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## Effective Organisation Overview & Scrutiny Committee

24 November 2009

Report of the Interim Head of Civic, Democratic & Legal Services

### Scrutiny Review of the Effective Use of the Executive Forward Plan

#### Summary

1. This report presents Members with information on the legislative and constitutional requirements associated with an Executive Forward Plan. It highlights those requirements currently not being met and suggests some issues for further consideration as part of this review.

#### Background

2. For some time, scrutiny Members have been expressing concern about their current inability to carry out pre-decision scrutiny due to the limited amount of time available between items appearing on the Executive Forward Plan and the relevant decision making meeting taking place.
3. Part III, regulation 13 (2) of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, states that a forward plan shall contain details of all the matters likely to be the subject of key decisions in the relevant authority for **a period of four months**; and the first such plan shall have effect from the first working day of any month.
4. It has become apparent that many items only appear on the Executive forward plan (FP) on average six weeks before the decision is required and that this is insufficient time to carry out any pre-decision scrutiny of the issues without requiring a deferral of the item to a later meeting.
5. With this in mind, this Committee agreed to look in detail at the current use of the Council's FP in order to identify any methods for improving its use and effectiveness, and to agree a robust method for identifying issues suitable for pre-decision scrutiny .

#### Consultation

6. In deciding to look in more detail at some of the issues raised within this report, Members may choose to consult with other Members, the Monitoring Officer, Directors, FP Contacts, Report Authors and the Democratic Services Manager.

## Information Gathered

7. The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, sets out the legislative requirements pertaining to an Executive Forward Plan. This council has also set out in its Constitution its own requirements in relation to the Executive Forward Plan and a comparison of both of these has highlighted:
  - a) where our Constitution does not match the legislation
  - b) where our current working practices do not match either the legislation or the Council's constitutional requirements
8. In addition, a comparison has been made between a number of FPs produced using the same Committee Management System as is used here in York (Modgov), and this has revealed some differences in style and content.
9. These assessments have helped to identify some alternative methods of working which may address those legislative and constitutional requirements currently not being achieved, potentially improve the way information is currently being presented, and ensure the Executive Forward Plan is fit for purpose as a tool for identifying possible topics for pre-decision scrutiny.

## Issues Identified

### Publishing An Annual Statement of Intent

Legislation	Current Practice In York	Alternative Approach
Regulation 12 <sup>1</sup> requires an annual statement to be published by the proper officer of the local authority, on a date at least 14 days, but not more than 21 days before the first forward plan of that year comes into effect, giving notice of when FPs will be published for the coming year, explaining what it is and how it can be obtained from the local authority.	City of York Council's Constitution states that the Head of Civic, Democratic & Legal Services will publish once a year a notice in at least one newspaper circulating in the area. This notice to give very specific information as detailed below in paragraph 9.	Not identified

### Analysis

10. Many Councils nationally choose not to adhere to this regulation. York is one of these Councils even though its Constitution states that:

*'The Head of Civic, Democratic & Legal Services will publish once a year a notice in at least one newspaper circulating in the area stating:*

- *that key decisions are to be taken on behalf of the Council;*

<sup>1</sup> of the Local Authorities (Executive Arrangement) (Access to Information) (England) Regulations 2000

- *that a Forward Plan containing particulars of the matters on which decisions are to be taken will be prepared on a twice monthly basis*
- *that the Plan will contain details of the key decisions to be made for the 12 month period following its publication*
- *that each Plan will be available for inspection at reasonable hours free of charge at the Council's offices*
- *that each Plan will contain a list of the documents submitted to the decision takers for consideration in relation to the key decisions on the Plan*
- *the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the Forward Plan is available*
- *that other documents may be submitted to decision takers*
- *the procedure for requesting details of documents (if any) as they become available; and*
- *the dates in each month in the following year on which each Forward Plan will be published and available to the public at the Council's offices'*

11. The Council therefore needs to carry out the annual publication of its statement of intent, to ensure its working practice is in line with legislation and the Council's Constitution.

