

Cabinet

8 September 2022

Officer Delegations

Recommendations

That Cabinet:

1. Endorses the amendments to the Constitution as set out in Appendix 1 to this Report and recommends them to Council for approval.
2. Recommends that Council authorises the Strategic Director for Resources to make any consequential amendments to any Human Resources or other corporate policies required as a result of the statutory guidance on special severance payments and the consequent changes to delegations.

1. Executive Summary

- 1.1 The Council is required by legislation (section 37 Local Government Act 2000) to have a Constitution which sets out the governance arrangements by which the Council will operate. The Constitution provides the basis on which the Council operates and where powers are to be exercised and decisions taken. Part 2 of the Constitution sets out the responsibilities for Council functions with delegations to officers set out at Part 2(10).
- 1.2 The existing Constitution (including the Contract Standing Orders and Financial Regulations that are contained within it) was reviewed in 2021/22. In December 2021, Council approved changes proposed as a result, which had previously been considered and supported by Cabinet. Since then, as a result of changes in legislation and national policy direction, further changes are proposed to Part 1(9) (Finance, Contracts and Legal Matters) and Part 2(10) (Delegations to Officers) of the Constitution. These sections are set out with the proposed amendments tracked at Appendix 1.

2. Proposed Changes to the Constitution

- 2.1 The reasons for the proposed changes to the Constitution are set out in more detail below and the specific changes proposed are detailed at Appendix 1. Overall, the proposed changes are to reflect a change in the law in relation to special severance payments and to ensure that the scheme of delegation to officers is clear and up to date and enables the Council to undertake its business in the most effective and efficient way. In summary the proposed changes are as follows:

2.2 Delegations relating to Fire & Rescue functions

2.2.1 It is proposed that functions relating to fire and rescue are directly delegated to the Chief Fire Officer (CFO). These functions are currently delegated to the Strategic Director for Communities who can in turn onward delegate them to the CFO. With the exception of the proposed change set out at 2.3 below, no further specific changes are being proposed to these delegations at this time. This report simply proposes that the existing functions listed are delegated directly to the CFO rather than to the Strategic Director for Communities with onward delegation to the CFO.

2.2.2 The direct delegation of functions relating to fire and rescue is being proposed to ensure that the delegations reflect the accountability of the CFO and the operational leadership required for fire and rescue. It also aligns with the direction of travel of fire and rescue reform, in particular as set out in the White Paper and Consultation document published by the Government in May 2022. The White Paper contains proposals to strengthen governance in fire and rescue services in England. In particular, it proposes strengthening the operational independence of the CFO and more clearly defining the role in legislation or statutory guidance.

2.2.3 Whilst significant changes to governance arrangements cannot be made until the outcome of the consultation is known, it is proposed that direct delegations to the CFO would be preferable at this stage to reflect the operational independence of the CFO and to ensure that the CFO as the person who is seen to be accountable, has the direct authority to make those decisions. This provides greater alignment between accountability and the operational decision maker, especially in the context of critical operational / emergency decisions that need to be taken. It is also in line with potential changes arising from national reform.

2.2.4 In addition to the above proposed change, it is proposed that the statutory references are updated to include recent relevant legislation.

2.3 Delegations relating to discharge of Fire & Rescue functions under the Regulatory Reform (Fire Safety) Order 2005 and other statutory provisions

2.3.1 The Regulatory Reform (Fire Safety) Order 2005 (FSO) – provides a framework for regulating fire safety in all non-domestic premises including workplaces and the parts of multi-occupied residential buildings used in common in England and Wales. The “enforcing authority” under the FSO is the fire and rescue authority for the area where the relevant premises are situated.

2.3.2 The FSO also gives wide powers to Inspectors to take such action as is necessary to ensure that fire safety is maintained and enforced. This includes the power to enter premises and to make enquiries of third parties.

2.3.3 The FSO requires an Inspector visiting a premises to produce evidence of their authority if required.

2.3.4 The Council's Constitution currently delegates authority to the Strategic Director for Communities:

To exercise the Council's powers of inspection and enforcement to appoint officers in the fire & rescue service as inspectors and otherwise to authorise in writing officers in the Fire & Rescue Service to exercise powers of entry on to premises, investigation, sampling and inspection and all supplementary powers and to issue all notices and licences in relation to the listed enactments.

2.3.5 Whilst this enables the Strategic Director for Communities or his nominee to appoint officers from Warwickshire Fire and Rescue as inspectors or otherwise authorise them to exercise those powers, this does not extend to officers from another fire and rescue authority.

2.3.6 Warwickshire Fire and Rescue Service is seeking to authorise inspectors from West Midlands Fire Service (WMFS) to assist in the discharge of their functions under the FSO. This will be limited to investigation of compliance with the FSO and will not extend to enforcement activities as these can only be delegated to employees of the relevant "enforcing authority". It is therefore proposed that this delegation is amended to enable appointments and authorisations to officers from other fire and rescue authorities.

