

COUNCIL

20 OCTOBER 2016

REPORT OF THE DIRECTOR GOVERNANCE & LEGAL SERVICES

ASSISTANTS TO CABINET MEMBERS

Reason for this Report

1. To enable the Council to consider recommended amendments to the current constitutional provisions in respect of Assistants to Cabinet Members.

Background

2. 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.

3. The Cardiff Constitution, Article 7.5 ('Assistants to Cabinet Members') currently 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.'

4. 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 and approved a generic role description. Appointments to these positions were made by the Cabinet in June 2014.
5. 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 to retain the title used in the Constitution of 'Assistants to Cabinet Members'.
6. In June 2015, the Cabinet revised the positions and approved three 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 post-holder.

Issues

7. 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.'

8. In considering the WAO Follow On Report on 21st March 2016 the Cabinet approved a Statement of Action 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)

9. The Constitution Committee considered a report on this matter at its meeting on 21st September, and specifically considered the Role Descriptions which had been approved by Cabinet when the positions were created in May 2014.
10. The Committee agreed to recommend to Council the insertion of the Role Description approved by Cabinet into the Constitution Article 7.5 'Assistants to Cabinet Members', subject to the following amendments:
 - a) The word 'deputise' to be replaced with 'attend on behalf of' or 'assist', as appropriate, in order to make clear that the role is not to formally deputise or substitute for the Cabinet Member; and
 - b) To stipulate that Assistants to Cabinet Members may not give formal speeches at events on behalf of a Cabinet Member.
11. The amended Role Description is appended as **Appendix A** to this report.
12. In addition to recommending the insertion of the approved Role Description into the Constitution, the Committee also instructed the Monitoring Officer to ensure that all Assistants to Cabinet Members are supplied with a copy of the Role Description, subject to approval by Council.

Legal Implications

13. The Local Government Act 2000 and the Local Authority Constitution (Wales) Direction 2002 requires the authority to keep its constitution up to date.
14. The Constitution Committee has responsibility for reviewing, and recommending to Council any changes to the Constitution.
15. The recommended changes to the Constitution set out in this report require the approval of full Council, pursuant to Article 14.2(a) of the Constitution.
16. Other relevant legal implications are set out in the body of the report.

Financial Implications

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

Recommendations

Council is recommended to:

- (1) Approve the amendment of Article 7.5 of the Constitution to include the Role Description for Assistants to Cabinet Members set out in **Appendix A**, subject to any further amendments;
- (2) Instruct the Monitoring Officer to make the necessary amendments to the Constitution (arising from Recommendation (1) above); and
- (3) Note that the approved Role Descriptions are to be circulated by the Monitoring Officer to all Assistants to Cabinet Members.

Davina Fiore
Director Governance and Legal Services and Monitoring Officer

22 September 2016

Appendices

Appendix A Assistants to Cabinet Members – Role Description (amended)

Background papers

Constitution Committee report 'Assistants to Cabinet Members', 21st September 2016;
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 assist them with 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.
- Attend Cabinet Briefings on behalf of a Cabinet Member.
- Attend (but not vote) at Cabinet meetings on behalf of a Cabinet Member.
- Attend formal and informal functions on behalf of a Cabinet Member, except for official openings or ceremonies or events where a formal speech is required, , in which case, in the event of the absence of the Cabinet Member, the Lord Mayor or another Cabinet Member will normally represent the Council.
- Formally speak at events and functions on issues within his or her area of responsibility, where the Assistant has received a specific named invitation to speak.

- 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.