

**REPORT OF CHIEF OFFICER LEGAL & DEMOCRATIC
SERVICES**

**SEPARATION OF FUNCTIONS – THE CHAIRMAN OF THE
COUNCIL AND THE RIGHT HONOURABLE THE LORD
MAYOR**

Reason for this Report

1. The purpose of this report is to provide information to the Council regarding the function of the Chairman of the Council, the function of The Right Honourable the Lord Mayor and whether the two functions can be separated.
2. The Council is asked to consider whether the functions of the existing Chairman of the Council (who has previously also been the Lord Mayor) should be split. It is proposed that:
 - (a) the recognised political, governance and administrative functions of the Chairman (referred to in this report as “administrative functions”) would be retained by a “Chair of the Council”; and
 - (b) the ceremonial and civic functions (referred to in this report as “civic functions”) be a stand alone role for the Lord Mayor.

Functions in Question

3. Set out below is an outline of the various functions that have previously been undertaken by the Chairman of the Council (in the capacity of being both the Chairman and the Lord Mayor). They have been separated into those that are considered to be administrative functions and those that are considered to be civic functions.

Administrative Functions

4. The Chairman’s functions are set out in statute and case law, and such duties include:
 - To determine that the meeting is properly constituted and that a quorum is present.

- To inform himself as to the business and the objects of the meeting.
 - To preserve order in the conduct of those present.
 - To confine discussion within the scope of the constitution.
 - To decide whether proposed motions and amendments are in order.
 - To decide points of order and other incidental questions that require a decision at the time.
 - To ascertain the sense of the meeting by:
 - putting relevant questions to the meeting and taking a vote thereon (and if so minded giving a casting vote)
 - declaring the result; and
 - causing a ballot to be taken if duly demanded.
 - To approve the draft of the minutes or other record of proceedings.
 - To adjourn the meeting when circumstances justify or require.
 - To exercise the Chairman's casting vote (in cases where there is an equality of votes).
 - To declare the meeting closed when its business has been completed.
5. The allocation of these administrative functions to the Chair is consistent with the intent of Article 5 of the Council's Constitution which (in summary) defines the duties as being to uphold the Constitution; preside over meetings and ensure that councillors who are not Cabinet Members are able to hold the Cabinet to account.

Civic Functions

6. The function of the Lord Mayor is not defined by statute. It is proposed that the functions allocated to the Lord Mayor would be to continue as a symbol of the city at civic and ceremonial events and to promote the city's commercial, social and touristic interests.

Background

7. There are currently restrictions on the use of the title "Mayor" and/or "Lord Mayor".
8. Statute provides for the annual election of a Chairman with the function of chairing Council meetings. The Chairman must be a member of the Council but may not be a member of the Cabinet. Under the relevant law, the Chairman has 'precedence', meaning that he/she is considered to be the 'first citizen'.
9. The relevant legislation further entitles (but does not oblige) the Chairman of the Council to use the title 'Mayor' (and the Vice Chairman to use the title 'Deputy Mayor'). However, by Letters Patent (a Royal Charter or declaration); Cardiff is one of a handful of cities entitled to instead use the title "The Right Honourable the Lord Mayor".
10. Although no legal precedent is directly applicable and, therefore, it is difficult to give an absolute opinion, it is the advice of the Monitoring Officer that the existing Royal Charter of Cardiff only permits the Lord Mayor title to

be used by the person who is the Mayor. As statute provides that the person entitled to use the title “Mayor“ can only be the Chairman, it follows that, currently, the only person entitled to use either the title “Mayor” or “Lord Mayor” in Cardiff is the Chairman of the Council. Different provisions apply in cities that have elected Mayors.

11. No powers exist under the Letters Patent or otherwise to enable the Council to create new or alternative titles. Therefore, there are restrictions that would prevent the proposals from being implemented due to the fact that only the Chairman currently has the right to use the title “Lord Mayor”.

Proposed Mechanism to Implement Proposals

12. In order to achieve the proposed structure (ie for the “Lord Mayor” title to be used by a person who is not the Chairman) the prevailing legal view is that the existing Royal Charter would need to be amended. It is proposed that an amendment be sought to enable the Council to bestow the title “Lord Mayor” on whomsoever it chooses rather than the title being restricted to use by the Chairman.
13. Such an amendment would require Royal approval. Officers are seeking clarification on the procedure for obtaining such approval. It is believed that the first step would be for representations to be made to Welsh Government, following which the matter may be considered by the Privy Council before being submitted for Royal approval.

