



# GOVERNANCE COMMITTEE

9 November 2011

# REPORT

**Subject Heading:**

**Report Author and contact details:**

**Policy context:**

**Financial summary:**

**KEY DECISIONS**

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Proposing a revision in the definition of  
what constitutes a “Key” executive  
decision

The proposal seeks to introduce more  
realistic financial limits for what constitutes  
a key decision

**The subject matter of this report deals with the following Council Objectives**

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

**SUMMARY**

This report invites consideration of revised definitions of what constitutes “significant” when deciding whether or not an Executive Decision is a Key Decision.

If an Executive Decision is a Key Decision, certain administrative processes must be followed that are not otherwise needed and the intention has been to define what constitutes a Key Decision in such a way as to avoid unnecessary bureaucracy.

**RECOMMENDATIONS**

That the Committee **RECOMMEND** to the Council that:

- 1 the definition of Key Decision be revised as set out in paragraphs 10 and 17 of the report; and
- 2 the Monitoring Officer be authorised to make all necessary amendments to the Council's Constitution and administrative procedures consequent upon the revised definition.

**REPORT DETAIL**

- 1 As part of the executive governance arrangements established by the Local Government Act 2000, the concept of "Key Decision" was introduced. Key Decisions differ from other decisions in that they must be notified in advance on the Forward Plan, which is published monthly, and (unless confidential or exempt) must be taken in public.
- 2 A Key Decision is defined by the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as a decisions that:
  - "is likely—
  - (a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the 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 local authority.... in determining the meaning of "significant" ... regard shall be had to any guidance for the time being issued by the Secretary of State."
- 3 The 2000 Regulations also require that (except where a report is contains, or relates to, information that is confidential or exempt), a draft of the Key Decision must be available for public inspection for five clear days before the decision is due to be taken (whether at a Cabinet meeting, or by an individual Cabinet Member or an officer).

**Definition of "significant" financial implications**

- 4 In the (continuing) absence of guidance from the Secretary of State as to what is "significant", in 2002 the Council adopted a definition of "significant" in the context of spending or saving of £500,000, whether capital or revenue. That definition has not been reviewed since then.

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- 5 The effect of inflation alone since 2002 means that £500,000 (especially in capital terms) now represents substantially lower value and, accordingly, the Committee is now invited to review the definition and to consider whether to recommend to Council changes in the financial thresholds.
- 6 Research has revealed a range of practices by other local authorities. Some use a definition similar to that of Havering, while others have higher thresholds (and a few, somewhat lower). No common theme emerges; the principal determinant is clearly operational convenience.
- 7 Having reviewed the position in the light of both current operational need and practice elsewhere, officers suggest that the thresholds for revenue and capital should be different, and that opportunity be taken to include exceptions and provisos intended to ensure that only decisions that are truly Key are so termed.
- 8 It should be stressed that any change will not affect Members' rights to call in decisions for scrutiny by Overview & Scrutiny Committees. The principal effect will be a reduction in the number of decisions of which forewarning is required through the Forward Plan on financial grounds.
- 9 Accordingly, the Committee is invited to consider the following revised definition of the financial thresholds for Key Decisions and, if content, to recommend to the Council that it be adopted and the Constitution amended accordingly:

<b>Capital</b>	<b>Expenditure or savings (including the receipt or loss of income or use of capital receipts) of not less than £1,000,000.</b>
<b>Revenue</b>	<b>Expenditure or savings (including the receipt or loss of income or use of capital receipts) of not less than £1,000,000</b>
<b>Exceptions</b>	<b>The following will not count as a key decision regardless of the financial amount involved:</b> <b>(i) any decision to borrow money to meet the short term borrowing requirements of the Council, to fund the approved capital programme, to refinance maturing debt or to restructure the long term borrowing of the Council;</b> <b>(ii) any decision to invest funds in accordance with the Treasury Management Strategy approved by the Council;</b> <b>(iii) subject to the Council obtaining best consideration, any of the following decisions relating to the management of Council land - rent reviews, release or waiver of covenants, short term leases (i.e. less than 7 years)</b> <b>(iv) any decision to apply scheme-specific third party grants or contributions towards expenditure where the net cost to the Council of the decision is below</b>

