

Manchester City Council Report for Resolution

Report to: Council – 25 March 2020

Subject: Constitutional Amendments and Other Matters for Council
Business Continuity

Report of: The Chief Executive, Deputy Chief Executive and City Treasurer,
and the City Solicitor

Summary

This report proposes the making of arrangements to ensure continuity of the Council's decision-making functions during the COVID-19 outbreak, with the risks that might arise from members and officers being unable to participate in council business.

The report is being prepared before the provisions of the Government's emergency legislation are known. By 25 March much or all of what is proposed below could have been overtaken by that legislation. If that is the case then the Council will be given an update at the meeting.

Recommendations

1. That from 25 March 2020 until 26 November 2020, under the provisions of Sections 85(1) and Section 85(2A) of the Local Government Act 1972, the protection of the health of the residents of the city or the health of the individual member shall be an approved reason for the non-attendance of a Member at any meeting (including, in the case of members of the Executive, non-attendance at meetings of the Executive); and that for this approval Rule 25 of the Council Procedure Rules be suspended so that this may be rescinded or extended by the Council at any time before then.
2. That the set of delegations set out in section 4 of the report be approved until 26 November 2020, and that for each of these Rule 25 of the Council Procedure Rules be suspended so that it may be rescinded or extended by the Council at any time before then.
3. That should an officer declare an interest in any decision to be made under (2) above, then the delegated authority transfers as follows:
 - from Chief Executive to the Deputy Chief Executive and City Treasurer,
 - from the Deputy Chief Executive and City Treasurer to the City Solicitor.
4. That in relation to scrutiny committee "call-in" the constitutional amendment proposed in section 6.3 of the report be approved until 26 November 2020, and that Rule 25 of the Council Procedure Rules be suspended so that this may be rescinded or extended by the Council at any time before then.

5. That for urgent financial decisions the Council agree that until 26 November 2020 the provisions of Rule 6 of the Budget and Policy Framework Procedure Rules be amended to include urgent decisions outside of the budget, including the use of the Council's reserves, and that for this constitutional change Rule 25 of the Council Procedure Rules be suspended so that it may be rescinded or extended by the Council at any time before then.
 6. That for urgent financial decisions the Council agree that until 26 November 2020, where this amended provision of Rule 6 of the Budget and Policy Framework Procedure Rules is to be used to make an urgent change to the revenue or capital budget, that Rule 7 of the same rules be suspended, and that for this constitutional change Rule 25 of the Council Procedure Rules be suspended so that it may be rescinded or extended by the Council at any time before then.
 7. That all Chief Officers and officers set out in Chapters 3A and 3B of Part 3, Section F of the Constitution that are already able to exercise delegated authority under the Constitution be required to nominate another officer or officers who are able to act on their behalf in their absence, and provide a copy of those nominations to the City Solicitor.
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Wards Affected – All

Financial Consequences – Revenue
Financial Consequences – Capital

There are no revenue or capital consequences that arise directly from this report but it does propose temporary changes to the Council's rules on the budget and policy framework as set out in the Constitution.

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Background documents (available for public inspection):

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents

are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

Coronavirus (COVID-19) - NHS website

<https://www.nhs.uk/conditions/coronavirus-covid-19/>

1. Members' Vacation of Office by Failure to Attend Meetings

- 1.1 Section 85(1) of the Local Government Act 1972 says that if a member fails throughout a period of six consecutive months to attend any meeting of the authority they shall cease to be a member of the authority. Furthermore, Section 85(2A) of the 1972 Act provides if a member of the Executive fails to attend any meeting of the Executive throughout a period of six consecutive months they shall cease to be a member of the authority. However, those sections enable a Local Authority to approve the reason for non-attendance, provided that approval is given by the Authority before the expiry of the six month period.
- 1.2 It is therefore proposed that from 25 March 2020 until 26 November 2020, the protection of the health of the residents of the city or the health of the individual member shall be an approved reason for the non-attendance of a Member at any meeting (including, in the case of members of the Executive, non-attendance at meetings of the Executive). A meeting of the Council is planned for 25 November 2020. If the timescale of this provision needs to be extended it can (and will) be considered at that meeting, or for it to be rescinded before then.

