

# **COUNCIL BUSINESS COMMITTEE**

## **Arrangements for Call-in 17 January 2013**

### **Report of the Monitoring Officer**

#### **PURPOSE OF REPORT**

To inform Members of the feasibility and legalities of the two proposals put forward at the last meeting of the Committee regarding the present call-in system and the introduction of new rules in addition to the present call-in system.

**This report is public**

#### **RECOMMENDATION:**

- (1) That the Committee considers the information in this report in relation to the proposals put forward at the last Committee meeting.**

#### **1.0 Introduction**

- 1.1 At the Committee meeting on 8 November 2012, Members considered a referral report from the Budget and Performance Panel asking the Committee to look at several procedures, including the procedure for dealing with call-in.
- 1.2 Two proposals were put forward at that meeting for amending the current call-in arrangements. Both proposals were complex and one proposal mixed elements of the Council's old Committee system with the current rules for call-in. It was clear that both proposals would need to be assessed in terms of feasibility and lawfulness and the Committee asked that the Monitoring Officer prepare a report for this meeting to address those matters.
- 1.3 The current rules regarding the arrangements for call-in are set out in Paragraph 16 of Part 4, Section 5 of the Council's Constitution. For ease of reference Paragraph 16 is appended to this report.

#### **2.0 The Proposals**

- 2.1 The two proposals are set out below:
- 2.2 Proposal 1 is that "a report on options for amendments to the call-in process so that an additional (less technical and confrontational) reason for rethinking a Cabinet decision could be created, such as one loosely based on the old procedure (standing order 23 under the former committee system) for

‘reference up of decisions’ to Council”.

- 2.3 Proposal 2 is that “the simplest way of achieving the opportunity for a wider debate on an issue, potentially leading to a recommendation from Council to Cabinet, (similar to one of the options under the current call-in rules) (if it is legally acceptable as a permitted element in the City’s Constitution) would be for implementation of a Cabinet decision to be suspended pending the outcome of an extraordinary council meeting summoned under procedure rule 3.1 to debate a motion put forward within the normal call-in period – but under conditions of support similar to rule 19.1. This would be additional to the present rules.”
- 2.4 Regarding proposal 2, it should be noted that the conditions of support for rule 19.1 (motion to rescind a previous decision) are 15 Members, not 5 Members as set out in rule 3.1 (calling extraordinary meetings).

2.5 The two proposals are discussed below.

### **3.0 Proposal 1**

3.1 Old standing order 23 allowed Members to refer a decision up to Council if at least four of the voting Members present at a Committee meeting (or two fifths, whichever was the fewer) requested it immediately after the decision had been made. If this happened during a meeting, the decision which had just been made by the Committee would be of no effect but would instead be treated as a recommendation to Council for consideration.

3.2 The same standing order allowed any Member who believed that a Committee had made a decision which was

- contrary to council policy;
- would place the Committee in excess of its budgetary provision; or
- be in breach of the Council’s Constitution

to give notice in writing to the Chief Executive within 10 days of the Committee decision being made. The Chief Executive then had five days to respond explaining why the decision was in order, or confirming that the decision would be placed before the next meeting of the Council.

3.3 Presently the rules state that call-in should only be used in exceptional circumstances. “Exceptional circumstances” are further defined as where Members of the Overview and Scrutiny Committee have evidence which suggests that the decision in question:

- Is not proportionate to the desired outcome
- Has not been consulted upon, or sufficiently consulted upon, or advice has not been taken from officers
- Has not been taken with regard for human rights
- Has not been taken with regard for openness

Or if

- The aims and desired outcomes of the decision have not been clearly expressed; or
- The options that were considered and the reasons for arriving at the

decision have not been explained.

