

PART 3

Responsibility for Functions

Section	Section Title	Page
1	Introduction to Responsibility for Functions • How delegation works • General powers for Executive Directors and Heads of Service	26
2	Executive Functions • Introduction to executive functions • About the Leader, Cabinet, Portfolios, Shadow Portfolios and Cabinet Champions	33
3	Scheme of Delegation – Executive Matters • Cabinet Portfolio responsibilities • Head of Service Responsibilities	36
4	Scheme of Delegation – Non-Executive Matters (council responsibilities) • Description of budget and policy framework	55
5	Role of the Council (Council Functions)	70
6	Role and Responsibilities of Council Decision Making Bodies Terms of Reference: • Corporate Governance, Audit and Standards Committee • Development Management Committee	72
7	Overview and Scrutiny Committee – Terms of Reference	79
8	Policy and Project Advisory Board – Terms of Reference	85
9	Rushmoor Development Partnership (RDP) and Rushmoor Homes Limited – Governance Arrangements	88
10	Councillor Role Descriptions – Special Responsibility Roles	92
11	Roles of Officers • Functions of Statutory Officers	97
12	Proper Officers	102
13	Provisions and Responsibilities for Joint Arrangements	111

SECTION 1: INTRODUCTION TO RESPONSIBILITY FOR FUNCTIONS

1.1 Introduction

This part of the Constitution explains who is responsible for the various functions of the Council.

The law divides a Council's functions into the following categories:

- Council functions – these must not be the responsibility of the Leader and Cabinet. In some cases, such as adopting the Council's Budget or Policy Framework, only the full Council may take the decision. In other cases, the Council may delegate the responsibility for taking the decision to a Committee or officer.
- Local choice functions – it is up to the Council to determine whether these are the responsibility of the Council or the Leader and Cabinet.
- Executive responsibilities – these must be the responsibility of the Leader. As set out in paragraph 2.1 below, the Leader may delegate responsibility for these functions to the Cabinet, individual Cabinet Members or officers.

Council responsibilities are set out in Section 4. Any responsibilities not listed in Section 4, including all local choice responsibilities, will be executive responsibilities.

1.2 Summary of Council responsibilities and executive responsibilities

Council responsibilities (non - executive functions)	Executive responsibilities
Budget and Policy Framework (Part 3, Section 4, para 4.1)	Everything else
Regulatory work – for example development management and licensing functions	
Specific electoral and electoral registration matters	
Collective terms and conditions for staff other than pay (which is NJC)	
All of the other matters in Section 4 (para. 4.9)	

1.3 Delegation of responsibilities

The Council delegates many of its responsibilities to committees of the Council and officers, and the Leader delegates responsibilities to the Cabinet, Cabinet Members and officers. Details of delegation arrangements are set out in Sections 3 to 6. The Council and the Leader cannot delegate to each other.

1.4 How delegation works

(1) Delegation by the Council and the Leader

The Council and Leader can at any time take back responsibilities they have delegated, and delegation to officers shall be without prejudice to the rights and powers of the Cabinet and Committees, as appropriate, at any time, to decide upon any matter that falls within their responsibilities.

(2) Authorised Officers

Officers to whom powers are delegated are "Authorised Officers". Executive Heads of Service, Heads of Service, Corporate Managers, the Chief Operating Officer, Executive Director and Chief Executive are authorised officers for their areas of responsibility.

Authorised officers, and those officers who manage them, will exercise such powers granted by this Constitution or by the Council, the Cabinet or a Committee. Authorised officers each have a power of sub-delegating those powers to a nominated officer or officers to such extent as they shall determine, but the officer granting the sub-delegation shall remain responsible for any decision taken by the nominated officer. The Authorised Officer shall keep a record in writing of such arrangements.

An Authorised Officer may decide not to exercise a delegated authority and to refer a decision to the appropriate committee, portfolio holder or the Cabinet for determination.

Absence of Authorised Officer

In the absence of an Authorised Officer, powers and functions shall be exercised by one or more assistants designated in accordance with standing instructions previously issued by the Authorised Officer concerned. Where powers are delegated to a Head of Service or Corporate Manager, such powers may be exercised by the Chief Executive (Head of Paid Service), the Executive Director or the Chief Operating Officer on their behalf.

