

CABINET

Date of meeting: 6th January 2009
Report of: Monitoring Officer
Title: Cabinet Decision-making arrangements

1.0 Purpose of Report

- 1.1 To consider options for Cabinet arrangements for the Council from 1 April 2009

2.0 Decision Required

- 2.1 For Members to consider, and ask the Governance and Constitution Committee to make recommendations to Council, upon the:
- 2.1.1 Leadership arrangements which should apply to Cheshire East Council
- 2.1.2 Portfolios of responsibility and delegated powers of each Cabinet Member
- 2.2 That the Monitoring Officer be authorised to make such changes to the Council's emerging Constitution as he considers are necessary to give effect to the wishes of Council.

3.0 Financial Implications for Transition Costs

- 3.1 None

4.0 Financial Implications 2009/10 and beyond

- 4.1 None

5.0 Legal Implications

- 5.1 The legal implications of the various leadership options are written into the main body of this report. However, further reports may need to be made to Members as the proposals develop, and the legal implications of those proposals will need to be given careful thought.

6.0 Risk Assessment

- 6.1 The Council's Executive Arrangements must have the appropriate checks and balances in place. Subject to these being properly incorporated in the Constitution, there are minimal associated risks.

7.0 Background and Options

- 7.1 A decision needs to be made upon whether the Council wishes to pursue a “Strong Leader” model of Executive Arrangements. This report has been prepared on that basis for illustrative purposes.
- 7.2 The “Strong” Leader Model involves the election of a Councillor as Leader by the Council and between 2 and 9 councillors appointed to the Cabinet by the Leader. The Leader would also have power to remove Cabinet Members and to determine the scope of their Portfolio responsibilities.
- 7.3 Members should note that, from May 2011, the only options which will apply will be the Strong Leader model, or for the Council to have an elected mayor.
- 7.4 In general, the functions of the Cabinet are to implement the Policy Framework of the Council and to do everything else not reserved to Council. The attached document makes suggestions as to what the Cabinet might be responsible for. It should be noted that, in a unitary authority, the volume of decisions to be made will be significant. Best practice would suggest that the functions of Cabinet Members should be clearly defined and that the range of decisions to be made by Members should be extensive. This will ensure speed of decision-making and clear accountability.
- 7.5 In law the Council has responsibility for a significant list of functions, such as planning, licensing, electoral, appointment of staff, approval of constitution etc. These functions would then be delegated to committees and sub-committees, responsible direct to Council. These matters will be subject to a separate report.
- 7.6 There are also certain “local choice” functions which may be retained by Council or delegated to the Cabinet by Council. These will be dealt with by a separate report.
- 7.7 Other than as indicated above, the Cabinet is responsible for all operational executive decisions.

8.0 Responsibilities for Functions

- 8.1 In order for Members, officers and members of the public to be clear upon where responsibilities lie for the Council’s numerous unitary functions, it is important for these to be identified in some detail.
- 8.2 Appendix A contains a draft set of general responsibilities which might apply to all Cabinet Members. The document contains:
 - 8.2.1 A set of general responsibilities which apply to all Cabinet Members.
 - 8.2.2 A set of specific responsibilities which apply to individual Cabinet Members. These have been based upon and include the responsibilities already agreed by Council, and which appear in the Constitution. However, additional responsibilities have been built-in to bring further clarity to the roles of Portfolio Holders, drawing upon the Executive Arrangements of other unitary authorities.

- 8.3 Members will wish to give some detailed thought to the draft areas of responsibility prepared by officers. It is possible that some elements might not properly reflect Cabinet Member thinking and, therefore, Appendix A may need to be changed.
- 8.4 Whilst the broad areas of responsibility of each Portfolio Holder are set out in Appendix A, a decision will need to be taken upon the level of responsibility for decisions within those areas. It has been assumed that there will be limits on decisions made. Appendix B makes some suggestions:
 - 8.4.1 That certain decisions will be delegated to officers under schemes of delegation.
 - 8.4.2 That Key Decisions will fall to be taken by the Cabinet, acting collectively.
 - 8.4.3 Key Decisions as currently defined are as follows, although it has been suggested that “significance” in terms of financial matters should be accepted as being £1M or more:

The statutory definition, as contained in paragraph 8 of Part III of the Local Authorities (Cabinet Arrangements) (Access to Information) (England) Regulations 2000, is as follows:-

“an executive decision which, is likely –

- (a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates; or*
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.”*

- 8.4.4 That executive strategy or policy will be recommended to Cabinet for decision.
- 8.4.5 That the Leader may require a decision to be taken by the Cabinet.
- 8.4.6 That any Cabinet Member may require a decision to be taken by the Cabinet.
- 8.5 The suggested limits in paragraph 8.4 should be carefully considered in order to ensure an appropriate balance of work between individual Members of the Cabinet and the collective Cabinet.
- 8.6 In order to complete the decision-making picture, schemes of delegation to officers will need to be prepared. The levels of delegation to officers will, of course, directly determine the amount of work which then falls to Members to decide.
- 8.7 Suggested responsibilities of the collective Cabinet are set out in Appendix C.

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Background Documents: None

Appendix A

Responsibilities of all Cabinet Members

Preamble

The following are the general responsibilities which apply to all Cabinet Members, and the specific responsibilities which apply to individual Cabinet Members. These responsibilities include various functions which are delegated to each Cabinet Member to discharge.

These responsibilities and delegations form part of the Council's Executive Arrangements.

In discharging these functions, the Cabinet Member must act lawfully. This means that he or she must act within the scope of the authority that is delegated in accordance with any limits within the delegation, this Constitution, Council policies, Procedure Rules and the Members' Code of Conduct, taking advice of the Monitoring Officer and the Section 151 Officer.

There are occasions when matters affect more than one portfolio of responsibility. On such occasions, the Cabinet Members concerned shall act in conjunction with one another.

Each Cabinet Member is responsible for:-

1. The proper administration of the Council's services.
2. Ensuring adequate staffing, premises and other resources to secure agreed standards and target outcomes within the scope of their portfolio.
3. The efficient use and day to day maintenance of Council premises insofar as it relates to their portfolio.
4. Ensuring budget control and financial monitoring within the scope of their portfolio.
5. Approving use of specific grants and/or funding from non-governmental sources, and any annual delivery plans and agreements in relation to such funding.
6. The continuous improvement of the Council's services through a programme of work.
7. Liaising with the relevant Council Scrutiny Committee.
8. All decisions proposed and made within the responsibility of the Cabinet Member's portfolio.
9. The promotion of the Council's policies and communication with the public as appropriate through local and other media, ensuring always

that publications are compliant with the Council's publications, guidelines and/or any advice provided by the Borough Solicitor.

10. The promotion of the Council's existing policies.
11. Speaking up on matters of local concern and acting as the main Council spokesperson on issues within the scope of their portfolio..
12. Where permitted by the Procurement and Financial Procedure Rules, approving exemptions to those Rules in conjunction with the Borough Solicitor and Section 151 Officer.
13. Giving approval to proceed to advertisement or other method of securing competition in accordance with Procurement and Financial Procedure Rules; and for inviting and accepting tenders and quotations related to matters within their portfolio in excess of [add monetary value] and approving all specifications/tender documentation.
14. Applying for planning permission, conservation area consent, listed building consent or any other permissions or consents necessary to progress the Council's own development schemes.
15. In conjunction with the relevant officer of the Council, setting new external charges and revisiting current ones.
16. In consultation with the Leader, representing and acting as an ambassador for the Council.
17. Representing the Council's views on matters of corporate or strategic policy and any other matters which are within the scope of their portfolio.
18. Request or commissioning research and other studies on any matters of policy or service provision within the scope of their portfolio..
19. Appointing or nominating the Council's representatives on outside bodies/organisations that fall within the scope of their portfolio..
20. Taking up corporate Membership of any appropriate body or organisation whose objectives are considered to be beneficial to the pursuit of the Council's activities.
21. Taking urgent decisions on matters which fall within the scope of their portfolio..
22. Working with other Cabinet Members on matters, as directed by the Leader.
23. Ensuring appropriate consultation and liaison with partners and the community on matters within the scope of their portfolio.

