

**REPORT OF THE MONITORING OFFICER AND THE SECTION 151
OFFICER IN RESPECT OF MAYORAL VIREMENT
EAST END LIFE**

1. Summary

1.1 At the Budget Council on 7 March 2013 Full Council agreed a budget motion to take savings of £433,000 from advertising for public notices, choice based lettings and general advertising, for the purpose of causing East End Life to cease publication. The Executive Mayor did not want to cease publication without due consideration and on 22 Mach 2013 he made a decision to make a virement of £443,000 from unallocated reserves to Chief Executive budget in order to ensure sufficient resources were available to continue the production of East End Life pending considerations of the options for the service and the implications of ceasing the production of paper.

1.2 On 9 April 2013, Overview and Scrutiny Committee agreed to call-in the Mayor's decision of 22 March 2013 and asked the Mayor to reconsider his decision to make the virement and at the same time they resolved to ask the Monitoring Officer and the Chief Finance Officer/Section 151 Officer to provide a report pursuant to rule 7.2 of the Budget and Policy Framework Rules of the Council's Constitution to advise whether the decision of the Mayor outside Cabinet was in contravention of the authority's Budget and Policy Framework and in that report to include their advice on the validity of the Mayor's determination that the decision was not a key decision. On the 17th April the Mayor reconfirmed his decision to make the virement.

2. Background

2.1 Under the terms of the Council's Constitution where Overview and Scrutiny Committee is of the opinion that an Executive decision is contrary to the Policy Framework or contrary to or not wholly in

accordance with the Council's Budget then it shall seek advice from the Monitoring Officer and/or Chief Finance Officer. At paragraph 7.2 (set out at page 178) of the Council's Constitution it states that:

"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.....The Executive must meet within 21 days of receipt of the report to decide what action to take in respect of the Monitoring Officer or Chief Finance Officer's report..."

This report will deal with the Budget as the Policy Framework means its plans and strategies set out in Article 4.01 (a) of the Constitution which are not relevant to this matter.

3. Virement

3.1 Virement rules are a key part of the Council's financial regulations in the standing orders to the constitution. Statutory guidance issued by the Secretary of State in connection with the Local Government Act 2000 in respect of Council's Constitutions indicated that;

"once a Budget had been adopted by the Council, the Executive will need to be able to respond to changing circumstances which might require reallocation of funds from one service to another. A local authority's standing orders for financial regulations will need therefore to include reasonable provision to allow the Executive to reallocate monies within the Budget.... The Secretary of State recommends the provision in the local authority's standing orders or financial regulations should enable the Executive to take any decision which is contrary to or not wholly in accordance with the Budget or the Capital Plan providing that the additional costs incurred can be offset by additionalcontingency funds (reserves and balances)..."

- 3.2. Under the Local Government Act 1972 it is for the full Council to determine the Authority's budget. Under Schedule 4 of the Local Government (Functions and Responsibilities) (England) Regulations 2000. ('the Regulations') it is generally for the Council to determine a matter in respect of the Budget if the Executive is minded to make a decision that is contrary to, or not wholly in accordance with the Authority's Budget. But this is only the case if the Executive is not authorised by the Council's rules or procedures (including its financial regulations) to make a Budget decision in the terms proposed by the Mayor.
- 3.3 The Council's Constitution contains provisions in the Financial Regulations that the Executive can make decisions to make virement of up to £1 million. The virement decisions are spending decisions which are within the Budget.
- Accordingly at the time the decision was made the Executive Mayor had the power to make the decision to make a virement from unallocated reserves.

Virement in respect of East End Life

- 3.4 The decision to maintain the operation of East End Life is an Executive decision within the meaning of the Regulations. It has been held in R (Buck) v Doncaster MBC [2012] LGR 663, that although it is for the Council to decide in the Budget what funds to allocate for expenditure by the Mayor, it cannot otherwise use its budgetary powers to dictate how Executive functions should be exercised. Therefore, if the Mayor is able, by virements or otherwise to finance the continued publication of East End Life, he is entitled to do so, even if the Council wished its publication to be terminated. An appeal is due to be heard in Buck in late July, but as matters stand, this judgement represents the law. .
- 3.5 The Executive Mayor confirmed in his decision on 22 March 2013 that he was making the decision to vire monies to continue East End Life

'in order to ensure sufficient resources are available to continue East End Life and implications of ceasing production. I have done this as I do not believe the proposals adopted in the Budget were properly evaluated and the timescales for alternative sourcing taken into account'.

