

CONSTITUTION COMMITTEE:

17 September 2014

INDIVIDUAL CABINET MEMBER DECISION MAKING

REPORT OF THE COUNTY CLERK & MONITORING OFFICER

AGENDA ITEM: 6

Reason for this Report

1. To enable the Committee to consider decision making by individual Cabinet members.

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. The Committee recently undertook a review of the Council's decision making arrangements. At its meeting in January 2014, the Committee resolved to further review the option of individual Cabinet Member decision making, in consultation with the Leader and Cabinet.
 4. It is also an objective of the County Clerk's Directorate Delivery Plan for 2014/15 to make council decision making more effective and efficient as part of an overall strategy for the Council, Cabinet and its Committees to be valued as the key democratic institutions for Cardiff making accountable, robust and inclusive decisions about public services for the city and city region and representing the diverse views of the electorate.
 5. The recent Corporate Assessment Report of the Council by the Wales Audit office found that "some processes intended to ensure good governance have

not been implemented and decision making processes are inefficient and lack transparency.” The Report identifies the need for efficient arrangements to support timely decision making with better co-ordination of activity, management of meetings including agenda content. The Report also commented on the length of cabinet agendas.

Legal & Constitutional Framework

6. Under the ‘Leader and Cabinet’ model executive arrangements adopted by Cardiff (pursuant to the Local Government Act 2000), the Council may allocate responsibility for discharging its Executive Functions (which are prescribed by law) to the full Cabinet; any individual Cabinet Member; a Cabinet Committee or any officers. Any Executive Functions which are not allocated by the Council may, by law, be discharged (or delegated) by the Leader of the Cabinet. This legal position is reflected in the Constitution, Article 7.7 (The Cabinet, Responsibility for Functions).
7. The Council has discretion over the extent to which it sets out the detailed allocation of Executive Functions in the Scheme of Delegations itself, or leaves scope for the Cabinet (or its Leader, individual Members or Committees) to either discharge or delegate functions as permitted by law. However, the Welsh Government’s Statutory Guidance advises that ‘Councils should ensure that the scheme of delegations determined by the Council is sufficiently flexible to ensure the executive can discharge functions efficiently and effectively.’ (Guidance for County and County Borough Councils in Wales on Executive and Alternative Arrangements 2006, SI 2006/56, paragraph 4.16).
8. The Council’s current allocation of responsibility for Executive Functions is set out in the Scheme of Delegations (in Part 3 of the Constitution), specifically in Section 2 which lists various functions which are reserved to the (full) Cabinet, and Section 4, which delegates all other Executive Functions to the Council’s senior officers. No provision is currently made in Cardiff’s Constitution for the Leader or any individual Cabinet Members to discharge any Executive Functions, ie. to exercise decision making powers (rather than the current consultation requirements).

Legal Requirements, Checks and Balances for Individual Cabinet Member Decisions

9. Members should note that any decisions taken by an individual Cabinet Member (where allowed under the Council’s Constitution) are subject to the same legal requirements as a full Cabinet decision, in respect of consultation, proper advice, record keeping, call-in and scrutiny.
10. The Welsh Government’s Statutory Guidance (referred to in paragraph 5 above, specifically, paragraphs 6.23 to 6.27 inclusive) also emphasises the need for appropriate checks and balances, such as:
 - i. Ensuring that individual Cabinet Members are clear what exactly they can and cannot do (having particular regard to the broad well-being

- powers available to authorities under section 2 of the Local Government Act 2000);
- ii. Ensuring that individual Cabinet Members are not permitted to actually sign contracts (they may approve the award of a contract, but the contract should be signed by the officer/s identified in the Council's Standing Orders, which in Cardiff's case is the City and County Solicitor or officer/s authorised by him);
 - iii. The need for protocols to ensure an individual Cabinet Member obtains any necessary advice from relevant officers before taking a decision, in the same way as decisions of the full Cabinet; and
 - iv. Ensuring that individual Cabinet Members are aware that any decisions they take will commit the authority to legal liability in the same way as collective Cabinet decisions, and that they are personally accountable for their decisions to any relevant Scrutiny Committee.

