



THE NEWCASTLE CHARTER

Part 7D – Guidance on Decision-Making

Notes:-

This guidance is issued by the Assistant Director Legal Services as Monitoring Officer.

How to make decisions?

The Newcastle Charter

- 1 In 1999 the Council moved from a traditional committee system of decision-making to a leader and cabinet system. Further changes were made in 2002 when the Council formally adopted the leader and Cabinet model under the Local Government Act 2000. Changes to the 2000 Act made by the Local Government and Public Involvement in Health Act 2007 required the Council to adopt 1 of 2 forms of executive arrangements: (a) Leader and Cabinet (b) Elected Mayor and Cabinet. Following public consultation, the Council formally adopted the Leader and Cabinet form, with effect from May 2010.
- 2 *The Newcastle Charter* is the Council's constitution that sets out in detail how the decision-making structure should operate. It is a legal document based on a Government model; the contents are set by Government regulations. It is not an easy document to follow.
- 3 The purpose of this note is to guide you through the stages of decision-making. The stages are –

Stage 1 – Identify what decision you wish to be made

Stage 2 – Identify who may make the decision(s)

Stage 3 – Decide who should make the decision(s)

Stage 4 – Make the decision

Stage 5 – Record the decision

Stage 6 – Call-in

Stage 1 – Identify what decision you wish to be made

- 4 The importance of clarifying exactly what decision or decisions you want cannot be stressed too much. If you do not get this right, you run the risk of going down the wrong avenue.
- 5 You also need to remember that you may need more than one decision (e.g. you may need approval to award a contract but you also may also need approval to make financial provision). The same person may not be responsible for each decision.

Stage 2 – Identify who may make the decision(s)

- 6 There are three main groups of **councillors** that can make decisions –
 - Full Council
 - Cabinet or a Cabinet Committee (e.g. Procurement Committee)
 - A non-executive Committee or Sub-Committee.

7 The Leader can make executive decisions, as can any Cabinet Member. However, other individual councillors cannot make decisions.

8 Scrutiny committees cannot make decisions.

Full Council

9 There are some matters that only Full Council can decide. There is a list of the main items in Article 4.02 and the Tables in Part 3 of the Constitution. Only City Council can approve the Council's budget and Council Tax.

10 City Council is also responsible for approving and amending the Council's policy framework. The particular plans and strategies that form the policy framework are listed in Article 4.01 of the Constitution. These must be approved by City Council within the relevant statutory timetable. It is not enough to get Cabinet approval. Cabinet's role is to prepare the drafts of these plans and strategies and to refer them to City Council for approval.

Other Matters

11 In relation to everything else, you have to decide whether it is an executive function or a non-executive function. How do you decide?

12 The general rule is that most matters are executive functions unless legislation provides otherwise. There are some complex regulations that categorise these functions. You need to refer to the Tables in Part 3 of the Constitution to check how functions are categorised.

13 The non-executive functions are broadly planning, regulatory, licensing, employment, elections and constitutional matters. But it is always important that you check the Tables because there are some anomalies. For instance, granting conservation area consent is non-executive but designating conservation areas is executive.

14 Why does this matter? It matters because this categorisation is the way business is allocated between Cabinet and non-executive committees.

Non-Executive Committees

15 Non-executive committees can only deal with non-executive matters. Cabinet cannot deal with non-executive matters.

16 The non-executive committees are listed in Articles 8 and 9 and Parts 3.5 and 3.5A of the Constitution. The powers of these committees are also set out there.

17 You must ensure that you refer the matter to the right Committee and not to Cabinet.

Cabinet and Committees of Cabinet

18 Cabinet and its committees deal with executive matters.

19 Details of the Cabinet Committees are set out in Part 3.4 of the Constitution.

20 You must not refer these matters to a non-executive committee.

21 There are two important restrictions on the powers of Cabinet –

- Decisions not in accordance with the budget and policy framework; and
- Key decisions and the Forward Plan.

Decisions not in accordance with the budget and policy framework

22 Except in special circumstances, Cabinet cannot make decisions that are not in accordance with the budget and policy framework set by the Council. The policy framework are those plans and strategies listed in Article 4.01 of the Constitution (see paragraph 10 above). Such decisions have to be referred to full Council.

