

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

**Date: 9 March 2018**

**Title of report: Amendment Options for the Scrutiny Call in Process**

**Purpose of report:**

Following previous discussions at the Committee to consider the findings of more detailed work into options for the call in process 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>	Not applicable
<b>Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports?)</a></b>	Not applicable
<b>The Decision - Is it eligible for call in by Scrutiny?</b>	Not applicable
<b>Date signed off by <u>Strategic Director</u> &amp; name</b>	
<b>Is it also signed off by the Service Director for Finance IT and Transactional Services?</b>	No – n/a
<b>Is it also signed off by the Service Director for Legal Governance and Commissioning Support?</b>	Yes 1 March 2018
<b>Cabinet member <a href="#">portfolio</a></b>	Cllr Graham Turner

**Electoral wards affected:** All

**Ward councillors consulted:** Not applicable

**Public or private:** Public

**1. Summary**

- 1.1 In 2015, following a number of call in hearings, the Corporate Governance and Audit Committee (CGA) requested that a piece of work be undertaken to examine the approach to Call-in in Kirklees to determine whether any changes or clarification of current arrangements were required.

An initial report to CGA set out a number of recommendations to refine the approach to call in which aimed to address learning from the recent call in meetings whilst ensuring a transparent process going forward. The amendments fell within the remit of the Overview and Scrutiny Management Committee to implement and did not require any amendments to the Constitution.

Whilst officers were working on implementing the decision of CGA there were a number

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of changes in relation to the structure of Scrutiny. As a result of these changes there is now a greater emphasis on pre-decision scrutiny. The CGA asked for further detailed work to look at call in practice elsewhere and the development of potential options which linked to the approach to Scrutiny in Kirklees.

This report sets out the findings of benchmarking work and potential options as to how the call in process might be amended in line with the principles that underpin Scrutiny practice in Kirklees.

## **2. Information required to take a decision**

### **Principles of Scrutiny**

2.1 Since its formal establishment in 2000, Overview and Scrutiny in Kirklees has always operated under a number of key principles which include:

- Leave the party politics at the door
- Wherever possible influence the decision before it is made
- Scrutiny findings and recommendations are evidence based

National Government guidance emphasises that the power of call in should be exercised infrequently and only as a last resort when there is a clear and demonstrable breach of the decision making principles. Like any other process, Call in requires Scrutiny to look at the evidence; to look at how a decision has breached the decision making principles; rather than providing a platform to air differing points of view on a decision.

## **3. Current Position**

- 3.1 Officers have considered the approach to call in in light of the above principles. Benchmarking has been undertaken to look at practice elsewhere. Officers have also reviewed the decision making principles to bring them in line with current best practice and provide a clear explanation of the meaning of each.
- 3.2 Research has indicated that in most local authorities in the region there is a more robust approach to determining whether a call in request is valid. A summary is attached at appendix 1. In Kirklees validation has been limited to meeting current process requirements, i.e. number of signatories, submission within the deadline etc. From the research sample it can be seen that the majority have additional considerations as part of the initial call in request. There are also a number of steps required prior to holding a call in meeting, to evidence that there have been efforts to try and resolve concerns before moving to a call in hearing e.g. having discussions with Cabinet portfolio holder(s) and lead Directors.
- 3.3 In an economic climate where delaying an executive decision due to call in can also have financial implications for achieving budgetary savings within necessary timescales, then a process that tries to resolve concerns before the decision is made, is prudent.
- 3.4 In the same way that Scrutiny already has the opportunity to consider the information that Cabinet used to reach its decision, so in a balanced process Scrutiny should also be able to see any evidence that the call in is based on. If a reason for call in refers to specific information, outside of the Cabinet papers, then the Scrutiny Panel / Committee should be able to see that evidence.

- 3.5 It is suggested that one of the measures of validity is that the call in pro forma includes reasons why the signatories to the call in believe the decision making principle (s) have been breached. If reference is made to evidence to support the signatories views then that should be made available for Scrutiny to consider.
- 3.6 Previous call ins illustrated that some of the decision making principles had been open to individual interpretation which led to confusion. It is suggested that it is timely to update the decision making principles in line with good practice and provide a narrative to clarify the legal interpretation. A copy of the revised decision making principles is attached at appendix 2.
- 3.7 The other Scrutiny principle which might form part of the approach to call in, is the principle of trying to influence the decision before it is made. Most call in requests in Kirklees are not generated by the scrutiny panels. All consultees recognised that discussion to try to resolve an issue without the need for call in is desirable. The initial discussion paper suggested that councillors who were considering calling in a Cabinet decision should try to resolve concerns before submitting a call in request by talking to the portfolio holder and the Strategic / Service Director. This could also include speaking at the Cabinet meeting before the decision has been taken and responding to ward member consultation on the proposals. The call in proforma would include a space to summarise actions taken to address concerns prior to call in.

