

## **GUIDANCE ON EXECUTIVE DECISION MAKING**

### **1. Background**

- 1.1. This document sets out the legal framework to Executive decision making and outlines the Council's processes, including those for documenting decisions taken under delegated authority.
- 1.2. Executive Decisions, which are the responsibility of the Leader and their Cabinet, essentially cover all functions of the Council except where statutory requirements state, for example where:
  - The Full Council is responsible for Budget & Policy Framework Documents
  - Regulatory Committees i.e. Licensing Committee; Planning; etc.
  - Any other Committee or anyone else under the delegation scheme

### **2. Types of Executive Decisions and Who Will Take These**

- 2.1. The significance of Executive decisions will vary, and officers authorised to make delegated decisions or preparing reports or forms for those to be taken by Councillors (whether by the Cabinet collectively or by individual Cabinet Members) will need to exercise judgement in determining:
  - a) Who has the authority to take the decision and, consequently, the processes to be followed.
  - b) Whether or not it meets the Key Decision criteria.
  - c) Whether or not the decision needs to be formally recorded – and, if so, how.
- 2.2. To assist in this process, decisions relating to Executive functions are defined either:
  - Key Decisions.
  - Non-Key Decisions:
    - Significant Operational Decisions.
    - Operational (“Day-to-Day”) Decisions.
- 2.3. Key Decisions are normally taken by the Cabinet or individual Cabinet Members (including the Leader). Non-Key Decisions will usually be taken at officer level.
- 2.4. For ease of reference, a table showing the thresholds for different types of Executive decision as well as a brief outline of the decision making process can be found as an Appendix to this document.

#### **Key Decisions**

- 2.5. It will be a Key Decision if it is likely to either:
  - 1) Significantly impact or affect a “significant” number of people/communities living or working in the Borough (usually this is defined as impacting two or more wards).

- 2) Result in the Council incurring expenditure which is, or the making of savings which are deemed significant in financial terms:
- By not being in the Annual Budget and Capital Programme approved by the Full Council.
  - In the case of **revenue** expenditure, any projects and new commitments likely to **exceed £100,000** per annum.
  - In the case of **capital** expenditure, any projects if they involve entering into new commitments in **excess of £500,000**.
  - Any **contract** awards **exceeding £500,000**.

*NB: Expenditure in excess of the above levels will not constitute a key decision if such expenditure is made as part of the implementation of, and in accordance with, a decision which itself was a key decision.*

- 2.6. A significant function of the “collective” Cabinet (i.e. all Cabinet Members) is to exercise collective responsibility for its decisions. The Cabinet will usually take Key Decisions, however Cabinet Member may also take Key Decisions where the following principles also apply within their portfolio responsibilities:
- Relatively minor changes to existing policy (i.e. corporate/strategic rather than operational policies) e.g. limited impact or area of coverage; very minor changes will be delegated to the Head of Service in consultation with the Cabinet Member.
  - Minor changes to service delivery i.e. if some limited impact on customers (e.g. some limited closures).
  - Of minimal political sensitivity – more politically sensitive matters are likely to go to the Cabinet for decision.
  - Those decisions specifically delegated to individual Cabinet Members. These delegations can be found in [The “Executive” Function \(the Leader and the Cabinet\)](#) section of the Constitution.

### **Non-Key Decisions**

- 2.7. Officers will usually take Non-Key Executive decisions which are divided into Significant Operational Decisions and Operational (“Day-to-Day”) Decisions.
- 2.8. **Significant Operational Decisions** (sometimes referred to as SODs) are those which necessitate a public record to ensure openness and transparency (in line with statute). These include any that:
- The Chief Executive, Monitoring Officer or another Chief Officer decides should be made publicly available (such as subsequent decisions relating to a previously agreed Key Decision).
  - Result in revenue expenditure or making savings (including the receipt or loss of income) between £80,000 and £99,999 per year.
  - Result in capital expenditure (i.e. if they involve entering into new commitments and/or making savings) and/or contract awards of between £250,000-£499,999.
- 2.9. **Operational (“Day-to-Day”) Decisions** are decisions which relate to the management of service areas and as such are delegated by the Leader to the Chief Executive who may delegate them further through the Council’s [Cascade and Generic Delegation Scheme](#). A public record of such decision is not usually required,

and a departmental record will suffice. [Chief Officer's Sub-Delegation Schemes](#) should be referred to before a decision route is taken.

