

COUNCIL

21 JANUARY 2016

SHARED SERVICE: INTERNAL AUDIT AND COUNTER FRAUD – USE OF URGENCY POWERS

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Summary

This report details decisions taken by the Cabinet and the Chief Executive under the urgency provisions contained within the Constitution.

1. Budget and Policy Framework

- 1.1 The Council's Constitution provides for a report to be submitted to the next available Council meeting where the call-in provisions have been waived in view of the urgent nature of a decision taken by the Cabinet.
- 1.2 The Council's Constitution also provides for a report to be submitted to the next available Council meeting where urgent action on Council side functions has been undertaken by the Chief Executive or Directors.

2. Background

- 2.1 The Council's Constitution contains provisions regarding the publication of decisions made by the Leader and Cabinet. These provisions include the ability for a decision to be called-in for scrutiny by the relevant Overview and Scrutiny Committee.
- 2.2 The call-in provisions can be waived where a decision is considered urgent, in that any delay caused by the call-in would seriously prejudice the Council's or public's interest. This requires the agreement of the Chairman of the relevant Overview and Scrutiny Committee and for the matter to be reported to the next available meeting of the Council, in accordance with paragraph 16.11 of chapter 4, part 5 of the Constitution (overview and scrutiny rules).
- 2.3 Additionally, where a proposed decision is a Council side function, the Chief Executive and directors shall have the power to act on behalf of the Council in cases of urgency only where the urgent matter is of such

a nature that it may be against the Council's interest to delay and where it is not practicable to obtain the approval of the Council, in accordance with paragraph 4.1 of chapter 3, part 4 of the Constitution (employee delegation scheme). This is subject to consultation with the Leaders of all the groups which comprise at least 1/10th of the membership of the Council (or their nominees) and the provisions for urgent decisions which are contrary to any plan or strategy which has been approved or adopted by the Council or which are contrary to or not wholly in accordance with the budget approved by the Council (set out in Chapter 4, Part 3 of the Constitution).

- 2.4 A summary of the recent use of these provisions is set out in the following section.

3. Shared Service – Internal Audit and Counter Fraud

- 3.1 On 24 November 2015, the Cabinet considered a report which set out proposals for the development of a Partnership to deliver Internal Audit and Counter Fraud Services to Medway Council and Gravesham Borough Council . A copy of the report is available via the Council's website:
<http://democracy.medway.gov.uk/mglIssueHistoryHome.aspx?Ild=15763>
- 3.2 This report asked the Cabinet to agree to assume responsibility for the discharge of Gravesham Borough Council's Internal Audit and Counter Fraud functions. This is permitted under the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 which provide for the executive of one local authority to arrange for a function for which it is responsible to be discharged by the executive of another local authority.
- 3.3 In addition the report asked the Cabinet to delegate authority to Medway's Chief Finance Officer to assume responsibility for the management and delivery of audit and counter fraud services for both Medway and Gravesham and, in consultation with the Monitoring Officers of both Councils, to enter into the necessary agreement with Gravesham.
- 3.4 The Cabinet on 24 November 2015 made the following decisions:
- 3.4.1 The Cabinet recommended to the Leader to agree to assume responsibility for the discharge of Gravesham Borough Council's Audit and Counter Fraud functions as permitted under the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 which provide for the executive of one local authority to arrange for a function for which it is responsible to be discharged by the executive of another local authority (decision no. 159/2015).
- 3.4.2 The Cabinet recommended Full Council to accept the delegation by Gravesham Borough Council of its Audit and Counter Fraud functions

to Medway Council as set out in 159/2015 above, noting that this together with Council side agreement to the delegated authority recommended in 161/2015 and 162/2015 will be agreed by the Chief Executive on behalf of Full Council using urgency procedures, as the next Council meeting is not until 21 January 2016 (decision no. 160/2015).

