

# **Cumberland Shadow Authority Meeting**

**17 May 2022**

## **Proposed Shadow Authority Constitution**

**Report from:** Linda Fisher, Technical Lead, Legal and Democratic Workstream and Monitoring Officer (South Lakeland District Council)

**Report Author:** Mark Lambert – Corporate Director of Governance and Regulatory Services (Monitoring Officer) (Carlisle City Council)

**Wards:** All

**Key Decision:** No.

### **1.0 Purpose/Summary of report**

1.1 This report recommends a Constitution for adoption by the Shadow Authority at its inaugural meeting.

### **2.0 Recommendation**

#### **2.1 It is recommended that the Cumberland Shadow Authority:**

- 1. approve and adopt the proposed Constitution and thereby, amongst other things, create a Leader and Cabinet Executive within the meaning of Part 1A of the Local Government Act 2000; and**
- 2. should Members have any amendments to the Constitution which they resolve should be made or considered further, that they instruct their Officers to report back to the next meeting of the Shadow Authority, accordingly.**
- 3. Establish a cross-party Constitution Review Group to contribute towards the review of the Shadow Authority constitution and the preparation of the required post vesting day Cumberland Council Constitution.**

### **3.0 Background and Proposals**

**3.1** The Cumbria (Structural Changes) Order 2022 (“the SCO”) changes the arrangements for local government in the County of Cumbria. Two new Unitary Authorities will come into existence, one known as Cumberland Council and the other as Westmorland and Furness Council.

**3.2** The two new Councils assume full responsibility for functions from 1 April 2023 onwards (vesting day) but elections were held on 5 May 2022 for the Authorities. From the fourth day after the 2022 election until immediately before vesting day what are to be known as Shadow Authorities will exist.

**3.3** Part 3 of the SCO sets out what is required of the Shadow Authorities and the role includes:

- the creation of a leader and cabinet executive;
- the designation of interim Head of Paid Service, Monitoring Officer and Chief Finance Officer (s151);
- the appointment, before 31 December 2022, of the Authority’s Head of Paid Service, Monitoring Officer and Chief Finance Officer (s151)
- adoption of a code of conduct for the Shadow Authority;
- formulation of proposals for a scheme of Members’ allowances;
- discharge of functions via the shadow executive;
- review and revise the Implementation Plan;
- commence and sustain their running as shadow authorities;
- prepare the authorities for the assumption, as Cumberland or Westmorland and Furness Council, of local government functions and full local authority powers on 1 April 2023;
- preparation of any budgets or plans required by Cumberland or Westmorland and Furness Council when those functions are assumed;
- liaison with the county council and relevant district councils and the other Shadow Authority for the purpose of ensuring continuity of service delivery of public services on and after 1 April 2023; and
- complying with the “Section 24 Direction” (approval of prescribed capital and revenue expenditure by the existing councils)

**3.4** The shadow authorities have all of the powers of a non-metropolitan county council or a non-metropolitan district council but it is important to note that the shadow authorities only carry out the restricted role prescribed in the SCO and other relevant legislation. During the shadow period the county council and the six districts remain responsible for the delivery of all their existing services.

**3.5** Each of the Cumberland and Westmorland and Furness Councils will require a Constitution for the shadow period in order to facilitate its activities. It is important to note that the shadow authority Constitution is a different document to the unitary Council Constitution which will be required post vesting day, with the latter document having to cover all functions and services delivered by the new Councils.

**3.6** The Monitoring Officer Constitution workstream reviewed several examples of previous shadow authority constitutions with a view to identifying current best practice. The proposed shadow authority constitution is attached to this report as Appendix 1. The Cumberland Joint Committee referred the draft Constitution for consideration at the inaugural meeting of the Shadow Authority for Cumberland.

### **3.7 THE PROPOSED SHADOW AUTHORITY CONSTITUTION**

**3.8** The Constitution contains the following sections:

- The Powers and Duties of the Shadow Authority
- The Shadow Authority: shadow member roles, the Chair, the Leader, allowances, conduct etc.
- The rights and responsibilities of members of the public
- Functions of the Shadow Authority
- Role of the Chair
- Overview and Scrutiny
- The Shadow Executive: Leader, Deputy Leader and other members
- Other Committees: senior appointments committee and standards committee
- The Code of Conduct
- Functions of Officers: Head of the Paid Service, Monitoring Officer and Chief Finance Officer
- Decision making and legal matters
- Review and revision of the Constitution
- Budget and Policy Framework
- Responsibility for Functions
- Procedure Rules: access to information, executive, overview and scrutiny and meeting rules
- Financial Procedure Rules

**3.8** It is important to note that this is a proposed constitution which was drafted for a body of Members not yet in existence and therefore able to give guidance. However, it is intended to be a workable document and one which is easily amended to cater for the wishes

of the new Council. Any Member may request the Monitoring Officer to amend the Constitution and if the proposed change is compliant with statute and not likely to conflict with policy then a report will be submitted to the Shadow Authority. The Monitoring Officer may also make minor amendments (following a consultation process with the Chief Finance Officer, the Leader and the Chair) to reflect legislative changes or for any other reason providing no power reserved to the Shadow Authority is changed. These matters would then be reported to the next meeting of the Shadow Authority.

