

19 September 2017		ITEM: 6
Corporate Overview and Scrutiny Committee		
Call-in to Cabinet Decision 01104421 Communication Strategy		
Wards and communities affected: All	Key Decision: Key	
Report of: David Lawson, Monitoring Officer and Deputy Head of Law & Governance		
Accountable Assistant Director: N/A		
Accountable Director: Karen Wheeler, Director of Strategy, Communications and Customer Services		
This report is Public		

Executive Summary

This report outlines the constitutional and procedural legal advice given by the Monitoring Officer following the decision by the Corporate Overview and Scrutiny Committee at their meeting on 29 June 2017, in relation to the call-in made to Cabinet Decision 01104421 Communication Strategy.

Following sight of the draft minutes the Monitoring Officer met with the Chair of the Committee to discuss procedural queries, arising from the meeting. During discussions it was agreed that officers would produce a report, including advice from the Monitoring Officer in relation to the call-in decision and report back to Members at their next meeting.

1. Recommendation(s)

- 1.1 That the Corporate Overview and Scrutiny Committee consider the procedural advice received from the Monitoring Officer at paragraphs 4 of the report.**
- 1.2 That the Corporate Overview and Scrutiny Committee consider the potential revised wording of the relevant section of the Communications Strategy 2017-2020.**
- 1.3 That the Committee can, following the legal and procedural advice from the Monitoring Officer, either, refer the recommendation (decision: 01104421 Communication Strategy) to Cabinet for reconsideration, setting out in writing the nature of its concerns, or reject the call-in stating the reasons why.**

2. Introduction and Background

- 2.1 On Tuesday 18 April 2017, Councillor John Kent called in Cabinet Decision 01104421, in his capacity as the Chair of the relevant Overview and Scrutiny Committee.
- 2.2 The reason for making the call in (in accordance with Chapter 4, Part 3, Rule 10.4 of the Constitution) has been cited as a failure of the decision maker to take the decision in accordance with the following decision-making principles:
- a. *Due regard for individuals and communities served by Thurrock.*
 - b. *Proportionality (i.e. the action must be proportionate to the desired outcome)*
 - c. *Due consultation*
 - e. *A presumption in favour of openness*
- 2.3 The call-in was agreed to be valid in accordance with the rules set out within Chapter 4, Part 3 of the Councils Constitution on those grounds.
- 2.4 The alternative proposal stated on the call in form is:
- Withdraw the threat to not recognise or engage with outlets that don't – in the Councils view- accurately reflect the Council line. Recognise all legitimate media organisations.*
- Put the strategy to the Corporate Overview and Scrutiny Committee.*
- 2.5 During the meeting held on 29 June 2017, the Corporate Overview and Scrutiny Committee agreed that overall the Communications Strategy 2017-2020 was a good and useful piece of work.
- 2.6 However, there were two sections of the covering report and strategy specifically highlighted as part of the call-in which the committee felt needed to be either removed or reviewed. Those sections are:
- 3.23 The Council will recognise organisations as 'media' who are a member of the Independent Press Standards Association (IPSO) or equivalent regulator and comply with the Editor's Code of Practice. Television and radio broadcasters, such as the BBC, are regulated by Ofcom. Any organisation which has membership of such a regulatory framework will be offered a place in the 'media area' for the benefit of reporting on council meetings. Other media organisations and reporters will be welcome to report from the public area.
 - 3.25 Should a media outlet, or one of its journalists, fail to adhere to the regulator's code and in particular not reflect the council's position accurately ensuring a 'right of reply', the council will not engage and

recognise that organisation and/or journalist as 'media' for a period of time determined by the council.

- 2.7 The discussion focussed on seeking clarity around what the spirit of those sections would mean in practice and under what circumstances the Council would act.
- 2.8 During the discussion, it was made clear by the Director of Strategy, Communications and Customer Services and the Portfolio Holder that the intention was not to seek to change the existing practice of how the council engages with the media. It sought only to codify how the council would react in the exceptional circumstance where an outlet's actions or reporting significantly and/or persistently fell below what is the independent industry-set standard.

The council has a good working relationship with the media and the work of the council is well reported on.

