

Reviewing schemes of delegation: guidance for English authorities



This is one of three connected publications, all aiming to provide technical advice on the operation and review of critical elements of governance framework for local authorities in England. Between them, the three publications look at:

- Call-in;
- The operation of schemes of delegation to support decision-making;
- The review of Council constitutions

A fourth publication, on the operation of full Council meetings, will be published later in 2023.

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Schemes of Delegation

Introduction to delegated decision-making

Councils are complex institutions, with multi-million pound budgets. While elected councillors are in charge, they cannot take all or even most day to day decisions. This is why systems exist, in local authorities, for certain decisions to be delegated.

All authorities are obliged to keep a “scheme” of delegation – a description of the types of decisions that can be made by council officers, and by individual councillors or groups of councillors, under a range of different circumstances. This paper deals principally with officer delegation in authorities operating “executive arrangements” – although member delegation is briefly covered, as is the approach to delegation in committee system authorities.

A “delegated officer” means any officer identified by the Council, the Executive or its Chief Executive Officer with authority to make decisions and give direction on behalf of the Council within a specific service or range of decisions. An authority’s officer delegation scheme confers on chief officers and certain other designated officers extensive powers to carry out an authority’s executive functions in addition to the functions delegated to chief officers as set out in the council’s Constitution.

Delegations to officers do not all come from the same place, and do not work in the same way. Some of the things we think of as being “delegations” are not actually delegations at all. Some of the most common sources include:

- Delegations from Cabinet (“executive decisions”): Cabinet has the power to make a wide variety of decisions under executive arrangements. This will incorporate strategic decision-making (the agreement of major policies and plans) as well as operational decision-making. The scheme of officer delegation will provide for broad delegation by Cabinet members (or Cabinet collectively);
- Delegations from Council. Under executive arrangements only specific decisions and functions are reserved to Council, and only certain of those can be delegated to officers. Two of the most important areas where officers can make decisions on non-executive matters are on licensing and planning.
- Officer powers conferred directly by statute. In law, certain powers are attached to a specific officer (or to whichever officer is designated in the constitution as having responsibility for exercising those powers). These are sometimes known as powers attached to the “proper officer”, with that officer being different for different duties and powers. Strictly speaking these are not “delegated” powers but they are sometimes treated similarly.

This guide covers only the delegation of decisions that relate to the Council’s budget and policy framework. There are other forms of “delegated decision” which do not relate to this framework, and which are not covered here. For example, the “delegated authority” by which a young person’s carer might make decisions about that person’s welfare.

Principles underpinning decision-making and delegation

Why are certain decisions delegated, and others not? To prevent the scheme from being a mishmash of inconsistent powers and duties it is necessary to understand *why* decisions are delegated, as much as how.

The first and most fundamental point to make about the principles underpinning delegation is that delegation is as much a matter of culture and behaviours as it is one of rules, processes and lists of powers.

An authority with an overly detailed list of powers delegated to officers – one that leaves little room for professional judgement or political oversight – will be one where decision-making is poor. Equally, one where the scheme of delegation of perfunctory and vague presents obvious risks.

In their 2022 report on learning lessons from Public Interest Reports, the audit firm Grant Thornton recommend frequent review of the appropriateness of delegation arrangements – in part because an organisation’s context and political appetite for risk continually changes. Delegation cannot sit in aspic – it has to be able to change and flex. A permissive framework bounded by mutually understood principles around officer and member roles will be better, and longer-lived, than the alternative.

Poor delegation can “gum up” decision-making systems – either because officers are constantly second-guessed by councillors who delve regularly into operational detail, or because members are not exercising the right oversight on the right issues, at the right time.

Understanding the distinction between member and officer roles

- *Members lead, officers implement;*
- *Delegation should support members to focus on policy;*
- *Delegation helps with political accountability – it provides for officer decision-making within a framework set by councillors.*

The argument that, in a local authority, members lead and decide on policy, and then officers take action to implement those decisions, feels rather trite and obvious – but it does by and large hold true.

The rationale is that officers are closer to the operational detail of service delivery and can make timely decisions to ensure services are delivered. This divides the strategic and political decisions from those with immediate impact on services. Members can be described as adopting a macro perspective of services and decisions, leaving the micro, or operational decisions to managers.

Thus, delegation to officers contributes to the effective running of the authority with members able to focus on the policy and political decisions voted for by citizens. Delegation is not a perfect art and there can never be a perfect division between the roles. Councillors, particularly executive members will want to maintain a degree of oversight on decisions which they have delegated. Schemes of delegation should reflect this reality.

The importance of political accountability

Schemes of delegation are intended to assist the authority in maintaining efficiency and effectiveness in service delivery. It should not prevent or be used to sidestep serious issues or significant decisions by either councillors or officers.