- 3.9** The Executive is to be the Leader plus between two and nine appointed persons. It is proposed for the shadow period that the Leader be appointed at the first meeting of the Shadow Authority and hold office until the first meeting of the Council following vesting day.
- 3.10** The Shadow Authority will have three committees and the Constitution provides that the Overview and Scrutiny Committee will have twelve members whilst the Senior Appointments Committee and the Standards Committee will each have seven members. The Overview and Scrutiny workstream preference is for one Scrutiny Panel which then utilises task and finish groups. The Overview and Scrutiny Committee may not have a member of the Shadow Executive on it whilst, conversely, the Senior Appointments Committee must have at least one member of the Shadow Executive as a member.
- 3.11** The Chair of the Shadow Authority includes the remit of attending such civic events as are appropriate, for example Remembrance Sunday. Any such events will continue to be organised by the relevant existing local authorities.
- 3.12** Part 3 of the SCO requires that the Shadow Authority, at its first meeting, must create a leader and cabinet executive in accordance with Part 1A of the Local Government Act 2000 and this is achieved via the adoption of the Constitution.
- 3.13** The obligation is to adopt suitable arrangements at the first meeting of the new Shadow Authority but, of course, Members may have different views as to what they wish their Constitution to contain and provide for. To this end, Members should note the ability for the Constitution to be easily amended in accordance with Members' wishes. If Members of the Shadow Authority wish their Constitution to have different provisions then the recommended course of action is for them to approve the proposed Constitution and instruct

officers to report to the next Shadow Authority meeting appropriate revisions to the said Constitution.

## **POST VESTING DAY CONSTITUTION**

3.14 During the course of the Shadow Authority's year an important task for the Authority will be to prepare a Constitution for the Council once it assumes its full role on 1 April 2023. To this end, it would be sensible and helpful (and it is recommended) for the Shadow Authority to establish a cross-party Constitutional Review Group to consider proposals and assist the Shadow Authority with its deliberations.

## **SECTION 24 OF THE PUBLIC INVOLVEMENT IN HEALTH ACT 2007**

**3.15** Members will be aware that the Government intend to issue a direction pursuant to section 24 of the Public Involvement in Health Act 2007 which, briefly, will regulate the ability of the existing Councils to enter into certain contracts and arrangements. The section is referenced within the body of the Constitution by way of acknowledgement of the role of the Shadow Authority in the process, however, the said role and a protocol for dealing with the requirements will be the subject of a separate report to the Shadow Authority setting out the detailed mechanism setting out how the process will be implemented.

## **REVISIONS TO THE SHADOW AUTHORITY CONSTITUTION AFTER THE CUMBERLAND JOINT COMMITTEE MEETING ON 14 APRIL 2022**

3.16 As made clear to the Joint Committee, the proposed Constitution is lengthy and complex document which was still being worked upon by the Monitoring Officers and other contributors. Subsequent to the Cumberland Joint Committee's receipt of the document the following changes have been incorporated:

3.16.1 An Equality Impact assessment was carried out and this recommended that the requirement for Members to stand when speaking should be removed so as not to indirectly discriminate against those persons unable to stand. This has been actioned.

3.16.2 The period of time for Member speeches has been set to five minutes.

3.16.3 A Member of the Executive to be part of the Senior Appointments Committee.

- 3.16.4 The terms of Reference for the Standards Committee to include recommending the appointment of the Independent Member.
- 3.16.5 Miscellaneous typos have been corrected.

3.17 Post Joint Committee amendments are set out in Appendix 2.

#### **4.0 Consultation**

4.1 The draft Constitution has been consulted upon with all of the various workstreams working on local government reorganisation, including the Chief Executives' Programme Board. The Constitution was reported to the Cumberland Joint Committee which resolved to refer the document to the Shadow Authority for consideration at its inaugural meeting.

#### **5.0 Alternative Options**

5.1 The Shadow Authority must adopt a Constitution at its first meeting and, as catered for in the recommendations, amendments may be made easily and in due course.

#### **6.0 Implications**

##### **Financial, Resources and Procurement**

6.1 There are no direct financial or procurement issues arising from this report but the proposed Constitution does set in place the framework of financial rules within which the Shadow Authority will operate. The Section 151 Officers have input into the formulation of the said rules.

##### **Human Resources**

6.2 The proposed Constitution sets up a Senior Appointments Committee to lead the recruitment of various posts within the Shadow Authority and it also deals with the appointment of interim/permanent statutory officers. There are no direct staffing implications arising from the Report.

## Legal

6.3 Legal comments are contained within the body of the Report. The Monitoring Officers workstream has drafted the report and Constitution to deliver the requirements of the Structural Change Order and a sound Constitution. The Constitution has been drafted in such a way that it may easily be amended to cater for the needs of the Shadow Authority during its existence in 2022/23.

## Health and Sustainability Impact Assessment

6.4 The proposals have no health and sustainability impacts and so no assessment of the health and sustainability impact of the proposal has been carried out.

## Equality and Diversity.

6.6 An equality and diversity review of the Constitution has been undertaken and the advice incorporated into the document.

<b>Risk Management</b>	<b>Consequence</b>	<b>Controls required</b>
There is a risk that the Shadow Authority does not approve a Constitution at its inaugural meeting.	The Shadow Authority will fail to comply with the SCO.	Members are reassured that the proposed Constitution is a workable and robust document but also one which is easily changed should that be the Shadow Authority's instruction.

## Contact Officers

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## Appendices Attached to this Report

<b>Appendix No.</b>	<b>Name of Appendix</b>
1	Constitution
2	Post Joint Committee amendments to the Constitution.

## Background Documents Available

<b>Name of Background document</b>	<b>Where it is available</b>
Equality Impact Assessment	By request.