	<p>the level of significant expenditure or savings referred to above;</p> <p>(v) the settlement of any actual or threatened legal proceedings in the interests of the Council;</p> <p>(vi) the acceptance of tenders for contracts wholly or mainly involving capital expenditure where the Group Director Finance &amp; Commerce in consultation with the Cabinet Member for Value, has previously issued formal capital expenditure approval for the scheme.</p>
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### Definition of “significant” effect on communities

- 10 The term “significant in terms of its effects on communities living or working in an area comprising two or more wards” has never been defined. It is clear that an effect on more than a small number of individuals is required – “communities” clearly implies a group of people having a collective identity, whether defined by locality, ethnicity or some other common factor, and it relates not only to residents but also to those working in the area. Moreover, that effect must be “significant” – simply to have “an impact” is not enough.
- 11 It is clear that most day-to-day operational decisions are unlikely to be “significant” in their impact on communities. Equally, decisions that make major changes – for example, to make a major change in a service that is available, if not to everyone, then to at least a large minority – could well have a “significant impact”, even if they do not reach the financial threshold for “significant”.
- 12 There is more room for individual judgment as to what is “significant” in terms of effect rather than finance. The requirement is to have a working definition that ensures that decisions that are truly key are dealt with appropriately, while avoiding putting forward comparatively trivial matters.
- 13 For example (a) a decision to close a facility, alter or withdraw services or carry out major, permanent street works **might** be a key decision whereas (b) a matter which has no obvious impact on local people, such as an internal Council policy, **would not**. Where a decision is likely to have a significant impact, but only on a very small number of people, it would only be a key decision if it exceeded the financial threshold. Similarly, responses to consultation documents or representations on external issues where the comments to be submitted are consistent with Council policy and/or are part of an on-going dialogue within that established policy would not constitute a key decision. However, where a substantive new response is required, this might well constitute a key decision.
- 14 In the case of strategies and plans, the key decision is made at the time the strategy or plan is agreed: subsequent discussions or decisions about the finalising of specific points of detail would not, themselves, be key decisions. A major change in a strategy or plan that clearly alters its focus would, however, be a key decision,

15 It is suggested that, where there is uncertainty, the matter in question should be treated as a key decision.

16 Accordingly, the Committee is invited to consider the following revised definition of the community impact threshold for Key Decisions and, if content, to recommend to the Council that it be adopted and the Constitution amended accordingly:

**“A decision shall be regarded as having a “significant effect on ... two or more wards” where:**

- (a) at least 25% of the people who live or work in the wards in question will be directly adversely affected ; or**
- (b) at least 50% of the users of a service or facility available to people living or working in two or more wards will be directly adversely affected.**

**A decision consequent upon a Key Decision taken earlier shall only be regarded as a Key Decision where it makes a substantial change to the action authorised by the earlier decision.”**

## **IMPLICATIONS AND RISKS**

**Financial implications and risks:**

There are no specific financial implications or risks for the Council. The adjustments proposed should lead to a small reduction in bureaucracy but any savings would be marginal. A range of controls is already in place to govern Council spending and these would simply need to be reviewed in the light of any change.

**Legal implications and risks:**

There will be a small reduction in the number of key executive decisions sought and made and thus a similar reduction in the risk that due process will not be followed. It will also reduce the potential for challenges to Council decisions on the basis that a decision should have been regarded as a key decision and accordingly the appropriate procedure had not been followed.

**Human Resources Implications and risks: None**

**Equalities implications and risks: None**

## **BACKGROUND PAPERS**

Survey of other local authorities' procedures for taking executive decisions