

OPEN REPORT



Chester-le-Street District Council

Report to:	Council
Date of Meeting:	27 September 2007
Report from:	Head of Legal & Democratic Services
Title of Report:	Local Government Reorganisation Proposals – Judicial Review and Consultation Response
Agenda Item Number:	11

1. Purpose and Summary

- 1.1 The purpose of this Report is to inform Council about two urgent Council decisions which were made on 3 September 2007 by the Leader of the Council, Cllr Linda Ebbatson, in exercise of the urgency powers under Rule 4(a) of Part 4D of the Council's Constitution after the necessary agreement was obtained from the Chair of the Overview and Scrutiny Management Board, Cllr Armstrong.
- 1.2 Rule 4(b) of Part 4D of the Council's Constitution requires the Leader of the Council to provide a full report to the next available Council meeting explaining the decisions, the reasons for it and why the decisions were treated as a matter of urgency.
- 1.3 Decision One - The Leader decided that the Council should join Durham City Council in its intended judicial review application of the Government's decision to accept Durham County Council's proposal of one unitary Council for County Durham, and to authorize financial expenditure to a maximum figure of £5,000 in order to undertake this. This was on the understanding that the matter would be re-evaluated after the outcome of the Shrewsbury & Atcham Borough Council's judicial review is known.

- 1.4 Decision Two – The Leader delegated authority to the Chief Executive in consultation with the Leader in order for a response to be given by Council by the consultation deadline of 28 September 2007 to the Government consultation paper entitled ‘Councils’ Proposals for Unitary Local Government: An Approach to Implementation (Discussion Document)’.

2. Consultation

- 2.1 Given the urgent timescales, it had not been possible for normal consultation to be undertaken on these decisions. Discussion had however taken place with Durham District Leaders and Chief Executives on both of these matters.
- 2.2 In order for the urgent Council decisions to be made, the Chair of the Overview and Scrutiny Management Board not only needed to be consulted but had to consent that the decisions were urgent. Cllr Geoff Armstrong was consulted and consented to the decisions being treated as a matter of urgency..
- 2.3 The Director of Resources and the Chief Executive had been consulted too.

3. Corporate plan and Priorities

- 3.1 The Council’s vision is ‘working together to fulfil the needs of our communities’ and the corporate priorities all reflect this vision.

4. Implications

4.1 Financial Implications and Value for Money Statement

- 4.1.1 Being party to judicial review proceedings exposes the Council to liability for not only its own costs but also potential liability for costs incurred by the Secretary of State in preparing and conducting the case.
- 4.1.2 Expenditure will be mitigated as much as possible by reliance on similar grounds to those in the Shrewsbury & Atcham Borough Council’s case. Furthermore, such proceedings be issued then the judicial review application is likely to be adjourned pending the outcome of the Shrewsbury & Atcham Borough Council case.
- 4.1.3 Up to 3 September 2007 about £200 expenditure has been incurred. Following the urgent decision to be a party to the judicial review it is anticipated that there will be liability up to an estimated maximum of £5,000 for the Council. This is up to the date when the result of the Shrewsbury & Atcham Borough Council’s judicial review result is expected. From information obtained by the Chief Executive, it is probable that the expenditure would be in the region of £2,000 to £3,000. It can be met from the Chief Executive’s existing budget. (At the time of drafting this Report – 13 September 2007 – no result is known but Members will be updated at the Meeting)

4.1.4 Whether or not further expenditure would be incurred would depend upon what decision was made following the Council's re-evaluation of its position after the outcome of the Shrewsbury & Atcham Borough Council's judicial review application. If the Council did not proceed further, then no further expenditure is anticipated. If the Council did proceed, then the financial implications would have formed part of a future report and decision-making process (including a risk assessment) prior to that decision.

4.2 Legal

4.2.1 Durham City Council had obtained legal opinion from Arden Chambers, the barristers acting on behalf of Shrewsbury & Atcham Borough Council, as to the merits of a claim for judicial review against the Secretary of State's decision to shortlist for implementation the proposals put forward by Durham County Council on Monday 27 July 2007.

4.2.2 This legal opinion which attracts legal professional privilege had been shared with all the Durham Districts Councils. The advice confirmed that there are sufficient and reasonable grounds on which to proceed to judicial review.

4.2.3 A copy of a report to Durham City Council's Cabinet's meeting on 5 September 2007 more fully set out the position and is available as a background paper.

4.3 Personnel

There are minimal implications and these can be met from existing staff resources.

4.4 Other Services

There are minimal implications at this stage but the proposed local government review associated disruption of service and future delivery of council services will have a significant impact upon service delivered to our communities and the need to provide the best locality based access to public services.

4.5 Diversity

There are no implications directly arising from this Report.

4.6 Risk

In addition to the financial risks already explained, there is a potential risk to relationships and reputation. This however if it exists goes both ways and it is believed that all engaged in public service will continue to serve the public interest as they best see it.

4.7 Crime and Disorder

There are no implications directly arising from this Report.

4.8 Data Quality

Every care has been taken in the development of this Report to ensure that the information and data used in its preparation and the appendix attached is accurate, timely, consistent and comprehensive. The Council's Data Quality Policy has been complied with in producing this report.

4.9 Other Implications

None

5. Background , Position Statement and Option Appraisal

5.1 Bids were invited by the Government as to the future reorganization of local government.

5.2 Sixteen bids were short listed by the Secretary of State for the Department of Communities and Local Government (DCLG) for consultation on 27 March 2007.

5.3 That consultation period ended on 22 June 2007.

5.4 On 25 July 2007 the Government announced the results and this included the Durham County Council's unitary bid for one unitary council in County Durham.

5.5 Since then further discussions have taken place including those through the Durham Districts Forum.

5.6 The Council could have either chosen to accept the outcome of the consultation process or the Council could have decided to challenge that process. Legal opinions taken by the Government and by other Councils differed.

5.7 Given the fact that Durham City Council was intending to issue proceedings on or around 7th September 2007, there was insufficient time to call a quorate meeting of the Council.

5.8 In addition, there was also insufficient time to deliver a response to the Government's consultation paper on implementation issued on 22 August 2007 and which has a deadline for receipt of representations of 28 September 2007.

5.9 Using the urgent Council decision-making procedure, the Leader decided between these two options outlined above at 5.6 going for a judicial review challenge and also agreed to delegate powers from the Council to the Chief Executive in consultation with the Leader under section 101 of the Local

Government Act 1972 in order for a response to be given to the consultation paper.

- 5.10 The Chair of the Overview and Scrutiny Management Board consented that the matter(s) were in the urgency category given the timescales made it impracticable to call a quorate meeting of the Council.

6. Recommendations

- 6.1 That Council notes the decisions made by the Leader of the Council and endorses those decisions.

7. Background Papers/ Documents referred to

- 7.1 Copy Executive Report to Durham City Council's Cabinet.
- 7.2 Governments 'Approach to Implementation (Discussion Document).

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