2. Decision Making and Council Functions

- 2.1 The Council's functions are either:
- **Council-only:** matters that must be decided at a Council meeting;
 - **Non-Executive Functions:** matters than cannot be decided by the Leader and so are delegated by the Council to a Committee or to an officer;
 - **Executive Functions:** matters to be decided by the Leader which are delegated to the Executive or to officers; and
 - **Scrutiny Functions:** advisory matters to be dealt with by scrutiny Committees.
- 2.2 The COVID-19 outbreak creates risks to the normal decision making arrangements of the Council, in particular where it becomes unsafe or improper for a group of members to meet to make a decision that falls to them to make. This paper deals with how the Council-only and non-executive functions decision making might be protected to help ensure business continuity throughout the outbreak.
- 2.3 It is understood that the Government is looking into legislating so as to allow members to take part in meetings remotely, using information technology. Until that legislation is in place all such decision making has to involve a group of members being together in the same room, something that is being actively discouraged at this time. Members will want to remain engaged in the Council's decision making throughout the outbreak, and will at the same time want to ensure their own safety and that of their families and communities. Members must therefore be free to avoid attending meetings if they feel it is unsafe or improper to do so, and yet still allow for business continuity in the Council. For any meeting of members there must be a minimum number present, a quorum, before the meeting is valid and can legally make decisions.

It also sets out proposals in relation to those meetings which are open to the public to limit risks to the public as far as possible. However, any meeting will be a risk and therefore the only meetings to be called will be those that are, in the opinion of the Chief Executive in consultation with the Leader and the City Solicitor, essential to the proper functioning of the Council where there is no alternative way for an important decision to be made.

- 2.4 If remote participation is allowed for in legislation, there could be technical challenges to overcome to make it work and make it practical for all councillors to use. It will be unsafe to rely entirely on that solution until it is tested and reliable.
- 2.5 The intent of this report is to put in place a set of provisions that will allow for decision-making to continue if members are unable to attend meetings, or if a meeting is called but a quorum is not present. It proposes a set of officer delegations. The specific proposals for each committee and subcommittee are below. These delegations would always be subject to declarations of interests by officers so no officer will be able to make a decision where they have declared an interest in that decision. In addition, the delegations referred to below will be subject to any limitation in law on a particular decision-making function being delegated to an officer.

3. Council – Membership 96, quorum 25

- 3.1 No specific delegations proposed. Any meeting called will need to be conducted using isolated seating in the Council Chamber. The meetings are webcast. The public have a right to access the meeting and so should be asked on the website and in the published meeting papers to not attend.
- 3.2 If a situation arises that would require a decision of the Council as a matter of urgency then the Chief Executive has an existing delegated authority that can be used:

“3. Take any action which is required as a matter of urgency in the interests of the Council, in consultation with the Leader if time permits.”

4. Non-Executive Functions

Planning and Highways Committee – Membership 15, quorum 5

- 4.1 A delegation is proposed:
 - that authority be delegated to the Chief Executive to determine any planning application, listed building consent and tree preservation order application that would otherwise have been decided at a meeting of the committee. This delegated authority to be exercised in consultation with the Director of Planning, Building Control and Licensing and with the Chair and Deputy Chair of the committee when both are available, and either if only one is available.

Licensing and Appeals Committee – Membership 14, quorum 5

- 4.2 A delegation is proposed to cover the decision making by the full committee and by panels (subcommittees) that deal with most of the routine decision making:
- that authority be delegated to the Chief Executive to determine any matter that would otherwise have been determined at the meeting of the committee or at a subcommittee. This delegated authority to be exercised in consultation with the Director of Planning, Building Control and Licensing and with the Chair of the committee, or if the Chair is unavailable, the Deputy Chair.

Licensing Committee – Membership 14, quorum 5

- 4.3 No delegations proposed as there are legal limitations that prevent many licencing matters being delegated to officers. Until legislation is introduced to change this some licensing matters will need to be decided by members, or put on hold.

