

# Changes to the Constitution

Date:	17th October 2023
Agenda Item:	11
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Key Decision?	No
Local Ward Members	All



**Council**

## 1. Executive Summary

- 1.1 The Council's Constitution is reviewed and updated to ensure it remains fit for purpose, reflects changes in legislation, and provides appropriate delegations.
- 1.2 Matters for consideration arising from the most recent review are set out below.

## 2. Recommendations

- 2.1 That the following changes to the Constitution (as set out in the table below) be approved:
  - (i) That the Key Decision Limit for additional expenditure, income or savings be set at £150,000.
  - (ii) The acceptance of additional income over the key decision limit will be a key decision where there are significant resource implications/obligations for the Council (as determined by the Section 151 officer).
  - (iii) That a new Committee be established following the November/December Cycle of meetings to undertake the Member Standards functions of the Audit & Member Standards Committee.
  - (iv) That provision be made for the Audit Committee to include up to two 'Independent Persons'.
- 2.2 That Council note that the Constitution has been updated to reflect areas of responsibility delegated to individual Members of the Cabinet

## 3. Background

Proposed Change to the Constitution	Details
<b>1. That the Key Decision Limit for additional expenditure, income or savings be set at £150,000</b>	<p>The Key Decision limit was last reviewed in 2018.</p> <p>A revised limit of £150,000 is suggested taking into account:</p> <ul style="list-style-type: none"><li>• The CIPFA Family Group average<sup>1</sup></li></ul>

<sup>1</sup> Chartered Institute of Public Finance & Accountancy is the UK-based international accountancy membership and standard-setting body.

- The type of decisions that will be affected
- Inflation over the last 5 years and the need to provide a degree of future proofing until the next review.

A key decision is defined as a decision likely to:

- result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates, or
- to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the Council's area.

Currently any decision involving additional expenditure, income or savings over £75,000 will be a key decision. The figure is not statutory and is determined by the Council.

Key Decisions have the following implications:

- The Cabinet is required to give at least 28 days' notice before making a decision.
- The decision must be made by Cabinet and cannot be made by an individual Cabinet Member (with the exception of contracts that are within budget).

The proposed key decision limit of **£150,000** would be in the context a revenue budget of £13.8m (2023/24).

### **Benchmarking**

The key decision limit was last reviewed in 2018. Allowing for inflation the original key decision limit would now be in the region of £93,000.

We have recently benchmarked with other local authorities (see **APPENDIX A**):

- The average across our CIPFA family group is £142K for revenue (170K for capital projects).
- For Staffordshire Districts, the key decision limit varies from £100K in Tamworth to £500K in Stafford Borough.

The figure of £150,000 brings the Council's key decision limit in line with the CIPFA family group average. It takes into account the nature of the decisions that would be affected and provides a degree of future proofing (preventing an increasing number of issues becoming key

	<p>decisions due to inflation).</p> <p><b>Impact of the Proposal</b></p> <p>The proposal only impacts decisions <i>within approved budgets</i> that <i>only qualify</i> as key decisions due to the expenditure incurred (i.e there is no significant impact on two or more Wards).</p> <p>As such there will be little impact on the number of reports considered by Cabinet.</p> <p>The main impact will be on decisions taken by Cabinet Members (who can approve of contracts within existing budgets up to £400,000).</p> <p>From May 2022 to September 2023 there have been 31 decisions taken by Cabinet Members of which 18 were key decisions (<b>APPENDIX B</b>). Of the 18 key decisions:</p> <ul style="list-style-type: none"> <li>• 10 (44%) were below 150K.</li> <li>• 8 (56%) were above 150K.</li> </ul> <p><b>Benefit of the Proposal:</b></p> <p>The proposed key decision limit will enable the Council to focus on strategic/significant decisions, while enabling more routine business decisions to be undertaken as quickly and efficiently as possible with reduced lead in times.</p> <p>It is important to note:</p> <ul style="list-style-type: none"> <li>• If a decision is significant in terms of its effects on communities living or working in an area comprising two or more wards, it will still be a key decision irrespective of the level of expenditure/savings.</li> <li>• Ward Members will continue to be consulted</li> <li>• all Members will continue to be notified when Decision Notices are published.</li> <li>• The ability to call-in a decision will be unaffected.</li> <li>• Any decision impacting the Medium Term Financial Strategy has to be approved by Full Council.</li> </ul>
<p><b>2. The acceptance of additional income over the key decision limit will only be a key decision where there are significant resource</b></p>	<p>The acceptance of additional income over the key decision limit is currently a key decision.</p> <p>It is proposed that this be amended/clarified so:</p> <p><i>the receipt of income is only a key decision where there are significant</i></p>

