

Agenda Item 10

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Date	September 2017
Ward (s) affected	All
Subject	Minor Changes to the Constitution relating to the Scheme of Delegation
Recommendation	
That the revised provisions be adopted and incorporated into the relevant parts of the Constitution.	
Corporate Priorities	
To assist in clarifying any doubt about whether an officer is exercising delegated powers or carrying out the duties and functions for which they were employed or have been allocated to them as part of their role in furtherance of the Corporate Strategy.	
The Council has the authority to determine the Recommendation	

1. Background

- 1.1 The Council's Constitution includes a section setting out a scheme of delegation whereby powers are delegated to officers by the Council, the Executive or Leader and Committees.
- 1.2 In most cases the delegations are made to the Chief Executive, Deputy Chief Executive and the Corporate Heads of Service. Those officers are able to delegate their powers to named individuals provided such delegation is made in writing.
- 1.3 It is essential, where regulatory decisions are made under delegated powers, such as for example, to issue a planning permission or an enforcement notice, or the granting of a Premises licence under the Licensing Act 2003, that the officer making the decision is properly authorised. However, there are numerous other functions which are being carried out by officers on a daily basis, as part of their job description or as directed by their manager, generally under the authority of the officer who holds that delegated authority. For the avoidance of any doubt and in an effort to seek to minimise any challenge against the Council exercising its powers, some clarifying paragraphs are proposed for the Constitution.

2. Proposed Updates to the Council's Constitution

- 2.1 The following additions are therefore proposed to be added to the Constitution – Part 3 – (ii) Responsibility for Functions – Scheme of Delegation to Officers:

These delegations should be interpreted widely to aid the smooth running and administration of the Council, the effective deployment of resources, the efficient delivery of services and achievement of the Council's Corporate Strategy.

An officer to whom delegated powers have been granted under this Scheme of Delegation may make such arrangements within his/her department or team for the exercise of the delegated powers as he/she considers appropriate, save that the responsibility for such exercise remains with the officer to whom the delegation was made, unless the power is delegated in writing by that officer under paragraph 6 above.

For the avoidance of any doubt, all officers, whether managed by the Chief Executive, the Finance Director and Deputy Chief Executive or by a Corporate Head of Service, shall be authorised to undertake the tasks, functions and duties for which they have been employed to undertake and perform (as set out in their job description or as directed by their manager or by one of the officers mentioned above). Generally, only decisions relating to matters which are not of a routine nature, are not part of the day to day management or work of a team or department, or involve complex or sensitive matters that are potentially controversial to the public, will be taken by the appropriate nominated officer under the Scheme of Delegation, unless specifically delegated in writing by that officer under paragraph 6 above.

3. Financial Implications

There are none arising as a direct result of this report.

4. Legal Implications

There is a difference between an officer making a decision on, for example, a planning application or licensing application, where the decision may affect the rights and expectations of an individual and a decision made, for example, on a purely administrative matter. However, there is a grey area between the two and to minimise any doubt and the risk of a challenge, amendments to the Scheme of Delegation have been suggested. The additional clauses will assist with clarifying the basis of the power under which officers carry out their day to day and additional duties and functions.

5. Corporate Implications

Monitoring Officer commentary

The Monitoring Officer confirms that all relevant legal implications have been taken into account.

S151 Officer commentary

The S151 Officer confirms that all relevant financial risks and implications have been taken into account in this report.

Risk Implications

The risk of not adopting the recommendation in the report is that there will remain the potential for some doubt, in certain cases, whether an officer is exercising delegated powers or merely carrying out his/her normal day to day role. Such doubt could lead to an officer's decision being challenged in some way.

Equalities Implications

None

Employment Issues

From an employment law perspective, individual job descriptions define the nature of the relationship between employee and manager. Although these are reviewed on an annual basis through the Performance and Development Review process to ensure they reflect current reality in a changing external landscape, an element of discretion

in their interpretation is inevitable (and desirable) as it is not possible to set out every duty in a job description. The wide and purposeful interpretation of the recommendations proposed mitigates risk that more senior officers are unable to progress more strategic, complex or unforeseen matters by ensuring that decisions of a day to day nature do not require delegation.

Sustainability Issues

None

Consultation

None

Communications

None

Background Papers

None