Licensing Policy Committee – Membership 6, quorum 3

- 4.4 No delegations proposed as meetings are infrequent, the last meeting of this committee was in July 2018.

Employee Appeals Committee – Membership 3, Quorum 3

- 4.5 No delegations to officers are proposed as it would be improper given the role of the committee.

Art Galleries Committee – Membership 11 councillors, quorum 3 councillors as co-opted members present at a meeting do not count towards a quorum.

- 4.6 No delegations proposed as the next meeting of the committee is likely to be February 2021.

Constitutional and Nomination Committee – Membership 10, quorum 3

- 4.7 A delegation is proposed:
- that authority be delegated to the Chief Executive to recommend to Council:
 1. the appointment of councillors to Committees, to the Executive Consultative Panel and to appoint Assistant Executive Members, in consultation with the Leaders of political groups as appropriate; and
 2. the appointment of co-opted members to committees and to renew the appointment of co-opted members.

- 4.8 No delegation of the committee's role in decision making on polling districts and polling places is proposed.

Personnel Committee – Membership 12, quorum 3

- 4.9 A delegation is proposed:

- that authority be delegated to the Chief Executive to determine any matter that would otherwise have been decided at the meeting of the Personnel Committee. This delegated authority to be exercised in consultation with the Chair of the committee, or if the Chair is unavailable, the Leader of the Council.

Audit Committee – Membership 6 councillors, quorum 3 councillors as co-opted members present at a meeting do not count towards a quorum.

- 4.10 A delegation is proposed:

- that authority be delegated to the Chief Executive, in consultation with the Chair of the Committee or with the Chair of the Resources and Governance Scrutiny Committee if the Chair is unavailable, to approve an internal audit plan for 2020/21.

- 4.11 The committee will also have a role in the approval of the annual accounts for 2019/20, and the consideration of the external auditor's report, before the deadline of the end of July 2020. This role cannot be delegated to an officer. The mitigation of the risk that the deadline is missed will most likely require government action to relax the deadline. It is unlikely that a failure to meet the deadline will result in any sanction against the Council. The feasibility of undertaking the external audit of the Council's 2019/20 accounts in a safe way is yet to be established.

Health and Wellbeing Board – Membership 21, quorum any 5 members of the Board including non-councillors as they are full members rather than co-opted.

- 4.12 A delegation is proposed:

- that authority be delegated to the Chief Executive to determine any matter that would otherwise have been decided at the meeting of the Board. This delegated authority to be exercised in consultation with the Chair of the Board, or if the Chair is unavailable, the Deputy Chair.

Standards Committee - Membership 5 councillors, quorum 3 councillors as co-opted members present do not count towards a quorum.

- 4.13 No delegation is proposed.

5. Executive Functions

5.1 The delegation of Executive Functions is decided by the Leader of the Council and the Executive. A separate report will be made to the Executive on this.

6. Scrutiny Functions

6.1 There are six Scrutiny Committees.

- Children and Young People Scrutiny Committee – Membership 14 councillors, quorum 5 councillors as co-opted members present do not count towards a quorum.
- Communities and Equalities Scrutiny Committee – Membership 14, quorum 5.
- Economy Scrutiny Committee – Membership 10, quorum 3.
- Health Scrutiny Committee – Membership 10, quorum 3.
- Neighbourhoods and Environment Scrutiny Committee – Membership 17, quorum 5.
- Resources and Governance Scrutiny Committee – Membership 13, quorum 5.

6.2 Scrutiny Subgroup meetings should be suspended for the time being.

6.3 The six scrutiny committees all share a common risk to decision making if meetings cannot be called or do not have a quorum: that an Executive decision is “called-in” under Scrutiny Procedure Rule 13 and then unable to proceed. For all six committees the same temporary amendment to the constitutional arrangements is proposed.

