

CONSTITUTION COMMITTEE:

21 JUNE 2021

**REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL
SERVICES AND MONITORING OFFICER**

CONSTITUTION UPDATE

Reason for this Report

1. To inform the Committee of various amendments required to ensure the Constitution remains up to date and fit for purpose.

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 Monitoring Officer has delegated authority to make minor amendments to the Constitution, to include:

- (a) amending typographical and minor drafting errors;
- (b) updating to reflect legislative changes and matter of record; and
- (c) drafting improvements to enhance clarity and remove minor anomalies

(delegated by the Constitution Committee on 8th September 2008 and reflected in the Scheme of Delegations, Section 4E reference LD16A).

Issues

4. The Council is required to keep its Constitution up to date and fit for purpose, and the Constitution Committee has responsibility for considering any necessary amendments in line with its terms of reference, set out in paragraph 2 above.
5. Constitution provisions in respect of the following matters have been identified as requiring amendment:

Section 151 Officer Delegation, Reference FS10

6. The Corporate Director Resources is the Council's Section 151 Officer, with statutory responsibility, under section 151 of the Local Government Act 1972, for the proper administration of the financial affairs of the authority.
7. The Scheme of Delegations set out within Part 3 of the Constitution includes a list of delegations exercisable by the Section 151 Officer (in Section 4E of the Scheme) in order to fulfill the statutory responsibilities of the post. Within those delegations, delegation FS10 provides for the operation of the Council's bank accounts, as follows:

FS10	To operate the Authority's main bank account and arrange for all cheques to bear the signature of the Corporate Director, Resources.
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8. Delegation FS10 is routinely used by the Section 151 Officer to manage the Council's bank accounts, including agreeing appropriate overdraft and other banking facilities, which are confirmed annually. However, in the interests of clarity and probity, the Council's day to day banking provider has recommended confirmation of specific authorisation in this regard.
9. Having considered the current delegation in consultation with Finance colleagues and the Council's bankers, it is recommended that delegation FS10 should be amended as follows:

FS10	To operate the Authority's bank accounts for the prudent management of financial affairs and arrange for all cheques to bear the signature of the Corporate Director, Resources; to include, without limitation, the authority to establish appropriate overdraft limits on individual accounts to allow the effective processing of transactions and operation of the accounts, and to enter into legal agreements to set-off debit and credit balances on any such accounts.
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10. For the avoidance of doubt, Members should note that the recommended constitution amendments do not involve any change to the Council's current banking or overdraft facilities; they simply confirm the delegated powers currently exercised by the Section 151 Officer.

Pensions Board Terms of Reference

11. The Local Pensions Board has been established by the Council, in accordance with the requirements of The Public Service Pensions Act 2013, to assist the Council to discharge its functions as Administering Authority and Scheme Manager of the Cardiff and Vale of Glamorgan Pension Fund.
12. The terms of reference of the Local Pensions Board, as approved by full Council in June 2018, are:
'To assist Cardiff Council as Scheme Manager and Administering Authority to:
(i) secure compliance with the LGPS regulations and any other legislation relating to the governance and administration of the scheme;
(ii) secure compliance with any requirements imposed by the Pensions Regulator in relation to the LGPS; and
(iii) ensure the effective and efficient governance and administration of the scheme
(pursuant to sections 5(1) and (2) of the Public Service Pensions Act 2013 and regulation 106(1) of the LGPS Regulations).'
13. The Local Pensions Board does not exercise formal decision making powers on behalf of the Council, but it does perform an important statutory role in assisting the Council to discharge its Pensions Fund functions. In recognition of this and in the interests of clarity and transparency, it is recommended that the terms of reference of the Local Pensions Board should be set out within the Constitution, in Part 3, Appendix 2.

Channel Panel

14. The Counter-Terrorism and Security Act 2015 ('CT&S Act'), section 36, places a duty on local authorities to ensure that a 'Channel Panel' is in place for their area to provide support for people vulnerable to being drawn into terrorism. A Channel Panel is a multi-agency partnership lead by the local authority in partnership with the police and other relevant agencies (specifically, the NHS, probation service, Welsh Extremism and Counter Terrorism Unit WECTU, schools/colleges, Youth Offending Services, Home Office Immigration (if required), Border Force and the Prison Service) which aims to: identify individuals at risk; assess the nature and extent of that risk; and develop the most appropriate support plan for the individuals concerned.
15. Cardiff's Channel Panel was initially set up in 2008, as a Home Office pilot. After the CT&S Act placed Channel Panels on a statutory footing in 2015, and made provision (in Section 41(3) of the Act) for two or more local authorities to set up a combined panel for their combined area, allowing for proportionate and efficient use of resources, the Cardiff and Vale of Glamorgan Channel Panel was set up. The Panel is overseen by, and reports to, the Community Safety Partnership.
16. Statutory Guidance issued by the Home Office in 2020, the Channel Duty Guidance, states that the Channel Panel should be reflected in the local

authority's constitution. It is therefore recommended to insert reference to the Channel Panel into the Constitution, Part 3, Appendix 2, as follows:

'Cardiff and Vale of Glamorgan Channel Panel - Established pursuant to section 41(3) of the Counter-Terrorism and Security Act 2015 ('the CT&S Act') to discharge the Channel Panel duties of Cardiff Council and the Vale of Glamorgan Council under the CT&S Act in relation to providing support for people vulnerable to being drawn into terrorism.'

