

CHESHIRE EAST COUNCIL

Governance and Constitution Committee

Date of meeting: 16 April 2009
Report of: Borough Solicitor
Title: Cabinet Decision-Making Arrangements

1.0 Purpose of Report

1.1 To finalise individual decision-making powers for Cabinet Members and to note the process for individual Cabinet Members making decisions.

2.1 This report was considered by the Cabinet on 24 March 2009. The decisions of the Cabinet are reported under paragraph 9.7.

2.0 Recommendations

2.1 That Governance and Constitution Committee recommend to Council that

(1) the provisions set out in paragraph 8.2 of this report be adopted in respect of individual Cabinet Member decision-making;

(2) the extra provision regarding Key Decisions referred to in paragraph 8.4 be rescinded; and

(3) these arrangements be incorporated into the Council's Constitution as appropriate.

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 proposals in this report depend on Cabinet Members making decisions in public. Were this not to be the case, the matter would have to be revisited.

6.0 Risk Assessment

6.1 Having clearly documented decision-making arrangements will minimise the risk of legal challenge.

7.0 Background/Context

- 7.1 Local authority decisions are taken either by the Council or by the executive (the Cabinet). The division of functions is determined by law. Executive functions may be delegated to an individual Cabinet Member (Portfolio Holder), a committee or sub-committee of the Cabinet or an officer.
- 7.2 Previous attempts to define individual decision-making powers for Cabinet Members have resorted in part to the definition of a Key Decision, as contained in paragraph 8 of Part III of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000. This is:

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.

8.0 Alternative Approach to Individual Decision-Making

- 8.1 The existing scheme for individual decision-making by Cabinet Members requires further clarification. Members have found the concept of a 'Key Decision' difficult to interpret and confusing. It is therefore suggested that we do not attempt to redefine it and adopt simpler categories.
- 8.2 It is suggested that the Constitution be amended to empower individual Cabinet Members to make all executive decisions in respect of their portfolio areas except:
- (a) Decisions already taken by Cabinet or an officer acting under delegated powers.
 - (b) Decisions involving a departure from the Council's Budget and Policy Framework or any Cabinet or regulatory committee policy.
 - (c) Decisions involving expenditure or savings of £1 million or more.
 - (d) Decisions which are significant in terms of their effect on communities living or working in an area comprising two or more wards or electoral divisions in the area of the Council.

(e) Decisions which the leader wishes to be taken by full Cabinet.

PROVIDED THAT all such decisions shall be taken in public and that regard shall be had to the advice of the Borough Solicitor by the decision-maker in interpreting these provisions.

8.3 It should be noted that expenditure of under £1 million could still technically be significant in terms of its effect on local communities and Members might therefore wish to abandon exemption (d) on the basis that the scale of the operations of a large unitary council make this less relevant. Individual Members might still wish to refer such decisions to full Cabinet as a matter of commonsense.

8.4 The Council has previously resolved to include the following provision in respect of Key Decisions. This provision was taken from the County Council's Constitution.

"The Council has decided that the letting of any contract by the Council's [Business Services Officer] or the Council's [Policy Officer], which involves the provision of services to, or the purchase of goods and services by, the Council shall be excluded from the definition of a Key Decision where such contracts relate mainly to the internal workings of the authority and do not therefore have a significant impact directly on local communities in the same way as other Key Decisions. Such contracts include advertising, library books, vehicles, consumables, food, gas, electricity and cleaning of Council premises."

However, on further consideration, this provision is flawed. Significant expenditure on internal matters can still be a Key Decision because it is significant with regard to the budget or service.

8.5 Under the Constitution, Officers have delegated powers to take decisions up to specified financial thresholds. Any decisions exceeding these thresholds would be referred to individual Portfolio Holders or to full Cabinet as appropriate. It is therefore suggested that the exemption in paragraph 8.4 be rescinded.

9.0 Public Decisions by Individual Cabinet Members

9.1 The Cabinet, at its meeting on 6 January, approved outline arrangements for decision-making by individual Cabinet Members. These included arrangements for consultation with key Officers and for the recording of decisions. However, the question of whether such decisions should be taken at formal public meetings was left open, as was the question of participation by non-executive Members.

9.2 Full Cabinet meetings are held in public except during the consideration of confidential or exempt information. It is suggested that individual Portfolio Holders also take their decisions at formally constituted public meetings. This would serve to demonstrate that the new Council was open, inclusive and accountable, and would also ensure a consistent approach to all executive decision-making by

Members. It would furthermore enable non-executive Members to participate more fully in the democratic process by attending and contributing to such meetings.

- 9.3 It is suggested that as with full Cabinet, the relevant scrutiny chairman/spokesmen for the portfolio in question be entitled to attend such meetings and speak on any matter on the agenda. Members may wish to extend similar rights to any local Members whose areas are affected by a particular decision on the agenda for a meeting. In addition, as with full Cabinet, any other Member of the Council would have a right to attend any formal meeting and, with the permission of the person presiding, speak on an item. Agendas and reports would be produced for Cabinet Member meetings in the usual way and relevant Officers would be in attendance. Following the meeting, the decisions would be published on the Council's website.
- 9.4 It is proposed that scheduled meetings for individual Cabinet Members be included in the calendar of meetings. It may be possible to group some individual Members together for this purpose where there is a close relationship between portfolio areas. For instance, at the County Council, the two Executive Members responsible for Planning and Waste and for Highways and Transportation attend an 'Environment Executive' meeting.
- 9.5 There would also be no reason why individual Cabinet Members should not be able to take their individual decisions at meetings of the full Cabinet. This would be useful in those circumstances where a decision could not await the next scheduled meeting of the Portfolio Holder and a full Cabinet meeting was imminent. Such arrangements currently operate at the County Council and provide greater flexibility. The alternative approach would simply be to take the matter to full Cabinet for collective decision. It is suggested that both approaches be allowed in order to provide maximum flexibility in decision-making.
- 9.6 If Members decided not to adopt public decision-making, the more generous formula in section 8 would have to be revisited because of the implications for Key Decisions.
- 9.7 The Cabinet on 24 March 2009 approved the recommendations set out in paragraph 2.1 of this report. The Cabinet did not agree to remove exemption (d) in paragraph 8.2 as suggested in paragraph 8.3. The Cabinet also approved the arrangements for public decision-making by individual Cabinet Portfolio Holders as set out in paragraphs 9.1-9.5, to be implemented with effect from 1 April 2009. These latter arrangements are included in this report for information only.

10.0 Reasons for Recommendation

- 10.1 To determine the arrangements for Cabinet decision-making within the Cheshire East Council from 1 April 2009.

For further information:

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Background Documents: None