23 There are exceptions. The detailed rules are contained in Part 4C of the Constitution.

Key Decisions and the Forward Plan

24 The definition “key decisions” is an important one. It is explained in Annex A of Part 4B to the Constitution. It is unfortunately vague and some thresholds are fixed in the Annex. It only applies to executive matters.

25 It relates to the Forward Plan provisions which are also explained in Part 4B to the Constitution.

26 Broadly, in the middle of each month the Service Manager Democratic Services publishes a Forward Plan which will come into force at the beginning of the next month. The Forward Plan should include details of all key decisions that will be made in the following four months. If you are in any doubt as to whether something should be included in the Forward Plan, it is better to include it rather than leave it out. The Forward Plan process is useful in identifying significant issues in itself as well as its legal purpose under the Constitution.

27 Why is this important? Because generally executive decisions cannot be made unless details are included in the current Forward Plan. It is directorates’ responsibility to identify key decisions for inclusion in the Forward Plan. It means that you must plan in advance the key decisions that you wish to make.

28 There are two exceptions.

General Exception

29 The general exception is in rule 15 of Part 4B of the Constitution. If it is impracticable to wait until the next published Forward Plan comes into force, the chair of the relevant scrutiny committee must be given notice, public notice must be given and five clear days must pass.

30 There is a special urgency provision in rule 16 of Part 4B of the Constitution. If it is not possible because of urgency to comply with rule 15, a key decision not included in the forward plan may be made only if the chair of the relevant scrutiny committee (or the Lord Mayor/Sheriff) agrees that the decision cannot be reasonably deferred. Details of the use of this procedure also need to be reported to full Council quarterly.

- 31 These exceptions should be used irregularly. It is important that you identify key decisions in advance and include them in the forward plan.

Key decisions by officers

- 32 Where officers have delegated powers (see below), they can make key decisions. There are complex requirements for notices and reports before officers can make key decisions. (See part 4B of the Constitution). It will often be easier to refer key decisions to Cabinet rather than for officers to make them.

Interim Summary

- 33 In respect of any decision, you need to decide –
- Whether the decision is a Council only matter, an executive matter or a non-executive matter;
 - (In the case of executive matters and assuming the Leader does not elect to make the decision himself or delegate it to an individual Cabinet Member) whether the decision is the responsibility of Cabinet or a Cabinet committee or (in the case of non-executive matters) which non-executive committee or sub-committee is responsible.
 - (In the case of executive matters) whether the matter is in accordance with the budget and policy framework. If not, it must be referred to full Council.
 - (In the case of executive matters) whether the matter is a key decision. If it is a key decision, you need to check whether it was included in the current forward plan. If not, the decision can only be made by following either of the two urgency exceptions.

Ward Committees

- 34 Ward Committees have certain decision-making powers in relation to local issues. Their powers are set out in Part 3.7 of the Constitution.

Officer Decisions

- 35 Officers can also make decisions where they have been given delegated power. Details are included in Part 3.13 of the Constitution. Delegation is made by Council, by committees and by Cabinet.
- 36 There are specific delegations in relation to non-executive matters e.g. regulatory and planning.
- 37 There are some decisions that officers cannot make. Examples are in Schedules 1 and 2 in Part 3.13 of the Constitution.
- 38 There is however general delegation to officers of all other executive and non-executive matters. The question will usually be whether it is appropriate for the officer to make a decision as opposed to whether the officer has power to make the decision. If in any doubt whether it is appropriate, seek the view of the relevant executive member (for an executive decision) or committee chair (for a non-executive one).

- 39 Which officers have general delegated power? This is set out in Part 3.13 of the Constitution. These include the Chief Executive, Directors and Heads of Service. These are called “**Delegated Officers**”.
- 40 It is, of course, impracticable for Delegated Officers to make all delegated decisions. The Constitution (see Paragraph 10 of the Protocol at Part 3.13) permits delegated officers to make internal arrangements allowing other officers in their department to make decisions. The decisions are made in the name of the Delegated Officer who remains responsible for the decision. The internal arrangements should be formalised in writing and a copy given to the Service Manager Democratic Services. She should also be kept informed of any changes. These officers are called “**Authorised Officers**”.

Interim Summary

- 41 If an officer proposes to make a decision, you need to check –
- That the officer is a **Delegated Officer** or an **Authorised Officer**;
 - That the officer does have delegated power to make the decision under Part 3.13 of the Constitution; and
 - That there is nothing in the Constitution that provides that the decision cannot be made by an officer and must be referred to another body.

