

Part 3

Responsibility for Functions

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Introduction

- 1 The Council may alter the terms of reference of, the composition of and delegations to any Committees, Sub Committees, Working Groups, Parties and Panels reporting directly to it and the Scheme of Delegation to Officers.
- 2 Subject to the provisions of the Constitution and any legal requirements, any function may be delegated to a Committee or to an Officer (whether acting after consultation or otherwise) but may not be delegated to a single Councillor.
- 3 The Committees, Sub Committees, Working Groups, Parties and Panels established at the time of publication of this issue of the Constitution are:
 - 3.1. Committees reporting directly to Full Council:
 - a) Audit and Standards
 - b) Scrutiny
 - c) Development Management
 - d) Licensing
 - 3.2. Working Groups, Parties and Panels reporting directly to Full Council:
 - a) Appointments Panel
 - b) Chief Executive's Appraisal Panel
 - c) Electoral Review Working Group
 - d) Independent Remuneration Panel
 - e) Civic Awards Panel
 - f) Investigatory and Disciplinary Committee (Statutory Officers)
 - 3.3. Working Groups, Parties and Panels reporting directly to Cabinet:
 - a) Constitution Panel
 - 3.4. Sub Committees reporting directly to Committees:

- a) Call In Sub Committee to the Scrutiny Committee
- b) Hearing Sub Committee to the Audit and Standards Committee
- c) Licensing Sub Committee to the Licensing Committee
- d) Regulatory Sub Committee to the Licensing Committee

Matters Reserved to Full Council

- 1 The responsibilities of the Full Council are to:
 - 1.1. approve, adopt and change the Constitution (including political management structure, Council Procedure Rules, Standing Orders, Terms of Reference, Delegation Scheme, Financial Regulations and codes of conduct, subject to paragraph 2 below).
 - 1.2. elect the Chair of the Council.
 - 1.3. appoint the Vice Chair of the Council.
 - 1.4. appoint the Leader of the Council, subject to the provisions in Part 2, Article 6 of the Constitution.
 - 1.5. make appointments to Committees subject to paragraph 2 below.
 - 1.6. appoint Member Champions
 - 1.7. agree and amend the terms of reference and delegated powers of those Committees, Sub Committees, Working Groups, Parties, Panels and Officers, reporting to Council, deciding on their composition and making appointments to them, subject to paragraph 2 below.
 - 1.8. agree the policy framework meaning the following plans and strategies and those required by regulations under the Local Government Act 2000 (as amended)
 - a) The Corporate ~~Plan~~Strategy
 - b) Medium Term Financial Strategy
 - c) Community Cohesion Strategy
 - d) Housing Strategy and Business Plan
 - e) Homelessness Strategy
 - f) Licensing Policy and Statement
 - g) Local Development Framework
 - h) Sustainable Community Strategy

- i) Crime and Disorder Reduction Strategy.
 - j) Together with such other plans and strategies as the Council may decide from time to time should be adopted by the Council as a matter of local choice.
- 1.9. approve the budget including :
- a) The allocation of financial resources to different services and projects
 - b) Proposed contingency funds
 - c) The Council Tax base
 - d) Setting the Council Tax and decisions relating to the control of the Council's borrowing requirement
 - e) The control of its capital expenditure
 - f) The setting of virement limits
 - g) The retention of reserve funds.
- 1.10. approve the adoption of applications (whether in draft form or not) to the Secretary of State in respect of any Housing Land Transfer. This is for the approval of a programme of disposal of 500 or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under sections 32 or 43 of the Housing Act 1985.
- 1.11. approve the following:
- a) Council Tax
 - b) General Fund, Housing Revenue Account and Capital Expenditure Estimates
 - c) Housing rent levels (including domestic garages)
 - d) Members' Allowances Scheme
 - e) Applications to the Secretary of State for the transfer of housing land.
- 1.12. appointment of Honorary Aldermen at meetings called specifically for this purpose.
- 1.13. appointment and dismissal of the Chief Executive and Statutory Officers subject to any statutory provision.

