

Council Report

Council – 7 December 2016

Title

Proposed Constitutional Amendments – The Definition of a “Key Decision” and Delegation to Officers

Is this a Key Decision and has it been included on the Forward Plan?

Not applicable

Strategic Director Approving Submission of the Report

Judith Badger, Strategic Director Finance and Customer Services

Ward(s) Affected

All

Executive Summary

At its Annual Meeting Council agreed that a Constitution Working Group be established whose responsibilities were to include reviewing the Scheme of Delegation to Officers. The Governance Review Working Group’s recommendations included:

That a review of scheme of delegation be considered regarding the level of delegation to Officers, it is recommended that this should be an ongoing and appropriate task for a Constitution review working group to undertake and that in the first instance it should consider and report on whether the upper limit for spending decisions by officers should be lowered to £250,000;

The Constitution Working Group has considered the Scheme of Delegation and in particular the appropriate financial limit for spending decisions by officers and the implications for the definition of a Key Decision and this report sets out the Constitution Working Group’s recommendations to Council.

Recommendations:

1. That Council approves the amendments to the Constitution in respect of the definition of a “Key Decision” and the financial limits for officer decision making as set out in Appendices 1 to 3 of this report.
2. That the proposed amendments to the Constitution take effect from 1 February 2017.

Background Papers

- The Council’s Constitution

Consideration by any other Council Committee, Scrutiny or Advisory Panel

This report brings to Council the recommendations of the Constitution Working Group

Council Approval Required

Yes

Exempt from the Press and Public

No

Title

Proposed Constitutional Amendments – Delegation to Officers

1. Recommendations

- 1.1 That Council approves the amendments to the Constitution in respect of the financial limits for officer decision making as set out in Appendices 1 to 3 of this report.
- 1.2 That the proposed amendments to the Constitution take effect from 1 February 2017.

2. Background and Key Issues

- 2.1 At its Annual Meeting Council agreed that a Constitution Working Group be established whose responsibilities were to include reviewing the Scheme of Delegation to Officers. The Governance Review Working Group's recommendations included:

That a review of scheme of delegation be considered regarding the level of delegation to Officers, it is recommended that this should be an ongoing and appropriate task for a Constitution review working group to undertake and that in the first instance it should consider and report on whether the upper limit for spending decisions by officers should be lowered to £250,000;

The Constitution Working Group has considered the Scheme of Delegation and in particular the appropriate financial limit for spending decisions by officers and this report sets out the Constitution Working Group's recommendations to Council.

- 2.2 The Council's Constitution includes the Scheme of Delegation set out at Appendix 9. The delegation of executive functions to officers is the responsibility of the Leader of the Council in accordance with Article 7(16) of the Constitution and Rule 1(3) of the Executive Procedure Rules. There is therefore no role for Council in the delegation of executive functions, although there is potential merit in the overall approach to delegation to officers being similar for both executive and Council functions.
- 2.3 The Constitution Working Group has considered the appropriate financial limit for officer decision making. There is no legal requirement for there to be any financial limit on the value of decisions which may be taken by officers but, in accordance with Article 5 of the Constitution, there must be an up to date record of which officer has responsibility for particular types of decisions or decisions relating to particular areas of functions. The Scheme of Delegation at Appendix 9 of the Constitution includes the terms of reference for the Cabinet, as decided by the Leader of the Council, and these include the taking of all Key Decisions. Accordingly officers have no power to take Key Decisions.
- 2.4 The definition of a Key Decision is set out at Rule 7(4) of the Executive Procedure Rules and applies the definition set out in Regulation 8 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information)

(England) Regulations 2012. The Council has previously decided and set out in Rule 7(4) that:

The Council has determined that decisions that will result in expenditure or savings with a gross effect of £500,000 or greater are to be considered significant.

This means that such decisions are currently Key Decisions and under the terms of reference of the Cabinet will be reserved to Cabinet.

2.5 Relevant factors in deciding what financial limits should apply to decision making by officers would include:

2.5.1 The need for democratic accountability in relation to decisions which are important to local people.

2.5.2 The need for officers to be able to make administrative and operational decisions in a timely and effective manner.

2.5.3 The need for officers to be able to implement budget decisions made by Council without further authorisations from elected members unless further authorisations can be justified.

2.6 The Scheme of Delegation at Appendix 9 of the Constitution states that:

Whether specifically stated or not, delegated powers shall be exercised in accordance with the Council's Standing Orders and Financial Regulations and any relevant codes of practice that are in force at the time and that have been approved by the executive or the full Council, as the case may be.

This means that any financial limits set for the exercise of delegated decision making by officers would not authorise officers to incur expenditure for which there was no budgetary provision without complying with the rules on supplementary estimates and virement set out in the Financial Regulations.

2.7 The work of the Constitution Working Group continues and includes a review of the operation of the Constitution as a whole. Further reports will be brought to Council as that work progresses.

