



**MIDDLESBROUGH  
BOROUGH COUNCIL  
SCHEME OF DELEGATION**





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# Introduction and Definitions

## Introduction

This Scheme of Delegation forms part of Middlesbrough Borough Council's Constitution and incorporates those matters delegated from the Council or the Executive to Members and Officers.

The Scheme of Delegation is made up of three groups of delegation: those made by Council pursuant to the Local Authorities (Functions and Responsibilities) Regulations 2000, as amended; those made by the Elected Mayor; and those made by Council to the Head of Paid Service and other officers, to carry out day-to-day business.

## Definitions

In the Middlesbrough Borough Council Constitution and this document:

- The **Chief Executive** shall be the Head of Paid Service and the Council's "Proper Officer" and shall, where permissible by law, discharge any functions delegated to another officer including all civic and ceremonial functions, and is referred to in this Constitution as "the **Head of Paid Service**";
- The **Strategic Director Finance, Governance and Support** shall be the Council's Section 151 Officer and Chief Finance Officer, and is referred to in the Constitution as "the **Chief Finance Officer**";
- The **Head of Legal Services** shall be the Monitoring Officer, is authorised to sign or authorise other officers to sign all documents and agreements on behalf of the Council, is authorised to amend the Senior Management Structure and associated job titles, to substitute members in accordance with the Council Procedure Rules, and to replace members at Group Request, subject to reporting and ratification of such replacement at the next practicable Ordinary Meeting of the Council, and is referred to in this Constitution as "the **Monitoring Officer**"; and
- Collectively, the Head of Paid Service, Executive Directors, Strategic Directors, and Assistant Directors are referred to as the Leadership Management Team.



# Part 1 – Council Scheme of Delegation

See the Local Authorities (Functions and Responsibilities) Regulations 2000, as amended

## ALLOCATION OF FUNCTIONS

### A. NON-EXECUTIVE FUNCTIONS

FUNCTION	DELEGATION ETC.
<b>A Functions relating to town and country planning and development control</b>	All functions specified in A1 – 4 shall be the responsibility of the Council.
1. Powers and duties relating to local development documents which are development plan documents.	
2. Power to agree to establish a joint committee to be, for the purposes of Part 2 of the Planning and Compulsory Purchase Act 2004, a local planning authority.	
3. Power to agree to confer additional functions on a joint committee.	
4. Power to request a dissolution of a joint committee.	
5. Power to determine applications for planning permission.	Planning Committee, unless there are fewer than three objections in which case Head of Planning.
6. Power to determine applications to develop land without compliance with conditions previously attached.	Planning Committee, unless there are fewer than three objections in which case Head of Planning.
7. Power to grant planning permission for development already carried out.	Planning Committee, unless there are fewer than three objections in which case Head of Planning.
8. Power to decline to determine applications for planning permission.	Head of Planning
9. Duties relating to the making of determinations of planning applications.	Head of Planning
10. Power to determine application for planning permission made by a local authority, alone or jointly with another person.	Planning Committee
11. Power to make determinations, give approvals and agree certain other matters	Head of Planning



	relating to the exercise of permitted development rights.	
12.	Power to enter into agreement regulating development or use of land. (S.106 TCP Act 1990)	Head of Planning
13.	Power to issue a certificate of existing or proposed lawful use or development.	Head of Planning
14.	Power to serve a completion notice. (S.94 TCP Act 1990)	Head of Planning
15.	Power to grant consent for the display of advertisements.	Planning Committee, unless there are fewer than three objections in which case Head of Planning.
16.	Power to authorise entry onto land. (S196A TCP Act 1990)	Head of Planning
17.	Power to require the discontinuance of a use of land.	Head of Planning
18.	Power to serve a planning contravention notice, breach of condition notice or stop notice.	Head of Planning
19.	Power to issue an enforcement notice.	Head of Planning
20.	Power to apply for an injunction restraining a breach of planning control.	Head of Planning
21.	Power to determine applications for hazardous substances consent, and related powers.	Planning Committee
22.	Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject.	Head of Planning
23.	Power to require proper maintenance of land. (S.215 TCP Act 1990)	Head of Planning
24.	Power to determine application for listed building consent, and related powers.	Planning Committee, unless there are fewer than three objections in which case Head of Planning.
25.	Power to determine applications for conservation area consent.	Planning Committee, unless there are fewer than three objections in which case Head of Planning.
26.	Duties relating to applications for listed building consent and conservation area consent.	Head of Planning

27.	Power to serve a building preservation notice, and related powers.	Head of Planning
28.	Power to issue enforcement notice in relation to demolition of unlisted building in conservation area.	Head of Planning
29.	Powers to acquire a listed building in need of repair and to serve a repairs notice.	Head of Planning
30.	Power to apply for an injunction in relation to an unlisted listed building.	Head of Planning
30A.	Power to authorise stopping up or diversion of highway (s.247 TCPA 1990)	Head of Transport & Infrastructure
31.	Power to execute urgent works. (S.54 Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.	Head of Planning

**B Licensing and registration functions  
(in so far as not covered by any  
paragraph of this Schedule)**

1.	Power to issue licences authorising the use of land as a caravan site ("site licences").	Assistant Director Supporting Communities
2.	Power to license the use of moveable dwellings and camping sites.	Assistant Director Supporting Communities
3.	Power to license hackney carriages and private hire vehicles.	Assistant Director Supporting Communities (where no there are no grounds for refusal); Licensing Committee where there are grounds for refusal.
4.	Power to license drivers of hackney carriages and private hire vehicles.	Assistant Director Supporting Communities (where no there are no grounds for refusal); Licensing Committee where there are grounds for refusal.
5.	Power to license operators of hackney carriages and private hire vehicles.	Assistant Director Supporting Communities (where no there are no grounds for refusal); Licensing Committee where there are grounds for refusal.
6.	Power to register pool promoters.	Assistant Director Supporting Communities
7.	Power to grant track betting licences.	Assistant Director Supporting Communities
8.	Power to license inter track betting schemes.	Assistant Director Supporting Communities
9.	Power to grant permits in respect of premises with amusement machines.	Assistant Director Supporting Communities
10.	Power to register societies wishing to promote lotteries.	Assistant Director Supporting Communities

