommendation to the Cabinet arising from the review of policies within the Panel's terms of reference.
- (b) **Scrutiny** The Strategic Overview and Scrutiny Panel may:
- (i) review and scrutinise the decisions made by and performance of the Cabinet and/or committees both in relation to individual decisions and over time;
 - (ii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
 - (iii) make recommendations to the Cabinet and/or appropriate committee and/or Council arising from the outcome of the scrutiny process;
 - (iv) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Strategic Overview and Scrutiny Panel and local people about their activities and performance;
 - (v) question and gather evidence from any person (with their consent);
 - (vi) consider any "local government matter" referred to the Panel by any councillor in the context of the Councillor Call for Action regime in accordance with the provisions of the Local Government and Public Involvement in Health Act 2007 and to make recommendations to the Council, Cabinet and or partners as appropriate .
- (c) **Crime and Disorder Committee** The Strategic Overview and Scrutiny Committee shall act as the Councils' designated Crime and Disorder Committee in accordance with the provisions of the Police and Justice Act 2006 and may:

- (i) review and scrutinise decisions made, or other action taken, in connection with the discharge by the responsible authorities of their crime and disorder functions;
 - (ii) make reports and recommendations to the Council or the Cabinet with respect to the discharge of those functions.
- (d) **Annual Report** The Strategic Overview and Scrutiny Panel shall report annually to the full Council on its workings and make recommendations for future work programmes and amended working methods if appropriate.
- (e) **Officers** To exercise overall responsibility for the work programme of any Officers employed to support its work.

6.03 Functions of the Finance and Audit Scrutiny Panel

- (i) question members of the Cabinet, Cabinet Members and/ or Committees and Officers about their views on issues and proposals affecting the Borough of Colchester;
- (ii) assist the Council and the Cabinet in the development of its budget and the policy framework;
- (iii) review and scrutinise the decisions made by and the performance of Cabinet Members and officers both in relation to individual decisions and over time;
- (iv) question members of the Cabinet and/or committees and officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;

6.04 Proceedings of the Scrutiny Panels

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

Colchester Borough Council

Article 7 – The Cabinet

INTRODUCTION

The Cabinet (or Executive) is at the heart of the day-to-day decision-making process. It also has a key role in proposing the budget and the policy framework to the Council.

7.01 Role

The Cabinet will lead the implementation of Council policy within the Council's budget and the policy framework. In doing this the 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.

7.02 Form, Appointment and Composition

The Cabinet will consist of the Leader of the Council together with, at least two, but not more than nine, additional Councillors (including the Deputy Leader) as the Leader shall determine

7.03 Appointment of the Leader of the Council

The Leader will be a Councillor appointed by the Council at the Annual Meeting for a term of four years (or for the remainder of his/her term of office as a Councillor if that is a shorter period) and holds office for that period ending with the day of the post-election Annual Meeting , unless the Leader within that period:

- (a) resigns from the office of Leader by giving notice in writing to the Mayor, copied to the Chief Executive; or
- (b) is suspended from being a Member under Part III of the Local Government Act 2000 (but shall resume office at the end of the suspension); or
- (c) ceases to be a member of the Council; or
- (d) is removed from the office as Leader by resolution of the Council following a vote upon which a simple majority have voted in favour for the Leader to be removed from office. If such a resolution is passed , a new Leader may be elected :
 - (i) at the meeting at which the Leader was removed from office; or
 - (ii) at a subsequent meeting

The person appointed to fill the vacancy shall hold office for the remainder of the original term subject to earlier termination as provided for above.

If the Council fails to appoint a Leader the Chief Executive, in consultation with the Group Leaders, shall discharge the functions of the Leader in the interregnum until the Council appoints a Leader.

7.04 Appointment of the Deputy Leader of the Council

The Leader will appoint a member of the Cabinet to act during any period of absence, to be known as the Deputy Leader who will carry out the role and duties of the Leader until the new Leader is elected by the Council.

The Deputy Leader will hold office for the duration of the Leader's term of office unless within that period he/she :

- (a) resigns from the office of Deputy Leader by giving notice in writing to the Leader , copied to the Chief Executive; or
- (b) is suspended from being a Member under Part III of the Local Government Act 2000 (but shall resume office at the end of the suspension); or
- (c) ceases to be a member of the Council;

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

If for any reason:

- (a) the Leader is unable to act or the office is vacant; and
- (b) 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.

7.05 Appointment of Cabinet Members

The Leader shall appoint the members of the Cabinet who will hold office for the duration of the Leaders term of office unless within that period:

- (a) they resign from office by giving notice in writing to the Leader, copied to the Chief Executive; or
- (b) they are suspended from being Councillors under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
- (c) they cease to be Members of the Council; or

- (d) are removed from office by the Leader.

7.06 Vacancies

Upon the occurrence of a vacancy in the office of a member of the Cabinet the vacancy shall be filled by the Leader.

7.07 Roles and Responsibilities of the Leader of the Council

The following duties and responsibilities are in addition to the functions and duties of Councillors as set out in Article 2.06 and are in addition to the role of a Cabinet Member contained in Article 7.

Purpose

- (a) Provide effective political leadership and strategic direction for the Council;
- (b) Ensure effective corporate governance;
- (c) Provide effective stewardship of the Council and its resources;
- (d) Be an advocate of the Council;
- (e) Chair the Cabinet and ensure that it achieves its terms of reference;
- (f) Ensure that the Council delivers high quality, value for money services;
- (g) Ensure that the Council delivers on its Strategic Plan objectives; and
- (h) Promote the benefits of partnership working.

Duties and Responsibilities

- (a) Provide political leadership to the Council, including proposing the Policy Framework within which the Council will operate and to take such executive action as may be delegated by the Council;
- (b) ensure effective Corporate Governance;
- (c) lead the Cabinet and be responsible for the Council's corporate and resource strategy;
- (d) appoint or dismiss Cabinet Members and to determine the allocation of portfolios for subsequent notification to the Council;
- (e) ensure that the Cabinet achieves its terms of reference both collectively and as individual portfolio holders;
- (f) chair Cabinet meetings and to prepare the Forward Plan;

- (g) exercise Executive functions not allocated to either the Cabinet or to Cabinet Members, or to delegate such functions to another Cabinet Member or Committee;
- (h) ensure the effective integration of executive roles, responsibilities and functions within the Cabinet membership;
- (j) be the key contact for outside organisations (including Central Government, Local Authority Associations and Council partners);
- (k) be the key interface between Councillors and the Chief Executive, and the Senior Management Team for the strategic management of the Council;
- (l) be the representative voice of the Council, for example, in its dealings with Central Government, other Local Authorities and their Associations and positively to promote the Council as a whole in the media;
- (m) act as the political spokesperson for the Council;
- (n) promote the long term financial, business and economic stability of the Council;
- (o) encourage the highest standards of probity, ethical and corporate governance for the well being of the Borough;
- (p) communicate the Administration's policies and priorities to the Senior Management Team and to receive their advice; and
- (q) to exercise the Executive functions of any Cabinet Member in their absence.

7.08 Roles and Responsibilities of the Deputy Leader of the Council

The following duties and responsibilities are in addition to the role as a Councillor as set out in Article 2.06 and in addition to his/her role as a Cabinet Member contained in Article 7.

Purpose

- (a) To assist and work with the Leader of the Council to provide effective political leadership and strategic direction for the Council;
- (b) assist the Leader of the Council with his other responsibilities such as ensuring effective Corporate Governance and stewardship of the Council and to ensure the Council delivers high quality, value for money services; and
- (c) where appropriate and permissible under the Constitution, to act in the absence of the Leader of the Council.

Duties and Responsibilities

- (a) To assist and work with the Leader of the Council in delivering his responsibilities to the Council within his role profile as set above;
- (b) deputise for the Leader of the Council in his absence from Council meetings and to deputise in the Leader's absence at Cabinet meetings;
- (c) in the Leader of the Council's absence, to carry out the requirements of his role profile as set out above so far as legally possible and permissible; and
- (d) carry out such other duties and undertake portfolio responsibility as delegated by the Leader of the Council.

7.07 Roles and Responsibilities of All Cabinet Members

The following duties and responsibilities are in addition to the role as a Member contained in Article 2.06.

Purpose

- (a) To provide collective and individual leadership as part of the Cabinet;
- (b) undertake lead responsibility for allocated portfolios contained in Part 3 of this Constitution; and
- (c) to contribute effectively towards the strategic direction of the Council.

Duties and Responsibilities

- (a) To participate effectively as a Member of the Cabinet, take joint responsibility with colleague Cabinet Members for all actions and to be accountable collectively. Challenge issues prior to making decisions if felt appropriate to do so. Ensure appropriate regard to the community's interests and to any equality and diversity issues. Encourage openness and honesty.
- (b) exercise delegated Executive powers in accordance with Part 3 of this Constitution.
- (c) shape and develop the strategic priorities and vision of the Council, participating in debates and discussion about policy issues across the range of services provided by the Council.
- (d) recognise the differing roles of Councillors and officers within the Council's Constitution.
- (e) act as the Lead Member for a particular portfolio as may be determined by the Leader of the Council but, in doing so, have regard to the overall collective responsibilities of the Cabinet and the Council's Strategic Plan objectives. Champion the portfolio concerned within that strategic context.
- (f) represent the Council on external bodies, as appointed and feed back to the Cabinet on issues of relevance/importance.

- (g) facilitate a corporate leadership role where appropriate to do so and foster links through partnerships.
- (h) be responsible for continuous personal development, to take advantage of learning opportunities to build on understanding and knowledge and to develop relevant skills.
- (i) promote positively the portfolio and where appropriate to act as the spokesperson with the media for that portfolio area only.
- (j) In connection with their portfolio:
 - (i) to build good relationships with appropriate senior officers and work with them in developing policy or strategic issues prior to formal reporting. Be supportive in dealing with problems at a strategic level;
 - (ii) keep abreast of related developments and policies at national, regional and a local level;
 - a. enhance the Council's reputation through taking the national stage where possible and participating in regional and national networks;
 - (iv) aim for the Council to be at the forefront of service development and provision where possible; take an active interest in related performance indicators and rankings;
 - (v) represent the Cabinet at a Scrutiny Panel meeting in connection with any related matter that may be 'called in' (contained in the Overview and Scrutiny Procedure Rules in Part 4 of the Constitution); similarly, attend a Scrutiny Panel at their request in connection with any issues associated with the portfolio that are being scrutinised;
 - (vi) be aware of issues of importance to the community and other stakeholders concerning portfolio services; and
 - (vii) be aware of key budgetary issues affecting the portfolio of the Cabinet Member

7.05 Proceedings of the Cabinet

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

7.06 Responsibility for Functions

The Council shall maintain the list in Part 3 of this Constitution setting out which individual members of the Cabinet, Committees of the Cabinet, Officers or joint arrangements are responsible for the particular exercise of particular Executive functions.

7.07 Advisory Panels

The Council has created the Policy Review and Development Panel to advise Cabinet on policy development and service delivery.

Colchester Borough Council

Article 8 – Regulatory and Other Committees

INTRODUCTION

Under the Local Government Act 2000 the Council is required to establish committees to undertake non-executive functions under powers delegated from full Council. By way of example planning and licensing are not executive functions and cannot be discharged by the Cabinet.

8.01 Regulatory and Other Committees

The following committees will be appointed by the full Council. Delegated powers will be given to these committees to discharge their relevant functions

Committee	Functions
Planning Committee	<p>Planning and conservation</p> <ul style="list-style-type: none">• Functions relating to town and country planning and development control as specified in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 ("the Functions Regulations") <p>Highways use and regulation</p> <ul style="list-style-type: none">• The exercise of powers relating to the regulation of the use of highways as set out in Schedule 1 to the Functions Regulations <p>Tree Preservation and Hedgerows</p> <ul style="list-style-type: none">• The exercise of powers as set out in Schedule 1 to the Functions Regulations
Licensing Committee	<p>Taxi, gaming, entertainment, food and miscellaneous licensing</p> <ul style="list-style-type: none">• Functions relating to licensing and registration as set out in Schedule 1 to the Functions Regulations• Licensing regime under the Licensing Act 2003 including Liquor Licensing• Gambling regime under the Gambling Act 2005

Committee	Functions
Standards Committee	<p>The promotion and maintenance of high standards of conduct within the Council</p> <ul style="list-style-type: none"> • Promoting and maintaining high standards of conduct by Councillors and co-opted members; • assisting the Councillors , and, co-opted members to observe the Members Code of Conduct;
	<ul style="list-style-type: none"> • advising the Council on the adoption or revision of the Members Code of Conduct • monitoring the operation of the Members Code of Conduct; • granting dispensations to Councillors and co-opted members from requirements relating to interests set out in the Members Code of Conduct; • local assessment of complaints made against Councillors • dealing with any reports from a case tribunal or interim case tribunal, and any report from the Monitoring Officer on any matter which is referred by an ethical standards officer to the Monitoring Officer. • the exercise of the above in relation to the Parish and Town Councils wholly or mainly within the Borough of Colchester and the members of those Parish or Town Councils. <p>Assistance to Councillors and co-opted external persons</p> <ul style="list-style-type: none"> • advising, training or arranging to train Councillors and co-opted members on matters relating to the Members Code of Conduct; <p>Other functions</p> <ul style="list-style-type: none"> • overview of the Council's whistle blowing policy • overview of the Council's complaints handling procedure; • overview of Ombudsman investigations; • monitoring the Officers' Code of Conduct;

Committee	Functions
	<ul style="list-style-type: none"> • monitoring the Member/ Officer Relations Protocol.
Accounts and Regulatory Committee	<ul style="list-style-type: none"> • To consider and approve the Council's Statement of Accounts <p>Health and safety</p> <ul style="list-style-type: none"> • Functions relating to health and safety under any "relevant statutory provision" within the meaning of Part 1 of the Health and Safety at Work Act 1974, to the extent that those functions are discharged otherwise than in the council's capacity as employer <p>Safety at Sports Ground</p> <ul style="list-style-type: none"> • Functions relating to safety of sports grounds
	<p>Employment</p> <ul style="list-style-type: none"> • To hear and determine all appeals by employees relating to dismissals following the Council's Disciplinary Procedures
Appointments Committee	<ul style="list-style-type: none"> • Recommend to Council the appointment of the Chief Executive (Head of Paid Service) • Appointment of the Executive Directors and Heads of Service in accordance with the Officer Employment Rules • Appointment of Independent Members to the Standards Committee
Local Development Framework Committee	<ul style="list-style-type: none"> • Dealing with the Council's responsibilities in relation to the Local Development Framework

Colchester Borough Council

Article 9 – The Standards Committee

INTRODUCTION

The Borough Council is required by the Local Government Act 2000 to establish a Standards Committee.

The Standards Committee has an important role in strengthening and maintaining high standards of conduct required of Councillors and Officers. It also has a role in investigating allegations of misconduct by members of Parish or Town Councils within the Borough of Colchester.

9.01 Standards Committee

The Council will establish a Standards Committee.

9.02 Composition

POLITICAL BALANCE

Standards Committees do not have to comply with the political balance rules in Section 15 of the Local Government and Housing Act 1989. The Council currently operates a Standards Committee without political balance, but will be guided by political balance principles.

- (a) **Membership** The Standards Committee will normally comprise:
- four Councillors (other than the Leader or a Cabinet Member);
 - five persons who are not Councillors or officers of the Council (known as Independent Members);
 - three members of a Parish or Town Council wholly or mainly in the Borough of Colchester (the Parish Representatives).
- (b) **Independent Members** the Independent Members will be appointed in accordance with The Standards Committee (England) Regulations 2008;
- (c) **Parish Representative** A Parish Representative must be present when matters relating to Parish or Town Councils or their members are being considered;
- (d) **Chairing the Committee** The committee will be chaired by an Independent Member;
- (e) **Voting** All members of the Standards Committee will be able to vote.

9.03 Role and Functions

The Standards Committee will have the following roles and functions:

- (a) promoting and maintaining high standards of conduct by Councillors and co-opted members;
- (b) assisting the Councillors and, co-opted members to observe the Members Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members Code of Conduct
- (d) monitoring the operation of the Members Code of Conduct;
- (e) advising, training or arranging to train Councillors and co-opted members on matters relating to the Members Code of Conduct;
- (f) granting dispensations to Councillors and co-opted members from requirements relating to interests set out in the Members Code of Conduct;
- (g) assessing any action should be taken in relation to complaints made against Councillors;
- (h) dealing with any reports from a case tribunal or interim case tribunal, and any report from the Monitoring Officer on any matter which is referred by an Ethical Standards Officer to the Monitoring Officer.
- (i) the exercise of (a) to (h) above in relation to the Parish and Town Councils wholly or mainly within the Borough of Colchester and the members of those Parish or Town Councils.