Previous Executive Decision Making in Cardiff

11. As noted in the Delegations Report to this Committee in May 2013, the Scheme of Delegations adopted in Cardiff in or around 2002/03 gave individual Cabinet members delegated authority, within their areas of responsibility, to make various decisions including:
 - i. Agreeing responses to petitions in respect of services within their portfolio;
 - ii. Agreeing submission of bids for additional resources;
 - iii. Determining responses to reports from Scrutiny Committees;
 - iv. Approving acceptance of tenders valued from £1,000,000 to £5,000,000;
 - v. Approving the write-off of individual debts up to £50,000; and
 - vi. Approving the sale or purchase of land valued £1,000,000 to £5,000,000 (Cabinet member with responsibility for Resources only).
12. Under Cardiff's current arrangements, Members will note that authority for most of the decisions listed in paragraph 9 above (with the exception of subparagraphs (iii) and (vi)) is now delegated to the Council's senior officers (at Director level or above), in consultation with the relevant Cabinet Member/s in some cases. All such decisions are published in the Officer Decision Register and subject to call-in.

The Case for Change

13. In September 2012 the then-Leader of the Council wrote to the Chair of this Committee suggesting various issues for consideration by the Committee, including individual Cabinet Member decision making. As part of the Committee's general review of the Council's decision making arrangements, at its meeting in January 2014, the Committee agreed to consider this issue further. Some concern was expressed about individual decisions not having the benefit of collective Cabinet support, but it was also noted that full Cabinet decision making involves administrative costs and delay and that Cabinet agendas are very full. The Committee resolved to instruct the

Monitoring Officer to review recent Cabinet agendas to assess the potential for individual Cabinet Member decision making on any matters currently submitted to the Cabinet.

14. The recent Corporate Assessment by the Welsh Audit office has also highlighted the need for more efficient , timely decision making with shorter and more focussed cabinet agendas and quicker consideration of scrutiny recommendations.
15. The items of Cabinet business during the period January to July 2014 (inclusive) are set out in the table in **Appendix A**, with a note of those matters which are suggested as potentially suitable for individual Cabinet member decision.
16. It is suggested that the suitability of business for individual Cabinet member decision could be analysed using criteria such as:
 - i. Policy impact – does the decision involve a substantive change to a Policy Framework policy with a significant impact?
 - ii. Key decision – would the decision be regarded as a ‘key decision’ under the legislative arrangements which apply in England (defined as an executive decision which is likely to result in significant expenditure or savings, having regard to the budget for that particular service or function; or is likely to be significant in terms of its effect on communities living or working in 2 or more wards of the authority – Regulation 8 of SI 2012/2089);
 - iii. Financial value; and or
 - iv. Local impact.
17. A high score on any of the agreed criteria could indicate that the matter should be reserved to full Cabinet, whereas a lower score would indicate that it may be suitable for individual Cabinet member decision.
18. It is also suggested that the Leader and or Ward Members could be given the right to require an executive item scheduled for individual decision making to go to full Cabinet on request; and that it would also be open to an individual Cabinet Member to refer up any matter scheduled for their decision to full Cabinet.
19. Members are invited to consider the information and suggested approach for analysis of Cabinet business set out in this report and to make any appropriate comments. If the Committee wishes to take this matter forward, it is recommended that the Monitoring Officer be instructed to consult with the Leader and Cabinet and bring a further report back to this Committee with an analysis of Cabinet business and options for consideration.

Legal Implications

20. The relevant legal provisions are set out in the body of the report.
21. Members should note that any decision to allocate decision making powers to individual Cabinet Members will require amendment of the Scheme of Delegations and the approval of full Council.

Financial Implications

22. There are no financial implications arising from this Report

Recommendations

The Committee is recommended:

1. To note the information and suggested approach for analysis of Cabinet business set out in this report and to make any appropriate comments; and
2. If the Committee wishes to take forward the matter of individual Cabinet Member decision making, to instruct the Monitoring Officer to consult with the Leader and Cabinet and bring a further report back to this Committee with an analysis of Cabinet business and options for consideration.

