

## **Part 3 – Officer Scheme of Delegation**

### **Chapter 1 – Functions which are Delegated to Officers**

This section sets out those functions which have been delegated to officers.

#### **1. Powers of delegation**

- 1.1 Non-executive functions are delegated to officers from the Assembly, Committees and Sub-Committees under section 101 of the Local Government Act 1972 and, in the case of licensing and gambling, under section 10 of the Licensing Act 2003 or section 154 of the Gambling Act 2005.
- 1.2 Executive functions are delegated to officers by the Leader or from the Cabinet under section 14 of the Local Government Act 2000.
- 1.3 Functions are delegated to the Director of Public Health under section 73A of the National Health Service Act 2006, as amended by the Health and Social Care Act 2012.

#### **2. Basis of Delegation**

- 2.1 Where the Assembly, a Committee or Sub-Committee, the Leader or the Cabinet has delegated a function to an officer, the person or body making the delegation may at any time resume responsibility for the function either in respect of a particular matter or generally, and so may exercise the function despite the delegation.
- 2.2 An officer to whom a power is delegated may refer the matter to the Chief Executive, or to the person or body making the delegation, for their determination. It will be appropriate for the officer to refer a matter:
  - (a) To the Chief Executive where the determination of the matter raises issues of corporate priorities or the co-ordination of the discharge of various functions of the Authority;
  - (b) To the person or body making the delegation where the determination of the matter is likely to be particularly controversial or raises issues of policy which it would be appropriate for Councillors to determine; or could, by its scale or complexity, expose the Council to major corporate risk which cannot be contained within Service Budgets.
- 2.3 In exercising any delegated powers, officers should ensure that decisions are consistent with Council policy, within approved spending limits, and in the best interests of residents and the Council as a whole. Councillors should be informed/consulted as appropriate depending on the nature and sensitivity of the decision.

#### **3. Conflicts of Interest**

- 3.1 Every officer is responsible for identifying whether he/she has any conflict of interest in any matter which is under consideration, actual or perceived, within the Authority, and for notifying the Authority (including under section 117 of the Local Government Act 1972).

- 3.2 Where an officer has a conflict of interest in any matter, he/she shall not participate in that matter in his/her capacity as an officer except with the prior approval of his/her line manager, the Monitoring Officer or the Chief Executive.
- 3.3 Where the Chief Executive is unable to act on a matter because of a conflict of interest, the matter shall be discharged by the Monitoring Officer. Where the Monitoring Officer is unable to act the matter shall be discharged by the Deputy Monitoring Officer.
- 3.4 Where a Strategic Leadership Director is unable to act on a matter because of a conflict of interest, the Chief Executive shall discharge the matter him/herself or allocate the matter to another officer.
- 3.5 Where the Monitoring Officer is unable to act on a matter in his/her statutory capacity under section 5 of the Local Government and Housing Act 1989, the matter shall be discharged by the Deputy Monitoring Officer.
- 3.6 Where the Monitoring Officer is unable to act on a matter in relation to Member conduct, the matter shall be discharged by the person appointed by the Monitoring Officer for this purpose under section 82A of the Local Government Act 2000.
- 3.7 Where any other officer is unable to act on a matter, that officer's line manager or the Chief Executive may arrange for another officer to discharge the matter.

#### **4. Context for the Exercise of Functions**

- 4.1 Except for matters reserved to the Assembly, to the Cabinet or to a Committee for decision, all other matters are delegated to the appropriate Chief Officer subject to the General Conditions and Limitations below and the Contract and Financial Rules. Each Chief Officer, in making decisions under this scheme, is required to do so within the internal scheme of management for their own directorate / service area. This will include appropriate monitoring arrangements and dissemination of information both internally and externally to the Council.

#### **General Conditions and Limitations**

- 4.2 In taking any decision, each officer must ensure that they have acted in a considered, well informed and defensible manner which is in the best interests of the Council and its residents. The more significant the decision, the greater the obligation to demonstrate that appropriate consideration has been given to the way the decision was made.
- 4.3 As a general rule all decisions will need to be made with a full understanding of Council policy relating to the decision, an awareness of relevant legal obligations including equality requirements, and a clear assessment of the impact of the decision on those affected. Decisions will also need to be consistent with the Council's Budget strategy and will need to be effectively risk assessed.
- 4.4 The obligation to ensure that these issues are properly understood rests with decision makers. Where doubt exists advice must be taken from those officers

