

**LONDON BOROUGH OF TOWER HAMLETS**

**PROFORMA:**

**MAYORAL DECISION SUBJECT TO CALL-IN AND REFERENCE BACK**

**Mayoral Decision Log No:** 021

**Title:** Budget Implementation 2013/14 (No 1) (virements to fund East End Life)

**Is this a Key Decision:**

Mayor's provisional decision published 26<sup>th</sup> March 2013 – No.

OSC consideration of "Call In" – Yes.

**UNRESTRICTED / RESTRICTED:**

Unrestricted

**DATE OF OVERVIEW AND SCRUTINY COMMITTEE:**

*9<sup>th</sup> April 2013*

**DECISION OF THE OVERVIEW AND SCRUTINY COMMITTEE:**

*To refer the above decision back to the Mayor for further consideration.*

**REASONS FOR THE REFERENCE BACK**

*The Call-in requisition in relation to the above decision set out the following reasons for the call-in:-*

Given the significant impact that this decision will have on both residents and the constitutional framework of the Council as well as the wide ranging public interest in this decision we ask that it be reviewed by the O&S Committee.

It is our view that this decision not only results in an additional £433,000 of Council funds being allocated from reserves but also serves to bring the Council's governance further into disrepute by actively pursuing policies designed to specifically counteract the legitimate decision of full Council when setting the budget.

*The Call-in requisition in relation to the above decision also asked the OSC to consider a number of specific issues:*

- That the Council passed by a two-thirds majority an amended budget which resolved:
  - To delete funding of £1.214m from the budget used to fund East End Life, delivering a saving of £433k by:
    - Reducing funding available for public notices from £267,000 to £100,000, sufficient to support the provision of statutory advertising in local newspapers, tendering a long term contract in order to secure the best rates;
    - Reducing the funding of £176,000 for the advertising of choice based lettings to £50,000, sufficient to fund a provision that can be made available on a weekly basis in each housing office, leisure centre and one-stop shop in the borough, as well as online, to be managed by the lettings team;
    - To cut departmental budgets by £143,000, to reduce their general advertising spend allocated in previous years to East End Life;
- To place a general restriction on the council that all virements outside of the agreed budget framework above £200,000 must be agreed by full council. (officers advised that this would not be dealt with as it was a constitutional amendment and must be agreed at an ordinary Council meeting not a Budget one)

In making this executive decision the Mayor is attempting to use virements to directly undo the amendment put in place by Council to remove the £433,000 budget for East End Life from the Budget. Given that Budget setting is a Council function this attempt to circumvent the Constitution should not be allowed, especially in light of the fact that Council has twice before tried to change the limit on virements to prevent this form of abuse – both at the 2013 Budget meeting, which was prevented by a technicality, and previously in January 2012, a decision which was ignored by officers and the Mayor. Given these attempts and the failure of action we recommend that the Committee press for the Mayor to suspend this virement until Council has the opportunity to express its view on the virement limit, and that this decision should then be taken to comply with that decision.

In taking this decision the Mayor decided not to classify this as a 'key decision'. We were previously advised that this would indeed have to be a key decision and therefore would be subject to the 28 day notice period required for these types of decision – therefore allowing Council the time to ratify its proposed changes to the virement rules at its April 17<sup>th</sup> meeting. The criteria

for deciding whether or not something is a key decision is set out in the constitution:

- (i) A key decision” is an executive decision which is likely:
  - (a) to result in the local authority 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; or
  - (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the borough.
- (ii) A decision taker, when making a decision may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of the Constitution.
- (iii) The Council has not adopted a financial threshold for key decisions but these are subject to financial regulations. However, the criteria that Councillors and officers will have regard to in determining what amounts to a key decisions include the following:
  - Whether the decision may incur a significant social, economic or environmental risk.
  - The likely extent of the impact of the decision both within and outside of the borough.
  - Whether the decision is likely to be a matter of political controversy.
  - The extent to which the decision is likely to result in substantial public interest.

It is our strong view that this decision is indeed a key decision as it will result in nearly half a million pounds being allocated from general reserves against a backdrop of a budget blackhole in forthcoming years of over £50m. Furthermore we believe the decision to reissue this funding will have a significant impact across the borough, especially given that the East End Life publication is delivered widely to residents.

