

## Amendments to the Constitution – Decision Making

Date: 23 May 2024

Report of: Catherine Witham City Solicitor

Report to: Council

Will the decision be open for call in?  Yes  No

Does the report contain confidential or exempt information?  Yes  No

### Brief summary

This report recommends an amendment to Part 2 Article 13 of the Constitution and Part 4(b) the Executive and Decision Making Rules.

The recommendations propose to amend the category of decision making and associated decision making rules and were considered by General Purposes Committee on 17 April 2024 which resolved to recommend that they are adopted by Council.

The recommendations follow a review of the Constitution and are considered the most appropriate in responding to the drivers for the review, having considered a wide range of options, having done extensive engagement and benchmarking work. They will strike a reasonable balance between speeding up decision making, reducing bureaucracy and resource required, retaining openness and engagement with the public and being in line with the statutory requirements.

### Recommendations

Council is recommended to:

- a) Note the resolution of General Purposes Committee dated 17 April 2024;
- b) Approve the amendments to Part 2 Article 13 (Decision making) attached as Appendix 1 and to Part 4(b) (Executive and Decision Making Rules) attached as Appendix 2;

## **What is this report about?**

- 1 The purpose of this report is to seek approval from Council to detailed amendments to Article 13 of the Constitution and the Executive and Decision Making Rules.

## **Background**

- 2.1 At a meeting on 18 October 2023, Members of General Purposes Committee agreed the need to review the Council's constitution and noted its agreement to the scope set out in paragraph 2.3 below.
- 2.2 The drivers for the review included:
  - 2.2.1 The need for it to remain fit for purpose so that it reflects our values and how we work with partners as well as supporting and complementing the Council's governance framework; as well as complying with legislative requirements, supporting the democratic oversight of decisions, continue to provide appropriate check and challenge around the use of public money and ensure openness and engagement whilst remaining agile and responsive;
  - 2.2.2 The 2022 LGA Peer Review which identified that further improvements to the document and associated procedures could be achieved by tackling concerns of middle managers about the speed of decision making and perceived bureaucracy;
  - 2.2.3 The need to reduce duplication, maximise efficiencies and minimise bureaucracy with a view to increasing workforce capacity in response to financial challenge, staff survey results around work pressures and the Organisational Plan objectives.
- 2.3 Feedback from stakeholders highlighted the following themes as needing to be subject of the scope of the Constitution review:
  - Decision- making;
  - Contract Procedure Rules;
  - Accessibility.
- 2.4 At its meeting on 17 April 2024, having considered the detailed analysis of options presented General Purposes Committee resolved to
  - (i) Agree in principle the proposals set out in paragraph 3.7;
  - (ii) Note the proposal to amend the Contract Procedure Rules at Part 4(h) of the Constitution; and
  - (iii) Recommend to Full Council that it
    - (a) Approves the amendments to Part 2 Article 13 (Decision making); and
    - (b) Approves the amendments to Part 4(b) (Executive and Decision Making Rules) set out at Appendix 1 and 2 of this report respectively.
- 2.5 A detailed review of the Contract Procedure Rules has also been completed and the nature of the proposed amendments, are to be approved by the Chief Finance Officer under delegated powers.
- 2.6 Work on accessibility of the Constitution has also been concluded which will enable the document to be published as one easily readable, searchable document.

## **Decision making**

- 3.1 Regulations<sup>1</sup> 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.

### Current categories of decision

- 3.2 There are currently three categories of decisions in Leeds: Key, Significant Operational and Administrative. The additional local (non-statutory) category of decision (Significant Operational Decisions) has been in place since 2001, this category falls between Key decisions and Administrative decisions. This is one more category of decision than all other councils considered in the benchmarking and what colleagues find most confusing.
- 3.3 Subject to exemptions, the current definition of a Key decision in Leeds is as follows:  
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 £500,000; or
  - b) To have a significant effect on communities living or working in an area the size of one ward or more.
- 3.4 The financial threshold was last reviewed in May 2019 when it was increased from £250,000 to £500,000. The definition of effect on communities was adopted in 2012 as a local definition departing from the statutory definition of two or more wards. All decisions require that certain practice and procedures are followed according to the level of decision.
- 3.5 Benchmarking across Core Cities reveals that decisions over £500,000 is the maximum threshold for Key Decisions, with the exception of Birmingham, which in relation to capital projects, has a threshold of over £1,000,000 (revenue spend is retained at over £500,000). This work also confirms that that all other Core Cities have retained the statutory definition of "two or more wards" in respect of a decision's impact on communities and, as described above, none have a local category of decision which is comparable to the Council's Significant Operational Decision category.
- 3.6 The recommended changes follow a detailed analysis and consideration of nine options presented to General Purposes Committee and, in addition to the drivers for the review and the Council's Values and behaviours, the following factors have also been considered:
- **The democratic mandate** – 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** – 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; and
  - **Openness and engagement with the public** – Care is required to ensure decision making processes remain agile and responsive whilst meeting this need for openness

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

so that procedures do not become unwieldy or burdensome and do not inhibit the Council's ability to act in the public interest

### Recommended Change

3.7 The recommended change to decision making categories is:

- No change to Key Decisions (either value or number of wards impacted);
- Delete Significant Operation Decisions as a category of decisions; and
- Retain the category of Administrative decisions but introduce a requirement to publish if the financial threshold is £250,000 or above or if the decision maker considers there is another reason for publication.