Review

- 42 You will now know who can make the decision and can move to Stage 3.

Stage 3 – Decide who should make the decision(s)

- 43 As a result of Stage 2, you probably have identified several potential decision-makers. You now have to decide who should make the decision.

Choice between Officers

- 44 Do not forget that a decision might need the approval of more than one Delegated Officer. E.g. A spending approval may need a decision to approve the project but also a decision under Financial Regulations by the City Treasurer.
- 45 There will usually be a choice between Delegated Officers. To state the obvious, you should only make decisions that come within the remit of your directorate or division. Within your directorate or division, you should follow your own internal guidance.

Decisions by Groups of Officers

- 46 The Constitution does not provide for decision-making by groups of officers sitting as an Officer Working Group etc. OWGs can discuss decisions and advise a Delegated Officer. However, “decisions” by OWGs need to be formally made by a Delegated or Authorised Officer and recorded as such. The minutes

of the OWG can be attached to the decision. This is important and is often overlooked.

Choice between Officers and Cabinet/Committees/Individual Cabinet Members

47 This is the choice that you will most often face. Guidance on making this choice is set out in Annexes 1 and 2 to Part 3.13 of the Constitution. Broadly members should decide strategic matters and officers should be responsible for operational matters. Between those there is a continuum. A key principle is the importance of consultation with councillors before decisions are made.

Review

48 You will now have decided who is going to make a decision and you can move to Stage 4.

Stage 4 – Make the decision

49 Guidance on good-decision making together with a checklist is included in Annex 3 in Part 3.13 of the Constitution. This is about the process of making the decision and being able to show why and how a decision was reached, in the case of legal challenge.

50 There are 8 preliminary considerations at this stage –

- Compliance with specific legal duties
- Compliance with general duties
- Compliance with Council policy and priorities
- Compliance with Financial Regulations
- Compliance with the Forward Plan and Key Decision provisions
- Risk Analysis
- Advice
- Consultation

Compliance with specific legal duties

51 Many decisions are made within a particular legislative framework. You need to know what this is and comply with it. You may be required to follow a particular process. You may be required to notify or consult other people or bodies. You may be required to have regard to statutory guidance issued by Government. You should always have regard to other guidance. You may have to record the decision in a particular way.

Compliance with general duties

52 There are a number of general statutory duties that apply to everything that the Council does. You must take these duties into account in all decision-making. The main duties include –

EQUALITY – section 149 of the Equality Act 2010 provides that:

A council must, in the exercise of its functions, have due regard to the need to (1) eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010; (2) advance equality of

opportunity between persons who share a relevant protected characteristic and persons who do not share it; (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The above powers relate to the following relevant protected characteristics:

- (a) age
- (b) disability
- (c) gender reassignment
- (d) pregnancy and maternity
- (e) race
- (f) religion or belief
- (g) sex
- (h) sexual orientation

HUMAN RIGHTS – section 6(1) of the Human Rights Act 1998 provides that:

“It is unlawful for a public authority to act [or fail to act] in a way which is incompatible with a Convention right.”

BEST VALUE – section 3(1) of the Local Government Act 1999 provides that:

“A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”

CRIME AND DISORDER – section 17(1) of the Crime and Disorder Act 1998 provides that:

“Without prejudice to any other obligation imposed on it, it shall be the duty of a [local authority] to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent –

- (a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and*
- (b) the misuse of drugs, alcohol and other substances in its area; and*
- (c) re-offending in its area.*

HEALTH AND SOCIAL CARE – section 116B(1) of the National Health Service Act 2006 provides that:

“[The Council and each of its partner clinical commissioning groups must, in exercising any functions, have regard to –

- (a) any assessment of relevant needs prepared by [the Council] and each of its partner clinical commissioning groups under section 116 [of the National Health Service Act 2006] which is relevant to the exercise of the functions, and*
- (b) any joint health and wellbeing strategy prepared by them under section 116A which is so relevant.”*

Compliance with Council policy and priorities

- 53 You need to take into account existing Council policy and priorities so far as it relates to the decision.

- 54 Do not forget that if you are making an executive decision, it must be in accordance with the budget and policy framework referred to in paragraph 10 (above). Otherwise, the decision must be referred to full Council for decision.
- 55 When taking into account other policies and priorities you should identify the implications of the decision in relation to those policies and priorities.

