

Executive – 23 April 2009

## AMENDMENT OF SCHEME OF DELEGATION

### Report of Chief Executive

**Statutory Powers:** Local Government Act 1972, s, 101

### Financial Implications

The financial implications of the case that prompted this report are set out in the exempt Appendix. If Members accept the recommendation, further financial implications would arise case-by-case in future but would be considered and fully accommodated before any final decisions were made.

### Purpose

It has come to light that the Chief Executive, as Head of Paid Service has insufficient authority to deal with certain claims made by current or former employees of the Council except under his emergency powers. This report seeks to make a modest extension to the Scheme of Delegation to permit settlement of such claims where it is considered expedient to do so.

This links to Council **Priority CP6** – improving core service performance in a cost-effective way.

## RECOMMENDATIONS

### That the Executive RESOLVES

- (1) To approve the exercise of the Chief Executive's emergency powers in the case described in the exempt Appendix and
- (2) That the Council be RECOMMENDED that the Scheme of Delegation be amended as set out in paragraph 4 of this report.

### The Issues

1. The Chief Executive has power and authority under the current Scheme of Delegation to officers to deal with a number of issues concerning the management of staff, including:
  - Consultation on pay negotiations, where there isn't time to consult members;
  - Agreeing to grading adjustments;
  - Appointment and dismissal;
  - Reviewing salary and considering market supplements;
  - Considering disciplinary matters;
  - Negotiating redundancy payments and compromise agreements.
2. This report concerns the last element (paragraph 2 A (ii) (5) of the Scheme of Delegation). In full, it says this:

## **5. Redundancy**

*a. In consultation with the Chairman of the Personnel Panel, to agree terms where there is solely a one-off payment and it is within the scheme, in such cases where it is considered a matter of urgency.*

*b. To negotiate 'compromise agreements' with employees who are minded to waive their statutory employment rights in return for compensation from the authority thereby enabling employment matters to be settled expeditiously whilst limiting any potential future liability on the Council.*

3. The Council has had reason to seek to implement this paragraph in a recent case, details of which are given in the exempt Appendix. The Monitoring Officer is concerned that its terms are insufficiently flexible for these reasons:
  - It appears to be limited to cases of redundancy, which means that where there is a claim of unfair dismissal, discrimination or equal pay, it is inoperable;
  - It isn't clear that it can be used for *former* employees;
  - Consultation with the Chairman of the Personnel Panel is limited to the first limb; and
  - It contemplates that where compromise agreements are being negotiated, the employee should waive his or her statutory rights, which is not only unfair because of the inequality of bargaining power but is probably also unlawful.
4. The result is that the Monitoring Officer has advised that any proposed settlement not falling within the terms of this paragraph must be agreed by Members. Where a claim has been brought in the Employment Tribunal, there is sometimes insufficient time to convene a meeting of the Personnel Panel to obtain their approval within the tribunal's timetable, so the Monitoring Officer has advised that the Chief Executive's emergency powers be used and reported to members. This is requested in the case mentioned in the exempt Appendix. While lawful, this process is unsatisfactory. Emergency powers should be confined to emergencies.
5. It is therefore suggested that this provision of the Scheme of Delegation be amended to read as follows:

## **5. Settlement of redundancy and other claims**

*In consultation with the Chairman of the Personnel Panel,*

*a. to agree terms for redundancy within the Council's scheme where there is a one-off payment to one individual and it is considered a matter of urgency.*

*b. To negotiate compromise agreements with employees or former employees in order that employment matters may be settled expeditiously in the interests of both the individuals and the Council.*

6. This is not limited to tribunal cases and approving the changes will not mean that every matter will be settled. Where appropriate, as now the Council will continue to resist claims. Where there is time, the Personnel Panel will be convened to consider a report in the usual way. In those rare cases where a different disposal is recommended on legal or personnel advice, in practice (as happens now) the relevant Head of Service, advised by the Head of HR

and the Monitoring Officer will provide a written report for the Chief Executive and the Chairman of the Personnel Panel proposing a course of action and seeking authorisation, in each case considering the financial implications of all options.

### **Risk Assessment**

Opportunity	Issues / Obstacles	Benefits
To provide a more expeditious method of dealing with urgent matters than using inappropriate emergency powers	<p>The present wording of the delegation is unsuitable.</p> <p>The Scheme of Delegation is due for wholesale review (it has been held up pending the outcome of LGR) but this provision is needed sooner</p>	<p>The Chairman of the Personnel Panel will be consulted in all cases</p> <p>Where settlement is recommended there can be a considerable saving in officer time</p> <p>Effective use of out of court/tribunal settlements can save the Council considerable expense, an approach which will be facilitated by the proposed delegation</p>

7. The following are the significant risks and opportunities identified:

### **Conclusion**

8. Approving these changes will mean that –

- The Chairman of the Personnel Panel is consulted in all cases,
- The process will apply to any kind of claim under employment law, and
- Matters can be settled more efficiently and effectively.

Delyth Jenkins Evans  
Head of Legal Services and Monitoring Officer

Executive  
 23 April 2009

### **Background Documents:**

South Hams District Council's Scheme of Delegation to Officers (part 3 of the Constitution)

Case files are exempt from publication by virtue of the provisions of paragraphs 1 and 2 of Schedule 12A to the Local Government Act 1972