



## Constitutional Amendments

### SUMMARY

- 1.1 The council is required to appoint a Section 151 Officer for the purposes of regulating and controlling the finances of the council. This report proposes an appointment to this role.
- 1.2 It is also timely to make other amendments to the Council Constitution to ensure better resilience. This is also proposed within the report.

### RECOMMENDATION

- 2.1 To approve that the Director of Finance and Procurement be appointed as Acting Section 151 Officer for the purposes of Section 151 of the Local Government Act 1972, and that Article 12 of the Council Constitution be amended accordingly.
- 2.2 To approve that Article 12 of the Council Constitution be amended such that the Chief Executive (and Head of Paid Service) be specified as the named post holder with operational responsibility for any directorate in the absence of a chief officer.
- 2.3 To approve that Article 12 of the Council Constitution be amended such that the Strategic Director of Neighbourhoods and Deputy Chief Executive be specified as the Deputy Head of Paid Service.
- 2.4 To approve that Part E of the Scheme of Delegations be amended to clearly divide those operational duties of the Strategic Director of Resources and those duties of the Section 151 Officer.
- 2.5 To note resultant consequential amendments will be made throughout Part 4 of the Council Constitution to ensure references to the Strategic Director of Resources and Chief Financial Officer are replaced with references to the Section 151 Officer where appropriate.

### REASONS FOR RECOMMENDATION

- 3.1 The council is required to appoint a Section 151 Officer for the purposes of regulating and controlling the finances of the council. The Director of Finance and Procurement is considered to be the appropriate appointment as Acting Section 151 Officer.

- 3.2 In considering this matter, it has become apparent that there is a general need for greater resilience in senior positions. Ensuring necessary provisions are in place to provide specified cover for chief officers in their absence will achieve this.
- 3.3 The Scheme of Delegations and Part 4 of the Council Constitution make reference to duties resting with the Strategic Director of Resources which presume that this post holder will necessarily also be Section 151 Officer. Dividing these roles accordingly does not preclude a single post holder from holding both positions but nor does it bind the two, enabling greater flexibility.

## **SUPPORTING INFORMATION**

- 4.1 Appendix 2 shows in detail the amendments that it is proposed to make to Article 12 of the Council Constitution arising from recommendations 2.1, 2.2 and 2.3.
- 4.2 Appendix 3 shows the existing section of Part E of the Scheme of Delegations setting out the responsibilities of the Strategic Director of Resources (and Chief Finance Officer).
- 4.3 Appendix 4 shows the proposed section of Part E of the Scheme of Delegations, separating out the responsibilities of the Strategic Director of Resources and Section 151 Officer.
- 4.4 The consequential amendments described in recommendation 2.5 do not require approval of Council, but can be made as a result of those constitutional amendments detailed in paragraphs 2.1 to 2.4.

## **OTHER OPTIONS CONSIDERED**

- 5.1 The appointment of a Section 151 Officer is mandatory. The other changes are not essential but do provide for greater resilience. The option not to take these other decisions is therefore not desirable.

**This report has been approved by the following officers:**

<b>Legal officer</b> <b>Financial officer</b> <b>Human Resources officer</b> <b>Estates/Property officer</b> <b>Service Director(s)</b> <b>Other(s)</b>	Janie Berry, Director of Legal and Democratic Services Martyn Marples, Director of Finance and Procurement N/A N/A Janie Berry, Director of Legal and Democratic Services Phil O'Brien, Head of Democratic Services
<b>For more information contact:</b> <b>Background papers:</b> <b>List of appendices:</b>	David Walsh 01332 643655 david.walsh@derby.gov.uk None Appendix 1 – Implications Appendix 2 – Proposed amendments to Article 12 Appendix 3 – Existing Part E of Scheme of Delegations (extract) Appendix 4 – Proposed Part E of Scheme of Delegations (extract)

<b>IMPLICATIONS</b>
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### **Financial and Value for Money**

- 1.1 None directly arising from this report.

