

<b>Isle of Anglesey County Council</b>	
Report to:	Executive Council
Dates:	Executive – decision by Portfolio Holder 29/4/24 Council 21/5/2024
Subject:	Local Choice Functions: Performance
Portfolio Holder(s):	Councillor Carwyn Jones
Head of Service / Director:	Lynn Ball Director of Function (Council Business) / Monitoring Officer
Report Author: Tel: E-mail:	Lynn Ball Director of Function (Council Business) / Monitoring Officer 01248 752586 lynnball@ynysmon.llyw.cymru
Local Members:	Relevant to all Members

#### A –Recommendation/s and reason/s

1. To designate the Corporate Self Assessment (CSA) and Panel Performance Assessment (PPA) as Executive functions;
2. To agree that the Council's first PPA shall take place in 2025;
3. To authorise the appointment of the Welsh Local Government Association (WLGA) to support the Council's first PPA, at an estimated cost of £35,000 (less the cost of co-designing the specification);
4. To delegate authority to the Chief Executive to make all operational decisions and arrangements for conducting the PPA, but specifically excluding the appointment of the independent panel and its terms of reference; which shall be Executive decisions.

#### **Legal Background**

Council will be aware of the duty to publish an annual CSA, as well as at least one PPA in every five year Council term. The requirement to produce these documents is specified in the [Local Government and Elections \(Wales\) Act 2021](#) ("the Act").

On [25/04/2022](#) the Council adopted constitutional amendments, revising the terms of reference of the Governance and Audit Committee (GAC), and in doing so also designated CSAs, and PPAs as Council functions. The legal position at the time was that these were both Council functions, there being no local discretion.

## A –Recommendation/s and reason/s

However, the WLGA has since contacted all Councils with advice from Welsh Government (reproduced at **Enclosure A**). Welsh Government has clarified its view and now considers that CSAs, and PPAs, are local choice functions. That is, they may be the responsibility of full Council or the Executive.

Against this background it is now recommended that a decision be made on whether the Council, or the Executive, shall be responsible for making relevant decisions over the functions listed in Section 108 of the Act; namely:-

- a) section 91(1) (self-assessment report);
- b) section 91(8) (response to recommendations about report);
- c) section 92(1) (appointment of performance assessment panel);
- d) section 93(1) (response to report of panel performance assessment);
- e) section 93(5) (response to recommendations about response to report of panel);
- f) section 96(1) (response to recommendations from the Auditor General for Wales);
- g) section 96(5) (response to recommendations about response to the Auditor General for Wales);
- h) section 102(2) (request to the Welsh Ministers for support and assistance)

### **Relevant Factors for Consideration**

- From a legal perspective, there is no distinction between the two performance duties being functions of Council or the Executive. Either choice is equally valid.
- Whichever Council body undertakes the political role, the same degree of transparency is required. So, agendas/reports/meetings in public/decision records/minutes/webcasting, shall apply to either the Council or the Executive.
- The role and powers of the GAC remains unchanged; including the requirement that the recommendations of the GAC be followed, or an explanation published as to why recommendations have been rejected.
- Once made, the designation of functions may be revisited by Council; subject to the usual six month rule.
- On balance, though, the Monitoring Officer recommends that both performance functions be exercised by the Executive. This is partly for reasons of public and corporate accountability but mainly for reasons of practicality, as described below.

### **CORPORATE SELF ASSESSMENT**

- Each year the CSA must be approved by the Council in draft before submission to the GAC for views and recommendations. The CSA then returns to Council to consider the views of the GAC, in particular to

## A –Recommendation/s and reason/s

consider and respond to any recommendations from the GAC and to make any amendments etc. The final CSA is then published.

It would be more efficient for this function to be undertaken by the Executive as there is a requirement that the CSA be published and shared with regulators as soon as possible after the end of the relevant financial year. Thus far, two CSAs have been published and the corporate timetable has been challenging. CSAs risk becoming stale/outdated if not published promptly and the nexus between Council and the GAC makes this delay inevitable.

However, the number of regular Executive meetings, and the potential for ongoing informal consultation with the Leader/Portfolio Holder/s, will hasten the timescale of publication. It should also be noted that approval by Executive decision would be open to call-in, including a potential referral from scrutiny to Council if appropriate.

### **PANEL PERFORMANCE ASSESSMENT**

- Every council must undertake at least one PPA in each 5 year Council term. This work is carried out by an independent panel. The report from the panel's work must be published at least a year before the next local government election in May 2027. The PPA is a process and not an event and will require numerous, and consequential, decisions from the preparation period to the publication of the panel's findings.

The WLGA's generic programme is [here](#) and gives a detailed account of what is likely to be involved. It is an inclusive process which, among others, involves all Council members.

The granularity of this process does not lend itself to oversight from Council. The preparation for the PPA will absorb significant officer capacity and the need to call extraordinary Council meetings would not add value with resources better deployed elsewhere. Key decisions, like the terms of reference, would be made by the Executive and would be open to call-in and the usual transparency requirements would apply. Operational decisions would be made by officers under delegation but in consultation with relevant Executive members. This would provide readily accessible support and advice for officers, facilitating a continuous dialogue which would not be possible where full Council was required to be consulted on an ongoing basis.

