
PROTOCOL ON OFFICER DECISION-MAKING

1.0 BACKGROUND

- 1.1 This document sets out the legal framework for decision-making and establishes a system to document decisions taken by Officers under delegated authority.

2.0 TYPES OF DECISION

- 2.1 The significance of decisions taken under delegated authority will vary and Officers authorised to make delegated decisions will need to exercise judgement in determining whether decisions are significant enough to require placing in the Forward Plan if they are in relation to Executive functions and/or formally recording. To assist in this process, decisions relating to Executive functions are defined as Key, Major or Administrative. All decisions other than Administrative Decisions need formally recording in accordance with paragraph 7. Administrative Decisions, although not required to be formally reported to the Proper Officer, must be recorded so as to provide an audit trail as referred to in paragraph 7.
- 2.2 In relation to non-Executive functions, Officers should adopt a similar approach to formal recording to ensure transparency of decision-making. Whilst Overview and Scrutiny cannot consider decisions of Regulatory Committees or Officers, such decisions can be challenged externally through appeals processes, the Courts and the Local Government Ombudsman.
- 2.3 A Key Decision is as defined in Article 12 of the Constitution.
- 2.4 A Major Decision is as defined in Article 12 of the Constitution.
- 2.5 An Administrative Decision is as defined in Article 12 of the Constitution.

3.0 THE PROCESS

- 3.1 Before taking any decision, an Officer should ensure that they have appropriate delegated authority, and reference should be made to the Scheme of Officer Delegations in Part 4 of the Constitution.
- 3.2 Where appropriate delegated authority exists, in writing, the authorised Officer must take into account the principles of decision-making set out in Article 12 of the Constitution.
- 3.3 All proposed Key Decisions need to be published on the Council's website not less than 28 clear days prior to the date on which the decision is to be made.

Officers proposing to make a Key Decision and needing to place an item on the Council's website should provide details to the Democratic Services Manager at least 30 clear days prior to the date on which the decision is to be made.

- 3.4 If it is impracticable to publish the notice not less than 28 clear days before the date of decision, then the Officer must comply with the legal requirements relating to exceptional and urgent Executive decisions. These are laid out in full in the Access to Information Procedure Rules in Part 4 of the Council's Constitution.
- 3.5 If an Officer is unable to give five clear days' notice of a Key Decision that was not published on the Council's website at least 28 clear days before the date of the decision, she/he can take the decision only if the Chairman of the Overview and Scrutiny Committee (for an Adur only item) or the Joint Chairman of the Joint Overview and Scrutiny Committee (joint items) agrees that the decision is urgent and cannot reasonably be deferred. The full procedure is again set out in the Access to Information Procedure Rules in Part 4 of the Council's Constitution.
- 3.6 Consultations under Paragraph 3.4 and 3.5 above, must be taken in consultation with the Democratic Services Manager.
- 3.7 In making an Officer decision, the principles of Member decision-making set out in Article 12 of the Constitution, should be complied with. All relevant considerations must be taken into account, no irrelevant considerations may be taken into account, due regard should be had to professional advice. A Key Decision should only be taken after consideration of an internal report, although there is no requirement to publish such a report.

4.0 CALL-IN

- 4.1 Relevant decisions made by Officers are subject to call-in by the Overview and Scrutiny Committee or Joint Overview and Scrutiny Committee and cannot be implemented until either the call-in period has expired or the Overview and Scrutiny Committee or Joint Overview and Scrutiny Committee has made a decision regarding the call-in. The call-in procedure is set out in the Overview and Scrutiny Procedure Rules within the Constitution.

5.0 RECORDING THE DECISION

- 5.1 Officer Key Decisions are recorded in the same manner as Executive Member decisions. The Officer will produce a decision record in the same format as those relating to Executive decisions following the Officer decisions.
- 5.2 Upon making a major decision in relation to an Executive function, the Officer must provide the Democratic Services Manager with a completed delegated

decision form (available on the Council's intranet site) within two clear working days of the date of taking the decision.

- 5.3 Upon making a major decision relating to the exercise of a non-Executive function, the Officer must provide the Democratic Services Manager with a completed delegated decision form within two clear working days of the date of taking the decision, unless agreed with the Solicitor to the Council that that decision (or class of decision) does not require this. Any such forms must be copied to the relevant Director.
- 5.4 The Democratic Services Manager will maintain a record of all decisions referred to in paragraphs 5.1 to 5.3, including any report upon which each decision was made and subject to any requirement for confidentiality, will ensure that this decision is recorded by the Council. She/he will also ensure that the record of decision is available for public inspection during all normal office hours, that the public has the right to copy or to be provided with a copy of any part of that record upon payment of a reasonable copying and administrative charge, and that the decision, report and background documents are available on the Council's website.
- 5.5 It is essential that the contents of the delegated decision form are clear in conveying the decision taken, i.e. it will not be sufficient to state that the recommendations in the report were agreed. The form and accompanying report must set out:
 - (a) A record of decision (including the date it was made);
 - (b) The reasons for the decision;
 - (c) Details of any alternative options considered and rejected, with reasons;
 - (d) A record of any conflict of interest declared by any Executive Member consulted; and
 - (e) In relation to any such declaration, a note of any dispensation granted by the Joint Governance Committee.
- 5.6 The delegated decision form includes a section for the recording of interests by Officers. It is important that where Officers involved in making decisions have a registerable interest, this is declared on the form to preserve the integrity of the process.

