

REPORT OF THE GOVERNANCE COMMITTEE

The Governance Committee met on 13 November 2012. Attendances:

Councillor Glazier (in the Chair)
Councillors Bennett, Birch, Elkin and Tutt

1. Statutory Officer Appointment and Amendment to Scheme of Delegations

1.1 On 26 July 2012 the Governance Committee (and subsequently the Council) received a report regarding changes to the senior officer structure and the consolidation of the Council's core support services. This set out the proposed significant structural changes to these services which will lead to savings and improved service delivery.

1.2 Every local authority is required to make arrangements for the proper administration of their financial affairs, and ensure that one of their officers has responsibility for the administration of those affairs under s151 Local Government Act 1972.

1.3 The current arrangement is that the Interim Director of Corporate Resources was appointed as the Council's s151 and Chief Financial Officer (CFO). The first phase of the change programme will shortly be completed and will include the appointment, by Members, of the officer who will then be appointed the Council's s151 and Chief Finance Officer (CFO). The person appointed to the role will not be in post before the Interim Director of Corporate Resources finishes and so there needs to be some flexibility in relation to the ability to appoint an officer, in the interim and then substantively, as the s151 CFO, to ensure that robust and effective governance arrangements are in place. A number of the County Council's officers are suitably qualified and experienced to perform this role until a substantive appointment is made, including the Deputy Director of Finance who is the deputy s151 officer.

1.4 The senior officer restructure and the consolidation of core resources will necessitate, and encourage, greater cross departmental working. Furthermore, as the Council moves further towards the commissioning approach greater flexibility in the scheme of delegations will be required to facilitate this. It is therefore recommended that the "General Delegation" to Directors be amended, as set out below in italics, to allow for delegation across departments and to the Council's contractors.

Delegation of Powers to Chief Executive and all Directors

Within the provisions of the Standing Orders and Financial Regulations of the County Council the following powers are delegated to Chief Executive and all Directors in relation to the services for which they are responsible. All references in these delegations to Acts or Regulations are to include reference to legislation amending or re-enacting the same. The operation of these delegations is subject to Standing Orders, the Code of Conduct and this Constitution.

Any interpretation of this Scheme of Delegations to Officers shall be in accordance with the Council's and the Leader's wish that the scheme shall not be construed restrictively.

1. General Delegation

The power to manage the services for which they are responsible, including taking and implementing decisions which aid in maintaining the operational effectiveness of those services, and which fall within a policy decision taken by the Council. The

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power to be exercised (a) in conformity with any instructions given by the Chief Executive and with Standing Orders, Financial Regulations, approved revenue estimates and the approved capital programme; and (b) having regard to any legal advice by the Assistant Director, Legal and Democratic Services .

*To the extent permissible by law, the Chief Executive and Directors are authorised to delegate all or any of their delegated functions to other officers within ~~their departments~~ **the Council or external contractors** either fully or under the general supervision and control of the delegating officer.*

1.5 As Members will be aware, in 2011 the role of Assistant Chief Executive was created and is one of the Council's Chief Officers. The Scheme of Delegation, however, makes reference only to delegations to Directors. In accordance with the wishes of the Council and the Leader the scheme has not been construed restrictively and "Director" has been interpreted as including Assistant Chief Executive. To put the matter beyond any doubt, the Committee recommend the County Council that it confirms that, where reference is made to "Director" or "Chief Officer", this includes the role of Assistant Chief Executive.

1.6 The Committee **recommends** the County Council to:

- ✧ delegate to the Chief Executive, in consultation with the Group Leaders, authority for a period of 6 months to appoint the s151 and Chief Finance Officer for the County Council;
- ✧ confirm that, where in the Constitution reference is made to Director or Chief Officer, this includes the role of Assistant Chief Executive; and
- ✧ agree to the proposed change to the Scheme of Delegation as set out in paragraph 1.4 above.

Additional recommendation to County Council

- ✧ To delegate to the Chief Executive for a period of 6 months the powers and authority delegated to the Director of Corporate Resources, and to amend the constitution where the Director of Corporate Resources is appointed as the proper officer to substitute the Chief Executive, so that where there are references in the Constitution (which do not relate to the role of s151 and Chief Finance Officer), to the powers and responsibilities of the Director of Corporate Resources these will be exercisable by the Chief Executive.

2. Scheme of Delegation: Changes as a result of the General Power of Competence

2.1 The Localism Act 2011 received Royal Assent on 15 November 2011. Section 1 of the Localism Act came into force on 18 February 2012.

2.2 The General Power of Competence at Section 1 of the Localism Act gives local authorities the power to do "anything that an individual generally may do". The section 1 power is more wide reaching than the well being power it effectively replaces. Whilst the well-being power was intended as a power of first resort, the Government considered that local authorities did not use it as often as they might due to a lack of confidence in its extent. The intention behind the new General Power is to remove this uncertainty.

