

**LONDON BOROUGH OF TOWER HAMLETS**

**PROFORMA:**

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

**Mayoral Decision Log No:** 022

**Title:** Budget Implementation 2013/14 (No 2) (Virements to Allocate £296,000 for Mayoral Advisors)

**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 £296,000 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.

It is particularly worrying that the Mayor writes in his report that he was "particularly concerned that the decision regarding funding of his Mayoral Office would leave him with insufficient support to carry out his role as elected Mayor" even though neighbouring Mayoral authorities in Hackney and Newham operate with no budgets for advisors and instead rely on their Cabinet members.

*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 the funding of £296k for Mayor's Advisors;
  - 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 £296,000 budget for unnecessary Mayoral advisors 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 over a quarter of a million pounds being allocated from general reserves against a backdrop of a budget blackhole in forthcoming years of over £50m. Within the context of the Mayor's office budget, adding the proposed £296,000 to the Mayor's office would increase the budget by 73%, this should surely be seen as a significant increase for the Mayor's office budget and therefore subject to the key decision criteria.

Furthermore we believe the decision to reissue this funding will have a significant impact across the borough given the significant financial constraints which will be faced in forthcoming years. Wasting £296,000 on partisan political advisors when it could be used to protect frontline services will have a great impact on 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 overinflated personal political office which other similar boroughs do without shows the misguided priorities the Mayor is pursuing at the public's expense. To argue that it is necessary in order to carry out his role as elected Mayor, has absolutely no basis.

#### **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 £296,000 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 the Head of Paid Service had not signed off this Mayoral Decision in contrast to the Mayoral Decision for virements to fund East End Life. He subsequently responded to questions from the OSC as follows:

- The rationale for “Call-in” Members considering that the Mayoral Decision outside the Budget Framework set by full Council. Clarified that the full Council had little control over the actions of the executive Mayor, but setting of the Budget and Policy Framework (BPF) was a matter reserved to it. It set the Authority’s Budget every year, and had done so in March 2013. At that meeting an amendment to the Mayor’s proposed Budget, had been passed by a two thirds majority, resulting in the funding for mayoral advisors not being included in the Budget Framework. The Mayor had now vired money from reserves in order to put the resources for these back into the Budget Framework, and this contravened/ reversed the full Council decision. The OSC should request Officers to advise on this.
- The stage at which the advice of the Chief Officers would be sought in relation to whether the Mayoral Decision was outside the BPF and whether it was key or non-key.
- Had the work undertaken by the mayoral advisors been identified and an assessment made of its value to the Authority. If the work undertaken by them was unknown, how could a judgement be made as to value for money and the impact of cutting the budget for this; had an impact assessment been done. Had the Executive been asked for the expenditure figure for the advisors, had the supporting documentation been requested. Clarified that the work the advisors undertook was unknown, and without seeing the output or it being detailed, it was difficult to assess; it would be helpful to establish this and Councillor Choudhury may be able to provide details. Impact assessments had been increasingly poor over recent years and sometimes not seen for decisions, an OSC IA might be helpful. However “Call-in” Members did not consider that the Mayor required these advisors to carry out his functions (as he had stated in his decision), when there was a 9 strong Cabinet and thousands of Officers to draw on for advice including political advisors and experts in each directorate in most fields. There were no similar advisors in LB Newham or Hackney where the Cabinet and Officers were relied on for this, so why were they and associated costs essential in LBTH. Also the OSC role was to assess whether value for money was being achieved on Authority spend, and in the context of huge savings to be made and current cuts to staffing costs in ESCWB the use of these monies would make a positive impact if used elsewhere.
- Had consideration been given to the case of Doncaster Council, where a court had determined that it had been lawful for the directly elected Mayor to make decisions against the Budget Framework set by two thirds of the Council. The case would go to appeal shortly, but if upheld power to set an authority’s Budget would be the sole prerogative of the

executive Mayor. Clarified that the Doncaster case would need monitoring, as the final court ruling would provide a steer on what was a legal decision on the Budget. However, currently the full Council was empowered to set the BPF and contravening the Constitutional and the Legal requirements on this could lead to legal challenge and associated costs for the Authority.

