

By: Alex King – Deputy Leader  
Geoff Wild – Director of Governance & Law

To: Cabinet - 16 April 2012

Subject: **Review of the Executive Scheme of Officer Delegation**

Summary This report invites the Cabinet to determine the most appropriate way forward for a comprehensive review of the approach to officer delegations

---

### **Background:**

(1) The Corporate Management Team (CMT) asked the Director of Governance and Law to review KCC's approach to delegated decisions. This was done for the following reasons:

- (a) That the existing process, whilst acceptable when it was first drafted, has been added to and changed incrementally over a number of years, which has led to a lack of consistency in application and a degree of confusion for Members and Officers, which can give rise to delays and potential legal risks;
- (b) The refinement of the executive decision-making system over the years has led to an expectation that decisions, once made at Member-level, will be implemented quickly, which is not always the case because of what is delegated and what is not delegated;
- (c) The approval of Bold Steps for Kent and Change to Keep Succeeding, together with the ongoing review of the Council's governance structure at Member level, presents an opportunity to streamline an important aspect of Member-led decision-making without compromising either the speed of decision-making or the scrutiny process.

### **The existing process**

(2) The Council operates a Cabinet system and the functions of the Executive are those prescribed by the Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 ("the 2000 Regulations"). The Executive undertakes all of the functions of the Council not exercised by the Council itself or delegated by the Council to a Committee or to an officer.

(3) All Executive powers are vested in the Leader who may then arrange for any of the executive functions to be exercised by:

- (a) the Cabinet collectively
- (b) an individual Cabinet member
- (c) a Cabinet committee
- (d) an area committee
- (e) an officer

(f) a local Member in relation to their division

(4) On the **Council side**, Appendix 2 Part 1 of the Constitution lists those functions that are exercised by the Council itself. Appendix 2 Part 2 lists those functions delegated by the Council to Committees and Part 3 lists those functions delegated by the Council to Officers (required by Section 100G(2) of the Local Government Act 1972). In exercising delegated functions under Part 3, Officers can only do so in accordance with:

- (a) the overall policies of the Council or its Committees
- (b) an approved budget
- (c) the Resource Management Responsibilities Statement and associated rules

(5) Officers exercising these delegated powers must maintain close liaison with the relevant Committee Chairman. They may also delegate their powers to more junior officers, but these must be properly documented to the satisfaction of the Monitoring Officer. The involvement of Local Members (where relevant) is also an important part of exercising delegated powers.

(6) Appendix 2 Part 5 of the Constitution describes those functions of the Council that are exercised jointly with other councils, for example the East Kent Joint Committee and the Kent and Essex Inshore Fisheries and Conservation Authority.

(7) Appendix 2 Part 6 of the Constitution contains the Personnel Management Rules - a detailed schedule of operational decisions on the management of staff - many of which are delegated to officers.

(8) On the **Executive side**, Appendix 2 Part 4 of the Constitution describes those functions and powers exercised by the Executive, a Committee or Member of the Executive, or an officer exercising executive decision-making powers. The Constitution is clear that, wherever arrangements are not specifically made for the discharge of functions by Cabinet Members or officers, those functions remain with the Leader. In addition, all Key Decisions are made by the Leader, the Cabinet or a Cabinet Member. Cabinet Members are also responsible, within their allocated areas of responsibility, for taking decisions that are otherwise delegated to officers but which are:

- (a) not in accordance with the Policy Framework or Budget agreed by the Council or management and business plans within their portfolio or
- (b) withdrawn from the delegation to senior managers

(9) The delivery of management and business plans, as agreed by Cabinet, is delegated to the relevant senior managers, and is a main channel for delegating Executive powers to officers. As with Council-side functions, officers exercising these delegations must act in accordance with existing policies and the approved budgets and also maintain a close liaison with the relevant Cabinet Members. Again, senior managers may delegate their powers to more junior officers, which must be properly documented to the satisfaction of the Monitoring Officer. However, Directorate Schemes of Delegation (i.e. delegations of executive functions below Corporate Director level), are not

currently included within or appended to the Constitution and there is also some inconsistency in the completeness of some Directorate schemes. Where Directorate Schemes of Delegation are not always maintained or kept up to date there is a risk that decisions may be taken by officers without proper authority. In the absence of a clear delegated authority in a formal Cabinet/Cabinet Member decision, sufficient detail within an approved Business Plan, an approved Scheme of Delegation or a line in the approved Budget, then officers must refer the matter back to the Cabinet or Cabinet Member for a formal decision. This not only adds an unnecessary stage to an already bureaucratic process but can also delay the implementation of decisions.