Delegations for Appropriation of Land

17. Appropriation is the legal process by which land held by a local authority is transferred from one legal function or purpose to another. Under the Local Government Act 1972, section 122, the local authority has a general power to appropriate land: belonging to that Council; that is no longer required for the purpose for which it is held; for any other purpose for which it is authorised by statute to acquire land.
18. Under the Scheme of Delegations (Section 4F), the Director of Economic Development has delegated authority to authorise disposals and acquisitions of land where the value is not more than £1 million (subject to compliance with the Procedure Rules for the Acquisition or Disposal of Land, and best value, Member consultation, and professional advice). However, the only express reference to appropriation in the Scheme of Delegations is in the Cabinet's reserved power (Scheme of Delegations, Section 2) number 16:
'To approve the purchase, sale or appropriation of land and buildings in any case where arrangements have not been made for discharge of the function by an officer of the Authority.' The absence of an officer delegation for appropriation appears to be an omission.
19. In practice, the Director of Economic Development has therefore relied on his general delegation ('To make any decisions relating to any matter within his area of responsibility', delegation reference 4B, 1.1) to approve any decision to appropriate land, for example, for planning purposes prior to a sale. For the avoidance of any doubt, it is recommended that the Director's delegated authority should be confirmed by an express delegation within Section 4F of the Scheme of Delegations, as follows:

'DE2A To authorise the appropriation of land held by the Council for any purpose or function for which the Council is authorised to acquire land by statute, subject to Member consultation and advice from the Section 151 Officer and the Director of Governance and Legal Services.'
20. It is also common to appropriate land from a General Fund function to the Housing Revenue Account (HRA) for housing purposes; and from the HRA to the General Fund in relation to property which is no longer required for housing purposes. These appropriations have financial accounting implications, due to the fact that the Housing Revenue Account is a ring-fenced fund, so the value

of the appropriated land must be transferred from the General Fund to the HRA or vice versa, as appropriate.

21. In February 2012, the Cabinet delegated authority for appropriations from the General Fund to the HRA to the Chief Corporate Services and Section 151 Officer, in consultation with the Corporate Chief Officer for Communities and Executive member for Finance and Service Delivery. It is recommended that, for clarity and certainty, the delegation should be incorporated within the Constitution and widened to cover appropriations from the HRA to the General Fund for property which is no longer required for housing purposes. Responsibility for the Council's Estates Department now falls under the remit of the Director of Economic Development. Therefore, it is recommended that a new delegation should be inserted in Section 4F of the Scheme of Delegations, subject to the same financial limits applicable to acquisitions and disposals of land, authorising the Director of Economic Development, as follows:

'DE2AA To authorise the appropriation of land from the General Fund to the Housing Revenue Account and from the Housing Revenue Account to the General Fund as may be appropriate, where the value of the land is no more than £1,000,000, subject to consultation with the relevant Cabinet member and the Corporate Director, People and Communities, and advice from the Section 151 Officer and the Director of Governance and Legal Services.'

Regrading Applications of Operational Managers

22. The Head of Paid Service has statutory responsibility for appointments, dismissals and taking disciplinary action against Council staff, except for chief officers, deputy chief officers, the Monitoring Officer and the Head of Democratic Services (under the Local Authorities (Standing Orders)(Wales) Regulations 2006, Regulation 5 and Schedule 3, Part 2, paragraph 2). The Regulations define 'chief officer' for these purposes as including the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer; and 'deputy chief officer' as meaning any officer who reports directly, or is directly accountable, to a chief officer, except for secretarial, clerical and support staff.
23. As there are specific statutory provisions relating to 'chief officers' as defined in the 2006 Regulations (and the Local Government and Housing Act 1989), the Council's Constitution (specifically, the Employment Procedure Rules and Committee terms of reference) also references 'chief officers' and 'deputy chief officers' as statutorily defined.
24. The appointment and dismissal of chief officers and deputy chief officers is delegated under the Council's Constitution to the Appointments Committee; and responsibility for determining regrading applications of chief officers and deputy chief officers falls within the terms of reference of the Employment Conditions Committee.

