

**OPENNESS OF LOCAL GOVERNMENT BODIES REGULATIONS 2014**

*To:* **Constitution and Ethics Committee**

*Meeting Date:* **26th January 2017**

*From:* **LGSS Director of Law & Governance  
and Monitoring Officer**

*Purpose:* **To consider the response from Strategic Management Team (SMT) to the points made by the Constitution and Ethics Committee in relation to the threshold of £250,000 to determine materiality under the Openness Regulations.**

*Recommendation:* **The Committee is recommended to:**

- a) Maintain the existing regulations and threshold at £250,000 for using the Openness Regulations form
- b) Note that the Contract Register enables all contracts over the value of £25k to be reported publicly

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## 1.0 BACKGROUND

- 1.1 The Openness of Local Government Bodies Regulations 2014 came into force in September 2014 and intended to promote openness by requiring local authorities to:
- a) permit any person to attend council meetings and to publish/communicate, by any means, the proceedings of the meeting.
  - b) produce and publish a written record of certain types of decisions taken by officers exercising delegated authority.
- 1.2 The regulations require a written record to be made of any decision taken by an officer of the council
- i) under a specific express authorisation, or
  - ii) under a general authorisation where the effect of the decision is to
    - a. grant permissions or licences,
    - b. affect the rights of individuals,
    - c. award contracts or incur expenditure which **materially affects** the body's financial position
- 1.3 The regulations, as drafted, permit some local discretion as to the financial value of the decisions to be recorded. Following a recommendation from the Constitution and Ethics Committee, the Council agreed the recommendation below at its meeting on 12 May 2015:
- a) agree that the requirement for a written record to be made of any decision taken by an officer of the council
    - i) under a specific express authorisation, or
    - ii) under a general authorisation where the effect of the decision is to
      - a. grant permissions or licences,
      - b. affect the rights of individuals,
      - c. award contracts or incur expenditure over £250kbe reflected in Parts 3D (Scheme of Delegation to Officers) and 4.2 (Access to Information Procedure Rules) of the Constitution, as set out in Appendices C and D respectively.
- 1.4 The regulations require that the written records are made available to the public at the council's offices, on their website, by post if requested and on receipt of payment for copying and postage, and through any other means thought appropriate by the council. The written record must be available for public inspection for at least six years, and any supporting documentation for at least four years. Written advice was provided to officers following the Council meeting and is attached at **Appendix A**.
- 1.5 The written record of the officer's decision must be available as soon as reasonably practicable after the decision has been taken. The written record should include:
- The decision taken and the date the decision was taken;
  - the reason(s) for the decision;

- any alternative options considered and rejected; and
- any other background documents.

A copy of the written record template is attached at Appendix B.

## **2.0 CONSTITUTION AND ETHICS COMMITTEE**

2.1 At its meeting on 22nd September, the Constitution and Ethics Committee received a report inviting it to review the threshold of £250,000 to determine materiality under the Openness Regulations. Advice had been sought from SMT regarding the burden of reducing the publication threshold. The Committee was reminded that it had reviewed and approved this threshold at its meeting on 4 February 2016, but had suggested that it be reviewed again in six months' time.

2.2 Discussing the report, members

- expressed surprise that no spending decisions in excess of £250,000 had been taken in relation to Children, Families and Adults (CFA) Services since May 2015; it was pointed out that a number of spending decisions over the threshold could well have been unpublished because to do so would have involved publishing confidential information, and that expenditure over £500,000 had to be considered by the relevant Policy and Service Committee as a Key Decision
- stressed the importance of being as transparent as possible, and cast doubt on the accuracy of the SMT prediction that reducing the publication threshold to £50,000 would increase the administrative burden significantly, and would have the potential to compromise the completion of other work. Councillor Bullen, seconded by Councillor Reeve, proposed that the threshold be lowered to £50,000
- commented that there should be little bureaucracy involved in a system when all decisions were anyway recorded electronically, but noted that officers were required to complete a detailed template form, as attached to the report
- suggested that the Director of Customer Service and Transformation be asked to investigate ways of using technology to facilitate the process of gathering the information automatically, even if some cost had to be incurred in developing the necessary systems to enhance transparency
- stressed that they had asked to know what the extra burden would be – if any – of having a £50,000 threshold under Openness Regulations; they had instead only been supplied with suppositions
- requested that SMT be asked for further information, for evidence on why the burden of supplying the information on the template would be excessive, and for information on the effect, if any, on freedom of information requests
- also requested that SMT be given the message that the Committee was not setting out to make matters difficult and increase the burdens on them.

It was proposed by the Chairwoman and resolved unanimously

- to defer until the Committee's November meeting a decision on the appropriate threshold to determine materiality under the Openness Regulations
- to ask the Democratic Services Manager and the Monitoring Officer to convey the points made in the course of discussion to members of the Strategic Management Team, and to seek the evidence requested.