3.8 This recommendation balances continuity with change, responds to the drivers and wider considerations set out above, and importantly strikes reasonable balance between speeding up decision making, reducing bureaucracy and resource required whilst importantly retaining openness and engagement with the public. The detail behind this is set out in paragraphs 3.10 – 3.21 below.

3.9 It should also be noted that some decisions are published in more than one place to comply with separate regimes and therefore any reduction in publication pursuant to the recommendations will not necessarily mean transparency is negatively impacted.

### No change to Key Decisions

3.10 In 22/23, **178** Key Decisions were made, **34** of which by Executive Board. Key decisions are those which have a threshold **>£500,000** and or where the impact of the decision has a significant effect on communities living or working in an area of one ward or more.

3.11 It is worth noting that there is an extensive list of decisions that are exempt from being Key as follows:

- 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 Decision 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.

- 3.12 All key decisions are required to be published on the list of forthcoming decisions at least 28 days before the date of the decision, a delegated decision report (DDR) is required to be published at least 5 days before the decision is made and all are subject to call in. Key decisions are therefore subject to the highest level of transparency and accountability/scrutiny of all the decisions made by the Council. Inevitably therefore, they involve the longest lead in time and greatest amount of Officer/Member resource.
- 3.13 Making no change to the definition of a Key Decision will ensure the highest level of transparency and scrutiny is retained in respect of the most significant decisions in terms of spending, saving or impact on communities.

Delete Significant Operational Decision category and introduce a financial threshold of £250,000 to Administrative decisions above which decisions should be published.

- 3.14 In 22/23, **802** Significant Operational Decisions (SOD's) were made. SOD's are a category of decision making that is non statutory and which have been introduced as a "local" procedure to Leeds and not used elsewhere. SOD's are those decisions which:
- are not a Key or an Administrative decision; or
  - fall within an exemption of a key decision (see paragraph 3.11 above) or
  - have a financial threshold of > £100,000: or
  - are, in the opinion of the decision taker, of such significance that a published record of the decision would ensure transparency and accountability in relation to decision making within the authority.
- 3.15 All SOD's are required to be published and require either a DDR (if over £100,000) or a delegated decision notice (DDN). They are not subject to call-in. SOD's are therefore subject to less scrutiny than Key decisions, and whilst the speed and resource associated with each individual decision is less than that for Key decisions, the overall resource associated with the annual total is considered significant particularly given there is no statutory requirement to have such a category and the benchmarking showed that Leeds is the only council who has this additional category.
- 3.16 By deleting the category of Significant Operational Decisions, anything that is not Key will be deemed to be an Administrative decision. This will introduce much needed clarity and greater simplicity in terms of definitions and understanding as to which category a decision falls into. It will also reduce the required resource associated with SOD's, enabling colleagues to deal with resource reductions and workload pressures.
- 3.17 Deleting SOD's will, without making other changes, impact on transparency of decision making as fewer decisions will be published under decision making regime. This partially reduces transparency of decisions relating to financial thresholds of between >£100,000 and £500,000 including those which, but for an exemption, would have been Key or are considered significant by the decision maker. Therefore, to retain transparency of the most significant non Key decisions the introduction to require publication of Administrative decisions is being recommended in order to mitigate the impacts of deleting SODs. This will relate to decisions with a financial threshold of £250,000 or more, or if the decision maker considers there is another reason for publication. It is important to note two other factors that mean that there should not be too detrimental an impact on transparency: many decisions are also published through other routes, for example procurement activity; and the impact in real terms of inflation means the threshold will capture decisions that previously would have been of a lower value.
- 3.18 Currently an Administrative decision is one that is not Key or a SOD and is within an approved budget, is not in conflict with the Budget and Policy framework (or other approved policies)

and does not raise new issues of policy. As Administrative decisions are not currently published, recording of such decisions is determined on a Directorate basis (i.e. a DDN is optional) and is not fully consistent across the Council. This means there are no recorded statistics relating to how many Administrative decisions are made, however they are made quickly, are agile and responsive without lead in times and mostly relate to financial thresholds of less than £100,000.

- 3.19 Introducing a threshold to publish all Administrative decisions (i.e. non Key) with a value of £250,000 or more or where the decision maker considers there is another reason for publication will mitigate the impact of deleting SOD's by retaining a level of transparency in respect of decisions that would previously have been published as a SOD. The overall impact is that almost 60% of previous SOD decisions will still be published as values exceed £250,000 or were published for another reason, as illustrated in the table below. This means transparency for the most significant decisions that are not Key is retained whilst realising a saving in staffing resource currently associated with SOD's of around 40% .
- 3.20 As mentioned above, this option will not impact on the need to publish decisions as required by other regimes – for example under the Contract Procedure Rules information relating to contracts over £10,000 must be published on the publicly visible contracts register via YORtender, the Council's electronic tendering platform regardless of the decision making category it falls into. Similarly, all non-contract expenditure over £500 is published to Data Mill North, as required by Data Transparency legislation.
- 3.21 This option is preferred to the alternative of retaining but amending the threshold definition of a SOD as it better responds to stakeholder feedback by removing the perceived complex SOD definition. It further enables the non statutory category of SOD's to be deleted and brings us into line with other councils. Decision makers need only consider whether a decision is Key or not. Where a decision is not Key, it will need to be published if it has a financial value of £250,000 or more, or if there is another reason for publication.