It would not be appropriate for Council to delegate all of the decision making to officers as it is essential there be political ownership of key components.

An alternative might be for Council to appoint an informal working group for consultation purposes. However this would create another level of

**A – Recommendation/s and reason/s**

administration, when Executive arrangements, which better meet the needs of this process, are already well established.

**B – What other options did you consider and why did you reject them and/or opt for this option?**

None. It is appropriate that Council make a decision based on the Welsh Government's advice.

**C – Why is this a decision for the Executive?**

This is a decision for Council, but the Executive is required to consider all proposed constitutional changes and make recommendations (if any) to Council.

**Ch – Is this decision consistent with policy approved by the full Council?**

Not relevant in these circumstances as the final decision is for Council.

**D – Is this decision within the budget approved by the Council?**

This is largely a governance decision about local choice functions and that decision will have no budgetary implications. However, Council is also being asked to set a timeframe for its first PPA, and to engage the WLGA to facilitate that work. The likely cost will be in the region of £35,000. This cost has already been anticipated by the Council's Section 151 Officer and the sum has been earmarked. The WLGA has recently informed the Council that it has secured government funding which will cover the costs involved in working with the Council to co-design the specification for the PPA. This is likely to reduce the estimated budget though the level of that reduction is not yet clear.

**Dd – Assessing the potential impact (if relevant):**

1	How does this decision impact on our long term needs as an Island?	
2	Is this a decision which it is envisaged will prevent future costs / dependencies on the Authority? If so, how?	

Dd – Assessing the potential impact (if relevant):	
3	Have we been working collaboratively with other organisations to come to this decision? If so, please advise whom.
4	Have Anglesey citizens played a part in drafting this way forward, including those directly affected by the decision? Please explain how.
5	Note any potential impact that this decision would have on the groups protected under the Equality Act 2010.
6	If this is a strategic decision, note any potential impact that the decision would have on those experiencing socio-economic disadvantage.
7	Note any potential impact that this decision would have on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

E – Who did you consult?		What did they say?
1	Chief Executive / Leadership Team (LT) (mandatory)	Supportive of the recommendations in the report
2	Finance / Section 151 (mandatory)	Supportive of the recommendations in the report
3	Legal / Monitoring Officer (mandatory)	Report Author
4	Human Resources (HR)	
5	Property	
6	Information Communication Technology (ICT)	
7	Procurement	
8	Scrutiny	
9	Local Members	
10	Others:  Head of Profession HR and Transformation  Head of Audit and Risk	All supportive of the recommendations in the report

E – Who did you consult?	What did they say?
Head of Democratic Services  Scrutiny Manager  Portfolio Holder Corporate and Customer Experience	

F - Appendices:
A – Advice of WLGA/Welsh Government

Ff - Background papers (please contact the author of the Report for any further information):
There are links in the report to the Act, the Report previously received by Council on 25/04/22 and the support “offer” from the WLGA

(Consideration of a local choice function: self-assessment and panel performance assessment, Council, 2023)

**Legal advice received by the Head of Improvement WLGA from Welsh Government Legal Team (May 2023):**

As discussed, I've received advice from Legal Services in relation to whether the self-assessments required by section 91 of the Local Government and Elections (Wales) Act 2021 should be agreed by the full council or the executive.

As we've previously discussed section 13 of the Local Government Act 2000 provides:

*"Subject to any provision made by this Act or by any enactment which is passed or made after the day on which this Act is passed, any function of a local authority which is not specified in regulations under subsection (3) is to be the responsibility of an executive of the authority under executive arrangements."*

However, section 13(2) of the 2000 Act also provides a stipulation that this provision is *"Subject to any provision made by this Act or by any enactment which is passed or made after the day on which this Act is passed,"*.

I was not previously aware that Section 108 of the 2021 Act states:

*"(1) A function conferred on a principal council under or by virtue of this Chapter (other than functions expressly conferred on a governance and audit committee) may be exercised by the council or by its executive, as the council may determine.*  
(my underline)

*(2) If a principal council determines that a function mentioned in subsection (4) is to be exercised by the council, section 101 of the 1972 Act (arrangements for discharge of functions by local authorities) does not apply to that function.*

*(3) If a principal council determines that a function mentioned in subsection (4) is to be exercised by the executive, section 14 or (as the case may be) 15 of the 2000 Act (discharge of functions by executives) does not apply in relation to that function."*

The requirement to prepare a self-assessment in section 91 of the 2021 Act falls within the Chapter referred to in section 108 ("Performance, performance assessments and intervention: principal councils").

Section 108(4) includes sections 91(1) (self-assessment report) and 91(8) (response to recommendations about report).

So, all of the functions referred to in section 91 may be exercised by either the council or the executive (not both, and excluding those functions conferred on the governance and audit committee).

I've now confirmed with Legal Services that ALL of the provisions dealing with "*Performance, performance assessments and intervention: principal councils*" in the 2021 Act are captured by section 108. Therefore the previous advice in relation to who should determine when a panel assessment should take place was incorrect. A local authority can also provide for either the full council OR the Executive to make a decision on timings of a panel assessment. I'm sorry for the confusion this might have caused.

DRAFT