(10) There are a number of matters that officers have to refer to the Leader, Cabinet or the relevant Cabinet Member, which are listed in paragraph 24 of Appendix 2 Part 4 of the Constitution; these include decisions to compulsorily purchase land and to suspend local management from any school. The involvement of Local Members (where relevant) is also an important part of exercising delegated executive powers.

### **Comments on the existing process:**

(11) The Council-side delegations (described in paragraphs (4)-(7) above) are clear, well-defined and work well. It is not proposed that they change, except that the Corporate Director of Human Resources has proposed that some changes to staff terms and conditions should be determined by the Personnel Committee, rather than referring all such changes to the full Council. This work will come forward for Members' consideration in due course. The Executive side of decision-making is not so detailed or clear and is responsible for generating the most 'blockages' and delays for want of clear authority to deliver.

(12) Work is already underway to review the Constitution in order to bring together all the main references to the powers of Cabinet Members and the process for making executive decisions, particularly Key Decisions. It is recommended that more fundamental revisions to the way in which Executive powers are delegated to officers be considered, and these are set out below.

### **Officer Decisions**

(13) Some officer decisions already require notification to Scrutiny Board Members, such as single source tenders above a certain threshold and others, such as the appointment of interim senior managers, which require consultation with Group Leaders before being made. After 1 April 2012, such decisions will be reported to the relevant Cabinet Committee. However, beyond these two examples, where it is obvious why prior Member consultation/notification is important, it is difficult to define the sorts of officer decisions that should be reported more widely to Members.

(14) There is a difficult balance to be struck between responding to the genuine concerns of Members in relation to the wider reporting of significant officer decisions, and introducing a whole new level of bureaucratic process, possibly even introducing a lower tier Forward Plan. Cabinet Members are invited to give a steer on this issue. This will therefore be left to the relevant Cabinet Member and senior officer to decide, depending on the circumstances.

## The options

(15) A number of schemes of delegation from other County and single tier councils have been examined in order to establish best practice elsewhere. Schemes of Delegation tend to fall into one of three main categories:

- (a) Exception basis: a light touch and highly devolved scheme where all decisions are delegated to officers except those matters reserved specifically to Members. These types of scheme are fairly straightforward to compile and update, but may cause concern amongst some Members that officers appear to have too much power. Tracking, recording and publishing decisions taken by officers under delegated authority for the purposes of scrutiny can also prove difficult and create an industry in itself.
- (b) Highly detailed: where the statutory powers available to the Council and the Executive under many pieces of legislation are set out in tabular form, with the relevant officer responsibilities listed alongside each power. These very detailed schemes are time-consuming to prepare and keep up to date and also lack flexibility, but arguments about who has the power to do what are rare and the level of detail means that officer actions can be scrutinised more easily.
- (c) Member-led Scheme: a combination of matters reserved to the Members, combined with the main areas of responsibility for each Directorate/Division, but not in as much detail as (b) above. This would typically delegate to officers the power to implement:
  - (i) lines in the Council's approved budget and
  - (ii) decisions taken by the Council, a committee or sub-committee, the Cabinet or a Cabinet Member

This ensures that officers are limited to implementing those actions already authorised by Members, but gives them considerably more flexibility than at present to give effect to and implement those decisions without having to refer them back to Members for detailed approval. It also removes the need for Directorate and Unit Business Plans to be the main vehicle for delegated powers. A proposed version of this has been prepared in the attached **Appendix**.