#### Conclusion of decision making recommended option for change

- 3.22 Maintaining the current Key decision definition and thresholds will retain the existing level of Member oversight, transparency and scrutiny of the most significant decisions made by the Council. The length of time to make these decisions will also not change. This is in line with the regulations and benchmarking.
- 3.23 Deleting Significant Operational Decisions as a category of decision whilst at the same time introducing a financial threshold requirement to publish Administrative decisions will retain transparency in respect of the most significant non Key decisions made by the Council, whilst enabling decisions which are not Key to be made in a more timely way, requiring less staffing resource and involving less duplication. This also introduces simpler definitions of decision categories and continues to meet statutory requirements, supports good governance, and is in line with benchmarking.
- 3.24 Collectively, the recommended options for change best respond to the drivers for the review and stakeholder feedback, and are in line with the regulations and benchmarking.

#### Associated procedures

- 3.25 Amendments to the Decision-making rules will provide a significant opportunity to further streamline associated procedures, in particular to Delegated Decision Reports (DDR's) and Delegated Decision Notices (DDNs) mentioned above. The purpose of these documents is to clearly evidence why and how a decision has been made and by whom. The documentation

needs to be proportionate with the decision being made and it is proposed that a full report (DDR) will be required in respect of all Key decisions and for all Administrative Decisions that require publication. All other Administrative Decisions will require the decision maker to maintain an appropriate and proportionate written record. Amending these procedures will introduce further Council wide efficiencies and consistency, whilst maintaining good governance of decision making. Whilst these procedures do not form part of the Constitution the work is closely linked to the review and is in response to stakeholder feedback and is therefore provided for Members information.

### **What impact will this proposal have?**

- 4 The amendments to the Constitution directly relate to the drivers for the review as well as feedback from stakeholders, being in line with the regulations and learning from benchmarking. It will introduce greater efficiency by reducing bureaucracy, speeding up decision making and procurement processes and reducing staffing resource required so that colleagues can manage to deliver services from the reduced resources available and reduce workload pressures. Crucially, the recommendation doesn't impact greatly on transparency of the most significant non-Key Decisions.

### **How does this proposal impact the three pillars of the Best City Ambition?**

Health and Wellbeing                       Inclusive Growth                       Zero Carbon

- 5 The review of the Constitution ensures that the governance of the Council remains robust and up to date.

### **What consultation and engagement has taken place?**

Wards affected:

Have ward members been consulted?                       Yes                       No

- 6.1 Consultation with stakeholders helped inform the broad scope of the review agreed by GPC in October.

- 6.2 Prior to GPC resolving to recommend the proposals to Council, the Chair of Corporate Governance and Audit Committee and the Chair of Strategy and Resources Scrutiny Board were consulted as were all group leaders.

### **What are the resource implications?**

7. As outlined above, this proposal is one practical thing that aims to reduce workload pressures and enable colleagues to manage within the reduced envelope available and deliver the extensive savings already committed to. There are no specific savings from this proposal or additional costs, but it is important within the context of the Financial Challenge.

### **What are the key risks and how are they being managed?**

- 8.1 By reducing the number of categories of decisions from three to two and by introducing new publication thresholds for Administrative decisions the proposals set out in this report simplify the council's governance arrangements in respect of decision making, and therefore reduce the risk of inconsistency and confusion.

8.2 In addition the changes will provide an opportunity to promote the Councils' governance framework, with awareness raising and training, and continuing to ensure an organisational culture with good compliance and in line with the values and behaviours.

8.3 Whilst the changes result in fewer decisions being published, that is not considered a significant risk given that many will still be published through other regimes and Member oversight remains on Key decisions.

### **What are the legal implications?**

9. 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.

## **Options, timescales and measuring success**

### **What other options were considered?**

10. A combination of the decision making options were considered but discounted in favour of the recommended option for change as they did not strike the most appropriate balance between reducing bureaucracy whilst retaining transparency of decision making.

### **How will success be measured?**

11 Success will be measured by the adoption of an up to date, accessible Constitution which removes existing duplication and complexity. Ongoing Internal Control Survey and Annual Governance Statements will cover the effect of implementation.

### **What is the timetable and who will be responsible for implementation?**

12. If approved the amendments will take immediate effect for the 2024 municipal year.

## **Appendices**

- Appendix 1 – Amended Article 13 – Decision Making
- Appendix 2 – Amended Executive Arrangements and Decision Making Procedure Rules

## **Background papers**

- None