

REPORT OF THE GOVERNANCE COMMITTEE

The Governance Committee met on 3 March and 21 April 2020. Attendances:

Councillor Glazier (Chair) (2)

Councillors Bennett (2), Godfrey Daniel (2), Simmons (2) and Tutt (2)

1. Constituting panels as part of Adoption South East

1.1 In July 2019 the Lead Member for Children and Families approved the establishment of a Regional Adoption Agency (RAA) from the adoption services of Brighton & Hove City Council, Surrey and East and West Sussex County Councils to be known as Adoption South East (ASE). It was agreed that East Sussex be appointed as the lead authority. The establishment of ASE is in line with national legislation directing local authorities to form or join RAAs, reflecting the policy of central Government to rationalise the adoption sector, creating a smaller number of adoption agencies operating at regional level in place of the 180 agencies in operation in England in 2015.

1.2 The RAA will bring benefits such as an increased and more diverse pool of adopters through a shared regional recruitment strategy and resource, and greater choice and more timely placements for children in need of adoption. It will also enable the sharing of good and innovative practice, offering opportunities for regional initiatives, collaborative commissioning arrangements and the development of ongoing adoption support for adopted children and their families.

1.3 As part of the creation of the RAA, adoption panels will become shared between the authorities within ASE in order to minimise delay in approval of adopters and in matches between adopters and children, to establish, support and maintain shared standards of practice and process and to streamline and co-ordinate administration. Any panel within the RAA will be able to consider and make recommendations about potential adopters and matches from any part of the ASE area.

1.4 As indicated in the Lead Member report of July 2019 there has been a review of adoption panel arrangements to ensure they are fit for purpose in the context of the RAA. It has been agreed by the constituent authorities that ASE will, from April 2020, operate three panels located in Horsham, Woking and Uckfield. Once implemented, these will replace the current practice of having two panels each covering half the county.

1.5 The proposed membership of the ASE panels reflects statutory requirements. Elected Member involvement in adoption panels has not been a legal requirement since 2011, albeit we have continued to practise this. The current two East Sussex Adoption and Permanence Panels each include one councillor. The review of panel arrangements has identified that some authorities currently have Member representation on adoption panels and others do not. Given that panels will operate on a regional basis, able to make recommendations in relation to adopters and placements from any of the constituent authority areas, it is necessary for ASE to take a consistent approach to panel arrangements across the region, rather than to make arrangements which are specific to any one part of the area. As a result, it is proposed to no longer include elected Member representation from individual authorities as part of the new panel arrangements.

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1.6 Appointment to the ASE panels is via a recruitment process open to those meeting the relevant criteria, including experience or knowledge in relation to adoption, which may include experience gained through previous membership of an adoption panel. Appointments to ASE panels will be made under the existing delegation to officers set out in the constitution, amended to reflect the ending of appointments of councillors in their elected Member role. The proposed amendment to the Scheme of Delegation, Part D, Paragraph 39 is below with deleted text indicated:

To appoint the members ~~(except for the appointment of any members who are County Councillors)~~ of the Adoption and Permanence panels in accordance with the Adoption Agencies Regulations 2011.

1.7 Panels will continue to have a broad membership and to perform a key role in advising and making recommendations to the Agency Decision Maker within the Local Authority on the suitability of adoption matches for children for whom the Agency Decision Maker has responsibility.

1.8 Members will continue to have oversight of the overall performance and progress of the RAA as part of the annual progress reports on Looked After Children's Services which are reported to Corporate Parenting Panel and to Cabinet each autumn.

1.9 In light of the creation of ASE, and the associated review of existing adoption panel arrangements operated by the constituent authorities, new shared panel arrangements are required to be put in place from April 2020 which are consistent with the regional approach to adoption. The new panel arrangements reflect the regional role of these panels and the need for consistency, in line with national policy.

