
NON-EXEMPT

HAVANT BOROUGH COUNCIL

STANDARDS COMMITTEE

Constitutional Changes in relation to undertaking work for third parties and electronic signatures

FOR RECOMMENDATION

Portfolio Holder Councillor Tony Denton

Key Decision: Yes

Report Number: HBC/091/2022

1. Purpose

- 1.1. To change a certain governance rule in the Constitution in terms of financial limit when entering into contracts where the council undertakes work for third parties; and
- 1.2. To amend the Constitution to recognise the validity of electronic signatures

2. Recommendation

- 2.1. Members are invited to **RECOMMEND** that:
- 2.2. The value contained within Financial Procedure Rule G143 in Part 3 Section G be raised to £250K; and
- 2.3. To make amendments to the Constitution relating to the use of electronic signatures, as per the wording set out in paragraph 3.2.4 below

3. Background and Reasons for Recommendation

3.1. Financial rule when working with third parties

3.1.1. In order to facilitate development and growth of the council's portfolio of services, particularly with regards to the generation of additional income to support future service needs, there is a desire to loosen the finance rule around working with third parties.

3.1.2. Financial Procedure Rule # G.143 (contained within Part3 Section 4G of the Constitution) currently provides the following:

Contractual arrangements to undertake work for third parties, must be approved by Cabinet in situations where the Chief Finance Officer is of the view that such a contract may cause a significant risk of net cost to the Council, or where the total value of new work in one year will exceed £50,000.

3.1.3. As an example of the need for change, a case has been made recently by one particular service, Coastal Services (see their paper at Appendix A). Their Executive Head anticipates the future will provide more opportunities for growth through wider sharing of experience and supporting other public authorities. In the case of this and other services, this will help build future service resilience. However, the process to obtain internal approval under rule #G143 can sometimes prove lengthy and add additional bureaucratic costs. The concern is that operationally, this could result in delays in delivering timely responses to new opportunities. Thereby resulting in loss of said opportunities, lost officer time, and potential loss of additional revenue.

3.1.4. The recommendation in this report is to therefore increase the financial limit set out within the rule concerned from £50,000 to £250,000. The rest of the rule will remain unchanged meaning that any potential arrangement above that new threshold or where the Chief Finance Officer has concerns over risk, must still be referred to Cabinet for decision.

3.2. Electronic Signatures

3.2.1. In recent times there has been a mounting trend towards developing a paperless working environment by making more use of electronic means of communication and document retention. As a result, the use of electronic signatures became more common. The Electronic Communication Act 2000 and the Electronic Signature Regulations 2002 deal with the admissibility and authenticity of electronic signatures. The recent pandemic has led to further changes in working practices with a significant increase in remote working with an even greater reliance on electronic practices. In consequence it is necessary to accept and formally recognise the validity of electronic signatures on documents such as contracts, deeds, minutes and resolutions when used by both the Council and those with whom it enters into contract, or other legally binding deeds and documents.

3.2.2. In practical terms, it is hoped that, rather than merely apply a JPG or PDF file of a signature to the document, new software can be purchased to enable e-signatures to be used and applied with maximum security. This should provide a safe and secure way for the parties to easily sign documents with a strong audit trail to confirm who has performed the signature. Marketplace research has been conducted and there is at least one supplier who meets these requirements. Further research and investigation will be undertaken should members be minded to make the recommendation requested herein.

3.2.3. Should members agree the recommendation presented, the Monitoring Officer will put measures in place ensure the Council meets its statutory obligations and to maintain a compliant audit trail for probity in the formal signing of Council documentation. This will be undertaken ahead of implementing organisational wide completion of documents electronically.

3.2.4. This report therefore recommends the addition of the following additional paragraphs to the Contract Standing Order as (additional and new) Order 19.3.4:

“19.3.4 Electronic Signatures

Electronic signatures may be used by both the Council and any supplier in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved by the Chief Finance Officer. Electronic signatures will, in line with the Electronic Communication Act 2000, be accepted as a fair representation of a willingness to enter into a contract by and with the Council, insofar as the e-signature is a true representation of the authorised person’s written signature and is supported with:

- 1. a contemporaneous document of authenticity; and*
- 2. authorisation from the supplier concerned”.*

4. Additional Budgetary Implications

4.1. None save for the cost of any supporting software licences needed.

5. Background and relationship to Corporate Strategy and/or Business Plans

5.1. These proposals are aligned to and support the Corporate Strategy priorities in that they help deliver a more agile and business like council, based on sound environmentally friendly principles.

6. Alternative Options considered

- 6.1. As regards Finance Procedure Rule #G143: to leave unchanged. As referenced above, this could lead to opportunities being lost and potential customers going elsewhere for service.
- 6.2. As regards electronic signatures, leaving the Constitution unchanged would result in the Council falling behind in the use of electronic practices. The preferred option will enable the Council to follow evolving working practices, reduce travelling by authorised signatories and assist with the council's desire to encourage hybrid working.

7.0 Resource Implications

- 7.1 N/A

8.0 Financial Implications

- 8.1 This change should result in the Council supporting other authorities, enabling income generation to reduce fixed costs which further reduces overall costs to the Council.

Section 151 Officer comments

Date: 04/10/2022

Any new work engaged through Coastal Partnerships will be subject to careful consideration as to the income and service benefits obtainable versus any potential risks and cost / service liabilities.

There are no direct budget implications arising from this report although the proposed change does present an opportunity to generate further income and service resilience

9.0 Human Resources Implications

- 9.1 None

10.0 Information Governance Implications

10.1 The information governance implications will be addressed through those anticipated measures referenced in paragraph 3.2.3 above.

11.0 Other resource implications

11.1 None

12.0 Legal Implications

12.1 If approved, this proposal will mean that Cabinet approval is no longer required for contracts entered into when undertaking work for third parties, unless the value exceeds £250,000 in any year to a single authority or they are considered high risk by the Section 151 Officer and will then be deferred to Cabinet for decision.

Deputy Monitoring Officer comments

Date: 20 October 2022

Designated Officers do have delegated authority to “enter into any agreement for the supply of goods and services” (Constitution Part 2 Section G2 paragraph 3.4) but, of course, the exercise of the power must be consistent with the provisions contained in Financial Procedure Rules. A significant restriction on the exercise of the power is the requirement to seek Cabinet approval if the value of new work in one year will exceed £50,000 (Part 3 G143). This financial threshold is recommended to be raised to £250,000. The principal control measure will remain in that the approval of Cabinet will be sought if Chief Finance Officer sees any significant risk of such a contract causing a net cost to the Council. This change to the Constitution, and the grant of the additional and specific contractual authorities to the Executive Head for the Coastal Service, should go forward as recommendations from Cabinet to Full Council.

13.0 Risks

13.1 Contractual arrangements and commissions to undertake work for third parties, which are considered high risk by the Section 151 Officer and will be deferred to Cabinet for decision.

13.2 As regards the use of electronic signatures, the obvious audit, information governance and security risks will be addressed and mitigated/eliminated through the work to be instigated by the monitoring officer ahead of roll out and referenced above at paragraph 3.2.3 above

14.0 Appendices

14.1 Appendix 1 Coastal Service Report

15.0 Background papers

15.1 None

Agreed and signed off by:

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