



NORTHAMPTON
BOROUGH COUNCIL

OVERVIEW & SCRUTINY VIEWS AND RECOMMENDATIONS

TO CABINET 5TH AUGUST 2009

Report Title	<p>REPORT OF OVERVIEW AND SCRUTINY COMMITTEE 3 (IMPROVEMENT, PERFORMANCE AND FINANCE) – ON THE CALL- IN OF CABINET DECISION OF 8TH JULY 2009: -</p> <p>EVALUATING WAYS OF DELIVERING SERVICES AND IMPROVING VALUE FOR MONEY FOR THE COUNCIL TAX PAYERS OF NORTHAMPTON</p>
--------------	--

Agenda Status: PUBLIC

1. Purpose

- 1.1 To submit a report to Cabinet detailing the Committee's findings following the Call-In Hearing that took place on Thursday, 16th July 2009.

2. Recommendations

- 2.1 That Cabinet be formally notified of Overview and Scrutiny Committee 3 (Improvement, Performance and Finance)'s findings following the Call-In Hearing of 16th July 2009:

Resolved:

- (1) That after all the evidence had been heard that the Call-In be accepted on the grounds that for transparency the process be correctly followed. The report had been incorrectly designated key decision on the Cabinet agenda of 8th July 2009. The report is a legal document that was not designated properly and therefore does not have proper status.
- (2) That Cabinet instructs the appropriate officer to circulate the definition of a key decision to all Members of the Council.

3. Background and Issues

3.1 The Cabinet decision:

1. It has been decided to undertake a full market testing exercise to determine the most cost effective and efficient way to deliver waste management, street care and grounds maintenance services and so improve VFM of these services for Council Tax payers.
2. Cabinet's commitment has been given to implementing the findings of this particular market testing exercise if a well defined and robust business case is established that supports this course of action, subject to paragraph 3 and 4 below.
3. It has been noted that further reports will be brought forward throughout the course of this market testing exercise if key decisions need to be made.
4. It has been noted that, further to paragraph 3 above, before any contract or tender is awarded as a result of the market testing of waste management, street care and grounds maintenance services, a report will be brought to Cabinet to seek its agreement.
5. That, subject to specific agreement with the relevant portfolio holder, approval has also been given to the principle and practice of market testing Council services where it is considered that the external market might provide greater opportunities to achieve better value for money, efficiencies and effectiveness in service delivery, as part of the Strategic Business Review programme or as distinct projects.
6. It has been noted that the Trades Unions have been informed of this proposal and that management are seeking positive and active engagement of the Trades Unions in pursuing this programme, to ensure that the proper interests of all employees, whether Union members or not, are duly considered.
7. Working together with other Councils on market-testing has been endorsed by Cabinet where this enables potential mutual benefits and sharing of the costs of market-testing, as long as such joint working does not fetter future discretion by this Council.

was called-in for Scrutiny by Councillors Tony Clarke and Joy Capstick for the following reason: -

1) In the Forward Plan 1st July 2009 to 31st October 2009, the item 'Evaluating Ways of Delivering Services' was not identified as a Key Decision. This means that this item was not subject to wider consultation and Overview and Scrutiny committees were not engaged as to the need for pre-scrutiny prior to any Cabinet determination.

2) The Report of 8th July 2009 is described as a 'Key Decision' and therefore contradicts the same item designation within the Forward Plan.

3) As the decision was incorrectly identified as 'Non Key' in the Forward Plan, by Cabinet determining on the Report of 8th July and not invoking the grounds of 'general exception' or 'special urgency', it breached the Constitutional Rules and Procedures of the Council.

4) By circumventing the usual and agreed Constitutional protocols of the Council and releasing the 8th July 2009 Report as a general press release before back-benchers had

even had sight of it, the administration severely and predictably compromised the position of elected members when asked for views by the press and members of the public.

3 Evidence

3.1.1 The Committee heard evidence from:-

Internal Witnesses

- Councillor Tony Woods Leader of the Council
- David Kennedy Chief Executive

3.1.2 The Leader of the Council provided oral evidence advising that the costs to the Council in respect of this decision would be less than £50,000. The issue was correctly designated as non-key in the Forward Plan. Non-key does not mean that the issue lacks importance but if it had been declared as a key decision in the Forward Plan all future decisions from this could have been designated non-key as a key decision had been taken at the initial part of the process. By designating the issue as non-key, all future issues can therefore be fully scrutinised at the time when the substantive decision is taken. It was confirmed that due to an error in the system the report that was presented to Cabinet at its meeting on 8 July 2009 was incorrectly designated as a key decision. The criteria of a key decision was given: -

- (a) Any decision in relation to an Executive function which results in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Local Authority's budget for the service or function to which the decision relates. For these purposes the minimum financial expenditure will be £50,000.
- (b) Where decisions are not likely to involve significant expenditure or savings but nevertheless are likely to be significant in terms of their effects on communities living or working in an area comprising two or more wards or electoral divisions.