Marie Rosenthal
County Clerk and Monitoring Officer
10 September 2014

Appendices

Appendix A Cabinet Business – January to July 2014

Background papers

Constitution Committee Reports on the Delegations Review, May 2013, September 2013 & January 2014, and minutes thereof
Cabinet Agendas and Decision Registers for the period January 2014 to July 2014

CABINET BUSINESS – JANUARY TO JULY 2014

Cabinet Meeting Date	Agenda Item/Business	Potentially Suitable for Individual Cabinet Member Decision Making
16/01/14	Economy & Culture Scrutiny Report	Yes
"	Community Provision Pentwyn	Yes
"	HRA Business Plan 2014/15	No
"	Council Tax Reduction Scheme 2014/15	Yes
"	School Organisation Planning – New Primary School Pontpennau	Yes
"	Hackney Carriage & Private Hire Vehicle Matters	Yes
"	Workforce Agreement	No
29/01/04	Splott Community Hub	No
"	Disposal of Cardiff Medicentre	Yes
"	Community Asset Transfer Strategy	No
"	Saving the Coal Exchange	Yes
"	City Centre Management	No
"	Major Project Update – Multi Purpose Arena	No
"	2014/15 Budget Proposals	No
"	Dumballs Road Housing Regeneration Scheme	No
"	Civil Parking Enforcement	Yes
21/02/14	Community & Adult Scrutiny Committee – Under Occupation of Social Housing	No
"	Environmental Scrutiny Committee & Community & Adult Scrutiny Committee – Dangerous Dogs	No
"	Health & Safety Policy	Yes
"	Corporate Plan 2014/14	No
"	Passenger Transport Provision Procurement	Yes
"	Metro Proposals	No
"	Budget Monitoring	No
"	Budget Report 2014/15	No
13/03/14	Welsh Language Skills Strategy	No as goes to council
"	Performance Report Q 3	Yes
"	Pay Policy 2014/15	No as goes to council
"	Strategic Equality Plan Annual Report 2013/14	Yes
"	Neighbourhood Partnerships – Appointment of Lead Elected Members	Yes
"	School Organisational Planning – Additional primary school places – Butetown, Canton, Grangetown & Riverside	No
"	Hayes Public Conveniences	Yes
"	A Fairer Deal for Adult Social Care Users	No
"	Cardiff Riding School – Asset Transfer Options	Yes
"	Control of "To-Let" Boards	Yes
"	Cardiff Development Protocol	Yes
"	Risk Management Policy	Yes
10/04/14	Local Service Board	No
"	Cooperative Councils	Yes

CABINET BUSINESS – JANUARY TO JULY 2014

10/04/14	Maelfa Regeneration Scheme	No
"	Plasnewydd & Maes Y Coed Community Centres – Community Asset Transfer	Yes
"	UEFA 2020 Bid	Yes
"	School Organisation Planning – Additional primary school places – Llanishen	Yes
"	School Organisation Planning – New primary school – Pontprennau	Yes
"	School Organisation Planning – School catchment areas	No
"	Litter Bin Policy	Yes
"	Lamby Way Landfill Site	No
"	Heath Park Miniature Railway	Yes
"	Parks Partnership Programme	No
15/05/14	Economy & Culture Scrutiny Committee – Small Business	Yes
"	Organisational Change Programme	No
"	Central Square Regeneration Scheme	No
"	Deputy Cabinet Members & Champions	Yes
"	Management of Leisure Centres & Arts Venues	No
"	Asbestos Policy Statement	Yes
"	National Procurement Service	Yes
"	School Transport Policy Review	No
"	Schools Admission Arrangements 2015/16	No
"	School Organisation Planning – Additional Primary School places – Adamsdown	Yes
"	Integrated Health & Social Care Programme	No
17/07/14	Children & Young People Scrutiny Committee – Looked After Children	No
"	Central Square Regeneration Scheme	No
"	Corporate Risk Register	Yes
"	Adoption Report	Yes
"	Social Innovation Fund	Yes
"	NNDR – Writes Off	Yes
"	Budget Strategy 2015/16	No
"	Old Trelai Library – Community Asset Transfer	Yes
"	Action Plan – Estyn's Inspection	No
"	School Organisation Proposals – Eastern High	No
"	School Organisation Planning – Primary School provision – Cyncoed	Yes
"	County Hall Nursery	Yes
"	Licensing Scheme – Plasnewydd	Yes
"	Contract Award – Non recyclable waste	Yes
"	Housing Subsidy Finance	Yes
"	Accredited Provider List for Domiciliary Care	Yes
"	Energy for a Liveable City	No
"	Lamby Way Solar Farm	No