
OFFICER DECISION MAKING PROTOCOL

1.0 BACKGROUND

This document sets out the legal and governance framework for decision-making and establishes a procedure to transparently document decisions taken by Officers under their delegated authority.

Compliance with the Protocol safeguards the Council by ensuring good governance, promotes transparency to our local communities and ensures compliance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and The Openness of Local Government Bodies Regulations 2014.

2.0 TYPES OF DECISIONS

The significance, consequence and impact of decisions taken by officers under their delegated authority will vary. Officers who are authorised to make delegated decisions will need to exercise judgment in determining whether notice of the taking of such decisions is required to be published in advance (by placing on the forward plan if they are in relation to Executive functions) and/or whether the decision is required to be formally recorded and / or published. They do so by determining whether a decision relates to an Executive or non-Executive function, and whether the decision is categorised as Key, Major or Administrative.

Advice in reaching such determination is always available from the Monitoring Officer and Democratic Services Officers.

2.1 Decision relating to an Executive or Non-Executive Function

Decisions may relate to Executive functions or to non-Executive (i.e. Council) functions.

Reference should be made to Responsibility for Functions in Part 3 of the Constitution to determine whether a decision is Executive or non-Executive.

Decisions relating to an Executive Function may be categorised as being either a Key Decision, a Major Decision or an Administrative Decision.

Decisions relating to a non-Executive Function may be categorised as being either a Major Decision or an Administrative Decision.

2.2 Categorisation of Decisions

Decisions may be defined as either Key, Major or Administrative.

2.2.1 Key Decisions

A key decision is defined in Article 14 of the Constitution. It is an Executive decision which is likely to result in expenditure, savings or income of at least £200,000 and/or have a significant impact on two or more Wards within the Borough.

Key Decisions must be published on the Forward Plan for a period of at least 28 clear days before the decision may be made.

A Key Decision must be recorded formally on an Officer Decision Notice and published as soon as reasonably practicable in accordance with para 3.5 below.

2.2.2 Major Decisions

A Major decision may be either an Executive or non-Executive decision, but it is one that does not meet the definition of a Key Decision, but is more than merely Administrative.

A Major Decision must be recorded formally on an Officer Decision Notice and published as soon as reasonably practicable in accordance with para 3.5 below (subject to the exceptions listed below); this is regardless of whether it relates to an Executive matter or a non-Executive matter.

2.2.3 Administrative Decisions

Administrative decisions may be either Executive or non-Executive and are decisions that are ancillary to the delivery of the function such as the ordering of stationery, publication of statutory notices, deployment of staff, or commencing a procurement process.

Administrative decisions do not need formally recording nor publishing in accordance with para 3.5 below but an audit trail of them should still be retained; this is regardless of whether they relate to an Executive matter or a non-Executive matter.

3.0 PROCEDURE

3.1 Authority

Before taking any decision, an Officer should ensure that they have the appropriate authority, in writing, to do so.

Such authority may come from the 'Scheme of Officer Delegations' contained in Part 3 of this Constitution. The general principles of the scheme must be considered as they may impose financial restrictions and other limitations upon the exercise of the authority, as well as any specific restrictions and consultation requirements. Authority is provided to a specific postholder in the 'Scheme of Officer Delegations', but may be exercised by another Officer, where the Officer with the delegation has authorised another named Officer to exercise the authority on their behalf, and such authorisation is contained within a Scheme of Authorisation provided to the Monitoring Officer and published on the Council's website.

Alternatively, such authority may arise from a specific delegation from a decision maker or decision-making body, such as the Executive, or a Committee, for a particular decision, or decisions.

3.2 Notice

All proposed Key Decisions must be included on the Forward Plan and published on the Council's website, not less than 28 clear days (which may include weekends and public holidays), prior to the date on which the decision is to be made.

To include a matter on the Forward Plan, an Officer should complete the Forward Plan submission on the democratic services system, Modern.Gov, which can be accessed on the Council's intranet. Submission of a forward plan item automatically notifies Democratic Services Officers who will ensure your item is included on the forward plan and published accordingly.

If it is not possible to publish 28 clear days' notice of the Key Decision to be made by an Officer, then the Officer must comply with the legal requirements relating to exceptional and urgent Executive decisions. The General Exception procedure may be used where it is impracticable to publish 28 days' notice of the decision, but at least 5 days' notice may be given and there is an appropriate reason for why compliance with the notice period is impracticable; the procedure is set out at Rule 15 of the Access to Information Procedure Rules. The Special Urgency procedure may be used where 5 days' notice of the decision cannot be given and the Chairs of the Overview & Scrutiny Committees have agreed that the taking of the decision is urgent and cannot reasonably be deferred; the procedure is set out at Rule 16 of the Access to Information Procedure Rules in Part 4 of the Constitution.

The use of the General Exception Procedure and Special Urgency Procedure may only be used in consultation with the Monitoring Officer, the Democratic Services and Elections Manager, and the relevant Ward Councillor and Portfolio Holder.

