

## SOUTH HOLLAND DISTRICT COUNCIL

**Report of:** Deputy Leader (Council), and Executive Manager - Governance (Deputy Monitoring Officer)

**To:** South Holland District Council Wednesday, 25 November 2020

**(Author:** Jacqui Berridge Lawyer)

**Subject** Appointment of Proper Officers, and proposed amendments to the Constitution

**Purpose:** To consider (a) the appointment of Proper Officers where the Chief Executive is currently the sole appointed Proper Officer, including a minor amendment to the Constitution; (b) proposed amendments to the terms of reference of the Joint Appointments and Disciplinary Committee arising from the resignation of the Chief Executive; (c) other amendments to the Constitution to deal with any periods during which there is no Chief Executive in post; and (d) amendments to the Financial Procedure Rules relating to virements and grants.

### **Recommendations:**

**(a)(i) Proper Officers** - that all Directors, including any Directors employed on a temporary basis, be appointed, in addition to the Chief Executive, as Proper Officers for the following functions which come under the Local Government Act 1972:

Section 13(3) (Acting, along with the Chairman of the parish meeting, as Parish Trustee for any parish where there is no parish council)

Section 83(1)-(4) (Witness and receipt of declaration of acceptance of office)

Section 84 (Receipt of declaration of resignation)

Section 88 (Convening of meeting of the Council to fill vacancy in the office of Chairman of the Council)

Section 210(6) and (7) (Charity functions of holders of offices with previous authorities transferred to Proper Officer, if no equivalent officer)

Any reference to any enactment passed before or during the 1971-72 session of Parliament other than the Local Government Act 1972 or in any instrument made before 26 October, 1972 to the Clerk of the Council which, by virtue of any provisions of the said Act, is to be construed as a reference to the Proper Officer of the Council.

**(a)(ii) Proper Officers** - that paragraph 3 of Part 3 Section F2 (Delegations to Chief Executive) of the Constitution be amended to read as follows:

*"3.0 to be (along with any other officers duly appointed to act as Proper Officer, which appointments are detailed in the list of Proper Officers maintained by the Senior Legal Officer) the Proper Officer of the Council in relation to:"*

- (b) **Terms of reference of the Joint Appointments and Disciplinary Committee** - that, arising from the resignation of the Chief Executive, the proposed amendments shown in Appendix A be approved, and the Constitution be amended accordingly;
- (c) **Other amendments arising from the resignation of the Chief Executive** - that the Constitution be amended as shown in Appendix B to deal any periods during which there is no Chief Executive in post; and
- (d) **Virements and Grants** - that the Financial Procedure Rules contained within the Constitution be amended as shown in Appendix C insofar as they relate to virements and grants.

## 1.0 BACKGROUND

1.1 The Council's current Constitution was approved by full Council at its meeting in January 2016. Under Article 14 of the Constitution (as amended) any proposed changes may be approved only by full Council unless the change is:

- a minor variation; or
- required to be made to remove any inconsistency or ambiguity; or
- required to be made so as to put into effect any decision of the Council or its committees or the Cabinet

1.2 In such circumstances the variation may be made by the Monitoring Officer and comes into force with immediate effect, but must (unless a minor typographical, referencing or numbering change) be referred to full Council as soon as is reasonably possible. Any change only continues to have effect if full Council agrees. Minor typographical, referencing and numbering changes shall not require the approval of full Council.

1.3 All other variations must be submitted to full Council for approval.

1.4 This report seeks full Council approval for a number of minor and non-minor variations.

## 2.0 PROPOSED VARIATIONS AND OTHER ISSUES BEING SUBMITTED TO COUNCIL FOR APPROVAL

### (a) Appointment of Proper Officers

2.1 In accordance with Part 3 Section D of the Constitution (Delegations to Committees) the full Council is responsible for appointing the Chief Executive as Proper Officer for any purpose. The Chief Executive then has delegated authority to make all other Proper Officer appointments.