- 2.9 National rules around transparency of local government are set out in The Openness of Local Government Regulations 2014 and The Local Authorities (Executive Arrangements)(Meeting and Access to Information)(England) Regulations 2012.

These Regulations state that the 'press' is defined in the widest terms, including traditional print media, filming crews, hyper-local journalists and bloggers.

- 2.10 The Regulations also advise that local government bodies are only required to provide 'reasonable facilities' to facilitate the reporting of meetings. This should include space to view and hear the meeting, seats, and ideally a desk.
- 2.11 Following the meeting and having had sight of the draft minutes the Monitoring Officer met with the Chair of the Committee to discuss procedural queries, arising from the meeting. It was then agreed that such legal and procedural advice should be presented to the Committee for it to have an opportunity to consider the advice at their next meeting. The Monitoring Officer's advice is set out at **paragraph 4** below and reflects the advice provided to the Chair of the Committee.

3. Proposed Changes

- 3.1 In the interim the Director of Strategy, Communications and Customer Services has considered the views of Members at the committee and is proposing, as a possible alternative recommendation back to the decision-maker, that sections 3.23 and 3.25 of the covering report, which are reflected in the Communication Strategy, are deleted and replaced with the following:
- 3.2 *The council will recognise all those who identify as being members of the press or media. Occasionally, there may be times when the number of media representatives attending a meeting is greater than the space allocated to the*

media in a Committee Room or the Council Chamber. Where this is the case, reasonable facilities will be put in place to ensure the media can report fully on the meeting and decisions taken, such as using seats in the public gallery.

- 3.3 *The council expects media outlets to adhere to independent industry-led standards and codes, in the same way that the council follows the Code of Recommended Practice on Local Authority Publicity (2011). In the exceptional circumstance where the council feels a media outlet has acted significantly and/or persistently against its own regulatory code, the council will seek redress by engaging directly with the outlet first, then through their own complaints procedure, followed by the independent regulator's appeal procedure should previous offers of resolution be insufficient.*
- 3.4 *Where a media outlet is not a member of a regulatory body and does not have a complaints procedure in place, should they act significantly and/or persistently against the relevant code, the council will continue to offer them the same access and opportunities as a member of the public as set out in the Constitution.*
- 3.5 Thurrock Council's Constitution states:

Residents have the right to:

(c) report on meetings, or those parts of meetings, that are open to the public using any communication methods, including the internet, to publish, post or otherwise share the results of their reporting

The definition of 'reporting on meetings' is defined in the Regulations as:

(a) Filming, photographing or making an audio recording of proceedings at a meeting;

(b) Using any other means for enabling persons not present to see or hear proceedings at a meeting as it takes place or later;

(c) Reporting or providing commentary on proceedings at a meeting, orally or in writing, so that the report or commentary is available as the meeting takes place or later to persons not present;

4. Legal Advice from the Monitoring Officer

4.1 Communications Strategy Call-in to Corporate Overview & Scrutiny Committee & Monitoring Officer Advice to Committee

In my role and function as Monitoring Officer for the Authority I have sight of draft minutes for committees and for the above item at Corporate Overview & Scrutiny Committee held on 29 June 2017, I had some procedural queries for which I have sought clarification from both officers and Chair of the Committee.

4.2 The procedural queries, which I needed to review, were:

- The ground that the relevant executive decision was or may be outside the Budget Policy Framework (BPF) was not a ground listed in the Call-In Form - there is an option for it this in the Call-In Form but it was not marked as a ground and there is no supporting evidence in the Form itself;
- My understanding is that this was an additional ground only raised on the night – this appears contrary to Scrutiny Procedure Rules at Chapter 5, Part 1 Para 10.10;
- Additionally the Scrutiny Procedure Rules at Chapter 5, Part 1 - Para 10.20 (b) state that if the Committee considers the decision might be outside BPF before referring it to Full Council they are required to seek advice of Monitoring Officer and / or section 151 Officer as relevant. I am not aware this was done;
- Chapter 2, Part 1 Rule 5 (Article 4) of the Constitution lists by formal definition those agreed high level plans / strategies that are within the agreed Policy Framework – the " Communication Strategy" is not one of them. Neither is the DCLG guidance document or the Nolan Principles which I believe were verbally referred to on the 29 June 2017;
- This has raised the risk that the Committee may be seeking to make a referral to Full Council other than in accord with its own constitution based procedure rules and of a matter not listed within Policy Framework, with potential for jurisdictional embarrassment to Full Council.