- 1.14. resolve differences between the Cabinet, the Scrutiny Committee or the Call In Sub Committee.
 - 1.15. review and make appointments to external organisations except where delegated, for example, to Cabinet.
 - 1.16. deal with other matters not within the terms of reference of any other Committee.
 - 1.17. to receive the reports of Statutory Officers made under Section 114 of the Local Government Finance Act 1988 or the Local Government and Housing Act 1989.
 - 1.18. such other matters as the Full Council may from time to time reserve to itself or are reserved to Full Council by law.
 - 1.19. decide on departures from previously agreed Council policies, strategies and budgets.
 - 1.20. Changing the name of an electoral area of Harlow.
 - 1.21. Making, amending, revoking, re-enacting or adopting byelaws.
 - 1.22. Promoting or opposing the making of local legislation or personal Bills (Personal/Local Bills are Parliamentary Bills but are not part of the legislative programme of Parliament. These normally relate to a specific local issue and are proposed in pursuit of local interests)
- 2 1.1, 1.5 and 1.6 above are subject to the functions delegated to the Licensing Committee by the Council under the Licensing Act 2003 in respect of:
- 2.1. the establishment of a Sub Committee
 - 2.2. regulation of its own procedure and that of its Sub Committees
 - 2.3. arrangements for the discharge of its functions by a Sub Committee or Officer(s).

Matters Reserved to Cabinet

- 1 The Terms of Reference of the Cabinet are:
 - 1.1. Develop and review policies within the Council's policy framework.
 - 1.2. Review the use and allocation of assets and resources within approved budgets and make recommendations to Council on the same.
 - 1.3. Be responsible for and review Council services, including the introduction of new services and the standard or level of existing services.
 - 1.4. Promote partnerships consistent with the Council's Corporate Plan.
 - 1.5. Respond to relevant documents and initiatives from other organisations.
 - 1.6. Review and make recommendations on the Scheme of Delegations, Council Procedure Rules, Standing Orders relating to Contracts and Financial Regulations.
 - 1.7. Promote and develop the image and reputation of the district and the Council.
 - 1.8. Prepare and maintain a forward plan of Key Decisions.
 - ~~1.8-1.9.~~ Carry out all the local authority's functions which are not the responsibility of any other part of the local authority or otherwise delegated, whether by law or under the Constitution.
- 2 The Cabinet can appoint Working Groups under Article 9 of the Constitution.

Portfolio Holder Delegations

1 All Portfolio Holders may take:

- 1.1. Urgent decisions that cannot reasonably be deferred until the next meeting of the Cabinet on any matter within the powers delegated to Cabinet and their Portfolio, after written (including e-mail) consultation with the Leader (or Deputy if they are not available).
- 1.2. Any previously designated cabinet decision that is:
 - a) Less than £1 million and more than delegated to officers; and
 - b) Not likely to be significant in terms of its effects on communities living in an area comprising two or more wards or electoral divisions in the area of the local authority; and
 - c) Is within policy and budget; and
 - d) Not reserved to the Cabinet.
- 1.3. Any decision that is:
 - a) Necessary to implement a decision of the Cabinet
 - b) To agree the grant of licences for the use of land within their Portfolio
 - c) To agree minor or inconsequential amendments to any Policy, Plan or Strategy within their Portfolio
 - d) Relating to procurement and contractual matters as set out in the Financial Regulations and Procurement Policy and Standing Orders relating to contracts
 - e) Where appropriate, and working with the relevant officers, responding to national consultation specific to their Portfolio
 - f) To allocate specific grants relevant to their Portfolio

2 The Leader (or Deputy Leader in their absence) may:

- 2.1. In the absence of any Portfolio Holder or at their request (in writing) or where a prejudicial interest has been declared take decisions on any matter delegated to that Portfolio Holder.

- 2.2. Take decisions to sell/purchase/lease or otherwise deal with land where this would not constitute a Key Decision.
- 2.3. Take any other Portfolio Holders decision otherwise allowed by these delegations and/or delegate that decision to the Deputy Leader.