11.	Power to grant permits in respect of premises where amusements with prizes are provided.	Assistant Director Supporting Communities
12.	Power to issue cinema and cinema club licences.	Assistant Director Supporting Communities
13.	Power to issue theatre licences.	Assistant Director Supporting Communities
14	Power to issue entertainments licences.	Assistant Director Supporting Communities
14A.	Functions relating to licensing (Sections 5-8 Licensing Act 2003)	Licensing Committee
14AA	Duty to comply with requirement to provide information to Gambling Commission	Assistant Director Supporting Communities
14AB	Functions relating to exchange of information	Assistant Director Supporting Communities
14AC	Functions relating to occasional use of notices	Assistant Director Supporting Communities
14B	Power to resolve not to issue a casino premises licence (Section 166 of the Gambling Act 2005)	Licensing Committee
14 C	Power to designate officer of a licensing authority as an authorised person for a purpose relating to premises	Assistant Director Supporting Communities
14CA	Power to make order dis-applying section 279 or 282(1) of the 2005 Act in relation to specified premises	Assistant Director Supporting Communities
14 D	Power to institute criminal proceedings	Monitoring Officer
14 E	Power to exchange information	Assistant Director Supporting Communities
14 F	Functions relating to the determination of fees for premises licences	Assistant Director Supporting Communities
14G	Functions relating to the registration and regulation of small society lotteries	Assistant Director Supporting Communities
15.	Power to license sex shops and sex cinemas.	Licensing Committee
16.	Power to license performances of hypnotism.	Assistant Director Supporting Communities
17.	Power to license premises for acupuncture, tattooing, ear-piercing and electrolysis.	Assistant Director Supporting Communities

18.	Power to license pleasure boats and pleasure vessels.	Assistant Director Supporting Communities
19.	Power to register door staff.	Assistant Director Supporting Communities
20.	Power to license market and street trading.	Assistant Director Supporting Communities
21.	Power to license night cafes and take-away food shops.	Licensing Committee
22.	Duty to keep list of persons entitled to sell non-medicinal poisons.	Assistant Director Supporting Communities
23.	Power to license dealers in game and the killing and selling of game.	Assistant Director Supporting Communities
24.	Power of register and license premises for the preparation of food.	Assistant Director Supporting Communities
25.	Power to license scrap yards.	Licensing Committee
26.	Power to issue, amend or replace safety certificates (whether general or special) for sports grounds.	Assistant Director Supporting Communities
27.	Power to issue, cancel, amend or replace safety certificates for regulated stands at sports grounds.	Assistant Director Supporting Communities
28.	Power to issue fire certificates.	Assistant Director Supporting Communities
29.	Power to license premises for the breeding of dogs.	Assistant Director Supporting Communities
30.	Power to license pet shops and other establishments where animals are bred or kept for the purposes of carrying on a business.	Assistant Director Supporting Communities
31.	Power to register animal trainers and exhibitors.	Assistant Director Supporting Communities
32.	Power to license zoos.	Assistant Director Supporting Communities
33.	Power to license dangerous wild animals.	Assistant Director Supporting Communities
34.	Power to license knackers' yards.	Assistant Director Supporting Communities
35.	Power to license the employment of children.	Assistant Director Supporting Communities
36.	Power to approve premises for the solemnisation of marriages.	Assistant Director Supporting Communities

37.	Power to register common land or town or village greens, except where the power is exercisable solely for the purpose of giving effect to:  (a) an exchange of lands effected by an order under section 19(3) of, or paragraph 6(4) of Schedule 3 to, the Acquisition of Land act 1981 (c.67) or  (b) an order under section 147 of the Inclosure Act 1845 (c.8 & 9 Vict. c.118)	Licensing Committee
38.	Power to register variation of rights of common	Licensing Committee
39.	Power to license persons to collect for charitable and other causes.	Assistant Director Supporting Communities
40.	Power to grant consent for the operation of a loudspeaker.	Assistant Director Supporting Communities
41.	Power to grant a street works licence.	Assistant Director Economic Development
42.	Power to license agencies for the supply of nurses.	Assistant Director Supporting Communities
43.	Power to issue licences for the movement of pigs.	Assistant Director Supporting Communities
44.	Power to license the sale of pigs.	Assistant Director Supporting Communities
45.	Power to license collecting centres for the movement of pigs.	Assistant Director Supporting Communities
46.	Power to issue a licence to move cattle from a market.	Assistant Director Supporting Communities
46A.	Power to grant permission for provisions, etc of services, amenities, recreation and refreshment facilities on highway, and related powers (S.115 E, 115 F and 115 K Highways Act 1980)	All functions specified in 46A – 56 shall be delegated to the Assistant Director Economic Development
47.	Power to permit deposit of builder's skip on highway.	
47A.	Duty to publish notice in respect of proposal to grant permission under Section 115 E of Highways Act 1980	
48.	Power to license planting, retention and maintenance of trees etc. in part of highway.	

49. Power to authorise erection of stiles etc. on footpaths and bridleways
50. Power to license works in relation to buildings etc. which obstruct the highway.
51. Power to consent to temporary deposits or excavations in streets.
52. Power to dispense with obligation to erect hoarding or fence.
53. Power to restrict the placing of rails, beams etc. over highways.
54. Power to consent to construction of cellars etc under street.
55. Power to consent to the making of openings into cellars etc. under streets and pavement lights and ventilators.
56. Power to sanction use of parts of buildings for storage of celluloid.
57. Power to approve meat product premises. All functions specified in 57 – 68 shall be delegated to the Assistant Director Supporting Communities
58. Power to approve premises for the production of minced meat or meat preparations.
59. Power to approve dairy establishments.
60. Power to approve egg product establishments.
61. Power to issue licences to retail butchers' shops carrying out commercial operations in relation to unwrapped raw meat and selling or supplying both raw meat and ready-to-eat foods.
62. Power to approve fish products premises.
63. Power to approve dispatch or purification centres.
64. Power to register fishing vessels on board which shrimps or molluscs are cooked.
65. Power to approve factory vessels and fishery product establishments.

