

CABINET

14 DECEMBER 2021

SCHEME OF DELEGATIONS

Portfolio Holder: Councillor Howard Doe, Deputy Leader and Portfolio Holder for Housing and Community Services

Report from: Richard Hicks, Director of Place and Deputy Chief Executive

Author: Mark Breathwick, Head of Strategic Housing

Summary

This report seeks Cabinet approval to amend the delegations to officers to provide clarity regarding the decisions that are covered.

1. Budget and policy framework

- 1.1. The approval of delegations in relation to the Council's housing and homelessness functions is a matter for Cabinet.
- 1.2. This report has been circulated separately to the main agenda. Therefore, the Cabinet is asked to accept this report as urgent to enable consideration of the matter at the earliest opportunity as a gap in the Constitution was only recently discovered and requires rectification urgently to ensure that the Council is able to exercise its statutory functions.

2. Background

- 2.1. Section 9E of the Local Government Act 2000 allows the Cabinet to arrange for the discharge of its functions by an officer of the authority. The current delegations from Cabinet in respect of the housing functions are set out at paragraphs 8.22 to 8.25 of the employee scheme of delegation.
- 2.2. It has recently come to our attention that there is a gap in the current employee scheme of delegation in respect of the housing and homelessness functions.
- 2.3. Amendments to the current delegation are sought to clarify the Constitution and make it clearer what decisions are covered. This will ensure that officers are clear as to the limits of their powers and that the Council is adequately protected. Amending the delegations will also ensure that the Council is able

to continue making decisions in these areas, some of which are statutory functions with tight deadlines.

3. Options

3.1. Cabinet is being asked to approve the amended delegations in the attached appendix, members could choose not to amend the delegations, however this would lead to a risk that the constitution remained unclear and there could a legal challenge of the decisions.

3.2. Option 1 Cabinet agree to the amended delegations.

3.3. Option 2 Do nothing.

4. Advice and analysis

4.1. Option 1 is recommended as this will ensure that the Council can continue to exercise its statutory functions and will minimise the risk of any legal challenge to the validity of the decision.

4.2. Option 2 is not recommended as this will leave the Council at risk of a legal challenge to the validity of decisions.

5. Risk management

| Risk | Description | Action to avoid or mitigate risk | Risk rating |
|----------------------------------|---|----------------------------------|-------------|
| Failure to amend the delegations | Leaving the delegations in the current form will mean that they continue to be unclear leading to a potential risk of challenge to the validity of the Council's decisions. | Amend the delegations. | D1 |

6. Climate change implications

6.1. The recommendation has no climate change implications.

7. Financial implications

7.1. There are no direct financial implications to the decision to amend the delegations. If however the delegations are not amended there is a risk of challenge to the validity of the Council's decisions which if successful would require the Council to pay costs.

8. Legal implications

- 8.1. Cabinet can arrange for the discharge of its functions under the Local Government Act 2000. This is currently dealt with by way of delegations within the employee scheme of delegation contained in the Constitution.
- 8.2. Any decisions made without delegated authority will automatically be ultra vires and therefore unlawful. If the decision is challenged, then the Council will be unable to defend such a decision and will be liable to pay legal costs.
- 8.3. The decisions relate to statutory homelessness and housing functions which make up a large proportion of the decisions made by the Housing department. In order to minimise the risk of challenge to the use of any powers by the Council it is necessary to ensure that any adoption of powers and subsequent delegation to officers has a clear audit trail.

9. Recommendation

- 9.1. It is recommended that authority be delegated to the Director of Place and Deputy Chief Executive to exercise and to delegate to officers at an appropriate grade the functions set out in the attached appendix.

10. Suggested reasons for decision

- 10.1. The amendments to the delegations be made to reduce the risk of legal challenge to the exercise of the Council's functions.

Lead officer contact

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Appendices

Appendix 1 – Suggested amended delegations.

Background papers

None.