9.04 Appointment of Independent Members

The Independent Members will be appointed in accordance with The Standards Committee (England) Regulations 2008;

9.05 Proceedings at Meetings of the Standards Committee

Meetings of the Standards Committee will be conducted in accordance with the Standards Committee Procedure Rules contained in Part 4 of this Constitution

9.06 Additional Roles Of The Standards Committee

The Council considers it appropriate for the Standards Committee to exercise the

following local choice functions:

- monitoring of the Council's Ethical Framework;
- overview of the Council's complaints handling procedure;
- overview of Ombudsman investigations.

Colchester Borough Council

Article 10 – Area Working Arrangements

INTRODUCTION

The Council has discretion in deciding whether it wishes to introduce Area Working arrangements. It recognises however that a key part of the modernisation process is to strengthen the engagement of the community with the Council. One of the means to achieving this is by way of Area Working arrangements.

10.01 Area Working Arrangements

No final decisions have yet been taken by the Council in respect of Area Working arrangements. The Council has however recognised the need to engage the community in Area Working which in its early stages will involve: listening and communicating better at the local level; identifying, reporting and representing the needs of the locality; community planning at the local level; and monitoring the local delivery of services.

Area Working arrangements will also need to engage the parishes and other existing local arrangements.

The approach to Area Working arrangements will be evolutionary whilst building upon partnerships and structures already established.

The Council may introduce Area Working arrangements as it sees fit, if it is satisfied that to do so will ensure improved service delivery in the context of best value and more efficient, transparent and accountable decision making.

10.02 Form, Composition and Function

Decisions will be made at a future date, and after due consultation.

Colchester Borough Council

Article 11 – Joint Arrangements

INTRODUCTION

The Local Government Act 2000 and regulations enable local authorities to make use of joint arrangements with other authorities and delegate to other local authorities.

11.01 Arrangements to Promote Well Being

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

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

11.02 Joint Arrangements

- (a) In accordance with Section 101 of the Local Government Act 1972, the Council may establish joint arrangements with one or more local authorities and/or their Cabinets to exercise functions which are not executive functions in any of the participating authorities.
- (b) The Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities.
- (c) Details of any joint arrangements including any delegations to joint committees will be found in the Council's scheme of delegations in Part 3 of this Constitution.

11.03 Access to Information

- (a) The Access to Information Rules contained in Part 4 of this Constitution apply to functions of the Cabinet and to functions of a joint committee provided all the members of the joint committee are members of the Cabinet within each participating authority.
- (b) If the joint committee contains members who are not on the Cabinet of any

participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

11.04 Delegation to and from other Local Authorities

- (a) The Council may delegate non-cabinet functions to another local authority or, in certain circumstances, the Cabinet of another local authority.
- (b) The Cabinet may delegate Cabinet functions to another local authority or the Cabinet of another local authority in certain circumstances.
- (c) The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting.

11.05 Contracting Out

The Council for functions which are not executive functions and the Cabinet for executive functions, may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an order under Section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making.

11.06 The Colchester and Ipswich Joint Museums Committee

On 24 January 2007 the Cabinet agreed to join with Ipswich Borough Council in the formation of the Colchester and Ipswich Joint Museums Committee. The Constitution of the joint committee sets out its membership and terms of reference etc. The purpose of the joint committee being to develop and implement a joint museum service for Colchester and Ipswich. This joint committee has been formed under Sections 101 and 102 of the Local Government Act 1972 and the Local Authorities (Arrangement for the Discharge of Functions) (England) Regulations 2000 (as amended). The Cabinet has agreed the delegations to the joint committee contained in Part 3 of this Constitution.

11.07 The Colchester Braintree and Uttlesford Joint Parking Committee

On 25 May 2005 the Cabinet agreed to join with Braintree District Council and Uttlesford District Council in the formation of the Colchester Braintree and Uttlesford Joint Parking Committee. The Constitution of the joint committee sets out its membership and terms of reference etc. The purpose of the joint committee being to develop and implement a combined parking service for Colchester, Braintree and Uttlesford. This joint committee has been formed under Sections 101 and 102 of the Local Government Act 1972 and the Local Authorities (Arrangement for the Discharge of Functions) (England) Regulations 2000 (as amended). The Cabinet has agreed the delegations to the joint committee contained in Part 3 of this Constitution.

Colchester Borough Council

Article 12 – Officers

INTRODUCTION

This Article describes the structure of the Senior Management of the Council and the roles of the Head of Paid Service, Monitoring Officer and Chief Finance Officer.

12.01 Management Structure

- (a) The Senior Management structure of the Council comprises the Chief Executive, Executive Directors and Heads of Service. Each Executive Director has a portfolio of responsibilities which may include statutory responsibilities, service areas, corporate themes and strategies and specific projects.
- (b) The composition of each portfolio may change from time to time to reflect the needs of the Council and the skills and experience of individual Executive Directors.
- (c) The number of Executive Directors and Heads of Service may vary from time to time.
- (e) The Council is required to designate the following statutory posts: Head of Paid Service, Monitoring Officer and Chief Finance Officer.

The distribution of portfolios and statutory responsibilities is as follows:

Post	Functions and areas of responsibility
Chief Executive (and Head of Paid Service)	Strategic managerial leadership Act as the key political interface A focal point for the Council Provide community leadership, according to the political situation Have ultimate accountability within the Council
Executive Directors	Strategic priorities and management Developing the vision Leading the cultural change Developing partnerships Assisting Councillors with their community leadership role
Heads of Service	Accountable to an Executive Director at a strategic level only for their Group Strategic managerial remit for their Group Developing and implementing service plans for their Groups that contribute to the achievement of corporate outcomes Direct interface with Councillors on day to day issues relating to their Group

Post	Functions and areas of responsibility
	Responsibility for all the resources within their Group
Monitoring Officer	Maintaining the Constitution Ensuring lawfulness and fairness of decision making Supporting the Standards Committee Conducting investigations Act as Proper Officer for Access to Information Advising whether Cabinet decisions are within the Budget & Policy Framework Providing advice
Chief Finance Officer	Ensuring lawfulness and financial prudence of decision making Administration of financial affairs Provide professional financial advice Provide financial information

The above table is descriptive only and full details of delegations will be made available as referred to in Part 3 of this Constitution.

The duties of Executive Directors include the delivery of effective corporate and strategic management of the Council through collaborative working with Councillors, the Senior Management Team and partners, including the pursuit of the Council's vision, goals and core values.

Such posts will have the functions described in Article 12.02–12.04 below.

Structure The Head of Paid Service will determine and publicise a description of the overall management structure of the Council. This is set out at Part 7 of this Constitution.

Functions of the Statutory Officers

12.02 Head of Paid Service

The Head of Paid Service shall undertake all duties designated under Section 4 of the Local Government and Housing Act 1989. These are personal functions and must be undertaken by the Head of Paid Service personally. Where the Head of Paid Service is also the Chief Executive, other functions which are not included in Section 4 may be delegated.

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

12.03 Monitoring Officer

- (a) **Maintaining the Constitution** The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for inspection by members, employees and the public.
- (b) **Ensuring lawfulness and fairness of decision making** After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the full Council (or to the Cabinet in relation to a executive function) if the Monitoring Officer considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- (c) **Supporting the Standards Committee** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- (d) **Receiving reports** The Monitoring Officer will receive and act on reports made by Ethical Standards Officers and decisions of the case tribunals.
- (e) **Conducting investigations** The Monitoring Officer will conduct investigations into matters referred by Ethical Standards Officers and make reports or recommendations in respect of them to the Standards Committee.
- (f) **Proper Officer for Access to Information** The Monitoring Officer will ensure that Cabinet decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.
- (g) **Advising whether Cabinet decisions are within the Budget and the Policy Framework** The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the Budget and the Policy Framework.
- (h) **Providing advice** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and the Policy Framework issues to all Councillors. The Monitoring Officer shall also provide advice to Councillors and Officers in relation to personal and prejudicial interests.
- (i) **Appointment of a Deputy** The Monitoring Officer shall appoint a deputy to act in his/her absence and when the Monitoring Officer is unable to act as defined in Section 5 of the Local Government and Housing Act 1989.
- (j) **Restrictions on posts** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

12.04 Chief Finance Officer

- (a) **Ensuring lawfulness and financial prudence of decision making** After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the full Council (or to the Cabinet in relation to an executive function) and the Council's external auditor if Chief Finance Officer considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- (b) **Administration of financial affairs** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management** The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing advice** The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and the Policy Framework issues to all Councillors and will support and advise Councillors and Officers in their respective roles.
- (e) **Give financial information** The Chief Finance Officer will provide financial information to the media, members of the public and the community.

12.05 Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer

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

12.06 Conduct

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

12.07 Employment

- (a) The recruitment, selection and dismissal of officers will comply with the Officer Employment rules set out in Part 4 of this Constitution.
- (b) All Officers shall be appointed on merit in accordance with Section 7 of the Local Government and Housing Act 1989.

Colchester Borough Council

Article 13 – Decision Making

INTRODUCTION

The Council is required to keep up to date a record of what part of the Council or which individual has responsibility for particular types decisions or decisions relating to particular areas or functions. This record is referred to in Part 3 of this Constitution.

13.01 Responsibility for decision making

One of the purposes of the executive structure is to expedite the decision making process. It is the intention of the Council that decision taking should be delegated in the interests of speed where that is consistent with the democratic process in terms of accountability and openness.

The various levels of decision making are:-

- (a) Council - Panels / Committees - delegations to Officers
- (b) Cabinet - Cabinet Members - delegations to Officers

Whilst specific functions are reserved to full Council by statute and the Council and the Leader determine that certain executive functions be taken in full meetings of the Cabinet, a purpose of this Constitution is to encourage delegation of decision making to Cabinet Members and to Officers. Where such decisions have been delegated it remains open to the person making the delegation to call the matter back for their own decision. Alternatively a person to whom a decision has been delegated may decide that the decision should be referred back to the person or body to whom the delegation originated from, ie an Officer to a Cabinet Member and a Cabinet Member to the Cabinet. This would usually be on issues of significance or sensitivity and for the decision maker to refer matters upwards for determination.

As a matter of principle all Key Decisions at least initially shall be taken at full meetings of the Cabinet.

The separation of powers between the Council and the Cabinet (the Executive) is fundamental to the operation of modernised local government.

The Local Authorities (Functions and Responsibilities) Regulations 2000 (As Amended) set out what decisions the Council must make itself and these are detailed in Article 4. The following function under Schedule 2 of the Regulations is a function in relation to which the Council itself will make decisions:

- The determination of any appeal against a decision made by, or on behalf of the full Council as opposed to appeals against decisions of the Cabinet.

The determination of any appeal against a decision made by, or on behalf of the full Council as referred to above shall not in any way affect or remove the statutory rights of the individual.

Decisions which the Council are delegating to Committees are identified in Article 8.

The Leader will exercise all powers including the power of delegation to individual Cabinet members and/or Officers. Decisions are made by the Cabinet collectively, or individual Cabinet members in respect of matters relating to the range of responsibilities which have been delegated to them.

Decisions in relation to the Budget and the Policy Framework are exclusively reserved to the Council.

13.02 Principles of decision making

In order that decision making is efficient, transparent and accountable, all decisions of the Council (whether taken by full council,, the Cabinet, Panels and Committees and those under delegated powers) shall have regard to the following principles :-

- (a) consideration of all options available;
- (b) having regard to due consultation;
- (c) consideration of professional advice from officers;
- (d) clarity of aims and desired outcomes;
- (e) the action proposed must be proportionate to the desired outcome;
- (f) having respect and regard for human rights;
- (g) presumption for openness;
- (h) only relevant matters taken into account;
- (i) due weight to all material considerations;
- (j) proper procedures will be followed.

13.03 Types of decision

- (a) Decisions reserved to full Council.

Decisions relating to the functions listed in Article 4 will be made by the full Council and not delegated.

- (b) Key Decision

A "Key Decision", as set out in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000) (as amended) is a decision, which is likely to either :

- result in the Council incurring expenditure or the making of savings which are significant having regard to the Council's budget for the service or function to which the decision relates. The Council has determined that the level of expenditure or savings for these purposes is £500,000;or

- to be significant in terms of its effects on communities living or working in an area comprising two or more wards within the Borough of Colchester;

A Key Decision will relate to a decision on a matter identified in the Forward Plan, except in cases of urgency when the provisions contained in the Budget and the Policy Framework Procedure Rules will apply.

In accordance with Section 38 of the Local Government Act 2000, in determining the meaning of "significant" the Council shall determine thresholds above which items are significant and will ensure these limits are published. The Council has determined that the threshold shall be £500,000.

Any decisions involving expenditure or saving above the published threshold for the service or function concerned will be a Key Decision. A Key Decision may not necessarily involve significant expenditure or savings but may however be significant in terms of its effect on communities in two or more wards with the Borough.

A decision taker may only make a Key Decision in accordance with the requirements of the Cabinet Procedure Rules set out in Part 4 of this Constitution.

(c) Decisions made by Panels and Committees

Decisions made by Panels and Committees appointed by the Council -power to make such decisions is delegated by the Council in accordance with Part 4 of this Constitution; (Section 101, Local Government Act 1972).

13.04 Decision making by the full Council

Subject to Article 13.09, when considering any matter the Council meeting will follow the Council Procedure Rules set out in Part 4 of this Constitution.

Reasons for decisions shall be recorded

13.05 Decision making by the Cabinet

Subject to Article 13.09, when considering any matter the Cabinet, individual Cabinet Member or Officer exercising delegated powers will follow the Cabinet Procedure Rules set out in Part 4 of this Constitution.

Reasons for decisions shall be recorded

13.06 Decision making by the Scrutiny Panels

When considering any matter the Scrutiny Panels will follow the Meetings General Procedure Rules and the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution.

Reasons for decisions shall be recorded

13.07 Decision making by the Planning Committee, Accounts and Regulatory Committee, Licensing Committee and Local Development Framework Committee

Subject to Article 13.09, other Council Committees will follow the Meetings General Procedure Rules and where appropriate the Planning Committee, Licensing Committee and Accounts and Regulatory Procedure Rules set out in Part 4 of this Constitution.

Reasons for decisions shall be recorded

13.08 Decision making by the Policy Review and Development Panel

When considering any matter, the Policy Review and Development Panel will follow the Meetings General Procedure Rules set out in Part 4 of this Constitution.

Reasons for decisions shall be recorded

13.09 Decision making by Council bodies acting as tribunals

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

Reasons for decisions shall be recorded

Colchester Borough Council

Article 14 – Finance, Contracts and Legal Matters

INTRODUCTION

This Article refers to the Council's Financial and Contract Rules, which are contained in Part 4 of this Constitution.

14.01 Financial Management

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

14.02 Contracts

Every contract made by the Council will comply with the Contract Procedure Rules set out in Part 4 of this Constitution. Individual Cabinet Members will not be able to authorise the entering into contracts beyond the value of £500,000.

14.03 General Emergency Powers

The Chief Executive shall, having as far as possible conferred with the Leader in the event of civic disasters or other issues of extreme emergency, have power to make decisions for the protection of the Borough and its citizens and which cannot be dealt with in accordance with the normal decision making process of the Council.

14.04 Legal Proceedings

The Proper Officer is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Proper Officer considers that such action is necessary to protect the Council's interests.

14.05 Authentication of Documents

The Proper Officer shall be authorised to sign on behalf of the Council all documents and other papers which are intended to give formal legal effect to decisions of the Council, the Cabinet, a Panel or Committee or Officer acting under delegated powers and which are not required to be under seal.

14.06 Common Seal of the Council

The Common Seal of the Council shall be kept in a safe place in the custody of the

Proper Officer.

The Common Seal of the Council shall not be affixed to any document unless the sealing has been authorised:

- (a) by a resolution of the Council, or
- (b) by a resolution of the Cabinet, a Panel or Committee to which the Council has delegated its powers in that behalf; or
- (c) upon the written authority of an Officer to whom the Council has delegated its powers in that behalf such resolution of the Council, the Cabinet, a Panel or Committee or written authority of an Officer shall be sufficient authority for sealing any document necessary to give effect to the resolution or exercise of delegated powers.