24. Leading on energy savings and reduction in carbon emissions on matters within the scope of their portfolio.

25. Submitting to the Cabinet:-

- Proposals on how to agree annual budget allocations between services covered within the scope of their portfolio.
- Recommendations in respect of strategic policy concerning matters covered within the scope of their portfolio.
- All responses to consultation papers, relating to matters within the scope of their portfolio., issued by the Government and outside organisations
- Annual estimates of expenditure and income in respect of services within the scope of their portfolio.
- All policy and/or operational matters which have corporate implications or which cross the remits of other individual Cabinet Members.

26. Overseeing the timely progress of Service reviews, and adopting and reviewing Service Plans within the scope of their portfolio..

Responsibilities of Leader

- To Chair the Cabinet.
- To select the Cabinet Members and determine their Portfolios of responsibility **[this assumes “Strong Leader” model]**.
- To represent and act as ambassador for the Authority.
- To have overall responsibility for;
 - policy development and design
 - Ministerial and Members of Parliament/European Parliament liaison
 - and act as Head of Cabinet.
- To represent the Council's views on matters of corporate or strategic policy and any other matters which are within the Leader's terms of reference.
- To request or commission research and other studies on any matters of policy or service provision within these responsibilities.
- To submit to the Cabinet:
 - all policy and/or operational matters which have corporate implications or which cross the remits of the individual Cabinet Members
 - any matter which crosses the portfolio of more than one Cabinet Member, and which cannot be resolved, to the Cabinet for decision
- To prepare and publish a Forward Plan of Key Decisions.
- To present to the Council "state of the Borough" reports and to be responsible for related debates. **[Meets the objective of having debates/similar events which engage the public]**

- To consider, and forward to the Standards Committee, reports from the appropriately designated independent person(s), to investigate allegations of misconduct against the Council's Head of Paid Service and Directors **[Needs to be checked against Regulations]**
- To provide appropriate and timely Cabinet responses to Scrutiny Committee recommendations and to monitor the implementation of those responses

Responsibilities of Adult Services Portfolio Holder (and Deputy Leader)

The Deputy Leader is deputy head of the Cabinet and, as such, deputises for the Leader in respect of all the Council's affairs.

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Adult Services Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, the Portfolio Holder has individual responsibility to make all **[this needs to be qualified by exclusion of those decisions made by officers]** decisions in respect of the following matters:

- Reablement
- Support to Informal Carers
- Community Equipment
- Occupational Therapy
- Assistive Technology
- Mobile Meals
- Respite and Short Breaks
- Family Based Care
- Domiciliary Care
- Residential Care
- Nursing Home Care
- Extracare housing
- Supported Employment
- Sensory Impairment Services
- Safeguarding Adults
- HIV/Aids
- DAAT Services
- Domestic Violence service
- Equality in service access and delivery
- Liaison with NHS Trusts and Health authorities

- Adult Social Care
- Mental Health and Disability
- Health Promotion
- Development of Integrated Services with Health Partners
- Strategy for Responding to Health Inequalities
- Welfare Rights
- Community Legal Service

Responsibilities of Children and Family Services Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Children and Family Services Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, the Portfolio Holder has individual responsibility to make all **[this needs to be qualified by exclusion of those decisions made by officers]** decisions in respect of the following matters:

- Early Years
- Education, including:
 - School organisation and inclusion
 - Special educational needs
 - School development and improvement
 - School finance buildings (including Capital Monitoring of school project) and catering
 - Building Schools for the Future Programme
 - Maintenance and management of Children's Play Areas
- Children's social care and wellbeing
- Joint use sports and community schemes at schools;
- Youth Services
- Lifelong Learning
- Family Services
- Conway Centre
- In respect of safeguarding children to;
 - ensure that the Council gives appropriate priority to safeguarding children coherently and consistently in service planning and resource allocation
 - ensure the Council appoints an Executive Director to carry social services responsibilities and ensure that the Cabinet receives advice from him/her on all relevant matters
 - Ensure all communities are equally served in this regard.
- Liaison with NHS Trusts and Health Authorities
- Mental Health and Disability
- Health Promotion
- Development of Integrated Services with Health Partners

