

**CUMBERLAND SHADOW AUTHORITY**

**CONSTITUTION**

**(Approved by the Shadow Authority on XXXX)**

**2022/2023**

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*Note: For the purposes of this Constitution, where the term Monitoring Officer, Head of Paid Service or Chief Financial Officer are utilised, this will apply to the officer duly designated at that time, whether interim, acting or permanent.*

# **Part 1 – Constitution – summary and explanation**

## Part 1 – Constitution – summary and explanation

### General

- 1 Shadow Authority for the Cumberland Council (“the Shadow Authority”) has been created by the Cumbria (Structural Changes) Order 2022 (“the 2022 Order”) and will operate as the Shadow Authority for Cumberland Council that will become a local authority on 1 April 2023. The Shadow Authority will operate during the period beginning with the fourth day after the 2022 Election Day and ending immediately before 1<sup>st</sup> April 2023, “the Shadow Period”. As required under the Local Government Act 2000, the Shadow Authority has approved this Constitution which sets out:
  - How the Shadow Authority operates;
  - How its decisions are made; and
  - The procedures which will be followed.
- 2 Some of the processes in the Constitution are required by law while others are considered by the Shadow Authority to be necessary to ensure that it operates effectively and efficiently; in the interests of the people it serves and to deliver the requirements of the 2022 Order.

### The Constitution and its Content

- 3 The Constitution is divided into seven parts.

Part 1 sets out an explanation of what the Shadow Authority is and how it works.

Part 2 sets out the formal articles of the Constitution:

Article 1 – The Constitution;  
Article 2 – The Shadow Authority;  
Article 3 – Rights and responsibilities of members of the public;  
Article 4 – The Shadow Authority;  
Article 5 – The role of the Chair;  
Article 6 – Overview and Scrutiny;  
Article 7 – The Shadow Executive;  
Article 8 – Other Committees;  
Article 9 – Joint Arrangements;  
Article 10 – Arrangements for promoting good standards of behaviour by Members;  
Article 11 – Officers;  
Article 12 - Decision Making;  
Article 13 – Legal Matters;  
Article 14 - Review, revision, suspension, interpretation and publication of the Constitution; and  
Article 15 – Budget and Policy Framework

Part 3 sets out the responsibility of bodies and individuals for various functions carried out by the Shadow Authority in relation to the exercise of its powers.

Part 4 contains the Rules of Procedure which are designed to regulate the conduct of the Shadow Authority’s business to ensure decisions are made in accordance with the law and the wishes of the Shadow Authority.



Part 5 includes the Code of Conduct for Shadow Members which is designed to ensure that Members carry out their duties to the highest ethical standards. It also includes a protocol on Member/Officer relations.

Part 6 covers the Scheme of Shadow Members' Allowances. Article 10 of the 2022 Order provides that the Shadow Authority has to prepare and adopt a scheme for the payment of allowances to its members.

Part 7 sets out a glossary to this constitution.

## **The Shadow Authority and how it operates in making decisions**

There are 46 Shadow Members who sit on the Shadow Authority. The Members who comprise the Shadow Authority are the persons who were elected as members of Cumberland Council on the ordinary day of elections of councillors in 2022. The role of the Shadow Authority is to:

- Prepare for the assumption as Cumberland Council of local government functions and full local authority powers on 1 April 2023;
- Prepare budgets and plans required by Cumberland Council when local government functions are assumed on 1 April 2023; and
- Liaise with Cumbria County Council, the Cumberland councils and Cumberland Shadow Authority to ensure continuity of public service delivery on and after 1 April 2023 and thereafter.
- Carry out all functions prescribed by the Cumbria Structural Changes Order 2022, namely:
  - Create the Shadow Executive;
  - Adopt a code of conduct for the Shadow Authority;
  - Designate an interim monitoring officer, interim chief finance officer and interim head of paid service;
  - Appoint a monitoring officer, chief finance officer and head of paid service;
  - Prepare and adopt a scheme of members' allowances;
  - Keep under review and revise as necessary the implementation plan for Cumberland Council;
  - Take all such practical steps as are necessary or expedient to commence and sustain their running as shadow authorities.
- Carry out any other function or role prescribed by any other relevant legislation.

The Shadow Members are directly accountable to their constituents for the running of the Shadow Authority. Whilst Shadow Members have this very broad role they have a duty to represent the interests of all their constituents. They also work closely with officers in developing policies and strategies to give direction to the Shadow Authority's vision .

The Shadow Authority will meet during the Shadow Period. Meetings are open to the public, but the public may be excluded where an item of a confidential or exempt nature is being discussed.

There are two main areas in the Shadow Authority's political structure covering the Shadow Executive and Overview and Scrutiny. These are covered in more detail within the Constitution.

### **Executive**

At its first meeting, the Shadow Authority for Cumberland must create a leader and cabinet executive within the meaning of Part 1A of the Local Government Act 2000. The cabinet executive will comprise of the executive leader together with at least 2, but not more than 9, shadow authority councillors appointed to the executive by the executive leader. The leader must appoint one of the members of the executive as deputy leader.

The Shadow Executive is that part of the Shadow Authority which is responsible for most of the day-to-day decisions.

The leader of the Cumberland Shadow Executive is appointed by the Shadow Authority for Cumberland.

Should a vacancy occur in the office of leader of the Shadow Executive during the Shadow Period, the Shadow Authority must elect a new leader and from among members of the Shadow Authority.

Any Key Decisions to be made by the Shadow Executive are published on a monthly basis in the Shadow Executive Forward Plan which looks at the forthcoming four-month period. It is not always possible to anticipate all the items to be included in the Plan. In cases where this is not possible items will be added to the Plan at the next date of publication. Special arrangements apply where a matter is urgent or cannot be included in the Plan.

### **Overview and Scrutiny Committee**

The Shadow Authority's Overview and Scrutiny arrangements ensure that Shadow Members who are not on the Shadow Executive can be involved in Shadow Executive decisions by questioning and making recommendations.

The Overview and Scrutiny arrangements will reflect as far as practicable the overall political proportionality of the Shadow Authority. Members of the Shadow Executive cannot sit on the Overview and Scrutiny Committee.

### **General**

In performing their various roles, Shadow Members are supported by the Officers who give advice and implement decisions. Officers ensure the Shadow Authority acts within the law and uses resources efficiently and effectively.

As the Shadow Authority is a public body, members of the public have a number of rights in their dealings with it. Whilst some are legal rights such as the right to film, audio record or to report on meetings, others will depend on the Shadow Authority's own processes. These rights are set out in Parts 2 and 4 of this Constitution.

The Constitution will be updated to reflect changes within the Shadow Authority, its procedures and processes.

## **Part 2 – ARTICLES OF THE CONSTITUTION**

## **Part 2 – ARTICLES OF THE CONSTITUTION**

Article 1 – The Constitution;

Article 2 – The Shadow Authority;

Article 3 – Rights and responsibilities of members of the public;

Article 4 – The Shadow Authority;

Article 5 – The role of the Chair;

Article 6 – Overview and Scrutiny;

Article 7 – The Shadow Executive;

Article 8 – Other Committees;

Article 9 – Joint Arrangements;

Article 10 – Arrangements for promoting good standards of behaviour by Members;

Article 11 – Officers;

Article 12 – Decision Making;

Article 13 – Legal Matters;

Article 14 – Review, revision, suspension, interpretation and publication of the Constitution;  
and

Article 15 – Budget and Policy Framework

## **Article 1 – The Constitution**

### **1 Powers and duties of the Shadow Authority**

- 1.1 The powers and duties of the Shadow Authority are set down in Acts of Parliament and secondary legislation. The Shadow Authority will exercise those powers and duties in accordance with the law and its Constitution.

### **2 The Constitution**

- 2.1 The Shadow Authority's Constitution includes all those parts listed in Part 1 – Summary and Explanation.

### **3 Purpose of the Constitution**

- 3.1 The objectives of this Constitution are:
- (a) To support the preparations for the establishment of the Cumberland Council post vesting day;
  - (b) To provide a framework for clear leadership to the community in partnership with its people, businesses and other organisations;
  - (c) To enable decisions to be taken efficiently and effectively;
  - (d) To provide a robust and effective overview and scrutiny function;
  - (e) To ensure that a decision will not be reviewed or scrutinised by anyone who was directly involved in making the decision; and
  - (f) To ensure that those responsibilities for decision making can be clearly identified by local people and that they can explain the reasons for their decisions.
- 3.2 The Shadow Authority will ensure that the articles, procedural rules and protocols in this Constitution reflect and deliver the objectives set out above.

## **Article 2 – The Shadow Authority**

### **1 Composition**

- 1.1 The Shadow Authority comprises the 46 Members elected through elections to Cumberland Council held on 5 May 2022.

### **2 Term of Office**

- 2.1 Members term of office commenced on the 4<sup>th</sup> day after the May 2022 election, the date that the Shadow Period commenced, and ends the fourth day after the 2027 election.

### **3 Role of Shadow Members**

- 3.1 Shadow Members will undertake the following roles:
- (a) as a body, they will keep under review and revise as necessary the implementation plan for Cumberland Council, set the Shadow Authority's major plans, policies and strategies as required by law, perform those functions identified in the 2022 Order and will take decisions on such matters as must be reserved to the Shadow Authority by law or as provided for in this Constitution;
  - (b) oversee the Shadow Authority's strategic and corporate management;
  - (c) represent their communities and the views of their electorate in the decision-making process;
  - (d) support, as appropriate, individuals in their dealings with the Shadow Authority and represent them in seeking to resolve particular concerns or grievances;
  - (e) balance the different interests of people within their constituency with a view to representing their constituency as a whole;
  - (f) participate, as appropriate, in the decision making and/or overview and scrutiny processes; and
  - (g) maintain the highest standards of conduct and ethics and will observe the Shadow Authority's Code of Conduct for elected Shadow Members.

### **4 Shadow Members Representational Roles**

- 4.1 All Shadow Members represent their constituents and the Shadow Authority sees this as an important role and responsibility under this Constitution.
- 4.2 Shadow Members have an important job in consulting their communities on the development of policies, plans and strategies and other local initiatives.
- 4.3 The Shadow Authority will ensure in its processes that appropriate procedures are in place so that Shadow Members can contribute to the Shadow Authority's business on behalf of their local community both in terms of policy development and decision making.

## **5 Shadow Members Rights**

- 5.1 Shadow Members will have rights of access to any document, information, land or buildings of the Shadow Authority where this is necessary for the proper discharge of their functions as a Shadow Member and in accordance with the law and this Constitution.
- 5.2 A Shadow Member is not permitted to make available to the press or to a member of the public any information which they have been sent or given in whatever form and which is exempt or confidential information as defined in the Access to Information Procedure Rules which are set out in Part 4 of this Constitution.
- 5.3 A Shadow Member shall not divulge information given in confidence to them to anyone other than a Shadow Member or officer or other person legally entitled to know it.

## **6 Chair and Vice-Chair of the Shadow Authority**

- 6.1 The Shadow Authority will elect, from amongst its number, at its first meeting, a Shadow Member to serve as Chair of the Shadow Authority for the Shadow Period.
- 6.2 Similarly, the Shadow Authority will appoint the Vice-Chair of the Shadow Authority for the Shadow Period.
- 6.3 Where a vacancy occurs in respect of either office, the Shadow Authority will elect/appoint as appropriate at its next meeting.
- 6.4 A member of the Shadow Executive cannot be elected or appointed as Chair or Vice-Chair of the Shadow Authority while serving on the Shadow Executive, otherwise any Shadow Member is eligible for election/appointment as Chair or Vice-Chair of the Shadow Authority.
- 6.5 Where the Chair and Vice-Chair of the Shadow Authority are both absent from a meeting of the Shadow Authority, or part of it, the Shadow Authority will appoint one of their members, other than a member of the Shadow Executive, to preside.

## **7 Leader of the Shadow Authority**

- 7.1 The Leader of the Shadow Authority will be appointed at the first meeting of the Shadow Authority and hold office until the first meeting of Cumberland Council following vesting day.

## **8 Other Offices**

- 8.1 The Shadow Authority will elect other Members to fill such offices as it may determine from time to time in accordance with any requirements set out in law or this Constitution.

## **9 Conduct of Shadow Members**

- 9.1 All Shadow Members are required, at all times, to observe the Shadow Members' Code of Conduct and to have appropriate regard to such other protocols, policies, guidance and advice as may be issued from time to time through the Shadow Authority's formal processes.

## **10 Shadow Members' Scheme of Allowances**

- 10.1 All Shadow Members shall be entitled to receive such allowances as are laid down from time to time in the Shadow Members' Scheme of Allowances and/or statute.

**11 Shadow Member Support**

- 11.1 The Shadow Authority will also provide support to Shadow Members as appropriate to enable them to fulfil their roles and responsibilities.



## **Article 3 – Rights and responsibilities of Members of the Public**

### **1 Rights**

- 1.1 Members of the public have the following rights in regard to the affairs of the Shadow Authority:
- (a) access to information subject to such constraints as may be imposed by law and as set out in the Access to Information Procedure Rules in Part 4 of this Constitution;
  - (b) to attend meetings of the Shadow Authority and its committees and sub-committees except where exempt or confidential information is likely to be disclosed;
  - (c) to attend public meetings of the Shadow Executive except where exempt or confidential information is likely to be disclosed;
  - (d) to film, audio record or report on meetings of the Shadow Authority and its committees and sub-committees and the Shadow Executive, except where exempt or confidential information is likely to be disclosed, subject to guidelines published on the Shadow Authority's website and available at meetings;
  - (e) to have access to the Shadow Authority's Forward Plan of Key Decisions to be taken by the Shadow Executive;
  - (f) in accordance with the statutory framework to inspect reports, background papers and any records of decisions made by the Shadow Authority, the Shadow Executive, a committee, a sub-committee, the Leader or an Executive Member subject to provisions on exempt or confidential information applying;
  - (g) to ask questions or present petitions at designated meetings in accordance with such procedures as the Shadow Authority may determine from time to time;
  - (h) to contribute to investigations by the Overview and Scrutiny Committee where invited to do so; and
  - (i) to complain to the Shadow Authority where there is an alleged breach of the Shadow Members' Code of Conduct.

### **2 Responsibilities of Members of the Public**

- 2.1 The Shadow Authority in turn expects members of the public not to use violent, abusive or threatening behaviour in any form against any Shadow Member, Officer or persons acting for or on behalf of the Shadow Authority.
- 2.2 The Shadow Authority also asks that the property, assets and other resources of the authority, Shadow Members, Officers or persons acting for or on behalf of the Shadow Authority are not wilfully harmed or damaged.
- 2.3 When attending a meeting of the Authority, the public will follow the reasonable instructions of the chair of the meeting and not disturb the conduct of business. The chair of the meeting, under the approved Meeting Procedure Rules, has the right if required to exclude a member of the public who is causing a disturbance to the conduct of business.

## **Article 4 – The Shadow Authority**

### **1 Functions**

- 1.1 The functions of the Shadow Authority are set out in the Cumbria (Structural Changes) Order 2022 (“the 2022 Order”) and in relevant consequential orders.
- 1.2 The Shadow Authority has the functions set out in Part 3 of this Constitution.
- 1.3 Except where there is provision by statute or this Constitution, the functions conferred by or under the Structural Changes Order are to be delegated to, and discharged by, its Executive Committee.

### **2 Shadow Authority Meeting**

- 2.1 The first meeting of the Shadow Authority will be held no later than 19 May 2022.
- 2.2 Ordinary meetings will be held according to a calendar of meetings to be agreed by the Shadow Authority and which will be published once agreed.
- 2.3 Extraordinary meetings may be called as and when required as provided in the Shadow Authority Procedure Rules.

### **3 Conduct of Shadow Authority Meetings**

- 3.1 Shadow Authority meetings will be conducted in accordance with the law and the Shadow Authority’s Meeting Procedure Rules.

### **4 Responsibility for Functions**

- 4.1 The Shadow Authority will maintain a record of those Shadow Authority functions which are the responsibility of its subordinate bodies i.e. committee or Officers of the Authority.

## **Article 5 – The role of the Chair of the Shadow Authority**

### **1 Civic Role**

- 1.1 The Chair of the Shadow Authority, supported by the Vice-Chair, and as appropriate other Shadow Members, will perform the civic role on behalf of the Shadow Authority.
- 1.2 The civic role entails raising and maintaining the profile of the Shadow Authority's area, the Shadow Authority and its members to the public. The office will promote the aims and values of the Shadow Authority in an apolitical manner.
- 1.3 The Chair will promote such civic and ceremonial functions as the Shadow Authority may determine following consultations, where appropriate.
- 1.4 The Chair will represent the Shadow Authority at civic and ceremonial functions of other local authorities or involving other appropriate bodies.

### **2 Shadow Authority Role**

- 2.1 The Chair will be elected by the Shadow Authority at its first meeting. The Vice- Chair is also appointed at the same meeting.
- 2.2 The Chair is responsible for the following:
  - (a) upholding and promoting the purposes of this Constitution and interpreting it with appropriate advice when necessary;
  - (b) presiding over meetings of the Shadow Authority to ensure that business is carried out efficiently and effectively whilst preserving the rights of Shadow Members and the interests of members of the public;
  - (c) ensuring that at Shadow Authority meetings matters of concern to local communities can be debated through the appropriate Shadow Members;
  - (d) ensuring that Shadow Members who are not on the Shadow Executive Committee or who do not hold the Chair of a main committee are able to hold those office holders to account;
  - (e) promoting public involvement in the Shadow Authority's affairs and acting as a contact between members of the public and organisations and the Shadow Authority; and
  - (f) undertaking such other roles as may be placed upon the office from time to time by the Shadow Authority.
- 2.3 The role of Chair is apolitical.
- 2.4 The Chair will represent the Shadow Authority at civic and ceremonial functions of other local authorities or involving other appropriate bodies.

### **3 Vice-Chair of the Shadow Authority**

- 3.1 The Vice-Chair will support the Chair in his/her civic role and will carry out civic duties as well on behalf of the civic office.

- 3.2 The Vice-Chair will also deputise in the absence of the Chair in carrying out the responsibilities of the office of Chair.

## **Article 6 – Overview and Scrutiny Committee**

### **1 Overview and Scrutiny**

- 1.1 The Shadow Authority has established arrangements for the overview and scrutiny of decisions or other action taken by the Shadow Executive and others in accordance with the Local Government Act 2000 as applied by the 2022 Order. This Article sets out those arrangements. It should be read in conjunction with the Overview and Scrutiny Procedure Rules.
- 1.2 The Shadow Authority will keep under review its overview and scrutiny arrangements and will make changes where it considers these are appropriate and will lead to improvements and an improved overview and scrutiny function.

### **2 Responsibilities of the Overview and Scrutiny Committee**

- 2.1 The Overview and Scrutiny Committee has the functions set out in Part 3 of this Constitution.

### **3 Membership of the Overview and Scrutiny Committee**

- 3.1 The Overview and Scrutiny Committee shall comprise twelve Shadow Members.
- 3.2 No member of the Shadow Executive may be a member of the Overview and Scrutiny Committee or any Overview and Scrutiny task and finish panel.
- 3.3 Any body established under these Scrutiny arrangements will be a politically proportionate body reflecting the overall political representation on the Shadow Authority.

### **4 Conduct of Overview and Scrutiny Committee meetings**

- 4.1 Conduct of the proceedings at Overview and Scrutiny Committee meetings shall be in accordance with the Shadow Authority and Overview and Scrutiny Procedure Rules as appropriate.

### **5 Task and Finish Panels**

- 5.1 The Overview and Scrutiny Committee may establish such task and finish panels as it considers necessary after taking into account the availability of resources, the work programme and scope of the review.
- 5.2 The Committee will appoint the Chair (and Vice Chair, if appropriate) of each panel and agree the membership

## **Article 7 – The Shadow Executive**

### **1 Role of the Shadow Executive**

- 1.1 The role of the Shadow Executive is limited to functions contained in the 2022 Order. The Shadow Executive will carry out all of the Shadow Authority's duties and responsibilities which are not the responsibility of any other part of the Shadow Authority, whether by law or under this Constitution, and in particular it will carry out those duties and responsibilities of the Shadow Executive which are contained in the 2022 Order.
- 1.2 The Shadow Executive shall be responsible for making recommendations to the Shadow Authority on the setting of the 2023/2024 budgets for the Cumberland Council.

### **2 Composition of the Shadow Executive**

- 2.1 The Leader of the Shadow Authority will be appointed at the first meeting of the Shadow Authority and hold office until the first meeting of Cumberland Council following vesting day subject to 3.1 below
- 2.2 The Shadow Executive will consist of the Leader and between two and nine Shadow Members appointed by the Leader.
- 2.3 The Deputy Leader of the Authority will be appointed and may be removed by the Leader.
- 2.4 The Shadow Executive will be chaired by the Leader of the Authority, or in their absence by the Deputy Leader. Should both the Leader and Deputy Leader be absent at a meeting, the remaining Shadow Executive Members will elect a Chair for the duration of that meeting.
- 2.5 No deputy or substitution arrangements are allowed in respect of the Shadow Executive. Neither the Chair nor Vice-Chair of the Shadow Authority may be appointed to the Shadow Executive. No Member of the Overview and Scrutiny Committee may be on the Executive.