#### **Period Covered By Forward Plan**

<b>Legislation</b>	<b>Current Practice In York</b>	<b>Alternative Approach</b>
Regulation 13 <sup>1</sup> also states that each new forward plan should be produced at least 14 days prior to the first day upon which the forward plan will come into effect	City of York Council's Constitution states that the Forward Plan must be published at least 14 days before the start of the period covered, in line with the legislation. In practice this does not occur. Currently, a forward plan published on 14 <sup>th</sup> of the month, covers the 4 month period commencing on the 15 <sup>th</sup> of that month i.e. forward plan published on 14 <sup>th</sup> April 2009 is for 15 <sup>th</sup> April – 14 <sup>th</sup> August 2009	Revise the period covered by each publication of the forward plan to ensure it gives at least the 14 days notice required by legislation of the forthcoming Executive decisions required

#### **Analysis**

12. By changing the period covered by each publication, in line with the legislative requirement and the Council's Constitution, it should help to limit the number of deferred items and the number of times the application of special urgency procedures are required. Democratic Services could make this change to the Forward Plan without impacting on the work of the Council and therefore would be in a position to do so, the next time the Forward Plan is published.

12. The Council therefore needs to amend the period covered by the published plan, to ensure its working practice is in line with legislation and the Council's Constitution.

<sup>1</sup> of the Local Authorities (Executive Arrangement) (Access to Information) (England) Regulations 2000

13.

### **Frequency of Forward Plan Publication**

<b>Legislation</b>	<b>Current Practice In York</b>	<b>Alternative Approach</b>
Regulation 13 <sup>1</sup> requires that a forward plan shall be updated on a monthly basis, with any outstanding matters contained in the previous forward plan being included in the latest forward plan.	City of York Council's Constitution states that the Forward Plan will be published on the Council's website on or around the 14 <sup>th</sup> and 28 <sup>th</sup> of each month i.e. twice a month	Reduce the number of publications per month to one, in line with legislation – it has not been possible to identify any other Councils who publish more often than the legislative requirement

### **Analysis**

14. The Council is fulfilling the legislative requirement but at the same time has double the work to do per month.
15. The decision to publish twice a month was taken following the local election in May 2007, following a change to the way in which political groups engaged with forthcoming Executive business prior to a decision being made. Group Leaders agreed that at fortnightly meetings, they would consider any new entries on the Forward Plan, together with the drafts of the reports due to appear on the next Executive agenda. These meetings were held fortnightly in part to coincide with the fortnightly cycle of Executive meetings. This created a problem in that at that time the Forward Plan was only published once a month (on 14<sup>th</sup> of the month) in line with the legislative requirement, often resulting in a delay in the Group Leaders seeing new entries. A decision was therefore taken to publish the plan fortnightly in order to provide a more up to date and current view of the new decisions required. The date of the relevant Group Leaders meeting was shown against each Forward Plan entry in order to keep the report writer informed.
16. Since the Group Leaders no longer meet fortnightly there is no longer an organisational requirement to have the Forward Plan published twice a month. That said, there are advantages to both fortnightly and monthly publication:
- Fortnightly
- New entries can be made closer to a required decision date enabling speedier decision making
  - Less business added under urgency provisions due to frequency of publication
- Monthly
- Less labour intensive than fortnightly publication i.e. better use of resources
  - More time for consultation on reports or for pre-decision scrutiny to take place before a decision is required
  - Less time consuming for members of the public, officers and Members to check the published forward plan once a month
  - Better supports the correct use of the Forward Plan in line with the regulations e.g. officers will be less inclined to add an item 4

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<sup>1</sup> of the Local Authorities (Executive Arrangement) (Access to Information) (England) Regulations 2000

months in advance of the decision being required, if they can add it 2 weeks before and still get the decision made

17. The removal of 'Information Only' reports and quarterly finance & performance monitoring reports from Executive Member agenda has as expected, resulted in a 50% reduction to date, in the number of entries appearing on the Executive Forward Plan.
18. The question for this issue is - 'Is there still a need for fortnightly publication?'

### **Key Decisions**

<b>Legislation</b>	<b>Current Practice In York</b>	<b>Alternative Approach</b>
Regulation 8 <sup>1</sup> defines that only 'Key' decisions <b>must</b> be included in the Forward Plan. Regulation 13 <sup>1</sup> states that a forward plan shall contain details of all the matters likely to be the subject of key decisions in the relevant authority for a period of four months	City of York Council's Constitution states that the Forward Plan is a list of decisions that the Executive and individual Executive Members are expected to take over the coming 4 month period – it does not differentiate between key and non-key decisions. The Council's definition of a key decision is shown in paragraph 19 below	Limit the forward plan to only key decisions - it has not been possible to identify any other Councils who include non-key decisions on their forward plan When the regulations were first introduced, it was recognised that not all key decisions needed to be, or indeed would be capable of being, identified four months in advance of the decision being taken. Guidance was provided on this by the then Secretary of State – see paragraph 20 below

