



Report Title: **Revising the Scheme of Delegation to Officers**

Forward Plan reference number **6**

Report of: **John Suddaby, Monitoring Officer and Head of Legal Services**

Wards(s) affected: **All**

Report for: **Informal Approval**

### **1. Purpose**

1.1 To consider and informally approve the proposed revision of the scheme of delegation to officers attached at Appendices 3, 4 & 5 to this report which will also be considered at the Constitution Review Working Group and formally recommended to the full Council for adoption as a replacement for the existing scheme of delegation in the Council's Constitution

### **2. Introduction by the Leader of the Council**

Revising the scheme of delegation will be important in ensuring that the Council can operate more effectively as a whole. The revised delegation does not alter the balance of responsibilities between officers and members but provides for a clearer and better defined relationship which will allow the Council to improve more efficiently. I am pleased that the revised scheme of delegation reflects on practice in Haringey but also good practice from other local authorities which are facing similar challenges.

### **3. Recommendations**

3.1 That the delegations of "executive functions in the following appendices to this report be approved as replacements for the relevant parts of the scheme of delegation in the Council's Constitution:

- (i) Appendix 3 – proposed replacement for Appendix D – "Senior Management Structure Schedule"
- (ii) Appendix 4 - proposed replacement for Part 3, Section E also described as Section 1 of the scheme – "Introduction and Ground Rules"
- (iii) Appendix 5 - proposed replacements to constitute Sections 2, 3, 4, 5, 6, 8 & 9 of the scheme in Appendix E (formerly Part F7.)

3.2 That Members note and approve the steps to improve the monthly Members' Briefing described in paragraph 15.6.

Report Authorised by:

John Suddaby, Monitoring Officer and Head of Legal Services

Contact Officer: Terence Mitchison, Senior Project lawyer, Corporate  
[Terence.Mitchison@haringey.gov.uk](mailto:Terence.Mitchison@haringey.gov.uk) 8489 5936

#### **4. Chief Financial Officer's Comments**

4.1 There are no specific financial implications

#### **5. Head of Legal Services Comments**

5.1 The legal and constitutional implications are set out in the main report.

#### **6. Equalities and Community Cohesion Comments**

6.1 There are no specific equalities and community cohesion implications

#### **7. Other Options Considered**

7.1 Other options and the practice in 8 other Boroughs were considered by full Council on 31 March 2008 and this report seeks to implement the decisions in principle made by Members at that Council meeting.

#### **8. Links with Council Plan Priorities and other Strategies**

8.1 Improving and updating the scheme of delegation to officers should assist indirectly in achieving all Council Plan priorities. There is no direct link with other strategies outside the Constitution but in some cases the revised scheme clarifies the respective roles of officers and Members in preparing or adopting strategies.

### **Background**

9.1 The Council's scheme of delegation to officers is due for revision both to make it more "fit for purpose" and to update it with recent legislation.

9.2 Reports on the principles that should underpin this revision were considered by the Constitution Review Working Group in February 2008 and by Full Council on 31 March 2008. This followed a benchmarking exercise with 8 other Boroughs to

ensure that Haringey was aware of best practice elsewhere.