### **3 The Leader and Deputy Leader**

- 3.1 The Leader of the Shadow Authority will be appointed at the first meeting of the Shadow Authority and hold office until the first meeting of Cumberland Council following vesting day unless
  - (a) they resign from the office of Leader; or
  - (b) they become ineligible to be a Shadow Member for a specified period or indefinitely; or
  - (c) they cease to be a Shadow Member: or
  - (d) the Shadow Authority passes a resolution to remove them as Leader.
- 3.2 Where there is a vacancy in the office of Leader, the Deputy Leader shall assume the responsibilities of the Leader until the next meeting of the Shadow Authority, whether that be an Ordinary or Extraordinary meeting of the Authority.

- 3.3 If the vacancy in the position results as a resolution of the Shadow Authority to remove the Leader, a new Leader may be elected at that meeting, or the vacancy be filled at the subsequent meeting of the Shadow Authority.
- 3.4 If the Leader is subject to a successful resolution (see 3.1.d above), this will not impact on their right to be a member of the Shadow Executive.
- 3.6 If for any reason the Leader of the Authority is unable to act or the office of Leader is vacant, the Deputy Leader must act in their place. If for any reason both the Leader and Deputy Leader are unable to act, or both posts are vacant, the Shadow Executive must act or must arrange for another Executive Member to act in the interim, until a permanent solution is determined.

#### **4 Proceedings of the Shadow Executive**

- 4.1 All proceedings of the Shadow Executive and its Committees shall be conducted in accordance with the Shadow Executive Procedure Rules set out in this Constitution.

#### **5 Responsibility for Functions**

- 5.1 The Leader may undertake any of the functions of the Shadow Executive themselves or may arrange for the discharge of any executive functions by: the Shadow Executive as a whole another member of the Shadow Executive; a sub-committee of the Shadow Executive; or an Officer or a Joint Committee.
- 5.2 If the Leader is unavailable, absent or there is a vacancy in the post of the Leader, the Deputy Leader may act in place of the Leader and exercise any executive power of the Leader.
- 5.3 Unless the Shadow Executive requests the Shadow Authority to discharge any function in accordance with Article 19 of the 2022 Order, the Shadow Executive can exercise any function of the Shadow Authority conferred on the Shadow Authority by or under the 2022 Order save to the extent any provision of any Act, the 2022 Order or regulations under section 9D or 9DA of the Local Government Act 2000 require otherwise.
- 5.4 The Shadow Executive and other committees can delegate powers to the extent as provided for in Part 1A of the Local Government Act 2000. The arrangements set out in this Constitution reflect those currently agreed. Further, the Shadow Executive can also delegate its powers to any Officer of the Shadow Authority, and/or Cumberland councils or Cumbria County Council as defined in the 2022 Order.
- 5.5 The Leader will ensure that a record is kept of the Shadow Executive functions which are the responsibility of any sub-committee of the Shadow Executive, any Executive Member, Officers or under any joint arrangements. A copy of that record to be deposited with the Shadow Authority's three statutory officers.
- 5.6 Where a delegation arrangement is made under paragraph 5.4 above, it shall not preclude the body or person delegating the function, or part of it, from exercising that function on giving notice in writing to that body or person.
- 5.7 The Leader may establish portfolios of executive functions for the purpose of delegating any executive function to a Member of the Shadow Executive.

#### **6 Sub-Committees of the Shadow Executive**

- 6.1 The Shadow Executive may establish from its membership, sub-committees with full or partial delegated powers to undertake its responsibilities and functions.

## **7 Task and Finish Groups**

- 7.1 The Shadow Executive may establish any Task and Finish Groups it determines are required to assist in formulating recommendations, guidance or providing advice, on matters relating to the Executive's responsibilities and functions.
- 7.2 Task and Finish Groups cannot determine matters on behalf of the Shadow Executive but may provide recommendations for deliberation and determination by the Executive Committee.
- 7.3 Each Task and Finish Group will be chaired by a Member of the Shadow Executive; however, its full membership can be drawn from other Members of the Shadow Authority and include other stakeholder representatives where appropriate.



## Article 8 – Other Committees

### 1 Other Committees

- 1.1 The Shadow Authority will appoint the following other Committees to take such decisions which are not within the responsibilities of the Shadow Executive:

Committee	Shadow Members
Overview and Scrutiny Committee	Twelve
Senior Appointments Committee	Seven
Standards Committee	Seven

- 1.2 The Shadow Authority may appoint other Committees, Sub-Committees and Special Committees with delegated powers to act under specific terms of reference which must be set out in the minutes.
- 1.3 To the extent that any committees are not exercising executive functions the provisions of sections 15-17 of the Local Government and Housing Act 1989 and the Local Government (Committees and Political Groups) Regulations 1990 will apply to their membership.
- 1.4 The membership of the Senior Appointments Committee must include at least one member of the Shadow Executive.

### 2 Powers of Committees

- 2.1 The Committees shall have the functions set out in Part 3 of this Constitution.
- 2.2 A Committee may, at any time, decline to exercise a delegated power. The matter must then be considered and determined by the Shadow Authority as appropriate.

### 3 Conduct of Committee Meetings

- 3.1 Committee meetings will be conducted in accordance with the law and the Meeting Procedure Rules set out in Part 4 of this Constitution.

## **Article 9 – Joint Arrangements**

There are currently no joint arrangements.

## **Article 10 – Arrangements for promoting good standards of behaviour**

### **1 Adoption of a Code of Conduct for Shadow Members**

- 1.1 The Shadow Authority has adopted the Code of Conduct for Shadow Members set out in Part 5 of this Constitution.

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

- 2.1 The Code of Conduct will apply to all Shadow Members when they are acting as a member of the Shadow Authority or hold themselves out as doing so.

### **3 Alleged breaches of the Code of Conduct**

- 3.1 Any allegations that a Shadow Member has breached the Code of Conduct are to be reported to the Monitoring Officer who will follow the approved arrangements for dealing with such matters.

### **4 Independent Person**

- 4.1 For the purposes of Part 5 of this Constitution, references to “the Independent Person” are to a person appointed by the Shadow Authority for the purposes of s28 of the Localism Act 2011.

## **Article 11 – Officers**

### **1 Cumbria (Structural Changes) Order 2022**

- 1.1 Article 9 of the 2022 Order makes provision for the Shadow Authority to designate officers to the posts of interim Monitoring Officer, interim Chief Finance Officer and to be its interim Head of Paid Service, and by 31<sup>st</sup> December 2022 to appoint the Cumberland Authority's permanent Monitoring Officer, permanent Chief Finance Officer and permanent Head of Paid Service.
- 1.2 The roles and functions of those officers are set out in the 2022 Order.
- 1.3 The Monitoring Officer may appoint, in writing, a deputy as appropriate.
- 1.4 The Chief Finance Officer may appoint, in writing, a deputy as appropriate.

### **2 Functions of the Head of Paid Service**

- 2.1 The Head of Paid Service will report to the Shadow Authority on the manner in which the Shadow Authority develops its functions and the co-ordination of those functions. They also have statutory functions in relation to staff directly employed or engaged by the Shadow Authority. The Head of Paid service is the returning officer for the Cumberland Council.

### **3 Functions of the Monitoring Officer**

- 3.1 The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by Shadow Members, staff and the public.
- 3.2 After consulting with the Head of Paid Service, the Monitoring Officer will report to the Shadow Authority, (or to the Shadow Executive in relation to a Shadow Executive function), if they consider any proposal, decision or omission would give rise to unlawfulness or if any decision or omission would give rising to a finding of maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- 3.3 They will contribute to the promotion and maintenance of high standards of conduct.
- 3.4 They will provide advice to all Shadow Members on issues in relation to the scope of powers and authority to take decisions, maladministration, financial impropriety and probity.

### **4 Functions of the Chief Finance Officer**

- 4.1 After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Shadow Authority (or to the Shadow Executive in relation to a Shadow Executive function) and the Shadow Authority's external auditor, if appointed, if they consider 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 Shadow Authority is about to enter an item of account unlawfully.
- 4.2 They will have overall responsibility for the administration of the financial affairs of the Shadow Authority.

- 4.3 They will contribute to the corporate management of the Shadow Authority, in particular, through the provision of professional financial advice.
- 4.4 They will provide advice on issues to all Shadow Members in relation to the scope of powers and authority to take decisions, maladministration, financial impropriety and probity issues and will support and advise Shadow Members and officers in their respective roles.
- 4.5 They will provide financial information to the media, members of the public and the community.
- 5 Duty to provide sufficient resources to the Monitoring Officer and the Chief Finance Officer**
- 5.1 The Shadow Authority will provide these officers with such or procure the provision to these officers of such Officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed in their statutory roles.
- 6 Conduct**
- 6.1 Officers will comply with any protocol on Member/Officer Relations that has been adopted by the Shadow Authority.
- 7 Employment**
- 7.1 The recruitment, selection and dismissal of officers will comply with the Officer Employment Procedure Rules as set out in this Constitution.

The functions set out in this Article are the functions of the officers who are appointed to the specified posts on an interim and a permanent basis.

## **Article 12 – Decision Making**

### **1 General**

- 1.1 The Shadow Authority will keep an up-to-date record, which shall be available for public inspection, of who has responsibility for making decisions in relation to Shadow Authority functions and services.
- 1.2 All decisions of the Shadow Authority will be made in accordance with the law, this Constitution and the principles set out below.

### **2 Types of Decision and the Decision-Takers**

- 2.1 The Shadow Authority will take all decisions which it has reserved to itself or which it is required to take by law.
- 2.2 The Shadow Executive will take all decisions including Key Decisions which it is required to determine as required by law or because the Shadow Authority has decided to delegate the matter to the Shadow Executive.
- 2.3 Other Committees, Sub-Committees, Executive Members, Officers will take such decisions as are delegated to them by the Shadow Authority or the Shadow Executive.

### **3 Decision Making Procedures**

- 3.1 In taking decisions the Shadow Authority, the Shadow Executive, Overview and Scrutiny Committee, and other Committees and Sub-Committees will follow the Shadow Authority's Procedure Rules and in particular as follows:
  - (a) Shadow Authority – Meeting Procedure Rules Parts A and D;
  - (b) Shadow Executive – Shadow Executive Procedure Rules and Meeting Procedure Rules Part C; and
  - (c) Overview and Scrutiny Committee – Overview and Scrutiny Procedure Rules and Meeting Procedure Rules Parts C.

### **4 Definition of Key Decision**

- 4.1 A Key Decision means:

“a decision which, is likely -

- (a) To result in the relevant local authority incurring expenditure which is, or the making of savings which are, over £500,000; or
- (b) To be significant in terms of its effect on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.”

In determining the meaning of “*significant*” for these purposes the Shadow Authority will have regard to any guidance for the time being issued by the Secretary of State in accordance with section 9Q of the Local Government Act 2000, and the advice of the Shadow Authority’s statutory officers.

## **Article 13 – Legal Matters**

### **1 Legal Proceedings**

- 1.1 The Monitoring Officer is authorised to institute, defend or participate in any legal proceedings or to take such other action where such action is necessary to give effect to decisions of, or on behalf of, the Shadow Authority or in any case where they consider that such action is necessary to protect or further the Shadow Authority's interests.

### **2 Document Authentication**

- 2.1 Where any document is necessary to any legal procedure or proceedings on behalf of the Shadow Authority, it will be signed by the Monitoring Officer or other person authorised by him/her unless any enactment otherwise authorises or requires, or the Shadow Authority has given requisite authority to some other person.
- 2.2 In the absence of any authority given to a specific officer, whether by this Constitution or in any other manner, all contracts entered into on behalf of the Shadow Authority may be signed by any one or more of the following:
- (a) the Head of Paid Service;
  - (b) the Monitoring Officer; and/or
  - (c) the Chief Finance Officer.

### **3 Address for service of documents**

- 3.1 Documents to be served on the Shadow Authority may be addressed to the Monitoring Officer at the main offices of the Shadow Authority. For this purpose and all purposes connected with this Constitution the Shadow Authority's main office is at the main office of the Authority as stated on the Shadow Authority's website.



## **Article 14 – Review, Revision, Suspension, Interpretation and Publication of the Constitution**

### **1 Review**

- 1.1 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.

### **2 Changing the Constitution**

- 2.1 Any Member, the Shadow Authority or part of the Shadow Authority may request the Monitoring Officer to consider changes to the Constitution. The Monitoring Officer will consider any requests for changes to the Constitution to ensure their compliance with statute. If the proposed changes are compliant with statute and are not likely to conflict with policy approved by the Shadow Authority, the Monitoring Officer will submit a report to Shadow Authority accordingly.

- 2.2 The Monitoring Officer may make minor amendments to the Constitution, in consultation with the Chief Finance Officer, the Leader and the Chair of the Authority:

- (a) where they consider this necessary and/or expedient to reflect legislative change, secure consistency, address any legal ambiguity and/or other legal issue and/or address any uncertainty in interpretation; or
- (b) for any other reason, provided that any such amendment does not seek to remove any reserved power of the Shadow Authority and/or the Shadow Executive and confirmation of such amendments are reported to the next available meeting of the Shadow Authority.

Should any consultee (listed above) request any proposed amendment be submitted to the Shadow Authority for ratification then this will be submitted to the next scheduled meeting.

- 2.3 For proposed changes from Executive arrangements, the Authority must comply with necessary statute.

### **3 Suspension of the Constitution**

- 3.1 The Articles of this Constitution may not be suspended. However, the Meeting Procedure Rules set out in this Constitution may be suspended by the Shadow Authority to the extent permitted within those Rules and the law.

- 3.2 A motion to suspend any rules cannot be moved without notice, unless at least one half of the whole number of Shadow Authority Members are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking into account the purposes of the Constitution set out in Article 1.

### **4 Interpretation**

- 4.1 The ruling of the Chair of the Shadow Authority as to the construction or application of this Constitution or as to any proceedings of the Shadow Authority shall not be challenged at any meeting of the Shadow Authority. Such interpretation will have regard to the purposes of this Constitution.

- 4.2 The Chair will consult with the Monitoring Officer, or in the Monitoring Officer's absence, other appropriate officers prior to any ruling under 4.1 above.

## **5 Publication**

### 5.1 The Monitoring Officer:

- (a) will give each Shadow Authority Member access to a copy of this Constitution in their preferred format;
- (b) will ensure that a copy of this Constitution is made available on the Shadow Authority's website;
- (c) will ensure that copies are available for inspection at the Shadow Authority's Main Office, and other appropriate locations, and can be purchased by members of the public and press on payment of a reasonable fee;
- (d) will ensure that the summary of the Constitution is made available within the area and is updated as necessary.

## **Article 15 - Budget and Policy Framework**

This article details those policy documents and strategy documents which comprise the “policy framework” which the Shadow Authority will be responsible for adopting in preparation of the Cumberland Authority assuming local government functions and full local authority powers on 1 April 2023. This policy framework and the annual budget are the responsibility of the Shadow Authority.

### **Framework**

- (a) General Fund Budget;
- (b) Housing Revenue Account Budget;
- (c) Capital Programme;
- (e) Medium Term Financial Strategy onwards;
- (f) Capital Strategy;
- (g) Treasury Management Strategy;
- (h) The Council Plan.

If the following matters are considered, they are **reserved** for Shadow Authority as set out in legislation –

- (i) Adopting and changing the Shadow Authority Constitution (subject to Article 14 above);
- (ii) Confirming the appointment or designation, of the interim, acting or permanent Head of Paid Service, Chief Finance Officer, Monitoring Officer ;
- (iii) Adopting or amending a Member Allowance Scheme for the Shadow Authority (following receipt of recommendations from an Independent Remuneration Panel);
- (iv) The Annual Library Plan;
- (v) The Best Value Performance Plan;
- (vi) The Children and Young People’s Plan;
- (vii) The Crime and Disorder Reduction Strategy;
- (viii) The Development Plan Documents;
- (ix) The Shadow Licensing Authority Policy Statement;
- (x) The Local Transport Plan;
- (xi) The Sustainable Community Strategy;
- (xii) The Youth Justice Plan;
- (xiii) The Gambling Licensing Policy

- (xiv) All other matters which by law must be reserved to the Shadow Authority.

## **Part 3 – Responsibility for Functions**

## **Responsibility for Functions**

### **1 General**

- 1.1 The Shadow Authority has the functions set out in the 2022 Order and in particular it will have the following responsibilities:
- (a) to commence and sustain its running as a Shadow Authority;
  - (b) to prepare the Shadow Authority for the assumption of local government functions and full local authority powers on 1 April 2023;
  - (c) to prepare any budgets or plans required beyond 1 April 2023 when those functions and powers are assumed;
  - (d) to liaise with Cumbria County Council, the Westmorland and Furness Shadow Authority and the Cumberland Councils for the purposes of ensuring continuity of public service delivery on and after 1 April 2023;
  - (e) to take all such practical steps as are necessary or expedient to liaise with the other local authorities within its area for the purposes of ensuring continuity of public service delivery on and after 1 April 2023; and
  - (f) to exercise any of the Local Government Act 1972 functions referred to in, and in accordance with the 2022 Order (as amended).
- 1.2 The powers and functions of the Shadow Authority are therefore limited and, consequently, the powers and functions of its Shadow Executive, committees, sub-committees and other decision-making bodies are similarly limited. The responsibilities for functions described in this Part of the Constitution must therefore be considered in this context. However, upon the assumption of full local authority functions and powers on 1 April 2023, these responsibilities will increase.
- 1.3 The Shadow Authority is required in this Constitution to set out the allocation of responsibilities for its functions.
- 1.4 The following paragraphs cover functions which are:
- (a) the responsibility of the Leader and the Shadow Executive;
  - (b) the responsibility of the Shadow Authority and/or its Committees/Sub-Committees; and
  - (c) the responsibility of Officers.
- 1.5 Where a function is not specified as being the responsibility of the Shadow Authority, a Committee, Sub-Committee or officer that function shall, unless otherwise proved to the contrary by law, be the responsibility of the Executive.

- 1.6 The exercise of any power or duty is subject to compliance with the law, the provisions of this Constitution and that sufficient budgetary provision having been made.
- 1.7 Any reference to a function or matter includes a reference to all statutory powers about that function or matter whether directly or indirectly and authority to exercise all such powers.
- 1.8 Any reference in the scheme of delegation to an Act of Parliament or statutory instrument includes a reference to any amendment, modification or statutory re-enactment (with or without modification).
- 1.9 Where a power or duty of the Authority has been delegated the delegation includes any action that may be incidental to the exercise of the power or duty.

## **2 Functions of the Leader and the Shadow Executive**

- 2.1 The functions to be exercised by the Leader or Shadow Executive are set out in Article 7 of this Constitution. Where the Leader or the Shadow Executive Committee is exercising a Shadow Executive function, in whole or in part, the Leader or the Shadow Executive is empowered to take all necessary and appropriate decisions to fulfil the obligations placed upon them subject to any restrictions or constraints imposed by the law or this Constitution.
- 2.2 The Leader may delegate functions to an Executive Member who is responsible for a portfolio for such functions in accordance with Article 7.

## **3 Responsibilities of committees of the Shadow Executive**

- 3.1 Where the Shadow has arranged for an executive function to be exercised by a subcommittee of the Shadow Executive or an individual Executive member, the committee or Member is empowered to take all necessary and appropriate decisions to fulfil the obligations placed upon it by the Executive, subject to any restrictions or constraints imposed by the law or this Constitution.

## **4 Functions of the Shadow Authority**

- 4.1 The functions of the Shadow Authority are set out in Article 4 of Part 2 but include:
  - (a) Adopting the budget and policy framework for the Cumberland Council and setting of the council tax for its area. For these purposes the budget includes the setting of council tax and the policy framework means such plans and strategies as must by law be approved by the Shadow Authority;
  - (b) adopting the Shadow Authority's Constitution in accordance with the requirements of section 9P of the Local Government Act 2000;
  - (c) appointing the:
    - (i) Chair of the Shadow Authority;
    - (ii) Vice-Chair of the Shadow Authority;
    - (iii) Chair and Vice-Chair of Committees (except the Executive Committee), Sub-Committees and Special Committees, Panels and Working Groups if the relevant Committee, Sub-Committee, Special

Committee, Panel or Working Group fails to elect a chair or vice-chair;  
Leader and

- (iv) Such other offices as may be required by or under the 2022 Order or this Constitution;
- (d) Appointment and removal of the Leader;
- (e) Adopting the Shadow Authority's Codes of Conduct for Shadow Members and Officers and the Protocol on Member/Officer Relations;
- (f) Where permitted by the law, will make arrangements for appointments to outside bodies;
- (g) Carrying out all duties specified in and compliant with the 2022 Order where the Shadow Executive has given notice under Article 19 of the 2022 Order;
- (h) Approving the Shadow Members Allowance Scheme, including any pension provision for Members, following advice from any Independent Remuneration Panel;
- (i) Appointment, designation or dismissal of statutory officers as required under the 2022 Order or other legislation;
- (j) May determine other matters which may from time to time be submitted to it for determination, either by resolution or through approved procedures, where such matters do not fall within the functions of the Shadow Executive.