The Common Seal of the Council shall be attested by an Authorised Signatory who shall be the Proper Officer or the Mayor or in his /her absence the Deputy Mayor

The Proper Officer shall keep a book called the "Seal Register" in which shall be entered the date on which every document is sealed and brief particulars of such document. The attestor shall sign their name against such entry.

14.07 Custody of Deeds etc

The Proper Officer shall be responsible for the maintenance of the Register of Properties giving full details of land and property owned by the Council.

The Proper Officer shall be responsible for the custody of all title deeds and similar securities relating to property owned by the Council.

14.08 Inspection of Lands, Premises, etc

Unless specifically authorised to do so by the Council, the Cabinet, a Panel or a Committee, a Councillor shall not issue or purport to issue, any order respecting any works which are to be carried out by or on behalf of the Council or claim, by virtue of being a Councillor, any right to inspect or to enter upon any lands or premises which the Council has the power or duty to inspect or enter.

Colchester Borough Council

Article 15 – Review and Revision of the Constitution

INTRODUCTION

This Article places a duty to monitor and review the constitution on a particular body or person.

15.01 Duty to Monitor and Review the Constitution

The Council is required to keep the Constitution under review and this task is to be undertaken by the Monitoring Officer.

The Council is also required to keep the Constitution up to date, and to reflect changes which may be made from time to time by the Council or the Cabinet.

The first review will consist of a complete review of the Constitution. Thereafter the review will consist of a systematic review of the Constitution on a rolling programme; the programme to be agreed by full Council on an annual basis.

The results of the review will be reported to full Council, who can approve and adopt any necessary changes to the Constitution.

The Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect, and will report at least on an annual basis to the full Council.

Protocol for Monitoring and Review of Constitution by Monitoring Officer

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

- (a) observe meetings of different parts of the Councillor and Officer structure;
- (b) undertake an audit trail of a sample of decisions;
- (c) record and analyse issues raised with him/her by Councillor, Officers, the public and other relevant stakeholders; and
- (d) compare practices in this Authority with those in other comparable authorities, or national examples of best practice.

15.02 Changes to the Constitution

Changes to the executive arrangements must be approved by the full Council.

Where the proposed change involves a change from a Leader and Cabinet model to a Mayoral form, the Council must take steps to consult with local electors and other interested persons and take the results of the consultation into account before taking a final decision on such a change. A change to a Mayoral form could not be implemented unless endorsed by a local referendum.

Colchester Borough Council

Article 16 – Suspension, Interpretation and Publication of the Constitution

INTRODUCTION

This Article ensures that the Articles of the Constitution may not be suspended. This provides certainty and stability to the fundamental aspects of the Council's governance. However, it does provide for Rules of Procedure to be suspended in certain circumstances.

16.01 Suspension of the Constitution

- (a) **Limit to suspension** The Articles of this Constitution may not be suspended. The Rules specified below may be suspended by the relevant meeting in accordance to the extent permitted within those Rules and the law.
- (b) **Procedure to suspend** A motion to the full Council to suspend any rules will not be moved without notice unless at least one half of the whole number of Councillors are present. For all other meetings, no rules shall be suspended by the meeting unless at least one half of the members of the meeting are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.
- (c) **Rules capable of suspension** The following Rules may be suspended in accordance with Article 16.01:
- Council Procedure Rules
 - Cabinet Procedure Rules
 - Meetings General Procedure Rules
 - Overview & Scrutiny Procedure Rules
 - Standards Committee Procedure Rules
 - Planning Committee Procedure Rules
 - Licensing Committee Procedure Rules
 - Accounts and Regulatory Committee Procedure Rules

16.02 Interpretation

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

16.03 Keeping the Constitution up to date

The Council has delegated the power under Section 37 of the Local Government Act 2000 to prepare and keep up to date the Constitution to the Monitoring Officer who shall make appropriate arrangements to ensure the Constitution is kept up to date and is made available in accordance with paragraph 16.04 below.

16.04 Publication

- (a) The Proper Officer will give a printed copy of this Constitution to each Councillor following that individual's declaration of acceptance of office upon the Councillor first being elected to the Council.
- (b) The Proper Officer will ensure that copies of this Constitution are available for inspection at the Council's offices. Publicity will be provided at libraries and other appropriate locations confirming where the Constitution can be viewed. Copies of the Constitution may be purchased by members of the local press and the public on payment of a reasonable fee to be determined by the Council.
- (c) The Constitution is published on the Council's website at www.colchester.gov.uk and the Council's Intranet known as "The Hub".

Council Procedure Rules

INTRODUCTION

The Council is required by law to have procedural rules that govern proceedings at meetings of the Council.

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Council Procedure Rules

1. Meetings of the Council

- (1) The Annual Meeting of the Council shall be held on a day in May to be determined by the Cabinet.
- (2) Other meetings of the Council shall be held at intervals of approximately eight weeks on Wednesdays commencing at 6pm or upon such other day or at such other hour as the Cabinet may determine.
- (3) The Proper Officer shall summon meetings of the Council.
- (4) The summons to an extraordinary meeting shall set out the business to be considered and no business other than that set out in the summons shall be considered at that meeting.

2. Order of Business at the Annual Meeting of the Council

The order of business at the Annual Meeting of the Council shall be:

1. To elect the Mayor;
2. To deal with any business required by law to be done before any other business;
3. To approve as a correct record the minutes of the last meeting of the Council;
4. To deal with any other business expressly required by law to be done;
5. To elect the Deputy Mayor;
6. To give a vote of thanks to the retiring Mayor;
7. Participation by the public (Have Your Say!) (Reconvened meeting only);
8. To appoint the Leader of the Council (only in the year where the Leader's term of office expires)
9. To receive notification from the Leader of the Council (only in the year where the Leader's term of office expires) of:
 - (a) the appointment of the Deputy Leader
 - (b) the appointments to the Cabinet and the extent of their delegated authorities
10. To appoint the Panels and Committees;
11. To give a vote of thanks to former Councillors;

12. Other business, if any, specified in the summons;
13. Other business, if any, not specified in the summons which by reasons of special circumstances, the Mayor determines should be considered at the meeting as a matter of urgency;

unless in the exercise of absolute discretion, the Mayor shall direct otherwise.

3. The Mayor and the Deputy Mayor

The Mayor and Deputy Mayor shall be elected annually by the Council from amongst the Councillors. If the Mayor or Deputy Mayor resign they shall continue in office until their successors are elected. If the Mayor or Deputy Mayor cease to be qualified, become disqualified or are removed from office, the Council shall elect a successor to hold office until the next Annual Meeting.

4. Chairman of Meetings of the Council

The Mayor shall, if present, take the Chair at meetings of the Council. In the absence of the Mayor, the Deputy Mayor shall take the Chair. In the absence of both the Mayor and the Deputy Mayor, a Chairman for the meeting shall be elected by the Council from amongst the Councillors present. Any power or duty of the Mayor in relation to the conduct of a meeting may be exercised by the person presiding at the meeting.

5. Appointment of the Leader of the Council, Panels and Committees

- (1) The Council shall, at the appropriate Annual Meeting, elect the Leader of the Council from amongst the Councillors. If the Leader of the Council resigns he/she shall continue in office until a successor is elected by the Council. If the Leader of the Council, ceases to be qualified, becomes disqualified or is removed from office, the Council shall elect a successor.
- (2) The Council shall, at the Annual Meeting, appoint such Panels and Committees as it is required to appoint by or under any statute or otherwise as it thinks fit and may, at any time, appoint such other Panels and Committees as are necessary to carry out the work of the Council but, subject to any statutory provision in that behalf:
 1. shall not appoint any member of a Panel or a Committee so as to hold office later than the next Annual Meeting of the Council.
 2. casual vacancies which arise on any Panel or any Committee shall be filled by the Cabinet as it, in its discretion, thinks fit subject to the requirements for achieving a political balance of members on the Panels and Committees.

6. Public Participation at all Public Meetings (Have Your Say!)

- (1) Any member of the public may ask a question or address a meeting of the Council on a matter which is on the agenda for the meeting or is within the terms of reference of the Council except in cases where the

Council is acting in a quasi-judicial capacity or similar or in relation to planning applications, subject to the procedure set out below.

- (2) Subject to the absolute discretion of the Mayor to extend or limit the time available for public participation, a period of up to fifteen minutes shall be available at the start of a meeting for public participation on issues within the remit of the meeting not otherwise appearing on the agenda for the meeting.
- (3) Where public participation relates to an item on the agenda for the meeting, the Mayor shall invite the participation immediately prior to the consideration of the item by the meeting. The amount of time afforded to public participation on any single item shall be at the absolute discretion of the Mayor but should not normally exceed fifteen minutes.
- (4) At the absolute discretion of the Mayor the order of business for the meeting may be changed for the convenience of the public who wish to participate.
- (5) A member of the public may ask questions or make a statement for a period not exceeding three minutes. When a speaker has one minute of the allotted time remaining, a bell will be rung. At the end of the period of time, the bell will be rung again and the speaker will resume his/her seat whether or not the speech has been concluded.
- (6) An answer to a question posed by a member of the public may take the form of:-
 1. a direct oral answer; or
 2. where the desired information is contained in a publication of the Council, a reference to that publication; or
 3. where the reply to the question cannot conveniently be given orally, a written answer which will be reported to a future meeting.
- (7) In the exercise of absolute discretion, the Mayor may disallow or terminate any public participation which is scurrilous, vexatious, improper, irrelevant or otherwise objectionable.
- (8) At the absolute discretion of the Mayor, one question may be asked of the participant by a Councillor and the participant may give an answer or decline to do so. If an answer is given, the participant will have a period not exceeding one minute in which to give it.
- (9) Public participation at meetings must be made orally at the meeting. Written statements may not be submitted instead of personal attendance and documents including photographs may not be circulated by a member of the public participating in the meeting, except for a petition which may be presented to the Mayor.

7. Quorum for all Meetings of the Council

- (1) A quorum is one quarter of the total membership of the Council.

- (2) If during any meeting of the Council the Mayor, after counting the number of Councillors present, declares that there is not a quorum present, the meeting shall stand adjourned.
- (3) The consideration of any business not transacted shall be adjourned to a time fixed by the Mayor at the time the meeting is adjourned or if a time is not fixed by the Mayor, to the next ordinary meeting of the Council.

8. Agenda and Order of Business at Ordinary Meetings of the Council

- (1) The agenda and order of business for every ordinary meeting of the Council will be determined by the Proper Officer in consultation with the Mayor or in his absence the Deputy Mayor:
- (2) The order of business may be altered at the meeting;
- (3) Business at every ordinary meeting of the Council will consist of:
 1. The election of a Chairman for the meeting if the Mayor and Deputy Mayor are both absent;
 2. Prayers at the discretion of the Mayor;
 3. Participation by the public (Have Your Say!);
 4. To approve as a correct record, the Minutes of the last meeting of the Council;
 5. Mayor's announcements;
 6. To receive declarations of Members Personal Interests;
 7. To receive declarations of Members Prejudicial Interests;
 8. To dispose of business (if any) remaining from the last meeting;
 9. To receive matters (if any) referred under the Call-In Procedure;
 10. To receive recommendations/resolutions from the Cabinet, Panels and Committees;
 11. Debate on an issue concerning the Borough which has been previously agreed by the Group Leaders;
 12. To receive motions the subject matter of which comprise an executive function in the order in which notice has been received;
 13. To receive motions the subject matter of which comprise a non-executive function in the order in which notice has been received;
 14. Questions from Councillors to the Leader of the Council, Cabinet Members and Chairmen (or in their absence Deputy Chairman)

of Panels and Committees and replies given;

15. To note schedule of decisions taken by Portfolio Holders under delegated powers since the last meeting of the Council
16. Other business, if any, specified in the summons;
17. Other business, if any, not specified in the summons which by reason of special circumstances, the Mayor determines should be considered at the meeting as a matter of urgency;

unless in the exercise of absolute discretion, the Mayor shall direct otherwise.

9. Members' Interests

Personal Interests

A Councillor has a personal interest in any business of the Council where either:

- (1) that business relates to or is likely to affect an interest in respect of which notification has been given to the Monitoring Officer and an entry made in the Register of Members Interests held by the Council in accordance with section 81(1) of the Local Government Act 2000, in the following categories –
 - (a) any body of which the Councillor is a member or in a position of general control or management and to which he/she is appointed or nominated by the Council;
 - (b) 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 the Councillor is a member or in a position of general control or management;
 - (c) any employment or business carried on by the Councillor;
 - (d) any person or body who employs or has appointed the Councillor;
 - (e) any person or body, other than a relevant authority, who has made a payment to the Councillor in respect of his/her election or any expenses incurred by the Councillor in carrying out his/her duties;
 - (f) any person or body who has a place of business or land in the Borough of Colchester, and in which a Councillor has a beneficial interest in a class of securities of that person or body that exceeds

the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

- (g) any contract for goods, services or works made between the Council and a Councillor or a firm in which he/she is a partner, a company of which he/she is a remunerated director, or a person or body of the description specified in paragraph (f) above;
 - (h) the interests of any person from whom a Councillor has received a gift or hospitality with an estimated value of at least £25;
 - (i) any land in the Borough of Colchester in which a Councillor has a beneficial interest;
 - (j) any land where the landlord is the Council and a Councillor is, or a firm in which he/she is a partner, a company of which he/she is a remunerated director, or a person or body of the description specified in paragraph (f) above is, the tenant;
 - (k) any land in the Borough of Colchester for which a Councillor has a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (2) a decision in relation to that business might reasonably be regarded as affecting the Councillors well-being or financial position or the well-being or financial position of a member of the Councillors family or any person with whom the Councillor has a close personal association to a greater extent than other council tax payers, ratepayers, or inhabitants of the Ward affected by the decision, or
- (a) any person or body who employs or has appointed a member of the Councillors family or a person with whom the Councillor has a close personal association, any firm in which they are a partner, or a company of which they are directors;
 - (b) any person or body in whom a member of the Councillors family or any person with whom the Councillor has a close personal association has a beneficial interest in a class of securities exceeding the nominal value of £25,000

Disclosure of Personal Interests

- (3) Subject to paragraphs (4) to (9) below, where a Councillor has a personal interest in any business of the Council and the Councillor attends a meeting of the Council at which the business is considered, the Councillor must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (4) Where a Councillor has a personal interest in any business of the Council which relates to or is likely to affect a person described in paragraphs (1)(a) or (1)(b)(i) above, a Councillor needs only disclose to the meeting the existence and nature of that interest when he/she addresses the meeting on that business.

- (5) Where a Councillor has a personal interest in any business of the Council of the type mentioned in paragraph (1)(h) above, he/she need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- (6) Paragraph (3) above only applies where a Councillor is aware or ought reasonably to be aware of the existence of the personal interest.
- (7) Where a Councillor has a personal interest but, by virtue of paragraph 14 of the Members' Code of Conduct, sensitive information relating to it is not registered in the Council's register of members' interests, he/she must indicate to the meeting that he/she has a personal interest, but need not disclose the sensitive information to the meeting.
- (8) Subject to paragraph (13)(b) below, where a Councillor has a personal interest in any business of the Council and he/she has made an executive decision in relation to that business, he/she must ensure that any written statement of that decision records the existence and nature of that interest.
- (9) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Prejudicial Interests

- (10) Subject to paragraph (11), where a Councillor has a personal interest in any business of the Council he/she also has a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Councillor's judgement of the public interest.
- (11) A Councillor does not have a prejudicial interest in any business of the Council where that business—
 - (a) does not affect the Councillors financial position or the financial position of a person or body described in paragraph (1) above;
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to the Councillor or any person or body described in paragraph (1) above; or
 - (c) relates to the functions of the Council in respect of—
 - (i) housing, where a Councillor is a tenant of the Council provided that those functions do not relate particularly to his/her tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where the Councillor is a parent or guardian of a child in full time education, or is a parent governor of a school, unless it relates particularly to the school which the child attends;

- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the Councillor is in receipt of, or is entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to Councillors;
- (v) any ceremonial honour given to Councillors; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

Strategic Overview and Scrutiny Panel and Finance and Audit Scrutiny Panel

- (12) A Councillor also has a prejudicial interest in any business before a meeting of the Strategic Overview and Scrutiny Panel or Finance and Audit Scrutiny Panel or a Sub-Committee of either where—
 - (a) that business relates to a decision made (whether implemented or not) or action taken by the Cabinet or another of the Council's committees, sub-committees, joint committees or joint sub-committees; and
 - (b) at the time the decision was made or action was taken, the Councillor was a member of the Cabinet, committee, sub-committee, joint committee or joint sub-committee mentioned in sub-paragraph (a) above and he/she were present when that decision was made or action was taken.

