

CABINET
23rd April, 2004

A NEW SCHEME OF DELEGATION

Purpose of Report

1. To present a revised Scheme of Officer Delegation for approval.

Background – Previous Decisions

2. Two years ago, the County Council adopted its new constitution. Whilst some fundamental changes to the decision-making apparatus of the Authority were made, the existing delegation of functions to Officers was left unaltered. The view at the time was that, with everything else that was changing, the delegations to Officers should be retained as a stable feature of the organisation. Once the organisation had evolved in the light of the new constitution, it would be pertinent to review the Scheme of Delegations.
3. Two years on, it is clear that the current delegations are no longer wholly fit for purpose. The Authority has changed a great deal over the last two years and the Scheme of Delegations has not kept up with those changes. Responsibilities have moved between Chief Officers and the rapidly changing nature of legislation means that it is almost impossible to pick up each change within a reasonable timescale. Nor does the current Scheme of Delegations adequately reflect the changing role of the Chief Executive and Chief Officers over the last two years, particularly following the corporate performance assessment. A fundamental change in approach, therefore, is needed.

Main Considerations/Relevant Issues

What is delegation?

4. Delegation is a designated Officer taking action on behalf of the Council in accordance with clearly stated and published rules. The legal basis for delegation is Section 101 of the Local Government Act 1972 as amended. Section 100(G)(2) requires that a list of powers exercisable by an Officer should be maintained and open to public inspection. The Council determines the basis on which a delegated agreement operates and the circumstances in which an Officer's delegated power to make a decision may be exercised.
5. The current scheme operates on the basis of a list of general powers applicable to all Chief Officers, followed by a list of specific powers, usually related to individual statutory provisions. These are the result of accumulated ad hoc delegations over many years. The mixture of general powers and specific delegations can be confusing, and the list of particular powers potentially could be seen to detract from the general powers given to Chief

Officers. The possibility of accidentally omitting a particular delegation is high, and the argument for relying on the general delegation in the face of other specific delegations might prove difficult.

The New Scheme of Delegation

6. The new Scheme of Delegation is attached (Appendix 1) and is designed to be all embracing and simpler to understand. In essence, providing Officers act within budget and policy, they can take any reasonable lawful step to deliver their service objectives. Thus, it moves away from a list of statutory provisions and confers a more generic power.
7. The current scheme is essentially hierarchical, with all powers delegated to one of several Chief Officers, who may then further delegate to other Officers. The new scheme needs to reflect the changing role of the Directors, precipitated in part by the CPA process, but also by the rapidly changing world in which local government has to operate. The Directors, in future, are likely to spend more time dealing with strategic issues affecting the whole organisation and collectively ensuring that the Council maintains the impetus for continuous improvement. This, in turn, will move the emphasis from service delivery to the Assistant Directors, who will become directly responsible for day to day operations and budgets. In practice, this is a reflection of what is now actually happening in the majority of services.
8. As the organisation continues to evolve, further revisions to the scheme will need to be made, but, for the moment, the Council should recognise this change in emphasis by clearly stating that there will be a presumption that all operation and budgetary decisions will rest with Assistant Directors (rather than Directors) in the first instance. This will allow the Directors to develop their role in giving strategic direction to the organisation whilst empowering the Assistant Directors to get on and run the services.
9. As with the present scheme, any further delegations to another Officer will have to be recorded in writing for the purposes of the constitution. Any delegations must be exercised within the parameters laid down and it is particularly important to note the requirement to consult, e.g. with the Cabinet Member or Local Member. In due course, the scheme will be reviewed again, in the light of experience and lessons learned.

Resource Implications

10. None.

Options Considered/Reason for Recommendations

11. The Council needs to update its Scheme of Delegation to reflect the changing environment of the Authority.

Environmental Impact of the Recommendation

12. None.

Recommendation

13. The Cabinet is recommended to approve the new Scheme of Delegation as set out in Appendix 1 and to ask the Standards Committee to recommend to the County Council the amendment to constitution.

