

This report will be made public on 16 May 2023



Report number **A/23/03**

To: Council
Date: 24 May 2023
Status: Non – executive decision
Head of service: Amandeep Khroud, Assistant Director - Governance, Law & Regulatory Services

SUBJECT: SCHEME OF DELEGATION OF NON-EXECUTIVE FUNCTIONS

SUMMARY: The Council's constitution requires that the scheme of delegations be agreed by the Council at its annual meeting. This report sets out the scheme.

REASON FOR RECOMMENDATIONS:

The council is asked to agree the recommendations set out below because it is required to agree the scheme of delegation at its annual meeting.

RECOMMENDATIONS:

- 1. To receive and note report A/23/03.**
- 2. To agree the scheme of delegation set out in the appendix to this report in so far as it relates to the non-executive functions of the Council.**

1. INTRODUCTION

- 1.1 The council's constitution requires the annual council meeting to agree a scheme of delegations for non-executive functions – see part 4.2 of the Constitution "Council Rules of Procedure", rule 1.1 h.
- 1.2 The functions of the council are divided into executive and non-executive functions. The rules on which functions are executive or non-executive are set out in the Local Authorities (Functions and Responsibilities) Regulations 2000. The council decides non-executive function delegations, the Leader of the Council decides executive function delegations.

2. THE SCHEME OF DELEGATION

- 2.1 The scheme of delegation to officers is attached at appendix 1. This is the current scheme which appears at part 8.1 of the Constitution.
- 2.2 The scheme includes executive and non-executive functions. The council can only approve those parts which relate to non-executive functions and this is reflected in the recommendations.

3. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

3.1 Legal officer's comments (AK)

There are no legal implications arising directly from this report.

3.2 Finance officer's comments

There are no financial implications arising from this report.

3.3 Diversities and equalities implications

No implications arising directly from this report.

4. CONTACT OFFICER AND BACKGROUND DOCUMENTS

Councillors with any questions arising from this report should contact the following officer prior to the meeting:

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The following background documents have been relied upon in the preparation of this report:

None

Appendices:

Appendix 1 : Scheme of delegation to officers

PART 8.1 – DELEGATION TO OFFICERS

SCHEME OF DELEGATION TO OFFICERS

1. SCHEME OF DELEGATION TO OFFICERS

NOTE: This scheme of delegation does not include functions or powers delegated by the Council, Cabinet or regulatory committees to officers for a specified period not exceeding six months. The delegations to officers are made with the intent that they lead to a streamlining and simplification of the processes of the Council and accordingly should be interpreted widely rather than narrowly. In addition, under paragraph 1.4 below officers may authorise other officers to exercise their delegated powers and it is the intention for this scheme that powers are exercised at the most appropriate level.

- 1.1** Exercise of delegated powers: First Tier Officers , namely the Head of Paid Service), the Director of Corporate Services, the Director of Place, the Director of Housing and Operations, the Second Tier Officers namely the Assistant Director of Governance and Law, Economic Development Advisor, the Chief Officer Human Resources the Chief Officer - Planning, Chief Officer - Financial Services, Chief Officer – Place and Growth, Chief Officer – Place and Regulatory, Chief Officer – Housing, Chief Officer - Operations and the Chief Officer - Development (all collectively referred to in this scheme of delegation as “the Senior Officers”) can discharge all functions where they have managerial or professional authority except for matters specifically reserved to the Cabinet, a cabinet member, cabinet committees (if any), committees or the Council.
- 1.2** They will not take decisions that are expressly reserved to another decision-making body under this Constitution however First Tier Officers, (or in the absence of all First Tier Officers either the Monitoring Officer or Chief Officer - Financial Services):
- May make key decisions, as defined in Article 12 of the Constitution, if it is impractical for the Cabinet to do so because of the urgent nature of the decision to be made; and
 - May take decisions that are reserved to Council or Cabinet under this Constitution in an emergency and if it is lawful for them to do so.
- 1.3** They may use whatever means they consider appropriate within budget and in accordance with financial regulations to discharge those functions, including:
- Incurring expenditure and collecting income;
 - Engaging and deploying staff;
 - Deploying other resources within their control; and
 - Placing contracts and procuring other resources within or outside the Council.

