

# Supplementary Papers for Audit and Governance Committee

Date: Thursday, 28 November 2024



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<b>8. Presentation - Transparency of officer decision making and accountability to Councillors</b>	<b>3 - 16</b>
<p>To receive a presentation on the transparency of officer decision making covering Constitution elements and the accountability to Councillors.</p> <p>Copy of presentation slides enclosed for information.</p>	
<b>9. Presentation - Governance surrounding the disposal of Council land and property</b>	<b>17 - 24</b>
<p>To receive a presentation to explain the governance in place when the Council seeks to dispose of land and property.</p> <p>Copy of presentation slides enclosed for information.</p>	

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# Transparency of officer decision making and accountability to Councillors

Audit & Governance Committee – 28 November 2024

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# Constitution

- The Constitution is a public document and is the Council's primary governance framework for the Council both in terms of corporate and ethical governance. It is a "living" document and as such should remain under review by the Monitoring Officer
- It sets out the rules and procedures which explain how council business is done and how decisions are made.
- Some of these rules and provisions are required by law and some are considered as necessary by BCP Council to ensure services are delivered effectively and efficiently and in the best interests of residents and others
- Decisions are made by Councilors in public meetings and by Officers. All decisions are formally recorded to ensure transparency and integrity of decision making.
- At BCP Council, individual Cabinet members do not make decisions though the constitution does provide for this should circumstances change.

# Financial Thresholds

Officer decisions are restricted by financial thresholds set out in the Financial Regulations (Part 5 of the Constitution) in summary (the Chief Finance Officer must be consulted in all instances):

£1million or more – Council

£500k-£1million - Cabinet

£100k - £500k - Corporate Director

Up to £100k - Service Director

In limited circumstances, the Chief Finance Officer can make decisions regardless of the financial threshold.

The Financial Regulations also provide advice and guidance in respect of fees and charges, sundry debt and a wide range of other circumstances whereby Officers can make operational decisions which have a financial threshold

# Scheme of Delegation

- All decisions are also governed by a Scheme of Delegation which is found at Part 3 of the Constitution
- The Constitution advises members of the public and stakeholders as to which body ie Councilors and or Officers, can make which decisions about which services/ functions.
- In respect of Officers, the Scheme, advises the seniority of Officer authorised to make a decision and or allocates certain decisions and functions to certain job roles
- The Scheme also acts as authority by BCP Council for officers to carry out designated or specific operational functions e.g the Corporate Director of Children and Families can undertake all statutory activity required as the Director of Children's Services
- The Scheme is also a "living" document and should remain under review as the Council's structure and services evolve and transform.
- Local schemes are created within directorates to govern how the functions detailed in the Constitution scheme of delegation are carried out at an operational level for example, the Corporate Director for Children and Families delegates her responsibilities to her Team to ensure robust delivery of services

# Scheme of Delegation

Part 3 of the Constitution, also provides some principles for decision making including:

- Just because there is provision in the Constitution for an Officer decision to make a decision this does not mean that an Officer should always make that decision. For example, Officers should not make politically contentious decisions and or those which are deemed to be highly controversial. In these instances the decision should revert to the relevant Committee, Cabinet and or Council
- Clarity is provided about Proper Officer Functions – this is where legislation requires a function to be carried out by a Proper Officer for a prescribed purpose
- Clarity is provided about Local Choice Functions – these are functions which the Council can exercise a choice as to whether certain functions should be reserved to Cabinet, reserved to Council or delegated to an Officer



# Types of Officer Decisions

## Operational Officer Decisions

These are made in compliance with relevant financial thresholds as detailed in the constitution. These are the most common form of decisions made. All Officer decisions require input from Legal Services and Finance as a minimum and are signed off by the relevant Director in consultation with the Monitoring Officer and the s151 Officer.

## Day to Day Operational Decision

- A Day-to-Day Operational Decision is an Officer decision which is not a Key or Major Operational Decision and meets all of the following criteria:
  - It is within an agreed Service Plan and Service Budget;
  - It is not in conflict with the Budget and Policy Framework or other approved policies of the Council; and
  - It does not raise new issues of policy.