2.4 **Delegations relating to the Council's functions as a provider of Gypsy and Traveller related accommodation**

2.4.1 The Council exercises its power to provide and manage sites where caravans may be brought for use for temporary purposes or for use as a permanent residence in accordance with Section 24 Caravan Sites and Control of Development Act 1960. In particular, it does so by providing land for use as permanent and temporary accommodation for members of the Gypsy and Traveller community. Those sites are 'protected sites' as defined by the Caravan Sites Act 1968 and any agreement permitting occupation of a protected site is subject to the Mobile Homes Act 1983. The Mobile Homes Act 1983 implies certain terms and conditions into agreements of occupation including obligations on the Council as owners of protected sites.

2.4.2 The Council has a dedicated Gypsy and Traveller Service within the Communities Directorate to manage the operation of the sites. That

management function includes the application of the Council's Gypsy and Traveller Site Registration and Allocation Policy and the execution of the Mobile Homes Act 1983.

2.4.3 The existing Constitution is silent as to the powers and duties of the Council in its discharge of the power to provide caravan sites for either temporary or permanent residence for the Gypsy and Traveller community such powers being considered to fall within the general powers of the Strategic Director for Communities. It is therefore proposed that for clarity there should be a specific delegated authority to the Strategic Director for Communities, in consultation with the Strategic Director for Resources (in respect of land/property) to exercise any function in respect of the provision of accommodation for the Gypsy and Traveller community and which may be conferred on the County Council at any time by the Caravan Sites and Control of Development Act 1960 and the Mobile Homes Act 1983 (or by that legislation as amended or re-enacted at any time) or by any subordinate legislation or any direction, designation, appointment, order or other instrument of government.

2.5 Responsibilities and delegations relating to special severance payments

2.5.1 On 12 May 2022, the Department for Levelling Up, Housing and Communities issued new statutory guidance on the making and disclosure of Special Severance Payments by local authorities. The guidance forms part of the best value regime for local authorities as set out in the Local Government Act 1999 and is issued under section 26 of that Act.

2.5.2 The guidance sets out the types of severance payments that are (or may be considered to be) Special Severance Payments. Such payments are generally 'ex gratia' in nature and include compensation payments made under settlement agreements in order to settle employment related claims, and may also include payments in lieu of an employee's notice period and discretionary payments to enhance pension benefits.

2.5.3 Certain payments are not considered to be Special Severance Payments, including payments in respect of annual leave, redundancy, pension strain costs arising from redundancy or efficiency retirements, pension payments in respect of ill health retirements and payments made pursuant to ACAS early conciliation, mediation or a court order.

2.5.4 The guidance sets out the exceptional circumstances in which it may be appropriate to consider making a Special Severance Payment, and the considerations that local authorities should take into account.

2.5.5 The expected approval process is set out in the guidance, as follows:

- 2.5.5.1 payments of £100,000 and above must be approved by full Council;
 - 2.5.5.2 payments of £20,000 and above, but below £100,000, must be approved and signed off by the Head of Paid Service, with a clear record of the Leader's approval (and that of any others who have signed off the payment); and
 - 2.5.5.3 payments below £20,000 must be approved according to the local authority's scheme of delegation.
- 2.5.6 Currently, the power to settle claims, including in relation to employment matters, is delegated to both the Chief Executive and the s151 Officer with an onward delegation to the Monitoring Officer. The Monitoring Officer consults with the s151 Officer in respect of any settlement payment over £10,000.
- 2.5.7 Accordingly, the current delegations within the Constitution require updating to take account of the expected approval process and relevant limits for the making of payments which are Special Severance Payments.
- 2.5.8 Cabinet is also being asked to recommend that Council authorises the Strategic Director for Resources to make any consequential amendments to Human Resources or other corporate policies relating to Special Severance Payments required as a result of the statutory guidance on Special Severance Payments and the subsequent changes to delegations.
- 2.5.9 The Council's annual pay policy statement is currently compatible with the changes to the approvals process for Special Severance Payments. However, the policy will require updating for 2023/24 to remove references to 'exit payments'. This will be taken to Council for approval in February 2023, in line with our reporting cycle.

3. Financial Implications

- 3.1 There are no direct financial implications arising from this report.

4. Environmental Implications

- 4.1 There are no direct environmental implications to this report.

5. Timescales associated with the decision and next steps

- 5.1 If approved, the proposals will be taken to full Council on 29 September 2022 for approval.

Appendices

1. Appendix 1 – proposed changes to the Constitution (tracked against current version)

Background Papers

1. None

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The report was circulated to the following members prior to publication:

Local Member(s): N/A

Other members: Cllr Butlin; Cllr Chilvers; Cllr Holland; Cllr Roodhouse; Cllr Seccombe