3. Options considered and recommended proposal

3.1 The Constitution Working Group has, in accordance with the recommendations of the Governance Review Working Group, considered whether the upper limit for spending decisions by officers should be lowered to £250,000. In particular the Working Group has considered the definition of "Key Decision" and the threshold above which executive decisions should be considered significant. As above at paragraph 2.4, the Executive Procedure Rules currently set the threshold at £500,000. The Constitution Working Group have had regard to the reductions in the Council's overall budget since the £500,000 threshold was set and the further reductions likely to be made in the future and take the view that the threshold for a Key Decision should be reduced to £400,000. As above at paragraph 2.3 this would have the effect of decisions above this

threshold being reserved to Cabinet with officers being unable to take such executive decisions. The Constitution Working Group is therefore recommending to Council the amendments to the definition of a “Key Decision” in the Executive Procedure Rules set out in Appendix 1.

3.2 On the same basis the Constitution Working Group has taken the view that the financial limit for officer decision in relation to Council functions should also be set at £400,000. The proposed amendments to the Constitution set out in Appendices 2 and 3 would bring the Constitution into accord with the recommendations of the Constitution Working Group.

3.3 Commissioner decisions which would otherwise fall within the definition of a “Key Decision” are already included on the Forward Plan and if the proposals were adopted that would continue subject to any revised threshold for the definition of a “Key Decision”. The Commissioners will consider any amendments to the Constitution made by Council and will reflect upon how the approach taken to the financial thresholds for officer decision making might apply to functions exercised by the Commissioners.

4. Consultation

4.1 Not applicable.

5. Timetable and Accountability for Implementing this Decision

5.1 It is important that any implementation of the recommendations does not create confusion about the status of decisions which would not be Key Decisions under the current arrangements but would be Key Decisions under the new arrangements and how such decisions would be dealt with in the Forward Plan. Any amendments to the Constitution should not have the effect of changing the status of decisions between their inclusion on the relevant Forward Plan and their consideration at the relevant Cabinet / Commissioners’ meeting. It is therefore recommended that any amendments to the Constitution should take effect on 1 February 2017 so that decisions to be taken at the Cabinet / Commissioners’ meeting on 13 March 2017 can be properly dealt with on the Forward Plan published on 1 February 2017.

5.2 The Chief Executive, Strategic Directors, Assistant Chief Executive and Director of Public Health will be responsible for implementing the proposed arrangements for delegation to officers.

6. Financial and Procurement Implications

6.1 Appendix 2 to this report sets out the recommended amendments to Contract Standing Orders necessary to apply the proposed financial limit on officer decision making to procurement decisions.

7. Legal Implications

7.1 The legislative requirements are set out at in the body of this report.

8. Human Resources Implications

8.1 There are no human resources implications.

9. Implications for Children and Young People

9.1 As set out at paragraph 3.3 above the Commissioners will consider any amendments to the Constitution made by Council and will reflect upon how the approach taken to the financial thresholds for officer decision making might apply to functions exercised by the Commissioners. This will apply to officer decision making in relation to the functions exercised by the Commissioners in relation to children's safeguarding and all other children's social care services.

10 Equalities and Human Rights Implications

10.1 None directly from this report

11. Implications for Partners and Other Directorates

11.1 None.

12. Risks and Mitigation

12.1 The recommendations in this report reflect the Constitution Working Group's consideration of recommendations made by the Governance Review Working Group, whose recommendations were designed to ensure that the Council had an efficient and effective decision making process. The Governance Review Working Group's proposals were explicitly intended to enhance transparency and accountability compared with the previous governance structure.

13. Accountable Officer(s)

Assistant Director (Legal Services)

14. Appendices

Appendix 1	Proposed amendments to the Executive Procedure Rules
Appendix 2	Proposed amendments to Standing Orders
Appendix 3	Proposed amendments to the Scheme of Delegation for Members and Officers

APPENDIX 1

Proposed Amendments to Rule 7(6) of the Executive Procedure Rules

To replace the current wording at the end of Rule 7(6), which states:

The Council has determined that decisions that will result in expenditure or savings with a gross effect of £500,000 or greater are to be considered significant.

With

The Council has determined that decisions that will result in expenditure or savings with a gross effect of £400,000 or greater are to be considered significant.

APPENDIX 2

Proposed amendments to Appendix 4 of the Constitution - Standing Orders

To substitute the following wording:

34. Delegation arrangements – strategic directors and directors of services

34.1. The Chief Executive, strategic directors and assistant directors of services have a general power to make council contracts that are estimated to be less than £400,000 in value, including power to determine select lists of tenderers and to accept tenders and award contracts.

34.2. The Director of Human Resources has the general power to make Council contracts that are estimated to be less than £400,000 in value, including power to determine select lists of tenderers and to accept tenders and to award contracts.

APPENDIX 3

Proposed Amendments to Appendix 9 of the Constitution - Scheme of Delegation for Members and Officers

To substitute the following wording:

The Borough Emergency Co-ordinators

1. Power to sanction expenditure up to a maximum of £400,000 in order to facilitate the Council's response to an emergency incident in which the Emergency Plan is activated.

The Statutory Role of the Director of Adult Social Services

10.5 To determine contract terms and conditions for services and the letting of specific contracts.

Decision

(under £400,000)

The Public Health Function

6a. To determine contract terms and conditions for public health services and letting of specific contracts in accordance with Financial Regulations and Standing Orders

Decision

(under £400,000)