




High Peak Borough Council

A Guide To Decision Making



First revision 21 June 2002
Second revision May 2003
Third revision September 2004
Fourth revision August 2005
Fifth revision May 2007
Sixth revision October 2009
Seventh revision May 2011

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1. Introduction

On 14 May 2002 the Council adopted a Constitution based on the Executive and Scrutiny Model set out in the Local Government Act 2000. The Constitution is reviewed annually.

It is in seven parts. A shortened guide to the Constitution summarises the document and the purpose of this Guide is to steer officers and members through the legal and administrative procedures relating to decision making.

This Guide is intended to be practical rather than technical and, as a result, certain aspects of the new rules may have been over simplified.

If you need advice or have any suggestions for the improvement of this Guide or the new procedures, please contact:-

The Executive Director (Customer Services) and Monitoring Officer.

2. Scheme of Delegation

The Local Government Act 2000 and its regulations set out some clear principles:-

- The Council, collectively, is the ultimate policy maker and, therefore, determines the plans and strategies set out in Article 4 of Part 2 of the Constitution. For example, it has responsibility for making changes to the Constitution, adopting the Council's major plans and strategies such as the the Corporate Plan and the Asset Management Plan.
- Decisions that cannot be taken by the Executive (see below), for example, development control and licensing decisions, are delegated to Committees. Many of the routine decisions are delegated to officers

There are also two Panels, the Appointments and Appeals Panel and the Licensing Panel.

There are a number of Joint Committees and partnerships on which members of other local authorities are represented. These include the joint Alliance Scrutiny Panel and the Crescent joint committee.

There are also partnerships which have no executive decision-making powers and on which interest groups and members of the public may be represented. They may, however, be responsible for influencing the way in which money is spent.

- The Executive takes all those decisions which are not the responsibility of the full Council or its committees. It is responsible for implementing Council policy and recommending policy.
- Individual members of the Executive have delegated power to take decisions. Their powers are set out in detail in Part 3 Table 4A of the

Constitution. They are (with minor exceptions) limited to decisions within policy and within budget.

- Routine decisions within policy are delegated to officers. The officer delegation scheme as set out in Part 3 of the Constitution only includes delegations to the Chief Executive and Executive Directors. Each must have in place, and keep up to date, a scheme for his or her service. Copies of these are kept by the Executive Director and Monitoring Officer so there is a central record. They must be available to the public.
- Under the scheme, it is a matter of judgment for the officer concerned to decide whether he or she should first consult with the relevant member before taking any decision. Where member consultation is mandatory, this is spelled out. Full details of the Officer Delegation Scheme are set out in Tables 5-8 of Part 3 of the Constitution. They must also take legal or financial advice when necessary.

3. Key Decisions

The Access to Information Rules introduced the concept of a “Key Decision”. This only applies to any executive decision, whether taken collectively or individually. The concept does **not** apply to Council decisions or those taken by any of its committees.

The definition of a Key Decision is set out in Appendix 1.

It is important to identify what a Key Decision is as a number of consequences flow from it.

4. The Forward Plan

The Leader of the Council is under a legal duty to produce a Forward Plan of Key Decisions covering a four month period. This has to be publicised. It must be kept up to date and rolled forward on a monthly basis.

The Forward Plan must contain mandatory statutory information. If this information is not available when the Plan is first published, it must be provided later on.

An example of a Forward Plan is attached at Appendix 1 of this Guide.

The legal requirement to produce a Forward Plan means members and officers must understand whether the decisions needed to get the job done fall within this category or not, and plan ahead. It is also important to be familiar with the statutory information required such as details of any consultation undertaken etc.

The Senior Committee and Member Services Officer is responsible for putting the Forward Plan together and must be notified of all forthcoming key decisions. As much of the statutory information as possible must be given at

the outset. As more information becomes available, this must be fed through so the Plan can be updated.

The Forward Plan begins on the first of each month and must be published 14 days beforehand. A monthly reminder is sent to all Directors and Service Managers by e-mail.

A “Key Decision” cannot be taken where it is not on the Forward Plan.

There are exceptions to this where a decision is required unexpectedly. Details of these exceptions are set out in the Access to Information Rules in Part 4 of the Constitution and at Appendix 2 of this Guide.

It does not matter whether the Key Decision is to be taken by the Executive collectively or a member of the Executive individually, the decision must go on the Forward Plan.

