
Executive

30 July 2015

Report of the Monitoring Officer

Consultation on Decision Making Arrangements

1. Summary

- 1.1 A key priority of the new council leadership is to ensure there is greater cross-party involvement in the decision making process and that these decisions are taken in a more open and transparent way.

The new leadership want policy and scrutiny committees to have the opportunity to debate and make recommendations on matters requiring an executive decision before a final decision is taken.

This report sets out proposals for how such a system could be introduced and identifies some issues which may arise. It is proposed that this report form the basis for consultation with Audit and Governance Committee, Corporate and Scrutiny Management Policy and Scrutiny Committee, political groups and independent members.

- 1.2 The proposals seek to balance three key principles:

- That there should be an opportunity for scrutiny of executive decisions before they are made
- That proper decision making should not be unduly delayed or fettered
- That there should be greater transparency not only of what decisions are made but by whom.

2. Who will undertake pre decision scrutiny?

- 2.1 It is proposed that the arrangements for scrutiny will vary according to whether the decision is proposed to be taken by the full Executive or an Executive Member acting alone.

- 2.2 For an Executive Member decision it is suggested that the policy and scrutiny committee within whose remit the issue lies will have the scrutiny responsibility. For matters coming to the Executive it is proposed that CSMC will be the scrutiny committee.
- 2.3 The suggestion that CSMC have oversight of Executive reports is made simply for reasons of effective administration. There may be concerns that this means that members of the relevant scrutiny committee will not get to scrutinise the most significant decisions relating to their area. This concern could be mitigated by one or more of the following:
- Scrutiny committees asking for early reports on significant issues in advance of Executive reports being drafted and thereby influencing policy development and the contents of the final Executive report
 - Arrangements for representatives of the scrutiny committee to have a right to participate in the debate at CSMC
 - Considering the make up of CSMC – could it, for example, be largely made up of the Chairs of the other scrutiny committees?

3. How will a decision come for scrutiny?

- 3.1 It has always been possible for a Scrutiny Committee to identify issues which will, in due course, require an Executive decision and for the Committee to review those issues. Such scrutiny at an early stage of policy development can help frame future debates and reports and is not in any way affected by these proposals.
- 3.2 What these proposals do seek to achieve is to give Scrutiny and Policy Committees the opportunity to see a report in its final (or close to final) form and to debate recommendations on the report prior to the final decision being made.
- 3.3 There are various ways that the Council could arrange to bring a report to the relevant scrutiny and policy committee including:
- All decisions coming for scrutiny routinely
 - Any Member being able to request a proposed decision be added to the Scrutiny agenda

- Replicating the post decision “call in process” requiring three Members to call the decision to Committee
- Have the Chair/Vice Chair operate as a filter for Member requests in much the same way as Planning Committee operates in bringing to Committee matters which would normally be decided under delegated powers.

3.4 Having all matters come for scrutiny routinely may not be the best use of Committee or Officer time and so some filter system is recommended. That in use for planning matters works well and may be an appropriate model.

4. How will Members know what decisions are to be made?

4.1 The Forward Plan is key to this and there will need to be considerable discipline in adding matters to the Plan in good time and with sufficient detail as to what is to be decided.

5. What would the timescales be?

5.1 Working backwards a possible **minimum** timeline for a decision to be taken at a meeting of the Executive might look something like:

Day 0 (Thursday)	Executive meets
Day minus 8 (Wednesday)	Executive agenda published with CSMC recommendations
Day minus 14 (Thursday)	CSMC meets
Day minus 22 (Wednesday)	CSMC agenda published
Day minus 24 (Monday)	Democratic services notified that decision is to be scrutinised
Day minus 41 (Friday)	Forward plan published

5.2 This timeline has some issues.

- The only practical way to make this system work is to move CSMC from a six weekly to a monthly cycle, meeting a fortnight before each Executive meeting.
- The Forward plan is currently published monthly as standard (previously this was a legal requirement). 28 days notice is required between publication and decision. It is suggested that a move to a rolling Forward Plan with weekly publication would make sense and the timetable above requires it.
- More seriously this time line allows only one full working day between notification that the decision will be scrutinised and the report needing to be with democratic services. Accordingly either Officers would have to work to having final reports ready for the CSMC agenda deadline or the timetable needs to be pushed back.
- The timeline is based on giving Members at least two week's notice to "call in" a decision. There is a question as to whether that is reasonable notice. Whatever the right notice period is, it is suggested that it needs to be set by reference to the decision date.

5.3 The issue is perhaps even greater for Executive Member decisions. The proposal is that decision sessions will run to the same timetable as the relevant scrutiny committee. With the exception of Health Scrutiny, those Committees are scheduled to meet seven times a year. If that continues then this may have consequences for the timeliness of proposed decisions. Given publication deadlines, some decision may wait up to twelve weeks. Possible options discounting a return to private decision making are:

- Move all Scrutiny Committees to a monthly cycle
- Schedule Executive Member decisions sessions between as well as alongside Scrutiny meetings allowing matters which have not been called in to be progressed more swiftly

5.4 Under current arrangements any decision made by the Executive or an individual Member is open to post decision call in. That could, of course, further stretch the timetable.

5.5 None of these issues are insurmountable and most decisions should be able to follow this process. There does though need to be a level of pragmatism which accepts that some urgent decisions will have to be made sooner than this system allows. Some decisions have a statutory timeline which may be difficult to meet while following this process – for example the Council has eight weeks to designate a Neighbourhood Area in connection with neighbourhood plan applications. Officers can determine these if straightforward but where there are objections they will be presented to the Executive Member. At best this will be known four weeks into the process. Other decisions may be urgent because of potential financial or reputational impacts on the Council. These decisions ought to be very much in the minority.

