

**Report to Audit and Governance  
Committee**



**Report reference:** *AGC-005-2013/14*  
**Date of meeting:** *27 June 2013*

**Epping Forest  
District Council**

**Portfolio:** Leader of the Council  
**Subject:** Officer Delegation – Process Review  
**Responsible Officer:** Ian Willett (01992 564243)  
**Democratic Services:** Gary Woodhall (01992 564470)

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**Recommendations:**

- (1) To note that the Council has asked this Committee to conduct a process review on the approval of delegation to Officers;**
- (2) To consider any further information required in order to conclude the review; and**
- (3) To make proposals to the Council for changes to the present process if considered appropriate relating to:**
  - (a) the nature of member involvement in delegation reviews; and**
  - (b) member arrangements for conducting reviews.**

**Executive Summary:**

This report arises from a request by the Council at its meeting on 23 April 2013 for this Committee to conduct a process review concerning the approval of Officer delegation.

The report provides details of the legal and constitutional background to Officer delegation, how it is defined, how arrangements for executive and non-executive functions differ, public access requirements and a summary of the current process for reviewing delegation each year.

The report also discusses possible options for revising the arrangements:

- (a) if more Member involvement in the process is considered necessary; and**
- (b) if reviews are to cover all existing delegations in preference to the present exception-based approach;**

The report invites this Committee to report back to the Council with its views on the matter.

**Reasons for Proposed Decision:**

This review was requested by the Council at its meeting on 23 April 2013.

## **Other Options for Action:**

None.

## **Report:**

### Introduction

1. At the Council meeting on 23 April 2013, the latest review of Officer delegation was approved following the submission of a report by the Constitution and Member Services Standing Scrutiny Panel. In adopting the review, the Council approved an amendment as follows:

*“That this Council requests the Assistant to the Chief Executive to provide a report to the next meeting of the Audit and Governance Committee proposing a process by which Members will review Officer delegation.”*

2. This report sets out a summary of the legal and constitutional background to Officer delegation, outlines the current arrangements for carrying out an annual review of delegation and invites the Committee to consider possible changes for recommendation to the Council.

### Officer Delegation - Definition

3. The delegation of functions to an Officer may be either to an individual Officer by name or, more usually, to a post holder. The effect of delegation to an Officer is that the act of the Officer becomes the act of the Council. Delegation in this sense means conferring authority on an Officer to make decisions within the parameters of the delegation arrangements.

4. There is a distinction to be made between “real” delegation which implies the exercise of discretion and management tasks which Officers can perform without the need for a formal delegation. The latter extends to matters such as the management of staff and the organisation of service activities within a Directorate to carry out the Council’s policies. In summary, the normal understanding about Officer delegation is that the elected members make the policy and Officers carry this out.

### Legal Background

5. Following the Local Government Act 2000, Council decision-making is divided into two areas: executive and non-executive. The latter is sometimes known as Council decision making or regulatory decision making.

### Executive Decision Making

6. Executive decisions may be made by the Cabinet, a Cabinet Committee, an individual Portfolio Holder, a Joint Committee (of different Local Authorities), by an Area Committee (subject to statutory requirements for such committees) or by an Officer.

### Council Decision-Making

7. Council decisions may be made by the Council itself, by a Committee, by a Sub-Committee acting under delegation granted by a Committee, by a Joint Committee, by another Local Authority, by an Area Committee or by an Officer. The principal difference between executive and Council decision making is that the law does not allow an individual Councillor to make Council decisions whereas for executive matters, individual Cabinet

members are able to do so.

### Constitution

8. The Council's Constitution must show the Officer delegation arrangements both for Council and executive functions and these must be made available to the public. These are shown in two separate schedules in the published material. The schedules set out delegation on a subject by subject basis. The only exception is the schedule relating to the Planning and Economic Development Directorate which is shown in a different format, namely generic headings linked to the main activities of the Directorate.

9. Hard copies of the schedule of delegation are available to the public if requested but in general terms these are supplied via the Council's website.

### Review Process

10. Currently, Officer delegations are reviewed once each year. This review involves the Constitution and Member Services Standing Scrutiny Panel and commences after Christmas with a view to having any revisions to the Officer delegation in place by the start of the new Council year. Directorates are invited to come up with proposals for amending existing delegated authorities or introduce new ones. Officers do not approve such delegation, this is a matter for the Council or the Leader.