(16) These options were considered by CMT on 20 October 2011 where a clear preference was expressed for the introduction of the Member-led Scheme of delegation, as set out in (c) above. There are, however, a number of important guiding principles, which should feature prominently in any revised scheme:

- (a) Once a Member-level decision has been taken, whether as part of the approved revenue or capital budget, in a Directorate or Divisional Business Plan, or otherwise, the implementation of that decision should be delegated to officers, so that multiple Member decisions are not required in respect of the same matter;

- (b) Cabinet Members will continue to be able to require officers to refer any matters that would otherwise be taken under this scheme of delegation to either themselves or Cabinet for decision;
- (c) Senior Managers exercising delegated powers will continue to be able to sub-delegate those functions to more junior officers, or escalate the making of those decisions to the relevant Corporate Director, who can then (if appropriate) refer the matter to the Cabinet Member or Cabinet, as now;
- (d) Existing safeguards and rules relating to the appointment of consultants and interim senior managers, the reporting of single source tenders, or where a tender other than the most economically most advantageous one is recommended for acceptance, should remain;
- (e) Local Member involvement in matters affecting specific electoral divisions should also remain.

**Recommendation:**

(17) Cabinet is invited to endorse the new Member-led Executive Scheme of Officer Delegation as set out in the Appendix.

Geoff Wild  
Director of Governance & Law

March 2012

## KENT COUNTY COUNCIL

**EXECUTIVE SCHEME OF DELEGATION TO OFFICERS****1. Principles**

1.1 This scheme operates from 1 April 2012.

1.2 In this scheme “officer” means the holder of any post named in this scheme as having delegated powers and duties.

1.3 This scheme delegates powers and duties in relation to Executive functions which are the responsibility of Leader and Cabinet Members.

1.4 This scheme delegates powers and duties within broad functional descriptions and includes powers and duties under all legislation within those descriptions and all powers and duties incidental to that legislation.

1.5 This scheme operates under Section 14 of the Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (‘the Regulations’) and all other enabling powers.

1.6 This scheme includes the obligation on officers to keep Members (notably Cabinet Members) properly informed of activity arising within the scope of these delegations.

1.7 Any exercise of these delegated powers shall be subject to the policies approved by the Leader from time to time and shall be guided by the relevant Codes of Conduct.

1.8 Any exercise of delegated powers shall be subject to any statutory restrictions, provisions made in the revenue or capital budgets, Standing Orders, Financial Regulations or other Procedure Rules as contained within the Constitution.

1.9 This scheme assumes that once a Member-level decision has been taken, whether as part of the approved revenue or capital budget, in a Directorate or Divisional Business Plan, or otherwise, the implementation of that decision will normally be delegated to officers, so that multiple Member decisions are not required in respect of the same matter;

1.10 However, Cabinet Members may at any time require officers to refer a matter that would otherwise be taken under this scheme of delegation to either themselves or Cabinet for decision;

1.11 This scheme includes the power for officers to further delegate in writing all or any of the delegated functions to other officers (described by name or post) either fully or under the general supervision and control of the delegating officer. Sub-delegations may be made across service boundaries.

1.12 Officers to whom matters have been sub-delegated may escalate the making of those decisions to the relevant Corporate Director, who can then (if appropriate) refer the matter to the Cabinet Member or Cabinet;

1.13 A power specifically delegated by this scheme to one officer shall not be exercised by another officer without the consent of the former.

1.14 Sub-delegations shall be recorded in a register kept by each Directorate and notified to the Monitoring Officer under Section 100G of the Local Government Act 1972.

1.15 Any officer exercising powers or duties in pursuance of full sub-delegation will be politically restricted under Section 2(1)(g) of the Local Government and Housing Act 1989.

1.16 All action taken under the terms of these delegations shall be properly discussed in advance with the relevant Cabinet Members and documented.

1.17 In each case, the delegated authority to officers includes management of the human and material resources made available for the service areas and the functions concerned within the limitations of this scheme and subject to specific delegations in this scheme or elsewhere to another officer.

