

Central Bedfordshire Council

General Purposes Committee

Thursday, 17 December 2015

AMENDMENT TO DEFINITION OF KEY DECISIONS

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Purpose of this report

1. To consider proposed changes to the definition of a 'Key Decision' intended to clarify the certain matters that are outside the scope of the definition.

RECOMMENDATIONS

It is recommended that the Committee:-

1. Considers and approves the proposed amendment of the 'Key Decision' definition in order to provide additional clarity as to the types of decision that are outside the scope of the definition;
2. Instruct the Monitoring Officer to implement the amendment and to take any actions necessary or incidental to achieving that end.

Overview and Scrutiny Comments/Recommendations

1. This Report is not scheduled to be considered by Overview and Scrutiny because it concerns a change to the Constitution relating to how decisions are to be made rather than a decision made pursuant to a specific function of the Council.

Introduction

2. CBC is a corporate body and exercises decision-making through a range of component bodies and through individual councillors and officers. The distribution of decision making authority and its limitation is set out in the Council's Constitution and in particular its scheme of delegation.
3. On a daily basis the Council makes numerous decisions from the mundane and operational matters to major decisions having profound effects on the residents of Central Bedfordshire.

4. The delegation to officers of decision-making authority is important in enabling the Council to undertake decision making at the appropriate level with elected members in Full Council, Committees and the Executive, focussing on the exercise of decision making over major decisions of significant financial or strategic import. The use of appropriate delegation to officers enables the efficient operation of the council through avoiding clogging up the key public facing decision making forums with routine and relatively uncontroversial matters which could be readily handled through delegated decision-making.
5. In addition, there are some decisions which due to their nature are, for reasons of practicality, most effectively dealt with through officer delegation with the oversight of an Executive Member. In particular, decisions relating to the provision of secure placements for children and specialist care packages for children and adults with disability, are examples of decisions which most effectively dealt with via officer delegation and consultation with the relevant Executive Member.

Background – Basic Principles of Officer Decision Making

6. When an officer is taking a decision it is essential for the validity of the decision that;
 - i) the officer has the appropriate level of delegated authority as provided under the Council's scheme of delegation and
 - ii) the officer isn't excluded from taking the decision by any special restriction on that authority such as the prohibition on officers taking 'Key Decisions' unless specifically authorised in respect of the particular decision.
7. The provisions relating to officer decision making authority are located primarily in the following parts of the Constitution:-
 - Part C2 – Key Decisions and the Forward Plan
 - Part H3 – Scheme of delegation to Directors and other officers
 - Part I2 – Code of Financial Governance
8. Part H3, scheme of delegation to Officers, contains a list of key restrictions/limitations to the exercise by officers of their delegated authority the following of which imposes a prohibition on officers taking a decision, under their delegated authority, which falls within the definition of a 'Key Decision', (Part C2 of the constitution).

2.5.3 Any matter constituting a Key Decision unless specifically approved by the Council or Leader of the Council or included in this Scheme of Delegation;

9. 'Key Decisions' are defined in Part C2 of the Constitution as follows:
- 1.1 A Key Decision means an executive decision which is likely:-*
- 1.1.1 To result in the Council incurring expenditure which is, or the making of savings, which are significant as defined in 1.2 below, having regard to the Council's budget for the service or function to which the decision relates; or*
- 1.1.2 To be significant in terms of its effect on communities living or working in an area comprising one or more wards in the area of the Council.*
- 1.2 For the purposes of 1.1.1 above, savings or expenditure are significant if they exceed £200,000 per annum (revenue) or £500,000 whole life cost (capital),.*
- 1.3 Savings and expenditure in 1.2 above, does not include:-*
- 1.3.1 The day to day activity of the Council's treasury management functions, which are covered by the Treasury Management Policy Statement approved separately by the Council.*
- 1.3.2 Expenditure which is identified in the approved Revenue Budget or Service Plan for the service concerned;*
- 1.3.3 Implementation of a capital project identified in the approved Capital Programme and in respect of which the detailed business case (or equivalent) has been approved;*
- 1.3.4 Implementation of an explicit policy within the approved Budget and Policy Framework or fulfilment of the policy intention of a key decision previously approved by the Executive;*
- 1.3.5 The invitation of tenders or awarding of contracts where necessary to provide for the continuation of an established policy or service standard.*
10. The term 'Key Decision' has its origins in the then DTLR Guidance on Modular Constitutions which was issued as part of the process of introduction, between 1999 to 2001, of new local authority systems of governance and constitutions, primarily the Leader/Cabinet model.
11. The original purpose of 'Key Decisions' was to ensure that significant decisions are readily available for public scrutiny and it does this by requiring that notice of forthcoming Key Decisions is made publicly available in the Council's Forward Plan.
12. This has the effect of placing a financial limit of £200k revenue (£500k capital), on the decisions that Officers may take under the auspices officer delegation.
13. In order to avoid an unnecessarily restrictive effect arising from the 'Key Decisions' provision, there are specific exclusions from the scope of the definition as follows:-
- 1.3 Savings and expenditure in 1.2 above, does not include:-*
- 1.3.1 The day to day activity of the Council's treasury management*