2.3 The Committee was told that in accordance with the Local Government Transparency Code, the Council is already required to publish all spending transactions over £500, as well as all Government Procurement Card spending and contracts valued over £5,000. From July 2010 spending transactions over £500 have been published on the council's website at [http://www.cambridgeshire.gov.uk/info/20043/finance\\_and\\_budget](http://www.cambridgeshire.gov.uk/info/20043/finance_and_budget); since April 2015, expenditure over £500 has been published on Cambridgeshire Insight at <http://opendata.cambridgeshireinsight.org.uk/dataset/cambridgeshire-county-council-expenditure-over-%C2%A3500>. It was felt that it might be possible to review how this information is presented to meet the requirements of the Openness Regulations.

### **3.0 STRATEGIC MANAGEMENT TEAM (SMT)**

3.1 SMT met on 22 December 2016 and was asked to:

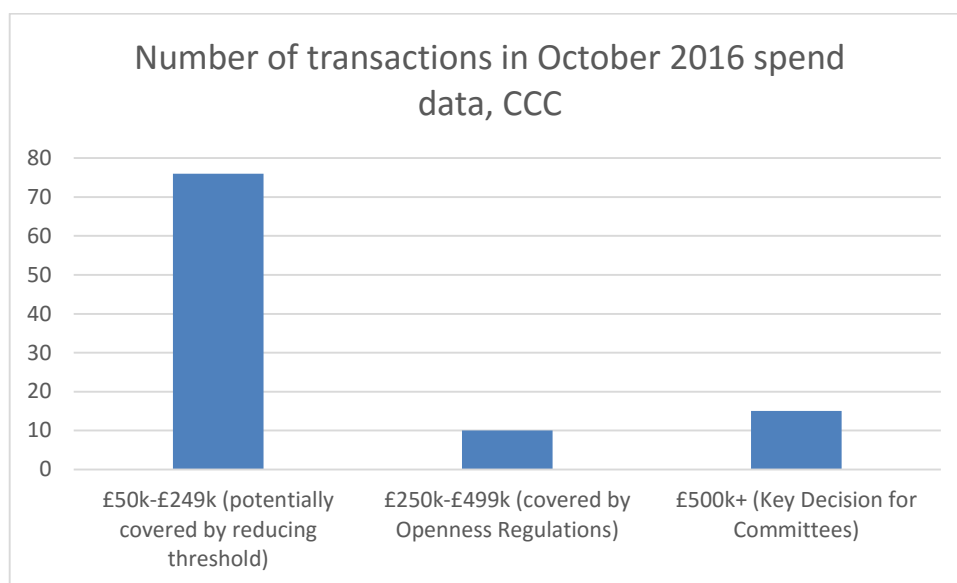
- provide evidence regarding how reducing the threshold would increase the administrative burden significantly.
- investigate ways of using technology to facilitate the process of gathering the information automatically.

#### Evidence of Administrative Burden

3.2 Part 3D of the Council's constitution, and the Scheme of Authorisation, available from [http://www.cambridgeshire.gov.uk/info/20050/council\\_structure/288/councils\\_constitution](http://www.cambridgeshire.gov.uk/info/20050/council_structure/288/councils_constitution), set out the range and structure of delegations to officers of decision-making. It is the decisions referred to in these documents that are required to be reported on by the Openness Regulations. For example, there are more than 50 areas for decision making, ranging from administering partnership agreements with English Heritage to making changes to times for mobile libraries, currently delegated to Economy, Transport and Environment. There are more than 40 distinct areas delegated to Children, Families and Adults, ranging from approving loans to foster parents, applying to control the number of children who attend a school, to fulfilling responsibilities in relation to social care for adults. Many of these decisions could have financial implications that are above a £50k threshold.

3.3 However, it is difficult to precisely estimate the number of decisions that could be affected by a change in the threshold because the scope and range of decisions is so broad. This means that there is not a consistent process for making them. The lack of a consistent process means it is difficult to count these decisions because they are not recorded in a single place.

- 3.4 In order to estimate the additional work required by providing more information on lower value transactions, we can use other data sources. These show that the volume of transactions is higher at lower values, implying that reducing the threshold for reporting would increase the administration required to comply with the regulations.
- 3.5 This report has looked at two data sources – the £500 spend data, and the care budgets. Looking at the October 2016 spend data, there were over 14,000 transactions with a value £500 or more. Most of these transactions (nearly 12,000) were less than £50k. However, of the remainder, there were nearly 8 times more in the band £50k-£249k than in the £250k-£499k band, suggesting that providing more information about lower value decisions would represent a significant extra burden for the organisation.



