

CONSTITUTION COMMITTEE:

14 May 2013

REPORT OF THE MONITORING OFFICER

AGENDA ITEM: 4

Officer Delegations – Changes in the Council’s management arrangements

Reason for this Report

1. To enable the Committee to consider amendments to the Scheme of Delegations which are necessary in order to reflect changes in the Council’s management arrangements and facilitate the continuous and effective discharge of the Council’s functions.

Background

2. The Constitution Committee’s approved Terms of Reference are:

To review the Council’s Constitution, and to recommend to Council and/or Executive any changes, except that the Committee will have authority (subject to the Monitoring Officer’s advice) to make the following changes on behalf of the Council:-

- (a) Drafting improvements to enhance clarity and remove minor anomalies.
 - (b) Updating to reflect legislative changes and matters of record.
 - (c) Amendments to the Financial, Contracts and Land Procedure Rules (subject to the advice of the S.151 Officer being sought).
3. The Constitution Committee on 08/09/08 resolved that the Monitoring Officer be delegated authority to amend the Constitution in respect of:
 - (a) amending typographical and minor drafting errors;
 - (b) updating to reflect legislative changes and matters of record; and
 - (c) drafting improvements to enhance clarity and remove minor anomalies(Constitution Committee Minute 6, point 3).

Issues

4. The Constitution Committee is commencing a review of Council decision making, and a separate report, titled 'Review of Council Decision-Making – Scope', is being submitted to this meeting to determine the scope of the review. In advance of the completion of this review, certain amendments to the Scheme of Delegations (found in Part 3 of the Constitution) are required in order to reflect changes in the Council's management arrangements, to ensure that all appointed managers are able to fully discharge all responsibilities of the posts to which they are appointed. This is pending any changes in delegations which may be introduced following the completion of the Constitution Committee's review.
5. The changes in management arrangements which this report addresses are: (i) appointments to new senior management posts established under the Council's new senior management structure; and (ii) interim appointments, agency workers and specialist consultants who may be required on a short term basis or in connection with collaborative work, to discharge managerial responsibilities necessary for the effective discharge of the Council's functions.

Revised Senior Management Structure

6. Members of the Committee will be aware that the Cabinet, 11 October 2012, approved a revised senior management structure and that appointments to the new posts established under this structure are currently underway. The revised senior management structure chart is appended as **Appendix A**.
7. Members will note that the revised senior management structure introduces the following new posts:
 - (i) Corporate Director (Operations)
 - (ii) Corporate Director (Resources)
 - (iii) 8 Directors (Education & Lifelong Learning; Sport, Leisure & Culture; Children Services; Health & Social Care; Environment; Strategic Planning, Highways and Traffic & Transportation; Communities, Housing & Customer Services; and Economic Development)
 - (iv) County Solicitor
 - (v) County Clerk and Monitoring Officer (Democratic Services)
 - (vi) 8 Assistant Directors (Education & Lifelong Learning; Sport, Leisure & Culture; Children Services; Health & Social Care; Environment; Strategic Planning, Highways and Traffic & Transportation; Communities & Housing; and Customer Services)
 - (vii) Chief Finance Officer
 - (viii) Chief HR Officer
 - (ix) Head of Cabinet Office
8. Once an appointment to any of the above posts has commenced, the newly appointed officer will need to be able to take any decisions within their area of responsibility in order to perform the role to which they are appointed and for the effective discharge of the Council's functions. The Cabinet decision of 11

October 2012 does not specify a date upon which the revised structure is to take effect, so it is understood that each new role is intended to take effect as soon as the relevant appointee is in post. For internal candidates this is 3rd June 2013 and for external candidates this depends on the notice period they have to serve with their existing employer.

9. During any transitional period of implementation of the revised senior management structure Corporate Chief Officers, Chief Officers and Heads of Service will continue to exercise their delegations (as currently set out in the Constitution) as required by the Head of Paid Service, Corporate Director Operations, or Corporate Director Resources for the effective discharge of the functions of the Council.
10. The Scheme of Delegations, which sets out delegations to officers in Sub-Section 4, currently makes no reference to any of the new post designations set out in paragraph 7 above. However, the Constitution provides for changes in officers' job titles and responsibilities, in Article 15.2 'Interpretation', sub-paragraph(i), as follows:

'(i) References to a post or designation shall be deemed to include a reference to the employee for the time-being performing those functions where the post or designation name is altered or the functions are reallocated and where there is a reference to a generic title (eg. Chief Officer) such reference will be deemed to include other posts whatever their designation or name but being within the same tier of management or responsibility.'
11. Applying the constitution interpretation provision above to the Scheme of Delegations, the powers which may be exercisable by the new post-holders listed in paragraph 7 above are set out in the table appended as **Appendix B**.
12. It is recommended that the Scheme of Delegations should be amended to specifically refer to the new post designations in the appropriate delegations, as noted in **Appendix B**, for clarity and the avoidance of doubt. The recommended amendments to the Scheme of Delegations, as approved, would be marked up and shown in an update to the scheme of delegations in the Council's Constitution document.
13. It should be noted that the recommended amendments relate only to the Scheme of Delegations, which is addressed in this report as a priority interim measure pending the Committee's overall review of delegations. As part of the overall review, the full implications of the revised senior management structure will be reported to this Committee, which will include all other references to post designations throughout the remainder of the Constitution. Until such review, all un-amended references to post designations should be interpreted in accordance with the interpretation clause set out in paragraph 9 above.
14. As the recommended amendments are clarifying the application of the current Scheme, in accordance with the constitution interpretation provisions, the amendments may be made under the Monitoring Officer's delegated authority (set out in paragraph 3 above), and are reported here for the Committee's information.

Interim appointments, agency workers, specialist consultants and jointly appointed managers

15. From time to time, the Council engages individuals through agency or consultancy arrangements or on secondment from other organisations, rather than as employees of Cardiff Council, in particular, where required as a short term solution to a resource problem or skills gap, but also in connection with collaborative working arrangements. Examples of such appointments include:
 - Interim appointments for a specific post;
 - Social work managers engaged through specialist agencies;
 - Supernumerary appointments;
 - Secondments from other organisations; and
 - Joint working project managers who may be employed by a partner authority.
16. In order for these individuals to fulfil the full range of responsibilities of the roles to which they have been appointed, and for the Council to ensure effective service delivery, such individuals need to be able to exercise all delegated powers, commensurate with their area of responsibility and level of seniority.
17. It should be noted that such placements are made for specific purposes and are in no way intended to circumvent proper recruitment processes. To ensure accountability and propriety, any such placement should be subject to all appropriate checks, and clearly stated roles and responsibilities. All placements are to be managed through the Council's Agency Managed Service
18. The Council is statutorily empowered to delegate the discharge of functions to its 'officers' (section 101(1) of the Local Government Act 1972 and section 15 of the Local Government Act 2000). The term 'officer' is not defined in this legislation, but secondary legislation (the Local Government (Staff Transfer Schemes) Order 1973 and the Local Authorities (Standing Orders) (Wales) Regulations 2006), and case-law (*Pinfold North Limited v. Humberside Fire Authority*, QBD, 2010) indicates that the term 'officer' is not restricted solely to employees and that the Authority may lawfully delegate functions to a paid office holder who is not an employee.
19. The Council's Scheme of Delegations, Section 4, sets out the delegations to officers, and specific functions and decisions may also be delegated to officers by the Council, any of its committees and or the Cabinet. The term 'officer' is defined in the Scheme (Sub-Section 4A, paragraph 1.2) as follows:

'In this scheme "officer" means the holder of any post named in this scheme as having delegated powers and duties.'

It will be noted that this definition refers to the 'holder of any post' and is not restricted to employees.
20. However, as the term 'officer' may be commonly understood to mean an employee, and as the constitution definition of 'officer' does not expressly include reference to non-employees, there has been uncertainty over the authority of agency managers, particularly in the social services area, to make day to day management decisions, such as approving leave applications and

mileage claims and authorising relatively low value procurements. This uncertainty is understood to be causing significant operational difficulties.

21. In order to avoid any such uncertainty over the powers of the newly appointed Interim Director for Children Services, Ms Sheila Lock, the Chief Executive has used his general delegation, as Head of Paid Service, to confirm the delegations exercisable by Ms Lock, on an interim basis and in accordance with the terms of her appointment. The Chief Executive's decision was taken pending full consideration of this issue by this Committee, in order to secure the effective discharge of the functions and responsibilities of the Interim Director's post.
22. This report recommends that the current uncertainty be removed by amending the definition of the term 'officer' in the Scheme of Delegations, Section 4A paragraph 1.2 to read as follows:

'In this scheme "officer" means the holder of any post named in this scheme as having delegated powers and duties, and for the avoidance of doubt, the term "officer" shall be deemed to include any individual who is not an employee of the Council (for example a locum, agency worker, specialist consultant, joint manager appointed with another organisation or similar) who is engaged by the Council to take responsibility for discharging the delegated powers and duties concerned, unless legislation provides that the relevant power or duty concerned can only be carried out by an employee of the authority.

