

# Scheme of Delegation to Officers

## 1. Introduction

- 1.1. This scheme of delegation authorises the relevant officers to exercise the functions of the council as set out in this scheme and the Constitution. For the purpose of this scheme, 'officers' includes the Head of Paid Service, directors and other officers whose titles and/or areas of responsibility are set out in Part 2, Article 13 of the Constitution.
- 1.2. This scheme is without prejudice to the exercise of the council's functions by the council, the Cabinet, the council's committees and sub-committees and their own powers of delegation and by the officers mentioned within 1.1 above.
- 1.3. For the avoidance of doubt anything which is not covered by this scheme, including the appointment of a proper officer for the purpose of any statutory function, will be determined by the Head of Paid Service.
- 1.4. The council has given a general indemnity to any officer acting in the purported discharge of any authority delegated to him for any action, costs, claim or liability incurred by him or her.
- 1.5. For the avoidance of doubt:
  - (a) the Head of Paid Service has over all other officers the powers which they are entitled to exercise under this Scheme;
  - (b) an officer may refer any matter to the Council, the Cabinet, or a committee of the Council as appropriate either:
    - (i) in lieu of exercising his/her powers in relation to that matter; or
    - (ii) for consultative purposes before exercising those powers;
  - (c) the power to exercise any function includes the power to exercise that function in a positive or negative manner or to refuse to exercise the function;
  - (d) nothing in this Scheme prevents the Council, the Cabinet or a committee of the Council from exercising a function in place of an officer;
  - (e) in this Scheme references to the Cabinet shall be taken to include the relevant Cabinet Member, a committee of the Cabinet or an area committee insofar as the function concerned has for the time being been delegated to such member or committee;

- (f) any exercise of delegation making incorrect references to any part of the Constitution, relevant statute, legislation or bylaw shall not of itself invalidate the authorised delegation.

## 2. Principles of Delegation

2.1. The Head of Paid Service and other officers (as defined in paragraph 1.1 of this Scheme) – known as ‘directors’ for the purposes of this Scheme of Delegation - are empowered to make decisions on behalf of the council in accordance with the following general principles:

- (a) If a function, power or responsibility has not been specifically reserved to the council, a committee, or the Cabinet, the director within whose remit the matter falls is authorised to act.
- (b) The council, its committees and the Cabinet will make decisions on matters of significant policy. The Head of Paid Service and the directors have express authority to take all necessary actions to implement council, committee and Cabinet decisions that commit resources, within agreed budgets in the case of financial resources, as necessary and appropriate.
- (c) The Head of Paid Service and the directors are empowered to take all operational decisions, within agreed policies, in relation to the services for which they are responsible.
- (d) The Head of Paid Service and the directors are empowered to take all necessary decisions in cases of emergency<sup>1</sup>.
- (e) In relation to all delegated authority conferred on the directors by this scheme, the Head of Paid Service may allocate or re-allocate responsibility for exercising particular powers to any officer of the council in the interests of effective corporate management as he or she thinks fit.
- (f) Where a director is absent from the workplace for a period of time that requires others to exercise delegated authority in the director’s absence, another officer should be nominated by the Head of Paid Service. This nomination should be formally recorded in writing.
- (g) Where there is doubt over the responsibility for the exercise of a delegated power, the Head of Paid Service or their nominee is authorised to act;

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<sup>1</sup> For the purposes of this scheme, emergency shall mean any situation in which the relevant officer believes that failure to act would seriously prejudice the Council’s or the public’s interests. Such interests are to be interpreted widely and include (but are not limited to) the risk of damage to property or threat to the health or well being of an individual.

- (h) All directors are empowered to act as deputies of the Head of Paid Service in his/her absence, subject to the following:
    - (i) In the first instance, the person deputised to act will be the director named on the duty rota operated by the Council
    - (ii) In the absence of both the Head of Paid Service and the duty rota director, any other director may deputise for the Head of Paid Service in consultation with the County Solicitor and Chief Finance Officer.
  - (i) Anything delegated to a director is also delegated to the Head of Paid Service;
  - (j) These delegations should be interpreted widely to aid the smooth running of the organisation, the effective deployment of resources, the efficient delivery of services, and the achievement of the council's goals.
  - (k) The exercise of delegated functions shall be in accordance with the managerial requirements of the Head of Paid Service otherwise than in matters of professional expertise, and subject to the legal requirements of the Chief Legal Officer and the financial requirements of the Chief Finance Officer.
- 2.2. In deciding whether or not to exercise such delegated powers, the Head of Paid Service and the directors should consider whether to consult the appropriate Cabinet member(s) or committee chairman and have regard to their views. Officers shall always be entitled to refer matters for decision to the appropriate member body where they consider it expedient to do so.
- 2.3. The Head of Paid Service and the officers may authorise officers in their service areas to exercise, on their behalf, powers delegated under this scheme.