## **5 Regulatory Committees**

- 5.1 Until the Shadow Authority assumes local government functions and full local authority powers on 1 April 2023, in accordance with the 2022 Order, the Shadow Authority will not exercise any regulatory powers and functions. The Shadow Authority will, however, take such practical steps as are necessary or expedient to prepare the Cumberland Council for the assumption of such regulatory functions and powers.

## **6 Responsibility of the Senior Appointments Committee**

- 6.1 The Senior Appointments Committee is a sub-committee of the Shadow Authority and has responsibility for:
  - (a) undertaking the selection process for, and formulating recommendations to the Shadow Authority in relation to, the appointment of the permanent Head of Paid Service of the Cumberland Council before 31<sup>st</sup> December 2022 in accordance with the appropriate procedures set out in the Officer Employment Procedure Rules;
  - (b) undertaking the selection process for, and confirming the recommendation to the Shadow Authority for the appointment of, the permanent Monitoring Officer and section 151 Officer of the Cumberland Council before 31<sup>st</sup> December 2022 in accordance with the appropriate procedures set out in the Officer Employment Procedure Rules;
  - (c) undertaking the dismissal processes of the Head of Paid Service, Monitoring Officer and section 151 Officer in accordance with statutory requirements and the appropriate procedures set out in the Officer Employment Procedure Rules;



- (d) undertaking the selection, appointment and dismissal processes and determining the terms and conditions for those other senior appointments specified in the Local Authorities (Standing Orders) (England) Regulations 2001 in accordance with the appropriate procedures set out in the Officer Employment Procedure Rules;
- (e) Where appropriate and in accordance with statutory requirements hearing and determining any grievances or appeals by the permanent Monitoring Officer, section 151 Officer and Head of Paid Service of the Cumberland Council.

## **7 Responsibility of the Overview and Scrutiny Committee**

7.1 The Shadow Authority shall have one Overview and Scrutiny Committee, which may commission task and finish groups to undertake scrutiny projects. The Overview and Scrutiny Committee will specifically:

- (a) discharge the Shadow Authority's functions under Section 9F of the Local Government Act 2000;
- (b) oversee the Shadow Authority's overall overview and scrutiny function including the preparation, implementation, monitoring and review of an annual work programme for overview and scrutiny;
- (c) Scrutinise the Shadow Executive's Budget proposals for 2023/2024.
- (d) establish such task and finish groups, appointing the Chair with such membership as it sees fit, to undertake overview and scrutiny on a task and finish basis;
- (e) ensure that officers discharge their responsibilities effectively and efficiently in relation to the overview and scrutiny function;
- (f) scrutinise decisions of the Shadow Executive, and offer advice or make recommendations on the matter under scrutiny once the Overview and Scrutiny Committee have considered the issues;
- (g) refer to the Shadow Authority, the Shadow Executive or appropriate Committee/Sub-Committee any matter which, following scrutiny, the Overview and Scrutiny Committee determines should be brought to the attention of the Shadow Authority, Shadow Executive or the Committee or Sub-Committee.
- (h) if requested, offer any views or advice to the Shadow Executive in relation to any matter referred to the Overview and Scrutiny Committee for consideration;
- (i) in performing its role, the Committee may consult and involve the local community and other public, private and voluntary bodies or organisations;
- (j) review the Shadow Authority's response to its obligations in respect of the overall performance management regime and where appropriate advise the Shadow Executive and the Shadow Authority of its findings;
- (k) scrutinise decisions after implementation to examine their effect and outcomes;
- (l) contribute to ensuring that the Shadow Authority develops and maintains effective policies and procedures for handling complaints and other customer feedback to the Shadow Authority; monitor the overall level and nature of complaints and

other customer feedback received and make recommendations regarding actions to address identified issues as appropriate; and

- (m) contribute to ensuring that the Shadow Authority has in place appropriate mechanisms to protect organisational integrity including the development of appropriate policies and guidance.

## **8 Responsibility of the Standards Committee**

- 8.1 In accordance with the approved arrangements, the Standards Committee is responsible for assessing and determining allegations referred to it that Shadow Members have breached the Shadow Authority's Code of Conduct in accordance with Article 10 of this Constitution.
- 8.2 The Standards Committee is responsible for recommending to the Shadow Authority the appointment of an Independent Person.

## **9 Independent Remuneration Panel**

- 9.1 The 2022 Order requires the Shadow Authority to prepare and make a scheme for the payment of allowances to its Shadow Members. The Independent Remuneration Panel shall have the functions given by Regulation 21 of the Local Authorities (Members' Allowances) (England) Regulations 2003.

## **10 Powers of Officers**

- 10.1 The Shadow Authority and its Shadow Executive Committee may delegate such powers, responsibilities and decisions to any of its own officers, or to any officers of Cumbria County Council or the Cumberland councils as defined in the 2022 Order.
- 10.2 The Head of Paid Service shall have the power to take:
  - (a) all necessary action for the effective day-to-day management, operation and/or administration of the Shadow Authority and for the efficient discharge of the professional responsibilities of their office;
  - (b) any action required to implement a decision of the Shadow Authority, the Leader, the Shadow Executive or any committee or sub-committee;
  - (c) in consultation with the Leader, unless the Leader is unavailable or absent, any urgent action as may be appropriate in connection with any of the executive or non-executive functions of the Shadow Authority; and
  - (d) without prejudice to the above, any action for the purposes of agreeing the terms and entering into any secondment agreements under section 113 of the Local Government Act 1972 and/or any arrangements for the purposes of securing the provisions of any goods and/or services whether pursuant to the Local Authorities (Goods and Services) Act 1970 or otherwise.
- 10.3 The Monitoring Officer, and the Chief Finance Officer have the statutory powers which are set out in the 2022 Order together with the power:
  - (a) to take all necessary action within their areas of responsibility for the effective day-to-day management, operation and/or administration of the Shadow Authority and for the efficient discharge of the professional responsibilities of their office;

- (b) to take any action within their areas of responsibility required to implement a decision of the Shadow Authority, the Leader, the Shadow Executive or any committee or sub-committee;
  - (c) without prejudice to the above, to take any action for the purposes of agreeing the terms and entering into any secondment agreement under section 113 of the Local Government Act 1972 and/or any arrangements for the purposes of securing the provision of any goods and/or services whether pursuant to the Local Authorities (Goods and Services) Act 1970 or otherwise; and
  - (d) to exercise any power of the Head of Paid Service if unavailable, absent and/or any such post is vacant.
- 10.4 When exercising delegated powers Officers:
- (a) must comply with the Shadow Authority's Financial and other relevant Procedure Rules and with the law:
  - (b) may authorise expenditure only which is in accordance with approved estimates and which does not require an approval which has not been authorised or received;
  - (c) save to the extent that the determining officer considers necessary, in order to give effect to a matter to which delegation 10.3 (c) above relates, shall comply with approved policies, schemes or directions of the Shadow Authority, Leader, Shadow Executive Committee or of any Committee and shall not depart from such policies, schemes or directions; and
  - (d) shall consult with the appropriate professional or technical officer(s) of the Shadow Authority or the Cumberland councils (as defined in the 2022 Order) and Cumbria County Council.
- 10.5 Delegation to officers does not affect the powers of the Shadow Authority, Leader, Shadow Executive or any Committee at any time to decide upon any delegated matter.
- 10.6 Officers may refer issues on which they have delegated power to the body or person by whom the delegation was given.
- 10.7 Authority to take decisions and other action including the signing of documents and the requirement to arrange consultations shall be undertaken on behalf of the Shadow Authority in the name of the Officer to whom the authority to act is given, but need not necessarily be personally by them.
- 10.8 Any specific delegation to the Head of Paid Service, Monitoring Officer or the Chief Finance Officer (including power to act as the Proper Officer), may be exercised by another Officer specifically designated in writing by the Head of Paid Service, Monitoring Officer or the Chief Finance Officer to whom the delegation applied initially, in accordance with any general directions issued and included in such written authorisation.
- 10.9 Neither the Monitoring Officer's nor the Chief Finance Officer's statutory responsibilities may be delegated, although they may each appoint a member of their staff to carry out those functions in their absence.

Statutory and Proper Officers

<u>Legislation and Section</u>	<u>Function</u>	<u>Proper Officer</u>
<u>Section 4(1) Local Government and Housing Act 1989</u>	<u>Head of Paid Service</u>	<u>Head of Paid Service</u>
<u>Section 151 Local Government Act 1972</u>	<u>Chief Financial Officer</u>	<u>Chief Finance Officer</u>
<u>Section 5 Local Government and Housing Act 1989</u>	<u>Monitoring Officer</u>	<u>Monitoring Officer</u>
<u>Section 9FB Local Government Act 2000</u>	<u>Scrutiny Officer</u>	<u>Monitoring Officer</u>
<u>Section 35 Representation of the People Act 1983</u>	<u>Returning Officer</u>	<u>Head of Paid Service</u>
<u>Section 8 Representation of the People Act 1983</u>	<u>Electoral Registration Officer</u>	<u>Head of Paid Service</u>
<u>Section 69 Data Protection Act 2018</u> <u>Article 37 General Data Protection Regulation 2018</u>	<u>Data Protection Officer</u>	<u>Monitoring Officer</u>

## Notes

1. Section 113 of the Local Government Finance Act 1988 provides that the Chief Finance Officer must also be the Council Tax Registration Officer.
2. Section 114 of the Local Government Finance Act 1988 provides that the Chief Finance Officer must nominate a suitably qualified member of staff to carry out the duties under that section when the Chief Finance Officer is unable to act through absence or illness.
3. Section 5(7) of the Local Government and Housing Act 1989 provides that the Monitoring Officer must nominate a deputy to act when the Monitoring Officer is unable to do so through absence or illness.
4. Section 35 of the Representation of the People Act 1983 provides that the Returning Officer may appoint deputies to assist in the duties of the Returning Officer.
5. Section 5(2) of the Representation of the People Act 1983 provides that the Electoral Registration Officer may appoint deputies to assist in the duties of the Electoral Registration Officer.

Proper Officers

Proper Officers are listed below. Proper Officers may appoint a Deputy to act when the Proper Officer is unavailable.

<u>Legislation, section and function</u>	<u>Proper Officer</u>
<b>Local Government Act 1972</b>	
Section 83(1)(4) - Proper Officer to witness and receive declaration of acceptance of office	Head of Paid Service and Monitoring Officer
Section 84(1) - Proper Officer for receipt of resignation of Members of the Council	Head of Paid Service
Section 88 – Proper Officer to convene a meeting of the Council when the office of Chair is vacant	Head of Paid Service

Section 89(1)(b) - Proper Officer to receive notice of vacancy in the officer of Member	Head of Paid Service
Section 96(2) - Proper Officer to record and keep in a book particulars of such disclosures	Head of Paid Service
Section 100(A) - Proper Officer for designating committee reports as confidential or exempt	Monitoring Officer
Section 100(B)(2) - Proper Officer for circulation of reports and agendas	Monitoring Officer
Section 100(B)(7)(C) - Proper Officer for supply of papers to the press	Monitoring Officer
Section 100(C)(2) - Proper Officer for summarising minutes	Monitoring Officer
Section 100(1)(1) and (5) - Proper Officer for identifying papers not open to members	Monitoring Officer
Section 100(F)(2) Proper Officer for identifying papers not open to members	Monitoring Officer
Section 115(2) - Proper Officer to receive money due from officers	Chief Finance Officer
Section 225(1) - Proper Officer to receive documents placed on deposit with the Council	Monitoring Officer
Section 229 – Proper Officer to certify photographic copies of documents	Monitoring Officer
Schedule 3 Paragraph 6(2) - Proper Officer by whom declarations of acceptance of office by Members shall be retained	Monitoring Officer
Schedule 12, Section 99 – Contains provisions governing conduct of meetings, including requirements for notices to be given by Proper Officer and the appointment of the Proper Officer to sign summons to attend meetings of the Council and specifying the proposed business	Monitoring Officer
Representation of the People Act 1983 – Section 67(7)(b) - Receipt of notice of an election agent for local elections Sections 82 and 89 – receipt of election expense declaration and returns for the holding of those documents for public inspection Section 128 – Provision that a copy of any petition questioning a local government election shall be sent to the Proper Officer who shall publish it in the local authority area – and any regulations made thereunder.	Head of Paid Service
<b>Local Government Finance Act 1988</b>	
Section 114 – Duty to report	Chief Finance Officer
Section 116 – Proper Officer must give the authority’s auditor notice of meetings held under section 115	Chief Finance Officer
<b>Local Government and Housing Act 1989</b>	
Section 2 – Listing and publication of politically sensitive posts	Head of Paid Service

Sections 15-17 – To receive notification of political groups and to allocate committee seats according to political balance	Monitoring Officer
<b>Local Government (Committees and Political Groups) Regulations 1990</b>	
Section 14 – For the purposes of the composition of committees and nominations to political groups, Proper Officer's duty to notify Leader or representative of a political group	Monitoring Officer
<b>Local Government Act 2000 and Regulations made thereunder</b>	
All references to the Proper Officer in the Act and subordinate legislation	Monitoring Officer
<b>Local Authorities (Standing Orders) (England) Regulations 2001</b>	
Schedule 1 Part II paragraph 3 – Proper Officer to give written notice of appointment or dismissal of officers	Monitoring Officer
<b>Local Elections (Principal Areas) (England and Wales) Rules 2006 and Local Elections (Parishes and Communities) (Rules) 2006</b>	
Schedule 2 to each set of rules – Retention and public inspection of documents after an election	Head of Paid Service
<b>Localism Act 2011 and Regulations made thereunder</b>	
To receive complaints for failure to comply with Code of Conduct	Monitoring Officer

# **Part 4**

## **Rules of Procedure**

## **A Access to Information Procedure Rules**

### **1 General**

- 1.1 These rules apply to all meetings of the Shadow Authority, its Committees and Sub- Committees and to public meetings of the Shadow Executive.
- 1.2 In these Rules the word “meeting” means a meeting or meetings of any of these bodies unless specified otherwise.
- 1.3 These rules do not affect any other specific rights to information contained elsewhere in this Constitution or the law.
- 1.4 Members of the public may attend all public meetings subject to the exceptions contained in these Rules.
- 1.5 Members of the press and public are also entitled to film, audio record and report on meetings of the Shadow Authority, Committees and Shadow Executive, except in circumstances where the public have been excluded as permitted by law. Any such filming, audio recording or reporting shall be in accordance with any guidelines published by the Shadow Authority on its website or made available at the meeting.

### **2 Notice of Meetings**

- 2.1 The Shadow Authority will give, wherever possible, at least five clear working days’ notice of any such meeting by publicising, including by electronic means, relevant details.
- 2.2 A copy of the official notice will also be published on the Shadow Authority’s website.

### **3 Agenda and Supporting Papers – Rights of Access**

- 3.1 Copies of the Agenda and supporting papers will be made available on the Shadow Authority’s website, for inspection by the public at least five clear working days before the meeting. Where an item is added to an Agenda at a later date, a supplementary agenda will be made available, with any supporting papers, to the public as soon as possible.
- 3.2 The Shadow Authority will supply on request copies of any agenda and reports which are open to public inspection, and if the Monitoring Officer thinks fit, copies of any further documents supplied to Shadow Members relating to that item.
- 3.3 The Shadow Authority may require any person to make a payment in advance covering postage and actual costs incurred connected to the supply of the papers in Rule 3.2 above.

### **4 Access to Decision Records, Minutes, Agenda and Supporting Papers after a meeting**



- 4.1 The Shadow Authority will make electronically available, for a period of six years from the date of the meeting:
- (a) the minutes of the meeting where, unless these rules or the Constitution minutes are required to be made, excluding any part of the minutes relating to the conduct of business when the public were not present or where exempt or confidential information would be disclosed; and
  - (b) the records of decisions taken (which may be included within the minutes), together with reasons by the Shadow Executive, excluding any part of the record relating to the conduct of business when the public were not present or where exempt or confidential information would be disclosed; and
  - (c) where information relating to a decision is considered in private, a summary of the proceedings to provide a reasonably fair and coherent record will be provided excluding any information which is of a confidential or exempt nature; and
  - (d) the agenda and supporting papers covering items which were considered when the public were entitled to be present.

## **5 Background Documents**

- 5.1 The Officer, in whose name an item is to be submitted for decision, will set out in the agenda a list of the background documents which in his/her opinion:
- (a) relates to the subject matter of the item in question; and
  - (b) discloses any facts or matters on which the agenda item or an important part of it has been based; and
  - (c) has been relied upon to a material extent in preparing the agenda item.
- 5.2 Background documents which have been made available for public inspection will continue to be available for a period of four years from the date the decision is made.

## **6 Definition of Confidential and Exempt Information**

- 6.1 For the purposes of these Rules the definitions of confidential and exempt information are set out below.
- 6.2 Confidential information means information supplied or given to the Shadow Authority by a Government Department on terms which forbid its disclosure to the public or is information which cannot be disclosed to the public by Order of the Courts.
- 6.3 Exempt information is information falling within any of the categories set out in Appendix 1 subject to the conditions noted in that Appendix.

## **7 Exclusion of the Public from Meetings**

### Confidential Information – Requirement to Exclude

- 7.1 The public will be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted or the proceedings, that confidential information, as described in Rule 6.2 above will be disclosed.

### Exempt Information – Discretion to Exclude

- 7.2 In the case of exempt information, the public may be excluded from a meeting whenever it is likely, in view of the nature of the business to be transacted or the proceedings, that exempt information within the categories set out at Appendix 1 will be disclosed.

## **8 No public right of access to agenda papers**

- 8.1 The Monitoring Officer, where they consider it necessary, may refuse access by the public to any agenda or supporting papers which in their opinion relate to items during which, in accordance with Rule 7 above, the meeting is not to be open to the public. Any such papers will be clearly marked “Not for Publication” and will contain the category of information to be disclosed as set out in Appendix 1 to these Rules. Similar provisions apply to the disclosures of documents related to decisions of the Shadow Authority, including the Shadow Executive.

## **9 The Shadow Executive: Application of these Rules**

- 9.1 Rules 10 to 20 will apply to the Shadow Executive and any Committees or Sub-Committees which it may establish from time to time.
- 9.2 Where the Shadow Executive, including a Committee or Sub-Committee of the Shadow Executive meet to discuss a Key Decision, with an Officer or Officers present, within 28 days of the date according to the Forward Plan by which it is to be decided, then the Shadow Executive must comply with Rules 1 to 8 above unless Rule 12 (general exception) or 13 (special urgency) apply. This requirement does not apply where the sole purpose of the meeting is for officers to brief Shadow Members.

## **10 Procedure before taking a Key Decision**

- 10.1 Subject to Rules 12 or 13, a Key Decision cannot be taken unless:
- (a) a notice (“the Forward Plan”) has been published in connection with the matter in question and made available to the public at the main office of the Shadow Authority; and
  - (b) at least 28 clear calendar days have elapsed since publication of the Forward Plan; and

- (c) where the decision is to be taken at a meeting of the Shadow Executive, including a Committee or Sub-Committee of the Shadow Executive, public notice of the meeting has been given under Rule 2 above.

## **11 The Forward Plan**

- 11.1 The Forward Plan will be prepared on behalf of the Leader on a monthly basis to cover a four-month period beginning with the first day of any month. The Forward Plan will be rolled forward and published each month to cover the four-month period beginning again with the new date of publication. There will be instances where it is impracticable to include an item in the Forward Plan. In this case Rule 12 or 13 below will apply.
- 11.2 The Forward Plan will contain such matters considered to be Key Decisions to be taken during the period covered by the Forward Plan.
- 11.3 The Forward Plan will describe in respect of each matter the following particulars:
  - (a) the matter relating to the decision to be made;
  - (b) the name and title of the decision taker if an individual, or the name and details of the membership where the decision taker is a body;
  - (c) the date on which, or the period within which, the decision will be taken;
  - (d) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
  - (e) the means by which any such consultation is proposed to be undertaken;
  - (f) the steps any person might take to make representations to the Shadow Executive or decision taker about the matter before the decision is made, and the date by which those steps must be taken.
  - (g) a list of the documents to be submitted to the decision taker for consideration in relation to the matter;
  - (h) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the forward plan is available;
  - (i) that other documents relevant to the matter may be submitted to the decision taker; and
  - (j) the procedure for requesting details of those documents (if any) as they become available.
- 11.4 Where in relation to any matter where the public may be excluded from a public meeting under Rule 7, or documents relating to the decision need not be disclosed to the public, the Forward Plan must contain the particulars of the

matter, but may not contain any confidential information, exempt information or particulars of the advice of a political adviser or assistant.