### **Legal**

- 2.1 Approval of recommendation 2.1 in the main report would satisfy the requirement to appoint an officer responsible for the regulation and control of council finances under Section 151 of the Local Government Act 1972.

### **Personnel**

- 3.1 None, except in relation to positions held by those post holders detailed in the report.

### **IT**

- 4.1 None.

### **Equalities Impact**

- 5.1 None.

### **Health and Safety**

- 6.1 None.

### **Environmental Sustainability**

- 7.1 None.

### **Property and Asset Management**

- 8.1 None.

### **Risk Management**

- 9.1 None.

### **Corporate objectives and priorities for change**

- 10.1 None.

Additions highlighted. Strikethrough denotes removal.

## Article 12 - Officers

### 12.1 Management structure

Appointment of officers cannot be the responsibility of the Council Cabinet. Appointment of officers below Service Director level must be the responsibility of the head of paid service or their nominee.

- a. **General.** The council may establish such posts as it considers necessary to carry out its functions.
- b. **Chief Officers.** The council will establish the following posts, who will be designated directors:

Post	Functions and areas of responsibility
Chief Executive (and Head of Paid Service)	<p>Overall corporate management and operational responsibility (including overall management responsibility for all officers)</p> <p>Representing the council on partnership and external bodies (as required by statute or the Council).</p> <ul style="list-style-type: none"> <li>• Policy, Performance, Communication and Transformation</li> <li>• Regeneration</li> </ul> <p>Operational responsibility for any directorate in the absence of a chief officer</p>
Strategic Director of Resources	<ul style="list-style-type: none"> <li>• Customer Services</li> <li>• Legal and Democratic Services</li> <li>• ICT</li> <li>• Finance and Procurement</li> <li>• Human Resources and Business Support</li> <li>• Internal Audit</li> </ul>
Strategic Director of Adults, Health and Housing	<ul style="list-style-type: none"> <li>• Older People and Physical Disabilities</li> <li>• Housing and Advice</li> <li>• Putting People First</li> <li>• Learning Disability and Mental Health</li> <li>• Public Health (under joint arrangements)</li> </ul>

Strategic Director of Children and Young People	<ul style="list-style-type: none"> <li>• Integrated Services</li> <li>• Learning and Inclusion</li> <li>• Strategy and Commissioning</li> <li>• Specialist Services</li> </ul>
Strategic Director of Neighbourhoods and Deputy Chief Executive (and Deputy Head of Paid Service)	<ul style="list-style-type: none"> <li>• Planning and Transportation</li> <li>• Streetpride</li> <li>• Environment and Regulatory Services</li> <li>• Leisure and Culture</li> </ul> <p>Those duties associated with the Chief Executive (and Head of Paid Service) in his/her absence.</p>

- c. Head of paid service, monitoring officer and ~~chief financial officer~~ Section 151 Officer. The Council will designate the following posts as shown:

Post	Designation
Chief Executive	Head of Paid Service
Strategic Director of Resources	Chief Financial Officer
Director of Legal and Democratic Services	Monitoring Officer
Director of Finance and Procurement	Acting Section 151 Officer

Such posts will have the functions described in Article 12.2–12.4 below.

- d. **Structure.** The head of paid service will determine and publicise a description of the overall departmental structure of the council showing the management structure and deployment of officers. This is set out at Part 7 of this Constitution.

## 12.2 Functions of the Head of Paid Service

- a. **Discharge of functions by the council.** The head of paid service will report to Council on the manner in which the discharge of the council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.
- b. **Restrictions on functions.** The head of paid service may not be the monitoring officer but may hold the post of ~~chief financial officer~~ Section 151 Officer if a qualified accountant.

