

NB Part 3.13 is subject to review

Part 3.13 Officers

1 The purpose of this part of the Constitution is to bring together delegations to officers and roles and responsibilities of officers.

1.1 Delegations

1.2 Officers may be delegated to make decisions in respect of executive and non-executive matters.

1.3 Any reference to “the Council” in this Part includes reference to “the Cabinet” in respect of executive functions, save where the context otherwise requires

Licensing Act 2003 and Gambling Act 2005

1.4 The Council’s licensing functions under the Licensing Act 2003 and the Gambling Act 2005 shall be exercised in accordance with Part 3.5A of this Constitution.

Contents

For ease of reference, this Part contains the following:

Paragraphs 1-25: This is the general text on Officer Delegations, including a list of Delegated Officers as Table A.

Schedule 1: A list of functions not exercisable in law by any Delegated Officer.

Schedule 2: A limit on delegated determination of planning applications.

Schedule 3A: A list of Planning delegations and guidance.

Schedule 3B: A list of Building Control delegations.

Schedule 4: A list of Proper Officers and Statutory Officers.

A Protocol on the Exercise of Officer Delegations, including:

Annex 1: Guidance on appropriate mode of Decision Making

Annex 2: Human Resource Issues guidance

Annex 3: Good Practice in Decision Making, including checklist

Annex 4: Ombudsman Matters

Annex 5: Drafting Reports guidance, including checklist for Cabinet reports

Further guidance on decision making is also to be found in Part 7D of this Charter.

OFFICER DELEGATIONS – GENERAL

1. The Council delegates to each of the officers referred to in Table A (referred to as a “**Delegated Officer**”) authority to discharge any function of the Council EXCEPT
 - 1.1. Where by law, the function must be discharged by the Council, a specific Committee or Sub-Committee of the Council, the Cabinet or by a specific Officer;

[See Schedule 1 for examples]
 - 1.2. Where by law, the function may not be exercised by a specific Officer;

[See Schedule 2 for examples]
 - 1.3. Where the discharge of the function has been specifically delegated under paragraphs 2, 3 and 4 below.

LIST OF DELEGATED OFFICERS- TABLE A	
Head of Paid Service : Chief Executive	
“Chief Officer”	“Deputy Chief Officers”
Executive Director of Adult & Culture Services	Director of Adult Social Care Director of Business Management Director of Commissioning Director of Transformation Director of Public Health*** Director of Culture, Libraries & Lifelong Learning ***also Scrutiny Chief Officer
Executive Director of Children’s Services	Director of Early Intervention and Social Care Director of Performance, Outcomes and Commissioning Director of School Improvement
Executive Director of Environment and Regeneration	Director of Neighbourhood Services Director of Regulatory Services and Public Protection Director of Resources and Performance Director of Housing, Planning & Transportation Director of Technical Services
Director of Corporate Services (CXD)	Head of Efficiency and Procurement Assistant Director Legal Services** Head of HR and Organisational Improvement ICT Services Manager Corporate Revenues and Exchequer Manager **also chief officer in capacity as Monitoring Officer
Director of Resources (CXD)	Head of Finance Head of Strategic Property and Asset Management Head of Major Projects and Programmes Head of Audit and Strategic Risk
Director of Policy, Strategy and Communication (CXD)	Head of Communities Head of Community Safety

	Head of Policy and Research Head of Economic Development Head of Communications and Marketing Service Manager Democratic Services
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OFFICER DELEGATIONS – DEVELOPMENT MANAGEMENT

2. The Council delegates to the **Head of Development Management** authority to discharge the functions of the Council within the terms of reference of its Planning Committee as set out in Schedule 3A.

OFFICER DELEGATIONS – REGULATORY LICENSING, GAMBLING AND TRAFFIC REGULATION ENFORCEMENT

3A Regulatory Matters

The Council delegates to the **Director of Regulatory Services and Public Protection** authority to discharge the functions of the Council which are delegated to Regulatory and Appeals Committee.

3B Licensing Act 2003 and Gambling Act 2005 Matters

The only officer who has delegated power to exercise these functions is the **Director of Regulatory Services and Public Protection** but only to the extent set out in Part 3.5A.

3C Traffic Regulation Enforcement

In addition to other Delegated Officers, the **Head of Parking Services** has delegated power to exercise the Council’s functions in relation to the enforcement of any traffic regulation and car parking orders made by it from time to time.

OFFICER DELEGATIONS – BUILDING CONTROL

4. The Council delegates to the **Director of Regulatory Services and Public Protection** authority to discharge the functions of the Council in respect of Building Control as set out in Schedule 3B.

OFFICER DELEGATIONS – NON-EXECUTIVE FUNCTIONS AND LOCAL CHOICE FUNCTIONS

5. Without prejudice to the above, in relation to the local choice functions listed in the first column of Table 3.1 where “NX” appears in relation to that function (treating it as a non-executive function) in the second column, and where an officer appears in the fourth column in relation to that function, that officer shall have full delegated power to exercise that function.
6. Without prejudice to the above, in relation to the non-executive functions listed in the first column of Table 3.2, where an officer appears in the fourth column in relation to that function, that officer shall have full delegated power to exercise that function EXCEPT in relation to those functions where “Planning” appears in

which case paragraph 2 sets out the extent of delegations.

OFFICER DELEGATIONS – LEGAL AND SIMILAR MATTERS

7. The Council delegates to the **Assistant Director Legal Services** authority:-
 - 7.1 To give effect to all resolutions and/or decisions of the Council or the Cabinet or the Leader or (where they exercise delegated powers) a committee, sub-committee, individual member of Cabinet or Delegated Officer;
 - 7.2 To institute, defend or act in respect of legal proceedings or other determinations involving the Council (whether actual or potential) (including power to settle and compromise such matters);
 - 7.3 To issue and serve notices and/or demands and to make orders and other instruments;
 - 7.4 To take whatever action is necessary to protect the interests of the Council.

8. The Council delegates to the **Service Manager Democratic Services** authority:-
 - 8.1 To give effect to all resolutions and/or decisions of the Council or the Cabinet or the Leader or (where they exercise delegated powers) a committee, sub-committee, individual member of Cabinet or Delegated Officer;

 - 8.2 To issue and serve notices and/or demands and to make orders and other instruments;

OFFICER DELEGATIONS – LOCAL TAXATION AND FINANCIAL CLAIMS

9. (a) The Council delegates to the **Corporate Revenues, Benefits and Exchequer Manager, and the Business Rates and Enforcement Manager and the Revenues and Benefits Service Support Manager** authority to sign complaints, informations or applications (as the case may be) for liability orders, warrants of commitment and prosecutions in the Magistrates' Courts in accordance with:-
 - 9.1 the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989; and
 - 9.2 the Council Tax (Administration and Enforcement) Regulations 1992; and
 - 9.3 the Business Improvement Districts (England) Regulations 2004.

- (b) The Council delegates to the **Revenues and Benefits Service Support Officer, Revenues and Benefits Quality Assurance and Statistics Officer and the Revenue and Benefits Service Response Officer** authority to prosecute and appear before the Magistrates' Court in connection with complaints, informations and applications (as the case may be) for liability orders, warrants of commitment and prosecutions under the provisions of the Regulations listed in paragraphs 9.1 to 9.3 above.

10. The Council delegates to the **Team Manager Insurance** as well as the Assistant Director Legal Services, authority to defend any civil liability claim for injury, damage or financial loss against the Council dealt with by its Insurance and Risk Management Section unless otherwise directed by the Assistant Director Legal Services.

OFFICER DELEGATIONS – CONDITIONS

11. In exercising a delegated function, the Officer shall comply with the provisions of this Constitution and in particular:-
 - 11.1 The Council's Standing Orders;
 - 11.2 The Council's Financial Regulations.
 - 11.3 The Access to Information Rules.
12. Where a function has been delegated to an officer or officers, the decision shall be taken in the name of (but not necessarily personally by) such officer or officers in accordance with arrangements made from time to time by such officer or officers for this purpose.
13. Notwithstanding a delegation to an officer of the Council's functions, the Council or (where it exercises delegated functions) a Committee or Sub-Committee of the Council, an individual member of Cabinet or the Leader may direct an Officer not to exercise the delegated function but instead may exercise the delegated function itself (or the Leader may direct that function be exercised by another part of the Cabinet) PROVIDED THAT the matter has not been finally dealt with and/or has not had legal effect.
14. Notwithstanding a delegation to an officer of the council's functions, the Delegated Officer may refer the matter for decision to the Council or (where it exercises delegated functions) to a Committee or Sub-Committee of the Council or to Cabinet or a committee of Cabinet or an individual member of Cabinet.
15. In exercising the delegated function, the Officer shall have regard to the provisions of a Protocol approved by the Council on the exercise of delegated functions by officers.