5. Collective Executive decisions

Reports to the Executive must give the following information:-

- (1) Whether the decision is a “Key Decision”.
- (2) If so, whether or not it was on the Forward Plan.
- (3) If not, why it was not and which exception applies (see above).
- (4) Whether or not the decision is subject to the call-in procedure (see below).
- (5) If not, why not.

There is a template for Executive reports.

If the item was not on the Forward Plan but is not of special urgency and 3 days notice can be given before the decision is taken (see Appendix 2), the Committee Officer has to give written notice to the relevant Select Committee Chairman. Before this is done the report author must take responsibility for briefing not only the portfolio holder but also the relevant Select Committee Chairman. Note that the requirement is that **notice** be given, **consent** is not required.

If the item was not on the Forward Plan but is of special urgency and there is no time to give 3 days notice (see Appendix 2) under the rules **or** has been identified as **unsuitable for call-in** (see later), the **consent** of the Select Committee Chairman has to be obtained.

Reports **must** be received by the Committee Officer before the deadline set out in the timetable circulated for each cycle of meetings.

Late reports will not be accepted except in the most exceptional circumstances.

6. Individual Executive Councillor decisions

Individual Executive Councillors may take Key Decisions. If they do, then the Forward Plan procedure applies.

If they are not making Key Decisions they are still required to receive a written report. The report must include the same information set out above and there is a template in Word.

It must also state the Delegation Scheme number (see Constitution Part 3 Table 4a).

7. Procedure for individual Executive Councillor decisions

So that individual decision-making is easier to track, there is a set timetable. This is set out in the flow-chart attached at Appendix 3.

All reports must be cleared by the relevant Executive Director. Legal, financial and any other advice must have been obtained and referred to in the report. It may also be advisable to discuss the matter in principle with the portfolio holder and Select Committee Chairman depending on the subject matter.

Once approved by the Executive Director, the report goes in draft by e-mail the same day to the portfolio holder. If approved in draft it is sent to all members on Thursday pm. Unless it is a key decision, the decision is formally taken the following Monday. From Tuesday to Thursday at 5.00 pm the decision may be called-in (see later). If it is not called-in it can be actioned on the Friday.

8. Executive Decision Notices

Following any executive decision (collective or individual), a Decision Notice is published which must contain prescribed information. The report must include this so the Committee Officer can extract it. The information required to be published with the decision is as follows:-

- The decision.
- Reasons for the decision.
- Any options rejected.
- Any declared conflict of interest.
- Any dispensation (from the Standards Committee).

The Decision Notice itself, together with a list of the background papers and the background papers themselves, must be available for public inspection for six years after the decision (four years for the background papers). They are also available to the press on request, published at the three main sites, on the Intranet and on the website.

9. Exempt Information

All reports containing exempt information must be marked “NOT FOR PUBLICATION” and the relevant paragraph of Schedule 12A of the Local Government Act 1972 must be quoted. See Appendix 2. They still need to go on the Forward Plan but care must be taken not to disclose the exempt information.

10. Officer Decisions in Consultation with Members

This procedure is only used in relation to the Partnership Grant committees. It is similar to that for individual member decisions in that there is a need for a written report. However, these do not need to go to the Alliance Management Team Meeting and nor do they need to be published.

11. Officer delegated decisions.

Officers are advised to study Tables 1-4 of Part 3 of the Constitution in some detail.

If there are errors or omissions in the officer delegation scheme then please bring these to the attention of the Executive Director and Monitoring Officer, who is responsible for keeping the Constitution under review and evaluating its effectiveness.

Officers need to be politically sensitive to those decisions where informal consultation with members may be required. It is also up to the officer to ensure Ward Members are appropriately consulted/informed.

12. Select Committees

The Corporate Select Committee co-ordinates and oversees the Work Programmes of the other Select Committees. It normally meets a week prior to meetings of the Executive. This provides a regular opportunity for decisions that are called-in to be discussed (see below).

An Executive Director has been designated with responsibility for the functioning of each of the Select Committees.

Select Committees have no delegated power to take decisions. Their main role is to advise on the development of policy and call the Executive to account.

Executive members cannot be on Select Committees although they can attend and take part.

13. Call-In

Any three members of any Select Committee/s can call-in a decision made by the Executive or an individual member of it.

Full details of the call-in procedure are set out in the Select Committee Procedure Rules in Part 4 of the Constitution.

Collective executive decisions are published no later than Mondays (most often on the Thursday after the meeting on the Tuesday) and individual decisions are published on Mondays. Copies are sent to all members, published at each of the main sites, on the Intranet and on the website. There is then a three clear day period (up to 5 in the case of the collective Executive) when the decision may be called-in. Decisions will, therefore, not be implemented until the Friday.

