

<b>Item No.</b> 6.2	<b>Classification:</b> Open	<b>Date:</b> 20 March 2024	<b>Meeting:</b> Council Assembly
<b>Report title:</b>		Review of Call-in Procedure	
<b>Ward(s) or groups affected:</b>		N/A	
<b>From:</b>		Constitutional Steering Panel	

## RECOMMENDATIONS

1. That 'the use of call-in: guidance for English authorities' issued by the Centre for Governance and Scrutiny (CfGS), Appendix 1 of the report be noted, section 1 in particular (purpose of call-in).
2. That having regard to the CfGS guidance, the findings from the review of the council's current call-in process (Appendix 2 of the report) be noted.
3. That the main findings set out in paragraphs 13 to 41 of the report be noted (arising report recommendations set out at paragraphs 4 to 7).
4. That it be noted that written guidance on the call-in process in the form of a protocol/procedure note is being prepared for circulation to members, and publication on the council website (paragraphs 15 to 16 of the report).
5. That overview and scrutiny procedure rule 17.4 be amended to 'any five members of the council (including education representatives for the purpose of education decisions only)' (paragraphs 23 to 27 of the report).
6. That the 'Guidance Note: Principles of Decision Making' prepared to support the decision making process (Appendix 3 of the report) be noted.
7. That the proposed changes take effect from 1 April 2024 to enable training for both members and officers on any new call-in arrangements ahead of implementation (paragraphs 42 to 43 of the report).

## BACKGROUND INFORMATION

8. The council commissioned the Centre for Governance and Scrutiny to undertake an independent review (scrutiny improvement review) of the council's scrutiny function. Arising from that review was a recommendation that the council review its call-in procedure based on benchmarking and examples of good practice.
9. The CfGS highlighted the following themes (raised by Members and Officers) that came up during the scrutiny improvement review in relation to call-in (paragraph 5.6, page 13 of the CfGS feedback report):

- The relatively low number of call-ins for decisions
  - The threshold for making a call-in, reserved to Members of Overview and Scrutiny Committee and requiring three Members (OSC Procedure Rule 17.4)
  - The decision criteria for reviewing call-in requests and how they are processed based on the content and detail of the challenge.
10. Within the scrutiny improvement review report, the CfGS made reference to a review programme it was undertaking on 'call-in' which would include benchmarking practice across England and the sharing of practical experiences from Members and Officers. This was to lead to the issuing of refreshed guidance. The CfGS recommended that the council draw on this work to consider any learning that could enhance the council's call-in procedure.
  11. The guidance on the use of call-in was published on 17 April 2023 and was produced by the CfGS using funding from HM Government and with the support of Bevan Brittan LLP, Lawyers in Local Government (LLG) and the Association of Democratic Services Officers (ADSO).
  12. The overview and scrutiny committee agreed the CfGS recommendation to review the call-in procedure at its meeting held on 4 July 2023.

## **KEY ISSUES FOR CONSIDERATION**

13. The council's constitution, current practices and procedures have been reviewed having regard to the guidance issued by the CfGS. The review findings are set out in Appendix 2 of the report. A benchmarking exercise in relation to the call-in procedures of other London local authorities has also been undertaken. Both the guidance and the benchmarking exercise informs the resulting recommendations contained within this report.
14. The council's constitution pertaining to 'call-in' is for the most part in line with the refreshed guidance. Set out below for members' attention are the areas where differences in current practices have been identified.

### **Protocol / procedure note on the call-in meeting process**

15. The rules around call-in are clearly set out in the council constitution, overview and scrutiny procedure rules 16 – 19. However, what is not included in the constitution in any detail, are the arrangements for the actual call-in meeting. The rules around the meeting arrangements are set out in the scrutiny officer's covering report, and chair's guidance note for the meeting.
16. The CfGS guidance recommends that written guidance be provided to members, which should itself be published in the interests of clarity and transparency. A protocol / procedure note on the meeting process is to be prepared and published on the council website.

### **Requestors of a call-in being allowed to be part of the reviewing call-in committee**

17. For Southwark, currently only members of the overview and scrutiny committee can request the call-in of a decision. Where a call-in meeting has taken place, the members who requested the call-in are allowed to take part in the meeting as participating committee members.
18. The guidance states “that many authorities do not normally allow those requesting the call-in to also be members of the reviewing overview and scrutiny committee conducting the review, in the same way that the decision-makers are not, on the basis of the natural justice principle, that one may not be a judge in one’s cause. This means that, in practice, while requestors may be able to be present and even participate in debate, they may not be able to vote.”
19. The benchmarking exercise has identified that a number of local authorities do not allow members who have requested a call-in to take part as a voting member of the call-in meeting. The exercise has also identified that there are a number of permutations to local authority arrangements, which may influence whether requestors of a call-in are able to take part as voting members of a call-in review meeting (see paragraphs 36 to 41).

