

**Open Report on behalf of Richard Wills, Executive Director Responsible for Democratic Services**

Report to:	<b>County Council</b>
Date:	<b>12 July 2017</b>
Subject:	<b>Executive Support Councillors on Scrutiny Committees</b>

**Summary:**

This report requests that councillors consider whether Executive Support Councillors should be permitted to sit on any scrutiny committee of the Council.

**Recommendation(s):**

- 1) That Council decides whether or not to maintain the existing restrictions on the scrutiny committees to which the Council's Executive Support Councillors can be appointed.
- 2) Delegate to the Monitoring Officer the authority to make any changes to the Council's Constitution necessary to give effect to the Council's decision under paragraph 1.

## **1. Background**

Paragraph 2 of the Overview and Scrutiny Procedure Rules of the Council's Constitution (Part 4, Page 42,) states that no councillor can be involved in scrutinising a decision in which he/she has been directly involved. The same paragraph goes on to state that Executive Support Councillors may not be members of an Overview and Scrutiny Committee relating to their portfolio area.

A copy of the Role Description of Executive Support Councillors is attached at Appendix A.

The first of these prohibitions represents what may be considered to be a minimum level of protection for the integrity and perceived integrity of the Council's scrutiny and decision-making processes, by enforcing a separation between those councillors scrutinising a decision and those directly involved in taking that decision.

The second prohibition may be considered to go beyond this minimum protection by prohibiting membership of certain scrutiny committees for all purposes. While this enforces a very clear separation of scrutiny and executive functions , there is a

view that this prohibition may be depriving scrutiny committees of a useful source of expertise, information and insight which could inform its wider work which does not relate to the scrutiny of decisions as such. This may be considered particularly to be the case as the role of scrutiny changes in relation to early involvement and a focus on policy and options, and more in-depth consideration of policy areas.

There is no legal prohibition against Executive Support Councillors being members of scrutiny committees relating to their portfolio area. All Councillors are required to consider such issues as bias, pre-determination and confidentiality in relation to their involvement in Council committees and Executive Support Councillors who are members of a Scrutiny Committee relating to their portfolio area would need to assess and manage these issues in relation to their involvement in individual Scrutiny meetings and Agenda items.

They would also need to manage any conflicts between their membership of a Scrutiny Committee and the requirements of the Executive Support Councillor Role Description. In particular, an individual member could not be in attendance at a Committee as a member of the Committee and represent the Executive Councillor at that Committee as provided for in the third bullet point of the Role Description.

Councillors are requested to consider whether or not they wish to lift the restriction on Executive Support Councillors being members of a Scrutiny Committee relating to their Portfolio area

## **2. Legal Issues:**

### Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- \* Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- \* Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- \* Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- \* Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- \* Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
- \* Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding

Compliance with the duties in section 149 may involve treating some persons more favourably than others

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process

The Equality Act duty has been considered and there are no equalities implications of the matter being considered

#### Joint Strategic Needs Analysis (JSNA and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision

The JSNA and JHWS have been considered and there are no implications in relation to the JSNA or the JHWS of the matter being considered

#### Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area

The matters referred to have been considered and there are no implications in relation to those matters of the matter being considered

### **3. Conclusion**

It is a matter for councillors to decide whether they wish to amend the Constitution to allow Executive Support Councillors to sit on committees relating to their portfolio area

#### **4. Legal Comments:**

Changes to the Council's constitution are a matter for the full Council. There is no legal prohibition against membership by Executive Support Councillors of Scrutiny Committees relating to their portfolios.

Issues which would need to be managed by individual councillors are referred to in the Report.

#### **5. Resources Comments:**

There are no financial implications arising from acceptance of the recommendation in this report.

#### **6. Consultation**

##### **a) Has Local Member Been Consulted?**

n/a

##### **b) Has Executive Councillor Been Consulted?**

Yes

##### **c) Scrutiny Comments**

This has not been considered by a scrutiny committee.

##### **d) Have Risks and Impact Analysis been carried out?**

Yes

##### **e) Risks and Impact Analysis**

The risks associated with this decision are covered in the Report.

#### **7. Appendices**

These are listed below and attached at the back of the report	
Appendix A	Executive Support Councillor Role Description

#### **8. Background Papers**

Document title	Where the document can be viewed
The Constitution	Democratic Services and Lincolnshire County Council website

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