

DELEGATIONS TO OFFICERS

1. INTRODUCTION

- 1.1 The Scheme of Delegation to Officers set out below has been approved and adopted by the Council for the purposes of Section 101 of the Local Government Act 1972. The delegations in respect of Cabinet functions, made under s 15 of the Local Government Act 2000, have been approved by the Leader who may amend any executive delegations to officers at any time by giving notice to the Chief Executive, the Monitoring Officer and the S151 Officer and any officer directly affected by the amendments.
- 1.2 Delegations may also be given by individual resolutions or as part of the approval of any policy procedure or protocol by the Council or Cabinet.
- 1.3 The following powers and duties are delegated to the officers named in this Scheme of Delegation within the normal constraints of Council policy but in the event of those officers being unavailable or unable to exercise the functions referred to, the following officers are authorised to act in their stead:

For the Chief Executive, a Strategic Director

For a Strategic Director, the relevant Director

For the Section 151 Officer, the Deputy Section 151 Officer

For the Monitoring Officer, the Deputy Monitoring Officer.

Any officer referred to by their title/post throughout this Constitution will automatically succeed their predecessor in title/post.

2. GENERAL PROVISIONS

- 2.1 Any delegation to an officer which authorises the incurring of any capital or revenue expenditure will be subject to there being sufficient budgetary provision to cover that expenditure.
- 2.2 Any delegation to an officer to take action under a statutory provision shall be deemed to authorise action under any amendment or statutory re-enactment of that provision.
- 2.3 Any delegation to an officer shall require that delegation to be exercised in compliance with the Council's Procedure Rules, Financial Regulations and Procedures and Procurement and Contract Standing Orders, Human Resources Policies and any other policies or conditions imposed either by the Council or the Cabinet or as required by this Constitution or by statute and any Code of Practice relating to specific functions which may be adopted.

- 2.4 Prior to exercising any delegation that consultation shall be carried out where required by law or by any other part of the Constitution.
- 2.5 Where delegated powers or proper officer functions have been granted to a post on the Council's staff and the designation of such post is changed then such delegated powers or proper officer functions shall vest in the post holder of the new post designation.
- 2.6 In addition to the constraints referred to in the Scheme of Delegations there are exceptions to officers' delegated powers. There is no delegation to officers of:
 - (a) matters specifically reserved to Council, Cabinet or a Committee and;
 - (b) any matter which by law may not be delegated to an officer.

3. GENERAL DELEGATIONS

- 3.1 To the Chief Executive, Strategic Directors and Directors (together referred to as the "Principal Officers").
- 3.2 Any officer referred to by their title/post throughout this Constitution will automatically succeed their predecessor in title/post.
- 3.3 Each Principal Officer is authorised to act on behalf of the Council in relation to any matters (including spending decisions) within the service areas for which they are responsible, subject to any limitations imposed by any provision in law or within this Constitution. The Head of Paid Service will publish a structure chart detailing the broad areas of responsibility for each of the Principal Officers ([Extended Leadership Team Structure Chart](#)).

4. CONFLICTS OF INTEREST

- 4.1 Every officer is responsible for identifying whether they have any conflict of interest in any matter which is under consideration, actual or perceived, within the Authority, and for notifying the Authority (including under section 117 of the Local Government Act 1972).
- 4.2 Where an officer has a conflict of interest in any matter, they shall not participate in that matter in their capacity as an officer except with the prior approval of their line manager, the Monitoring Officer or the Chief Executive.
- 4.3 Where the Chief Executive is unable to act on a matter because of a conflict of interest, the matter shall be discharged by the Monitoring Officer. Where the Monitoring Officer is unable to act the matter shall be discharged by the Deputy Monitoring Officer.
- 4.4 Where a Strategic Director is unable to act on a matter because of a conflict of interest, the Chief Executive shall discharge the matter themselves or allocate the matter to another officer.

- 4.5 Where the Monitoring Officer is unable to act on a matter in their statutory capacity under section 5 of the Local Government and Housing Act 1989, the matter shall be discharged by the Deputy Monitoring Officer.
- 4.6 Where the Monitoring Officer is unable to act on a matter in relation to Councillor conduct, the matter shall be discharged by the person appointed by the Monitoring Officer for this purpose under section 82A of the Local Government Act 2000.
- 4.7 Where any other officer is unable to act on a matter, that officer's line manager or the Chief Executive may arrange for another officer to discharge the matter.

