

**Name of meeting: Corporate Governance and Audit Committee**

**Date: 12 May 2017**

**Title of report: The Call In Process in Kirklees**

**Purpose of report:** To set out the findings of research into approaches to the Call In process and consider options for amending practice in Kirklees.

<b>Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?</b>	<b>Not applicable</b>
<b>Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports?)</a></b>	<b>Not applicable</b>
<b>The Decision - Is it eligible for call in by Scrutiny?</b>	<b>No – the decision will be taken by the Council</b>
<b>Date signed off by <u>Strategic Director</u> &amp; name</b>	<b>Give name and date for Cabinet reports</b>
<b>Is it also signed off by the Service Director for Finance IT and Transactional Services?</b>	<b>Give name and date for Cabinet reports</b>
<b>Is it also signed off by the Service Director for Governance and Commissioning Support?</b>	<b>Julie Muscroft</b>
<b>Cabinet member <a href="#">portfolio</a></b>	<b>Cllr Graham Turner</b>

**Electoral wards affected:** All

**Ward councillors consulted:** None

**Public or private:** Public

## 1. Summary

**1.1** Following earlier consideration by Corporate Governance and Audit Committee on a protocol in respect of call in meetings, the Committee agreed that the Overview and Scrutiny Management Committee could implement the initial proposals. However in light of feedback following a series of call in meetings, the Committee approved a further piece of work to examine the approach to Call-in in Kirklees and determine whether any changes or clarification of current arrangements were required.

**1.2** This report sets out the findings of research into approaches to call in, including steps that could be taken prior to getting to the call in stage. The report presents options which aim to address learning from recent call in meetings whilst ensuring a transparent process going forward.

**1.3** Following consideration by leading councillors as part of consultation, it was agreed that the call in work should be rolled into a more fundamental proposal regarding the future operating model for Overview and Scrutiny in Kirklees. This report is therefore accompanied by a further report proposing amendments to current Scrutiny arrangements.

## 2. Information required to take a decision

### 2.1 Legislative background

The Local Government Act 2000 saw the establishment of the Executive/ Scrutiny model of governance. As part of the functions of Scrutiny set out in the Act, Section 21(3) of the Act states that overview and scrutiny has:

*The power of an overview and scrutiny committee under subsection (2)(a) includes power to review or scrutinise a decision made but not implemented –*

*(a) to recommend that the decision be reconsidered by the person who made it,*

*or*

*(b) to arrange for its function under subsection (2)(a), so far as it relates to the decision, to be exercised by the authority.*

The power to review a decision prior to implementation is a core part of the role of overview and scrutiny committees in holding the Executive to account for the decisions it has made. They can call-in a decision which has been made by the executive but not yet implemented and may recommend that the executive reconsider and amend the decision.

Government guidance makes it clear that call-in should rarely be exercised and that councils should act to ensure that their local protocols and procedures meet this end.

### 2.2 Early Intervention options prior to call in

Cabinet decisions can be scrutinised at a number of different stages in the decision making process. There are different ways of undertaking this role; the most common mechanisms for scrutiny are set out below:

- Pre-Scrutiny - The role of Pre-Scrutiny was established to provide a clear focused member lead process at the pre-decision stage. This is the process by which Members of the Overview and Scrutiny Committee (or Panel) become involved with decisions at a stage before the decision is formally taken. This approach is advantageous for the following reasons:

- It involves non-executive Councillors at the pre-decision stage;
- It could reduce the need for call-ins through developing an understanding of an issue, and ensuring that reports for decisions adequately reflect different options and approaches;
- It adds value to reports through wider consultation.

It requires that the OSMC is made aware of forthcoming decisions that Cabinet /Committee will be addressing at an early stage. The constitution is clear that the Committee must use this knowledge to identify at an early stage to the Cabinet Member the issues that they are concerned about, particularly if the work is focused on a particular option and likely decision.

