

Council Issues

1. Change in Key Decision Threshold/Officer Delegations

At present officers are not allowed to take key decisions. Key decisions are defined in the constitution. Decisions with financial implications of £500,000 or more are key decisions, as are decisions which have a significant impact on people living or working in two or more electoral divisions.

The £500,000 threshold has been in place since 2000. The financial threshold appears to be lower than some similar sized authorities – Kent and Hampshire both have a Key Decision threshold of £1m, while Lancashire has a threshold of £1.4m. It also appears low as a proportion of the budget.

The proposal is to raise the Key Decision threshold from £0.5m to £2m and change the scheme of delegations to officers so that:

- a) Decisions under £500k would be unaffected – key decisions under £500k would still be taken by Cabinet Members.
- b) Decisions with a value of between £500k and £2m would no longer be key decisions based on value, although if the decision has a significant impact then it would still be a key decision and would still have to be taken by the Cabinet Member.
- c) Non-key decisions between £500k and £2m could be taken by officers or by the Cabinet Member. If taken by officers, the following would apply:
 - a. only an Executive Director could make the decision;
 - b. following consultation with the relevant Cabinet Member (or the Leader);
 - c. after considering a written report. The report and the decision would be published.
- d) Decisions taken by Officers over £0.5m would need to be taken in accordance with any requirements issued from time to time by the Section 151 Officer or the Monitoring Officer.

There would also be a simplification of the definition of a key decision which includes a number of provisions which are difficult to interpret such as 'cross cutting' and 'contract involving an element of risk transfer'.

Recommendation:

That the Constitution be amended as set out in Appendix 'A' to this report.

2. Technical amendments to Constitution

There are a number of technical amendments which are proposed as set out below. These have all been considered by the Chairman and Vice-Chairman and the Leaders of the Political Groups who raised no objection to them:

1. It is proposed to make a minor technical amendment to the Scheme of Delegations to Officers to reflect the outcome of a recent court case. This makes it clear that officers not named in the scheme of delegation can be authorised to exercise delegated functions.
2. It is proposed to amend the call-in rules so that:
 - a. In addition to the current rules, a decision can be called in by any four Members.
 - b. To make it clear that decisions taken by joint committees which exercise the Council's powers are subject to call in. In practice the Council already applies call in to these decisions.
3. The Monitoring Officer's delegations relating to the Code of Conduct which were agreed in October 2012 have not been incorporated into the Constitution and they need to be added in. It is also proposed to allow the Monitoring Officer to grant dispensations after consulting the Chairman of the Joint Standards Committee. This will prevent unnecessary meetings of the Joint Standards Committee and allow dispensations to be granted at short notice.
4. To amend paragraph 13.4 of the Constitution to make it clear that making appointments to outside bodies is the responsibility of the Executive in accordance with arrangements made by the Leader. At present it refers to this being a function of the Cabinet.
5. To update paragraph 7.3.2 of the Constitution with a revised role description for Deputy Cabinet Members to improve clarity of the role.

Recommendation:

1. That paragraph 15.1.1 of the Constitution be amended to say:

'This Scheme of Delegation also allows any officer identified in this scheme of delegation to authorise any other officer of the Council (identified by name or description) to exercise any of their delegated powers, subject to any conditions or limitations or exceptions which they may specify. All such authorisations shall be recorded in a register kept by the Monitoring Officer.'

2. (a) That paragraph 20.15 (ii) of the Constitution be amended to read:

- (ii) Subject to paragraph (ix) any decision taken by
- (a) the Cabinet;
 - (b) any Member of the Cabinet; or
 - (c) any joint body or partnership specified in paragraph 13.3

may be called-in to the Overview and Scrutiny Committee whose remit includes the subject-matter of the decision. A decision may be called-in by

- (a) Any Member of the relevant Overview and Scrutiny Committee;
- (b) Any Member of the Council who has the support of a further three Members of the Council; or
- (c) With the agreement of the Chairman of the Relevant Overview and Scrutiny Committee, any Member of the Council who represents a Division which is particularly affected by the decision in question.

- (b) That paragraph 20.15(v) of the Constitution be amended to say:

‘A decision is called-in if during the period specified in (iv) above a valid written call-in notice is received which specifies the reasons for the call-in. The proper officer shall then call a meeting of the Committee on such date as he decides (where possible after consultation with the Chairman of the Committee) and in any case within ten clear working days of receipt of the request to call in.’