5. RESPONSES TO CONSULTATION

- 5.1 The relevant Director shall be authorised to submit responses on consultation on matters within their functions and area of responsibility in line with the scheme of delegations.
- 5.2 If any consultations are deemed by the Director - Law and Governance to be of sufficient significance they will be referred to the Council, Cabinet or relevant Committee.
- 5.3 Matters that are likely to be of sufficient significance are consultation documents on national, regional or local issues which have been or are likely to be high profile, complicated and controversial.
- 5.4 Should the deadline for the response not enable the matter to be considered by the relevant meeting then the Director - Law and Governance, in consultation with the appropriate Director and meeting Chair is authorised to submit a response, a copy of which will be submitted to the next meeting of that decision maker for information.
- 5.5 All consultation responses issued in the name of the District Council must be in accordance with adopted Council policy, as well as any existing national or regional policy.
- 5.6 Councillors are of course entitled to make separate individual, personal responses to the consultation.

6. RESPONSIBILITIES OF STATUTORY OFFICERS

- 6.1 The functions and responsibilities of the Statutory Officers are given below. The Section 151 Officer and the Monitoring Officer may appoint a deputy (or deputies) as they deem appropriate.

<u>Post</u>	<u>Function and areas of responsibility</u>
Chief Executive/ Head of Paid Service	Overall corporate management and operational responsibility (including management responsibility for all officers and staffing matters). Returning Officer for Elections and Electoral Registration Officer
Section 151 Officer	Principal adviser to the Council on financial matters. Responsible for the overall management of the Council's financial affairs including Internal Audit.
Monitoring Officer	Responsible for ensuring that the Council acts in a lawful manner and that it does not do anything which might cause maladministration or injustice.

7. DELEGATION MATTERS SUBJECT TO CONSULTATION WITH CHAIR (OR VICE-CHAIR IN ABSENCE) OF APPROPRIATE COMMITTEE

Power to act out of Council meeting – General Power

- 7.1 Where, in their opinion, by reason of limitation of time, or urgency a decision is required on any matter, (other than those specifically excluded from delegation) the Chief Executive shall have power to make a decision on that matter subject to consultation with the Chair of the appropriate Committee on the action to be taken by the Chief Executive.
- 7.2 This power shall not apply to:-
- (a) Matters reserved to the Council by statute or common law without power of delegation to a Committee.
 - (a) The setting of Council taxes.
 - (b) Incurring of expenditure for which no allowance has been made in the annual budget unless the approval of the Chair of the Council, and of the Leader has been given to such expenditure.
 - (d) Any proposal which involves the formulation of a major new policy or a major variation of an existing major policy.

- (e) Any matter on which the Council or the Cabinet has given a specific direction.

Note:

At the next ordinary meeting of the appropriate Committee a report is to be submitted setting out all relevant information in relation to the action taken and detailing the reasons why it was necessary to deal with the matter out of meeting.

8. RECORDING AND PUBLICATION OF OFFICER DECISIONS MADE UNDER EITHER EXPRESS AUTHORISATION OR THE SCHEME OF DELEGATIONS

- 8.1 There are two sets of regulations that apply to officer decision making depending on whether an officer decision is taken under Executive Functions or Non-Executive functions.

Executive Functions

- 8.2 When any officer with delegated power (or is duly authorised to take such decisions) takes any executive decision on matters that are the responsibility of the Council's Cabinet, and which affect external parties or the community such as (by way of examples):

- decisions about awarding contracts above a total value of £10,000;
- decisions to exercise powers of Compulsory Purchase;
- decisions on disposal of and/or provision of open space, allotment land or other green spaces;
- decisions to purchase new ICT systems;
- decisions about the holding/cancellation of car boot sales/markets or events on council-owned land;
- decisions about the operating hours of off-street car parks;
- decisions to close a park or sports centre;
- decisions resulting in the closure of a major road.

