

GOVERNANCE COMMITTEE

13 January 2016

Subject Heading:

The sealing of Council documents and delegation to legal officers

CMT Lead:

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Policy context:

The Monitoring Officer is authorised to propose changes to the Constitution as from time to time seem appropriate

Financial summary:

To lessen the Council's exposure to financial loss and to increase operational efficiency.

The subject matter of this report deals with the following Council Objectives

Havering will be clean and its environment will be cared for

☐

People will be safe, in their homes and in the community

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Residents will be proud to live in Havering

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SUMMARY

The report proposes a number of minor refinements to the Constitution and asks that members recommend to Council a change in the arrangements in relation to the sealing of Council legal documents and the delegation of legal powers to legal officers to enable more efficient management of the respective legal processes.

RECOMMENDATIONS

The Committee recommends to Council that:

1. The second paragraph of Article 10.4 of the constitution be amended to read
“Contracts must be made under the common seal of the Council in accordance with rule 16 of the Contract Procedure Rules. Contracts under £100,000 may, in most circumstances, be signed by the Chief Executive or the appropriate Group Director, Director of Legal and Governance or Head of Service, in accordance with the Contracts Procedure Rules set out in Part 4.
2. The monetary threshold for the sealing of contracts as set out in paragraph 16 of the Contract Procedure Rules be raised to £150,000.
3. Article 10.5 of the Constitution be amended to read

“The common seal of the Council may be affixed to any document on the authority of any either the Chief Executive, a Group Director, the Director of Legal and Governance, the Deputy Director of Legal and Governance, a Principal or Senior Lawyer.

The seal shall be attested by the individual and an entry of every sealing of a document shall be made and consecutively numbered in a register to be provided for the purpose and shall be signed by a person who has attested the seal.”

REPORT DETAIL

SEALING OF DEEDS

- 1 Certain agreements, namely land transfers and contracts over an agreed monetary value, are required to be executed as deeds. This enables enforcement action to be commenced after the usual time limitation period of 6 years. In such instances the agreements are not completed by the signature of an authorising officer but by affixing the councils seal.
- 2 The Council constitution at Article 10.04 provides:-
“Contracts with a value exceeding £100,000 must be made under the common seal of the Council in accordance with rule 16 of the Contract Procedure Rules.”

- 3 However rule 16 of the Contract Procedure Rules adopts a more pragmatic and flexible approach providing:-

“16 Execution of contracts

Contracts over £100,000 to be sealed

Contracts with a total value of more than £100,000 will be executed under seal in accordance with Article 10.04 of the Constitution unless the Director of Legal & Governance approves otherwise.

Contracts under £100,000

Unless the Director of Legal & Governance approves otherwise, contracts with a total value of less than £100,000 will be executed by the signature of the duly authorised Head of Service or more senior staff as appropriate, in accordance with the functions delegated to staff under section 3 of Part 3 of this constitution.

Contracts with a total value of less than £100,000 may be executed under seal where the Head of Service or Member of CMT and the Director of Legal & Governance deem this appropriate.

Care & Consultancy Contracts

Contracts for the provision of personal social services to an individual (eg residential care) and educational placements may be signed by the relevant approved officer (as formally designated by the Head of Service or more senior staff and lodged with the Director of Legal & Governance) provided that the annual value of the contract does not exceed £200,000. If it will exceed £200,000 then the contract must be signed by the Director of Legal & Governance.

Contracts for consultancy services and specialist advice (other than those that form part of a larger contract or project) may be signed by the relevant Head of Service or more senior staff provided that the total value of the contract does not exceed £200,000. If it will exceed £200,000 then the contract must be signed by the Director of Legal & Governance.”