2.2 Under Part 3 Section F2 of the Constitution the Chief Executive is currently the Proper Officer for the following functions. Those functions which are shown in bold italic letters are functions where the Chief Executive is currently the sole Proper Officer:

(a) The following provisions of the Local Government Act 1972 (Council):

<b>Section 13(3)</b>	<b><i>(Acting, along with the Chairman of the parish meeting, as Parish Trustee for any parish where there is no parish council)</i></b>
<b>Section 83(1)-(4) office)</b>	<b><i>(Witness and receipt of declaration of acceptance of office)</i></b>
<b>Section 84</b>	<b><i>(Receipt of declaration of resignation)</i></b>
<b>Section 88</b>	<b><i>(Convening of meeting of the Council to fill vacancy in the office of Chairman of the Council)</i></b>
Section 100B(2)	(Exclusion from agenda papers made available to public any reports (or parts) likely to be taken in absence of public)
Section 100D(1)(a)	(Compilation of a list of background papers to a report)
Section 100D(5)(a) based)	(Identification of background papers on which a report is based)
<b>Section 210(6) and (7)</b>	<b><i>(Charity functions of holders of offices with previous authorities transferred to Proper Officer, if no equivalent officer)</i></b>
Section 229(5)	(Authentication of documents – certification of a photographic copy of a document in the custody of the Council)
Section 234	(Authentication of documents – signing of formal notices, orders or other documents made or issued under any enactment by the Council)
Section 238	(Authentication of documents – signing of certificate on any printed copy of the byelaws authenticating such print as a true and correct copy)
<b>Schedule 12</b>	<b><i>(Issue and service of summons to meetings of Council and Committees, receipt of formal notification from Councillors of addresses to which such summons be sent)</i></b>
Schedule 14	(Authentication of documents – certification of copy resolutions)

***(b) any reference to any enactment passed before or during the 1971-72 session of Parliament other than the Local Government Act 1972 or in any instrument made before 26 October, 1972 to the Clerk of the Council which, by virtue of any provisions of the said Act, is to be construed as a reference to the Proper Officer of the Council.***

(c) Section 41 of the Local Government (Miscellaneous Provisions) Act 1976 – authentication of documents – certification of copies of resolutions, orders, reports or minutes of the Council or any predecessor authority.

(d) Section 59 of the Public Health (Control of Diseases) Act 1984 – authentication of documents.

(e) Section 49 of the Food Safety Act 1990 – authentication of documents.

2.3 As the Chief Executive has now left the authority, the Council is asked to consider appointing additional officers as Proper Officer for those functions. This is with the exception of the Proper Officer appointment for Schedule 12 of the Local Government Act 1972 where the existing Directors were appointed at the recent special Council meeting.

2.4 It is recommended that all Directors (including any Directors appointed on a temporary basis) be appointed as Proper Officer for the remaining functions which are currently the sole responsibility of the Chief Executive.

2.5 Arising from this recommendation it is suggested that the first sentence of paragraph 3 of Part 3 Section F2 of the Constitution (Delegations to Chief Executive) be amended as follows:

"3.0 to be ***(along with any other officers duly appointed to act as Proper Officer, which appointments are detailed in the list of Proper Officers maintained by the Senior Legal Officer)*** the Proper officer of the Council in relation to:"

#### **(b) Joint Appointments and Disciplinary Committee**

2.6 The Joint Appointments and Disciplinary Committee deals with appointment, dismissal and disciplinary action in relation to Chief Officers and Deputy Chief Officers. In most instances the Committee has executive authority to deal with these issues (usually subject to no objections from the Cabinet Members and Leaders) but, in accordance with the Local Authority (Standing Order) (England) Regulations 2001, the Committee may only make recommendations to full Council in relation to:

- appointment and dismissal of the Head of the Paid Service (the terms of reference also require full Council approval for disciplinary action)
- dismissal of the Monitoring Officer and the Section 151 Officer

2.7 Where the post of Head of the Paid Service is separate from the post of Chief Executive, the Chief Executive will be treated in the same way as any other Chief Officer or Deputy Chief Officer who is neither the Head of the Paid Service, the Monitoring Officer nor the Section 151 Officer. Proposed amendments to the terms of reference of the Joint Appointments and Disciplinary Committee to take this into account are shown in Appendix A.

