



North Tyneside Council

**Quadrant, The Silverlink North, Cobalt Business Park,
North Tyneside, NE27 0BY
Tel: (0191) 643 5339 Fax: (0191) 643 2451**

Briefing Note

To: Overview & Scrutiny Committee

Authors: Vivienne Geary –
Head of Legal, Governance and
Commercial Services
(tel: 0191 643 5339)

Wendy Innes –
Senior Manager Legal Services
(tel: 0191 643 5338)

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Title: Response to requests for information from Overview and Scrutiny Committee on 9 May 2012

Introduction

This Briefing Note is provided in response to requests from Overview and Scrutiny Committee for clarification of specific issues during its consideration of the Implementation Plan in relation to the Council's Budget 2012/13 and Strategic Plan 2012/15, at its extraordinary meeting of 9 May 2012. The numbers referred to below relate to the numbered actions set out in the Committee's Report to Cabinet dated 14 May 2012.

Action 2: That a chronology be provided to the next Overview and Scrutiny Committee giving information about securing the recent advice of Mr Goudie concerning the Budget and Council Plan. This should detail who originally asked for the Advice and authority to secure the advice prior to 1 March 2012.

The table attached at Appendix 1 details a chronology of such advice obtained by the Council in relation to the Budget and Council Plan. The Section 151 Officer when assisting Members from each Political Group in developing their Budget and Council Plan alternative proposals prior to the Council meeting of 21 February 2012, advised Members that such Advice would be sought to support the development of the Political Groups' proposals and to provide clarity as to the effect of proposals and ensure proposals were robust.

Authority to seek Mr Goudie's advice

The Council's Officer Delegation Scheme at paragraph LGC17 authorises the Head of Legal, Governance and Commercial Services to "obtain Counsel's advice where it is considered to be in the Council's interests, and to instruct Counsel to represent the Council in any court or tribunal or other appropriate circumstance."

Action 3: That advice be provided in relation to the power of the Cabinet to contract for services the appointment of an interim senior management post as opposed to the Council's power to appoint Chief Officers.

Further advice has been sought on this point from James Goudie as requested by the Committee. This advice has confirmed that, as has been clarified previously, Cabinet has responsibility for functions relating to senior management structures, and for contracts for services. The Council has responsibility for the appointment of staff, and to determine their terms and conditions (including procedures for dismissal), subject to the Local Authorities (Standing Orders) (England) Regulations 2001, which require that such functions be discharged by the Head of Paid Service except as to a number of specified posts, including chief officers and deputy chief officers.

The advice received has confirmed that, in relation to Cabinet decision making on contracts for services, Cabinet need to be satisfied that it is appropriate and proper for the authority to enter into or to extend any contract for services, taking into account all relevant factors and circumstances associated with such an arrangement, at the time the decision is taken. Any such decision would be subject to scrutiny in the usual way by Overview and Scrutiny Committee. In addition, the advice indicates that it would be reasonable, in relation to any contract for services with respect to a senior officer position such as an Interim Chief Executive, for Cabinet to seek the views of the members of the Council in advance of taking such a decision. The manner in which those views would be sought would be a matter for Cabinet.

Action 5: That further clarification is given in respect of the advice provided regarding Ward Community Budgets and particularly the delegation and process to distribute funds to wards.

Overview and Scrutiny Committee has requested further clarification on the responsibility for decision making in relation to Item 30 in the Implementation Plan “Create Ward Forums with Devolved Area Forum budgets (revenue and capital)” The proposal in the Council Plan and Budget sought to allocate decision-making on spend of budgets allocated to Area Forums to be made at a Ward level by Ward Members.

The Committee has been advised that the responsibility for deciding whether this change would be implemented would fall to the Cabinet and have sought further clarification which is set out below.

The Council’s Area Forums are not decision making bodies of the Council. The Council is able to create such decision making bodies commonly known as Area Committees should it wish to do so. Such Committees are the responsibility of the Council under the Local Authorities (Functions and responsibilities) Regulations 2000 and do not fall within the functions of the Executive. Should the Council choose to set up Area Committees these will be subject to the normal committee requirements relating to Agendas, minutes, reports all Members are familiar with and will have the decision making powers allocated by the Council. If such Committees are set up there is a requirement as reflected under the Constitution at Article 10, that the procedure rules relating to the Committees *must* be included in the Constitution.

