

Record of Officer Decision

Constitution Amendment - Officer Scheme of Delegation (Urgent Council Decision by Chief Executive)

Decision Taker and Date Decision Taken:

Chief Executive (under the Chief Executive's Specific Delegation 1.20), on 16 August 2024 in consultation with Leader of the Council and Group Leaders (who confirmed their support by 19 August 2024).

Summary of Matter or Issue Requiring Decision:

The Regulatory Committee, at its meeting on 18 July 2024, took the decision to defer consideration of changes to the Hackney Carriage and Private Hire Licensing Policy to enable further consultation on unmet demand. Subsequent to the Committee's deferment, and the actions of officers in determining applications in the absence of an updated Policy, it has become apparent that the Officer Scheme of Delegation does not provide robust limitations on officer decision-making outside of Member approved Policies.

Leading Counsel's advice has been sought on the matter. He advised, whilst there are general delegations to officers and they are entrusted with decision-making, currently they have to decide whether the facts warrant a departure from Policy on an individual case basis, otherwise they act unlawfully by fettering their own discretion. As a result, the Chief Executive has reviewed the Officer Scheme of Delegation which sits within the Council's Constitution, in order to provide robust parameters for officer decision-making and to safeguard and ensure the primacy of Member decision-making.

The Chief Executive has determined the amendments to the Council's Constitution (as set out below) as a matter of urgency and in the best interests of the Council and the inhabitants of the Borough, as in her opinion, it was not reasonably practicable to convene a meeting of the Council to consider the matter. This decision will be communicated to all Members and a written report shall be submitted to the next Council meeting on this decision.

Decision Taken:

That the Officer Scheme of Delegation be amended as follows

Limitations on delegations to the Chief Executive, Directors and Divisional Directors, Heads of Service and all other officers

- 2.3 All decisions shall be in accordance with the Constitution, the Policy Framework of the Council **and any other Policy of the Council which has been approved by Members.** Whether or not any decision or action falls within the Policy Framework may, if necessary, be determined by the Council. However, no decision or action shall be taken by any employee if the Monitoring Officer reasonably considers it to be contrary to the Policy Framework **or contrary to a Policy approved by Members.**

Council **and**
Cabinet

(Note: This limitation shall not apply to decisions

connected to the Council's emergency response and/or recovery in relation to any matters which deal with civil protection. The emergency response shall be triggered by the Local Resilience Forum declaring a major incident. Decisions connected to emergency response and/or recovery shall follow the limitations on financial delegation arrangements outlined in 2.12 below.)

Summary of Reason(s) for Decision Taken:

In order to safeguard the Council and to ensure the primacy of member decision-making in respect of member approved policies is secured.

Summary of Alternatives or Options considered and rejected and Background Papers:

None

Details of any conflict of interest and dispensation granted to the Officer taking the decision or by any Member of the Council in delegating responsibility for any specific express delegation:

None.

Implementation:

This decision will be implemented immediately.

A copy of this decision and any supporting documentation considered by the Officer taking this decision may also be available for inspection by the public at the Council's offices or posted upon payment of any copying and postage charges. Any member of the public wishing to take up either of these options is asked to please ring (01803) 207087 or email governance.support@torbay.gov.uk

Signed: _____ Date: 19/08/2024
Chief Executive