

Leicester
City Council

WARDS AFFECTED
All Wards

Cabinet

25th April 2005

SCHEME OF DELEGATION

REPORT OF THE SERVICE DIRECTOR – LEGAL SERVICES

1. PURPOSE OF REPORT

For Cabinet to consider the outcome of a review of its Scheme of Delegation to Officers which has been carried out by all Scrutiny Committees; and

To consider whether and what decisions to delegate to individual Cabinet members and the procedure required.

2. RECOMMENDATIONS

2.1 Cabinet is recommended to:

- i) Note and consider the views expressed by Scrutiny Committees which have been summarised in **Appendix 1**; and
- ii) Require the Town Clerk to introduce a system whereby decisions made by Corporate Directors / Chief Executive in consultation with relevant Cabinet Members are recorded and reported every three months to Cabinet; and
- iii) To decide if any further action is needed.

2.2 Cabinet is also asked to determine:

Whether to delegate to each Cabinet Lead decisions within his or her portfolio which would otherwise need to be made by the Cabinet and, if so, to approve that:

- (i) Each decision be subject to approval by two Cabinet Member; that is, the relevant Cabinet Lead and Leader (or Deputy Leader if the Leader is the relevant Cabinet Lead);
- (b) The report on which each such decision is based be published five clear days in advance as for other decision making reports;
- (c) The other practical arrangements described in paragraph 2.2 be implemented;
- (d) Indemnity and insurance cover be extended as in paragraph 2.5

3. HEADLINE FINANCIAL AND LEGAL IMPLICATIONS

There are no additional financial implications and legal implications are covered in the report.

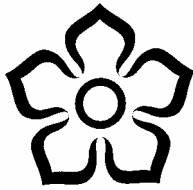
4. REPORT AUTHOR

Peter Nicholls, Service Director –Legal Services, x6302

(Draft dated 13th April, 2005)

DECISION STATUS

| | |
|--------------------------------------|---------------------|
| Key Decision | No |
| Reason | N/A |
| Appeared in Forward Plan | No |
| Executive or Council Decision | Executive (Cabinet) |



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SUPPORTING INFORMATION

1. REPORT

1.1 Review of Cabinet's Scheme of Delegation to Officers

Procedures Working Party asked that all Scrutiny Committees receive a report to enable a review of Cabinet's Scheme of Delegation to Officers.

The Working Party concluded that Cabinet's current form of delegation to officers should be maintained but that all Scrutiny Committees be given the opportunity to review Cabinet's Scheme within the scope of each Scrutiny Committee's terms of reference with a brief to consider whether any action or changes are required.

A report was presented to each of the current Scrutiny Committees:

Resources & Equal Opportunities Scrutiny - 16th September & 11th November
Housing Scrutiny - 14th October
Strategic Planning & Regeneration Scrutiny - 10th November
Education and Lifelong Learning Scrutiny - 9th November
Arts, leisure and Environment Scrutiny - 6th October
Health and Social Care Scrutiny - 8th December

The outcome of this process was then further reported to the Resources and Equal Opportunities Scrutiny Committee for consideration and comment at its meeting on the 17th March.

A summary of the views of Scrutiny Committees is shown in **Appendix 1**.

1.2 Action taken so far in response to the views expressed by Scrutiny Committees:

Resources & Equal Opportunities Scrutiny Committee asked for a report back in six months summarising all such decisions made at Corporate Director level and also asked for and received a report for period 16th September – 2nd November 2004. This was presented to its meeting on the 11th November.

Although the report to Resources & Equal Opportunities Scrutiny Committee on the 11th November focused on decisions made within its remit all Corporate Directors are required to record such decisions made in consultation with members.

Health and Social Care Scrutiny:

Legal Services has provided training on the Constitution in response to requests from individual members and this offer remains open.

Training on the Constitution is being included in all members' induction.

1.3 Further action proposed

Concerns expressed have focused on the number and type of decisions taken at Corporate Director level and the lack of political input into some decision making. Cabinet can change its Scheme of Delegation to Officers and may reserve back to itself certain matters for decision making at Cabinet Member level.

2.1 Options for decision making by individual Cabinet members

Powers and controls are set out in the Constitution:

- (1) The Cabinet decides on the delegation of executive functions; that part of the Scheme of Delegation is determined by the Cabinet and the Leader is responsible for maintaining the formal record (**Cabinet Procedure Rules 1, 2 and 3: page 141**).
- (2) Cabinet Members can further delegate to Officers.
- (3) A Key Decision may only be taken (whether by Cabinet, Cabinet Committee, Cabinet Member or Officer) if:
 - it is in a published Forward Plan (**Access to Information Rule 12**); or
 - it cannot wait and five clear days notice is published and sent to the Scrutiny Triumvirate (**Rule 14**).
 - the Scrutiny Chair agrees it is urgent (**Rule 15**).