3.1.3 David Kennedy, Chief Executive, Northampton Borough Council, provided evidence. The decision was correctly designated as non-key in the Forward Plan, not because it was not significant but in accordance with Legislation. The report that had been signed off for inclusion in the Cabinet agenda of 8th July 2009 had been designated non-key. However, when the agenda was published approximately twenty minutes later, the report was detailed as a key decision. An error in the publication process had occurred. The process has now been improved to ensure that errors of this nature do not occur in the future.

3.1.4 Three members of the public addressed the Committee supporting the Call In.

3.1.5 Legal Advice

3.1.5.1 The Borough Solicitor provided advice to the Call-In Hearing. There is no legal reason to refer the issue back to Cabinet. Evidence suggests that there was no intention for this issue to be designated a key decision. The definition of key decision is not particularly clear in the Legislation and there was some subjectivity involved in assessing whether a particular report falls within this definition. This

assessment is usually made by the report author and the Borough Solicitor (in his capacity as Monitoring Officer) would only become involved if the assessment was irrational.

3.1.5.2 Cabinet Members present at the Call-In Hearing declared a personal and prejudicial interest in the issue and were advised by the Borough Solicitor that they should remain in the Call-In Hearing as long as they were required to by the Committee, however, when the Committee commenced its decision making Cabinet Members present were asked to leave.

4 Findings and Conclusions

4.1 Following the submission of all the evidence, the Committee concluded that as the Cabinet report was incorrectly designated key decision on the Cabinet agenda of 8th July 2009 that it had no status and that Cabinet should therefore undertake this process correctly.

4.2 The Committee further concluded that Cabinet be asked to instruct the appropriate officer to circulate the definition of a key decision to all members of the Council.

4.3 Upon a vote, the Committee:

Resolved:

(1) That after all the evidence had been heard that the Call-In be accepted on the grounds that for transparency the process should be correctly followed. The report had been incorrectly designated key decision on the Cabinet agenda of 8th July 2009. The report is a legal document that was not designated properly and therefore does not have proper status.

(2) That Cabinet instructs the appropriate officer to circulate the definition of a key decision to all Members of the Council.

5. Options

5.1 Not applicable.

6. Implications (including financial implications)

6.1 Policy

6.1.1 The work of Overview and Scrutiny plays a major part in the development of the Council's policy framework through its work programme.

6.2 Resources and Risk

6.2.1 The decision cannot be implemented until Cabinet has received and made a decision upon Overview and Scrutiny Committee 3 (Improvement, Performance and Finance)'s report on the result of the Call-In Hearing.

6.3 Legal

6.3.1 The duties to undertake Overview and Scrutiny are set out in the Local Government Act 2000.

6.3.2 The Borough Solicitor advised the Call-In Hearing as detailed at paragraph 3.1.5.

6.4 Equality

6.4.1 Not applicable.

7 Consultees (Internal and External)

7.1 Overview and Scrutiny Committee 3 (Improvement, Performance and Finance) held the Call-In Hearing.

7.2 Internal witnesses as detailed in paragraph 3.1.

7.3 The Call-In Authors, Councillors Tony Clarke and Joy Capstick, attended the Call-In Hearing to respond to the Committee's questions.

7.4 The Call-In Hearing was published through the Council's usual channels and was attended by seven members of the public, of which three addressed the Committee.

8. Background Papers

8.1 The key papers are:

- Cabinet Report of 8th July 2009 – Item 10 - Evaluating ways of delivering services and improving value for money for the Council tax payers of Northampton.
- Cabinet decision and minutes of 8th July 2009 – Item 10 - Evaluating ways of delivering services and improving value for money for the Council tax payers of Northampton.

Report Author and Title: Tracy Tiff, Overview and Scrutiny Officer, on behalf of Councillor Jamie Lane, Chair, Overview and Scrutiny Committee 3 (Improvement, Performance and Finance)

Telephone and Email: 01604 837408, ttiff@northampton.gov.uk