<p><b>implications/obligations for the Council.</b></p>	<p><i>resource implications/obligations for the council (e.g. match funding, staff time) as determined by the Section 151 officer.</i></p> <p><b>Impact of the Proposal</b></p> <p>Any income with implications for the council will continue to be treated as a key decision. The Council will be able to accept other grants without delay – the timetable for these is often outside the control of the Council (e.g. Government grants) and delays can jeopardise funding.</p> <p><b>Benefit of the Proposal:</b></p> <p>The ‘passporting’ of grants and receipt of additional income where there are no additional implications for the Council, will not be subject to, and potentially delayed by, key decision requirements.</p>
<p><b>3. That a new Committee be established to undertake the Member Standards functions of the Audit &amp; Member Standards Committee (to comprise 9 Members).</b></p>	<p>Member Standards and Member Complaints are currently overseen by Audit &amp; Member Standards Committee and its Sub-Committees.</p> <p>CIPFA has published guidance on the function and operation of Audit Committees in local authorities and police bodies<sup>2</sup>. On Ethical values the guidance states:</p> <p>‘Authorities have a standards committee to oversee member conduct and review complaints. <b>This is not a function of the audit committee and combining the two committees should be avoided.</b>’</p> <p><b>Benefit of the Proposal</b></p> <ul style="list-style-type: none"> <li>• The Council will comply with CIPFA guidance and best practice.</li> <li>• Audit Committee has a heavy workload and limited capacity for Member Standards work.</li> <li>• The separation of audit and member standards functions will provide greater focus and capacity for both functions.</li> </ul> <p>It is suggested that Audit and Member Standards Committee becomes Audit Committee (with provision to appoint up to two independent members as agreed at Audit &amp; Member Standards on 27 September - see 4 below).</p> <p>The new Member Standards Committee is likely to meet as and when required (one of the first tasks could, potentially, be to consider adoption of the LGA Model code of Conduct).</p> <p>The Committee will comprise 9 Members and be the parent Committee</p>

<sup>2</sup> CIPFA published guidance on the function and operation of Audit Committees in local authorities and police bodies and this represents good practice for audit committees. The guidance updated in 2022 and incorporates CIPFA’s Position Statement: Audit Committees in Local Authorities and Police (2022) (the Position Statement)

	<p>for the Review Sub-Committee and Assessment Sub-Committee. The functions, responsibilities and delegations are listed at <b>APPENDIX C</b>.</p> <p>Special Responsibility Allowances will be reviewed by the Independent Remuneration Panel. There is a strong argument that the SRA for Audit Committee should remain the same as Audit and Member Standards given the nature of the work and fact that there will be no reduction in workload for the Committee (indeed the change is in recognition of the Committees high workload).</p>
<p><b>4. That provision be made for the Audit Committee to include up to two ‘Independent Persons.</b></p>	<p>The Council’s Constitution currently allows for one independent person to be co-opted to Audit &amp; Member Standards Committee.</p> <p>In line with CIPFA guidance Audit &amp; Member Standards Committee has recommended that up to two independent members be appointed (meeting held on 27 September 2023).</p> <p>It is therefore proposed that provision be made in the constitution for <i>up to two members to be appointed to the Committee responsible for audit.</i></p> <p><b>Benefit of the Proposal</b></p> <ul style="list-style-type: none"> <li>• In line with best practice and CIPFA guidance.</li> <li>• An external view can often bring a new approach to committee discussions.</li> <li>• To bring additional knowledge and expertise to the committee where there may be skills gaps.</li> <li>• To reinforce the political neutrality and independence of the committee.</li> <li>• To maintain the continuity of committee membership where membership is affected by the electoral cycle.</li> </ul>

