

Report of the City Solicitor and the Chief Officer Financial Services

Report to General Purposes Committee

Date: 15th May 2019

Subject: Review of Thresholds in Governance of Decision Making

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary of main issues

1. The City Solicitor and Chief Officer Financial Services (in their roles as Monitoring Officer and S151 Officer) have undertaken a review of the financial thresholds in place that support the Council's governance arrangements.
2. There are currently 12 separate thresholds; some based in legislation in relation to which the Council has no discretion; others based in legislation giving discretion to the Council as to where to fix them; others purely local. All require that certain practice and procedure is followed. The number and alignment of these thresholds across decision making, procurement and finance add unnecessary complexity to those governance arrangements.
3. This report sets out proposed amendments to the decision making thresholds in place, and the way in which they are applied, and provides a clear and consistent approach to the governance of decision making to align with arrangements for procurement and finance. The proposals set out comply with legislative requirements; support and strengthen the democratic oversight of decisions; provide appropriate check and challenge around the use of public money and ensure openness and engagement whilst remaining agile and responsive.

Recommendations

3. For the reasons set out in this report General Purposes Committee is requested to :-
- Recommend that Full Council
 - Amend Article 13 of the Council's Constitution to include the definitions of decision categories as set out at Annex 5; and
 - Approve amendments to the delegations and limits for virements as set out at Annex 6 attached; and
 - Note the contingent intention of the Chief Officer Financial Services to review and amend the capital finance thresholds set out in the Financial Regulations to align them with procurement and decision making practice and procedure.

1. Purpose of this report

- 1.1 This report follows a review of the governance thresholds in place across decision making, procurement and financial management and sets out a number of recommendations to amend those thresholds and the way in which they are applied to better align the council's governance arrangements and to promote clarity and consistency.

2. Background information

2.1 Source and Impact of Thresholds

Decision Making

- 2.2 Regulations¹ require each local authority to determine the thresholds above which a decision will be a key decision and therefore subject to the controls set out in those regulations. Thresholds must identify decisions which are likely
- a) To result in the authority incurring expenditure or making savings which are significant having regard to the authority's budget for the service or function to which the decision relates; or
 - b) To be significant in terms of their effects on communities living or working in an area comprising two or more wards
- 2.3 In Leeds additional local categories of decision have been added and removed over time, and the specified thresholds amended as set out at in the table attached at Annex 1 to this report.
- 2.4 The current thresholds were last reviewed in May 2012 and so it is timely for the arrangements to be reviewed. The current arrangements are set out in Article 13 of the Constitution and are attached at Annex 2 to this report. In brief a decision will be considered key if the financial implications of the decision exceed £250,000 per annum or the decision will have a significant impact on communities living and working in an area the size of one ward or more.

Procurement

- 2.4.1 The Public Contracts Regulations 2015 impose a number of thresholds requiring certain procedures when undertaking significant public procurements. These thresholds are set out in the Table A of Annex 3 below. These thresholds are fixed in legislation and there are therefore no recommendations to amend them.
- 2.4.2 Other procurement thresholds are set locally in the Contracts Procedure Rules. These relate to procedures which are required in relation to low (below £10,000), intermediate (between £10,000 and £100,000) and high (over £100,000) value procurements which are lower than those set in the Public Contracts Regulations. The relevant thresholds are set out in Table B of

¹ The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012/2089

Annex 3 below. While these thresholds are fixed by local arrangement they have been the subject of recent review and are not therefore subject to recommendations to amend.

Finance

- 2.4.3 Financial thresholds are imposed in relation to both revenue and capital accounting.
- 2.4.4 The Council's revenue budget is approved in February each year. In accordance with the Budget and Policy Framework Procedure Rules officers are authorised to spend within the budget set, and "to vire across budget headings subject to value limits set out". Relevant limits and authorities are reported to Council alongside the budget each year.
- 2.4.5 Capital accounting thresholds are determined by the Chief Officer Financial Services and set out in the Capital tables which sit beneath the Financial Regulations. In order to differentiate between types of scheme they are categorised depending on the nature of the capital investment:-
- Category A – new assets or significant enhancement of existing assets
 - Category B – maintenance of existing assets
 - Category C – externally funded schemes
 - Category D - ICT
- 2.4.6 Under the existing arrangements formal approvals are required at a number of steps through a capital scheme:-
- injection into the capital programme;
 - funding approval;
 - authority to spend; and
 - variations
- 2.4.7 The value and category of scheme or variation, and whether it is to be funded externally or by Leeds City Council monies, determines whether the approval should be given by Executive Board, the Chief Officer Financial Services or the relevant director. The table set out at Annex 4 below summarises these thresholds.
- 2.4.8 It is the intention of the Chief Officer Financial Services to review the limits and authorities applicable to capital budgets to align them with the thresholds in place for decision making, procurement and revenue finance contingent upon the outcome of this report.

3. Main issues – Decision Making Governance

- 3.1 In undertaking this review the City Solicitor and Chief Officer Financial Services have been mindful of the following priorities:-

The democratic mandate.