In doing so, they must act within the law and the Council's Constitution and follow Council policy and the lawful instructions of Council committees and the Cabinet. If, exceptionally, they need to depart from Council policy or those instructions, they must report to the relevant body as soon as possible.

- 1.4 They may authorise other officers to exercise delegated powers on their behalf. They may also authorise appropriately experienced officers whose services are placed at the disposal of the Council pursuant to section 113 of the Local Government Act 1972 to exercise any powers or functions delegated to them or to specified officers.
- 1.5 Emergency action taken under delegated powers must be reported to the relevant body as soon as possible.
- 1.6 Significant decisions taken by Officers will be published and recorded in accordance with the Access to Information Procedure Rules. There will be no requirement to keep a written record of operational decisions within the budget and policy framework.
- 1.7 The Senior Officers of the Council shall be entitled to exercise the powers and functions set out below.

1.8 Decisions Delegated to the Senior Officers after appropriate consultation

The Senior Officers, in respect of matters falling within their remit, may take any action on behalf of the Council, including action relating to executive and non-executive functions, where the proposed action conforms with the policy and budget framework but where in his or her opinion, the matter is politically sensitive or raises issues of public or local concern, after consultation with the Leader and/or relevant portfolio holder, or the chair of the appropriate non-executive committee in the case of non-executive functions, and may respond to consultation documents after consultation as set out above.

1.9 Decisions Delegated to Senior Officers without prior consultation

The Senior Officers, in respect of matters falling within their remit, may take any action on behalf of the Council, including action relating to Executive and non-executive functions, where the proposed action conforms with the policy and budget framework and where in their opinion it is not of such political sensitivity or public concern that consideration by members is necessary.

- 1.10 The Head of Paid Service may discharge any of the functions of any other officer unless prohibited from doing so by any legislation or regulatory rule.

2. GENERAL DELEGATION TO THE SENIOR OFFICERS

In addition to those matters expressly delegated to individual officers, all the Senior Officers (save where expressly reserved to chief officers only) shall have the following delegated powers:

2.1 Power to Take Urgent Decisions

First Tier Officers (and in the absence of all First Tier Officers, either the Monitoring Officer or Chief Officer – Financial Services) may take urgent decisions if they are of the opinion that circumstances exist which make it necessary for action to be taken by the Council prior to the time when such action could be approved through normal council procedures. They shall, where practicable, first consult with the Leader and relevant portfolio holder or the chair of the appropriate non-executive committee in the case of non-executive functions.

2.2 Staffing Issues

The Senior Officers may deal with any matter relating to staffing other than those expressly reserved to Council, or the Head of Paid Service under paragraph 3.2 below, provided that they are in accordance with approved human resources policies, procedures and within the approved budget framework.

2.3 Orders/Agreements for Work, Goods and Services

In accordance with standing orders, financial regulations and codes of procedure relating to contracts:

- To issue orders for work, goods and services;
- To accept tenders;
- To sign agreements;
- Tenders or quotations may be submitted, and contractual arrangements entered into for carrying out work and / or providing services for other parties with the approval of the head of paid service (in consultation with the other chief officers) provided that the value of such contracts does not exceed £40,000; and
- To appoint specialist advisors or consultants.

2.4 Operational Decisions

To take decisions relating to all operational and professional matters within their remit.

2.5 Ombudsman Matters

To agree local settlements where they consider it in the interests of the Council to do so.

2.6 Land and buildings

In respect of any development of land and buildings which is proposed to be carried out for the purposes of statutory functions within the sphere of his/her responsibility, power to authorise an application for planning permission to the Planning and Licensing Committee, or for any other permission for works or the use of land, and once such permission has been received, to authorise the carrying out of such development in accordance with the terms and conditions of such permission.

2.7 Legal Proceedings

In consultation with the Assistant Director - Governance and Law, to: -

- i. institute and defend legal proceedings on the Council's behalf; and
- ii. authorise any suitable officer of the Council to appear on the Council's behalf in proceedings before any Magistrates Court and/or County Court.

2.8 Fees and charges

To exercise, in accordance with any current policy, all of the Council's functions relating to those fees and charges falling within their remit. This does not, for the avoidance of doubt, include the determination of fees.