PROPER OFFICERS AND OTHER STATUTORY OFFICERS

15. The Council appoints Officer or Officers for the respective purposes set out in Schedule 4.
16. The "Proper Officer" and other "statutory officer" functions shall be exercised in the name of (but not necessarily personally by) such officer or officers in accordance with arrangements made from time to time by such officer or officers for this purpose.

SUBSTITUTE OFFICERS

17. In the event of any officer being for any reason unable to act or of any of their posts being vacant, except where specific provision has been made, the officer

specified in column 2 of the Table below is appointed to act instead of the officer specified in column 1, whether as “proper” or other “statutory officer” or a Delegated Officer:-

<u>Column 1</u>	<u>Column 2</u>
<u>Officer</u>	<u>Substitute Officer</u>
Chief Executive	Appropriate Executive Director/Director or, for electoral purposes, Assistant Director Legal Services
A Director/Executive Director	Appropriate Head of Service or Chief Executive
Director of Public Health	PH Consultant
Assistant Director Legal Services	Appropriate Senior Solicitor
Head of Service	Appropriate Executive Director or Director
Director of Regulatory Services and Public Protection	Head of Environment and Public Protection
Head of Development Management	Senior Planning Officer (Planning and Building Control)

TRANSITIONAL PROVISIONS

18. The approval of this scheme of officer delegations shall not prejudice the continued exercise of powers previously delegated to an officer by the Council or a Committee or Sub-Committee of the Council, notwithstanding that under the terms of this scheme of delegations the power would be exercisable by another officer.

OFFICER DELEGATIONS - INTERPRETATION AND VALIDITY OF DECISIONS

19. A purposive approach shall be taken in interpreting the delegations and other appointments. In particular:-
- 19.1 To give effect to the Council’s intention that all functions of the Council may be exercised by a Delegated Officer, except where reserved by law to the Council, a committee, a sub-committee or specific officer or to the Leader; and
- 19.2 To avoid duplication in decision making.
20. If there is any uncertainty as to the interpretation of this document, the issue shall be referred to the Assistant Director Legal Services, or in his/her absence the Senior Solicitor, whose decision shall be final.
21. The validity of a decision of a Delegated Officer shall not be questioned on the grounds:-
- 21.1 That it ought not to have been made by an officer because the issue is of such significance that it ought to have been referred for decision to the Council, the Leader, the Cabinet, an individual member of Cabinet or a sub-committee or because the officer ought to have consulted with a member(s) of the Council;

- 21.2 That it ought to have been made by a different officer; or
- 21.3 The provisions of an agreed protocol have not been followed.

DIRECTIONS

- 23. The Director of Resources or the Assistant Director Legal Services may from time to time issue directions concerning the exercise of Delegated Powers by Officers of the Council.
- 24. Without prejudice to the generality of paragraph 23:-
 - 24.1. The direction may be addressed to all or specified Delegated Officers.
 - 24.2. The direction may be addressed to all or specified officers authorised by Delegated Officers in accordance with arrangements made by them.
 - 24.3. The direction may refer to all decisions or decisions of a type referred to in the direction.
 - 24.4. The direction may be in force for a specified period of time or for an unlimited period of time.
 - 24.5. The direction may specify that decisions shall be referred to a Committee or Sub-Committee of the Council or to Cabinet or a committee of Cabinet for decision.
 - 24.6. The direction may specify that consultation shall take place with specified persons before decisions are made.
 - 24.7. The direction may specify that specified persons shall be notified before or after decisions are made.
- 25. The Director of Resources or the Assistant Director Legal Services may from time to time require officers to give them access to documentation in their possession relating to decisions made or proposed to be made by them.

OFFICER DELEGATIONS - SCHEDULE 1

Functions that cannot be exercised by any Delegated Officer

1. Consideration of certain Ombudsman Reports (section 31A - Local Government Act 1974);
2. Consideration of reports of the Chief Finance Officer (section 115 - Local Government Finance Act 1988);
3. Consideration of reports of the Head of Paid Service (section 4(5) - Local Government and Housing Act 1989);
4. Consideration of reports of the Monitoring Officer (section 5(5) - Local Government and Housing Act 1989);
5. Certain functions relating to non-domestic rating (section 139 - Local Government Finance Act 1988);
6. Certain functions relating to council tax (section 67 - Local Government Finance Act 1992)
7. The preparation of an annual report on the health of the people in the city (section 73B(5) – National Health Service Act 2006). This is a personal duty of the Director of Public Health.

OFFICER DELEGATIONS - SCHEDULE 2

Prohibitions on the exercise of functions by specific Delegated Officers

1. Determination of applications for planning permission by an officer if his or her responsibilities include any aspect of the management of any land or buildings to which the application relates (Regulation 10 - Town and Country Planning General Regulations 1992)

SCHEDULE 3A - DEVELOPMENT MANAGEMENT

Delegations to Head of Development Management

To determine applications, notifications, consultations, enforcements and all other matters within the terms of reference of the Planning Committee subject to the exceptions specified below.

Exceptions

1. Applications (other than those for the discharge of reserved matters or conditions or for applications under s73 Town and Country Planning Act 1990, as amended) for major development as defined for the purposes of the government PS2 statistical return i.e.
 - residential development of 10 or more dwellings or, where numbers not specified, the site area is more than 0.5 hectares;
 - other development where the floor space is 1000 sq. metres or more or the site is 1 hectare or more;

- where a major development is subject to a change of use, it will be classed as a major development and not as a change of use.
Provided that officers may determine applications for major development which consists of external alterations to 10 or more flats.
2. Mineral Applications (other than those for the discharge of conditions or for applications under s73 Town and Country Planning Act 1990) as defined for the purposes of the government PS2 statistical returns, i.e. applications under the National Land Use Classification M101D, MA06A, TR05B.
 3. Applications (other than applications under s73 Town and Country Planning Act 1990) which are a departure from the Development Plan and which would need to be notified to the Secretary of State under the Town and Country Planning (Consultation) (England) Directions 2009 if the Council was minded to grant permission for them.
 4. Applications which are subject to an objection from a statutory consultee (as defined in Article 16 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 which has not been resolved by negotiation or the imposition of conditions.
 5. Applications submitted by or on behalf of the Council for its own development which are the subject of substantive planning objections which have not been resolved by negotiation or the imposition of conditions.
 6. Applications submitted by or on behalf of a City Councillor or their spouse/partner.
 7. Applications submitted by or on behalf of any member of staff of the Strategic Housing, Planning and Transportation Division or any Chief Officer of the Council or their spouse/partner.
 8. Applications which the delegated officer considers should be determined by Planning Committee, having regard to approved guidance on this matter.

Development Management Delegations – Guidance to Officers

Factors to be taken into account by delegated officers in deciding whether a planning application should be determined by Planning Committee.

1. Whether a Councillor, applicant or other person with a significant interest has, within the statutory publicity period, requested in writing with reasons that the matter be determined by Committee. In all such cases, the delegated officer must liaise with the Chair and Vice Chair in relation to the request.
2. Whether it is desirable that representations for and/or against a development proposal should be heard by the Committee. In all cases of requests for such hearings, the delegated officer must liaise with the Chair and Vice Chair in relation to the request.
3. The impact of the development on communities, businesses or individuals.
4. The number, strength and issues raised in public representations.

5. Whether there are significant national planning policy or development plan implications raised in the proposal.
 6. Whether formal Environmental Impact Assessment is involved.
 7. The scale and/or complexity of the development.
 8. The characteristics and sensitivity of the site or adjacent sites, including amenity and heritage considerations.
 9. The nature of the planning history and the history of previous Committee involvement.
 10. Whether Council owned land is involved and it is prudent and in the public interest that the decision is taken by Committee.
 11. Whether the matter is likely to involve either a fine balance between alternative decisions or disputed/uncertain matters of fact or law which ought in the interests of natural justice to be considered by Committee.
 12. Whether there are any legal consequences arising from the determination of the application which are of such significance that they ought to be considered by Committee.
 13. Whether there are any other factors which indicate a Committee decision to be appropriate.
- N.B. This Scheme of Delegation was originally approved by Development Control Committee on 20 September 2002 and came into force on 1 October 2002. It was reviewed and confirmed by Development Control Committee on 11 July 2003.

