

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
CABINET AND CORPORATE SERVICES SCRUTINY COMMITTEE
19 SEPTEMBER 2016
KEY DECISIONS AND THE SCRUTINY PROCESS
REPORT OF THE DIRECTOR OF STRATEGY AND LOCAL SERVICES

This report on key decisions and the scrutiny process at the Royal Borough, requested by the Chairman, gives an overview of the legislation relating to overview and scrutiny as well as that relating to key decisions. It then sets out the Borough's definition and process, including timelines. The Committee is invited to note the current arrangements for scrutiny involvement in the key decision process and discuss any ways in which this might be improved.

FOR INFORMATION AND COMMENT

1 INTRODUCTION

- 1.1 This report gives an overview of the legislation relating to overview and scrutiny as well as that relating to key decisions. Although legislation does not prescribe how local authorities should carry out their pre-decision scrutiny, good practice suggests that this will be a key feature of effective governance arrangements especially given that call-in - after the decision has been made, but not yet implemented - can seem rather unproductive.
- 1.2 Although not explicitly stated in its Constitution, the Royal Borough has, over time, placed greater emphasis on the pre-decision scrutiny of key decisions and, nearly ten years ago, introduced the innovative 'diamond rating system' to facilitate this and to help Scrutiny members identify the key decisions of greatest interest. In summary, all key decisions are given a classification, ranging from one to three diamonds when they are entered onto the Forward Plan. The classification must then be approved by the relevant Scrutiny Chairman who also has the authority to modify the rating. Those key decisions with a two or three diamond classification are expected to feature planned consultation with the Scrutiny Committees - though it does not necessarily follow that this will entail a committee report.

- 1.3 The diamond rating system is complemented by regular communication between Scrutiny Chairmen and the relevant Cabinet Member and attendance by Cabinet Members at Scrutiny Committee meetings to present papers and ask questions.
- 1.4 Scrutiny processes are amended from time to time when improvements are identified. This is most usually at the instigation of Scrutiny Chairmen who deal with any matters that affect all committees.
- 1.5 The diamond rating system was devised by and is unique to the Royal Borough – indeed this goes far beyond what other authorities routinely do to identify in advance executive decision likely to be of most Scrutiny interest. It has not therefore been possible to include comparative information with other boroughs about such a system but some information is included about processes at Westminster City Council and the London Borough of Hammersmith and Fulham.

2 LEGISLATIVE OVERVIEW

The Creation of Overview and Scrutiny

- 2.1 The Local Government Act 2000 established new political governance arrangements for local authorities in England and Wales which required them to move away from the traditional committee style of decision making. Each council was required to set up an executive (cabinet), responsible for taking day-to-day decisions on the running of the authority within a policy and budget framework agreed by the full council. The establishment of overview and scrutiny committees was intended as a counterweight to these executive structures. Scrutiny has been evolving since 2000 and legislation affecting the way Scrutiny is done has been promulgated from time to time. Much of this legislation was consolidated in the Localism Act 2011, however, the basic principles remain the same.

The Key Decision Definition

- 2.2 The current definition of a key decision is set out in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. This definition has not substantially changed since the 2000 Act and is noted below.

The Regulations state that a key decision is:

“an executive decision, which is likely a) to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant (...); or b) to be significant in terms of its effect on communities living or working in an area comprising two or more wards or electoral divisions (...).”

- 2.3 Key decisions may be made by individual Cabinet Members, where power has been so delegated, or by Cabinet as a whole.

- 2.4 Councils are required to give public notice of key decisions and until 2012 this was through a Forward Plan which was published fourteen days before the end of every month and which included planned key decisions for the subsequent four months. Since 2012, councils in England have been required to give 28 days' notice of planned key decisions, with a provision for shorter timescales in the case of urgency. Although there is no longer a requirement to publish a Forward Plan, many councils have continued to use this mechanism to give the 28 days notification of upcoming key decisions.
- 2.5 The Local Government Act 2000, Sections 9(F)2(a) and 9F(4), sets out the power of scrutiny to review or scrutinise decisions made but not implemented by the executive. This includes a power to recommend that the decision be reconsidered by the persons who made it and this process is known as 'call in'. Statutory Guidance issued in October 2000 by the then Department of Environment, Transport and the Regions set out the particular issues councils would need to consider when establishing their call in arrangements.
- 2.6 The Government guidance contains clear expectations that call-in should be exercised rarely and that councils should act to ensure their local protocols and procedures meet this end.

3 KEY DECISIONS AT THE ROYAL BOROUGH

Definition

- 3.1 The Royal Borough's Constitution defines a key decision as:

". . . any executive side matter that is not already delegated to officers which:

- (i) involves income or expenditure of £100,000 or more*; and/or
- (ii) is likely to have a significant impact on the community in one or more electoral wards.