2.9 Compensation

To pay compensation for service failure where they consider it appropriate up to a maximum amount of £1,000 in respect of any single issue.

- 2.10** In addition to the General Scheme of Delegation to the Senior Officers set out above, individual Senior Officers shall be entitled to exercise the powers and functions expressly delegated to them in the following paragraphs, subject to the conditions and restrictions set out above.

3. SPECIFIC POWERS AND FUNCTIONS DELEGATED TO THE HEAD OF PAID SERVICE

- 3.1** To exercise the powers and responsibilities of the Head of Paid Service for the purpose of Section 4 of the Local Government and Housing Act 1989.

- 3.2** To determine and to amend staffing structures.

- 3.3** To give such directions as he/she may consider necessary:

- To secure the efficient management and execution of the Council's functions;
- To secure co-ordination of advice and forward planning of objectives and services;
- To secure a corporate approach to the affairs of the Council generally;
- To achieve the efficient and effective implementation of the Council's strategies and policies and the effective deployment of the Council's resources towards those ends;
- To maintain good internal and external relations;
- To determine the allocation of office accommodation

- 3.4** To take all such action as he/she considers appropriate in any emergency (as defined by the Head of Paid Service) including power to make or approve any necessary and urgent arrangements within the powers of the council for the protection of persons or property in any civil or other emergency.

- 3.5** To sign on behalf of the Council any document necessary to give effect to any resolution of the Council, the Cabinet, committees or sub-committees and/or officers acting under delegated powers.
- 3.6** To act as proper officer of the Council, except where legislation or this constitution names another officer or the Council has specifically determined otherwise.
- 3.7** In consultation with the other chief officers, settle employee and industrial relations matters, including issues involving the application or rates of pay, conditions of service or other staffing benefits etc.
- 3.8** To consider and approve applications and proposals for early retirement of staff who are subject to the Local Government Superannuation Regulations.
- 3.9** To determine and issue to officers general guidelines for the management of human resources in the areas of recruitment and planning; training and development; employee relations; health, safety and welfare (including occupational health); pay and performance and equality of opportunity.
- 3.10** To add posts to the list of politically restricted posts and to grant and supervise exemptions from political restriction under the Local Government and Housing Act 1989 (as amended).
- 3.11** To make any order requested by the chief constable and authorised by the Home Office prohibiting the holding of public processions or trespassory assemblies.
- 3.12** To provide assistance at elections to the county council, of the police and crime commissioner and to discharge functions relating to parliamentary, and local elections, referendums and polls (whether national or local) including appointment of staff and determination of fees payable to those staff.
- 3.13** To be the Council's Electoral Registration Officer pursuant to S 8(2) Representation of the People Act 1983 and to exercise all the functions of that post.
- 3.14** To be the returning officer pursuant to S 35(1) Representation of the People Act 1983.
- 3.15** To be the Returning Officer for the purpose of conducting parish polls pursuant to Rule 4 (1) of the Parish and Community Meetings (Polls) Rules 1987.
- 3.16** To exercise the powers and functions of the Council under S113 of the Local Government Act 1972 to enter into an agreement with another local authority;
- For the placing at the disposal of that authority for the purposes of their functions, the services of officers employed by the Council; and
 - For the placing at the disposal of the Council for the purposes of its functions, the services of officers employed by that authority.

- 3.17** To exercise the powers and functions of the Council under the Local Authorities (Goods and Services) Act 1970.
- 3.18** To exercise the Council's powers to make appointments to committees or sub-committees at the request of the relevant political group leader subject to the conditions that (a) the appointed member shall be a replacement for a committee or sub-committee member from the same political group or the appointee is to fill a vacant seat on the committee/sub-committee allocated to the political group of which he/she is a member and (b) the changes shall be reported to the next available meeting of the council. This delegation shall only be exercisable in respect of councillors who are members of a political group.
- 3.19** To grant dispensations under the Local Authorities (Executive Arrangements) Meetings and Access to Information) (England) Regulations 2012 to in respect of any declared conflict of interest by a cabinet member.
- 3.20** To take the lead on organisational transformation initiatives.
- 3.21** To be the lead on matters relating to improvement, efficiency and organisational development.
- 3.22** To be responsible for the planning policy functions of the council as the local planning authority.
- 3.23** To nominate if he/she sees fit a deputy to exercise all the powers and functions of the Head of the Paid Service in his / her absence.
- 3.24** Where the post of Monitoring Officer or S151 Officer falls vacant to designate the Monitoring Officer or S151 Officer on a temporary basis pending the council's consideration of which officer to designate as one of the statutory officers.
- 3.25** To delegate any of the functions of Head of Paid Service subject to such conditions or limitations as he / she considers appropriate.

