



GOVERNANCE COMMITTEE

Subject Heading:	Key Decisions – amendment of definition
CMT Lead:	Ian Burns, Assistant Chief Executive, Legal & Democratic Services
Report Author and contact details:	Ian Buckmaster, Committee Administration & Member Support Manager
Policy context:	The Council is obliged by law to define what constitutes a “Key Decision”. This report suggests an amendment to that definition.
Financial summary:	There are no financial implications
Has an Equality Impact Assessment (EIA) been carried out?	Not required

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

Ensuring a clean, safe and green borough	<input type="checkbox"/>
Championing education and learning for all	<input type="checkbox"/>
Providing economic, social and cultural activity in thriving towns and villages	<input type="checkbox"/>
Valuing and enhancing the lives of our residents	<input type="checkbox"/>
Delivering high customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

SUMMARY

In the light of recent changes in legislation, the Committee is now invited to consider the use of the term “savings” in the Council’s definition of key decision, in order to avoid the possibility of challenge to a decision on the basis that it was not properly taken.

RECOMMENDATION

That it be **RECOMMENDED** to the Council that the term “savings” in the Council’s definition of Key Decision be defined as meaning “expenditure avoided, additional revenue income generated or capital receipts obtained”, and that an appropriate note be added to the definition of Key Decision in paragraph 14(a)(i) of the Council’s Executive Procedure Rules.

REPORT DETAIL

1 The Local Government Act 2000, as amended by and under the Localism Act 2011, requires that, when decisions that are considered to be “Key” are to be made, particular procedural steps be taken before, when and after they are taken. Failure to observe those steps – for example, giving 28 days’ notice of them before they are taken, and allowing time for them to be called in before being implemented – could result in the decisions being challenged and, for example, open to being quashed on judicial review.

2 There is no statutory definition of what constitutes a “key decision”: each local authority is free to develop its own definition. The Council’s current definition is as follows:

A key decision is an Executive decision which is likely

- (i) 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. For this purpose “significant” is defined as
 - (a) In excess of £500,000
 - (b) In excess of 10% of the gross controllable composite budget at Head of Service/ Assistant Chief Executive level (subject to a minimum value of £250,000)

In determining the meaning of “significant”, regard must be had to any guidance issued by the Secretary of State

3 The term “savings” has not thus far been defined further. Although, however, the term is normally recognised as meaning “expenditure avoided”, it has been stretched on occasion to cover more than that – for example, the capital receipt obtained on sale of an asset has generally been regarded as being, in effect, a saving in that the money received avoids the need to borrow that sum and so is in effect a saving.

4 Hitherto, this has not resulted in any particular difficulty. Members will be aware, however, that the Secretary of State for Communities & Local Government has recently changed the law relating to the making of executive decisions, with the explicit aim of ensuring that decision-making

by the executives of local authorities is more transparent and more open to public scrutiny.

- 5 The lack of definition of savings leaves the Council potentially open to challenge. For example, if a decision to dispose of an asset values in excess of £500,000 were treated as non-key (on the basis that the prospective capital receipt were not a “saving”), it would be open for an aggrieved party to accuse the Council of acting improperly.
- 6 It is suggested, therefore, that the meaning of “saving” be now defined, in order to avoid such challenges.
- 7 In the past, “savings” has been taken also as including additional income generated or capital receipts obtained. Given the effect of the recent legislation, it is now suggested that a note be added to paragraph (14)(a)(i) of the Rules. This would be added at the end of the sentence beginning “In determining the meaning of “significant”, which would then read:

In determining the meaning of “significant”, regard must be had to any guidance issued by the Secretary of State. For the avoidance of doubt, “savings” includes expenditure avoided, additional revenue income generated or capital receipts obtained.

IMPLICATIONS AND RISKS

Financial implications and risks:

There are no direct financial implications or risks arising from this report. The proposed change may result in a minor saving in administrative costs by removing ambiguity about what constitutes a “significant” effect in financial terms.

Legal implications and risks:

There is a possibility that allowing the ambiguity to continue might lead to legal challenges to controversial decisions.

Human Resources implications and risks:

There are none.

Equalities implications and risks:

There are none.

BACKGROUND PAPERS

There are none.