

# **DECISION MAKING ON WARD ISSUES**

## **PROCEDURAL ADVICE TO CABINET MEMBERS**

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### 1. Background

- 1.1 The Standards Committee has been asked to provide advice to Cabinet Members on procedures should they wish to campaign on behalf of their Ward on an issue which will be coming before the Cabinet for a decision. The Standards Committee referred the issue to a Working Group consisting of Council and independent members of that Committee and a member of the Cabinet.
- 1.2 The procedural advice set out below has been drawn up and agreed by that Working Party, with the benefit of advice from the Head of Legal Services. It was approved by the Standards Committee on the 23rd January, 2003.
- 1.3 The advice is to be reviewed after one year's operation.

### 2. Context

- 2.1 Cabinet members will on occasion find themselves having to resolve two different roles on a particular issue.
- 2.2 First, there is the role as **decision maker** in which they have to act in the best interests of the Council as a whole, taking account of all relevant matters.
- 2.3 The second role is that of **elected representative** where members will listen to and may wish to represent and on occasion even campaign for the views of local people. This is particularly an issue where the Cabinet member happens also to be the Cabinet member for the relevant Ward.
- 2.4 This paper is not concerned with quasi judicial decisions and similar matters such as planning applications or licensing matters. The Cabinet does not make such decisions. This issue relates to the sort of decisions on service provision and implementation of policy which are the responsibility of the Cabinet. There is no doubt that in quasi judicial decisions, it is inappropriate for a member to express a view before the decision-taking meeting which might indicate that his or her mind has already been made up on the issue. This will raise clear questions of legality and could raise question marks (however undeserved) about probity. Matters which come before the Cabinet, on the other hand, can legitimately be the subject of political debate and of party political or local priorities. There is ordinarily no problem with Cabinet members putting forward political policies and priorities and seeking to follow those, provided that when the decision is taken they do not blindly follow those policies and priorities but do have available and take into account all the

relevant information so that a balanced decision can be made. In many cases there will be a range of decisions which might be reasonable on the basis of all the relevant facts and Cabinet members can exercise political choice in making the decision.

2.5 Similarly, a Cabinet member can express a view or a preference on an issue beforehand, subject to the same proviso.

2.6 This is not an issue about compliance with the Code of Conduct for Councillors or about declarations of interest. It is simply a matter of ensuring that the decision is legally taken and cannot be challenged through the Courts. The principal requirements for a valid decision are that:-

- all relevant issues have been taken into account;
- no irrelevant issues have been taken into account; and
- the decision is not so irrational that no reasonable person could have made it.

This is also now tempered by the need to ensure that any human rights issues are satisfactorily resolved.

2.7 There is, therefore, no reason why a Cabinet member should not express a view about the ward issues arising on a particular decision; nor is there any reason why he/she should not seek to ensure that the Cabinet are aware of such issues at the time the decision is taken.

2.8 A problem arises, however, if the member wishes either to “campaign” so vigorously for a particular decision on behalf of his/her constituents that the member’s ability to put that issue aside and take a balanced view of all relevant matters at the time the decision is taken comes into question. Similarly, of course, there is a problem if the member wishes solely to campaign on behalf of his/her constituents and allow others to take the balanced decision.

### **3. Advice on Procedures**

3.1 It is accepted that a Cabinet member may on occasion put him/herself into a position where his/her ward interests are placed ahead of Cabinet duties and the Member is thus excluded from being able to take part in the vote on the issue.

3.2 However, this should only be on rare occasions on major issues having particularly significant implications within the ward. This is because, although constituents may well have expectations of their ward councillors, the Council and also the public as a whole also expects the duly appointed Cabinet to take the responsibility for decision making. This is even stronger where the issue relates to the Cabinet member’s own portfolio.

- 3.3 In all other cases where a strong representational role is desirable, the Cabinet member should arrange for this role to be carried out by a ward colleague or a political colleague from another ward.
- 3.4 Where a Cabinet member decides in the light of the above that it is appropriate for him/her to take up such a position, it is that member's responsibility to write immediately to the Chief Executive, Head of Policy and Governance and the Leader (or Deputy Leader if it is the Leader who is concerned) giving details of the relevant issue and the reason why the member wishes to take up the representational role to the exclusion of the Cabinet role.
- 3.5 If the member concerned is the portfolio holder for the issue, the Leader should, as soon as possible, appoint another Cabinet member to lead on the particular issue, in the same way as would happen if a portfolio holder had a prejudicial interest in an issue.
- 3.6 The Cabinet member should then take no further part as Cabinet member in any consideration of the issue concerned. This means, for instance, that a portfolio holder should cease to work in that role with officers on that issue and will receive briefings as Cabinet member to no greater extent than the Cabinet as a whole.
- 3.7 The Head of Policy and Governance should ensure that the information is passed on to other Cabinet members and relevant officers.
- 3.8 Where a portfolio holder is concerned, any report produced on the issue should refer to the change in responsibility for leading on the issue within the Cabinet.
- 3.9 At any meetings at which the issue is considered, the Cabinet member should make his/her position known in the same way as would be done with a personal interest. The member may remain in the meeting, but should sit apart from the main meeting table to make the position clear. He/she may take part in the debate only to represent ward issues, if invited to do so by the Chair of the meeting. It is unnecessary for the member to leave the meeting, because this is not a question of probity or personal prejudicial interest, as defined in the Code of Conduct.