- that if a decision is “called-in”, that the Chair of the Committee that would normally consider the “call-in” be authorised, if they deem it appropriate, to apply Rule 14 of the Scrutiny Procedure Rules “Call-in and Urgency” to then exempt the decision from that “call-in” on the grounds that the delay before the matter could be looked at by the committee would seriously prejudice the legal or financial position of the Council or the interests of the residents of Manchester.

6.4 Rule 14 of the Scrutiny Procedure Rules is in place to allow urgent decisions to be exempt from “call-in” **before** they are made. This proposed change will allow for consideration to be given by the Committee Chair **after** a decision has been made and “called-in”. It will apply when it will not be possible for a committee to consider a “call-in” without the delay involved in that being prejudicial.

7. Urgent Financial Decisions outside of the Approved Budget

- 7.1 Rule 5 of the Budget and Policy Framework Procedure Rules (see appendix) requires all decisions that are outside of the approved budget or the approved Policy Framework to be referred to the Council. Rule 6 creates an exception to Rule 5 that allows urgent decision outside of the **Policy Framework** to be made if certain tests are met. Rule 6 does not include financial decisions outside the budget, only decisions outside the policy framework.
- 7.2 It is therefore proposed to extend the scope of Rule 6 to allow urgent decisions outside of the approved budget to be made in the same way as urgent decisions outside the policy framework. The same tests as set out in Rule 6 will also apply to those urgent budget decisions.
- 7.3 To further permit urgent financial decisions to be made, whenever this amended Rule 6 is being utilised to make an urgent financial decision, the virement limits and limits of authority in Rule 7 will be suspended.
- 7.4 It is stressed that this change to Rule 6 and 7 will only be used for urgent and major decisions where legal or financial position of the Council or the interests of the Council and/or the residents of Manchester would otherwise be prejudiced. Existing delegations will deal with most of the financial decision making.

8. Officers Exercising Delegated Powers as set out in the Constitution

- 8.1 Senior officers already have extensive delegated authority under the constitution and under the resolutions of the Council, the Executive and of Committees. However, each of those delegations is normally to a single officer and to them alone. All such officers should therefore be required to authorise other officers to act in their stead, should they be absent. A register of these authorisations should be lodged with the City Solicitor so that it will be possible to ensure all decisions are taken by the right people, who are authorised to make them.
- 8.2 The Constitution already allows for the Chief Executive to exercise the powers delegated to a Chief Officers if that Chief Officer is unable to act and for other Chief Officers to exercise the delegated powers of their subordinate officers in similar circumstances. That 'upwards-delegation' could result in an excessive decision making burden falling on the Chief Executive and/or other Chief Officers. If others are authorised to act instead that risk will be lessened. The Chief Executive should therefore also authorise other officers to exercise the authorities granted in Section 4 of the report, if unable to act themselves.

9. Communication of Decisions and Intentions

- 9.1 Unless the government legislates accordingly, which is believed to be unlikely, all of the constitutional and legislative requirements around Key Decisions and the communication of executive and non-executive decision making by officers will remain in place – rules 16 to 24 of the Access to Information Procedure Rules. Residents and all Councillors will be made aware of the exercise of any

of these additional delegated powers during the virus outbreak through emails, notices and by means of the website.

Appendix

Budget and Policy Framework Procedure Rules 5, 6 and 7

5. Decisions outside the Budget or Policy Framework

- 5.1 Subject to the provisions of paragraph 7 and Financial Regulations in relation to the budget, and paragraphs 6 and 8 in relation to the policy framework, the Executive, committees of the Executive, individual members of the Executive and any officers discharging Executive functions may only make decisions which are in line with the budget and policy framework. If any of these bodies or persons wishes to make a decision which is contrary to the policy framework, or contrary to or not wholly in accordance with the budget approved by full Council, then that decision may only be taken by the Council.
- 5.2 If the Executive, committees of the Executive, individual members of the Executive and any officers, discharging Executive functions want to make such a decision, they shall take advice from the Monitoring Officer and/or the Chief Finance Officer as to whether the decision they want to make would be contrary to the policy framework, or contrary to or not wholly in accordance with the budget. If the advice of either of those officers is that the decision would not be in line with the existing budget, and not authorised by paragraphs 7 or Financial Regulations, then the decision must be referred by that body or person to the Council for decision. If the advice of the Monitoring Officer is that the decision would be contrary to the policy framework and not authorised by paragraph 8, then the decision must be referred by that body or person to the Council for decision, unless the decision is a matter of urgency, in which case the provisions of paragraph 6 apply.