3. Insert, after paragraph 15.3.7(ix) of the Constitution:

- (x) To be the Proper Officer to receive and manage the determination of complaints of failure by Members to comply with the Code of Conduct and to advise the Joint Standards Committee and Sub-Committee thereon.
- (xi) To investigate complaints against councillors or to arrange for such an investigation to be carried out or to seek a decision from the Standards Committee on whether to investigate and to notify.
- (xii) To determine that no further action be taken following a finding that there has been no breach of the Code, subject to consulting an Independent Person.
- (xiv) To grant applications for dispensations to members with respect to their or their spouse’s interest which arises as a result of membership of another public body.
- (xv) To grant dispensations under the Code of Conduct or the Localism Act 2011 after consulting an Independent Person and the Chairman of the Joint Standards Committee.

4. (a) Amend the first sentence of paragraph 13.4 of the Constitution to say:

'The Executive is responsible for exercising the following Local Choice Functions in accordance with arrangements made by the Leader:'

(b) Insert, at the end of 13.4(ii):

Any such appointments must be notified for information to the Council.

5. To replace paragraph 7.3.2 of the Constitution (Duties and Responsibilities of Deputy Cabinet Members) with:

- (i) To oversee a specific area or areas of responsibilities within a Cabinet portfolio, as allocated by the Leader in consultation with the Cabinet Member, but not to make any formal decisions or sign Cabinet Member Actions.
- (ii) To undertake tasks in relation to the portfolio, as allocated by the Cabinet Member, subject to any specific requirements of the Council's constitution or Terms of Reference of external bodies.
- (iii) To assist the Cabinet Member in monitoring performance in specified areas relating to the allocated portfolio.
- (iv) To attend Cabinet, and report to Cabinet, in the absence of the relevant Cabinet Member, but Deputies cannot vote.
- (v) The expected minimum time commitment for the role is 2 days a week (or 0.4 FTE).

3. Change to Scheme of Delegations made following restructure

Following the disestablishment of the post of Executive Director for Strategy, Transformation and Commissioning Support, the specific delegations possessed by that post have been re-allocated by the Chief Executive in accordance with paragraph 1.7 of the Constitution. Any use of this power has to be reported to the next meeting of Council for 'formal approval'. These changes simply reflect the current management arrangements for these services.

The following changes have been made:

Delegation	Transferred to
To exercise the Council's functions relating to employment policies and practice.	Executive Director for People Commissioning
To exercise the Council's functions relating to publication of material and relations with the press.	Executive Director for People Commissioning
To exercise the Council's powers to trade and to make any decision which the Council may make as a shareholder in any company.	Executive Director for Corporate and Customer Services

Recommendation:

That the above changes be formally approved by the Council as required by paragraph 1.7 of the Constitution.

4. Reports of the Local Government Ombudsman

Under the Local Government Act 1974 any public report of the Ombudsman is required to be 'laid before the Council'. This does not require the report to be considered at a meeting of the Full Council but the Ombudsman has expressed the view that the matters ought to be referred to in the papers for a meeting.

Two reports have been received since the last meeting and are reported here for noting.

In each case the Council has accepted the recommendations set out in the report.

Copies of each report are available by email from Colin Ismay, Council and Member Support Manager.

Date of report	Reference	Subject
2 February 2016	14 012 127	Adult social care
16 February 2016	15 003 872, 15 004 550, 15 004 223, 15 006 047	Home to school transport.

5. Disclosure and Barring Service (DBS) Checks for Members

At present the County Council has no formal policy on DBS checks for Members. Kent and Hertfordshire check all their members after each election. Although Essex has no formal policy, Members are asked to undergo a check if they undertake certain roles such as acting as a member of adoption or fostering panels.

The view of Simon Hart, the Chair of the Essex Independent Safeguarding Board, is that DBS checks are not a panacea but they do provide additional assurance. He considers that the Council needs to look at the broader responsibilities and opportunities that Members have. All Members have a corporate parenting responsibility. Many members will hold local surgeries or attend public events as a councillor. Further, many members are active in their divisions. They know the people living in their division. The role of councillor gives them opportunities to obtain information about people. Members may well find out who the vulnerable people are and where they live.

It is proposed that ECC adopts the attached policy (Appendix "B") with effect from May 2017.

As an interim measure it is proposed to ask the following to undergo a check now (unless a check is already in place):

- All Cabinet members.
- Deputy Cabinet Members for Adults and Children, Health and Education and Lifelong Learning.
- All members who are newly-appointed to governing bodies.
- All members of fostering and adoption panels.

If something is revealed on a DBS check or a member declines to participate then a risk assessment will be undertaken by the Council's safeguarding service.

If a DBS check reveals any information, a copy will be sent to the individual concerned, but not to the Council. The Council will just be told whether a certificate has been issued and whether or not it is clear. If the certificate is not clear, the Executive Director of People Commissioning, in consultation with the Member concerned, the Safeguarding Team and the Monitoring Officer will undertake a risk assessment.