If there are cases where differences cannot be resolved and/or an item arises at short notice on an agenda then there is a procedure set out below which gives the OSMC an opportunity to issue a formal 'notice of concern'.

- Notice of Concern - The procedure for this is set out in Section 4 of the Constitution – Overview and Scrutiny Procedure Rules. The OSMC takes receipt of the Forward Plan, information about decisions to be taken and reports to Cabinet containing recommendations. If they feel that Scrutiny's concerns have not been addressed and the Scrutiny Panel Chair or Chair of OS is unhappy with the report recommendation, the OS Panel Chair or Chair of Scrutiny can issue a 'notice of concern'.

All councillors who are not in Cabinet can contribute to Overview and Scrutiny and request Overview and Scrutiny issue a notice of concern setting out the grounds for concern. The item can be deferred for further consideration or continue on the agenda. This is an opportunity for any areas of weakness to be highlighted.

## **Effective report writing**

**2.3.** A Cabinet report is an important document for pre-scrutiny concerns as it sets out in detail the options and information required by Councillors to assist in their decision making. It is essential that reports are sufficiently detailed, clear and unambiguous with the required information and options available. There is a clear link between the effectiveness of pre-scrutiny and the quality of report writing. High quality reports provide a further opportunity to support robust decision making and ensure any concerns are adequately addressed. One essential element is to ensure that all options are set out fully in reports and reasons why they are not appropriate. This report does not focus on this area in detail as there is already a review being carried out by the Governance team, in relation to report writing and report writing guidance.

## **3. The Kirklees Council Approach to Call In**

**3.1** The Overview and Scrutiny Procedure Rules in the Council's Constitution set out the process to be followed to call in a decision. It is important to note that section 16 of the O & S Procedure Rules sets out the principles that underpin the approach in Kirklees to scrutinising decision making.

**3.2** It emphasises that one underpinning principle is that the Council is one body and it is in the interests of Councillors and the public that the Council makes the right decision first time. Implicit in this is a constructive role for Overview and Scrutiny to be proactive in raising concerns before a decision is made.

The Constitution states that Overview and Scrutiny Lead Members (or members with portfolios) should be working with the Cabinet Member and senior officers to build up an

understanding of the work programme in that portfolio, including the decisions that are on the horizon.

Scrutiny should be making the Cabinet Member aware at an early stage of any issues of concern. Grounds for concern may include that all options are not being adequately explored or that there may not have been adequate public consultation

### **The procedure in Kirklees**

**3.3** The call in process in Kirklees is set out in the Council's Constitution at section 18 of the Overview and Scrutiny Procedure rules. The current procedure is attached at Appendix 1. The main points of the process are:

- The decision notice setting out the Cabinets decisions is published
- There is a period of 5 working days in which a decision may be called in. The 5 days starts on the next working day after the day the decision is taken and ends at 5.30 p.m. on the 5<sup>th</sup> working day.
- A decision can only be called in by giving written notice on an electronic pro forma. The pro forma must be signed by all parties to the call in and must state the reasons for the suspension of the decision and request a review.
- A decision can be called in by:
  - either 5 non-executive councillors
  - or 2 Members of the Overview and Scrutiny Management Committee, one of whom must be the Chair
  
  - or 2 Members of the relevant Overview and Scrutiny Panel, one of whom should be the Chair
- All efforts should be made to consult with the Chair of the Overview and Scrutiny Management Committee.

**3.4** If a valid call in notice is received then the implementation of the decision must be suspended for two weeks (which begins at the end of the call in period)

**3.5** Research indicates that there are a range of different approaches taken to the call in process. The key components are;

- The call in timescales /deadlines - for both calling in decisions and holding the call in meeting
- The pro forma setting out the reasons for call in
- Restrictions on what may be called in
- The process for agreeing a valid call in
- The process at the call in meeting

## **4. What happens elsewhere?**

**4.1** According to a study by the Centre for Public Scrutiny, since 2009, the proportion of decisions amended as a result of call-in has declined as a percentage of the total number of decisions that have been called in. However, call-in should be seen in context – firstly, it is a

means to provoke further debate on a topic of political contention, and acts as a democratic safeguard against the unconstrained exercise of executive power. Secondly, it is one of a number of tools available to scrutiny to influence decision-making. Members may, for example, carry out pre-decision scrutiny, which can lessen the need for call-in. Call-in can also be seen as part of a process whereby scrutiny can challenge the assumptions and evidence behind decisions.

