

HAMPSHIRE COUNTY COUNCIL

Report

Decision Maker	Cabinet
Date:	12 October 2021
Title:	Proposals Regarding Business Efficiency & Review of Financial Thresholds
Report From:	Chief Executive

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Purpose of this Report

1. The purpose of this report is to propose to Cabinet an increase of the current financial threshold for a Key Decision (£1 million) to £2 million.
2. This report also outlines to Cabinet the procedure set out in Contract Standing Orders (CSOs) in respect of Single Tender Approvals (STAs), and suggests changes to CSO 9 and CSO 12 relating to operational responsibility for the approval of STA's in the case of routine contracts.
3. In addition, this report suggests a number of changes to CSOs 6, 7, 8 and 10, and a consequential change to CSO 11 regarding purchasing / tendering procedures relating to contracts below UK thresholds. A track changed copy of existing CSOs indicating the proposed amendments is attached at Appendix 1.
4. Lastly, this report sets out to Cabinet the present procedure in Financial Regulations regarding capital expenditure, and recommends increases in the limits in the interests of business efficiency.

Recommendation(s)

That Cabinet recommend to full Council:

5. An increase of the current financial threshold for a Key Decision (£1 million) to £2 million.
6. The revised approvals required in the case of STAs, authority levels and purchasing / tendering procedures and thresholds as proposed at Paragraphs 15 - 21 of this report, and consequential revisions to Contract Standing Orders as indicated at Appendix 1.
7. Increases in the approval limits relating to Capital Expenditure contained in Financial Regulations as proposed at Paragraph 22 of this report.
8. Agree the submission to full Council on Cabinet on 4 November 2021 for approval to make the necessary changes to the Constitution, Contract Standing Orders, and Financial Regulations, in order to give effect to the recommendations proposed at Paragraphs 5, 6 and 7 of this report.

9. Review of Key Decision Threshold

10. The Constitution defines a Key Decision as an Executive decision which is likely:

“to result in the County Council incurring expenditure which is, or making savings which are, significant in terms of the County Council’s budget for the service or function to which the decision relates (the County Council has presently set a financial limit of £1,000,000); or

to be significant in terms of its effects on communities living or working in an area comprising two or more electoral divisions in the County Council’s administrative area”

11. As indicated above, the financial threshold as to when a decision becomes ‘Key’ is currently set at £1 million. This figure is not however a legal requirement and is determined by the County Council - the Regulations simply require that the figure be ‘significant in terms of the County Council’s budget for the service or function to which the decision relates’. By way of background the amount was originally set at £500K in 2001 on the introduction of Executive Arrangements and was last reviewed in 2007, when it was increased to the current figure of £1 million. Clearly what was significant in 2007 in terms of the County Council’s budget for a service area or function is not the same fourteen years later in 2021.
12. It is therefore proposed that the financial threshold for a Key Decision be increased to £2 million. This would mean that decisions under this threshold currently classed as a Key Decision would no longer be ‘Key’ unless of course the second criteria for a Key Decision applied (‘significant in terms of its effects on communities living or working in an area or two or more electoral divisions in the County Council’s administrative area’) - such decisions would remain ‘Key’ whatever the financial threshold.

13. The business benefit of the proposal to raise the financial threshold for a Key Decision would be that the statutory 28-day notification processes specific to Key Decisions would no longer apply to those decisions previously 'Key' but no longer 'Key' purely in financial terms. It is considered that the reduced statutory notifications and consequential shorter lead-in timescales would achieve a streamlining of business processes, more agile decision making (particularly around 'business as usual' matters, for example repeat decisions where it may simply be the cumulative spend which takes the decision over the 'Key' threshold), and overall efficiencies arising out of a reduction in administrative requirements around the process. Given the pressures on the County Council coming down the track as a result of the Covid-19 crisis, it is considered that it is now the right time to review the financial threshold, and thereby 'bank' the potential efficiencies.

14. Should Cabinet be in favour of increasing the financial threshold for a Key Decision, the change would need the approval of the full Council by way of amendment to Executive Procedures in the Constitution.

15. Review of Contract Standing Orders (CSOs)

15.1. A number of business efficiencies are proposed as follows. The proposed changes to CSO's are indicated at Appendix 1.