- who are professionally qualified to give advice, such as the Council's Monitoring Officer and Chief Financial Officer. Officers must not commit the Council to a course of action which will entail financial obligations beyond those approved by the Council.
- 4.5 Where the decision is politically sensitive or likely to affect significant numbers of residents, decision makers are under a general obligation to consult with those from whom the decision is delegated and Members where appropriate. Where realistic choices exist and where good practice would suggest it to be appropriate, public consultation should be undertaken after consulting with appropriate Members.
- 4.6 No officer, other than the Director of Law and Governance, shall authorise or institute any legal proceedings or process or instruct legal agents or Counsel without the prior written consent of the Director of Law and Governance.
- 4.7 The powers delegated to officers shall not include the power to take a Key Decision, except in the following cases:
- (a) in relation to contracts with a value between £200,000 - £500,000 in accordance with the Council's Contract Rules;
  - (b) where the Cabinet or HWBB has specifically delegated the responsibility to an officer;
  - (c) where the Chief Executive considers that the matter is so urgent that it is appropriate to take a Key Decision, in line with the Urgent Action provisions in Part 2, Chapter 16 of this Constitution or other emergency provisions within the Constitution.
- 4.8 This Scheme of Delegation is set out, as far as possible, in terms of broad areas of responsibility rather than in terms of specific statutory powers. The Chief Executive shall be responsible for co-ordinating the discharge of the Council's functions between the various officers.
- 4.9 The Chief Executive may allocate or re-allocate responsibility for functions between officers as necessary for the effective discharge of those functions or to cover absence of particular officers.
- 4.10 Where an officer is going to be absent for a period of time, the appropriate line manager may re-allocate responsibility for that officer's functions as necessary to ensure the effective discharge of those functions during the officer's absence. Where the Chief Executive is going to be absent for a period of time then responsibility for the Chief Executive's functions, as necessary, shall be allocated to the designated Deputy Chief Executive, unless otherwise allocated by the Chief Executive. Where the designated Deputy Chief Executive is also absent the Chief Executive functions shall be discharged by the Directors collectively, or by such officer as they shall determine for this purpose.
- 4.11 Where a function is delegated to a Director, it shall also be exercisable by the Chief Executive and relevant Strategic Leadership Director. Where a function is delegated to a Strategic Leadership Director or Director it shall also be exercisable by the Chief Executive, except the functions of Monitoring Officer

and Chief Financial Officer. Where a function is stated to be specifically delegated to a particular officer, that function shall not be exercised by any other officer except in accordance with this Scheme.

### **Areas of Responsibility**

- 4.12 The areas of responsibility of Chief Officers and other specified officers are set out in sections 5 to 11 below and, where appropriate, shall include the areas of responsibility of each officer within his/her service area.
- 4.13 These areas of responsibility include some statutory and other functions that are directly delivered by Council-owned companies and / or other third-party providers. In such circumstances, the relevant Chief Officer's responsibilities shall extend to holding the service provider(s) to account via any and all appropriate means, including via internal governance arrangements and /or other "dotted line" arrangements as designated by the Chief Executive.

## **5. All Chief Officers**

- 5.1 All Chief Officers are authorised to exercise the following powers and duties of the Council in respect of services under their control with the exception of those matters reserved to Member-level meetings or other specific provisions within this Constitution:
- (a) take all lawful action consistent with overall Council policy to deliver agreed strategy plans and policy within their area of responsibility and within approved Budgets, service plans, contract and financial procedural Rules, the general obligation to act in the best interests of residents and the Council and to achieve value for money;
  - (b) incur expenditure on the Council's behalf within the sums approved by the Assembly and in line with the Financial Regulations and Rules;
  - (c) procure goods and services consistent with the Council's Contract Rules;
  - (d) deal with the invitation and acceptance of tenders within the limits set out in the Contracts Rules;
  - (e) submission of bids for funding in consultation with the relevant Cabinet Member where this does not imply an ongoing commitment to the Council when the funding ends, requires match funding that cannot be met within Directorate Budgets or could, by its scale or complexity expose the Council to major corporate risks which cannot be contained within Directorate Budgets;
  - (f) approve the following, within any parameters prescribed in the Council's Contract, Financial or other Rules or policies:
    - (i) write-off of irrecoverable debts
    - (ii) virements between budgets
    - (iii) compensation claims from residents, businesses and contractors

- (iv) financial settlements in Court actions, in consultation with the Council's authorised legal representative and the Chief Executive, when considered to be in the best interests of the Council to do so
- (v) the award of settlements arising from Ombudsmen recommendations
- (vi) disposal of or writing-off of assets
- (g) service or placing of any necessary statutory or other notices;
- (h) after consultation with the Director of Law and Governance, authorising the institution, defence or appearance in criminal or civil proceedings in relation to any legislation which they are responsible for monitoring, enforcing or otherwise implementing on behalf of the Council;
- (i) deal with all staffing and management issues and arrangements (except those reserved to the Assembly) in line with the Council's strategic management arrangements and staffing policies, on the advice of the Council's lead officer for Human Resources issues (the Director of Law and Governance);
- (j) Issuing licences;
- (k) Enforcing byelaws.