- 9.3 A very substantial amount of detailed work has been necessary to review nearly 200 items of legislation and to reduce the long schedules of statutory powers to more manageable proportions. The revised draft scheme has been discussed in detail with each Directorate to ensure that the scheme is not only sound legally but reflects the practical requirements to delegate decision-making to the appropriate level.
- 9.4 The revised draft scheme as recommended is set out at Appendices 4 and 5 to this report. Appendix 4 to this report is the proposed replacement for the Introductory Section or Ground Rules for the scheme of delegation. Although treated as “Section 1” of the scheme, it is located in Part 3, Section E of the Constitution. It is proposed to have a short cross-reference to it at the start of Appendix E which is at the end of the Constitution where the remainder of the scheme is located. Unless Members wish it, Section 1 would not be repeated in full in Appendix E. Since the format of Section 1 will not be altered, the recommended text changes can readily be shown in Appendix 4 to this report.
- 9.5 Appendix 5 to this report comprises Sections 2 to 6 and 8 and 9 of the scheme. It is in the new shorter form (see paragraph 10.2 below). It is a fair version without attempting to show the text changes from the current scheme. Appendix 5 to this report is being recommended to replace the current Appendix E in the Constitution.
- 9.6 There is also a “comparison version” which is the revised scheme in substance but still as it would be if in the longer format used in the current scheme. That is to say, there is a separate “box” for every section of each statute. The comparison version, so far as possible, shows all the statutory powers being added to, or deleted from the scheme. The deletions are usually the result of statutory repeals or the transfer of powers from one Directorate to another as a result of the restructuring or reshaping of Services.
- 9.7 Because the revised scheme aims to condense the scheme into a much shorter form, it is not practicable to show the precise text changes between the current and the revised scheme and at the same time to show the substantive additions/deletions of powers.
- 9.8 The comparison version of the scheme is much longer than Appendix 5. It is therefore impracticable to add it to the formal appendices to this report and to circulate hard copies physically with the agenda papers for the meeting. As a substitute, a hard copy has been placed in a lever arch file in the Cabinet Members’ Room at River Park House and an electronic copy has been sent to all Cabinet Members.
- 9.9 Members will note that neither Appendix 5 to this report, nor the comparison version just described, contain the proposed delegations to the General Manager

of the Alexandra Palace & Park charity and his senior staff. These are intended for Section 7 of the scheme within Appendix E. Because of the special status of the charity, the Alexandra Palace & Park Board of trustees will follow their own process for reviewing the powers they delegate to their own officers and this is part of a wider review of the charity's governance. These delegations are likely to be considered at an "away-day" for trustees in April. Once formally agreed by the Alexandra Palace and Park Board, the delegations would be reported for adoption to Full Council.

## **10 Protecting the Council through a shorter but more comprehensive scheme**

- 10.1 One obvious problem with Haringey's current scheme is the excessive amount of detail contained in the schedules of statutory powers for each service. Generally, there is a separate entry or "box", sometimes several lines or several paragraphs long, purporting to summarise the effect of every section in every Statute where power is delegated. The result is a document 170 pages long which is not written in user-friendly language and which does not meet the original aim of keeping Members informed about officer delegated powers. By listing in detail a vast number of powers that are exercised very rarely, or never, the current schedules are more confusing than informative.
- 10.2 It is perfectly sufficient, legally, to have a much shorter scheme which expressly delegates the whole of the local authority functions (whether expressed as powers or duties) under the relevant section numbers or Parts of the relevant Statute. This is achieved in a standard paragraph under the heading "statutory delegations" in each of Sections 2 to 6 of the scheme.
- 10.3 At Appendix 1 to this report, as an example, there is a comparison between the existing "longer form" of schedule of statutory powers and the proposed much shorter form in the revised scheme which is shown at the bottom of page 2 of this Appendix. Appendix 1, being an example, only covers the powers under the Housing Act 1996 delegated to the Director, Urban Environment. In the revised shorter form the Parts and sections of the Act being delegated are set out in the left hand column and this is the legally necessary aspect of the delegation. The verbal description of the powers in the middle column are for information only. This would be the pattern for the whole revised scheme.
- 10.4 The presumption that the whole of the statutory function was being delegated would not change the general limitations on the exercise of officers' delegated powers which are set out at paragraphs 4.01 and 4.02 in Part 3, Section E of the Constitution. These paragraphs prevent officers taking delegated decisions outside agreed budget limits or Council policies or in specific cases such as compulsory purchase.
- 10.5 Legally, a "shorter form" scheme of this kind would be safer and less vulnerable to challenge. The danger of a lengthy description is the opportunity it affords for those in dispute with the Council to claim that, in the specific instance where a

power was exercised, it fell outside the precise scope of the delegation to the officer concerned.