- 3.1.1 It is recognised that the vast majority of the authority's functions are conferred on Members by statute and are therefore the responsibility of Members; whether those functions are then carried out by or on behalf of the Council (of 99 Members) or the executive (as selected by the Leader). Members delegate many functions to officers to exercise on their behalf. The arrangements which govern the exercise of these functions must enable Members to have oversight and be satisfied that decisions are proportionate, provide value for money and are in the public interest.

The appropriate use of public money

- 3.1.2 Thresholds that are set in relation to incurring expenditure or making savings relate to the public money available to the Council in carrying out its functions. Full account should therefore be taken of the relevant cost or savings to the Council, however that cost or saving is to be funded. However any cost or saving to be incurred or accrued by the Council's partners through any joint activity is not part of the assessment of the impact of that decision on the authority's budget.

Openness and engagement with the public.

- 3.1.3 Members have been clear throughout the operation of Executive Arrangements that decision making thresholds should be set with a view to ensuring that the Council's processes and procedures are open, honest and transparent. Care is required to ensure decision making processes remain agile and responsive whilst meeting this need for openness so that procedures do not become unwieldy or burdensome and do not inhibit the Council's ability to act in the public interest.

Decision Making Thresholds

Key Decisions

- 3.2 Legislation requires that the authority sets thresholds above which an executive decision will be treated as Key. The regulations go on to provide that before taking a Key decision the authority must first ensure that notice is given of the intention to take that decision not less than 28 clear calendar days before the decision is taken. In addition there is a local requirement (not set out in legislation) that the report supporting that decision is published not less than 5 clear working days in advance of the decision being taken. Key decisions are then open to Call In (as are all decisions taken by Executive Board.)

Significant Operational Decisions

- 3.3 Local arrangements also provide for a category of significant operational decisions. These are not subject to a requirement for prior publicity, or open to Call In, but they are required to be recorded. This supports the Council's value of being open, honest and trusted and opens these decisions up to public scrutiny.

Administrative Decisions

- 3.4 In accordance with legislation all other decisions are administrative decisions. These are not subject to any requirements in terms of decision making governance. However the Contracts Procedure Rules and Financial Regulations must be observed where relevant and a written record of all decisions should be maintained for audit purposes.

Effect on Communities

- 3.5 Members will have noted that the legislation requires that the threshold is set to capture decisions which are likely to be significant in terms of their effects on communities living or working in an area comprising two or more wards.
- 3.6 A desktop benchmarking exercise was undertaken to review thresholds adopted by Councils for the core cities and across West Yorkshire. Of the seven core cities six (Birmingham City Council, Liverpool City Council, Manchester City Council, Newcastle upon Tyne City Council, Nottingham City Council, and Sheffield City Council) have fixed the community impact threshold at two or more wards as have the four other West Yorkshire Authorities (Bradford, Calderdale, Kirklees and Wakefield Councils). Bristol City Council is the only local authority in the benchmarking sample to have fixed this threshold at just one ward as is currently the case in Leeds.
- 3.7 From the introduction of executive arrangements via the Localism Act 2000 until May 2012 Leeds City Council set the threshold over a two ward area. However in 2012 a decision was taken to set this threshold at one ward with the intention that Members were made aware of and consulted on all significant decisions at ward level. Article 13 currently provides that a key decision is one which is likely “to have a significant effect on communities living or working in an area (including one ward)”.
- 3.8 A review of key decisions taken in the period from April 2017 to March 2018 has shown that of 145 decisions taken by officers, just 3 were categorised as key purely because of their impact on communities. Two of these three decisions had city wide implications² the third was more localised in impact³. During the same period of 75 decisions taken by Executive Board 28 were categorised as key because of their impact on communities.
- 3.9 It is recommended that this aspect of the key decision threshold remains the same and that decisions that have a significant impact on the people living and working in an area the size of one ward or more should continue to be treated as key.**

Financial Impact

- 3.10 Article 13 currently provides that a key decision is one which is likely “to result in the authority incurring expenditure or making savings (including the receipt or loss of income) over £250,000 pa”

² School holidays and tenancy review

³ PSPO

3.11 The results of the benchmarking exercise for key decision thresholds is set out in the table below:-

Financial Key Decision Thresholds		
Threshold	West Yorkshire Authorities	Core Cities
£200,000	Calderdale	
£250,000	Leeds Bradford Kirklees Wakefield	Leeds Newcastle (revenue only)
£500,000		Birmingham (revenue only) Bristol Liverpool Manchester (or 10% operating budget if lower) Sheffield
£1,000,000		Birmingham (capital only) Newcastle (capital only) Nottingham

3.12 It can be seen that the threshold currently set in Leeds is in line with the West Yorkshire authorities but considerably lower than the majority of core cities which are more comparable in terms of size and influence.

3.13 In addition to the benchmarking exercise the City Solicitor has undertaken an analysis of key decisions taken in the 17/18 financial year.

3.14 Of 220 decisions taken between 1st April 2017 and 31st March 2018, 145 were taken by officers and 75 by Executive Board. 31 of these were categorised as key because of their community impact; 189 were categorised as Key because of their financial value. The table below sets out more information in relation to the decisions recorded during this period.