1.10 The Committee recommends the County Council to:

☆ (1) agree to discontinue the appointment of Members to Adoption Panels with effect from 1 April 2020 and agree the new panel arrangements set out above to be constituted in support of Adoption South East; and

(2) delegate authority to the Assistant Chief Executive to amend the Constitution to reflect the changes to Adoption Panel arrangements

2. Pay Policy Statement

2.1 The Localism Act 2011 requires local authorities to formulate and publish a pay policy statement on the pay of its Chief Officers and the relationship between these pay levels and the rest of the workforce, excluding schools. This policy statement must be approved annually by full Council by 31 March.

2.2 At its meeting on 27 March 2012, County Council agreed that the Governance Committee should have formal responsibility for the approval of posts at Chief Officer, Deputy Chief Officer and Assistant Director level with a remuneration package of £100,000 or more, provided the existing grade bands and terms and conditions are applied and any proposed exceptions to these are reported to full County Council. The actual appointment decision will continue to be made using existing delegations. Any proposed exceptions to this would require the approval of the full County Council.

2.3 The Localism Act 2011 requires local authorities to prepare an annual pay policy statement relating to the remuneration (total pay package) of its Chief Officers, as defined by statute, Deputy Chief Officers (and, by definition, Assistant Directors), the Monitoring Officer and its lowest-paid employees, excluding schools. The pay policy also has to state the

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relationship between the remuneration of Chief Officers and the remuneration of its employees who are not Chief Officers.

2.4 The Hutton report of Fair Pay in the Public Sector recommended the publication of an organisation's pay multiple as a means of illustrating the relationship between the pay of the highest paid employee and that of the rest of the (non-schools) workforce in the form of a ratio. The ratio is currently (March 2019) 7.14 to 1. The pay multiple is published on our website with the Pay Policy Statement and will be updated in March 2020.

2.5 It is necessary to include definitions and the authorities' policies relating to levels and elements of remuneration including all additional payments and benefits in kind. The statement must also indicate the approach to the payment of Chief Officers on ceasing employment, including eligibility for the award of additional pensionable service and on the engagement or re-engagement of Chief Officers previously made redundant or accessing a local government pension.

2.6 The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 placed a new requirement on all employers with 250 or more employees to publish gender pay data on the gov.uk website by 30 March each year. The gender pay report for East Sussex County Council is published on our website, along with the Pay Policy Statement.

2.7 The Government has also undertaken a number of consultations over the last couple of years in relation to reforming public sector exit payment terms. All of the below were due to be implemented in 2018 but implementation has been delayed and no expected implementation date has currently been announced:

- (i) Recovery of exit payments - the Small Business, Enterprise and Employment Act 2015 includes provisions to enable the recovery of exit payments made to individuals who return to the public sector within 12 months of receiving an exit payment.
- (ii) Exit payment cap — the Government intends to introduce a cap of £95,000 on public sector exit payments (including pension strain costs etc.).
- (iii) Exit payment terms (compensation) — the Government is considering further reforms to the calculation of compensation terms and to employer funded early retirement in circumstances of redundancy, including the introduction of a maximum salary on which an exit payment can be based and the tapering of a lump sum compensation as employees get closer to their normal retirement age. The maximum salary is currently proposed to be £80,000.

2.8 Whilst the existing pay policy statement remains a valid statement of the County Council's remuneration arrangements at present, it will need to be updated to reflect the outcome of the above consultations once known. Attached at Appendix 1 is a copy of the pay policy statement for 2020/21

2.9 The Committee recommends the County Council to:

- ✧ agree the updated pay policy statement for 2019/20 as set out in Appendix 1.

3 Amendments to the Constitution

A) Adopting and Changing the Constitution

3.1 The County Council has delegated authority to the Governance Committee to agree the delegation of the Council's non-executive powers to officers and the Leader has the power to delegate any Executive function to Members and officers. The Leader is required to report annually on the nature and extent of any delegations. The Constitution sets out at Part

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3 Table 6 the Scheme of Delegations to Officers, which is a record of those powers and functions that have been delegated to officers of the County Council.

