

Recording Officer Decisions

DECISION MAKING AND DELEGATION

1. Background

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

2. Types of Decisions

- 2.1 The significance of decisions taken under delegated powers 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 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 need formally recording in accordance with paragraph 7. Administrative Decisions although not required to be formally recorded and reported, 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 Scrutiny Panels cannot consider decisions of Regulatory Panels, such officer decisions can be challenged externally through the courts. A delegated decision form to record Council functions is referred to in paragraph 5.2.

2.3 A Key Decision is as defined in Article 12.

~~2.3 Key Decision: an Executive decision which is likely:~~

- ~~i. to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the City Council's budget for the service or function to which the decision relates;~~
- ~~ii. to be significant in terms of its effects on communities living or working in an areas comprising two or more wards or electoral divisions in the City; or~~
- ~~iii. to have a particularly significant impact on any community as experiencing social exclusion or discrimination, whether that community is defined by geography or interest and even if that community is only located in one ward or electoral division in the area of the local authority.~~

Notes

- ~~1. In relation to paragraph (i) above, the term "significant" shall be construed as meaning £200,000 (except that this does not apply to care packages where the value of the care package exceeds £200,000). For the purposes of this paragraph, the term "care package" is defined as a package of personal care and support purchased as a consequence of a community care assessment within the National Health Service and Community Care Act 1990 provided to an individual who has needs that meet the Council's Eligibility Criteria under "Fair Access to Care" Guidance. The decision to provide the care package is for the duration of the individual's life for as long as they are assessed as continuing to need such care".~~

~~2. In relation to paragraph (ii) above, the Council will, unless it is impracticable to do so, treat as if they were Key any decisions which are likely to have a significant impact on communities in one ward or electoral division. Where a decision is only likely to have a significant impact on a very small number of people in one ward or electoral division, the decision-maker should ensure that those people are nevertheless informed of the forthcoming decision in sufficient time for them to exercise their right to see the relevant papers and make an input into the decision-making process.~~

~~3. In considering whether a decision is likely to be significant, a decision-maker will also need to consider the strategic nature of the decision and whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working the locality affected. Regard should again be given to the underlying principles of open, transparent and accountable decision-making of this Constitution to ensure that there is a presumption towards openness.~~

~~4. In interpreting after the event whether or not a decision should or should not have been classified as a Key Decision, the following will be taken into account:~~

~~a. the issue must be assessed on the basis of the information which could reasonably have been available to the decision-maker at the time;~~

~~b. the "de minimus" rule will be applied;~~

~~c. the level and nature of advice sought by the decision-maker. The Monitoring Officer and Chief Financial Officer will have significant roles to play in this.~~

~~Note: "De minimus" means that (in this context) this rule does not apply to trifling, minor or insignificant variations, departures or breaches.~~

- 2.4 ~~Major Decisions: a Major Decision shall bear the same definition as a Key Decision in Article 12 of the Council's Constitution, save that the only criteria for a Major Decision is that n Executive decision where using the definition of a Key Decision set out above, the expenditure shall be is between £200,000 - £500,000. The exceptions and exemptions from Key Decisions shall also apply to Major Decisions. (except that this does not apply to care packages where the value of the care package exceeds £200,000).~~

3. The Process

- 3.1 Before taking any decision, the authorised officer must take into account the principles of decision making set out the Constitution

- 3.2 All proposed Key Decisions need to be in the Council's Forward Plan which sets out **key** matters to be considered by the authority over the following four months and is updated on a monthly basis. Officers proposing to make a Key Decision and needing to place an item on the Council's Forward Plan should complete the Forward Plan template and supply this to the Democratic Services Officer. This is available on the Council's intranet site.

- 3.3 If it is impracticable to include the matter in the Forward Plan, 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, Part 4 of the Council's Constitution. Officers will find the explanation of the constitutional and legal position set out in the Corporate Standards on Decision-Making.

- 3.4 If an officer is unable to give five clear days notice of a Key Decision that was not in the Forward Plan, s/he can take the decision only if the chair of the relevant Scrutiny Panel agreed that the decision is urgent and cannot reasonably be deferred. The full procedure is again set out in the Access to Information Procedure Rules and again laid out in the Corporate Standards on Decision-Making.