### **Who should determine that a call-in is valid**

20. The CfGS is of the view that the decision on validity should be made by the Monitoring Officer, given the process and legal concepts involved.
21. Currently the scrutiny officer determines the validity of a call-in request in consultation with a governance lawyer as appropriate, setting out in writing the reasons for the determination. Where a call-in request has been considered invalid, there is provision in the constitution for the requestors of the call-in to refer the matter to the monitoring officer to review the determination. In light of this provision, the monitoring officer determines the validity of a call-in where requested.
22. Reviewing requests for call-in can be time consuming and requires a determination within 2 days of the request being made. The initial review by the scrutiny officer (in consultation with a governance lawyer) serves as a filter process, resulting in the monitoring officer only becoming involved in the validity process if necessary. It is not being recommended that this arrangement is changed.

### **Call-in Threshold (highlighted in scrutiny improvement review)**

#### **Numbers**

23. Currently three members of the overview and scrutiny committee (including education representatives for the purpose of education decisions only) are

required to make a request for call-in in order to meet the threshold for a request to be considered. Due to the political composition of the overview and scrutiny committee (9 Labour, 2 Liberal Democrats), it is currently not possible for the Liberal Democrat members on the overview and scrutiny committee to request a call-in without support from a Labour member of the committee.

24. The CfGS does not give specific direction in the guidance on the numbers or types of members that may trigger a call-in, but is of the view that the requirements should be clearly justified and reviewed following each election and after a change in political control. This is to ensure ongoing fairness and applicability as endorsed by the authority (page 14 of the guidance).
25. The benchmarking exercise has highlighted that the practices of London local authorities vary to some degree in respect of the number of councillors required to request a call-in. The various thresholds are detailed below. Some local authorities have dual arrangements whereby they have one threshold for the overview and scrutiny committee and another for other members of the council – these authorities are listed for each arrangement they have in place, and therefore appear in the list more than once.

<b>Threshold</b>	<b>Number of local authorities</b>
• 2 members of the council	2 local authorities
• 3 members of OSC	8 local authorities
• 3 members of the council	1 local authority
• 4 members of the council	3 local authorities
• 5 members of the council	9 local authorities
• 5 members of OSC	2 local authorities
• 6 members of the council	4 local authorities
• 7 members of the council	1 local authority
• 8 members of the council	1 local authority
• Above 8 members of the council	2 local authorities
• Dual call-in arrangements	5 local authorities
• Requiring representation from more than one political group	2 local authorities

26. In the case of Southwark, for the period 2002 – 2013, the call-in threshold was chair or vice-chair plus three members of the overview and scrutiny committee. This changed in the 2014/15 municipal year, when the call-in threshold was amended to the effect of removing the requirement for the chair or vice-chair to support a call-in. Detail setting out the political representation of the council and OSC composition since the introduction of scrutiny arrangements, is set out in the table below:

<b>Period</b>	<b>Political representation</b>	<b>OSC political composition</b>	<b>Call-in threshold</b>
2002 – 2005	Lib Dem 30 Lab 28 Con 5	Lib Dem 4 Lab 3 Con 1  Chair – Con VC – Lib Dem	Chair or vice-chair plus three members of the overview and scrutiny committee
2006 – 2009	Lib Dem 28 Lab 28 Con 6 Green 1	Lib Dem 4 Lab 4 Con 1  Chair – Lab VC – Lib Dem	Chair or vice-chair plus three members of the overview and scrutiny committee
2010 – 2013	Lab 35 Lib Dem 25 Con 3	Lab 6 Lib Dem 4 Con 1  Chair – Lib Dem VC - Lab	Chair or vice-chair plus three members of the overview and scrutiny committee
2014 – 2017	Lab 48 Lib Dem 13 Con 2	Lab 8 Lib Dem 3  Chair – Lab VC- Lib Dem	(Revised in June 2014 - requirement for chair or vice-chair to also request a call-in removed).  Three members of the overview and scrutiny committee
2018 – 2021	Lab 49 Lib Dem 14	Lab 8 Lib Dem 3  Chair – Lab VC – Lib Dem	Three members of the overview and scrutiny committee
2022 – Present	Lab 52 Lib Dem 11	Lab 9 Lib Dem 2  Chair – Lab VC – Lib Dem	Three members of the overview and scrutiny committee

27. The overview and scrutiny committee at its meeting held on 4 October 2023 proposed that the threshold be changed from three members of the overview and scrutiny committee to any three members of the council. In light of the findings of the benchmarking exercise, it is recommended that the requirement is any five members of the council (including education representatives for the purpose of education decisions only).

