

INDIVIDUAL CABINET MEMBER DECISION MAKING

REPORT OF THE INTERIM MONITORING OFFICER

Reason for this Report

1. To enable the Committee to further 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 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 the Committee's review of the Council's decision making arrangements, at its meeting in January 2014 the Committee resolved to review the option of individual Cabinet Member decision making, in consultation with the Leader and Cabinet. The Committee has received two subsequent reports on this issue, in September 2014 and in January 2015.
 4. At its meeting in September 2014, the Committee considered the legal and constitutional framework for decision making by individual Cabinet members and the volume and type of Cabinet decisions taken over the preceding six months, with potential criteria for determining which decisions may be suitable for individual Cabinet member decision.

5. The Committee noted that the Wales Audit Office (WAO) Corporate Assessment had commented on the length of Cabinet agendas and identified the need for more efficient arrangements to support timely decision making with better co-ordinating of activity, swifter consideration of Scrutiny recommendations and improved management of meetings including agenda content. The Committee resolved to instruct the Monitoring Officer to consult with the Leader and Cabinet on this issue and bring a further report back to Committee with options for consideration.
6. The Committee received a further report at its meeting in January 2015. The Committee noted that the Leader and Cabinet had been consulted and were broadly supportive of the proposal to introduce individual Cabinet member decision making, subject to a proper, public and efficient process being adopted. Two suggested approaches to categorising decisions for this purpose were considered, namely: (i) the Red / Amber / Green (RAG) categorisation of Cabinet business used for Scrutiny purposes; and (ii) the 'Key Decision' concept used in English local authorities. The Committee raised certain concerns regarding the transparency of executive decision making, emphasising the need for an effective published Forward Plan and list of key decisions, and the importance of published decision notices; and requested that further consideration be given to assessing the strengths and weaknesses of the RAG / Key Decision categorisation.
7. The Wales Audit Office Corporate Assessment Follow On Report, issued in February 2016 recorded that:

'54. Decisions relating to the Council's executive functions are taken by the Cabinet as a whole or delegated to its Senior Officers. These arrangements are set out in the Council's constitution and recorded in its decision register, both of which are available on the Council's website. The Council has started to consider whether to delegate some of these executive decisions to individual Cabinet Members so as to help speed up executive decision-making, in line with comments we made in our September 2014 Corporate Assessment report. However, the issue of whether to delegate executive decisions to individual Cabinet Members has not yet been resolved by the Council.'

This issue was identified as a Proposal for Improvement (reference P2d):

'To ensure that a decision is made on the issue about whether to delegate executive decision-making to individual Cabinet Members.'

Issues

8. The Cabinet considered the WAO Corporate Assessment Follow On Report on 21st March 2016, and approved a 'Statement of Action', which included the following action:

'Constitution Committee to undertake a further review of the volume and category of decisions taken by the Cabinet over the last 12 months and consider making provision within the Council's Constitution for executive decision-making to be delegated to individual Cabinet Members.'

(Action Point P2d, timetabled for action in September 2016)

9. The Cabinet decisions taken during the period September 2015 to July 2016 (inclusive) are set out in the table in **Appendix A**.

10. Members will note that the total number of Cabinet business items considered during the period September 2015 to July 2016 was 100. For previous years, the figures were as follows:

September 2014 to July 2015	126
September 2013 to July 2014	134

11. As noted in paragraph 6 above, the Committee has previously indicated that it wishes to give further consideration to analysing Cabinet business in terms of (i) its RAG status; and (ii) the 'Key Decision' concept, to consider whether such categorisation may assist to identify decisions suitable for individual Cabinet Member decision-making.

RAG status

12. Members will be aware that the Cabinet's business is currently categorised in the Cabinet Forward Plan with a Red / Amber / Green (RAG) traffic light rating, denoting as follows:

Red – Decisions relating to high level functions, primarily relating to policy formulation within the Policy and Budgetary Framework, where the Cabinet would usually make a proposal

Amber – Decisions of a more sensitive nature, which could be potentially contentious or not of a routine nature. These would generally flow through to the Cabinet for decision without prior scrutiny, although a judgement will be made in each case regarding scrutiny considerations before decision and the possibility of call-in

Green – Decisions of a non-contentious, day to day nature, unlikely to be the subject of call-in

13. The RAG rating of Cabinet decisions taken during the last 12 months is shown in **Appendix A**. It will be noted that a few business items, such as items included late on an urgent basis, have not been given a RAG rating.