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| 66. | Power to register auction and wholesale markets.                                 |   |
| 67. | Duty to keep register of food business premises.                                 |   |
| 68. | Power to register food business premises.  |   |
| 69. | Power to register motor salvage operators  | Assistant Director Supporting Communities   |
| 70. | Functions relating of the registration of common land and town or village greens | Monitoring Officer  |
| 71. | Power to license Scrap Metal Dealers   | Assistant Director Supporting Communities (where no there are no grounds for refusal) |

**C Functions relating to health and safety at work**

Licensing Committee subject to the Council's Scheme of Delegation

Functions under any of the "relevant statutory provisions" within the meaning of Part I (health, safety and welfare in connection with work, and control of dangerous substances) of the Health and Safety at Work etc. Act 1974, to the extent that those functions are discharged otherwise than in the authority's capacity as an employer.

**D Functions relating to elections**

Unless otherwise specified all functions specified in D1 to 22 shall be delegated to the Corporate Affairs and Audit Committee subject to the Scheme of Delegation approved by the Council

1. Duty to appoint an electoral registration officer.
2. Power to assign officers in relation to requisitions of the registration officer.
3. Functions in relation to parishes and parish councils.
4. Power to dissolve small parish councils.
5. Power to make orders for grouping parishes, dissolving groups and separating parishes from groups.
6. Duty to appoint returning officer for local government elections.

7.	Duty to provide assistance at European Parliamentary elections.	Returning Officer
8.	Duty to divide constituency into polling districts.	
9.	Power to divide electoral divisions into polling districts at local government elections.	
10.	Powers in respect of holding of elections.	Returning Officer
11.	Power to pay expenses properly incurred by electoral registration officers.	Returning Officer
12.	Power to fill vacancies in the event of insufficient nominations.	Returning Officer
13.	Duty to declare vacancy in office in certain cases. (S.85 Local Government Act 1972)	Returning Officer
14.	Duty to give public notice of a casual vacancy.	Returning Officer
15.	Power to make temporary appointments to parish councils.	Returning Officer
16.	Power to determine fees and conditions for supply of copies of, or extracts from, elections documents.	Returning Officer
17.	Power to submit proposals to the Secretary of State for an order under section 10 (pilot schemes for local elections in England and Wales) of the Representation of the People Act 2000.	
18.	Duty to consult on change of scheme for elections	
19.	Duties relating to publicity	Returning Officer
20.	Duties relating to notice to Electoral Commission	Returning Officer
21.	Power to alter year of ordinary election of parish councillors	
22.	Functions relating to change of name of electoral area	
	<b>E. Functions relating to name and status of areas and individuals</b>	The Council



1. Power to change the name of a district.
2. Power to change the name of a parish.
3. Power to confer title of honorary alderman or to admit to be an honorary freeman
4. Power to petition for a charter to confer borough status.

**EA. Functions relating to changing governance arrangements**

The Council

1. Duty to draw up proposals
2. Duty to consult prior to drawing up proposals
3. Duty to implement new governance arrangements
4. Duty to comply with direction given by the Secretary of State
5. Duty to hold a referendum
6. Duty to publish notice if proposals not approved in referendum
7. Duty to obtain written consent of elected mayor

**EB. Functions relating to community governance**

The Council

1. Duties relating to community governance reviews
2. Functions relating to community governance petitions
3. Functions relating to terms of reference of review
4. Power to undertake a community governance review
5. Functions relating to making of recommendations
6. Duties when undertaking review
7. Duty to publicise outcome of review

8. Duty to send two copies of order to Secretary of State
9. Power to make agreements about incidental matters

**F. Power to make, amend, revoke, re-enact or enforce byelaws.**

The Council

**FA Functions relating to smoke-free premises, etc.**

1. Duty to enforce Chapter 1 and regulations made under it.
2. Power to authorise officers
3. Functions relating to fixed penalty notices
4. Power to transfer enforcement functions to another enforcement authority

**G. Power to promote or oppose local or personal Bills.**

The Council

**H. Functions relating to pensions etc.**

The Teesside Pension Fund and Investment Panel

1. Functions relating to local government pensions, etc.
2. Functions under the Fireman's Pension Scheme relating to pensions, etc. as respects persons employed as members of fire brigades maintained pursuant to section 4 of the Fire Services Act 1947.

**1. Miscellaneous functions**

**Part I: functions relating to public rights of way**

1. Power to create footpath or bridleways by agreement.
2. Power to create footpaths and bridleways.
3. Duty to keep register of information with respect to maps, statements and declarations.
4. Power to stop up footpaths and bridleways. (S.118 Highways Act 1980)
5. Power to determine application for public path extinguishment order.

All functions specified in 1 – 34 shall be delegated to the Assistant Director Economic Development

6. Power to make a rail crossing extinguishment order.
7. Power to make a special extinguishment order. (S.118B Highways Act 1980)
8. Power to divert footpaths and bridleways. (S. 119 Highways Act 1980)
9. Power to make a public path diversion order.
10. Power to make a rail crossing diversion order.
11. Power to make a special diversion order. (S.119B Highways Act 1980)
12. Power to require applicant for order to enter into agreement. (S. 119C Highways Act 1980)
13. Power to make an SSSI diversion order.
14. Duty to keep register with respect to applications under section 118ZA, 118C, 119ZA and 119C of the Highways Act 1980.
15. Power to decline to determine certain applications. (S.121C Highways Act 1980)
16. Duty to assert and protect the rights of the public to use and enjoyment of highways.
17. Duty to serve notice of proposed action in relation to obstruction.
18. Power to apply for variation of order under section 130B of the Highways Act 1980.
19. Power to authorise temporary disturbance of surface or footpath or bridleway.
20. Power temporarily to divert footpath or bridleway.
21. Functions relating to the making good of damage and the removal of obstructions (S.32 Acquisition of Land Act 1981)
22. Powers relating to the removal of things so deposited on highways as to be a nuisance.
23. Power to extinguish certain public rights of way.( S.32 Acquisition of Land Act 1981)

24. Duty to keep definitive map and statement under review.
25. Power to include modifications in other orders.  
(S53A Wildlife and Countryside Act 1981)
26. Duty to keep register of prescribed information with respect to applications under section 53(5) of the Wildlife and Countryside Act 1981.
27. Duty to reclassify roads used as public paths.
28. Power to prepare map and statement by way of consolidation of definitive map and statement.
29. Power to designate footpath as cycle track.
30. Power to extinguish public right of way over land acquired for clearance.  
(S.294 Housing Act 1981)
31. Power to authorise stopping-up or diversion of footpath or bridleway.  
(S.258 Town and Country Planning Act 1990)
32. Power to extinguish public rights of way over land held for planning purposes.  
(S.258 Town and Country Planning Act 1990)
33. Power to enter into agreements with respect to means of access.
34. Power to provide access in absence of agreement.  
(S.37 Countryside and Rights of Way Act 2000)