23. The recommended amendment may be regarded as a 'drafting improvement to enhance clarity', which may be authorised under the Monitoring Officer's delegated authority, sub-paragraph (c), set out in paragraph 3 above. However, in view of the potential sensitivity of this issue, it is reported to Constitution Committee for consideration and approval.

Legal Implications

24. The legal implications are set out in the body of the report.

Financial Implications

25. There are no direct financial implications arising from this report.
26. Any officers who are not employees of the Council will need to make themselves aware of the responsibilities of fulfilling those delegated powers and duties which they are undertaking on behalf of the Council. Matters in respect of insurance indemnities for such officers will need to be confirmed on a case by case basis.

HR Implications

27. Paragraph 14 provides examples of where agency workers, interims and joint managers are currently unable to exercise the full range of managerial decisions required of the role being covered. The proposal to amend the definition of officer will assist in ensuring that relevant and required management responsibilities associated with these roles are able to be fully discharged. This will also ensure that agency workers, interims and joint managers brought into the Council in the future will be clear on the decisions they are able to take to ensure full operational efficiency.

Recommendations

The Committee is recommended to:

1. Approve the amendments to the Scheme of Delegations to refer to the new post designations of the revised senior management structure, as shown in **Appendix B**; and
2. Approve the amendment of the definition of “officer” in the Scheme of Delegations, Sub-Section 4A, paragraph 1.2, to read as follows:

‘In this scheme “officer” means the holder of any post named in this scheme as having delegated powers and duties, and for the avoidance of doubt, the term “officer” shall be deemed to include any individual who is not an employee of the Council (for example a locum, agency worker, specialist consultant, joint manager appointed with another organisation or similar) who is engaged by the Council to take responsibility for discharging the delegated powers and duties concerned, unless legislation provides that the relevant power or duty can only be carried out by an employee of the authority.’

Melanie Clay
Chief Officer, Legal and Democratic Services and Monitoring Officer
9 May 2013

Appendices

- Appendix A Revised Senior Management Structure Chart
- Appendix B Table showing powers to be exercisable by new post holders under Revised Senior Management Structure

Background papers

Cabinet report ‘Senior Management Structure’, 11 October 2012, and minutes Chief Executive’s Officer Decision ‘Interim Director of Children Services – Delegated Authority’, dated 8 May 2013

APPROVED STRUCTURE

CEX

CORPORATE DIRECTOR RESOURCES

CORPORATE DIRECTOR OPERATIONS

DIRECTOR ECONOMIC DEVELOPMENT

COUNTY CLERK AND MONITORING OFFICER (DEMOCRATIC SERVICES)

CHIEF HR OFFICER

COUNTY SOLICITOR

CHIEF FINANCE OFFICER

DIRECTOR HEALTH AND SOCIAL CARE
ASSISTANT DIRECTOR

DIRECTOR CHILDREN SERVICES
ASSISTANT DIRECTOR

DIRECTOR STRATEGIC PLANNING, HIGHWAYS AND TRAFFIC AND TRANSPORT
ASSISTANT DIRECTOR

DIRECTOR ENVIRONMENT
ASSISTANT DIRECTOR

DIRECTOR COMMUNITIES, HOUSING AND CUSTOMER SERVICES
ASSISTANT DIRECTOR
ASSISTANT DIRECTOR

HEAD OF CABINET OFFICE (ASSIST DIRECTOR)

CORPORATE DIRECTOR OPERATIONS SALARY	£130K
CORPORATE DIRECTOR RESOURCES SALARY	£130K
DIRECTORS' SALARY	£120K
COUNTY SOLICITOR SALARY	£120K
COUNTY CLERK SALARY	£120K
CHIEF OFFICER SALARY	£80K
ASSISTANT DIRECTOR SALARY	£80K