Officers cannot (usually) pass an operational decision back to councillors because it is too difficult – although it is a different matter if the decision is especially politically contentious, or raises wider policy issues, as we go on to explain below. And Councillors cannot delegate decisions to officers that are political and strategic because this sits within their sphere.

While accountability rests with members politically, officers are accountable and responsible for decisions properly delegated to them; and in respect of “proper officer” functions, members do not of course hold responsibility at all.

Consistent financial thresholds

- *Thresholds below which officers can make decisions will vary by the type of council, and by the service / issue to which the delegation relates;*
- *Thresholds will need to provide enough flexibility to account for changing circumstances, as well as the pooling of budgets with other organisations, and the exercising by council officers of the Council's shareholding function in any wholly or partly-owned companies.*

Authorities will have a spend criterion which determines whether the decision is delegated or taken by members. The size of the spend is often set to reflect the size of the council's overall budget. For example, in a large authority officers may be authorised to decide spends up to £500,000; for smaller authorities the sum is more likely to be in the region of £50,000.

Alternatively, thresholds can be based on the service in question. For instance the Chief Legal Officer can be authorised to settle any claim or potential claim made by or against the council in a sum not exceeding £50,000 (or similar, depending on the size of the Council). Any finance-based criterion will need regular review to keep pace with inflation and other budgetary pressures.

The scheme of delegation will need to reflect the changing nature of local government and the complexity of decisions its executive and officers will need to take. This should be discussed and understood rather than firefighting when a problem emerges, which some local authorities have recently faced.

Careful consideration should be given to the operation of the scheme of delegation where joint budgets, jointly services or arms lengths companies of the authority are in place. These are complex arrangements, and there is always a risk that the operation of delegations in these spaces will be unclear, and/or incorrectly applied. There is, for example, sometimes confusion among both members and officers serving on boards as to where the boundaries of responsibility lie and how the scheme of delegation operates in this territory. The exercise by officers (or, indeed, members) of the Council's shareholding function in respect of wholly or partly-owned companies needs to be considered in this context.

This may be:

- In respect of the impact on existing decision-making – whether or not this is itself delegated;
- In respect of decisions on (for example) spend, and loans, which may affect both the financial position of the Council and the company.

The governance of any council created companies should also include arrangements for reporting decision making and where and when decisions should be made.

CfGS has produced separate material on risk and commercialisation which engages with some of these issues. Forthcoming CfGS material will go into further detail on corporate governance issues arising from the oversight of wholly-owned companies.

Political clarity

- *There will always be an area of overlap between member and officer decision-making responsibilities;*
- *Because of this councillors' political motivations and objectives must be understood by officers;*
- *Officers need to possess a degree of political acuity so that they can operate confidently in "political" spaces, making certain decisions with members in concert. This is particularly the case with high profile, or contentious, decisions, which might require a higher degree of member oversight.*

Even where member and officer roles overall are well understood, the impact of local politics can make the demarcation fuzzy – and inconsistent. On some high profile or highly contentious matters, members can rightly expect to be more involved than might otherwise be the case – or at the very least sighted when decisions come to be made.

There may therefore be occasions where responsibility has been delegated but the officer chooses not to exercise it – because it is a sensitive issue or where the officer feels that it is policy rather than operational decision (or could be perceived by residents as such).

While this will be rare, councils need to have systems in place to ensure that these issues can be identified ahead of time. It cannot always be relied on that officers holding delegated authority will have the political acuity to proactively identify these kinds of issues. Chief officers, and the Monitoring Officer (and other legal and governance professionals) may have to provide advice, and oversight.

For the Scheme of Delegation to work effectively Councillors, especially executive members must be kept informed of, and engaged in, emerging issues (this can be via briefings or member-officer discussions) and are made aware of major forthcoming decisions coming their way but as mentioned earlier the efficient running of the council would be limited if too many decisions, especially those that are operational, rest with the executive.

Officers have to keep members sighted on matters of corporate importance to ensure proper accountability. If decisions work through the member process but with members having little understanding of their significance or opportunity their ability to challenge or influence them is limited. Structures should be in place to ensure that members are kept informed of issues and any modifications to a decision that may be likely. Otherwise, it has the potential to become performative or simply a tick box exercise which weakens the council's overall governance.

Sometimes a Council's constitution will provide for specific circumstances where a Cabinet member should be consulted on the exercise of a delegation. Under these circumstances it might be expected that the nature of this consultation is recorded.

For this to work properly requires that both officers and members have a consistent understanding of members' political priorities, otherwise delegation will become overwhelmed by a constant process of reference to members on account of a lack of understanding of what matters might be politically contentious, rendering the idea of delegation pointless.

