

A photograph of three people (two men and one woman) sitting at a long table in a modern office or cafe at night. They are all looking at their laptops. The woman is on the left, wearing a grey blazer. The man in the middle is wearing a light blue sweater. The man on the right is wearing a dark red shirt and is gesturing with his hand while talking. There are coffee cups and a small potted plant on the table. The background shows a large window with a view of city lights at night. The word 'geldards' is written in white lowercase letters in the top right corner.

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Geldards Public Sector: Local Authority Decision Making

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Agenda

- Local Government and Elections (Wales) Act 2021
- Public Office (Accountability Bill)
- Principles of decision making
- Responsibility for decision making
- Consultation
- Reasonable exercise of powers
- Bias and predetermination

Scenario

- ABC Council has recognised that several of its officers are highly knowledgeable about plants and skilled at horticulture. They are also skilled at training and advising their colleagues. It is considering setting up a centre where those officers will provide training services to individuals and businesses. The Council has identified its preferred location but it is currently the site of a community centre where the Council provides a range of services to the local community. The Council has commissioned an expert report into the viability of its proposal. It has also carried out an equality impact assessment

Local Government and Elections (Wales) Act 2021

- Part 3 – Promoting access to local government
- Duty to encourage local people to participate in decision-making
- Duty to publish public participation strategy
- Duty to publish constitution and constitution guide

Local Government and Elections (Wales) Act 2021

- Local Government Meetings
- Electronic broadcast of meetings
- Remote attendance at meetings
- Regulations about conduct of local authority meetings
- Local Government and Elections (Wales) Act 2021
(Consequential Amendments and Miscellaneous Provisions)
Regulations 2021
- Local Authorities (Amendments relating to Publication of
Information) (Wales) Regulations 2022

Public Office (Accountability) Bill

- Duty of candour and assistance for public authorities and public officials
- Duty for public authorities to promote and take steps to maintain high standards of ethical conduct
- Offence of misleading the public
- Misconduct in public office

Principles of decision making

- Within the local authority's powers
- Reasonable exercise of powers
- Procedurally correct
- Taken by an authorised decision maker
- Consistent with local authority's plans and strategies

Reasonable decision making

- Take account of all relevant matters
- Disregard irrelevant matters
- Act for proper purposes
 - *R v Greater London Council and another ex parte Westminster City Council*
- Do not act in bad faith

Reasonable decision making

- No improper delegation
 - R (on the application of Selter Associates Ltd) v Leicestershire County Council
 - R (on the application of 007 Stratford Taxis Ltd) v *Stratford upon Avon District Council*
- Lawful delegation – *R (on the application of Michael James Daw and others) v Staffordshire County Council*

Reasonable decision making

- Do not fetter discretion
 - *R V London County Council ex parte Corrie*
- Wednesbury unreasonableness – *Associated Provincial Picture Houses Ltd v Wednesbury Corporation*

Scenario

- Would ABC Council's proposal be a reasonable exercise of its powers?
- Any concerns about reasonable decision making?

Responsibility for decisions

- Responsibility for decisions depends on form of governance and local authority's constitution

Executive Arrangements

- Functions are executive unless reserved to Council
- Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 specify:
 - Functions not to be the responsibility of an executive
 - Local choice functions
 - Functions not to be the sole responsibility of an executive
 - Circumstances in which functions are not to be the responsibility of an executive

Executive Arrangements

- Council must decide who is responsible for local choice functions
- Executive decision taken by Council is ultra vires
 - *R (on the application of Buck) v Doncaster Metropolitan Borough Council*

Delegation of Functions

- S.101 Local Government Act 1972
- Executive functions – S.19 S.20 Local Government Act 2000, Local Authorities (Executive Arrangements) (Discharge of Functions) (Wales) Regulations 2002
- Constitution – Responsibility and authority for all functions must be clear

Delegation of functions to officers

- Local authorities have power to enter into contracts for the provision of assets or services by other persons in connection with discharge of local authority functions – S.1 Local Government (Contracts) Act 1997
- Orders under S.70 Deregulation and Contracting Out Act 1994 can authorise a local authority to arrange for functions to be discharged by employees of third parties

Taking account of relevant matters

- Pervasive duties of local authorities
 - Public sector equality duty
 - Duty to keep performance under review
 - Biodiversity and resilience of ecosystems
 - Fiduciary duty
 - Crime and disorder
 - Well-being
 - Welsh Language

Do not compartmentalise decisions

- Consider all relevant duties
 - *R (on the application of J and Another) v London Borough of Hillingdon*
 - “The Decision Letter fails, completely, actively to promote the welfare of L. If it were to be suggested that it was no part of the housing officer’s role to make decisions about the welfare of L (and even were that correct) that simply serves to demonstrate the dangers of compartmentalising the process.”