Alternative Options	1. That one or more of the changes are amended or not approved.
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Consultation	1. As a decision of full council all members will be able to speak on the matter.
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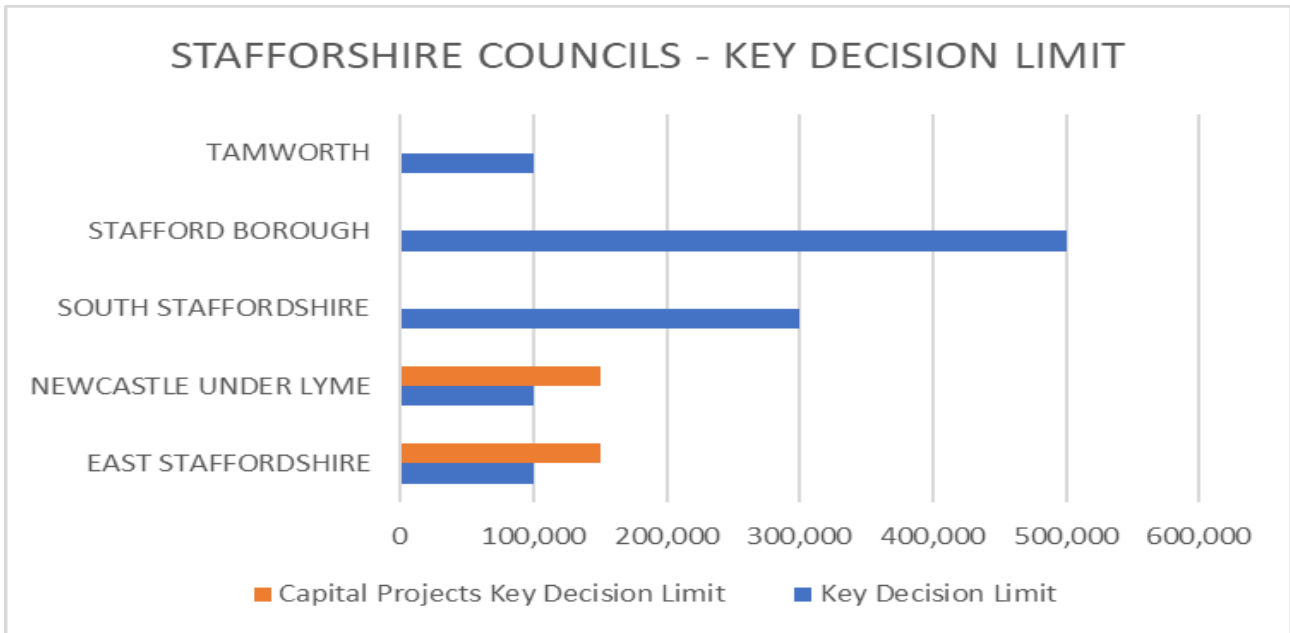
Financial Implications	<ol style="list-style-type: none"> <li>1. There are no direct financial implications from these proposals.</li> <li>2. The proposal that the constitution be updated to include up to two ‘independent persons’ was reviewed by Audit and Member Standards Committee on 27 September 2023 prior to the recommendation to Council.</li> <li>3. Consideration should be given, where practicable, to broader changes to the Constitution (subject to minor and consequential amendments continuing to be delegated to the Monitoring Officer) being reported for consideration by the Audit Committee prior to consideration by Full Council. This approach would be in line with Good Practice adopted at</li> </ol>
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	many other Councils and would require a further constitutional update.
Approved by Section 151 Officer	Yes
Legal Implications	1. The constitution sets out how the Council conducts its business and is regularly reviewed to ensure it reflects legislative changes and best practice.
Approved by Monitoring Officer	Yes
Contribution to the Delivery of the Strategic Plan	1. The proposal will contribute towards the following strategic objectives: <ul style="list-style-type: none"> <li>• A council that is transparent and accountable</li> </ul>
Equality, Diversity and Human Rights Implications	1. None
Approved by Equalities Officer	Yes/no*
Crime & Safety Issues	1. None
Environmental Impact (including Climate Change and Biodiversity).	1. None
GDPR / Privacy Impact Assessment	1. None