The cascade principle

- *Decisions should be taken at the most appropriate level, by those with the practical skills and knowledge to make those decisions effectively;*
- *To provide for this, systems of onward delegation from chief officers to more junior officers will exist;*
- *Where onward delegation, or “sub-delegation”, is exercised, the nomination/authorisation of individuals to make decisions must be clearly recorded.*

When officer delegations are made, it is usually to specific chief officers. These people can then transfer delegated power to the relevant officers. This can be described as delegation via the “cascade principle”. This means that decisions are taken at the most appropriate level i.e. by those with the correct professional skills, and with a closer connection to those affected. Thus, the vast majority of the Council’s decisions and actions will fall into the category of operational day to day decisions taken by its officers.

Officers acting under delegated powers in this way (further to authorisation through what is sometimes called “sub-delegation”) can exercise the full range of powers necessary to discharge executive functions (or Council functions, in the case of the committee system). This includes officers taking decisions, implementing decisions and managing the services, contracts and staff for which they are responsible. Officers have the authority to take decisions within their area of responsibility which have been delegated and/or nominated to them. Officers work on the basis that, where functions have not been delegated or nominated to officers, it is the right of Members to take the final decisions. This is usually informed by officers’ advice, although members may listen to the advice but make an independent decision.

Where the cascade principle is used by a local authority this will usually be governed by a local scheme of nomination which sets out the defined areas of the Council’s service areas given to specific officers. This is based on the assumption that for the majority the delegated officer will make decisions. This may require that the individual decision must be evidenced in writing, dated and signed by the officer delegating the power – and that the nomination is clearly recorded. The scheme of nomination can be temporary and the person or body (if it is a committee) may reassume responsibility at any time. However, this should be done with due consideration and liaison between officers and cabinet. If the power of resumption is too loose and cabinet unpredictably makes decisions within the officer delegation sphere, the scheme of delegation will become ineffective or inoperable, and essentially meaningless.

Accurate recording and reporting

- *Legislation exists that requires the reporting of certain individual decisions made under delegated authority;*
- *Even where individual reporting is not required, a regular digest of decisions made under delegated authority needs to be prepared, shared with members and published.*

As is the case in delegation from manager to staff, formal delegation of authority is the process of distributing and **entrusting** work to another person, with minimal intervention. Here, that is from elected member to a local government officer.

As with other areas of governance there needs to be in place a means of oversight and accountability of decisions made in this way. Councils are required to issue and maintain an up-to-date record of what part of the Council or individual has responsibility for particular types of decision or decisions relating to particular areas or functions. The scheme of delegation will usually perform this function, by recording the individual officers authorised to exercise a certain range of decisions, following the “cascade principle” set out above.

The making of individual decisions further to this scheme will also need to be recorded.

Recording arrangements for certain delegated officer decisions (not all) are set out in the Openness of Local Government Bodies Regulations 2014. Regulation 7 says,

The decision-making officer must produce a written record of any decision which [...] would otherwise have been taken by the relevant local government body [which may be Cabinet, or Council, or a committee], but it has been delegated to an officer of that body either under a specific express authorisation, or under a general authorisation to officers [...] and the effect of the decision is to **grant a permission of licence, affect the rights of an individual or award a contract or incur expenditure which, in either case, materially affects that [body's] financial position.**

The nature of a “material effect” will differ from council to council. Usually, the Council constitution will set out what it is (a spend, or saving, above £100,000 for example).

While these kinds of decision need to be recorded and reported individual, other delegated decisions do not. They will, however, usually be recorded in digest form on a monthly or quarterly basis.

For key decisions (which we cover in more detail below), there are particular requirements for recording and reporting, which are set out partially in legislation, and partially in councils’ constitutions.

Adherence to law

- *Decisions must be made in a way that respects the scope of the power originally held, and the way that that power has been delegated;*
- *The exercise of delegation is framed by law – legal advice needs to be given, and taken, to avoid confusion.*

All delegation and decisions following from that delegation have always to remain within the law – ie decisions must remain within the scope of the delegation itself to be valid.

Officers holding responsibility for delegated decisions should be expected to have sufficient familiarity of the scheme of delegation and its requirements not to need the regular intervention of the Monitoring Officer or Chief Legal Officer. In certain contexts, this may not be completely simple. While it is unlikely that the precise scope of a delegated power will be tested in court, the nature of the delegation must be clearly expressed, and understood, in terms that reflect the original legal authority by which the delegation has been made¹.

The Monitoring Officer will have some responsibility in assuring the health of the decision-making system overall – understanding where pressures exist and where improvements might be necessary.

¹ The judgment of the Court of Appeal in *R (Flynn) v Southwark LBC and Elephant and Castle Properties* [2021] EWCA Civ 827 provides some useful principles, although they may only apply to the specific matter of delegation to officers of certain planning functions.