### **3. Recording of Delegations and Decisions**

- 3.1. All delegations conferred under this scheme must be recorded in writing by the Head of Paid Service and the directors in such a form as the Chief Legal Officer may prescribe (including for the avoidance of doubt any delegation under paragraph 2.1(e) above). Any decision taken under such authority shall remain their responsibility, and must be taken in their name.
- 3.2. Each director will maintain a separate record of sub-delegations pertaining to his/her directorate and will provide copies to the Chief Legal Officer for retention.

- 3.3. The Chief Legal Officer will maintain a central record of all delegations under this scheme and make this available for public inspection. The record shall be kept up to date according to any additions or other variations to the powers and functions which are delegated to officers.
- 3.4. Any decision of an officer having substantive effect shall be recorded in such a manner that all those who may have an interest in that decision have certain knowledge of its effect. Any key decision shall be recorded as required by the Access to Information Rules and notification given in accordance with the Scrutiny Procedure Rules at Part 6.2 of this Constitution.

#### **4. Scope of Powers**

- 4.1. In exercising these delegated powers the officers concerned shall have broad discretion, subject to complying with all relevant legislation, the council's constitution, including its contract and financial procedures and regulations, and overall council policy, to use the most efficient and effective means available, including the deployment of staffing and other resources within their control and the procurement of other resources necessary, whether within or outside the council.
- 4.2. Without prejudice to the generality of the foregoing the Head of Paid Service and directors shall have the power:
- (a) to take all lawful action consistent with overall council policy to deliver agreed strategy, plans and policy within their area of responsibility and within approved budgets. This shall include, but not exhaustively:
    - (i) invitation and acceptance of tenders, subject to the Contract Procedure rules at Part 8.3 of this Constitution;
    - (ii) preparation and submission of bids for external funds or grants for purposes related to the provision of services and acceptance of such funds and grants on such terms and conditions as may be agreed, subject to consulting the Chief Legal Officer where contractual obligations are involved;
    - (iii) write-off of irrecoverable amounts (including bad debts) up to such limit as may for the time being be prescribed by the Financial Procedure Rules at Part 8.2 of this Constitution subject in each case to the written approval of the Chief Finance Officer (or of a member of his/her staff nominated by him/her for that purpose) and to such approval being shown in the accounting records;
    - (iv) virement (within the budget framework);
    - (v) disposal and acquisition of assets;

- (vi) subject to the requirements of the Chief Legal Officer given either generally or in a particular case, the issue of formal notices, orders, instructions and instruments required under any legislation relating to his/her functions and areas of service or otherwise to give legal effect to the exercise of the powers set out above;
  - (vii) authorising the institution, defence or appearance in criminal or civil proceedings in relation to any legislation which they are responsible for monitoring, enforcing or otherwise implementing on behalf of the council, subject to authorisation by the Chief Legal Officer;
  - (viii) the negotiation of agreements or arrangements with other directorates of the Council or other companies or organisations relating to the provision of services for his/her directorate;
- (b) to put in place management arrangements, which define the area of responsibility of all officers under their area of responsibility;
- (c) in the case of any overspend to notify the chief finance officer in the role of Section 151 officer in accordance with the financial procedure rules and regulations;
- (d) subject to the Officer Employment Rules set out at Part 8.4 of this Constitution, to determine staffing arrangements within his or her directorate within approved budgets (except for staff employed in schools with delegated budgets), including:
- (i) appointments, unless the power to appoint to a particular post rests with the Council or a committee of the Council;
  - (ii) dismissal of any employee subject to the concurrence of the Chief Human Resources Officer (except where the power of dismissal is vested by law in the Director);
  - (iii) the transfer of posts within the total establishment of his/her directorate;
  - (iv) all disciplinary matters;
  - (v) granting ex-gratia payments up to a limit determined by the Chief Legal Officer to employees who have suffered loss of, or damage to, personal property in the course of their work;
  - (vi) extending an employee's sick leave on half pay for a period not exceeding the equivalent period of half pay already received; and

- (vii) granting up to 10 days' additional paid leave on compassionate grounds, or up to twelve months unpaid leave;
  - (viii) granting unpaid leave beyond twelve months, and any other exceptional request for leave, subject to the agreement of the Chief Human Resources Officer and the Chief Finance Officer.
- (e) to take all action to recruit, appoint, develop, manage and reward employees, in accordance with legislation and within approved council policies and procedures (including operation of policies for voluntary severance, early retirement, redundancy and redeployment) and relevant conditions of service for staff.