#### **(c) References to the Chief Executive in the Constitution**

2.8 There are a number of references in the Constitution to the Chief Executive which, now that there is no Chief Executive in post, need clarification. In addition, the Constitution assumes that the Chief Executive is also the Head of the Paid Service.

2.9 It is recommended that the Constitution be amended as shown in Appendix B.

## **(d) Financial Procedure Rules (virements, and acceptance of grant)**

- 2.10 Financial Procedure Rule 3.8(h) reserves to Council any decision to “*agree to any terms or restrictions applied by the funder and to approve the receipt and spend of grant funding above £100,000.00*”. This is not an accurate representation of the legal position, as approval of any terms and conditions and a decision to spend grant funding is always an executive function. It also results in a need for duplication of decision making (i.e. executive and Council decisions) often at a time when there is a short deadline for acceptance of the grant.
- 2.11 A Council decision is only required if there is a need to vary the approved budget. Very often, grant funding has a neutral impact on the budget, and it is therefore proposed that this rule is amended so that a Council decision (to accept the grant and amend the budget) is required in respect of any grant funding in excess of £100,000, except where the s151 Officer certifies that the grant has a neutral impact on the budget.
- 2.12 It is recommended that the wording of Financial Procedure Rule 3.8(h) be amended as shown Appendix C, which also contains a number of further minor clarification amendments to the Rule that relate to virements and grants.

## **OPTIONS**

- 3.1 Members have the option to approve or not approve the appointments and variations, or to require alternative appointments and variations.

## **REASONS FOR RECOMMENDATIONS**

- 4.1 To remove anomalies, improve efficiency and effectiveness, and to ensure that the Constitution is kept up to date with changing circumstances.

## **4.0 EXPECTED BENEFITS**

- 5.1 To ensure business continuity and ensure clarity of function.

## **6.0 IMPLICATIONS**

- 6.1 In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

### **6.1.1 Constitution & Legal**

- 6.1.2 Any legal implications are set out in the relevant paragraphs. Amending the Constitution is a function reserved to full Council.

## **7.0 WARDS/COMMUNITIES AFFECTED**

- 7.1 None

## **8.0 ACRONYMS**

- 8.1 None

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Background papers:- The Council's Constitution which is available on the Council's website.

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**Lead Contact Officer**

Name and Post: Jacqui Berridge Lawyer  
Telephone Number  
Email: jacqui.berridge@breckland-sholland.gov.uk

**Key Decision:** N

**Exempt Decision:** N

**This report refers to a Mandatory Service**

**Appendices attached to this report:**

Appendix A - Proposed amendments to the terms of reference of the Joint Appointments and Disciplinary Committee  
Appendix B - Other proposed amendments to the Constitution to take account of any periods where there is no Chief Executive in post  
Appendix C - Proposed amendments to Financial Procedure Rules relating to virements and grants