## Call-in Criteria

28. The CfGS in its guidance notes that a widespread development has been that a call-in request is only valid when it is accompanied by the meeting of other tests and in particular the reasons for the request. The CfGS is of the view that there should be a requirement to give reasons for call-ins (page 14 of the guidance).
29. The council's current arrangements for identifying appropriate reasons for 'call-in' are set out in paragraph 17.6 of the overview and scrutiny procedure rules. This rule states that "Requests for call-in should normally only be made if there is evidence that the decision maker did not take the decision in accordance with the principles of decision making as set out in Article 1.3 of the constitution."
30. Article 1.3 is as follows:

*All decisions of the council will be made in accordance with the following Principles:*

- a) the link between strategy and implementation must be maintained*
  - b) decision making generally, whether by individual officers, individual cabinet members or the cabinet collectively, should have reference to the policy framework*
  - c) respect for human rights, law and probity*
  - d) due consultation and the taking of professional advice from officers*
  - e) proportionality (i.e. the action must be proportionate to the desired outcome)*
  - f) a presumption in favour of openness*
  - g) clarity of aims and desired outcomes*
  - h) consideration of the likely climate consequences and the likely equality (including socio-economic disadvantage and health inequality) consequences of the relevant decision and therefore reports for decision should include advice from officers of the likely climate and equality impacts of that decision.*
31. Similar call-in criteria have been adopted by a number of local authorities.
  32. The overview and scrutiny committee at its meeting held on 4 October 2023, considered an alternative list of criteria to enable grounds for call-in to be made clearer, detailed below:

- Lack of consultation
  - New important evidence
  - Insufficient information or important information disregarded
  - Lack of a clear recommendation
  - Lack of reason for a recommendation
  - No details on other options considered, or consultation carried out
  - Inadequate consideration of legal and financial issues
  - No or incomplete list of background documents
  - Omission of key facts on which decision is based
  - Clear deviance from Constitution's decision-making principles
  - Outside the financial and legal frameworks
  - Flaw in process – procedures not followed correctly.
33. The alternative criteria has been reviewed by the Monitoring Officer, and in response is recommending amendments to Article 1.3 of the constitution [Principles of Decision Making] and developed a guidance note, explaining the principles to assist with the preparation of reports for decision making. This guidance will also assist councillors when considering whether to request the call-in of a decision. A draft of the guidance note is attached as Appendix 3 to this report (**Note:** this appendix is subject to consultation with officers and also does not require approval by council assembly).

#### **Mediation/round table discussions**

34. The guidance indicates that some councils include in the call-in process, a step between receiving a valid request for call-in and the call-in meeting, to facilitate a mediation process or a round table discussion between the lead requestor and the executive decision maker or chair of the decision-making meeting. The guidance further indicates that this type of meeting has on occasion been found to have resolved issues in advance, without the need for the call-in review meeting.
35. Currently there is no provision in the council constitution for such meetings to be offered. This provision is mentioned given reference to it in the CfGS guidance.

#### **Benchmarking Exercise – General observations**

36. The benchmarking exercise identified that whilst local authorities operate similarly in respect of their individual call-in procedures, there are some differences.
37. Local authority call-in thresholds vary - in some local authorities only members of the overview and scrutiny committee can request the call-in of a decision (Southwark's current arrangement), where as in other local authorities, an individual scrutiny chair can request a call-in and/or other members of the council (not necessarily scrutiny councillors). Some local

authorities require cross party representation in order for a call-in to be made.

38. Some local authorities have established a call-in sub-committee to consider call-ins, where as in other local authorities call-ins are considered by the scrutiny committee with the remit for the subject matter under consideration. Others operate a process similar to Southwark where the main overview and scrutiny committee considers the call-in.
39. Some local authorities appear to have very low call-in thresholds in terms of grounds for call-in, where if a call-in request is made then the call-in is considered. This is factored into the local authority's meeting arrangement process.
40. Some local authorities specifically disallow members who have requested a call-in to take part as voting members of a call-in review meeting.
41. The benchmarking exercise was carried out by reviewing individual local authority constitutions. No analysis has been undertaken on the effectiveness of any particular local authority arrangement.

#### **Member and officer training**

42. It is anticipated that with the widening of members who will be able to request the call-in of a decision, some form of training will be needed to enable members to be confident about call-in, and for council officers to be fully aware of what might attract the call-in of a decision.
43. A procedure/guidance note on revised call-in arrangements, including the meeting process will be prepared for circulation to members and officers and published on the council website.