JANET RELFE

Deputy Chief Executive

8th April, 2004

Report Author: Janet Relfe, Deputy Chief Executive

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The following unpublished documents have been relied upon in the preparation of this report: None.

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APPENDIX 1

WILTSHIRE COUNTY COUNCIL

SCHEME OF DELEGATION TO OFFICERS

Introduction

1. This scheme of delegation authorises the Chief Executive, Deputy Chief Executive and the Directors to exercise the functions of the Council as set out in this document. It repeals and replaces all previous schemes of delegation.
2. This scheme is without prejudice to the exercise of the Council's functions by the Council, the Cabinet, and the Council's Committees, Sub-committees and Panels.
3. For the purposes of this scheme "the Directors" means the directors whose job title and areas of responsibility are set out in Schedule 1 below and "Assistant Director" means the Assistant Directors reporting to a Director and also the Deputy County Treasurer.

General Delegation to Officers

4. The Chief Executive, Deputy Chief Executive and the Directors are empowered to make decisions on behalf of the Council in accordance with the following general principles:
 - a. if a function, power or responsibility has not been specifically reserved to the Council, a Committee or the Cabinet, the Director within whose remit the matter falls is authorised to act;
 - b. the Council, its Committees and the Cabinet will make decisions on matters of significant policy. The Chief Executive, Deputy Chief Executive and the Directors have express authority to take all necessary actions to implement Council, Committee and Cabinet decisions that commit resources, within agreed budgets in the case of financial resources, as necessary and appropriate;
 - c. The Chief Executive, Deputy Chief Executive and the Directors are empowered to take all operational decisions, within agreed policies, in relation to the services for which they are responsible;

- d. The Chief Executive, Deputy Chief Executive and the Directors are empowered to take all necessary decisions in cases of emergency;
 - e. in relation to all delegated authority conferred on the Directors by this scheme, the Chief Executive may allocate or re-allocate responsibility for exercising particular powers to any officer of the Council in the interests of effective corporate management as he or she thinks fit;
 - f. where there is doubt over the responsibility for the exercise of a delegated power, the Chief Executive, Deputy Chief Executive or their nominee, is authorised to act;
 - g. anything delegated to a Director is also delegated to the Chief Executive and the Deputy Chief Executive;
 - h. These delegations should be interpreted widely to aid the smooth running of the organisation, the effective deployment of resources and the efficient delivery of services.
5. For the purposes of this scheme, emergency shall mean any situation in which the relevant officer believes that there is a risk of damage to property, a threat to the health or well being of an individual or that the interests of the Council may be compromised.
 6. In deciding whether or not to exercise such delegated powers, the Chief Executive, Deputy Chief Executive and the Directors should consider whether to consult the appropriate Cabinet Member(s) or Committee Chairman and have regard to their views. Officers shall always be entitled to refer matters for decision to the appropriate member body where they consider it expedient to do so.
 7. The Chief Executive, Deputy Chief Executive and the Directors may authorise officers in their service areas to exercise, on their behalf, powers delegated under this scheme, and there will be a presumption that all operational and budgetary responsibility for services shall be exercised by the Assistant Directors/Deputy County Treasurer for the appropriate services, unless the Chief Executive directs otherwise.
 8. All delegations conferred under this scheme must be formally recorded in writing by the Chief Executive, Deputy Chief Executive and the Directors as the case may be (including for the avoidance of doubt any delegation under paragraph 4 (e) above). Any decision taken under such authority shall remain their responsibility, and must be taken in their name.
 9. The Chief Executive will make such arrangements as he considers appropriate to maintain a central record of all delegations under this scheme. The record will be available for public inspection.
 10. In exercising these delegated powers the officers concerned shall have broad discretion, subject to complying with all relevant legislation, the Council's Constitution, including its Contract and Financial Procedures and Regulations, and overall Council policy, to use the most efficient and effective means available, including the deployment of staffing and

other resources within their control and the procurement of other resources necessary, whether within or outside the Council.