** The £100,000 threshold does not apply to decisions to award contracts up to a value of £164,176 which, as stated in Part 4F of the Contract Regulations, are delegated to the relevant director. This EU services threshold applies from 1 January 2016 and is reviewed on 1 January every second year. The Contract Regulations and this note will be updated by the Monitoring Officer to incorporate any change to the EU services threshold."*

The current key decision process and timelines

- 3.2 The Council must by law give 28 days' notice before taking any key decision and this is done by means of the Forward Plan (which has been retained at the Royal Borough) on the first working day of each calendar month. Whilst a key decision must by law be displayed on the Forward Plan for 28 days, in practice most are (and good practice suggests they should be) added to the Plan as soon as the relevant director becomes aware that key decision is required. This understanding is well-established here, since the early days of the LGA 2000 which envisages a Forward Plan looking four months ahead.

- 3.3 As noted in the introduction, all key decisions are given a diamond rating and this scrutiny process is described in detail below.
- 3.4 The relevant officer at the time of scheduling on the Forward Plan gives a 'rating' and the classification is set out below:
- ◆◆◆ High impact/high public interest:** *A key decision that is likely to have a major impact on service users, residents or businesses **and** where there is prospect of significant public interest. This decision would be expected to feature planned consultation with the Scrutiny Committee and the public.*
- ◆◆ High impact or high public interest:** *Such a key decision would meet all the above criteria on impact, or would be expected to be of particularly public interest. This decision would be expected to feature planned consultation with the Scrutiny Committee.*
- ◆ Routine/low public interest:** *A key decision that is of a relatively routine nature where the Scrutiny Committee would not wish to get involved.*
- 3.5 Where the report author considers that the proposed key decision should receive either a two or three diamond classification because of likely Scrutiny interest, the Governance Team contacts the relevant Scrutiny Committee Chairman at the time of scheduling on the Forward Plan, to get their agreement on how the Scrutiny Committee should be consulted. This will often result in a Scrutiny Committee discussion, but if the timescale is short, comments could be sought from Scrutiny Committee members by email. This pre-decision scrutiny is designed to give non-executive councillors the opportunity to have early input into the development of appropriate policies, plans and decisions in advance of the Cabinet Member taking the decision. Each Scrutiny Committee meeting has the opportunity to consider an extract of the Forward Plan relating to their Scrutiny Committee and at this point will have an opportunity to change the rating if they feel it requires reclassification.
- 3.6 The report author would then proceed to draft the key decision report. The report is signed by the Cabinet Member, published and circulated as a **proposed decision**. At this point, Members of the relevant Scrutiny Committee receive an automated email with the relevant documentation attached, as will any other Member who has asked to be notified. This is published on the Council's website and circulated to libraries, and also to a number of external subscribers.
- 3.7 After the decision has been so proposed, the Scrutiny Committee and members of the public have five clear working days (i.e. over a week) to submit comments or suggest amendments.
- 3.8 Subject to any amendments in response to comments received from Scrutiny Members or members of the public, the report is signed by the Cabinet Member, published and circulated by email (and hard

copy if so requested) as a **confirmed decision**. The relevant Scrutiny Members receive a further email with the relevant documentation, notifying them and attaching the confirmed key decision. Any revisions to the proposed key decision which are accepted by the Cabinet Member, taking into account comments received by Scrutiny Members, are reflected in a revised confirmed key decision. If the view of the Cabinet Member is that the comments are substantial and materially change the nature of the report, a new key decision would need to be generated.

- 3.9 After the decision has been confirmed, the relevant Scrutiny Committee has a further five clear days, before implementation of the decision, within which to call-in the decision. In the case of full Cabinet decisions, the relevant Scrutiny Committee has 24 hours to call-in a decision.
- 3.9 If no call-in request is made, the decision is then **implemented**.
- 3.10 If the decision is called-in, the Chairman of the Scrutiny Committee has five clear days within which to call a meeting of the Scrutiny Committee.
- 3.11 In the case of an urgent matter, the report author is expected to schedule the item on the Forward Plan for five clear days as a first step and contact the relevant Scrutiny Chairman requesting their agreement to treat the matter as urgent. If this is granted and once the five clear days have elapsed, the Cabinet Member would sign the confirmed key decision, which is then **implemented**, without recourse to call-in. The documentation is emailed to the relevant Scrutiny Committee members. In the case of urgent key decisions, Scrutiny Members have no opportunity to comment on the key decision or to call it in. All urgent key decisions are reported to Council quarterly.
- 3.12 Other than in the case of urgency, it therefore takes a minimum of three weeks to process a key decision.
- 3.13 Individual Scrutiny Chairmen maintain regular contact with Cabinet Members to discuss important projects and policies. These meetings provide an opportunity to discuss any upcoming major projects and policies including items that will be classified as key decisions but are not yet entered onto the Forward Plan. The Chairman can then begin to assess the relevance of the item in relation to the Committee's priorities and work programme.
- 3.14 These conversations are progressed at the agenda planning meetings that Scrutiny Chairmen hold with senior officers in advance of each scrutiny committee meeting.
- 3.15 In addition to reports about individual key decisions, a report appears on the agenda of all ordinary Scrutiny Committee meetings which summarises the issues the relevant Cabinet Member and business