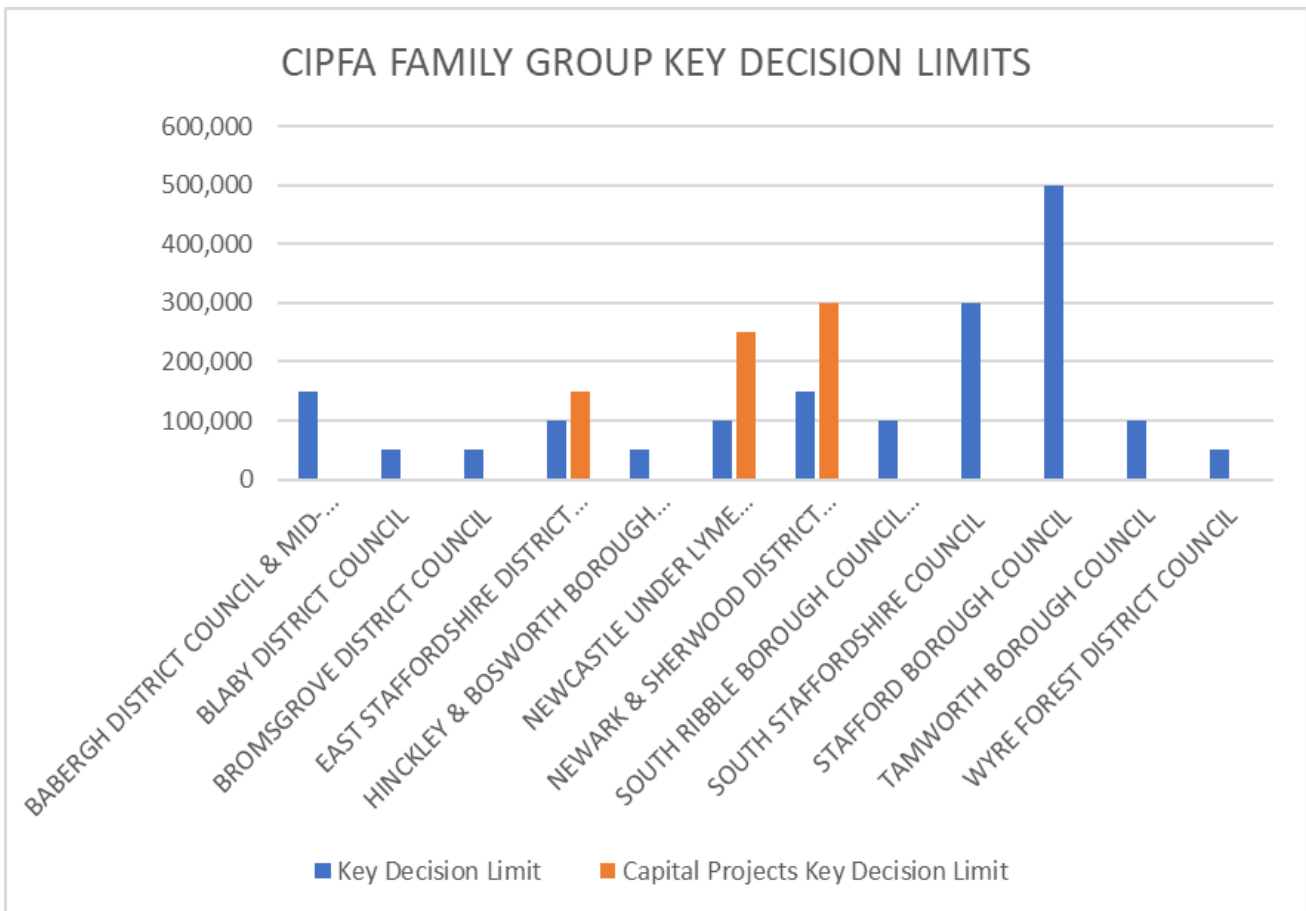
	Risk Description & Risk Owner	Original Score (RYG)	How We Manage It	Current Score (RYG)
A	Legal Challenge due to the Constitution not being up to date.	Yellow	Review the constitution on a regular basis	Green
B	Insufficient Awareness of Decisions below the Key Decision Limit	Yellow	Ward Members are consulted, Members are notified when decisions are made, decisions are published, Call-In is still applicable.	Green