2.3 Prior to the introduction of the General Power, before taking any innovative action the Council would have to satisfy itself that the action was specifically permitted by legislation. The General Power of Competence enables local authorities to do things that are not ordinarily, or have not previously been, done by local authorities.

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2.4 When relying on the General Power of Competence local authorities shall continue to be required to act in accordance with statutory limitations or restrictions that apply to powers which overlap with the general power.

2.5 The Committee **recommends** the County Council to:

- ✧ note the coming into force of the General Power of Competence; and
- ✧ delegate authority to the Assistant Director, Legal and Democratic Services to amend the Scheme of Delegations so as to delegate from Council to Chief Officers (and their delegates) authority to exercise the general power of competence given to local authorities under section 1, Localism Act 2011.

3. Amendment to the Constitution relating to Notices of Motion

3.1 Following the last County Council meeting the Labour Group asked that the issue of Notices of Motion be considered by the Governance Committee.

3.2 Members will be familiar with the procedure by which motions can be moved which are set out in the Council's Constitution.

3.3 At the last meeting of the Council a situation occurred whereby a Notice of Motion had been properly submitted in advance of the meeting and was due to be considered by the Cabinet prior to then being considered by the Council. However, a related item was then considered by the Council and the Member who had submitted the Motion in advance was not the first to put his Motion forward, and instead had to seek to amend another Notice of Motion that had been put at the meeting.

3.4 Whilst this was in accordance with the Constitution it did give Members of the opposition parties cause for concern, and there was a perception that this was procedurally unfair.

3.5 Although this is an unusual situation, the Governance Committee considers that the Constitution should be amended to envisage such a scenario.

The Committee **recommends** the County Council to:

- ✧ delegate authority to the Assistant Director, Legal and Democratic Services to amend the Constitution so that where a Notice of Motion has been submitted, and the County Council is due to consider a matter which the Chairman considers to be related, the Member who has submitted the Notice of Motion in advance be given the first opportunity to speak after the report has been moved by the relevant Committee Chairman, where it is necessary for the report to be moved.

4. The Local Authority (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

4.1 In September 2012 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations came into force. There are a number of implications for the Council arising from these, including how meetings are publicised. The main changes are summarised below:

Forward plan

4.2 The Council is no longer required to publish a Forward Plan. However, the Regulations state that where a decision maker intends to consider a Key Decision then a

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document must be published at least 28 clear days before. The information that must be provided in the document largely mirrors the information currently contained on the Forward Plan. There is an additional requirement to publish a list of the documents which are to be submitted to the decision maker. It is, therefore, proposed to continue to publish a Forward Plan with the necessary additions. Key Decisions must be included on the Forward Plan (published on 1st of each month) at least 28 clear days in advance of the meeting taking place and must include a list of documents which are to be submitted to the decision maker in addition to the information previously required. An additional column has been added to the Forward Plan so that Key Decisions and decisions which are proposed to be taken in private can be identified.

4.3 Where publication of the intention to make a key decision giving 28 clear days notice is impracticable the decision may only be made (a) where the Chairman of the relevant scrutiny committee has been informed; and a notice is published on the Council's website setting out the reasons why compliance with the requirement to give 28 days notice was impracticable.

Private meetings

4.4 Where an executive decision is to be made in private (ie where some or all of a report is to be on pink paper as it contains confidential or exempt information) at least 28 clear days notice must be given of the private meeting. This notice must be published on the Council's website and must include a statement of the reasons for the meeting to be held in private. At least five clear days before a private meeting the Council must publish a further notice of its intention to hold a private meeting and the notice must set out a statement of the reasons for the meeting to be held in private, details of any representations received by the Council about why the private meeting should be open to the public, and a statement of its response to any such representations.

4.5 Failure to comply with the 28 days notice requires agreement to be obtained from the Chairman of the relevant scrutiny committee that consideration of the item(s) is urgent and cannot reasonably be deferred. As soon as reasonably practicable after the decision-making body has obtained agreement to hold a private meeting it must publish a notice setting out the reasons why the meeting is urgent and cannot reasonably be deferred.

4.6 There is some uncertainty about how the new Regulations will be applied in practice and how best to give effect to the requirements in the most administratively effective and efficient way. These issues will be resolved over the coming months. The proposed changes to the Constitution to reflect the requirements set out in the Regulations, which may be refined in due course, are set out in Appendix 1 which is being circulated separately to all Members. Insertions are shown as underlined; deletions are shown with strikethrough.

4.7 The Committee **recommends** the County Council to:

- ✧ note the implications in relation to The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012; and
- ✧ delegate authority to the Assistant Director, Legal and Democratic Services to make changes to the Constitution in the light of the Regulations

KEITH GLAZIER
(In the Chair)

13 November 2012