- 10.6 There are some areas requiring special treatment. For example, the power to determine planning applications has been divided according to the long-established practice of the Planning Committee. Applications above certain physical limits, for example, more than 5 new dwellings, are referred to the Planning Committee while the more numerous and more routine applications below these limits are delegated to senior Planning Officers.
- 10.7 In these special cases, there is a note in bold type stating that this is a “Limited Delegation”. The effect is that the scope of the delegation is determined by the verbal description in the middle column which will contain some reservation about, or qualification to, the power delegated to officers. This can be seen in the case of planning applications under the heading “Town & Country Planning Act 1990” at section 70.

## **11. Extending Delegated Powers Down the Management Structure**

- 11.1 As agreed by Full Council, the great majority of powers have been delegated at Service Manager and Team Leader level in every Service. This will bring the Scheme into line with the usual practice of decision-making to a greater extent.
- 11.2 All Services have identified the powers that should be restricted to Director or Deputy Chief Officer level and not delegated further. These are generally powers to appoint other officers to fulfil particular functions or powers to take sensitive or exceptional action such as a decision to authorise covert surveillance under the Regulation of Investigatory Powers Act 2000. Such powers are marked in the right hand column as delegated to the Director or Assistant Director “only”.
- 11.3 There is an important distinction to be made between the extension of delegated powers down the structure and the question of senior management control over the exercise of those powers. The extension of delegated powers is necessary to protect the Council legally because it will help ensure that managers throughout the Council have authority to take speedy and effective decisions.
- 11.4 It need not undermine proper management control because senior managers can always require supervision or impose conditions before less senior officers take decisions on matters that are sensitive or complex. The extension of delegation is a quite separate issue from ensuring the “quality control” of junior officers’ work by management.

## **12. Reflecting the Council Reshaping**

- 12.1 The current scheme pre-dates the Council-wide “Reshaping” of Directors that

was implemented at the start of 2007. A “Reshaping Schedule” was then added to the beginning of the scheme to make the necessary changes, legally, as an interim solution. The whole of the scheme has now been brought up-to-date so that Directorates and officers have their new names and the result should be far easier to understand.

- 12.2 Before Appendix E at the end of the Constitution, there is an Appendix D which is called the “Senior Management Structure Schedule”. This too is being brought up-to-date with the current post titles and descriptions of the responsibilities of Chief Officers and Deputy Chief Officers. The revised version of Appendix D is at Appendix 3 to this report. Appendix D is important to the scheme of delegation because the scope of the general management and operational powers granted to senior officers in Section 8 (paragraph 17.1 below) is linked to the descriptions in Appendix D.

### **13. Updating the references to Legislation**

- 13.1 Pending agreement on the new format of the Scheme and the production of a revised version new legislation has not been added to the scheme. This has not prevented officers from being able to take decisions because of the broad functional delegations in the scheme which automatically encompass new Acts of Parliament as they come into force. But the schedules of statutory powers in each Section of the scheme have now been updated to show all relevant legislative powers which are recommended for delegation to officers.

### **14. The Balance Between Members and Officers**

- 14.1 It is important for Members to be aware that the revised scheme is not intended to change the existing balance of responsibilities between Members and officers but only to protect the Council from possible challenge and to make the format shorter and more accessible. Although there appears to be a huge amount of re-drafting, this is mainly the consequence of condensing into a shorter format, explaining the effect of the “Limited Delegations”, deleting repeals and adding new legislation. Members will not find that the revised scheme makes any significant change to the matters coming to them for decision or to their powers to call senior officers to account for their exercise of delegated powers.
- 14.2 The opening paragraph of each Section defines the matters excluded from officer delegation more clearly than before. Members will continue to take all “key decisions” and matters expressly within the terms of reference of the Full Council, Cabinet or Committees. “Key decisions” involve expenditure above £500,000 or action having a significant effect on communities in two or more Wards. Decisions on the budget and all other Council policies and strategies will remain with Members.
- 14.3 Officers will keep responsibility for the very large volume of routine operational and case work decisions which, as a matter of practicality, have to be delegated

in all local authorities.

