

REPORT TO: WEST OF ENGLAND JOINT COMMITTEE

DATE: 17 December 2021

REPORT TITLE: West of England Joint Committee governance and voting arrangements

**DIRECTOR: WEST OF ENGLAND COMBINED AUTHORITY
MONITORING OFFICER**

AUTHOR: SHAHZIA DAYA

Purpose of Report

To clarify voting arrangements for the Joint Committee.

Recommendation

To note that the Metro Mayor does not have a right of veto on matters relating to the Joint Committee; all voting is by way of a simple majority of those present and voting and will exclude the Metro Mayor for the particular items set out in the Joint Committee Terms of Reference (Appendix 1).

Background

At a joint meeting of the Combined Authority and Joint Committee on 21 September, the Metro Mayor exercised a right of veto on matters being discussed by the Joint Committee.

This was based on advice received from James Goudie QC which stated that the Metro Mayor had a right of veto on both committees. The advice was caveated with the proviso that the position was open to interpretation but in the limited time available the QC advised that the better interpretation was that the Metro Mayor did have a right of veto on both committees.

Following representations made by the constituent authorities contained at Appendix 2, Richard Clayton QC was asked to review this advice.

Having considered the advice from James Goudie and the note prepared by the constituent authority Monitoring Officers, Richard Clayton advises that the Metro Mayor does have a right of veto on CA matters but does not believe that this can be extended to the Joint Committee, as it is not explicitly set out in the constitution (Appendix 3)

Given that Richard Clayton had the benefit of time to fully consider the matter and the briefing note from the constituent authorities, future meetings should proceed on the basis that the Mayor can exercise a right of veto at the Combined Authority committee but that this right does not extend to the Joint Committee.

Decisions taken at the committee on 21 September are unaffected as the motion on the airport was unanimously agreed and the other items where this was an issue have either been withdrawn or will be coming back to committee for a future decision.

Consultation

- 3 The constituent authority Monitoring Officers were consulted with as part of the preparation of this report.

Public Sector Equality Duties

- 4 The public sector equality duty created under the Equality Act 2010 means that public authorities must have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimization and other conduct prohibited by the Act.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.
- 4.1 The Act explains that having due regard for advancing equality involves:
- Removing or minimizing disadvantages suffered by people due to their protected characteristics.
 - Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
 - Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.
- 4.2 The general equality duty therefore requires organisations to consider how they could positively contribute to the advancement of equality and good relations. It requires equality considerations to be reflected in the design of policies and the delivery of services, including policies, and for these issues to be kept under review.

Climate Change Implications

- 5 On 19 July 2019, the West of England Combined Authority declared a climate emergency, recognising the huge significance of climate change and its impact on the health, safety and wellbeing of the region's residents. The Combined Authority is committed to taking climate change considerations fully into account as an integral part of its governance and decision making process. Each report/proposal submitted for Combined Authority / Joint Committee approval is assessed in terms of the following:
- Will the proposal impact positively or negatively on:
- * The emission of climate changing gases?
 - * The region's resilience to the effects of climate change?
 - * Consumption of non-renewable resources?
 - * Pollution to land, water or air?
- Particular projects will also be subject to more detailed environmental assessment/consideration as necessary as part of their detailed project-specific management arrangements

None

Finance Implications, including economic impact assessment where appropriate

6 None

Legal Implications

7 See report

Appendices:

Appendix 1 – Joint committee terms of reference

Appendix 2 – Monitoring Officers briefing note

Appendix 3 – Advice from Richard Clayton QC

Background papers:

Combined Authority constitution

West of England Combined Authority Contact:

Any person seeking background information relating to this item should seek the assistance of the contact officer for the meeting who is Ian Hird on 07436 600313; or by writing to West of England Combined Authority, 3 Rivergate, Temple Quay, Bristol BS1 6EW; email: democratic.services@westofengland-ca.gov.uk

Appendix 1

West of England Joint Committee terms of reference:

Terms of Reference of the Joint Committee comprising of the Constituent Councils of the West of England Combined Authority, the Mayor and North Somerset Council (“The Joint Committee”)

Summary of West of England Joint Committee Functions

The West of England Joint Committee is established under Section 101(5) of the Local Government Act 1972, as applied by Section 9EB of the Local Government Act 2000 and Regulation 11 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 by the Executives of Bath and North East Somerset Council, Bristol City Council, South Gloucestershire Council, North Somerset Council. Following the election of the Mayor of the West of England Combined Authority, the Mayor shall become a member of the West of England Joint Committee.

