

## Member Delegated Decision Operating Processes – Review of the Governance Working Group and Proposed Changes.

### Report of the Director of Legal and Democratic Services

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Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.

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#### **1) Recommendation**

That Council be recommended to amend Part 3c of the Constitution, section 11 as outlined in section 4 of the Report, with new text shown in red and removed text with a strikethrough.

#### **2) Background / Introduction**

The Governance Review Group have reviewed and benchmarked the criteria for a Member Delegated Decision, taking into account best practice and a thorough consideration of the current guidance in the Constitution.

The aim of the work was to establish clear roles and responsibilities for elected members, ensure that the Cabinet and individual members are aware of their powers and the information required to make informed decisions. The definition needed to be further defined and a clear framework for what is considered a Member delegated Decision when decision making. The Committee will note there are also working examples to add clarity.

A copy of the current process for Member Delegated Decisions is outlined in section 3c of the Constitution.

#### **3) Consultations / Representations / Technical Data**

Views were sought from the Governance Working Group and benchmarking data from across other Authorities as well as specialist support from the Local Government Association (LGA).

#### **4) Main Body / Proposal**

It is proposed that section 3c of the Constitution be amended as follows, with amendments shown in red and removed text as a strikethrough.

## **11.0 Delegation to Cabinet Members**

- 10.1** Under the Local Government Act 2000, the Cabinet may delegate any of its functions to an individual Member of the Cabinet and the individual Member shall make decisions only in accordance with the guidance below.
- 10.2** A Cabinet Member may take any decision other than a key decision which is both within his/her remit (as set out in Paragraph 8.0 above) and within the policy and budget framework in Part 4 of the Constitution. An individual Member exercising their decision-making power shall not make any decision which the Cabinet would not be able to make either under legislation or under the Council's Constitution. No decision should be made, or which is not within budget, or a decision on a function which is reserved to the Council.
- 10.3** Two or more Cabinet Members may jointly agree to make a decision which is within their collective remits.
- 10.4** If a Cabinet Member has a Disclosable Personal Interest ~~as set out at Standing Order 34 and in the Members' Code of Conduct at Part 6 of this Constitution~~ in any matter which is the subject of a proposed decision or is absent or otherwise unavailable to act the Leader or the Deputy Leader **in the absence of the Leader** may exercise all the powers delegated to that Member in paragraph 11.1.
- 10.4.1** If a Cabinet Member has a conflict of interest (within the meaning described in the Cabinet Procedure Rules) in any matter which is the subject of a proposed decision by them then they may seek a dispensation from the Council's Monitoring Officer to remove that disability or the Leader or the Deputy Leader may exercise the powers delegated to that Member ~~in paragraph 11.2 for the purposes of that matter.~~
- 10.5** Before taking any decision under this delegation **the officer dealing with the decision shall send the Report to the relevant Cabinet Member, the Chief Executive, the Monitoring Officer and Section 151 Officer and** ~~shall so far as is reasonably practicable consult any Member whose division is particularly affected by that decision. They shall also and shall arrange for a copy of any the further report which they intend to take into account in coming to a decision to be made available to the Chair of the relevant Scrutiny Committee or to the local County Councillor if it relates to a local issue as described on paragraph 11.6 below.~~

**10.6** Any of the above persons may make written comments to the Member who is due to make the decision before the five days has expired, copied to the Officer who wrote the report.

**10.7** The above procedure shall not apply where the decision being taken is urgent, i.e., where any delay would seriously prejudice the Council's or the public interest. The Chair of the relevant Scrutiny Committee or the Head of the Paid Service must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. The record of the decision shall state the reasons(s) for urgency.

**10.8** The Report template must set out:

**10.8.1** the decision to be taken.

**10.8.2** any publicity or consultation requirements (either before or after the decision is made) in respect of the decision, either under legislation or under Council policy or any which is considered appropriate and the outcome of those consultations.

**10.8.3** the facts upon which any decision must be based.

**10.8.4** any legislative requirements, including: the Public Sector Equality duty.

**10.8.5** staffing and financial implications.

**10.8.6** any implications for any other areas of the Council's activities.

**10.8.7** any relevant national or regional guidance.

**10.8.8** any Council policy relating to the issue, including sustainability issues.

**10.8.9** the Cabinet Portfolio within which the issue falls and details of any interest or conflict of interest and / or any dispensation.

**10.8.10** any wards which are particularly affected by the issue and confirmation the ward member has been informed of proposal.

**10.8.11** the options and alternatives that are available; and

**10.8.12** any professional recommendation that the Officer wishes to make.

**11.1** In relation to contracts,

**11.1.1** the individual Member must ensure that the Council's Contract Procedure Rules and Financial Regulations have been complied with. They must not make a decision in respect of the selection of contractors, acceptance of tenders or otherwise entering into a contract unless they have written notification from the Director of Legal and Democratic Services/Monitoring Officer and the 151 officer that the above Procedure Rules have been complied with.