**APPENDIX A - Proposed amendments to the terms of reference of the Joint Appointments and Disciplinary Committee**

<p>Joint Appointments and Disciplinary Committee</p> <p>This Committee may also sit under Terms of Reference 2 and 3 in relation to “any other Chief Officer or Deputy Chief Officer” who is not jointly appointed subject to (i) the membership being restricted to the members of the appointing/dismissing Council only; (ii) the quorum being amended to 3 including at least 1 Cabinet member; and (iii) all references to the Councils being deemed to refer to the appointing/dismissing Council</p>	<p>6 Members</p> <p>(3 Breckland Members &amp; 3 South Holland Members in accordance with Local Government (Committees and Political Groups) Regulations 1990)</p> <p>(Quorum 6 which must comprise 3 members from each authority including at least one Cabinet Member from each authority)</p> <p>Substitutions: see paragraphs 1.4 to 1.7 above</p>	<p>Has executive powers in relation to terms of reference 2, 3, 5 and 6 below:</p> <ol style="list-style-type: none"> <li>1. The making of recommendations to the full Councils on the appointment and dismissal of the joint Head of the Paid Service/<b><u>Chief Executive</u></b>, or the taking of disciplinary action against him/her; When dealing with potential dismissal, or disciplinary action the committee will carry out the necessary disciplinary hearing and the report to the full Councils will detail the opinions of each of the independent persons</li> <li>2. The appointment of any other joint Chief Officer or joint Deputy Chief Officer (<b><u>this includes the Chief Executive where the post of Chief Executive is separate from the Post of Head of the Paid Service</u></b>)</li> <li>3. The dismissal of, or the taking of any disciplinary action against any other joint Chief Officer or joint Deputy Chief Officer except the joint Section 151 Officer and the joint Monitoring Officer (<b><u>this includes the Chief Executive where the post of Chief Executive is separate from the Post of Head of the Paid Service</u></b>);</li> <li>4. The making of recommendations to the full Councils on the dismissal of the joint Monitoring Officer or the joint Section 151 Officer, or on the taking of disciplinary action against him/her. When dealing with potential dismissal or disciplinary action the committee will carry out the necessary disciplinary hearing and the report to the full Councils will detail the opinions of each of the independent persons.</li> <li>5. Considering and reporting to each Council on any disputes submitted to it in accordance with sections 8 (termination and review of joint arrangements) or 11 (dispute resolution) of the Memorandum of Agreement dated 1 April 2011</li> <li>6. Approving staffing policies in respect of redundancy, early retirement, and discretionary compensation.</li> </ol>
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		<p>NOTE:</p> <p>In the exercise of these functions the Committee must act in accordance with Standing Orders relating to Staff and the Local Authority (Standing Orders) (England) Regulations 2001 (as amended) including;</p> <p>(a) Head of the Paid Service - No offer of appointment may be made until the proposed appointment has been approved by the full Councils and until notice of the proposed appointment has been given by the proper officer to each Council's Cabinet Members and the Leaders have not objected within the time given for response. No notice of dismissal may be issued until the proposed dismissal has been approved by the full Councils, taking into account the recommendation of a joint committee which must comprise at least 2 independent persons, and until notice of the proposed dismissal has been given by the proper officer to each Council's Cabinet Members and the Leaders have not objected within the time given for response.</p> <p>(b) Monitoring Officer and Section 151 Officer - No offer of appointment may be made until notice of the proposed appointment has been given by the proper officer to each Council's Cabinet Members and the Leaders have not objected within the time given for response. No notice of dismissal may be issued until the proposed dismissal has been approved by the full Councils, taking into account the recommendation of a joint committee which must comprise at least 2 independent persons, and until notice of the proposed dismissal has been given by the proper officer to each Council's Cabinet Members and the Leaders have not objected within the time given for response.</p> <p>(c) Other Chief Officers and Deputy Chief Officers <b><u>(this includes the Chief Executive where the post of Chief Executive is separate from the Post of Head of the Paid Service)</u></b> – no offer of appointment may be made nor notice of dismissal issued until notice of the proposed appointment or dismissal has been given by the proper officer to each Council's Cabinet Members and the Leaders have not objected within the time given for response.</p>
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## APPENDIX B - Other proposed amendments to the Constitution to take account of any periods during which there is no Chief Executive in post .

**(amendments shown in bold underlined italics)**

### Definitions relating to Staff

Chief Officers currently comprise the Head of the Paid Service ~~(who is also the Chief Executive)~~, **the Chief Executive**, and the Shared Executive Directors (the Monitoring Officer and the Section 151 Officer are both also Shared Executive Directors).

“Head of the Paid Service” means the officer appointed in accordance with Section 4 of the 1989 Act. The Head of the Paid Service is **currently usually** the Chief Executive

### Article 2 - Members of the Council

1.3.2 Following an ordinary election of district councillors, it is a requirement that all Political Group appointments are reported to the Chief Executive **or the Director responsible for Democratic Services**.

1.3.3 Following the election of a Leader, it is a requirement that, within seven days of his/her appointment, the Leader shall appoint a Cabinet and shall report the names of the Cabinet members to the Chief Executive **or the Director responsible for Democratic Services**.