- (4) A Key Decision may only be taken by a Cabinet Member three clear days (soon to be five clear days) after a report has been published and sent to the Scrutiny Triumvirate (**Rule 20**).
- (5) Any decision by a Cabinet Member (key or otherwise) must be published, with reasons, within two working days, and the five member call-in provision applies in exactly the same way as for Cabinet and Cabinet Committee decisions (**Cabinet Procedure Rule 12**). The decision would then be subject to Scrutiny and, potentially, full Council consideration, before being implemented.
- (6) Decisions must be made within the Budget and Policy Framework set by Council (**Budget and Policy Framework Procedure Rules**).
- (7) Any executive decision can be delegated, say to give more flexibility to speed up decisions between Cabinet meetings. This is a matter for the full Cabinet. Limitations and conditions can be imposed on exercise of the delegation. It is essential that the terms of reference, and scope of the delegation are clear and documented:
 - ad hoc delegations can be recorded in Cabinet minutes.
 - delegations for a period should be incorporated into the Scheme of Delegation.
- (8) Delegation by Cabinet to an individual member or officers can be revoked at any time.

2.2 What Practical Arrangements Are Required?

Arrangements for Cabinet Member decisions would need to take account of several requirements, including:

- (1) There must first be dialogue between the relevant Corporate Director and Cabinet Lead to assess the level of priority which justifies the need for a decision being taken by individual Cabinet Members rather than Cabinet collectively.
- (2) There is a need to ensure that all relevant advice is provided, including financial and legal, and that decisions are made within the Policy and Budget Framework set by Full Council. In practice an officer report will be needed, perhaps a brief (two sides maximum) summary of the salient factors (comparable to an old-fashioned “*chairs action*” report).
- (3) The report must explain the necessary priority which justifies a decision being made by individual Cabinet members.
- (4) Any conflicts of interest must be addressed and documented.
- (5) Whether a Key Decision is involved needs to be assessed.

- (6) Background papers need to be identified, as for any Member decision.
 - (7) There is a requirement to record and publish the decision and the reasons for it. In practice, there would be a minute or subscript to the decision paper, signed by the Member at the time of the decision. This, with the report and background papers, would be published in the normal way on “*Modern.gov*” with the decision sent to all Members of the Council.
 - (8) There is a need to make clear who is responsible for ensuring proper financial and legal input, and for all other stages in the process.
- 2.3 Several authorities have Constitutions which enable delegation to Cabinet Members. As far as we know, not many have implemented it.
- 2.4 The delegation could be to more than one member; for example to the relevant Cabinet Lead and the Leader. If the Leader is also the Cabinet Lead the second person could be the Deputy Leader. This would have the advantage of sharing accountability and ensuring consistency. It would be necessary, for a cross-portfolio decision, to obtain the approval of all relevant Cabinet Leads. Care would be needed to avoid further bureaucracy and actually create a bottleneck.
- 2.5 Individual decision-making involves additional personal accountability. Indemnity and insurance cover will need to be reviewed to maximise protection. For protection from (successful) legal challenge, individuals must act:
- in good faith
 - in the light of proper advice;
 - reasonably taking account of relevant factors and ignoring irrelevant ones;
 - avoiding conflict of interest;
 - with documented reasons, taking care to justify departures from recommendations, exceptions to policies, calculated risks and choices between finely balanced options.

3. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

i. Financial Implications

None direct.

ii. Legal Implications

These are covered in the report.

iii. Other Implications

| OTHER IMPLICATIONS | YES/NO | Paragraph references within supporting information |
|-------------------------------|--------|--|
| Equal Opportunities | No | |
| Policy | Yes | Throughout the report e.g. 2(i) |
| Sustainable and Environmental | No | |
| Crime and Disorder | No | |
| Human Rights Act | No | |
| Elderly/People on Low Income | No | |

4. BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

Committee reports and minutes for the meetings referred to in this report.

5. CONSULTATIONS

All Scrutiny Committees.