Participation in Relation to Disclosed Interests

- (13) Subject to paragraph (14) below, where a Councillor has a prejudicial interest in any business of the Council—
 - (a) he/she must withdraw from the room or chamber where a meeting considering the business is being held—
 - (i) in a case where paragraph (14) below applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting; unless the Councillor has obtained a dispensation from the Standards Committee;
 - (b) must not exercise executive functions in relation to that business; and
 - (c) must not seek improperly to influence a decision about that business.
- (14) Where a Councillor has a prejudicial interest in any business of the Council, he/she may attend a meeting (including a meeting of the Strategic Overview and Scrutiny Panel or Finance and Audit Scrutiny

Panel or a sub-committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

10. Questions to the Leader, Cabinet Members and Chairmen of Panels and Committees

- (1) There shall be a period not exceeding 60 minutes during which Pre-notified Questions and other questions may be put by Councillors to the Leader of the Council or to Cabinet Members on any aspect of matters within a portfolio or Chairmen of Panels and Committees (or in their absence the Deputy Chairman) on any aspect of matters within the Panels or Committees remit. Pre-notified Questions will be dealt with first and any Pre-notified Questions that are not dealt with during the time allocated will receive a written reply.
- (2) A Councillor may, provided two clear days' notice in writing has been given to the Proper Officer, ask up to three questions of the Leader of the Council, Cabinet Members or Chairmen of Panels and Committees (a Pre-notified Question).
- (3) Following the conclusion of Pre-notified Questions, each Councillor may ask no more than one oral question of the Leader of the Council and of each Cabinet Member and Chairmen of Panels and Committees. In the exercise of absolute discretion, the Mayor may disallow any question which is scurrilous, vexatious, improper, irrelevant or otherwise objectionable.
- (4) At the expiration of 60 minutes, any questions which Councillors have indicated to the Mayor a desire to ask, but which have not been asked shall be deemed to have lapsed and shall not be carried forward to any future meeting.
- (5) Every question asked shall be put and answered without discussion but the person to whom a question has been put may decline to answer.
- (6) An answer may take the form of:-
 1. a direct oral answer; or
 2. where the desired information is contained in a publication of the Council, a reference to that publication; or
 3. where the reply to the question cannot conveniently be given orally, a written answer circulated to Councillors with the Minutes of the meetings at which the question has been asked.
- (7) Where either a Pre-notified Question or an oral question asked has been put and answered, the Councillor who has asked the question may ask one supplementary question of the Leader of the Council, appropriate Cabinet Member or Chairmen of Panels and Committees who has answered the question, provided the supplementary question is on a point arising from the Leader of the Council's, appropriate Cabinet Member's or Chairmen of Panels and Committees' answer. The Leader of the Council, appropriate Cabinet Member or Chairmen

of Panels and Committees may decline to answer a supplementary question or may answer it in one of the forms mentioned in the previous paragraph.

11. Notices of Motion

- (1) Except for a Motion that may be proposed without notice, notice of every motion shall be either given in writing, signed by the Councillor giving it, or electronically via e-mail and delivered to the Proper Officer at least five clear working days before the meeting to which it is intended to be submitted.

The Monitoring Officer in consultation with the Proper Officer shall determine whether the subject matter of the motion comprises an executive or non-executive function or an executive decision. The Proper Officer shall rule out of order:

- (a) any motion the wording of which comprises an executive decision; or
- (b) any motion that is not relevant to some matter in relation to which the Council has powers or duties or which affects the Borough.

(The Proper Officer for this purpose being the Democratic Services Manager.)

(NB: All executive decisions are required by law to be taken by the Cabinet. The Council may, however, advise the Cabinet of its view on a matter which amounts to an executive decision.)

- (2) Any motion the subject matter of which relates to an executive function shall, on being formally proposed by the councillor moving the motion set out on the Agenda in their name but without speaking upon it, stand referred without discussion to the Cabinet for consideration and determination.
- (3) Any motion the subject matter of which comprises a non-executive function shall be considered and determined by the Council.
- (4) Every motion of which notice has been given shall be relevant to some matter in relation to which the Council has powers or duties or which affects the Borough.

12. Motions and Amendments which may be proposed without Notice

- (1) The following motions and amendments may be proposed without notice:-
 1. Appointment of a Chairman of the meeting at which the motion is made.
 2. Motions relating to the accuracy of the Minutes, closure, adjournments, order of business, next business or disorderly conduct.

3. Remission to the Cabinet, a Panel or a Committee or that the matter be considered forthwith.
4. Appointment of, or changes to, the membership of a Panel or Committee.
5. Adoption of reports and recommendations of the Cabinet, Panels, Committees or Officers and any consequent resolutions.
6. That leave be given to withdraw a motion.
7. Secondary amendments to motions.
8. Extending the time limit for speeches.
9. That an item of business specified in the summons has precedence.
10. Suspending the Council Procedure Rules.
11. Motion under Section 100 A(4) of the Local Government Act 1972 (as amended) to exclude the public (including the press) from the meeting to prevent the disclosure to them of exempt information as defined in the Act.

13. Previous Determinations by the Council

- (1) No matter on which a decision has been reached within the previous six months by the Council, shall be further considered unless the Leader of the Council or the Proper Officer is satisfied that circumstances reasonably justify the matter being re-opened.
- (2) Motions relating to business considered previously by the Council shall be subject to the following requirements:
 1. No motion to rescind any resolution of the Council passed within the preceding 6 months shall be proposed unless the notice bears the names of at least 15 Councillors.
 2. No motion or amendment to the same or similar effect as any motion or amendment which has been proposed and lost at a Council meeting within the preceding 6 months shall be proposed unless the notice bears the names of at least 15 Councillors.

The above shall not apply to motions proposed in pursuance of a recommendation of the Cabinet.

14. Rules of Debate at all meetings of the Council

Speaking

- (1) A Councillor shall stand when speaking and shall address the Mayor. If two or more Councillors rise, the Mayor shall call on one to speak. The other Councillors shall remain seated unless rising to a point of order or in personal explanation.

- (2) Councillors shall, in speaking to or of each other, employ the title of "Mayor", "Deputy Mayor" or "Councillor" as the case may be.
- (3) A Councillor's speech shall be directed to the question under discussion or to a personal explanation or to a point of order. Speeches shall be addressed to the Mayor. No speech shall exceed the following time limits except by consent of the Council.
 1. Report of the Leader of the Council and of Cabinet Members – 10 minutes
 2. Proposer of a Motion – 10 minutes
 3. Proposer of a main amendment – 10 minutes
 4. Reply to discussion on a motion or main amendment – 10 minutes
 5. Reply to debate by proposer of a main amendment – 5 minutes
 6. Any other case – 5 minutes.

When a speaker has one minute of the allotted time remaining, a bell will be rung. At the end of the period of time, the bell will be rung again and the speaker will resume his/her seat whether or not he/she has concluded the speech.

- (4) Whenever the Mayor rises during a debate, a Councillor then speaking or standing shall be seated and the Council shall be silent.

Recommendations made to Council

- (5) Recommendations made to the Council by the Cabinet shall be proposed by the Leader of the Council or other appropriate Cabinet Member. Matters which are referred to the Council pursuant to the Call-In Procedure shall be the subject of a recommendation proposed by the Leader of the Council or in the absence of the Leader by an appropriate Cabinet Member.

Recommendations of the Cabinet shall be proposed collectively with the exception of:-

1. Recommendations in respect of which a main amendment has been submitted.
2. Where the Councillor who would otherwise propose the recommendations has declared a Members Interest.
3. Where a Councillor declines to propose a recommendation, it may be proposed by another Councillor who shall have the same rights to speak as the proposer of a recommendation.
4. Recommendations upon which in the opinion of the proposer there are grounds for reconsideration by the Cabinet on the basis of new information which has become available and which

was not available when the Cabinet considered the matter. The proposer shall explain why the new information is sufficient for the matter to be reconsidered whereupon the recommendation shall be referred back without further discussion or vote unless it is proposed that the recommendation be considered by the Council forthwith and without further discussion the Council so resolves.

Amendments

- (6) If a proposed amendment is submitted in writing or electronically via e-mail to the Proper Officer not later than by 10am on the day before the meeting, it shall be considered to be a main amendment. All other amendments shall be considered to be secondary amendments.

[NB. a main amendment is subject to full debate by the Council. A secondary amendment may only be debated by the Council if the meeting agrees.]

- (7) No Councillor other than the proposer of the amendment or of the original motion shall be entitled to speak on a secondary amendment provided that any Councillor may request the Mayor and, if the Council agree, a secondary amendment may be treated as a main amendment.

- (8) Any Cabinet recommendation for which a main amendment has been submitted shall be proposed separately by the Leader of the Council or other appropriate Cabinet Member after the other recommendations of the Cabinet have been dealt with.

- (9) An amendment shall be relevant to the motion and shall be either:-

1. to leave out words; or
2. to leave out words and insert or add others; or
3. to insert or add words;
4. to refer the Minute back to the Cabinet for further consideration;

but such omission, insertion or addition of words shall not have the effect of introducing a new proposal or of negating the motion before the Council.

- (10) Immediately after an amendment has been proposed, the Mayor shall ask the proposer of the original motion if the amendment is accepted and if the proposer and the Council signify acceptance, the original motion shall be deemed amended accordingly and be debated as the substantive motion.

- (11) A motion and any amendments relating thereto shall be moved individually and shall be debated (but not voted upon) together. All amendments (subject to rule 14 (10)) shall be voted upon in the order that they were received.

- (12) If the amendment is lost, other amendments not substantially to the same effect as the amendment already lost, may be proposed on the original motion. If an amendment is carried, the motion as amended shall take the place of the original motion and shall become the

substantive motion upon which any further amendment may be proposed.

- (13) No Councillor shall speak more than once on the same motion or amendment.
- (14) A motion or amendment may be withdrawn by the proposer with the consent of the Council which shall be signified without discussion and, after the proposer has sought permission to withdraw the motion or amendment, no other Councillor shall speak upon it unless such permission shall have been refused.

Alterations of Motions/Amendments

- (15) The proposer of a motion may, with the consent of the Council, signified without discussion, alter that motion.

Replies to Motions/Amendments

- (16) The proposer of a motion has a right of reply at the close of the debate on the motion, immediately before it is put to the vote. If an amendment is proposed, the proposer of the original motion shall also have a right of reply at the close of the debate on the amendment and shall not otherwise speak on the amendment. The proposer of an amendment shall have a right of reply to the debate on that amendment, which shall not exceed 5 minutes and which shall be exercised immediately prior to the right of reply of the proposer of the motion.

Points of Order and Personal Explanation

- (17) A Councillor 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 these Rules, or
 - an alleged breach of a statutory provision

The Councillor rising on a point of order shall specify the Rule or the statutory provision and the manner in which the Councillor considers it to have been breached.

A Councillor rising in personal explanation shall be confined to some material part of a former speech by the Councillor which may appear to have been misunderstood in the present debate.

- (18) The ruling of the Mayor on a point of order or on the admissibility of a personal explanation shall be final and binding and shall not be open to discussion.

Extraordinary Meetings of the Council

- (19) Where an extraordinary meeting of the Council has been convened in accordance with Paragraph 3 of Part 1 of the 12th Schedule to the Local Government Act 1972 (meeting called by the Mayor) for the purpose of considering a motion or recommendation from individual Councillors, the rules of debate applicable to main amendments shall apply to the motion or recommendation.

15. Voting

- (1) Subject to Rule 15(2) - (4) below, every determination by the Council shall be by a show of hands.
- (2) On the request of any Councillor supported by two other Councillors, the voting on any determination by the Council shall be recorded. The record shall show how each Councillor present and voting, voted and also the names of any Councillors present but not voting. The demand for the vote to be recorded must be made before the vote is taken. A vote so recorded shall be called a "named vote".
- (3) On the request of any Councillor supported by two other Councillors, the number of votes cast for and against any determination, together with the number of Councillors present but not voting, shall be recorded. The demand for the vote to be recorded must be made before the vote is taken. A vote so recorded shall be called a "recorded vote".
- (4) Where immediately after a vote is taken and any Councillor so requires there shall be recorded in the minutes of the meeting whether that Councillor voted for or against the determination or whether that Councillor abstained from voting.
- (5) When any position or positions is/are to be filled by the Council, nominations shall be sought and if, after nominations have closed there are more nominees than positions to be filled, a vote shall be taken, each Councillor having one vote only. The nominee(s) with the greatest number of votes shall be appointed to the position(s).
- (6) At the close of any speech two Councillors may propose and second without comment, "that the vote be taken", which motion, if accepted by the Mayor, shall be voted upon immediately, without discussion. If the motion is carried, the Mayor shall put the question under consideration provided that such closure shall not prevent a proposer of a motion having the right of reply or preventing the moving of a motion or main amendment.

16. Disorderly Conduct

- (1) If at a meeting of the Council any Councillor, in the opinion of the Mayor notified to the Council, is guilty of misconduct by persistently disregarding the ruling of the Mayor or by behaving irregularly, improperly or offensively or by wilfully obstructing the business of the Council, the Mayor or any Councillor may propose:-

- that the Councillor named may not speak further on that item or for the duration of the meeting ;or
- that the Councillor named be excluded from the meeting forthwith.

The motion, if seconded, shall be put and determined without discussion.

- (2) If a member of the public interrupts the proceedings at any meeting, the Mayor shall issue a warning. If the member of the public continues the interruption the Mayor shall order the removal of the member of the public from the Council Chamber. In the case of general disturbance in any part of the Chamber open to the public, the Mayor shall order that part to be cleared.
- (3) In the event of general disturbance which, in the opinion of the Mayor renders the due and orderly dispatch of business impossible, the Mayor, may without question, adjourn the meeting of the Council for such period as the Mayor in the exercise of absolute discretion shall consider expedient

17. Removal from Office

The Mayor, the Deputy Mayor, the Leader of the Council, Chairmen of Panels, Committees and Sub-Committees, members of Panels, Committees and Sub-Committees and any Councillor appointed to an office or to membership of any body, may be removed from such office or membership by resolution of the Council following a vote upon which at least two thirds of the Council (ie 40 Councillors or more) have voted in favour.

18. Matters of Urgency

- (1) Where the Proper Officer considers that a matter of urgency has arisen in connection with a non-executive function and requires a decision before the next regular meeting of the Council, the Proper Officer after consultation with the Chairman of the Overview and Scrutiny Committee, or in whose absence, the Deputy Chairman of the Overview and Scrutiny Committee, shall have the power to act and shall report the action to the next ordinary meeting of the Council; provided that no action shall be taken under this provision in any matter which cannot be delegated by the Council.
- (2) Where in the opinion of the Chairman of the Overview and Scrutiny Committee a matter has arisen in connection with a non executive function which cannot reasonably be postponed until the next ordinary meeting of the Council, then, if the Chairman of the Overview and Scrutiny Committee and the Proper Officer following consultation with Group Leaders concur, a meeting of the council shall be held and such a meeting shall have power to reach a decision in the matter provided it is on which the Council would, in law, have power to decide.

19. Adjournment of Discussions and Closure of Council Meetings

- (1) At the conclusion of the first speech ending after 9pm the Mayor shall adjourn the meeting for fifteen minutes unless, in the opinion of the Mayor, the meeting is likely to conclude within a short time and at the conclusion of the first speech ending after 10pm, the Mayor shall invite Councillors to consider whether the meeting is to continue or be adjourned and any motion thereon shall be voted on without formal discussion.
- (2) When any Councillor is called by the Mayor to speak that Councillor may propose, without discussion, the adjournment of the meeting and no amendment shall be proposed to it unless it relates to the time of adjournment, and it shall be voted on without discussion.

20. Conduct of Meetings

- (1) The Proper Officer or nominee may, at any time, advise the Council on a matter of procedure.
- (2) No Councillor shall leave a meeting during a sitting of the Council without notice to the Mayor.
- (3) There shall be no smoking at Council meetings.
- (4) There shall be no filming or tape recording of Council meetings without the consent of the meeting.
- (5) All mobile telephones shall be switched off for the duration of the meeting.

21. Interpretation

Following consultation with the Proper Officer, the ruling of the Mayor as to the construction or application of any of these Rules, or as to any proceedings of the Council, shall not be challenged at any meeting of the Council.