6.0 AUTHORISATION OF OFFICERS TO EXERCISE DELEGATED POWERS

- 6.1 The Scheme of Delegations to Officers includes the power for Officers to authorise other Officers to exercise delegations that have been delegated to them under the Scheme. This must be to another Officer or Officers of suitable experience and seniority. Each Director will prepare a departmental Scheme of Authorisations within 28 days of the Council's AGM, when the Scheme of Delegations is approved, and revise it as appropriate during the year. It shall set out how decisions will be made in his/her area. This should

establish which Officers will be given authority to make decisions under delegated powers and subject to which terms and conditions. The Scheme of Authorisation will be lodged with the Solicitor to the Council.

- 6.2 Whilst Directors may authorise other Officers to take delegated decisions, the decision is still their responsibility in that they will be accountable for the decision to authorise and the exercise of that authorisation.

7.0 REFERRAL

- 7.1 Whilst the Scheme of Delegations to Officers is designed to encourage Officers to take responsibility for decisions, an Officer may decide that a particular issue is such that it should be referred to the body from whom authority was delegated. Such a referral must take place where the proposed decision relates to an Executive function and is conflict with the Council's Budget and Policy Framework.
- 7.2 The Executive may also direct an Officer's delegated authority should not be exercised in respect of a particular matter and that the matter should be referred to the Executive.
- 7.3 In relation to the exercise of non-Executive functions, the Officer may decide to refer a particular issue to the Committee or Sub-Committee from whom it was delegated, or if none, arrange for an appropriate recommendation to be made to Full Council.

8.0 GIVING REASONS

- 8.1 A matter of increasing significance in Local Government, decision-making is when reasons have to be given. Generally, giving reasons is an accepted 'best practice' principle of good administration. Case law suggests that the practice may be important in ensuring that controversial decisions are rooted in relevant considerations and with proper regard to available legal powers.

9.0 ACCOUNTABILITY

- 9.1 Officers are accountable to the Council for any decision they may make and with the exception of decisions relating to individual regulatory matters, may be required to report to, and answer questions from, the Overview and Scrutiny Committee or Joint Overview and Scrutiny Committee in respect of any decisions. The Overview and Scrutiny Committee or Joint Overview and Scrutiny Committee may also call in Key and Major Decisions before they are implemented and may recommend a course of action when the matter is to be reconsidered by the Officer.

10.0 CONSULTATION WITH MEMBERS

10.1 General provisions:

- (a) Decisions made by Officers under delegated powers fall into two principal categories, namely:
 - (i) Decisions delegated to Officers in, or following, consultation with Executive Member (which may or may not be Key Decisions); and
 - (ii) Other decisions delegated to Officers (which are not required to be taken in, or following, consultation with Executive Members) and which may or may not be Key Decisions;
- (b) Officers to whom decisions have been delegated have a duty to ensure that effective consultation takes place in accordance with the Constitution / the terms of the delegation;
- (c) Every effort will be made to ensure that Members have a realistic timescale to respond to consultation and, where appropriate and reasonably practicable, this timescale will be sufficient to enable Members to consult with their constituents. Members will be informed of any time restrictions which may apply relating to the process of consultation, particularly where urgent action is needed in the Council's and/or the public interest.

10.2 Decisions by Officers following consultation with Executive Members

Officers to whom decision-making powers have been delegated, subject to consultation with Executive Members, will ensure that such consultation takes place.

Consultation shall be carried out in writing, unless there is an urgency about the decision that makes such written consultation impractical, in which case the Officer shall confirm, in writing, to the Executive Member their understanding of the Executive Member's response to the consultation.

The decision, however, is the responsibility of the Officer and if, following consultation with the relevant Executive Member, the Officer does not feel that they can make the decision in accordance with their professional opinion, then they must refer the matter to the Executive Member for a formal decision.

10.3 **Other decisions delegated to Officers**

- (a) Officers acting within the remit of their delegated authority would ensure that they identify, at an early stage, issues upon which Members should be consulted; and
- (b) Will ensure that appropriate consultation takes place.

10.4 **Consultation with Executive Members**

Officers will ensure that appropriate consultation is undertaken with Executive Members on issues relating to their portfolios.