

SEALING OF DOCUMENTS

Meeting –	Standards Committee -13/09/2016
Report Author	Director of Corporate Governance and Monitoring Officer
Portfolio Holder	Corporate Governance
Status	For Recommendation
Classification:	Unrestricted
Key Decision	No
Ward:	Not applicable

Executive Summary:

In accordance with historic practice, the Constitution requires both a Councillor and a legal officer to attest the sealing of documents. The purpose of attestation is to prove that the document was sealed by the local authority. The practice of document sealing has changed since this practice commenced and indeed many corporate bodies are no longer required to seal documents at all. However, the requirement to have a Member involved causes difficulty in finding Members available to attest the sealing of documents especially in respect of urgent action. The report therefore recommends that the requirement for a Member to attest the sealing of documents is removed. Where the seal is required, it will continue to be attested by a senior legal officer of the council.

Recommendation(s):

The requirement for a Member to attest the seal in addition to a senior legal officer be removed so that the requirement for sealing reads:

Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Head of Legal Services. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Head of Legal Services or Monitoring Officer should be sealed. The affixing of the Common Seal will be attested by the Head of Legal Services or the Monitoring Officer or a Solicitor or Barrister authorised by him or her. An entry of every sealing of a document shall be made and consecutively numbered in a book to be provided for the purpose and shall be signed by a person who has attested the seal.

CORPORATE IMPLICATIONS

Financial and Value for Money	There are no financial implications resulting from this report
Legal	<p>It is standard practice for a local authority to delegate authority to execute deeds and documents to senior legal officers. That responsibility should sit with legal professionals.</p> <p>The seal register will include reference to the decision which authorised the sealing of the document.</p>

Corporate	There are no risks involved in removing the need for a Member to attest the sealing of the document. The role of the person attesting the document is not to verify the contents of the document but to certify that it has been sealed by the council.								
Equalities Act 2010 & Public Sector Equality Duty	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p> <table border="1" style="width: 100%;"> <tr> <td colspan="2">Please indicate which aim is relevant to the report.</td> </tr> <tr> <td>Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,</td> <td style="width: 10%;"></td> </tr> <tr> <td>Advance equality of opportunity between people who share a protected characteristic and people who do not share it</td> <td></td> </tr> <tr> <td>Foster good relations between people who share a protected characteristic and people who do not share it.</td> <td></td> </tr> </table> <p>There are no specific equalities implications from the report.</p>	Please indicate which aim is relevant to the report.		Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,		Advance equality of opportunity between people who share a protected characteristic and people who do not share it		Foster good relations between people who share a protected characteristic and people who do not share it.	
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CORPORATE PRIORITIES (tick those relevant)✓	
A clean and welcoming Environment	
Promoting inward investment and job creation	
Supporting neighbourhoods	

CORPORATE VALUES (tick those relevant)✓	
Delivering value for money	X
Supporting the Workforce	X
Promoting open communications	

1.0 Introduction and Background

- 1.1 Seals have been in use since the earliest civilisations to authenticate documents. In a time when direct contact between parties was impossible, the seal was the only evidence that a document was legitimate.
- 1.2 In this time of instant communication and access to other information to authenticate documents, the use of a seal is anachronistic. Indeed companies for example are no longer legally required to use nor own their own seal.
- 1.3 The purpose of attesting the seal is not to verify the content or form of the document, but to show that the common seal has been properly affixed. This verification can be carried out by a single legal officer and does not legally require a council Member too.

2.0 The Current Situation

- 2.1 The constitution presently says:

'The Common Seal of the Council will be kept in a safe place in the custody of the Head of Legal Services. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Legal Services Officer, Monitoring Officer should be sealed. The affixing of the Common Seal will be attested by a Member of the Council and one of the said officers or some other person authorised by him/her. An entry of every sealing of a document shall be made and consecutively numbered in a book to be provided for the purpose and shall be signed by a person who has attested the seal.'

- 2.2 In the same way that the need for the use of a seal has changed the need for and method of the attestation of the seal has changed too. Whilst originally local authority documents had their seals attested by elected Members, local authorities now generally delegate authority to execute deeds and documents to various senior officers.
- 2.3 In particular with the present constitution requirements it is sometimes difficult to find Members available (especially at times of urgency) to attest documents which can cause delay. This happens once or twice per month and there is then additional administrative work in locating a councillor and finding a suitable time for the sealing to take place.
- 2.4 In order to allay any Members' concerns, I can confirm that this is not an attempt to take power away from Members but an attempt to reduce administrative bureaucracy and inefficiency whilst bringing our processes into line with standard local authority practice. I have not found any other authority in Kent which requires a Member to attest the sealing of documents

3.0 Options

- 3.1 It is therefore being recommended that the constitution be amended to read:

'The Common Seal of the Council will be kept in a safe place in the custody of the Head of Legal Services. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Head of Legal Services or Monitoring Officer should be sealed. The affixing of the Common Seal will be attested by the Head of Legal Services or the Monitoring Officer or a Solicitor or Barrister authorised by him or her. An entry of every sealing of a document shall be made and consecutively numbered in a book to be provided for the purpose and shall be signed by a person who has attested the seal.'

Contact Officer:	Tim Howes Director of Corporate Governance
Reporting to:	Madeline Homer , Chief Executive

Annex List

n/a	
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Background Papers

Title	Details of where to access copy
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Corporate Consultation

Finance	Tim Willis, Director of Corporate Resources
Legal	Ciara Feeney Head of Legal Services & Deputy Monitoring Officer