## Part II: Other miscellaneous functions

35.	Functions relating to sea fisheries.	Corporate Affairs and Audit Committee Subject to the Council's Scheme of Delegation
36.	Power to make standing orders.	The Council
37.	Power to appoint staff, and to determine the terms and conditions on which they hold office (including procedures for their dismissal).	In accordance with Officer Employment Procedure Rules set out in Part 4 of this Constitution
38.	Power to make standing orders as to contracts.	The Council
39.	Duty to make arrangements for proper administration of financial affairs etc.	The Council
40.	Power to appoint officers for particular purposes (appointment of "proper officers").	The Council
41.	Power to make limestone pavement order.	Assistant Director Economic Development
42.	Power to make closing order with respect to take-away food shops.	Assistant Director Improving Public Health
43.	Duty to designate officer as the head of the authority's paid service, and to provide staff, etc.	The Council
44A.	Duty to designate officer as the monitoring officer, and to provide staff, etc.	The Council
44B	Powers relating to overview and scrutiny committees (voting rights of co-opted members)	The Council
45.	Duty to approve authority's statement of accounts, income and expenditure and balance sheet, or record of payments and receipts (as the case may be).	Corporate Affairs and Audit Committee
46.	Powers relating to the protection of important hedgerows.	Head of Planning
47.	Powers relating to the preservation of trees.	Head of Planning
47A	Powers relating to complaints about high hedges	Head of Planning

48.	Power to make payments or provide other benefits in cases of maladministration etc.	The Head of Paid Service
49.	Powers to make an Order identifying a place for purposes of police powers in relation to alcohol consumption	Assistant Director Improving Public Health
50.	Power to apply for an enforcement order against unlawful works on common land	Monitoring Officer
51.	Power to protect unclaimed registered common land and unclaimed town or village greens against unlawful interference	Monitoring Officer
52.	Power to institute proceedings for offences in respect of unclaimed registered common land and unclaimed town or village greens	Monitoring Officer
53.	All matters arising out of the grant, refusal, variation or revocation of a Consent Street under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, including but is not limited to determining: <ul style="list-style-type: none"> <li>i. the application process for applying for a Consent;</li> <li>ii. the fee for the Grant of a Consent;</li> <li>iii. the total number of Consents to be allocated at any one time;</li> <li>iv. the conditions to be attached to each Consent granted, including but not limited to the length of the Consent and times of trading, the location of pitch, type of pitch, type of goods to be sold at the pitch and any other matters that the Authority may consider appropriate; and</li> <li>v. whether a Consent should be granted, refused, varied or revoked.</li> </ul>	Assistant Director Economic Development
54.	Power to designate a Chief Inspector of Weights and Measures	Assistant Director Improving Public Health

**B. LOCAL CHOICE FUNCTIONS**

FUNCTION	SUGGESTED BODY
1. Any function under a local Act other than a function specified or referred to in regulation 2 or Schedule 1.	The Head of Paid Service shall decide which is the most appropriate body as and when the need arises
2. The determination of an appeal against any decision made by or on behalf of the authority.	Complaints and Appeals Manager (in respect of statutory appeals)

3.	The making of arrangements in relation to appeals against the exclusion of pupils from maintained schools	Monitoring Officer
4.	The making of arrangements pursuant to section 94 (1), (1A) and (4) of the 1998 Act (admission appeals)	Monitoring Officer
6.	The making of arrangements pursuant to section 95(2) of the 1998 Act (children to whom section 87 applies: appeals by governing bodies).	Monitoring Officer
7.	The making of arrangements under section 20 (questions on police matters at council meetings) of the Police Act 1996 for enabling questions to be put on the discharge of the functions of a police authority.	Monitoring Officer
8.	The making of appointments under paragraphs 2 to 4 (appointment of members by relevant councils) of Schedule 2 (police authorities established under section 3) to the Police Act 1996.	The Council
9.	<p>Responsibility for Local Area Agreements in relation to:</p> <ul style="list-style-type: none"> <li>• The duty to prepare and submit a Draft of the Local Area Agreement</li> <li>• The revision and addition of targets</li> <li>• Designated targets: revision proposals</li> <li>• Duty to publish information about the Local Area Agreement</li> </ul>	The Executive
10.	Any function relating to contaminated land. (Part IIA Environmental Protection Act 1990)	Corporate Affairs and Audit Committee
11.	The discharge of any function relating to the control of pollution of the management of air quality.	Corporate Affairs and Audit Committee
12.	The service of an abatement notice in respect of a statutory nuisance.	Head of Community Protection
13.	The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area.	Corporate Affairs and Audit Committee

14.	The inspection of the authority's area to detect any statutory nuisance. (S.79 Environmental Protection Act 1990)	Assistant Director Improving Public Health
15.	The investigation of any complaint as to the existence of a statutory nuisance.	Assistant Director Improving Public Health
16.	The obtaining of information under section 330 of the Town and Country Planning act 1990(a) as to interests in land.	Head of Planning
17.	The obtaining of particulars of persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976	Assistant Director Improving Public Health / Monitoring Officer
18.	The making of agreements for the execution of highways works. (S.278 Highways Act 1980)	Assistant Director Economic Development
19.	<p>The appointment of any individual –</p> <p>(a) to any office other than an office in which he is employed by the authority.</p> <p>(b) to any body other than –</p> <p>(i) the authority</p> <p>(ii) a joint committee of two or more authorities; or</p> <p>(c) to any committee or sub-committee of such a body, and the revocation of any such appointment.</p>	The Council except insofar as may be determined otherwise as specified in the Schedules relating to outside bodies
20.	The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities.	The Head of Paid Service/Corporate Affairs and Audit Committee
21.	Any function of a local authority in their capacity as a harbour authority (to the extent that the function does not fall within paragraph 1 of this Schedule.	The Head of Paid Service/Corporate Affairs and Audit Committee
22.	Any function of a local authority in relation to the authority's responsibility for Public Health.	Assistant Director Improving Public Health





## Part 2 - Executive Scheme of Delegation

1. The Mayor is responsible for determining his Scheme of Delegation and this covers the following five areas of delegated powers: the Executive collectively, individual Executive Members, officers, Executive Sub-Committees and joint arrangements. When he considers it appropriate however, the Mayor may still take any decision regardless of whether it has been delegated within his Scheme. The general responsibilities of the Mayor and Executive Members including their portfolios are detailed at appendix A. The membership of the Mayor's Executive is detailed at Appendix B.