3.2 As the exercise of the power to delegate these functions, which have been delegated to the Governance Committee and rest with the Leader, may result in amendments being made to the Scheme of Delegation it is recommended that the Constitution be amended to reflect the position and practice of the Council.

B) Delegation of Functions to Officers

3.3 The Constitution contains a number of references to the delegation of powers to Chief Officers and Directors. However, in the light of current and possible future governance arrangements there could be occasions where the delegation of functions might be to an officer other than a Chief Officer or Director. It is therefore proposed to amend the Part 3 Paragraph 1.06 and Part 3 Table 6 of the Constitution as follows:

Cabinet Responsibilities and Functions

*1.06 The Leader has delegated certain Executive powers to the Chief Executive, ~~and~~ Directors **and other officers**. These, together with the powers delegated by the Council to the Chief Executive, ~~and~~ Directors **and other officers** are set out in Table 6. Separate delegations to the Chief Executive, ~~and~~ Directors **and other officers** in relation to contracts are set out in the Procurement Procedure Rules and in relation to financial matters in the Financial Procedure Rules.*

Delegations to the Chief Executive

*To make minor changes to Standing Orders, Delegations to the Chief Executive, ~~and~~ Directors **and other officers**, the Terms of Reference of Committees, Sub-Committees and Panels and existing protocols, after consultation with the Group Leaders*

C) Responsibility for Local Choice Functions

3.4 The functions set out in Part 3 Table 2 of the Constitution (Appendix 2) set out those functions where the local authority can decide whether it is considered an Executive or non-executive function and where this Council consider they best sit. Currently the functions allocated to the Executive are either delegated to officers or reserved to Cabinet. To reflect the decision making arrangements of this Council it is recommended that this be amended so the where considered appropriate Lead Members can exercise those functions reserved to the Executive.

3.5 The Committee recommends the County Council to:

☆ (1) approve the proposed changes to the Constitution as set out in paragraphs 3.2 and 3.3 above;

(2) agree that Local Choice Functions reserved to the Executive can be undertaken by Lead Members; and

(3) delegate authority to the Assistant Chief Executive to amend the Constitution accordingly.

4. Coronavirus (Covid-19) temporary arrangements

4.1 The current incidence of the Covid-19 virus both nationally and internationally is causing disruption to a wide range of business and social activity. Additional preventative measures have been introduced nationally to help contain the spread of the virus. This includes advice to individuals or groups to self-isolate for periods of time, and more general restrictions on travel and gatherings.

4.2 The spread of Covid-19 is therefore impacting upon the County Council's ability to hold its normal range of meetings in public. This issue has been recognised by Government and temporary regulations have been issued which relax a number of legal requirements on local authorities around physical access to meetings and papers and enable meetings to be held remotely, for example using video conferencing technology.

4.3 The regulations are broad and allow for councils to make specific local arrangements to suit local circumstances. This report outlines a range of proposed temporary measures to help enable the County Council's business to be conducted efficiently throughout the period of disruption due to Covid-19.

Executive decisions

4.4 It is legally permissible for a Lead Member to take a decision remotely and for the Leader to take most decisions which may normally be taken by Cabinet collectively. In light of disruption already experienced due to Covid-19 the County Council has implemented an approach to enable Lead Member to make decisions remotely, but in a transparent way that allows continued engagement, to enable decision making to continue as required. This approach which will be developed when feasible to include remote public access.

4.5 For the avoidance of doubt it is proposed that, in so far as such approval is required, Council approves the approach that has been taken and that this should continue.

4.6 The current practice of publishing an agenda and publicly available report continues in the usual way, and Members are able to make representations via email and/or video conferencing to the decision maker.

4.7 It is also proposed that the Leader (or in their absence the Deputy Leader) will assume responsibility for all the powers of the Cabinet in order that decisions can be taken if the Cabinet cannot meet or is not quorate due to Covid-19 related disruption.