Recommendation:

- (1) That the policy attached at Appendix 'B' be adopted with effect from May 2017.

(2) That as an interim measure the following are asked to agree to undergo a DBS check now, if they have not already been the subject of a check by the County Council:

- the Cabinet
- Deputy Cabinet Members for Adults and Children, Health and Education and Lifelong Learning
- All members who are newly-appointed to governing bodies
- All members of fostering and adoption panels.

Additions to the text are shown underlined and deletions are shown as struck through.

Increase in the Key Decision Threshold and Increase in Officer Delegations

1. Amend paragraph 5.3.2 of the Constitution to say:

5.3.2 Key Decisions

A "Key Decision", as set out in the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012, is a decision of the Executive which is likely either:

- (i) to result in the Council incurring expenditure or making savings which are in excess of ~~£500,000~~ £2m, except as otherwise determined under financial regulations; **or**
- (ii) to be significant in terms of its effects on communities living or working in an area comprising two or more electoral divisions.

~~All other decisions shall be considered as non-Key Decisions.~~

A Key Decision will also include those decisions which will have a material effect on the Council's services, including but not limited to:

- ~~(i) an existing service or access to an existing service being substantially expanded or reduced or ceasing altogether or a new service being proposed;~~
- ~~(ii) a service which is currently provided in-house by the Council being outsourced;~~
- ~~(iii) a partnership being entered into with a third party which involves an element of risk share or transfer;~~
- (ii) a decision that involves any new policy or strategy or which forms part of the development of or a change to the Policy Framework or the Budget; and
- ~~(v) a decision to exercise the Council's power to trade or charge for discretionary services; and~~
- (iii) consideration of any matter which will result in a recommendation to full Council.

For the avoidance of doubt the following shall not be a Key Decision:

- (i) Routine money market transactions; and
- (ii) In relation to the letting of contracts, and where the Key Decision is the proposal to let the contract, subsequent decisions in relation to any procurement process from inviting tenders up to and including awarding the contract to a particular contractor are not then Key Decisions.

When the proposed expenditure arises from a proposed contract or tender, the expenditure likely to be incurred is the estimated gross expenditure to be paid by the Council over the whole life of the contract assuming that any options to extend are not exercised.

2. Amend paragraph 15.1.1 of the Constitution to say:

15.1.1 General Principles

This scheme, which has been agreed by the full Council and by the Leader of the Council, authorises officers of the Council to take decisions about the exercise of the Council's statutory functions.

This scheme is intended to be interpreted broadly and applies to all of the Council's powers and duties derived from legislation or otherwise and all incidental powers and duties.

Executive Functions are delegated by the Leader under section 9J of the Local Government Act 2000 (as amended). References to 'the Regulations' are references to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended).

Subject to the following paragraph, this Scheme of Delegation also allows any officer identified in this scheme of delegation to authorise any other officer of the Council (identified by name or description) to exercise any of their delegated powers, subject to any conditions or limitations or exceptions which they may specify. All such authorisations shall be recorded in a register kept by the Monitoring Officer.

~~Officers may further authorise any other officer (described by name or post) to exercise any of their delegated functions subject to any such conditions or limitations or exceptions which they may specify. All such authorisations shall be recorded in a register kept by the Monitoring Officer.~~

Officers identified in this scheme of delegation may not authorise anyone other than an Executive Director to make any decision on executive functions with financial implications in excess of £500,000.

Officers identified in this document as exercising delegated powers will be politically restricted under s2(1)(g) of the Local Government and Housing Act 1989.

Executive Decisions taken by officers must be recorded as required by law. Where an officer takes a decision on executive functions with financial implications which exceed £500,000, the decision may only be taken after the officer has:

- considered a written report
- consulted the relevant Cabinet Member or in the absence of the relevant Cabinet Member, the Leader.

As soon as the decision has been taken the report and the decision must be:

- published on the Council's website; and
- circulated to the relevant overview and scrutiny committee.

Nothing in this paragraph requires anything to be published if it includes exempt or confidential information.

Decisions taken by Officers must comply with such procedural or other requirements as may from time to time be prescribed by the Section 151 Officer or the Monitoring Officer.

In exercising any delegated powers, officers are expected to undertake appropriate consultation with other members and officers and shall have regard to any advice given. An Officer may choose not to take a decision if they feel it is not appropriate for them to make a decision and may refer a matter to the Cabinet Member or to the appropriate committee for a decision. To ensure political accountability for decisions, if the decision has financial implications in excess of £500,000 the Officer may not make a decision until they have consulted the Cabinet Member or in the absence of the Cabinet Member, the Leader of the Council. Nothing in this paragraph prevents the Cabinet Member from requiring consultation at a lower level.