Responsibility for Functions

Section 13 of the Local Government Act 2000 provides that all the functions of the authority shall be functions of the Cabinet except in so far as they are reserved to the Council by the Local Government Act 2000, by subsequent legislation or by regulations made under the Local Government Act 2000. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) set out those functions:

- (a) which must not be discharged by the Cabinet, (eg determining of planning applications)
- (b) which may be the responsibility of the Cabinet, (eg service of an abatement notice for statutory nuisance);
- (c) which may not be the sole responsibility of the Cabinet (eg Community Strategy); and
- (d) circumstances in which functions which would otherwise be functions of the Cabinet fall to be discharged other than by the Cabinet (eg where the Cabinet is taking a decision concerning the budget and wish to make a decision contrary to the approved budget, then this is a matter for the Council).

Accordingly, the Council only has a discretion as to the allocation of functions between the Council ("Council functions") and the Cabinet ("Cabinet functions") in respect of those functions which fall within categories (b) and (c) above.

Council functions shall therefore comprise:

- (a) those functions which are reserved as Council functions by the Local Government Act 2000 and by subsequent legislation;
- (b) those functions which are reserved as Council functions by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and subsequent regulations under the Local Government Act 2000;
- (c) of those functions set out in Schedule 2 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000:
 - (i) under paragraph 2 of that Schedule, any appeal in respect of a decision which is a Council function shall be a Council function; and
 - (ii) under paragraph 19 of that Schedule, the appointment of any individual to any office or body, or to any committee or sub-committee of any body, and the revocation of such appointment shall be a Council function except to the extent that the opportunity for such appointment arises at such date that it is not convenient to defer any such appointment until the next Annual meeting of the Council

and those plans and strategies set out in Schedule 3 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 together with such other plans and strategies as the Council shall identify from time to time for this purpose.

The Council may make arrangements under Section 101 of the Local Government Act 1972 for the discharge of any of its functions by:

- (a) a Committee;
- (b) a Sub-Committee
- (c) a Joint Committee
- (d) another local authority, or
- (e) an officer.

Such arrangements are set out in Part 2 of this Constitution and in the Scheme of Delegation of Council Functions to Officers.

The Leader may make arrangements for the discharge of executive functions by:

- (a) the Cabinet (as a body);
- (b) an individual member of the Cabinet;
- (c) a Committee of the Cabinet; or
- (d) an Officer.

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 specify which functions are not to be the responsibility of the executive ie the Cabinet, which may (but need not) be the responsibility of the Cabinet (the 'local choice functions') and which are to some extent the responsibility of the Cabinet. All other functions not so specified are to be the responsibility of the Cabinet.

ALLOCATION OF LOCAL CHOICE FUNCTIONS

Function	Decision Making Body	Membership	Delegation of functions See Terms of Reference/Officer Delegation Scheme for terms and limitations of delegations.
1. Functions under a local Act (other than one specified or referred to in Reg 2 or Schedule 1 of the Regulations 2000)	Cabinet	8 Councillors	
2. Determination of appeals against dismissal by employees	Accounts and Regulatory Committee	3 of 10 Councillors	
3. Any function relating to contaminated land ¹	Cabinet	8 Councillors	Portfolio Holder for Planning and Sustainability
4. The control of pollution or the management of air quality ²	Cabinet	8 Councillors	Portfolio Holder for Street and Waste Services
5. The service of an abatement notice in respect of a statutory nuisance ³	Cabinet	8 Councillors	Portfolio Holder for Street and Waste Services
6. The passing of a resolution that Schedule 2 of the Noise	Cabinet	8 Councillors	Portfolio Holder for Street and Waste Services

¹ Part IIA Environmental Protection Act 1990 and subordinate legislation

² Pollution Prevention and Control Act 1999; Part IV Environment Act 1995; Part I Environmental Protection Act 1990; Clean Air Act 1993

³ s80(I) Environmental Protection Act 1990

Function	Decision Making Body	Membership	Delegation of functions See Terms of Reference/Officer Delegation Scheme for terms and limitations of delegations.
and Statutory Nuisance Act 1993 should apply in the authority's area ⁴			
7. The inspection of the authority's area to detect any statutory nuisance ⁵	Cabinet	8 Councillors	Portfolio Holder for Street and Waste Services
8. The investigation of any complaint as to the existence of a statutory nuisance ⁶	Cabinet	8 Councillors	Portfolio Holder for Street and Waste Services
9. Obtaining of information as to interests in land ⁷	Planning Committee	12 Councillors	Head of Environmental and Protective Services
10. Obtaining of particulars of persons interested in land ⁸	Cabinet	8 Councillors	All Heads of Service in pursuance of their delegated authority
11. The making of arrangements for the execution of highways works ⁹	Cabinet	8 Councillors	Portfolio Holder for Street and Waste Services
12. The appointment of any individual a) to any office other than an office in which he is employed by the authority b) to any body other than— i) the authority; ii) a joint committee of two or more authorities; or c) to any committee or sub committee of such a body and the revocation of any such appointment	Cabinet	8 Councillors	Portfolio Holder for Strategy and Performance

⁴ s8 Noise and Statutory Nuisance Act 1993

⁵ s79 Environmental Protection Act 1990

⁶ s79 Environmental Protection Act 1990

⁷ s330 Town and Country Planning Act 1990

⁸ s16 Local Government (Miscellaneous Provisions) Act 1976

⁹ s278 Highways Act 1980

RESPONSIBILITY FOR COUNCIL FUNCTIONS

Committee	Membership	Functions as set out in Schedule 1 of the Functions Regulations ¹⁰	Delegation of functions
Council	60 Councillors	<p>Functions relating to elections</p> <p>The appointment of the electoral registration officer, the appointment of the returning officer for local elections and as to polling districts and local election pilot schemes¹¹</p> <ul style="list-style-type: none"> • assignment of officers to the Electoral Registration Officer • assistance at European Parliament elections • the holding of elections/the filling of certain vacancies, • the declaration of vacancies, and • notices of casual vacancies • fees for and conditions of supply of elections documents <p>All other functions relating to elections¹²</p> <p>Functions relating to changing governance arrangements¹³</p>	<p>The Chief Executive shall be the Electoral Registration Officer for the Council and the Returning Officer for local elections.</p> <p>Chief Executive</p>
Council	60 Councillors	<p>Power to change the name of the district or parish¹⁴</p> <p>Power to confer title of honorary alderman or to admit to be an honorary freeman of the borough¹⁵</p> <p>Power to make, amend, revoke, enact or enforce byelaws¹⁶</p> <p>Local or personal Bills¹⁷ power to promote or oppose local Bills in Parliament</p> <p>Functions relating to local government pensions¹⁸</p>	Chief Finance Officer

¹⁰ Local Authorities (Functions and Responsibilities) Regulations 2000 (as amended)

¹¹ paras 1, 6, 8, 9 and 17 of Section D

¹² Section D

¹³ Section EA

¹⁴ paras 1, 2 of Section E

¹⁵ para 3 of Section E

¹⁶ Section F

¹⁷ Section G

¹⁸ para 1 of Section H

Committee	Membership	Functions as set out in Schedule 1 of the Functions Regulations ¹⁰	Delegation of functions
Council	60 Councillors	<p>Proper Officers¹⁹ Power to appoint officers for particular purposes (appointment of "Proper Officers").</p> <p>Head of Paid Service²⁰ Duty to designate officer as the head of the authority's paid service, and to provide staff, etc.</p> <p>Monitoring Officer²¹ Duty to designate officer as the monitoring officer, and to provide staff, etc.</p> <p>Chief Finance Officer²² Duty to designate officer as the Chief Finance Officer, and to provide staff, etc.</p> <p>Powers relating to Overview and Scrutiny Committees (voting rights of co-opted members)²³</p>	Executive Directors / Heads of Service / Monitoring Officer
Council	60 Councillors	<p>Administration of Financial Affairs Duty to make arrangements for proper administration of financial affairs etc²⁴</p> <p>Procedure Rules Power to make and amend Procedure Rules and Contract Procedure Rules²⁵</p>	<p>Chief Finance Officer</p> <p>Chief Finance Officer in relation to Financial Procedure Rules</p> <p>Monitoring Officer in respect of any other Rules</p>
Council	60 Councillors	<p>Appointment of Staff²⁶ (Below Head of Service level). Power to appoint staff, and to determine the terms and conditions on which they hold office (including procedures for their dismissal).</p>	All Executive Directors/Heads of Service in accordance with the Scheme of Delegation to Officers
Council	60 Councillors	<p>Maladministration Power to make payments or provide other benefits in cases of maladministration²⁷</p>	All Executive Directors/Heads of Service/Monitoring Officer in accordance with the Scheme of Delegation to Officers
Council	60 Councillors	<p>Designated Public Places Order²⁸ Power to make an order identifying a place as a designated public</p>	

¹⁹ para 40 of Section I

²⁰ para 43 of Section I

²¹ paras 44 and 44A of Section I

²² para 44 of Section I

²³ para 44B of Section I

²⁴ para 39 of Section I

²⁵ paras 36 and 38 of Section I

²⁶ para 37 of Section I

²⁷ para 48 of Section I

²⁸ Para 49 of Section I

Committee	Membership	Functions as set out in Schedule 1 of the Functions Regulations ¹⁰	Delegation of functions
		place for the purpose of Police powers in relation to alcohol consumption	
Appointments Committee	3 main political Group Leaders plus relevant Portfolio Holders	Appointment of Chief Executive, Executive Directors and recommendations regarding the appointment of Head of Paid Service. Appointment of staff at Head of Service level.	
Planning Committee	12 Councillors	<p>Planning, development control and conservation Functions relating to town and country planning, development control and conservation²⁹</p> <p>Highways use and regulation The exercise of powers relating to the regulation of the use of highways³⁰ (including footpaths and bridleways)³¹</p> <p>Tree Preservation and Hedgerows Functions relating to the preservation of trees and the protection of important hedgerows³²</p> <p>Powers relating to complaints about high hedges³³</p>	Refer to Scheme of Delegation to Officers contained at Part 3 of this Constitution
Accounts and Regulatory Committee	10 Councillors	<p>Statement of Accounts The duty to consider and approve the Council's Statement of Accounts under the Accounts and Audit Regulations³⁴</p> <p>Health and safety Functions relating to health and safety under any "relevant statutory provision" within the meaning of Part 1 of the Health and Safety at Work Act 1974, to the extent that those functions are discharged otherwise than in the Council's capacity as employer³⁵</p> <p>Safety at Sports Grounds Functions relating to safety of sports grounds³⁶</p>	

²⁹ paras 1 to 31 of Section A

³⁰ paras 46A, 47, 47A to 55 of Section B and 30A of Section I

³¹ paras 1 to 4 and 6, 7 of Section I

³² paras 46, 47 of Section I

³³ para 47A of Section I

³⁴ para 45 of Section I

³⁵ Section C

³⁶ paras 26 to 27 of Section B

Committee	Membership	Functions as set out in Schedule 1 of the Functions Regulations ¹⁰	Delegation of functions
Accounts and Regulatory Committee	3 of 10 Councillors	<p>Regulatory Matters</p> <p>Functions relating to Community Governance para EB</p> <p>Employment To hear and determine all appeals by employees relating to dismissal following the Council's Disciplinary Procedures</p>	
Licensing Committee	5 of 12 Councillors 3 out of 12 Councillors	<p>Taxi, gaming, entertainment, food and miscellaneous licensing</p> <p>Functions relating to licensing and registration³⁷</p> <p>Licensing Act 2003 Licensing Regime</p> <p>Functions relating to licensing³⁸</p>	Refer to Scheme of Delegation to Officers contained at Part 3 of this Constitution
Standards Committee	4 Councillors (other than the Leader and Cabinet Members), 5 Independent persons and 3 Parish Council representatives	<p>The promotion and maintenance of high standards of conduct within the Council To advise the Council on the adoption or revision of its Code of Conduct</p> <p>To monitor and advise the Council about the operation of its Code of Conduct in the light of best practice, changes in the law, guidance from the Standards Board and recommendations of case tribunals under Section 80 of the Local Government Act 2000</p> <p>Assistance to Councillors and co-opted external persons To ensure that all Councillors have access to training in all aspects of the Member Code of Conduct, that this training is actively promoted, and that Councillors and co-opted persons are aware of the standards expected under the Code.</p> <p>Other functions Functions relating to standards of conduct of Members under any relevant provision of, or regulations made under, the Local Government Act 2000</p>	
Local Development Framework Committee	9 Councillors (except those being members of the Planning Committee)	Local Development Framework Discharge of the non-executive functions	

³⁷ paras 1 to 21, 23 to 34, 39 to 46, 56 to 68, 71 of Section B and paras 42 and 49 of Section I

³⁸ para 14A of Section B

FUNCTIONS OF ADVISORY PANELS

The Council has created the Policy Review and Development Panel to advise Cabinet with the membership and Terms of Reference set out below:

Panel	Membership	Terms of Reference
Policy Review and Development Panel	7 Councillors and up to three (non voting) co-opted external persons.	<ol style="list-style-type: none"> <li data-bbox="651 338 1469 427">(1) To review strategies and policies at the request of the Cabinet either directly or by establishing Task and Finish Groups, and to make recommendations back to Cabinet for decision. <li data-bbox="651 461 1458 551">(2) To review issues at the request of a Portfolio Holder either directly or by establishing Task and Finish Groups and to make recommendations back to the Portfolio Holder for decision. <li data-bbox="651 584 1474 674">(3) To monitor progress of Task and Finish Groups and assess their final reports prior to their submission to either the Cabinet or the Portfolio Holder. <li data-bbox="651 707 1433 797">(4) To proactively identify issues that may require review and improvement and to seek Cabinet's agreement as to whether and how they should be examined.

Record of Decisions taken under Scheme of Delegation to Cabinet Members
1 February – 9 March 2011

Agenda item 12

Portfolio – Communities						
Date	Number	Report Title	Author	Decision	Result	
27/1/11	COM-016-10	Cycling in Lower Castle Park	Jane Thompson	To allow a consultation to take place on the proposal to allow cycling on the riverside path within the Lower Castle Park	Agreed 3/2/11	
10/2/11	COM-017-10	Consultation on the Public Health White Paper "Healthy lives, healthy people: Our strategy for public health in England"	Alison Woolnough	To approve the Council response to the Department of Health's consultation on the future of public health	Agreed 22/2/11	
1/3/11	COM-019-10	Agreement for Macmillan Cancer Support to fund Colchester Borough Council to provide a four year welfare rights service for people affected by cancer in North East Essex	Tamara Moreau	To approve the agreement for Macmillan Cancer Support to fund Colchester Borough Council to provide a four year welfare rights service for people affected by cancer in North East Essex	Agreed 8/3/11	

Portfolio - Customers			
Date	Number	Report Title	Result

**Record of Decisions taken under Scheme of Delegation to Cabinet Members
1 February – 9 March 2011**

Portfolio – Economic Development, Culture and Tourism					
Date	Number	Report Title	Author	Decision	Result

Portfolio – Housing and Community Safety					
Date	Number	Report Title	Author	Decision	Result
18/2/11	HOU-017-10	Transfer of HRA Land Ascott House and Gardens, Bardfield House and Friars Court	Matt Sterling	To approve to transfer the freehold of a part of Housing Revenue Account (HRA) land at Ascott House, Bardfield House and Friars Court, Colchester to Family Mosaic at nil cost	Agreed 8/3/11

Portfolio – Planning and Sustainability					
Date	Number	Report Title	Author	Decision	Result
07/02/11	PLA-010-10	Response to the Essex Local Transport Plan Consultation	Paul Wilkinson	To approve the Council's response to the Essex Local Transport Plan Consultation document 2011	Agreed 18/02/11
09/02/11	PLA-011-10	The Maltings, King Edwards Quay Development Brief	Beverley McClean	To approve the Design Brief for The Maltings, King Edward Quay and to adopt the Brief as a Guidance Note	Agreed 25/02/11

Record of Decisions taken under Scheme of Delegation to Cabinet Members 1 February – 9 March 2011

16/02/11	PLA-012-10	Sustainable Design and Construction Supplementary Planning Document	Shelley Blackaby	To agree that a revised version of the Sustainable Design and Construction Supplementary Planning Document is released for public consultation	Agreed 25/02/11
18/2/11	PLA-013-10	Minerals Development Document: Preferred Approach	Laura Chase	To agree Colchester Borough Council's consultation response to Essex County Council's Minerals Development Document Preferred Approach	Agreed 2/3/11

Portfolio – Resources and Diversity

Date	Number	Report Title	Author	Decision	Result
18/2/11	RES-012-10	Irrecoverable Debts over £5,000	Peter Evans	To approve the writing off of debts totalling £262,253.90 which have proved irrecoverable	Called-in 02/03/11. To be reviewed at Finance and Audit Scrutiny Panel 16 March 2011.
18/2/11	RES-013-10	Coriander Road Open Space, Tiptree. Land transfer to Tiptree Parish Council	Bob Penny	To agree the transfer of land from Colchester Borough Council to Tiptree Parish Council	Agreed 1/3/11
23/2/11	RES-014-10	Local Authority Mortgage Interest Rates	Peter Evans	To set the locally determined interest rate applicable to council mortgages for the period starting 1 April 2011	Agreed 8/3/11

**Record of Decisions taken under Scheme of Delegation to Cabinet Members
1 February – 9 March 2011**

Portfolio – Strategy and Performance					
Date	Number	Report Title	Author	Decision	Result

Portfolio – Street and Waste Services					
Date	Number	Report Title	Author	Decision	Result

22 February 2011

Report of	Head of Corporate Management	Author	Amanda Chidgey
Title	Honorary Alderman		 2227
Wards affected	Not Applicable		

This report gives details of a request from Councillor Hunt that former Councillor Hall be appointed an Honorary Alderman.