## **6. The Chief Executive (Head of Paid Service)**

- 6.1 With the exception of those matters reserved to Member-level meetings or other specific provisions within this Constitution, the Chief Executive shall:
- (a) exercise overall corporate, commercial and operational management responsibility, including performance monitoring and assessment and the efficiency programme of the Council;
  - (b) be the Council's principal adviser on all matters of policy;
  - (c) in exceptional circumstances, such as a civil emergency, during a void in political leadership or to maintain the efficient and effective governance of the Council, take any decision on behalf of the Council (after consultation with the Leader where feasible);
  - (d) exercise overall responsibility for promoting the community leadership role of the Council with Government Departments and other agencies, and other national, regional and local authorities;
  - (e) exercise overall responsibility for all employment matters for all staff (except those reserved to member-level meetings) including disciplinary, grievances, job evaluation, selection for redundancy where there is no appeal against dismissal, appeals in respect of gradings, appeals in respect of harassment and bullying, refusal of retaining employees beyond retirement age, injury allowances, discretionary early retirements, efficiency retirements, discretionary death grants (in cases where employees are not married), early payment of preserved benefits, and all

matters relating to restructuring/ reorganisation except those reserved to the JNC Salaries and Conditions Panel.

- (f) determine the settlement of employment matters in the best legal and financial interests of the Authority, having taken appropriate advice from the Chief Financial Officer, the Director of Law and Governance and the lead officer for Human Resources;
- (g) nominate Chief Officers, as appropriate, to hear appeals against first and second written warnings on the grounds of misconduct, sickness absence and capability, and grievance appeals; and first stage appeals against final written warnings.
- (h) be responsible for securing implementation of the Council's decisions within the agreed Policy Framework to ensure the overall effectiveness of the Council's services;
- (i) Investigate disciplinary matters, with the involvement of an independent person, against the Monitoring Officer and Chief Financial Officer;
- (j) be responsible for determining Civil Contingency services, with operational responsibility for the provision of these services being delegated to the Director of Law and Governance as deputy to the Chief Executive in relation to this matter;
- (k) appoint a Proper Officer for the purpose of any statutory function which is not covered by this Scheme;
- (l) be responsible for setting the strategic management arrangements for the Council and for the allocation of roles to Directors other than those which are statutorily prescribed.

## **7. Director of People and Resilience**

7.1 With the exception of those matters reserved to Member-level meetings or other specific provisions within this Constitution, the Director of People and Resilience shall be responsible for all matters within the remit of the following areas:

- (a) Adult Social Care, including learning disabilities, care assessment and planning and intensive support;
- (b) Strategic Commissioning and Partnerships, including integration commissioning and adult safeguarding;
- (c) Public Health, including the following (some of which are statutory responsibilities of the Director of Public Health):
  - (i) Developing and maintaining the Joint Strategic Needs Assessment for the Council.
  - (ii) Supporting and advising the Health and Wellbeing Board.
  - (iii) Developing and maintaining a Public Health Plan.

- (iv) Meeting the Council's obligations for liaison with and support to the Health Protection Agency.
  - (v) Providing public health leadership, advice and information to the public as required by the Health Act 2006.
  - (vi) Preparing and publishing an annual report on public health in Barking and Dagenham.
  - (vii) Discharging the responsibility for co-operation and joint working in relation to public health within Barking & Dagenham on behalf of the Council.
  - (viii) Discharging the responsibilities for social care research and information in relation to public health and well-being.
  - (ix) Overseeing the responsibilities of the Council for liaison with voluntary sector social care and health organisations.
  - (x) Authorising Patient Group Directions in the exercise of the Council's new public health functions under the National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013.
- (d) Children's Social Care and Complex Needs, including children in care placements, children with disabilities and educational psychology.
- (e) Education, Youth and Childcare, including school estate and admissions, the Adult College, early years, integrated youth services and engagement, school improvement and the appointment of parent governor representatives to the Children's Services Select Committee, in accordance with The Parent Governor Representatives (England) Regulations 2001.
- (f) Children's Safeguarding, Early Intervention and Commissioning, including quality, safeguarding and reviews, traded services (with schools) and troubled families.
- 7.2 The Director of People and Resilience is the statutory Director of Adult Social Services and Director of Children's Services.