6. Urgent Decisions Outside the Policy Framework

- 6.1 The Executive, a committee of the Executive, an individual member of the Executive or officers, discharging Executive functions] may take a decision which is contrary to the Council's policy framework if the decision is a matter of urgency. However, the decision may only be taken if:
- (a) either the Chief Executive, the Chief Finance Officer or the Monitoring Officer advise in writing that the legal or financial position of the Council or the interests of the Council and/or the residents of Manchester would be prejudiced if the matter were not determined before the next scheduled Council meeting, AND
 - (b) the chair of a relevant scrutiny committee (or in their absence the Lord Mayor or, in the absence of both, the Deputy Lord Mayor) agrees that the decision is a matter of urgency.
- 6.2 The advice of the Chief Executive, Chief Finance Officer or Monitoring Officer and the consent of the chair of the relevant scrutiny committee (or, if relevant, the Lord Mayor or Deputy Lord Mayor) to the decision being taken as a matter of urgency must be noted on the record of the decision.

6.3 Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

7. Virement and In-Year Changes to the Budget

7.1 Steps taken by the Executive, a committee of the Executive, an individual member of the Executive or officers, discharging Executive functions to implement Council policy shall not exceed those budgets allocated to each budget heading, subject to paragraphs 7.2 to 7.4 below.

7.2 Such bodies or individuals shall be entitled to vire across budget headings as follows:

(a) Capital

- A Chief Officer (as defined in Part 8 of this Constitution) may vire capital up to £50,000 from within the capital programme following notification to the Deputy Chief Executive and City Treasurer (or, up to £100,000 with the approval of the Deputy Chief Executive and City Treasurer, in consultation with the Executive Member for Finance and Human Resources).
- The Executive may vire capital up to £500,000 across budget headings.
- Any capital virement above £500,000 shall require the approval of full Council

(b) Revenue

- A Chief Officer (as defined in Part 8 of this Constitution) may vire revenue up to £100,000 following notification to the Deputy Chief Executive and City Treasurer.
- A Chief Officer may vire up to £250,000 with the approval of the Deputy Chief Executive and City Treasurer and Executive Member for Finance and Human Resources.
- The Executive may vire revenue up to £500,000 across budget headings.
- Any revenue virement above £500,000 shall require the approval of full Council.

7.3 The Executive may:

- (a) Increase capital or revenue expenditure in-year by use of reserves (in addition to the use of reserves planned in the budget calculations), provided that such use of reserves does not exceed £2,000,000 in aggregate in a financial year and provided that the Deputy Chief Executive and City Treasurer has certified in writing that such use of reserves would not cause the Council's overall reserves to fall below a

prudent level. Any such use of reserves shall be reported to the next meeting of full Council.

(b) Increase the capital budget provided that additional expenditure can be funded through:

- Additional external resources
- Additional capital receipts

7.4 The Chief Executive may exercise any of the powers of the Executive under 7.2 and 7.3, in consultation with the Leader, the Executive Member for Finance and Human Resources and the Deputy Chief Executive and City Treasurer where the legal or financial position of the Council or the interests of the residents of Manchester would be prejudiced if the matter were not determined before the next scheduled executive meeting. The Chief Executive will report any such decision to the next meeting of the Executive.

7.5 The Deputy Chief Executive and City Treasurer may authorise in consultation with the Executive Member for Finance and Human Resources, increases in capital expenditure by up to £500,000 per scheme, subject to external funding, capital receipts or revenue budget being available. Increases in capital expenditure above £500,000 which can be funded through additional external funding, capital receipts or available revenue budget require the approval of the Executive. Where capital expenditure is to be supported through borrowing this requires the approval of full Council.