Nevertheless, Members may wish to consider whether business items which are RAG rated as Green (or possibly Amber) may be matters potentially suitable for individual Cabinet Member decision.

Key Decisions

14. Under the legislative arrangements which apply to English local authorities, all 'Key Decisions' which are to be taken must be published in advance, and for these purposes a 'Key Decision' is statutorily 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).

15. The Committee has previously agreed that it wishes to consider whether the concept of a 'Key Decision' may be helpful to identify Cabinet decisions which may be suitable for individual Cabinet Member decision-making. In order to pursue this line of analysis, consideration needs to be given to specifying what is to be regarded as 'significant expenditure or savings', as this does not appear to be statutorily defined, but is instead left to individual authorities in England to determine having regard to their particular circumstances. Similarly, consideration should be given to providing guidelines on what is to be regarded as 'significant in terms of its effect on communities'.

16. The 'Key Decision' concept is unfamiliar to Welsh local authorities; however, it appears that many English authorities have adopted their own extended definitions, tailored to the particular circumstances and requirements of their individual authorities. A sample of some extended 'Key Decision' definitions published online is shown in the table in **Appendix B**. Members will note that definitions include:

- a. prescribed financial thresholds;
- b. specific types of financial transactions and exceptions;
- c. factors to be considered in assessing the impact on communities; and
- d. specific decisions, such as decisions relating to policy framework proposals or recommendations, including approvals for consultation purposes.

17. If Members wish to further consider whether the concept of a 'Key Decision' may assist to identify matters which are suitable for individual Cabinet Member decision-making, then they are invited to provide comments on how a 'Key Decision' should be defined for Cardiff.

Other Considerations

18. Members may recall that Cardiff has previously, in or around 2002/03, adopted a scheme which gave individual Cabinet Members decision-making

authority in respect of specific decisions within their areas of responsibility, such as:

- a) Agreeing responses to petitions in respect of services within their portfolio;
- b) Agreeing submission of bids for additional resources;
- c) Determining responses to reports from Scrutiny Committees;
- d) Approving acceptance of tenders valued from £1,000,000 to £5,000,000;
- e) Approving the write-off of individual debts up to £50,000; and
- f) Approving the sale or purchase of land valued £1,000,000 to £5,000,000 (Cabinet member with responsibility for Resources only).

19. As the majority of the above decisions (all except those in sub-paragraphs (c) and (f) above) are delegated to Senior Officers under Cardiff's current Scheme of Delegations, this previous approach would not significantly reduce the current volume of Cabinet business. However, Members may wish to review the position with regard to:

- (i) Responses to Scrutiny Committee reports; and
- (ii) Land transactions valued up between £1 million and £5 million,

and consider whether such decisions may be suitable to be returned for individual Cabinet Member decision-making.

20. If individual Cabinet Member decision-making is to be adopted, it is suggested that the Leader and/or Ward Members could be given the right to require any executive item which may be scheduled for individual decision-making to be considered formally and collectively by the Cabinet on request; and that it should also be open to an individual Cabinet Member to refer up any matter scheduled for his/her decision to full Cabinet.

Way Forward

21. Members are invited to consider whether the option of individual Cabinet Member decision-making is to be progressed further, and if so, to provide views on the methodology and criteria for determining which decisions may be taken in this way. Members may wish to consider establishing a Working Group comprised of Committee members, including Cabinet representative/s and Opposition Member/s to make recommendations to the Committee in this regard.

22. Members may also wish to consider other ways of potentially reducing the volume of Cabinet business (without introducing individual Cabinet Member decision-making). It may be possible to remove certain types of business from Cabinet agendas, for example, information reports, receipt of Scrutiny reports and responses to such reports, approvals for proceeding to consultation or responses to external consultation exercises. However, further consideration would be required as to how these matters could potentially be dealt with under any revised arrangements, so as to ensure accountability and transparency.

