

KEY DECISION DEFINITION

Constitutional Review Working Party 9 November 2023

Report Author	Committee Service Manager
Portfolio Holder	Councillor Yates, Portfolio Holder for Corporate Services
Status	For Recommendation
Classification:	Unrestricted

Executive Summary:

As part of the review by the Independent Monitoring Officer, it was recommended:

“To review the scheme of delegation to ensure that it is clear and easy to understand and also includes appropriate conditions requiring engagement of Cllrs in strategic and high-risk decisions.”

This report looks at the current definition of a key decision and suggests some amendments to it in order to meet the recommendation set out above. The report asks the Constitutional Review Working Party to look at the changes and recommend them (with any further amendments they might wish to make) to the Standards Committee.

Recommendation(s):

Members are asked to make a recommendation to the Standards Committee regarding the Council’s key decision definition.

Corporate Implications

Financial and Value for Money

The key decision threshold gives clarity to the Council about the decision making process for spending significant amounts of money. Regular review of the thresholds keeps the definition relevant and minimises risk to the Council from incorrect decision making. Changes to these limits have no impact on the robustness of controls as these are picked up elsewhere under Contract standing orders and Financial Procedure Rules.

Legal

The Statutory Definition of Key Decision is as set out in Regulation 8 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 made pursuant to the Local Government Act 2000, which as follows:

“A “key decision” means an executive decision, which is likely— (a) to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority’s budget for the service or function to which the

decision relates; or (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.

In determining the meaning of “significant” for the purposes of paragraph (1) the local authority must have regard to any guidance for the time being issued by the Secretary of State in accordance with section 9Q of the 2000 Act.. Whilst there is currently no guidance under S9Q in this regard, guidance issued under S38 of the 2000 Act makes clear that the local authority should agree as a full council limits above which items are significant and publish these limits. A local authority is able to set different thresholds for different services or functions, bearing in mind the overall budget for those services and functions and the likely impact on communities of each service or function. The Council is able to review and amend these limits if considered appropriate and following consideration by full Council.

Risk Management

See the Financial and Value for Money section of the report.

Corporate

It is important for the Council to regularly review elements of its constitution to ensure that it remains up to date.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

This report relates to the following aim of the equality duty: -

- To eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act.
- To advance equality of opportunity between people who share a protected characteristic and people who do not share it
- To foster good relations between people who share a protected characteristic and people who do not share it.

CORPORATE PRIORITIES

This report relates to the following corporate priorities: -

- Communities

1.0 Introduction and Background

1.1 As part of the review by the Independent Monitoring Officer, it was recommended:

“To review the scheme of delegation to ensure that it is clear and easy to understand and also includes appropriate conditions requiring engagement of Cllrs in strategic and high-risk decisions.”

1.2 The Council has recently published revised Officer delegations as another strand of addressing this recommendation via the General Purposes Committee. This report allows the Council to review its key decision thresholds, thereby defining the decisions the Council considers to be so significant, strategic or high-risk that only the Cabinet may take them.

1.3 This report along with the officer delegations report referenced above and the Policy Framework report elsewhere on this agenda together will complete the work needed to satisfy the recommendation of the Independent Monitoring Officer.

1.4 The report shows the current definition and outlines the suggested changes and comments from both the Council’s management team and the Cabinet.

2.0 The Current Situation

2.1 The current definition of a key decision in the Council’s constitution (Part 2 para. 13.03) is:

Key decisions. A “key decision” which must be included in the Forward Plan, is an executive decision: ~~which is likely:~~

- 1) Which is likely to involve the incurring of expenditure, or the making of savings, by the Council, which are anticipated to be £250,000 or above. The exception to this rule being where approval has previously been received to incur that expenditure by the Executive, notwithstanding criterion 3; or
- 2) Where the Council is entering into a contractual obligation with a value of £750,000 or above; or
- 3) For the acquisition or disposal of land or property with a value of £750,000 or above; or
- 4) Where the effect would be on communities living or working in the district, in an area comprising two or more wards. However, decisions that impact on communities living or working in one ward will be treated as “key” if the impact is likely to be very significant.

2.2 Democratic Services undertook a desktop research exercise to discern if there was a common financial definition for key decisions amongst other Kent Councils. Our research found that the limits were as follows.