## **15. Section 1 of the scheme – Introduction and Ground Rules**

- 15.1 Appendix 4 to this report shows section 1 of the Scheme (also known as Part 3, Section E) which contains the introduction and Ground Rules. The first change requiring explanation is the addition of a new paragraph 3.06.
- 15.2 There is already a long-standing requirement in paragraph 3.05 to report monthly to the Cabinet or the relevant Committee on recent decisions already taken under delegated powers. This is quite separate from the reporting on decisions taken under “urgency procedures”. The duty is to report decisions of “particular significance” individually rather than grouped by number and type under a general description in a schedule. Until now there has been no definition of a decision of “particular significance”.
- 15.3 The new paragraph 3.06 sets out the two proposed alternative criteria for decisions of “particular significance”. At 3.06 (a) there is spending or saving £100,000 or more. At 3.06 (b) there is a decision that is significant or sensitive for any other reason which the Director and Cabinet Member have agreed should be reported. The adoption of these two new criteria should keep the reporting requirements within a sensible length but it would not prejudice Members’ right to call for more information in any specific case causing concern.
- 15.4 At the end of the current paragraph 3.05 the final sentence refers to significant delegated decisions being reported up from Cabinet/Committee to Full Council. This has rarely happened in practice and, therefore, the final sentence is recommended for deletion.
- 15.5 The report to Full Council in March 2008 considered the increased reporting of local impact decisions to all Councillors and this was agreed in principle. Officers have subsequently looked in greater detail at the practicality of encapsulating this as a formal requirement in the Constitution and have concluded that it would be very difficult to produce a sensible definition of the matters to be reported.
- 15.6 As an alternative, it is proposed to take action by expanding the monthly Members’ Briefing so that it includes more items of local and topical interest from all Council Services. This could include recent enforcement action or the outcomes of prosecutions as well as details of traffic schemes or Park improvements.
- 15.7 At the end of Section 1, there is a sub-section entitled the “Protocol for Officers Taking Decisions under Delegated Powers”. As already agreed in principle, this Protocol has been simplified to make it shorter and easier to implement comprehensively. The list of obligatory details that must be recorded, whenever an officer takes any delegated decision, has been reduced to five: (i) the

name/post of the officer taking the decision, (ii) the substantive facts, (iii) the reasons for the decision, (iv) the expenditure authorised and (v) the date of the decision.

## **16. Sections 2 to 6 of the Scheme Relating to Individual Directorates**

16.1 Sections 2 to 6 of the scheme contain the revised delegations for the Chief Executive's Service, Corporate Resources, Urban Environment, Children & Young People's Service and Adult, Culture & Community Services and they are set out in Appendix 5 to this report. There are a very great number of changes being recommended, most of them quite minor. The more significant changes are summarised in Appendix 2 to this report.

## **17. Section 8 of the Scheme – General Delegations**

17.1 In this Section certain general delegated powers are granted to all Chief Officers including powers to take management and operational decisions on behalf of the Council. It is recommended that most of these powers are extended to Deputy Chief Officers except for the following which would remain at Chief Officer level: (i) requests for access to Council premises by the media (ii) power to waive charges in exceptional circumstances and (iii) decisions on the use/management of premises held for the operational requirements of the Directorate.

17.2 One very important change, already agreed in principle by full Council, is the delegation to the Chief Executive of powers to take decisions on the "non-executive" aspects of a Service Restructuring when more than 20 posts are affected. The Cabinet will continue to take the decisions on the service delivery aspects which are "executive" side functions. The Chief Executive will then take the related decisions on staff terms and conditions and the size of the staff establishment in line with the Cabinet's decisions. These matters will cease to fall within the remit of the General Purposes Committee but they cannot, legally, be transferred to the Cabinet because they are "non-executive" functions; hence the need for the delegation to the Chief Executive. The Cabinet will then be the only Member body co-ordinating the Council's staffing structure.

17.3 The revised scheme continues the delegated powers of senior management to take all decisions relating to changes to the staff establishment which affect 20 posts or less. Consultation with the relevant Cabinet Member will still be a requirement.

17.4 The revised scheme clarifies the procedures for dealing with any objections from the staff side both in respect of changes above and below the limit of 20 posts. Representatives of staff side would have the right to address the Cabinet Member or the full Cabinet, as appropriate.