Further the report contained comments of the Section 151 Officer confirming that there were sufficient monies in unallocated reserves to cover the virement and the virement was in within the Virement Rules. Since the Council has met to consider its Budget, it had received confirmation of a number of sources of funding over and above the funding included in the budget. These exceed the costs of the Mayor's decisions. There was therefore no impact on reserves of the Mayoral decisions relative to the assumptions made in setting the budget in March.

- 3.6 The Budget motion itself was not clear. It stated ..."to delete funding of £1.214 million". By reducing the budgets for advertising public notices, choice based lettings and general advertising to the sum of £433,000. The budget for East End Life forms part of the Communications Service Budget. East End Life does not have a net budget it is zero budgeted which means that it has a requirement to generate £1.2 million of income each year to counter balance costs of producing and delivering the paper which it achieves through advertising income by selling advertising in the paper. Some of that advertising comes from internal departments and it was this internal expenditure that the Council made a decision to in effect cap.

Conclusion

The virement in respect of East End Life was lawful and it was not contrary to the Councils Budget.

4. **Key Decisions**

4.1 The Council's Constitution states in Article 13 that a key decision is an Executive decision which is likely to :

- a) 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 or the service or the function which the decision relates ; or
- b) to be significant in terms of the its effects on the community living or working in the area compromising two or more wards in the borough

This definition is the same as that set out in the Local Authorities (Executive Arrangements) Meetings and Access to Information Regulations 2012.

4.2 In making the decision as to whether the matter is "key" the Mayor must have regard to the following criteria when determining what amounts to a key decision:-

- whether the decision may incur a significant social, economic or environmental risk
- the likely extend of the impact of the decision both within and outside 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.

4.3 In making his decision on 22 March 2012 in respect of East End Life the Executive Mayor stated that he had considered whether or not the matter was a key decision under Article 13 of the Constitution and that when making the decision he did not consider the virement of £443,000 was a significant amount in respect of the local authority's overall budget for the communication services and publicity budget of £4.1 million (representing 10.8%) nor was the virement decision significant

in terms of the effects upon the community living or working in an area compromising of two or more wards in the borough

4.4 Ultimately, a decision is only a key decision if it falls within the definitions set out in paragraph 4.1 above. The fact that it is likely to be a matter of “political controversy” or result in substantial public interest is a matter to which the decision-maker should have regard, and the implication is that the potential for such controversy or interest may in some cases be evidence of it being a decision which will have significant effects. However, a decision is not a key decision simply because it is politically controversial or of public interest. In this case the Mayor had regard to these matters and acknowledged that his decision may be of public and/ or political interest.

4.5 The Mayor went on to say that ‘ it would not incur significant risk socially, economically or environmentally and indeed would act to mitigate such risks’. The impact on the decision to vire the money will not be significant inside or outside the borough. “I am content that the decision to vire £443,000 is a non key decision and I require officers to put it into effect”. At the same time the Mayor required officers to conduct the review detailed in paragraph 3.2 of the report.

Conclusion

In making the decision as to whether the matter was a ‘key decision’ the Mayor had taken into account the specified matters under Article 13.

4.6 The question of whether a particular decision is a key decision is one for the decision maker (the Mayor), provided that all relevant considerations are taken into account and a rational conclusion is reached. In the view of the Monitoring Officer and the Chief Finance Officer, the Mayor did have regard to relevant considerations and reached the conclusion (that it was not a key decision) to which he was entitled to come. The Mayor was not referred specifically to the

Secretary of State's guidance on key decisions contained in Chapter 7 of the New Council Constitutions, but the matters referred to in that guidance are similar to those which the Mayor took into account.

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