Compliance with Financial Regulations

- 56 Financial Regulations are set out in Part 4F of the Constitution.
- 57 You should identify the financial implications of the decision – both immediate and in the future. You need to be sure that financial provision exists. You need to know whether the expenditure is revenue or capital.
- 58 The approval process for capital expenditure is different from revenue.
- 59 Financial Regulations are very important if you are letting a contract. You must follow them.

Compliance with the Forward Plan and Key Decision provisions

- 60 Remember, if you are seeking an executive decision which is also a key decision, details must be included in the current forward plan. If not, you must follow the urgency provisions.
- 61 These provisions also apply to executive key decisions by officers. There are special procedural rules that must be followed before an officer makes a key decision. It will often be easier to refer such decisions to Cabinet.

Risk Analysis

- 62 You must carry out a proper risk assessment of the decision in accordance with the Council's risk management policy.

Advice

- 63 You need to seek appropriate advice, including –
- Financial advice – Director of Resources
 - Legal advice – Assistant Director Legal Services
 - Personnel advice – Head of HR and Organisational Improvement
 - Procedural advice – Service Manager Democratic Services
 - Property advice – Head of Strategic Property and Asset Management

Consultation

- 64 You need to ensure that there is appropriate consultation, including –
- With citizens
 - With councillors
 - With partners
 - With stakeholders

- 65 Councillors have frequently stressed the importance of consultation with them before decisions are made. Guidance is included in Part 3.13 of the Constitution. There is a presumption that consultation **will** take place with Cabinet members, chairs of non-executive committees and ward members. If you do not consult them, you need to record your reason for not doing so. This should only be if you are satisfied that the decision (a) involves purely administrative or operational issues with no significant direct impact on local services or local residents, any expenditure being within existing budgets or (b) otherwise has no implications about which any member is likely to be concerned. Even if you do not consult members before making a decision, you should still notify ward members of your decision if it affects anything in a particular ward.
- 66 When you consult ward members, you should consult all the members in the ward unless all the ward members have agreed otherwise. This is very important where all the members in a ward are not members of the same political group. Consultation should be carried out in writing and make clear what is being consulted about.

Asking the Decision-Maker to make the Decision

- 67 You are now ready to ask the decision-maker to make the decision.
- 68 In the case of a decision by members, you need to prepare a report. You should follow the corporate format. You must ensure that the decision-maker has all the material information before them. You must also ensure that they do not have immaterial information before them. The report must be balanced and fair.
- 69 If there is a legal challenge to the decision, the report will be scrutinised by the courts or the Ombudsman.
- 70 In the case of a decision by officers, you should also prepare a similar report (for a template report, see Annex 6 of the Protocol on the Exercise of Officer Delegations in Part 3.13 of the Charter) so that you can show that the officer making the decision followed a proper process. This should be done for all decisions other than minor matters. It must be done if there is a risk of legal challenge or complaint. A proper audit trail must exist.

Making the Decision

- 71 The decision-maker should consider the report and reach a decision. The decision-maker should record the reasons for making the decision.

Review

- 72 You should now have a decision and can move to stage 5

Stage 5 – Record the decision

- 73 You now need to record the decision.

Decisions by Members

- 74 Council, Cabinet and Committee meetings are properly minuted. This will record the decision and the reason for the decision.
- 75 You need not do anything else. The minutes will be approved at the next meeting and signed by the chair. Certified extracts of the minutes are evidence in law of the decision.

Decisions by Officers

- 76 You need to ensure that all officer decisions are recorded in writing. Except for decisions described in paragraph 77 below, you should record and sign off the decision by using the standard report template for officer decisions (see Annex 6 to the Protocol on Officer Delegations in Part 3.13 of the Charter). You should then immediately send that form electronically, together with a completed checklist (also at Annex 6), to the Service Manager Democratic Services for publication on the CMIS System on the Intranet. (Decisions will not be deemed effective until such publication and you will be notified when that occurs). This ensures that a central record is kept which is open to member and (if not confidential) public inspection. Details are reported to Cabinet and Scrutiny committees.
- 77 The following types of decision are exempt from the requirement in paragraph 76 above:
- (a) The Assistant Director Legal Services has agreed to exempt the following types of decision because they are adequately recorded elsewhere and are inappropriate for the CMIS System:
- Orders through POPS
 - Appointment and dismissal of staff
 - Housing possession cases
 - Decisions by the Head of Strategic Property and Asset Management within agreed thresholds
 - Decisions by the Director of Regulatory Services and Public Protection in regulatory/licensing/car parking and traffic enforcement matters
 - Adult and Childrens' Services casework decisions
 - Decisions to award grants of less than £10k, on 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.
- 78 Although the form of report for officer decisions and checklist may seem complex, they are simple and an important means of properly recording and publishing decisions.
- 79 There are three categories of officers who have rights to complete the forms –

