

Report of City Solicitor

Report to Executive Board

Date: 22nd April 2020

Subject: Decision Making Arrangements During Coronavirus Pandemic

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has consultation been carried out?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary

1. Main issues

- This report sets out arrangements made to enable publication and recording of officer decision making during the Coronavirus pandemic.

2. Best Council Plan Implications (see the [latest version of the Best Council Plan](#)) **and Resource Implications**

- The arrangements detailed in this report enable best use of officer resources available during the pandemic to meet urgent service delivery needs, whilst ensuring that decision making remains transparent and open to democratic oversight and scrutiny.

Recommendations

- a) Executive Board are requested to
- Note the arrangements set out for officer decision making during the course of the coronavirus pandemic;
 - Retrospectively endorse the decisions taken during the period between 16th March and 6th April set out in Appendix D attached; and
 - Exempt this decision from call in for the reasons set out in this report.

1. Purpose of this report

- 1.1 This report sets out arrangements made to enable publication and recording of officer decision making during the Coronavirus pandemic.

2. Background information

- 2.1 Appendix A attached sets out the statutory and constitutional provisions relevant to the arrangements detailed in this report.

3. Main issues

- 3.1 The Director of Resources and Housing, City Solicitor and Chief Finance Officer have considered the legislative and constitutional requirements in relation to oversight and recording of officer decision making and the way in which arrangements can be made to ensure that officers are able to act in an agile and responsive way to ensure the continued delivery of key services within the city; to facilitate best use of resources and partnership working to meet the needs of the council and the city; to protect Members, staff, partners and citizens during the course of the Coronavirus pandemic; and to ensure that arrangements for decision making remain lawful and robust.

Officer delegations

- 3.2 Directors derive their authority to take decisions through the Officer Delegation Scheme set out in the Constitution. In turn each Director sub-delegates that authority to officers of suitable experience and seniority through their sub-delegation scheme. Schemes may reserve some decisions to the Director but provide for decisions to be taken in their absence on leave (including annual leave, sick leave and special leave.)
- 3.3 Each Director has amended their scheme in the following terms:
- 3.4 “Strictly in exceptional circumstances, such as a global pandemic, where officers with the requisite delegations are incapacitated or absent, functions may be exercised by any officer within the council with suitable experience and seniority who has been appropriately briefed and has sufficient understanding of the matter to be decided”
- 3.5 These arrangements will only be used in extremis but will enable business continuity in the event that the council or directorate’s human resources are significantly compromised by the pandemic.

Emergency Government Funding

- 3.6 The Government has made £22M available to the Council to spend in meeting the Coronavirus emergency.
- 3.7 The Director of Resources and Housing, in discharge of his delegated authority in relation to the council’s citywide resilience and emergency planning functions, approved a key decision giving authority to spend the full amount in accordance with the purposes for which it has been given. All decisions which flow from that will be considered a direct consequence of that authority to spend and treated as significant operational decisions.

- 3.8 The decision was taken under the statutory special urgency provision and was taken with the agreement of the Chair of the Scrutiny Board (Resources) that the decision was urgent and could not be delayed. However all Scrutiny Chairs were briefed in relation to the decision and received assurance that they will be briefed weekly on those decisions which flow as direct consequences in relation to matters within their remit.

Reporting of key decisions

- 3.9 In the normal course of events officer Key Decisions are recorded on the same template used for committee reports across the council, and published alongside a delegated decision notice which gives formal notification of the decision made. However completion of these reporting arrangements is heavily dependent on officer time and resource and is impracticable to achieve in the current circumstances as staff and resource are flexibly deployed to meet the requirements of service provision through the pandemic.
- 3.10 Taking into account the legislative requirements and the provisions of the Constitution the City Solicitor has therefore prepared a shortened form (attached at Appendix B) for reporting key decisions taken by officers. This provides a simplified format, meeting the statutory requirements for reporting whilst setting out relevant considerations in making each decision and capturing arrangements for transparency and political oversight.
- 3.11 This form meets all legal requirements for recording of key decisions.

Key Decisions Relating To Pandemic Emergency

- 3.12 The statutory provisions relating to key decisions require that notice of the proposed decision is published 28 clear calendar days in advance of the decision being taken. Where the decision is required to be taken earlier the statutory General Exception procedure allows the decision to be taken after five clear working days' notice. Where even this is impracticable the decision can be taken immediately under the statutory Special Urgency procedure with the agreement of the relevant Scrutiny Chair that the decision is urgent and cannot be deferred.
- 3.13 Given the pace and volume of decisions being taken in response to the Coronavirus pandemic it may be impracticable to obtain individual approvals in respect of each decision in respect of Special Urgency. This could have serious consequences for the council and the city.
- 3.14 The Scrutiny Board Chairs have therefore given their combined agreement that all key decisions taken in relation to the emergency response to and in consequence of the Coronavirus Pandemic are of 'Special Urgency' and can be taken forthwith. In so doing the Scrutiny Chair's drew reassurance from the commitment that officers would use their best endeavours to brief Scrutiny Chairs ahead of urgent decisions, and that Directors would provide weekly briefings in respect of any decisions taken under this overarching consent. The approval is time limited and will be reviewed on or before 4th May 2020. A copy of the approval is attached as Appendix C to this report.
- 3.15 There is no proposal to seek any overarching exemption from call in arrangements. Instead individual decision makers will take the decision in relation to each decision and record the reasons for any exemption on the decision itself.