Forms of delegation in more detail

Urgency, special urgency and emergency

All councils have arrangements for the making of decisions where ordinary timescales are not practical. During the pandemic, many councils put in place emergency arrangements to ensure continuity of decision-making when it was impossible for councillors to come together to approve decisions in person.

Under these arrangements it was usually the Chief Executive who was tasked to make decisions, where possible in consultation with the relevant Cabinet Member. Decisions were (in line with our advice above) recorded and reported. These arrangements sit in Council constitutions ready for other emergency situations – their use is usually highly circumscribed.

Delegation from Cabinet

Some functions of the council, as specified by the Local Government Act 2000, are divided into two categories: executive and non-executive. Non-executive functions (or Council functions) are set out in Regulations issued under the Act and include activities such as the determination of applications relating to planning and licensing. The council may delegate decisions concerning these services to committees, sub-committees or officers under section 101 of the Local Government Act 1972 (“the 1972 Act”). These are covered in more detail in the section below.

Executive decisions, meanwhile, are the responsibility of Cabinet under the leader-cabinet model.

Under the Mayor and Cabinet model, executive decisions are all the responsibility of the Mayor, who can delegate to Cabinet – otherwise Cabinet can be largely, or wholly, advisory. Governance systems in Mayoral authorities do usually provide for some individual Cabinet member decision-making.

Generally speaking they reflect the broad spread of Council policymaking on things like adult social care, housing, children’s services, environmental services, leisure and culture, and the setting of policy for non-executive functions like planning and licensing.

Executive decisions can be made by:

- Cabinet, collectively. At a meeting of Cabinet, a decision is tabled and made by all Cabinet members together;
- Cabinet members individually. Some councils, but not all, make arrangements for individual Cabinet member decision-making. Cabinet members will make decisions in accordance with the terms of reference of their portfolios, as set out in the constitution. Certain decisions are likely to be held by the Leader under this model;
- Officers, in line with the scheme of officer delegation.

The most significant are often described as “key” decisions. A key decision taken by the Leader, Cabinet, Committee of Cabinet or an Officer is any executive decision which is likely:

- to result in the Council incurring expenditure or making savings which are significant (this is generally expressed in a figure that relates to the council’s overall budget, for large councils decisions with cost implications over £500,000 is common, for smaller councils a figure is more usually quite a lot less – it can be as low as £50,000 in some places)
- to have a significant impact on communities living or working in an area comprising two or more wards in the council; or some councils have provision that under certain circumstances where there is likely to be significant impact on communities in one ward, this is regarded as a key decision unless it is considered impracticable to do so.

Key decisions are usually made by members – by Cabinet collectively, or by an individual member of Cabinet. However, Council constitutions can provide for the making of key decisions by officers.

Delegation from Council

In the committee system

Under the committee system all authority derives from Council, and so is by definition delegated by that body – to be transacted by members in committee and/or by officers.

While the substance of delegation in a committee system authority may look similar to that which operates under executive arrangements, the legal framework is therefore quite different.

For the avoidance of doubt, councils operating under the committee system will not normally have member decision-making in spaces which, under executive arrangements, are led by officers. The difference in decision-making under the committee system should be seen as involving a broadening of member engagement within the member, policy, space, rather than an enlargement of that space to encompass operational matters.

Under executive arrangements

Under executive arrangements, with few delegable functions reserved to Council, the scope for action is limited.

In respect of functions like planning and licensing

Planning and licensing delegation is necessary to provide for efficient and effective decision-making on individual applications. Under these arrangements most planning and licensing decisions are made by officers, with certain decisions escalated to councillor panels, subject to recognised principles for escalation.

In respect of planning in particular, delegation might be blanket in nature, with certain matters reserved to members “by exception”. Alternatively there might be specific and quite narrow circumstances in which delegated authority is to be exercised.

Councils take a variety of approaches here. Inevitable, large, urban unitaries will probably tend to delegate more decisions to officers than smaller shire districts, purely for logistical reasons.

“Proper officer” functions

A “**proper officer**” is appointed by a local authority to carry out certain administrative functions as required by statute. Functions of a proper officer include receiving or giving notices, certifying or authenticating documents, keeping registers, and issuing summonses for meetings. The “proper officer” can be the Chief Executive, the Executive Director and Chief Finance Officer (Deputy Chief Executive) or the Executive Director and Monitoring Officer or (in the absence of the Executive Director and Monitoring Officer) the Head of Legal and Democratic Services and the Assistant Chief Executive are designated the ‘Proper Officer’ for the purposes of Section 234(1) of the Local Government Act 1972. A proper officer is empowered by statute to make certain decisions without recourse to the executive members or leader.

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MARCH 23

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