### **The Executive collectively**

2. The Executive (the Mayor, Deputy Mayor & Executive Member for Regeneration and Executive portfolio holders) will be responsible collectively for determining the following matters in respect of all or any functions which fall within the Executive terms of reference:
  - The delegation of authority to take Executive decisions when there are public meetings of the Executive, convened in accordance with the relevant legislation.
  - Proposals which will be submitted to the Council as part of the annual budget and policy framework together with significant in year departures from the framework.
  - New policies and procedures and changes to existing policies and procedures likely to have a significant impact on service provision or the organisation of the Council.
  - The principles and funding of significant management restructuring involving more than one department.
  - Compulsory redundancies arising directly in connection with proposals falling into the 2 preceding categories.
  - Broad programme allocations together with proposals and overall expenditure levels, for projects with significant corporate implications, including those for which it is proposed to let a contract.
  - Any matters relating to bids for funding, which are financially or strategically significant and have not been provided for within the financial and policy framework.
  - Council-wide strategic performance and financial management / monitoring together with associated action.
  - Strategic and significant decisions arising from service reviews.
  - Key decisions, not delegated to an Executive Committee, Executive Member, officer or joint arrangement.
  - Sensitive Council-wide matters which are not key decisions.

- All reports referred to the Executive by the Overview and Scrutiny Board and its Scrutiny Panels.
- Responsibility for issues relating to Corporate Risk Management.

### **Individual Executive Members**

3. Individual portfolio holders will normally be responsible for the following matters in relation to the functions and service areas within the scope of their own portfolio.
  - Major variations to existing policies and procedures.
  - Approval of departmental service plans.
  - Monitoring of service performance information.
  - Portfolio service reviews, including, improvement plans, external inspection, reviews and non-strategic corporate matters.
  - Policies, plans and strategies, which are not part of the financial and policy framework.
  - Key decisions which are portfolio specific.
  - Sensitive non-key decisions, which are portfolio specific.
  - Matters relating to bids for funding which do not have major financial or strategic significance, or which have either been approved in principle by the Executive or as part of the financial and policy framework.

### **Deputy Mayor and Executive Member Regeneration – Delegated Authority**

4. The Deputy Mayor and Executive Member for Regeneration has delegated powers:
  - a. To appoint to outside bodies, made by the Executive or jointly with Council.
  - b. To appoint to Executive Advisory Bodies and Executive Sub Committees (Excluding membership to the Full Executive)
5. In circumstances where it is considered that an Executive Member would have a prejudicial interest or by virtue of the fact that they are a member of the Thirteen Housing Group, the matter be referred to the Deputy Mayor and Executive Member for Regeneration for determination.
6. The Deputy Mayor and Executive Member for Regeneration has delegated powers to approve and implement any decision or recommendation of Tees Valley Unlimited.

### **Executive Sub-Committee for Grants to the Voluntary Sector**

7. When not referred to the Mayor, Executive or Executive Member for determination, the Executive Sub-Committee for Grants to the Voluntary Sector is delegated the following powers:

- To determine the criteria under which grants will be awarded from the Grants to Voluntary Sector budget.
  - That working within the existing frameworks and allocated resources, determine on an annual basis, the allocation of grant aid from the Grants to Voluntary Sector budget.
  - To determine 'in year' changes to those allocations should it become necessary.
  - To monitor and evaluate the use of grant aid once allocated.
  - Subject to available resources within the Budget, to determine 'in year' one off applications for grant aid.
  - To consider and determine all issues relating to charities, which identify the Council as being Trustee and which are not specifically delegated to another body.
  - To consider and determine policy issues in relation to Grants, Trusts and the Voluntary and Community sector not specifically delegated to another body.
8. (NOTE: the Members of the Sub-Committee also act as trustees of the Hustler, Albert Park and of Stewart Park Trusts).
9. The Membership of the Executive Sub-Committee for Grants to the Voluntary Sector is as follows:
- Deputy Mayor and Executive Member for Regeneration (Chair)
  - The Executive Member for Finance and Governance
  - The Lead Executive Member for Children's Services
  - The Executive Member for Adult Health and Social Care

#### **Substitution Arrangements**

10. Please see sections below on substitution arrangements.

#### **Executive Sub-Committee for Property**

11. When not referred to the Mayor, Executive or Executive Member to determine, the Executive Sub-Committee for Property is delegated the following powers:
- To determine the Council's corporate property priorities.
  - To approve the allocation of resources from the Small Scheme Allocation budget.
  - To be consulted upon the capital programme.
  - To determine 'in year' changes to the new start investment programme and small scheme allocation projects should it become necessary.
  - To consider and determine the acquisition and disposal of assets (including land and buildings), other than equipment, plant and machinery for resale, in

accordance with the requirements of Financial Regulations and Contract Standing Orders.

- To be consulted upon planning brief proposals.
- To establish effective communication channels to cascade the Council's corporate property priorities.

12. The Membership of the Executive Sub-Committee for Property is as follows:

- Deputy Mayor and Executive Member for Regeneration (Chair)
- The Executive Member for Environment
- The Lead Executive Member for Children's Services
- The Executive Member for Finance and Governance
- The Executive Member for Adult Health and Social Care
- The Executive Member for Education and Skills
- The Executive Member for Communities and Public Health
- The Executive Member for Culture, Leisure and Sport

### **Substitution**

13. Please see sections below on substitution arrangements.

### **Appointment of Substitute Members to the Executive Sub Committees for the Voluntary Sector and Property**

14. A substitute may be designated for each Member appointed to the sub-committee, by the Member(s), by notification to the monitoring officer at least 24 hours prior to the date of the meeting. Designation as a substitute, shall take effect immediately after notification to the monitoring officer, for the specific meeting or until such later time as shall be specified by the Member.