**4.2** Opinion about the general value of call-in is very mixed across councillors and officers around the country. Predominantly, councillors consider it to be ineffective, although in those authorities where it is used more, it is considered to be a useful tool.

**4.3** The number of call-ins varies hugely from council to council. A large number have none at all (and many have had none at all for several years); one council had 38 call-ins in 2012/13. There is no obvious correlation between councils with high (or low) numbers of call-ins and those with effective scrutiny functions; a larger number of call-ins has no direct effect on the proportion of those call ins that lead to an amended decision.

## **5. Local statistics**

### **5.1 To date,**

- Kirklees has not had any call ins in the 2016 /17 municipal year but had 3 call ins in 2015/16. In 2014/15 there were 2 call ins and in 2013/14 only 1 call in was considered.
- Bradford did not have figures to hand but on average do not have more than 3 or 4 call ins per year but in the last six months they had not had any. The Council is led by the majority party but is made up by 8 other political groups.
- Leeds had 4 call ins during 2013/14.
- York until the year 15/16 had around 10-15 call ins per year. They recently had a change of administration and amended their call in procedure in an effort to try and reduce the numbers of decisions being called in.

It seems that Kirklees is not significantly out of step with other local authorities in West Yorkshire. A short table setting out the details is attached at Appendix 2.

## **6. Pro forma**

**6.1** Many Local Authorities, including Kirklees use pro formas that are required to be completed when submitting a call-in. Locally, Leeds and Barnsley use forms and they have found them helpful in setting out specific reasons relating to call in reviews and in narrowing the issues.

The pro forma document is important as it sets out the basis of the call in and the exact reasons for the Committee to review the decision. It is essentially the starting point for the call-in review and should be sufficiently detailed. Attached at Appendix 3 is an example form from Leeds which is clearly drafted and sets out the specific principles of decision making taken from their articles. This is not currently included in the Kirklees form which is attached at Appendix 4. It would be helpful to have those principles inserted so that Councillors are clear about which principle is being challenged and proving full and detailed evidence of the grounds on which each principle is challenged.

**6.2** In learning from recent call ins it appears that the Kirklees pro forma needs strengthening to ensure a consistent interpretation of the decision making principles. It may also assist to

request the nominated signatory insert the outcome they are seeking when submitting the call in.

## **7. The call in meeting**

**7.1** Sometimes, call-ins are appended to the agendas of existing meetings, but it is more usual to convene a separate meeting for this purpose (and sometimes a separate “call-in committee” exists, for example in **Brent** and **Dorset**). It is usual for the Cabinet member and the chief officer for the service involved to be invited to give evidence. However, it is at the discretion of the Chair how the meeting is run, and he/she may invite others to give evidence. This might include other council officers, members of the public directly affected by the decision or representatives of partner organisations.

**7.2** On some occasions at Kirklees the contribution of the public has led to the meetings being extended. Guidance to the public may assist them in understanding their role, manage expectations and provide a greater understanding of the call in meeting and its purpose. This would still need to be managed by the Chair to ensure contributions were kept to the grounds and not used as an opportunity for repetitive concerns and complaints about the decision made.

**7.3** Within West Yorkshire most councils have a flexible approach to the conduct of the call in meeting and adapt to each call in on a case by case basis which seems to work well, allowing more time when necessary. Although there is a formal agenda the Chair is required to ensure that members of the public (if they attend and are given the opportunity to speak) keep to the specific basis of the call in and discussion is not diverted to reconsidering the decision as a whole or irrelevant information. The process of the call in meeting and management of it is determined by the Chair. Most do not have a formal procedure but use a basic outline and adapt this depending on the circumstances of the call in.

