

WAVERLEY BOROUGH COUNCIL

STANDARDS COMMITTEE

5 OCTOBER 2020

Title:

SCHEME OF DELEGATION

Portfolio Holder: Not applicable (non-Executive function)

Head of Service: Robin Taylor, Head of Policy & Governance (Monitoring Officer)

Key decision: No

Access: Public

1. Purpose and summary

1.1 This report responds to two matters raised by a number of Councillors:

- (i) The delegation granted to the S151 Officer to approve fees and charges, in consultation with the relevant Portfolio Holder(s) by Council on 10 December 2019 on the recommendation of the Audit Committee; and
- (ii) Whether the scheme of delegation should be revised to include a new provision so that:

IF officers refer a particular matter to a committee (either by choice or because there was a listed exception in the scheme of delegation to an officer's authority to otherwise make a particular decision in relation to that matter)

THEN all future decisions relating to that matter must then be taken by the committee rather than being taken by the officer (even if those other decisions would have otherwise been allowable under the scheme without reference to a committee)

1.2 The Committee is asked to consider how it wishes to proceed to resolve these matters in a satisfactory way.

Matter 1 – Section 151 authority

1.3 With regards to the the delegated authority given by the Full Council to the Section 151 Officer in December 2019 (point (i) above) the committee could:

- a. choose to recommend to Council that this authority now be removed.
- b. choose to recommend a change to the wording of that delegation to give it a different effect and meaning.
- c. choose to leave the delegation as it is, in which case there will be no need to recommend anything to Full Council.

- 1.4 Whilst there is an expectation that Members and Officers have a working relationship based on trust, the Committee should be mindful of avoiding a situation where a legitimate authority for the S151 officer to make changes to fees and charges in-year under delegated authority could be reversed by Council as part of the budget approval; and *vice versa*.

Matter 2 – exceptions to delegated authority within the scheme of delegation

- 1.5 With regards to the possibility of revising the scheme of delegation to include a provision so that once any decision is referred to a committee either by choice or because of a listed scheme exception in relation to any particular decision, then all future decisions relating to that matter must then be taken by the committee rather than being taken by the officer (even if those other decisions would have otherwise been allowable under the scheme without reference to a committee) the committee is advised to give consideration to any potential unintended negative consequences of automatically constraining delegated officer authority in this way as well as any potential benefits.
- 1.6 Adding a caveat of this type would automatically ensure committee decision-making on all aspects of a matter once a matter had been considered by a committee. It would essentially override all other delegated authority as set out within the scheme from that point forwards.
- 1.7 A key reason for a scheme of delegation is to ensure that where the Council considers decisions do not need to be made by committee and can instead be made appropriately and properly by officers instead, that this can happen, avoiding unnecessary procedure and ‘rubber stamping’ of decisions.
- 1.8 Ultimately the Council has to judge, and it is for full Council to determine, what the correct balance is between those matters that are retained for decision at committee level, those delegated to officers and exceptions to that delegated authority.
- 1.9 Options available to the committee include:
- a. deciding that no changes are needed to the scheme;
 - b. deciding to add, remove or revise any specific listed exceptions to any named officer’s authority within the scheme
 - c. deciding to add a ‘catch all’ statement to the start of the scheme of the type listed in paragraph 1.1(i) above.

2. Recommendation

It is recommended that the Committee:

- (i) Considers whether to make any recommendations to Council on the delegation to the S151 Officer in relation to approval of fees and charges (matter 1).
- (ii) Considers whether to make any recommendations to Council to limit the scope of the Scheme of Delegation to Officers once a matter has been brought to committee in order for a committee to retain ‘ownership’ of an issue (matter 2).

- (iii) Notes that the Audit Committee will be reviewing its terms of reference and potential areas of overlap with the terms of reference of the Standards Committee and Overview and Scrutiny, and that the Chairman and Vice-Chairman of the Standards Committee will be invited to contribute to this review.

3. Reason for the recommendation

- 3.1 This matter is brought before the committee at the request of a number of Councillors. It is important that when elected councillors express concern that any element of the Council's Constitution and associated documentation are not having the desired effect in respect of how governance and decision-making happens at the Council, that this issue is debated by the Standards Committee, the advice of officers is received, and there is an opportunity for the Standards Committee to put forward any recommendations they judge to be appropriate to Full Council for a decision.