3 Specific delegations to Portfolio Holders

- 3.1. The Leader will approve a list of specific delegations from time to time.
- 3.2. Any member of the Cabinet may refer any matter delegated to them to the Cabinet for a collective decision.

4 Requirements for making Portfolio Holder decision

- 4.1. Portfolio Holder decisions must be supported by a written report from the relevant senior Officer(s). It is the Portfolio Holder's responsibility to consult and to seek advice from the Chief Executive, Monitoring Officer or Chief Finance Officer as appropriate before decisions are taken to ensure that they are intra vires. Portfolio Holders should also consult the relevant budget holding Director before decisions are taken.
- 4.2. Portfolio Holders must only make decisions on matters affecting their own wards only if recommended as one of a range of options recommended by an officer within a Portfolio Holders Decision report.
- 4.3. Where an interest has been declared by the Portfolio Holder that prevents that individual from taking a decision, that decision may be taken by another member of the cabinet (on advice) or be referred to the cabinet for decision.

Scheme of Delegations to Officers – (Part 1) General Provisions

1 Conditions concerning delegations

- 1.1. In the event an Officer's role or title changes, the Officer who delegated the function to them will determine any changes to the delegations that may be required.
- 1.2. Powers delegated shall, unless expressly stated to the contrary, include all of the powers of the Council or Committee under legislation or common law. They will be exercised in line with the relevant procedures, rules and regulations of the Council and in line with the expressed policies and objectives of the Council relevant to the matter.
- 1.3. The delegations to Officers will be deemed to extend to any statutory re-enactment thereof. This can be in whole, or part, or varied in extent or wording. Any major variation will be reported to for information to the Council or any relevant Committee.
- 1.4. The delegation of any power or function includes the authority to take all steps and actions to support or facilitate the exercise of the power or function.
- 1.5. An appropriate record will be made and retained of the exercise of delegated powers and functions.

2 Functions of Officers – General Delegations

- 2.1. The Chief Executive and any Officer acting in their place in accordance with paragraph 2.18 below may discharge the functions of, any of the Council's Committees or the Cabinet, the professional and managerial functions relating to their service and any of the Council's functions in cases of emergency.
- 2.2. The Chief Executive and Director (any Officer acting in their place in accordance with paragraph 18 below) may discharge the general functions delegated to them (in paragraphs 2.3 to 2.18 below). They may also delegate the specific professional and managerial functions relating to their service as identified below.

- 2.3. To implement changes to service delivery arrangements and to approve the transferring of items between financial accounts (virement) between budget heads which do not significantly affect levels of service, require changes to policies or cause budgets to be exceeded in accordance with Financial Regulations.
- 2.4. Together, with the Director of Governance and Corporate Services, to initiate legal and other procedures as necessary pursuant to authorising the institution, defence or settlement of any legal proceedings and incurring any necessary expenditure for the same purpose within existing budgets.
- 2.5. To determine charges/concessions in accordance with policies determined by the Council.
- 2.6. To take all necessary steps to preserve the Council's land and property, including repairs, insurance and the employment of agents and contractors.
- 2.7. To make purchases and/or enter into agreements on behalf of the Council in line with policy and the approved budget in accordance with Financial Regulations and Standing Orders relating to Contracts.
- 2.8. To implement agreed schemes and incur capital and revenue expenditure within budget except for matters which require further consideration by a Committee or the Council.
- 2.9. To make planning applications for Council development proposals.
- 2.10. To deal with all complaints from the Local Government Ombudsman and to make settlements of up to £1,000 in cases where, in accordance with Financial Regulations, it is considered appropriate.
- 2.11. To make representations regarding governmental or other consultation processes in line with agreed policy.
- 2.12. If a matter involves considerations not wholly within the remit of the Officer primarily involved there shall be an obligation to consult with any other Officer, agency or local authority with related responsibilities and to take account of their views before decisions are made and action taken.

~~2.13. Before discharging any function an Officer should consider whether it is desirable to consult with the Leader, appropriate Portfolio Holder or Committee Chair and/or Councillors.~~

~~2.14.~~2.13. The Officer will always be entitled to refer a matter to the appropriate Committee for decision where they consider it appropriate to do so.