- 3.4 The list above is quite wide-ranging and it has always been possible for Members who wish to call-in a decision to do so using at least one of the above categories. No request to call-in a decision has ever been declined by the Chief Executive.
- 3.5 Whilst it would be possible to adopt different criteria for calling-in a decision, any criteria would have to fit with the aim that call-in should only be used in 'exceptional' circumstances. If an additional criteria to be introduced, as suggested in Proposal 1, whereby a specified number of Councillors being in favour of call-in formed the only basis for a decision to be reconsidered, call-in might be used more often and no longer reserved for 'exceptional' cases. The looser the criteria, the greater the potential for any small group of members to call in any/every Cabinet decision simply because they don't like it, even though the decision may have been taken entirely in accordance with the principles agreed in the Council's Constitution. The Council has chosen a Cabinet and Leader model of Governance and call-in is intended to be used only if Members have occasion to believe that Cabinet has not taken a decision properly.
- 3.6 With regard to 'referencing up' under the old committee system it should be noted that the old committee system and the current system of Leader and Cabinet are entirely different. The old Committees were Committees of Council, with powers delegated to them by Council. The point of 'referencing up' was that Council had the power to overturn a decision of one of its Committees. With a Leader and Cabinet (Executive) system, Council deals with policy and other non-executive issues whereas the Executive/Cabinet has legally defined powers. Therefore Council has no power to overturn any decision made by Cabinet. Council can make recommendations to Cabinet but, in any event, the current arrangements already allow for the Overview and Scrutiny Committee to refer a decision to Council and:

*"...if the Council does object, it has no locus to make decisions in respect of a Cabinet decision unless it is contrary to the Policy Framework, or contrary to or not wholly consistent with the Budget. Unless that is the case, the Council will refer any decision to which it objects back to the decision making person or body, together with Council's views on the decision."*

In practice, the Overview and Scrutiny Committee has generally chosen to refer any decisions called-in straight back to Cabinet, not Council, perhaps in recognition that there is little point in referring a decision to Council unless Overview and Scrutiny believes the decision to be contrary to the Policy Framework or inconsistent with the Budget.

#### **4.0 Proposal 2**

- 4.1 Proposal 2 appears to be a request for a wider debate, by Council, on decisions taken by Cabinet. For the reasons set out in 3.6 above, this is not generally appropriate with a Leader and Cabinet system, nor would it be an efficient way of operating to hold extraordinary full Council meetings in the manner described. The proposal put forward suggests that a minimum of 15

Members would need to support convening an extraordinary meeting. However, this is not feasible as it would contravene Schedule 12 of the LGA 1972. Schedule 12 states that an extraordinary meeting can be called by 5 members, and this is reflected in Council Procedure Rule 3.1.

- 4.2 Proposal 2 does not, at first sight, appear to fit with the aim expressed in Proposal 1, which is to seek a less “confrontational” approach to rethinking a Cabinet decision. Arranging an extraordinary full Council meeting to consider a Cabinet decision would seem to be equally, if not more, confrontational than the current call-in process.
- 4.3 It is not clear how Proposal 2 could run alongside the current process for call-in of decisions. Presumably a group of Members could decide they wish to convene an extraordinary Council meeting to discuss a recent Cabinet decision whilst another group of Members could decide they wish to call in that Cabinet decision and start off the call-in procedure. So there could be two processes set in action at the same time to look at the same decision. Rules would have to be put in place to ensure that this was not possible, as such duplication would be inefficient, potentially contradictory and resource intensive.

	<b>Proposal 1</b>	<b>Proposal 2</b>
<b>Advantages</b>	No advantages to changing the grounds for call-in have been identified. No call-in requests have ever been refused on insufficient grounds.	No advantages identified. Overview and Scrutiny can already call-in a Cabinet decision and refer it to Council to consider.
<b>Disadvantages</b>	Does not fit with the aim that call-in should only be used in ‘exceptional circumstances’ where Members of the Overview and Scrutiny Committee have evidence that the decision has not been made properly.  Could lead to frequent call-ins on the grounds that a group of Members don’t like a decision, rather than because Members believe it has been taken improperly.	Unlawful to insist that 15 Members are required to request an extraordinary meeting of Council as the law states that only 5 Members are required.  Duplication. Call-in rules already in place allow the same outcome.  Complexity and additional layer of rules.
<b>Risks</b>	Potential for disruption and delays to the implementation of decisions properly made by Cabinet in accordance with the Constitution.	See disadvantages. To make this proposal lawful it would be required to stipulate 5 Members (not 15) to call an extraordinary meeting of Council to consider a decision

		<p>which Cabinet had already taken. Potential reputational risk if this was introduced and extraordinary Council meetings were held frequently to discuss decisions taken in accordance with the Council's Constitution.</p>
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## 5.0 Conclusion

- 5.1 The current arrangements for call-in appear to be working. No requests for call-in have been refused and there seems to be no obvious gain by adding any additional ground for call-in or referring call-ins anywhere but back to the decision-makers. Referral of Cabinet decisions to Council and then back to Cabinet again is not an efficient way of working and it runs contrary to the Cabinet and Leader model which the Council has chosen to adopt. In any event, it is already possible under the current procedures for Overview and Scrutiny Committee to refer to Council a decision that has been called in.
- 5.2 Members are asked to consider the information in this report about the arrangements for call-in. Any proposals to make changes to the call-in arrangements should be referred to Council.