- 3.4.3 The Cabinet agreed, subject to 160/2015 above, to delegate authority to the Chief Finance Officer of Medway Council, in consultation with the Monitoring Officers of Medway and Gravesham to enter into a legally binding contract between both local authorities setting out the detail of the arrangements for a fully shared Audit and Counter Fraud Service, including a governance framework (decision no. 161/2015).
- 3.4.4 The Cabinet agreed, subject to 160/2015 above, to delegate authority to Medway's Chief Finance Officer to assume responsibility for the management and delivery of audit and counter fraud services for Gravesham Borough Council jointly with the services provided for Medway Council and for this to be reflected in the Council's Scheme of Delegation (decision no. 162/2015).
- 3.4.5 The Cabinet:
- (i) noted that the Chairman of the Business Support Overview and Scrutiny Committee had agreed that decisions 159/2015 – 164/2015 are reasonable in all the circumstances and to them being treated as a matter of urgency and to waive call-in .
 - (ii) agreed that decisions 159/2015 – 164/2015 are considered urgent and therefore should not be subject to call in (decision no. 163/2015).
- 3.4.6 The Leader agreed to assume responsibility for the discharge of Gravesham Borough Council's Audit and Counter Fraud functions as permitted under the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 which provide for the executive of one local authority to arrange for a function for which it is responsible to be discharged by the executive of another local authority (decision no. 164/2015).

Use of powers to waive call in of Cabinet decisions

- 3.5 In line with rule 16.11 of Chapter 4, Part 5 of the Constitution, call-in can be waived where any delay likely to be caused by the call-in process would seriously prejudice the Council's or the Public's interests. In this case, the shared service was intended to go live on 1 December 2015, with all of the Gravesham staff transferring to Medway under TUPE on that date. Therefore, the Chairman of the Business Support Overview and Scrutiny Committee had agreed that the decisions proposed were reasonable in all the circumstances and to them being treated as a matter of urgency and to waive call-in. The

Business Support Overview and Scrutiny Committee was also notified, via email, when agreement to use these provisions was given on 12 November 2015.

Use of Council side urgency powers

- 3.6 Subsequent to the Cabinet decisions on 24 November 2015, the Chief Executive agreed to use urgency powers, as detailed in paragraph 2.4 above, to accept a delegation concerning the discharge of the Gravesham Borough Council's Internal Audit and Counter Fraud functions.
- 3.7 The Chief Executive was required to use these powers because of the provisions of Article 10 of the Council's Constitution which sets out the arrangements for the agreement of delegations to and from other local authorities. Whilst the Leader is able to delegate executive functions to another authority the Constitution specifies that a decision whether or not to accept such a delegation from another local authority (whether executive or non-executive) is reserved for Full Council.
- 3.8 In this case the shared service was intended to go live on 1 December 2015, with all of the Gravesham staff transferring to Medway under TUPE on that date. It was therefore not considered to be in the Council's interest to delay and wait for a decision at Council on 21 January 2016.
- 3.9 The Chief Executive consulted with the Leader of the Council, Councillor Jarrett on 24 November 2015 and the Leader of the Labour Group, Councillor Maple on 26 November 2015, as required by the Constitution. Following this, the Chief Executive made the following decision, using urgency powers on 26 November 2015:
 - 3.9.1 That the Chief Executive (using urgency powers (in place of referring this matter to Full Council)) agrees to accept the delegation by Gravesham Borough Council of its Audit and Counter Fraud functions to Medway Council together with Council side agreement to the delegated authority as set out in paragraph 3.4 above.
- 3.10 Subsequent to the Chief Executive's decision, the contract between both local authorities (setting out the detail of the arrangements for a fully shared Audit and Counter Fraud Service) was signed on 30 November 2015 and the shared service went live, as planned, on 1 December 2015.

4. Financial, legal and risk implications

- 4.1 The requirement to report decisions taken under the various urgency provisions is set out within the Constitution. Details of the financial, legal and risk implications are set out in full within the relevant Cabinet report.

5. Recommendation

5.1 That the report be noted.

Lead officer contact

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Background papers

Shared Service - Internal Audit and Counter Fraud

Cabinet – 24 November 2015

<http://democracy.medway.gov.uk/mgIssueHistoryHome.aspx?IId=15763>

Shared Service - Internal Audit and Counter Fraud

Chief Executive using urgency powers – 26 November 2015

<http://democracy.medway.gov.uk/mgConvert2PDF.aspx?ID=29336>

Appendices

None