### 12.3 Functions of the Monitoring Officer

- a. **Maintaining the Constitution.** The monitoring officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, staff and the public.
- b. **Ensuring lawfulness and fairness of decision making.** After consulting with the head of paid service and ~~chief financial officer~~ **Section 151 Officer**, the monitoring officer will report to the full Council, or to the Council Cabinet in relation to an executive function, if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- c. **Supporting the Standards Committee.** The monitoring officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- d. **Receiving reports.** The monitoring officer will receive and act on reports made by ethical standards officers and decisions of the case tribunals.
- e. **Conducting investigations.** The monitoring officer will conduct investigations into matters referred by ethical standards officers and make reports or recommendations in respect of them to the Standards Committee.
- f. **Proper officer for access to information.** The monitoring officer will ensure that executive decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.
- g. **Advising whether Council Cabinet decisions are within the budget and policy framework.** The monitoring officer will advise whether decisions of the Council Cabinet are in accordance with the budget and policy framework.
- h. **Providing advice.** The monitoring officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all councillors.
- i. **Restrictions on posts.** The monitoring officer cannot be the ~~chief financial officer~~ **Section 151 Officer** or the head of paid service.

### 12.4 Functions of the ~~Chief Financial Officer~~ **Section 151 Officer**

- a. **Ensuring lawfulness and financial prudence of decision making.** After consulting with the head of paid service and the monitoring officer, the ~~Chief Financial Officer~~ **Section 151 Officer** will report to Council, or to the Council Cabinet in relation to an Executive function, and the council's external auditor if s/he considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or

is unlawful and is likely to cause a loss or deficiency or if the council is about to enter an item of account unlawfully.

- b. **Administration of financial affairs.** The ~~Chief Financial Officer~~ **Section 151 Officer** will have responsibility for the administration of the financial affairs of the council.
- c. **Contributing to corporate management.** The ~~Chief Financial Officer~~ **Section 151 Officer** will contribute to the corporate management of the council, in particular through the provision of professional financial advice.
- d. **Providing advice.** The ~~Chief Financial Officer~~ **Section 151 Officer** will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all councillors and the elected mayor and will support and advise councillors and officers in their respective roles.
- e. **Give financial information.** The ~~Chief Financial Officer~~ **Section 151 Officer** will provide financial information to the media, members of the public and the community.

**12.5 Duty to provide sufficient resources to the Monitoring Officer and ~~Chief Financial Officer~~ Section 151 Officer.**

The council will provide the Monitoring Officer and ~~Chief Financial Officer~~ **Section 151 Officer** with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

**12.6 Conduct**

Officers will comply with the Officers' Code of Conduct and other protocols or codes of practice set out in Part 5 of this Constitution.

**12.7 Employment**

The recruitment, selection and dismissal of officers will comply with the Officer Employment Rules set out in Part 4 of this Constitution.

**Existing Scheme of Delegations, Part E (Extract; pages 3-27 to 3-28)****STRATEGIC DIRECTOR, RESOURCES**

The Strategic Director, Resources will have responsibility for all management, operational and non key decisions about the following functions and areas of responsibility other than those matters delegated to individual members of the Council Cabinet set out in Part B.

**A Statutory Executive Functions**

- 1) The functions of the Council in respect of Community Charge, Council Tax and National Non-Domestic Rates, except where these are reserved to the Council or the Council Cabinet.
- 2) The Housing and Council Tax Benefits schemes.
- 3) The powers conferred in the Council's Financial Procedure Rules.
- 4) The powers and duties as approved by the Council and included in the Treasury Management Code of Practice and documents issued there under.
- 5) Determining local average rates in accordance with the provisions of paragraphs 3 and 4 of Schedule 16 to the Housing Act 1985.
- 6) Granting loans to industrialists under Section 3 of the Local Authorities (Land) Act 1963.
- 7) Registration Services, including births, deaths, marriages, civil ceremonies and civil partnerships.

