

Subject: Council Meetings and Powers of the Mayor
Date of Meeting: 26 April 2010
Report of: Director of Strategy and Governance
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Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This paper is in response to a letter from Councillor Kitcat dated 22 March 2010 asking for clarification about the common law powers of the Mayor, which is on the agenda under item 98a (i). It briefly mentions the various sources of legal authority for the powers of the person presiding at meetings and explains the process followed at the Council meeting on 18 March.

2. RECOMMENDATIONS:

- 2.1 That the Governance Committee notes the report.

3. RELEVANT BACKGROUND INFORMATION / CHRONOLOGY OF KEY EVENTS:

- 3.1 The matters referred to in Councillor Kitcat's letter relate to two items discussed at the Council meeting on 18 March. The first related to a report on Members' allowances and the second to the draft Sustainable Community Strategy.
- 3.2 On the item regarding Members' allowances, concerns were expressed about aspects of the proposed amendments to the scheme at the Governance Committee and the Leaders Group. Although full Council had full authority to amend the recommendations, there was no consensus on the way forward. As the recommendations came from the Independent Remuneration Panel, it was felt important to involve the Panel in assisting the Council to find a way forward that had the support of all Members. It was therefore requested before the meeting that the item be deferred or withdrawn and the request was communicated to the Mayor.
- 3.3 Under Council procedure rule 7.4, the Mayor has the power to withdraw an item from the agenda providing Group Leaders are consulted. This does not require the Group Leaders to agree, only to be consulted. Following consultation with Group Leaders, it emerged that there was objection from at least one Group. Notwithstanding the fact that she had the power to withdraw the item, the Mayor decided not to exercise her right but to leave the deferral of the item to the full Council as a preliminary point. The Mayor asked the Leader to move the deferral motion and put it to a vote, which was carried. Far from following "unusual procedural changes" (with the implication that there was something improper) the

Mayor was allowing the Council to make a decision on whether it wanted the matter deferred notwithstanding the fact that she could have decided the matter herself. As this was a purely procedural motion, the Mayor, having taken advice, did not feel there was a need for a debate. Councillor Kitcat and others were briefed in detail about the exact procedure to be followed. The actions of the Mayor reflected the wish of the meeting and was consistent with the powers of the Mayor as described below.

3.4 The second item related to the draft Sustainable Community Strategy. There was consensus on all parts of the draft strategy except one chapter. In order to enable the wishes of the meeting to be better reflected in the resolution, the Mayor ruled (as was her right, and as happens frequently at meetings either at the request of Members or on the Chairman's own initiative) to take the vote in two parts. Again this allowed for the wishes of the true wishes of the Council to be reflected and there was nothing unusual or improper.

3.5 Powers of the Mayor

3.5.1 The Council's Standing Orders, although reasonably detailed, are not an exhaustive list of all the rules governing Council meetings. The total set of rules consists of:

- Acts of Parliament, in particular, the Local Government Act 1972;
- Secondary Legislation, including the Access to Meetings Regulations;
- The Common Law; and
- Custom and Practice.

3.5.2 The Local Government Act 1972 provides for the appointment of the Mayor, the term of office of the Mayor, the requirement to have an annual meeting, the procedure for calling a meeting, access to meetings and documents, the voting procedure (including the casting vote of the person presiding at the meeting.) Most of these are incorporated into the Council's Rules of Procedure. There are also detailed regulations (secondary legislation) governing access to Council, committee and cabinet meetings and access to documents, the forward plan, key decisions and the recording of decisions. Most, but not necessarily all, of these are incorporated into the Council's Standing Orders and other procedural documents in the constitution.