3.3 Report

An Officer should only take a Key Decision after consideration of a report on the matter. There is no requirement for such a report to be published, but an audit trail of the report should be retained, by the decision-making Officer, for a period of 6 years and made available for inspection by the public upon request (unless exempt).

The report should, as a minimum, contain sufficient information for the decision-maker to make an informed decision, and to be able to satisfy the decision-making principles set out below.

The report should contain:

- Details of the Wards affected by the decision, if appropriate;
- The title of the Strategic Director with overall responsibility for the subject matter of the report;
- The details of the Officer writing the report;
- The source of authority for the decision-maker;
- Whether the report contains exempt or confidential information;
- A description of the issues to be decided;
- The views of the Ward Member and/or Portfolio Holder;
- The outcome of any consultation undertaken;
- Details of any alternative options considered and reasons as to why a particular decision is recommended;
- Any relevant professional advice from other Officers such as legal and/or finance colleagues, where appropriate;
- Reference to any relevant background papers.

3.4 Principles

Where authority to make a decision exists, appropriate notice has been given, and a report has been considered, the decision-maker should turn their attention to the

Principles of Decision Making. These are set out in Article 14 of the Constitution and are:

- There should be a clarity of aims and desired outcomes;
- Proper regard should be paid to professional advice from Officers;
- All decisions must be in accordance with the law;
- Proper regard should be paid to appropriate internal and external consultation;
- There should be a presumption in favour of openness, accountability and transparency;
- There should be a respect for human rights;
- There should be proportionality so that the action taken is proportionate to the desired outcome;
- There should be an explanation of the alternative options considered;
- There should be proper and documented reasons given for all decisions;
- The decision maker must take into account all relevant matters and disregard all irrelevant matters;
- The decision maker must act for a proper purpose, exercising its powers for the public good;
- The decision maker should not reach a decision which is irrational and which is so unreasonable that no reasonable person could have made it;
- The decision maker should act with procedural propriety in accordance with the rules of fairness and principles of natural justice;
- If intended to secure action a decision must be capable of effect and execution.

3.5 Making, Recording and Publishing an Officer Decision

3.5.1 Key Decision

In making a Key Decision, the Officer who is the decision maker must complete an Officer Decision Notice, summarising the decision they have made. A template document is available on the intranet.

Such Officer Decision Notice must be published as soon as practicable after the decision maker has made their decision, and this is deemed to be by 5pm on the working day after the date they made their decision (See below for exempt / confidential information). The Officer Decision Notice will be published on the Council's website.

The Officer Decision Notice will record, as a minimum, the following information:

- The title and subject of the decision;
- Whether the decision notice contains Exempt Information or is Open;
- The date the decision is made;
- The name of the Officer taking the decision;
- The source of that Officer's authority to take the decision;
- Confirmation that the appropriate notice has been provided before taking the decision;
- Details of consultation undertaken and comments from consultees;
- The decision made;
- Reasons for the decision;
- Alternative options considered;
- A record of any conflict of interests relating to any Officer or Councillor involved in the process and any relevant dispensation if applicable;
- Date of implementation of the decision (see paragraph 3.5 below).

The decision maker should provide the completed Officer Decision Notice to Democratic Services Officers for publication, via email at committeeservices@guildford.gov.uk.

Should the decision maker consider the decision relates to exempt or confidential information they must contact the Monitoring Officer, or one of the Deputy Monitoring Officers, via the email address committeeservices@guildford.gov.uk, for their confirmation that the information is exempt or confidential. In such circumstances the Officer Decision Notice should be provided to Democratic Services Officers who will retain the 'open' version and produce a redacted version with all exempt information withheld, which will be published in the usual way, so that the public are aware of a decision having been made.

3.5.2 Major Executive or Non-Executive Decisions

As above, Major decisions, which are not Key but neither merely administrative, whether Executive or non-Executive, should also be recorded and published, subject to the exceptions listed at para 3.5.4 below. Whilst they are not subject to 28 clear days' notice to have elapsed before they may be taken, and they are not subject to the Call-in procedure set out at para 3.6 below, they may still be challenged externally through appeals processes, the Courts and the Ombudsman.

Where Major Decisions relate to Executive functions, the Local Authorities Regulations 2012 mandate such recording and formal publication. Where Major Decisions relate to non-Executive functions such as Planning or Licensing, the Openness of Local Bodies Regulations 2014 provide for such publication, subject to the exceptions listed at para 3.5.4 below, to uphold the principle of transparency within Local Government.

An Officer making a Major Executive or non-Executive decision should again complete an Officer Decision Notice by accessing the template document on the democratic services page of the Council's intranet. This should be done as soon as practicable after the decision is made and in any event by 5pm on the working day after making the decision.

The completed Officer Decision Notice, must be provided to Democratic Services Officers for publication on the Council's website, via email at committeeservices@guildford.gov.uk.