We do not believe that the Mayor has taken due regard of the necessary criteria as this is most definitely an issue of great political controversy and is likely to result in substantial public interest. We also believe that in not taking account of the necessary factors and by deeming this to be a non-key decision, the Mayor has opened the Council up to legal challenge.

The Constitution also states that if the Overview and Scrutiny Committee is of the opinion that a Mayoral Decision “is contrary to the policy framework, or contrary to or not wholly in accordance with the budget approved by the Council, then that decision may only be taken by the Council.”

It is our view that this decision explicitly goes against and indeed actively seeks to undermine the Budget framework agreed by Council on the 7<sup>th</sup> March 2013. The Constitution goes on to state:

7.2 In respect of functions which are the responsibility of the Mayor or the Executive, the report of the Monitoring Officer and/or Chief Finance Officer shall be to the Mayor and Executive with a copy to every Member of the Council. Regardless of whether the decision is delegated or not, the Executive must meet within 21 days of receiving the report to decide what action to take in respect of the Monitoring Officer's or Chief Finance Officer's report and to prepare a report to Council in the event that the Monitoring Officer or the Chief Finance Officer conclude that the decision was a departure, and to the Overview and Scrutiny Committee if the Monitoring Officer or the Chief Finance Officer conclude that the decision was not a departure.

7.3 If the decision has yet to be made, or has been made but not yet implemented, and the advice from the Monitoring Officer and/or the Chief Finance Officer is that the decision is or would be contrary to the policy framework or contrary to or not wholly in accordance with the budget, the Overview and Scrutiny Committee may refer the matter to Council. In such cases, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter. The Council shall meet within 21 days of the request from the Overview and Scrutiny Committee (or within 28 days if a meeting of the Council is scheduled within that period). At the meeting the Council will receive a report of the decision or proposals and the advice of the Monitoring Officer and/or the Chief Finance Officer.

7.4 The Council may either:

7.4.1 endorse a decision or proposal of the decision taker as falling within the existing budget and policy framework. In this case no further action is required, save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or

7.4.2 amend the budget, financial rule or policy concerned to encompass the decision or proposal of the body or individual responsible for that function and agree to the decision with immediate effect. In this case, no further action is required save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or

7.4.3 where the Council accepts that the decision or proposal is contrary to the policy framework or contrary to or not wholly in accordance with the budget, and does not amend the existing framework to accommodate it, require the Mayor or Executive to

reconsider the matter in accordance with the advice of the Monitoring Officer and/or the Chief Finance Officer.

7.5 If the Council does not meet, the decision will become effective on the date of the Council meeting or expiry of the period in which the Council meeting should have been held, whichever is the earlier providing that the Monitoring Officer and/or the Chief Finance Officer is/are satisfied that the decision is within the budget and policy framework or falls within Rules 6.1.1 – 6.1.4.

We ask that the Overview and Scrutiny Committee forms a judgement as to whether they agree that the Mayor has broken the Council's agreed Budget policy framework and if so require officers to draw up a report as mandated by the Constitution.

The Budget policy framework is one of the few powers reserved to Council. Riding roughshod over the Constitution and pressuring officers to find questionable workarounds not only demeans the office of the Mayor but illustrates the Mayor's utter contempt for the democratic process. This decision is both potentially unlawful and a dereliction of the Mayor's duty to operate in the public interest and within the bounds of the budgetary framework set by Council.

There are extraordinary circumstances in which the Mayor would be forgiven for taking action such as we see here, for example in the case of emergencies or to ensure essential service delivery. For the Mayor to take these steps in order to fund an overtly political communications asset shows the misguided priorities the Mayor is pursuing at the public's expense.

#### **ALTERNATIVE ACTION RECOMMENDED BY THE OVERVIEW AND SCRUTINY COMMITTEE (IF ANY)**

*The Call-in requisition proposed the following alternative action in relation to the Mayor's decision:-*

That the Mayor does not vire this £433,000 and works within the Budget set by Council.