6. Urgent decisions

6.1 There are several ways that the issue of urgent decisions could be tackled. Options might include:

- A “special urgency” process for decisions which are particularly urgent. There is such a process for making key decisions which are not on the Forward Plan. That involves seeking the consent of the Chair of the relevant scrutiny committee to the decision being taken. An alternative would be for the Leader to certify that the decision cannot wait and then be accountable to CSMC for so certifying.
- A “general urgency” process for decisions which cannot wait until the next scheduled meeting but can be taken after normal notice of a meeting has been given and the meeting held.

6.2 A general urgency process might then involve one of the following:

- a) Scheduling a special meeting of the appropriate scrutiny committee
- b) Refer the decision to CSMC if it has a scheduled meeting within an appropriate timescale
- c) Establishing an “urgency” sub committee of CSMC to be called on an ad hoc basis. Such a committee could even meet immediately before the Executive or the decision session.
- d) Referring these decisions to Staffing Matters and Urgency Committee (which has fortnightly meetings scheduled but is not a scrutiny committee)

6.3 Whatever system is implemented Members may wish to consider reviewing its use periodically.

7. How would the scrutiny committee/decision session operate?

7.1 Under current procedures decision sessions operate as though they are a formal local authority meeting. If we continue on that basis then logically the new system would either have:

- the Committee meet, adjourn to allow the decision session to take place and then reconvene or
- the executive business would be the final item on the agenda and the decision session would open on the committee meeting closing.

7.2 Of these two options the latter provides a clearer distinction between the two sets of proceedings but may mean an Executive Member and members of the public interested in an executive decision having to wait some time before the executive business can be completed.

7.3 An alternative solution might be that the executive business is an early agenda item for the Scrutiny committee, public participation takes place at least on that item, an officer presents the report, the Executive Member participates in the debate and at the close of the debate the Chair asks the Executive Member whether he or she is able to announce his or her decision. That decision would then be recorded in a decision notice in accordance with legal requirements. If a decision is delayed it would either be referred to the full Executive or taken at another decision session.

7.4 One potential downside to this suggestion is that it might not be clear who the decision maker is. While it is to be expected that the views of the Committee would be given very great weight, legally the decision rests with the Executive and decisions would be open to challenge if the Executive member does no more than rubber stamp a decision.

8. What about decisions requiring Council approval?

8.1 There are relatively few decisions which require Full Council approval but they include:

- Agreeing the budget

- Agreeing expenditure outside of virement limits – typically significant capital spend
- Agreeing specified key plans – including the local plan and the Council plan

These decisions would not currently be subject to post decision scrutiny.

- 8.2 Cross party engagement in the local plan is already ensured through the Local Plan Working Group.
- 8.3 The budget report is inevitably finalised close to the deadlines for an Executive recommendation and in any case opposition parties tend to like to propose a full budget amendment for Council. Scrutinising the Executive's budget report, even if it can be made available, may not be terribly productive. However, Scrutiny could develop a more significant role in looking at the principles underpinning the budget in the run up to the Executive producing its draft.
- 8.4 It is therefore suggested that Executive recommendations to Council should not be subject to the new pre decision scrutiny process.

9. Scrutiny Committee remit

- 9.1 There is a further consequence for Executive Members in that many of the portfolios come within the remit of more than one Scrutiny Committee. It seems appropriate to review those remits to see whether it is possible to bring them more in line with portfolios.

10. Officer in consultation decisions

- 10.1 To improve openness and transparency the new council leadership also proposes to end the occasional practice whereby decisions may have been taken by an officer in consultation with the Executive Member. Where a decision requires the active involvement of the Executive Member the new leadership believe that the decision should be taken by the relevant Executive Member in a public decision session. This will allow reports to be published in advance and for residents and councillors to speak at the meetings.

11. Options

11.1 The Executive may accept or reject any of the proposals put forward and may put forward alternatives.

12. Analysis

12.1 The analysis is contained in the body of the report.

13. Consultation

13.1 This report is being presented to the Executive, Audit and Governance Committee and Corporate and Scrutiny Management Committee by way of consultation. Political groups and the independent Members will also be asked for their views.

14. Council Plan

14.1 Effective and inclusive decision making will assist in achieving all Council plan priorities

15. Implications

15.1 The implications are:

- Financial – there are no financial consequences arising directly from this report. The final proposals following consultation may have a resource impact, particularly for the staffing of the Democratic Services team, which will need to be considered in due course.
- Equalities - none
- Legal - as York operates a Leader and Cabinet model of decision making under the Local Government Act 2000, executive decisions must be taken in accordance with the provisions of that Act and Regulations issued under it. Decisions will be open to challenge if the Executive or an Executive Member were to slavishly follow the recommendations of a Scrutiny Committee without applying their own independent judgment.

16. Risk Management

16.1 The report identifies risks in respect of the timeliness of decision making and the transparency of decision making.

17. Recommendations

17.1 Members are requested to:

- Indicate any immediate views on the proposals contained in this report
- Agree to consult with both the Audit and Governance Committee and the Corporate and Scrutiny Management Policy and Scrutiny Committee along with political groups and independent members on the proposals in July. Before a final proposal is brought forward in August.

Reason: To enable revised decision making arrangements to be put in place

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Report
Approved



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Wards Affected:

All

For further information please contact the author of the report

Background Papers:

None

Annexes:

None