The Joint Committee is established to deal with any relevant functions that fall outside those set out in the West of England Combined Authority Order 2017; in particular the West of England Joint Spatial Plan and Joint Transport Plan, the receipt of any relevant recommendations from the Local Enterprise Partnership Business Board and any other relevant legacy matters that involve the West of England Combined Authority area and the area of North Somerset Council.

Core Strategic Legacy Functions

The West of England Joint Committee functions:

- Prepare and adopt a Joint Transport Plan
- Prepare and adopt the Joint Spatial Plan
- Agreeing expenditure from the 2012 City Deal Funding including;
 - Economic Development Fund
 - 10-year Local Major Transport Funding allocation
 - The Growth Hub
- Approval of West of England One Front Door Programme Schemes including;
 - LGF Rounds 1, 2 and 3
 - Revolving Infrastructure Schemes
- Approving and Monitoring funding awarded for one off projects including from;
 - Cycling Ambition Fund
 - Local Sustainable Transport Fund
 - Better Bus Areas
- Review of the West of England Growth Fund
- Support the West of England Growth Hub
- Support Invest Bristol & Bath

The West of England Joint Committee will contribute to the following work that will be led by the West of England Combined Authority:

- The delivery and development of key strategies to improve the economic condition across the West of England area.
- Agreement and delivery of a set of strategic priorities that enables the region to deliver on its climate commitments.
- Championing the delivery of policy, projects and programmes of work that enables the region to deliver on its climate commitments.

Matters requiring a decision on the following functions are to be determined by a majority of those Members in attendance, or their substitutes (one vote representing each Authority) and excluding the West of England Combined Authority Mayor, subject to the proviso that any such matter that solely impacts the area of a single unitary authority requires that unitary authority to vote in favour of the proposal:

- Agreeing expenditure from the 2012 City Deal Funding including;
 - Economic Development Fund
 - 10-year Local Major Transport Funding allocation
 - The Growth Hub
- Approval of West of England One Front Door Programme Schemes including;
 - Revolving Infrastructure Schemes
- Monitoring / approving application for existing joint funding awarded for one off projects including;
 - Cycling Ambition Fund
 - Local Sustainable Transport Fund
 - Better Bus Areas

Matters requiring a decision on the following functions are to be determined by a majority of those Members in attendance, or their substitutes (one vote representing each Authority) and including the West of England Combined Authority Mayor subject to the proviso that any such matter that solely impacts the area of a single unitary authority requires that unitary authority to vote in favour of the proposal:

- West of England One Front Door Programme Schemes including;
 - LGF Rounds 1,2 and 3
- West of England Growth Fund Review
- Support the West of England Growth Hub
- Support Invest Bristol & Bath

Matters requiring a decision on the following functions are to be determined by unanimous agreement of all Members, or their substitutes (one vote representing each Authority) and excluding the West of England Combined Authority Mayor:

- Prepare and adopt a Joint Local Transport Plan
- Prepare and adopt the Joint Spatial Plan

Save for the provision in Section A – Standing Orders (Descriptions and Rules of Procedure), that can only apply to a meeting of the West of England Combined Authority, the rules of procedure will apply to meetings of the Joint Committee save that the voting arrangements applicable to the Joint Committee shall be as referred to in these Terms of Reference.

