

# TONBRIDGE & MALLING BOROUGH COUNCIL

## COUNCIL

23 February 2012

### Report of the Monitoring Officer

#### Part 1- Public

#### Matters For Decision

### **1 CHANGES TO THE CONSTITUTION**

#### **1.1 Introduction**

1.1.1 Part 2 of the Constitution provides that the Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

1.1.2 As part of this ongoing review, I have noted that there is one area within the scheme of delegation, where changes could be made to improve the ability of officers to effectively discharge their duties. This report sets out the area in question, and recommends appropriate amendments to the constitution.

1.1.3 The report also requests that an amendment is made to the constitution in respect of one specific Proper Officer appointment, namely that of the Proper Officer for the purposes of various public health functions, following the retirement of Dr Mathibalasingham Chandrakumar.

#### **1.2 Scheme of delegation**

1.2.2 Part 3 of the Constitution sets out the delegations to Chief Officers. In addition to providing a wide power to Chief Officers to act on behalf of the Council in relation to routine matters of management and administration in their respective service areas, Part 3 details specific delegations to each Chief Officer. These powers have been delegated by either Cabinet or Council, depending upon the source of the statutory power in question i.e. whether it is an executive or non-executive function of the Council.

1.2.3 It is my intention to report more fully in due course on the operation of the scheme of delegation. However, during the course of my review I have noted one particular area which would benefit from early attention.

1.2.4 I have considered the operation of the scheme in the context of the Council's powers under the Licensing Act 2003. Members will be aware that upon receipt of an application for a new premises licence/ club premises certificate (or an application for variation thereof), copies of the application are served upon the

various 'Responsible Authorities'. These include Environmental Health Services (as the department through whom the Council exercises its statutory functions in relation to minimising or preventing the risk of pollution of the environment or of harm to human health) and Planning Services (as the department through whom the Council exercises its statutory functions as Local Planning Authority). Responsible Authorities are empowered under the Act to make representations in response to applications, and also to seek a review of a premises licence/certificate if problems arise with premises that undermine the promotion of the licensing objectives.

- 1.2.5 Whilst arguably covered by wider powers of delegation, there is no specific delegation within the constitution to either the Director of Health & Housing or to the Director of Planning, Transport and Leisure which provides for the making of representations or for the submission of an application for review. In order to remove any doubt, it is therefore recommended that the constitution be amended so as to provide express powers in this regard.

### **1.3 Proper Officer for public health functions**

- 1.3.2 On 18 January 2012 the Council was notified by Dr Mathibalasingham Chandrakumar, Director of the Kent Health Protection Unit, of his intention to retire from the Health Protection Agency on 17 February 2012.
- 1.3.3 Dr Chandrakumar has been the Council's Proper officer for various public health functions since June 2001. During that time we have called upon his expertise on numerous occasions. We are grateful to Dr Chandrakumar for his assistance to Tonbridge and Malling, and wish him well in his retirement.
- 1.3.4 Dr James Sedgwick has been appointed Interim Director for the Kent Health Protection Unit, and it is therefore recommended that he now be appointed as the appropriate 'Proper Officer' within the constitution as the Council's medical adviser for public health and for the purposes of the Health Protection (Notification) Regulations 2010.

### **1.5 Legal Implications**

- 1.5.1 Article 15 in part 2 of the Constitution sets out the procedure for review and revision of the Constitution. Changes to the Constitution may only be approved by full Council after consideration of a report on the proposal from the Council's Monitoring Officer.

### **1.6 Financial and Value for Money Considerations**

- 1.6.1 None.

### **1.7 Risk Assessment**

1.7.1 If the changes are not made to the Constitution to deal with new legislation then officers will not be able to enforce our statutory duties and powers effectively and efficiently.

## **1.8 Recommendations**

1.8.1 It is **RECOMMENDED** that the Monitoring Officer be authorised to amend Part 3 of the Constitution to give effect to the changes outlined in the above report.

Background papers:

contact: Adrian Stanfield

Nil

Adrian Stanfield  
Chief Solicitor and Monitoring Officer