Taking account of relevant matters

- Relevant matters must be brought to decision maker's attention:
 - *R (on the application of Hunt) v North Somerset Council*
 - *R (on the application of DAT v West Berkshire Council*
 - *R (on the application of Logan) v Havering London Borough Council*

Power to restrict voting rights

- *R (on the application of The Spitalfields Historic Building Trust) v Tower Hamlets London Borough Council*
- Paragraph 42 Schedule 12 Local Government Act 1972 -
“Subject to the provisions of this Act, a local authority may make standing orders for the regulation of their proceedings and business and may vary or revoke any such orders.”
- Lawful for a local authority to restrict voting to members who have been present at all meetings considering an application

Importance of reports and records

- Reports and records of decisions must show local authority is acting within its powers
- *Risk Management Partners Limited v Brent London Borough Council*
 - Local authority did not show how arrangements were within incidental or well-being powers
- *R (on the application of Faraday Development Limited) v West Berkshire Council*
 - “There is no need for the authority’s decision-making process to refer to section 123(2) explicitly, provided that the Court is able to see that the duty has in substance been performed.”

Exercise of powers - Purpose

- Local authority must comply with all requirements and constraints affecting relevant powers
- Purpose is important
- S.222 Local Government Act 1972 – Power for local authority to prosecute, defend or appear in legal proceedings “where a local authority consider it expedient for the promotion or protection of interests of inhabitants of their area”

Exercise of powers - Purpose

- *R v AB and others*
- Local authority brought prosecution for Legal Aid Agency
- No reason to think prosecution was expedient for the promotion or protection of interests of inhabitants of the area
- Benefit to UK taxpayers generally and general financial justification not sufficient
- Therefore prosecution outside local authority's powers
- *Qualter and Others v Crown Court at Preston*

Exercise of powers - Purpose

- *Peters v Haringey London Borough Council*
- Decision to establish joint venture challenged on grounds that:
 - Outside the local authority's powers to set up a limited liability partnership because acting for a commercial purpose
 - Breach of duty of consultation
 - Breach of public sector equality duty
 - Decision should have been taken by full Council

Comprehensive decision making

- Decisions need to cover all aspects of a project
- Are the purposes within the scope of all relevant powers?
- For example:
 - Contracts
 - Land disposal
 - Borrowing

Consultation

- Required by:
 - Express statutory requirement
 - Legitimate expectation
 - Fairness

Consultation Principles

- Must take place when proposals are at formative stage
- Those consulted must be given sufficient information and time to allow them to make an intelligent response
- Decision maker must take results of consultation into account

Consultation Cases

- *R (on the application of Moseley) v Haringey London Borough Council*
- *R v Brent London Borough Council ex parte Gunning*
- *R v North and East Devon Health Authority ex parte Coughlan*
- *R (on the application of Robson) v Salford City Council*

Consultation Cases

- *R (on the application of L and Another) v Warwickshire County Council*
- *R (on the application of Silus Investments SA) v Hounslow London Borough Council*
- *R (on the application of T v Trafford Metropolitan Borough Council*
- *R (on the application of Morris and Another) v Rhondda Cynon Taf County Borough Council*

Consultation Cases

- *Draper v Lincolnshire County Council*
- *R (on the application of Tilley) v Vale of Glamorgan Council*
- *Keep Wythenshawe Special Ltd v NHS Central Manchester CCG and Others*
- *R (on the application of Edwards) v Flintshire County Council*
- *R (on the application of Liberty) v Secretary of State for the Home Department*

Bias

- Decisions must be taken with an open mind
- Test is whether a fair minded and informed observer having considered the facts would conclude there was a real possibility of bias

Bias Cases

- *Porter v Magill*
- *R (on the application of Southwark London Borough Council) v London Fire and Emergency Planning Authority*
- *Hussain v Sandwell Metropolitan Borough Council*
- *R (on the application of Piffs Elm Ltd) v Tewkesbury Council*

Predetermination

- Predetermination – Approaching a decision with an open mind
- *R v Teesside Development Corporation ex parte William Morrison Supermarket plc*
- *Bovis Homes Ltd v New Forest District Council*
- *Georgiou v Enfield London Borough Council*
- *Ghadami v Harlow District Council*

Predetermination Cases

- *R (on the application of Island Farm Development) v Bridgend County Borough Council*
- *Condrón v National Assembly for Wales*
- *R (on the application of Ware v Neath Port Talbot County Borough Council)*
- *R (on the application of Lewis) v Persimmon Homes Teesside Ltd*

Predetermination

- S.25 Localism Act 2011
 - Prior indication of a view does not amount to predetermination
- *EU Plants Ltd v Wokingham Borough Council*
- *R (on the application of TW Logistics Ltd) v Tendring District Council*
- *R (on the application of IM Properties Development Ltd) v Lichfield District Council*
- *R (on the application of Nestwood Homes Development Limited v South Holland District Council*

Local authorities working with others

- All parties involved in local authority projects need to understand the importance of decision making
 - Timescales
 - Extent of powers
 - Pervasive duties
 - Transparency
 - Impact of changes to projects

Scenario

- On the way into the Cabinet meeting, Councillor X tells Councillor Y that Councillor X has not read the papers for the meeting but that he intends to vote in favour of the proposal if the expert report is favourable.
- Councillor Y says that is a stupid approach to take and calls Councillor X several insulting names. Councillor Y says that she does not like plants and would always be opposed to the Council doing anything which might encourage people to grow more plants.

Scenario

- Do you have any concerns about the decision making of ABC Council?

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Thank You

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