## **8. Chief Operating Officer**

- 8.1 With the exception of those matters reserved to Member-level meetings or other specific provisions within this Constitution, the Chief Operating Officer shall be responsible for all matters within the remit of the following areas:
- (a) Environmental services, waste management and recycling, grounds maintenance and road safety
  - (b) Highways, fleet and passenger transport and street lighting;

- (c) Housing and Neighbourhood functions, including allocations, landlord and tenancy services management, caretaking, housing repairs and maintenance, travellers, tenant participation and sheltered housing;
- (d) Joint venture and service delivery arrangements with Elevate East London;
- (e) Client responsibilities for Information Technology (IT) and contracts;
- (f) Corporate and strategic finance, treasury management, investments and acquisitions, the capital programme, Council Tax, revenues and benefits and debt recovery;
- (g) Audit and anti-fraud, risk management and insurance, assets and commercial services;
- (h) The Council's Pension Fund.

8.2 The Chief Operating Officer shall also have authority to:

- (a) determine applications for mandatory and discretionary non-domestic rate relief and discretionary housing benefit in accordance with the approved scheme;
- (b) determine appeals in relation to applications for Council Tax discretionary relief in accordance with the approved scheme;
- (c) sign-off all statutory financial returns, except those reserved to the Assembly or Cabinet;
- (d) constitute an Investment Panel to advise on the implementation of the Council's Investment and Acquisition Strategy by appraising individual investment decisions and development schemes. The Chief Operating Officer shall consider all recommendations from the Panel, except those which are the Cabinet's responsibility;
- (e) negotiate terms and agree investment proposals and land and property acquisitions for projects within the Investment and Acquisition Strategy and the Be First Business Plan, in consultation with the Director of Law and Governance and the relevant Cabinet Members. The Chief Operating Officer shall consider a recommendation on individual projects from the Investment Panel;
- (f) exercise delegated authority, advised by the Investment Panel, to:
  - (1) agree the appropriate source(s) of funding for each individual approved development proposal;
  - (2) approve the draw-down of development funding from the development facility subject to:
    - (i) a positive recommendation to proceed with each individual development proposal by the Investment Panel; and



- (ii) that the funding for the facility, any drawn downs and borrowing costs are provided for in the Council's Medium Term Financial Strategy and the Chief Operating Officer is satisfied that the funding is in line with statutory guidance on local authority investments and is state aid compliant.
- (3) agree, in consultation with the Director of Law and Governance:
  - (i) the terms and form of such legal agreements (as are necessary) to give effect to the development facility and to enter into such agreements on behalf of the Council;
  - (ii) the terms and form of legal agreements to give effect to the draw-downs as referred to above, including instruments providing security to the Council, and to enter into such agreements or security documents on behalf of the Council.
- (4) approve the allocation from additional funding approved by the Cabinet for Be First, subject to the Chief Operating Officer being satisfied that it is financially prudent to do so;
- (5) approve, in consultation with the Director of Law and Governance, the entering into (by Be First or the Council) of any agreement or commitments required to enable the delivery of the Council's capital programme as commissioned subject to:
  - (i) compliance with relevant procurement and state aid law;
  - (ii) being satisfied as to the appropriate terms and financial implications;
  - (iii) being satisfied that the terms of such agreements or commitments would not cause the Council to be in breach of its Constitution.
- (6) approve, in consultation with the Director of Law and Governance, the entering into (by Be First or the Council) of any agreement or commitments required to enable the delivery of any approved schemes within the Council's Investment and Acquisition programme subject to:
  - (i) the endorsement of the Council's Investment Panel;
  - (ii) compliance with relevant procurement and state aid law;
  - (iii) being satisfied as to the appropriate terms and financial implications;
  - (iv) being satisfied that the terms of such agreements or commitments would not cause the Council to be in breach of its Constitution.

8.3 The Chief Operating Officer is the designated Deputy Chief Executive.

## **9. Director of Inclusive Growth**

9.1 With the exception of those matters reserved to Member-level meetings or other specific provisions within this Constitution, the Director of Inclusive Growth shall be responsible for all matters within the remit of the following areas:

- (a) Regeneration, including the Estate Renewal programme;
- (b) Housing Strategy, including housing advice;
- (c) Capital Delivery;
- (d) Employment and Skills;
- (e) Planning and Development Management, including matters relating to the naming of building and roads that are not otherwise reserved to the Cabinet.