Value of Key Decisions Published By Leeds City Council April 2017 – March 2018						
Value	Officer Decisions		Executive Board Decisions		Total Decisions	
	No	%	No	%	No	%
Community Impact	3	2	28	37	31	14
Over £1M	58	40	32	43	90	41
£500K - £1M	33	23	9	12	42	19
£250K - £500K	36	35	3	4	39	18
Value not recorded	15	10	3	4	18	8

- 3.15 From this analysis, an increase in the financial threshold for a key decision to £500K per annum would exclude 18%, or 39 decisions currently categorised as key.
- 3.16 However, it should be noted that the values given above reflect the per annum spend or save relating to the decision taken as required by the current definitions set out in Article 13. This contrasts with the approach to valuation set out in the Public Contracts Regulations 2015 and the Contracts Procedure Rules which use the total value of the contract to assess the applicability of financial thresholds.
- 3.17 Further analysis has been undertaken to consider the position if, in addition to raising the threshold to £500K, the basis for evaluation is changed to reflect the procurement requirement that total spend is considered.
- 3.18 Taken together these changes would have seen a reduction in key decisions of just 26 of the total number recorded in the sample period. This is because of the 36 decisions taken by officers with an annual value between £250K and £500K, 13 related to contracts with a total value in excess of £500K. Of the remaining 23 decisions 12 were valued between £250K and £300K, 8 up to £400K and the remaining 3 up to £500K.
- 3.19 Furthermore, the City Solicitor has undertaken an evaluation of the 913 contracts included in the Council's contracts register. This indicates that if categorised on the basis of the current definition (£250K annual spend) 204 of the Council's contracts would be categorised as key when the decision to procure is taken; but that under the proposed definition (£500K total spend) 259 would be treated as key.
- 3.20 Similarly the proposed assessment based on total contract value would increase the number of contracts to be recorded as significant operational decisions. Under existing provisions (£100K - £250K annual spend) 124 contracts are valued as significant operational decisions. This brings a total of 328 decisions under a requirement to record whether as key or significant operational. Under the proposed evaluation criteria (£100K - £500K total spend) 256 would be categorised as significant operational, bringing the total number of procurements subject to a formal published report under the council's governance arrangements to 515. (It should be noted that all but the 99 contracts valued at less than £10,000 total value would be published on the Council's procurement portal YORtender in any event.)
- 3.21 Taken together these amendments would ensure that long term commitments with lower annual values are subject to the checks and balances in place for key decisions and therefore open to Member challenge, or are recorded as significant operational decisions and are therefore open to public scrutiny.
- 3.22 The City Solicitor is therefore of the view that the proposed changes increase the governance control in relation to the council's procurement decision making and provides greater Member oversight.
- 3.23 On balance the City Solicitor and Chief Officer Financial Services recommend that the threshold for a key decision should be raised to £500,000. This would reflect the threshold established by other core cities and be more reflective of the size of the council's budget. It is not**

however recommended that there should be any change to the current threshold of £100,000 for significant operational decisions.

- 3.24 **In addition it is recommended that the value of any decision is calculated in accordance with overall financial commitment of the project or contract rather than in relation to per annum spend.**

Linked Decisions

- 3.25 The definition of a Key Decision currently includes provision to ensure that only one decision forming part of a chain of decisions leading to the same outcome is classed as key. Decisions which will be followed by a further more detailed report before the authority is committed to proceed⁴; or which flow as a direct consequence of a previous key decision⁵ are instead categorised as significant operational decisions which are subject only to a requirement to publish those decisions once taken. This ensures that the proposed outcome of the chain of decisions is open to appropriate transparency and scrutiny but that the relevant decision making within the council remains agile.
- 3.26 The arrangements in place at Sheffield, Bradford, Calderdale, Kirklees and Wakefield Councils include similar provisions permitting direct consequence decisions not to be taken as key. However, Sheffield and Calderdale both provide that any such decision to be taken as a direct consequence should be in the contemplation of the decision maker when the original decision is made.
- 3.27 Through guidance and training officers are encouraged to ensure that reports and recommendations are clear in respect of links between related decisions, and that the Key decision in a project is signposted. Similarly the report supporting the Key decision should provide a clear indication of the anticipated consequences which will flow from that report.
- 3.28 **In order to strengthen the linkage between such decisions it is recommended that the Article 13 is amended to show that direct consequence decisions should be “in the contemplation of the decision maker” at the time the Key decision is taken.**

Contract Extensions

- 3.29 The Contract Procedure Rules make provision for the exercise of a contract extension put in place before the expiry of the existing contract. In order to exercise a contract extension the decision maker must be satisfied that the extension represents best value.
- 3.30 Current practice, based on the recommendation of Scrutiny Board (Resources and Council Services)⁶ and set out in Contract Procedure Rule 21, is that any contract extension should be evaluated for governance purposes and taken

⁴ For example an injection into the capital programme would not be categorised as Key as there would be a later Authority to Spend decision containing more detailed information.

⁵ For example the decision to award a contract following receipt of tenders would be a direct consequence of a decision made earlier giving authority to spend and to procure.

⁶ 29th July 2013

accordingly. (For example, an extension valued at £333K for one year would currently be treated as key.)