- At the outset of the Budget setting process the focus was on a need to make savings, but now unutilised funds were to be used for mayoral advisors; did “Call-in” Members consider the funds could be better used elsewhere. Commented in response that a 5 per cent cut had been made to the staff costs in Education, Social Care & Wellbeing in order to free up resources for Mayoral priorities and this was not right. The monies proposed for mayoral advisors would be better used to fund posts in ESCWB, improve services or support those suffering the impact of Government welfare reform.
- During the Budget setting process Conservative Group Councillors had been advised that virements were only to be used to provide funds in emergency situations such as the mitigating action required in the Baby P case, so the proposed usage for the vired funds was inappropriate; had Labour Group Councillors been similarly advised. Confirmation that advice had been given that the purpose of virements was to ensure the Authority continued to run financially in a time of crisis, or financial year end when a budget was overspent and it was essential to ensure funding for continued service provision. The proposed virement was instead shifting resources to fund activities not included within the Budget set by full Council in March 2013.
- Clarified that advice had also been received that the decision was key and therefore required 28 days notice on the Authority’s Forward Plan, but this had not transpired.
- Noted that advice had been received that it was the pre-rogative of the Mayor to determine what was or was not a key decision. Clarification that this should be in accordance with the criteria set out in the Constitution and that to determine that it was not a key decision, when a reasonable person could see it was, meant there was potential for legal challenge with associated costs for the Authority. The OSC should request Officers to advise on this.

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:

- Referencing the point raised by OSC that virements should only be used for emergencies, this rationale, although generally accepted, was not consistent with the recent General Purposed Committee proposal to introduce a virement cap which would make the process to fund emergencies, such as Baby P, with costs above the cap very difficult.
- The Mayor believed that value for money was being achieved from the mayoral advisors through the support they delivered his administration in policy and strategy development, and excellent outcomes delivered for the borough.

- The political sensitivity attributed to this Mayoral decision by “Call-in” Members was subjective in the context of an erroneous full Council decision. 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.
- The Mayor considered the amendment to the Budget at Budget Council to be a politically motivated attack intended to fetter his actions, rather than address budget issues such as the future Budget gap the effect on which would be insignificant.
- The advice received by the Mayor was that the virement decision he had made was both lawful and constitutional.
- Clarification was sought as to the reason for the Head of Paid Service (HPS) not having ‘signed off’ this Mayoral Decision in contrast to the Mayoral Decision for virements to fund East End Life. Officers suggested that this may be because the HPS Role was different to that of the Chief Executive, with some functions of the latter not included, and the HPS may have exercised a judgement on this in relation to this Mayoral Decision. Councillor Choudhury added that it may be because the mayoral advisors did not report directly to the HPS, in the same way as East End Life Staff, and the HPS may have considered this was not his direct responsibility. **Written response requested from the Mayor.**
- Clarification was sought as to whether Councillor Choudhury considered the mayoral advisors provided the authority with value for money, with a view to OSC forming a judgement as to the impact of withdrawing the budget for this. Responded that there were several advisors including for housing and Older People and they had helped deliver regeneration projects such as Poplar Baths and the Whitechapel Vision and other projects outcomes to support the vulnerable elements of the community. Also provided support for the delivery of Mayor’s pledges and the Mayor’s Policy Group relied heavily on them. Officers were paid for delivery and provision of advice but the Mayoral advisors supported this. Considering the response to lack clarity, whether the Executive would accept a commission from the OSC to provide a report detailing the number of mayoral advisors, the time they were contracted to provide, and outcomes produced. **Councillor Choudhury confirmed such a request would be accommodated.**
- Commenting that the Mayor was in the third year in this role and substantial advisory capacity, not required by previous Leaders of the Council, existed in the first two years and was now being supplemented, what had the advisors delivered in Year 1&2 and what outcomes would be delivered in return for the additional resource in Year 3. Responded that workload had increased, delivery had increased significantly in the past year, and much more was intended in the coming year. A summary of the job roles and responsibilities in years 1, 2 and 3 was requested. **Councillor Choudhury undertook to relay the request to the Mayor.**



- Clarification was sought and given as to the role of Cabinet members given the number of mayoral advisers and how the roles were complimentary.