**(Note:** The Director of Inclusive Growth is responsible for the Council’s duties as the Local Planning Authority. The post holder will liaise with Be First on its delivery of the core planning functions. The Council retains responsibility for the determination of planning applications and Compulsory Purchase Orders).

## **10. Director of Law and Governance**

10.1 With the exception of those matters reserved to Member-level meetings or other specific provisions within this Constitution, the Director of Law and Governance shall be responsible for all matters within the remit of the following areas:

- (a) Legal and Democratic Services, incorporating electoral services, member development and members’ support;
- (b) Human Resources and Organisational Development, including learning and development, occupational health, safety and wellbeing, employment policies and procedures and equalities and diversity in employment.
- (c) Community Safety;
- (d) Enforcement Services, including street trading;
- (e) Regulatory Services, including housing and licensing;
- (f) Civil Protection;
- (g) Parking Services;
- (h) Facilities Management.

10.2 The Director of Law and Governance shall also have authority to:

- (a) take any action to implement any decision taken by or on behalf of the Council, including the signature or service of statutory and other notices and any document;

- (b) institute, defend, settle or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Authority or in any case where he/she considers that such action is necessary to protect the Authority's interests;
- (c) instruct counsel, solicitors or other experts for legal proceedings, public inquiries, or other matters involving the Authority;
- (d) enter objections to any proposal affecting the Authority, the Authority's area or the inhabitants of the Authority's area.

## **11. Director of Policy and Participation**

11.1 With the exception of those matters reserved to Member-level meetings or other specific provisions within this Constitution, the Director of Policy and Participation shall be responsible for all matters within the remit of the following areas:

- (a) Corporate Policy and Strategic Planning;
- (b) Council communications and reputation management;
- (c) Community Development and Engagement;
- (d) Community Cohesion and Equalities;
- (e) Culture and Recreation, including heritage, leisure, libraries and sport.

## **12. Detailed Scheme of Management**

12.1 Each Chief Officer, in making decisions under the above scheme, is required to do so within the internal scheme of management for their own directorate / service area.

## **13. Recording, Implementing and Accounting for Decisions**

13.1 The Openness of Local Government Bodies Regulations 2014 require a written record to be made of any decision that has been delegated to an officer under a specific express authorisation, or under a general authorisation where the effect of the decision is to:

- (a) grant a permission or licence;
- (b) affect the rights of an individual; or
- (c) award a contract or incur expenditure which, in either case, materially affects the Council's financial position.

13.2 The written record referred to in Rule 13.1 above must be produced as soon as reasonably practicable after the decision has been made and must contain the following information:

- (a) the date the decision was taken;
- (b) a record of the decision taken, along with the reasons for the decision;

- (c) details of alternative options, if any, considered and rejected; and
  - (d) where the decision has been delegated under a specific express authorisation, the names of any Member of the Council who has declared a conflict of interest in relation to the decision.
- 13.3 The written record of the decision, together with any background papers, must be made available for inspection by members of the public as soon as reasonably practicable after the decision has been made:
  - (a) at all reasonable hours at the Council's Offices;
  - (b) on the Council's website,
  - (c) by such other means that the Council considers appropriate.
- 13.4 The written record of the decision must be retained and made available for public inspection for at least six years. Any background papers referred to by the decision-maker should be retained and made available for public inspection for at least four years. The relevant retention period will begin with the date on which the decision, to which the written record and any background papers relates, was made.
- 13.5 Nothing in the above Rules is to be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence, or, information that, in the opinion of the Monitoring Officer can be defined as exempt, as set out in Part 2, Chapter 17 of the Constitution.
- 13.6 Each Officer is responsible for ensuring that any decision which they take is properly recorded in line with the provisions of Rules 13.1 to 13.5 above, and that the record of that decision is available to other Officers, to Members and to the public as required by statute and this Constitution, particularly if the decision relates to a change in policy or practice, or a financial commitment.
- 13.7 The Openness of Local Government Bodies Regulations 2014 state that a person who has custody of a document which is required to be made available for inspection by members of the public will commit an offence if, without reasonable excuse, that person:
  - (a) intentionally obstructs any person exercising a right conferred by the Regulations to inspect written records and background papers; or
  - (b) refuses any request made under the Regulations to provide written records or background papers.
- 13.8 Every Officer is responsible for ensuring that any decision which he/she takes is implemented in accordance with that decision.
- 13.9 Every Officer is accountable for each decision which he/she takes and may be called to provide an explanation of his/her reasons for the decision and account for its implementation to other Officers, Members and statutory regulators.