## **12 General exception for Key Decisions**

- 12.1 If a matter which is likely to be a Key Decision has not been included in the Forward Plan then, subject to Rule 13, the decision may still be taken if:
- (a) the decision has to be taken by such a date that it is impracticable to defer the decision until it can be included in the next Forward Plan and until the start of the first month to which the next Forward Plan relates; and
  - (b) the Monitoring Officer has informed the Chair of the Overview and Scrutiny Committee, or if there is no such person, each member of the Committee in writing, by notice, of the matter to which the decision is to be made; and
  - (c) the Monitoring Officer has made copies of that notice available to the public at the Main Office of the Shadow Authority; and
  - (d) at least five clear working days have elapsed since the Monitoring Officer complied with his/her obligations under this paragraph.
- 12.2 Where such a decision is taken by the Shadow Executive, it must be taken in public subject to any requirements relating to the disclosure of confidential or exempt information and the exclusion of the public.

## **13 Special urgency for Key Decisions**

- 13.1 If by virtue of the date by which a Key Decision must be taken, the requirements of Rule 12 above cannot be followed, then the decision can only be taken if the decision maker (if an individual) or the Leader if the decision is to be taken by the Shadow Executive or sub-committee of the Shadow Executive, obtains the agreement of the Chair of the Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chair of the Overview and Scrutiny Committee or if they are unable to act, then the agreement of the Chair of the Shadow Authority, or in his/her absence the Vice Chair will suffice.
- 13.2 In addition to the requirement for the Chair of the Overview and Scrutiny Committee to agree to the matter being dealt with as urgent business, the Chair of the Overview and Scrutiny Committee will be consulted, and may comment, on the subject matter of the decision itself.

## **14 Report to Shadow Authority**

- 14.1 If the Overview and Scrutiny Committee is of the opinion that a Key Decision has been taken which was not:
- (a) included in the Forward Plan; or
  - (b) the subject of the general exception procedure under Rule 12 above; or

- (c) the subject of an agreement with the Overview and Scrutiny Committee Chair, or the Chair/Vice Chair of the Shadow Authority under Rule 13 above;
- (d) The Committee may require the Shadow Executive to submit a report to the Shadow Authority within such reasonable time as the Committee specifies.

14.2 In response to any requirement under Rule 14.1 above, the Shadow Executive will prepare a report for submission to the next available meeting of the Shadow Authority. However, if the next meeting of the Shadow Authority is within 7 clear working days of the resolution of the Committee, then the report may be submitted to the subsequent meeting. The report to the Shadow Authority will set out particulars of the decision, the individual or body taking the decision, and if the Shadow Executive is of the opinion that it was not a Key Decision, the reasons for that opinion.

## **15 Record of decisions of the Shadow Executive**

15.1 After any meeting of the Shadow Executive or any of its Committees or Sub-Committees, whether held in public or private, the Monitoring Officer or their nominee, or where no officer was present, the person presiding at the meeting, will normally produce as soon as practicable an electronic record (which may be included within the minutes) of every decision taken at that meeting. The record will include:

- (a) a record of the decision including the date it was made;
- (b) a record of the reasons for the decision;
- (c) details of any alternative options considered and rejected by the decision taker;
- (d) a record of any conflict of interest relating to the matter decided which is declared by any member of the decision taker; and
- (e) in respect of any declared conflict of interest, a note of any dispensation granted by the Monitoring Officer.

## **16 Meeting of the Shadow Executive in private**

16.1 Where a meeting of the Shadow Executive, including a Committee or Sub-Committee of the Shadow Executive, is to be held in private under these Rules, at least 28 clear days before the meeting, the Shadow Executive shall make available at the main office of the Shadow Authority a notice of its intention to hold a meeting in private giving reasons as to why the meeting is to be held in private.

16.2 At least five clear working days before the meeting, the Shadow Executive must make available at the main office of the Shadow Authority a further notice of its intention to hold a meeting in private containing: the reasons as to why the meeting is to be held in private; details of any representation received by the

Shadow Executive about why the meeting should be open to the public; and a statement of the Shadow Executive's response to any such representations.

- 16.3 Copies of the notices required by Rules 16.1 and 16.2 shall be sent to the Chair of the Overview and Scrutiny Committee.
- 16.4 Where the date by which a private meeting must be held makes compliance with Rules 16.1 and 16.2 impracticable, the meeting may only be held in private where the Shadow Executive has obtained agreement from:
- (a) the Chair of the Overview and Scrutiny Committee; or
  - (b) if there is no such person, or if the Chair of the Overview and Scrutiny Committee is unable to act, the Chair of the Shadow Authority; or
  - (c) where there is no Chair of either the Overview and Scrutiny Committee or of the Shadow Authority able to act, the Vice-Chair of the Shadow Authority.

## **17 Attendance at private meetings of the Shadow Executive**

- 17.1 Any Member of the Shadow Executive may attend a private meeting of a Committee or Sub-Committee of the Shadow Executive whether or not they are members of that body unless the body determines otherwise.
- 17.2 Any Shadow Executive member who is not a member of such a Committee or Subcommittee shall be entitled to speak with the consent of the person presiding but not to vote.

## **18 Officer attendance at Shadow Executive Meetings**

- 18.1 The Head of Paid Service, the Chief Finance Officer and the Monitoring Officer, or their nominees, are entitled to attend any meeting of the Shadow Executive. The Shadow Executive cannot meet unless the Monitoring Officer has been given reasonable notice that a meeting is to take place. This provision also applies to Committees and Sub-Committees of the Shadow Executive.
- 18.2 A private meeting of the Shadow Executive, including a Committee or Sub-Committee of the Shadow Executive, may only take place in the presence of the Monitoring Officer or their nominee, who shall have responsibility for recording and publicising any decisions.

## **19 Decisions by Members of the Shadow Executive**

- 19.1 Where an individual member of the Shadow Executive receives a report, which they intend to take into account in making any Key Decision for which they have delegated authority, then they will not make the decision until at least five clear working days after receipt of that report.
- 19.2 On giving of such a report to a member of the Shadow Executive, the person who prepared the report will give a copy of it to the Chair of the Overview and Scrutiny Committee as soon as reasonably practicable, and make it publicly available at the same time.

- 19.3 As soon as reasonably practicable after an executive decision has been taken by a delegated member of the Shadow Executive, a written record of the decision must be produced which must include the following:
- (a) a record of the decision including the date it was made; (b) a record of the reasons for the decision;
  - (b) details of any alternative options considered and rejected by the Member;
  - (c) a record of any conflict of interest relating to the matter decided which is declared by any Member of the Shadow Executive who is consulted by the Member which relates to the decision; and
  - (d) the provisions of Rules 4 and 5 will also apply to the making of decisions by Shadow Executive Members.

## **20 Record of Executive and non-Executive decisions taken by Officers**

- 20.1 As soon as reasonably practicable after an Officer has made a decision which is an Executive decision (i.e. the responsibility of the Shadow Executive ) a written statement will be prepared including:
- (a) a record of the decision including the date it was made;
  - (b) a record of the reasons for the decision;
  - (c) details of any alternative options considered and rejected by the Officer when making the decision;
  - (d) a record of any conflict of interest declared by any Executive Member who is consulted by the Officer which relates to the decision; and
  - (e) in respect of any declared conflict of interest, a note of dispensation granted by the Monitoring Officer.
- 20.2 Any record prepared in accordance with Rule 20.1 and any report considered by the Officer and relevant to the decision will be available for public inspection at the Main Office of the Shadow Authority and on the Shadow Authority's website.
- 20.3 Rules 20.1 to 20.2 do not apply to day-to-day administrative or operational decisions of the Shadow Authority taken by Officers in connection with the discharge of functions which are the responsibility of the Shadow Executive.
- 20.4 As soon as reasonably practicable after an Officer has made a decision under an express delegation from the Shadow Authority, its Committees, Sub-Committees or any Joint Committee in which the Shadow Authority is involved or under a general delegation from one of these bodies where the effect of the decision is to grant a permission or licence, affect the rights of an individual or award a contract or incur expenditure, which in either case materially affects the Shadow Authority's position a written statement will be prepared including:

- (a) a record of the decision including the date it was made;
  - (b) a record of the reasons for the decision;
  - (c) details of any alternative options considered and rejected by the officer when making the decision; and
  - (d) a record of the name of any Shadow Member or local government body who has declared an interest (for decisions taken under an express delegation).
- 20.5 Any record prepared in accordance with Rule 20.4 together with any background papers considered by the officer and relevant to the decision will be available for public inspection at the main office of the Shadow Authority and on the Shadow Authority's website.
- 20.6 Rules 20.4 to 20.5 do not apply to:
- (a) routine administrative and organisational decisions;
  - (b) decisions on operational matters such as day-to-day variations in services;
  - (c) decisions if the whole or part of the record contains confidential or exempt information; and
  - (d) decisions that are already required to be published by other legislation, provided the record published includes the date the decision was taken and the reasons for the decision.

### **Access to documents – Overview and Scrutiny Committee**

- 21.1 Subject to Rule 21.4 below, any member of the Overview and Scrutiny Committee is entitled to copies of any document which is in the possession or control of the Leader and/or the Shadow Executive including its Committees and Sub-Committees and which contains material relating to:
- (a) any business transacted at a public or private meeting of the Shadow Executive including any of its Committees and Sub-Committees;
  - (b) any decision taken by an individual member of the Shadow Executive; or
  - (c) any Executive decision taken by an officer in accordance with Part 3 of this Constitution.
- 21.2 Where a member of the Overview and Scrutiny Committee (including its Sub-Committees) requests a document which falls within Rule 21.1 the Leader must provide that document as soon as reasonably practicable and, in any case, no later than 10 clear working days after the Leader receives the request.
- 21.3 Subject to Rule 21.4 the Chair of the Overview and Scrutiny Committee is entitled to see papers in relation to private decisions of the Shadow Executive before the decision is made.



- 21.4 Where the Leader so determines, a member of the Overview and Scrutiny Committee will not be entitled to:
- (a) any document that is in draft form;
  - (b) any such document or part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or any review contained in any programme of work of the Committee;
  - (c) the advice of an assistant to a political group who has been appointed pursuant to section 9 of the Local Government and Housing Act 1989.

Where the Leader determines that a member of the Overview and Scrutiny Committee is not entitled to a copy of a document, or part of any such document, for the reasons set out above the Leader must provide the Overview and Scrutiny Committee with a written statement setting out their reasons for that decision.

## **22 Additional rights of access for Shadow Members**

- 22.1 All Shadow Members will be entitled to inspect any document which is in the possession or under the control of the Leader and or the Shadow Executive including its Committees or Sub-Committees and contains material relating to any business to be transacted at a public meeting; any business previously transacted at a private meeting; any decision made by an individual Member; or an Executive decision by an officer unless in the opinion of the Monitoring Officer it contains exempt information falling within the categories of exempt information as set out in the Appendix; or it contains the advice of a political advisor.
- 22.2 All Shadow Members will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Leader or the Shadow Executive including its Committees and Sub-Committees which relates to any Key Decision unless Rule 22.1 above applies.
- 22.3 In relation to public meetings, where a document is required to be available for inspection by all Shadow Members under Rule 22.1 it must be available for at least 5 clear working days before the meeting except where the meeting is convened at shorter notice or an item is added to an agenda at shorter notice in which case the document must be available for inspection when the meeting is convened or the item is added to the agenda.
- 22.4 In relation to private meetings, decisions made by an individual Member or Executive decisions made by an Officer, where a document is required to be available for inspection by all Shadow Members under Rule 22.1 must be available within 1 working day of the meeting concluding or where an Executive decision is made by an individual Member or an Officer within 1 working day of the decision being made.
- 22.5 These rights of a Shadow Member are additional to any right they may have.

## **Appendix 1 – Descriptions of Exempt Information**

Exempt information means information falling within the following categories (subject to any qualification):

- (1) Information relating to any individual.
- (2) Information which is likely to reveal the identity of an individual.
- (3) Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- (4) Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
- (5) Information in respect of which a claim of legal professional privilege could be maintained in legal proceedings.
- (6) Information which reveals that the authority proposes –
  - (a) To give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - (b) To make an order or direction under any enactment.
- (7) Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

### **Qualifications**

Information falling within the above descriptions is not exempt information if it is required to be registered under:

- (a) The Companies Acts (as defined in section 2 of the Companies Act 2006);
- (b) The Friendly Societies Act 1974;
- (c) The Friendly Societies Act 1992;
- (d) The Co-operative and Community Benefit Societies Act 2014;
- (e) The Building Societies Act 1986; or
- (f) The Charities Act 2011.

Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission or permission in principle pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992.

Information which –

- (a) Falls within any of the descriptions above; and
- (b) Is not prevented from being exempt by the previous two qualifications is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

# **B SHADOW AUTHORITY PROCEDURE RULES**

## **1 Shadow Authority meetings**

- 1.1 The Shadow Authority will decide when its meetings will take place. Details will be contained in a calendar of meetings which will be approved by the Shadow Authority.
- 1.2 Meetings of the Shadow Authority will normally commence at 10:00am. The Chair, or the Shadow Authority, can agree to hold a meeting at a different place or time.
- 1.3 A special meeting or extraordinary meeting can be called by resolution or by the Chair, or five Shadow Members can ask the Chair, in writing, to call a special meeting or extraordinary meeting. If the Chair does not agree, then those Shadow Members can call the meeting by giving written notice to the Monitoring Officer.

## **Calling extraordinary meetings of committees, sub-committees, panels and working groups**

- 1.4 The chair of a committee, sub-committee, panel or working group or the Chair of the Shadow Authority may call a special meeting of a committee, sub-committee, panel or working group at any time. A special meeting shall also be called on the requisition of a quarter of the whole number of the relevant body delivered in writing to the Monitoring Officer but in no case shall less than three members requisition a special meeting. The summons to the special meeting shall set out the business to be considered thereat and no business other than that set out in the summons shall be considered at the meeting.

## **Order of business**

- 1.5 Business shall be dealt with in the order in which it is set out in the agenda unless the Shadow Authority decides otherwise.

## **Urgent business**

- 1.6 Business cannot be dealt with at a Shadow Authority meeting unless it is included in the summons or unless the Chair has agreed in consultation with the Head of Paid Service that it is urgent and cannot wait until the next scheduled meeting. The Chair must give the reasons for urgency, which must be recorded in the minutes of the meeting.

## **2 Chair and Vice-Chair of the Shadow Authority**

- 2.1 At its first meeting, the Shadow Authority will elect its Chair and appoint its Vice-Chair for the Shadow Period.
- 2.2 The Chair of the Shadow Authority, or in their absence the Vice-Chair (who will have the same powers and duties as the Chair), will preside at meetings of the Shadow Authority. Where both the Chair and Vice-Chair are absent, the Shadow Authority will appoint another Shadow Member, other than a member of the

Shadow Executive, to chair the meeting, who will have the same powers and duties as the Chair.

### **3 Quorum**

3.1 No business shall be dealt with at a meeting of the Shadow Authority or any committee if there are fewer than a quarter of the whole of the Shadow Authority or Committee members present.

3.2 Where the meeting has started, and the number of Shadow Members present is fewer than a quarter of the whole of the Shadow Members and does not meet the minimum quorum requirements described in 3.1 above, the Chair will adjourn the meeting. Where the Chair does not give a date and/or time, all business not completed will be considered at the next meeting.

### **4 What the Shadow Authority can decide**

4.1 The Shadow Authority will decide such matters as required by the law, and those matters set out in Part 3 of this Constitution.

### **5. Notice of and Summons to Meetings**

5.1 The Monitoring Officer will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least five clear days before a meeting, the Monitoring Officer will send a summons signed by him or her by post or email to every member of the Council or leave it at their usual place of residence. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

### **6. Chair of Meeting and Appointment of Chairs of Committees**

6.1 The person presiding at the meeting may exercise any power or duty of the chair. Where these rules apply to committee, sub-committee, panel or working group meetings, references to the chair also include the chair of committees, sub-committees, panels and working groups. The ruling of the chair on the construction or application of any of these Council Procedure Rules or upon any proceedings of the meeting shall not be challenged at any meeting.

6.2 Every committee, sub-committee, panel or working group shall at its first meeting after appointment before proceeding to any other business elect a chair and may at any time elect a vice-chair. In the absence from a meeting of the chair (and vice-chair if elected) the chair for that meeting shall be appointed before the business of the meeting is proceeded with. If a committee, sub-committee, panel or working group fails to elect a chair or vice-chair the Shadow Authority may appoint a chair of the relevant committee, sub-committee, panel or working group.

6.3 If a committee, sub-committee, panel or working group fails to elect a chair or vice-chair as provided for under Rule 6.2 above, then the Council may make such an appointment from among the voting members of the relevant committee, sub-committee, panel or working group.

## **7. Duration of Meeting**

- 7.1 Unless otherwise specified, the duration of all meetings of the Shadow Authority, any committee or any sub-committee will be a maximum of 3 hours.
- 7.2 If the 3 hour limit is approaching, by a simple majority of all Members in attendance agreeing, the meeting may continue beyond the 3 hour guillotine, however a revised finish time should be agreed.
- 7.3 If an extension to the meeting has been agreed, and the revised closure time is being approached a further extension may be agreed, as per 8.2 above.
- 7.4 In the case of the Senior Appointments Committee, 8.1-8.3 shall not apply where that Committee is interviewing candidates for positions within the Shadow Authority or Cumberland Council.

## **8. Questions by the public and presentation of petitions and deputations**

### **8.1 General**

Members of the public may ask questions of the Leader of the Shadow Authority or any other member of the Shadow Authority at meetings of the Executive or at ordinary meetings of the Shadow Authority and questions of the chair of any committee, sub-committee, panel or working group at meetings of that body.

### **8.2 Order of questions**

Questions will be asked in the order notice of them was received, except that the chair or person presiding at the meeting may group together similar questions.

### **8.3 Notice of questions**

A question may only be asked if notice has been given by delivering it in writing or by electronic mail to the Monitoring Officer no later than midday two clear days before the day of the meeting. Each question must give the name and address of the questioner and must, if the questioner wishes the question to be answered by a specific named member, name that member of the Council to whom it is to be put. If the questioner does not name a specific member, then the question will be answered by the leader or such member of the executive whom they nominate in respect of any matter for which the executive is responsible, and by the chair of a relevant committee, sub-committee, panel or working group in respect of that body's functions.

### **8.4 Number of questions**

At any one meeting no person may submit more than 2 questions and no more than 2 such questions may be asked on behalf of one organisation.

### **8.5 Scope of questions**

The Monitoring Officer may reject a question if it:

- is not about a matter for which the local authority has a responsibility or which affects the district;
- is defamatory, frivolous or offensive;
- is substantially the same as a question which has been put at a meeting of the Shadow Authority, or the relevant committee, sub-committee, panel or working group in the past six months; or
- requires the disclosure of confidential or exempt information.

#### **8.6 Record of questions**

The Monitoring Officer will enter each question in a book open to public inspection and will immediately send a copy of the question to the member to whom it is to be put. Rejected questions will include reasons for rejection.

Copies of all questions will be circulated to all members of the relevant body at which they will be asked and will be made available to the public attending the meeting.

#### **8.7 Asking the question at the meeting**

The chair will invite the questioner to put the question. If a questioner who has submitted a written question is unable to be present, they may ask the chair to put the question on their behalf. The chair may ask the question on the questioner's behalf, indicate that a written reply will be given or decide, in the absence of the questioner, that the question will not be dealt with.

#### **8.8 Supplemental question**

A questioner who has put a question in person may also put one supplementary question without notice to the member who has replied to his or her original question.

A supplementary question must arise directly out of the original question or the reply. The chair may reject a supplementary question on any of the grounds in Rule 8.5 above.

#### **8.9 Written answers**

Any question which cannot be dealt with during public question time, either because of lack of time or because of the non-attendance of the member to whom it was to be put, will be dealt with by a written answer.

#### **8.10 Reference of question to the executive or a committee**

Unless the chair decides otherwise, no discussion will take place on any question, but any member may move that a matter raised by a question be referred to the executive or the appropriate committee, sub-committee, panel or working group. Once seconded, such a motion will be voted on without discussion.

## **8.11 Deputations and Petitions**

- (a) Deputations may be received at ordinary meetings of the Council and at meetings of the executive, committees, sub-committees, panels and working groups immediately following questions by the public. The nature and object of the deputation and the names of members shall be delivered in writing to the Monitoring Officer at least 14 days before the relevant meeting. A member of the deputation may speak on the issue for up to five minutes. The issue raised by the deputation must relate to a matter which falls within the powers and duties of the Council, or the relevant body as determined by the Monitoring Officer or which affects the district.
- (b) Except where the matter raised by a deputation or petition appears as a separate item on the agenda of the relevant meeting, there shall be no discussion at the meeting on any matter raised by a deputation or petition, but any member may move that the matter be referred to the next meeting of the executive or the appropriate committee, sub-committee, panel or working group which shall be immediately put to the vote.
- (c) A subject or related matter which has been raised at a meeting of the Council or other relevant body cannot be raised at the next subsequent meeting of that body.
- (d) Deputations and petitions scheduled to be heard at a particular meeting shall be dealt with in order of receipt and in the event of there being insufficient time to hear them all, opportunity shall be given for them to be heard at a subsequent meeting.