Legal Implications

23. Detailed advice on the legal and constitutional framework for decision making by individual Cabinet Members was set out in the previous reports to Committee on this issue (September 2014 and January 2015). That advice is not repeated here. Key points to note include:
- i. By law, the Council may allocate responsibility for discharging any Executive Function/s to any individual Cabinet member (or to the full Cabinet, a Cabinet Committee or an officer). This legal position is reflected in the Constitution, Article 7.7 (The Cabinet, Responsibility for Functions).
 - ii. The Council's Scheme of Delegations (in Part 3 of the Constitution) lists various functions which are reserved to the (full) Cabinet, and 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 exercise any decision making powers (as opposed to the current consultation requirements).
 - iii. Any decisions to be taken by an individual Cabinet Member (if suitable provision were made in the Council's Constitution) are subject to the same legal requirements as a full Cabinet decision in respect of consultation, proper advice, record keeping, publication, call-in and scrutiny. Clear criteria and protocols would need to be developed to guide and regulate the decision making process.
 - iv. Full Council would need to approve any proposed introduction of individual Cabinet member decision making and the associated Constitution amendments.

Financial Implications

There are no direct financial implications arising from this report.

Recommendations

The Committee is recommended:

- (i) To note the information set out in this report and its appendices, and to provide any appropriate comments;
- (ii) To agree whether the Committee wishes to take forward the option of individual Cabinet Member decision-making, in principle, and if so, whether to establish a Working Group as set out in paragraph 21 of this report; and
- (iii) To receive a further report on this matter in due course.

David Marr
Interim Monitoring Officer
12th September 2016

Appendices

Appendix A Cabinet Business – September 2015 to July 2016

Appendix B Sample of Definitions of ‘Key Decision’

Background papers

Constitution Committee Reports on Individual Cabinet Member Decision Making, 17th September 2014 and 15th January 2015; 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

Cabinet Forward Plans, Agendas and Decision Registers for the period September 2015 to July 2016

Cabinet Decision Registers from September 2013 to July 2015

APPENDIX A

CABINET BUSINESS – SEPTEMBER 2015 TO JULY 2016

Cabinet Meeting Date	Cabinet Business	RAG Rating
17 Sept 2015	Neighbourhood Partnerships – Appointment of Lead Members	GREEN
	Budget Monitoring Month 4	GREEN
	Q1 Corporate Performance Report	GREEN
	WAO Annual Improvement Report	GREEN
	Annual Complaints Report	GREEN
	Disposal of Land at Howard Gardens	AMBER
	SOP: Proposed transfer of Glyn Derw High School to Michaelston Community College site	AMBER
	SOP: Proposed establishment of new high school in the West	AMBER
	School Transport Policy Review – Home to School Transport	AMBER
	Resettlement of Afghan and Syrian People, Support Scheme	
	Additional Licensing Scheme in Cathays Ward	GREEN
	Cardiff Public Realm Manual	GREEN
	Director of Social Services Annual Report	GREEN
	Cardiff's Ageing Well in Wales Delivery Plan	AMBER
1 Oct 2015	St Mellons Hub Phase 2 Community Consultation	AMBER
	City of Cardiff Council Annual Improvement Report 2014/15	
	Corporate Parenting Advisory committee progress report	GREEN
	Response to Call-In for the New Household Waste Recycling Centre and Reuse Facility	
	Future Provision of Substance Misuse Counselling Services in Cardiff	
	Cardiff Parking Strategy 2015 - Consultation draft	AMBER
12 Nov 2015	Cardiff Business Council Update	AMBER
	Review of Non Operational Estate	AMBER
	Update of Council's No Smoking Policy	GREEN
	Treasury Management Mid Year Report 2015/16	GREEN
	Budget Monitoring - Month 6	GREEN

	City Operations Broadening Enforcement Powers to Improve the Public Realm	AMBER
	City of Cardiff Council Day Opportunities Strategy	RED/AMBER
3 Dec 2015	Llanedeyrn Hub and the Maelfa Regeneration Scheme	AMBER
	City of Cardiff Council Libraries Stock Management Strategy and Local Studies Service	AMBER
	Council Tax - Discretionary Relief Policy	GREEN
	School Organisation Proposals: Specialist Provision For Primary Aged Pupils with Speech and Language Difficulties, and with Behavioural Emotional and Social Difficulties.	GREEN
	Schools Organisation Planning: The provision of Welsh-medium and English-medium primary school places in and around Llandaff North	AMBER
	Amendments to the Joint Scheme for the Allocation of Social Housing	AMBER
	Cardiff Central Transport Interchange	AMBER
10 Dec 2015	Cardiff Capital Region City Deal Update	
	2016/17 Budget Proposals - for Consultation	GREEN
	Quarter 2 Performance report 2015/16	
	Calculation of Council Tax Base	GREEN
	Corporate Risk Register - Mid Year Review	AMBER
	SOP: Proposed Establishment of a New High School in the West to Replace Glyn Derw High School and Michaelston Community College	AMBER
	SOP: The provision of additional English-medium and Welsh-medium primary school places in the Adamsdown and Splott wards (Post Consultation)	AMBER
	SOP: The Provision of Additional English-Medium and Welsh-Medium Primary School Provision In and Around the Butetown, Canton, Grangetown And Riverside Areas (The 'Four Wards')	AMBER
	Hackney Carriage Fares	GREEN
21 Jan 2016	Cardiff Commitment to Youth Engagement and Progression (Strategy)	
	Gypsy and Traveller Accommodation and Site Assessment Criteria	

