

MATTERS FOR CONSIDERATION BY THE CONSTITUTION COMMITTEE

1. Definition of a Key Decision

The Committee at its meeting on 22nd March 2018 considered a proposal to amend the definition of a key decision to exclude operational expenditure. The Committee resolved as follows:

The proposal to exclude operational expenditure from the definition of a key decision be deferred and considered further at the next meeting.

Under the current Constitution all expenditure above £1m is a Key Decision. This means that all expenditure above this threshold requires a Cabinet decision (or specific delegation to an officer) to enter into a contract. This includes day to day operational expenditure such as office cleaning materials, library books, stationery and Microsoft licences. This adds time and additional work to the commissioning and procurement process to gain approval to proceed for business as usual expenditure.

Some authorities have included an exemption within the definition of a Key Decision which excludes operational expenditure, irrespective of contract value. This exemption means business as usual activity does not need to go through Cabinet. This report recommends that Cheshire East Council adopts the same approach, allowing the procurement, renewal or extension of contracts that relate to operational expenditure for which there is budget approval to proceed without needing further Cabinet approval. Approval as to whether it is day to day operational expenditure would sit with the newly formed Commissioning and Procurement Board. The authority to enter into the contract would still require sign-off by the relevant Executive Director.

Cheshire West and Chester Council have an exemption within their constitution for a Key Decision as follows:

“A Key Decision is any Cabinet Decision (regardless of who takes it) which is likely to:

(a) result in expenditure (except internal operational expenditure on things like advertising, locum staff, office cleaning services, library books, vehicles, consumables, utilities etc...) or savings of £1million or more; or,

(b) have a significant effect on communities living or working in an area comprising two or more wards.”

This means that any operational expenditure that is already within approved budgets does not require a Cabinet decision.

An example of this is the Microsoft Desktop Licencing Agreement. This is £3.7m for 3 years. Under CEC constitution this requires Cabinet approval, however some

authorities class this as operational expenditure that has already been approved at Council and is within agreed budgets.

Other examples which fall into this are stationary, translation and interpretation and Energy.

It is proposed that Cheshire East have a similar exemption which allows the council to procure and enter contracts for operational expenditure which is already within council budgets. The authorisation as to whether the expenditure is operational or not should sit with the Commissioning and Procurement Board.

2. Legal Authorisation and Enforcement

It was reported at the meeting on 22nd March that the Monitoring Officer proposed to use his delegated powers to make a minor change to the constitution. In considering the matter, the Committee sought further information on what was proposed. The matter was deferred to this meeting. Regrettably, time has not permitted the preparation of a report in time for this meeting and the matter stands deferred to a future meeting.

3. Review of the Provisions relating to Member Access to Part 2 Papers and Attendance During the Part 2 Proceedings of Meetings

During the review of the constitution, the Council's external advisers, Bevan Brittan, proposed a tightening up of the current arrangements regarding member access to Part 2 papers (papers containing confidential or exempt information), and member attendance during the Part 2 proceedings of meetings when confidential or exempt papers were considered.

Members felt that this should be a matter for separate review in due course. The Committee at its meeting on 22nd March 2018 resolved as follows:

"The Committee confirms, as accepted by the Council at its meeting on 14th December 2017, that the provisions relating to member access to Part 2 papers and member attendance during Part 2 proceedings at meetings as set out in the former constitution remain in force and that the arrangements will be reviewed after the new constitution has been in operation for six months."

It now being 6 months since the adoption of the Constitution, the committee is asked to note that a paper will be prepared reviewing the matter and will be brought to a future meeting of the committee.

4. Recording and Reporting of Public Meetings by Members of the Public

Under the Openness of Local Government Bodies Regulations 2014, members of the public are entitled to report the public proceedings of meetings of local authorities. These Regulations were introduced by the Government as a means of promoting robust scrutiny and local accountability.

Under the Regulations, 'reporting on proceedings at a meeting' means:

- (a) filming, photographing or making an audio recording of the proceedings at the meeting,
- (b) using any other means for enabling persons not present to see or hear proceedings at the meeting as it takes place or later, or
- (c) reporting or providing commentary on proceedings at the meeting, orally or in writing, so that the report or commentary is available to persons not present, as the meeting takes place or later.”

There are certain limitations to this. For instance, no one present at a meeting may provide an oral commentary on the proceedings, which would disrupt the meeting, and no one may wander around the meeting room filming or photographing those taking part in the meeting. The rights of individual members of the public to privacy must also be observed.

There have been a number of public committee meetings recently where those advising the meeting were unsure of the rights and limitations in relation to the reporting of meetings by members of the public. It is suggested therefore that a provision on the reporting of meetings by members of the public be included in the Access to Information Procedure Rules within the constitution, the drafting to be arrived at by the Monitoring Officer in consultation with the Committee Chairman.

5. Publication of Register of Interests / Gifts and Hospitality

Member Registers of Interests and Gifts and Hospitality are required to be available for public inspection. Currently, the Member Register of Interests is available online, but the register of Gifts and Hospitality is not. Good practice in accordance with the transparency agenda would dictate that both registers are available on-line. It is intended to give effect to that and that the Monitoring Officer use delegated powers to make consequential amendments to the constitution to notify and signpost accordingly.