If the Monitoring Officer has confirmed that the decision relates to exempt or confidential information, the Officer Decision Notice should be clearly marked as Exempt and when provided to Democratic Services Officers by email, they will retain the document on their records, and publish on the Council's website, a redacted version with exempt information removed.

3.5.3 Administrative Decisions

Administrative decisions may also be Executive or non-Executive. There is no requirement to complete and publish an Officer Decision Notice in respect of administrative decisions. However, they could still be challenged and so an audit trail should be retained.

3.5.4 Exceptions to Formal Recording and Publication of Decisions

As explained in paragraph 3.5.1, all Key decisions must always be formally recorded and published.

However, in respect of some Major Decisions, where we already publish such information on our website, there is no need to formally record the decision on an Officer Decision Notice, nor to publish such Notice. This will be the case where such decisions are included on the Council's Planning Portal, within registers that are open to the public, or information the Council has published in line with the Local Government (Transparency Requirements) (England) Regulations 2015.

In particular the Council will not publish Officer Decision Notices relating to:

- Routine administrative and organisational decisions;
- Decisions on operational matters such as changes to services;
- Decisions on HR proposals;
- Decisions to give business relief to individual traders;
- Decisions to review the benefit claims of an individual applicant;
- Decisions to issue parking permits;
- Decisions on penalty charge notices, fixed penalty notices and regulatory notices such as abatement, enforcement, anti-social behaviour etc;
- Decisions to institute legal proceedings;
- Decisions that in the opinion of the Monitoring Officer are other purely administrative or operational decisions concerning our day-to day workings.

However, the above may still be requested under other legislation, including the Freedom of Information Act 2000, and you must still record your decision.

3.6 Implementation of an Officer Decision & the Call-in Process

3.6.1 Key Decisions

Key decisions made by Officers are subject to Call-in by an Overview and Scrutiny Committee and cannot therefore be implemented until a period of 5 clear working days has elapsed from the date the Officer Decision Notice was published, (regardless of the date the decision was made), and it has been ascertained that the decision has not been Called-in. For the avoidance of doubt, 28 clear calendar days' notice must be given for a key decision and in addition 5 clear working days' notice following publication of a decision for the call-in period.

If a decision is called in by one of the Overview and Scrutiny Committees the decision cannot be implemented until that Committee has made a decision regarding the Call-in. If a decision has been Called-in and dealt with by an Overview & Scrutiny Committee, the same decision may not be further Called-in. The Call-In Procedure is set out in the Overview and Scrutiny Procedure Rules in Part 4 of the Constitution.

3.6.2 Major and Administrative Decisions

Whilst non-Key decisions, i.e. Major and Administrative Decisions, are not subject to the formal 'call-in' procedure, Officers remain accountable for any such decisions they make and may be required to answer questions from the Overview and Scrutiny Committee in respect of any such decisions.

3.7 Consultation

Officers to whom authority to make a decision has been delegated (either by the Scheme of Officer Delegations, by an individual's Scheme of Authorisations or expressly by a decision maker) have a duty to ensure that effective consultation takes

place in accordance with the terms of their delegation and in accordance with the principles of decision making and good governance.

Every effort should be made to ensure that Councillors have a realistic timescale to respond to consultation and, where appropriate and reasonably practicable, this timescale is sufficient to enable Councillors to consult with their constituents, should they wish to do so. 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.

Consultation shall be carried out in writing, unless there is an urgency about the decision that makes such written consultation impractical, in which case the officer shall confirm, in writing, to the Councillor their understanding of the Councillor's verbal response to the consultation.

An audit trail of any consultation responses should be retained by the decision maker and details of consultation undertaken and summary of the response must be contained within the Officer Decision Notice.

The decision, however, remains the responsibility of the Officer making the decision and they cannot have their discretion fettered by any consultee. If following consultation with a Councillor, the Officer does not feel that they can make the decision in accordance with their professional judgment, they may choose not to exercise their authority but instead refer the matter to the relevant Executive, Committee, Council, Executive Member, Leader or Senior Officer from whom the authority derived.

4.0 SUMMARY

The below table should not be read in isolation but is intended to be a summary guide to be supplemented by the above Protocol.

	Executive			Non-Executive	
	Key	Major	Admin.	Major	Admin.
28 clear days prior notice on Forward Plan?	Yes	No	No	No	No
Report produced?	Yes	Yes	No	Yes	No
Officer Decision Notice Published (redacted version published if exempt)?	Yes	Yes <i>Unless exception applies</i>	No	Yes <i>Unless exception applies</i>	No
Subject to call-in?	Yes	No	No	No	No
Decision Maker remains accountable?	Yes	Yes	Yes	Yes	Yes
Consultation likely to be required and audit trail to be retained?	Yes	Yes	No	Yes	No
Background papers and report to be made available for inspection upon request (unless exempt) – potentially under FOI legislation	Yes	Yes	Yes	Yes	Yes