## **5. Delegation in Practice**

5.1. In taking any decision, the officer concerned must be satisfied that the following issues have been properly considered and completed where appropriate. All of these issues should be considered at the earliest possible stage:

- (a) a key decision should be taken in accordance with the relevant requirements (including the requirements for the recording of such decisions under Rule 18 of Part 8.1 of this Constitution);
- (b) the views of the relevant Cabinet member(s) and committee chairman following the application of the consultation criteria set out in paragraph (c) below;
- (c) the implication of any council policy, initiative, strategy or procedure. Officers need to be aware of any potential impact of a delegated decision in other services. In such cases, consultation with officers, relevant Cabinet member(s) or committee chairmen from any affected portfolio and local members, where the issue relates to a specific area, should take place;
- (d) consultation in accordance with the council's consultation strategy and the views emanating from that process;
- (e) the range of available options;
- (f) the staffing, financial and legal implications;
- (g) the assessment of any associated risks in accordance with the council's risk management strategy;
- (h) the involvement of appropriate statutory officers and/or other directors;
- (i) the relevance of any regional or national guidance from other bodies;

- (j) the council's constitution, including the Forward Plan, its contract and financial procedures and regulations, all relevant guidance, legislation, codes of practice and protocols.

5.2. Any member may request that executive decisions taken by officers under delegated powers are scrutinised by the appropriate scrutiny committee.

## 6. Specific Powers and Functions

6.1. Subject to the foregoing and without prejudice to the general effect of this scheme, the Head of Paid Service and directors designated for the purpose may exercise such specific powers and functions:

- (a) in the capacity of proper officer; or
- (b) otherwise on behalf of the Council, the Cabinet or a committee of the Council

as may be delegated to them from time to time. The powers and functions which are for the time being delegated to the Head of Paid Service, Chief Legal Officer and the Chief Finance Officer are listed in this section.

6.2. The Chief Legal Officer shall keep this scheme of delegation up to date according to any additions or other variations to the powers and functions of the Head of Paid Service, Chief Legal Officer, the Chief Finance Officer and directors.

6.3. The **Head of Paid Service** is authorised to undertake:

- (a) The functions under Section 4 of the Local Government and Housing Act 1989 as the Head of Paid Service of the Council, and in accordance with Article 13 of this Constitution.
- (b) Allocation of accommodation for the purposes of the Council, the Cabinet, committees, sub-committees and members.
- (c) Any function of the Cabinet or of a Council committee or sub-committee, after consultation with the appropriate Director and thereafter:
  - (i) in the case of an executive function, with the Leader of the Council or, in his/her absence, the Deputy Leader of the Council; or
  - (ii) in any other case, with the Chairman of the relevant committee or sub-committee or, in his/her absence, the Deputy Chairman of the relevant committee or sub-committee.

Any exercise of these functions shall be reported to the Cabinet or other relevant committee or sub-committee and shall be published on the website as soon as possible.

- (d) Following consultation with employees' representatives and with the Cabinet Member having responsibility for human resources and any other member(s) of the Cabinet whose responsibilities include a service particularly affected, approval of amendments to the County Council's personnel policies and procedures, subject to reference being made to the Cabinet where either:
  - (i) they would have material budget implications; or
  - (ii) material concerns about them have been expressed by the employees' representatives.
- (e) The powers and duties of County Returning Officer for the purposes of Section 35 of the Representation of the People Act 1983.

6.4. The **Chief Legal Officer** is authorised to:

- (a) take any action to implement any decision taken by or on behalf of the council, including the signature and service of statutory and other notices and any document; and authority to apply the Common Seal of the County Council to deeds in order to execute them;
- (b) institute, defend, settle or participate in any legal proceedings or disputes in any case where such action is necessary to give effect to decisions of the council or in any case where the Chief Legal Officer considers that such action is necessary to protect the council's interests;
- (c) consult with and instruct counsel, solicitors and other experts for legal proceedings, public inquiries, and other matters involving the council, and the negotiation and settlement of legal disputes on behalf of the Council, the Cabinet, committees of the Council or officers and arrangements for their representation in any court, public inquiry or other forum where he/she considers formal representation to be proper, including the incurring of such fees in respect thereof as may be appropriate;
- (d) authorisations under Section 223 of the Local Government Act 1972 (appearance by persons other than solicitors in legal proceedings);
- (e) acting as trustee on behalf of the Council in respect of any matter whereon he/she considers such action to be appropriate;
- (f) enter objections to any proposal affecting the county, the council or the inhabitants of the county;
- (g) undertake the following proper officer functions of the Council under the Local Government Act 1972:



- (i) Declaration of Acceptance of Office (Section 83);
  - (ii) Notice of Resignation of Office (Section 84);
  - (iii) Convening of and Summonses to Meetings (Section 88 & Schedule 12);
  - (iv) Filling of Casual Vacancies (Section 89);
  - (v) General Notices regarding Pecuniary Interest (Section 96);
  - (vi) Ordnance Survey (Section 191);
  - (vii) Charitable Trusts (Section 210);
  - (viii) Deposit of Documents (Section 225);
  - (ix) Certificate of Photographic Copies of Documents (Section 229);
  - (x) Authentication of Documents (Section 234);
  - (xi) Procedure etc. for Bye-Laws (Section 236);
  - (xii) Evidence of Bye-Laws (Section 238);
  - (xiii) Enactments relating to Town & Country Planning (Schedule 16)
  - (xiv) Adaptations, Modifications and Amendments of Enactments (Schedule 29);
- (h) the functions of Monitoring Officer within the meaning of Section 5 of the Local Government and Housing Act 1989 and in accordance with Article 13 of this Constitution;
- (i) the proper officer functions of the Council for the purposes of giving public notice of the receipt of a report from the Local Commissioner, for the purposes of Part III of the Local Government Act 1974;
- (j) following consultation with the Chief Finance Officer and with the Leader and Deputy Leader of the Council, approval of new or amended operational policies and procedures for the governance of the Council, subject to reference being made to the Cabinet where either:
- (i) they would have material budget or substantive policy implications; or
  - (ii) material concerns about them have been expressed by the employees' representatives;
- (k) such proper officer functions of the Council other than those specified in this section as are not specifically delegated to any other officer;
- (l) the functions under Section 16(1) and Section 16(2) of the Local Government and Housing Act 1989 to give effect to the wishes of the political groups as regards membership of scrutiny committees and committees of the Council;
- (m) the proper officer functions of the Council for the purposes of Part VA of the Local Government Act 1972 (Access to Information);
- (n) making of appointments to outside bodies in accordance with the Council's published arrangements relating to representation on outside bodies;

- (o) making of appointments to school admission and exclusion appeal panels;
- (p) to adjust the terms of reference of a scrutiny committee to reflect detailed changes in the remits of individuals or bodies which are specified in those terms of reference, subject to the concurrence of the Scrutiny Co-ordinating Group in each case;
- (q) authorisation of the reproduction or display of the Council's armorial bearings or any part thereof;
- (r) as Monitoring Officer, the functions of the 'qualified person' under the Freedom of Information Act 2000 (Section 36(5)(o)(iii)) for determining whether the exemptions under Section 36 are engaged.

6.5. The **Chief Finance Officer** is authorised to undertake:

- (a) The proper officer functions of the Council for the purposes of Section 115 of the Local Government Act 1972 (Receipt of Money) and for the administration of the Council's financial affairs under Section 151 of the Act, and in accordance with Article 13 of this Constitution.
- (b) The proper officer functions of the Council for the purposes of Section 146 of the Local Government Act 1972 - Transfer of Securities.
- (c) The functions of 'responsible officer' for the purposes of financial administration under the Local Government Finance Act 1988.
- (d) Functions as the officer responsible for maintaining an adequate and effective system of internal audit.
- (e) Implementation of pay awards made nationally or locally under procedures recognised by the Council.
- (f) The making of investments of the County Pension Fund in accordance with the policies determined by the Pension Fund Committee.
- (g) Determination of cases of whether the education or training should be treated as continuous where an eligible child for the payment of a dependent's pension benefit under the Local Government Pension Scheme Regulations is over 17 and has been engaged continuously in full-time education or in training for a trade, profession or vocation has taken a gap year, subject to a report to the Pension Fund Committee on such determinations.

**6.6. Directors**

Each director is authorised to act on behalf of the Council in relation to any operational matters within the service areas for which s/he is responsible as set out in Article 13, subject to the provisions of Part 7.2 of this Constitution. The director will maintain a separate record of sub-delegations pertaining to his/her directorate and will provide copies to the Chief Legal Officer for retention under this Schedule.

- 6.7. For the avoidance of doubt, the delegation to the Director for Environment & Economy includes the power, jointly with the Chief Legal Officer, to determine applications for certificates of lawfulness of existing or proposed use or development.