11. Officers shall act so as to achieve for their service the policies and objectives of their service area always having regard to the overall corporate interests of the Council.
12. Where an officer referred to in paragraph 1 above is absent from the workplace for a period of time that requires others to exercise delegated authority in that officer's absence, another officer should be nominated by the Chief Executive. This nomination should be formally recorded in writing.
13. Notwithstanding anything contained in this scheme of delegation, officers shall not have the power to make decisions upon any matter that has been reserved to a member body except in cases of emergency.
14. Without prejudice to the generality of the foregoing the Chief Executive, Deputy Chief Executive and the Directors shall have the power:-
 - a. to 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. This shall include, but not exhaustively:
 - invitation and acceptance of tenders;
 - submission of bids for funding;
 - write-off of irrecoverable debts;
 - virement (within the budget framework);
 - disposal and acquisition of assets;
 - service and placing of any necessary statutory or other notices (other than those expressly reserved to a Council, Committee or Cabinet);
 - in consultation with the Solicitor to the Council, 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.
 - b. to put in place management arrangements, which define the area of responsibility of all officers under their area of responsibility.
 - c. in the case of any overspend to notify the County Treasurer in the role of Section 151 Officer in accordance with the Financial Procedure Rules and Regulations.
 - d. to determine staffing arrangements within approved budgets, subject to agreement on grading with the Chief Personnel Officer and conformance with Council policies.

- e. To take all action to recruit, appoint, develop, manage and reward employees within approved Council policies and procedures (including operation of policies for voluntary severance, early retirement, redundancy and redeployment) and relevant conditions of service.

[For the avoidance of doubt the appointment of the Chief Executive, Deputy Chief Executive, Directors and Deputy Chief Officers shall be made by a duly appointed member body in accordance with the Officer Employment Procedure Rules.]

Taking Decisions

15. In taking any decision, the officer concerned must be satisfied that the following issues have been properly considered and completed where appropriate. All of these issues should be considered at the earliest possible stage.

- a. a key decision should be taken in accordance with the relevant requirements;
- b. the views of the relevant Cabinet Members(s) *or Committee Chairman* following the application of the consultation criteria set out in paragraph (c) below;
- c. the implication of any Council policy, initiative, strategy or procedure. Officers need to be aware of any potential impact of a delegated decision in other areas. In such cases, consultation with officers and relevant Cabinet Members(s) or Committee Chairman from any affected portfolio should take place;
- d. consultation in accordance with the Council's Consultation Strategy and the views emanating from that process;
- e. the range of available options;
- f. the staffing, financial and legal implications.
- g. the assessment of any associated risks in accordance with the Council's Risk Management Strategy.
- h. the involvement of appropriate statutory officers and/or other Directors;
- i. the views of local members where the issue relates to a specific area;
- j. the relevance of any regional or national guidance from other bodies.
- k. the Council's Constitution, including the Forward Plan, its Contract and Financial Procedures and Regulations, all relevant guidance, legislation and Codes of Practice.
- l. the need to secure Best Value.

16. In order to assist with the above arrangements should be made by each Cabinet Member and relevant officer to deal with times of absence e.g. holidays. This could, for example, be through a named alternative.

Scrutiny

17. A report should be presented annually to the appropriate Overview and Scrutiny Committee setting out significant decisions taken by Officers under delegated powers in the previous year.
18. Any member may request that decisions taken by officers under delegated powers are scrutinised by the appropriate Overview and Scrutiny Committee.
19. Any such scrutiny will not make any action taken as a result of the decision invalid. However, the scrutiny body will be able to recommend a different course of action that would then be considered by the appropriate Cabinet Member(s).