4.3 Monitoring Officer Advice

In the circumstances, given that it appears that the committee could have made a referral to Full Council contrary to its own Scrutiny Procedure Rules and / or outside the definition of "Policy Framework" in the Constitution or the relevant statutory guidance in this matter I have advised:

That the matter should be brought back to the committee to give it an opportunity to consider this advice:

- That the current call-in stasis as to any implementation of the new "Communication Strategy" will have to continue until the committee has had an opportunity to consider this advice;
- That by giving this advice, this goes towards satisfying the procedural requirement of the Scrutiny Procedure Rules at Chapter 5, Part 1 - Para 10.20 (b) but I am happy to attend the meeting at which this report is heard to assist the committee in any further way I can in this regard;
- It appears that the ground of being contrary to the BPF was not cited by the call-in as required by Scrutiny Procedure Rules at Chapter 5, Part 1 Para 10.10;

- That the Communication Strategy, the DCLG document and the Nolan Principles are not policies within the current “Policy Framework” as set out in Chapter 2, Part 1 Rule 5 (Article 4) and therefore the prerequisites for a referral to Full Council, rather than back to original decision maker (Cabinet), do not appear to be satisfied;
- It is my understanding from the draft minutes that there may be some level of agreement that the passages of the Communication Strategy, which have clearly caused the committee concern, will be addressed elsewhere in this report either by potential alternative wording and / or deletion of the said passages and which may or may not assist the committee in its debate and help inform any alternative recommendation by the committee back to the decision maker in this matter.

5. Possible Alternative Recommendation

- 5.1 Further to a request by the Chair in order to assist the Committee in its debate as to possible alternative recommendations, the Director of Strategy, Communications and Customer Services has put forward a potential amendment to the Communications Strategy, for the committee to consider as a recommendation to Cabinet. If the suggested amendments are adopted by the Committee, after due scrutiny and debate, then the alternative recommendation could be expressed as follows:

“That the committee considers the revised wording of the relevant section of the Communications Strategy 2017-2020 and recommend the proposed change to Cabinet”.

- 5.2 This may allow for the Committee, depending on its view, to address the areas of the Communications Strategy which the committee felt needed to be amended and recommend alternative wording to Cabinet.

6. Reasons for Recommendation

- 6.1 The Committee are requested to manage the call-in in accordance with the provisions set out in Chapter 4, Part 3 of the Constitution.

7. Consultation (including Overview and Scrutiny, if applicable)

- 7.1 Not applicable.

8. Impact on corporate policies, priorities, performance and community impact

- 8.1 The call-in has a positive impact on corporate policies as it allows for the proper exercise of the democratic function, namely for Members to call-in a Cabinet decision based on valid arguments.

- 8.2 The role of Overview and Scrutiny in this function will allow for issues to be discussed in a public arena with cross party involvement and will give the opportunity for interested parties to join the debate and make representations.
- 8.3 The impact on performance, should the recommendation not be agreed is that the Council could be deemed to not be discharging the Call-In correctly.

9. Implications

9.1 Financial

Implications verified by: **Carl Tomlinson**
Finance Manager

There are no direct financial implications arising from this call in. Any alternative proposals would need to be reviewed and any financial implications arising from them would need to be stated as part of the proposals.

9.2 Legal

Implications verified by: **David Lawson**
Monitoring Officer and Deputy Head of Law & Governance

The legal implications are provided in the body of the report The Council Constitution provides for Call-In of Cabinet decisions in Chapter 4, Part 3, Rule 10.

9.3 Diversity and Equality

Implications verified by: **Natalie Warren**
Community Development & Equalities Manager

There are no direct equality implications arising from this call in. Any alternative proposals would need to be reviewed and any equality implications arising from them would be stated as part of the proposals.

9.4 Other implications (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

- None

10. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- Minutes of the Corporate O&S Committee – 29 June 2017. These are published within the agenda (19 September 2017).

11. Appendices to the report

- None

Report Author:

Kenna-Victoria Martin
Senior Democratic Services Officer
Legal & Democratic Services