

# Cherwell District Council

## Council

20 July 2020

### Amendments to the Officer Scheme of Delegation

#### Report of Monitoring Officer (interim)

This report is public

#### Purpose of report

To request specific amendments to the Officer Scheme of Delegation and clarify the extent to which the Monitoring Officer can make changes to the Officer Scheme from time to time pending update to Council.

#### 1.0 Recommendation

The meeting is recommended:

- 1.1 To amend the revised scheme of officer delegations as proposed at Appendix 1 with immediate effect.
- 1.2 To delegate authority to the Monitoring Officer, in consultation with the Chief Executive, to determine any amendments to the Officer Scheme of Delegations that are necessary to address (i) post titles changing (ii) current service responsibilities being revised (iii) new service responsibilities being introduced and/or (iv) new or existing powers being identified for or demanding allocation by the Monitoring Officer, pending update to Council at the first practicable opportunity.

#### 2.0 Introduction

- 2.1 It is necessary to amend the scheme of officer delegations so that new legal powers continue to be aligned with appropriate staff.

#### 3.0 Report Details

- 3.1 Pursuant to section 101 of the Local Government Act 1972 the Council has an adopted scheme of officer delegations to ensure that it is clear that identified senior officers have the power to take decisions that are not reserved to elected members.
- 3.2 The Assistant Directors identified in Appendix 1 have requested that their areas of responsibility as set out in the Officer Scheme of Delegation be updated by the addition of the legal powers set out in Appendix 1.

- 3.3 The implications arising from each specific request is set out in Appendix 1, and the proposals are supported by Lead Members for the areas of responsibility in scope.
- 3.4 Having regard to the nature and scope of the powers being sought for inclusion in the Officer Scheme of Delegation as specified in Appendix 1, the Monitoring Officer considers it appropriate for those powers to be enforced by officers and not by Executive or committee.
- 3.5 Previous reports to Council on changes to the Officer Scheme of Delegation have recommended a standing delegation to the head of the legal service to make changes to the Scheme from time to time pending later update to Council.
- 3.6 The report to Council of 22 July 2019 for instance contained a recommendation that authority be delegated to the Director of Law & Governance, in consultation with the Chief Executive, to make any amendments that are consequential on the current allocation of service responsibilities being revised, new service responsibilities being introduced or post titles changing, which was subsequently approved by Council.
- 3.7 The opportunity is therefore taken to refine that delegation as recommended in this report to more accurately prescribe the parameters in which changes can be made by the Monitoring Officer in consultation with the Chief Executive, in particular that new legal powers that are not accounted for in the existing scheme can be allocated to officers where appropriate, pending update to Council.
- 3.8 This will permit timely, effective and efficient enforcement of current legal powers available to council officers from time to time between Council meetings.
- 3.9 All such decisions made by the Monitoring Officer in consultation will be noted as officer decisions in the council's records, and Council will be updated on the same at the first practicable opportunity.
- 3.10 The role of the Monitoring Officer derives from the Section 5 of the Local Government and Housing Act 1989 (as amended by Schedule 5 paragraph 24 of the Local Government Act 2000) (the **Act**). The Act requires local authorities to appoint a Monitoring Officer. The post of Monitoring Officer is currently held by Steve Jorden, on an interim basis.

## **4.0 Conclusion and Reasons for Recommendations**

- 4.1 It is appropriate to amend the scheme of officer delegations to accommodate updates in legal powers and ensure they can be effectively and efficiently enforced by the services requesting the changes.

## **5.0 Consultation**

Chief Executive, Assistant Directors requiring specific amendments in this report and relevant Lead Members.

## **6.0 Alternative Options and Reasons for Rejection**

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: To accept the recommendations

Option 2: To reject the recommendations – this is not recommended as it will limit timely, effective and efficient enforcement of legal powers available to council officers.

Option 3: to amend the recommendations – this is not recommended as the exercise of legal powers by appropriate officers are framed by limitations in statute.

## **7.0 Implications**

### **Financial and Resource Implications**

- 7.1 Financial implications specific to the additional delegated powers being sought pursuant to recommendation 1.1 of this report are set out in Appendix 1.

There are no financial implications arising directly from recommendation 1.2 of this report.