Decisions may be exempt from call-in where any delay would seriously prejudice the Council's or an individual's interests. If this is the case, this must be clearly specified in the report as this exemption effectively denies Select Committee Members their immediate right of challenge. The **consent** of the relevant Select Committee Chairman **must** be obtained before a call-in is denied. This has to be in writing and there is a proforma for this purpose. Consent will be formally obtained by the Committee officer. However, it is the responsibility of the report author and/or the portfolio holder to fully brief the Select Committee Chairman before sending the report through to the Committee officer.

If the call-in system is abused, it can be reviewed. Although it is law that all select committees have this right, the precise details of the procedure are left to individual Councils to decide.

A flowchart for Executive decision-making can be found at Appendix 4.

A key decision, as defined in Article 12 of the Councils Constitution, is:-

- (i) A report proposing changes or additions to the Budget and policy framework (as defined in the Constitution),
- (ii) A report in connection with the preparation of the annual Revenue Budget;
- (iii) A report in connection with the preparation of the Capital Programme;
- (iv) A report proposing specific action which is outside the Budget and policy framework, annual Revenue Budget or Capital Programme previously approved by the Council;
- (v) Any decision to spend £10,000 or more over the Council approved budget for any budget item; any decision to spend over £60,000 revenue or £150,000 capital that is within budget, or any decision to vire more than these amounts from one budget head to another, or any decision which would result in a saving of £10,000 to any budget head;
- (vi) A report proposing action, which the originator of the report, in consultation with his or her Chief Officer, and in consultation with the relevant portfolio holder, believes may have a significant impact on communities living or working in an area comprising one or more Wards.

Appendix 2 Access to Information Rules

Description of exempt information	Qualification	Notes
	Information is not exempt information if it relates to any proposed development for which the council may grant itself planning permission under regulation 3 of the Town and Country Planning General Regulations 1992	Applies to all categories of otherwise exempt information
1. Information relating to any individual	Exempt information if the public interest in maintaining the exemption outweighs the public interest in disclosing the information – see note on public interest at end of table	Names, addresses or telephone numbers can identify individuals. Also consider the Council's Data Protection Act responsibilities.
2. Information which is likely to reveal the identity of an individual	Exempt information if the public interest in maintaining the exemption outweighs the public interest in disclosing the information – see note on public interest at end of table	Names, addresses or telephone numbers can identify individuals. Also consider the Council's Data Protection Act responsibilities.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)	Exempt information if the public interest in maintaining the exemption outweighs the public interest in disclosing the information – see note on public interest at end of table Information falling within paragraph 3 is not exempt if it is required to be registered under – (a) the Companies Act 1985 (b) the Friendly Societies Act 1974 (c) the Friendly Societies Act 1992 (d) the Industrial and Provident Societies Acts 1965 to 1978 (e) the Building Societies Act 1986 (f) the Charities Act 1993	The authority means High Peak Borough Council, the Executive or a committee or subcommittee Financial or business affairs includes contemplated, as well as past or current activities In relation to information required to be registered under the Building Societies Act 1986, this means recorded in the public file of any building society

<p>4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority</p>	<p>Exempt information if the public interest in maintaining the exemption outweighs the public interest in disclosing the information – see note on public interest at end of table</p>	<p>The authority means the Council, the Executive, committee or subcommittee</p> <p>Employee means a person employed under a contract of service</p> <p>Labour relations matter means :-</p> <p>(a) any of the matters specified in paragraphs (a) to (g) of section 218 of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act); or</p> <p>(b) any dispute about a matter falling within paragraph (a) above</p> <p>(applies to trade disputes relating to office holders as well as employees)</p> <p>Office holder in relation to the authority, means the holder of any paid office appointments which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority</p>
<p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings</p>	<p>Exempt information if the public interest in maintaining the exemption outweighs the public interest in disclosing the information – see note on public interest at end of table</p>	<p>Privilege lies with the “client” which broadly is the council. Seek the view of the Chief Executive, Executive Director or Service Manager (as appropriate) as to whether they wish to waive privilege.</p>
<p>6. Information which reveals that the authority proposes – (a) to give under any enactment a notice under or by virtue of</p>	<p>Exempt information if the public interest in maintaining the exemption outweighs the public interest in disclosing the information – see note on public interest at end of table</p>	<p>The authority is a reference to the council, executive, committee or subcommittee</p>