Appendix 2 - Briefing Note

Governance arrangements in respect of the West of England Joint Committee

1. This Briefing Note has been agreed by Monitoring Officers at Bristol City Council, South Gloucestershire Council, Bath and North East Somerset Council and North Somerset Council to support decision making by the Mayor/Leaders and Chief Executives in their respective authorities. Given the issues that this note raises, this note has been prepared on the basis that it will be shared with the West of England Combined Authority.

Introduction

2. This Briefing Note addresses a number of governance issues relating to the West of England Joint Committee (“the Joint Committee”) arising from its relationship with the West of England Combined Authority (“WECA”). In particular, this note considers the scope of the functions of the Joint Committee, the voting arrangements of the Joint Committee, the lawfulness of decision making by the Joint Committee, options to resolve these issues and some practical considerations.

Scope of West of England Joint Committee Functions

3. The Joint Committee is responsible for matters which fall outside the remit of WECA. The responsibilities of the Joint Committee are summarised at page A9 in the WECA Constitution as follows:

“The Joint Committee is established to deal with any relevant functions that fall outside those set out in the West of England Combined Authority Order 2017; in particular the West of England Joint Spatial Plan and Joint Transport Plan, the receipt of any relevant recommendations from the Local Enterprise Partnership Business Board and any other relevant legacy matters that involve the West of England Combined Authority area and the area of North Somerset Council.”

4. Further details regarding the relevant functions of the Joint Committee are set out on pages A9-A10 of the WECA Constitution as follows:

“Core Strategic Legacy Functions

The West of England Joint Committee functions:

- Prepare and adopt a Joint Transport Plan
- Prepare and adopt the Joint Spatial Plan
- Agreeing expenditure from the 2012 City Deal Funding including;
 - o Economic Development Fund
 - o 10-year Local Major Transport Funding allocation
 - o The Growth Hub
- Approval of West of England One Front Door Programme Schemes including;
 - o LGF Rounds 1, 2 and 3
 - o Revolving Infrastructure Schemes

- Approving and Monitoring funding awarded for one off projects including from;
 - o Cycling Ambition Fund
 - o Local Sustainable Transport Fund
 - o Better Bus Areas
 - Review of the West of England Growth Fund
 - Support the West of England Growth Hub
 - Support Invest Bristol & Bath”
5. Furthermore, the WECA Constitution acknowledges the role of the Joint Committee in supporting work that is led by WECA as set out on page A10 of the WECA Constitution:

“The West of England Joint Committee will contribute to the following work that will be led by the West of England Combined Authority:

- The delivery and development of key strategies to improve the economic condition across the West of England area.
- Agreement and delivery of a set of strategic priorities that enables the region to deliver on its climate commitments.
- Championing the delivery of policy, projects and programmes of work that enables the region to deliver on its climate commitments.”

6. These are the only functions that are the responsibility of the Joint Committee. There have been no further delegations to the Joint Committee since it was established. Many of these functions and responsibilities are no longer current, for example the Joint Spatial Plan is not progressing, so responsibility for the Spatial Development Strategy now rests with WECA.

Voting arrangements for the Joint Committee

7. The voting arrangements for the Joint Committee are also set out in the WECA Constitution. The voting arrangements vary depending on the item of business being considered by the Joint Committee. In preparing this part of the note, consideration has been given to the legal advice provided by James Goudie QC relating to the exercise of a right of veto by the WECA Mayor at the Joint Committee.
8. The voting arrangements governing decisions to be taken by a majority of members of the Joint Committee and which do not confer a voting right on the WECA Mayor are set out at page A10 in the WECA Constitution:

“Matters requiring a decision on the following functions are to be determined by a majority of those Members in attendance, or their substitutes (one vote representing each Authority) and excluding the West of England Combined Authority Mayor, subject to the proviso that any such matter that solely impacts the area of a single unitary authority requires that unitary authority to vote in favour of the proposal:

- Agreeing expenditure from the 2012 City Deal Funding including;
 - o Economic Development Fund
 - o 10-year Local Major Transport Funding allocation
 - o The Growth Hub
- Approval of West of England One Front Door Programme Schemes including;
 - o Revolving Infrastructure Schemes
- Monitoring / approving application for existing joint funding awarded for one off projects including;
 - o Cycling Ambition Fund
 - o Local Sustainable Transport Fund
 - o Better Bus Areas”

9. This voting arrangement establishes the principle of majority voting for the Joint Committee. It also states that the WECA Mayor has no voting rights in respect of these matters and therefore it follows that the WECA Mayor cannot have a veto in respect of these matters. The only proviso in respect of these matters is a “veto” on Joint Committee business is given to a member of the joint Committee where the business being transacted relates to only one single unitary authority area.

10. The voting arrangements governing decisions to be taken by a majority of the members of the Joint Committee and which also confer a voting right on the WECA Mayor are set out at page A10 in the WECA Constitution:

“Matters requiring a decision on the following functions are to be determined by a majority of those Members in attendance, or their substitutes (one vote representing each Authority) and including the West of England Combined Authority Mayor subject to the proviso that any such matter that solely impacts the area of a single unitary authority requires that unitary authority to vote in favour of the proposal:

- West of England One Front Door Programme Schemes including;
 - o LGF Rounds 1,2 and 3
- West of England Growth Fund Review
- Support the West of England Growth Hub
- Support Invest Bristol & Bath”

11. This section also reinforces the principle of majority voting for the Joint Committee. However, in respect of these matters, the WECA Mayor is entitled to vote. The only proviso in respect of these matters is a “veto” on Joint Committee business is given to a member of the joint Committee where the business being transacted relates to only one single unitary authority area. There is no veto in respect of these matters for the WECA Mayor. Clearly, if the WECA Mayor was intended to have a veto in

respect of these matters, then this would have been included in the same proviso granted to the unitary authorities.

12. The voting arrangements governing decisions to be taken unanimously by the unitary authorities of the Joint Committee and which do not confer a voting right on the WECA Mayor are also set out at page A10 in the WECA Constitution:

“Matters requiring a decision on the following functions are to be determined by unanimous agreement of all Members, or their substitutes (one vote representing each Authority) and excluding the West of England Combined Authority Mayor:

- Prepare and adopt a Joint Local Transport Plan
- Prepare and adopt the Joint Spatial Plan”

13. Furthermore, the WECA Constitution states at page A10 that

“Save for the provision in Section A – Standing Orders (Descriptions and Rules of Procedure), that can only apply to a meeting of the West of England Combined Authority, the rules of procedure will apply to meetings [of the] Joint Committee save that the voting arrangements applicable to the Joint Committee shall be as referred to in these Terms of Reference”

14. The effect of this section is that decisions of the Joint Committee are to be decided in accordance with the Terms of the Reference for the Joint Committee which set out the specific voting arrangements for the Joint Committee. In other words, whilst the WECA Standing Orders/Rules of Procedure apply to the Joint Committee, the voting arrangements in the WECA Standing Orders/Rules of Procedure are explicitly excluded by this section.
15. Based on the above analysis of the voting arrangements of the Joint Committee, the agreed view is that the advice that WECA received from James Goudie QC is not correct. That advice was based on a very brief and urgent instruction and did not have full regard to the wider voting arrangements that apply to the Joint Committee.

Lawfulness of decision making by the Joint Committee

16. It is possible that recent decisions of the Joint Committee have been made other than in accordance with the voting arrangements set out in the preceding paragraphs. On the face of it that would arguably amount to maladministration. However, it is also possible that decisions have been taken which are outside the explicit delegation of functions to the Joint Committee. Any decisions that are taken by the Joint Committee which are outside of its Terms of Reference would be ultra vires and open to challenge by way of judicial review.

