

**Audit Committee – 20<sup>th</sup> April 2015**

**Reporting Requirement under Part 3.5, Clause 2 Council Constitution**

**Summary of report**

This report details a review of the requirement under Part 3.5 clause 3 headed “Reports on the exercise of delegated powers”. The review was requested by the Audit Committee on the 5<sup>th</sup> January 2015 following a report of the Chief Financial Officer dated 19<sup>th</sup> December 2014, which was entitled Officers Exercise of Delegated Powers 2013/14. This report gave a nil return in respect of decisions taken. As this report has historically always given a nil return members of the audit committee correctly asked why this report is compiled and whether or not there is a statutory requirement for this to be included in the council’s constitution.

**Recommendations**

1. That the Monitoring Officer amend Part 3.5 Clause 3 to remove the requirement for reporting chief officer decisions to the Audit Committee.
2. That any such proposed amendment is included in a report to council as required by the constitution.

**1.0 Background**

1.1 The council’s constitution sets out how the council will operate, how decisions are made and the procedures which are followed to ensure that these are efficient and transparent and accountable to local people. The council is required by law to have a constitution and to keep it up to date under s37 Local Government Act 2000, as amended. In drafting the constitution the council also had to have regard to the Guidance to English Authorities issued by the Office of the Deputy Prime Minister 26<sup>th</sup> October 2000, when drafting and approving a constitution.

1.2 The Local Government Act 2000 (Constitutions) (England) Directions 2000 set out the broad themes to be included in a Local Authority's Constitution. These were in addition to the requirements specified in section 37 and follow the structure of the Modular Constitutions as drafted by the Department Of The Environment, Transport and the Regions, jointly with the LGA and IDeA, which published examples of new constitutions to accompany the statutory guidance. Local authorities were given the choice of using the modular constitutions directly with little or no amendments or were given discretion to use them as a starting point for developing the drawing up their own constitution.

1.3 There is therefore no statutory requirement to include part 3.5, clause 3 et sequitor in the councils constitution. This must have been incorporated at some point after consultation was carried out on the constitution, as a reasonable requirement to manage the councils decision-making processes.

1.4 Initially there was requirement for chief officers to make such a report on a quarterly basis. Due to the fact that there were continued nil returns, this requirement was reduced to annual reporting. There continues to be nil returns therefore it is questionable as to whether or not there is any purpose to this provision being retained within the constitution.

1.5 There is already a power under 4.5 rule 17.01 (a) of the council's constitution that where an officer of the council takes a "key decision" as defined by the council's constitution for that decision to be called in. In addition under protocol 5.8 of the council's constitution there is a requirement for chief officers to record all significant decisions taken under delegated powers. This does not include decisions that are purely operational in nature or necessary to give effect to a decision of the council, cabinet, or regulatory committees. There are not likely to be many of these types of decision taken by Chief Officers, and if such a decision were to be taken by a Chief Officer it should still be subject to the requirements for consultation as set out in the council's constitution at 3.5 clause 2, and is subject to inspection by the relevant portfolio holder and elected members under their general right to know.

## **2.0 Resource and legal considerations**

2.1 A local authority which is operating executive arrangements or alternative arrangements must prepare and keep up to date a document (the 'constitution') which contains:

- (1) such information as the Secretary of State may direct;
- (2) a copy of the authority's standing orders for the time being;
- (3) a copy of the authority's code of conduct for the time being; and
- (4) such other information, if any, as the authority considers appropriate.

The Code of Guidance, to which authorities must have regard, contains a model constitution. The guidance provides that a number of principles should apply to all decisions of an authority: proportionality; respect for human rights; a presumption in favour of openness; clarity of aims and desired outcomes; and a requirement for due consultation and professional advice from officers

2.2 A local authority must ensure that copies of its constitution are available at its principal office for inspection by members of the public at all reasonable hours. A local authority must supply a copy of its constitution to any person who requests a copy and who pays to the authority such reasonable fee as the authority may determine.

2.3 Only council has the power to make changes to the constitution under Article 13.

2.2 There are no resource considerations to this proposal.

## **Citizen impact**

The work of the Audit Committee is intended to ensure that effective governance arrangements are in place. This protects the council and its officers and provides an assurance to stakeholders and citizens regarding the security of the council's operations. There are sufficient checks and safeguards in place in the constitution to ensure adequate openness and transparency in decision making.

### **Performance and risk management issues**

Performance and risk management form part of the corporate governance framework. Part of the Audit Committee's role is to seek assurance that the council's performance and risk management arrangements are robust and operating effectively.

### **Equality implications**

None arising from this report.

### **Consultation**

This report has been circulated to the Head of Democratic Services, the Chief Finance Officer and the Head of Internal Audit for comment.

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