	Background documents
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	Relevant web links
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\* The chart above shows published fixed key decision limits. A minority of authorities use alternative methods. Cannock Chase District Council sets the key decision threshold at 0.5% of the gross turnover of the Council. Staffordshire Moorlands refers to significant expenditure but has not published a set figure on its Forward Plan.





**Impact of increasing the Key Decision Limit to £150,000**

From May 2022 to September 2023 there have been 31 decisions taken by Cabinet Members of which 18 were key decisions.

Of the 18 key decisions:

- 10 (56%) were below 150K (shown in green).
- 8 (44%) were above (shown in orange).

Cabinet Member Decision	Decision Date
*Temporary Agency Staffing	21/09/2022
*Fuel Supply Framework Contract Award	15/02/2023
*Incubator Space Phase 3 First Floor Refurbishment	20/04/2023
*Contract Award for Insurance	15/02/2023
*IT Strategy - scaffolding and interim support	02/12/2022
*Incubator Space Upgrade	02/11/2022
*Write-off of council tax debt relating to current Local Council Tax Support (LCTS) claimants	06/03/2023
*LDC-254 MPF	16/11/2022
*Works for the Ground Floor Redevelopment at DCH	26/05/2022
*Council Tax Energy Rebate Implementing the Discretionary Fund	16/06/2022
*Housing Benefit Assurance Contract Award	13/02/2023
*Contract Award for Garden Waste Stickers	30/06/2022
*Hybrid & Bulk Mail Solution	20/03/2023
*Incubator Space Phase 3	06/01/2023
*Chatbot Implementation	24/05/2022
*Contract for Learning Management Software	27/06/2022
*Treasury Management Contract Award	07/06/2022
*Contract Award for the Development of a Design Code SPD	28/11/2022

## MEMBER STANDARDS COMMITTEE – FUNCTIONS

Function	Delegations
To promote and maintain high standards of conduct by Councillors (including Parish Councillors)	
To be the Standards Committee for the Parish Councils in the District of Lichfield	
To consider and determine allegations the Councillors, including Parish Councillors have breached the Code of Conduct of the relevant authority in accordance with the arrangements approved by the principal Council.	Assessment Sub-Committee Review Sub-Committee Monitoring Officer initial assessment of complaint and local resolution.
To monitor that such Member Codes of Conduct have been adopted by the Council and the Parish Councils and that Members of the Councils concerned have signed to accept the provisions of the relevant Code	Monitoring Officer
To ensure that arrangements are made for advice to be available to assist members to comply with the adopted Codes of Conduct	Monitoring Officer
To ensure that arrangements are put in place for keeping and updating the Registers of Members' Interests for the Council and for the Parish Councils	Monitoring Officer
Advising on training for Councillors, Parish Councillors and co-opted members on matters relating to the Code of Conduct	Monitoring Officer
Functions relating to standards of conduct of councillors under any relevant statutory	Monitoring Officer
Functions relating to standards of conduct of councillors under any relevant statutory provision	Monitoring Officer
The determination of applications from Lichfield District Councillors for dispensations in accordance with statutory provision	Monitoring Officer as set out in Part 3 of the Constitution.