	Annual Review of the Council's Voluntary Redundancy Scheme	AMBER
	Review of the Council's Disciplinary Policy and Associated Policies and Procedures	GREEN
	Independent Commission on Local Government Finance Wales: City of Cardiff Council Response	
	CCTV Body Worn Camera Policy and Pilot Deployment	GREEN
	Adoption of Cardiff LDP	
	The Performance of Cardiff Schools 2014/15	
18 Feb 2016	Corporate Plan	RED
	Assistant to Cabinet Member	GREEN
	Draft Local Government Wales Bill	GREEN
	Quarter 3 Performance 15/16	GREEN
	Budget Monitoring - Month 9	GREEN
	Budget Proposals 16/17	RED
10 Mar 2016	Wales Audit Office – Corporate Assessment Follow On	
	Llanishen Community Hub	GREEN
	The City of Cardiff Councils Equality Plan 2016-2020	AMBER
	Housing Revenue (HRA) Business Plan	A
	National Non-Domestic Rates – Write Offs	GREEN
	Annual Council Pay Policy Statement 17/18	GREEN
	School Admission Arrangements	GREEN
	SOP : The Provision of additional Welsh-Medium and English-Medium Primary School Places in and around Butetown, Canton, Grangetown and Riverside Areas	AMBER
	SOP: Proposed establishment of a New High School in the West to Replace Glyn Derw High School and Michaelston Community Collage	AMBER
	SOP: The Provision of Welsh-Medium and English-Medium Primary School Places in and around Llandaff North (Post Statutory Notice)	AMBER
21 Mar 2016	Wales Audit Office Corporate Assessment Follow On Report – Statement of Action	
	Cardiff Capital Region City Deal	
	Cardiff Central Transport Interchange	GREEN
	Creative Education Partnership	GREEN
	School Catchment Areas	GREEN
	SOP: The Provision of English-Medium and Welsh-Medium Primary School Places in the	AMBER

	Adamsdown and Splott Wards	
19 May 2016	Multi Agency Child Sexual Exploitation Strategy	GREEN
	Corporate Parenting Strategy	GREEN
	Cardiff Business Improvement District	
	Llanover Hall – Expressions of Interest to Sub Lease	
	Cabinet Advisory Groups	
	Response to the report of CASSC – Information, Advice and Assistance Services for Mental Health Service Users in Cardiff.	
	City of Cardiff Digital Strategy	GREEN
	Cardiff 2020 Aiming for Excellence	
16 Jun 2016	Joint Scrutiny Task and Finish Report on Community Infrastructure Levy	
	Welsh Language Standards: Annual Monitoring Report	
	Organisational Development Programme Update	
	Commissioning and Procurement LA Trading Company	AMBER
	Q4 Performance Report	AMBER
	Outturn 201516	
	Employee Health and Well-Being Strategy	GREEN
14 Jul 2016	Cardiff Capital Region City Deal	AMBER
	EU Referendum Implications	URGENT
	Corporate Asset Management Plan	AMBER
	Budget Strategy 2017/18 and the Medium Term	GREEN
	SOP – Specialist Provision for Primary Aged Pupils with Speech and Language Difficulties and with Behavioural Emotional and Social Difficulties	AMBER
	Cardiff Statue and Monument Protocol	GREEN
27 Jul 2016	Property Investment Estate	
	Cardiff Business Improvement District	AMBER
	ADM – Leisure Centres	AMBER
	National Non-Domestic Rate – Write Offs	GREEN
	Corporate Risk Register	AMBER
	Director of Social Services Annual Report	GREEN
	Response to the report of CASSC – How to Reduce Crime in the Night Time Economy	