When an Authorised Officer post is vacant, delegated functions, including the power to designate assistants, shall be exercisable in all respects either

- by the officer who is temporarily appointed to carry out the duties and responsibilities normally associated with that Authorised Officer post; or
- if no such temporary appointment has been made, by the Chief Executive (Head of Paid Service) or the Executive Director or Chief Operating Officer.

(3) General requirements for powers exercised under delegation arrangements

In exercising delegated powers, officers shall comply with the following:

- all relevant statutory requirements
- the provisions of this Constitution including the Council's Standing Orders, Financial Procedure Rules, Contract Standing Orders and Access to Information Procedure Rules
- the approved plans, policies and decisions of the Council, Cabinet and Committees and shall not depart from this without specific approval from the relevant body concerned
- the revenue and capital budgets of the Council, subject to any variation permitted by the Council's Financial Procedure Rules
- the Council's Health and Safety policy for Council employees and premises

As part of delegated decision-making, consultation should be carried out with appropriate officers, ward members (where appropriate) and portfolio holders and the relevant Executive Director, Chief Operating Officer or the Chief Executive should be kept informed on any key or other significant decisions.

Additional guidance on using delegation powers under the scheme of delegation for Executive Matters is available in the Council's 'Executive Decision-Making Guidance for Officers' document.

Records of decisions made under delegation arrangements must be made in accordance with the provisions in the Access to Information Procedure Rules (Part 4 of the Constitution).

(4) Emergency Out of Hours Service

Powers delegated to the Chief Operating Officer shall be exercised by duty officers, in accordance with agreed authorisations, to carry out the Out of Hours Service and other emergency arrangements.

(5) When Officers and Individual Members should not use their delegated powers

Where powers are delegated by the Cabinet and Committees in this Constitution, an officer or individual Member (as the decision maker) shall refer the matter to the Cabinet or appropriate Committee for decision in the following circumstances:

- The decision raises new questions of principle or policy
- The officer or the Member has an interest in the matter

(6) Delegated powers exercised by individual members

Where responsibilities are exercised by individual Members, directly or as consultees with authorised officers, the following arrangements shall apply in making a decision:

- In the absence of the Chair of a Committee, the Vice-Chair
- In the absence of a Cabinet Member, the Leader of the Council or in his/her absence the Deputy Leader
- In the absence of the Leader, the Deputy Leader
- In the absence of the Mayor, the Deputy Mayor

1.5 General powers for Executive Directors and Heads of Service

The Chief Executive, Executive Director, the Chief Operating Officer, Executive Heads of Service, Heads of Service and Corporate Managers are authorised by the Council to

- (1) take all routine and day-to-day operational service decisions within agreed policies provided they are met from within overall approved budgets in relation to the services for which they are responsible, subject to any other requirements imposed by the Constitution (e.g. Financial Procedure Rules, Contract Procedure Rules);
- (2) take all decisions necessary to implement the contents of any approved Policy Framework plans, in relation to the services for which they are responsible, provided they are within agreed budgets;
- (3) act under all current or new legislation and Council plans, policies, guidelines and procedures relating to their services and functions managed, operated and controlled by them and shall have the authority to vary or change their services in consultation with the Executive Leadership Team;
- (4) authorise expenditure within approved revenue or capital budgets, or within the limits on variations provided for in the Financial Procedure Rules;
- (5) initiate procurement, accept quotations and tenders, access framework agreements, and sign contracts for the procurement of services, supplies and works subject to the requirements of Contract Standing Orders;
- (6) authorise employees of the Council to enter any land and premises for the purposes of any investigation, inspection or any statutory powers of the Council related to their area of service;
- (7) determine charges for the use of relevant services and events not covered by the annual review of fees and charges;

- (8) authorise their officers for the purpose of issuing notices under any legislation within the purview of the Council e.g. fixed penalty notices, penalty charge notices and abatement notices;
- (9) authorise their officers to obtain warrants authorising entry to property under the provisions of any legislation within the purview of the Council;
- (10) authorise their officers to appear in Legal Proceedings e.g. a Magistrates' Court to represent the Council, in consultation with the Executive Head of Governance & Law;
- (11) issue simple cautions in respect of offences under legislation enforced by the Council or the appropriate Committee, following consultation with the appropriate Cabinet Portfolio Holder or Chair of Committee and the Executive Head of Governance & Law;
- (12) signing documents and serving statutory or other notices on behalf of the Council;