functions, which are covered by the Treasury Management Policy Statement approved separately by the Council.

- 1.3.2 *Expenditure which is identified in the approved Revenue Budget or Service Plan for the service concerned;*
 - 1.3.3 *Implementation of a capital project identified in the approved Capital Programme and in respect of which the detailed business case (or equivalent) has been approved;*
 - 1.3.4 *Implementation of an explicit policy within the approved Budget and Policy Framework or fulfilment of the policy intention of a key decision previously approved by the Executive;*
 - 1.3.5 *The invitation of tenders or awarding of contracts where necessary to provide for the continuation of an established policy or service standard.*
14. As such, if the decision to be made involves expenditure falling within any of the above categories, it is not regarded as a 'Key Decision' and may be implemented under Officer delegation subject to the other general restrictions and limitations placed on the exercise of officer delegation.
15. The above exemptions do not include decisions relating to the procurement and provision of;
- a. Secure placements for children in care.
 - b. Long term care and support packages for children and adults with disabilities.

These type of placement and care packages regularly fall within the Key Decision criteria due to the fact that they are costly and often extend over many years. However, it is generally accepted that these sorts of decision have characteristics which it is felt render them more appropriate for decision under officer delegation as opposed to via Executive. By their nature the need for these decisions arises from and is informed by highly sensitive information regarding matters such as the health of individuals and would result in all such decisions being taken by Executive in exempt session. The fact that these decisions are often based on 'clinical' assessments means that there is scope for a decision making forum such as the Executive to engage in any meaningful way in the decision making process.

16. As such, the Monitoring Officer has advised that the list of exemptions be extended to include a specific category covering decisions relating to the procurement of placements for children and of care packages for children and adults. The following is the suggested wording of a paragraph to be added to paragraph 1.3 of Part C2 of the Constitution:

1.3.6 The procurement of placements for children and of care packages, including residential care, for children and adults with disabilities or other conditions warranting the provision of such placements or packages.

Council Priorities

17. The recommendation supports all of the Council's priorities by enabling a more flexible and timely decision making process for delegated officers allowing Council and committees to concentrate on the more contentious and larger decisions.

Corporate Implications

Legal Implications

18. The question of how any council defines a 'Key Decision' is a matter for that council subject to the usual requirements of reasonableness and as such, the proposed changes may lawfully be made by the council.

N.B. The delegations to the General Purposes Committee, (Part E2 Paragraph 5.1 of the Constitution), empower it to implement changes without reference to full council where the change is recommended on the advice of the Monitoring Officer.

Financial Implications

19. The recommendation will not change the actual decisions to be made and apart from a resources point of view will not have any financial implications.

Equalities Implications

20. Public Authorities must ensure that decisions are made in a way which minimises unfairness and without a disproportionately negative effect on people from different ethnic groups, disabled people, women and men. As officers would be making more decisions under their delegated authority it is important that they are aware of this duty before they take a decision.
21. When decisions are made, decision makers must have the relevant data, including the results of equality impact assessment, and of consultation and involvement, to ensure they reach an informed decision.

Implications for Work Programming

22. Due to the fact that the proposed change will bring the Constitution closer in line with the practice it is not envisaged that there will be any significant impact upon the decision making process.

Conclusion and next Steps

23. The proposed addition of wording is intended to clarify the existence of an exemption of decisions relating to the procurement of placements and care packages. It is intended that this clarification will reduce uncertainty in this regard and lead to greater consistency.

Appendices

None

Background Papers

24. The following background papers, not previously available to the public, were taken into account and are available on the Council's website:

None