

GOVERNANCE AND CONSTITUTION COMMITTEE

Date of meeting: 3 November 2008
Report of: Interim Monitoring Officer
Title: Delegation of decisions to individual Members

1.0 Purpose of Report

- 1.1 To provide further information to the Committee upon the powers contained in the Constitution, which allow urgent decisions to be made.

2.0 Decision Required

- 2.1 That the contents of the report be noted.

3.0 Legal Implications

- 3.1 The legal implications are contained in the body of this report.

4.0 Risk Assessment

- 4.1 No risks appear to arise as a consequence of the contents of this report.

5.0 Background

- 5.1 At the meeting of the Committee on 6th October, discussion took place upon powers contained in the Shadow Council's constitution, which enable decisions to be made by officers in urgent circumstances.
- 5.2 These powers appear at pages 84, 89 and Appendix 4 (pg 111) of the Constitution.
- 5.3 In summary, where a matter is urgent and cannot await the next meeting of the appropriate decision-making body, the Shadow Council's Chief Executive may take the necessary action provided that Members have been consulted. Furthermore, copies of the consultation document must be sent to the appropriate Cabinet Member, the Chairman and Spokespersons of the scrutiny committee, the party group leaders and the local member.
- 5.4 The Chief Executive has sole discretion to decide the matter in question, having taken into account the views of Members consulted.

- 5.5 Whilst individual Member decision-making powers may be delegated to Cabinet Members under a local authority's executive arrangements in respect of executive functions, similar arrangements cannot be made in respect of non-executive functions.

The following explains the legal position.

Powers to delegate functions of full Council are derived from Section 101 of the Local Government Act 1972. This section enables delegation to a committee or sub-committee of the Council, officers of the Council, or to another local authority. There are restrictions on certain types of delegations which are outside the scope of this report. Section 101 does not permit delegation to individual elected members of the Council. This restriction also extends to purported delegations to a committee consisting of one elected member. The leading cases on this point are *R v Secretary of State for Education and Science, Ex p. Birmingham DC* (1984) 83 L.G.R. 79 and *R v Secretary of State for the Environment, Ex p. Hillingdon LBC* [1986] 1 W.L.R. 192.

For many years, local authorities have authorised officers, pursuant to S101, to take decisions in consultation with an elected Member (ordinarily the Council or committee chairman). The determining factor, should any question of lawfulness arise, is whether the ultimate decision was that of the officer. There would be a risk of challenge if the elected member takes a dominant role in the process.

The situation is not to be confused with the position in respect of the discharge of executive functions where legislation permits functions to be discharged by individual executive members.

6.0 Reasons for Recommendation

- 6.1 This report explains the legal position in respect of delegation of decision-making powers to individual Members of the Council.
- 6.2 Whilst a decision may be taken which would provide for decisions to be made by individual Cabinet Members of the new unitary authority, further discussion would need to take place on such arrangements.

For further information:

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Background Documents:

- ***Cheshire East Council Constitution***
- ***Local Government Act 1972***

Documents are available for inspection at:

*Cheshire East Shadow Council Support Office
Congleton Borough Council
Westfields
Middlewich Road
Sandbach*