Legal and Procedural

20. The Solicitor to the Council is authorised:
- a. to take any action to implement any decision taken by or on behalf of the Council, including the signature and service of statutory and other notices and any document;
 - b. to institute, defend, settle or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Solicitor to the Council considers that such action is necessary to protect the Council's interests.
 - c. to instruct counsel, solicitors and other experts for legal proceedings, public inquiries, and other matters involving the Council.
 - d. to enter objections to any proposal affecting the county, the Council or the inhabitants of the county.
21. For the avoidance of doubt anything which is not covered by this scheme, including the appointment of a proper officer for the purpose of any statutory function, will be determined by the Chief Executive.

General Indemnity

22. The Council has given a general indemnity to any officer acting in the purported discharge of any authority delegated to him for any action, costs, claim or liability incurred by him or her in the form in Schedule 2.

Schedule 1

Chief Officer Areas of Responsibility

Post	Areas of Responsibility
Chief Executive	<p>Overall corporate management and operational responsibility (including overall management responsibility for all officers) for all services.</p> <p>The Chief Executive (Head of Paid Service) is the Proper Officer for all statutory purposes unless otherwise determined by him.</p>
Deputy Chief Executive	<p>Participate in the corporate management of the Council, including prime responsibility for the implementation of the Performance and Improvement Programme.</p> <p>Deputise for Chief Executive in his absence.</p> <p>Direct the Department of Corporate and Library Services to ensure efficient, effective and responsive support to Members, Chief Executive, Directors and partners in achieving corporate and service objectives.</p>
County Treasurer	<p>Participate in the corporate management of the Council.</p> <p>Provide financial and IT services in support of the Council's corporate and service strategies and objectives.</p> <p>Responsible for the proper administration of the Council's financial affairs under section 151 Local Government Act 1972, Section 114 of the Local Government and Finance Act 1988 and Accounts and Audit Regulations and Guidance.</p>

Director of Children and Education	<p>Participate in the corporate management of the Council.</p> <p>Direct the Children and Education Department in the provision of educational services and child care services in support of the Council's corporate goals and ensuring that the Council meets its statutory obligations under the Children Act 1989 and as local education authority.</p>
Director of Environmental Services	<p>Participate in the corporate management of the Council.</p> <p>Direct the Environmental Services Department in the provision of environmental services in support of the Council's corporate goals, including property management; highways; transportation; waste management; economic development and the exercise of regulatory, planning and environmental functions. Ensuring that the Council meets its statutory obligations in these areas.</p>
Director of Adult and Community Services	<p>Participate in the corporate management of the Council.</p> <p>Direct the Adult & Community Services Department in the provision of adult and community services in support of the Council's corporate goals and manage its partnership arrangements with external bodies, particularly the Health Service.</p> <p>Ensuring that the Council meets its statutory obligations under adult social services and other relevant legislation.</p> <p>Act as the Council's statutory Director of Social Services.</p>

Schedule 2

Indemnity to Staff

The County Council will, subject to the exceptions set out below, indemnify its employees and former employees against claims made against them (including costs awarded *and reasonable costs incurred*) and will not itself make claims against them for any loss or damage (other than claims falling within the cover provided to its employees under any policy of insurance taken out by the County Council or any motor vehicle insurance policy taken out by the employee) occasioned by any neglect, act, error or omission committed by them in or about the pursuit of their duties *as they may be from time to time* in the course of their employment with the County Council whilst acting within the scope of their authority which shall include when they are acting for other persons or other bodies with the Council's consent.

Exceptions

The indemnity will not extend to loss or damage directly or indirectly caused by or arising from:-

- (a) Fraud, dishonesty or a criminal offence on the part of the employee;
- (b) Any neglect, error or omission by the employee otherwise than in the course of his duties;
- (c) Liability in respect of losses certified by the District Auditor as caused by wilful misconduct.

The indemnity will not apply if an employee, without the written authority of the County Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of this resolution, or where there is evidence that the employee had acted with reckless disregard for the consequences.

The indemnity is without prejudice to the right of the Council to take or institute disciplinary action against an employee in respect of any neglect, act, error or omission.