

**Decision Maker:** GENERAL PURPOSES AND LICENSING COMMITTEE

**Date:** 6 July 2021

**Decision Type:** Non-Urgent Non-Executive Non-Key

**Title:** REVIEW OF THE SCHEME OF DELEGATION TO OFFICERS

**Contact Officer:** Graham Walton, Democratic Services Manager  
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**Chief Officer:** Mark Bowen, Director of Corporate Services

**Ward:** All Wards

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1. Reason for report

- 1.1 The Scheme of Delegation to officers is reviewed at least once a year - and an updated version is usually considered at the annual meeting of the Council. The Council is asked to note the changes made to executive delegations, and approve the non executive scheme. At the annual Council meeting on 19<sup>th</sup> May 2021 a member complained that a number of provisions in the scheme were incorrect or should be reviewed, and at the Mayor's suggestion, the matter was referred to this Committee to consider.

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2. **RECOMMENDATION**

**That the Committee reviews the non-executive Scheme of Delegation to Officers, and in particular the criticisms of the Scheme raised at the annual Council meeting.**

### Impact on Vulnerable Adults and Children

1. Summary of Impact: Not Applicable
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### Corporate Policy

1. Policy Status: Existing Policy:
  2. BBB Priority: Excellent Council:
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### Financial

1. Cost of proposal: No Cost:
  2. Ongoing costs: Not Applicable:
  3. Budget head/performance centre: Democratic Services
  4. Total current budget for this head: £366k
  5. Source of funding: Revenue Budget
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### Personnel

1. Number of staff (current and additional): 6 (6.67 fte)
  2. If from existing staff resources, number of staff hours: Not Applicable
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### Legal

1. Legal Requirement: Statutory Requirement:
  2. Call-in: Not Applicable: non-executive matters are not subject to call-in.
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### Procurement

1. Summary of Procurement Implications: Not Applicable
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Not Applicable
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: Not Applicable

### 3. COMMENTARY

3.1 The Local Government Act 2000 created the Executive model of local governance. The most common version adopted by local authorities vested the majority of local authority functions and decision making at a member level in an Executive comprising a Leader and up to 9 other Councillors. Bromley's Executive comprises the Leader and 6 Portfolio Holders.

3.2 The law has evolved and the present position on Executive decision making is set out in the 2000 Act as amended by the Localism Act 2011 (the Act). Section 9 D (2) of the Act provides

*(2) Subject to any provision made by this Act or by any enactment which is passed or made after the day on which this Act is passed, any function of the local authority which is not specified in regulations under subsection (3) is to be the responsibility of an executive of the authority under executive arrangements.*

3.3 Originally Council could set the executive scheme of delegation but as the legislation developed those powers were vested entirely in the Executive Leader. The position now is set out in section 9E of the Act

*(1) Subject to any provision made under section 9EA or 9EB, any functions which, under executive arrangements, are the responsibility of—*

*(b) a leader and cabinet executive (England),*

*are to be discharged in accordance with this section.*

*(2) The senior executive member [Leader]—*

*(a) may discharge any of those functions, or*

*(b) may arrange for the discharge of any of those functions—*

*(i) by the executive,*

*(ii) by another member of the executive,*

*(iii) by a committee of the executive,*

*(iv) by an area committee, or*

*(v) by an officer of the authority.*

3.4 Therefore, the delegation of Executive functions is entirely a matter for the Leader and is not a matter for this Committee.

3.5 For non executive functions, section 101 of the Local Government Act 1972 provides the main general power to delegate. That allows for the majority of non executive functions to be exercised by Council, a committee, a sub-committee or an officer. The main list of non executive functions is set out in the The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended).

3.6 Certain matters are reserved to full Council - e.g appointing the Mayor and setting the budget. Other matters must be discharged by specific parts of the Council and cannot be delegated further - e.g certain licensing functions, which limits discharging these functions to between 10 - 15 named members. Some matters - e.g certain staffing matters, and surveillance authorisation under the Regulation of Investigatory Powers Act 2000 (RIPA) are reserved by law to Officers.

The relevant statutory provisions allow onward delegation in most cases so g a committee can delegate to a sub-committee or to an officer.

- 3.7 The Council has a single scheme covering both executive and non executive functions which are marked as such on the scheme . There are some areas which overlap both Executive and non executive functions and these are marked accordingly.
- 3.8 At the annual meeting of the Council on 19<sup>th</sup> May 2021, a member raised some queries about the Scheme of Delegation, and these issues were referred to this Committee for further consideration. The five issues raised are set out in Appendix A. Three of these issues concern executive delegations, which this Committee cannot change. One issue concerns an update which can be made when the Scheme next needs to be updated by full Council

<b>Non-Applicable Sections:</b>	Impact on Vulnerable Adults and Children/Policy/Financial/Personnel/Legal/Procurement
Background Documents: (Access via Contact Officer)	Scheme of Delegation to Officers – May 2021

**COMMENTS ON THE SCHEME OF DELEGATION –  
ANNUAL COUNCIL MEETING 19<sup>TH</sup> MAY 2021**

<b>Delegation and objection</b>	<b>Executive/ Non-Executive</b>	<b>Officer Comment</b>
<p>Page 30 - (24) <i>To DEPP - "Authorise action under Sections 28 and 29 of the Regulation of Investigatory Powers Act 2000."</i></p> <p>The concern was that the RIPA provisions are intrusive and overbearing - the Police have the necessary powers and these powers should not be delegated to officers.</p>	<p>Executive</p>	<p>This matter is reserved by law to Council officers, and cannot be exercised by Councillors. It is also an executive delegation from the Leader which the Committee cannot withdraw</p>
<p>Page 33 - (11) <i>To ADP - "Decide action on applications for approval of intended names of streets."</i></p> <p>Councillors should decide on names of new streets and buildings, and should use names of former prime Ministers with associations with the Borough.</p>	<p>Executive</p>	<p>This is an executive delegation from the Leader which the Committee cannot withdraw.</p>
<p>Page 43 - (83) <i>To DEPP – "Approve annual requests from Environment Bromley for grant funding."</i></p> <p>Why should Environment Bromley be singled out to receive an automatic annual grant?</p>	<p>Executive</p>	<p>There is not an automatic grant. It allows officers to permit, but refusal would be a Member decision. This is an executive delegation from the Leader which the Committee cannot withdraw</p>

<p>Page 52 – (8) <i>To all chief officers &amp; DHR - “Authority to agree applications for early retirement outside the redundancy policy where this will lead to compensatory staff savings, and act as a member of the Chief Officer Early Retirement Panel to determine applications for early/flexible retirement under the Local Government Pension Scheme Regulations.”</i></p> <p>Why should Members agree to delegate powers to authorise payments that are not compliant with policy?</p>	<p>Council</p>	<p>This delegation allows chief officers some flexibility in dealing with complex and sensitive matters concerning individual members of staff that are not necessarily covered by relevant policy where that will achieve savings .</p>
<p>Page 75 –<i>“Secondary legislation made under the European Communities Act 1972”</i></p> <p>This is now out of date – it should refer to the European Withdrawal Agreement Act 2020</p>	<p>N/A</p>	<p>It is accepted that this needs updating – this can be done when the Scheme is next considered by full Council.</p>