

# North Somerset Council

## Report to the Council

**Date of Meeting: 10 November 2020**

**Subject of Report: Constitution changes to delegations**

**Town or Parish: None**

**Officer/Member Presenting: Head of Legal and Democratic Services**

**Key Decision: N/A**

**Reason:**

Not an Executive Decision.

## **Recommendation**

That Council approves the changes to the Constitution referenced in this report and authorises the Head of Legal & Democratic Services to implement them.

### **1. Summary of Report**

The report sets out changes to the Constitution necessary to reflect establishment changes which have occurred or may be required, update the Employment committee (and sub-committees) terms of reference and bring the Officer Employment Procedure Rules up to date with the Standing Order Regulations.

### **2. Policy**

None

### **3. Details**

3.1 Members will be aware that the Director of Public Health role was widened to also take responsibility for various regulatory services functions in addition to the core public health functions. Those functions have been line managed by the Director of Public Health and been operating effectively in that way for some time now. However the officer delegations and authorisations in Part 3 of the Constitution have yet to be updated to reflect the change in operational delivery, with delegated authority for regulatory and licensing functions being with those applicable to the Director of Development and Environment and some contract award functions resting with the Director of People and Communities. It is recommended that the officer delegations be realigned with the relevant delegations for those services and functions now under the management of the Director of Public Health being transferred.

3.2 Further proposals to make changes to the organisational structure were the subject of report to Executive on 21 October 2020. Proposals when implemented may involve further realignment of officer delegations and it is recommended that the Head of Legal & Democratic Services be asked to implement any such changes when updating the Constitution.

3.3 The Council's constitution does not at present fully provide for the requirements of the Local Authorities (Standing Orders) (England) Regulations 2001 as amended in 2015, as the Model Constitution did not originally provide for full implementation of the Regulations and staffing matters generally.

3.4 The constitution also needs to dovetail with the updated Chief Executive and Chief Officers Terms and Conditions of Service Handbook issued in 2017 and Chief Officers Terms and Conditions of Service. The statutory officer disciplinary panel/committee is known as the Investigation and Disciplinary Committee under the Terms and Conditions of Service for Chief Executives Handbook. The Chief Officer Terms and Conditions of Service apply the Chief Executive's process to the Chief Finance Officer and Monitoring Officer. The Investigation and Disciplinary Committee needs to be in political balance with at least one member of the Executive (not a majority) being included.

3.5 The Standing Orders Regulations provide protection to a statutory officer (being the Head of Paid Service, Chief Finance Officer or Monitoring Officer), against dismissal without a report to full Council including consideration of a report/representations by a panel of Independent Persons, and the officer themselves. The Independent Persons need to be established as a separate Panel from the Investigation and Disciplinary Committee, formed under s.102(4) of the Local Government Act 1972. That Panel is able to meet either on its own or concurrently with any Statutory Officers Investigation and Disciplinary Committee that would meet to consider allegations of gross misconduct or other conduct that could lead to the dismissal of a statutory officer. For disciplinary action that is unlikely to amount to gross misconduct or that will be unlikely to lead to dismissal the Panel of the Independent Persons would not need to meet.

3.6 Whilst addressing updates it is proposed that the Council's current Officer Employment Procedure Rules are also updated to reflect all of the standing order requirements set out in the Standing Order Regulations, for example the Executive procedure in respect of appointments and dismissals which require that the executive be given notice of any intended appointment to the post of head of paid service prior to Council making the appointment. This has been done in practice but relies on officers knowledge of the Regulations rather than being evident from the Constitution.

3.7 The Chief Executive's Terms and Conditions of Service allow for a process to rule out complaints and allegations that are clearly unfounded, trivial or better dealt with through some other process elsewhere. It is proposed that this process is undertaken by an officer (the Monitoring Officer unless the allegations are against the Monitoring Officer in which case the Head of Paid Service is proposed) in consultation with the chair of the relevant Sub-Committee. The Sub-Committee should also have the power to suspend the Chief Executive – below the level of Chief Executive then the Chief Executive, a Director or Assistant Director will suspend a more junior Officer.

3.8 The terms of reference of the Employment Committee provide for it to be involved in all appointments including interviewing candidates for posts that fall within the statutory definition of "deputy chief officer". With the flattening of council structures over the years this can now include officers even below head of service level. It is recommended that this be amended such that the committee is involved in appointments at the level of statutory chief officer and non-statutory chief officer i.e. head of paid service (subject to approval by Council), directors, s151 and monitoring officer, and that the staffing sub-committee deals with (and where appropriate recommends to Council) the discipline of the Protected Statutory Officers and acts as the "Investigation and disciplinary Committee" referred to in the JNC Conditions of Service Handbook for Chief Executives.

#### **4. Consultation**

The proposed delegation changes are required to align delegations with officer organisational functions. The employment changes are needed to align the officer employment procedure rules with Regulations. As such consultation is not appropriate.

#### **5. Financial Implications**

None

#### **6. Legal Powers and Implications**

None

#### **7. Climate Change and Environmental Implications**

None.

#### **8. Risk Management**

Failure to have delegations aligned with functions may result in actions being incorrectly authorised by the wrong officer and thus actions being ultra vires. Failure to align the employment rules might give rise to challenges regarding employment decisions and thus employment tribunal claims.

#### **9. Equality Implications**

N/A. The processes would not disproportionately affect protected characteristic groups.

#### **10. Corporate Implications**

None

#### **11. Options Considered**

Not to implement changes.

#### **Author:**

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#### **Appendices:**

None

#### **Background Papers:**

Legislation and terms and conditions referred to in the report.