- 8.3 The decision must be recorded in writing to comply with the *Local Authorities (Meetings & Access to Information) England Regulations 2012 no. 2089*.

The written record must be completed by the officer at the time of making the decision including:

- details of the decision and the date it was made;
- reasons for the decision;
- any other options considered and why those options were rejected;
- details of any conflict of interest declared by any Cabinet member consulted in relation to the decision; and
- a note of any dispensation granted in respect of any declared conflict of interest.

- 8.4 Where an officer takes a key decision they must comply with part 3, paragraph 16 of the Constitution and allow five clear working days before the decision can be implemented.

Non-Executive Functions

- 8.5 When any officer with delegated power takes a Non-Executive decision - under a specific express authorisation, or under a general authorisation where the effect of the decision is to:

- grant permissions or licences;
- affect the rights of individuals;
- award contracts or incur expenditure which, in either case, materially affects the Councils financial position (normally this will be a contract or expenditure above a total of £10,000).

- 8.6 These decisions must be recorded in writing to comply with *The Openness of Local Government Bodies Regulations 2014 no. 2095*. The written record must be produced as soon as possible, (normally within 10 working days) after the decision has been made including:

- The date the decision was taken;
- A record of the decision taken along with reasons for the decision;
- Details of alternative options if any considered and rejected; and
- Where the decision is taken under a specific express authorisation to include the name of any member who has declared a conflict of interest in relation to the decision.

- 8.7 A copy of the record of the decision must be sent by the relevant officer to the Monitoring Officer for publication or inspection as soon as practicable after the decision has been made to enable publication within the timescale set out in 8.6 above.

- 8.8 Executive Functions cease to be Executive Functions (and the decision must be taken by full Council) if the decision maker proposes to:

- (a) make a decision which is inconsistent with a policy approved by the full Council which applies to that decision; or
- (b) make a decision contrary to the budget, capital programme or treasury management in circumstances where the full Council has not authorised this.

9. Authorisations to other Officers

- 9.1 Officers with delegated powers may, in writing, authorise another officer or officers to exercise those powers in any or particular circumstances. Such authorisations may be subject to limitations and conditions. The officer with the delegated powers shall keep a register of all authorisations granted.

9.2 Copies of any authorisations must also be sent:

- (a) to the Monitoring Officer: every authorisation;
- (b) to the S151 officer: authorisations relating to the management of employees and authorisations to sign orders/requisitions, cheques etc.

10 Reserve Delegations

10.1 The delegated powers held by a post may be exercised by the line manager of that post (or by the line manager's line manager or by the Chief Executive) if:

- (a) that post is vacant;
- (b) the post-holder is not at work for any reason;
- (c) the person who has the delegated power has a conflict of interest in the decision or matter.

11. Transfer of Functions

11.1 Where the name of a post is changed for any reason, the renamed post shall retain any delegated powers possessed by the post prior to the name change.

11.2 Where a service area is restructured, the Chief Executive has authority to re-allocate any officer delegated powers (whether Council or executive functions) to other posts and shall give notice of this to the Monitoring Officer and shall also notify all Councillors. The officer to whom any delegated power is transferred is responsible for reauthorising any subordinate officers to take any action under their delegations.

11.3 When a post is vacant and an employee takes on the duties of the post in an "acting" capacity, they have the same delegated powers that they would have if they held the substantive post.

SPECIFIC DELEGATIONS

CHIEF EXECUTIVE

1. To take any action, including the incurring of expenditure, in connection with an emergency or disaster in the district.
2. To exercise powers delegated to any Officer when that Officer is unable or unwilling to act.
3. To employ outside consultants, off payroll staff and firms in cases where they are satisfied that it is necessary to do so in order to carry out work which cannot be dealt with by in-house staff within budget.

