

CONSTITUTION COMMITTEE:

19 MARCH 2015

INTERVENTION IN SCHOOLS – SCHEME OF DELEGATIONS

REPORT OF THE COUNTY CLERK & MONITORING OFFICER

Reason for this Report

1. To enable the Committee to consider recommended amendments to the Scheme of Delegations in relation to the Council's powers of intervention in schools causing concern.

Background

2. The Constitution Committee's approved Terms of Reference are:

To review the Council's Constitution, and to recommend to Council and/or Executive any changes, except that the Committee will have authority (subject to the Monitoring Officer's advice) to make the following changes on behalf of the Council:-

- (a) Drafting improvements to enhance clarity and remove minor anomalies.
 - (b) Updating to reflect legislative changes and matters of record.
 - (c) Amendments to the Financial, Contracts and Land Procedure Rules (subject to the advice of the S.151 Officer being sought).
3. At the February 2015 Council meeting, Members received an information report on urgent decisions taken in respect of the Council's intervention in a particular Cardiff school ('Decisions taken under Scrutiny Procedure Rule 13(a) – Eastern High School'). Whilst considering that matter, the Council's Constitution (Scheme of Delegations) was identified as requiring attention and potential amendment, subject to the agreement of this Committee. This report addresses those issues.

Issues

4. The Council has statutory responsibility for monitoring and intervening where necessary where there are concerns about school standards. The Council's powers to intervene in maintained schools are set out in Part 2, Chapter 1, of the School Standards and Organisation (Wales) Act 2013 ('SSOW Act

2013'); and the accompanying statutory guidance (Schools Causing Concern, Welsh Government Guidance document no. 129/2014) states that Councils are required to 'use their powers proactively and effectively to bring about the rapid improvement of underperforming schools' (Guidance, Introduction paragraph 2).

5. There are 5 different types of intervention powers under the SSOW Act 2013, which the Council can exercise whenever the statutory grounds for intervention exist. Section 3 of the 2013 Act requires a Warning notice to be served before the powers can be exercised. The intervention powers are:
 - i. To direct a governing body to secure advice or collaborate in order to secure improvements - section 5;
 - ii. To appoint additional governors (to provide additional expertise to the governing body in key areas to support the school's improvement) - section 6;
 - iii. To appoint an Interim Executive Board to replace the governing body - section 7;
 - iv. To suspend the school's delegated budget – section 8; and
 - v. To give directions to the governing body or head teacher or take any other steps – section 9.
6. Education functions of the Council are generally classified by law as Executive functions, which are discharged by the Cabinet or officers under delegated authority. However, whilst the powers to intervene in schools causing concern may be thought to be Executive type functions (and the specific powers to direct the governing body to secure advice or collaborate; to suspend the school's delegated budget; or to give directions or take other steps, are all certainly Executive functions), the legal advice is that, under the Constitution as currently drafted, the intervention and appointment of additional governors should be regarded in the same way as routine school governor appointments, which are referred to full Council (along with all other appointments to outside bodies).
7. The appointment of individuals to outside bodies is, by law, a local choice function, which means that the Council has discretion to allocate responsibility for this function to either the Cabinet or the Council. The Statutory Guidance issued by Welsh Government (Guidance for County and County Borough Councils in Wales on Executive and Alternative Arrangements 2006, paragraph 3.22) confirms that the appropriate allocation of responsibility for such functions will depend on the circumstances, which means that whilst certain appointments may be suitable for decision by full Council, other appointments may be more suitable for decision by the Cabinet or officers under delegated authority. However, the Constitution currently assigns responsibility for *all* such appointments to full Council (Scheme of Delegations, Section 3).
8. The powers to intervene in schools causing concern need to be exercised in a timely manner, and sometimes on an urgent basis, without the delay likely to be involved in waiting for a monthly Council meeting. The decision to intervene and the type of intervention, are matters requiring professional

judgement, rather than political debate; and additional governors are generally appointed on the basis of their special expertise, rather than as representatives of the Council. For these reasons, it is submitted that all the powers of intervention listed in paragraph 5 above (including the power to appoint additional governors and the power to appoint an Interim Executive Board) should properly be assigned as Executive functions, and delegated to the Director of Education.

9. This report recommends amendment of the Scheme of Delegations to that effect, that is, to insert a new delegation to the Director of Education to exercise any of the Council's powers of intervention under Part 2 of the School Standards and Organisation (Wales) Act 2013 (including the power to serve a Warning Notice ; appoint additional governors and the power to appoint an Interim Executive Board, subject always to the usual caveats applicable to all officer delegations, including consultation with relevant elected Members. Corresponding amendment should then be made to the allocation of responsibility for the function of making appointments to outside bodies, to refer to the Director's delegation. For the avoidance of any doubt, no change is to be made to the provision for all other appointments to outside bodies to be referred to full Council.
10. It is also recommended that the Director of Education have reserve powers to appoint and remove Local Authority Governors alongside the proposed Governor Panel.

Legal Implications

11. The relevant legal provisions are set out in the body of the report.
12. Members should note that the recommended amendments to the Constitution, Scheme of Delegations, will require the approval of full Council.

Financial Implications

13. There are no financial implications arising from the recommendations of this report

Recommendations

The Committee is recommended to approve and recommend to Council the following amendments to the Scheme of Delegations:

1. Section 4F, Insert a new delegation:

*'Director of Education, Delegation Reference 'DEd1'
To exercise the Council's powers of intervention under Part 2 of the School Standards and Organisation (Wales) Act 2013, including for the avoidance of doubt, the powers to serve a Warning Notice; appoint additional governors or an Interim Executive Board'*

2. Section 3, Amend allocation of the following local choice function:

'The appointment of any individual:

- (a) To any office other than an office in which he / she is employed by the authority;
- (b) To any body other than:
 - (i) The authority;
 - (ii) A joint committee of two or more authorities; or
- (c) To any committee or sub-committee of such a body,

And the revocation of any such appointment'

Decision Making Body – Council / *Cabinet, for appointments pursuant to powers of intervention under section 6 or section 7 of the School Standards and Organisation (Wales) Act 2013*

Delegation – [For appointments pursuant to powers of intervention] - Director of Education under delegation reference DEd1 (Scheme Section 4F)

3. Any consequential amendments to other Constitution provisions.

Marie Rosenthal
County Clerk and Monitoring Officer

Date: 13th March 2015

Background papers

Council report 'Decisions taken under Scrutiny Procedure Rule 13(a) – Eastern High School', 26 February 2015