- 11.1.2** The individual Member must not sign any contract or in any way bind the Council, him, or herself. The contract documentation must be prepared by or approved by the Director of Legal and Democratic Services/Monitoring Officer and signed or sealed in accordance with the Council's procedures.
- 11.2** ~~The report outlining summarising any such the decision (to include options and reasons for taking the decision), and signed by the Cabinet Member(s) indicating also details of any personal interest or conflict of interest referred to above and any dispensation granted to that Cabinet Member shall be sent, together with a record of any report or~~ **any** other information which was taken into account by the decision-maker(s), to the Director of Legal and Democratic Services immediately **who will arrange for its publication.**
- 11.3** The decision will then be notified to all Members of the Council within 2 working days of it having been made. If the decision relates to a local issue a member whose division is particularly affected may within 5 working days of such notification being given, ask that the decision be referred to the full Cabinet for consideration. If the decision is of general application to the whole County any Member may ask the Leader of ~~his/her~~ **their** political group to require the decision to be referred to the full Cabinet for consideration. Where a decision relates to matter that would, had it been taken by the Cabinet, been considered as a Part II item in the absence of the press and public Members will be notified of the decision and reminded that any documentation contains exempt information which should not be disclosed to the press and public.
- 11.4** Until the Cabinet has considered a decision which is the subject of a requisition under Paragraph **11.11** it shall not be implemented.
- 11.5** **No decision shall take effect until it has been confirmed by the Monitoring Officer. The Monitoring Officer shall ensure that an Officer is designated as responsible for keeping up to date the full record of decisions by individual Members.**
- 11.6** All forms sent to the Director of Legal and Democratic Services in accordance with Paragraphs 11 shall be ~~kept in a Register which shall be tabled at all meetings of the Cabinet and be available for public inspection,~~ **published on the website (unless part 2) and be an agenda item on meetings of the Cabinet.**
- 11.7** **Principles of Delegation** - In respect of matters delegated from Cabinet to individual Cabinet Members, the focus will be on policy

issues within the policy and expenditure frameworks agreed by Cabinet and Council.

- Policy matters, internal to the service and required to provide guidance to officers to ensure significant policy decisions are implemented.
- Details of policy matters delegated by Cabinet once principles have been agreed.
- Expenditure items not specifically detailed within Service Plans but not sufficiently significant in scale to refer to Cabinet.
- Budget virement items within a service where only one Cabinet Member is involved.
- Responses to consultation documents not referred to Cabinet.
- In their absence, at the Leader's request, or where a prejudicial interest has been declared, to take decisions on any matter delegated to another Cabinet Member.
- It is the Cabinet Members responsibility to consult any other Member or Members of the Cabinet where the decision to be taken is of a cross-cutting nature.
- Any Member of the Cabinet may refer a matter delegated to them to the Cabinet for a collective decision.
- A record will be kept of all individual Cabinet Member decisions, which will be published and circulated to all Members to enable scrutiny of the same.

**11.8 Matters for Cabinet Members** - Cabinet Members are authorised to make decisions required in the area of their individual Cabinet Portfolio. This does not include a key decision, as defined in the Constitution.

- Cabinet Members may take policy, budget and expenditure decisions in accordance with the principles set out above.
- Cabinet Members may take decisions on tenders and contracts in accordance with the provisions within the Council's Constitution relating to contracts.
- Cabinet Members may take decisions on virement, audit, debt, write-off and placing of orders, in accordance with Financial Regulations.
- Cabinet Members may deal with petitions in accordance with the Council's Petitions Scheme.
- Cabinet Members may deal with asset management such as agreeing minor lease extensions.

## **5) Strategic Plan**

This proposal aligns to the Council's Strategic Plan 2021 – 2025. The proposal supports the commitment of ensuring that the Council makes good

decisions and is transparent and supports being a trusted and inclusive Council that hears the voices of communities and listens and learns.

## **6) Financial Considerations**

There are no financial considerations.

## **7) Legal Considerations**

Under Section 37 of the Localism Act 2011, the Council must prepare and keep up to date a Constitution. The proposed arrangements would not compromise this requirement.

## **8) Environmental Impact Considerations (Including Climate Change, Sustainability and Socio-economic)**

There are no environmental related issues.

## **9) Equality Considerations**

There are no equality related issues.

## **10) Risk Management Considerations**

No risks have been identified.

## **11) Summary / Conclusions / Reasons for Recommendations**

Under Section 37 of the Localism Act 2011, the Council must prepare and keep up to date a Constitution. The proposed arrangements would not compromise this requirement.

**Name – Maria Price** - Director of Legal and Democratic Services  
Cabinet Members for Policy, Corporate and Asset Management – John Hart  
and Cabinet Member for Organisational Development, Workforce & Digital  
Transformation – Andrew Saywell.

**Electoral Divisions:** All

**Local Government Act 1972: List of background papers** - NIL

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