1. Decision(s) Required

- 1.1 The Committee is requested to consider a proposition that former Councillor Chris Hall be appointed an Honorary Alderman.
- 1.2 The Committee is further requested to consider approving the following recommendation to the Council:

“RECOMMENDED that –

- (i) A special meeting of the Council be convened for the purpose of passing the following resolution:

“That in pursuance of the provisions of Section 249 of the Local Government Act 1972, this Council confers the title of “Honorary Alderman” on former Councillor Christopher Basil Hall in recognition of his loyal and eminent service as a Member of the Council and its constituent authority”

- (ii) An illuminated transcript of the resolution be given to the former Councillor concerned.”

2. Alternative Options

- 2.1 The Committee has discretion as to how it wishes to respond to the proposal from Councillor Hunt.

3. Supporting Information

- 3.1 Making recommendations regarding the conferment of the title of Honorary Alderman currently falls within the terms of reference of this Committee.
- 3.2 At the Council meeting held on 20 February 2008, this Council’s eligibility criteria for the conferment of the title of Honorary Alderman was determined as follows:

“Former Councillors who have either acquired at least 20 years service as Members of the Council or who have held the office of Mayor of the Borough.”
- 3.3 Councillor Hall has served on the Council for 23 years, from 7 May 1987 to 6 May 2010 and was Mayor in 2003/04.

4. Publicity Considerations

- 4.1 Should the proposal from Councillor Hunt be approved, arrangements will be made for a press release to be published at the appropriate time.

5. Financial Implications

- 5.1 Set out below are the required arrangements and associated likely cost implications:
- a special meeting of the Council (no significant cost);
 - the presentation of a framed, illuminated transcript of the Council Resolution (£570);
 - The Council's current stock of serviceable robes for use by Aldermen on civic occasions is considered to be adequate and it is not currently necessary to renew this stock.
- 5.2 In order to contain the financial implications it is proposed that a special meeting of the council (a requirement of the Local Government Act) be convened on 23 March 2011, a date on which the Council is already meeting to conduct business. The intention would be for the recommendation from this Committee to be determined as part of the business of the scheduled council meeting and this meeting to be adjourned to enable the ceremony to be conducted as the business of the special council meeting. At the conclusion of the ceremony, the scheduled council meeting would be reconvened.
- 5.3 The Mayoralty Task and Finish Group recently recommended that the cost of any new robes (approximately £1,000), if required, and any reception after the ceremony for the family and friends of the newly appointed Honorary Aldermen should, in future, fall on the Honorary Aldermen themselves.
- 5.4 There is no specific budget allocation for the appointment of Honorary Aldermen but it is anticipated that, with the arrangements being made in accordance with the Task and Finish Group recommendations, capacity will be available within the Civic Fund budget to absorb the cost of the illuminated resolution.

6. Equality, Diversity and Human Rights implications

- 6.1 There are no direct implications for Equality and Diversity from these proposals and as such a full EQIA has not been deemed necessary.

7. Standard References

- 7.1 There are no references to the Strategic Plan and no particular consultation considerations; community safety; health and safety or risk management implications.



Standards Committee

Item
6

4 March 2011

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Standards Committee Annual Report 2010/2011		
Wards affected	Not applicable		

**This report recommends that the Committee approves its
Annual Report for 2010/2011**

1. Decision(s) Required

- 1.1 To consider and approve the Standards Committee Annual Report for 2010/2011 and to recommend to the Full Council that it be noted.
- 1.2 To authorise the Monitoring Officer in consultation with the Chairman to make any necessary changes to the Annual Report to give effect to the Committees activities up to the end of March 2011.

2. Background

- 2.1 An Annual Report is a method by which the Committee can inform the Council and the public of its activities and raise awareness of ethical issues both within the Borough Council and the Town and Parish Council's situated in the Borough. An Annual Report is seen as good practice and attached to this report is a draft second Annual report for the Committee which covers the period from April 2010 to March 2011.
- 2.3 The draft Annual Report highlights particularly the work undertaken by the Sub-Committees in dealing with the Local Assessments of allegations made against members. The Committee is also requested to recommend the Annual Report to Council for its information.

3. Strategic Plan References

- 3.1 The Council's ethical arrangements forms parts of the Council's commitment to customer excellence which underpins the Council's Strategic Plan vision.

4. Financial Considerations

- 5.1 None.

5. Equality, Diversity and Human Rights Implications

- 5.1 No particular implications.

6. Publicity Considerations

- 6.1 The Annual Report will be placed on the Council's website.

7. Consultation Implications

7.1 None.

8. Community Safety Implications

8.1 None

9. Health and Safety Implications

9.1 None

10. Risk Management Implications

10.1 None.



COLCHESTER BOROUGH COUNCIL

STANDARDS COMMITTEE

Annual Report 2010/2011

1. Introduction

This is the third Annual Report of Colchester Borough Council's Standards Committee and covers the period from 1 April 2010 to 31 March 2011. In reviewing the activities and looking back at issues highlighted in 2010/11, it also looks forward to next year.

The Borough Council is required by law to establish a Standards Committee which has an important role to play in providing training for and maintaining ethical conduct of Councillors. Article 9 and Part 3 of the Council's Constitution contain the requirements for and composition of the Standards Committee.

2. Roles and functions of the Standards Committee

The Committee's roles and functions are as follows:

- (a) To promote and maintain high ethical standards of conduct for elected and co-opted Members.
- (b) To help elected and co-opted Members to observe the Members' Code of Conduct.
- (c) To give the Council advice on adoption or revision of the Members' Code of Conduct and on informal codes/protocols covering matters such as planning and Member/officer relations.
- (d) To monitor the effectiveness of the Members' Code of Conduct.
- (e) To train or arrange training for elected and co-opted Members on matters relating to the Members' Code of Conduct.
- (f) To assess and review complaints that elected and co-opted Members have breached the Members' Code of Conduct and in connection with this function.
- (g) To develop and adopt:
 - (i) Assessment criteria for dealing with complaints;
 - (ii) Policies for dealing with vexatious, persistent and anonymous complaints and requests by complainants for confidentiality;
 - (iii) Arrangements for dealing with complaints and publicising the arrangements;
 - (iv) Procedures for dealing with local investigations; and
 - (v) Such other provisions and procedures as may be required.
- (h) To establish and maintain the following three sub-committees each with their own terms of reference:
 - Allegations Sub-Committee
 - Allegations Appeals Sub-Committee
 - Hearings Sub-Committee

- (i) To conduct Hearings and make determinations in respect of complaints that elected and co-opted Members have breached the Members' Code of Conduct in accordance with relevant statutory requirements and guidance issued by the Standards for England and in connection with this function; and
- (j) To develop and adopt procedures for dealing with such Hearings.
- (k) To grant dispensations to elected and co-opted Members with prejudicial interests.
- (l) To grant exemptions from politically restricted posts.
- (m) To maintain an overview of the Council's arrangements for dealing with complaints and Local Government Ombudsman investigations.
- (n) To undertake the functions set out at (a) to (k) above in respect of all Parish and Town Councils wholly or mainly within the Borough of Colchester and the Members of those Parish or Town Councils.

Part 5 of the Borough Council's Constitution contains its Ethical Framework comprising various Codes and protocols relevant to the functions of the Committee and in respect of which the Committee has previously given advice and made recommendations.

3. Composition

The Committee comprises Independent Members, Parish Representatives and Borough Councillors. The Borough Council agreed, at its meeting on 19 May 2010, the membership of the Committee for the 2010/2011 municipal year as follows:

Independent Members;

- Mr D Coe (Chairman)
- Mr P Fitton (Deputy Chairman)
- Mr I Andrews
- Mr S Farmer
- Mr S Roberts-Mee

Parish Representatives;

- Councillor M Bartier
- Councillor V Eden
- Councillor T Abnett

Borough Councillors;

- Councillor N Chapman
- Councillor R Gamble
- Councillor H Chuah
- Councillor T Sutton

The Independent Members were appointed by the Borough Council following a public recruitment process and provide a valuable pool of experience. The Parish Representatives are nominated annually to the Council by the Colchester Association of

Local Councils. The Borough Councillors are appointed annually and are senior members who have had/are soon to have mayoral responsibilities.

The Committee wishes to express its appreciation for the high level of support it receives from the Monitoring Officer, Andrew Weavers and Democratic Services Officer, Richard Clifford.

4. The Committee's Work Programme

The Committee agreed a work programme for 2010/2011 which covered:

- Review of the Local Assessment process
- Review of the Council's Local Code of Corporate Governance
- Review and provision of training for Members on the Members Code of Conduct
- Review of the Whistleblowing Policy
- Review of the Council's Anti- Fraud and Corruption Policy
- Consideration of the Local Government Ombudsman's Annual Letter
- Scheduled meetings so as to be able to respond to complaints within time limits

5. Main Areas of Work

5.1 Implementation of Local Assessment of Allegations Process

In May 2008 the responsibility for the initial assessment of allegations whether or not councillors had failed to follow the Members Code of Conduct was transferred from Standards for England to local Standards Committees.

Following recommendations from Standards for England, the Committee created three Sub-Committees; Allegations Sub-Committee, Allegations Appeals Sub-Committee and the Hearings Sub-Committee. The Committee itself and each of its Sub-Committees are chaired by an Independent Member.

The Committee has a duty to ensure adequate publicity for the Local Assessment process and has kept this under review.

The Local Assessment process has required meetings of the Allegations Sub-Committee (which deals with the initial assessment of allegations) to be diarised monthly. In accordance with the law these meetings are held in private.

During 2010/2011:

The Allegations Sub-Committee met twice and considered two complaints both of which were in relation to Town and Parish Councillors.

The Sub Committee made the following decisions:

- 2 complaints - no further action.

The Allegations Sub-Committee was able to consider the complaints within the recommended time limit of 20 days from receipt.

The Allegations Appeals Sub-Committee, (which hears requests for a review following a finding of no further action by the Allegations Sub-Committee) did not need to meet as there were no requests for reviews.

The Hearings Sub-Committee, (which hears and determines the findings of an investigating officers report where it is found that a Councillor has not followed the Code of Conduct) as there were no reports to be determined.

5.2 Review of the Local Assessment Process

The Committee undertook a review of its experiences in operating the process and was satisfied that it was functioning correctly. It will keep this under annual review.

5.3 Review of Ethical Governance

The Committee undertook a review of the Council's Anti-Fraud and Corruption Policy and Whistleblowing Policy which was subsequently endorsed by the full council.

5.4 Training for Members on the Code of Conduct

The Committee reviewed the level of training that should be provided throughout the year for both the 60 Borough and the 255 Town and Parish Councillors in the 27 Town and Parish Councils situated in the Borough. The Independent Members ensured that at least one of them would be present at each session.

The Committee is concerned that all Councillors receive adequate training on the Code of Conduct to ensure that they are up to date with developments and able to fulfil the functions for which they are elected in a proper manner. In the coming year the Committee will be facilitating further training and will be monitoring attendance particularly where there has been evidence of non-compliance with the Code.

6. Localism and the future of the Standards Regime

The Committee is mindful of the Coalition Government's commitment via the Localism Bill to overhaul the standards regime. The Committee is keeping a watching brief on the Governments intentions and the Bill as it progresses through Parliament and will offer advice to the Council once the future is clear. Any changes to the standards regime are not expected to come into effect until 2012 and until that time the Ethical Framework remains in force, Councillors remain subject to the Code of Conduct and the Standards Committee responsible for it's monitoring and enforcement.

7. Work Programme for 2011/2012

The main focus of the Committee in the coming year will be on the impact of the Localism Bill on the Borough Council's ethical governance arrangements, continue to monitor the Local Assessment process and also review the Borough Council's Ethical Framework and governance arrangements.

8. Conclusions

In a busy year, the Committee has completed its work programme and is well placed to continue to face the continuing challenges of handling the initial assessment of allegations and progressing matters that it considers necessary to investigate. Colchester Borough Council and the Town and Parish Council's with the Borough continues to have a sound record in ensuring good standards of conduct and it is our intention to promote, maintain and enhance those standards whilst looking forward to the challenges that the Localism Bill will bring.

Dated March 2011

Derek Coe
Chairman

4 March 2011

Report of	Head of Resource Management	Author	Hayley McGrath ☎ 508902
Title	Revised Anti-Fraud and Corruption Policy		
Wards affected	Not applicable		

**This report recommends that the Committee approves a revised
Anti-fraud and Corruption Policy**

1. Decision(s) Required

- 1.1 To agree the reviewed Anti-Fraud and Corruption Policy for 2011/12, attached at appendix 1, and to refer it to Council for inclusion in the Council's Policy Framework.

2. Background

- 2.1 Many of the external review processes that the Council has to undertake, such as external audit of the benefits process and professional body accreditations, examine the success of the Council in combating fraud and corruption. The Audit Commission look to local authorities to demonstrate that they have robust arrangements in place for combating fraud and corruption and that these are well documented and 'advertised'.
- 2.2 The anti-fraud and corruption policy is part of the Council's corporate governance framework and the anti-fraud and corruption processes form a significant part of the Annual Governance Statement self assessment, which is verified as part of the year end external audit program.
- 2.3 The anti-fraud and corruption policy was substantially updated in November 2009, with the inclusion of the Benefits sanctions policy and a procedure guide for investigating suspected irregularities.
- 2.4 The policy states that it will be reviewed on an annual basis and the review will include a self assessment of the Council's compliance with the governance checklist set by the Audit Commission paper 'Protecting the Public Purse'.

3. Results of Policy Review

- 3.1 This report confirms that a review of the policy has been undertaken and the only amendments are the inclusion of details relating to the Bribery Act 2010, which has been included as part of the definition of Corruption in the overview on page 2, and the updated version of the Benefits sanctions policy, from April 2010.
- 3.2 The completed self assessment is also included within the policy at appendix 3, page 18. This shows that the Council has robust systems in place for combating fraud and corruption.

4. Strategic Plan References

- 4.1 The standards regime forms parts of the Council's commitment to customer excellence which underpins the Council's Strategic Plan vision.

5. Financial Considerations

- 5.1 None.

6. Equality, Diversity and Human Rights Implications

- 6.1 An Equality Impact Assessment has been undertaken of the Benefit fraud policy and this is attached at appendix 2. This indicates that the policy does not unjustifiably or adversely treat any group.

7. Publicity Considerations

- 7.1 The Anti-fraud and Corruption Policy forms part of the Council's Policy Framework and will be placed on the Council's website.

8. Consultation Implications

- 8.1 None.

9. Community Safety Implications

- 9.1 None

10. Health and Safety Implications

- 10.1 None

11. Risk Management Implications

- 11.1 A clear Anti-fraud and Corruption Policy is a key element in being able to mitigate against the risk of fraud or corruption being perpetrated against the Council.



Appendix 1

DRAFT

**COLCHESTER BOROUGH
COUNCIL**

**ANTI FRAUD AND
CORRUPTION
POLICY**

March 2011

CONTEXT

Colchester Borough Council, like every Local Authority, has a duty to ensure that it safeguards the public money that it is responsible for.