4. Call-in

- 4.1 ~~Relevant Key~~ decisions made by officers are subject to call-in by the relevant Scrutiny Panel and cannot be implemented until either the call-in period has expired or the Scrutiny Panel has made a decision regarding the call-in. ~~Directors can identify a decision as being exempt from call-in but only where the Director has declared that the decision is urgent and any delay in implementing the decision would seriously prejudice the Council's or public interest.~~ The call-in procedure is set out in the Overview and Scrutiny Procedure Rules within the Constitution.

5. Recording the Decision

- 5.1 Officer ~~Key~~ ~~Dec~~isions are recorded in the same manner as Cabinet / Cabinet Member Key Decisions. The nominated Democratic Services Officer will produce a Decision Record in the same format as those relating to Cabinet decisions following the officer decision taking as advertised on the Forward Plan.
- 5.2 Upon making a Major Decision in relation to an Executive function, the officer must provide the Democratic Services Officer 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. Any such forms must also be copied to the relevant Executive Director and Policy Co-ordinator.
- 5.3 Upon making a Major Decision relating to the exercise of a non-Executive function, the officer must provide the Democratic Services Officer 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 decisions) does not require this. Any such forms must also be copied to the relevant Executive Director and Policy Co-ordinator.
- 5.4 The Democratic Services Officer 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. S/he will also ensure that the record of decisions is available for public inspection during all normal office hours and 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.
- 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 a report were agreed. The form and accompanying report must set out:
- a record of the decision;
 - the reasons for the decision;
 - details of any alternative options considered and rejected;

- a record of any conflict of interest declared by any Executive Member consulted; [and](#)
- in relation to any such declaration, a note of any dispensation granted by the Standards Committee; [and](#)
- any consultation carried out / responses.

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. Authorisation of Officers to exercise Delegated Powers

6.1 The ~~Officer Scheme of Delegation is Scheme~~ 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 Chief Officer will prepare a Departmental Scheme of [Authorisations Delegations](#) within 28 days of the Council's AGM when the Scheme of Delegation is approved, and revise it as appropriate during the year. It shall set out how decisions will be made in his/her ~~are a department~~. This should establish which officers will be given authority to make decisions under the ~~Chief Officer~~ Director's delegated powers, and subject to which terms and conditions. The ~~Departmental~~ Scheme of [Authorisation Delegations](#) will be lodged with the ~~Democratic Services Officer and shall be in the form as prescribed by the~~ Solicitor to the Council.

6.2 Whilst Executive Directors may authorise other officers to take delegated decisions, the decision is still the responsibility of the Chief Officer, who will be accountable for the decision to authorise and the exercise of that authorisation.

7. Referral

7.1 Whilst this Scheme 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 relating to Executive function is in 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 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. Giving Reasons

8.1 A matter of increasing significance in local authority 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. Accountability

- 9.1 Officers are accountable to the Council for any decision they make, and with the exception of decisions relating to non-Executive functions, may be required to report to, and answer questions from a Scrutiny Panel in respect of any Decision. Scrutiny Panel 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. Consultation with Members

10.1 General Provisions

- a. Decisions made by officers under delegated powers fall into two principal categories, namely:
 - decisions delegated to officers in or following consultation with Cabinet Member (which may or may not be Key Decisions); and
 - other decisions delegated to officer (which are not required to be taken in or following consultation with Cabinet 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.
- c. Every effort will be made to ensure that Members have a realistic time scale to respond to consultation and, where appropriate and reasonably practicable, this time scale 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.
- d. When preparing reports to Cabinet and/or Committees, officers will include details of any consultation with and any comments received from Members.
- e. ~~Some officer delegation decisions will be Key Decisions (as defined in the Constitution) and will be subject to the requirements of the regulations relating to such decisions (eg requirements relating to recording and publishing decisions) and to the call-in provisions outline in the Constitution.~~

10.2 Decisions by Officers following consultation with Cabinet Members

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

10.3 Other Decisions delegated to officers

- a. Officers acting within the remit of their delegated powers will ensure that they identify, at an early stage, issues upon which Members should be consulted. ~~These will include:~~
 - ~~issues of interest to Cabinet Members;~~
 - ~~issues of interest to Ward Members;~~
 - ~~issues of general interest to all Members.~~
- b. Officers will ensure that appropriate consultation takes place.

10.4 Consultation with Cabinet Members

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