- Strategy for Responding to health Inequalities
- Looked-after Children
- **[Management of Connexions Service?]**

Responsibilities of Health and Wellbeing Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Health and Wellbeing Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, the Portfolio Holder has individual responsibility to make all **[this needs to be qualified by exclusion of those decisions made by officers]** decisions in respect of the following matters:

- Sport
- Archives
- Parks and Recreation
- Children's Play
- Public Health promotion
- Health improvement
- Cultural Services, including:
 - Arts
 - Events
 - Museums
 - Libraries
 - Countryside
 - Tourism

Key dependencies where lead is a different Portfolio Holder:

- Tatton Park
- Joint use sports

Typical Responsibilities of Environmental Services Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Environmental Services Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, the Portfolio Holder has individual responsibility to make all **[this needs to be qualified by exclusion of those decisions made by officers]** decisions in respect of the following matters:

- Streetscene
- Highways Operational Management including:
 - Management of Highways Register
 - Highways Design, Maintenance, Parking and Decriminalisation of Parking Enforcement
 - Street Lighting, Signals and Signing
 - Traffic Management and Road Safety
 - Civil Engineering and Transport Operations
- Climate change
- Domestic and Commercial Waste collection and Disposal
- Waste PFI
- Markets
- Bereavement services
- Health and Safety Enforcement
- Local Agenda 21
- Recycling
- Environmental cleansing and Street Cleaning
- Bulk Waste and Clearance

Key dependencies where lead is a different Portfolio Holder:

- Parks and other open space maintenance
- Contaminated land
- Public rights of way maintenance

Responsibilities of Prosperity Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Prosperity Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, the Portfolio Holder has individual responsibility to make all **[this needs to be qualified by exclusion of those decisions made by officers]** decisions in respect of the following matters:

- Strategic highways
- Local Transport Plan
- Strategic Public Transport Issues

- Economic development
- Development management
- Public and Private Sector Housing Strategy and Provision
- Homelessness
- Tourism
- Tatton Park
- Contaminated land
- Industrial and commercial activities
- New deal and other employment initiatives
- Credit Union and co-operatives development

Key dependencies where lead is a different Portfolio Holder:

- Extracare housing
- Local Development Framework

Responsibilities of Safer and Stronger Communities Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Safer and Stronger Communities Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, the Portfolio Holder has individual responsibility to make all **[this needs to be qualified by exclusion of those decisions made by officers]** decisions in respect of the following matters:

- Civil protection/ emergency planning
- Third sector and community delivery
- Youth offending team
- Crime reduction including CDRP and police/emergency services liaison
- Anti social behaviour reduction including drug abuse and domestic violence
- Community safety wardens
- CCTV
- Trading standards
- Registration services
- Licensing
- Reviewing fares and Licensing Fees
- Environmental Health
- Food safety
- Air Pollution control and monitoring
- Environmental enforcement

- Contaminated land
- Pest and Vermin Control
- Dog wardens
- Cremation and Burial Services
 - Overall responsibility for monitoring all enforcement activity
[does this conflict with Health and Safety Enforcement][see Environment Portfolio]

Key dependencies where lead is a different Portfolio Holder:

- Neighbourhood working implementation
- Domestic Violence

Responsibilities of Resources Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Resources Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, the Portfolio Holder has individual responsibility to make all **[this needs to be qualified by exclusion of those decisions made by officers]** decisions in respect of the following matters:

- Finance
- Finance service responsibility
- Construction of annual budget
- Treasury Management
- Capital Programme
- Revenues and Exchequer functions, including Benefits
- Revenues and benefits
- HR Strategy
- Transactional HR
- Liaison with employees, organisations and unions
- Organisational Development
- Employee training and development
- Occupational Health
- Corporate Health and safety
- Legal and Democratic Services
- Civic matters
- Electoral Services
- Member Training and Development
- ICT, including internet and ICT monitoring

To submit to the Cabinet:

- proposals on how to agree annual budget allocations between services;
- annual estimates of expenditure and income ;
- proposals on how to agree annual budget allocations between services covered by these terms of reference;
- annual estimates of expenditure and income in respect of services covered by these terms of reference.