group are progressing including upcoming major projects. This provides a wider opportunity for Committee Members to prioritise future key decisions for greater scrutiny involvement. The Cabinet and Corporate Services Scrutiny Committee considers the Cabinet agenda so does not receive such a report.

- 3.16 it is common practice that the relevant Cabinet Members will attend Scrutiny Committee meetings. This attendance is helpful as it assists Cabinet Members to keep themselves informed about the Scrutiny Committee's deliberations and also to assist the Scrutiny Committee in those deliberations. The Scrutiny Committee Chairman may invite the Cabinet Member to answer any questions on his/her report or about individual key decision reports - even those on the Forward Plan but where a report has not yet been produced/published.
- 3.17 Other Scrutiny processes to complement those described above include Committee Members attending site visits to observe services in operation, Member briefing sessions, or holding a single issue meeting (in addition to one of the regular meetings) to discuss a key decision in greater detail.
- 3.18 Some key decisions will be developed to a shorter timeframe, for example more commercially-focused key decisions. The pre-decision scrutiny in these cases is likely to take a different form as there is less opportunity for Scrutiny involvement as the Committees, with the exception of Cabinet and Corporate Services, do not meet as frequently as Cabinet.
- 3.19 In the case of these key decisions, the Scrutiny Committee would usually consider the Cabinet Report and comment by email. The Scrutiny Committee Chairmen would still have the right to attend Cabinet and speak, with the permission of the Leader, in order to represent the views of the Committee, including making any recommendations.

4 AMENDMENTS TO SCRUTINY PROCESSES

- 4.1 Scrutiny processes are kept under review by Scrutiny Chairmen, meeting as the Scrutiny Steering Group, who consider matters that affect all of the Committees. Two recent examples of process amendments are noted below:
- From 1 June 2016 the definition of a two diamond decision was amended to put greater emphasis on scrutiny involvement in relation to key decisions which are of high public interest.
 - Scrutiny involvement at the specification stage of the procurement process is seen by Chairmen as a point where the Committees can add value. The changes to scrutiny processes, including the information scrutinised by the Committees, will be agreed once the Procurement Working Group has reported.

- 4.2 Scrutiny Committees understandably tend to focus on individual Cabinet Member decisions as these are not taken at meetings. With this in mind efforts have always been made to flag-up to Scrutiny Committees key decisions within their remit that appear on full Cabinet agendas. This system was regularised in July 2016, since when all matters on Cabinet agendas that fall outside the Cabinet and Corporate Services Scrutiny Committee remit are the subject of a bespoke alert to Members of the relevant Scrutiny Committee.
- 4.3 Additional guidance has been drafted for officers on the Royal Borough's approach and requirements in relation to pre-decision scrutiny and this also includes some best practice examples.

5 SCRUTINY PROCESSES AT OTHER COUNCILS

- 5.1 As noted above, the diamond rating system is a bespoke system and unique to the Royal Borough. It was not therefore possible to find a comparable system.
- 5.2 Westminster City Council promotes a collaborative approach and dialogue between Scrutiny and the Executive, but fewer decisions at WCC are 'key decisions', in part because that Council does not have a detailed key decision definition (because it simply uses the statutory definition as set out in the Local Government Act 2000, as set out at paragraph 2.2 above).
- 5.3 The London Borough of Hammersmith and Fulham includes a key decision list at each committee meeting and any councillor can request an item be included on an agenda.

6 CONCLUSION

- 6.1 In conclusion, the involvement of Scrutiny Chairmen in the key decision process, through the diamond rating classification, ensures a systematic approach with early Scrutiny involvement. This is complemented by regular meetings between the Chairmen, Cabinet Members and senior officers as well as their attendance at Scrutiny Committee meetings to present reports and answer questions.
- 6.2 The Committee is invited to note the current arrangements for Scrutiny involvement in the key decision process and discuss any ways in which this might be improved.

FOR INFORMATION AND COMMENT

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Background papers used in the preparation of this report: None other than previously published documents.

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