

SECTION 8 – PROTOCOL FOR EXECUTIVE DECISION-MAKING BY MEMBERS UNDER EXECUTIVE ARRANGEMENTS

1. Introduction

2. With the law allowing individual Members to make decisions which bind the Council, it is important that procedures be put in place to avoid:-

- Contractual commitments being entered into without the benefit of all relevant advice.
- Disputes as to whether or not the Council has entered into any legally binding commitment by a Member acting under actual, or perceived, authorisation from the Executive.
- Claims for compensation for misrepresentation arising from (alleged) comments, discussions and correspondence in the course of negotiations.

3. The legal framework for decision-making under Executive arrangements is complex but it includes the following:-

- Except in cases of urgency, the most significant decisions, known as “Key Decisions”, can only be made if they are included in a “Forward Plan” which will be published by the Council each month and will set out those Key Decisions to be made during the next four months.
- Where an individual Executive Member, or Officer, receives a report which they intend to take into account when taking a Key Decision, the decision cannot be made until the report has been available for public inspection for five clear days and a copy sent to the Chair of the Overview and Scrutiny Commission.
- Whenever Executive Members make a decision and an Officer takes a key decision, a record must be made of
 - the decision
 - the reasons for the decision
 - the details of any options considered but rejected
 - any conflicts of interests declared by Members

The record must be made available for public inspection within two working days of the decision being made.

4. Purpose

This Protocol has been adopted by the Council to help in the achievement of the following aims, namely that:-

- The financial and propriety interests of the Council are protected.

- Decisions are based upon complete and sound information and advice from appropriate professional staff.
- Decisions are made in accordance with the Council's agreed processes and standards.

5. **Scope**

The Protocol does not purport to be a complete guide as to how decisions are made under Executive arrangements. Members and Officers will also need to be aware of, and guided by, those provisions which are set out in:-

- The Members' Code of Conduct
- The Code of Conduct for Officers
- The Member and Officer Protocol

6. **The Executive Work Programme and Forward Plan**

Although the law only requires that Key Decisions be included in the Forward Plan, the Director of Resources will use best endeavours to maintain an Executive Work Programme containing information as to **all** decisions to be made by Executive Members (whether individually or collectively) and Key Decisions to be made by Officers. Although a paper copy of the Forward Plan is published on the first day of each month to comply with statutory requirements, this and a list of non-key executive decisions to be made will be updated on an ongoing basis and can be viewed on the Council's intranet and external web site. As soon as the need for an Executive decision arises, the relevant Director shall input the details to the system and submit these to the Head of Democratic and Registration Services who will check that all the required details have been provided and, if so, publish the new item on the intranet and web site. When submitting a new item, Directors must include details of:

- (i) Whether it is a key or non-key decision
- (ii) The title of the item
- (iii) A short description of the purpose of the decision
- (iv) Any relevant financial implications known at the time of submission, or if they are to be determined, a statement to that effect
- (v) The name of the decision-maker (Executive, Executive Committee, Individual (named) Executive Member or named Officer)
- (vi) A list of the groups or individuals to be consulted prior to the decision
- (vii) The method of consultation, presentation, letter, Public Notice, etc
- (viii) How anyone wishing to make representations should do so by indicating to whom they should be sent and where appropriate, the address
- (ix) The documents to be considered by the decision-maker

- (x) The closing date for representations
- (xi) The date the decision will be made

The Corporate Management Team will review the work programme on a monthly basis to ensure that due corporate consideration is given to any items being determined by individuals, as well as reviewing the draft agenda for each meeting of the Executive itself.

With the exception of urgent matters, Executive decisions shall not be made by Executive Members (collectively or individually) or a Key Decision made by an Officer, unless it has been included on the Forward Plan. Where grounds for urgency exist, the General Exception and Special Urgency Procedures, as set out in Section 15 and 16 of the Access to Information Procedure Rules, shall also apply to non-key decisions.

7. Negotiations and Communications

It will only rarely be appropriate for Executive Members to participate in the conduct of negotiations on behalf of the Council. Members should only participate where there are clear reasons to conclude that their involvement in the negotiation, rather than in setting the framework and making a final decision, will add real value to the process. When it is appropriate for Members to become involved in any process of negotiation, the appropriate Officers (i.e. Officers designated by the relevant Director or his or her Deputy) must always be present, except by prior agreement with the relevant Director. Members should not enter into any prior correspondence or communications concerning an Executive decision which is to be made. Members should not give any indication that they have made an Executive decision in advance of the meeting with the relevant Director or the meeting of the Executive Committee or the Executive (as the case may be).

8. Confidentiality

Commercial transactions, by their nature, involve the commercial activities of a party, or parties, other than the Council and they might involve the disclosure to the Council of matters of commercial confidentiality, such as the Business Plans, performance standards or pricing structures of commercial organisations, disclosure of which, to a competitor, or to the market, could be very detrimental. This is even more so as Best Value encourages the development of Partnership and Open Book Transactions. The maintenance of confidentiality is essential both to maintain the integrity of the competitive procurement process and to ensure that those who have commercial dealings with the Council know that they can rely upon the Council to protect their commercial secrets, and are, therefore, able to be open with the Council.