Officers taking decisions are required to keep Members (including local members) properly informed about relevant decisions.

3. Amend paragraph 15.1.2 of the Constitution as follows:

15.1.2 Limitations on delegations

- (a) Officers may not take decisions on executive functions if the proposed decision is contrary to the Policy Framework approved by full Council. Where an officer is minded to do this a recommendation must be made to the Cabinet who will make a recommendation to full Council.
- (b) Any exercise of delegated powers must comply with:
 - (i) any restrictions contained in the law;
 - (ii) the constitution (including standing orders, procurement rules and financial regulations).
- (c) Officers may not take delegated decisions unless adequate budgetary provision has been made for the likely financial consequences of the decision.
- (d) Except as otherwise stated in the scheme of delegation, no officer may take a Key Decision (see paragraph 15.3.1(iii) for the Chief Executive's power to make key decisions).
- (e) Other than as set out below, this scheme does not authorise officers to change fees, charges or concession policies:
 - (i) officers may apply inflationary increases to fees, charges and concession policies;
 - (ii) officers may determine fees for one off events or activities;
 - (iii) officers may determine the fees to be charged to other public bodies for services which the Council provides on a commercial or full-cost recovery basis;
- (f) This scheme does not authorise the making of a compulsory purchase order.
- (g) This scheme does not authorise the acquisition of an interest in land in anticipation of future requirements.
- (h) Unless otherwise stated, this scheme does not authorise the confirmation of any order or grant of any permission, consent or licence or other determination where any response is received expressing opposition to the proposed course of action.
- (i) Nothing in this Scheme of delegation authorises any officer of the Council who is not a permanent employee to make any decision with financial implications in excess of £500,000.

Essex County Council
Policy on Disclosure and Barring Service (DBS) Checks for Members

1. Introduction

- 1.1 Essex County Council, as a democratically accountable organisation, gives the highest priority to safeguarding. Everyone has a part to play in ensuring that children and vulnerable adults are kept as safe as possible. All Members of the Council have a role as the 'corporate parent' of looked after children.
- 1.2 Accordingly, the Council has decided that with effect from 1 May 2017 all members should be asked to undergo an enhanced DBS check when they are elected or re-elected.

2. When will the request be made

- 2.1 All members will be asked to agree to be checked when they are elected or re-elected.
- 2.2 The only exception to this is that no one will be asked to undergo a fresh check if a check has been undertaken within the last six months (eg if someone is elected at a by-election very shortly before the normal County Council elections).

3. Applying for a check

- 3.1 Checks will be at the enhanced level where possible. Members will be asked to complete the paperwork electronically as far as possible. Support from Democratic Services is available for members to use the online system. As part of the requirements set by the DBS, officers assisting with the checks will need to see proof of identity.
- 3.2 The Council will pay the cost of applying for a check.

4. Receiving the result of the check

- 4.1 When the Councillor receives a clear certificate the Council will receive an online notification that a clear certificate has been issued.
- 4.2 If the check discloses anything the DBS will notify the Council that something is shown on the certificate. The DBS will not tell the Council what is shown on the certificate.

- 4.3 If something is disclosed in a DBS certificate or if an application for a DBS check has not been made within 3 months of election the matter will be referred to the Council's Safeguarding Service who will:
- (a) Contact the Member to ask for a copy of the certificate (if any).
 - (b) Speak to the Member about what has been disclosed.
 - (c) Make a confidential recommendation to the Executive Director for People Commissioning as to any action which they believe should be taken to safeguard children and/or vulnerable adults.
- 4.4 Where full information is not provided by a Member the Safeguarding Service will issue a draft recommendation based on the information they do have.
- 4.5 The Executive Director for People Commissioning will make a final recommendation after consulting:
- (a) the Member concerned
 - (b) the Monitoring Officer; and
 - (c) such other persons as may be appropriate in the circumstances.
- 4.6 The recommendations could for example include:
- (a) A recommendation that the Member concerned is not appointed to a particular office or position.
 - (b) A recommendation that the Member does not discharge any particular duty.
 - (c) A recommendation that that the Leader of the Member's political group and/or the Leader of the Council is notified as to any advice given.
- 4.7 The Member will be notified of the recommendation along with any other person to whom a recommendation is addressed.
- 4.8 Under the Council's statutory safeguarding responsibilities the Executive Director for People Commissioning may need to make further disclosures if necessary and proportionate to do so.