- 3.31 If the definition of a key decision is amended to require that the total value of the contract is used as the basis for assessing whether the decision to procure is a key decision the value of any extension will have been incorporated into this valuation. As such the report supporting the original authority to procure should include details of any opportunity to extend incorporated into the contract.
- 3.32 It is recommended that any future decision to take up such contract extensions is treated as a direct consequence of the decision to procure in those terms and treated as a significant operational decision.**
- 3.33 It should be noted that this recommendation does not change the approach to any new procurement even where that procurement is of an identical service if it is not as a result of the terms of the existing contract. Where the contract has expired, or is due to expire with no option to extend, the re-procurement will require a new authority to procure, the category of which will be based on the total value of that new procurement.
- 3.34 The requirement that the decision maker extending the contract be satisfied that it represents best value will continue. This should be considered and addressed through the management of the contractual relationship, and there is an opportunity for independent assurances to be provided by Internal Audit through the annual programme of contract management audits.

Key Decisions following Call In

- 3.35 Article 13 currently allows that a key decision which is amended in line with the recommendations of a Scrutiny Board following call in will not be categorised as Key. Such a decision is treated as a significant operational decision and available for immediate implementation although it would require publication.
- 3.36** A decision taker, having regard to the recommendations of the Scrutiny Board, may choose not to confirm the original decision (which would require the approval of Executive Board) or amend the decision in line with the Scrutiny Board's recommendations, but rather to amend the decision in some other way. Under current arrangements and interpretation this latter option would effectively be a new Key decision and therefore require publication on the List of Forthcoming Key Decisions although in accordance with the Executive and Decision Making Procedure Rules it would not be open to call in (having already been the subject of consideration at a call in meeting.) This delays decision making and add unnecessary complexity to key decision governance.
- 3.37 In view of the fact that the relevant options and information will already have been tested through the full process of key decision governance it is recommended that Article 13.4 is amended simply to exclude any decision which is the result of varying a previous Key decision following a Call In of that decision.**

- 3.38 This will ensure that a decision in relation to a matter which has already been substantively included in the List of Forthcoming Key Decisions for the required 28 day period is not further delayed.

Exempted Decisions

- 3.39 Article 13 includes a number of categories (treasury management; energy purchasing; high value care plans; and settlement of proceedings) which are exempted from the definition of a key decision because it is impracticable to undertake the processes set out in legislation and local arrangements in respect of these matters.

High Value Care Plans

- 3.40 There is a need to update the statutory references under which the authority may be required to provide care.

Emergency Decision Making

- 3.41 The Council's Emergency Management Plan provides for the designation of the Council's senior officers as Gold⁷ or Silver⁸ leads in relation to an emergency. Whether acting alone in an inward facing Council emergency, or acting as part of the Strategic Co-ordinating Group at gold level or Tactical Co-ordinating Group at silver level it may be necessary for the relevant officer to take a decision which would be categorised as Key given the financial implications of that decision, or the likely impact of the decision on communities living and/or working in the Leeds area.
- 3.42 In situations where the Council's Emergency Management Plan applies however it is likely that such decisions will be so urgent as to preclude the meaningful fulfilment of the required governance process giving advance notice and allowing for call in of a key decision. In extreme situations, particularly where emergencies occur outside of office hours it may not be possible to obtain the consent of the Scrutiny Chair or Lord Mayor to the use of the special urgency provision.
- 3.43 It is therefore recommended that an amendment is made to Article 13 of the Constitution amending the list of statutory provisions underpinning care plans; and adding such emergency decisions, taken by the designated lead officer out of office hours in response to an emergency, to the limited circumstances in which a decision is exempt from the category of Key.**
- 3.44 This exemption will not extend to decisions taken as the emergency enters the recovery phase when the decision making will return to the usual controls and statutory exemptions.

⁷ Corporate Leadership Team level officers

⁸ Chief Officer or Head of Service level officers

Article 13

- 3.45 In order to effect the recommendations set out in part 3 of this report it is proposed that Article 13 of the Constitution should be amended to the form set out at Annex 5 below.**

Revenue Approvals and Limits

- 3.46 The Council's revenue budget is approved in February each year. In accordance with the Budget and Policy Framework Procedure Rules officers are authorised to spend within the budget set, and "to vire across budget headings subject to value limits set out". Relevant limits and authorities are set by Full Council alongside the budget each year. It is therefore Full Council which is able to amend these limits and authorities.
- 3.47 The City Solicitor and Chief Officer Financial Services have considered the delegations and limits which form part of the Council's budget and financial control environment together with the other financial thresholds in place across the governance framework.
- 3.48 In order to simplify, and therefore strengthen, the Council's governance control environment the Chief Officer Financial Services recommends that the existing virements limits and authorities are amended to:-**
- **Remove the thresholds within which Directors can approve Leeds City Council funded virements between budget heads within the directorate or between directorates subject to the upper threshold of £5 million above which virements must be considered by Full Council.**
 - **Remove the distinction between externally funded virements which are within or which amend existing Council policy so that all can be approved by Directors.**
- 3.49 Decisions in relation to virements will, where necessary and appropriate be taken by the relevant Director as part of the substantive decision in relation to their service. The report supporting these decisions will include confirmation that the Chief Officer Financial Services has been consulted in relation to any virements and that they support the proposal. As with all decisions taken by officers in accordance with their executive delegations the relevant Portfolio Holder may require, or the director may determine that the matter should be referred to Executive Board for the decision to be taken.
- 3.50 General Purposes Committee are invited to recommend that Full Council approves the amended virements delegations and limits as set out in the table attached at Annex 6 to this report.**

Corporate Governance

- 3.51 Best practice requires that the Council ensures that its governance arrangements are up to date and fit for purpose; effectively communicated; routinely complied with and monitored. The proposals set out above will comply with the requirement that the Council's arrangements are up to date and fit for purpose.