The Council expects the highest standards of conduct and integrity from all that have dealings with it including staff, members, contractors, volunteers and the public. It is committed to the elimination of fraud and corruption and to ensuring that all activities are conducted ethically, honestly and to the highest possible standard of openness and accountability so as to protect public safety and public money.

There will be no distinction made in investigation and action between cases that generate financial benefits and those that do not. The policy will not compromise the Council's commitment to Equal Opportunities or the requirements of the Human Rights Act or any other relevant statutory provision.

This policy has been created with due regard to the CIPFA better Governance Forum's Red Book 2 'Managing the Risk of Fraud' and the Audit Commission Publication 'Protecting the Public Purse'.

OVERVIEW

This policy provides an overview of the of measures designed to combat any attempted fraudulent or corrupt act and the steps to be taken if such action occurs. For ease of understanding it is separated into four areas as below:-

- Culture
- Responsibilities & Prevention
- Detection and Investigation
- Awareness & Monitoring

Fraud and corruption are defined by the Audit Commission as:-

Fraud – “the intentional distortion of financial statements or other records by persons internal or external to the authority which is carried out to conceal the misappropriation of assets or otherwise for gain”.

In addition, fraud can also be defined as *“the intentional distortion of financial statements or other records by persons internal or external to the authority which is carried out to mislead or misrepresent”.*

Corruption – “the offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person”.

The Council also abides by the Bribery Act 2010 which covers, amongst other things, the offences of bribing another person, of allowing to be bribed and organisational responsibility. Such offences include:

- The offer, promise or giving of financial or other advantage to another person in return for the person improperly performing a relevant function or activity

- Requesting, agreeing to receive or accepting a financial or other advantage intending that, in consequence a relevant function or activity should be performed improperly.
- Commercial organisation responsibility for a person, associated with the organisation, bribing another person for the purpose of obtaining or retaining business for the organisation

In addition, this policy statement also covers “*the failure to disclose an interest in order to gain financial or other pecuniary benefit.*”

CULTURE

The prevention/detection of fraud/corruption and the protection of the public purse are responsibilities of everyone, both internal and external to the organisation. The Council's elected members and employees play an important role in creating and maintaining this culture. They are positively encouraged to raise concerns regarding fraud and corruption, immaterial of seniority, rank or status, in the knowledge that such concerns will wherever possible be treated in confidence. The public also has a role to play in this process and should inform the Council if they feel that fraud/corruption may have occurred.

Concerns must be raised when members, employees or the public reasonably believe that one or more of the following has occurred, is in the process of occurring or is likely to occur:

- A criminal offence
- A failure to comply with a statutory or legal obligation
- Improper or unauthorised use of public or other official funds
- A miscarriage of justice
- Maladministration, misconduct or malpractice
- Endangering an individual's health and/or safety
- Damage to the environment
- Deliberate concealment of any of the above

The Council will ensure that any allegations received in any way, including by anonymous letters or telephone calls, will be taken seriously and investigated in an appropriate manner. The Council has a whistle blowing policy that sets out the approach to these types of allegation in more detail.

The Council will deal firmly with those who defraud the Council or who are corrupt, or where there has been financial malpractice. There is, of course, a need to ensure that any investigation process is not misused and, therefore, any abuse (such as employees/members raising malicious allegations) may be dealt with as a disciplinary matter (employees) or through Group procedures (members).

When fraud or corruption has occurred due to a breakdown in the Council's systems or procedures, Directors will ensure that appropriate improvements in systems of control are implemented in order to prevent a re-occurrence

RESPONSIBILITIES & PREVENTION

Responsibilities of Elected Members

As elected representatives, all members of the Council have a duty to protect the Council and public money from any acts of fraud and corruption. This is done through existing practice, compliance with the National and Local Code of Conduct for Members, the Council's Constitution including Financial Regulations and Standing Orders and relevant legislation. Conduct and ethical matters are specifically brought to the attention of members during induction and include the declaration and registration of interests. Officers advise members of new legislative or procedural requirements.

Responsibilities of the Monitoring Officer

The Monitoring Officer is responsible for ensuring that all decisions made by the Council are within the law. The Monitoring Officer's key role is to promote and maintain high standards of conduct throughout the Council by developing, enforcing and reporting appropriate governance arrangements including codes of conduct and other standards policies.

All suspected instances of fraud or corruption (apart from benefit claim issues) should be reported to the Monitoring Officer.

Responsibilities of the Head of Resource Management

The Head of Resource Management has been designated the statutory responsibilities of the Finance Director as defined by s151 of the Local Government Act 1972. These responsibilities outline that every local authority in England & Wales should: *"make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has the responsibility or the administration of those affairs"*

'Proper administration' encompasses all aspects of local authority financial management including:

- Compliance with the statutory requirements for accounting and internal audit;
- Managing the financial affairs of the Council
- The proper exercise of a wide range of delegated powers both formal and informal;
- The recognition of the fiduciary responsibility owed to local tax payers.

Under these statutory responsibilities the Head of Resource Management contributes to the anti-fraud and corruption framework of the Council.

Responsibilities of the Senior Management Team

Managers at all levels are responsible for the communication and implementation of this policy. They are also responsible for ensuring that their employees are aware of the Council's personnel policies and procedures, the Council's Financial Regulations and Standing Orders and that the requirements of each are being met. Managers are expected to create an environment in which their staff feel able to approach them with any concerns they may have about suspected irregularities. Special arrangements may be applied from time to time for example where employees are responsible for cash handling or are in charge of financial systems and systems that generate payments, for example payroll or the Revenues & Benefits computer system. These procedures will be supported by relevant training.

The Council recognises that a key preventative measure in dealing with fraud and corruption is for managers to take effective steps at the recruitment stage to establish, as far as possible, the honesty and integrity of potential employees, whether for permanent, temporary or casual posts and agency staff. The Council's formal recruitment procedure contains appropriate safeguards in the form of written references, the verification of qualifications held and employment history. As in other public bodies Criminal Records Bureau (CRB) checks are undertaken for employees working with or who may have contact with children or vulnerable adults.

Responsibilities of Employees

Each employee is governed in their work by the Council's Standing Orders and Financial Regulations, and other policies on conduct and on IT usage. Included in the Council policies are guidelines on Gifts and Hospitality, and codes of conduct associated with professional and personal conduct and conflict of interest. These are issued to all employees when they join the Council. In addition, employees are responsible for ensuring that they follow any instructions given to them, particularly in relation to the safekeeping of the assets of the Council. Employees are expected always to be aware of the possibility that fraud, corruption and theft may exist in the workplace and be able to share their concerns with management.

Role of Internal Audit

Internal Audit plays a vital preventative role in trying to ensure that systems and procedures are in place to prevent and deter fraud and corruption. Internal Audit investigates all employee cases of suspected financial irregularity, fraud or corruption, except Benefit fraud investigations (see appendix 1), in accordance with agreed procedures. Within the Financial Procedure Rules in the Constitution, representatives of Internal Audit are empowered to:

- enter at all reasonable times any Council premises or land
- have access to all records, documentation and correspondence relating to any
- financial and other transactions as considered necessary
- have access to records belonging to third parties such as contractors when required
- require and receive such explanations as are regarded necessary concerning any
- matter under examination
- require any employee of the Council to account for cash, stores or any other Council
- property under his/her control or possession

Internal Audit liaises with management to recommend changes in procedures to reduce risks and prevent losses to the Authority.

Role of the Benefits Investigation

Due to the specialised nature of benefit fraud investigations a separate sanctions policy has been developed that covers all aspects of the benefit investigation process. This is included at appendix 1.

Role of the Audit Commission

Independent external audit is an essential safeguard of the stewardship of public money. This is currently carried out by the Audit Commission through specific reviews that are designed to test (amongst other things) the adequacy of the Council's financial systems and arrangements for preventing and detecting fraud and corruption. It is not the external auditors' function to prevent fraud and irregularities, but the integrity of public funds is at all times a matter of general concern. External auditors are always alert to the possibility of fraud and irregularity, and will act without undue delay if grounds for suspicion come to their notice. The Council contributes to the bi-annual Audit Commission led National Fraud Initiative which is designed to cross match customers across authorities too highlight areas where there are potential fraudulent claims.

Role of the Public

This policy, although primarily aimed at those within or associated with the Council, enables concerns raised by the public to be investigated, as appropriate, by the relevant person in a proper manner.

Conflicts of Interest

Both elected members and employees must ensure that they avoid situations where there is a potential for a conflict of interest. Such situations can arise with externalisation of services, internal tendering, planning and land issues etc. Effective role separation will ensure decisions made are seen to be based upon impartial advice and avoid questions about improper disclosure of confidential information.

Official Guidance

In addition to Financial Regulations and Standing Orders, due regard will be had to external and inspectorate recommendations.

The Council is aware of the high degree of external scrutiny of its affairs by a variety of bodies such as the Audit Commission (including External Audit and Inspection), other Government Inspection bodies, the Local Government Ombudsman, the National Standards Board, HM Customs & Excise and the Inland Revenue. These bodies are important in highlighting any areas where improvements can be made.

DETECTION & INVESTIGATION

Internal Audit plays an important role in the detection of fraud and corruption. Included within the audit plans are reviews of system controls including financial controls and specific fraud and corruption tests, spot checks and unannounced visits.

In addition to Internal Audit, there are numerous systems and management controls in place to deter fraud and corruption but it is often the vigilance of employees and members

of the public that aids detection. In some cases frauds are discovered by chance or “tip-off” and the Council will ensure that such information is properly dealt with within its whistle blowing policies.

Detailed guidance on investigations can be found at appendix 2.

Disciplinary Action

The Council’s Disciplinary Procedures will be used to facilitate a thorough investigation of any allegations of improper behaviour by employees. Theft, fraud and corruption are serious offences which may constitute gross misconduct against the Council and employees will face disciplinary action if there is evidence that they have been involved in these activities, including Benefit fraud. Disciplinary action will be taken in addition to, or instead of, criminal proceedings depending on the circumstances of each individual case.

Members will face appropriate action under this policy if they are found to have been involved in theft, fraud and corruption against the Authority. Action will be taken in addition to, or instead of criminal proceedings, depending on the circumstances of each individual case but in a consistent manner. If the matter is a breach of the Code of Conduct for Members then it will also be referred to Standards for England - the national standards organisation.

Prosecution

In terms of proceedings the Council will ensure consistency in the Council’s action in specific cases and to deter others from committing offences against the Authority.

Publicity

The Council will optimise the publicity opportunities associated with anti-fraud and corruption activity within the Council. In all cases (both Member and Officer) where the Council has suffered a financial loss then the Council will consider the recovery of the loss. All anti-fraud and corruption activities, including the update of this policy, will be publicised.

AWARENESS & MONITORING

The Council recognises that the continuing success of this policy and its general credibility will depend in part on the effectiveness of training and awareness for members and employees and accordingly will take appropriate action.

The Monitoring Officer will provide an annual report to senior management and members outlining investigations undertaken during the year.

This policy and associated procedures will be reviewed at least annually and will include a self assessment of the Council’s compliance with the governance checklist set by the Audit Commission paper ‘Protecting the Public Purse’ which has been included at appendix 3.

Appendix 1

COLCHESTER BOROUGH COUNCIL

**FRAUD SANCTIONS POLICY
FOR BENEFITS**



AMENDED 01.04.10

1. Introduction

- 1.1 Colchester Borough Council aims to provide a modern, customer focused, efficient, effective and secure Housing Benefit service that is continuously seeking to improve. This document sets out the policy of Colchester Borough Council towards sanctions, including criminal prosecutions, for offences relating to benefit fraud.
- 1.2 This policy has been developed with the aim of providing a framework to ensure a fair and consistent approach to the use of formal sanctions. It refers to criteria relating to the offence, offender, value and duration of the fraud which have to be taken into account before considering whether a sanction is appropriate, and if so, which sanction to apply.
- 1.3 This policy needs to be considered in conjunction with the council's Anti-Fraud and Corruption Policy Statement which sets out the commitment to prevent, detect and investigate benefit fraud.
- 1.4 Housing and Council Tax Benefits are administered by a local authority on behalf of the Department of Work and Pensions (DWP) as part of the statutory local government functions. Our policy is therefore a matter for our members. In practice, the policy broadly follows the approach of the DWP.

2.0 General Principles

- 2.1 Colchester Borough Council is committed to the prevention, detection, correction, investigation and, where appropriate, prosecution of fraudulent benefit claims.
- 2.2 The aim is to prevent criminal offences occurring by making it clear to our customers that they have a responsibility to provide accurate and timely information about their claims; to punish wrongdoing; and to deter offending.
- 2.3 This policy supports the DWP Public Service Agreement to reduce losses from fraud and error by 15% by 2010. It also provides a full response to the need to be effective against fraud in the full range of welfare benefits.
- 2.4 Each potential fraud is assessed against local criteria by Colchester Borough Council's Housing and Council Tax Benefits Investigation Team. This assessment will result either in cases being investigated further under criminal investigation standards or referred to the Housing and Council Tax Benefits Review Team. Review action usually comprises of an interview regarding any changes in circumstances and the allegation concerned. Further action will depend upon the outcome of the interview but they will be reminded of their responsibilities and may be advised about their future conduct and required to rectify or withdraw their claim.
- 2.5 Each case that is subject to criminal investigation is considered on its own merits, having regard to all of the facts, before an appropriate sanction is administered.

3. Organisation

3.1 Criminal investigations are undertaken in accordance with:

- Police and Criminal Evidence Act 1984 and its code of practice
- Criminal Procedures and Investigation Act 1996 and its code of practice
- all other relevant legislative and common law rules
- Departmental Policy
- advice from internal legal department

3.2 Fraud Investigators receive Professionalism in Security (PINS) training which is accredited by Portsmouth University. Additional guidance is provided by the Fraud Procedures and Instruction Manual which is regularly updated to ensure that:

- investigations are conducted in a legal and professional manner
- policy and legislation is correctly applied, and
- approved working methods are applied

3.3 Colchester Borough Council has a legal team who provide advice and guidance to investigators throughout the investigative and prosecution process if required. They do not conduct any part of the investigation but advise on the investigator's obligations, evidential requirements and any appropriate charges. Colchester Borough Council's legal team are also responsible for identifying those cases which are not suitable for criminal prosecution for evidential reasons.

3.4 Colchester Borough Council also has access to free technical support and/or legal advice from the DWP prosecution division.

3.5 Colchester Borough Council also works closely with the DWP Fraud Investigation Service (FIS) team operating under similar prosecution practices and has a Fraud Partnership Agreement (FPA) with them to support joint working activity such as joint interviews under caution and investigations, to aid in the tackling of fraud in the full range of welfare benefits.

4. Sanction Process

Where an offence has been committed the Investigation Team can consider administering a caution, offering an administrative penalty, or instigating a prosecution. The choice will depend on the factors below and taking into account the criteria within section 4.4.1.

Cautions:

4.2.1 A formal caution is an administrative sanction that a local authority in England and Wales is able to offer as an alternative to a prosecution as long as specific criteria are met, and the case is one that Colchester Borough Council could take to court if the caution was refused.

4.2.2 Cautions are usually aimed at the less serious benefit frauds and those where the overpayment is under £2,000. It also provides an additional tool for the Investigation Team to use in those cases where the deterrent effect is considered a sufficient and suitable alternative to prosecution or an administrative penalty.

4.2.3 The offender must admit to the offence in an Interview Under Caution (IUC) and provide informed consent to being cautioned. To be able to offer a caution requires the same standard of criminal evidence as for a prosecution and should only be offered if the authority could prosecute should the caution be refused.

4.2.4 If the customer is consequently prosecuted for another benefit offence the caution can be cited in court.

4.3 Administrative Penalties

4.3.1 An Administrative Penalty is the offer to the customer to agree to pay a financial penalty where the customer has caused benefit to be overpaid to them, by either an act or omission. The amount of the penalty is currently stipulated at 30 percent of the amount of the gross overpayment.

4.3.2 These penalties will be offered where the case is deemed to be not so serious to deserve any other sanction and an Administrative Penalty is considered to be a suitable alternative to prosecution and where the gross overpayment is less than £2,000. Unlike cautions, no admission of guilt is required from the customer before offering an administrative penalty, although there is a statutory requirement for investigators to ensure that there are grounds for instituting criminal proceedings for an offence relating to the overpayment.

