

ASSISTANTS TO CABINET MEMBERS

REPORT OF THE INTERIM MONITORING OFFICER

Reason for this Report

1. To enable the Committee to consider the constitutional provisions in respect of Assistants to Cabinet Members in light of the agreed Action Plan following the Wales Audit Office Corporate Assessment Follow On Report.

Background

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

To review the Council's Constitution, and to recommend to Council and/or Cabinet 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. As part of its executive arrangements the Council is able to provide for Deputies or Assistants to Cabinet Members to be appointed to assist the Cabinet. The National Assembly for Wales' Statutory Guidance on Executive Arrangements (SI 2006/56) advises as follows:
 - 4.29 Local authorities will be free to determine whether to have deputy cabinet members but should they so decide, those deputies will be unable to substitute for a cabinet member at a cabinet meeting nor vote on behalf of the cabinet member for whom they deputise. Cabinet members cannot delegate decision-making power to individual elected members outside the cabinet. An executive, therefore, is not able to have formal substitute or deputy members. A separate executive is designed to increase transparency and accountability. Allowing formal substitution could cloud accountability. Since deputies cannot play a formal role in the decision-making process, their role, if appointed, would be a support and advisory one which could have a representational element.

4. Accordingly, the Cardiff Constitution, Article 7.5 ('Assistants to Cabinet Members') provides that:

'The Cabinet may appoint Councillors to act as assistants to the Cabinet as the Cabinet considers reasonably necessary and appropriate. Their role will be:

- (a) To assist the Cabinet collectively;
- (b) To liaise with the Chairs and members of relevant Scrutiny Committees; and
- (c) To act as observers at meetings of the Cabinet or a committee of the Cabinet.

Assistants to the Cabinet may not vote on any matters before the Cabinet, neither may they substitute for a Cabinet Member at a meeting of the Cabinet nor in any decision making role.'

5. In order to widen Member participation in Council business and provide additional support to Cabinet Member portfolios, in May 2014 the Cabinet agreed to create three Deputy Cabinet Member positions with the generic Role Description set out in **Appendix 1** to this report, to assist Cabinet Members in the following areas:

- Housing and Tackling Poverty;
- Delivering the Co-Operative Council; and
- Young People and Learning (including Libraries).

(Appointments to these roles were made by the Cabinet in June 2014.).

6. The Constitution Committee, in June 2014, considered the Deputy Cabinet Member appointments and the constitutional provisions of Article 7.5. The Committee expressed some concern that the designation of 'Deputy Cabinet Member' may be misleading as the post-holders are not able to fully deputise for Cabinet members. The Committee resolved not to amend the designations in the Constitution on this basis.

7. In June 2015, the Cabinet revised the positions and approved 3 Assistant to Cabinet Member appointments, to assist Cabinet Members in the following areas:

- Technology, Innovation and Skills;
- Active Travel & Wellbeing (including Libraries); and
- Housing and Tackling Poverty.

(A new Assistant was appointed for the Housing and Tackling Poverty position in February 2016, following the resignation of the previous appointee.)

Issues

8. The Wales Audit Office Corporate Assessment Follow On Report issued in February 2016 considered the Council's arrangements in this respect and reported (at paragraph 52) that:

'Three Assistants to Cabinet Members have been appointed. Their functions are clearly defined in the Council's constitution, but during our review they were often referred to as Assistant (sic) [Deputy] Cabinet Members, which are posts that are not permissible. This lack of clarity raises the risk that they may be perceived to be members of the Cabinet or inappropriately become directly involved in the decision making process. However, the Council advised us that they did not do so.'

Accordingly, one of the Wales Audit Office Proposals for Improvement (reference P2b) was to:

'Ensure that the titles and roles of Assistants to Cabinet Members are applied consistently, ensuring that their limited roles and responsibilities do not cloud any accountabilities.'

9. In considering the WAO Follow On Report on 21st March 2016 the Cabinet approved an Action Plan which included the following action on this matter:

'Role description for Assistants to Cabinet Members will be included within the Council's Constitution and provided to all post-holders to assist in clarifying roles and responsibilities.' (Action Point P2b)

10. The Committee is recommended to note the Role Description approved by the Cabinet and appended as **Appendix 1**; and to instruct the Monitoring Officer to insert the Role Description into the Constitution, subject to the approval of Council; and to ensure that all post-holders are supplied with a copy of the Role Description.