17. If the Joint Committee is to take decisions outside the scope of its current Terms of Reference, the only lawful basis on which it will be able to do so is through the delegation of additional functions and responsibilities to the Joint Committee by either the unitary authorities or WECA. With that in mind, a review and reset of the functions that should be delegated to the Joint Committee would be appropriate.
18. In respect of the current Terms of Reference there are a few improvements that could be made to ensure better governance of decision making. This could, in part, be addressed through better use of the forward planning process to give greater transparency in respect of matters which will be considered by the Joint Committee. The sharing of reports in advance of publication through a draft agenda planning process would add greater scrutiny to the committee process. Furthermore, the Joint Committee should avoid the tabling of last-minute reports.
19. These issues are also relevant to the formal meetings of the WECA Committee, where there is the absence of a committee Draft Agenda review cycle prior to actual meetings. Looking at the budget setting process normally there's an expectation that members would have had sight of detailed revenue and capital monitors. This information helps them understand the assumptions which underpin the draft budget proposals from the WECA Mayor. At this point in the year members should be receiving regular briefings on what budget the WECA Mayor is developing. It is not clear whether any of this is happening.

Options for governance arrangements

20. There are several options that the unitary authorities and WECA should consider to improve the governance arrangements of the Joint Committee.
21. It is recommended that the unitary authorities and WECA undertake a governance review of the functions of the Joint Committee to identify whether there are any legacy functions that the Joint Committee still needs to discharge. In particular this should include a review of any legacy funding that has been received by the Joint Committee and which still needs to be administered by it. For example, the Economic Development Fund was set up with 25 years of funding and has circa 20 years remaining. Engagement with S.151 Officers on this point will be required.
22. A governance review of the Joint Committee should also consider the extent to which the original delegations have now become obsolete, for example the requirement to produce a Joint Spatial Plan. As part of that review, the unitary authorities and WECA should consider whether there are additional functions which should be delegated to the Joint Committee.
23. Once the governance review of the Joint Committee has established whether there are any additional functions which should be delegated to the Joint Committee, the unitary authorities and WECA should determine whether those delegations should

be made to the existing Joint Committee or whether the Joint Committee should be constituted afresh. In either scenario, the appropriate decision-making procedures in the unitary authorities and WECA would need to be followed to delegate new functions or establish a new Joint Committee. This would involve decisions of Full Council and/or Cabinet depending on whether the functions delegated are executive or non-executive functions.

24. By way of indicative examples, the following potential arrangements may be required. A Joint Committee would continue to exercise the current legacy functions and any other functions that the unitary authorities decide to delegate to it. A further option could be the establishment of a Joint Committee by the WECA Mayor and North Somerset Council as Transport Authorities.
25. Finally, given the lack of transparency regarding the budget setting processes within WECA, the unitary authorities could consider the option for an alternative budget as provided for by Articles 5 to 10 of the Combined Authorities (Finance) Order 2017. Preparatory work would need to be started now.

Practical considerations

26. There are a number of practical points that should be considered.
27. In the short term, the advice above relating to the voting arrangements for the Joint Committee should be shared with the Monitoring Officer at WECA for consideration in advance of the next meeting of the Joint Committee on 15 October 2021.
28. A review of the Forward Planning and Agenda Setting processes for the Joint Committee needs to be considered to provide greater transparency around decision making. This would also reduce the risk of decisions being taken which are unlawful and which may be challenged.
29. A governance review of the functions of the Joint Committee with a view to agreeing the future governance of the Joint Committee should be carried out. This will establish whether there is a role for the Joint Committee going forward and if so, what it should be.

Agreed by Monitoring Officers for Bristol City Council, South Gloucestershire Council, Bath and North East Somerset Council and North Somerset Council

4 October 2021

RE: WEST OF ENGLAND COMBINED AUTHORITY

-and-

RE: MAYOR'S VOTE

ADVICE

1. I have been asked by the West of England Combined Authority (WECA) to advise on some voting issues which arise in relation to Joint Committee and the Mayor.

2. For these purposes I have been provided with:
 - (1) the WECA constitution;
 - (2) the WECA Order;
 - (3) the Advice of James Goudie QC; and
 - (4) the briefing note from constituent authority Monitoring Officers (MOs)

3. The Joint Committee is established under the Local Government Act 1972 and its Terms of Reference (**ToR**) are contained within the WECA constitution. The ToR set out voting arrangements that exclude the Metro Mayor from certain votes pertaining to legacy functions that existed before WECA was established.