Feedback on this option was mixed, with particular concern that this should not be a barrier to calling in a decision. Some felt it should be a recommended course of action rather than a requirement. It should be noted that previous optional steps in the call in process have not usually been followed.

- 3.8 It is proposed that the decision about the validity of a call in request will be determined by the Service Director, Legal Governance and Commissioning in consultation with the Chair of Overview and Scrutiny.

### **3. Implications for the Council**

- 3.1 **Early Intervention and Prevention (EIP)**  
None specific
- 3.2 **Economic Resilience (ER)**  
None specific
- 3.3 **Improving Outcomes for Children**  
None specific
- 3.4 **Reducing demand of services**  
None specific
- 3.5 **Other (eg Legal/Financial or Human Resources)**  
None specific

#### **4. Consultees and their opinions**

In preparing this report, the views of the Overview and Scrutiny Management Committee, the Leadership Management Team and political groups have been sought. A summary of views is set out below:

i. LMT was supportive of a discussion prior to call in to try to resolve the concerns. The clarification of the decision making principles was welcomed to try and ensure consistent interpretation by all parties.

ii The Scrutiny Committee was supportive of a balanced process based on Scrutiny principles. Whilst agreeing that trying to avoid call in by resolving concerns through discussion was desirable, the OSMC had reservations about making it a formal requirement. It was suggested that if there were to be a requirement to try to resolve concerns then consideration should be given to the length of timescale in which to carry out this requirement. The OSMC was keen to ensure that there are no obstructive barriers to legitimate call ins. The OSMC also welcomed the clarification and updating of the decision making principles.

iii The Independent Group: Fine with the proposals

iv The views of the Conservative Group are:

- As there have been no call-ins in the last year, we don't feel the need to change the system for call-in as there is no evidence that it is being used inappropriately. The proposals seem to be geared towards discouraging and disallowing call-in requests, and this is not helpful to the openness or reputation of the scrutiny process.
- We would agree that conversations before the decision are helpful, and that this is one of the purposes of Scrutiny, but that most Cabinet papers are released with only one week's notice. This gives little time to be able to affect the decision, apart from coming to the cabinet meeting to speak. So demonstrating how one has tried to influence a decision will not be useful in most cases.
- We do not agree that call-in lead signatories should have to put their arguments in the call-in papers. That is the purpose of holding a call-in meeting.
- There would be more pressure on the OSMC Chair and Head of Governance to allow/disallow a call-in request.
- We have no problem with up-dating decision-making principles

v. Cllr Andrew Cooper responded:

My own personal view is that we need to stress the 'Critical Friend' role of Scrutiny explicitly so people pursuing a Call in are very clear about the spirit in which they are submitting it.

Perhaps stressing what the overtly party political alternatives are to a Call in might also be of value so members are directed towards more appropriate routes if needed.

#### **5. Next steps**

Following discussions at the CGA Committee, any consequential changes to the Council's Constitution will be prepared for consideration at the Annual Council meeting. Any update in practice, including supporting guidance notes, will be implemented from the beginning of the new municipal year.

## 6. **Officer recommendations and reasons**

That consideration be given to the options set out in the report and pending the outcomes of the discussion, any consequent changes to the constitution be presented to Council for consideration. In summary the options are:

- a. In line with trying to influence the decision before it is made, introduce a requirement for the Lead Councillor (signatory) to the call in to demonstrate the steps taken to raise / resolve concerns prior to the Cabinet decision being called in. This would require a change to the Constitution.
- b. To amend the constitution to clarify that supporting evidence and reasons to illustrate which decision making principle(s) has been breached is included in the call in request.
- c. If a and b above are agreed then the Call in proforma would be amended to introduce a requirement for signatories to provide this information. This would be an administrative change as the proforma is not part to the constitution.
- d. To update the decision making principles in Article 13 of the constitution as set out in appendix 2, to simplify in line with current good practice and ensure clarity of interpretation.
- e. That the decision about the validity of a call in request will be determined by the Service Director, Legal Governance and Commissioning in consultation with the Chair of Overview and Scrutiny.

Following discussion any options agreed which require amendments to the Council's constitution will be considered at Annual Council with other changes to the constitution.

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

Not applicable

## 8. **Contact officer**

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

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

Briefing note "Proposals to Amend the Call In Process"

## 10. **Service Director responsible**

Julie Muscroft – Service Director for Legal, Governance and Commissioning