## **9. Questions by Members**

### **9.1 On reports and minutes of meetings of the executive, committees, sub-committees, panels and working groups**

A member of the Shadow Authority may ask the leader, the relevant member of the Shadow Executive or the chair of a committee, sub-committee, panel or working group any question without notice upon an item of the report or upon the minutes of meetings of the relevant body when that item is being received or under consideration by the Shadow Authority.

### **9.2 Questions on notice at Shadow Authority Meetings**

Subject to Rule 9.4, a member of the Council may ask:

- the chair;
- the leader or any other member of the executive;
- the chair of any committee, sub-committee, panel or working group a question on any matter in relation to which the Council has powers or duties or which affects the district.

### **9.3 Questions on notice at committees, sub-committees, panels and working groups**

Subject to Rule 9.4, a member of a committee, sub-committee, panel or working group may ask the chair of it a question on any matter in relation to which the Council has powers or duties or which affect the district and which falls within the terms of reference of that body.

#### **9.4 Notice of questions**

A member may only ask a question under Rule 9.2 or 9.3 if either:

- (a) they have given notice of the question in writing or by electronic mail to the Monitoring Officer no later than midday at least two clear days before the day of the meeting; or
- (b) the question relates to urgent matters, they have the consent of the chair of the Shadow Authority in respect of any question to be asked at a Shadow Authority meeting and the chair of the relevant committee, sub-committee, panel or working group in respect of any question to be asked at that meeting and the content of the question is given to the Monitoring Officer by 9.30 a.m. on the day of the meeting.

#### **9.5 Response**

An answer may take the form of:

- (a) a direct oral answer;
- (b) where the desired information is in a publication of the Shadow Authority or other published work, a reference to that publication; or
- (c) where the reply cannot conveniently be given orally, a written answer circulated later to the questioner.

#### **9.6 Supplementary question**

A member asking a question under Rule 9.2 or 9.3 may ask one supplementary question without notice of the member to whom the first question was asked. The supplemental question must arise directly out of the original question or the reply.

### **10. Motions On Notice**

#### **10.1 Notice**

Except for motions which can be moved without notice under Rule 12, written notice of every motion, signed by the member or members of the Council, must be delivered to the Monitoring Officer not later than midday 11 clear days (including weekends) before the date of the meeting. These will be entered in a book open to public inspection.

#### **10.2 Motion set out in agenda**



Motions for which notice has been given will be listed on the agenda in the order in which notice was received, unless the member giving notice states, in writing, that they propose to move it to a later meeting or withdraw it.

**10.3 Scope**

Motions must be about matters for which the Shadow Authority has a responsibility or which affect the districts.

**10.4 Scrutiny of Motion**

If it shall appear to the Monitoring Officer that a motion of which they have received notice is not in order, or has been delayed in the post, or is framed in improper or unbecoming language, they shall take the direction of the chair upon whether and in what form it shall be placed upon the Agenda paper and the decision of the chair, after consultation if possible with the givers of the notice, shall be final.

**10.5 Motion not Moved**

If a motion thus set out in the summons be not moved by a member who gave notice thereof or by some other member on his/her behalf it shall, unless postponed by consent of the Shadow Authority, be treated as withdrawn and shall not be moved without fresh notice.

**11. Motions and Amendments which may be moved without notice**

11.1 The following motions and amendments may be moved without notice:

- (a) to appoint a chair of the meeting at which the motion is moved;
- (b) in relation to the accuracy of the minutes;
- (c) to change the order of business in the agenda;
- (d) to refer something to an appropriate body or individual;
- (e) to appoint a committee or member arising from an item on the summons for the meeting;
- (e) to receive reports or adoption of recommendations of the Shadow Executive, committees, sub-committees, panels, working groups or officers and any resolutions following from them;
- (f) to withdraw a motion;
- (g) to amend a motion;
- (h) to proceed to the next business;
- (i) that the question be now put;
- (j) to adjourn a debate;

- (k) to adjourn a meeting;
  - (l) that the meeting continue beyond 3 hours in duration.
  - (m) to suspend a particular Shadow Authority Procedure Rule;
  - (n) to exclude the public and press in accordance with the Access to Information Rules;
  - (o) to not hear further a named member or to exclude them from the meeting;  
and
  - (p) to give the consent of the Shadow Authority where its consent is required by this Constitution.
- 11.2 The chair, with or without notice, may propose a resolution upon any matter which they may deem a matter of urgency and which is within the functions or powers of the Shadow Authority.

## **12. Rules of Debate**

### **12.1 No speeches until motion seconded**

No speeches may be made after the mover has moved a proposal and explained the purpose of it until the motion has been seconded.

### **12.2 Right to require motions and amendments in writing**

A motion or amendment shall not be discussed unless it has been proposed and seconded and, unless notice has already been given in accordance with Rule 12, it shall, if required by the Chair, be put into writing and handed to the Chair before it is further discussed or put to the meeting.

### **12.3 Seconders' speech**

When seconding a motion or amendment, a member may reserve their speech until later in the debate.

### **12.4 Content and length of speeches**

Speeches must be directed to the question under discussion or to a personal explanation or point of order. No speech may exceed five minutes without the consent of the chair.

### **12.5 When a member may speak again**

A member who has spoken on a motion may not speak again whilst it is the subject of debate, except:

- (a) to speak once on an amendment moved by another member;

- (b) to move a further amendment if the motion has been amended since they last spoke;
- (c) if their first speech was on an amendment moved by another member, to speak on the main issue (whether or not the amendment on which they spoke was carried);
- (d) in exercise of a right of reply;
- (e) on a point of order; and
- (f) by way of personal explanation.

## 12.6 Amendments to motions

- (a) An amendment to a motion must be relevant to the motion and will either be:
  - (i) to refer the matter to an appropriate body or individual for consideration or reconsideration;
  - (ii) to leave out words;
  - (iii) to leave out words and insert or add others; or
  - (v) to insert or add words,as long as the effect of (ii) to (iv) is not to negate the motion.
- (b) Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of provided that the Chair may permit two or more amendments to be discussed (but not voted on) together if circumstances suggest that this course would facilitate the proper conduct of the Shadow Authority's business.
- (c) If an amendment is not carried, other amendments to the original motion may be moved.
- (d) If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.
- (e) After an amendment has been carried, the chair will read out the amended motion before accepting any further amendments, or if there are none, put it to the vote.

## 12.7 Alteration of motion

- (a) A member may alter a motion of which they have given notice with the consent of the meeting. The meeting's consent will be signified without discussion.

- (b) A member may alter a motion which they have moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.
- (c) Only alterations which could be made as an amendment may be made.

#### 12.8 **Withdrawal of motion**

A member may withdraw a motion which they have moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No member may speak on the motion after the mover has asked permission to withdraw it unless permission is refused.

#### 12.9 **Right of reply**

- (a) The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote.
- (b) If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it.
- (c) The mover of the amendment has no right of reply to the debate on his or her amendment.

#### 12.10 **Motions which may be moved during debate**

When a motion is under debate, no other motion may be moved except the following procedural motions:

- (a) to withdraw a motion;
- (b) to amend a motion;
- (c) to postpone consideration of the motion;
- (d) to proceed to the next business;
- (e) that the question be now put;
- (f) to adjourn a debate;
- (g) to adjourn a meeting;
- (h) that the meeting continue beyond 3 hours in duration;
- (i) to exclude the public and press in accordance with the Access to Information Rules; and
- (j) to not hear further a member or to exclude them from the meeting.

### 12.11 Closure motions

- (a) A member who has not spoken on the subject under discussion may move, without comment, the following motions at the end of a speech of another member:
  - (i) to proceed to the next business;
  - (ii) that the question be now put;
  - (iii) to adjourn a debate; or
  - (iv) to adjourn a meeting.
- (b) If a motion to proceed to next business is seconded and the chair thinks the item has been sufficiently discussed, they will put the procedural motion to the vote. If it is passed, they will give the mover of the original motion a right of reply and then put the original motion to the vote.
- (c) If a motion that the question be now put is seconded and the chair thinks the item has been sufficiently discussed, they will put the procedural motion to the vote. If it is passed they will give the mover of the original motion a right of reply before putting their motion to the vote.
- (d) If a motion to adjourn the debate or to adjourn the meeting is seconded and the chair thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, they will put the procedural motion to the vote without giving the mover of the original motion the right of reply.
- (e) A second motion "That the Shadow Authority proceed to the next business", "That the debate be now adjourned" or "That the Shadow Authority does now adjourn" shall not be made within 15 minutes unless it be moved by the Chair.

### 12.12 Point of order

A member may raise a point of order at any time. The chair will hear them immediately. A point of order may only relate to an alleged breach of these Procedure Rules or the law. The member must indicate the rule or law and the way in which they consider it has been broken. The ruling of the chair on the matter will be final.

### 12.13 Personal explanation

A member may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the member which may appear to have been misunderstood in the present debate. The ruling of the chair on the admissibility of a personal explanation will be final.

### 12.14 Motions affecting persons employed by the Council

If any member wishes to raise a question at a meeting of the Shadow Authority concerning the appointment, promotion, dismissal, salary, superannuation or

conditions of service or concerning the conduct of any person employed by the Council, they shall without specifying the name or department of the person concerned, inform the chair of their wish to raise such a question and such question shall not be the subject of discussion until the Shadow Authority has decided upon the motion of the chair put without debate whether or not the power of exclusion under Section 100A of the Local Government Act 1972 shall be exercised.

#### **12.15 Irrelevance**

The chair shall call a member to order for irrelevance or repetition and may direct such member if speaking to discontinue his or her speech and the member shall thereupon be silent and resume his or her seat.

### **13. Previous Decisions and Motions**

#### **13.1 Motion to rescind a previous decision**

A motion or amendment to rescind a decision made at a meeting of the Shadow Authority within the past six months cannot be moved unless the notice of motion is signed by at least 12 members.

#### **13.2 Motion similar to one previously rejected**

A motion or amendment in similar terms to one that has been rejected at a meeting of the Shadow Authority in the past six months cannot be moved unless the notice of motion or amendment is signed by at least 12 members. Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

13.3 Rules 13.1 and 13.2 shall not apply to motions moved in pursuance of a recommendation of the executive or any committee, sub-committee, panel or working group.

### **14. Voting**

#### **14.1 Majority**

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those members voting and present in the room at the time the question was put.

#### **14.2 Chair's casting vote**

If there are equal numbers of votes for and against, the chair will have a second or casting vote. There will be no restriction on how the chair chooses to exercise a casting vote.

#### **14.3 Voting**

Unless a recorded vote is demanded under Rule 15.4, the chair will take the vote by either show of hands or electronic means, or if there is no dissent, by the

affirmation of the meeting. The ruling of the Chair as to the voting methodology to be used will be final.

#### **14.4 Recorded vote**

If before the vote is taken at least one fourth of members present at the meeting demand it, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.

#### **14.5 Right to require individual vote to be recorded**

Where any member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting.

#### **14.6 Voting on appointments**

If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

### **15. Minutes**

#### **15.1 Signing the minutes**

The Chair will sign the minutes of the proceedings at the next suitable meeting. The Chair will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.

#### **15.2 No requirement to sign minutes of previous meeting at extraordinary meeting**

Where in relation to any meeting, the next meeting for the purpose of signing the minutes is a meeting called under paragraph 3 of schedule 12 to the Local Government Act 1972 (an Extraordinary Meeting), then the next following meeting (being a meeting called otherwise than under that paragraph) will be treated as a suitable meeting for the purposes of paragraph 41(1) and (2) of schedule 12 relating to signing of minutes.

#### **15.3 Form of minutes**

Minutes will contain all motions and amendments in the exact form and order the chair put them.

### **16. Record of Attendance**

The attendance of members at meetings of the Shadow Authority shall be recorded in such a manner as the Council may from time to time determine.

### **17. Exclusion of Public**

Members of the public and press may only be excluded either in accordance with the Access to Information Rules of this Constitution or Rule 20 (Disturbance by Public).

## **18. Members' Conduct**

### **18.1 Addressing the meeting**

When a member speaks they must address the meeting through the chair. If more than one member asks to address the meeting, the chair will ask one to speak and the others must wait until the chair invites them to speak. Other members must remain silent whilst a member is speaking unless they wish to make a point of order or a point of personal explanation. If they wish to make a point of order or a point of personal explanation, they must inform the chair and wait until the chair invites them to make their point of order or point of personal explanation.

### **18.2 Chair standing**

When the chair stands during a debate, any member speaking at the time must stop and sit down. The meeting must be silent.

### **18.3 Member not to be heard further**

If a member persistently disregards the ruling of the chair by behaving improperly or offensively or deliberately obstructs business, the chair may move that the member be not heard further. If seconded, the motion will be voted on without discussion.

### **18.4 Member to leave the meeting**

If the member continues to behave improperly after such a motion is carried, the chair may move that either the member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

### **18.5 General disturbance**

If there is a general disturbance making orderly business impossible, the chair may adjourn the meeting for as long as they think necessary.

## **19. Disturbance by Public**

### **19.1 Removal of member of the public**

If a member of the public interrupts proceedings, the chair will warn the person concerned. If they continue to interrupt, the chair will order their removal from the meeting room.

### **19.2 Clearance of part of meeting room**



If there is a general disturbance in any part of the meeting room open to the public, the chair may call for that part to be cleared.

## **20. Recording of Meetings**

- 20.1 While any meeting is open to the public, any person present is permitted to report the proceedings by:
- (i) filming, photographing or making an audio recording of the proceedings at the meeting;
  - (ii) using any other means for enabling persons not present to see or hear proceedings at the meeting as it takes place or later;
  - (iii) reporting or providing commentary on proceedings at the meeting orally (but not whilst present in the meeting) or in writing, so that the report or commentary is available to other persons as the meeting takes place or later; or
  - (iv) using any communication method, including the internet, to publish, post or otherwise share the report.
- 20.2 The right to report is subject to the chair's power to deal with disturbance at the meeting. The meeting should not be disrupted by, for example, reporting activities, flash photography or intrusive equipment.
- 20.3 Any person recording a meeting is requested to focus on recording councillors, officers and the public who are directly involved in the conduct of the meeting. No recording should take place of children, vulnerable persons or other members of the public who actively object to being filmed.

## **21. Declarations of Interest**

- 21.1 Subject to Rule 22.2, if a Member has a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting, then the Member should declare that interest to the meeting and should leave the room whilst any discussion or vote takes place.
- 21.2 If a dispensation has been granted to a Member in relation to a disclosable pecuniary interest then subject to the terms of the dispensation the Member may be relieved from the above restrictions but will still be required to declare the interest to the meeting.
- 21.3 Where a Member has a disclosable pecuniary interest in any business of the Shadow Authority, they may attend a Meeting 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. Once any such representations etc have been made, the Member should leave the room whilst any discussion or vote takes place.

## **22. Suspension and Amendment of Shadow Authority Procedure Rules**

### **22.1 Suspension**

All of these Rules of Procedure may be suspended by motion on notice or without notice if at least one half of the whole number of members of the Shadow Authority are present. Suspension can only be for the duration of the meeting.

### **22.2 Amendment**

Any motion to add to, vary or revoke these Rules of Procedure will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Shadow Authority.

## **23. Application To Committees, Sub-Committees, Panels and Working Groups**

All of the Rules of Procedure apply to meetings of the Shadow Authority. The Rules also apply to meetings of committees, sub-committees, panels and working groups where the context so permits. The Rules do not apply to meetings of the Shadow Executive unless specifically stated and meetings of the executive are governed by the Shadow Executive Procedure Rules.

# **C SHADOW EXECUTIVE PROCEDURE RULES**

## **Meetings of the Shadow Executive**

- 1.1 The Shadow Executive will meet as indicated in the Shadow Authority's programme of meetings. The Shadow Executive or the Leader may agree to change the date of any programmed meeting, to cancel a meeting or to arrange additional meetings as they see fit. Locations of meetings will be published in the calendar of meetings.
- 1.2 The Shadow Executive may meet in public or in private, subject to legal requirements and the Access to Information Procedure Rules set out in this Constitution.
- 1.3 The Leader will chair meetings of the Shadow Executive or in his/her absence, the Deputy Leader will preside. Where both the Leader and Deputy Leader are absent, the Members present, will appoint one member of the Shadow Executive to chair that meeting.
- 1.4 Attendance by other Members of the Shadow Authority or the public shall be in accordance with the Access to Information Procedure Rules, by invitation under Rule 1.5 below, or set out in Rules 4.1 to 4.2 below.
- 1.5 The Shadow Executive may invite any person they consider appropriate, to its meetings to discuss matters of mutual interest or concern or to advise. Such persons may only be given access to confidential and/or exempt information on terms to be decided by the Monitoring Officer so as to ensure that the Access to Information Procedure Rules are observed.

## **2 Quorum at meetings of the Shadow Executive**

- 2.1 No business shall be transacted where at any time during the meeting of the Shadow Executive, or a committee or sub-committee established by the Shadow Executive, there are fewer than three members of the Shadow Executive, or committee or sub-committee of the Shadow Executive present.

## **3 Taking of decisions by the Shadow Executive**

- 3.1 Shadow Executive decisions, including those taken under delegated powers, shall not take effect until they have been recorded in writing, as required under the Access to Information Procedure Rules, and shall not be implemented until the call-in process has been concluded. Records of Shadow Executive decisions must be confirmed at the next meeting.

## **4 Members attending and speaking at Shadow Executive Meetings**

- 4.1 The Chair of the Overview and Scrutiny Committee shall be entitled to attend any formal public meeting of the Shadow Executive and to speak to any matter on the agenda for that meeting.

Other Members not previously described above may also speak at such meetings with the permission of the Leader or person presiding in his/her absence.

## **5 Business at Shadow Executive Meetings**

- 5.1 The business to be transacted at meetings of the Shadow Executive will be set out in an Agenda for the meeting in question, subject to any requirements or exemptions under the Access to Information Procedure Rules.
- 5.2 The Agenda may be supported by additional papers prepared by the officers or by or on behalf of other bodies, subject to requirements about disclosure of confidential or exempt information.
- 5.3 The Shadow Executive is obliged to consider matters referred to it by the Overview and Scrutiny Committee, or by the Shadow Authority for consideration under the Scrutiny Rules.
- 5.4 The Access to Information Procedure Rules will apply to notice of meetings, agendas, and access to reports and background papers. Where matters are for decision, the Agenda must stipulate those which are Key Decisions and those which are not, in accordance with the Access to Information Procedure Rules.
- 5.5 The Shadow Executive will, at each formal meeting, confirm the record of decisions taken at its previous meeting as a correct record.
- 5.6 The Monitoring Officer or their nominated officer shall be responsible for preparing and distributing the Agenda for Shadow Executive meetings, attending meetings for the purpose of advising the Shadow Executive on matters within their area of responsibility and recording decisions as required under this Constitution.
- 5.7 In taking decisions, the Shadow Executive must satisfy itself that it has before it adequate and appropriate advice from its service, legal and financial advisers who shall be present at any meeting where a decision is being taken and that the advice is taken into consideration in determining the matter. Where there is any doubt about vires or probity then advice must be obtained from the Monitoring Officer and the Chief Finance Officer.
- 5.8 Any member of the Shadow Executive may require the Monitoring Officer to place an item on the Agenda for a stipulated meeting of the Shadow Executive.
- 5.9 The Monitoring Officer will ensure that any matter referred to the Shadow Executive by the Shadow Authority or the Shadow Authority's Overview and Scrutiny Committee are placed on the Agenda for the next appropriate meeting of the Shadow Executive.
- 5.10 Any Shadow Member may request the Leader to place an item on the agenda of a meeting of the Shadow Executive. The leader shall have sole discretion as to whether or not to accede to such a request and, if such a request is granted, whether the Member in question can speak to the item at the meeting in question.

- 5.11 The Head of Paid Service, the Monitoring Officer and/or the Chief Finance Officer can include an item for consideration on the agenda of a Shadow Executive Meeting. In pursuance of their statutory duties they can require that a special meeting of the Shadow Executive be convened.
- 5.12 Business cannot be conducted at formal meetings of the Shadow Executive unless it is included in the agenda for the meeting. Where it is urgent, the requirements of the Access to Information Procedure Rules must be complied with.
- 5.13 The Shadow Executive will report to the Shadow Authority as required under the Access to Information Procedure Rules on any matter which is classified as a Key Decision and is dealt with under special urgency procedures.
- 5.14 Questions can be submitted by members of the public at meetings of the Shadow Executive in accordance with Shadow Authority Procedure Rule 28 and Appendix 6 of the Shadow Authority Meeting Procedure Rules.

## **6 Voting at Shadow Executive Committee Meetings**

- 6.1 Voting at Shadow Executive meetings will be by a show of hands or electronic means. Any Member may require, immediately after the vote is taken, that the minutes of the meeting record how they voted or abstained. Where there are equal votes cast, the Leader or in their absence, the person presiding will have a second and casting vote.
- 6.2 Voting for any office or appointment, including any paid appointment, where more than one person is nominated shall be in accordance with Shadow Authority Procedure Rule 15.6.