- 3.6 Approximately 75% of all the transactions are with care establishments, although less than 0.1% of these are above £50k individually. This suggests that a significant volume of the transactions is about care package costs, and over a full year some of these care packages may cost more than £50k<sup>1</sup>. Analysis of the estimated annual value of care packages in children's and adults' services in February 2015 showed that the distribution was as follows:

<b>Adult Social Care packages, snapshot February 2015</b>		
Estimated gross annual value (data rounded to nearest £10,000)	Number of packages	Proportion of packages
Up to £49k	7939	91.79%
£50k - £99k	576	6.66%
£100k - £149k	104	1.20%
£150k - £199k	20	0.23%
£200k - £249k	7	0.08%
£250k +	3	0.03%
Total	8649	

<sup>1</sup> It is difficult to estimate the true annual value of care packages because the circumstances of each package are unique and the duration of the package / placement may vary depending on need.

<b>Children's services packages, snapshot February 2015</b>		
Estimated gross annual value (data rounded to nearest £1,000)	Number of packages	Proportion
Up to £49k	416	76.75%
£50k - £99k	78	14.39%
£100k - £149k	27	4.98%
£150k - £199k	14	2.58%
£200k - £249k	6	1.11%
£250k+	1	0.18%
Total	542	

- 3.7 In both of these service areas, changing the threshold would be likely to bring many more packages under the reporting requirements, increasing the administrative burden of this requirement.
- 3.8 Analysis by Finance has suggested that it would require approximately an extra day per month to produce the required information for new packages using a £50k threshold.
- 3.9 However, this may not be a helpful investment of resource. Decision-making on the residential / placement packages, and high value community-based packages, is managed by panels in both adults' and children's services. Application materials are prepared by social workers or care managers. The detail of these applications are extremely personal, as they are based on assessed social care needs, and disclosure is very carefully handled. Publication of the details of applications considered by these panels would require anonymisation, and redaction of commercially sensitive information such as agreed prices for care. Based on experience completing Subject Access Requests and other statutory disclosures of information, this process is likely to add extra time, and reduce the usefulness of the information, because the detail of the specifics of someone's need and placement is necessary to understand why a particular placement has been made.

#### Investigate Way of Using Technology to Facilitate the Process

- 3.10 However, it is believed that there may be an alternative way to transparently share information about decisions that imply lower value expenditure. As previously noted, the Council publishes data about spending decisions in a number of different ways. These are summarised in the table below.

Value of expenditure	Public report	Key data items under the regulations	Location
<£500	Not publicly reported		
>£500	Transparency data	Date paid, transaction number*	Cambridgeshire Insight open data website
>£25k (contracts)	Contract Register	Date awarded, officer contact, reference numbers*	Public Contracts Register portal (available via CCC website)

Value of expenditure	Public report	Key data items under the regulations	Location
£250k - £500k	Openness Regulations report	Date decision made, officer contact, reason for decision, alternative options, references to background documents	Committee minutes section of CCC website
>£500k	Key Decision for Committee	Date decision made, officer contact, reason for decision, alternative options, references to background documents	Committee papers website
Expenditure and activity data	Finance and Performance reports to Committees	Spend, profile, activity data – for all care budgets	Committee papers website

\* These reference numbers enable the circumstances and reasons for that expenditure or commitment to be reported. This research process would be done manually at present, in a similar way to the process for FOI requests for example.

- 3.11 It may be possible to use the publication of the Contract Register information to support the current arrangements of the Openness Regulations. It is the policy of the Council that all contracts with a value of more than £25k should be recorded on the Contract Register. This is accessible to the public via [http://www.cambridgeshire.gov.uk/info/20092/business\\_with\\_the\\_council/37/business\\_with\\_the\\_council/2](http://www.cambridgeshire.gov.uk/info/20092/business_with_the_council/37/business_with_the_council/2). Analysis of an extract from the Contract Register taken in January 2017 showed the following contracts had been awarded since May 2015:

#Award date	May 15- Dec 16				
Central purchasing body	Cambridgeshire County Council				
Department	Number of contracts	Estimated overall value	Estimated annual value	Number of contracts with overall value <£500k	Number of contracts with overall value <£250k
CCC - Adults Services	25	£55,547,124	£11,706,823	8	5
CCC - Childrens Services	35	£40,576,940	£13,596,806	23	17
CCC - Highways and Transport	24	£875,206,077	£201,011,618 <sup>2</sup>	15	12
CCC - Other Services	17	£3,834,075	£664,754	14	13
CCC - Public Health and Wellbeing	4	£2,510,786	£684,898	2	1
LGSS - Finance	3	£1,060,000	£335,000	2	1
LGSS - Insurance	2	£400,000	£60,000	2	1
LGSS - IT	2	£261,400	£192,000	2	2
LGSS - Legal	1	£150,000	£50,000	1	1
LGSS - Other Services inc. Corporate and Business Services	1	£500,000	£166,666		
LGSS - Property Estates	1	£1,600,000	£400,000		
LGSS - Property FM Services	6	£27,660,473	£7,353,491	1	
<b>Grand Total</b>	<b>121</b>	<b>£1,009,306,875</b>	<b>£236,222,056</b>	<b>70</b>	<b>53</b>

<sup>2</sup> This includes a large contract for Highways Services, managed by the Council on behalf of Eastern Highways Alliance, which increases the value significantly.