- 3.52 The City Solicitor and Chief Officer Financial Services will make arrangements to communicate the changes in decision making, procurement and financial governance systems and processes.
- 3.53 Briefings will be offered to Executive Members and Scrutiny Chairs in order to ensure that they are familiar with the checks and balances in place in relation to officer decision making. Further briefings will then be offered to all Members to explain the modified arrangements and show clearly how Members are able to engage with decision making.
- 3.54 Written information will be supported and enhanced by the provision of training to ensure that officers are aware of and routinely comply with the checks and balances that apply. The City Solicitor has worked with Directors to identify those members of staff who are key to the delivery of functions within each directorate and to enable as many as possible to attend a face to face briefing in June should the proposals be approved.
- 3.55 Corporate Governance and Audit Committee will continue to receive an annual report on the Council's decision making arrangements which will enable them to keep under review the number of key and significant operational decisions taken, and to ensure that they are compliant with the decision making framework. In addition the Head of Audit has been briefed on the proposed changes and will keep relevant systems and processes under review to monitor compliance.

4. Corporate considerations

4.1 Consultation and engagement

- 4.1.1 The Deputy Leader and Executive Member for Strategy and Resources is content with the proposals as set out.
- 4.1.2 The Chair of Corporate Governance and Audit Committee supports the proposed amendments to the decision making thresholds which strengthen the governance of decision making in relation to procurement in opening controls to contracts of lower annual values where those contracts commit the authority to a larger spend over time. In addition the Chair is pleased to note the proposals of the Chief Officer Financial Services which simplify and strengthen the financial control arrangements in relation to both revenue and capital budgets.
- 4.1.3 The Chair of the Scrutiny Board (Strategy and Resources) agrees with the proposals set out in this report.
- 4.1.4 The proposals have been shared with each of the opposition groups.
- 4.1.5 The Leader of Opposition is supportive of the proposals to amend the thresholds in relation to the governance of decision making and financial controls. He notes in particular that the move to assessing the financial impact of a decision over the lifetime of the decision will enhance Member oversight in relation to contracts with significant lifetime values.

- 4.1.6 The Council's Corporate Leadership Team have considered and are supportive of the proposals set out in this report.
- 4.1.7 The proposals have been shared with a workshop of officers representing each of the Council's directorates. Officers are broadly supportive of the proposals and welcome the proposed increase in threshold for a key decision, although it has been noted that the shift to categorising decisions on the basis of the total financial commitment will increase the number of contracts subject to the controls around taking key decisions, and at lower values requiring publication as significant operational decisions. Assurance has been given that ongoing monitoring of the publication of decisions will offer opportunity to gauge whether this creates undue administrative burden. Officers are also welcoming of the shift in emphasis towards ensuring that finance and procurement matters are considered as part of the substantive operational decisions with authority for directors to give all necessary approvals with the appropriate oversight of executive portfolio holders.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 There are no implications for this report.

4.3 Council policies and best council plan

- 4.3.1 The proposals set out in this report are mindful of the Council's values. In particular they support open and honest governance and through the appropriate delegation of authority in respect of financial governance underpin the value of spending money wisely.
- 4.3.2 The proposals are in line with the seven principals underpinning the Council's Code of Corporate Governance which are:-
- To behave lawfully, with integrity and in the public interest;
 - To be open and engage with local communities, service users and our other stakeholders;
 - To focus resources on outcomes and ensure ...excellent value for money;
 - To have clear responsibilities and arrangements for transparent and effective accountability;
 - To take informed and transparent decisions;
 - To have robust and effective audit, scrutiny, information governance, risk and financial management arrangements; and
 - To develop capacity and capability to be effective.

4.4 Resources and value for money

- 4.4.1 The necessary steps to implement the changes set out in this report can be met within existing resources.

4.5 Legal implications, access to information, and call-in

4.5.1 The proposals set out within this report seek to ensure that the Council continues to meet statutory requirements in relation to decision making and procurement.

4.6 Risk management

4.6.1 By reducing the number of separate thresholds from twelve to eight, and aligning requirements across disciplines the proposals set out in this report simplify the councils governance arrangements in respect of decision making, procurement and finance and therefore reduce the risk of confusion.

4.6.2 In addition the changes will provide an opportunity to promote the Councils governance framework, with awareness raising and training work which will further reduce the risk of non-compliance.