### **3. The Cascade and Generic Delegation Scheme - Authorisation of Officers to Exercise Delegated Powers**

- 3.1. The [Cascade and Officer Generic Delegation Scheme](#) includes the power for any Chief Officer (i.e. Chief Executive, Deputy Chief Executive, Heads of Service, Monitoring Officer, Chief Financial Officer) to make arrangements to sub-delegate their authority to another officer.
- 3.2. When officers act under delegated powers, they do so in the name of the appropriate Chief Officer who will retain ultimate responsibility for ensuring that powers are exercised at the appropriate level by suitably competent and qualified officers. The Chief Officer remains responsible for any decisions made under such arrangements. The Cascade and Generic Delegation Scheme is explained further in the [Council Officer Responsibilities and Decision Making section](#) of the Constitution.
- 3.3. In exceptional circumstances, and with the agreement of those above them in the chain of cascade, Officers may decline to exercise powers which rest with them where it is considered, in all the circumstances, that it would be more appropriate for another officer (further up the chain of cascade) or for a Cabinet Member, the Leader of the Council, or the Cabinet to exercise the power instead.
- 3.4. The Cabinet may also direct when an officer's delegated authority should not be exercised and that the matter should be referred to the Cabinet.

### **4. The Process**

- 4.1. Before taking any decision, the authorised officer must take into account the principles of decision making set out in the [Introduction to Decision Making](#) section in the Constitution.
- 4.2. The Council will observe the following principles when making decisions:
  - a) Proportionality (i.e. the action must be proportionate to the desired outcome).
  - b) Due consultation and the taking of professional advice from officers.
  - c) Respect for human rights.
  - d) A presumption in favour of openness.
  - e) Clarity of aims and desired outcomes.
  - f) Relevant matters have not been ignored.
  - g) Consideration and evaluation of alternatives and reasons for decisions.
  - h) Due regard to the statutory framework, guidance and Codes of Conduct.
- 4.3. Under the Regulations, notification of upcoming Key Decisions must be published by the Council at least 28 calendar days before the proposed decision date. However, in the interests of greater openness and transparency, the local practice is to request that all decisions due to be taken by either the Cabinet or an individual Cabinet Member (whether Key or Non-Key) be published via a Forthcoming Decision Notice (previously referred to as the Forward Plan) at least 28 calendar days before the proposed decision date.

- 4.4. If it is impracticable to publish a Forthcoming Decisions Notice Plan at least 28 days before the proposed decision date, then the officer must comply with the Urgency and Exception Procedures set out in the [Access to Information Procedure Rules](#). In these cases the relevant officer should contact the Democratic Services team for advice.
- 4.5. If an officer is unable to give five clear days' notice of a Key Decision that was not published in a Forthcoming Decision Notice, the decision can only be taken if the Chair of the Overview and Scrutiny Commission, or in their absence the Vice Chair of the Commission and the Mayor, have agreed that the decision is urgent and cannot reasonably be deferred. The full procedure is again set out in the [Access to Information Procedure Rules](#).

## 5. Call-in

- 5.1. Any decision taken by the Cabinet or by individual Cabinet Members (or Key Decisions taken by officers) may be Called-In when a Councillor objects to it and then gains the support of three other Councillors by 12 noon on the fifth day following publication of the decision. The Call-In suspends the decision until it is referred to the next meeting of the Full Council. The Call-In procedure is set out in the [Call-In Procedure Rules](#) within the Constitution.

