

Part 2 – Section 1: Introduction to Decision-Making

1 GENERAL

- 1.1. The Council makes many decisions relating to matters within its area. This Part of the Council's Constitution sets out how these decisions are made so that members of the public are clear about what decisions are made and which part of the Council or individual has responsibility for particular types of decisions.
- 1.2. The Council's functions may be lawfully exercised by:
 - 1.2.1. The **Council**;
 - 1.2.2. the **Executive** (the collective term for the Leader, individual Executive Councillors, the Executive or a committee of the Executive);
 - 1.2.3. Committees and sub-committees of the Council or the Executive;
 - 1.2.4. Joint Committees; and
 - 1.2.5. Officers.
- 1.3. All of the Council's functions are either "executive" or "non-executive". **Executive functions** are the responsibility of the **Executive** or one of its committees, sub-committees, joint committees, or an officer. **Non-executive functions** are the responsibility of the Council or one of its committees, sub-committees, joint committees, or an officer. "Functions" includes all of the Council's powers and duties under legislation, that is, all of the activities the Council undertakes.
- 1.4. Under the Local Government Act 2000 ("the 2000 Act") functions are "**executive functions**", therefore the responsibility of the **Executive**, unless in law they are prevented from being exercised by the Executive. "**Non-executive functions**" (or Council functions) are specified in Regulations issued under the 2000 Act and include matters such as those relating to officers, planning and licensing. Non-executive functions may be delegated to committees, sub-committees or officers under Section 101 of the Local Government Act 1972 ("the 1972 Act"). Unless specified as a non-executive function, a function is presumed to be an executive function.
- 1.5. The **Executive** is the part of the Council which is responsible for most day-to-day decisions, including **key decisions**. The Executive is made up of the **Leader** and a number of **Executive Councillors** selected by the Leader and which make up the **Executive**. The Executive might also establish committees and sub-committees. All key decisions will be published in advance in the Forward Plan in so far as they can be anticipated.
- 1.6. The Executive will ordinarily carry out all of the Council's executive functions that are not the responsibility of any other part of the local authority, whether by law or under this Constitution, unless the Leader decides to discharge them personally or allocate them to an individual Executive Councillor or a committee of the Executive. Each year, the Leader will record which executive functions

may be carried out by individuals or committees and this Constitution will be updated accordingly. This record is set out in this Part 2 of the Constitution and will be published alongside it.

- 1.7. The Council will also agree and keep up to date a record of what part of the Council or individual has responsibility for non-executive decisions relating to particular areas or functions. This record is set out in this Part 2 of this Constitution.
- 1.8. The Council will also have local schemes of further delegation which are not part of this Constitution but are maintained by the Council's **Designated Officers**.
- 1.9. Where a function is delegated under this Constitution, that does not prevent the person or body that has delegated the function from removing the delegation or exercising the function concurrently, for example in the absence of a delegatee making a decision.

2 PRINCIPLES OF DECISION-MAKING

- 2.1 The following principles will apply to all decision makers. Decision makers will:
 - 2.1.1 take into account all relevant considerations and ignore those which are irrelevant;
 - 2.1.2 take decisions which are proportionate to the desired outcome;
 - 2.1.3 undertake appropriate consultation where required and based on professional advice from officers;
 - 2.1.4 undertake a realistic evaluation of alternatives and options, giving reasons for their decision;
 - 2.1.5 consider relevant professional advice;
 - 2.1.6 have regard to statutory duties, such as **best value** and **social value**, and to environmental considerations and impacts;
 - 2.1.7 respect human rights and advance equality of opportunity;
 - 2.1.8 avoid, and seek to eliminate, discrimination, harassment and victimisation;
 - 2.1.9 approach decision making on a transparent and open basis;
 - 2.1.10 consider how the decision contributes to the Council Plan; and
 - 2.1.11 assess the impact of the decision and recommend mitigations using a proportionate impact assessment.
- 2.2 In the circumstance of a sub-committee established as a Panel to fulfil the function of a tribunal, the Panel or Sub-Committee may regulate, where necessary, its own procedures to deal with any matter arising in connection with

its duties, provided that the procedures remain in accordance with the principles of decision making set out in this Constitution. This includes that:

- 2.2.1 subject to any statutory rules or procedures detailed elsewhere, a Panel acting as a tribunal shall, when all evidence has been submitted and speakers (if any) have finished, hold discussion in the presence of the speakers and, as appropriate and in compliance with the Access to Information Procedure Rules, the public and press, and the decision making may thereafter be taken in private adjournment; and
- 2.2.2 it is expected that decisions will then normally be announced to those present and remaining post-adjournment, at least in summary form, before a decision is issued in writing.