- Delegated Officers
- Authorised Officers
- Form fillers

Delegated and Authorised Officers are explained in paragraphs 39 and 40 (above). Form fillers are others who are allowed to complete the forms but not sign them off.

The Delegated Officer is the person in whose name the decision is being made. The Authorised Officer is one of the officers who the Delegated Officer has authorised to make the decision.

80 The other boxes are self-explanatory. Only the following call for comment –

Confidentiality

81 Is the decision to be confidential? The grounds are the same as for “pinking” committee reports. The Council supports openness in its decision-making. You should only “pink” a decision if the interests of the Council or some other person would be prejudiced by public disclosure.

82 If possible, indicate which parts of the report are confidential and which parts if any you think could be made public. This will help the Service Manager Democratic Services decide how much information about the decision can be published on the CMIS System. You can keep any background papers confidential.

Cost and Budget Provision

83 This is important. Seek advice from your accountant if you have doubts. The information should already have been gathered for the decision-maker.

Member Consultation

84 You must state whom you have consulted. If you have not consulted members, you must state why.

Background Papers

85 List your background papers. You may indicate that they are confidential.

Declared Interests

86 If members or officers have declared any interests, record them.

Review

87 Once a delegated decision is published on the CMIS System (and the Service Manager Democratic Services will let you know as soon as it is) you can implement it, subject to any call-in if it is a key decision (although in practice very few officer decisions should be key decisions).

Stage 6 – Call-in

- 88 The rules relating to “call-in” are set out in Part 4E of the Constitution. It only applies to executive decisions made by Cabinet, a Cabinet Committee and a joint Committee and to key decisions made by an Officer or a decision made by an individual Cabinet member.
- 89 If call-in applies, you need to wait before implementing a decision. There are a number of steps
- 90 **Step 1** – The Service Manager Democratic Services has to give notice of decisions that are subject to call-in. This will usually be done within two working days of an executive decision or weekly for officer decisions.
- 91 **Step 2** – Members have until 10am on the fifth working day after the notice in step 1 was given to initiate a call-in. It needs to be initiated by either seven non-executive Members (which may include the statutory education representatives if the matter being called in is an education matter on which they would be entitled to vote), or the Chair and Vice-Chair of the relevant scrutiny committee plus one other non-executive Member.
- If this time passes and a call-in is not initiated, you may implement the decision. You should check with the Service Manager Democratic Services.
- If a call-in is initiated, you must not implement the decision until the process has been completed.
- 92 **Step 3** – This is the call-in procedure. Details and time limits are set out in Part 4E of the Constitution. At the end of the process, neither an overview and scrutiny committee or full Council can change the decision, provided the decision complies with the budget and policy framework; their role is to decide whether to ask the decision-maker to re-consider the decision. The decision-maker should consider any such request carefully.

Urgent Exceptions to call-in

- 93 The Constitution recognises that there may be cases where the potential delay caused by a call-in could be prejudicial.
- 94 Call-in does not apply where the rule 16 special urgency procedure has been used (see paragraph 30 above).
- 95 The decision-maker can decide that call-in should not apply. The decision must be urgent and the decision-maker must be satisfied that “**any delay likely to be caused by the call-in would seriously prejudice the Council’s or the public’s interest**”. It must be used only in exceptional circumstances and with the agreement of the Chair of the relevant scrutiny committee. Reasons must be recorded in the Cabinet/Committee/Officer report and in the minutes/delegated decision.

Conclusion

- 96 You now have a decision that you can implement.
- 97 The provisions are not complex. This note deals with general principles. Where you make a number of similar decisions, you should prepare a note mapping out

the process for those decisions so that they can be followed in your directorate or division.