Key Decisions Relating to Business as Usual

- 3.16 Key decisions which are not taken in relation to the emergency response or in consequence of the pandemic will remain subject to the usual requirements in relation to prior publicity and oversight.
- Each decisions will be published to the List of Forthcoming Key Decisions (and a link circulated to all Members) not less than 28 days before the decision is taken unless
 - The decision fits the statutory General Exception – in which case notice will be published 5 clear days in advance of the decision being taken (and circulated to all Members); or
 - The decision fits the statutory criteria for Special Urgency – in which case the relevant Scrutiny Chair will be asked to agree that the decision is urgent and cannot be delayed.
 - The short form report setting out each decision will be published five clear days in advance of the decision being taken.
 - The decision will be open for call in – unless exempted by the decision maker for reasons set out in the report.

Reporting Of Significant Operational Decisions

- 3.17 The recording of Significant Operational Decisions taken by officers is also achieved by the combined publication of Delegated Decision Notice and formal supporting report. This is required to take place as soon as reasonably practicable after the decision has been taken.
- 3.18 Taking into account the legislative requirements and the provisions of the Constitution it is proposed that arrangements are made for the batch publication of Significant Operational Decisions by each Director on a weekly basis in order to ensure that the council maintains transparency in relation to decision making whilst ensuring administrative resource can be directed to priority services.
- 3.19 Each Director will publish weekly reports bringing together all Significant Operational Decisions taken in pursuance of their delegated authority in one schedule. This schedule will form the Council's published record of these decisions, and will be shared with Scrutiny Board Chairs alongside their weekly briefings.

Retrospective Endorsement of Decisions

- 3.20 It has been recognised that in the early days and weeks of the emergency a number of decisions have been taken by officers seeking to give effect to government guidance and to enable the Council's emergency response. Given the pace and volume of decisions taken it was not possible to formally record all of those decisions as they were taken.
- 3.21 The Council prides itself on being open, honest and trusted and strives to take a transparent approach to decision making. It is therefore important to use best efforts to bring together a record of those decisions taken during the emergency response period.
- 3.22 The Schedule attached at Appendix D of this report set out the decisions which have been identified as having been taken within each Directorate in the period from 16th March to 6th April. Executive Board are asked to note the information provided and retrospectively endorse the decisions taken.

- 3.23 It is recognised that this schedule provides high level information, and that it may be incomplete. Further work will continue to identify any additional decisions taken during this period and these will be reported to executive board as soon as practicable when that work is complete.
- 3.24 This schedule, and details of any further decisions identified, will be shared with Scrutiny Chair's and opportunity given for discussion in regular weekly briefings with Directors.

Monitoring and Review

- 3.25 Arrangements have been made to ensure that there will be regular liaison between officers representing the Chief Finance Officer, the Monitoring Officer and Director's governance support to ensure that these arrangements are communicated and routinely complied with.
- 3.26 The arrangements set out above will be the subject of continuous review by the City Solicitor, in consultation with the Chief Finance Officer to ensure that they remain necessary, appropriate and fit for purpose.

4. Corporate considerations

4.1 Consultation and engagement

- 4.1.1 Arrangements are set out in the body of the report.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 There are no implications for this report.

4.3 Council policies and the Best Council Plan

- 4.3.1 The arrangements detailed in this report enable best use of officer resources available during the pandemic to meet urgent service delivery needs, whilst ensuring that decision making remains transparent and open to democratic oversight and scrutiny

Climate Emergency

- 4.3.2 There are no implications for this report

4.4 Resources, procurement and value for money

- 4.4.1 Decisions taken by officers will continue to fulfil usual requirements in relation to Contracts Procedure Rules and Financial Regulations and the requirement to ensure value for money.

4.5 Legal implications, access to information, and call-in

- 4.5.1 See Annex A for relevant statutory provisions.
- 4.5.2 The provisions set out in the Executive and Decision Making Procedure Rules and in the Access to Information Procedure Rules, and the arrangements made and detailed in this report to meet those Rules during the course of pandemic are compliant with these requirements.

- 4.5.3 The decision set out in this report was published to the List of Forthcoming Key Decisions on 6th April 2020. This decision is being taken under the General Exception set out in Executive and Decision Making Procedure Rule 2.5 as it is impracticable to defer the arrangements set out and decisions taken in response to the emergency.
- 4.5.4 It is recommended that this report is exempt from call in in accordance with Rule 5.1.3 of the Executive and Decision Making Procedure Rules. Decisions taken include measures to promote and secure public health, to provide help and assistance to vulnerable citizens and to provide support to local business and industry. To delay or pause the implementation of these would have potential to seriously prejudice the interests of both the council and the public.

4.6 Risk management

- 4.6.1 The arrangements described will ensure that officers are able to respond at pace to the risks presented by the coronavirus pandemic.

5. Conclusions

- 5.1 The Director of Resources and Housing, City Solicitor and Chief Finance Officer have considered the legislative and constitutional requirements in relation to oversight and recording of officer decision making and proposed arrangements to ensure that officers are able to act in an agile and responsive way to ensure the continued delivery of key services within the city, to facilitate best use of resources and partnership meeting to meet the needs of the council and the city, and to protect Members, staff, partners and citizens during the course of the Coronavirus pandemic.
- 5.2 The arrangements set out will be the subject of continuous review by the City Solicitor to ensure that they remain necessary, appropriate and fit for purpose.

6. Recommendations

- 6.1 Executive Board are requested to

- Note the arrangements set out for officer decision making during the course of the coronavirus pandemic;
- Retrospectively endorse the decisions taken during the period between 16th March and 6th April set out in Appendix D attached; and
- Exempt this decision from call in for the reasons set out in this report.

7. Background documents¹

- 7.1 None

¹ The background documents listed in this section are available to download from the council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.