## **7 Shadow Executive– Committees and Sub-Committees**

- 7.1 The Shadow Executive may appoint such Committees or Sub- Committees as it considers necessary and appropriate to assist in the discharge of functions. In making such appointments, the Shadow Executive must specify the name of the Committee/Sub-Committee, its membership (including Chair and, if appropriate, Vice-Chair) and the terms of reference of the body.

## **8 Motion under Meeting Procedure Rule 11**

- 8.1 A mover of a motion under Shadow Authority Meeting Procedure Rule 11 which has been referred to the Shadow Executive for consideration may attend the meeting of the Shadow Executive when their motion is under consideration and explain the motion. The mover of the motion will be advised of the date and time of the meeting when the matter is to be considered and they will be sent an electronic copy of the relevant papers.

## **9 Resolving disputes**

- 9.1 In the case of any dispute during proceedings of the Shadow Executive the relevant part(s) of the Constitution will apply and after considering the application of the relevant provision(s), the person presiding at the meeting will rule on the issue in question and their ruling will be final.

## **10 Reserves/substitute Members**

- 10.1 There shall be no reserve or substitute members of the Shadow Executive.

## **11 Approval of urgent business**

- 11.1 Where any matter is urgent and cannot await the next meeting, the Head of Paid Service may take the necessary action, provided that they have first consulted the Leader (or Deputy Leader if the Leader is unavailable) and the appropriate statutory officer(s).
- 11.2 Where action is taken under 11.1 above, the action taken and response to consultations shall be reported to the next ordinary meeting of the Shadow Executive.

## **12 Conflicts of Interest**

- 12.1 Where the Leader or any Shadow Executive Member has a conflict of interest, they will follow the requirements of the Shadow Authority's Code of Conduct for Members.
- 12.2 If all (or a majority) of the Members of the Shadow Executive present have a conflict of interest then consideration will be given to applying to the Monitoring Officer for a dispensation from the provisions of the Code.
- 12.3 If the discharge of a Shadow Executive function has been delegated to another body or individual and a conflict of interest arises, then it will fall to the body or individual who delegated the matter to take the decision. Where that body or individual also has a conflict of interest then action set out in Rule 12.2 shall be considered.

# **D OVERVIEW AND SCRUTINY PROCEDURE RULES**

## **1. Work Programme**

- 1.1 The Overview and Scrutiny Committee will consult with other parts of the Shadow Authority as appropriate, including the Shadow Executive, on the preparation of any work programme.
- 1.2 The Overview and Scrutiny Committee will take into account any views expressed following consultation under Rule 1.1 above in drawing-up and agreeing any work programme. It should also take into account the resources, both officer and financial, available to support its proposals.
- 1.3 Once any programme has been approved, a copy will be sent to all Members of the Shadow Authority and all relevant officers.
- 1.4 The Overview and Scrutiny Committee shall respond, as soon as it may consider it is possible to do so, to requests from the Shadow Authority and the Shadow Executive, to review particular areas of Shadow Authority activities. Where it does so, it will report its findings and any recommendations back to the Shadow Executive and/or Shadow Authority in accordance with Rule 4 below.

## **2 Agenda for meetings of the Overview and Scrutiny Committee**

- 2.1 Matters to be considered will be set out in an Agenda, together with appropriate and relevant supporting papers.
- 2.2 Any member of the Committee shall be entitled to suggest, in writing, that an item be included on the agenda, and such item shall appear on the agenda for the next meeting of the Committee in question provided that the item relates to the functions of the Committee. The committee will decide how the item should be considered and whether or not it can be included in its work programme.
- 2.3 Similarly, the Leader or the Executive may give notice in writing suggesting that an item appear on an agenda of the Overview and Scrutiny Committee. The Overview and Scrutiny Committee will decide how the item should be considered and whether or not it can be included in its work programme.
- 2.4 Subject to the Shadow Authority Procedure Rules, any other Shadow Member may give notice in writing to the Monitoring Officer, suggesting an item appear on an agenda of the Overview and Scrutiny Committee. The item shall be included after consulting the Chair of the Overview and Scrutiny Committee.
- 2.5 Any Shadow Member raising an item under Rules 2.2, 2.3 or 2.4 above shall be precluded from raising the matter again for a period of 6 months from the date it is considered by the Committee.

## **3 Policy Review and Development**

- 3.1 The Overview and Scrutiny Committee has a key role in policy and budget development in the approach to the creation of Cumberland Authority.

## **4 Reports from the Overview and Scrutiny Committee**

- 4.1 Once recommendations have been formed, the Overview and Scrutiny Committee may submit a formal report for consideration by the Shadow Executive or to the

Shadow Authority as appropriate (if the recommendation would require a departure from or a change to the agreed budget and policy framework).

- 4.2 The Shadow Authority or the Shadow Executive shall consider the report of the Overview and Scrutiny Committee within one month (or next available meeting in the case of the Shadow Authority) of it being submitted.

## **5 Access to the Forward Plan**

- 5.1 The Overview and Scrutiny Committee will have access to the Shadow Executive Forward Plan and timetable for decisions and intentions for consultation.

## **6 Rights of Overview and Scrutiny Committee members to documents**

- 6.1 In addition to their rights as Shadow Members, members of the Overview and Scrutiny Committee have the additional right of access to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in this Constitution as they deem necessary.

## **7 Shadow Members and Officers giving account**

- 7.1 The Overview and Scrutiny Committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Shadow Authority function. As well as reviewing the documentation, in fulfilling its scrutiny role, it may require the Leader or any Member of the Executive (or a nominated substitute), to attend before it to explain in relation to matters within their remit:

- (a) any particular decision or series of decisions;
- (b) the extent to which the actions taken implement Shadow Authority policy; and  
or
- (c) their performance.

And it is the duty of that person to attend if so required.

- 7.2 Where the Overview and Scrutiny Committee requires an officer to attend to answer questions or discuss issues, this will be agreed with the lead officer of the Central Implementation Team.

Where it is agreed that an officer should appear to answer questions, their evidence should, as far as possible, be confined to questions of fact and explanation relating to policies and decisions. Officers may be asked to explain:

- (a) What the policies are;
- (b) The justification and objectives of those policies as the Shadow Executive sees them;
- (b) The extent to which those objectives have been met; and
- (d) How administrative factors may have affected both the choice of policy measures and the manner of their implementation.

- 7.3 Officers may be asked to explain and justify advice they have given to the Shadow Executive prior to decisions being taken. They may also be asked to explain and justify decisions they have taken under delegation powers from the Shadow Executive.



- 7.4 Officers should not be expected and should avoid being drawn into discussions of politically contentious matters and any officer input should be consistent with the requirements for political impartiality.
- 7.5 The requirements of any protocols on Member/Officer relationships and the Code of Conduct must be adhered to where an officer is attending the Overview and Scrutiny Committee.
- 7.6 Where any Member of the Shadow Executive or officer is required to attend Overview and Scrutiny Committee under this provision, the Chair of that Committee will inform the Monitoring Officer, who will inform the Shadow Member or officer in writing at least ten clear working days' notice of the meeting. The notice will state the nature of the item on which they are required to attend to give account and whether any papers are required to be produced for the Committee. Where the account to be given to the Overview and Scrutiny Committee will require the production of a report, then the Shadow Member or Officer concerned will be given reasonable and sufficient notice to allow for its preparation.
- 7.7 Where, in exceptional circumstances, the Member of the Executive or officer is unable to attend on the required date, then the Committee shall, in consultation with the Member of the Executive or officer, arrange an alternative date for attendance within a reasonable timescale, or allow a substitute to attend.

## **8 Attendance by others**

- 8.1 The Overview and Scrutiny Committee may invite individuals other than those referred to in Rules 7.1 and 7.2 to address it, discuss issues of local concern and/or answer questions.

## **9 Call-in**

- 9.1 Call-in is the exercise of the Overview and Scrutiny Committee's statutory power in section 21(3) of the Local Government Act 2000 to review an Executive decision that has been made but not yet implemented. Where a decision is called in and the Overview and Scrutiny Committee decides to refer it back to the Executive Committee for reconsideration, it cannot be implemented until the call-in procedure is complete.
- 9.2 Any decision of the Shadow Executive Committee, an individual Member of the Shadow Executive, or a Key Decision made by an officer under authority delegated by the Shadow Executive, is subject to call-in. A decision may be called-in only once. A recommendation by the Shadow Executive to the Shadow Authority may not be called-in.
- 9.3 The call-in procedure and the powers to refer a decision back for reconsideration may only be exercised by the Overview and Scrutiny Committee, within the remit of its terms of reference.
- 9.4 Call-in of decisions which may be contrary to the budget and policy framework shall be governed by the provisions of the Budget and Policy Framework Procedure Rules set out elsewhere within this Constitution.
- 9.5 The Call-in Procedure

- 9.5.1 Once made, an Executive decision shall be published, in the form of a decision note, within two clear working days on the public website of the Shadow Authority.
- 9.5.2 The decisions digest will bear the date on which it is published and will specify that the decision will be effective on the expiry of five clear working days after the publication of the decision and may then be implemented, unless called-in under this provision within that five clear working day period. The deadline for a call-in request will be specified in the decisions digest.
- 9.5.3 Requests for call-in may be made by submission of a notice in accordance with 9.5.4 below. A request shall only be considered to be valid if signed/authorised by at least four Shadow Members who are not Members of the Executive.
- 9.5.4 A call-in request must be in the form of a written/e-mailed notice submitted to the Monitoring Officer and received before the published deadline. Either one notice containing all required signatures or four separate notices will be acceptable.
- 9.5.5 The notice must set out –
- (a) the resolution or resolutions that the Member(s) wish to call-in;
  - (b) the reasons why they wish the Overview and Scrutiny Committee to consider referring it back to the Executive Committee, with particular reference to the principles of decision making set out within Article 12 (Decision Making); and
  - (c) the alternative course of action or recommendation(s) that they wish to propose.
- 9.5.6 The call-in request will be deemed valid unless either –
- (a) the procedures set out in Procedure Rules 9.5.3 to 9.5.5 above have not been properly followed;
  - (b) a similar decision has been called-in to the Committee previously;
  - (c) the Executive decision has been recorded as urgent in accordance with paragraph 10 below; or
  - (d) the Monitoring Officer, in consultation with the Chair of the Overview and Scrutiny Committee, considers the call-in to be frivolous, vexatious or clearly outside the call-in provisions, in which case the Monitoring Officer may reject the call-in request and write/e-mail to the Members making the request explaining why it was rejected.
- 9.5.7 Before deciding on its validity, the Monitoring Officer may seek clarification of the call-in request from the Member(s) concerned.
- 9.5.8 Upon deciding on its validity, the Monitoring Officer shall forthwith inform the Member(s) concerned, the Leader of the Shadow Authority, Shadow Executive, Shadow Executive Member(s) as appropriate, the Chair and the Vice Chair of the Overview and Scrutiny Committee and the Head of Paid Service.

## 9.6 Consideration of Call-in requests by the Overview and Scrutiny Committee

9.6.1 The Monitoring Officer will ensure that any valid call-in is considered and determined at the next available meeting of the Overview and Scrutiny Committee, or will convene a special meeting if so agreed by the Chair of the Overview and Scrutiny Committee and the decision taker.

9.6.2 The Members submitting the request for call-in will be expected to attend the meeting of the Overview and Scrutiny Committee to explain their reasons for the call-in and the alternative course of action or recommendations they wish to propose.

9.6.3 Having considered the call-in and the reasons given, the Overview and Scrutiny Committee may –

(a) refer it back to the decision-making person or body for reconsideration, normally in time for its next scheduled meeting, setting out in writing the nature of its concerns and any alternative recommendations;

(b) refer the decision to the Shadow Authority, if it feels the original decision was outside of the Budget and Policy Framework, after seeking advice of the Monitoring Officer and/or Chief Finance Officer; or

(c) decide to take no further action, in which case the original Executive decision will be effective immediately.

## 9.7 Decision referred back to the Decision Maker

9.7.1 If a decision is referred back to the original decision maker, that person or body shall then reconsider the matter, taking into account any concerns and recommendations of the Overview and Scrutiny Committee, and make a final decision, amending the decision or not, giving reasons for their final decision.

9.7.2 If a decision relates to an Executive function only the Shadow Executive can ultimately decide the matter.

## 10 Call-in and Urgency

10.1 The call-in procedure set out above shall not apply where the decision being taken is urgent. A decision is urgent if –

(a) A call-in would prevent the Shadow Authority reaching a decision that is required by law within a specified timescale; or

(b) Any delay likely to be caused by the call-in process would seriously prejudice the Shadow Authority's or the public's interests and the reasons for urgency are reported to the decision-making body or person before the decision is taken.

10.2 The decision note shall state whether the decision is an urgent one, and therefore not subject to call-in.

10.3 The Chair of the Overview and Scrutiny Committee must agree to the decision being treated as a matter of urgency. In the absence of the Chair, the Vice-Chair of the Overview and Scrutiny Committee shall be requested to give consent. In the

absence of both the Chair and Vice-Chair of the Overview and Scrutiny Committee, the Chair of the Authority (or in his/her absence) the Vice-Chair, will be requested to provide consent.

- 10.4 Where the Executive has recorded a decision as urgent, the Overview and Scrutiny Committee may retrospectively review actions arising from that decision (within agreed criteria) but cannot delay its implementation.

## **11 Member Call for Action**

- 11.1 Any member of the Shadow Authority may submit a Member Call for Action using the appropriate form. The Member Call for Action is intended to be a process of last resort and therefore a member must demonstrate that reasonable steps have been taken to resolve the matter including a response from the Leader or appropriate Executive Member and the Head of Paid Service or their nominee. The Member Call for Action will be placed on the agenda of the Overview and Scrutiny Committee. It is for the Overview and Scrutiny Committee to determine how it wishes to respond to the Member Call for Action and in the case of refusal to undertake a review then reasons must be provided.

## **12 The Party Whip**

- 12.1 It is generally accepted that the Party Whip should be suspended in respect of Scrutiny matters. However, when considering any matter in respect of which a member of the Overview and Scrutiny Committee is subject to a formal party whip, the Shadow Member must declare the existence of the whip, and the nature of it before the commencement of the Committee's deliberations on the matter. The declaration, and the detail of the whipping arrangements, shall be recorded in the minutes of the meeting.

## **13 Task and Finish Panels**

- 13.1 The Committee may appoint such task and finish panels as it considers appropriate to undertake specific tasks on its behalf, with the same powers as the Committee, excluding the provision to call-in Executive decisions. Whilst these will be on a task and finish basis in most cases, the Committee is not precluded from establishing such Panels on a more permanent basis subject to regular review. Task and Finish Panel members do not have to be members of the Overview and Scrutiny Committee, but cannot be members of the Shadow Executive.
- 13.2 Where the Committee establish any Panel under Rule 13.1 above, it will set out the name of the Panel, its membership (including the Chair and, if appropriate, the Vice-Chair) and the terms of reference including relevant dates for completion of the task or review.
- 13.3 Any Task and Finish Panel established will report back to the Overview and Scrutiny Committee who will consider the Panel's outcome or recommendations.

## **14 Procedure at Overview and Scrutiny Committee Meetings**

- 14.1 The Overview and Scrutiny Committee shall consider the following business:
- (a) record of the last meeting;
  - (b) consideration of any matter referred to the Committee by the Shadow Authority or by the Shadow Executive;

- (c) consideration of any matter referred to the Committee for advice in relation to call-in or a decision;
  - (d) responses of the Shadow Executive on reports of the Overview and Scrutiny Committee; and
  - (e) the business otherwise set out on the agenda for the meeting.
- 14.2 Where the Overview and Scrutiny Committee conducts investigations (e.g. with a view to policy development), the Committee may also ask people to attend to give evidence at its meetings, which are to be conducted in accordance with the following principles:
- (a) the investigation be conducted fairly and all members of the Committee be given the opportunity to ask questions of attendees, and to contribute and speak;
  - (b) those assisting the Committee by giving evidence be treated with respect and courtesy; and
  - (c) the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
- 14.3 Following any investigation or review, the Committee shall prepare a report for submission to the Shadow Executive and/or Shadow Authority as appropriate and shall, unless there are exceptional reasons, make its report and findings public.

# **E FINANCIAL PROCEDURE RULES**

## **1 Introduction**

- 1.1 The Local Government Act 1972 Section 151 requires the Cumberland Shadow Authority to make arrangements for the proper administration of its financial affairs. The Shadow Authority has allocated this responsibility to the Section 151 Officer (Chief Financial Officer) for the new Cumberland Council.
- 1.2 References to Section 151 Officer also apply to the interim appointment until a permanent appointment is made to the post.
- 1.3 These Financial Procedure Rules set out the financial responsibilities of the Shadow Authority, the Shadow Executive, Section 151 Officer and the Head of Paid Service and their nominated representatives as appropriate, in relation to the Shadow Cumberland Authority prior to the creation of Cumberland Council on the 1 April 2023.
- 1.4 Should any uncertainty or dispute arise about these Procedure Rules, the matter must be referred to the Section 151 Officer for interpretation and arbitration.
- 1.5 The Section 151 officer may appoint one or more deputy Section 151 Officers each of whom has power to exercise all the powers and duties of the Section 151 Officer during the absence or incapacity of or during the vacancy of the role of, the Section 151 Officer.
- 1.6 The Section 151 Officer has the authority to delegate matters under these Financial Procedure Rules, where appropriate, and records will be maintained of any such delegations.

## **2 Financial Transactions**

- 2.1 The Shadow Authority will not incur any direct payments nor receive any income directly.
- 2.2 Any expenditure incurred, or income received on behalf of the Shadow Authority will be undertaken and accounted for by Cumbria County Council, whose approved financial procedures will be utilised for those purposes.
- 2.3 Any procurement undertaken by the Shadow Authority, or authorised on its behalf, will be compliant with the law and the approved procedures contained within the Cumbria LGR Implementation Reserve Memorandum of Understanding.

## **3 Employees**

- 3.1 Interim appointments to the three statutory posts made by the Shadow Cumberland Council will be designated and the appointed employees will remain employed by their existing authorities on their existing terms and conditions.
- 3.2 The appointment to permanent posts will be made in the most appropriate and convenient manner as determined at the time, as follows:
  - i. The appointment to permanent posts will be made by the Shadow Authority and Cumberland Council will be the employer of the said posts and determine the terms and conditions of their employment; or
  - ii. The appointment to permanent posts by the Shadow Authority on behalf of the Cumberland Council may be employed by a designated principal Council

under terms and conditions to be agreed by the Senior Appointments Committee.

#### **4 Responsibilities of the Section 151 Officer**

- 4.1 Under Section 151 of the Local Government Act 1972, to undertake the duties of the Responsible Financial Officer to the Shadow Authority in preparing for a legally compliant Cumberland Authority on the 1 April 2023.
- 4.2 As Responsible Financial Officer, under Section 114 of the Local Government Act 1988, making a report to the Shadow Authority, the Shadow Executive and, if appointed, external auditor if the Shadow Authority or one of its appointed officers:
  - (a) has made, or is about to make, a decision which involves committing one of the existing authorities to unlawful expenditure on behalf of the Shadow Authority; or
  - (b) has taken, or is about to take, an unlawful action on behalf of the Shadow Authority, which has resulted or would result in a loss or deficiency to the existing councils or the future Cumberland Council.
- 4.3 As Responsible Financial Officer, under the Accounts and Audit Regulations 2015, to comply with internal control requirements as far as they are applicable to the creation of Cumberland Council.
- 4.4 Reporting to, and gaining the approval of, the Shadow Executive any decisions, as determined by the direction made under section 24 of the Local Government and Public Involvement in Health Act 2007, of the existing councils that would be to the detriment of the Shadow Authority or Cumberland Council.
- 4.5 Working with the Shadow Executive and any other Member body established to provide advice and financial information on the emerging financial position of Cumberland Council and on the key financial controls necessary to secure sound financial management in the new organisation.
- 4.6 Maintaining and updating a Medium-Term Financial Strategy (MTFS).
- 4.7 Preparing the revenue budget and capital programme; advising on the level of council tax; preparing the list of dwelling rents (HRA); and preparing treasury management, banking and exchequer functions.

#### **5 Policies, Strategies and Plans**

- 5.1 The Section 151 Officer is responsible for preparing the following documents for consideration by the Shadow Executive and approval by the Shadow Authority at the same time as the 2023/24 budget is approved and council tax set:
  - (a) Capital Programme;
  - (b) Treasury Management Strategy including:
    - i) Prudential Indicators and Limits for 2023/24 to 2027/28;
    - ii) Minimum Revenue Provision Statement;
    - iii) Treasury Management Indicators;

- iv) Debt and Investment Strategy 2023/24 and associated criteria.
  - (c) Treasury Management Policy Statement;
  - (d) Treasury Management Practices (TMPs)
  - (e) Capital Investment Strategy 2023-2028;
  - (f) Housing Revenue Account; and
  - (g) Medium Term Financial Strategy 2023-2028.
- 5.2 The Head of Paid Service is responsible for preparing Cumberland Council's Pay Policy Statement for 2023/24, for consideration by the Shadow Executive and approval by the Shadow Authority before 31<sup>st</sup> March 2023.