4. SPECIFIC POWERS AND FUNCTIONS DELEGATED TO THE DIRECTOR – CORPORATE SERVICES

- 4.1** To carry out those of the council's duties and functions as are shown in the table in appendix 1 to this scheme of delegation against the post title of the director together with the functions specified below
- 4.2** To be and carry out the duties of the Chief Finance Officer (Section 151 Officer), including ensuring the proper administration of the council's financial affairs.
- 4.3** To undertake the following specific roles:
- To be the Council's money laundering reporting officer
 - To appoint the deputy money laundering reporting officer
 - To set the council tax base

- To appoint the deputy Chief Finance Officer
- To agree external audit arrangements
- To be the council's lead on digital delivery

4.4 To write off bad debts, stores deficiencies and surplus goods or equipment up to £10,000 (higher value write-offs require the approval of the Chief Finance Officer in liaison with the Portfolio holder).

5. SPECIFIC POWERS AND FUNCTIONS DELEGATED TO THE DIRECTOR OF PLACE

5.1 To carry out those of the council's duties and functions as are shown in the table in appendix 1 to this scheme of delegation against the post title of the director

6. SPECIFIC POWERS AND FUNCTIONS DELEGATED TO THE DIRECTOR – HOUSING AND OPERATIONS

6.1 To carry out those of the council's duties and functions as covered by the 1985 Housing Act and as shown in the table in appendix 1 to this scheme of delegation against the post title of the director

7. SPECIFIC POWERS AND FUNCTIONS DELEGATED TO THE ASSISTANT DIRECTOR – LAW AND GOVERNANCE.

7.1 To carry out those of the council's duties and functions as are shown in the table in appendix 2 to this scheme of delegation against the post title of the Second Tier Officer together with the functions specified below

7.2 Monitoring officer

To be the Council's Monitoring Officer under Section 5 of the Local Government and Housing Act 1989.

To be the Proper Officer for the purposes of receiving applications for dispensation pursuant to section 33(1) of the Localism Act 2011.

To grant dispensations to members pursuant to section 32(2) of the

Localism Act 2011 and paragraph 8 of the adopted code of conduct to

Speak only or to speak and vote where:

- (i) so many members of the decision-making body have Disclosable Pecuniary or Other Significant Interests in a matter that it would impede the transaction of the business; or
- (ii) without a dispensation, no member of the executive would be able to participate on a particular item of business.

In consultation with the Chairman (or in his/her absence the vice-chair) of the Audit and Governance Committee to grant dispensations to speak and/or vote where it is not possible to convene a meeting of that committee where the application for dispensation is made on any of the following grounds:

- (i) Without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter;
- (ii) That the authority considers that the dispensation is in the interests of persons living in its area; or
- (iii) Where the authority considers that it is otherwise appropriate to grant a dispensation.

In making the decision the Monitoring Officer shall have regard to the following criteria:

- a) The nature of the member's interest and allowing them to participate would not damage public confidence in the conduct of the authority's business.

If public confidence would be damaged, then such an application would be likely to be refused. It is unlikely that it would be appropriate therefore, for example, to grant a dispensation to a member who has an interest arising as a result of an effect on their personal financial position or on that of a relative.

- b) The interest is common to the member and a significant proportion of the general public.
- c) The participation of the member in the business that the interest relates to is justified by the member's particular role or expertise.
- d) The business that the interest relates to is about a voluntary organisation or a public body which is to be considered by an overview and scrutiny committee and the member's interest is not a financial one.

In circumstances such as these, the committee might believe that it is in the interests of the authority's inhabitants to remove the incapacity from speaking or voting.

And that any dispensations granted shall be reported back to the next meeting of the Audit and Standards Committee.