19. The Council's definition of a key decision means a decision made in connection with the discharge of a function which is the responsibility of the Executive and which is likely to:
  - result in the Council incurring expenditure, or making savings, which are significant having regard to the Council's budget for the service or function to which the decision relates i.e.:
    - make a saving of more than 10% of the budget for a particular area - or be more than £500,000
    - require spending that is more than 10% of the budget for a particular area - or be more than £500,00
  - be significant in terms of its effects on communities
20. The guidelines produced by the Secretary of State on the introduction of the Local Authorities (Executive Arrangement) (Access to Information) (England) Regulations 2000 state:

*'Some decisions (such as the adoption of certain plans or strategies in the policy framework) will be able to be identified that far in advance and therefore will be on*

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<sup>1</sup> of the Local Authorities (Executive Arrangement) (Access to Information) (England) Regulations 2000

*the forward plan for some time, whereas others will not be known until a few weeks before the decision is due to be taken. The forward plan will therefore inevitably include more decisions which will be taken within, say, one month than it will decisions to be taken in, say, three or four months and can therefore be viewed as a planning tool for managing the work programme of the Executive.'*

## **Analysis**

21. A majority of items are added to the forward plan only 4/6 weeks in advance of the decision being taken, and most of these are 'non-key' decisions. The Council is exceeding its legislative requirement by including non-key decisions on its forward plan, which in turn creates a great deal more work than would otherwise be required.
22. This is one of the important issues to be addressed by this review, as late additions limit the time available for scrutiny members to identify possible topics for pre-decision scrutiny. It should be noted that if non-key decisions were removed from the Forward Plan, without an alternative way of keeping Members informed of those decisions required, the issue of identifying all forthcoming decisions and/or topics suitable for pre-decision scrutiny would be made much harder.
23. Although best practice suggests items should be added to the Forward Plan as far in advance as possible (as detailed in paragraph 20 above), feedback from Directorates is that they find it difficult to do so, because often for valid reasons unknown at the time of submission, officers need to change the focus of the decision required and/or the meeting date at which the item will be considered. In the past when this has occurred, Members have not been happy with items being deferred.
24. One suggested approach to addressing this to the satisfaction of both officers and Members, would be the provision of an environment in which officers work within guidelines on acceptable reasons for deferral, and where Members accept the necessity on occasion for deferral - this would require an important cultural change at the Council. The Committee Management System already provides a mechanism for recording reasons for deferral and enables those reasons to be visible online.
25. If this approach is not acceptable, the Committee may choose to identify an alternative method for addressing this issue. For example, the introduction of Directorate Business Plans - these could be populated with their planned work programming for the year. Again Members would need to recognise that these documents were subject to change and not hold officers to account about the slippage or movement of items. Out of these plans would fall items requiring decisions and these in turn would generate the population of the Executive Forward Plan.
26. The questions for this issue are, would Members be happy to:
  - a) limit the Forward Plan to Key decisions only?

- b) recommend the approach outlined in paragraph 24 above or prefer to investigate further an alternative method for addressing the issue of late submission of FP items

**Style & Content of the Forward Plan**

27. There are over a hundred Councils nationally using the same Committee Management System we have here in York. Each of them produces a Forward Plan and many will have chosen to adapt the style of their plan to best suit their individual needs. An example of the council’s current printed format for the FP is shown at Annex A, showing all of the information we currently expect to be included. As part of this review, Members may choose to look at examples of different formats used by other local authorities in order to decide whether our current format is fit for purpose or whether changes are required.

<b>Legislation</b>	<b>Current Practice In York</b>	<b>Alternative Approach</b>
Regulation 14 <sup>1</sup> specifies what particular information each forward plan entry should contain – see paragraph 28 below.	City of York Council’s Constitution states what information should be included in each forward plan entry (detailed in paragraph 29 below) - this does not match exactly with the legislative requirements	The Council already has in place an alternative and more detailed approach to what information is included in each forward plan entry, which exceeds our constitutional requirements e.g. it captures information on wards affected. This supports Secretary of State guidance on identifying decisions of particular relevance to a particular locality within the authority.