### **Termination of Appointment**

15. A Member may, by written notification to the monitoring officer, terminate the appointment of a substitute with immediate effect.

### **Powers and Duties**

16. Substitute Members will have all the powers and duties of any ordinary Member of the committee but will not be able to exercise any special powers or duties exercisable by the person for whom they are substituting.

### **Substitution**

17. At the commencement of a meeting at which a substitute is to attend as a substitute, s/he shall identify the Member for whom s/he substitutes who shall be excluded from participating in that meeting and for whom there shall be no further substitution at that meeting.

### **Executive Sub-Committee for Standing Orders**

18. When not referred to the Mayor, the Executive or, where prejudicial interests might be involved requiring the matter to be referred to the Deputy Mayor and Executive Member

for Regeneration for determination, the Executive Sub-Committee for Standing Orders is delegated the following power:

- To determine requests to waive standing orders, which fall within the remit of the Executive, relating to contracts. No exemptions can be used if EC procurement procedures apply.
19. In the event that the Sub-Committee for Standing Orders is unable to reach a decision on a report, it may be submitted to either the Mayor or the full Executive for determination.
20. The membership of the Executive Sub-Committee for Standing Orders is:
- Deputy Mayor and Executive Member for Regeneration
  - Relevant Executive Portfolio holder.

#### **Decision Making by Joint Bodies**

21. The following body will exercise executive functions in accordance with the terms of the agreement currently in operation:
- Joint Archives Committee.

#### **OFFICER DELEGATED AUTHORITY**

22. Officers have the power to undertake without reference to Council, the Executive, or to any of the Council's committees, matters of day-to-day management and associated activities. Subject to the provisions within the Mayor's scheme of delegation above, officers can take executive non-key decisions. Unless specifically delegated by the Mayor and his Executive, officers do not have the delegated powers to take key decisions.

### **General responsibilities of the Mayor**

As the town's First Citizen, the Mayor promotes Middlesbrough in the sub-region, region and nationally.

Duties and responsibilities of the Mayor include:

1. Providing strong and visible leadership in relation to the Council, citizens, stakeholders and partners of the Council.
2. Leading on partnerships and strategic matters of significance to Middlesbrough on a local, sub-regional, regional and national basis.
3. Promoting, wherever possible, public engagement in the work of the Council.
4. Leading in promoting the core values and objectives of the Council.
5. Leading on promoting proposals in relation to the Council's Budget and Policy Framework.
6. Leading on the delivery of continuous improvement in Council services.
7. Promoting the highest standards of conduct and ethics within the Council.
8. Making appointments to the Executive, determining portfolios and chairing the Executive.
9. Determining the Executive Scheme of Delegation.

### **General responsibilities of the Deputy Mayor and Executive Member for Regeneration**

To support the Mayor in the development and promotion of Council activities, policies and performance and to lead on managing the business of the Council.

Duties and responsibilities of the Deputy Mayor and Executive Member for Regeneration:

1. Chairing meetings of the Executive in the absence of the Mayor.
2. If for any reason the Mayor is unable to act, the Deputy Mayor and Executive Member for Regeneration will act in his place until the Mayor is again able to act.
3. Co-ordination and promotion of liaison between the Mayor, Executive and non-Executive Members.
4. Leading on corporate issues in connection with the Council's performance.
5. Leading on corporate external inspection and assessments.
6. Promotion and development of Member accountability especially in relation to Members performance.
7. Ensuring that there is effective liaison and co-ordination between the Executive and Scrutiny.
8. Promotion and development of non-Executive Member involvement in Council policy at the initial stages of policy formulation.
9. To undertake such duties as may be directed by the Mayor.

### **General responsibilities of Executive Members**

1. To be the principal spokesperson on issues relating to their portfolios.
2. To lead on the development and delivery of policies within their portfolio remit.
3. To commission scrutiny, when appropriate, to assist in policy development and attend scrutiny meetings when invited.
4. To report to Council on activities they have undertaken and to be held to account by Councillors and the Mayor.
5. To respond to appropriate questions received in the Council's public question time.
6. To represent the Council on outside bodies.

7. To monitor service performance specific to their portfolio (including the budget).
8. To participate in service reviews and inspections as appropriate.
9. To agree responses to Government and other strategic consultation documents.
10. Promote appropriate non-executive member involvement in portfolio activities
11. In accordance with agreed procedures, to take decisions as authorised under the Executive Scheme of Delegation.
12. To maintain effective working relationships with officers.
13. To attend meetings of the Executive.
14. To promote health issues specific to their portfolio.





# Part 3 - Officer Scheme of Delegation

## **CONTENTS**

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Delegations to Specific Officers

## **FOREWORD**

1. The fact that a function stands delegated to an officer under these arrangements shall not preclude the Council, or the Executive as appropriate, from exercising the function directly. Similarly, where a regulatory committee has resolved to delegate a function to an officer, it shall remain open to the Council or the committee to discharge the function itself.
2. Whilst the exercise of a function by an officer under these arrangements is not made subject to the satisfaction of any prior condition, an officer shall, when exercising a discretion remitted to him/her, be under a duty to consider whether the decision conforms to Council-approved policies and whether, in reaching the decision, s/he has observed approved practices and procedures, including those in relation to consultation.
3. Where it appears to an officer to whom a function has been delegated hereunder that a matter might require to be considered by the Executive prior to a decision being taken, s/he shall consult the Head of Paid Service or appropriate Executive Director before proceeding.

# **GENERAL DELEGATIONS TO OFFICERS -**

**(See also Openness of Local Government Regulations 2014 – Page 41)**

The Head of Paid Service, Executive Directors, Strategic Directors, Assistant Directors, and Heads of Service or other named officer shall have power to carry into effect without reference to the Council, the Executive, or to any of the Council's committees, matters of day to day management and administration and, in particular, the following functions:

## **1. Revenue Expenditure**

- (i) Following approval of revenue budgets to incur expenditure within those estimates subject to Financial Regulations.
- (ii) To incur expenditure within the Revenue Budget in accordance with the virement procedures and delegated limits set out in Financial Regulations.
- (iii) In an emergency to incur immediately necessary expenditure which shall be reported to the Chief Finance Officer at the first opportunity.