4.4 Prosecutions

4.4.1 If there is sufficient evidence Colchester Borough Council will refer the case to the solicitors internally for consideration of criminal prosecution where one or more of the following criteria are met:

- the gross adjudicated overpayment is £2,000 or over
- false identities or other personal details have been used
- false or forged documents have been used
- official documents have been altered or falsified
- the person concerned is in a position of trust
- the person concerned assisted or encouraged others to commit offences
- there is evidence of premeditation or organised fraud
- the person concerned has relevant previous convictions
- the customer had previously been convicted of benefit fraud
- the amount of the adjudicated overpayment is under £2,000 and the offer of an administrative penalty or formal caution is not accepted.
- Is the person in sound mind and in good physical position?
- Are there any social factors (eg death in the family)?

4.4.2 In all cases, including those which do not fall within any of the above criteria, Colchester Borough Council retains discretion as to whether criminal proceedings are started.

5. Proceeds of Crime Act (POCA)

5.1 Colchester Borough Council Investigation Officers must consider in all suitable cases the ability for a court to obtain restraint and/or confiscation orders of identified assets. A restraint order will prevent a person from dealing with specific assets. A confiscation order will enable the council to recover losses from assets which are found to be the proceeds of crime.

6. Loss of Provision:

Social security (Loss of Benefit) Regulations 2001 as amended by the Social Security (loss of benefit) Amendment Regulations 2010 allow for reduction or withdrawal of Social Security benefits and allowances in payment to individuals and their partners who have accepted the offer of a caution or administrative penalty. This includes both DWP and Local Authority benefits, such as Council Tax and Housing benefit.

This provision allows the DWP and local authorities to apply a sanction in the form of a 4 week benefit sanction period where a person accepts an Administrative Penalty, caution or is convicted of benefit fraud on one occasion. Benefits can be withdrawn for the 4 week period.

7. Recovery of Debt:

7.1 Where an overpayment arising from fraud is identified Colchester Borough Council will take steps to recover the resultant debt, including taking action in the civil courts if necessary, in addition to any sanction it may impose in respect of that fraud. The council has an overpayment policy which is updated regularly.

8. Summary

8.1 This policy sets out the main areas that the council takes into consideration when investigating potentially fraudulent claims for benefits. As well as the above, the council is working towards achieving the performance standards set by the DWP for its counter fraud work.

8.1.2 Whilst the council appreciates that the majority of customers are honest, it will continue to fight abuse of the system by those who falsely claim benefits to which they are not entitled. All investigations will be completed by trained staff who will respect the rights of all customers.

Appendix 2

PROCEDURES FOR INVESTIGATING FRAUD OR CORRUPTION

1. Purpose

- 1.1 These procedures define how the Council will react to any suspected cases of fraud or corruption apart from benefit claim fraud.

2. Responsibilities

- 2.1 The responsibilities for actions identified in this plan are detailed in Annex A.

3. Initiating Action

- 3.1 Actual or suspected frauds or corruption may become apparent in a variety of ways including external sources or via the Council's whistle blowing process. In any event, actual or suspected frauds or corruption will be reported as soon as practicable to the Chief Executive and Head of Resource Management. Who will immediately inform the Council's Monitoring Officer and Head of Corporate Management where an employee is believed to be involved.
- 3.2 When practicably possible of receiving notification of actual or suspected fraud or corruption, the Head of Resource Management will, in consultation with the Chief Executive and Monitoring Officer, where appropriate, decide on the initial response.
- 3.3 The initial response may be an internal investigation, referral to the police, some other form of action, or a decision not to pursue the issue further. The Head of Resource Management will keep a formal record of the decision and the reasons behind it. The decision will be reported to the Chief Executive and Monitoring Officer and the appropriate Head of Service.
- 3.4 Where the identity of the informant is known, the Head of Resource Management will inform them in writing within ten working days of the initial receipt of the allegations, of the initial action being taken, unless the Monitoring Officer determines that there are reasons for not doing so.
- 3.5 The appropriate Head of Service (or an officer nominated by him/her) who will also inform the Council's insurance section immediately and will report criminal damage to Council property to the Police.

4. Prevention of Further Loss

- 4.1 Where initial investigation provides reasonable grounds for suspecting a Councillor of fraud or corruption the Monitoring Officer, in consultation with the Chief Executive and Head of Resource Management will decide how to prevent further loss. In respect of employees suspected of fraud or corruption, the Head of Resource Management, in consultation with the Monitoring Officer and appropriate Head of Service will decide

how to prevent further loss. This may require the suspension of the suspect(s) and the appropriate Head of Service will be requested to agree and implement the suspension. It may be necessary to plan the timing of suspension to prevent the suspect(s) from destroying or removing evidence.

- 4.2 In these circumstances, the suspect(s) should be approached unannounced. They should be supervised at all times before leaving the Council's premises. They should be allowed to collect personal property under supervision, but should not be able to remove any property belonging to the Council. Any security passes and keys to premises, offices and furniture should be returned.
- 4.3 Where an employee is suspended in these circumstances, their Head of Service will immediately make the necessary arrangements to remove access to all Council computing facilities.
- 4.4 The Head of Resource Management will consider and initiate any other action necessary to protect Council assets and property. This will include considering whether it is necessary to investigate systems other than that which has given rise to suspicion, through which the suspect may have had opportunities to misappropriate the Council's assets.

5. Obtaining and Safeguarding Evidence

- 5.1 It is never possible to predict with any degree of certainty how any individual investigation will develop. It is therefore essential to ensure that, for all investigations, a chronological log is maintained of all events as the investigation proceeds.
- 5.2 A standard working paper format, appropriately headed, will be all that is required for smaller investigations. Larger or more complex investigations may necessitate the use of a diary. The purpose of these documents is to provide a history in summary form of the investigation as it proceeds.
- 5.3 It is important that all meetings, interviews, removal/taking possession of evidence, telephone discussions, etc are recorded. A more comprehensive note of any such event should be maintained in the form of a detailed working paper which should be written up either during, or as soon after the relevant event as possible, and signed, dated and timed by the responsible individual.

6. Recovery of Losses

- 6.1 Recovering losses is a major objective of any fraud or corruption investigation. The Head of Resource Management will ensure that the amount of any loss will be quantified and repayment of losses will be sought in all cases.
- 6.2 Where the loss is substantial, legal advice will be obtained immediately about the need to freeze the suspect's assets through the court, pending conclusion of the investigation. Legal advice will also be obtained about prospects for recovering losses through the civil court, where the perpetrator refuses repayment. The Council would normally expect to recover costs in addition to losses.

6.3 The appropriate Head of Service will ensure that prompt action is taken to recover insured losses by notifying the Council's insurance officer and submitting the appropriate claims information as quickly as possible.

7. References for Employees Disciplined or Prosecuted for Fraud or corruption

7.1 Any request for a reference for an employee who has been disciplined or prosecuted for fraud or corruption shall be referred to the Head of Corporate Management who will prepare any answer to a request for a reference having regard to employment law.

8. Reporting Fraud or corruption to the Audit Commission

8.1 Where the estimated amount of the loss due to a fraud or corruption is above the threshold set by the Audit Commission the Head of Resource Management will formally report the fraud or corruption to them.

9. Reporting Lines

9.1 The Head of Resource Management will report formally to the Monitoring Officer and Chief Executive, where appropriate at the following stages of the process:

Initial action stage
Referral to the police
Quantification of losses
Conclusion of the episode

10. Responsibility for Investigation

10.1 The Head of Resource Management will be responsible for procuring resources and managing internal investigations.

11. Referring Suspected Fraud or corruption to the Police

11.1 The Head of Resource Management, in consultation with the Monitoring Officer will formally refer suspected fraud or corruptions to the Police, obtaining a crime reference number in each case.

11.2 The Head of Resource Management will establish and maintain a contact point with the police for each fraud or corruption reported to them and will periodically enquire on the progress of investigations; reporting the results to the Monitoring Officer.

ANNEX A TO FRAUD AND CORRUPTION PROCEDURES

DEFINITION OF ACTIONS

Action	Responsibility	Timescale
Head of Resource Management, Chief Executive and the Monitoring Officer informed of cases of suspected or actual fraud. In addition, in consultation with the Head of Corporate Services where an employee is believed to be involved	Appropriate Head of Service	Immediate
Decide on the initial response Members suspected Employee suspected	Monitoring Officer in consultation with the Chief Executive & Head of Resource Management Head of Resource Management in consultation with Monitoring Officer and appropriate Head of Service	Within 24 hours of receiving notification of actual or suspected fraud
Record decision and report it to the Monitoring Officer and Chief Executive, where appropriate	Head of Resource Management	
Write to the informant to tell them of the initial action being taken.	Head of Resource Management	Within 10 working days of receipt of the allegation
Report criminal damage to the Police and the Council's insurance section	Head of Resource Management	Immediately
Suspension of employees suspected of committing a fraudulent act Remove access to Council buildings and collect security cards, access cards, keys and access to computer facilities etc	Appropriate Head of Service Appropriate Head of Service (or an officer nominated by him/her)	Immediately sufficient grounds for suspicion identified Upon suspension

Action	Responsibility	Timescale
Quantify losses	Appropriate Head of Service and Head of Resource Management	As soon as practical
Seek legal advice on recovery of losses and costs where estimated losses over £5,000	Head of Resource Management / Head of Corporate Services	As soon as practical
Seek to recover insured losses as quickly as possible by notifying the Council's insurance officer and submitting the appropriate claims information	Appropriate Head of Service	As soon as practical
Refer request for a reference for an employee who has been disciplined or prosecuted for fraud to the Head of Corporate Services	Appropriate Head of Service	As required
Report the fraud to the Audit Commission where the estimated amount of the loss is above the threshold set by the Audit Commission.	Head of Resource Management	As soon as it has been identified that the threshold is likely to be exceeded
Refer suspected frauds to the Police, obtaining a crime reference number in each case	Head of Resource Management in consultation with the Monitoring Officer	As soon as practical
Establish and maintain a contact point with the Police for each fraud reported to them and will periodically enquire on the progress of investigations.	Head of Resource Management	As required

Appendix 3

Audit Commission – Protecting the Public Purse

Self Assessment Checklist for Governance

Date Completed: November 2010

Completed By: Risk & Resilience Manager

	Yes	No	Comments / Actions
General			
1. Have we committed ourselves to zero tolerance against fraud?	✓		Contained in policy.
2. Do we have appropriate strategies, policies and plans?	✓		Anti-fraud and corruption policy along with risk registers
3. Do we have dedicated counter-fraud resources?	✓		Dedicated team in Benefits
4. Do the resources cover all of the activities of our organisation?		✓	Majority of counter-fraud work is undertaken in respect of benefits. Other areas are covered by standard management practise and officer judgement e.g. insurance and accounts payable.
5. Do we receive regular reports on fraud risks, plans and outcomes?	✓		There is an annual report to committee about fraud issues and fraud is included on all risk registers. Internal audit reports also identify any system weaknesses and these are regularly reported.
6. Have we assessed our management of counter-fraud resources against good practice?	✓		Audit Commission guidance – Protecting the Public Purse and CIPFA publication – Managing the Risk of Fraud.
7. Do we raise awareness of fraud risks with: <ul style="list-style-type: none"> ➤ new staff (including agency staff)? ➤ existing staff? ➤ members? 	✓		With regards to benefits - yes. Awareness for other services is to be incorporated into our routine training and corporate governance processes.
8. Do we join in appropriately with national, regional and local networks and partnerships to ensure we are up to date with current fraud risks and issues?	✓		Various groups including the Association of Local Authority Risk Managers and Monitoring Officer network as well as contact with Police.

9. Do we have working arrangements with relevant organisations to ensure effective sharing of knowledge and data about fraud?	✓		National Fraud Initiative and data sharing across authorities and agencies.
10. Do we identify areas where internal controls may not be performing as intended?	✓		Part of internal audit process.
11. Do we maximise the benefit of our participation in the Audit Commission NFI and receive reports on outcomes?	✓		We use all the reports to identify suspect areas and complete the reporting process.
Fighting fraud in the recession			
12. Have we reassessed our fraud risks because of the recession?	✓		Increased awareness, especially in benefits area. Risk has been identified in registers.
13. Have we amended our counter-fraud action plan as a result?	✓		Within benefits.
14. Have we reallocated staffing as a result?	✓		Staff reallocation was not required.
Some current risks and issues			
15. Do we take effective action to ensure that social housing is allocated only to those in need?	✓		There is a housing needs assessment and policy that ensures only eligible applicants are housed.
16. Do we take effective action to ensure that social housing is occupied by those to whom it is allocated?	✓		Managed by CBH with regular contact with Housing Officers
17. Are we satisfied that payment controls are working as intended?	✓		Verified by internal audit process – no actions identified
18. Have we reviewed our contract letting procedures against the good practice guidance issued by the Office of Fair Trading to reduce the risk of illegal practices such as cartels?	✓		Contract procedure rules comply with good practise and covers illegal practices
19. Are we satisfied that our recruitment procedures are: <ul style="list-style-type: none"> ➤ preventing employment of people working under false identities? ➤ validating employment references effectively? ➤ ensuring applicants are eligible to work in the UK? 	✓		Verified by the internal and external audit processes. No actions identified.
20. Where we are moving to direct payments (for example, social care) have we introduced suitable and proportionate control arrangements in line with recommended practice?	✓		Verified by internal audit process for those specific areas.

21. Are we effectively controlling the discounts and allowances we give to council taxpayers?	✓		Test checking and verified by internal audit process.
22. Are we satisfied that we are doing all that we can to tackle housing and council tax benefit fraud?	✓		Sanctions policy, dedicated team, regular test checking and participation in the NFI process.
23. Do we have a reporting mechanism that encourages our staff to raise their concerns of money laundering?	✓		Various policies highlight processes.

**EQUALITY IMPACT
ASSESSMENT
(EQIA)**

Please ensure that you read the EIA Framework before completing this pro-forma

Date Started: 2 November 2005
Date Completed: 2 November 2005
Date last reviewed: 24 October 2008

Service Group/Team: Resource Management

Lead Officer(s): John Fisher & Louisa Giddings

Name of policy, procedure or practice: Benefit Fraud Prosecution policy statement
(Written or unwritten)

Who is responsible for it and who implements it? John Fisher & Louisa Giddings

Stage 1. Scope of the EIA

For advice refer to stage 1 of the EIA guidance

- **What are the broad aim(s) objective(s) of the policy, procedure or practice?**

To provide documented internal instruction and guidance to the Council's staff.

- **What outcomes do you want to achieve?**

To ensure and a consistent and fair mechanism for the assessment and administration of benefits.

Stage 2

Please refer to stage 2 of the EIA guidance:

In this section you need to:

- determine who your audience, users or customers are and what their needs are likely to be.
- determine what impact the policy, procedure or practice is likely to have on them.

• List of Audience; Users or Customers

Benefit practitioners
Customer Service Officers
Other Council officers and council members
DWP
Members of the public (when published as part of the Constitution)

- List how you monitor the impact that it has on different groups. If you do not monitor the impact on different groups is there a justifiable reason for this?

Feedback from staff and customers

- Please list below all data/information you have used to inform you impact assessment, including source & reference.

Examples:

Recruitment & Selection Policy, National Census Ethnicity Data, Recruitment Monitoring Statistics, Service User and Focus Group Consultation, Consultation Reports.
See EIA Framework for other likely sources of useful information

Previous policy document.
Rules and legislation as set out in the policy statement

<p>4.5 Using information gathered record below if you need to take any action to remove any negative impact on identified customers or users (yes or no). If 'no' record this decision below with the reasons why this conclusion has been reached. If 'yes' go to Stage 5.</p>			
<p>No. Procedures are based on established legal rules and precedents.</p>			
<p>Stage 5 – List below proposals and actions to overcome unjustifiable or adverse treatment of any group</p>			
Actions	By whom	Groups consulted	Date completed
None.			
<p>Stage 6 Please summarise below arrangements you have made for publication of your findings. For advice please refer to stage 6 of the EIA guidance.</p>			
<p>No publicity required as this is an internal document mainly intended for use of council staff only.</p>			

Stage 7

Please summarise below what arrangements you have made to monitor/review the impact of the policy, procedure and practice. For advice please refer to **stage 7** of the EIA guidance. Please explain why if you have not.

Benefit practitioners are encouraged to give feedback about the content and effectiveness of the policy, with the aim of reviewing it from time to time. The policy will also be updated in line with any new legislation or working practices, taking account of any suggestions and benchmarking.

Review

Given low or no direct impact of this document on people outside the organisation, this assessment is due for review every three years.

By this review on 24 October 2008, the assessment has been brought up to date, but the principle conclusion remains the same, so that no further action is necessary.