25. The Scheme of Delegations, Section 4E, includes the following officer delegations:

- (i) Delegation CE2 – Delegates authority to the Chief Executive ‘To be Head of Paid Service and discharge the functions of appointment and dismissal of, and taking disciplinary action against, any member of staff, in accordance with the Council’s HR and financial procedures and subject to appropriate consultation as outlined therein, except where such functions have been reserved to the Appointments Committee.’
- (ii) Delegation CE5 – Authorises the Chief Executive ‘To determine any matter which is not a matter specifically reserved for full Council, a committee of the Council, the Cabinet or another Statutory Officer.’
- (iii) Delegation CE11 – Delegates authority to the Chief Executive ‘To determine applications for re-grading from the Chief HR Officer.’
- (iv) Delegation HR1 – Delegates authority to the Chief HR Officer ‘To approve the proposals of Chief Officers to • Determine any applications for re-grading at Operational Manager Level and below..’

26. Regrading applications in respect of an Operational Manager would ordinarily fall within the Chief HR Officer’s delegation HR1, also exercisable by the Chief Executive under his delegation CE5. However, for any Operational Manager who reports to a chief officer and therefore falls within the statutory definition of a deputy chief officer, responsibility would also fall within the terms of reference of the Employment Conditions Committee. As all officer delegations expressly exclude any matter specifically reserved to a Committee (or Full Council, Cabinet, or a Statutory Officer), responsibility for determining a regrading application of an Operational Manager who is also classed as a ‘deputy chief officer’ would fall to the Employment Conditions Committee. Where Operational Manager regrading applications may be dealt with within the current remuneration framework for Operational Managers, it is suggested that it would be more appropriate for such decisions to be made under officer delegations, as it is not appropriate for the Employment Conditions Committee to consider matters relating to individual members of staff at that level.

27. The Committee is requested to consider amending the terms of reference of the Employment Conditions Committee (in the Scheme of Delegations, Appendix 2) to reflect this, as follows:

‘(a) to consider and determine policy and issues arising from the organisation, terms and conditions of Chief Officers and Deputy Chief Officers (as defined in the Local Authorities (Standing Orders) (Wales) Regulations 2006), together with any other category of employee specified in Regulation from time to time where this is necessary, subject to the approval of Council in respect of any determination or variation of the remuneration of Chief Officers;

(b) to decide requests for re-grading of Chief Officers and Deputy Chief Officers (as defined in the Local Authorities (Standing Orders) (Wales) Regulations 2006), except for Operational Managers deemed to be classed as Deputy Chief Officers, whose applications may be determined under Chief Executive officer delegation within the remuneration framework for

[Operational Managers](#), together with any other category of employee specified in Regulation from time to time, whether by way of appeal by an employee against a decision to refuse a re-grading application or to decide applications for re-grading which are supported, subject to the approval of Council in respect of any determination or variation of the remuneration of a Chief Officer.

(c) All Members of the Committee will be required to undertake relevant training to enable them to properly discharge their duties.'

28. This proposed change to the Employment Conditions Committee's terms of reference requires consultation with the Trade Unions, which has been carried out. No concerns have been raised by the Trade Unions in relation to this proposal.

Members' / Senior Officers' Planning Applications

29. Under the Scheme of Delegations (Section 4F), the Head of Planning has delegated authority to determine all planning applications, with the exception of certain specified matters which are reserved for decision by the Planning Committee. The list of matters reserved for decision by the Planning Committee includes:

- (i) Planning applications submitted by current Elected Members of the Council, Directors and Assistant Directors.

30. The purpose of this exception is to guard against any allegations or appearance of undue influence in the decision making process.

31. Planning applications may be submitted directly or through an agent. For the avoidance of any doubt, it is recommended that the exception to the Head of Planning's delegated authority should be amended to clarify that this includes any applications submitted *on behalf of* a Member or Director / Assistant Director. It is also recommended, for the same reasons (set out in paragraph 30 above), that this exception should extend to the Head of Planning and Planning Operational Managers. The recommended amendments are as follows:

- (i) Planning applications submitted by or on behalf of any current Elected Members of the Council, Directors and Assistant Directors [or the Head of Planning or Planning Operational Managers](#).

32. This would clarify that any planning application submitted by or on behalf of an elected Member, any Director / Assistant Director, or the Head of Planning or Planning Operational Managers must be determined by the Planning Committee.

Legal Implications

- 33. The Local Government Act 2000 and the Local Authority Constitution (Wales) Direction 2002 requires the authority to keep its constitution up to date.
- 34. The recommended Constitution amendments set out in this report require the approval of full Council.
- 35. Other relevant legal implications are set out in the body of the report.

Financial Implications

- 36. There are no direct financial implications arising from the recommendation of this report. When delegations are exercised, they are accompanied by detailed financial and legal advice and are to be contained within the budget framework.

Recommendations

The Committee is recommended to agree the Constitution amendments set out in this report and recommend the same to full Council for approval.

Davina Fiore

Director Governance and Legal Services & Monitoring Officer

15 June 2021

Background papers

Council report, Cardiff and Vale of Glamorgan Pension Fund – Amendment of Terms of Reference for the Local Pensions Board, 21st June 2018

[Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/612211/Channel-Duty-Guidance-Protecting-people-vulnerable-to-being-drawn-into-terrorism.pdf)

Cabinet report, Budget Proposals, February 2012