~~2.15-2.14.~~ The Officer may authorise other Officers in their service to exercise, on their behalf, functions delegated to them. Any decision taken under this authority will remain the responsibility of the relevant Officer named above. They will remain accountable and responsible for these decisions.

~~2.16-2.15.~~ In carrying out delegated functions Officers will:

- a) comply with all relevant legislation
- b) have regard for the provisions of the Constitution
- c) consider the best value principles and use the most efficient and effective means available. This will include the deployment of staffing and other resources within their control and the procurement of other resources necessary whether within or outside the Council
- d) act in accordance with the policies and objectives of the Council
- e) have regard to the corporate interests and image of the Council.
- f) consult with Cabinet, the Leader, Portfolio Holder or Committee chairs, as appropriate, on:
 - i) changes to service delivery;
 - ii) the transfer of items between budgets which significantly affect the level of service;
 - iii) changes to policy;
 - iv) changes which cause budgets to be exceeded as defined in the Financial Regulations;
 - v) any matter which requires a formal decision to be made by Councillors;
 - vi) any other function for which an Officer considers consultation to be necessary;
 - vii) where the procurement is likely to be over £75,000 to consult the relevant portfolio holder prior to the commencement of procurement.

~~2.17-2.16.~~ Officers discharging functions under paragraph 2.1 above, other than those which relate to their service, must report any action taken to the appropriate Committee or partnership.

~~2.18-2.17.~~ Where an Officer referred to in paragraphs 2.1 or 2.2 above is to be absent for any period they, the Chief Executive or Director as appropriate, must nominate in writing another Officer to act in their place during the period of absence.

3 Calling in Officer decisions

- 3.1. An Officer decision taken under delegated powers on behalf of the Cabinet which has yet to be implemented may be called in by the Call In Sub Committee for consideration.
- 3.2. The call in procedures for decisions taken by officers are set out in paragraphs 15 and 17 in the Scrutiny Procedure Rules.
- 3.3. The following decisions of Officers are not subject to call in:
 - a) a decision to implement Council policy approved by the Council within the preceding six (6) months
 - b) a decision that has already been subject to call in under paragraph 2.2 above
 - c) a decision taken in the exercise of the Council's functions as the local planning authority under the Town and Country Planning Acts and in the exercise of non-policy matters relating to the Licensing Committee
 - d) a decision on a procedural, operational or managerial matter
 - e) decisions in relation to which a specific appeals procedure of any description exists
 - f) any decisions taken by the Monitoring Officer or the Chief Finance Officer in relation to their statutory functions.

4 Appointment of Proper Officers

- 4.1. An Officer referred to in the Scheme of Delegations to Officers – (Part 2) Specific Delegations below is the Proper Officer for all purposes relating to their service.
- 4.2. The Chief Executive will appoint Proper Officers to carry out the Council's functions where required by any legislation.

Scheme of Delegations to Officers – (Part 2) Specific Delegations

1 Chief Executive

- 1.1. The Chief Executive will act as the Head of the Paid Service in accordance with Section 4 of the Local Government & Housing Act 1989. The Council will provide them with such staff, accommodation and other resources as are, in their opinion, sufficient to allow their duties under this section to be performed.
- 1.2. The Chief Executive shall have the delegated authority to define the specific roles of any Chief Officer and Director.
- 1.3. At the publication of this version of the Constitution the Chief Executive is specifically responsible for the Director.