4. Background

Delegation to the S151 Officer

- 4.1 In April 2019, on the recommendation of the Standards Committee, Council approved a new delegation to the S151 Officer in relation to the approval of Fees and Charges:

- E3. To approve the adoption of new or increased fees and charges within the Schedule of Fees and Charges, after consultation with the Portfolio Holder for Finance, and subject to the annual approval by Council of the complete Schedule of Fees and Charges as part of the Budget-setting.

- 4.2 In November 2019, the Audit Committee considered proposed revisions to the Financial Regulations in relation to, amongst other things, the approval of fees and charges:

“Approval of Fees and Charges

It is proposed that the Section 151 Officer approve changes to fees and charges, including car park fees.

This will allow enable a quick and efficient fee setting approach with more ability to respond to the market commercially when required.

Current regulation:

7.2 The fees and charges shall be:

- reviewed as part of the budget process or, where appropriate, more frequently.
- approved by Full Council unless covered by a delegated authority
- Budget Holders shall ensure that up-to-date fees and charges are published.

Proposed regulation:

7.2 The fees and charges shall be:

- reviewed as part of the budget process or, where appropriate, more frequently.
- approved by Section 151 officer unless covered by a delegated authority.

- Budget Holders shall ensure that up-to-date fees and charges are published.

4.3 The Audit Committee recommended the following to Council, which was approved at the Council meeting on 10 December 2019:

“7.2 The fees and charges shall be:

- reviewed as part of the budget process or, where appropriate, more frequently.
- approved by the Section 151 *officer in consultation with the relevant Portfolio Holders unless covered by a delegated authority, and reported annually to Full Council for information as part of the budget report.*
- Budget Holders shall ensure that up-to-date fees and charges are published.”

4.4 The minutes of the Audit Committee in relation to this item (AUD 33/19) were submitted to Council on 10 December 2019, and record that the Committee was informed that the proposed delegation included car park fees:

“It was proposed that the Section 151 Officer be able to approve changes to fees and charges, including car park fees, to speed up the process and give more flexibility to change charges during the year to respond to market demand. Officers assured the Committee that changes to fees would be considered in consultation with the relevant Portfolio Holders, and it was recognised that there was a political element to certain fees and charges. The Committee felt that the case for flexibility was stronger for services where the council was in competition with other providers; also, that Licensing fees and charges should remain within the remit of the Licensing Committee. **It was agreed that the approval of the S151 Officer to amend fees and charges should be in consultation with the relevant Portfolio Holders, and with the complete Schedule of Fees and Charges being reported to Council annually for information as part of the budget report.**”

4.5 On the recommendation of the Audit Committee, Council approved the revised Financial Regulation 7.2 (as set out in paragraph 4.3 above). A number of Councillors have subsequently argued that it was not clear to Members when they were agreeing this that the delegation to the S151 Officer included delegated authority to amend car park fees.

4.6 The Standards Committee is asked to consider whether it is necessary to make a recommendation to Council to amend the delegation to the S151 Officer in relation to approval of Fees and Charges.

4.7 Whilst there is an expectation that Members and Officers have a working relationship based on trust, the Committee should be mindful of avoiding a situation where a legitimate authority for the S151 officer to make changes to fees and charges in-year under delegated authority could be reversed by Council as part of the budget approval; and *vice versa*.

Limitations on the Scheme of Delegation

4.8 At its meeting on 4 December 2018, the Executive considered a report proposing

the grant of a new lease to the Broadwater Park Golf Club following the expiry of their existing lease for a period of time exceeding officers' delegated authority. The proposed terms of the lease extension were set out in an Exempt annexe.