### Article 7 - the Cabinet

3.2 If the Council fails to appoint a Leader, the Executive Functions shall vest in the Chief Executive **or, in the absence of the Chief Executive, each and any of the Directors** until such time as the Leader is appointed.

### Article 11 - Officers - Management Structure

(Box at 1.3 - Post functions and areas of responsibility - Joint Chief Executive) - To act as Head of the Paid Service **(except during any period where the Councils decide not to appoint a Chief Executive at which time a Head of the Paid Service will be appointed separately)**

Statutory officers - 1.4 The Council will designate the following statutory posts as shown:  
Head of the Paid Service - Chief Executive **(except during any period where the Councils decide not to appoint a Chief Executive at which time a Head of the Paid Service will be appointed separately)**

## Article 14 - Review and Revision of the Constitution

2.1.1 Subject to below, changes to the Constitution will only be approved by the full Council. The Council may if it considers necessary appoint a special committee to make recommendations for that purpose. Where the table of Chief Officers in Article 11 or the Management Structure section of the Constitution needs to be updated, the Senior Legal Officer may make the necessary changes upon receipt of notification from the Chief Executive **or Head of the Paid Service** that he/she has made changes to these structures following Council or relevant committee approval of such changes.

## Part 3 Section D Delegations to Committees - D1 - General Provisions relating to Executive Powers

4. The delegations in Parts D2, D3 and D4 below may be changed by the Leader by giving notice in writing of the changes to the Chief Executive **or the Director responsible for Democratic Services**. The Chief Executive **or Director** will notify all members of the Council of any changes as soon as possible.

## Part 3 Section D Delegations to Committees - full Council terms of reference

7. Power to appoint **Chief Executive as** Proper Officers for any purpose **where such appointments have not been made by the Chief Executive under Part 3 Section F2 - Delegation to Chief Executive (all other Proper officer appointments will be made by the Chief Executive)**

## Part 3 Section D Delegations to Committees - D1 - General provisions relating to Executive powers

4. The delegations in Parts D2, D3 and D4 below may be changed by the Leader by giving notice in writing of the changes to the Chief Executive **or the Director responsible for Democratic Services**. The Chief Executive **or Director** will notify all members of the Council of any changes as soon as possible.

## Part 3 Section D Delegations to Committees - D2 - Powers and responsibilities of the executive

2. To appoint members of the Council to the position of Cabinet Member and, if appropriate, Cabinet Support Member. Written notice of the appointment must be given to the Chief Executive **or the Director responsible for Democratic Services** and the appointment will take effect on receipt of such a notice. The Chief Executive **or Director** will notify all members of the Council of any notices as soon as possible.

Terms of reference of the Settlement Agreements Sub-Committee

(b) The Chief Executive **or, in the absence of the Chief Executive, any Director**, submitting an annual report to both Chairman of the Performance Monitoring Panel and the Policy Development Panel advising on the use of the delegated authority.

Paragraph 15(l) of Part 3 Section F1 - Officer delegations in relation to Staffing Matters

All references to Chief Executive be amended to "Chief Executive **or, in the absence of the Chief Executive, any Director**"

Part 3 Section F2 - Delegation to Chief Executive - amend the heading so that it reads as follows:

F2 - Delegations to Chief Executive **(note that under Part 3 Section F1 paragraph 15(d) the Executive Directors have authority to exercise the powers of the Chief Executive in his/her absence)**

1.0 To act as the Council's Head of Paid Service **(except during any period where the Councils decide not to appoint a Chief Executive at which time a Head of the Paid Service will be appointed separately)**

That all references to the Chief Executive in the following parts of the Constitution be amended to refer to "the Chief Executive **or, in the absence of the Chief Executive, the Director responsible for Democratic Services**"

- Standing Orders
- 1.2 (meetings of the Council)
- 6.3 (notice of questions)
- 6.6 (response to supplementary question)
- 8.1 and 8.2 (notice of motion)
- 11.4 (motions and amendments)
- 17.2 (voting on appointments)
- 19A (postponement of full Council meeting)
- 22.2 (delegation of executive functions)
- 32.1 (ex-officio members of Committee)
- 35 (postponement or cancellation of Committee Meeting)
- 36.1 and 36.2 (special meetings of committees)
- 37.2 (Sub-Committee - ex-officio members)
- 43.1 (consideration of matters by overview and scrutiny committee)
- 55.1 (standing orders to be given to members)
- 56.1 and 56.4 (vacation of office by failure to attend meetings)
- Financial Management Standards
- 3.3 - issues arising from reports