MONITORING OFFICER

1. To institute, defend, appear and be responsible for the conduct of legal proceedings before any court, tribunal or public inquiry on behalf of and in the name of the Council where it is in the Council's interests to do so and in particular:
2. To instruct and retain Counsel and obtain advice in relation to any matter whenever this is considered to be in the interests of the Council;
3. To settle proceedings of any description including the payment of damages, compensation and legal costs in consultation with Strategic Directors. Where the settlement figure exceeds £50,000 the Chief Executive and Leader of the Council will be consulted first.
4. To authorise officers to appear in any civil or criminal court or tribunal, and act as authorised officers for the purposes of all legislation under which the Council has duties and powers.
5. To authorise officers to enter land and premises where an authorised officer of the Council may do so under any enactment.
6. To authorise, issue and serve all Statutory Notices (including Requisitions for Information) under any enactment.
7. To sign and seal documents on behalf of the Council.
8. To issue enforcement notices and/or serve stop notices under the Town and Country Planning Act 1990.
9. To determine applications for Lawful Development Certificates pursuant to Sections 191-194 of the Town and Country Planning Act 1990.
10. To accept statutory declarations for the purpose contained in the Housing Acts 1980, 1985 and 1988.

11. To sign indemnities and provide solicitors' undertakings where they are required to enable the Council to exercise any of its functions subject to consultation with the Section 151 Officer where the indemnity or undertaking has considerable financial implications.
12. To ensure compliance with the requirements specified in the Data Protection Act 1998, the Human Rights Act 1998, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
13. To make/amend the Constitution or the Scheme of Delegations where there has been a change of law, job title, structure or rearrangement of responsibilities between officers or to correct typographical and clerical errors (all members to be notified forthwith).

PROPER OFFICER PROVISIONS

Any officer referred to by their title/post throughout this Constitution will automatically succeed their successor in title/post.

“Proper Officer” appointments in accordance with the relevant provisions of the specified legislation are as set out here under:-

Local Government Act 1972

<u>Section</u>	<u>Description</u>	<u>Proper Officer</u>
13(3)	Chair of Parish Meeting and Proper Officer shall become a body corporate where there is no separate parish council.	Head of Paid Service
83(1)	Receipt of Declaration of Acceptance of Office.	Monitoring Officer/ Head of Paid Service
84	The Officer to whom a person elected to any office under the Council may give written notice of resignation.	Monitoring Officer/ Head of Paid Service
88(2)	The Officer who may convene a meeting of the Council for the election to fill a vacancy.	Head of Paid Service
89(1)(b)	The Officer who may receive notice in writing of a casual vacancy in the office of Councillor from two local government electors.	Head of Paid Service
96(1)	Receipt of notices of pecuniary interest.	Monitoring Officer
96(2)	The Officer who shall keep the record of disclosures of interest under Section 94 and of notices under Section 96(1) and of Section 19 of the Local Government and Housing Act 1989.	Monitoring Officer
100A-100K	Access to Meetings and Documents of Certain Authorities Committees and Sub Committees	Monitoring Officer
115(2)	The Officer who shall receive all money due from every officer employed by the Council.	Section 151 Officer
146(1)(a) and (b)	The Officer who shall give statutory declarations and certificates with regard to securities on the change of name or status.	Section 151 Officer
151	The Officer responsible for the proper administration of financial affairs.	Section 151 Officer
191	The Officer to whom applications under Section 1 of the Ordnance Survey Act 1841 should be sent.	Strategic Director
225(1)	Deposit of Documents with the Proper Officer and making of notes or endorsements and receipts.	Monitoring Officer

<u>Section</u>	<u>Description</u>	<u>Proper Officer</u>
229(5)	The Officer who shall certify that a document is a photographic copy of a document in the custody of the Council.	Monitoring Officer
234	The Officer who may authenticate documents.	Monitoring Officer
236(9) and (10)	The Officer who is responsible for sending certified copies of byelaws to appropriate bodies.	Monitoring Officer
238	The Officer who shall certify copies of Byelaws as true copies.	Monitoring Officer
Sch 12 Para 4(2)(b)	The Officer who may sign a summons to Council meetings.	Head of Paid Service
Sch 12 Para 4(3)	The Officer who may receive notice from a Member of the address to which a summons to a meeting is to be sent.	Head of Paid Service
Sch 14 Para 25(7)	The Officer who may certify copies of resolutions passed under the Public Health Acts 1875 to 1925 as true copies for production in legal proceedings.	Monitoring Officer
Local Government Act 1974		
30(5)	Publication in newspapers of reports of Local Commissioner.	Head of Paid Service
Local Government (Miscellaneous Provisions) Act 1976		
41	Certification of copies of resolutions, minutes and other documents.	Monitoring Officer
Building Act 1984		
S93	Authentication of documents	Section 151 Officer

Note: Infectious disease legislation for which Babergh is the enforcing Authority is co-ordinated to a large extent by the joint approaches of the Director - Operations and the Consultant in Communicable Diseases Control (CCDC). The CCDC is appointed to act as a Proper Officer on behalf of Babergh District Council.

