

Report to: Audit and Standards Committee

Date: 16 January 2023

Title: Updating and Alignment of Schemes of Delegations to Officers

Report of: Monitoring Officer

Ward(s): All

Purpose of report: To seek the Committee's comments on the draft new Lewes Scheme and recommend it to Cabinet and Full Council.

Officer recommendation(s): (1) To review and then to recommend to Cabinet the updated and aligned Scheme of Delegations to Officers (executive functions only) set out in Appendix 1.
(2) To review and then to recommend to Full Council the updated and aligned Scheme of Delegations to Officers (non-executive functions only) set out in Appendix 1.

Reasons for recommendations: The existing Scheme for Lewes has not been fully updated since 2015, leading to uncertainty over certain officer powers and difficulty with implementation.

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1 Introduction

- 1.1 The Council's Scheme of Delegations to Officers forms part of the constitution, and sets out the substance and extent of powers delegated by the executive and full Council to each of the directors, assistant director, Monitoring Officer and Head of Legal Services. These delegations relate to officers' operational powers to perform their routine day to day functions.
- 1.2 Additionally, the Scheme delegates powers to Proper Officers, namely those officers designated under local government legislation to perform "proper officer" functions.
- 1.3 Since the Joint Transformation Programme in 2015, the Council (LDC) and Eastbourne Borough Council (EBC) have continued to operate under individual Schemes. The presentation and scope of each one is drafted quite differently.

1.4 This differing approach, in addition to the absence of a much-needed update, has led to inconsistencies at corporate level where directors acting across both authorities have sought clarity over the nature and extent of their delegated powers. Equally, references to 'Proper Officer' legislation require a refresh to ensure only current law is cited.

1.5 Whilst updating and alignment is the overriding objective, two individual Schemes should remain, since LDC retains exclusive functions relating to–

- (i) its development management functions on behalf of South Downs National Park Authority, and
- (ii) its management of Code of Conduct matters in relation to parish councils.

EBC retains exclusive functions relating to Devonshire Park and culture and tourism, including Eastbourne Downs Golf Club.

1.6 The two Schemes will in all other respects be identical, enabling officers to interpret and apply their powers correctly and consistently across their entire service responsibility and both authorities' geographical areas.

2 Proposal

2.1 Part of the Audit and Standards Committee remit is to consider governance amendments (including constitutional matters). In that capacity, the Committee is invited–

- (i) to review the draft version of the updated and aligned Scheme set out in Appendix 1; and
- (ii) to recommend its approval by Cabinet (executive functions) and by full Council (non-executive functions).

2.2 The Council's non-executive functions are set out in article 4.4 of the Council's constitution – see link under Background Papers (paragraph 11) below. Any functions not listed in article 4.4 are, by default, executive functions.

2.3 As indicated in paragraph 1.1, the Scheme specifies powers exercisable by officers on a routine, regular basis as part of their ordinary day to day functions. These are distinct from express delegations made by resolution of Cabinet or full Council, giving effect to a stand-alone officer report and recommendations on a specific topic.

2.4 Subject to Cabinet approving the executive delegations at its meeting on 2 February 2023, the new Scheme will come into force immediately after full Council has approved the non-executive delegations at its meeting on 20 February 2023.

2.5 EBC's Scheme will undergo the same decision-making pathway through its own audit committee (17 January), Cabinet (8 February) and Full Council (22 February).

3 Outcome expected

- 3.1 An aligned and updated Scheme should ensure lawful, valid and consistent decision making by directors and their teams across both authority areas.

4 Consultation

- 4.1 The Corporate Management Team gave in principle agreement to the above proposal on 19 October 2022.
- 4.2 Relevant Heads of Service were consulted on 28 October 2022 to ensure the wording specific to their service areas was correct. Their updates and other amendments have been incorporated into the revised Scheme at Appendix 1.

5 Business Case and alternative option(s) considered

- 5.1 The Council is under a legal duty to include in its constitution a list of powers exercisable by officers. See further at paragraph 8 below.

6 Financial appraisal

- 6.1 The cost of updating and managing an updated set of Schemes can be met by the revenue budgets of the Legal Services and Democratic Services teams.

7 Legal implications

- 7.1 Section 9P(1) of the Local Government Act 2000 requires a council operating executive arrangements to prepare and keep up to date a constitution which contains (amongst other things) “such information as the Secretary of State may direct.” Under the Local Government Act 2000 (Constitution) Direction 2000, the Secretary of State directed that councils must include in their constitution–
- a. a description of those powers of the **executive** which are exercisable by an officer of the local authority, stating the title of the officer by whom each of the powers so specified is exercisable; and
 - b. a description of those powers of the **council** which are exercisable by an officer of the local authority stating the title of the officer by whom each of the powers so specified is for exercisable.
- 7.2 Apart from the record needing to list all powers delegated to specified officers, the document format is not prescribed by statute or common law. It is in the interests of council members, officers and the public, however, that the Scheme is clear and concise. It should also be prefaced by a set of principles as to how the Scheme operates (including arrangements for amending and adding to the Scheme as necessary from time to time) and guidelines by which it should be interpreted.
- 7.3 Section 100G(4) of the Local Government Act 1972 and section 9P(3) of the Local Government Act 2000 require that local authorities make a copy of its

constitution available for inspection by members of the public at all reasonable hours. The council satisfies this obligation by publishing its constitution on its website.

Date of legal advice: 13.12.22

Legal ref: ADMIN-JOINT-OD (Governance)

8 Risk management implications

- 8.1 An aligned and updated Scheme provides a sound and proper basis on which directors can exercise powers on a delegated basis. It is no longer tenable for directors to rely on the current Scheme, given its many references to obsolete job titles, repealed legislation and lack of consistency across the shared LDC-EBC areas.
- 8.2 Officer decisions made without proper authority could provide an affected party with grounds to apply for a judicial review.

9 Appendices

- 9.1 Appendix 1 - Proposed Scheme of Delegations to Officers, aligned and updated

10 Background papers

- 10.1 The background papers used in compiling this report were as follows:
- [Lewes District Council's current Scheme of Delegations](#)
 - [Eastbourne Borough Council's current Scheme of Delegations](#)
 - [List of non-executive powers – all reserved to full Council](#)
(refer to pages B7 to B8)