Comments checked by:

Dominic Oakeshott, Assistant Director – Finance (Interim), 01295 227943

[dominic.oakeshott@cherwell-edc.gov.uk](mailto:dominic.oakeshott@cherwell-edc.gov.uk)

### **Legal Implications**

- 7.2 Section 101 of the Local Government Act 1972 provides that the Council can delegate specified functions to an officer. As a consequence of updating the scheme of officer delegation as proposed in this report it will also be necessary for each Assistant Director requesting changes to that scheme to revisit their respective sub-delegations to ensure that the new powers they wish to exercise are properly and effectively delegated to all appropriate officers within the relevant service unit as necessary.

Comments checked by:

Richard Hawtin, Team Leader – Non-contentious, 01295 221695

[richard.hawtin@cherwell-dc.gov.uk](mailto:richard.hawtin@cherwell-dc.gov.uk)

### **Risk Implications**

- 7.3 Without an accurate scheme of officer delegation there is a risk of individual officers tasking decisions that are not within the lawful powers of the Council.

Risk implications specific to the additional delegated powers being sought pursuant to recommendation 1.1 of this report are set out in Appendix 1.

Comments checked by:

Louise Tustian, Head of Insight and Corporate Programmes, 01295 221786  
[louise.tustian@cherwell-dc.gov.uk](mailto:louise.tustian@cherwell-dc.gov.uk)

## 8.0 Decision Information

### Wards Affected

All.

### Links to Corporate Plan and Policy Framework

Accessible, value for money Council

### Lead Councillor

Councillor Tony Ilott, Lead Member for Financial Management and Governance

### Document Information

Appendix No	Title
1	Changes Requested to Officer Scheme of Delegation
Background Papers	
None	
Report Author	Steve Jordan Corporate Director – Commercial Development, Assets and Investment and Interim Monitoring Officer
Contact Information	<a href="mailto:steve.jorden@cherwell-dc.gov.uk">steve.jorden@cherwell-dc.gov.uk</a>

## Appendix 1

### Changes to the Officer Scheme of Delegation

The following additional powers are requested:

#### Assistant Director Housing and Social Care Commissioning

- Service and enforcement of community protection notices and fixed penalty notices under the Antisocial Behaviour, Crime and Policing Act 2014 in relation to residential premises

Reason	<p>Community Protection Notices (CPNs) are an additional tool which will help the Housing Standards Team address problems of unacceptable behaviour associated with residential premises.</p> <p>Currently the Housing Standards Team do not have an effective enforcement tool for tackling lower-level unacceptable conduct, such as threatened illegal eviction or harassment. Currently the only formal recourse for such acts is prosecution once an eviction has taken place. Prosecutions for such offences can be difficult to prove evidentially, and often rely heavily on witness testimony. CPNs offer a versatile solution which can be used to prevent such issues from occurring or escalating, for example a Community Protection Warning (which must be served before a CPN can be issued) can be used to effectively set a 'line in the sand' for what is acceptable or unacceptable conduct. If the conduct persists, the breach of a CPN is an offence which is easier for an officer to witness, and can be discharged either by fixed penalty notice or prosecution, and ultimately post-conviction orders can be sought. This gives a wide range of enforcement options which can be used independently, or in parallel with existing powers.</p>
Lead Member Support	<p>Gillian Douglas and Cllr John Donaldson have been consulted and are content with the proposal which they regard as a useful addition to the Housing Standards Team's range of enforcement powers.</p>
Financial Implications	<p>No particular increased risk over and above existing similar enforcement powers.</p> <p>Low risks of non-payment of Fixed Penalty Notices as maximum penalty £100.</p> <p>Comments checked by: Dominic Oakeshott, Assistant Director – Finance (Interim), 01295 227943, <a href="mailto:dominic.oakeshott@cherwell-dc.gov.uk">dominic.oakeshott@cherwell-dc.gov.uk</a></p>

Risk Implications	<p>Without CPN provisions, the Housing Standards Team have to rely on existing powers which do not adequately cover the range of conducts encountered, rely on prosecution as the only recourse, or have higher thresholds for action, for example statutory nuisance.</p> <p>These will be managed as part of the services operational risk register and escalated as and when necessary to the leadership risk register.</p> <p>Comments checked by:  Louise Tustian, Head of Insight and Corporate Programmes, 01295 221786, <a href="mailto:louise.tustian@cherwell-dc.gov.uk">louise.tustian@cherwell-dc.gov.uk</a>,</p>
Legal Implications	<p>Monitoring of CPWs and CPNs for compliance by Housing Standards Team.</p> <p>Non-compliance with CPN can be discharged via Fixed Penalty Notice or prosecution in Magistrate’s Court.</p> <p>Post-conviction orders can be requested, including seizure and forfeiture of equipment.</p> <p>Limited provision for works-in-default (but it is expected existing powers would be used in most cases).</p> <p>Comments checked by:  Richard Hawtin, Team Leader – Non-contentious, 01295 221695, <a href="mailto:richard.hawtin@cherwell-dc.gov.uk">richard.hawtin@cherwell-dc.gov.uk</a></p>