## **6 Budget Setting for 2023/24**

- 6.1 The revenue budget should reflect the corporate aims and priorities of the Shadow Authority and is set in the context of the proposed Medium-Term Financial Strategy.
- 6.2 The Section 151 Officer is responsible for preparing a balanced 2023/24 budget in accordance with the Local Government Act 1992, as amended, in particular by the Localism Act 2011. To achieve this the Section 151 Officer is responsible for:
- (a) preparing a 2023/24 budget strategy and timetable for engagement with: the Shadow Executive, Shadow Authority, other Member bodies, stakeholders and the public, for consideration by the Shadow Executive ;
  - (b) setting a timetable for receipt of local precept information from town and parish councils in the Cumberland area;
  - (c) determining the detailed form of revenue estimates;
  - (d) consolidating the first draft 2023/24 budget from the budget information prepared by the existing Councils, namely Cumbria County Council and the Cumberland councils;
  - (e) developing the draft budget, taking into account the revenue implications of the proposed capital programme, council tax and fees and charges harmonisation policies; to identify the budget gap and recommend ways to close this gap, in liaison with appropriate Member bodies, having regard for achieving best resources and value for money;
  - (f) undertaking consultation on the budget proposals and reporting the outcome of the consultation to the appropriate Member body for consideration;
  - (g) reporting the final draft budget, along with proposals to balance the budget and the outcome of the consultation, to the Shadow Executive for consideration.



- 6.3 The Shadow Executive must consider the draft budget and agree budget proposals which will be submitted to the Overview and Scrutiny Committee for review, before the end of January 2023.
- 6.4 The Shadow Executive must make recommendations on the final, scrutinised, budget and council tax proposals to the Shadow Authority for approval by the third week of February 2023.

## **7 Capital Programme**

- 7.1 The Section 151 Officer is responsible for undertaking financial appraisals of schemes, if required, and collating the capital estimates to form the capital programme, identifying the required financing and taking into account the full year revenue effect of each scheme and report this to the Shadow Executive
- 7.2 The Shadow Executive will make recommendations on the capital programme and on any associated financing requirements to the Shadow Authority as part of the budget setting process.

## **8 Council Tax Base**

- 8.1 Each of the existing billing authorities comprising the three district/borough councils (Allerdale Borough Council, Carlisle City Council and Copeland Borough Council) is responsible for calculating the council tax base for its administrative area and aggregating these figures to provide a council tax base for the council area in accordance with the Local Authorities (Calculation of Council Tax Base) (England) Regulations 2012.
- 8.2 The Section 151 Officer is responsible for:
- (a) aggregating the council tax base information provided by each of the districts and boroughs to create a council tax base for the administrative area of Cumberland (the billing authority), in early December;
  - (b) ensuring that any differences in the CTRS schemes are resolved for recommendation to the Shadow Authority;
  - (c) ensuring that all reliefs, discounts and premiums in respect of Council Tax and NNDR are harmonized as far as practicably possible;
  - (d) promptly notifying the major preceptors and local preceptors of the relevant tax base for their purposes.

## **9 Setting the Council Tax**

- 9.1 In order to raise sufficient council tax to meet the needs of Cumberland Council, the major preceptors and local preceptors, the Section 151 Officer is responsible:
- (a) for estimating any surplus or deficit on the Collection Fund, as at 15 January 2023 and to notify all relevant organisations of their relevant share of any surplus or deficit;
  - (b) using the tax base to calculate the average band D council tax and all of the council tax bands for Cumberland Council and each of the major and local preceptors in the billing authority's area in accordance with the Local Government Act 1992 (as amended) in particular by the Localism Act 2011;

- (c) agreeing the council tax leaflet, for inclusion with the bills, with the Leader of the Shadow Authority;
- (d) promptly publishing the list of council tax bands once approved by the Shadow Authority; and
- (e) applying any alternative notional amounts to the council tax comparators for 2022/23, when undertaking the comparison with the 2023/24 council tax, for the purposes of identifying if the council tax referendum limit has been breached. A statement as to the outcome of this calculation to be approved by the Shadow Authority.

9.2 The Shadow Authority is responsible for approving the council tax bands in respect of Cumberland Council and the aggregation of the bands to arrive at the actual council tax chargeable in its administrative area and the average council tax bands for the billing authority area.

## **10 Collection Fund**

10.1 The Section 151 Officer is responsible for:

- (a) creating a Collection Fund for the Cumberland Council area one day after the Shadow Authority sets the 2023/24 budget and council tax: and
- (b) undertaking council tax and national non-domestic rates billing, as soon as the Shadow Authority has approved the council tax.

## **11 Reserves and Balances**

11.1 Financial reserves and balances are maintained as a matter of prudence against unforeseen events and future contingencies. They will enable Cumberland Council to provide for unexpected events and thereby protect it from future extraordinary expenditure and overspends. Reserves for specific known purposes are also maintained and it is reasonable to build reserves in anticipation of a known call on resources in future years.

11.2 The Section 151 Officer is responsible for advising the Shadow Executive and Shadow Authority on the prudent level of reserves and balances for Cumberland Council as part of the annual budget setting process based on an assessment of risk.

11.3 The purpose, usage and basis of transactions must be clearly set out in respect of each of the reserves and balances held by Cumberland Council.

## **12 Returns and Grant Claims**

12.1 The Section 151 Officer is responsible for submission of all returns and grant claims in respect of Cumberland Council prior to the 1 April 2023. These returns include:

- (a) CTB1 – Calculation of Council Tax Bases;
- (b) NNDR1 – National Non-Domestic Rates Return;
- (c) Relevant Housing Revenue Account returns

- (d) CTR1 – Council Tax Requirement Return;
- (e) RA – Revenue Account Form (to be submitted after 1 April 2023 and the responsibility of the unitary s.151 Officer);
- (f) Benefit Subsidy Claim; and
- (g) DHP – Discretionary Housing Payment Return

### **13 Financial Control**

- 13.1 Under the Accounts and Audit Regulations 2015, the Section 151 Officer is responsible for ensuring that appropriate systems and financial controls are in place on the 1 April 2023 to provide effective management information, financial stewardship and control for Cumberland Council.
- 13.2 This will include the ability to operate a robust general ledger and other core financial systems to be able to deliver the following on 1 April 2023:
  - a. run payroll,
  - b. manage the pension fund and pay pensions payroll (designated host authority),
  - c. raise orders and pay suppliers,
  - d. pay other third parties,
  - e. raise invoices and collect all income due,
  - f. produce internal budget monitoring reports,
  - g. produce the Council's statutory accounts,
  - h. produce monthly bank reconciliations,
  - i. operate robust Treasury Management activities for daily cash management, loans and investments.

### **14 Banking Arrangements**

- 14.1 The Section 151 Officer is responsible for:
  - (a) Identifying the bank accounts required (including a separate account for the CLGPS) and opening these accounts in the name of Cumberland Council by the 1 April 2023;
  - (b) Authorising bank signatories and setting up authorised accesses and roles;
  - (c) Putting in place the arrangements required for the transmission of funds and collection of cash; and
  - (d) Agreeing procedures for managing the transition from the existing bank accounts and banking arrangements to those of Cumberland Council.

### **15 Treasury Management**

- 15.1 The Section 151 Officer is responsible for putting in place all necessary arrangements to enable Cumberland Council to invest or borrow monies on the 1 April 2023.

### **16 Insurances**

16.1 The Section 151 Officer is responsible for putting in place adequate insurance arrangements for Cumberland Council in readiness for the 1 April 2023.

**17 Taxation**

17.1 The Section 151 Officer is responsible for liaising with HM Revenues and Customs to obtain appropriate taxation and VAT reference numbers, including a separate PAYE reference for Cumberland's Returning Officer.

**18 Audit**

18.1 The Section 151 Officer is responsible for ensuring appropriate audit arrangements are in place for the Shadow Authority compliant with statute and good practice.

**19 Pensions**

19.1 The Section 151 Officer of the designated Administering Authority for Cumbria Local Government Pension Scheme (CLGPS) will be responsible for developing the constitutional requirements to ensure that the functions of the CLGPS can be transferred to the new Administering Authority on 1 April 2023.

# F OFFICER EMPLOYMENT PROCEDURE RULES

## 1 General

- 1.1 The Shadow Authority has limited powers in connection with the employment and designation of staff. It relies upon staff resources provided by all of the Cumberland local authorities and the Central Implementation Team to carry out its work. These Rules must therefore be read in that context.
- 1.2 Officers within the organisation are employed, appointed, designated or engaged by or on behalf of the whole Shadow Authority and not by parts of the organisation or individuals.
- 1.3 The employment, appointment, designation or engagement of all staff will be in compliance with the law and any relevant policies and practices of the employing organisation and the Shadow Authority.
- 1.4 Generally (except for certain senior appointments specified in the Local Authorities (Standing Orders) (England) Regulations 2001) the function of appointment and dismissal of, and taking disciplinary action against a member of staff of the Shadow Authority shall be discharged on behalf of the Shadow Authority by the Head of Paid Service or by an officer nominated by them and shall comply with the employing organisation's and the Shadow Council's relevant practices and procedures.
- 1.5 Appointment, dismissal and disciplinary action in relation to statutory officers shall follow the statutory procedures laid down in the relevant legislation, guidance and handbooks.

## 2 Recruitment and Appointment of Staff

- 2.1 Subject to the provisions of these Procedures, the recruitment, designation and appointment of officers will be conducted in accordance with law and the employing organisation's policies and procedures.
- 2.2 Any candidate for any designation or appointment with the Shadow Authority who knows that they are related to a Shadow Member or employee of the Shadow Authority shall, when making application, disclose, in writing, that relationship to the Central Implementation Team lead officer for Human Resources. A person who deliberately fails to disclose such a relationship shall be disqualified from designation or appointment and, if designated or appointed, shall be liable to dismissal.
- 2.3 Every Shadow Member and employee of the Shadow Authority shall disclose to the Central Implementation Team lead officer for Human Resources any relationship known to them to exist between themselves and any person they know is a candidate for designation or appointment by the Shadow Authority.
- 2.4 Any candidate for designation or appointment who directly or indirectly seeks the support of a Shadow Member or officer of the Shadow Authority in any designation or appointment shall be disqualified and, if designated or appointed, shall be liable for dismissal. A Shadow Member shall not solicit for any person in respect of any designation or appointment with the Shadow Authority, but may give a written testimonial of a candidate's ability, experience or character if so requested by the Central Implementation Team lead officer for Human Resources.
- 2.5 Persons shall be deemed to be related to a candidate or officer if they are a spouse, partner (i.e. member of couple living together), parent, parent-in-law, grandparent,

child, stepchild, adopted child, grandchild, child of partner, brother, sister, uncle, aunt, cousin, nephew or niece or the spouse or partner of any of the preceding persons.

- 2.6 In the case of a dispute under paragraph 2.5 above about the status of a relationship in relation to an appointment, the Central Implementation Team lead officer for Human Resources will rule and such ruling will be applied.
- 2.7 The Central Implementation Team lead officer for Human Resources will ensure that the provisions of these Rules are reflected, as appropriate, in application forms or in any accompanying detailed procedures for each post, following advertisement.

### **3 Responsibility for Human Resources matters**

- 3.1 Subject to any matters reserved to the Shadow Authority, the Senior Appointments Committee is responsible for the development of corporate personnel policies and for determining and monitoring such policies and for the operational implementation of those policies, including the development of practices and procedures to support those policies.

### **4 Responsibility of the Senior Appointments Committee**

- 4.1 The responsibilities of the Senior Appointments Committee are set out in Part 3 of this Constitution.
- 4.2 Subject to the provisions of these Rules, the Committee is also responsible for hearing and determining appeals under the Shadow Authority's employment-related policies, the suspension of sick pay and the review and determination of matters relating to any fixed term contracts. In determining these matters the Committee will have regard to the appropriate provisions of this procedure. The Committee may agree to discharge some of these functions through a Sub-Committee.
- 4.3 The Shadow Executive is required to ensure that the corporate personnel policies and procedures of Cumbria County Council and the Cumberland Councils for employees working on its behalf are adhered to by the Shadow Authority, or the employing authority of the individual, including training, matters relating to discipline, workforce performance management, and grievance (other than determining appeals).

### **5 Appointment of the Head of Paid Service**

- 5.1 The appointment of the Head of Paid Service is subject to specific requirements as set out below.
- 5.2 Where the Shadow Authority proposes to appoint to the Head of Paid Service, the Senior Appointments Committee will oversee the arrangements for filling the vacancy. For this purpose the Committee shall include at least one member of the Shadow Executive in its membership.
- 5.3 The Senior Appointments Committee shall:
  - (a) draw up a statement specifying the duties of the officer concerned and any qualifications or guidelines to be sought in the person to be appointed;
  - (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it;

- (c) make arrangements for a copy of the statement mentioned above to be sent to any person on request;
  - (d) where a post has been advertised as required above, the Committee will select from the applications a short list of qualified candidates and will then interview those included in the short list.
- 5.4 Following the interview of candidates, the Committee will come to a view as to the most suitable person for the position.
- 5.5 The Committee must advise the Monitoring Officer of:
  - (a) the name of the person in question; and
  - (b) —any other particulars which the Committee consider are relevant to the appointment.
- 5.6 Within two clear working days of receiving the notification in paragraph 5.5 above, the Monitoring Officer will notify each member of the Shadow Executive of:
  - (a) the information notified under paragraph 5.5 above; and
  - (b) the period within which any objection to the making of the offer is to be made by the Leader on behalf of the Shadow Executive to the Central Implementation Team lead officer for Human Resources; such period shall not exceed five clear working days.
- 5.7 A provisional offer of appointment shall not be made before:
  - (a) the Leader has, within the period of the notice under paragraph 5.6 above, notified the Committee through the Central Implementation Team lead officer for Human Resources that neither they nor any member of the Shadow Executive has any objection to the making of the offer; or
  - (b) the Central Implementation Team lead officer for Human Resources has notified the Committee that no objections have been received by him/her within the period of the notice under paragraph 5.6 above; or
  - (c) the Committee is satisfied that any objection received from the Leader within the notice period is not material or is not well founded. In this regard, where necessary, the advice of the Monitoring Officer should be sought.
- 5.8 Where following the above procedure there are no objections to the proposed appointment or any objections are not up-held, the Committee will recommend that person for appointment at the next meeting of the Shadow Authority or at a specially convened meeting of the Shadow Authority. If the Shadow Authority approve the recommendation, then a formal offer of appointment can be made.
- 5.9 Where following the interviews the Committee are of the view that there is no suitable candidate, it shall re-advertise the post.
- 5.10 Where the Shadow Authority do not approve the recommendation of the Committee, it shall indicate how it wishes to proceed.

## **6. Appointment of Monitoring Officer and section 151 Officer**

6.1 The appointment of the Monitoring Officer and section 151 Officer for the Cumberland Council shall be undertaken following the procedure set out in paragraphs 5.2 to 5.7 above.

6.2 Where, following the above procedure, there are no objections to the proposed appointment or any objections are not upheld, the Committee will make a formal offer of appointment.

**7 Appointment/dismissal of Interim/Acting/Permanent Head of Paid Service, Statutory Chief Officers, Non-Statutory Chief Officers and Deputy Chief Officers**

7.1 The requirements of the Local Authorities (Standing Orders) (England) Regulations 2001 (“the Regulations”) and any other relevant legislation, guidance and terms will be followed in respect of those posts which fall within the definitions of Head of Paid Service, Statutory Chief Officers, Non-Statutory Chief Officers and Deputy Chief Officers.

**8. Appointment/dismissal of other officers**

Where any appointments are made to positions other than those referred to in paragraph 6 above, or where such persons are dismissed, these shall be the responsibility of the Head of Paid Service of the employing Council, or another officer to whom they have delegated that responsibility.



# **Part 5 – Code of Conduct, Member/Officer Protocol and other related provisions**

## **CUMBERLAND SHADOW AUTHORITY MEMBERS' CODE OF CONDUCT**

### **Definitions**

For the purposes of this Code of Conduct, a “councillor” means a member or co-opted member of a local authority or a directly elected mayor. A “co-opted member” is defined in the Localism Act 2011 Section 27(4) as “a person who is not a member of the authority but who

- a) is a member of any committee or sub-committee of the authority, or;
- b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee”.

For the purposes of this Code of Conduct, “local authority” includes county councils, district councils, London borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities.

### **Purpose of the Code of Conduct**

The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The LGA encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

### **General principles of councillor conduct**

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the [Seven Principles of Public Life](#), also known as the Nolan Principles.

Building on these principles, the following general principles have been developed specifically for the role of councillor.

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.

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

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor.

This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- You misuse your position as a councillor
- Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;

The Code applies to all forms of communication and interaction, including:

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

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

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

### **Standards of councillor conduct**

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

## **General Conduct**

### **1. Respect**

#### **As a councillor:**

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

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

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

### **2. Bullying, harassment and discrimination**

#### **As a councillor:**

- 2.1 I do not bully any person.
- 2.2 I do not harass any person.
- 2.3 I promote equalities and do not discriminate unlawfully against any person.

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

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

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

sexual orientation.

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

### **3. Impartiality of officers of the council**

#### **As a councillor:**

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

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

### **4. Confidentiality and access to information**

#### **As a councillor:**

- 4.1 I do not disclose information:

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

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

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

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

## **5. Disrepute**

### **As a councillor:**

5.1 I do not bring my role or local authority into disrepute.

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

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

## **6. Use of position**

### **As a councillor:**

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

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

## **7. Use of local authority resources and facilities**

### **As a councillor:**

7.1 I do not misuse council resources.

7.2 I will, when using the resources of the local authority or authorising their use by others:

- a. act in accordance with the local authority's requirements; and
- b. ensure that such resources are not used for political purposes.

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

Examples include:

- office support
- stationery
- equipment such as phones, and computers
- transport
- access and use of local authority buildings and rooms.

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

## **8. Complying with the Code of Conduct**

### **As a Councillor:**

- 8.1 I undertake Code of Conduct training provided by my local authority.
- 8.2 I cooperate with any Code of Conduct investigation and/or determination.
- 8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.
- 8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.

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

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

### **9. Interests**

#### **As a councillor:**

- 9.1 I register and disclose my interests.

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

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

potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

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

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

## **10. Gifts and hospitality**

### **As a councillor:**

- 10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.
- 10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.
- 10.3 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 that I have been offered but have refused to accept.

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



## **Appendices**

### **Appendix A – The Seven Principles of Public Life**

The principles are:

#### **Selflessness**

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

#### **Integrity**

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

#### **Objectivity**

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

#### **Accountability**

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

#### **Openness**

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

#### **Honesty**

Holders of public office should be truthful.

#### **Leadership**

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

## Appendix B

### Registering interests

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

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

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

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

### Non participation in case of disclosable pecuniary interest

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

### Disclosure of Other Registrable Interests

6. Where a matter arises at a meeting which **directly relates** to one of your Other Registrable Interests (as set out in Table 2), you must disclose the interest. If you have such an interest you must consider whether a reasonable member of the public, knowing all the facts, would think the interest such that it may influence the way you vote. If the ordinary person would think that the interest may influence your vote then you should not participate in the matter. In these

circumstances you may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter. If it is a 'sensitive interest', you do not have to disclose the nature of the interest

### Disclosure of Non- Registrable Interests

7. Where a matter arises at a meeting which **directly relates** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.
8. Where a matter arises at a meeting which **affects**–
  - a. your own financial interest or well-being;
  - b. a financial interest or well-being of a friend, relative, close associate; or
  - c. a financial interest or wellbeing of a body included under Other Registrable Interests set out in Table 1

you must disclose the interest. In order to determine whether you may participate in the meeting after disclosing your interest the following test should be applied:

9. Where a matter **affects** your financial interest or well-being so that a reasonable member of the public knowing all the facts would believe that it may affect your view of the wider public interest you may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

10. Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must make sure that any written statement of that decision records the existence and nature of your interest.

### Table 1: Disclosable Pecuniary Interests

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

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.

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

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

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

**Table 2: Other Registrable Interests**

*You have a personal interest in any business of your authority where it relates to or is likely to affect:*

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

## **Code and Protocol**

### **Protocol on Shadow Member/Officer Relations**

#### **Introduction**

- 1.1 The purpose of this Protocol is to guide Shadow Members and Officers of the Shadow Authority in their relations with one another.
- 1.2 Given the variety and complexity of such relations, this Protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise. It is hoped however that the approach which it adopts to these issues will serve as a guide to dealing with other issues.
- 1.3 This Protocol also seeks to reflect the principles underlying the respective Codes of Conduct which apply to Shadow Members and Officers. The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government and they therefore demand very high standards of personal conduct.
- 1.4 It is important that any dealings between Shadow Members and Officers should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position.
- 1.5 In their dealings with one another Members and Officers should bear in mind the seven Nolan principles of public life:
  - Selflessness
  - Integrity
  - Objectivity
  - Accountability
  - Openness
  - Honesty
  - Leadership
- 1.6. The Standards Committee shall maintain oversight of this protocol as part of its work programme.