SCHEDULE 3B - BUILDING CONTROL

Delegations to Director of Regulatory Services and Public Protection

1. To approve an application which conforms with the requirements of the Building Regulations and associated legislation.
2. To refuse an application not conforming with the requirements of the Building Regulations and associated legislation.
3. To relax or dispense with the requirements of the Building Regulations where he or she considers this appropriate in the circumstances of any particular case.
4. To carry out the functions applicable on receipt of a building notice given under the Building Regulations.
5. To carry out the functions applicable to initial notices, plans, certificates and final certificates under the Building (Approved Inspectors Etc.) Regulations.
6. To carry out the functions in relation to dangerous structures under the Building Act.
7. To carry out the functions under the Building Act to require the removal or alteration of work not in conformity with Regulations or executed despite rejection of plans.

8. To approve the institution, amendment or withdrawal of proceedings under the Building Act for non-compliance with the Building Regulations.
9. To carry out the functions in relation to demolition of buildings under the provisions of the Building Act.
10. To carry out the functions under the Building Act in pursuance of the Council's licensing control function, including representations to the courts in respect of liquor and gaming licences.
11. To approve the numbering of houses and street naming.
12. Appointing Officer for the purposes of the Party Wall Etc. Act.
13. To determine applications for permits and licences in accordance with the requirements of the Highways Act for the placing of builders skips on the highway and the erection of scaffolds/hoardings.
14. To determine applications for licences under the Highways Act in respect of buildings or other structures which project over the highway.

SCHEDULE 4

“Proper” officers and other “statutory” officers

In this Schedule the following abbreviations are used:

ABBREVIATIONS	STATUTE
NA48	National Assistance Act 1948
LASSA70	Local Authority Social Services Act 1970
LGA72	Local Government Act 1972
LGA74	Local Government Act 1974
LLCA75	Local Land Charges Act 1975
LG(MP)A76	Local Government (Miscellaneous Provisions) Act 1976
HA80	Highways Act 1980
RPA83	Representation of the People Act 1983
PH(CoD)84	Public Health (Control of Diseases) Act 1984
W&MA85	Weights and Measures Act 1985
CA88	Coroners Act 1988
LGFA88	Local Government Finance Act 1988
LGHA89	Local Government and Housing Act 1989
FSA90	Food Safety Act 1990
EA96	Education Act 1996
LGA2000	Local Government Act 2000
NHSA2006	National Health Service Act 2006

"Statutory Officers"

Title	Officer	Statute
Head of Paid Service #	Chief Executive	LGHA89 – s.4
Chief Finance Officer ± †	Director of Resources or nominated deputy pursuant to s.114(6)	LGA72 – s.151 LGFA88 – s.114
Monitoring Officer ± #	Assistant Director Legal Services or nominated deputy pursuant to s.5(7)	LGHA89 – s.5
Chief Education Officer	Executive Director of Children's Services	EA96 - s.532
Director of Social Services ‡	Executive Director of Children's Services and Executive Director of Adult and Culture Services	LASSA70 - s.6
Scrutiny Officer	Policy Co-ordinator (Scrutiny)	LGA2000- s.9FB
Director of Public Health	Director of Public Health	NHSA2006-s73A
± # May not be the same officer		
† Legislation prescribes qualification		
‡ May only exercise non social services functions with the consent of the Secretary of State		

"Proper Officers"

Officer:-	<u>Chief Executive</u>
Statute	Function
LGA72 – s.83(1)-(3)	Witness and receipt of declaration of acceptance of office by councillors
LGA72 – s.84(1)(a)	Receipt of written notice of resignation of office by a councillor
LGA72 – s.88(2)	Convening of meeting of Council to fill casual vacancy in the Office of Chair
LGA72 – s.89(1)(b)	Receipt of notice of casual vacancy in the office of councillor by two local government electors
LGA72 – sch.12, para.4(2)(b)	Signature of summonses to Council meetings
RPA83 – s.8	Registration Officer for the various constituencies comprised within the city

RPA83 – s.28	Acting Returning Officer for certain Parliamentary constituencies comprised within the city
RPA83 – s.35	Returning Officer for the elections of councillors of the city and of parishes within the city
LGHA89 – S.3A	Grant and supervision of exemptions from political restrictions

Officer:-	<u>Director of Resources</u>
Statute	Function
LGA72 – s.115(2)	Receipt of money due from officers
LGA72 – s.146(1)(a) and (b)	Declarations and certificates with regard to securities standing in the name of the Council

Officer:-	<u>Service Manager Democratic Services</u>
Statute	Function
LGA72 – s.96(1)	Receipt of general notices of pecuniary interests
LGA72 – s.96(2)	Keeping records of disclosures of pecuniary interests under s.94 and general notices under s.96(1)
LGA72 – s.191(2)	Receipt of applications under the Ordnance Survey Act 1841 – s.1
LGA72 – s.210(6) and (7)	Certain charity functions of holders of offices
LGA72 – s.225	Deposit of documents
LGA72 – s.229(5)	Certification of photographic copies of documents
LGA72 – sch.12, para.4(3)	Receipt of notices regarding address to which summons to meetings is to be sent
LGA72 – sch.14, para.25(7)	Certification of resolutions under sch.14, para.25
LG(MP)A76 – s.41	Certification of copies of resolutions and minutes of proceedings, etc.

Officer:-	<u>Assistant Director Legal Services</u>
Statute	Function
LGA72 – s.229(5)	Certification of photographic copies of documents
LGA72 – s.236(9) and (10)	Service of copies of byelaws
LGA72 – s.238	Certification of copies of byelaws
LGA72 – s.248(2)	Keeping of the roll of Freemen
LGA74 – s.30(5)	Publication of Ombudsman reports
LLCA75	Responsibility for the registration of local land charges

Officer:-	<u>Assistant Director Legal Services</u>
Statute	Function
RPA83 – s. 52(2) and (3)	Deputy registration officer and acting in the event of incapacity or vacancy of the registration officer
LGHA89 – s.2	Deposit of list of politically restricted posts
LGHA89 – s.19	Register of members' interests
CA88	Matters related to coroners

Officer:-	<u>Corporate Customer Services and Registration Manager</u>
Statute	Function
LGA72-sch 29, para 41(3) to (5)	Functions relating to the Registration Services under the Registration Services Act 1953 – S9(1), 9(2), 13(2)(h), 13(3)(b) and 20 (b)

Local Government (Access to Information) Act 1985 and Local Authorities (Executive Arrangements) (Access to Information) Regulations 2000

[LGA72 – part VA and sch.12A]

The “proper officer” functions shall be exercised by the author of the particular report or the first named author in the case of joint reports

Public Health Functions

National Assistance Act 1948 – s.47(2) and (3)	Dr Roberta Marshall - (Director of North East Health Protection Unit) and, in her absence, Deputy or Deputies who may be appointed by the Director of Regulatory Services and Public Protection under his delegated powers
Public Health (Control of Disease) Act 1984 – s. 11, 18, 20, 21, 22, 24, 29, 31, 32, 36, 40, 42, 43 and 48	
Public Health (Control of Disease) Act 1984 – s.35 and 36 (nominated registered medical practitioner)	
Public Health (Aircraft) Regulations 1979	
Food Safety Act 1990	
N.B. The Director of Regulatory Services and Public Protection has delegated power to appoint this proper officer and deputy or deputies.	

<u>Weights and Measures Functions</u>	
W&MA85 – s.72 †	Chief Inspector of Weights and Measures – Dave Ellerington Also authorised to issue Certificates of competence under s.18 and of exemption under regulations made under s.49 and 54.
† Legislation prescribes qualification	

<u>Special Educational Needs</u>	
Head of SEN Services	Statements of special educational needs - Regulation 16 of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001
Head of SEN Assessment, Provision and Review	LEA Case Statement - Regulation 13 of the Special Educational Needs Tribunal Regulations 2001

<u>Safeguarding Children</u>	
Unit Co-ordinator, Children's Safeguarding Standards Unit, Children's Services	Local Authority Designated Officer (LADO) responsible for managing allegations against persons who work with children, appointed under statutory guidance "Working Together to Safeguard Children 2006" per section 7 Local Authority Social Services Act 1970

<u>Authentication of Documents</u>	
[LGA72 – s.234, HA80 – s.321,PH(CoD)A84 – s.59, FSA90 – s.49 and all other provisions relating to the authentication of documents	
Assistant Director Legal Services	All documents
Service Manager Democratic Services	All documents

All other officers	Where authentication is made pursuant to functions of the Council delegated to them or in respect of their appointment as “proper officer” of the Council
Head of Development Management	All matters within the terms of reference of Planning Committee, including: - Signing and issuing decision notices as local planning authority; Signing and issuing all forms of enforcement notices as local planning authority; Issuing copied material under section 47 of the Copyright, Designs and Patents Act 1988 as local planning authority Signing and issuing of all notices in respect of Building Control functions
Area Housing Directors and Principal Housing Managers of Your Homes Newcastle Ltd	Notices to quit and notices seeking possession
The nominated architect, engineer, supervising officer, authorised officer, or other such person named in contracts.	All the functions conferred on such person by the contract

<u>Other</u>	
Assistant Director Legal Services	“Proper Officer” for the purposes of all other statutory provisions, whether existing or in the future, until otherwise determined

PROTOCOL ON THE EXERCISE OF OFFICER DELEGATIONS

Purpose of the Protocol

1. The Council and the Leader have power to make decisions themselves and have respectively also delegated powers to (a) Committees and Sub-Committees of the Council and to (b) the full Cabinet and to Cabinet Committees.
2. The Leader has also appointed Cabinet Members who have individual portfolio responsibilities. In May 2011 the Leader delegated power to make executive decisions to individual Executive members.
3. The Council and the Leader have each delegated to the Chief Executive and certain other senior officers (referred to as a "Delegated Officer") power to make most operational decisions on behalf of the Council, both in respect of executive and non-executive functions.
4. The Council has also established a Corporate Management Team consisting of the Chief Executive and certain senior officers.
5. The purpose of this Protocol is to advise Delegated Officers on when it is appropriate to exercise their delegated powers and the manner in which they should be exercised.