Legal Implications

11. The Council must agree the form of its executive arrangements, along with the standing orders, schemes of delegation and codes of conduct which together make up the Council's Constitution. The Constitution Committee has responsibility for reviewing, and recommending to Council any changes to the Constitution, in accordance with its terms of reference (set out in paragraph 2 above).
12. The Cabinet is responsible for the discharge of executive functions in accordance with the approved executive arrangements set out in the Constitution. The Cabinet is entitled to consult with, and take soundings from, other councillors or whoever it thinks appropriate. However, the Cabinet remains accountable for decision making with regard to executive functions.
13. Other relevant legal provisions are set out in the body of the report.

Financial Implications

14. There are no direct financial implications arising from this report.

Recommendations

The Committee is recommended to:

- (I) Note the Role Description for Assistants to Cabinet Members approved by the Cabinet and set out in **Appendix 1**;
- (II) Instruct the Monitoring Officer to draft amendments to the Constitution to include the Role Description referred to in Recommendation (I);
- (III) Recommend to Council approval of the Constitution amendments referred to in Recommendation (II); and
- (IV) Instruct the Monitoring Office to ensure that copies of the Role Description are provided to all Assistants to Cabinet Members.

David Marr
Interim Monitoring Officer

12th September 2016

Appendices

Appendix 1 Assistants to Cabinet Members – Role Description

Background papers

Cabinet report 'Deputy Cabinet Members and Member Champions', 15th May 2014 and minutes thereof;
Constitution Committee report 'Constitution Update', 11th June 2014 and minutes thereof;
Wales Audit Office 'Corporate Assessment Follow On' report, issued February 2016;
Cabinet report, 'Wales Audit Office Corporate Assessment Follow On Report – Statement of Action', 21st March 2016; and minutes thereof;
National Assembly for Wales Statutory Guidance, Guidance for County and County Borough Councils in Wales on Executive and Alternative Arrangements, July 2006.

ASSISTANTS TO CABINET MEMBERS – ROLE DESCRIPTION

Article 7.5 Cardiff Constitution provides as follows:

‘The Cabinet may appoint Councillors to act as Assistants to the Cabinet as the Cabinet considers reasonably necessary and appropriate. Their role will be:

- (a) To assist the Cabinet collectively
- (b) To liaise with the Chairs and members of relevant Scrutiny Committees and
- (c) To act as observers at meetings of the Cabinet or a committee of Cabinet.

Assistants to the Cabinet may not vote on any matters before the Cabinet, neither may they substitute for a Cabinet Member at a meeting of the Cabinet nor in any decision making role.’

ROLE DESCRIPTION

1. Assistants to Cabinet Members are members appointed by the Cabinet to work with a Cabinet Member or Cabinet Members and deputise for them for any function except decision-making subject to the limitations set out below.

2. This includes taking forward particular projects or programmes. Most Assistant posts will range across the functions of the Cabinet Member but it is a matter for each individual Cabinet Member, after discussion with the Leader of the Council, to establish any limits or conditions on the ways in which the Assistant will operate. Any limitations on the role of Assistant which the Cabinet Member wishes to impose should be a matter of record, to be copied to the Leader of the Council and the Monitoring Officer.

3. The role of Assistant to Cabinet member does not attract a special responsibility allowance

4. Assistants to Cabinet Members may:

- Undertake specific tasks, research and investigations and attend conferences, seminars and meetings, as requested by the Cabinet Member, so as to keep abreast of current policy and development initiatives.
- Deputise for a Cabinet Member at Cabinet Briefings.
- Deputise for a Cabinet Member (but not vote) at Cabinet meetings.
- Deputise for the Cabinet Member at formal and informal functions, except for official openings or ceremonies where it is appropriate for the Cabinet Member to have a role, in which case, in the event of the absence of the Cabinet Member, the Lord Mayor will normally represent the Council.
- Liaise with non-executive members in order to ensure that the Cabinet Member is fully aware of issues which are of concern to members.
- Appear before a Scrutiny Committee where the Cabinet Member cannot attend or where the Assistant has focussed on the particular project or programme.

(However, the Scrutiny Committee may also request the Cabinet Member to attend on a further occasion).

- Be a member of a Scrutiny Committee which does not relate to his or her Cabinet Member's portfolio.
- Be a member of a Scrutiny Task and Finish Group.

5. However, an Assistant to a Cabinet Member cannot:

- Take decisions
- Deputise for a Cabinet Member at Council Meetings
- Be a member of the Scrutiny Committee which scrutinises his or her Cabinet Member's portfolio.