4. The WECA Order (Sch 1 (4) (5)) and the WECA ToR provide the Mayor with a right of veto as he must vote in favour of any Combined Authority decisions. The final para of the Joint Committee ToR also states

Save for the provision in Section A – Standing Orders (Descriptions and Rules of Procedure), that can only apply to a meeting of the West of England Combined Authority, the rules of procedure will apply to meetings of the Joint Committee save that the voting arrangements applicable to the Joint Committee shall be as referred to in these Terms of Reference.

5. I clarified my instructions in a telephone conference on 21 October 2021 and have been asked to advise on my views in relation to the voting position of the Mayor as described in the briefing note dated 20 October 2021 agreed by Monitoring Officers for Bristol City Council, South Gloucestershire Council, Bath and North East Somerset Council and North Somerset Council.
6. Unfortunately, it should be emphasised that the relevant provisions have been drafted in obscure language which readily gives rise to confusion. In particular, it has been suggested that the Mayor has a right of veto based not on WECA's ToR themselves, but on the basis that the WECA committees' ToR would apply in all other circumstances.
7. However, I would advise that the question of whether the Mayor has voting rights will depend on the particular function in question and how that function is treated by the ToR.
8. I would also advise that the ToR do not confer a right of veto on the Mayor.
9. I shall set out the views expressed (i) in the Briefing Note and (ii) by my Instructing Solicitors before (iii) explaining in more details my reasoning for this conclusion.

The position described in the Briefing Note

10. The Note states that the voting arrangements for the Joint Committee are also set out in the WECA Constitution and vary depending on the item of business being considered by the Joint Committee. In preparing this part of the note, consideration was given to the legal advice provided by James Goudie QC relating to the exercise of a right of veto by the WECA Mayor at the Joint Committee.
11. The email advice given by Mr Goudie is extremely short and no reasons for his conclusion are provided. His email states:

Dear Shahzia,

We have now spoken.

This is not straightforward, and there are arguments either way, but I regard the better view as being that the general position as to the powers of the Mayor of the Combined Authority in relation to Committee decisions including the veto power is not excluded in the case of Joint Committee decisions. The Joint Committee ToR are subordinate and govern the decision that the Joint Committee makes, not the powers of the Mayor in relation to that decision.

Best Wishes

James

12. The Note goes on to state that voting arrangements governing decisions to be taken by a majority of members of the Joint Committee and which do not confer a voting right on the WECA Mayor are set out at page A10 in the WECA Constitution:

Matters requiring a decision on the following functions are to be determined by a majority of those Members in attendance, or their substitutes (one vote representing each Authority) and excluding the West of England Combined Authority Mayor, subject to the proviso that any such matter that solely impacts the area of a single unitary authority requires that unitary authority to vote in favour of the proposal:

- *Agreeing expenditure from the 2012 City Deal Funding including;*
 - o *Economic Development Fund*
 - o *10-year Local Major Transport Funding allocation*
 - o *The Growth Hub*
- *Approval of West of England One Front Door Programme Schemes including;*
 - o *Revolving Infrastructure Schemes*
- *Monitoring / approving application for existing joint funding awarded for one off projects including;*
 - o *Cycling Ambition Fund*
 - o *Local Sustainable Transport Fund*
 - o *Better Bus Areas*

13. The Note goes on to state that this voting arrangement establishes the principle of majority voting for the Joint Committee. It also says that the WECA Mayor has no voting rights in respect of these matters and therefore it follows that the WECA Mayor cannot have a veto in respect of these matters. The only proviso in respect of these matters is a "veto" on Joint Committee business is given to a member of the

joint Committee where the business being transacted relates to only one single unitary authority area.