4.6.3 Although it may have been anticipated that to raise the threshold for key decisions would reduce Member oversight of decision making the analysis of decisions taken and the Council's contracts register have shown that the changes taken as a whole will include more decisions committing the council to significant spend, whilst streamlining and simplifying procedures and reducing repeat consideration of some matters.

5. Conclusions

5.1 The proposed amendments set out in this report will ensure that the thresholds in place, and the way in which they are applied, will provide a clear and consistent approach to the governance of decision making, procurement and finance which meets legislative requirements; supports the democratic mandate; provides appropriate check and challenge around the use of public money; and secures openness and engagement with Members and the public whilst remaining agile and responsive.

5.2 Taken together it is recommended that:-

5.2.1 the definition of a key decision be amended to include:-

- decisions that have a significant impact on the people living and working in an area the size of one ward or more;
- decisions with a total value greater than £500,000;
- clarification that any decision following the call-in of a previous key decision is not key;
- the addition of emergency decision making to the categories of decisions exempt from the definition

5.2.2 the definition of a significant operational decision be amended to include:-

- decisions with a total value greater than £100,000.

- 5.2.3 Decisions to be taken as a direct consequence of a previous key decision should be in the contemplation of the decision maker at the time the Key decision is taken.
- 5.2.4 Decisions to take up contract extensions be treated as a direct consequence of the decision to procure in those terms and treated as a significant operational decision.
- 5.2.5 Existing virements limits and authorities are amended to:-
- Remove the thresholds within which Directors can approve Leeds City Council funded virements between budget heads within the directorate or between directorates subject to the upper threshold of £5 million above which virements must be considered by Full Council.
 - Remove the distinction between externally funded virements which are within or which amend existing Council policy so that all can be approved by Directors

6. Recommendations

- 6.1 For the reasons set out in this report General Purposes Committee is requested to :-
- Recommend that Full Council
 - Amend Article 13 of the Council's Constitution to include the definitions of decision categories as set out at Annex 5; and
 - Approve amendments to the delegations and limits for virements as set out at Annex 6 attached; and
 - Note the contingent intention of the Chief Officer Financial Services to review and amend the capital finance thresholds set out in the Financial Regulations to align them with procurement and decision making practice and procedure.

7. Background documents⁹

- 7.1 None

⁹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

Annex 1 – Decision Making Thresholds From 2001

Date	Category	Financial Threshold	Effect on communities
December 2001	Key	£500K pa	2 or more wards
	Major	£100K pa	1 ward
	Significant Operational	NA	Specific Circumstances as listed
	Administrative	Under £100K	Within budget and policy framework
May 2008	Key	£250K pa	2 or more wards
	Major	£100K pa	1 ward
	Significant Operational	NA	Specific Circumstances as listed
	Administrative	Under £100K	Within budget and policy framework
May 2012	Key	£250K pa	1 ward
	Significant Operational	£100K pa	Necessary for transparency / accountability
	Administrative	Under £100K	Within budget and policy framework
Proposed	Key	£500K total commitment	1 ward
	Significant Operational	£100K total commitment	Necessary for transparency / accountability
	Administrative	Under £100K	Within budget and policy framework

Annex 2

Decision Making Thresholds as set out in Article 13

CATEGORIES OF DECISION

13.1. **Key Decision:-** a decision relating to an executive function which is likely

- a. to result in the authority incurring expenditure or making savings (including the receipt or loss of income) over £250,000 pa¹⁰; or

to have a significant effect on communities living or working in an area (including one ward), and
- b. which is not a decision which is a direct consequence of implementing a previous Key Decision¹¹, or in relation to which a further report will be submitted for approval of the proposal before the Council is committed to proceed¹²; or

which is not the result of varying a previous Key decision in line with recommendations made by a Scrutiny Board following a Call In of that decision.

13.2. **Significant Operational Decision:-** A decision in relation to a Council¹³ or Executive Function which is not a Key decision and which;

- a. Does not fall within the definition of an Administrative decision; or

¹⁰ Except where this expenditure, saving or income will result from:-

- a) a Treasury Management decision in relation to the making, payment or borrowing of a loan; or
- b) a decision to purchase energy under the terms of an energy supply contract which has been awarded following the appropriate procurement process; or
- c) a decision to approve a care plan which the Council has a duty or power to provide as defined by s46 of National Health Service and Community Care Act 1990 and s2 of the Chronically Sick and Disabled Persons Act 1970. Ss17 and 20 Children Act 1989
- d) the settlement of proceedings to which Leeds City Council is a party.

¹¹ Where a scheme or proposal changes following the original decision to the extent that the additional spend or save, or the additional impact of the decision, reaches the threshold for a Key decision it shall be treated as a new Key decision.

¹² Under the capital programme, a decision to **authorise expenditure** over £250,000 will be a **key** decision, but a decision to **inject a scheme** into the capital programme, or to **award a contract** over the value of £250,000 will not.