3.5.3 Where the position is not covered by legislation or the Council's rules of procedure, one has to look at the common law as well as custom and practice. Although an explanation of the whole of the common law of meetings is beyond the scope of this report, the role of the Chairman (or the Mayor) as they relate to the issues in question, is summarised in ***The Law and Practice of Local Authority Meetings*** by Raymond Knowles by saying:

“ From judicial decisions there has emerged a widely recognised catalogue of powers and duties of a chairman. Thus it is the duty of the chairman and his/her function:

- (a) To determine that the meeting is properly constituted and that a quorum is present;
- (b) To inform himself/herself as to the business and objects of the meeting

- (c) To preserve order in the conduct of those present;
- (d) To confine discussion within the scope of the meeting and reasonable limits of time;
- (e) To decide whether proposed motions and amendments are in order;
- (f) To formulate for discussion and decision questions which have been moved for consideration of the meeting;
- (g) To decide points of order and other incidental questions which require decision at the time;
- (h) To ascertain the sense of the meeting;
- (i) To approve the draft of the minutes or other record of the proceedings
- (j) To adjourn the meeting when circumstances justify or require that course;
- (k) To declare the meeting closed when its business has been completed.”

3.5.4 Knowles goes on to say:

“Upon taking the chair at a meeting, the chairman (or whoever may be presiding) becomes invested with authority to regulate and control the proceedings for the purposes of the meeting. So long as the Chairman acts bona fide and remains in the chair he/she has virtually absolute rule. While acting in good faith, the chairman’s decisions, even if not strictly correct, will be upheld by the court provided no substantial injustice has arisen there from. If, however, the chairman acts improperly or mala fide, his/her decisions are not binding and in proper cases the court will intervene. The court will not normally intervene unless the complaint of irregularity comes from a representative majority of the meeting, but if a specific individual right is infringed, action could be taken by the party aggrieved.”

3.5.5 It should be recognised that not every aspect of a meeting is capable of being covered by Standing Orders. One therefore looks to the person presiding at the meeting to use their judgement and discretion in taking whatever action or decision they consider is appropriate having regard to the need for efficient despatch of business, fairness and reflecting, where possible, the wishes of those present. The fact that something is not expressly provided for in standing orders does not mean that the Mayor/Chair is precluded from exercising their discretion to facilitate the efficient despatch of business taking into account the sense of the meeting.

3.5.6 Where a particular procedural issue is not covered by legislation, standing orders or the general common law, the Mayor or Chair would be expected to use their discretion having regard to established custom and practice. This means that where the Council has a practice of doing things in a particular way, one would normally expect the Council to follow the custom and practice unless there is good reason, such as the procedure being inconsistent with the law or express rules of procedure. Some of the things that the Council does as custom and practice include prayers, Members standing when the Mayor enters or leaves, congratulating Members when they make their maiden speech, allowing people to speak at some meetings when there is no automatic right to speak, a minute’s silence in respect of people who have died and had association with the Council or the City, and respecting the Mayoralty.

3.6 Circulation of Amended Rules of Procedure

3.6.1 The amended rules of procedure have been drafted and will be circulated in the next couple of weeks, well before the new rules come into force.

4. CONSULTATION

4.1 The report was in response to a letter seeking clarification of rules and there was therefore no consultation.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

5.1 There are no financial implications arising from this report.

Finance Officer Consulted: Peter Francis

Date: 16/04/10

Legal Implications:

5.2 These are incorporated in the body of the report and the guidance itself.

Lawyer Consulted: Abraham Ghebre-Ghiorghis

Date: 15/04/10

Equalities Implications:

5.3 There are no equalities implications directly arising from this report

Sustainability Implications:

5.4 There are no sustainability implications arising from the report.

Crime & Disorder Implications:

5.5 There are no crime and disorder implications arising from this report.

Risk and Opportunity Management Implications:

5.6 None.

Corporate / Citywide Implications:

5.7 The report is for clarification only and it is not proposing any changes. There are therefore no corporate or citywide implications arising from the report.

SUPPORTING DOCUMENTATION

Appendices:

None

Documents in Members' Rooms

None

Background Documents:

None