- 4 The baseline monetary threshold has not been revised for a number of years and it is suggested that the threshold be raised from £100,000 to £150,000 and that the contract procedure rules be amended accordingly. In order that there is no confusion between the Articles and the contract procedure rules it is also suggested that Article 10.4 be amended to read:

“Contracts must be made under the common seal of the Council in accordance with rule 16 of the Contract Procedure Rules. “

- 5 Article 10.05 of the constitution requires that “the seal shall be attested by two individuals from a prescribed list which must (except in exceptional circumstances) include either the Mayor or Deputy Mayor.
- 6 The inclusion of the Mayor or Deputy Mayor is an historical requirement and it is unclear what purpose this additional requirement

serves given the complex nature of these documents and the governance processes that are undertaken before such documents are sealed. The inclusion of Mayor or deputy Mayor as signatory has inevitably led to delays in completion of contractual agreements. In addition most of the documents are prepared by legal services, currently based at Stratford and consequently there is a requirement for engrossed documentation to be couriered to the Town Hall for the Mayor to complete his element of the process. Many contracting third parties find this process overly bureaucratic and frustrating, particularly where tight dead lines are in place and it is difficult to justify this cumbersome approach or identify the risk which this process is designed to control.

- 7 It is therefore suggested that the requirement for the Mayor or Deputy Mayor to attest the sealing of documents is removed.
- 8 The Leader has indicated his support for these proposed changes. Anecdotally this is now the common practice of local authorities and a survey of the procedures adopted by other London Borough Councils and of their sealing monetary thresholds is currently underway and will be available at the meeting for members to use as a comparator.
- 9 There is a process for urgent attestations which enables officers to attest the sealing of the document in the absence of the Mayor or deputy Mayor and the subsequent reporting of the exercise of that power to the next meeting of Council . If members are minded to accept the officer proposals set out below this provision will no longer be necessary.
- 10 It is also suggested that the designation of authorised officers who attest the affixing of the seal be amended to reflect the new titles of legal services personnel following the legal services restructure.
- 11 The reference to Head of Legal Services should now refer to Deputy Director of Legal and Governance and reference to Legal Manager be changed to Principal Solicitor or Senior Lawyer.
- 12 If members agree with these proposals, Article 10.05 will read as follows:-

"The common seal of the Council may be affixed to any document on the authority of either the Chief Executive, Group Director, Director of Legal and Governance, Deputy Director of Legal and Governance, Principal Lawyer or Senior Lawyer.

The seal shall be attested by that individual ..."

Reasons for the proposed changes:

- 13 The selection of persons to attest the sealing of council documents is usually based on an assessment of risk and appropriate control. There is a limited risk that affixing of the seal could be used for fraudulent

purposes or that the documents to be sealed are inappropriate. There are in both instances a number of controls in place to manage these risks and unless the Mayor or Deputy Mayor was either legally qualified or extremely experienced in this area it is unlikely that they would possess the skill set to review those controls at the point of sealing. Moreover the logistics around the current process arguably involve unnecessary delay and expense.

- 14 The raising of the monetary threshold reflects the changing value of contracts against their complexity and the need for sealing with many contracts above £100000 being routine and standardised in nature yet requiring affixing of the Councils seal. Moreover the Director of Legal and Governance retains the power to require contracts below the monetary threshold to be made under seal where appropriate.

Other options considered:

- 15 The status quo continues with the inherent logistical difficulties described earlier within the report.
- 16 That the monetary threshold for sealing of documents be raised to a higher level for instance £200,000. It was felt that whilst anecdotally many councils operate at this level the Council should take an incremental step change based on its current experience.

IMPLICATIONS AND RISKS

Financial implications and risks:

None given that the Director of Legal and Governance retains the right to require documents under the monetary threshold to be sealed where appropriate.

Legal implications and risks:

Most of the legal implications relating to the substance of the issues are contained within the body of the report. Article 11 of the Constitution provides it is the responsibility of the Governance Committee to monitor and review the operation of the Constitution to ensure that the aims and principles of the constitution are given full effect and to make recommendations to Council on its possible amendment.

Human Resources implications and risks:

None

Equalities implications and risks:

None

BACKGROUND PAPERS

None