To receive complaints relating to alleged breaches of the adopted Code of Conduct and to process complaints in accordance with the adopted arrangements for dealing with Code of Conduct complaints.

7.3 Land of community value

To hear appeals under the provisions relating to land of community value.

7.4 Solicitor to the council

To act as solicitor to the council in particular:

- To institute, defend, conduct and settle civil and criminal legal proceedings; and
- To sign or authenticate documents of any kind.

8. **SPECIFIC POWERS AND FUNCTIONS DELEGATED TO THE CHIEF OFFICER - PLANNING**

8.1 To carry out those of the council's duties and functions as are shown in the table in appendix 2 to this scheme of delegation against the post title of the Second Tier Officer subject to any condition or limitation shown below

8.2 Planning

To exercise all the Council's functions, including determining all consents, permissions, licenses under the planning (including control of advertisements) and listed building legislation, and taking enforcement action, in relation to town and country planning, in accordance with the specific scheme of delegation for planning in paragraph 8.3.

8.3 Specific scheme of delegation for town and country planning.

8.3.1 The Chief Planning Officer is authorised to determine the categories of applications set out in paragraph 8.3.2 except those that:

- a) Have been called in to the committee at the request of any district councillor;
- b) Represent a significant departure from the development plan and which the Chief Officer - Planning considers should be approved;
- c) The Council has a substantial interest in, other than small-scale proposals, (e.g. extensions and alterations to council owned properties and means of enclosure, accesses, installation of windows);
- d) Relate to proposals submitted by or on behalf of any member (including any co-opted member) or employee of the Council other than small scale works to which there have been no objections and related renewals and amendments;
- e) The Chief Officer - Planning believes raise issues which should be considered by the Planning and Licensing Control Committee;
- f) Are planning applications where the view of the parish or town council differs strongly from that of the Chief Officer - Planning except where an objection:

- i. relates to the principle of a proposal which already has outline planning permission; an issue determined at outline stage or an application of similar scale or character to one already approved;
 - ii. is for the renewal of a planning permission without stating what, in the view of the town or parish council, planning circumstances have changed since the grant of the original permission which would justify a refusal, is made without giving any reasons, or is only made on the basis that the work has already been implemented;
 - iii. is made without giving any reasons;
 - iv. is based upon a technical issue where the body responsible for providing advice on the issue is satisfied with the proposal subject to any evidence which contradicts that advice first being investigated;
 - v. is to minor operational development (e.g. domestic extensions, alterations to buildings, means of enclosures, accesses).
- g) Are planning applications where the view of a parish or town council differs strongly from that of the Chief Officer - Planning except where it expresses support for an application, but that application is clearly contrary to development plan policy and / or government guidance.

8.3.2 The categories of application which the Chief Officer - Planning may determine are:

- i. applications for planning permission under Section 70 Town and Country Planning Act 1990;
- ii. applications under Sections 73 and 73A of the Town and Country Planning Act 1990 to retain a building or to continue to use without complying with a condition subject to which planning permission has been granted;
- iii. applications to determine reserved matters and details arising from: grants of planning permission, e.g. landscaping schemes, details of external appearance, samples of materials, means of access, including listed building consents, conservation area consents, advertisement consents and permissions under the above;
- iv. applications submitted under General Permitted Development Order requirements; and
- v. applications for listed building and conservation area consents, subject to the agreement of the Secretary of State in cases where this is necessary.

8.3.3 The Chief Officer - Planning is authorised to determine:

- i. notifications under Sections 198 and 211 to 213 of the Town and Country Planning Act 1990 Act for the felling, topping or lopping of trees; and
- ii. applications for minor amendments/revisions in substitution for approved plans, including those for listed building consent, conservation area consent, advertisement consent or for permission to lop, top or fell trees.

8.3.4 Subject to the limitations in paragraph 10.3.1, the Chief Officer - Planning is authorised to:

- i. approve submissions respect of developments under Regulations 3 and 4 of the Town and Country Planning General Regulations 1992 made by the council and to raise objection or raise no objection to such submissions made by Kent County Council; and
- ii. respond to formal consultations by statutory bodies and development proposals by government departments.