Further Guidance

6. Delegated Officers shall follow any further guidance that may be issued from time to time by the Chief Executive, the Director of Resources or the Assistant Director Legal Services, including Protocols relating to Property Issues.

Directorate Responsibilities

7. As a general rule, Delegated Officers designated as "Chief Officers" in Table A shall only exercise delegated powers in respect of matters that fall within their area of responsibility and shall act in accordance with any guidance given by the Chief Executive.
8. As a general rule, Delegated Officers designated as "Deputy Chief Officers" in Table A and other Delegated Officers shall only exercise powers in respects of matters that fall within their area of responsibility and shall act in accordance with any guidance given by the Chief Executive or their Chief Officer.
9. Where a matter falls within the responsibilities of more than one Directorate or Division, there shall be full liaison and consultation between the Delegated Officers with a view to deciding who should exercise the power and how it should be exercised.
 - 9.1. If it proves impossible to decide the issue, the matter shall be referred to the Chief Executive, relevant Chief Officer or Corporate Management Team (as appropriate).

Internal Arrangements

10. It is not necessary for Delegated Officers to exercise delegated powers personally. They may be exercised by junior officers (“Authorised Officers”) in the name of a Delegated Officer in accordance with arrangements made by the Delegated Officer.
 - 10.1. If Delegated Officers consider that it is appropriate to make such arrangements, the arrangements should be made in writing and a copy supplied to the Service Manager Democratic Services for public inspection.
 - 10.2. The Delegated Officer remains responsible for the exercise of the power.

Reference to Members etc

11. There are a number of different avenues for making decisions:-
 - 11.1. By the Council
 - 11.2. By a committee or sub-committee of the Council (which has delegated powers)
 - 11.3. By the Leader or (if he has delegated power to them) the full Cabinet or a committee of Cabinet or an individual Cabinet member
 - 11.4. By a Delegated Officer after consultation with the Corporate Management Team*
 - 11.5. By a Delegated Officer after consultation with a Cabinet member*
 - 11.6. By a Delegated Officer after consultation with a chair of a non-executive committee*
 - 11.7. By a Delegated Officer after consultation with Ward Members*
 - 11.8. By a Delegated Officer alone

Note: An asterisk (*) indicates that the person/body referred does not have delegated powers and the responsibility for making the decision remains with the Delegated Officer.

12. In deciding on the appropriate method for making a decision, the Delegated Officer shall consider the guidance contained in **Annex 1** to this Protocol. If a Delegated Officer is unsure whether a decision should be made by elected members, s/he should seek the view of the relevant Cabinet member (for executive decisions) or committee chair (for non-executive ones).
13. Consultation with Corporate Management Team (paragraph 11.4), Cabinet Members (paragraph 11.5), Chair (paragraph 11.6) and Ward Members (paragraph 11.7) are not necessarily alternatives. In particular, in many cases it will be appropriate to consult with both Cabinet Members and all relevant Ward Members.

14. Delegated Officers should proceed on the basis that they should consult with Cabinet members/chairs and ward members unless they have good reasons for not doing so i.e. they are satisfied that the decision (a) involves purely administrative or operational issues with no significant direct impact on local services or local residents, with any expenditure being within existing budgets or (b) otherwise has no implications about which the Cabinet member/chair or any ward member is likely to be concerned. If Delegated Officers decide not to consult, they should record their reasons on the record of the decision. Even if a Delegated Officer decides not to **consult**, because for instance the decision will have no **significant** impact on local services or residents, s/he should ensure ward members are at least **notified** of any changes which will affect local services or residents.

If during consultation there is any significant member disagreement with the proposed decision, the Delegated Officer should generally seek the view of a more senior Delegated Officer and the relevant Cabinet member before deciding on the matter.

15. Where ward members are consulted individually, all the members in the ward should be consulted unless the ward members have jointly indicated that it is not necessary to do so. If a decision affecting a ward has wider implications for the city, the relevant Cabinet member/chair should also be consulted.
16. Directorates should establish procedures to manage the consultation process in an effective manner and try to avoid ad hoc consultation exercises. Examples might be regular bulletins. Directorates should also consider the possibility of consultation taking place through Ward Committees. Any consultation with members should be carried out, or at least recorded, in writing and in a way which ensures the relevant members clearly understand what they are being consulted about.

Property Issues

17. Delegated powers regarding land and buildings (including issues relating to management, acquisition, disposal and appropriation of land and buildings) and other property issues shall be exercised by the Head of Strategic Property and Asset Management, except as provided in paragraph 17.1.
- 17.1. Other Delegated Officers may only make such decisions with the prior agreement of the Head of Strategic Property and Asset Management and in accordance with his or her advice.
- 17.2. This will be appropriate where, traditionally, the Head of Strategic Property and Asset Management has not been involved and such matters do not raise strategic or professional issues (e.g. allotment tenancies, school rooms, burial rights). The Assistant Director Legal Services should approve all documentation.
- 17.3. The Head of Strategic Property and Asset Management will ensure regular liaison with the Executive Director of Environment and Regeneration in respect of the overall exercise of his delegated powers.
18. The following decisions should generally be referred to the Cabinet:-

- 18.1. The principle of significant acquisitions or disposals except where the proposal forms part of an overall scheme or project that has been approved under delegated powers by an officer or committee of the Council;
 - 18.2. Freehold or leasehold disposals/acquisitions where the consideration is greater than £250,000;
 - 18.3. Leasehold disposals/acquisitions where the rental value is greater than £100,000 per annum;
 - 18.4. Disposals not at best consideration (other than leases of seven years or less) whether or not the disposal falls within the terms of a general or specific consent from the Secretary of State.
19. All reports to Cabinet or full City Council relating to the acquisition or disposal of land and other property issues shall include advice from
- the Executive Director of Environment and Regeneration (or other appropriate Director)
 - the Head of Strategic Property and Asset Management
 - the Assistant Director Legal Services and
 - the Director of Resources (as the Chief Finance Officer),
- unless they have indicated that they do not wish to give advice.
- 19.1. Alternatively, these officers shall have the right to report separately in their own name.
20. In order to ensure compliance with the duty with regard to best consideration:-
- 20.1. In all cases, the Head of Strategic Property and Asset Management shall state in such reports whether in his or her professional opinion the Council is or is not receiving or giving best consideration.
 - 20.2. Where the Council is not receiving best consideration, the Assistant Director Legal Services shall indicate whether in his or her opinion it is necessary to obtain the consent of the Secretary of State or whether the circumstances fall within the terms of a general consent; and
 - 20.3. Where the Council is not receiving best consideration, the Director of Resources shall give advice on any financial consequences for the Council.
21. While property related reports will normally be in the name of the relevant chief officer (together with the Head of Strategic Property and Asset Management and other appropriate officers): -
- 21.1. The Head of Strategic Property and Asset Management shall have the right at any time to submit a report in his or her own name to the City

Council, to Cabinet or to any other committee or sub-committee of the Council on property issues that fall within his or her responsibilities; and

- 21.2. The Head of Strategic Property and Asset Management shall also have the right to report direct to the Chief Executive (as Head of Paid Service), the Director of Resources (as Chief Finance Officer), or the Assistant Director Legal Services (as Monitoring Officer) on property issues that fall within his or her responsibilities.

Human Resources Issues

22. Delegated powers regarding Human Resources issues shall be exercised in accordance with the provisions of the Council's Personnel Manual, as issued from time to time by the Head of Strategic HR. Delegated Officers shall also act in accordance with the guidance contained in **Annex 2** to this Protocol.