### **CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

None.

### **LEGAL IMPLICATIONS**

It is noted in the report that Schedule 12 of the Local Government Act 1972 states that an extraordinary meeting can be called by 5 members so it would not be lawful to insist upon 15 members as set out in Proposal 2.

### **FINANCIAL IMPLICATIONS**

If the rules were to change and there were more Full Council meetings required there would be implications, particularly officer time, along with additional travel and refreshment costs where applicable.

### **OTHER RESOURCE IMPLICATIONS**

#### **Human Resources:**

None.

#### **Information Services:**

None.

#### **Property:**

None.

**Open Spaces:**

None.

**SECTION 151 OFFICER'S COMMENTS**

The Section 151 Officer has been consulted and has no further comment.

**MONITORING OFFICER'S COMMENTS**

The report has been prepared by the Deputy Monitoring Officer in consultation with the Monitoring Officer, and there are no further comments.

**BACKGROUND PAPERS**

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## 16. Call-In Arrangements

Call-in should only be used in exceptional circumstances. 'Exceptional circumstances' are where Members of the Overview and Scrutiny Committee have evidence which suggests that the decision in question will not be, or has not been made, in accordance with the principles set out in Article 13 (Decision Making).

- (a) When a decision is made by the Cabinet or a Committee of the Cabinet, or a Key Decision is made by an Officer with delegated authority from the Cabinet, or an Area Forum/Committee or under joint arrangements, the decision shall be published, by electronic means and shall be available on the Council website and at the main Offices of the Council normally within 2 days of being made. Members of the Overview and Scrutiny Committee will be sent copies of the records of all such decisions within the same timescale by the person responsible for publishing the decision.
- (b) That notice will bear the date on which it is published and will specify that the decision will come into force and may then be implemented on the expiry of 5 working days after the publication of the decision, unless there are objections to it and it is called in.
- (c) During that period, the Chief Executive shall call-in a decision for scrutiny by the Overview and Scrutiny Committee if so requested in writing or by e-mail from a known or recognised source, by exactly 5 non-Cabinet Councillors, not all of the same political group, of which two must be members of the Overview and Scrutiny Committee and shall then notify the decision-maker of the Call-in. This can be a collective notification from two or more Councillors of the same political group. The decision shall be considered by the Overview and Scrutiny Committee within 10 days of the decision to Call-in, and, if necessary, this may be dealt with as an item of urgent business at a scheduled meeting of the Overview and Scrutiny Committee within that period.
- (c) If following a request to Call-in, the Overview and Scrutiny Committee does not meet within 10 working days, or does meet but does not refer the matter back to the decision making person or body, the decision shall take effect on the date of the Overview and Scrutiny Committee meeting, or the expiry of the 10 day period, whichever is the earlier.
- (d) If, having considered the decision, a majority of the Overview and Scrutiny Committee is still concerned about it, then it may refer it back to the decision making person or body for further consideration, setting out in writing the nature of its concerns, or refer the matter to Council.
- (e) In the case of Individual Cabinet Member and officer delegated decisions these will be referred to full Cabinet for reconsideration.
- (f) If the matter is referred by the Overview and Scrutiny Committee to Council and the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective in accordance with the provision in paragraph (h) below.

However, if the Council does object, it has no locus to make decisions in respect of a Cabinet decision unless it is contrary to the Policy Framework, or contrary to or not wholly consistent with the Budget. Unless that is the case, the Council will refer any decision to which it objects back to the decision making person or body, together with the Council's views on the decision. In the case of Individual Cabinet Member and officer delegated decisions these will be referred to full Cabinet for reconsideration. Cabinet shall then choose whether to amend the decision or not before reaching a final decision and implementing it. The matter will be re-considered no later than the next scheduled meeting of the Cabinet after the referral from Council. Following the re-consideration of the decision, the outcome must be publicised within 2 days and can be implemented with immediate effect.

- (g) If the Council does not refer the decision back to the decision-making body or person, the decision will become effective on the date of the Council meeting at which the Overview and Scrutiny Committee referral was considered.
- (h) The only exception to these Call-in arrangements is that contained in Rule 17 below.