**7.4** One local Council relies heavily upon pre-scrutiny prior to any decision being taken by Cabinet. This allows for anything which is likely to be contentious to be scrutinised and considered at an early stage. Scrutiny will often stay involved and be updated and can be involved in clarifying any issues of concern. This has been used as a method to ensure a formal call in is averted in relation to any matter which is believed to be controversial.

## **8. Restrictions on call in**

**8.1** Legislation makes it clear that when a council committee is acting in a quasi-judicial capacity then call in does not apply. This includes Licensing and Planning Committee decisions. The reason for this being that there are other means of appealing against decisions made by these bodies.

**8.2** Councils have tried different methods to try resolving the issues prior to submission of the call in pro forma. Some Councils have put in pre call in requirements that mean that the lead signatory for a call in has to take steps to try and resolve concerns prior to submitting the call in. Whilst this puts the emphasis in trying to resolve concerns outside of a formal meeting, it has to be done in the restricted timeframe allowed to call in a decision.

**8.3** Some Councils have opted to restrict call in to key decisions only. Whilst it is more usual in Kirklees for called in decisions to be key decisions, it is not exclusive. In Kirklees this would not have led to any change in the decisions called in over the last year as they were all key decisions. However this is an option the Council may wish to consider.

**8.4** Leeds City Council require the nominated signatory to the call in to have contacted the relevant Director and Cabinet Member to have tried to resolve the concerns and discussed any relevant issues in an effort to try and resolve matters. This is an attempt to ensure that

all has been done to try and avert a call in. In practice they have found this works well and could prove advantageous in averting the need for the call-in if the query can be easily resolved. There has certainly been one of the 3 most recent call ins in Kirklees that would have benefitted from this and could have avoided that particular call in. The call in pro forma has a specific section to record details of the discussion and concerns and points raised and must be included.

**8.5** York Council has amended its call in procedure in October 2015 and now has a pre-decision call in and a set procedure to follow contained in their constitution. This is as well as a post decision call in. Any decision can be called in on any basis as there are no parameters to limit the basis contents of the call in. This has reduced the number of post decision call ins but has shifted the emphasis to pre-decision. Effectively it places more emphasis on scrutiny of the Forward plan once published. In practice this is still resource intensive and results in a significant number of decisions being called in pre-decision without any assessment of the contents or strengths of the reasons for call in.

## **9. Validity of Call in notice**

**9.1** Call in is not appropriate simply because councillors disagree with the decision made or having been unsuccessful in changing the decision at Cabinet they want a review to see if Scrutiny might support their point of view and recommend amending the decision. Valid grounds should be based on a flawed decision making process that does not adhere to the decision making principles in the Constitution. Any alleged flaw should be supported by evidence which is made available at the time the notice is submitted

**9.2** In Kirklees the Assistant Director Legal, Governance and Monitoring must determine if it is a valid call in notice. However currently the grounds of validity are limited and focus on having complied with the pro forma and timescale requirements. In the interests of natural justice there should be clarity for all parties of the reasons for a call in. The reasons should relate directly to a breach of the decision making principles and be supported by evidence.

## **10. Conclusions**

**10.1** It is apparent that practice is varied across the country and locally, but there are still a number of similarities. In terms of statistics relating to the number of call ins that Kirklees has, it is not disproportionate for the size of the council and political make up.

The review has highlighted some areas at Kirklees where practice could be improved especially in relation to pre-decision. This would be in furtherance of the guidance to the legislation which envisaged that call ins would be used rarely.

### Pre decision

**10.2** Whilst conducting the review it was clear that placing more emphasis on pre-scrutiny would benefit members as this provides members with an opportunity to challenge and consider reports before decisions are made, especially in regard to controversial or significant decisions. This could result in a lower amount of call ins if members followed the procedure.