11. Not all delegated authorities are, however, dealt with in this way. From time to time, the Council, the Cabinet, the Leader or Portfolio Holders can delegate authority to Officers on certain matters. These decisions result in amendments to the Constitution and the schedule of delegation is updated during the year.

12. The annual review of delegated authorities is undertaken by an Officer group chaired by the Assistant to the Chief Executive and includes the Chief Internal Auditor, the Director of Finance and ICT, the Assistant Director (Legal Services) and the Assistant Director Housing (Property). The Working Party reviews the proposals submitted by Directorates. The number of such proposals each year is generally quite small.

13. Proposals are submitted to the Constitution Panel with a rationale for seeking either changes to existing delegation or new delegated authorities. Some proposals do not proceed beyond the Panel meeting. The majority are supported however and are then reported via the Overview and Scrutiny Committee to the Council or the Leader of the Council for approval. Delegation in respect of planning functions usually attracts the most debate in the Constitution Panel.

14. This process has been in operation for approximately ten years. Initially members of the Council were asked through the Council Bulletin to comment on any Officer delegation proposals which they wished to review. However this practice has ceased in recent years principally because of a very limited response from Councillors. The approach now taken is one of exception reporting.

15. The Constitution requires that all delegation of non-executive functions is submitted for approval at the Annual Council meeting. The schedule relating to executive functions is approved by the Leader of Council and is submitted to the Council for information purposes. Thus, the Council will receive an exception report from the Constitution Panel in March/April followed by the submission of full schedules at the Annual Meeting in May.

### Comments on the Current System

16. The Council is unable to alter delegated authorities approved by the Leader of the Council but could ask for any of his decisions to be reviewed.

17. The annual review lacks member input except for exception reports which are brought forward and this appears to be an area of Council work to which the majority of members do not have a great affinity. However, there have not been major changes in delegation to Officers in recent years, mainly due to the advent of the executive, as many matters which might previously have been dealt with by means of Officer delegation are now dealt with by Portfolio Holders.

18. In terms of other options for this review, it would be possible for the Constitution Panel (or some other body) to review all delegations on an annual basis, not just exception reports. This would mean that complete schedules would be scrutinised by members and not filtered by Officers

19. Accepting that there is a wish for a detailed review by members, a possible future programme is set out below:

(a) full review of all delegations by the Constitution Panel on an annual basis (Dec-April) with a report on changes at the April Council meeting;

(b) schedules submitted to the Annual Council meeting (covers the position if there is a change of Leader or of political control of the Council) as required by the Constitution;

(c) individual changes/additions continue to be approved during the year and noted in the final schedules under (a) above; and

(d) Officer Working Party continues to facilitate the review at Officer level.

20. Copies of the sample pages from the schedule of delegation are attached. The full schedules have not been appended in view of their length.

### Member Arrangements

21. Currently, the process is conducted under the auspices of the Overview & Scrutiny Committee which has established the Constitution & Member Services Scrutiny Panel to deal with this and related constitutional matters. Proposals from that panel are then submitted to the Overview & Scrutiny Committee and then to the Council/Leader for approval. This process can be repetitious. In the past, debates at Council or the Overview & Scrutiny Committee meetings on this subject have been the exception rather than the rule. The main debate has generally been at Constitution Panel meetings.

22. Other options for these reviews at member level include:

(a) a new Constitution Committee (pro rata) reporting directly to the Council/Leader on delegation and possibly dealing with all constitutional matters – this would reduce the number of separate reporting levels;

(b) as a consequence of (a) above, the Overview and Scrutiny Committee could then review the terms of reference for the Constitution Panel;

(c) agree that Cabinet delegation be left to the Leader of the Council in accordance with his statutory functions with a report to the Annual Council meeting on his decisions; and

(d) as a consequence of (c) above, the member review process would focus on Council delegation only.

**Resource Implications:**

Any review is conducted from within existing resources.

**Legal and Governance Implications:**

The basis of Officer delegation is the Local Government Acts 1972, 2000, 2007 and 2011. These statutory requirements are reflected in the Council's Constitution.

**Safer, Cleaner, Greener Implications:**

None.

**Consultation Undertaken:**

This report was submitted in draft form to the Corporate Governance Group.

**Background Papers:**

None.

**Impact Assessments:**

None undertaken.