

To: **GOVERNANCE & AUDIT COMMITTEE**
22 March 2023

Recording of Officer Executive Decisions
Executive Director of Delivery - Legal

1 Purpose of Report

1.1 To review existing arrangements for the recording of Officer Executive decisions

2 Recommendation(s) That:

2.1 That the Governance & Audit Committee approve the changes to the existing criteria for recording Officer Executive Decisions set out in paragraph 5.8

3 Reasons for Recommendation(S)

3.1 The existing criteria were introduced by the Council in 2013 and a review is desirable in order to validate their continuing efficacy.

4 Alternative Options Considered

4.1 The Council could decide to retain the existing criteria but in doing so would miss an opportunity to refine its decision making governance arrangements to better reflect current norms of transparency

5 Supporting Information

5.1 The statutory framework around local authority meetings is largely set out in statute and reflected in the Council's constitution. This includes the requirements around the recording of Executive decisions either at formal meetings or by Individual Members or Officers

5.2 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 stipulate that as soon as reasonably practicable after a decision has been taken, the proper officer should produce a written statement including;

- A record of the decision including the date it was made
- A record of the reasons for the decision
- Details of any alternative options considered and rejected by the Meeting/officer
- A record of any conflict of interest declared/dispensation granted

5.3 Whilst the requirement has been straightforward to comply with in terms of Executive and Executive Member decisions, (over which Democratic Services retain oversight) the recording of officer Executive decisions has been more challenging due to a lack of consistency in approach.

5.4 The requirement applies whether or not the decision is a key decision. That being said, numerous executive decisions are taken by officers on a daily basis and a large number of these are administrative. A line therefore needed to be drawn as to what

type of executive decision should be recorded as clearly it would be an administrative nightmare for all officer executive decisions to be recorded. To assist, the Department of Communities and Local Government ('DCLG') published guidance in 2012 which provides that **it is not intended that administrative and operational decisions are to be recorded.**

- 5.5 With this in mind the Governance and Audit Committee in January 2013 approved the following criteria for determining whether a non key officer decision should be recorded;
1. Any decision to incur expenditure or the making of a saving of £10,000 or more.
 2. Any decision taken following public consultation.
 3. Any decision which would have a material impact upon ten or more persons.
 4. Any decision which is taken in exercise of an express delegation made to an officer by the Executive, an Executive Committee or an individual Executive Member.
 5. A decision whether or not to list a property as an Asset of Community Value (the "Community Right to Bid" under the Localism Act).
 6. A decision whether or not to accept an expression of interest submitted under the Community Right to Challenge.
- 5.6 Clarification has previously been sought by CMT over issues such as the continuing viability of this £10k threshold criteria, whether expenditure already agreed in the budget needs to be recorded and whether the requirement applied to Contract Standing Order Waivers. Consequently at its meeting of 22 July 2022, CMT tasked the Borough Solicitor to review the thresholds with a view to reporting to Governance and Audit Committee as to what may be more appropriate today in the light of experience.
- 5.7 The Borough Solicitor has undertaken a desktop analysis of the criteria applied across a handful of other local authorities and the result of that are included in Annex A. The variety of approaches bears testimony to the challenge faced in setting appropriate thresholds. **A rule of thumb which underpins each approach would appear to be that the threshold for recording is calibrated around whether the proposed Executive officer decision is one which an ordinary member of the public would expect to be aware of.**
- 5.8 Having regard to the issues raised by CMT it is proposed that the existing criteria is amended as set out below;
1. Any Executive decision arising directly from a constitutional delegation under Part 2 Section 6 involving expenditure or savings in excess of £25,000 **[New]***
 2. Any Executive decision** which is taken in exercise of an express delegation made to an officer by the Executive, an Executive Committee or an individual Executive Member involving expenditure or savings in excess of £25,000

**** except Contract Standing Order waivers for which see item 7 below.**

And insofar as not captured by 1 or 2 above:

3. Any Executive decision taken following public consultation.
4. ~~Any Executive decision which would have a material impact upon ten or more persons.~~
5. Any Executive decision which conflicts with the Council's Budget and Policy Framework [New]*
6. Any Contract Standing Order waiver in respect of contracts in excess of the relevant statutory procurement threshold (as defined in the Contract Standing Orders) to be calculated according to total contract value inclusive of any previous extension or variation [New]*
7. Any Executive decision taken contrary to legal advice [New]*
8. Any Executive decision which in the opinion of the Chief Executive, Executive Director or Assistant Director is of such significance that a published record of the decision would ensure transparency and accountability in relation to executive decision making within the Council [New]*

**"New" denotes in addition to existing 2013 criteria*

6. Limitations and Exceptions

6.1 Capital Maintenance Programme Expenditure (eg Buildings/Highways)

- Where Capital Works projects have previously have been collectively signed off at Executive/Executive Member level and therefore already recorded at that point, Officer decisions calling off individual works packages will not require further recording.(eg Highways and Transport Capital works). Otherwise, individual projects will need to be recorded where any of the criteria in 5.8 above are satisfied (eg Delivery Buildings Planned Maintenance Programme)

6.2 Revenue funded works expenditure (eg Buildings/Highways)

- Individual works packages satisfying any of the criteria set out in 5.8 above would need to be recorded except where such expenditure falls part of an existing contract arrangement with an agreed supplier (eg Ringway for Highways maintenance)

6.3 Individual Care Packages

- These relate to Adult Social Care, Childrens Services and Special Educational Needs provision. As referenced in paragraph 5.4 above, DCLG Guidance envisages that operational decisions fall outside the scope of the recording requirements and as such, individual packages of care need not be recorded.

6.4 Staff appointments (including locums)

- These are operational and non executive so would not need recording. Consultancy contracts should be recorded with any exempt information being removed. (eg identity and cost).

7 Consultation and Other Considerations

Legal Advice

7.1 The Borough Solicitor is the author of this report

Financial Advice

7.2 There are no financial implications arising

Other Consultation Responses

7.3 None

Equalities Impact Assessment

7.4 N/A

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