Contract/Procurement Issues

23. The provisions of Financial Regulations (Part 4F) shall be observed, in particular:-
- 23.1. The requirements of FR8 on procurement and contracts and associated procedures.
- 23.2. The desirability of obtaining legal advice.

Providers of External Professional Services

25. A decision to appoint a provider of External Professional Services shall only be made:
- (a) by a Delegated Officer only after consultation with the relevant Cabinet Member, where the value of the commission is between £10,000 and £50,000
- (b) by Procurement Committee, where the value of the commission exceeds £50,000
26. Every proposal to procure a provider of external professional services shall be approved by the Head of Efficiency and Procurement or the Head of Major Projects and Programme Management.
27. For these purposes, "external professional services" has the meaning given in Appendix 3 of the Procurement Procedure Rules, namely any external advice and/or assistance in identifying, investigating and/or analysing problems, issues or opportunities concerned with policy, organisation, procedure, method or operational activity, and/or recommending appropriate action and/or helping to implement those recommendations

School Organisation Proposals

28. Cabinet (in its then name of Executive) on 18 July 2007 agreed that generally the approval of any school organisation proposals under the Education and Inspections Act 2006 would lie with Cabinet itself, on receipt of a report from the Executive Director of Children's Services. In the case of contentious decisions (i.e. where objections to the proposals have been received), the Service Delivery Scrutiny Committee will be asked to consider the proposals before they are reported to Cabinet for final decision.
29. Cabinet have acknowledged that only in exceptional cases (e.g. where the proposal is both non-contentious and either particularly minor in its effect or where an urgent decision is required) would a Delegated Officer be expected to approve any proposal.

Finance Issues

30. Delegated Officers shall seek advice and guidance from the Director of Resources on any issue that may have significant financial consequences for the Council.
31. The provisions of Financial Regulations shall be observed.

Legal Issues

32. Delegated Officers shall seek advice and guidance from the Assistant Director Legal Services on any issue that may have significant legal consequences for the Council.
33. The Assistant Director Legal Services shall be responsible for conducting all legal proceedings on behalf of the Council (except Local Taxation matters delegated to other officers and civil liability claims handled by the Insurance Manager).

Risk Management

34. Delegated Officers shall consider the risks to the Council before making delegated decisions and shall carry out a full risk analysis in significant cases as part of the decision making process.

Good Practice

35. Delegated Officers shall have regard to the guidance contained in **Annex 3** to this Protocol on good practice in decision making.

Ombudsman Matters

36. Delegated Officers shall have regard to guidance contained in **Annex 4** for dealing with Ombudsman Matters.

Reports

37. When preparing a report to Council, Cabinet or other committees, authors shall have regard to guidance contained in **Annex 5**.
38. Any officer decision (or a decision by an individual Cabinet member) should be recorded on the CMIS System. The template report for such decisions at **Annex 6** of this Protocol shall be used, as well as the accompanying checklist. Annex 6 also includes explanatory notes about making such decisions.

ANNEX 1 TO THE PART 3.13 PROTOCOL - GUIDANCE

1. A Delegated Officer shall have regard to the following matters in deciding what is the appropriate mode of decision making:-
 - 1.1. Whether the issue is of corporate or strategic significance;
 - 1.2. Whether the matter raises new significant policy issues;
 - 1.3. The financial consequences;
 - 1.4. The legal consequences;
 - 1.5. The human resources consequences;
 - 1.6. Public relations/communications implications:
 - 1.7. The risks to the Council
 - 1.8. The involvement of members;
 - 1.9. Whether the matter involves significant issues relating to the Council's relationship with Government, Local Government and other outside bodies;
 - 1.10. Public expectation as to the mode of decision making;
 - 1.11. Where there is significant public interest or concern;
 - 1.12. Whether it is a key decision (See Part 4B)
 - 1.13. The practice adopted previously by the Council.
2. Table 1 gives examples:-

TABLE 1

Mode of Decision Making	Guidance
By the Council	<ul style="list-style-type: none"> • If required by law • Overall guidance of the Council's strategic policy
By the Leader or full Cabinet (or a Committee of Cabinet) or a committee or sub-committee of the Council (which has delegated powers)	<ul style="list-style-type: none"> • If required by law • Issues of corporate/strategic significance • Where there are significant new policy issues • Where there is significant public interest • Where there is significant member interest

By an individual member of Cabinet	<ul style="list-style-type: none"> • Where there are significant new policy issues • Where there is significant public interest • Where there is significant member interest • Where there is public interest • Where there is member interest • Matters involving policy changes
By a Delegated Officer after consultation with the Corporate Management Team*	<ul style="list-style-type: none"> • Where there are significant cross-directorate issues
By a Delegated Officer after consultation with a Cabinet member/chair*	<ul style="list-style-type: none"> • Where there is public interest • Where there is member interest • Matters involving policy changes
By a Delegated Officer after consultation with Ward Members*	<ul style="list-style-type: none"> • Where the decision has a impact on local services or local residents in the ward
By a Delegated Officer alone	<ul style="list-style-type: none"> • Administrative or Operational issues having no significant direct impact on local services or local residents, and with any expenditure being within existing budgets
<p>Note (1): An asterisk (*) indicates that the person/body referred does not have delegated powers and the responsibility for making the decision remains with the Delegated Officer.</p>	
<p>Note (2): A decision may fall within more than one of the above examples.</p>	
<p>Note (3): There is a presumption of consultation with Cabinet members/chairs and ward members under paragraph 14 of the Protocol on the exercise of officer delegations. There should be a good reason for not doing so i.e. the decision (a) will have no significant impact on local services or local residents, with any expenditure being within existing budgets or (b) has no implications about which the Cabinet member/chair or any ward member is likely to be concerned. Even if no member is consulted (e.g. because the decision will have no significant impact on local services or residents), ward members should still be notified of any changes which will affect services or residents in the ward.</p>	
<p>Note (4): If a Delegated Officer is unsure if a decision should be made by elected members, s/he should seek the view of the relevant Cabinet member (for executive decisions) or committee chair (for non-executive ones).</p>	

Note (5): A Delegated Officer is required to consult with a Cabinet member on any matter where there is likely to be public interest, member interest or which involves policy changes.

If such public or member interest, or policy changes, are perceived as 'significant', then the decision may be taken by the relevant Cabinet member rather than a Delegated Officer.

An individual Cabinet member may also elect to be the decision maker on any matter which might otherwise have been decided by a Delegated Officer.

In practice, however, Cabinet members will not be expected to assume decision-making roles on local operational or administrative matters, but will be expected to concentrate on matters of wider public interest or which reflect policy changes.

Note (6): In practice, a Cabinet member will often consult the Leader about whether a decision should be more appropriately made by full Cabinet or the individual Cabinet member.

ANNEX 2 TO THE PART 3.13 PROTOCOL – HUMAN RESOURCE ISSUES	
Delegated powers in respect of Human Resources Issues shall generally be exercised in accordance with the guidance contained in the following Table: -	
Body/Person	Issue
Constitutional Committee	<ul style="list-style-type: none"> • Strategic Human Resource Issues • Creation, pay and grading of all chief officer and deputy chief officer posts
Ad hoc Sub-Committee of the Constitutional Committee (N.B. Standing Orders in the Officer Employment Procedure Rules in Part 4G)	<p>Appointment of all chief officer and deputy chief officer posts (except for any “designated jointly funded posts” as defined below)</p> <p><i>Note: As agreed by Constitutional Committee on 4 October 2005, the Chief Executive is entitled to advertise any existing chief officer or deputy chief officer post prior to the appointment of an Ad Hoc Sub-Committee of Constitutional Committee.</i></p> <p><i>Note: In the case of the appointment of the Director of Public Health, the appointment is made jointly with the Secretary of State and the Council must have regard to any guidance given by the Secretary of State.</i></p>
Chief Executive’s Appraisal Panel	Salary progression within approved range of the Chief Executive
Chief Executive in consultation with the Leader of the Council	<p>Salary progression within Senior Management Grade H and the Director/Executive Director salary range taking into account;</p> <ul style="list-style-type: none"> • sustained high level of performance by the postholder (where a bonus system is not applicable); • duties and responsibilities including corporate strategic roles: • the need to retain a high performing postholder. • the need to attract and secure the appointment of a high calibre candidate.
Chief Executive in consultation with representatives nominated by the relevant partnership (at least one of whom shall be a City Council member)	Appointment of the Director of Tyne and Wear Archives and Museums and the Chief Executive of Centre West (Newcastle) Ltd and any other jointly funded post which may be designated by Constitutional Committee for these purposes