A record of these decisions is retained within the Service area

# Types of Officer Decisions

## Major Operational Decision

A Major Operational Decision is an Officer decision which is not a Key Decision and which is likely to meet one of the following criteria:

- 1. it will result in the Council incurring expenditure, including the loss of income – in excess of £100,000, with the exception of operational expenditure identified within the agreed Service Plan and Service Budget;
- 2. it is a decision which has been specifically delegated to Officers – for example to conclude an agreement or contract within the outline terms agreed by the Cabinet; and/or
- 3. it is a decision which is controversial and/or politically sensitive in nature or is, in the opinion of the Director, of such significance that a published record of the decision would ensure transparency and accountability in relation to decision making within the Council.

A record of these decisions is published by Democratic Services

# Officer Decisions – Consultation with Ward Councillors & Cabinet

Many decisions have ward implications therefore Officer consultation with Ward Councillors as part of the decision making process is invaluable.

Every officer decision should include the outcome of consultation and the views of Ward Councillors and where appropriate Cabinet Members.

## Why is this important?

- ⇒ Ward Councillors are directly accountable to residents and therefore should be fully informed of decisions which may have an impact on the local community
- Cabinet Members act as portfolio leads and work with officers in setting policy and strategy direction, they also respond to media enquiries and general queries from members of the public and other Councillors.
- Modern.gov allows for cabinet members and ward Councillors to review draft reports and give comment – the intention is to put all ODR decision making process through Modern.gov to strengthen the governance approach to officer decision making

# Other forms of Officer Decisions

## Urgent Decisions

- Urgent decisions are made by the Chief Executive when a decision is required and there is insufficient time to refer the matter to Cabinet and/or Council. For example the Council is asked to accept grant funding within 7 days – this would not allow sufficient time to convene a meeting of Cabinet or Council (subject to financial thresholds).
- They can only be made in consultation with the Monitoring Officer, and the Leader and or relevant Member of the Cabinet (and or Committee chair if relevant) and s151 Officer where there are expenditure implications.
- All Urgent Decisions must be reported (retrospectively) to the next meeting of the Cabinet and Council

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## Emergency Decisions

- Emergency decision making is part of the Gold/Silver command framework and in response to the Council's Emergency Response Framework

# Other forms of Officer Decisions

## Emergency Decisions

- Emergency decision making is part of the Gold/Silver command framework and in response to the Council's Emergency Response Framework
- Any financial expenditure must not exceed that set out in the Emergency Response Plan
- ⇒• Notifications of any decision taken should be given to the Leader, Deputy Leader, relevant Cabinet Member, Chief Executive, Monitoring Officer and s151 Officer as soon as reasonably practicable
- A schedule of decisions should be reported as soon as reasonably practicable to a meeting of Cabinet following the incident

# Decisions by Statutory Officers

In certain circumstances legislation requires the Monitoring Officer and the s151 Officer to issue reports which have the effect of suspending decision making.

## Action by the Monitoring Officer

14 Can issue a report pursuant to s5 Local Government and Housing Act 1989, where, in the course of discharging functions, there is a proposal, decision or omission which has or may give rise to the contravention of the law, ie maladministration.

The report once issued suspends the decision making in respect of the activity until such time as the report has been considered either by the Cabinet or Council (dependent on the function in question) within 21 days of issue. Cabinet or Council must decide whether to accept or not the s5 report. Prior to issue, the Monitoring Officer must consult (where appropriate) with the Head of Paid Service and the s151 Officer. In some circumstances, issuing a s5 Report may also trigger the issuing of a s114 report by the s151 Officer

# Decisions by Statutory Officers

In certain circumstances legislation requires the Monitoring Officer and the s151 Officer to issue reports which have the effect of suspending decision making.

## Action by the s151 Officer

15 Can issue a report pursuant to s114 Local Government Finance Act 1988. This report directly relates to financial matters relating to the Council and has the effect of suspending decision making which may worsen the Council's position however all decisions which have a final implication must be considered and approved by the s151 Officer. The report once issued must be considered either by the Cabinet or Council (dependent on the function in question) within 21 days of issue. Council or Cabinet will be required to provide a written response to address determine if the s114 report is accepted and if so, what action will be taken to address the concerns raised.