16. Contract Standing Order 6 – procedure regarding publication of notices

16.1. The proposed amendment to CSO 6.3 is to make explicit a pre-existing legal requirement.

17. Contract Standing Order 7 – review of upper limit value (presently £100K)

17.1. Presently CSO 7 provides that in cases where the estimated value of a contract is less than £100K and a suitable Framework Agreement is available, then the Framework Agreement shall be used. In cases where no suitable Framework is available then three written quotations are required, save in any case where the estimated value of the contract is £1K, in which case only one written quotation is required.

17.2. It is suggested that a more appropriate upper limit in CSO 7 is £189,000. The revised upper limit reflects a risk based approach as £189,000 is the threshold where the Procurement Regulations begin to apply and in consequence contracts under £189,000 can be regarded as lower risk. In addition, it is suggested that in cases where no suitable Framework Agreement is in place the requirement to obtain three quotes be amended so that instead the requirement is to *request* three quotes in cases where obtaining three quotes proves not reasonably practicable. The reason for this is that experience shows that not all suppliers respond, and therefore it is not always possible to obtain three quotes in a timely manner. Appropriate guidance regarding this will be included in the Procurement Best Practice Guide.

18. Contract Standing Order 8 – review of upper limit value (presently £100K or greater but less than the relevant threshold)

- 18.1. Consequential upon the amendment proposed at paragraph 17 above, should Cabinet be in favour of the proposal, it is proposed that the lower limit at CSO 8 is amended to £189K to cover any gaps between the new limit and the relevant threshold.

19. Contract Standing Orders 9 and 12 - Single Tender Approvals

- 19.1. Contained within Standing Orders at CSO 9 and CSO 12 is specific provision for approval of STAs (Single Tender Approvals). In practice, STAs are required where a contract is awarded directly to a provider without competition. STAs cover 3 scenarios depending on the value of the contract.
- 19.2. Firstly, where the contract value is below the threshold for contracts caught by the Public Contract Regulations the STA would require a waiver of contract standing orders (CSO 12). CSO 12 also provides for other technical waivers of CSO's for example publication of notices.
- 19.3. CSO 12.1 sets out who has current responsibility for approving any waiver and is set out below for ease of reference.

“Where the estimated value of the Contract is less than £100,000, the Chief Officer within whose Area of Responsibility the Contract falls

Where the estimated value of the Contract is £100,000 or greater but less than £1m, the Head of Law and Governance and Monitoring Officer

Where the estimated value of the Contract is £1m or greater, the Executive or, in respect of Non-Executive matters, the Committee with delegated responsibility for the relevant service area”

- 19.4. Where the contract value falls at or above the threshold for contracts caught by the Public Contract Regulations, the STA requires approval of the use of the negotiated procedure without prior notice to award a contract.
- 19.5. Where the contract value falls at or above the threshold for contracts caught by the Public Contract Regulations and involves a proposed modification which has not been provided for in clear, precise and unequivocal review clauses within the contract the STA requires approval of the proposed modification.
- 19.6. CSO's 9.3, 9.4 and 9.5 set out who has current responsibility for approving the use of the negotiated procedure and proposed modifications. Currently responsibility rests with the Head of Law and

Governance and Monitoring Officer where the value of the contract is less than £1million, and with the Executive or (in the case of Non-Executive matters, the Committee with delegated responsibility for the relevant service area), where the value of the contract is £1 million or greater.

- 19.7. In relation to modifications it is sometimes the case that only a small additional amount 'pushes' a contract over £1 million which under CSO 9.5 would require approval by the relevant Executive Member.
- 19.8. It is proposed that the authority 'levels' set out at Contract Standing Orders 9.3, 9.4, 9.5 and 12.1 be amended so that STAs are aligned with decision making in relation to spend.
- 19.9. In this regard it is proposed that the lower limit of £100,000 for Chief Officer STA approvals without requiring consultation with the Head of Law and Governance and Monitoring Officer be amended to include values up to £189,000, as this would more closely mirror (but remain below) threshold levels in the UK Regulations.
- 19.10. In cases where the contract value is £189,000 or above and the decision relates to a non-strategic or policy decision, it is proposed that authority for the STA rest with the relevant Chief Officer in consultation with the Head of Law and Governance and Monitoring Officer. The present STA governance process would not change ensuring that Chief Officers would still be in possession of the appropriate legal and procurement advice in writing to inform their decision making. This would remove the 'additional step' of seeking Executive Member approval in the case of STAs for routine contracts with a value of £1million or greater and thus reflect the County Council's need for more agility in this area, while retaining appropriate governance arrangements. Should Cabinet be in favour of this it is proposed that STA approvals remain at Chief Officer or nominated Deputy Chief Officer level for the relevant service area (i.e. be non-delegable other than to a Deputy Chief Officer).
- 19.11. Where an STA relates to a decision on a strategic or policy level (which decisions under the Constitution are required to be made by Members), then the relevant Executive Member/Committee would continue to be required to provide the approval to the STA.