Head of HR and Organisational Improvement after consultation with the Chair of Constitutional Committee and Corporate Management Team	<ul style="list-style-type: none"> • Human Resources policies • Response to consultation exercises from national bodies such as the DfEE, LGA, and EO
Head of HR and Organisational Improvement after consultation with Executive Director of Children's Services and Cabinet member for Children's Services	<ul style="list-style-type: none"> • Schools Human Resources Policies
Head of HR and Organisational Improvement after consultation with Corporate Management Team	<ul style="list-style-type: none"> • Pay and conditions variations within the pay and grading structure determined by the Cabinet
Chief Executive as advised by the Head of HR and Organisational Improvement	<ul style="list-style-type: none"> • Creation and grading of senior management grade posts below deputy chief officer level • Approval of block facility time for directorate trade union officers for periods beyond six months • Employer discretions on special leave (if exceeding chief officer's powers set out in the personnel manual) • Extension of sick pay
Chief Executive, Director of Resources and Head of HR and Organisational Improvement	<ul style="list-style-type: none"> • Early release of pension benefits under the 85 year rule and, on compassionate grounds, augmentation of pension scheme membership • Approval of applications for severance and early retirement on efficiency grounds that do not meet financial vetting criteria
Director of Resources, Head of HR and Organisational Improvement and appropriate chief officer	<ul style="list-style-type: none"> • Approval of applications for severance and early retirement on efficiency grounds that satisfy financial vetting criteria
Head of HR and Organisational Improvement and chief officer	<ul style="list-style-type: none"> • Honoraria payments (if exceeding chief officer's powers set out in the manual)
Chief Executive or officer nominated by the Chief executive <i>Note: The Chief Executive has nominated all chief officers and officers nominated by chief officers</i>	<ul style="list-style-type: none"> • Appointments to posts below deputy chief officer.

Chief Officers	<ul style="list-style-type: none"> • Creation and grading of posts below senior management grades in consultation with their Human Resources (HR) Manager (subject to the post being fully funded and the grade being determined in accordance with the Council's framework for assessing grades). If the HR Manager is not satisfied that the grade has been assessed in accordance with the framework he or she can refer the matter to the Head of HR and Organisational Improvement whose additional approval will then be required. • Honoraria payments (if exceeding chief officer's powers set out in the personnel manual). • All other powers as set out in the personnel manual including starting salaries, special leave requests, car allowances, planned overtime, carry forward of leave, approval to fill posts, etc.
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Definitions

In this Annex,

“chief officer” means:

- (a) the head of paid service
- (b) the Monitoring Officer
- (c) any statutory chief officer which means –
 - the director of children’s services or director of social services
 - the chief education officer
 - the section 151 officer responsible for financial administration
 - the director of public health
- (d) any non-statutory chief officer which means –
 - any person for whom the head of paid service is directly responsible
 - any person who, as respects all or most of the duties of his or her post, is required to report directly or is directly accountable to the head of paid service or to the authority itself or any committee or sub-committee of the authority.

“deputy chief officer” means any person who as respects all or most of the duties of his post, is required to report directly or is directly accountable to one or more statutory or non

Note: The above definitions

- (i) are taken from the Local Authorities (Standing Orders) Regulations 1993 and section 2 Local Government and Housing Act 1989.

- (ii) do not include any person whose duties are solely secretarial or clerical or otherwise in the nature of support services

“designated jointly funded post” means the posts of the Director of Tyne and Wear Archives and Museums and the Chief Executive of Centre West (Newcastle) Ltd and any other jointly funded post which may from time to time be designated for these purposes by Constitutional Committee.

ANNEX 3 TO THE PART 3.13 PROTOCOL - GOOD PRACTICE IN DECISION MAKING

A. Scrutiny of Decisions

All decisions made on behalf of the Council are subject to scrutiny by various bodies. These include: -

- ❖ Councillors - both on an individual basis and through Scrutiny Committees (in accordance with the Scrutiny Committee Procedure Rules (Part 4E) and at full Council
- ❖ Officers - particularly the statutory functions of the Chief Finance Officer and the Monitoring Officer
- ❖ The public - through councillors and exercising their rights under the Council's complaint procedures and the Access to Information Procedure Rules (Part 4B)
- ❖ The District Auditor
- ❖ The Local Government Ombudsman
- ❖ Central Government and the European Commission
- ❖ Courts and Tribunals - through statutory appeals and judicial review.

B. Good Practice

Proper administrative decision making requires that: -

- ❖ Decisions are properly made
- ❖ Appropriate reasons are given to those affected
- ❖ Decisions are fully recorded

C. Key Considerations

1. In many cases, scrutiny of decisions concentrates on the **process** of making the decision rather than whether or not the actual decision was **right**. Even where there is a right of appeal on the merits of a decision, appeal bodies frequently concentrate on the **process**. If the **process** is right, decisions can better withstand scrutiny.
2. The courts and the Ombudsman are expecting ever-higher standards of decision making from local authorities. The implementation of the Human Rights Act 1998 will continue this process of requiring higher standards and providing for additional grounds for challenge.

3. Decisions can only be made by the person or body to whom the Council has delegated a function:-
 - 3.1. Under this Constitution, members of the Council (other than the Leader and the members of Cabinet) can only make decisions at full Council or at a legally constituted committee or sub-committee or at Cabinet or Cabinet committees.
 - 3.2. Delegated Officers must neither act nor give the impression of acting under the direction of another. While Delegated Officers may (and in some cases should) consult with members and other officers, the decision (and responsibility for it) rests with the Delegated Officer.

Where the danger of creating such an impression exists: -

In the case of consultation with a member, the Delegated Officer should refer the matter to the Cabinet or appropriate Committee;

In the case of consultation with another Delegated Officer, the Delegated Officer should leave the decision to that other Officer.
 - 3.3. Where a Delegated Officer permits other officers to make decisions in his or her name, a formal scheme should be established clarifying precisely the extent of the authority of such officers in accordance with paragraph 10 of this Protocol.
 - 3.4. It is important that proper consultation takes place with Cabinet Members, Chairs, Ward Members, the Director of Resources and the Assistant Director Legal Services before decisions are made in accordance with the Protocol.

D. Proper Decision Making

In many cases, existing office procedures will exist to ensure proper decision making.

Where they do not exist, Delegated Officers are encouraged to use the attached Checklist. It may be adapted to apply to specific decisions.

You should identify the Council's powers relevant to the decision. Legislation may provide that the Council should have regard to certain matters. You must also consider relevant Council policies, standing orders and financial regulations. You should identify the financial implications of the decision. You should identify the risks of your decision. You must ensure that all material considerations are considered and you must ensure that immaterial considerations are not considered. What is material or immaterial will depend on the particular circumstances. Implications of other legislation such as the Human Rights Act 1998 must also be considered. In this way you will be complying with the so-called "Wednesbury rules" and will ensure that the decision cannot be challenged. Decisions must be reasonable and proportionate and must not be irrational.

The application of the "Wednesbury rules" is not always easy. Both the Assistant Director Legal Services (as the Council's Monitoring Officer) and the Director of Resources (as the Council's Chief Finance Officer) may be consulted before decisions are made. Their views should be included in the records of decisions.

E. Giving Reasons and Access to Information

In many cases, the Council is required by law to give reasons for the decisions that it makes.

Although, there is no general obligation to give reasons in other cases, the law in this area is developing and the Human Rights Act 1998 is likely to have a great impact.

Good practice suggests that persons affected by decisions should be given reasons for decisions.

Delegated Officers are encouraged to give reasons for decisions and access to information taken into account in reaching decisions except where there are good sustainable reasons for not doing so (e.g. where to do so would involve the disclosure of exempt or confidential information).

Decisions made by Committees are subject to the provisions of the Local Government (Access to Information) Act 1985. Decisions made by Cabinet, by individual Cabinet members and by Delegated Officers making key decisions are subject to similar provisions. (See the Access to Information Rules in Part 4B of the Council's Constitution). While the Act and rules do not apply to non-key decisions made by Delegated Officers, they should operate within the spirit of the Act and rules and, in particular, should only refuse access to information, when requested by persons who can show a legitimate need for access, where there would be grounds for declining access under the Act if the decision had been made by a Committee.

F. Recording of Officer Decisions

The proper recording of decisions is crucial.

Delegated Officers should keep a written record of all delegated decisions.

CMIS System

Most officer decisions must be made using the standard report template for officer decisions which must be lodged, along with a completed checklist (see Annex 6 of this Protocol for copies of these documents), with the Service Manager Democratic Services for recording on the CMIS System (see G below). Only then will the decision be deemed effective. Preferably each Directorate will nominate a lead officer responsible for co-ordinating all Delegated Officer decisions in that directorate, at least those which must be recorded on the CMIS System.