Prior to issue, the s151 Officer is encouraged to consult (where appropriate) with the Head of Paid Service and the Monitoring Officer.

# Questions?



# Governance surrounding the disposal of Council Land & Property

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# Process Map for Asset Disposal

**Step 1.** Asset identified as under-used or surplus

**Step 2.** Under-use or surplus notified to the Corporate Property Group (Cross Authority Officer Group)

**Step 3.** Corporate Property Group consider following courses of action

- Improve utilisation – increase occupation by relocation of another team, service, or third party
- Re-use – Reallocate to a different service such as Housing, Special Educational Needs & Disabilities, Community Use.
- Declare surplus

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**Step 4.** Cabinet/CMB Bi-weekly Strategic Planning Meeting

- Feedback from Cabinet on any potential Community Use of the Asset and likely support for Disposal
- Input from Officers such as Chief Executive, Monitoring Officer, s151 Officer

**Step 5.** Consultation with ward Councillors

**Step 6.** Cross Party Strategic Asset Disposal Working Group

- Cllr Northover, Cllr Canavan, Cllr Bagwell, Cllr Broadhead, Cllr Dedman, Cllr Goodall, Cllr Rice. Cllr K Salmon

**Step 7.** Cabinet Decision

**Step 8.** Council Decision

# Cross Party Strategic Asset Disposal Working Group



**CPSADWG - Established by Council in January 2023**

## **Terms of reference**

- Capital disposal strategy for BCP Council.  
*To develop a pipeline of asset disposals which enables funding of Transformation Investment Programme via Flexible Use of Capital Receipts (FUCR) statutory guidance*
- Strengthen public trust and transparency in the process.
- Initially included a review of the regulations the council must adhere to.

## **Meeting dates**

- 31 March 2023
- 21 April 2023
- 9 June 2023
- 12 January 2024
- 8 March 2024
- 20 September 2024
- 4 October 2024

# Financial Regulations

## Requirements whether Acquisition or Disposal

- Up to £350k      Corporate Property Officer decision
- £350k to £500k      Cabinet decision
- Over £500k      Council decision

# Legal Framework – Best Value Duty

Legal power to dispose of its assets as it thinks fit pursuant to s123 of the Local Government Act 1972, subject to the requirement to obtain **best value** (*unless consent is given by the Secretary of State*) – linked to red book valuations.

A general disposal consent was issued in 2003 by the Secretary of State to permit the disposal of sites at less than best consideration in certain circumstances, provided the undervalue is below £2 million.

- *Should not divest themselves of valuable public assets unless they are satisfied the circumstances warrant such action.*
- *Consent SoS not required or the disposal of any interest in land at below market value, which the council considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area provided below the £2m threshold.*

# CPSADWG principles approved Cabinet July 23 (Part 1 of 2)



## Principle 1

We will ensure sufficient assets disposals are secured to enable the councils Transformation Programme costs to be fully funded by the Flexible Use of Capital Receipts. This will require disposal of assets where completion can be guaranteed by the 31 March of the relevant financial year and to the required amount.

## Principle 2

Pursuant with s123 of the Local Government Act 1972, we will ensure Best Value is achieved in respect of any asset disposal by ensuring the value achieves the red book valuation as a minimum. We will also consider the use of overage clauses, where appropriate, to benefit from any future uplift in value.

## Principle 3

We will constantly challenge ourselves as to the basis for holding any asset to ensure our portfolio is managed in an efficient and effective way. Holding costs and ability to reduce carbon footprint will be salient factors.

## Principle 4

We will look to dispose of surplus, under-used, vacant land & buildings unless there is a strong strategic rationale for holding them for example - support future service delivery, regeneration, housing or place making.

# CPSADWG principles agreed by Cabinet July 23 (Part 2 of 2)



## **Principle 5**

Provided consistent with other principles, we will support the acquisition of assets by community organisations and other public sector bodies such as Town and Parish Councils.

## **Principle 6**

Estates Team capacity will be focused on the delivery of the required asset disposals.



# Questions