A discussion followed which focused on the following points:-

- Consideration that the responses of Councillor Choudhury lacked clarity with some OSC members considering them uncooperative and disrespectful of the OSC. The advice of Chief Officers would therefore be important.
- Concern expressed that "Call-in" Members had previously been advised that this virement decision was 'key', and therefore required 28 days notice on the Authority's Forward Plan, but such notice was not given. Concern also in the context that full Council had wanted to change the virement rules at Budget Council, but this had not been permitted, then the 28 days notice was not given for this virement decision allowing this decision to be taken before the full Council could determine new virement arrangements, at its scheduled meeting on 17<sup>th</sup> April, 2013.
- Consideration that the decision had not been taken in accordance with due process required in the Constitution, and this undermined confidence in the Authority's governance process and the democratic process. Also that the decision was in contravention of the Budget and Policy Framework, agreed by a two thirds majority of full Council, and to amend this without consultation with other stakeholders was unconstitutional; 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.
- Consideration also that any referral of the Mayoral Decision should emphasise the breach of constitutional procedures more than the rights or wrongs of having mayoral advisors.
- Concern expressed that an individual was making a decision which overturned a decision of the full Council, passed by two thirds majority, in the full knowledge that it would be politically controversial.
- Consideration that the outcome of the Doncaster Council court case would have an important bearing on whether full Council, with a two thirds majority, remained empowered to set the Budget for an Authority, or whether an executive Mayor could take lawful decisions outside this. Accordingly **proposed** that the OSC be kept updated on developments with the case.
- Comment that a leaked set of minutes on the blog 'Trial by Jeory' indicated that mayoral advisers were to coordinate the Mayor's re-election campaign and raise funds for it; consideration that this merited investigation by Officers. In contrast another Member expressed

confidence that Officers would ensure the advisors would undertake the role they were employed to and not another.

- Consideration that it was important to establish what the mayoral advisors were doing, noting that substantial changes to the housing and benefit system may require the Mayor to acquire more advice to manage change. Also that it was important to know the value of a role before making it and the people redundant. Noted that Councillor Choudhury had undertaken to provide information on the work undertaken by the mayoral advisors, and the “Call In” should not be supported until this was received and the OSC could form a view as to the value of their work.
- Consideration that an impact assessment was needed establishing what the individuals did, the hours they worked, how much they were paid.
- Consideration that in house expertise was available and the resources for mayoral advisors could be better used elsewhere.
- Consideration that there was a lack of clarity on the decision making on whether the decision was ‘key’ or ‘non-key’ and the rationale for the virement in general. The decision appeared “key”, given its significant impact on the borough, given it was politically controversial and given the substantial public interest already 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,
- Commenting that consultation had taken place on the working of the Mayoral system at inception and a review should now take place to identify what was working well and not working well.
- Advice was sought and given as to the constitutional provisions for the OSC to refer decisions of the Mayor, considered to be in contravention of the Authority’s BPF, to full Council for determination. Mr Galpin, Head of Legal Services Community, advised 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 summarised that the OSC considered that this Mayoral Decision had been cynically taken to circumvent a full Council decision, passed with a two thirds majority, was not in the public interest and was potentially unlawful. She then formally **Moved**, and it was:-

*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
4. That the OSC be kept updated on developments with the Doncaster Council court case.

**DECISION OF THE MAYOR**

I have reconsidered my decision Log No. 022 "Budget Implementation 2013/14 (No 2)" 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.

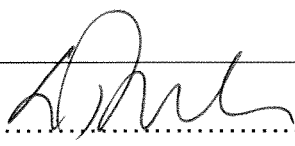
Having taken into account all of the relevant information I have decided to:-

(a) Confirm my decision, of 25<sup>th</sup> March published on 26<sup>th</sup> March 2013, on the matter\*; 

~~(b) Amend my decision, of 25<sup>th</sup> March published on 26<sup>th</sup> March 2013, on the matter as follows\*:-~~ 

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(\* Delete as applicable)

Signed 	Date <u>17/04/13</u>
Mayor Lutfur Rahman	