3 RECORD OF DECISION-MAKING

- 3.1 The Council supports transparency of decision-making in the public interest.
- 3.2 A decision to be taken by the Council, a Committee or the Executive or to be taken as a Key Decision by an officer or Executive Councillor will normally only be made on consideration of a full report prepared by the relevant officer(s), published as may be required by the Council's Access to Information Procedure Rules set out at Part 3(3) of this Constitution, and which shall contain as a minimum:
 - 3.2.1 a recommended decision;
 - 3.2.2 an explanation of the reasons for the recommendation being put forward;
 - 3.2.3 details of any alternative options, if any, considered and rejected for recommendation;
 - 3.2.4 details of any consultation undertaken or proposed including, in respect of consultation undertaken, the nature and extent of the consultation undertaken with stakeholders and the overview and scrutiny committees and the outcome of that consultation;
 - 3.2.5 a consideration of the financial and legal issues pertaining to the matter, and such other matters as the Statutory Chief Officers (the Head of Paid Service, Chief Finance Officer or Monitoring Officer) may require, which may include risk, staffing, equalities, crime and disorder, public health and climate change implications; plus
 - 3.2.6 a list compiled of any Background Papers to the report, which are those documents other than published works that, in the opinion of the proper officer, relate to the subject matter of the report or, as the case may be, the part of the report and:
 - (a) disclose any facts or matters on which the report or an important part of the report is based; and

(b) were relied on to a material extent in preparing the report.

- 3.3 When decisions are taken, a decision record and/or minutes must be produced which will include the following information:
- 3.3.1 who took the decision (the person or body);
 - 3.3.2 the details of the decision including the date it was made;
 - 3.3.3 the reasons for the decision;
 - 3.3.4 a summary of any alternative options considered and rejected by the officer, Councillor or decision-making body when the decision was made;
 - 3.3.5 details of any conflict of interest relating to the matter declared by any member of the decision-making body or by a Councillor who is consulted by the officer or Councillor who made the decision; and
 - 3.3.6 in respect of any declared conflict of interest, a note of any dispensation granted by the Monitoring Officer or Standards Committee.

4 TYPES OF DECISION AND THE DECISION-TAKERS

- 4.1 When the Council makes decisions, it will comply with the Council Procedure Rules.
- 4.2 When the **Executive** makes decisions, these will comply with the Executive Procedure Rules.
- 4.3 When the Overview and Scrutiny Committee makes decisions, these will comply with the Overview and Scrutiny Procedure Rules.
- 4.4 When committees and sub-committees make decisions, these will comply with those Council Procedure Rules that apply to them.
- 4.5 On occasions, the Council, a Councillor or an officer will act as a tribunal or in a quasi-judicial manner when they determine the civil rights, obligations or criminal responsibility of an individual. When this happens:
- 4.5.1 the body or person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights (Fair Hearing); and
 - 4.5.2 subject to any statutory rules or procedures detailed elsewhere in the Constitution, a body acting as a tribunal is permitted, when all evidence has been submitted and speakers (if any) have finished, will hold discussion in the presence of the speakers and, as appropriate and in compliance with the Access to Information Procedure Rules (Part 3(3)), the public and press, and the decision making may thereafter be taken

in private adjournment. Decisions will then normally be announced to those present and remaining post-adjournment, at least in summary form, before a decision is issued in writing (Decision making in private).

- 4.6 Any area of responsibility that is not specifically listed under the matters reserved for Councillors in this **Part 2** is deemed to be delegated to officers.
- 4.7 **Part 2** Section 2 sets out the **non-executive functions** which are reserved to the **Council**.
- 4.8 **Part 2** Section 3 sets out the “local choice” functions, which are those that the Council can allocate to either the **Council** or the **Executive** for decision, and sets out which body has been allocated them.
- 4.9 **Part 2** Section 4 sets out the **executive functions** that are the responsibility of the **Leader**, individual **Executive Councillors**, the **Executive** and any committees or sub-committees it establishes.
- 4.10 **Part 2** Section 5 sets out the **non-executive functions** which are reserved to the committees established by the **Council**.
- 4.11 **Part 2** Section 6 sets out the functions which are reserved to joint committees established by the Council.
- 4.12 **Part 2** Section 7 sets out the principles of the Officer Scheme of Delegation for all functions and powers not otherwise reserved to Councillors. Section 8 sets out the functions of the Proper Officers of the Council.

5 FINANCE, CONTRACTS AND LEGAL MATTERS

5.1 Finance

- 5.1.1 The Council shall manage its financial affairs in accordance with the Financial Procedure Rules

5.2 Contracts

- 5.2.1 The way that the Council procures, enters into and/or manages contracts shall be in accordance with the Contracts Procedure Rules.

5.3 Authentication of Legal Documents

- 5.3.1 Only the Monitoring Officer or a person authorised by them shall sign documents which are necessary to any legal proceedings.
- 5.3.2 Certain documents shall have the Council’s Common Seal affixed to them (including by electronic means) rather than the signature of an officer. The affixing of the Common Seal shall be attested by the Monitoring Officer or any other Officer authorised by them.