This would mean that members are acting in a pro-active way and the contents of a report could be examined in a non-political and constructive manner.

### Validity of Call In

**10.3** Grounds - Having considered previous call ins and the grounds for requesting the review it is clear that requests have either not supplied evidence or in some cases the request has lacked sufficient detail to evidence how the decision has not been made in accordance with the decision making principles. This is an area that could benefit Members

by strengthening the call in procedure as it could ensure that the OSC are clear about the exact basis for the call in. This would make sure that the requests are not too wide and that the hearings are limited to the specific basis of the call in request. It would enable proper consideration as to the validity and content of the actual request which is not part of the current procedure. This could mean requests which are not sufficiently detailed or evidenced could be rejected.

It is also not apparent how the member has raised concerns and contributed to the decision making process prior to the decision being made, in line with the constitution and call in procedure.

**10.4 Consultation** - When the call in is requested there is a requirement set out at Section 18.4 which states “...*All efforts should be made to consult with the Chair of the Overview and Scrutiny Management Committee.*” In recent years this step has not been followed but if it was included then it could form a useful role in enabling the Chair of Scrutiny to comment on the concerns in light of any previous scrutiny involvement in the issue.

In light of practice elsewhere, Members may wish to consider whether it would be advantageous to add to the procedure a requirement for the nominated signatory to the call in to have contacted the relevant Director and Cabinet Member to try and resolve the concerns through discussion of the relevant issues. Having considered previous call ins there was one call in that would have benefitted from this and negated the need for the review, as in essence the request related to terminology contained in a report and how it had been defined. If members are minded to insert this caveat then the call in procedure and pro forma would require amendment to include this.

### Call in Hearing

**10.5 Format** - In practice it was clear that all local councils had an outline hearing procedure that was adapted on a case by case basis. This allowed for flexibility depending on the circumstances of the review. In terms of procedure the most popular approach was a concise one to ensure that matters were kept to the specific grounds of the call in and did not stray into irrelevant areas. In brief, the procedure at the hearing in most cases began with the nominated signatory giving evidence, followed by cabinet holder with responsibility and any relevant officers and then the Panel to ask questions.

Another useful tool could be altering the current hearing procedure to make it more streamlined. A copy of the current procedure is attached at Appendix 5. It would be suggested that the amended procedure would be as outlined above and an example of a possible new procedure is attached at Appendix 6. It seeks to streamline and focus the process whilst allowing the Committee considering the call in to hear the salient facts from all parties.

**10.6 Role of the public** - Most if not all, councils gave a very limited opportunity for the public to contribute at this section or just before the Panel begin its scrutiny.

During the review it was evident that management by the chair is essential to ensure the public remain focused upon the relevant grounds and that they understand the purpose of the review and its limitations. It is suggested that guidance provided to the public may assist in this regard and would be a helpful tool in providing the information prior to the hearing and managing expectations, which would also assist the Chair.

### Decision Making Principles

**10.7** An area that has been highlighted during the review and is something that has risen from previous call ins, is to ensure that the Panel is clear that they are required to consider whether constitutionally the decision has complied with the decision making principles in Article 13. Issuing guidance to members about the extent of their powers would help to

ensure that there is a consistent interpretation when conducting the call in review. This would enable the Panel to be unambiguous in its role and understand that Scrutiny is limited to considering the specific grounds of the call in and ensuring that it is in line with the decision making principles as set out in the constitution. It would also be plain to Members who had brought the call in that Scrutiny is not there to substitute a different decision simply because they believed the wrong decision had been made or that a particular option had not been considered. Rather the Scrutiny Panel are restricted to considering whether constitutionally the decision has complied with the decision making principles. Producing a guidance note to the OSC members could be informative in this regard.