- One set at £50,000

- One set at £200,000
- Four set at £250,000
- One set at £300,000
- Four have the words significant rather than a figure.

2.3 CMT took these amounts into consideration and proposed the following amendments to the key decision threshold:

Key decisions. A “key decision” which must be included in the Forward Plan, is an executive decision: ~~which is likely:~~

- 1) Which is likely to involve the incurring of expenditure, or the making of **one-off** savings, by the Council, which are anticipated to be £250,000 or ~~above~~ **more***. The exceptions to this rule being: ~~where approval has previously been received to incur that expenditure by the Executive, notwithstanding criterion 3; or~~
 - a) **Where approval has previously been received to incur that expenditure by the Cabinet.****
 - b) **For the acquisition, enhancement or disposal of land or property with a value of £1m, a new key decision would be needed even if previous generic permission has been received via another key decision.**
- 2) ~~Where the Council is entering into a contractual obligation with a value of £750,000 or above;~~ Which is likely to **have an annual expenditure of less than £250,000, but has a total contract value over the lifetime of the contract of over £750,000.**
- 3) ~~For the acquisition or disposal of land or property with a value of £750,000 or above; or~~
or
- 3) Where the effect would be on communities living or working in the district, in an area comprising two or more wards. However, decisions that impact on communities living or working in one ward will be treated as “key” if the impact is likely to be very significant.

***With regard to property leases the £250k value is defined as the letting or taking of a lease with a cumulative rental value in excess of £250k over the first 5 years of the lease**

****Having the budget approved by Council does not mean that an individual has permission to proceed with their project.**

2.4 When presented with the proposed changes the Cabinet expressed no wish to amend them.

3.0 Main Changes

3.1 At first glance there may appear to be many changes, however there are no major changes to the definition and the changes that have been made are designed to clarify the existing definition rather than change it.

3.2 Paragraph 3 of the definition has been moved to be part of the exception to the 1st paragraph, to make it clear that this is part of the exception and not a separate point. The amount for the acquisition, enhancement or disposal of land or property has risen

from £750,000 to £1m, this reflects property price increases. Paragraph 2 has been amended to make clear at what levels contracts become key decisions.

- 3.3 It is also important for context that the Council's constitution does not permit any officer (including the Chief Executive) to take a key decision. All key decisions must be taken by Cabinet or an individual cabinet member. This has not changed.

4.0 Examples

- 4.1 Members may find some examples helpful to understand how the definition works.
- 4.2 **Example 1** - The Council wishes to purchase a new fleet of small refuse vehicles, the total cost is £3.2m. This would be a key decision as per paragraph 1) of the definition as it would be more than £250,000.
- 4.3 **Example 2** - The Council enters into a 4 four year contract for a new planning computer system, the cost is £105,000 per year. Therefore the total cost of the contract over its lifetime would be £420,000 as per paragraph 2 this would not be a key decision as the total contract value is less than £750,000 over its lifetime.
- 4.4 **Example 3** - The Council creates a land trust of £5m to purchase and regenerate properties in the district. This would be a key decision as per paragraph 1) of the definition as it would be more than £250,000. Once this decision had been made the appropriate officer then purchased a property of £650,000. This would not be a key decision as per paragraph 1a) as permission to spend that money had already been obtained via the original key decision. If however the appropriate officer then purchased a property of £1.5m this would be another key decision as per paragraph 1b) as it was over £1m.

4.0 Options

- 4.1 Members could agree one of the following options:
- a) To recommend the revised definition of a key decision as per paragraph 2.3 of the report to the Standards Committee.
 - b) To recommend other amendments on the key decision definition to the Standards Committee
 - c) To recommend to the Standards Committee that no amendments are made to the key decision threshold.

5.0 Next Steps

- 5.1 Once a proposal has been agreed by the Constitutional Review Working Party, it would be recommended to Standards for consideration and onward submission to Full Council.

5.2 If agreed by Council the changes to the key decision thresholds would be amended in the Council's Constitution and would become effective from the date of the Full council decision.

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Reporting to: Sameera Khan, Interim Head of Legal Services and Monitoring Officer

Annex List

None

Background Papers

None

Corporate Consultation

Finance: Matthew Sanham (Head of Finance and Procurement)

Legal: Ingrid Brown (Head of Legal and Democracy & Monitoring Officer)