14. The Note then states that the voting arrangements governing decisions to be taken by a majority of the members of the Joint Committee and which also confer a voting right on the WECA Mayor are set out at page A10 in the WECA Constitution:

Matters requiring a decision on the following functions are to be determined by a majority of those Members in attendance, or their substitutes (one vote representing each Authority) and including the West of England Combined Authority Mayor subject to the proviso that any such matter that solely impacts the area of a single unitary authority requires that unitary authority to vote in favour of the proposal:

- *West of England One Front Door Programme Schemes including;*
 - o *LGF Rounds 1,2 and 3*
- *West of England Growth Fund Review*
- *Support the West of England Growth Hub*
- *Support Invest Bristol & Bath*

15. The Note argues that this section also reinforces the principle of majority voting for the Joint Committee. However, in respect of these matters, the WECA Mayor is entitled to vote. The only proviso in respect of these matters is a "veto" on Joint Committee business is given to a member of the joint Committee where the business being transacted relates to only one single unitary authority area. There is no veto in respect of these matters for the WECA Mayor. Clearly, if the WECA Mayor was intended to have a veto in respect of these matters, then this would have been included in the same proviso granted to the unitary authorities.

16. The Note then argues that the voting arrangements governing decisions to be taken unanimously by the unitary authorities of the Joint Committee and which do not confer a voting right on the WECA Mayor are also set out at page A10 in the WECA Constitution:

Matters requiring a decision on the following functions are to be determined by unanimous agreement of all Members, or their substitutes (one vote representing each Authority) and excluding the West of England Combined Authority Mayor:

- o *Prepare and adopt a Joint Local Transport Plan*
- o *Prepare and adopt the Joint Spatial Plan*

17. It next points out that the WECA Constitution states at page A10 that:

Save for the provision in Section A - Standing Orders (Descriptions and Rules of Procedure), that can only apply to a meeting of the West of England Combined Authority, the rules of procedure will apply to meetings [of the] Joint Committee save that the voting arrangements applicable to the Joint Committee shall be as referred to in these Terms of Reference

18. The Note further argues that the effect of A10 is that decisions of the Joint Committee are to be decided in accordance with the Terms of the Reference for the Joint Committee which set out the specific voting arrangements for the Joint Committee. In other words, whilst the WECA Standing Orders/Rules of Procedure apply to the Joint Committee, the voting arrangements in the WECA Standing Orders/Rules of Procedure are explicitly excluded by this section.

19. The Note concludes on voting arrangement that, based on the above analysis of the voting arrangements of the Joint Committee, the agreed view is that the advice that WECA received from James Goudie QC is not correct. That advice was based on a very brief and urgent instruction and did not have full regard to the wider voting arrangements that apply to the Joint Committee.

The views expressed by those instructing me

20. Instructing Solicitors point out that the Joint Committee is established under the Local Government Act 1972 but its ToR are contained within the WECA constitution. The ToR set out voting arrangements that exclude the Metro Mayor from certain votes pertaining to legacy functions that existed before WECA was established.

21. Paragraph 4 of the WECA Order 2017 gives effect to the WECA constitution (which makes provision for the WECA's constitution. As Instructing Solicitors rightly point out, Sch 1 para 4(1) states that any questions to be decided by the WECA is to be

decided by a majority of the members present and voting on that question at a meeting of the Combined Authority, and such majority is to include the Mayor, or the deputy Mayor acting in place of the Mayor, and substitute members, acting in place of members. Sch 1 para 4(5) states that decisions must be carried by a majority of the Mayor and members of the Combined Authority appointed by the constituent councils, or substitute members acting in place of those members, present and voting on that question. Of course these provisions apply solely to the WECA and not specifically to the Joint Committee.

22. Again, as Instructing Solicitors rightly say, the terms of the WECA ToR are critical.

23. I also agree that the important question is to identify the proper meaning of page A10 of the WECA Constitution.

24. Instructing Solicitors suggest that, on the basis that the Joint Committee ToR specify the voting arrangements and then apply the constitution to the rest, By contrast, James Goudie seems to have proceeded on the basis that the WECA Committee rules applied with the result that the Mayor has the right of veto to anything not specifically listed in those voting arrangements.