#### **ANY OTHER COMMENTS**

*The OSC had before them the Mayoral Decision Pro-forma considered and signed by the Mayor (published 26<sup>th</sup> March 2013) and the "Call In" Requisition signed by seven Councillors (declared valid 5<sup>th</sup> April 2013).*

*The Overview and Scrutiny Committee considered the call-in request which was presented by Councillor Gibbs.*

Councillor Gibbs summarised the reasons for "calling in" the Mayoral Decision, outlining the key concerns of the "Call-in" Members, and setting out

the action sought from the OSC to address these. He also highlighted the additional point that Councillor Choudhury had indicated in his response to the "Call In" considered at agenda item 5.2 earlier in the proceedings, that Mayor considered the amendment to the Budget at Budget Council to have been politically motivated. To take a decision to change that would have political ramifications, and it must therefore be a 'key' decision. By determining otherwise the Mayor had placed the Authority at risk of legal challenge

Councillor Alibor Choudhury, Cabinet Member for Resources, responded to the concerns raised by the "Call-in" Members and subsequently responded to questions from the OSC summarised as follows:

- Referring to the above point on political ramifications of the decision, made by Councillor Gibbs, he had not used the word political in its literal sense in the previous discussion.
- Legal advice made clear that the Authority could not lawfully place an artificial cap on statutory adverts, and it was wrong to suggest this.
- The reduction in the Budget for East End Life (EEL) would lead to redundancy of 12 full time staff, and it was therefore subject to the Authority's processes requiring consultation on such matters with staff and trades unions. The amendment to the Budget had no regard for this process. Also a high proportion of these staff were women and BME, a matter the Mayor took seriously.
- Due regard must be paid to the equality impacts of the proposals, and a full EQIA would need undertaken. Thought needed given to the people that accessed EEL, their reasons for doing so and the impact of closure.
- Financial and contractual obligations needed consideration eg the Authority had recently joined a London-wide print contract and the implications of breaking the contract needed assessed.
- The Authority had a duty to promote equality and social cohesion and used EEL to reach service users and the wider community and the Budget amendment did not take this into consideration.
- Placing statutory notices elsewhere would increase costs significantly, as the former Chief Finance Officer had previously advised. This needed consideration.
- The Mayor considered it sensible to continue the provision of EEL whilst a review of the options was undertaken.
- The Authority had a continuing need to communicate with the maximum number of residents and EEL reached 80 or 90,000 households each week. The Mayor didn't believe this could be achieved without it.
- Consideration that there was a difference between whether EEL was a priority service and the reasons listed for the Mayor's decision. However there was no merit in duplicating the discussion at full Council as it had reached a decision, passed by two thirds majority. The issue needing addressed was whether it was right to reverse that decision through the virement. Responded that the decision of full Council had

been erroneous, as the proposals had not been properly evaluated, with all important issues taken into account. The decision had been taken as the politically motivated Budget amendment, intended to undermine the Mayor, had resulted in collateral damage to vulnerable sections of the community who relied on EEL.

- Why had this decision not been placed on the Authority's Forward Plan for Cabinet decision if there were significant concerns regarding the Budget reduction. Responded that the information was not new and already in the public domain. The criteria for a key decision had been weighed when the decision was made: the political sensitivity of the matter was erroneous, being based on malicious politics. The impact of the virement had not been considered significant in terms of impact on 2 or more wards. The consequent rationale of "Call-in" Members that the decision was Key, was therefore not accepted.
- Council employees had a legitimate expectation of continued employment, and if redundancy was proposed, consultation on such matters with staff and trades unions should take place; it was also reasonable for the Mayor to have time to consider the alternative options to EEL. If a timescale for this review and consultation was proposed and funding provided for that period, the virement decision might appear more reasonable. However the virement proposed a sum identical to the annual EEL budget, withdrawn by Budget Council, be re-included. This was a reversal of the full Council decision and contravened constitutional process. What was the rationale for a virement of £433k and what was the timescale for the review. Responded that the Mayor was doing what he considered necessary to undertake a review of the options relating to EEL, and allow time for any reprocurement; and it had been considered appropriate to provide the staff of EEL with security and stability for a year whilst this took place.