<p>which requirements are imposed on a person; or</p> <p>(b) to make an order or direction under any enactment</p>		
<p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime</p>	<p>Exempt information if the public interest in maintaining the exemption outweighs the public interest in disclosing the information – see note on public interest at end of table</p>	
<p>Description of exempt information relating to Standards Committee ONLY (in addition to paras 1 – 7 above)</p>	<p>Qualification</p>	<p>Notes</p>
<p>8. Information which is subject to any obligation of confidentiality.</p>	<p>Exempt information if the public interest in maintaining the exemption outweighs the public interest in disclosing the information – see note on public interest at end of table</p>	<p>This will not apply to all the papers before a Standards Committee but is likely to need careful consideration in the circumstances of a Local Investigation or Determination.</p>
<p>9. Information which relates in any way to matters concerning national security.</p>	<p>Exempt information if the public interest in maintaining the exemption outweighs the public interest in disclosing the information – see note on public interest at end of table</p>	
<p>10. The deliberations of a standards committee or of a sub-committee of a standards committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.</p>	<p>Exempt information if the public interest in maintaining the exemption outweighs the public interest in disclosing the information – see note on public interest at end of table</p>	<p>This will apply in relation to Local Determinations whether the original report came from an Ethical Standards Officer or from a Local Investigator.</p>

Public interest

There is no legal definition of what the public interest is but the following are some of the relevant considerations.

- The public interest in disclosure is particularly strong where the information in question would assist public understanding of an issue that is subject to current national debate
- The issue has generated public or parliamentary debate
- Proper debate cannot take place without wide availability of all the relevant information
- The issue affects a wide range of individuals or companies
- The public interest in a local interest group having sufficient information to represent effectively local interests on an issue
- Facts and analysis behind major policy decisions
- Knowing reasons for decisions
- Accountability for proceeds of sale of assets in public ownership
- Openness and accountability for tender processes and prices
- Public interest in public bodies obtaining value for money
- Public health
- Contingency plans in an emergency
- Damage to the environment

When applying the public interest test, ask yourself the following questions:

- Is it in the public interest or merely of interest to the public?
- Is it the public interest that needs protecting or merely the Council's own private interest?
- Will disclosure ensure greater competition? If so, the public interest may better be served by disclosure.
- Would disclosure adversely affect law enforcement? If so you would need to explain how.

There will be difficult decisions where you will need to decide where the balance lies.

Who Decides?

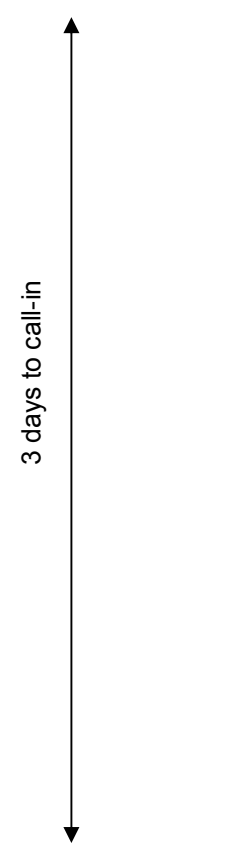
The report writer initially and they need to be clear about their reasons and include these in the body of the report. It will then be up to whoever considers the report to decide whether they agree. This could be the Executive, a member of the Executive, a committee, sub-committee or panel.

Good Practice

Openness is in the public interest and is a legal requirement under the Freedom of Information Act. There is a presumption that all information will be public. It is not often that the whole of a report will be exempt. Where there is exempt information it should be put in a separate schedule to the report so that if a freedom of Information request is received, the exempt material can be easily identified.

APPENDIX 3

INDIVIDUAL EXECUTIVE DECISION-MAKING

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
WEEK 1	Draft report submitted to the relevant Executive Director for clearance.				Final report to Steve Etchells
WEEK 2	am Circulate draft report to PH and Leader for comments by Thursday noon			Noon deadline for comments from PH and Leader Pm all reports circulated to all members	
WEEK 3	5 clear days publication before decision can be taken (key decisions only) a non key decision can be taken by PH on Monday in week 3 but not implemented until after call-in period i.e 3 clear days after publication				
WEEK 4 (or week 3 if non key)	Decision Day Noon deadline for Portfolio Holder to notify Member Services Manager of decision Pm Decision Notice and report published on intranet	 3 days to call-in			Lead Officer notified of decision – implement. If called-in refer to relevant Select Committee or Corporate Select Committee if meets sooner.

EXECUTIVE DECISION-MAKING