¹³ In accordance with the Openness of Local Government Bodies Regulations 2014, these shall include where appropriate Council decisions taken:-

- a) under a specific express authorisation from Council or one of its committees; or
- b) In accordance with the Officer Delegation Scheme (Council (non-executive) Functions)¹³, where the effect of the decision is to-
 - a. Grant a permission or licence;
 - b. Affect the rights of an individual;
 - c. Or award a contract or incur expenditure which, in either case, materially affects the financial position of the Council

- b. Would have been a Key decision but for footnote 1 to Article 13.4a or Article 13.4b above; or
- c. Results in the authority incurring expenditure or making savings (including the receipt or loss of income) over £100,000 each year; or
- d. Is, in the opinion of the Director, Chief Officer or Head of Service¹⁴, of such significance that a published record of the decision would ensure transparency and accountability in relation to decision making within the authority.

13.3. **Administrative Decision:-** A decision in relation to a Council or Executive function which is not a Key, or Significant Operational decision and which;

- a. is within an approved budget; and
- b. is not in conflict with the Budget and Policy Framework or other approved policies approved by the Council; and
- c. does not raise new issues of policy.

¹⁴ Having taken into account the provisions of the Constitution together with other policy, procedure and guidance available

Annex 3 – Thresholds in Procurement

Table A

Threshold set out in Public Contracts Regulations		
Amount	Threshold set out in Regulations	Procurement Procedure
>£4,551,413	Contracts for works subject to Public Contracts Regulations	<ul style="list-style-type: none"> • COFS advice required • OJEU notice required
>£615,278	Contracts for social and other specified services subject to Public Contracts Regulations	<ul style="list-style-type: none"> • COFS advice required • OJEU notice required
>£181,302	Contracts for Goods or Services subject to Public Contracts Regulations	<ul style="list-style-type: none"> • COFS advice required • OJEU notice required <p>Standard Selection questionnaire required Suitability selection questions allowed under this threshold but must be proportionate and relevant to subject matter of the contract</p>

Table B

Amount	Threshold set out CPRs	Procurement Procedure
All Contracts below £100,000		<ul style="list-style-type: none"> • Use ISP, existing provider or third party framework where possible. If not use competition. • Direct award where formal evidence of no genuine competition
>£100,000	High Value Procurement	<ul style="list-style-type: none"> • 4 written tenders required for competition • Completed contracts registered on YORtender • Contracts to be executed in accordance with Art 14.5 (sealed or two signatures) • Contract termination to be reported to Chief Officer Financial Services for monitoring
		COFS and City Solicitor to be kept informed of contractual claims (by or against Council)
<= £100,00 and >=£10,000	Intermediate Value Procurement	<ul style="list-style-type: none"> • 3 written tenders required for competition • All completed contracts to be registered on YORtender. • Contracts executed by single signature
<£10,000	Low Value Procurement	<ul style="list-style-type: none"> • 3 written tenders required for competition • Direct award where best value for Council (up to £25K on Chief Officer discretion) • Written record of decision to be kept. • Completed direct award contracts to be registered on YORtender • Contracts executed by single signature

Annex 4 – Thresholds in Financial Regulations

	Executive Board	Chief Officer Financial Services	Director of Resources and Housing	Relevant Director
Injection into Capital Programme	<ul style="list-style-type: none"> LCC funded schemes over £250K 	<ul style="list-style-type: none"> LCC funded schemes up to £250K 		<ul style="list-style-type: none"> All externally funded schemes
Funding Approval ¹⁵		<ul style="list-style-type: none"> Cat A schemes over £500,000 		
Authority To Spend	<ul style="list-style-type: none"> Cat A schemes over £500,000 		<ul style="list-style-type: none"> Cat D schemes 	<ul style="list-style-type: none"> Cat A schemes up to £500,000; and All Cat B & C schemes
Variations at tender stage	<ul style="list-style-type: none"> Over £100,000 	<ul style="list-style-type: none"> Over £50,000 and up to £100,000 		<ul style="list-style-type: none"> Up to £50,000
Prior approval of variations during life of contract within approved amount		<ul style="list-style-type: none"> Up to the value of any additional external funding; or Over 1% of approved amount or £5,000 up to limit of approved amount 		<ul style="list-style-type: none"> Up to 1% of approved amount or £5,000 Schemes relating to Community Committee Functions in consultation with Community Committee.
Prior approval of variations during life of contract exceeding approved amount	<ul style="list-style-type: none"> Over £100,000 	<ul style="list-style-type: none"> Up to £100,000 		
Retrospective approval of variations		<ul style="list-style-type: none"> Essential variations exceeding approved amount. 		<ul style="list-style-type: none"> Schemes relating to Community Committee Functions in consultation with Community Committee.

¹⁵ No funding approval is required for Category B,C, or D schemes or for Category A schemes valued at less than £500,000.