1.18 In each case the delegated authority excludes the determination by the officer concerned of policy, exceptions to policy and budgets.

## **2 Delegations to officers**

2.1 The powers delegated to officers exclude the authority to take Key Decisions.

2.2 Officers are responsible for the management of their services and the implementation of Council and Cabinet policies and Executive Decisions.

2.3 Decisions which an officer takes under delegated powers must:

- (a) implement a policy or decision previously approved or taken by the Cabinet or a Cabinet Member or
- (b) facilitate or be conducive or incidental to the implementation of a policy or decision previously taken by the Cabinet or a Cabinet Member or
- (c) relate to the management of the human, material and financial resources made available for the functions for which they are responsible

2.4 It shall always be incumbent on an officer to consult in advance with the appropriate Cabinet Member on the exercise of a delegated Executive Function, or agree with them not to exercise a delegated Executive Function but to refer the matter instead to the Cabinet or relevant Cabinet Member.

**3 Subject to the provisions of paragraph 2.3 (above), the Executive Functions to be the Responsibility of Chief Officers are as follows:**

**3.1 TO THE CORPORATE DIRECTOR BUSINESS STRATEGY & SUPPORT**

(i) To exercise the relevant functions of the Leader of the Council in relation to the overall strategic direction, policies and priorities of the Cabinet and of Council, including the overall corporate revenue and capital budget strategy and ensuring that the appropriate systems are in place to assure the performance management of the authority.

(ii) To exercise the relevant functions of the Cabinet Member Business Strategy, Performance & Health Reform, the Cabinet Member Democracy & Partnerships and the Cabinet Member Regeneration & Economic Development in relation to their portfolios.

(iii) To exercise in cases of urgency the Executive Functions delegated to other Chief Officers.

(iv) To incur expenditure in the event of a civil emergency.

**3.2 TO THE CORPORATE DIRECTOR FAMILIES & SOCIAL CARE**

(i) To exercise the functions conferred on or exercisable pursuant to Section 18 of the Children Act 2004 and Regulations made thereunder.

(ii) To exercise the functions conferred on or exercisable pursuant to Section 6(A1) of the Local Authority Social Services Act 1970 and Regulations made thereunder.

(iii) To exercise the relevant functions of the Cabinet Member Specialist Children's Services and the Cabinet Member Adult Social Care & Public Health in relation to their portfolios.

**3.3 TO THE CORPORATE DIRECTOR EDUCATION LEARNING & SKILLS**

(i) To exercise the relevant functions conferred on or exercisable pursuant to Section 532 of the Education Act 1996 and Regulations made thereunder.

(ii) To exercise the relevant functions of the Cabinet Member Education Learning & Skills in relation to his portfolio.

**3.4 TO THE CORPORATE DIRECTOR CUSTOMER & COMMUNITIES**

(i) To exercise the relevant functions of the Cabinet Member Customer & Communities, the Cabinet Member Business Strategy, Performance & Health Reform and the Cabinet Member Regeneration & Economic Development in relation to their portfolios.

**3.5 TO THE CORPORATE DIRECTOR ENTERPRISE & ENVIRONMENT**



(i) To exercise the relevant functions of the Cabinet Member Environment Highways & Waste and the Cabinet Member Regeneration & Economic Development in relation to their portfolios.

### **3.6 TO THE CORPORATE DIRECTOR FINANCE & PROCUREMENT**

(i) To exercise the relevant functions conferred on or exercisable pursuant to Section 151 of the Local Government Act 1972 and Regulations made thereunder.

(ii) To exercise the relevant functions of the Cabinet Member Finance and Business Support, the Cabinet Member Business Strategy, Performance & Health Reform, the Cabinet Member Democracy & Partnerships and the Cabinet Member Education Learning & Skills in relation to their portfolios.

### **3.7 TO THE CORPORATE DIRECTOR HUMAN RESOURCES**

(i) To exercise the relevant functions of the Cabinet Member Business Strategy, Performance & Health Reform and the Cabinet Member Finance & Business Support in relation to their portfolios.