**Assistant Director Planning and Economy (now Planning and Development)  
Building Control**

- To consider and respond to any applications in respect of structures on ordinary watercourses
- To undertake, or arrange the undertaking of, any works on ordinary watercourses
- To undertake any enforcement action in relation to any matter or thing affecting ordinary watercourses which may give rise to flood risk
- To liaise with and provide any information necessary to any other public authority, statutory body or other entity in respect of flood risk, including the Lead Local Flood Authority (as identified in the Flood and Water Management Act 2010)
- To exercise any power which is relevant to ordinary watercourses contained in either the Land Drainage Act 1991, the Land Drainage Act 1994 and the Public Health Act 1936 as the same may be amended, replaced or superseded from time to time

Reason	The Council has resolved to resume from April 2020 using its powers under the various Land Drainage Acts to ensure that the maintenance of and works to “ordinary watercourses” are done so that flood risk is minimised. These delegations will enable these powers to be used in an efficient and timely manner.
Lead Member Support	Councillor Colin Clarke and Councillor Daniel Sames
Financial Implications	There are no financial implications arising directly from this change.  Comments checked by: Dominic Oakeshott, Assistant Director – Finance (Interim), 01295 227943, <a href="mailto:dominic.oakeshott@cherwell-dc.gov.uk">dominic.oakeshott@cherwell-dc.gov.uk</a>
Risk Implications	Flood risk to our community will be reduced by the effective use of these delegated powers.  Comments checked by: Louise Tustian, Head of Insight and Corporate Programmes, 01295 221786, <a href="mailto:louise.tustian@cherwell-dc.gov.uk">louise.tustian@cherwell-dc.gov.uk</a> ,
Legal Implications	The legal implications arising from this addition to the officer scheme of delegation are covered in the reasons given for the change.  Comments checked by: Richard Hawtin, Team Leader, Non-contentious, 01295 221695, <a href="mailto:richard.hawtin@cherwell-dc.gov.uk">richard.hawtin@cherwell-dc.gov.uk</a>

**Assistant Director Environmental Health and Licensing (now Assistant Director Regulatory Services and Community Safety)**

- To deal with all matters, and exercise the Council’s powers, including enforcement, under legislation relating to pavement licences

Reason	To delegate authority by function rather than reference to specific legislation. This will avoid the need for the scheme of delegation to be amended every time there is a change/amendment to the legislation.
Lead Member Support	Councillor McHugh
Financial Implications	There are no financial implications arising directly from

	<p>this change.</p> <p>Comments checked by:  Dominic Oakeshott, Assistant Director – Finance (Interim), 01295 227943, <a href="mailto:dominic.oakeshott@cherwell-dc.gov.uk">dominic.oakeshott@cherwell-dc.gov.uk</a></p>
<p>Risk Implications</p>	<p>Officers are currently only authorised to enforce the specific statutory power (section 115 of the Highways Act 1980) and not the wider function around regulation of pavement licences.</p> <p>Comments checked by:  Louise Tustian, Head of Insight and Corporate Programmes, 01295 221786, <a href="mailto:louise.tustian@cherwell-dc.gov.uk">louise.tustian@cherwell-dc.gov.uk</a>,</p>
<p>Legal Implications</p>	<p>The current delegation states ‘To exercise powers to permit third parties to place objects over or on the public highway, under section 115 of the Highways Act 1980’. For information section 115 of the Highways Act 1980 falls in Part VII of the Act and relates to the parking of heavy goods vehicles. Pavement licences come under Part VIIA and sections 115A onwards so the change will additionally rectify this potential anomaly.</p> <p>Comments checked by:  Richard Hawtin, Team Leader, Non-contentious, 01295 221695, <a href="mailto:richard.hawtin@cherwell-dc.gov.uk">richard.hawtin@cherwell-dc.gov.uk</a></p>