Annex 5 – AMENDED CATEGORIES OF DECISION

13.4. Key Decision:-

- 13.4.1. Subject to 13.4.2 below a Key decision is a decision relating to an executive function which is likely;
- a. to result in the authority incurring expenditure or making savings (including the receipt or loss of income) over £500,000¹⁶; or
 - b. to have a significant effect on communities living or working in an area the size of one ward or more.
- 13.4.2. The following shall be exempt from the definition of a key decision¹⁷:-
- a. any decision where the expenditure, saving or income will result from:-
 - a Treasury Management decision in relation to the making, payment or borrowing of a loan; or
 - a decision to purchase energy under the terms of an energy supply contract which has been awarded following the appropriate procurement process; or
 - a decision to approve a care plan which the Council has a duty or power to provide as defined by s25 of Care Act 2014, s46 of National Health Service and Community Care Act 1990 and s2 of the Chronically Sick and Disabled Persons Act 1970; or ss17 and 20 Children Act 1989; or
 - the settlement of proceedings to which Leeds City Council is a party; or
 - an urgent decision necessary out of office hours taken in accordance with the Council's Emergency Management Plan by the Officer acting at Gold or Silver level at the relevant time; and
 - b. any decision in relation to which a further report will be submitted for approval of the proposal before the Council is committed to proceed; and
 - c. any decision which is a direct consequence of implementing a previous Key Decision¹⁸ and was in the contemplation of the decision maker at the time the decision was taken; and
 - d. any decision which is the result of varying a previous Key decision following a Call In of that decision.

¹⁶ Assessed over the full commitment of the decision (e.g. total potential contract value including extensions or full cost of capital project) Where the decision commits the Council to an ongoing commitment (e.g. the staffing costs related to creation of a permanent post) the value should be assessed on an annual basis.

¹⁷ Decisions falling within these exemptions shall be treated as Significant Operational Decisions in accordance with 13.5.1 b.

¹⁸ Where a scheme or proposal changes following the original decision to the extent that the additional spend or save, or the additional impact of the decision, reaches the threshold for a Key decision it shall be treated as a new Key decision.

13.5. Significant Operational Decision:-

- 13.5.1. A Significant Operational decision in relation to a Council¹⁹ or Executive Function is a decision which is not a Key decision and which;
- a. does not fall within the definition of an Administrative decision; or
 - b. would have been a Key decision but for the exemptions set out at 13.4.2 above; or
 - c. results in the authority incurring expenditure or making savings (including the receipt or loss of income) over £100,000²⁰; or
 - d. is, in the opinion of the decision taker²¹, of such significance that a published record of the decision would ensure transparency and accountability in relation to decision making within the authority.

13.6. Administrative Decision:-

- 13.6.1. A decision in relation to a Council or Executive function which is not a Key, or Significant Operational decision and which;
- a. is within an approved budget; and
 - b. is not in conflict with the Budget and Policy Framework or other approved policies approved by the Council; and
 - c. does not raise new issues of policy.

¹⁹ In accordance with the Openness of Local Government Bodies Regulations 2014, these shall include where appropriate Council decisions taken:-

- c) under a specific express authorisation from Council or one of its committees; or
- d) In accordance with the Officer Delegation Scheme (Council (non-executive) Functions)¹⁹, where the effect of the decision is to-
 - a. Grant a permission or licence;
 - b. Affect the rights of an individual;
 - c. Or award a contract or incur expenditure which, in either case, materially affects the financial position of the Council

²⁰ Assessed over the full commitment of the decision (e.g. total potential contract value or full cost of capital project) unless the decision commits the Council to an ongoing commitment in which case the value should be assessed on an annual basis.

²¹ Having taken into account the provisions of the Constitution together with other policy, procedure and guidance available

ANNEX 6 - MAXIMUM DELEGATED LIMITS FOR REVENUE VIREMENTS

Approval Type	Supplementary Votes (release of general fund reserve)	Virements out of net managed budget into or out of budget book service headings		Self-financing virements of the net managed budget (from external funding)
		Within directorate	Between directorates	
Amount				
Up to £100,000 ²²	Chief Finance Officer	Director	Director(s)	Director
Up to £500,000 ²³	Executive Board	Director	Director(s)	Director
Up to £5,000,000 ²⁴	Executive Board	Director	Director(s)	Director
Over £5,000,000	Full Council	Full Council	Full Council	Director

²² Although the substantive decision would be categorised as administrative it should be treated as a significant operational decision as it is not within an existing budget

²³ These will be significant operational decisions unless they have a significant impact in an area the size of one ward or more in which case they should be treated as key decisions

²⁴ These will be key decisions unless subject to an exemption as defined by Article 13 in which case they should be treated as significant operational decisions.

Understanding the Virements Table

Executive Decision Making

- All decisions taken in relation to virements will be executive decisions and should be taken in accordance with the Executive and Decision Making Procedure Rules and Officer Delegation Scheme (Executive Functions) which requires that where the Leader or the relevant Portfolio Holder has directed or the Director considers that the matter should be referred to Executive Board for consideration.
- As by definition decisions which require virements do not fall within an existing budget they should be treated as significant operational decisions unless they are part of a wider decision which is categorised as key.
- Decisions makers should consider the categories of executive decisions set out in Article 13 of the Constitution.

Directors

- In this table delegations to “Directors” should be understood as to all those officers listed as Chief Officers at Article 12.1
- As with all executive delegations these delegations are made save where the Leader or the relevant Portfolio Holder has directed or the Director considers that the matter should be referred to Executive Board for consideration, it is therefore important that the relevant Executive member is briefed in relation to capital projects.
- These delegated decisions should be taken in accordance with the decision making procedures set out in the Executive and Decision Making Procedure Rules.
- All decisions should be taken in consultation with the Chief Finance Officer whose comments should be recorded on the relevant decision report.