

Municipal Year 2016/17 Report No.249

MEETING TITLE AND DATE:

Council
6th April 2017

Members & Democratic
Services Group
1st March 2017

REPORT OF:

Executive Director of Finance,
Resources & Customer
Services

Agenda - Part: 1

Item: 9

Subject:

Reference from Members & Democratic Services Group: Review of the Council's constitution and removal of the term 'Big Decisions'

Wards: N/A

Cabinet Member consulted: None

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1. Executive Summary

- 1.1 Part 2, Chapter 2.4 of the Council's constitution 'Purpose of the Council', refers to the Council making all "Big decisions" about the Council's services and functions and the policies and strategies within which they operate. This is not a term which is used in the Local Government Act 2000 and Local Authorities (Functions and Responsibilities) Regulations 2000 which introduced a clear split between Executive and Council decision making.
- 1.2 If the wrong body within the Council takes a decision, then there is real potential that the decision could be challenged and found ultra vires. The Member and Democratic Services Group agreed to the textual change, it is therefore proposed that the term "Big Decisions" is removed from the constitution.
- 1.3 To ensure that the constitution is maintained effectively, Council as asked to delegate authority to the Monitoring Officer (MO) to make minor and/or necessary amendments to the constitution to ensure that it complies with the law, and is up to date. Any changes would then be communicated to all members.

2. Recommendations:

- 2.1 Council is asked to consider and formally approve the following recommendations, referred from the Members & Democratic services Group (MDSG):
- 2.2 That the term 'Big Decisions' is removed from the text of the Purpose and functions of Full Council, as set out below, but the detailed breakdown of the functions remains the same as detailed in Chapter 2.4 section 4.3.
- 2.3 That authority is delegated to the Monitoring Officer to make minor and/or necessary changes to the Constitution, including administrative changes and those required by law. This authority shall be subject to clearance of the proposed changes, either at a meeting or by correspondence, by the MDSG.
- 2.4 If any such amendment to the constitution is not agreed by MDSG (as recommended in 2.3 above), the amendment will be referred to Full Council for consideration as set out in Chapter 2.12 of the Constitution.

3. BACKGROUND

3.1 REVIEW AND REVISION OF THE CONSTITUTION

3.1.1 The council's current approach to any amendments to the constitution are that all changes to the constitution must be referred to full Council. Most authorities within their articles for review and revision of the constitution delegate authority to the Monitoring Officer to make minor revisions in order that the constitution is up to date with any legislative changes, and therefore complies with the law, and to pick-up any administrative or structural changes to ensure the constitution is maintained effectively.

3.1.2 MDSG agreed to make provision within the constitution for the MO to do this.

3.2. BIG DECISIONS

3.2.1 Part 2, Chapter 4.2 of the constitution refers to the purpose of the Council, it states that the Council will make all the "big decisions" about the Council's services and functions and the policies and strategies within which they operate.

3.2.2 Big decisions are defined within the constitution as "all policy proposals which fall outside the Councils agreed policy framework. The Council will make decisions which it considers have significant community interest and or impact. The Cabinet and Councils Management Board will bring

these matters to the attention of the Council.”

3.2.3 External legal advice has confirmed that “Big decisions” is not a term which is used in the Local Government Act 2000 and Local Authorities (Functions and Responsibilities) Regulations 2000 which introduced a clear split between Executive and Council decision making

3.2.4 Most decisions rest with the Executive; and are to be exercised by the Leader and Cabinet, and often these are delegated to officers. There are some decisions which are specifically reserved to Council e.g. setting the Council Tax and regulatory type decisions dealing for example with licensing and development control- usually delegated by Council to Committees, and again sometimes to officers. Part 3 of the Constitution sets out the main responsibility for functions and how these are currently split between the Council, Executive and local choice functions. The relevant extract has been attached for member’s information as Appendix A.

3.2.5 If the wrong body within the Council takes a decision then there is real potential that the decision could be challenged and found ultra vires.

3.2.6 Whilst Council clearly have a role in agreeing the overall policy framework, policy decisions regarding the way in which services are provided are treated under the legislation as matters for the Executive. It is therefore recommended that the term and definition “big decision” be removed from the constitution with the following sections replaced as follows:

(a) Chapter 2.4 - 4.1 (a) “exercise the functions reserved to it within section 4.3 and as required under the Council’s Financial Procedure Rules”

(b) Part 3 section 3.4 Scheme of Delegation delete reference to Big Decisions and replace with “Matters listed under purpose and functions of Council”

3.2.7 The rest of the functions remain the same.

4. ALTERNATIVE OPTIONS CONSIDERED

None.

5. REASONS FOR RECOMMENDATIONS

A key role for the Assistant Director, Corporate Governance & Legal Services is to be aware of the strengths and weaknesses of the Councils constitution, and to ensure that its aims and principles are given full effect.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

a. Financial Implications

Any changes required to the Constitution will be undertaken within existing resources

b. Legal Implications

The Council may only do what it is empowered or required to do by statute, whether expressly or by necessary implication. This means that the Council must make decisions that lie within the requirements of its governing legislation. If the Council carries out an unauthorised activity, including the manner in which powers and duties are exercised, that decision is potentially ultra vires. The recommendations set out in this report will help secure lawful decision-making and promote strong governance.

The Local Authorities (Functions and Responsibilities) Order 2000 sets out the division between Council and Executive decision-making and where responsibility for decision-making rests. The Local Government Act 2000 provides that, unless a matter is specifically reserved to the Council, or is a matter of local choice, it is a matter for the executive. This is the default position. Some matters are specifically reserved to Council, for example setting the Council tax and regulatory functions. There is some flexibility in determining how to discharge local choice functions, which may be exercised by either the executive or the Council.

The functions, rights and powers of the Council are set out in the Council's Constitution at Part 2, Chapter 2.4. The Council's Constitution currently refers to 'big decisions'. Paragraph 4.1(a) of the Council's Constitution sets out that the Council will 'make all the 'big decisions' about the Council's services and functions and the policies and strategies within which they operate'.

It is the legal position - as set out in the legal framework above - which governs whether functions are matters for the Council or the Executive, regardless of the size or level of importance of a decision. There is no legal definition of 'big decisions'. If any provisions of the Constitution are in conflict with the legislation, the legislation will prevail. The proposed amendment to the Council's Constitution will provide clarity to the Council's decision-making process and help secure lawful decision-making.

The Council is under a statutory duty to prepare and keep up to date its Constitution under s9P LGA 2000. The recommendation to delegate authority to the Monitoring Officer to make minor and/or necessary

changes is a lawful exercise of the Council's powers and will help secure compliance with its statutory obligation.

c. Property Implications

None

7. KEY RISKS

If the wrong body within the Council takes a decision then there is real potential that this can be challenged and the decision would be ultra vires, and this could obviously cause serious problems for the Council.

8. IMPACT ON COUNCIL PRIORITIES

Fairness for All, Growth and Sustainability, Strong Communities

The changes proposed are designed to ensure that the Council's Constitution remains clear in order to assist the Council in managing its business in as efficient and effective a way as possible.

9. EQUALITIES IMPACT IMPLICATIONS

An equalities impact assessment is neither relevant nor proportionate for the approval of this report.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

None

11. PUBLIC HEALTH IMPLICATIONS

None

Background Papers

None