- 9. It is important that Members should have access to the information necessary to enable them to understand the business of the Council and to ensure that it is being conducted in accordance with the Policies and Budgets of the Council and to the highest standards of propriety. Directors will ensure that all Members have the information necessary to enable them to perform their duties, but Members should only request access to confidential information where there are clear reasons why they need access to that information for the performance of their obligations, and should ensure that they do not disclose confidential information to unauthorised persons or organisations.

10. **Decision-making by individual Executive Members**

The process for a decision by individual Executive Members shall be as follows:-

- (i) A written report shall be prepared by the relevant Director. The report may be prepared by the Director on his or her own initiative or at the request of an Executive Member. A template for a report is shown at Annexe A to this Protocol.
- (ii) The Director's report shall set out the following:-
 - The Executive Portfolio within which the issues falls.
 - The issue to be decided.
 - Supporting Information – a summary of the facts relating to the matter under consideration. This Section of the report should also indicate whether or not the recommended decision is in accordance with the relevant policy framework of the Council.
 - The comments of the Borough Solicitor and the Director of Resources and shall include an Impact Assessment.
 - The Director's recommendations (if any) and the reasons for that recommendation.
 - Any consultations undertaken, the method of consultation, and a summary of any representations received.
 - Whether or not any Member consulted in connection with the matter, or participating in the making of the decision, has declared a conflict of interest.
 - If the report contains confidential or exempt information, that must be stated.
 - A list of background papers.
- (iii) The Director may determine that the report should not be published until the Corporate Management Team has had an opportunity of considering it.
- (iv) The Executive Member shall make his or her decision at a meeting with the Director. A Schedule of Meetings for Executive Decisions will be agreed by the Director and the relevant Executive Member. Such meetings may, for example, be scheduled to commence immediately after meetings of Departmental Management Teams.
- (v) The Director shall forward a copy of the completed report to the Democratic and Registration Services Section not less than five clear days before the meeting with the Executive Member. The Director must have previously forwarded a copy of the draft report to the Borough Solicitor and the Director of Resources, not less than three clear working days before it is sent to the Democratic and Registration Services Section. The Democratic and Registration Services Section will be responsible for ensuring that the report

is available for public inspection for at least five clear working days prior to the meeting with the Executive Member and also for forwarding a copy of the report to the Chair of the Overview and Scrutiny Commission.

- (vi) After each Executive decision has been made, the Executive Member shall, with the assistance of the relevant Director and Democratic and Registration Services, input that decision to the Modern.Gov System. The decision record must provide details of:
 - (i) Whether it was a key or non-key decision
 - (ii) The title of the item
 - (iii) A short description of the purpose of the decision
 - (iv) The name of the decision-maker (Executive, Executive Committee, Individual (named) Executive Member or named Officer)
 - (v) The decision
 - (vi) The reasons for the decision
 - (vii) The alternative options considered, if any
 - (viii) A list of any groups or other consultees contacted prior to making the decision
 - (ix) A list of the documents considered by the decision-maker, including the report of the relevant Director
 - (x) Any declarations of personal interest
 - (xi) The date on which the decision was made
 - (xii) The date on which the decision will be implemented

Within two working days of the decision being made, the Democratic and Registration Services Section shall make available for public inspection, the record of the decision.

11. Decision-making by Executive Committees and the Executive

The process for decision-making by Executive Committees and by the Executive shall be as follows:-

- (i) A written report shall be prepared by the relevant Director. The report may be prepared by the Director on his or her own initiative or at the request of an Executive Member, an Executive Committee or the whole Executive. A template for decision making reports is shown at Annexe A.
- (ii) Paragraph 10(ii) shall apply to the Committee report.
- (iii) A draft of the report will be considered by the Corporate Management Team.

- (iv) Following the consideration of a report by the Corporate Management Team, the draft report (amended as necessary, or appropriate) shall be considered at a briefing meeting of the Executive, the purpose of which, will **solely** be for Officers to brief the Executive on matters connected with the making of the executive decisions for determination.
- (v) The Director shall be responsible for ensuring that a draft of the report is sent to the Borough Solicitor and Director of Resources not less than five working days before it is considered by the Corporate Management Team.
- (vi) Following the briefing meeting, the Director must forward a copy of the completed report to the Democratic and Registration Services Section, not less than seven clear days before the meeting of the Executive, or the Executive Committee. The Democratic and Registration Services Section will be responsible for ensuring that the report is available for public inspection for at least five clear working days before the Executive meeting.
- (vii) After each individual Executive decision has been made, a report on the Executive decision shall be made through the Executive Work Programme and Forward Plan System. Although the responsibility for each record being made is, legally, the responsibility of the Director of Resources (or representative), all Members present at the meeting shall afford full co-operation on the completion of such form.

TO: NAME OF COMMITTEE
DATE OF MEETING

TITLE OF REPORT
Director of

1 PURPOSE OF REPORT

1.1

2 RECOMMENDATION(S)

2.1

3 REASONS FOR RECOMMENDATION(S)

3.1

4 ALTERNATIVE OPTIONS CONSIDERED

4.1

5 SUPPORTING INFORMATION

5.1

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

6.1

Director of Resources

6.2

Equalities Impact Assessment

6.3

Strategic Risk Management Issues

6.4

Other Officers

6.5

7 CONSULTATION

Principal Groups Consulted

7.1

Method of Consultation

7.2

Representations Received

7.3

Background Papers

Contact for further information

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