

# CHESHIRE EAST

## GOVERNANCE AND CONSTITUTION COMMITTEE

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**Date of meeting:** 1 December 2008  
**Report of:** Interim Monitoring Officer  
**Title:** Delegation of Decisions to Individual Members

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### **1.0 Purpose of Report**

- 1.1 Following the meeting of the Committee on 3 November 2008, 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 content 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 and Options**

- 5.1 At its meeting on 3 November 2008, the Committee considered the appended report.

- 5.2 Following a debate, the Committee asked for a further report. The following is the pre-amble to the minute made at the meeting:

“The Committee was keen for urgent decision making to rest with elected Members, whilst still reflecting the need to respond in an urgent manner, and asked for a further report to be prepared for consideration at the next meeting of the Committee”.

- 5.3 Whilst it is understandable that the Committee is keen for urgent decisions to be seen to rest with elected Members, and whilst the consultation of Members is a key stage of the process when urgent action is taken, the Committee’s attention is drawn to the legal advice provided at paragraph 5.5 of the appended report; in particular;

“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”.

- 5.4 There would therefore be a real risk of legal challenge to decisions made if the Council’s procedures were altered so as to give additional prominence to the role of individual Members in the urgent decision-making process.
- 5.5 However, it should be noted that such decisions are relatively infrequent and that the process is only used where it is not possible for a Committee decision to be made.
- 5.6 It should also be noted that discussions are currently taking place with the Council’s political leadership on the model of Executive Arrangements which they would wish to see in operation in respect of Cabinet decisions after 1 April 2009. One possible option to be considered will be that of individual Cabinet Member decision-making, as is permitted by the Local Government Act 2000.
- 5.7 If this option was to be pursued, then proposals would be considered by the Committee, and a recommendation would need to be made by Council in order for the arrangements to be embodied in the Constitution. However the adoption of such arrangements would provide a facility enabling officers to approach individual Cabinet Members in certain circumstances of urgency rather than having to rely on officer urgency powers in all cases.
- 5.8 If the executive wishes to pursue this option, proposals for individual Cabinet Member decision-making would have to be developed and, if adopted, would not result in individual Members having powers to make the full range of executive decisions, or any non-executive decisions. But much more flexibility would exist in order to ensure that Member decisions could be made in circumstances of urgency rather than the Council having to rely upon officer urgency powers in all cases.
- 5.9 A further facility for deciding non-executive matters of urgency would be the appointment of an “urgency panel” or similar politically proportional decision-making body of Members which would be convened to deal with such matters. However, such a body would be subject to the Access to Information legislation requiring, amongst other things, that agendas and reports on matters to be decided to be prepared and published 5 working days before the meeting in question. In matters of urgency, this could clearly be counter-productive.

## **6.0 Conclusion**

- 6.1 Whilst the law does not permit individual Member decisions to be made under the Council’s current Constitutional arrangements, if the Cabinet requests it, a report will need to be made to the Committee which will explore individual Cabinet Member decision-making.
- 6.2 If approved, such arrangements would ensure that officer urgency powers do not need to be exercised in all cases where urgent decisions need to be made.

***For further information:***

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***Background Documents:***

*Documents are available for inspection at:*

*Cheshire East Shadow Council Support Office*

*Congleton Borough Council*

*Westfields*

*Middlewich Road*

*Sandbach*

## GOVERNANCE AND CONSTITUTION COMMITTEE

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

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### **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 6<sup>th</sup> 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:*

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