28. In line with legislation, the information required for inclusion in a published forward plan is:
- a) the matter in respect of which the decision is to be made;
  - b) where the decision maker is an individual, his name & title if any, and where the decision maker is a decision making body, its name and a list of its members;
  - c) the date on which, or the period within which, the decision is to be made;
  - d) the identity of the principal groups or organisations whom the decision maker proposes to consult before making the decision;
  - e) the means by which any such consultation is proposed to be undertaken;
  - f) the steps that may be taken by any person who wishes to make representations to the local authority executive or to the decision maker about the matter in respect of which the decision is to be made, and the date by which those steps are to be taken; and
  - g) a list of the documents, submitted to the decision maker for consideration in relation to the matter in respect of which the decision is to be made.

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<sup>1</sup> of the Local Authorities (Executive Arrangement) (Access to Information) (England) Regulations 2000

29. In line with the Council's Constitution (see page 65 of Part 5), the information required for inclusion in a published forward plan is:
- i) information on the type of decision to be taken e.g. Key Decision
  - ii) who will be taking the decision e.g. The Executive, Executive Member
  - iii) details of any consultation taking place and who to contact should you wish to comment
  - iv) the name of the lead officer responsible for the item and the report author
  - v) associated documents relating to individual items on the plan e.g. reports, annexes and background papers where applicable

### **Analysis**

30. Neither the Council's constitutional requirement or the alternative more detailed approach currently in operation (see Annex A), match exactly with the legislative requirements i.e. :
- they do not require the members of a decision making body to be listed i.e. the names of the Executive Members
  - the steps that may be taken by any person who wishes to make representations, and the date by which those steps are to be taken
  - a list of the documents, submitted to the decision maker for consideration in relation to the matter in respect of which the decision is to be made
31. In addition, although the Council's Constitution states that details of any consultation taking place should be included (in line with the legislative requirement), in practice this does not happen in York. The Council's working practices therefore need revising to ensure this is done.
32. The questions for this issue are:
- a) Would Members like to examine examples of alternative formats for the printed Forward Plan, in order to establish whether changes are required to the format currently in use.
  - b) should the relevant scrutiny chair/committee be consulted in order to help in the identification of issues suitable for pre-decision scrutiny?

### **Corporate Strategy**

33. This scrutiny review is in line with the Council's aim to improve the Council's organisational effectiveness i.e. 'we shall be a modern council with high standards in all we do, living up to our values and be a great place to work. As members of the public are entitled to participate in the Council's decision making process, it is important that the Council's Forward Plan is robust and fully informative.

### **Implications**

34. **Legal** - The Council's Constitution will need to be updated to reflect any changes approved by the Executive as a result of this review.



35. There are no known Financial, HR, Equalities, Crime & Disorder, ITT, Property or Other implications associated with the recommendations in this report.

### **Risk Management**

36. If the changes needed to ensure the Forward Plan is meeting the legislative and constitutional requirements are not made, there is a risk to the Council that the Forward plan will remain organisationally ineffective.

### **Recommendations**

37. There are a number of issues with the current Forward Plan where the Council is not meeting the legislative and /or constitutional requirements. Some of these can be addressed easily as they only require a simple change in procedure. If Members are able to agree those changes at this stage in the scrutiny review, then the remainder of the review could focus on those issues that require not only a procedural change but also a cultural change in the way we work.
38. Members are therefore initially asked to support and endorse officers implementation of the following changes to the Council's current working practices to ensure they are in line with legislation
- i) to carry out the annual publication of its statement of intent
  - ii) to change the period covered by the FP to bring it in line with legislation as detailed in paragraphs 10-18
39. Members are also asked to agree whether fortnightly publication of the FP is still necessary?
40. Finally, Members are asked to agree to focussing their work for this review on:
- a) whether the Forward Plan should be limited to 'Key' decisions only
  - b) investigating methods for addressing the issue of late submission of FP items as per the examples outlined in paragraphs 24-25
  - c) considering alternative layouts for the printed plan in order to decide whether the Council's current FP format is fit for purpose

### **Contact Details**

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**Report Approved**

**Date**

12 November 2009

### **Specialist Implications Officer(s)**

**Wards Affected:**

**All**

**For further information please contact the author of the report**

**Background Papers:**

The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000

**Annex A** - Example of this Council's current printed format for a Forward Plan entry