My view of the Mayor's voting rights

25. I am afraid that the advice given by Mr Goudie is so brief and so absent of any reasons for his conclusion that it is safest to leave his view to one side and approach the issues by the issues by going back to first principles.

26. I agree with the Note on the following issues:

- (1) the voting arrangements set out at page A10 in the WECA Constitution establishes (i) the principle of majority voting for the Joint Committee; and (ii) that the WECA Mayor has no voting rights in respect of these matters.

(2) I, again, agree that there is a proviso that there is veto on Joint Committee business is given to a member of the joint Committee where the business being transacted relates to only one single unitary authority area.

(4) I also agree that at page A10 in the WECA Constitution creates the principle of majority voting and expressly confers a right of vote to the Mayor subject to the proviso that any such matter that solely impacts the area of a single unitary authority requires that unitary authority to vote in favour of certain specifies proposals.

27. However, the crucial issue is the Note's contention that, whilst the WECA Standing Orders/Rules of Procedure apply to the Joint Committee, the voting arrangements in the WECA Standing Orders/Rules of Procedure are explicitly excluded by this section.

28. I would advise that the crucial issue is the proper meaning to A10 of the WECA Constitution which, as I have already said, states:

Save for the provision in Section A - Standing Orders (Descriptions and Rules of Procedure), that can only apply to a meeting of the West of England Combined Authority, the rules of procedure will apply to meetings [of the] Joint Committee save that the voting arrangements applicable to the Joint Committee shall be as referred to in these Terms of Reference

29. As I already stressed, A10 is not very happily drafted. However, I would advise that A10 is to be construed as meaning:

- (1) the WECA standing orders apply save in relation to those standing orders that can only apply to the WECA itself; and
- (2) voting arrangements are to be those set out in the ToR.

30. I, therefore, would advise that the ToR are determinative of the Mayor's voting rights and that the Mayor's right to vote depends on the particular function in question.

31. Accordingly, I would advise as follows:

- (1) in relation to the “*functions*” specified in A8 (key strategies to improve economic conditions, strategic priorities to deliver on climate commitments and championing the delivery of policies to deliver on climate commitment) , the Mayor has a right to vote;
- (2) in relation to decisions on the following functions at A8 (agreeing expenditure on the 2012 City Deal funding, approving Front Door Programme Schemes, monitoring/approving existing funding), the Mayor is, again, excluded from voting- except “*that where any such matter that solely impacts on the area of single unitary authority requires the unitary authority to vote in favour of the proposal*”;
- (3) in relation to decisions on the following functions at A8-9 (One Front Door Programme Schemes, Growth Fund Review, Growth Hub and Support Invest), the Mayor is entitled to vote- “*that where any such matter that solely impacts on the area of single unitary authority requires the unitary authority to vote in favour of the proposal*”; and
- (4) in relation to decisions on the following functions at A9 (joint transport and spatial plan), the Mayor cannot vote;

Whether the Mayor has a right of veto

32. I am afraid I disagree with the view that the Mayor has a right of veto because that possibility is not excluded by the general position of the rights of the Mayor.

33. The WECA constitution confers certain functions and powers on the Mayor.

34. I would, therefore, advise the Mayor has no right of veto for the following reasons:

- (1) the Mayor can only do that which he is empowered to do what the WECA rules entitle him to do; and

- (2) on the material I have seen it is difficult to maintain that the Mayor has a right of veto by virtue of any statutory power, whether expressly or by inference.

Conclusion

35. I would, accordingly, advise that the Mayor's right to vote depends on the ToR as defined by the ToR's express terms. The upshot is that the question of whether or not the Mayor has voting rights will depend on the particular function in question and how that function is treated by the ToR.
36. If there are any matters which Instructing Solicitors might wish to discuss further, they should not hesitate to contact me.

RICHARD CLAYTON QC

22 October 2021