- 4.9 The Executive resolved (EXE59/18) "that Officers be authorised to proceed with due legal process to grant a new lease to the Broadwater Park Golf Club on the terms proposed in Exempt Annexe 1 to the report".
- 4.10 On 8 July 2020, the Executive resolved, on the recommendation of the Property Investment Advisory Board, to commission the Council's external property advisers to undertake a detailed options appraisal of the Broadwater Golf Course site. The recommendation was a consequence of the Head of Finance and Property being unable to satisfactorily complete the "due legal process" in order to complete the grant of a new long lease to the Broadwater Park Golf Club, and a decision by the Head of Finance and Property to terminate the existing lease to Broadwater Park Golf Club.
- 4.11 The Scheme of Delegation to the Head of Finance and Property includes the following:
- J.11 To undertake all actions in relation to the administration of the Council's estate and property portfolio, and its **interests** in land or property
Except the following matters which are reserved to the Executive:
- (i) acquisitions or disposals of interests in land or property with a value in excess of £250,000; and
 - (ii) the grant or renewal of all leases in excess of 25 years, other than qualifying applications made under the Leasehold Reform Act 1967 to extend the lease or acquire the freehold where the price reflects the independent valuation and all costs are met by the applicant.

Whilst the resolution of the Executive on 4 December 2018 gave the Head of Finance and Property the authority to grant a lease in excess of 25 years, there was no obligation to do so if it was no longer in the Council's interest to do so.

- 4.12 Four members of the Value for Money Overview & Scrutiny Committee called-in the Executive decision of 8 July. The [call-in form](#) included a request [at 1(c)] to call-in:

"the inadequate explanation and apparent failure of process in relation to how the decision by the Executive in December 2018 to grant a new lease to Broadwater Golf Club was overturned which then led to the decisions to approve the requested expenditure. (Reason: to ensure that the VfM O&S Committee can examine all the facts from the decision to grant the new lease to the current situation where there is a potential legal issue and further expenditure which could breach the Constitution and process)."

- 4.13 This part of the call-in was disallowed by the Monitoring Officer as being beyond the scope of the call-in of the Executive's decision of 8 July 2020.
- 4.14 A number of Councillors have proposed that to avoid such a situation arising in future there should be a limitation on the scope of the Scheme of Delegation such that, for example, where an "issue" has been referred to a committee for decision,

all further decisions regarding that “issue” should be “owned” by that committee and not dealt with under delegated authority, even where this might otherwise be allowed due to the nature of the decision being taken.

- 4.15 While there is no suggestion that the decision take by the Head of Finance and Property to terminate the lease was either not in line with the Constitution or Scheme of Delegation, the Committee is asked to consider whether there is a need for such a limitation to the scope of the Scheme of Delegation, and make such recommendation to Council as necessary. The Committee should consider whether any limitation should apply to the Scheme of Delegation as a whole, or just to certain parts.

Standards Committee Terms of Reference

- 4.16 The Standards Committee functions include

“A. To review and propose revisions to the Constitution as set out in Article 15.”

- 4.17 The terms of reference of the Audit Committee include:

“iii. To maintain an overview of the contract procedure rules and financial regulations and recommend their adoption to the Council.”

- 4.18 The Constitution includes the Scheme of Delegation, the Contract Procurement Rules and the Financial Regulations. Therefore, there is some ambiguity around the governance route for changes to ‘the Constitution’ depending on which part is under consideration.

- 4.19 In addition, the Audit Committee has identified possible overlap between its terms of reference and those of the Value for Money Overview & Scrutiny Committee. In order to consider these matters the Audit Committee is holding an informal session to review its terms of reference in relation to the CIPFA Model Terms of Reference for Local Authority Audit Committees, and has invited the Chairman and Vice-Chairman of the Standards Committee to attend and contribute to the discussion. The outcome of these discussions will be reported back to the respective committees.

5. Relationship to the Corporate Strategy and Service Plan

- 5.1 This report supports the Council’s aims for ‘open, democratic and participative governance’.

6. Implications of decision

6.1 Resource (Finance, procurement, staffing, IT)

There are no direct resource implications arising from this report.

6.2 Risk management

6.3 Legal

Any legal implications are discussed within the body of this report.

6.4 Equality, diversity and inclusion

There are no direct equality, diversity or inclusion implications in this report.

6.5 Climate emergency declaration

There are no direct climate emergency implications arising from this report.

7. Consultation and engagement

7.1 N/A.

8. Other options considered

8.1 N/A.

9. Governance journey

9.1 The Standards Committee may make recommendations to Council in relation to changes to the Scheme of Delegation.

Background Papers

There are no background papers, as defined by Section 100D(5) of the Local Government Act 1972).

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