- 3.12 Referring to this as a key data source for reporting decisions that have implications for spending between £25k and £250k would enable the use of existing procedures for reporting contracts publicly with a value of £25k and up, with no extra bureaucracy.
- 3.13 The protocol for updating the Contract Register is currently being reviewed by the Commercial Board (chaired by the Deputy Chief Executive). The revised protocol will set out how the Contract Register can be used to report the wide variety of spending decisions the Council makes, including reporting of social care framework contracts and placements, section 75 agreements, and contract exemptions. It will also refer to the requirement to complete the written record form at the appropriate threshold.
- 3.14 The current system for maintaining the Contract Register (Due North) cannot be updated to include the information on alternative options, reasons for decision etc. but the Contract Register does include the contact name of the Officer responsible for the contract who will be required to maintain the written record. The opportunity will be taken to review whether the move to ERP Gold will allow this written record to be held on the system to simplify data collection and publication.

Source Documents	Location
Spend over £500 reports	<a href="http://opendata.cambridgeshireinsight.org.uk/dataset/cambridgeshire-county-council-expenditure-over-%C2%A3500">http://opendata.cambridgeshireinsight.org.uk/dataset/cambridgeshire-county-council-expenditure-over-%C2%A3500</a>
Contract Register	<a href="https://www.lgssprocurementportal.co.uk/">https://www.lgssprocurementportal.co.uk/</a>
Agenda and minutes of the Constitution and Ethics Committee, 22 September 2016	<a href="https://cmis.cambridgeshire.gov.uk/ccclive/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/166/Committee/10/Default.aspx">https://cmis.cambridgeshire.gov.uk/ccclive/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/166/Committee/10/Default.aspx</a>



### **Draft Guidance as to which Decisions Must be Recorded.**

Due to the broad scope of the regulations and the large number of decisions that they could cover, it would be extremely difficult to produce an exhaustive list of the decisions which must be recorded and published. This briefing note does not attempt to do this. Instead, it has been designed to raise awareness of the requirements and provide some guidance and advice for officers charged with making such decisions.

Examples of decisions that should be recorded under these regulations include:

- A decision to awarding a contract or incur expenditure above the threshold of (£250k - £500k);
- A decision to grant a permission for major road works;
- A decision to grant, suspend or revoke licences or concessions;
- A decision to determine a permission, such as for planning permission or to serve a planning contravention, breach of condition or stop notice; and
- A decision which could result in the rights of a specific individual differing from those of the majority of the general public (e.g. a vexatious individual being banned from council premises).

### **Exceptions and Decisions which do not need to be Recorded**

It is important to note that where decisions are already required to be published by other legislation, they do not need to be recorded again provided that the record published includes the date the decision was taken and the reasons for the decision.

The Government has also issued guidance which states that decisions which are operational and administrative – in other words decisions which the public would reasonably expect to be taken by an officer in order for the council to operate on a day-to-day basis - do not need to be recorded. Decisions which do not need to be recorded might include the following examples:

- Routine administrative and organisational decisions such as giving permission to a local society to use the authority's premises;
- Decisions on operational matters such as day to day variations in services;
- Decisions to issue permissions or licences which are purely routine such as a licence for a skip;
- Decisions to give business relief to individual traders;
- Decisions taken in response to requests under the Data Protection Act 1998 or the Freedom of Information Act 2000.

There are also important exemptions which outline circumstances in which records of decisions must not be published:

- Information relating to any individual.
- Information which is likely to reveal the identity of an individual.
- Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- Information relating to any consultations or negotiations in connection with any labour relations matter arising between a council and its employees.
- Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

- Information which reveals that the authority proposes to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or to make an order or direction under any enactment.
- Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

Please note that these decisions must still be recorded – they are just exempt from the requirement to publish a record of the decisions.

**Cambridgeshire County Council Record of Decision**

**Decision taken by an officer of the Council**

<b>Title of decision</b>	
<b>Date decision taken</b>	
<b>Decision maker</b>	
<b>Details of decision taken</b>	
<b>Reasons for taking decision</b>	
<b>Options considered</b>	
<b>Details of any conflict of interests declared</b>	
<b>Details of any disclosable pecuniary interest or non-statutory disclosable interest declared</b>	

Signature of decision maker (if appropriate)

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