8.3.5 In cases of urgency or where the breach of planning control relates to householder development or development that has already been refused planning permission, after consultation (if practicable) with the chairman or vice chairman of the Planning and Licensing Committee, the Chief Officer Planning - is authorised to:

- i. issue enforcement notices under Section 172 Town and Country Planning Act 1990;
- ii. serve a listed building preservation notice under 3 and 4 Planning (Listed Buildings and Conservation Area) Act 1990;
- iii. issue temporary stop notices under Section 171E Town and Country Planning Act 1990;
- iv. serve a stop notice under S183 Town and Country Planning Act 1990;
- v. make application for and serve injunctions under Section 187B Town and Country Planning Act 1990; and
- vi. serve urgent repairs notices under Section 54 Planning (Listed Buildings and Conservation Areas) Act 1990.

8.3.6 The Chief Officer - Planning is authorised to make directions under Article 4 Town and Country Planning (General Permitted Development) Order 1995 to take away rights conferred by Class A, part 2, Schedule 2 of the Order in relation to the erection, construction, maintenance, improvement or other alteration of a gate, fence, wall or other means of enclosure, subject to prior consultation with the relevant member of the Executive.

8.3.7 The Chief Officer - Planning is authorised to exercise all other functions relating to town and country planning.

8.238 The Chief Officer Planning is authorised, after consultation (if practicable) with the Chairman or vice-chairman of the Development Control Committee to arrange site visits for the committee where he/she considers it appropriate for the committee to visit the site. The Chief Officer - Planning can arrange such visits at any time during the processing of an application.

8.3.9 The Chief Officer - Planning may authorise other officers to exercise delegated powers on his/her behalf. In this case, the officers act in the name of the Chief Officer - Planning and he/she remains accountable for the action or decision.

8.4 Planning agreements

To negotiate Section 106 Agreements.

8.5 Listed buildings and conservation areas

To promote conservation of historic buildings and areas and make recommendations as to the designation of conservation areas.

8.6 Land of community value

To administer the list of land of community value.

9. SPECIFIC POWERS DELEGATED TO THE CHIEF OFFICER - HUMAN RESOURCES

9.1 To carry out those of the council's duties and functions as are shown in the table in appendix 2 to this scheme of delegation against the post title of the Second Tier Officer

APPENDIX 1 – Areas of Responsibilities – First Tier Officers

Director of Corporate Services	Director of Place	Director of Housing & Operations		
Human Resources	Licensing	Transportation		
Finance	Environmental Health	Grounds Maintenance		
ICT & Digital Services	Economic Growth	Lifeline		
Case Services (Corporate Services)	Waste Partnership (with DDC)	Estates and Assets		
Strategy and Policy	Building Control	Engineering and Technical Services		
Legal	Development Management	Housing Landlord Functions		
Democratic and Committee Services	Customer Services	Housing Strategy and Needs		
Leadership Support	Case Services (Place)	Strategic Development		
Procurement and Corporate Contracts	Communities			
Communication and Engagement	Community Safety			
Revenues & Benefits				

APPENDIX 2 - Areas of Responsibilities – Section Tier Officers

Chief Officer - HR	Assistant Director – Governance & Law	Economic Development Advisor	Chief Officer - Planning	Chief Officer – Place and Growth	Chief Officer - Place and Regulatory	Chief Officer	Chief Officer – Corporate Estate and Development	Chief Officer – Housing	Chief Officer – Financial Services
HR	Corporate Contracts and Procurement	Economic and business development	Development Management	Economic Growth, Business Development and Skills	Environmental Health and Licensing		Regeneration and Development Programmes	Housing Landlord functions	Treasury Management
Payroll	Legal Services		Building Control	Economic and place based Strategy	Environmental Protection		HRA Regeneration and Development	Housing strategy and Needs	Corporate Debt
Training	Democratic Services & Elections			Town Centre Regeneration	Procurement Team		Corporate Estate and Asset Management		Accountancy
Lifeline	Leadership Support			External funding	Waste Partnership (with DDC)		Engineering		Case Services (Corporate)
Customer Services	Communications and Engagements			Grounds Maintenance & Technical Services	Community Safety				

	Policy and Strategy			Corporate Health & Safety	Hythe Pool				