20. Contract Standing Order 10 – Receipt and opening of tenders

- 20.1. Addition of the wording 'independent of the procurement process' is proposed to make it clear that due regard is being paid to segregation of duties. Further, it is proposed CSO 10.2 is deleted as certification of training is no longer required due to the tender process being electronic.

21. Contract Standing Order 11 – Evaluation of Tenders and Award of Contract

- 21.1. Amendment to CSO 11 is proposed to amend the threshold for Chief Officers to sign and award contracts from £100,000 to £189,000 on the basis that contracts below £189,000 represent a lower risk to the County Council.
- 21.2. The proposed amendment to CSO11 continues to provide that where a contract is estimated in value over £189,000, or is of an unusual or complex nature, the Monitoring Officer should be consulted to produce a suitable set of conditions of contract.

22. Capital Expenditure

- 22.1. Requirements relating to the management of the Capital Programme are set out in Financial Regulations, a copy of which is attached at Appendix 2 for ease of reference. Regulation 2.27 which is reproduced below sets out specific approvals to spend required in the case of both additions to the capital programme, variations and variations.

Capital Programme Management

2.27 *Management of changes to the Capital Programme are defined in the following table:*

Additions : Existing or new schemes *			Approval to Spend	Variations and Variations *
100% funded by external sources	Funded by existing departmental revenue or capital sources	Funded by corporate resources including borrowing	If scheme is defined in capital programme and within approved cash limit	Variations across a programme of works within an overall scheme or variations up to £250,000
Any sum Approved by Chief Officer in consultation with Executive Member	Up to £250,000 (£500,000) Approved by Chief Officer in consultation with Executive Member		Up to £250,000 (£500,000) Approved by Chief Officer in consultation with Executive Member	(£500,000) can be approved by the Chief Officer in consultation with the Executive Member
	Up to £500,000 (£1 million) Approved by Executive Member		Over £250,000 (£500,000) Approved by Executive Member	Single variations over £250,000 (£500,000) Approved by Executive Member
	Over £500,000 (£1 million) Approved by Cabinet	Up to £5 million Approved by Cabinet	If not defined in the capital programme and not within cash limit	Single variations over £500,000 (£1 million) Approved by Cabinet

			Executive Member for P&R approval required	
	Over £2 million Approved by County Council	Over £5 million Approved by County Council		Single variations over £2 million Approved by County Council

For all decisions within the above table consultation with the Chief Financial Officer or their representative is required.

- * *If the addition or virements is not in line with current approved council policies and strategies, the decision must be made by County Council regardless of value.*

22.2. Financial Regulation 2.27 is self-explanatory. Similar to the financial threshold for a Key Decision, financial thresholds regarding Capital approvals have not been reviewed for some time, in this case not since 2015. It is considered for reasons of business efficiency given the scale of the County Council's Capital Programme, an increase to the limit of capital spend that Chief Officers, and similarly individual Executive Members / Cabinet, is appropriate. It is suggested that approval limits for Chief Officers and Executive Members are increased as shown in brackets in red in the table above. It should however be noted that similarly to any change to the financial threshold for a Key Decision and changes to Contract Standing Orders, any changes to Capital approval limits at Regulation 2.27 requires both the approval of approval of Cabinet and full Council.

23. Timelines / next steps

- 23.1. Should Cabinet be in favour of the recommendations in this report, then it is proposed to take a Part I report to full Council 4 November 2021, seeking authority for the necessary changes to be made to the Constitution, Contract Standing Orders and Financial Regulations.

24. Conclusion

- 24.1. Cabinet are asked to agree the Recommendations contained at paragraphs 5 – 8.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

This proposal does not link to the Strategic Plan but, nevertheless, requires a decision in order for amendment to be made to the Constitution, Contract Standing Orders and Financial Regulations.

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

None

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

It is considered that this report will have no adverse impact or cause no disadvantage to groups with protected characteristics.