

# REVISION TO DELEGATIONS

Constitutional Review Working Party	<b>23 February 2022</b>
Report Author	<b>Director of Democracy and Law</b>
Status	<b>For recommendation</b>
Classification:	<b>Unrestricted</b>
Ward:	<b>All</b>

## Executive Summary:

In line with the practice followed in other authorities, the Constitutional Review Working Party (CRWP) is being asked to recommend amending the scheme of delegations to authorise the Chief Executive to declare vacancies in office under Section 86 of the Local Government Act 1972.

This will avoid the artificial situation where Full Council is asked to consider and debate an administrative provision whereas the law requires that the matter be agreed.

## Recommendation(s):

That CRWP recommends that Council amends its scheme of delegations by delegating to the Chief Executive (and in her absence the Director of Democracy and Law) the authority to declare vacancies in office under section 86 of the Local Government Act 1972.

## Corporate Implications

### Financial and Value for Money

There are no additional costs resulting from this recommendation.

### Legal

A continued failure to declare a vacancy may lead to the publication of a report under section 5 of the Local Government and Housing Act 1989 and potential judicial review proceedings.

### Corporate

The failure to declare vacancies forthwith has the effect of disenfranchising the electorate when elections are halted or delayed.

### Equality Act 2010 & Public Sector Equality Duty

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.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

There are no equality implications in respect of this report.

## **CORPORATE PRIORITIES**

This report relates to the following corporate priorities: -

- *Communities*

### **1.0 Introduction and Background**

- 1.1 The law requires the Council to declare a vacancy in office forthwith, where a councillor ceases to be qualified as a member, becomes disqualified for being a member or ceases to be a member by reason of failure to attend meetings. This responsibility is currently reserved to Council in the scheme of delegations.
- 1.2 Seeking a Council decision to carry out this statutory requirement where there is no discretion can cause confusion and a delay in declaring a vacancy and can be seen as inefficient for the Council and unfair on the Councillor involved.

### **2.0 The Proposed Way Forward**

- 2.1 In order to avoid any potential confusion, it is recommended that the responsibility for declaring vacancies in office under section 86 of the Local Government Act 1972 is delegated to the Chief Executive and in her absence, the Director of Democracy and Law. This then avoids the Council going through the fallacy of a debate when the law requires the Council to make an administrative decision with no choice or discretion.

Contact Officer: Estelle Culligan, Director of Law & Democracy  
Reporting to: Madeline Homer, Chief Executive

### **Corporate Consultation**

**Finance:** Matthew Sanham Financial Services Manager

**Legal:** Estelle Culligan, Director of Law & Democracy