6. REPORT AUTHOR

Peter Nicholls, Service Director – Legal Services, x6302

VIEWS OF SCRUTINY COMMITTEES

Resources & Equal Opportunities Scrutiny – 16th and 11th November

It was noted that the Authority's Scheme of Delegation is a public document setting out who/what body can make decisions on behalf of the Authority. It was noted that the Scheme is one of exception, whereby every decision is delegated to officers unless stated otherwise which ensures that the Scheme is always up to date.

However, concern was expressed regarding the role of Scrutiny in the decision making process and the resulting influence that members can have over the making of major decisions.

It was suggested that should all three parties on a Scrutiny Committee disagree with a decision, work should not proceed on the decision until the next full meeting of Cabinet had reconsidered the issue.

One Councillor expressed a view that there should be a full scale review of the structure of the Authority to ensure that there is adequate political control over major decisions made.

It was also stated that there is a need for a system to be in place to ensure that members are involved in any major policy or structural decisions, for example the closing of buildings or any decisions which remove or alter a service.

Cabinet's Scheme of Delegation provides that "policy developments of strategic significance relating to the portfolio's terms of reference" are reserved and so must be decided on by Cabinet.

Scrutiny members were concerned to ensure transparency where decisions are made at Corporate Director level following consultation with Cabinet members to assess the level of significance, basically to gain a steer as to whether a matter should be reported to Cabinet for decision.

Resources and Equal Opportunities Scrutiny Committee – 17th March

The Committee expressed their concern about the number and type of decisions taken at Corporate Director level, and the lack of political input on some major decisions. The Committee felt that the entire Scheme of Delegation needed to be looked at again, and that officers should take less decisions. It was also the view that the Cabinet should reserve back to itself a lot of the functions currently delegated to officers to ensure that there was adequate political input. The Committee also felt that there needed to be a full scale review of the structure of the Council as a whole.

Housing Scrutiny – 14th October

The view was expressed that the present Scheme of Delegation to Corporate Directors be continued but with the following conditions:

- a) That officers consult with the relevant Cabinet Lead on matters of sensitivity, and where the decision might involve a significant change in policy or strategy;
- b) That there was a clear need for Lead Members of Scrutiny Committee to understand what had been delegated to officers; and
- c) That when Cabinet Leads had significant concerns over the operation of certain services, that they, and Corporate Directors, suspend delegated authority for a period of time for those particular services.

It was also agreed that Cabinet be informed of the Housing Scrutiny Committee's concern at the level of delegated authority for officers, the need for more details, and a regular report on decisions taken be brought to Cabinet.

Strategic Planning and Regeneration Scrutiny – 10th November

Members expressed the view that there should be a comparison with forms of Constitution adopted by other Local Authorities including one, Chesterfield BC, which is understood to provide for key Corporate Director decisions to be made in public.

It was explained to members that it was accepted good practice to compare our Constitutional arrangements with national guidelines and other Constitutions adopted by other Authorities in the region and nationally. Chesterfield BC's Constitution had been inspected but it was not found to be particularly clear or helpful on the issue raised.

Education and Lifelong Learning Scrutiny – 9th November

Concerns were raised regarding items presented to Scrutiny for consideration where a decision had already been made by Cabinet. Also it was suggested that there is a need for greater openness, that members should not be discouraged from seeking to scrutinise decisions and Cabinet should be more willing to accept collective responsibility for decisions taken.

The Committee proposed amendments to the Cabinet's Scheme of Delegation to comply with the following requirements:

- a) That the closure of any project or voluntary organisation through the removal of grant or all of their funding or for any other reason shall be a decision of the Cabinet.
- b) That the reorganisation of any part of the Council be the subject of a Cabinet decision and prior consideration with Scrutiny.
- c) That Scrutiny be consulted on any officer proposal that involves changes affecting more than five staff or £50,000 or constitutes a major change to that

service, or in the view of any Scrutiny Committee ought to be considered by Scrutiny.

Arts, Leisure and Environment Scrutiny Committee – 6th October

Members welcomed the report as they felt that it gave the Committee a job description which would facilitate more meaningful scrutiny. However, members raised concerns that the Scrutiny Committee's role may be seen as purely "rubber stamping" Cabinet's decisions.

In response it was stated that Scrutiny Committees had a role to help develop policy. Cabinet members usually wanted to know the recommendations of Scrutiny Committees before making decisions.

This was felt not to be happening. There was interest in Cabinet enabling more constructive engagement with Scrutiny Committees in policy making.

Health and Social Care Scrutiny – 8th December

Members welcomed the report and asked that more training on the Scheme of Delegation be offered to elected members, in particular those who had been recently elected to office.