The only exceptions to the requirement to record on the CMIS System are:

(a) decisions of a type which the Assistant Director Legal Services has agreed to exempt from such recording because they are adequately recorded elsewhere and are inappropriate for the CMIS System. These are:

- Orders through POPS
- Appointment and dismissal of staff
- Housing possession cases
- Decisions by the Head of Strategic Property and Asset Management within agreed financial values.
- Decisions by the Director of Regulatory Services and Public Protection in regulatory/licensing/car parking and traffic enforcement matters

- Adult Services and Children's Services casework decisions
- Decisions to award grants of less than £10k, on the basis they will instead be reported quarterly to the Service Manager Democratic Services to publish as a group on the CMIS system

(b) any purely administrative or operational decision i.e. one which (i) does not directly affect any person outside the Council and (ii) does not commit expenditure above £100k.

(c) any decision which the Assistant Director Legal Services agrees, because of exceptional circumstances such as extreme urgency, can take effect without being recorded on the CMIS System.

G. Notification of Decisions

It is important that arrangements exist to ensure that members and the public can find out about decisions made by Delegated Officers in the interests of proper accountability.

As explained in section F. above, most delegated officer decisions must be recorded on the CMIS System.

In addition, Delegated Officers should also specifically notify individual members of decisions that are of particular interest to them e.g.:-

- Cabinet Members - in respect of matters within their Portfolio
- Chairs - in respect of matters within the terms of reference of their committees
- Ward Members - in respect of Ward matters.

H. Key Decisions

Delegated Officers may make executive key decisions. That is a decision defined in Article 14.03 of this Constitution.

There are special rules about making key decisions. These are set out in the Access to Information Procedure Rules in Part 4B of this Constitution. **Delegated Officers must follow these rules.**

Key decisions must be recorded on the CMIS System and (unless exempted from call-in) must not be implemented until the call-in period has expired, and, if a call-in is made, until the call-in procedure has been completed. (See Scrutiny Committee Procedure Rules in Part 4E of the Constitution)

I. Budget and Policy Framework

All decisions must be made in accordance with the Council's budget and policy framework. Article 4.01 of the Constitution sets out policy framework.

Executive decisions that do not accord with the budget and policy framework **must be referred to full Council for decision.** Neither Delegated Officers nor Cabinet can make these decisions.

CHECKLIST FOR DECISION MAKING	
MAKING THE DECISION	
Is it an executive or non-executive decision?	
If executive, is the decision in accordance with the Council's budget and policy framework?	
If not, does it need to be referred to City Council?	
Is this a KEY DECISION?	
Has it been included in the forward plan?	
If not, has the special procedure for such decisions been followed?	
Is the decision subject to call-in by a scrutiny committee?	
If so, which is the appropriate scrutiny committee?	
Do I have delegated power to make the decision?	
Should I refer the decision to another Officer/Committee/Cabinet/Individual Cabinet member?	
Have I to consult with a Cabinet member/Chair? If not, why not?	
Have I to consult with Ward Members? If not, why not?	
Have I complied with any statutory provisions relating to the decision?	
Have I obtained all the relevant information and facts relating to the matter?	
Have I consulted with everyone who might expect to be consulted?	
Have I sought advice from the (and if not, why not):-	
➤ Head of Strategic Property and Asset Management?	
➤ Director of Resources?	
➤ Head of HR and Organisational Improvement	
➤ Assistant Director Legal Services	
Have I carried out a risk analysis?	
Have I complied with Standing Orders/Financial Regulations and other provisions of the Council's constitution?	
Have I or any other persons involved complied with the provisions relating to the declaration of interests?	
Does the decision avoid discrimination against any individual or group or section of society?	
Is the decision proportionate to the effect it may have?	
Is my decision compatible with the European Convention of Human Rights as provided by the Human Rights Act 1998?	
RECORDING AND NOTIFICATION	
Have I recorded the decision?	
Have I notified persons affected of the decision?	
Ought I to give reasons?	
Ought I to record the decision on the Delegated Decisions system on the	

Council's Intranet? [You must if it is a key decision.]	
Ought I to notify ward members?	
Ought I to notify any other members e.g. Cabinet Members/Chairs	

ANNEX 4 TO THE PART 3.13 PROTOCOL - OMBUDSMAN MATTERS

Receipt of Ombudsman Reports

- A. Delegated Officers shall deal with Ombudsman Reports in accordance with this guidance.
- B. Where an Ombudsman Report is received, a copy shall be sent to the relevant Cabinet member/Chair and the Chair of the relevant Scrutiny Committee. All other members of the Council should be told of the receipt (such as via the Chief Executive's newsletter).
- C. The Cabinet Member/Chair or the Chair of the Scrutiny Committee may decide that Cabinet/Committee or a Scrutiny committee should consider the report.
- D. Where an Ombudsman makes a finding of maladministration causing injustice and a Delegated Officer considers that the Council should not accept any recommendation as to how the injustice should be remedied, the decision shall not be made under delegated power but shall be referred to Cabinet/Committee of the Council which has delegated power in respect of the subject of the report.
- E. In other cases, Delegated Officers may act under delegated powers subject to the other provisions of this Protocol (in particular regarding consultation with members). The Service Manager Democratic Services should also be consulted.

Local Settlements and Payments in cases of maladministration

- F. Delegated Officers may exercise their delegated powers to agree local settlements with the Ombudsman. They may also exercise their delegated powers to make payments or provide other benefits under section 92 of the Local Government Act 2000.
- G. This is subject to the other provisions of this Protocol (in particular regarding consultation with members). The Service Manager Democratic Services and Assistant Director Legal Services should also be consulted. The Delegated Officer must also be satisfied that financial provision exists and comply with the provisions of Financial Regulations.

Second Reports

- H. Second reports must be dealt with in accordance with the provisions of the Local Government Act 1974 which limits the power to delegate consideration of these reports.

Recording Decisions

- I. Decisions made by Delegated Officers in respect of these matters should be recorded on the Delegated Decisions system on the Council's Intranet.

ANNEX 5 TO THE PART 3.13 PROTOCOL - DRAFTING REPORTS

Officers should have regard to this Protocol when drafting reports.

CITY COUNCIL, CABINET AND CONSTITUTIONAL COMMITTEE

1. All reports to Council, Cabinet or any of their committees should be concise and to the point. Detailed information should be included in Appendices or background papers. There are templates available for reports to Council, Cabinet and Constitutional Committee (as well as other non-executive committees, Audit Committee and Procurement Committee) which should be used. A copy of the templates can be found on the Council's intranet and obtained from the Service Manager Democratic Services.
2. Reports must contain sufficient information to allow City Council, Cabinet or the relevant Committee to reach a proper decision. It must be possible to justify the basis for the decision from the face of the report.
3. To do this, Annex 3 and its attached Checklist for Decision Making is a good starting point. You should identify the Council's powers relevant to the decision. Legislation may provide that the Council should have regard to certain matters. You must also refer to relevant Council policies, standing orders and financial regulations. You should identify the financial implications of the report. You should identify the risks of the decision. You must ensure that all material considerations are referred to and you must ensure that immaterial considerations are not referred to. What is material or immaterial will depend on the particular circumstances. Implications of other legislation such as the Human Rights Act 1998 must also be considered. In this way you will be complying with the so-called "Wednesbury rules" and will ensure that the decision cannot be challenged. Decisions must be reasonable and proportionate and must not be irrational.
4. The application of the "Wednesbury rules" is not always easy. The Assistant Director Legal Services and the Director of Resources (as the Council's Chief Finance Officer) should be consulted on draft reports. Their views should be included in the reports in a separate section of the report except where they are also authors of the report.

OTHER COMMITTEES

5. This guidance also applies to reports to other committees except that paragraph 4 will not apply unless the author of the report considers that the officers referred to in paragraph 4 should be consulted.