In contrast the Cabinet, the Council’s Executive, has chosen to set up Area Forums, which are not decision making but consultative bodies and whose purpose broadly is to seek to increase local engagement in the Forum areas. The creation of such Forums is not a Council function but an Executive function under the residuary powers of the Executive under section 9D of the Local Government Act 2000. Cabinet has elected to include reference to the Forums in the Constitution; it is not a legislative requirement, unlike the position with Area Committees.

The Cabinet decided in January 2010 that although recommendations would be received from Area Forums as to the allocation and spend of Budgets, in accordance with the responsibilities of the Executive in relation to the Area Forums, the “final decisions on funding would be made by the Elected Mayor, in consultation with the Cabinet Member for Community Engagement and the

relevant Head of Service.” Decisions on funding are to be reported back to the Area Forum.

The Cabinet as Executive would develop any changes to the operation of Area Forums being an Executive responsibility and this would include any change to the decision making on the allocation of the budget for the Area Forums subject to the requirement for such budgets to be contained within the ‘budgetary envelope’. The Cabinet cannot be required to implement the proposals put forward in the Budget/Council Plan. Area Forums being an Executive responsibility would result in any change to the Constitution purporting to impose alterations to the Executive’s arrangements for Area Forums being capable of rejection by the Mayor under the provisions in Article 15.

The advice above is not affected by the reference in Article 10 to the “Council” being able to regularly review the operation of each Area Forum. The use of the term Council in this context is a generic reference and does not reallocate responsibility for the Forums to the Council from the Executive; such a reallocation of functions is not possible as it would not be lawful.

Date of Opinion/Advice Received	Subject Matter of Opinion/Advice	Opinions/Advice sought by Monitoring Officer/Deputy Monitoring Officer on behalf of:
5 January 2012	To provide advice as to what may properly comprise a budget objection within the budget setting process.	Section 151 Officer and Monitoring Officer
1 February 2012	To provide advice in relation to responsibility for in-year changes to the budget.	Section 151 Officer and Monitoring Officer
8 February 2012	Changes to Financial Regulations and responsibility for Housing Revenue Account.	Section 151 Officer and Monitoring Officer
17 February 2012	To understand the potential effect of draft budget and Council Plan proposals being raised by Political Groups regarding Senior Management Arrangements and strategic projects, whether certain Senior Officers had a conflict of interest with those proposals and clarification of the financial envelope provided by the budget.	Section 151 Officer and Monitoring Officer
22 February 2012	Further clarification provided arising from advice on 17 February 2012 on responsibilities for the implementation of the Budget and Council Plan proposals	Section 151 Officer and Monitoring Officer
8/9 March 2012	Implementation Plan - Teleconference	Section 151 Officer, Monitoring Officer and Chief Executive
14 March 2012	Implementation Plan - Teleconference	Section 151 Officer, Monitoring Officer and Chief Executive
19 March 2012	Implementation Plan – Attendance at Overview and Scrutiny Committee	Section 151 Officer, Monitoring Officer and Chief Executive
23 March 2012	Briefing Note for Members	Section 151 Officer, Monitoring Officer and Chief Executive
2 April 2012	Teleconference – Implementation Plan	Section 151 Officer, Monitoring Officer and Chief Executive

10 April 2012	Teleconference – Implementation Plan	Section 151 Officer, Monitoring Officer and Chief Executive
16 April 2012	Addendum to Briefing Note to Members	Section 151 Officer, Monitoring Officer and Chief Executive
17 April 2012	Advice in relation to responsibility for the creation and amendment of Plans and Strategies.	Section 151 Officer, Monitoring Officer and Chief Executive
4 May 2012	Briefing Note for Members – Plans and Strategies.	Section 151 Officer, Monitoring Officer and Chief Executive