## **2. Capital Expenditure**

- (i) To incur expenditure on capital schemes in accordance with the arrangements set out in Financial Regulations.
- (ii) To accept tenders for construction works within specific limits as set out in Financial Regulations.

## **3. Superannuation and Pensions**

The Chief Finance Officer to deal with pension matters

## **4. Appointments**

- (i) To appoint staff within the approved establishment in accordance with the Officer Employment Procedure Rules.
- (ii) To appoint staff on a temporary basis to provide cover for absences of staff or to cater for peaks in workload subject to there being budgetary provision.

## **5. Establishment**

To deal with staffing and personnel issues in accordance with Council policies and procedures.

## **6. Support Services**

The Monitoring Officer with the agreement of the appropriate Executive Director, is authorised to approve transfers (at the same grade) of posts and staff providing support services between services of the Council.

## **7. Changes to Staffing Structures**

- (i) To agree changes to staffing structures except where the restructure:
  - (a) involves the loss of one or more posts not currently vacant
  - (b) involves the regrading of posts or the grading of new posts
  - (c) involves changes to existing National or Local Agreements and policies
  - (d) cannot be achieved within delegated powers in respect of budgets.
- (ii) That decisions made by Strategic Directors / Assistant Directors / Heads of Service be subject to prior notifications to their line manager and prior consultation with all appropriate parties affected by the decision, notably the Trade Unions.
- (iii) That decisions in respect of restructures which involve regradings, loss of posts, changes to existing agreements or policies or have budgetary implications as set out above be delegated to the Council's Leadership Management Team, unless agreed by the affected individuals.
- (iv) That proposals which involve additional Council expenditure outside of officer delegations or which involve issues outside existing Council policy be referred to the Executive and Council as appropriate.

## **8. Trade Union Facilities Scheme – Time Off for Duties as an Elected National Union Officer**

The Monitoring Officer is authorised to deal with this as a corporate not a service issue.

## **9. Executive Directors**

In addition to any matter specifically delegated to an Executive Director, the Executive Director may exercise any power delegated to a Strategic Director, Assistant Director, or Head of Service within the service grouping, unless such exercise is prohibited by law or where they do not possess the qualifications required by a person exercising such delegated authority.

## **10. Constitution**

- (i) Subject to the approval of the Chair of Council, the Monitoring Officer shall have delegated power to make non-material amendments to the Constitution, such amendments to be reported to Council at the next reasonably available opportunity.
- (ii) The Monitoring Officer shall have delegated power to amend the Constitution in line with changes in legislation, such amendments to be reported to Council at the next reasonably available opportunity.
- (iii) Subject to the approval of the Chair of Council and the Monitoring Officer, the Chief Finance Officer shall have delegated power to make non-material amendments to the Middlesbrough Borough Council Financial and Contract Procedure Rules (Standing Orders), such amendments to be reported to Council at the next reasonably available opportunity.

## **DECISION MAKING AND DELEGATION UNDER THE NEW ARRANGEMENTS**

### **GUIDANCE NOTES**

#### **1. Introduction**

- 1.1. The Council operates a political structure and Constitution which is based on the Elected Mayor and Executive model, together with Overview and Scrutiny Board and regulatory committees. This Scheme of Delegation is founded on the principle of delegation 'by exception'. That means that the parent body delegates everything that can be delegated to the inferior body or officer, except for exceptions which are listed. Therefore the listing is of what is not delegated, as opposed to a listing of what is.
- 1.2. There has always been significant delegation to officers and the new arrangements, whilst they may increase to some extent the number and range of decisions taken by officers, do not alter the principles of decision making nor the need for properly recording the decision making process.
- 1.3. The Scheme provides for delegation to the Head of Paid Service, an Executive Director, Strategic Director, Assistant Director, or Head of Service. However, the fact that a function has been delegated to an officer, does not require that officer to give the matter his/her personal attention and s/he may arrange for such delegation to be exercised by an officer of suitable experience and seniority. However, that officer remains responsible for any decision taken pursuant to such arrangements.
- 1.4. "Function" for these purposes is to be construed in a broad and inclusive fashion, and includes the doing of anything which is calculated to facilitate or is conducive or incidental to the discharge of any of the specified functions.
- 1.5. Decisions taken, must clearly identify the officer responsible for taking the decision.

#### **2. Decision Making**

- 2.1. Decisions are open to challenge and review in a number of ways and it is consequently important to be able to demonstrate that they have been taken in a manner that avoids legitimate challenge.
- 2.2. It is important to remember that decisions which are overturned will invariably have been successfully challenged not because they were 'wrong' but because they have been reached following a flawed process.
- 2.3. The principal avenues for challenge to a decision are:
  - (a) Overview and Scrutiny Board

The Board has a wide remit which includes reviewing the Executive decisions of officers acting under delegated authority.
  - (b) The Council Corporate Complaints System

A decision may be challenged through the Council's formal complaint procedure. "A complaint is an expression of dissatisfaction, however made,

about the standard of service, actions or lack of action by the Council or their staff affecting an individual customer or group of customers".

(c) Local Government Ombudsman

The Office of the Local Government Ombudsman was created by the Local Government Act 1974 to investigate complaints of injustice arising from maladministration by local authorities and certain other bodies.

The law does not define 'maladministration', but it means that there has been a fault in the way the Council has or has not done something. (The Ombudsman should not question what a Council has done or decided simply because the complainant does not agree with it).

(d) The Auditor

The audit function in relation to local government is one of its most significant accountabilities being comprehensive and systematic.

(e) Designated Officers

The Head of Paid Service, the Chief Finance Officer, and the Monitoring Officer all have specific duties which involve monitoring and regulation and these are explained elsewhere in the Constitution.

(f) The European Dimension

The Human Rights Act in particular is likely to have an increasing impact upon local government administration.

(g) Central Government

Central government controls many of the activities of local government. Many decisions that the council takes will require the approval of a government minister or civil servant - a council's freedom of action is not just controlled by Parliament, but also by ministers and the civil service. Councils will be bound by ministerial directives and regulations and many of the services they run will be scrutinised by central government. Some of the decisions councils reach may be the subject of an appeal to a minister or a government department.

(h) The Courts

The courts can by a process known as Judicial Review examine decisions made by local authorities.

The main heads of judicial review:

**Illegality** (ultra vires) - Although democratically elected and representative of the area, a local authority is not a sovereign body and can only do such things as are expressly or impliedly authorised by Parliament.