Interim Position

14. It is intended that the elected Chairman of the Council, in his capacity as first citizen, continue to undertake both the administrative and the civic functions (currently associated with the title of Lord Mayor) for the time being, without exercising his entitlement to use the title of Lord Mayor. He/she shall instead be known as the “Chair of the Council”. It is proposed that this continue until such time as the formal separation of the two functions can be achieved.
15. It is proposed that, during this interim period, the Chairman will, again in his capacity as first citizen, make use of the regalia associated with the title “Lord Mayor” as appropriate (e.g. the maces will be in the Council Chamber to denote Council is in session).
16. It is important to note that the civic regalia (including the civic ring, chains and maces) commonly associated with the Lord Mayoralty should be viewed independently of the title. The regalia are assets of the Council and their use is not expressly governed by statute or the Letters Patent. Therefore, there is no restriction on their use that would prevent the proposed interim arrangements relating to the regalia.

Rationale

17. Both the administrative and civic functions are key roles for the Council. It is proposed that the Chair of Council is the focus for effective governance and

impartial chairing of the Council meeting to ensure that all members have a voice in the Council proceedings. This will include non-Cabinet Members holding the Cabinet to account consistent with the intent of Article 5 of the Council's Constitution. Separation of the administrative functions would also enable the Chair to carry out their duties and be chosen on the basis of their suitability for ensuring good governance free from the civic functions that may be distracting, competing or requiring a different skill set.

18. Similarly, separation of functions would enable the civic functions of the Lord Mayor to stand in their own right – recognising the importance of the civic functions to the city. The position of Lord Mayor is seen as providing a sense of tradition and continuity to civic functions that is generally believed to be beneficial to the city's commercial and social interests and tourism. It is proposed that separation of functions would enable the Lord Mayor to concentrate on and be selected solely on their suitability for these civic functions.

Deputy Positions

19. This report also relates to the positions of Vice Chairman and Deputy Mayor. It is proposed that they be dealt with in a similar manner to the main positions.

Legal Implications

20. The Local Government Act 1972 provides for the annual election of a Chairman with the function of chairing Council meetings. The Chairman remains in post until his/her successor becomes entitled to act as Chairman.
21. The Chairman has 'precedence', meaning that he/she is considered first citizen. Practically this means that certain protocols should be followed by the Chairman and event organisers when on Council business.
22. The Chairman must be a member of the Council but may not be a member of the Cabinet (under the provisions of the 1972 Act).
23. The 1972 Act further entitles the Chairman of the Council to the title 'Mayor' and the vice chairman to 'Deputy Mayor'. By Letters Patent (a Royal Charter or declaration) Cardiff is entitled to instead use the titles "The Right Honourable the Lord Mayor and Deputy Lord Mayor of Cardiff".
24. Although no legal precedent is directly applicable and so it is difficult to give an absolute opinion, it is the view of the Monitoring Officer and of a leading Queen's Counsel (who was asked to advise on similar matter in 2002) that the existing Royal Charter of Cardiff only permits the "Lord Mayor" title to be used by the Chairman.
25. Therefore, in order to achieve the proposed structure (i.e. for the "Lord Mayor" title to be used by a person who is not the Chairman) the prevailing legal view is that the existing Royal Charter would need to be amended. This would require Royal approval. Officers are seeking clarification on the

procedure for obtaining such approval. It is believed that the first step would be for representations to be made to Welsh Government following which the matter may be considered by the Privy Council before being submitted for Royal approval.

Financial Implications

26. There are no financial implications arising from this report.

RECOMMENDATIONS

The Council is recommended to:

1. consider whether steps should be taken to pursue the separation of the functions of the Chairman into two distinct functions: a “Chair of Council” (with a political governance and administrative remit) and a “Lord Mayor” (with ceremonial and civic functions).
2. delegate authority to the Chief Officer Legal & Democratic Services to pursue such separation of functions.

MELANIE CLAY

Chief Officer Legal & Democratic Services and Monitoring Officer

11 May 2012