

**Special Overview and Scrutiny Committee on 21 August 2006**

Report Title: **Monitoring Officer's Report on the Call-In of a Decision taken by The Executive on 25 July 2006 recorded at minute TEX 61**

Forward Plan reference number (if applicable): **N/A**

Report of: **The Monitoring Officer and Head of Legal Services**

Wards(s) affected: **All**

Report for: **Consideration by Overview and Scrutiny Committee**


**1. Purpose**

1.1 To advise the Overview and Scrutiny Committee whether or not the decision taken by The Executive on 25 July 2006 and minuted at TEX 61 falls inside the Council's policy or budget framework

**2. Recommendations**

2.1 That Members note the advice of the Monitoring Officer that the decision taken by The Executive was inside the Council's policy framework.

Report Authorised by:

  
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**3. Local Government (Access to Information) Act 1985**

3.1 The following background papers were used in the preparation of this report:

The Council's Constitution  
The report on the Recycling Service to The Executive meeting on 25 July 2006

3.2 This report contains exempt and non-exempt information. The exempt information is set out in the Exempt Appendix and is not for publication. The exempt information is under the following category (no.3) in Schedule 12A Local Government Act 1972 as amended:

Information relating to the financial or business affairs of any particular person (including the authority holding that information) where the public interest in maintaining the exemption outweighs the public interest in disclosure.

#### **4. Details of the Call-In**

- 4.1 In order for a decision to be outside the policy framework, it would be contrary to, or inconsistent with, a policy set out in Part F.6 of the Constitution which is “The Budget and Policy Framework Schedule”. Among these framework policies are “over-arching” strategies such as the Community Strategy and major service plans such as the Unitary Development Plan. The Council’s Constitution itself is part of the framework that must be complied with. A decision would be outside the budget framework if it necessarily resulted in expenditure exceeding an agreed budget.
- 4.2 The Call-In form starts by claiming that the original decision of The Executive “may be outside the policy framework because the decision to bring the service in-house is contrary to Council policy to work in partnership with the voluntary sector and has the potential to adversely affect service delivery.”
- 4.3 Later the Call-In form states that the original decision The Call-In form claims that the original decision of The Executive “may also be outside the policy framework because no environmental or broader sustainability (including social impacts) assessment was carried out of the options.”
- 4.4 Finally the Call-In form alleges that the original decision is “outside the budget framework because the decision to bring the service in-house involved unquantified risks to the budget including adverse effects on the qualifications for grants towards the service.”

#### **5. Monitoring Officer’s Response – Voluntary Sector Point**

- 5.1 The Community Strategy at page 7 contains a policy “to support the development of services by voluntary...organisations.” This is a general aspiration but it cannot be interpreted to mean that securing service provision by a voluntary organisation takes precedence over other important criteria such as the need to ensure reliable service provision within budget and in accordance with statutory recycling targets.
- 5.2 RWS (Recycling Works Services) is described in its Company Memorandum of Association as having “not-for-profit” status which is not necessarily the same thing as a voluntary body. The relationship between RWS and the Council is essentially a commercial one. Under the Council’s Contract Procedure Rules (Standing Orders) and the law relating to procurement by public authorities, proposed service provision by a company such as RWS must be assessed on the same basis as bids from commercial

providers. These specific legal requirements cannot be over-ridden by a general policy to encourage service provision by the voluntary sector.

- 5.3 The original report examined the options for future service delivery and concluded with a firm and clearly argued recommendation that the recycling service should be brought in-house as the best option to ensure reliable and proper service delivery. Although there could be counter-arguments to the effect that there may be benefits in continuing the contractual relationship with RWS, this does not take The Executive's decision outside the policy framework.

#### **Monitoring Officer's Response – Lack of Environmental/Sustainability Assessment**

- 5.4 The original report focussed on the main environmental and sustainability factors affecting Members' decision. These were (i) the need to ensure reliable future service provision in the light of the continuing dispute over payments due to RWS, (ii) the need to ensure that future arrangements enable the Council to meet Government recycling targets by exercising greater control over service delivery and (iii) the need to work towards an integrated recycling and waste contract for the longer-term.
- 5.5 While the broader environmental and social impacts are important in the long term these are inevitably difficult to predict with certainty. In the circumstances, there was an obvious need for a rapid decision given the risks to service delivery. The report gave Members the most important information on environmental and sustainability factors. Therefore the decision of The Executive is inside the policy framework.