## **11 Conclusions and proposals:**

**11.1** Following consideration of the approach to call in Kirklees in light of the feedback received and the findings of research, the following proposals are put forward for consideration:

- a. That a reminder be issued to members which;
  - Highlights the importance of pre scrutiny
  - may reduce necessity for call in post decision scrutiny
  - encourages consultation with the Chair of Scrutiny in line with current procedure at time of call in
- b. That a revised call in procedure be developed which;
  - extends the requirement for validity of a call in
  - requires specific evidence or sufficient detail relating to the decision making principles
  - is sufficiently detailed for full and proper analysis
  - Requires nominated signatory to try and resolve issues prior to call in
  - enables Panel to narrow the issues
  - may reduce the length of hearings
  - places importance upon resolution
- c. That the call in pro forma be revised to:
  - Include the changes to the call in procedure
  - include the decision making principles
  - include a requirement to have tried to resolve concerns about a decision prior to the decision being made with the relevant Director and Cabinet Portfolio Holder.
  - include more detail about reasons and supporting evidence where appropriate
  - provide sufficient details in order to fully assess the validity of the call in
  - demonstrate that constitutional procedure has been followed
- d. That guidance be produced for the public to:
  - help the public understand the purpose and limitations of the call in
  - manage expectations
  - support the Chair in the management of the hearing
- e. That guidance be produced for Scrutiny members on how to consider the review in accordance with the decision making principles in the constitution which:
  - ensures consistent interpretation
  - provides helpful information in order to narrow the issues when considering the call in request
- f. That the OSMC agree a revised call in hearing procedure which is more streamlined and simplifies the current procedure.

## **12 Implications for the Council**

### **12.1 Early Intervention and Prevention (EIP)**

There are no implications

### **12.2 Economic Resilience (ER)**

There are no implications

### **12.3 Improving Outcomes for Children**

There are no implications

### **12.4 Reducing demand of services**

There are no implications

### **12.5 Other (eg Legal/Financial or Human Resources)**

There are no significant resource issues in making the changes recommended, however streamlining procedures and adding further detail when considering the validity of the call in will impact by reducing the time and resources spent on call ins. Investing in pre scrutiny will avert the more intensive use of resources which can increase costs when holding lengthy call-in meetings.

#### **Legal Implications:**

The procedure for call ins currently meets the legislative requirements of the Local Government Act 2000 and the suggested amendments do not alter this. The legal implications arising from this report would be some minor constitutional changes depending on the response from members.

The constitutional amendments would include slightly altering the call in procedure in relation to the submission of the call in the requirements and validity of the call in. Minor amendments to the current pro forma to accommodate those changes would need to be included.

Once a view has been reached at Corporate Governance and Audit, the consequent constitutional amendments will be worked up and follow the appropriate decision making pathway.

## **13. Consultees and their opinions**

The views of consultees are attached at appendix 7 of the report

## **14. Next steps**

Once a view has been reached at Corporate Governance and Audit Committee, the consequent constitutional amendments will be worked up and follow the appropriate decision making pathway.

## **15. Officer recommendations and reasons**

That the Committee consider the research findings set out in the report and the proposals put forward at section 11 and determine next steps.

## **16. Cabinet portfolio holder's recommendations**

Not applicable

## **17. Contact officers**

Samantha Lawton Samantha Lawton – Senior Legal Officer  
Penny Bunker - Governance and Democratic Engagement Manager

## **18. Background Papers and History of Decisions**

1. Local Government Act 2000 and Model Constitution Guidance
2. Centre for Public Scrutiny – Practice Guide; Key Decisions and Power of Call In – June 2014
3. Northern Ireland Assembly – Briefing Paper - Call In Operation in England and Wales – February 2014

Appendices:

1. Kirklees Call in procedure
2. Local Call-In Information Table
3. Leeds pro forma
4. Kirklees pro forma
5. Call in meeting procedure
6. Draft new call in meeting procedure
7. Consultee Views

## **19. Service Director responsible**

Julie Muscroft - Service Director Legal, Governance and Commissioning