APPENDIX B

NEW POST TITLE (under Revised Senior Management Structure)	POWERS EXERCISABLE BY VIRTUE OF ARTICLE 15.2(i) (with reference to current Scheme of Delegations) <i>PROVIDED ALWAYS, that such powers relate to functions within the responsibility of the new post</i>	COMMENTS
Corporate Director (Operations)	All delegations to Chief Operating Officer	It is understood that the functions of the Chief Operating Officer post are to be performed by the Corporate Director (Operations), and therefore all delegations to the Chief Operating Officer post are deemed to include reference to the Corporate Director (Operations)
Corporate Director (Resources)	All delegations to Corporate Chief Officers (generically); and All specific delegations to the Corporate Chief Officer, Corporate Services and Section 151 Officer	It is understood that the functions of the Corporate Chief Officer, Corporate Services post, including the statutory section 151 officer delegations, are to be performed by the Corporate Director (Resources), and therefore all delegations to the Corporate Chief Officer, Corporate Services post are deemed to include reference to the Corporate Director (Resources)
Directors	All delegations to Corporate Chief Officers generically; and Any delegations to a specific Corporate Chief Officer	It is understood that the functions of Corporate Chief Officers are to be performed by Directors, and that Directors are within the same tier of management and responsibility as Corporate Chief Officers.
County Solicitor	All delegations to Corporate Chief Officers generically; and Any delegations to a specific Corporate Chief Officer AND All specific delegations to the Chief	It is understood that the County Solicitor post is within the same tier of management and responsibility as the post of Director, and will therefore require the same level of delegated authority as the post of Director (All delegations to Corporate Chief Officers OR Chief Officers - see above); and Those functions of the Chief Officer Legal & Democratic Services

NEW POST TITLE (under Revised Senior Management Structure)	POWERS EXERCISABLE BY VIRTUE OF ARTICLE 15.2(i) (with reference to current Scheme of Delegations) <i>PROVIDED ALWAYS, that such powers relate to functions within the responsibility of the new post</i>	COMMENTS
	Officer Legal & Democratic Services, in so far as they relate to functions within the responsibility of the County Solicitor.	post which are within the area of responsibility of the County Solicitor post are to be performed by the County Solicitor, and therefore all relevant delegations to the Chief Officer Legal & Democratic Services post are deemed to include reference to the County Solicitor as appropriate.
County Clerk and Monitoring Officer (Democratic Services)	All delegations to Corporate Chief Officers generically; and Any delegations to a specific Corporate Chief Officer AND All specific delegations to the Chief Officer Legal & Democratic Services and Monitoring Officer, in so far as they relate to functions within the responsibility of the County Clerk and Monitoring Officer (Democratic Services)	It is understood that the County Clerk post is within the same tier of management and responsibility as the post of Director, and will therefore require the same level of delegated authority as the post of Director (All delegations to Corporate Chief Officers OR Chief Officers - see above); and Those functions of the Chief Officer Legal & Democratic Services and Monitoring Officer post which are within the area of responsibility of the County Clerk and Monitoring Officer (Democratic Services) post are to be performed by the County Clerk and Monitoring Officer, and therefore all relevant delegations to the Chief Officer Legal & Democratic Services and Monitoring Officer post are deemed to include reference to the County Clerk and Monitoring Officer as appropriate
Assistant Directors	All delegations to Chief Officers and Head of Service generically; and Any delegations to a specific Chief Officer or relevant Head of Service	It is understood that the functions of Chief Officers and Head of Service are to be performed by Assistant Directors, and that Assistant Directors are within the same tier of management and responsibility as Chief Officers.
Chief Finance Officer	All delegations to Chief Officers and Head of Service generically; and	It is understood that the Chief Finance Officer post is within the same tier of management and responsibility as the post of Assistant Director, and will therefore require the same level of delegated

NEW POST TITLE (under Revised Senior Management Structure)	POWERS EXERCISABLE BY VIRTUE OF ARTICLE 15.2(i) (with reference to current Scheme of Delegations) <i>PROVIDED ALWAYS, that such powers relate to functions within the responsibility of the new post</i>	COMMENTS
	Any specific delegation to the Section 151 Officer (for discharge of the deputy Section 151 Officer role)	authority as the post of Assistant Director, that is, to be able to exercise all relevant Chief Officer and Head of Service delegations; and The Chief Finance Officer post is responsible for discharging the deputy Section 151 Officer functions and so references to the Section 151 Officer are deemed to include the Chief Finance Officer when discharging those functions.
Chief HR Officer	All delegations to Chief Officers and Head of Service generically; and The specific delegations to the Corporate Chief Officer, Shared Services which relate to HR functions	It is understood that the Chief HR Officer post is within the same tier of management and responsibility as the post of Assistant Director, and will therefore require the same level of delegated authority as the post of Assistant Director, that is, to be able to exercise all relevant Chief Officer delegations; and The specific delegations to the Corporate Chief Officer, Shared Services post which relate to HR functions are to be performed by the Chief HR Officer, and so all such delegations to the Corporate Chief Officer, Shared Services post are deemed to include reference to the Chief HR Officer
Head of Cabinet Office		It is noted that the Head of Cabinet Office post is designated as an Assistant Director, and should therefore have the same level of delegated authority as the post of Assistant Director, that is, to be able to exercise all relevant Chief Officer and Head of Service delegations