Non-Executive decisions

4.8 The national regulations also allow for remote meetings of Non-Executive bodies to take place via internet, telephone or video conferencing. The County Council will aim to arrange virtual meetings of relevant bodies where required to enable core business to continue. However, there is potential for practical, health or capacity related constraints to limit the Council's ability to hold virtual meetings. It is therefore prudent to put in place delegations to officers which can be used where considered necessary.

4.9 In circumstances where the committees set out below are, in the view of the Chief Executive (or in her absence the Assistant Chief Executive) in consultation with the Chair of the relevant Committee, either unable to reasonably conduct necessary business by meeting virtually, or are inquorate, or the business of the meeting is not suited to a virtual meeting it is proposed that the following delegations be agreed:

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- (i) In relation to the Planning Committee – to delegate the functions of the Planning Committee in so far as the law allows to the Director of Communities, Economy and Transport, in consultation with the Chair of the Committee.
- (ii) In relation to the Pensions Committee – to delegate the functions of the Pensions Committee in so far as the law allows to the Chief Operating Officer, in consultation with the Chair of the Committee.
- (iii) In relation to the Governance Committee – to delegate the functions of the Governance Committee in so far as the law allows to the Chief Executive, in consultation with the members of the Committee.
- (iv) In relation to the Discretionary Transport Appeal Panel - to delegate the functions of the Discretionary Transport Appeal in so far as the law allows to the Chief Executive, in consultation with the members of the Panel.

Any decisions taken by officers under these delegations will be reported to the next meeting of the relevant committee or panel.

Member attendance

4.10 Covid-19 may impact on Members' ability to attend Council meetings either due to them being personally affected or due to general disruption or suspension of meetings. This may in turn result in Members becoming at risk of failing to meet attendance rules which require a minimum attendance at meetings of once every six months. The national regulations allow for Members' attendance at a virtual meeting to be counted for the purposes of attendance rules. However, there may be factors which prevent a Member participating in a virtual meeting and thus continuing to be at risk of non-attendance.

4.11 To prevent any Member being at risk due to non-attendance as a result of Covid-19 it is proposed that non-attendance due to: being diagnosed with Covid-19; self-isolating due to suspected Covid-19; self-isolating in order to reduce the risk of contracting or passing on Covid-19; or as a result of following Covid-19 related guidance from Government be considered as absence for a reason approved by the Council in relation to attendance requirements.

4.12 The Committee recommends the County Council agrees the range of measures outlined in this report in order to enable the Council's business to be conducted during the period of disruption due to the Covid-19 virus. Although temporary national regulations allow for the holding of remote meetings and this will be implemented where possible, there are likely to be practical and capacity constraints which will place unavoidable limitations on the holding of meetings during this period. It is proposed that the Chief Executive (or in her absence the Assistant Chief Executive) be authorised to cancel or postpone meetings, in consultation with the relevant Committee Chair or Cabinet Member.

4.13 The Committee recommends the County Council to:

☆ 1) approve the approach in relation to Lead Member decisions being made virtually and to its continuation;

2) agree that the Leader will assume all the powers of the Cabinet where required as set out in paragraph 4.7 above;

3) agree the delegations to officers in relation to the functions of the Planning, Pensions and Governance Committees and the Discretionary Transport Appeal Panel as set out in paragraph 4.9 above;

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4) agree that Member non-attendance related to Covid-19 be considered as an absence approved by the Council as set out in paragraph 4.11 above;

5) agree that the Chief Executive (or in her absence the Assistant Chief Executive) be authorised to cancel or postpone meetings, in consultation with the relevant Chair or Cabinet Member;

6) review these measures at the October 2020 meeting of the Council (or before if requested by a Group Leader) or as soon as practicable thereafter; and

7) agree to amend the Constitution accordingly

21 April 2020

KEITH GLAZIER
(Chair)