17.5 The revised General Delegations also provide that the Chief Executive is to have delegated power to fix the initial terms of employment and the starting salary



level of any new Chief Officer or Deputy Chief Officer. Again, this delegation is necessary because the functions are “non-executive” and cannot be exercised by the Cabinet. But the power will be exercised by the Chief Executive in accordance with a previous decision of the Cabinet on the service delivery aspects. The actual processes of interview and selection for these senior posts will remain with the Member Appointments Panels, as now, and the remuneration of these posts will continue to be subject to review by the Remuneration Committee.

## **18. Section 9 of the Scheme – Proper and Designated Officer Functions**

- 18.1 These are in a separate Section because they derive from particular Statutes, mainly the Local Government Acts, which create powers for the Council’s “proper officer” or occasionally a “specified officer”. Most Councils ensure that there is a specific location in their Constitutions for these delegations which are sometimes of a sensitive nature.
- 18.2 The main changes are to allocate to the Monitoring Officer the power to decide what constitutes “exempt information” in Cabinet/Committee reports and background papers under the “Access to Information Rules” and in relation to any information held by the Council in the case of requests under the Freedom of Information Act 2000. This will involve the application of the respective “public interest tests” to assess whether the grounds for maintaining confidentiality are outweighed by the public interest in disclosure. Other “Access to Information” functions will continue to be delegated to the Head of Local Democracy and Member Services.
- 18.3 The Chief Executive is granted power to exercise any proper officer function if no other officer has been appointed or if the appointed officer is unable to act.

## **19. Role of the Cabinet and Other Member Bodies**

- 19.1 This report comes to the Cabinet because the great majority of the functions being delegated are on the “executive” side and it is appropriate for the Cabinet Members to approve the proposals informally.
- 19.2 However, the Constitution allocates to the Full Council the formal agreement of amendments to the scheme of delegation to officers and their adoption as part of the Council’s Constitution.
- 19.3 The standard process for any proposal to amend the Constitution is for the matter to be reported to the Constitution Review Working Group (CRWG) and considered in detail there. The CRWG is to meet on 17 March and will then makes its recommendations directly to Full Council. The CRWG will be asked to agree a mechanism for taking into account the views of both Cabinet Members and the Planning Committee (see paragraph 19.5 below).

- 19.4 All Council functions in the scheme are “executive” side with the exception of the following which are non-executive: Licensing, Planning (except policy), Health & Safety, Highway stopping up and diversion and Personnel powers.
- 19.5 A much shorter report is being submitted to the Planning Committee, which also meets on 17 March, as part of a comparable informal consultation about certain “non-executive” Planning functions within the Committee’s remit. The report covers proposed extensions of delegated powers in relation to: (i) section 106 planning agreements (ii) highway stopping up and diversion needed to implement planning permissions and (iii) raising the “threshold” in terms of the weight and number of objections to policy compliant applications which would require them to be referred to Committee. There is more detail in Appendix 2 to this report on pages 3 and 4.

## **20. Local Government (Access to Information) Act 1985**

The background papers are:

- (i) The Council’s Constitution
- (ii) Report to Full Council on 31 March 2008 entitled “Revising the Scheme of Delegation to Officers”.

## **21. Use of Appendices / Tables / Photographs**

- 21.1 Appendix 1 is a comparison between the current “longer form” of schedule of statutory powers and the “shorter form” of schedule proposed for the revised scheme. This is derived from the delegations to the Director, Urban Environment under the Housing Act 1996.
- 22.2 Appendix 2 is a summary of the more significant changes proposed in Sections 2 to 6 of the scheme i.e. the delegations to Chief Executive’s Service, Corporate Resources, Urban Environment, Children & Young People’s Service and Adults, Culture and Community Services.
- 22.3 Appendix 3 is the proposed replacement for Appendix D of the Constitution – the Senior Management Structure Schedule.
- 22.4 Appendix 4 is the proposed replacement for Part 3, Section E of the Constitution which is Section 1 of the Scheme – Introduction and Ground Rules.
- 22.5 Appendix 5 is the proposed replacement for sections 2, 3, 4, 5, 6, 8 and 9 of the scheme in Appendix E of the Constitution.