

TO: COUNCIL
25 FEBRUARY 2015

RECOMMENDATIONS OF GOVERNANCE AND AUDIT COMMITTEE
Director of Corporate Services – Legal

1 PURPOSE OF REPORT

- 1.1 This report seeks the endorsement of Council to two recommendations made to Council (as set out below) by the Governance and Audit Committee at its meeting on 28 January 2015.

2 RECOMMENDATION

- 2.1 **That the Council's Constitution be amended to provide that the affixing of the Common Seal of the Council should be attested by the Borough Solicitor or (in his/her absence) another Solicitor authorised by the Borough Solicitor.**
- 2.2 **That the Council's Constitution be amended as shown in Appendix 1 to this report.**

3 REASONS FOR RECOMMENDATION

- 3.1 As regards the recommendation in paragraph 2.1, the current requirements of the Council's Constitution which requires execution of Deeds to be attested by the Borough Solicitor and the Mayor, the Deputy Mayor or another nominated Member are unnecessarily bureaucratic and do not facilitate the swift completion of deeds.
- 3.2 Concerning recommendation 3.2, an alternative course would be for the Council to delegate to the Health Overview and Scrutiny Panel or another committee the power to refer to the Secretary of State any concerns at planned substantial development or substantial variations in the provision of the health service. This would exclude many Councillors from the decision making process in the event of a referral of an important matter to the Government.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 To retain the current arrangements, but for the reasons set out in this report that option is not considered to be desirable.

5 SUPPORTING INFORMATION

Sealing of Documents

- 5.1 Unlike companies, in order to execute a Deed the Council must affix its Common Seal to a Deed in order for the Deed to be properly executed. The affixing of the Common Seal has to be attested to (i.e. witnessed) by one or more persons.
- 5.2 The Council's Constitution currently provides (Part 4, Section 17) that:-

Unrestricted

“The affixing of the Common Seal will be attested by the Borough Solicitor, or some other authorised by him or her, and the Mayor or Deputy Mayor, or in their absence, another Member nominated by either of them”.

- 5.3 The Council executes a considerable number of Deeds for a wide variety of transactions. In the 2013 calendar year Deeds were completed for 358 transactions; the number of signatures required for attestation was significantly greater as frequently two, three or more engrossments of the same Deed require sealing. In addition, plans annexed to Deeds should be signed or initialled. Accordingly, taking into account time spent in travelling by Councillors to Easthampstead House, a not insignificant amount of Member time has been engaged in attesting the sealing of documents.
- 5.4 Not infrequently Deeds have to be completed at very short notice. Mayors and Deputy Mayors have been very understanding in attending Easthampstead House at short notice to sign Deeds. However, given that there is no requirement in law for a Member to have to attest the affixing of the Council's Seal, there is no need for Councillors to be inconvenienced or for Legal officers to have to endeavour to synchronise transaction completion dates with the Mayor or Deputy Mayor's availability. The Council is alone amongst the Berkshire Unitary Authorities, in requiring the affixing of the Common Seal to be attested by a Councillor.

Health – Overview and Scrutiny

- 5.5 The 2012 Health and Social Care Act's amendments to the National Health Service Act 2006, and the accompanying regulations (*The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013*) made various changes to the system of health scrutiny. One main change was to confer health scrutiny functions on the local authority, as distinct from any overview and scrutiny committee or panel within the local authority, as is currently the case in the Council. This new provision was designed to give local authorities greater flexibility and freedom over the way they discharge health scrutiny functions. The full council of each local authority is required to determine which arrangement is adopted. For example:
- It may choose to continue to operate its existing health overview and scrutiny committee/panel, delegating its health scrutiny functions to them.
 - It may choose other arrangements, such as appointing a committee involving members of the public and delegating its health scrutiny functions (except the function of making referrals) to that committee.
 - It may operate its health scrutiny functions through a joint scrutiny committee with one or more other councils.
- 5.6 The Department of Health's long-awaited guidance on the 2013 regulations was issued in June 2014. This included, '*If a council decides to delegate to a health scrutiny committee, it need not delegate all of its health scrutiny functions to that committee (i.e. it could retain some functions itself). For example, it might choose to retain the power to refer issues to the Secretary of State for Health*'. This relates to regulation 23, which deals with consultation of local authorities by 'responsible persons' on proposals for substantial developments of the health service or for substantial variations in the provision of the health service. Consultations over substantial development or variation in health services affecting Bracknell Forest residents are infrequent, and are likely to be of interest to all councillors, not just those who are members of the Health O&S Panel.

- 5.7 The Health O&S Panel's Working Group on the implications of the Francis Report made a number of recommendations in January 2014 which were accepted by the Panel and supported by the Executive. These included having a clear statement of the aim of health O&S, also that the Panel's terms of reference should recognise the role of Local Healthwatch. The Working Group's recommended wording is shown in the amendments at Appendix 1.

ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 The Borough Solicitor is the author of this report.

Borough Treasurer

- 6.2 There are no financial implications directly arising.

Equalities Impact Assessment

- 6.3 Not Required.

Strategic Risk Management Issues

- 6.4 None.

7 CONSULTATION

Principal Groups Consulted

- 7.1 None.

Method of Consultation

- 7.2 Not applicable.

Representations Received

- 7.3 Not applicable.

Background Papers

None

Contact for further information

Alex Jack, Corporate Services Department – 01344 355679

Alex.jack@bracknell-forest.gov.uk

Doc Ref:

Aj/f/reports/Council – 25 February 2015– Sealing of Deeds