2 Functions Delegated to Directors

- 2.1. Under paragraphs 1 to 4 of the General Provisions of the scheme of delegations to Officers, the Directors will have the delegated authority to exercise all of the powers in relation to the areas listed below of the Council, or any Committee, under legislation or common law. This will be exercised in line with the relevant procedures, rules and regulations of the Council in force and in accordance with the expressed policies and objectives of the Council relevant to the matter.
- 2.2. This delegated authority will be deemed to extend to any statutory re-enactment of any relevant legislation. This can be, whether in whole, or part, whether varied in extent or wording. Any major variation will be reported for information to the Council or any relevant Committee.
- 2.3. The delegation of any power or function includes the authority to take all steps and actions to support or facilitate the exercise of the power or function.
- 2.4. The Directors have the power to delegate any of their functions to any appropriately experienced or qualified Officer in their service. They will be responsible for ensuring that a full list of Officers in receipt of such delegated power is maintained on the Council's internal website. Any decision taken under this authority will remain the responsibility of the Director. They will remain accountable and responsible for such decisions.

- 2.5. Notwithstanding the obligation to maintain an updated list where any matter is delegated to a particular Officer this scheme of delegation shall apply to any Officer to whom those duties may have been assigned. This can be as a result of any management restructuring or otherwise and howsoever the post may be named or designated.

3 Deputy to the Chief Executive and Director of Finance

- 3.1. The Deputy to the Chief Executive and Director of Finance will act as the Council's appointed Officer (Chief Finance Officer) under Section 151 of the Local Government Act 1972. They will be responsible for the proper administration of the Council's financial affairs and for reporting under Section 114 of the Local Government Finance Act 1988. They will nominate an Officer to deputise in their absence under those sections.
- 3.2. They will have all the functions of the following services:
- a) Insurance and Risk
 - b) Internal Audit
 - c) Finance and Accountancy
 - d) Revenues and Benefits

4 Director of Governance and Corporate Services

- 4.1. The Director of Governance and Corporate Services will have all the functions of the following services:
- a) Business Continuity
 - b) Communications and Media/Website
 - c) Complaints/FOI
 - d) Corporate and Governance Support
 - e) Customer Services
 - f) Electoral Services
 - g) ICT
 - h) HR
 - i) Legal Services
 - j) Performance Management

- k) Print Unit
- l) Project Support

4.2. In addition, the Director of Governance and Corporate Services will exercise the functions of the Monitoring Officer under the provisions of the Local Government and Housing Act 1989 (and as necessary appoint a deputy). They will:

- a) authorise Officers to appear on behalf of the Council before the courts in any proceedings instituted by or on behalf of or against the Council
- b) complete all necessary documentation in connection with sales and acquisitions of land or property for the Council
- c) complete, execute, sign any other deed, document, letter or process in relation to any other transaction or matter where the Council is a party or has an interest
- d) authorise the issue of proceedings (whether civil or criminal or of any other description) on behalf of the Council
- e) defend, compromise, settle, dispose or conclude the same in such manner as in the opinion of the post holder will meet the best interests of the Council and to be the Proper Officer for the purpose of the Local Government Act 1972, Section 234.

5 Director of Communities and Environment

5.1. The Director of Communities and Environment shall have all the functions of the following services:

- a) Arts, Culture and Tourism
- b) Economic Growth and Development
- c) Environmental Health
- d) Environmental Management including Carbon Management and GIS
- e) Harlow Museum
- f) Harlow Playhouse
- g) Health and Safety
- h) Health and Wellbeing

- i) Licensing
- j) Pets' Corner
- k) Safeguarding
- l) Safer Harlow Partnership/Community Safety
- m) Sam's Place
- n) Street Scene and Trees
- o) Youth and Citizenship

6 Director of Housing

6.1. The Director of Housing shall have all the functions of the following services:

- a) Estates Management
- b) Home Ownership
- c) Housing Asset Management and Facilities
- d) Housing Assets and Business Systems
- e) Housing Needs and Options
- f) Housing Projects
- g) Leah Manning Centre
- h) Non-Housing Asset
- i) Office Facilities
- j) Property and Facilities
- k) Supported Housing
- l) Surveying, Technical Services
- m) Tenancy Conditions
- n) Tenant and Leaseholder Engagement

7 Director of Strategic Growth and Regeneration

7.1. The Director of Strategic Growth and Regeneration shall have all the functions of the following services:

- a) Building Control
- b) Development Management
- c) Council Housing Delivery
- d) Planning Policy
- e) Regeneration Projects