#### **The Roles of Shadow Members and Officers**

- 2.1 Both Shadow Members and Officers are servants of the public and they are indispensable to one another. However, their responsibilities are distinct.
- 2.2 Mutual respect between Shadow Members and Officers is essential to good local government. The best service will be provided to local people by Members and staff working as one team. Effective working relationships between Members and staff must be based on trust and mutual respect.
- 2.3. Both Members and staff have a duty to act in accordance with the Authority's ethical standards as set out in the adopted codes of conduct.

## *Shadow Members*

2.4.1 Shadow Members are responsible to the electorate and serve only so long as their term of office lasts.

2.4.2 Shadow Members have some main areas of responsibility as follows:

- (a) Determining the policy of the Shadow Authority and giving it political leadership.
- (b) Monitoring and reviewing the performance of the Shadow Authority.
- (c) Representing the Shadow Authority externally.
- (d) Acting as advocates on behalf of their constituents. It is not the role of Shadow Members to involve themselves in the day to day management of the Shadow Authority.

## *Officers*

2.5.1 Officers are responsible to the Shadow Authority. Officers are professional staff and together have expertise covering a wide range of areas. Their job is to give advice to Shadow Members and the Shadow Authority, and to carry out the Shadow Authority's work under the direction and control of the Shadow Authority, its Committees and Sub-Committees. Officers work to the instructions of Senior Officers and not to individual Shadow Members, whatever office the Member may hold.

2.5.2 The role of Officers is to give advice and information to Shadow Members and to implement the policies determined by the Shadow Authority. In giving such advice to Shadow Members, and in preparing and presenting reports, it is the responsibility of the Officer to express his/her own professional views and recommendations. Whilst an Officer may report the views of individual Shadow Members on an issue, if the Shadow Member wishes to express a contrary view they should not seek to pressure the Officer to make a recommendation contrary to the Officer's professional view.

2.5.3. The political impartiality of staff must be maintained and no member of staff shall be asked to work in such a way that they support any political group or movement, except for those officers appointed specifically as administrative support to a particular political group represented on the Authority. See also paragraph 5 below.

2.5.4. Certain officers e.g. Head of Paid Service, Monitoring Officer, Chief Finance Officer (Section 151 Officer) have responsibilities in law over and above their obligations to the authority and to individual Shadow Members. Shadow Members must respect these obligations, must not obstruct Officers in the discharge of these responsibilities and must not victimise Officers for discharging these responsibilities.

## *Expectations*

2.6.1 Shadow Members can expect the following from Officers:

- (a) A commitment to the Shadow Authority as a whole, and not to any political group.

- (b) A working partnership.
- (c) An understanding by Officers that all Shadow Members have the same rights and obligations in their relationship with Officers and will be treated equally.
- (d) An understanding of and support for respective roles, workloads and pressures.
- (d) Timely response to enquiries and complaints.
- (e) Professional advice, not influenced by political views or preference.
- (f) Regular, up-to-date information on matters that can reasonably be considered appropriate and relevant to their needs, having regard to any individual responsibilities that they have and positions that they hold.
- (g) Awareness of and sensitivity and confidentiality in the political environment.
- (h) Respect, dignity and courtesy.
- (i) Training and development in order to carry out their role effectively.
- (j) Integrity, mutual support and appropriate confidentiality.
- (k) That Officers will not use their relationship with Shadow Members to advance their personal interests or to influence decisions improperly.
- (l) That Officers will at all times comply with the relevant Code of Conduct.
- (m) Not to be the subject of bullying or to be put under undue pressure.

#### 2.6.2 Officers can expect the following from Shadow Members:

- (a) A working partnership.
- (b) An understanding of and support for respective roles, workloads and pressures (and in this regard Shadow Members are encouraged to make prior appointments to see Officers).
- (c) Political leadership and direction.
- (d) Respect, dignity and courtesy.
- (e) Respect for their professional advice.
- (f) Integrity, mutual support and appropriate confidentiality.
- (g) Not to be the subject of bullying or to be put under undue pressure.
- (h) That regard will be had by Shadow Members to the seniority of Officers in determining the reasonableness of requests and that Shadow Members will be mindful of the potential vulnerability of Officers at junior levels.



- (i) That Shadow Members will be aware that Officers cannot respond to personal criticism in the same way that Shadow Members can and that Shadow Members will make their comments accordingly, and will avoid intimidating Officers.
- (j) That Shadow Members will not use their position or relationship with Officers to advance their personal interests or those of others, or to influence decisions improperly.
- (k) That Shadow Members will at all times comply with the Cumberland Shadow Members' Code of Conduct.

### *Limitations upon Behaviour*

2.7.1 The distinct roles of Shadow Members and Officers necessarily impose limitations upon behaviour. By way of illustration, and not as an exclusive list:

- (a) Close personal familiarity between Shadow Members and Officers can confuse these separate roles. It can get in the way of the proper discharge of the Shadow Authority's functions, not least in creating the perception in others that a particular Shadow Member or Officer may secure advantageous treatment. It can also prove embarrassing to other Shadow Members and Officers.
- (b) The need to maintain the separate roles means that there are limits to the matters on which Shadow Members may seek the advice of Officers, both in relation to personal matters and party political issues.
- (c) Relationships with a particular individual or party group should not be such as to create public suspicion that an Officer favours that Shadow Member or group above others. The issue of Officer advice to party political groups is specifically covered below.

### **Executive Arrangements**

- 3.1 The Shadow Authority has established a Shadow Executive which is the Shadow Authority's principal decision-making body.
- 3.2 Certain points must be clearly understood by Officers and Shadow Members:
  - (a) The Shadow Executive is the decision making body within the policy framework and budget set by the Shadow Authority.
  - (b) The Shadow Executive takes most but not all the decisions. Some decisions are still taken by other committees or the Shadow Authority itself or by Officers.
  - (c) Meetings of the Shadow Executive are open to the public, except where confidential matters are to be discussed. Minutes of meetings will be available for public inspection.
- 3.3 The Shadow Authority has also established an Overview and Scrutiny Committee to scrutinise the work of the Shadow Executive Committee. Officers and Shadow Members must recognise, when giving information and advice to the Overview and Scrutiny Committee, that Officers are responsible to the Shadow Authority as a whole.

## **Officer advice to Party Groups**

- 4.1 There is statutory recognition of party groups. In accordance with common practice, such groups may give preliminary consideration to matters of Shadow Authority business in advance of such matters being considered by the relevant Shadow Authority decision-making body. Officers may properly be called upon to support such deliberations by party groups.
- 4.2 The support provided by Officers can take many forms, ranging from a briefing meeting with a Chairperson or Spokesperson prior to a Committee meeting, to a presentation to a full party group meeting. Whilst in practice such Officer support is likely to be in most demand from whichever party group is for the time being in control of the Shadow Authority, such support is available to all party groups.
- 4.3 Certain points must however be clearly understood by all those participating in this type of process, Shadow Members and Officers alike. In particular:
  - (a) Officer support in these circumstances must not extend beyond providing information and advice in relation to matters of Shadow Authority business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if Officers are not expected to be present at meetings, or parts of meetings, when matters of party business are to be discussed.
  - (b) Although party group meetings may form part of the preliminaries to Shadow Authority decision making, they are not empowered to make decisions on behalf of the Shadow Authority. Conclusions reached at such meetings do not thereafter rank as Shadow Authority decisions and it is essential that they are not interpreted or acted upon as such.
  - (c) Similarly, where Officers provide information and advice to a party group meeting in relation to a matter of Shadow Authority business, this cannot act as a substitute for providing all necessary information and advice to the relevant Shadow Authority meeting, Committee or Sub-Committee when the matter in question is considered.
- 4.4 Special care needs to be exercised whenever Officers are involved in providing information and advice to a party group meeting which includes persons who are not members of the Shadow Authority. Such persons will not be bound by the Code of Conduct for Shadow Members (in particular, the provisions concerning the declaration of interests and confidentiality). For this and other reasons Officers may not be able to provide the same level of information and advice as they would to a Shadow Members only meeting.
- 4.5 If there are individuals present at a party group meeting (see 4.4 above) who are not members of the shadow authority and are not therefore bound by this code, the meeting organiser shall make clear to the Officer(s) concerned.
- 4.6 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group or anyone outside that group.
- 4.7 Any particular cases of difficulty or uncertainty concerning Officer support to party groups, should be raised with the Chief Executive who will discuss the matter with the relevant group leader(s).

## **Shadow Members' access to information and to Shadow Authority documents**

5.1 Shadow Members are free to approach any officer of the Shadow Authority to provide them with such information, explanation and advice as they may reasonably need in order to assist them in discharging their role as members of the Shadow Authority. This can range from a request for general information about some aspect of the work of the Shadow Authority to a request for specific information on behalf of a constituent. Such approaches should be directed to the relevant Chief Officer or Head of Service in the first instance. .

5.2 As regards the legal rights of Shadow Members to inspect Shadow Authority documents, these are covered partly by statute and partly by the common law.

5.3 Shadow Members have a statutory right to inspect any Shadow Authority document which contains material relating to any business which is to be transacted at a Shadow Authority, Committee or Sub-committee meeting.

This right applies irrespective of whether the Shadow Member is a member of the Committee or Sub-Committee concerned and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers.

This right does not however apply to documents relating to certain items which may appear on the private agenda for meetings. The type of information that would be contained within a private meeting agenda would for example be exempt information, such as information relating to employees, contract and industrial relations negotiations, legal advice and criminal investigations.

5.4 The common law right of Shadow Members is much broader and is based on the principle that any Shadow Member has a prima facie right to inspect Shadow Authority documents so far as access to the documents is reasonably necessary to enable the Shadow Member properly to perform their duties as a member of the Shadow Authority. This principle is commonly referred to as the "need to know" principle.

5.5 The exercise of this common law right depends therefore upon the Shadow Member's ability to demonstrate that they have the necessary "need to know". In this respect a Shadow Member has no right to "a roving commission" to go and examine documents of the Shadow Authority. Mere curiosity is not sufficient. The crucial question is the determination of the "need to know". This question must initially be determined by the relevant Chief Officer with advice from Monitoring Officer. In the event of a dispute, the question falls to be determined by the Chief Executive, having consulted with an Independent Person appointed pursuant to the Localism Act.

5.6 In most circumstances (e.g. a Committee member wishing to inspect documents relating to the functions of that Committee) a Shadow Member's "need to know" will normally be presumed. In other circumstances (e.g. a member wishing to inspect documents which contain personal information about third parties) a Shadow Member will normally be expected to justify the request in specific terms.

5.7 Whilst the term "Shadow Authority document" is very broad and includes, for example, any document produced with Shadow Authority resources, it is accepted by convention that a member of one party group will not have a "need to know", and therefore a right

to inspect, a document which forms part of the internal workings of another party group. This does not apply to documents in draft.

- 5.8 Further and more detailed advice regarding Shadow Members' rights to inspect Shadow Authority documents may be obtained from the Monitoring Officer.
- 5.9 Finally, any Shadow Authority information provided to a Shadow Member must only be used by the Shadow Member for the purpose for which it was provided i.e. in connection with the proper performance of the Shadow Member's duties as a member of the Shadow Authority.

### **Officer/Chairperson/Member of the Shadow Executive Relationships**

- 6.1 It is clearly important that there should be a close working relationship between Members of the Shadow Executive, Chairs of Committees, and relevant senior Officers. However, such Shadow Members must still respect the impartiality of Officers and such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officers' ability to deal impartially with other Shadow Members and other party groups.
- 6.2 Whilst the Leader, Chair of a Committee (or Sub-Committee) or a Shadow Executive Member will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations statutory Chief Officers and other senior Officers will be under a duty to submit a report on a particular matter. An Officer will always be fully responsible for the contents of any report submitted in his/her name. Any issues arising between a Chair or a Cabinet Member and an Officer in this area should be referred to the Chief Executive for resolution.
- 6.3 Finally, it must be remembered that Officers are accountable to their Chief Officer and that whilst Officers should always seek to assist a Chair or a Shadow Executive Member (or indeed any Shadow Member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Chief Officer or in the case of Officers exercising delegated powers, the Shadow Authority.

### **Correspondence**

- 7.1 Correspondence between an individual Shadow Member and an Officer should not normally be copied (by the Officer) to any other Shadow Member. Where exceptionally it is necessary to copy the correspondence to another Shadow Member, this should be made clear to the original Shadow Member. In other words, a system of "silent copies" should not be employed.
- 7.2 Official letters on behalf of the Shadow Authority should normally be sent out in the name of the appropriate Officer, rather than in the name of a Shadow Member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister or where a specific delegation applies) for a letter to be sent in the name of a Shadow Member, but this should be the exception rather than the norm. Letters which, for example, create obligations or give instructions on behalf of the Shadow Authority should not normally be sent out in the name of a Shadow Member.

## **Public Relations**

- 8.1 Both Officers and Shadow Members should follow the Code of Recommended Practice on Local Authority Publicity particularly when issuing press releases.

## **Code and Protocol**

### **Politically Restricted Posts - Cumberland Shadow Authority**

The main provisions regarding Politically Restricted Posts are set out in Part 1 of the Local Government and Housing Act 1989. Further details were set out in the Local Government (Political Restrictions) Regulations 1990.

The effect of including a local authority employee on the list of “politically restricted posts” is to prevent that individual from having any active political role either in or outside the workplace. Politically restricted employees will automatically be disqualified from standing for or holding elected office and these restrictions are incorporated as terms in the employee’s contract of employment.

Employees are also restricted from:-

- Canvassing on behalf of a political party or a person who is or seeks to be a candidate; and
- Speaking to the public at large or publishing any written or artistic work that could give the impression that they are advocating support for a political party.

The cumulative effect of these restrictions is to limit the holders of Politically Restricted Posts to bare membership of political parties, with no active participation within the party permitted.

Each local authority is under a duty to draw-up and regularly update a list of those posts which are politically restricted.

The Local Democracy, Economic Development and Construction Act 2009 modified the previous scheme.

With effect from 12 January 2010 politically restricted posts fall into two broad categories: specified posts and “sensitive” posts.

#### Specified posts

Specified posts include:-

- The Head of Paid Service
- The statutory chief officers
- Non-statutory chief officers (officers reporting to the Head of Paid Service excluding secretarial/clerical support staff)
- The Monitoring Officer
- Officers exercising delegated powers i.e. persons whose posts are for the time being specified by the authority in a list maintained in accordance with s.100G(2) of the Local Government Act 1972
- Assistants to political groups

All of the above-mentioned posts are politically restricted without rights of appeal for exemption to the local authority’s Standards Committee.

## “Sensitive” posts

A sensitive post is one which meets one or both of the following duties-related criteria:-

- Giving advice on a regular basis to the authority itself, to any committee or sub-committee of the authority or to any joint committee on which the authority is represented; and
- Speaking on behalf of the authority on a regular basis to journalists or broadcasters.

These postholders can appeal to the local Standards Committee to be exempted from the list, on the grounds that the authority has wrongly applied the criteria.

The right of appeal to the local Standards Committee was introduced under the Local Government and Public Involvement in Health Act 2007.

### **Appeal Process**

Employees included on the list compiled by the local authority on duties-related grounds (“sensitive” posts) can appeal against their inclusion, if they feel that they cannot influence policy, or that the local authority has incorrectly applied the duties-related criteria.

All such appeals require a letter from the applicant formally seeking exemption and a full job description of the post.

The letter should be submitted to the authority’s local Monitoring Officer (or his/her Deputy) with a copy lodged with the authority’s Human Resources Service.

The local Monitoring Officer (or their Deputy) will ensure that the appeal is tabled at a special meeting of a Panel of 3 Standards Committee members; membership of the Panel shall be drawn from the full or substitute membership of the local Standards Committee.

The applicant shall have the right to address the Panel when they are determining the appeal and submit any written testimony or evidence ahead of the meeting. Any written documentation must be provided to the local Monitoring Officer at least 5 working days prior to the Panel meeting for distribution to Panel members.

The Panel shall determine the appeal. The outcome of the appeal shall be communicated in writing to the applicant within 5 working days of the determination.

If the appeal is unsuccessful the applicant may not lodge a further appeal within a period of 12 calendar months unless their substantive job description has been amended significantly in the interim.

If the appeal is successful the authority shall immediately remove the post from the designated “sensitive” post list. The authority may not re-instate the post on the list unless there is a significant amendment to the substantive job description of the post.

# **Part 6 – Members’ Allowances Scheme**

TO BE INCLUDED



## Part 7 – Glossary

Articles	The basic rules governing the Shadow Authority's business, which cannot be suspended.
Budget/ Budget framework	<p>The framework developed by the Shadow Authority which identifies all the financial resources allocated to different services and projects for Cumberland Council.</p> <p>The agreed budget levels for each year from 1 April 2023 form a framework for expenditure which until 1 April 2023 only the Shadow Authority can alter and from 1 April 2023 only the Council of Cumberland Council can alter.</p>
Call-in	A mechanism, which allows Overview & Scrutiny Committees to examine, and challenge, an Executive decision before it is implemented.
Chief Finance Officer	The officer responsible for the administration of the financial affairs of the Shadow Authority in accordance with section 151 of the Local Government Act 1972. This applies to both the interim and permanent appointments to the role.
Chief Officers	The officers appointed to the roles of Head of Paid Service, Chief Finance Officer and Monitoring Officer on an interim and permanent basis.
Committee/Sub-Committee	<p>A group of members appointed by the Shadow Authority to undertake tasks allocated to it under the articles</p> <p>of this constitution or by direct instruction of the Shadow Authority. Decisions are taken collectively by majority present at a meeting.</p>

Confidential Information	Information either given to the Shadow Authority on terms which forbid its public disclosure or which cannot be publicly disclosed by Court Order.
Constitution	The document setting out how the Shadow Authority operates, how decisions are made and all the procedures that have to be followed.
Co-optee/Co-opted	A non-voting, non-Councillor appointed to serve on a Committee/Sub-Committee in an advisory capacity.
Councillors/Members	A person elected by their local community to represent them. Each Councillor represents a ward from the fourth day after the elections to the Shadow Authority on 5 May 2022 until the fourth day after the elections to Cumberland Council in 2027.
Council	The collective term for all councillors who are members of the Shadow Authority.
Executive	Term used to describe the collective role of the Leader, & those individual Members appointed by the Leader who together carry out those functions which are not reserved to the Shadow Authority.
Exempt Information	Information falling into a category set out in Schedule 12A to the Local Government Act 1972 which usually cannot be publicly disclosed – see the Access to Information Procedure Rules.
Forward Plan	A schedule of all the Key Decisions the Shadow Executive expects to take over the next four months.
Governance	The collective terms used to describe the process of continuous monitoring of the implementation of policies and practices that ensure the good management of the Council.
Head of Paid Service	The officer designated as head of paid service in accordance with section 4 of the Local Government and Housing Act 1989; also known as the Chief Executive. This

	applies to both the interim and permanent appointments to the role.
Key Decision	A decision by the Shadow Executive or Shadow Executive Member, which is likely either to incur significant expenditure/make significant savings or to have a significant impact on local communities.
Leader	A Councillor that is elected by the Shadow Authority as leader of the Authority and who will chair the Shadow Executive
Main Office	The address of the main office of the Shadow Authority as stated on the Shadow Authority's website
Monitoring Officer	The officer designated as monitoring officer in accordance with section 5 of the Local Government and Housing Act 1989. This applies to both the interim and permanent appointments to the role.
Officer	Any officer of Allerdale Borough Council, Barrow-in-Furness Borough Council, Carlisle City Council, Copeland Borough Council, Eden District Council, South Lakeland District Council or Cumbria County Council
Overview & Scrutiny	A committee of Members, appointed by the Shadow Authority, which has responsibility for providing support and advice to the Shadow Executive by contributing to the review and development of policy; and holding the Shadow Executive to account by questioning, challenging and monitoring their performance.
Policy Framework	The plans and strategies, which have to be adopted by the Shadow Authority and in accordance with which the Shadow Executive has to operate.
Portfolio/Portfolio Holder	<p>Pursuant to delegations from the Leader:</p> <p>A group of functions for which a member of the Shadow Executive has responsibility for decision making and affecting use of Shadow Authority resources.</p> <p>A member of the Shadow Executive who has collective and individual decision making</p>

	powers for a number of Council services and sections.
Procedure Rules	Detailed rules, which govern how the Shadow Authority operates and how decisions are taken.
Proper Officer	An Officer appointed to undertake a statutory function, can be a different person for each function. Often the Chief Executive or Monitoring Officer.
Quorum	The minimum number of people who have to be present before a meeting can take place.
Senior Appointments Panel	A committee of the Shadow Authority with responsibility for recommending to the Shadow Authority suitable candidates for appointment to identified senior posts.
Shadow Executive	Portfolio-holding Members of the Shadow Authority, including the Leader, who are responsible for carrying out almost all of the local authority's functions.
Standards Committee	A Committee responsible for promoting and maintaining high standards of conduct by Councillors and considers written allegations that a Councillor has failed to comply with their Code of Conduct.
Virement	Moving funds from one area of expenditure to another.