In respect of the Council's budget and Council Tax:

- to make recommendations for the proper administration of the Authority's financial affairs;
- to consider the Authority's revenue and capital estimates and to make recommendations on the levels of Council Tax for submission to the Council;
- to consider and make recommendations annually to the Council on the calculation of the Council Tax base.

To consider and make recommendations to Council in respect of the final accounts and balance sheets of the Council and the Annual Reports on the accounts prepared by the relevant officers.

Key dependencies where lead is a different Portfolio Holder:

- Audit

Responsibilities of Procurement, Assets and Shared Services Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Procurement, Assets and Shared Services Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, the Portfolio Holder has individual responsibility to make all **[this needs to be qualified by exclusion of those decisions made by officers]** decisions in respect of the following matters:

- Property services including county farms
- Corporate Landlord function in respect of all Council property
- Council Property functions including:
 - Council land policy, usage, sales, valuations
 - Markets and vending facilities
 - Facilities management and the allocation of office space.
 - Architectural and design services
 - The Council's conference facilities and allied establishments
 - Security of Council buildings
 - Accessibility within Council buildings

- Cheshire Business Services
- Pensions
- Procurement including subregional hub
- External funding
- European Unit
- Shared services and delivery models
- Procurement and Contract Monitoring of External Providers
- Resource Procurement, SRB, European and Lottery Funding

Key dependencies where lead is a different Portfolio Holder:

- PFI procurement
- E-procurement

Responsibilities of Performance and Capacity Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Performance and Capacity Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, the Portfolio Holder has individual responsibility to make all **[this needs to be qualified by exclusion of those decisions made by officers]** decisions in respect of the following matters:

- Performance Management and Transformation
- Research and Intelligence
- Customer Access/Services
- Community Plan/Community Strategy
- Third sector and community development
- Local Strategic partnership
- Corporate Plan
- LDS
- Area and neighbourhood working
- Communications, market research and public opinion surveys
- Consultation
- Audit
- Risk management and insurance
- Equality and diversity
- Oversee the Comprehensive Performance Assessment
- The Council's work in respect of the Local Strategic Partnership
- Policy Unit

- Customer Complaints and Responses
- Marketing and Publicity
- Printing and Design
- Business Planning
- Major Policy Development

To submit to the Cabinet:

- recommendations in respect of strategic policy for the Council
- recommendations in respect of the Council's Corporate Plan
- all responses to consultation papers, relating to these terms of reference, issued by the Government and outside organisations
- recommendations in respect of strategic policy concerning matters covered by these terms of reference

Key dependencies where lead is a different Portfolio Holder:

- Organisational development
 - External Funding/European Unit
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Appendix B

DRAFT OUTLINE FOR DECISION MAKING INDIVIDUAL CABINET MEMBERS

Individual Cabinet Members are empowered to make all executive decisions in respect of their own portfolio area of responsibility **except**

- Those decisions delegated to an officer (unless the officer refers the decision to the executive member)
- Where the decision is a Key Decision as defined in this Constitution.
- A decision or recommendation on strategy or policy
- A decision that is a departure from any agreed Corporate objective or the approved Budget
- Where the Leader (before a decision has been taken) requires the decision to be taken collectively by the Cabinet
- A decision which any Cabinet Member has asked to be taken collectively by the Cabinet

The decisions must be made in discussion with one or more of the following as appropriate:

- Chief Executive
- Appropriate Director or Head of Service
- Monitoring Officer
- Chief Finance Officer
- Where there are minor cross-cutting implications - other appropriate Portfolio Holder(s)

The Executive Member must take into account professional, legal and financial implications.

If any of the above officers give advice that the decision would fall within one of the exceptions above then it shall be a decision for the Cabinet acting collectively.

Where it is not clear in which Portfolio an issue sits, the Leader shall decide.

Decisions must be recorded on a form, countersigned by one of the above officers that professional advice has been given and that legal and financial implications have been made known. In the case of key decisions the reasons for the decision must be identified. The advising officer must keep a record of the decisions he/she has countersigned and a copy of the form sent to the Democratic Services team. The decision will be published electronically and members may exercise call-in in the same manner as for a full executive decision.