## 6. Recording Executive Decisions

- 6.1. **Decisions taken by the Cabinet collectively:** the main steps to be taken for decisions taken by the Cabinet are:
- a) Notification that the decision is to be taken should be published as a Forthcoming Decision Notice at least 28 calendar days before the decision is due to be taken.
  - b) The decision, once taken, will be published in the minutes of the Cabinet meeting and in the Notifications of Decisions document on the Council's website. The decision will also be published on the "Decisions Made" page of the Council's website.
- 6.2. **Delegated decisions taken by individual Cabinet Members:** the main steps to be taken for decisions taken by individual Cabinet Members are:
- a) Notification that the decision is to be taken should be published as a Forthcoming Decision Notice at least 28 calendar days before the decision is due to be taken.
  - b) A "Consideration Report" must be produced, submitted to Democratic Services and published in the Councillor's Information Bulletin at least 5 clear working days before the decision is to be taken.
  - c) Once the decision has been taken, a "Record of Delegated Decision Taken" form needs to be completed, signed and emailed to [democratic.services@crawley.gov.uk](mailto:democratic.services@crawley.gov.uk). A member of the Democratic Services team will then arrange for the decision to be published on the "Decisions Made" page of the Council's website and in the Councillors' Information Bulletin.
  - d) Subject to the decision not being Called-In, the decision can be implemented

after 12 noon on the 5th day following publication in the Councillors' Information Bulletin.

- 6.3. **Key delegated decisions taken by officers:** Most Key Decisions will be taken by the Cabinet collectively and some by individual Cabinet Members. However, should an officer be authorised to take a key delegated decision they must follow the same processes outlined for delegated decisions taken by individual Cabinet Members above.
- 6.4. **Significant Operational Decisions (SOD) taken by officers:** No prior notice needs to be given before a SOD is taken by an officer. Once a SOD has been taken by an officer this should be uploaded to the Modern.Gov system (further guidance can be requested by emailing [democratic.services@crawley.gov.uk](mailto:democratic.services@crawley.gov.uk)). The decision will then be published on the "Decisions Made" page of the Council's website and in the Councillors' Information Bulletin.
- 6.5. **Operational Decisions taken by officers:** Service areas should keep information relating to operational decisions taken so that an audit trail is available if required. No formal publication of these decisions is required.

## 7. Giving Reasons

- 7.1. A matter of increasing significance in local authority decision-making is when reasons have to be given. Generally, giving reasons is an accepted 'best practice' principle of good administration. Case law suggests that the practice may be important in ensuring that controversial decisions are rooted in relevant considerations and with proper regard to available legal powers and having regard to the duties under the Equality Act 2010.

## 8. Accountability

- 8.1. Officers to whom decisions have been delegated or are preparing reports for decisions to be taken at Councillor level are required to ensure that:
  - a) They identify, at an early stage, issues upon which Councillors should be consulted, and that appropriate consultation takes place.
  - b) Effective consultation takes place in accordance with the Constitution and any terms of the delegation.
  - c) Officers will ensure that appropriate consultation is undertaken with Cabinet Members on issues relating to their portfolio responsibilities.
- 8.2. Every effort will be made to ensure that Councillors have a realistic time scale to respond to consultation and, where appropriate and reasonably practicable, this time scale will be sufficient to enable Councillors to consult with their constituents. Councillors will be informed of any time restrictions which may apply relating to the process of consultation, particularly where urgent action is needed in the Council's and/or the public interest.

## Brief Overview: Executive Decision Thresholds and Decision Making Process

Thresholds/Details	Key Decisions	Significant Operational (Non-Key) Decisions (SOD)*	Operational (Non-Key) Decisions*
Revenue expenditure or savings p.a	£100,000+ p.a.	£80,000 - £99,999 p.a.	Under £80,000 p.a.
Capital expenditure (new commitments)	£500,000+	£250,000-£499,999	Under £250,000
Contract awards	£500,000+	£250,000-£499,999	Under £250,000
Usual decision maker(s)	Cabinet – otherwise individual Cabinet Members	Officers	Officers
Notice of or further details of forthcoming executive decisions (if appropriate)	Published Forthcoming Decision Notice, Cabinet agenda or in the Councillors' Information Bulletin	Not required ( <i>unless decision to be taken by the Cabinet or individual Cabinet Members</i> )	Not required ( <i>unless decision to be taken by the Cabinet or individual Cabinet Members</i> )
How executive decisions are recorded	In Cabinet minutes or in the Councillors' Information Bulletin and on the "Decisions Made" Council's website	In the Councillors' Information Bulletin and on the "Decisions Made" Council's website	Not required to be publicised. Service areas should hold a record of such decisions for an audit trail.*