That all references to the Chief Executive in the following parts of the Constitution be amended to refer to "the Chief Executive **or the Relevant Director**"

Financial Management Standards

- 3.6.3 (use of vehicles, plant or equipment for private purposes)
- 4.5.5 and 4.6.3 (approval of officer and member claims and time records etc)

Financial Procedure Rule 4.2.4 - second sentence:

"As part of this statement, the Chief Executive **or, in the absence of the Chief Executive any Director (except the Section 151 Officer)**, and the Leader are required to comment on the effectiveness of the entire internal control environment within the council as this is a key indicator of good.

Part 5 - Section 2 - Protocol on Officer/Member Relations

4.5 If a Member believes that

- he/she has not been treated with proper respect and courtesy; or
- has any concern about the conduct or capability of a Council employee

he/she should raise the matter with the employees Head of Service, if it fails to be resolved through direct discussion with the employee.

The Head of Service will then look into the facts and report back to the member. If the member continues to feel concerned he/she can raise the matter with the Leader of the Council and the Chief Executive **or, in the absence of the Chief Executive, a Chief Officer not directly responsible for the employee.**

4.6 If a Member has a concern about the conduct or capability of a Director or Head of Service then he/she should raise that concern directly with the Chief Executive **or, in the absence of the Chief Executive, another Chief Officer.**

## APPENDIX C - Proposed amendments to Financial Procedure Rules relating to virements and grants

### (amendments shown in bold underlined italics)

3.4.4 The following limits have been approved for the authorisation of Budget transfers (Virements) **and grants. All references to "up to" an amount include that amount:**

#### 3.5 Senior Managers

(a) Up to £20,000.00, between one budget head to another (standard groupings) for which they are responsible, during the financial year after notification to the Section 151 Officer.

#### 3.6 Chief Officers/Deputy Chief Officers

(b) Up to £68,000.00, between any one Budget head to another (Standard groupings) for which they are responsible, during the financial year with written approval of the Section 151 Officer.

(c) Up to £68,000.00 in relation to grant funding, where the Chief Officer/Deputy Chief Officer will have the power, subject to consultation with the Section 151 Officer and any directions given by the Cabinet Member, to agree to any terms or restrictions applied by the grant funding **and** to approve the receipt and spend of **that** grant funding.

(d) Up to £68,000.00 in relation to expenditure which generates additional income, where the Chief Officer/Deputy Chief Officer will have the power, subject to consultation with the Section 151 Officer and any directions given by the relevant Cabinet Members, approve additional expenditure that leads to the generation of a net surplus within the financial year.

(e) The Section 151 Officer shall have power to amend the capital programme and vire between capital budgets up **to** £100,000 (without the need to submit the matter to Cabinet under paragraph 3.7 below) following consultation with the responsible Chief Officer/Deputy Chief Officer and subject to no written directions to the contrary from the Leader.

#### 3.7 Cabinet

(f) Individual transfers between Budget heads in excess of ~~£68,001.00~~ **£68,000** following a joint report by the Section 151 Officer and the responsible Chief Officer/Deputy Chief Officer. The joint report must explain the implications in the current and future financial year.

(g) **In relation to grants in excess of £68,000**, to agree to any terms or restrictions applied by the funder and to approve the receipt **(except where reserved to full Council)** and spend of **any that** grant funding ~~between £68,000.01 and £100,000.00.~~

#### 3.8 Full Council

(h) To agree to any terms or restrictions applied by the funder and to approve the receipt and spend of grant funding above £100,000.

**(h) Except where the s151 Officer certifies that there is no material impact on the Council's budget, to approve receipt of any grant funding in excess of £100,000 and any necessary budget amendment."**

(i) Any transfer which results in an excess of 30% of a directorate gross Budget.