**B Areas of Responsibility**

- 1) Regulating and controlling the finances of the Council and acting as Chief Financial Officer for the purposes of Section 151 of the Local Government Act 1972.
- 2) Internal and External Audit including anti-fraud strategy and initiatives.
- 3) Dealing with European Monetary Union matters.
- 4) Establishing insurance arrangements as appropriate to safeguard the assets of, and services to the Council in consultation with the Service Director - Property Services as to the valuation of interests in land and property.
- 5) Authorising making loans to purchase, construct, improve or repair houses.
- 6) Varying the interest rate as required on loans to housing associations.
- 7) Fixing interest rates on loans but not loans for the purchase of houses and in any case where the Council has discretion about the rate of interest to be charged.
- 8) Managing the Council's IS/IT function and e-Business functions.



- 9) Management of the Strategic Procurement function.
- 10) Managing the Council's central purchasing function.
- 11) To accept offers of grants made by Government Departments.
- 12) Dealing with mayoral, civic and ceremonial matters in consultation with the Mayor and the Deputy Mayor.
- 13) Seeking the eviction of unauthorised travellers occupying Council land and repairing damage caused by them.
- 14) Dealing with corporate administrative services.
- 15) Managing local land charges, searches and enquiries.
- 16) Approving attendance of members at conferences and seminars.
- 17) Approving the use of the council suite by outside bodies and organisations.
- 18) Dealing with corporate personnel functions including reviews, policy and industrial relations, equalities and employee development.

**C Acting as Authorised/Proper Officer for the following matters**

The Strategic Director, Resources will:

- act as authorised or proper officer for the purposes of any Act of Parliament or Statutory Instrument where qualified to do so and no other Officer has been appointed
- appoint officers to act as authorised/proper Officers for the purposes of any Act of Parliament or Statutory Instrument

**D Drawing up the following Policies and Plans that form part of the budget and policy framework**

- The budget
- Any plan or strategy for the control of the Council's borrowing or capital expenditure (the capital plan)
- Annual statement of the authority's accounts, income and expenditure and balance sheets
- Any review of the Treasury Management Policy Statement

**E Statutory Non Executive Functions**

These are set out in the Appendix.

**Proposed Scheme of Delegations, Part E (Extract; pages 3-27 to 3-28)****STRATEGIC DIRECTOR, RESOURCES**

The Strategic Director, Resources will have responsibility for all management, operational and non key decisions about the following functions and areas of responsibility other than those matters delegated to individual members of the Council Cabinet set out in Part B.

**A Statutory Executive Functions**

- 1) The functions of the Council in respect of Council Tax and National Non- Domestic Rates, except where these are reserved to the Council or the Council Cabinet.
- 2) The Housing and Council Tax Benefits schemes.
- 3) Registration Services, including births, deaths, marriages, civil ceremonies and civil partnerships.

**B Areas of Responsibility**

- 1) Establishing insurance arrangements as appropriate to safeguard the assets of, and services to the Council in consultation with the Service Director - Property Services as to the valuation of interests in land and property.
- 2) Managing the Council's IS/IT function and e-Business functions.
- 3) Management of the Strategic Procurement function.
- 4) Managing the Council's central purchasing function.
- 5) Dealing with mayoral, civic and ceremonial matters in consultation with the Mayor and the Deputy Mayor.
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- appoint officers to act as authorised/proper Officers for the purposes of any Act of Parliament or Statutory Instrument

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These are set out in the Appendix.

**SECTION 151 OFFICER, AS SPECIFIED IN ARTICLE 12 OF THE COUNCIL CONSTITUTION**

**A Statutory Executive Functions**

- 1) The powers conferred in the Council's Financial Procedure Rules.
- 2) The powers and duties as approved by the Council and included in the Treasury Management Code of Practice and documents issued there under.
- 3) Determining local average rates in accordance with the provisions of paragraphs 3 and 4 of Schedule 16 to the Housing Act 1985.
- 4) Granting loans to industrialists under Section 3 of the Local Authorities (Land) Act 1963.

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- 1) Regulating and controlling the finances of the Council and acting as Chief Financial Officer for the purposes of Section 151 of the Local Government Act 1972.
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