Public Health Acts - Health Protection Functions

The CCDC, where nominated below, shall be the Consultant in Communicable Disease Control for Suffolk as designated by the Health Protection Agency's Norfolk, Suffolk and Cambridgeshire Health Protection Unit (NSCHPU), or by any successor agency or unit, or any equivalently medically qualified deputising officer, also as designated by any successor agency or unit.

<u>Section</u>	<u>Description</u>	<u>Proper Officer</u>
Public Health Act 1936		
84	Cleansing of filthy and verminous articles.	CCDC (as Medical Officer of Health)
85	Cleansing of filthy and verminous persons and their clothing.	CCDC (as Medical Officer of Health)
Public Health (Control of Disease Act) 1984 as amended, and any subordinate Regulations or Orders		
Wherever Proper Officer is referenced or specified:-		CCDC
61	Powers of entry	CCDC or Director - Operations
62	Supplementary powers of entry	CCDC or Director - Operations
National Assistance Act 1948 (as amended) and Section 61 of the National Assistance Act 1951		
47	Removal to suitable premises of persons in need of care and attention	Director - Operations to appoint consultant(s) as necessary to act as the Medical Officer of Health

Representation of the People Act 1983

8	The Electoral Registration Officer for any constituency or part of a constituency coterminous with the District	Chief Executive
35	The Returning Officer for the elections of Councillors of the District and of Councillors of Parishes within the District	Chief Executive

Local Elections (Principal Areas) Rules 1986

All references to the Proper Officer in these Rules relate to the:-	Chief Executive
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Housing Act 1985

606(1) and (2)	Reports on unfitness and clearance.	Director - Housing
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Local Government Finance Act 1988

114	Financial Report to the Authority	Section 151 Officer
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Local Government and Housing Act 1989

4	Head of Paid Service	Head of Paid Service
5	Monitoring Officer	Monitoring Officer
S19	Receipt of information about Members' interests	Monitoring Officer

Localism Act 2011

33	The officer to receive a written request for a dispensation to be granted.	Monitoring Officer
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Anti-Social Behaviour, Crime and Policing Act 2014

1	Power to seek and Injunction	Director Operations and Director - Housing in consultation with Monitoring Officer
43	Power to issue Community Protection Notices	Director - Operations and Director - Housing in consultation with Monitoring Officer.
52	Power to issue Fixed Penalty Notices	Director - Operations and Director - Housing.
59	Power to make Public Spaces Protection Orders	Director - Communities and Public Access and Director - Operations.
76	Power to seek Closure Orders and/or Issue Closure Notices	Director - Operations and Director - Housing

Data Protection Act 2018

69	Data Protection Officer	Director - Law and Governance
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DEPUTY PROPER OFFICER PROVISIONS

In respect of the purposes for which the Head of Paid Service is the Proper Officer of the Council, a Strategic Director is authorised to act as the Proper Officer when the Chief Executive is unable to act.

In other cases where the designated Proper Officer is unable to act, the following are designated Deputy Proper Officers:-

For any Director, a Strategic Director, or Head of Paid Service.

For a Strategic Director, another Strategic Director or the Head of Paid Service.

For the Section 151 Officer, the Deputy Section 151 Officer.

For the Monitoring Officer, a Deputy Monitoring Officer.

For the Consultant in Communicable Diseases (CCDC), any equivalently medically qualified officer as designated by the Health Protection Agency's Norfolk, Suffolk and Cambridgeshire Health Protection Unit (NSCHPU), or by any successor agency or unit.

For the Director - Environment and Projects in respect of sections 61 and 62 of the Public Health (Control of Disease) Act 1984, any Officer duly authorised by the Director Environment and Projects.

Any Proper Officer may appoint any other person in writing to act on their behalf.