#### **Policy framework implications**

44. There are no policy framework implications.

#### **Community, equalities (including socio-economic) and health impacts**

45. There are no specific community, equality or health impacts.

#### **Climate change implications**

46. There are no specific climate change implications.

#### **Resource implications**

47. There are no specific resource implications.



## **Legal implications**

48. Local authorities must have in place provision for its overview and scrutiny committee to be able to call-in an executive decision which has been made but not yet implemented.

## **Financial implications**

49. There are no specific financial implications arising from the report.

## **Consultation**

50. The political group whips have been consulted through the constitutional steering panel.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Assistant Chief Executive, Governance and Assurance (Monitoring Officer) [AJW 31.10.23]**

51. Section 9F(2) of the Local Government Act 2000 requires the council to ensure that its overview and scrutiny committee has power to review and scrutinise decisions made and actions taken in relation to its executive functions. Section 9F(4) makes it clear that this includes a power to review a decision made but not yet implemented. Although “call-in” is not specifically referred to in the Act this is the provision that has come to be known as “call-in”.
52. These arrangements are set out in the council’s Overview and Scrutiny Rules. Any changes to these rules require approval of the full council as a change to the constitution under Article 1.5.
53. In considering any changes, the council must have regard to any guidance issued by the Secretary of State. In 2019 the government issued “Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities”. This makes it clear that scrutiny committees have the power to “call-in” decisions but should not view it as a substitute for early involvement in the decision making process or as a party-political tool.
54. The “Local Government Act 2000: Guidance to English Authorities” last updated in July 2001 is also still in place. This includes a provision that the arrangements made by local authorities should ensure that any call-in procedure is not abused or used unduly to delay decisions or slow down the process of decision making.
55. Reference is made throughout the paper to the Centre for Governance and Scrutiny (CfGS) Guidance on call-in issued in March 2023. Whilst this provides helpful good practice advice, it does not have the same authority as government guidance - the Centre is a charitable organisation offering assistance on these issues to the sector. This guidance includes the view

that “call-in” is a “longstop”- a process that can be relatively infrequently used because other constitutional systems work alongside to ensure that decision-making overall is of a high quality”.

56. As regards the numbers required to request a call-in, the monitoring officer’s clear advice is that 5 members of the council would be a reasonable threshold to adopt. The 2000 guidance refers to having a “certain number of committee or local authority members to call in a particular decision”. The modular constitution issued at the time by the government referred to the request being made “by the chair or any three members of the committee [ie the overview and scrutiny committee]”. The monitoring officer has noted the benchmarking exercise which shows that the criterion with the highest representation is for five members of an authority.
57. The report makes reference to the point raised in the CfGS guidance about whether those that have requested a “call-in” can participate as members of the Overview and Scrutiny Committee in any decision on the item. The position adopted by many other authorities is not to permit this, it is suggested “on the basis of the natural justice principle”. The monitoring officer is not minded to make any firm recommendation on this, noting that the current practice is not to include any such restriction, and bearing in mind that the members of the committee are not actually reviewing a decision they have made themselves.
58. Any changes will need supplementing with relevant protocols and guidance as referred to in the report. Training will also need to be provided to members, given that any member may in future potentially be able to call-in a decision. The monitoring officer is clear that all of this should be in place prior to the implementation of any changes.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
CfGS Use of call-in: guidance for English authorities	Centre for Governance and Scrutiny	Name Phone number
<a href="https://www.cfgs.org.uk/?publication=the-use-of-call-in-guidance-for-english-authorities">https://www.cfgs.org.uk/?publication=the-use-of-call-in-guidance-for-english-authorities</a>		
Southwark Council Constitution	Southwark Council Website	Virginia Wynn-Jones 020 7525 7055
<a href="https://moderngov.southwark.gov.uk/ieListMeetings.aspx?Committeed=425&amp;Info=1&amp;bcr=1">https://moderngov.southwark.gov.uk/ieListMeetings.aspx?Committeed=425&amp;Info=1&amp;bcr=1</a>		

## APPENDICES

No.	Title
Appendix 1	The use of call-in: guidance for English authorities
Appendix 2	Review of Call-in Process - Findings
Appendix 3	Guidance Note: Principles of Decision Making
Appendix 4	Proposed amendments to Article 1.3 and the Overview and Scrutiny Procedure Rules

## AUDIT TRAIL

<b>Lead Officer</b>	Doreen Forrester-Brown, Assistant Chief Executive, Governance and Assurance	
<b>Report Author</b>	Everton Roberts, Head of Scrutiny	
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<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Assistant Chief Executive, Governance and Assurance	Yes	Yes
Strategic Director Finance	No	No
Proper Constitutional Officer	Yes	
<b>Cabinet Member</b>	No	No
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