Staffing

- (13) make decisions on staffing issues including recruitment to posts within their service, and issues in relation to working practices, performance, overtime and attendance on training courses within approved staffing budgets;
- (14) discipline and dismiss employees, subject to consultation with HR and in line with approved policies;
- (15) transfer or second employees subject to consultation with the Executive Leadership Team; and
- (16) approve the payment of more than one increment in accordance with criteria in the Council's Pay and Reward Policy.

Legal Proceedings

The Executive Head of Governance & Law is empowered in respect of legal proceedings to:

- (1) defend, conclude and settle all legal proceedings either issued or advised of pursuant to a pre action protocol against the Council and to institute, conclude or settle any legal proceedings authorised by the Cabinet or a Committee;
- (2) institute, conclude or settle any civil proceedings for debt or damages due to the Council and to institute any proceedings for the recovery of land or take other injunctive relief;
- (3) where urgent action is required in any instances not coming within the arrangements for urgency and exceptions set out in the Appendix to the Access

to Information Procedure Rules in Part 4 of the Constitution, or where he or she deems it appropriate, to institute any proceedings in consultation with the appropriate Cabinet Member or Chair, including the service of any necessary statutory notice (including an enforcement notice and a stop notice), provided that the reason for the urgency and the decision taken shall be reported to the next meeting of the Cabinet or the appropriate Committee and, if a Court Hearing is necessary prior to consideration by the relevant body, the appropriate Cabinet Member or Chair shall be informed of the action taken;

- (4) prosecute for failure to reply to Requisitions for Information regarding the ownership of premises served under planning and building control or other Local Government (Miscellaneous Provisions) Act 1976 powers;
- (5) prosecute for offences relating to contravention of any byelaws provided that, on the conclusion of the case, the Cabinet relevant Committee is informed of the action taken and the result thereof; and
- (6) after consultation with the relevant Head of Service to prosecute in the Magistrates' Court or the Crown Court for any other criminal offence with the Council's statutory or agency responsibilities

The Council's Chief Executive is empowered in respect of all general powers set out in paragraph 1.5 above.

The Council's Head of Paid Service, Monitoring Officer, and Section 151 Officer are authorised to give contract certificates under the Local Government (Contracts) Act 1997 upon receipt of an indemnity from the Council.

1.6 Consulting Cabinet Members and Chairs of Committees

The Chief Executive, Executive Director, Chief Operating Officer and Heads of Service will take decisions in relation to the day-to day running of the Council's services. However, arrangements will be made to ensure briefings with Committee Chairs, the Leader and/or the relevant Cabinet Members, Cabinet Champions and Shadow Cabinet Members on matters relating to their portfolio, responsibilities or shadow portfolio as appropriate.

Committee Chairs and Cabinet Members will be consulted as part of decision-making processes where appropriate, and Portfolio Holders shall be consulted on any key decisions taken under delegation arrangements.

1.7 Interpreting the rules on delegation

When a responsibility is delegated in the Constitution, so is the authority to do anything necessary to carry it out (unless it was forbidden when the responsibility was delegated). Functions, matters, powers, authorisations, delegations, duties and responsibilities within this Scheme shall be construed in broad terms and shall include the doing of anything which is calculated to facilitate or is conducive or incidental to the discharge of anything specified.

1.8 Responsibilities are carried out on behalf of the Council

All responsibilities are carried out on behalf of the Council and in the Council's name.

Section 26 of the Health and Safety at Work etc. Act 1974 allows local authorities to indemnify inspectors appointed under that Act under specified circumstances. It is the policy of this authority to indemnify inspectors appointed under that Act against the whole of any damages and costs or expenses which may be involved, if the authority is satisfied that the inspector honestly believed that the act complained of was within their powers and that their duty as an inspector entitled them to do it, providing the inspector was not wilfully acting against instructions.

1.9 Matters of Urgency

Arrangements for urgency and exceptions are set out in the Appendix to the Access to Information Procedure Rules in Part 4 of the Constitution.