#### **Monitoring Officer's Response – Budget Point**

- 5.6 The original report examined the financial risks involved in the potential loss of CRED funding which would probably cease to be available for an in-house operation. It was explained that about half of the total bid value of £520,000 over two years was to come from Seven Sisters NDC and Council match funding. The NDC and Council match funding would still be available and may have been supplemented from neighbourhood renewal grant funding to provide an alternative estates recycling scheme. The risk of losing the CRED funding was thus quantified.
- 5.7 The other financial risk arising from increased pensions costs was also quantified in the original report as a maximum potential cost of £200,000 when the service was brought in-house. Many of the potential savings were quantified and these would have been used to off-set the overall additional cost. Any net additional cost would have been met either from compensatory savings from within Environmental Services budget or failing that from the Council's general reserves. Therefore any additional expenditure arising from the decision would not have exceeded the Council's overall agreed budget.
- 5.8 As against these increased costs, bringing the service in-house would avoid the uncertainties and potential extra costs inherent in continuing the contract with RWS which threatened to take the costs of service provision outside the agreed service budget. The relevant costs and financial information were set out in the exempt appendices to the original report. Bringing the service back in-house would give greater

certainty that service provision costs can be contained within budget. Therefore the original decision is not outside the budget framework.

5.9 Should the Council have proceeded to use RWS until 2009 under their stated terms of business with the implementation of the CRED scheme, the estimated cost over base of doing so would have been as shown in Table 1 which is set out in the Exempt Appendix to this report.

5.10 Should the Council proceed with the recommendation to terminate the contract with RWS and run the service in house until 2009 with the implementation of an alternative to the CRED scheme, the estimated cost over base of doing so is shown in Table 2 which is set out in the Exempt Appendix to this report.

5.11 This response incorporates information from the Corporate Finance Manager of the Environmental Services Directorate.

## **6. Call-In Procedure Rules**

6.1 The rules governing the Call-In procedure are set out in Part I.3 of the Council's Constitution. Once a Call-In request has been validated and notified to the Chair of Overview and Scrutiny Committee (OSC), the Committee must meet within the next 10 working days to decide what action to take. In the meantime, all action to implement the original decision is suspended.

6.2 The Monitoring Officer will prepare a report to advise OSC whether or not the original decision was within the Council's policy framework. OSC Members must have regard to that report and any advice from the Monitoring Officer but Members themselves make the eventual determination as to whether the original decision was, in fact, within the policy framework.

6.3 If OSC Members determine that the original decision was within the policy framework, the Committee has three options:

- (i) not to take any further action, in which case the original decision is implemented immediately
- (ii) to refer the original decision back to the decision taker, in this case the Procurement Committee. If this option is followed, the Procurement Committee must meet within the next 5 working days to reconsider its decision in the light of the views expressed by OSC
- (iii) to refer the original decision on to full Council. If this option is followed, full Council must meet within the next 10 working days to consider the decision. Full Council must either decide, itself, to take no further action and allow the decision to be implemented immediately or it must refer the decision back to Procurement Committee.

6.4 If OSC Members determine that the original decision was outside the policy framework, the Committee must refer the matter back to the Procurement Committee with a request to reconsider it on the grounds that it is incompatible with the policy framework.

6.5 In that event, the Procurement Committee would have two options:

- (i) to amend the decision in line with OSC's determination, in which case the amended decision is implemented immediately
- (ii) to re-affirm the original decision in which case the matter is referred to a meeting of full Council within the next 10 working days.

## **7. Recommendations**

7.1 That Members note the advice of the Monitoring Officer that the decision taken by The Executive was inside the Council's policy framework.

## **8. Use of Appendices / Tables / Photographs**

8.1 The Exempt Appendix to this report contains:

Table 1 – Cost over base of continuing to use RWS until 2009 on their stated terms

Table 2 – Cost over base of running the service in-house until 2009.