If a statutory power conferred on a local authority for one purpose is used for a different purpose there is a necessary illegality

**Unfairness or procedural impropriety** (breach of natural justice) - so far as exercise of local authority power is concerned, procedural impropriety consists, principally, of:

- Bias
- procedural unfairness
- breach of legitimate expectation
- failure to give reasons.

### **Notes**

#### **bias:**

usually occurs in one or more of the following, namely where

- a disqualified person participates;
- the case is prejudged;
- an interested party has improper access to the decision maker.

#### **procedural unfairness:**

the conduct of any hearing must be fair and a party is entitled to put his case fully. Fairness will not necessarily require an oral hearing or legal representation.

#### **breach of legitimate expectation:**

confers procedural protection on a party where a local authority has either given an express assurance that it will deal with a matter in a particular way, or where it has adopted a past practice to that effect. In such cases the courts have consistently held that no adverse decision may be taken without first giving the affected party the opportunity of making representations.

#### **failure to give reasons:**

where a statute requires a local authority to give reasons for its decision there is a clear duty to do so. In many cases, however, the courts are now laying down a duty to give reasons even where the statute is silent. In the local authority context reasons will usually be given where a decision calls for explanation. Where reasons are required they must be adequate and intelligible. Failure to give reasons may lead to the inference that a decision is unlawful.

### **3. Decision Making: Executive and Administrative Decisions**

- 3.1 The significance of decisions taken under delegated powers will vary, and all those empowered to make decisions will need to exercise judgement in determining whether decisions are significant enough to require formally recording. To assist in this process, some decisions are defined as key decisions. Key decisions are more fully described elsewhere in this Constitution and in Government Guidance. The Council and officers will endeavour to make all decisions in accordance with the principles of openness and transparency. Also refer for further clarification on officer powers to the Executive Scheme of Delegation.

### **4. Decision Making: The Process**

- 4.1 Before taking any key decision, the officer must satisfy him/herself where relevant as to the following matters:

- (i) any restrictions or requirements relating to the publication of the background papers.
- (ii) the facts upon which the decision is to be based.
- (iii) any legislative requirements.
- (iv) any Council policy, strategy, initiative or procedure relating to the issue.
- (v) any relevant national or regional guidance.
- (vi) the available options.
- (vii) the staffing and financial implications.
- (viii) the views/advice of any appropriate officer.
- (ix) the views of any local councillor(s) where the report relates to a particular area of the Council.
- (x) any public consultations undertaken, the views of any consultees and a summary of any other representations received.
- (xi) any implications for any other areas of the Council's activities including the views of any officer whose services may be affected and whether any consultation has taken place.
- (xii) the Executive's portfolio within which the issue falls and whether any consultation with the Executive has taken place.
- (xiii) reasons for the decision.

4.2 Officers are responsible for determining when further consultation and public participation would be appropriate.

## **5. Decision Making: Recording the Decision**

5.1 The Head of Democratic Services will maintain a record of all key decisions, including any report upon which each key decision was made and subject to any requirement for confidentiality, will ensure that this decision is recorded. S/he will also ensure that the record of decisions is available for public inspection during all normal office hours and that the public has the right to copy or to be provided with a copy of any part of that record upon payment of a reasonable copying and administrative charge.

5.2 There is no requirement to maintain a record of non-key decisions for the purpose of councillor or public access, or to report administrative decisions to the Executive. Officers are responsible for retaining a record of administrative decisions which they take and the reasons for such decisions sufficient for audit and evidential purposes (against the eventuality of evidence being required for Judicial Review, Employment Tribunal, Ombudsman, District Audit, Ofsted or other proceedings or investigation), and for ensuring that all those who need to know are informed promptly of the decision.

5.3 Officers are also responsible for ensuring that consultation is undertaken where appropriate, and especially where they are aware that the decision is likely to be controversial.



## **6. Decision Making: Sub Delegation**

- 6.1 This scheme includes the power for officers further to delegate any function which has been delegated to them under this Scheme, to another officer or officers of suitable experience and seniority. Each officer will prepare a Service Scheme of Delegations which sets out how decisions will be made in his/her Service. This should establish which officers will be given authority to make decisions under delegated powers, and subject to which terms and conditions. The Service Scheme of Delegations and any amendments thereto, must be lodged with the Head of Democratic Services, the Monitoring Officer and the Chief Finance Officer.

## **7. Referral**

- 7.1 Whilst this Scheme is designed to encourage officers to take responsibility for decisions, an officer may decide that a particular issue is such that it should be referred to the Executive or regulatory committee for a decision to be taken. Such a referral should take place where the proposed decision is of such a nature that the officer considers councillors should directly make the decision.
- 7.2 The Elected Mayor or appropriate Executive member may direct that an officer's delegated authority should not be exercised by the officer.

## **8. Decision Making: Giving Reasons**

- 8.1 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. Even if a decision is not a key decision consideration must be given as to the reasons for such a decision.
- 8.2 Clearly if a decision is challenged it is vital to be able to demonstrate that the proper processes were complied with. To be able to do this it is essential that adequate records are kept so they can be referred to and produced if necessary. These records should include written notes of all relevant meetings and discussions and copies of all papers considered in making a decision. It is best practice to keep a clear note of all considerations taken into account with reasons why they were considered relevant and why matters not considered were thought not to be relevant.

## **9. Accountability**

Officers are accountable to the Council for any decision they make, and may be required to report to, and to answer questions from, the Overview and Scrutiny Board or a panel in respect of any decision they make.

# GENERAL DELEGATION TO OFFICERS

## General Principles

The Head of Paid Service, Executive Directors, Strategic Directors, Assistant Directors, and Heads of Service are authorised to discharge any function of the Council, including functions of the Executive, relating to their service areas and within their service budgets, together with any additional matters referred thereto, but subject to the following exceptions.

## Exceptions

An officer may not exercise a delegated function under these arrangements if:

- (i) The matter has been reserved to the Council;
- (ii) The matter has been identified by the Elected Mayor as a decision to be made by the Elected Mayor, the Executive or an individual of the Executive;
- (iii) The matter has been delegated to any committee of the Council; or
- (iv) The matter has been reserved to the Head of Paid Service, Executive Director, Strategic Director, or Assistant Director.