ANNEX 6 TO THE PART 3.13 PROTOCOL -DELEGATED DECISION CHECKLIST AND REPORT TEMPLATE

Explanatory Notes:

1. The following checklist and attached template report should be completed for any delegated decision to be made by either (a) an individual Cabinet member or (b) a Delegated Officer ("the Decision-Maker"). Only some categories of minor officer decisions have been specifically exempted from these requirements - the Assistant Director Legal Services can advise further on such exemptions and also the procedure in cases of extreme urgency.
2. The Reporting Officer should prepare the report and the checklist. Once the Decision-Maker has made the decision, and signed off the report, a copy of both completed documents should be sent electronically to the Service Manager Democratic Services. If he is satisfied that proper process has been followed, he will immediately arrange publication of the decision (and the report) on the Council's Corporate Management Information System 'CMIS'. He will notify both the Reporting Officer and the Decision-Maker when this has been done.
3. If the decision is made by a Delegated Officer, and is **not** a 'key decision', it can be acted upon as soon as notification is received that it has been published on CMIS.
4. Other decisions will be subject to possible call-in. The Service Manager Democratic Services will notify all Council members of the decision at the same time as it is published on CMIS. If no call-in request is made within 7 days, the decision can then be acted on.
5. If any proposed decision is a 'key decision', then a copy of the report and any background papers must also be made available for public inspection, and sent to the relevant scrutiny committee chair, at least 5 clear days before the decision is made. In such a case, the Reporting Officer should send the completed report and checklist to the Service Manager Democratic Services sufficiently ahead of the decision being made for him to arrange this. He will then advise the Reporting Officer when the 5 day period has elapsed.
6. A 'key decision' means any executive decision which is likely to (a) result in the Council incurring expenditure, or making savings, which are significant having regard to the budget for the relevant function or (b) have a significant effect on communities living or working in two or more wards in the city. Revenue expenditure of less than £250k or capital expenditure of less than £1m will not normally be considered significant in this context. Further advice in any particular case can be sought from the Assistant Director Legal Services or Service Manager Democratic Services.
7. If a report is marked 'Not for Publication' because it contains exempt or confidential information, an abridged version of the decision and report will be prepared by the Service Manager Democratic Services to ensure such information is not made public. He may well liaise with the Reporting Officer to ensure such information is correctly identified.

8. A delegated decision can be made in the name of a Delegated Officer by another officer duly authorised in writing by the Delegated Officer to do so ('an Authorised Officer')

9. A delegated decision by an individual Cabinet member can only be made by a Cabinet Member, and not by a Deputy Cabinet member.

The checklist starts on the next page:

Checklist for Delegated Decision by either individual Cabinet Member or Delegated Officer

Reporting Officer		Tel. No.	
Directorate		E-mail	
Reporting Officer Directorate Ref.		DD Ref.	

Name of Decision Maker		Tel. No.	
Position of Decision-Maker		E-mail	

Checklist	Complete [Yes, No, N/A]	Further Information
1. Is the DD Report complete and attached and signed by the Decision-Maker?		
2. Is the decision a Key Decision?		
3. If a Key Decision, is it on the Forward Plan?		
4. If a Key Decision, was the report published for at least 5 clear days before the decision was made?		
5. Has there been member consultation? (Enter details in section 6 of the attached report).		
6. Is a Project Appraisal Form required and completed? If so please attach. (Required for all capital expenditure).		
7. I confirm financial advice has been sought (state officer) and section 4.2 of the attached report has been completed.		
8. The following financial issues have been considered:		
8.1. A funding source been identified and secured.		
8.2. There is written confirmation of funding.		

8.3. The conditions of funding have been identified (State what is being put in place to ensure conditions of funding can be met).		
8.4. The risks of not meeting the funding conditions have been assessed.		
8.5. If a scheme is time limited, has a budget been identified to pick up any termination costs e.g. redundancy payments or on-going lease agreements etc? (if so, state budget manager and revenue cost centre).		
8.6. Have the revenue consequences of capital expenditure been identified and agreed with the Budget Manager (if so state, budget manager and revenue cost centre).		
8.7. A full breakdown of the Revenue and Capital costs and budget provisions for this decision, as summarised in section 4.2 of the attached report, are available (state location of the evidence).		
8.8. Capital Expenditure - has the scheme been entered onto the capital programme?		
9. If applicable, have the Council's procurement processes been followed, and those of any relevant funding bodies (if external funding is involved)?		
10. Have any Tax and VAT implications been assessed? (If so, state officer and outcome)		
11. Has legal advice been sought? If so, state officer and ensure section 5.2 of report is completed		
12. Has HR advice been sought? If so, state officer and nature of advice (if not included in report).		
13. Please indicate what legal agreements (if any) are proposed as a result of this delegated decision		
14. Please indicate if the Decision-Maker, or any Cabinet Member who has been consulted about this decision, has declared any personal or prejudicial interest in it and if so, if any dispensation has been granted by the Standards Committee.		

15. Is the report marked 'Not for Publication'? (If so, please explain why and clarify which parts of it contain exempt or confidential information)		
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Dated



Portfolio:

[Report Name]

Report by: [Name and title of reporting officer]
Report to: [Name and title of Decision- Maker i.e. Delegated Officer or Cabinet Member]
 Ward Implications:

[Ward or Wards]

<p>Please indicate For Decision or Information</p>	<p>If confidential insert: <u>Not for Publication</u></p>	<p>If confidential insert: <u>The reason</u></p>
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- 1. Purpose**
 - 1.1 *Use one sentence to outline the purpose of the report.*
- 2. Recommendations**
 - 2.1 *Numbered Bullet points listing the recommended decision(s).*
- 3. Background**
 - 3.1 *Provide a short summary outlining the background to the subject and the issues which give rise to this report.*
- 4. Proposals and Reasons**
 - 4.1 *Explain as succinctly as possible what is being proposed and why the recommendations are being made, with the arguments and evidence for and against. Include here any other relevant options which you think the Decision-Maker should be aware of and why they are not being recommended.*
 - 4.2 **Financial Summary:**

For all decisions provide a concise narrative with costs and budget provision relating to this decision.

	£
Budget provision	X
Expenditure Narrative (<i>insert additional lines and total</i>)	X

For Capital decisions provide a concise narrative with costs and budget provision relating to this decision.

Capital Budget	X
Capital Expenditure Narrative <i>(insert additional lines and total)</i>	X
Revenue Implications: year 1	X
Revenue Implications: year 2	X
Revenue Implications: year 3	X

5. Resource and Legal Implications

5.1 Views of the Director of Resources *(this section to be completed by Director of Resources' representative)*

Enter any views or comments of the Director of Resources' representative (either Principal Accountant or Head of Finance)

5.2 Views of the Assistant Director Legal Services

If legal advice on this report has been sought, enter any legal text as agreed with the Assistant Director Legal Services or their representative

5.3 Other Implications

The Annex to this report sets out any other potentially significant implications or consequences of the recommendations being agreed (or not agreed) which it is considered important that the decision-maker should take into account

6. Consultation

6.1 *Outline who has been consulted and when and what feedback was received. This needs to include any Scrutiny, work with partners and ward planning issues. Where ward members are consulted individually, all the members in the ward should be consulted unless the ward members have jointly indicated that it is not necessary to do so*

Delegated Officers should proceed on the basis that they should consult with Cabinet members/chairs and ward members unless they have good reasons for not doing so and/or are satisfied that the decision has no implications about which the Cabinet member/chair or ward member may be concerned. If Delegated Officers decide not to consult at all, they should record their reasons on the record of the decision.

Every decision by an individual Cabinet Member is likely to be of sufficient importance to justify some degree of consultation

7. What happens next

7.1 *List the activity and expected outcomes if the report is approved, including timescales.*

8. Contact Officers and Background Papers

8.1 *Name, phone number and email address of relevant officers and list any background papers relating to this report..*

Annex to Report - Any other significant implications

*Please insert here any potentially **significant** implications or consequences of the recommendations being agreed (or not agreed) **which are not already dealt with in the body of the report**. These are any implications which you think it is important the Decision-Maker should understand and take into account before making the decision. If there are none, please insert 'None' or 'Not applicable' in the appropriate paragraph*

(a) Risk Management

Any Key Risks

Mitigating Actions

(b) Equality

If appropriate, confirm that an EINA has been carried out, the key outcomes of the EINA and any actions that will be taken to minimise any impacts.

(c) Environmental and Sustainability

List any significant implications for our strategic objectives to promote environmental and sustainability issues.

(d) Partnership

If the recommendations will lead to a new significant partnership, confirm that this partnership has been through the Council's Partnership Approval Process. Outline if there are any significant implications for existing partnerships.

(e) Community Safety

Summarise any significant community safety issues and how these will be addressed.

(f) Any Other Significant Implications

Authorisation Checklist

Role	Name	Date
Reporting officer*		
Principal Accountant / Head of Finance*		
	I confirm my agreement to the recommendations set out in paragraph 2 of this report for the reasons explained in the report.	
Signature and Name of Decision-Maker*		
Authorised Officer (if any)*		

Now please send to the Service Manager Democratic Services the following:-

- 1 – the completed checklist
- 2 – the completed report
- 3 – proof of the relevant authorisations (Audit have indicated that authorisation by e-mail is acceptable, but please send copies of the relevant e-mails with the checklist and report)

* It is the Reporting Officer's responsibility to retain an audit trail that everything recorded on the checklist and report is accurate.