A discussion followed which focused on the following points:-

- The positive value of EEL for communicating information to residents of the borough and the socially inclusive nature of this outreach. Also the need for cross party co-operation on editorial content if EEL continued. Also, however, that the Budget Council discussion in support of withdrawing funding for EEL, did not focus on the quality of the EEL service, but whether it's £0.5million budget was a priority for the Authority in the context of unprecedented cuts.
- Consideration that the decision was in contravention of the Budget and Policy Framework, agreed by a two thirds majority of full Council, and for the Mayor to attempt to work around this through the virement was unconstitutional and made a mockery of the Budget setting process; accordingly **proposed** that the Monitoring Officer and Chief Finance Officer/ Section 151 Officer should be requested to provide advice on this in a report as set out in the Constitution. Also **proposed** that this report and deliberations of the OSC in relation to this Mayoral decision making be placed on the agenda of the full Council meeting to be held on 17<sup>th</sup> April 2013 at the request of the Chair of the OSC. Noted that

the report may come to OSC for consideration prior to consideration by full Council.

- The OSC was advised by Mr Galpin, Head of Legal Services Community, that the OSC could refer the “Call In” of the Mayoral Decision back for further consideration. However, the OSC could not, at this point in time, refer this matter to full Council under the provisions of Rule 7.3 of the BPF rules in the Constitution, as the advice of the Monitoring Officer and Section 151 Officer that the decision was contrary to the Authority’s BPF had not yet been obtained. The Chair responded that she had received senior officer advice, that as OSC Chair she could request a report be placed on the full Council agenda, and if this was not so the report to OSC should have advised otherwise. Also regardless of any referral on the basis that the mayoral decision was contrary to the BPF, as OSC Chair she could place the matter on the full Council agenda as a complaint regarding the way the matter had been handled. The Vice-Chair concurred that a referral to full Council should be made on both counts.
- Consideration that there was a lack of clarity on the decision making on whether the decision was ‘key’ or ‘non-key’. Also Councillor Choudhury’s response on the importance of EEL to vulnerable elements of the community indicated a significant impact in all wards. The decision appeared “key”, given its significant impact on the borough, given it was politically controversial and given the substantial public interest shown. Accordingly **proposed** that the report requested from Monitoring Officer and Chief Finance Officer/ Section 151 Officer should include advice on the the validity of the determination that the decision was not key.
- Commented that a Bill in the new session of Parliament was likely to include the current guidance on operation of local authority media on a statutory basis, resulting in EEL having to be abolished. OffCom had previously rejected the rationale used for maintaining a Council publication, and therefore examination of that rationale was merited by Officers. Commented also that costs would arise from the enforced closure of EEL
- Consideration also that any referral of the Mayoral Decision should acknowledge the legitimacy of consultation with staff and the trades unions where proposals involved redundancies; and if a virement to continue EEL, linked to a consultation timetable, and therefore of a smaller amount than the EEL annual Budget, the OSC was supportive of that.
- Consideration that full Council had fully weighed the implications of withdrawing funding for EEL. Also that the credibility of EEL had been compromised as it the message it conveyed was not entirely corporate.

*Following discussion, the Overview and Scrutiny Committee made the following Decision.*

### **Decision**





1. To refer the decision of the Mayor outside Cabinet back to the Mayor for further consideration;
2. That the Monitoring Officer and Chief Finance Officer/ Section 151 Officer be requested to provide a report, as set out in Rule 7.2 of the Budget and Policy Frameworks Rules of the Authority's Constitution, containing their advice as to whether the decision of the Mayor outside Cabinet was in contravention of the Authority's Budget and Policy Framework. Also that the report include their advice on the the validity of the Mayor's determination that the decision was not 'key';
3. That the report referred to at Resolution 2 above, and deliberations of the OSC in relation to the Mayoral decision making in this case, be placed on the agenda of the full Council meeting to be held on 17th April 2013 at the request of the Chair of the OSC; and

**DECISION OF THE MAYOR**

I have reconsidered my decision Log No. 021 "Budget Implementation 2013/14 (No 1)" in the light of the information provided by the Overview and Scrutiny Committee at its meeting on 9<sup>th</sup> April 2013 as set out above.

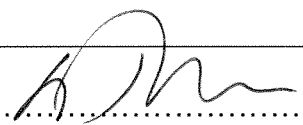
Having taken into account all of the relevant information I have decided to:-

(a) Confirm my decision, of 22<sup>nd</sup> March published on 26<sup>th</sup> March 2013, on the matter\*; 

~~(b) Amend my decision, of 22<sup>nd</sup> March published on 26<sup>th</sup> March 2013, on the matter as follows\*:-~~ 

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(\* Delete as applicable)

Signed .. 	Date .. 17/04/13
Mayor Lutfur Rahman	