

Scrutiny Overview Committee

**Agenda
Item No.
7**

Date: 15 September, 2015

Relationship between Scrutiny and the Executive

Ward(s) All

Portfolios: All

Executive Summary

This report seeks to clarify the roll of Scrutiny, the operation of Call-In and the relationship between Scrutiny and the Executive. It should be noted that any proposed amendments to the 'call-in' process would require approval by Council.

Reason for scrutiny

The report was drafted at the request of the Scrutiny Overview Committee at its meeting held in June, 2015.

Recommendation

To consider the content of the report and identify any areas for development/further consideration.

Background Papers

Walsall Councils Constitution

Review of Scrutiny Arrangements in Walsall – Professor Steve Leach

Resource and legal considerations

Any proposed amendments to the 'call-in' process would require approval by Council.

Citizen impact:

None arising directly from this report.

Performance management:

None arising directly from this report.

Equality Implications

None arising directly from this report.

Consultation:

None.

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Report

1. Scrutiny Arrangements in Walsall

1.1 Walsall has four Overview and Scrutiny Committees, each with distinct terms of reference, which are detailed in Article 6 of the Constitution:

- Scrutiny Overview Committee;
- Education and Children's Services Overview and Scrutiny Committee;
- Corporate and Public Services Overview and Scrutiny Committee;
- Social Care and Health Overview and Scrutiny Committee.

1.2 Scrutiny and Overview Committees support the work of the Executive and the Council as a whole. They allow Members outside the Executive and citizens to have a greater say in Council matters by investigating issues of local concern. This can include questioning officers of the Council and inviting people from outside the Council to give opinions and expert advice. These lead to reports and recommendations which advise the Executive and the Council as a whole on its policies, budget and service delivery.

1.3 The Overview and Scrutiny Committees also monitor the decisions of the Executive. They can "call-in" a decision which has been made by the Executive but not yet implemented. This enables them to consider whether the decision is appropriate. They may recommend that the Executive reconsider the decision. They may also be consulted by the Executive or the Council on forthcoming decisions and the development of policy.

2. General role

2.1 Within their terms of reference, Overview and Scrutiny Committees will:-

- (i) Review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (ii) Make reports and/or recommendations to the Council and/or the Executive and/or any policy, joint committee in connection with the discharge of any functions;
- (iii) Consider any matter affecting the area or its inhabitants;
- (iv) Exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Executive; and
- (v) Will exercise the right to consider Councillor Call for Action.

3. Specific functions

3.1 **Policy development and review** – Overview and Scrutiny Committees may:

- (i) assist the Council and the Executive in the development of its budget and policy framework by in-depth analysis of policy issues;
- (ii) conduct research, community and other consultation in the analysis of policy issues and possible options;

- (iii) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
- (iv) question members of the Executive, Committees and all non regulatory Committees and the Chief Executive or Executive Directors or their representatives about their views on issues and proposals affecting the area; and
- (v) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.

3.2 Scrutiny - Overview and Scrutiny Committees may:

- (i) review and scrutinise the decisions made by and performance of the Executive, Committees and Council officers both in relation to individual decisions and over time, save for individual decisions that are of a regulatory/quasi judicial nature;
- (ii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
- (iii) question members of the Executive, Committees and Chief Executive or Executive Directors or their representatives about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
- (iv) make recommendations to the Executive, appropriate Committee and/or Council arising from the outcome of the scrutiny process;
- (v) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Overview and Scrutiny Committee and local people about their activities and performance; and
- (vi) question and gather evidence from any person (with their consent).

3.3 Finance - Overview and Scrutiny Committees may exercise overall responsibility for the finances made available to them.

3.4 Annual report - Overview and Scrutiny Committees must report annually to Council on their workings and make recommendations for future work programmes and amended working methods if appropriate.

3.5 Officers - Overview and Scrutiny Committees may exercise overall responsibility for the work programme of any officer employed to support their work.

4. Relationship between Scrutiny and the Executive

4.1 Professor Steve Leach undertook a review of Scrutiny arrangements in Walsall during Spring 2015. Within that report a number of matters were highlighted in relation to the relationship between Scrutiny and the Executive. It should be recognised that it was acknowledged that the current administration has an open-minded approach to scrutiny, and had not

sought to manipulate or marginalise it. This is not the case within all Authorities.

4.2 The broad issues are set out below together with actions taken to address them:-

- **Lack of clarity and consistency in the role of executive members at scrutiny panels**
 - Democratic Services now invite Portfolio Holders to attend meetings only when there are to items which relate to their portfolio.
 - Portfolio Holders have been advised that they are now primary respondents at Committee, deferring to relevant officers for additional support only when necessary.
- **A Scrutiny Co-ordination Group should be established/ The relationship between the executive and the scrutiny panels are unstructured. There are no joint meetings.**
 - The Scrutiny Overview Committee was established at Council on 3 June, 2015. It includes the Chairs of the three Committees, has a membership of 11 and is politically balanced. All Portfolio Holders, together with the Leader of the Council, are invited to attend this meeting to provide opportunity for discussion and debate in respect of the work of Scrutiny and the relationship between the Executive and Scrutiny.
 - The meeting provides opportunity to identify areas of work which Cabinet would welcome the input of Scrutiny. This can then be allocated to the most relevant Committees work programme.
- **Limited use of 'Call-in'**
 - Use of 'call-ins' to be debated at a meeting of Overview and Scrutiny to establish whether the current process needs amending.
- **The layout of rooms could reflect that of Select Committees.**
 - Each Scrutiny Committee has adopted a Select Committee style layout for one cycle to gauge its effectiveness.

5. Call In

5.1 There have been three decisions 'Called In' since April, 2014 including the disposal of the Allen Centre, Local Healthwatch Contract and the grant of lease to Ryecroft Neighbourhood Resource Centre.

5.2 The principles and procedures for 'call in' are set out in Part 4 of the Councils Constitution. The relevant extracts are set out below and the protocol is attached at appendix 1.

5.3 **Call-in – principles**

The following principles shall apply:

- Overview and Scrutiny Committees should not normally scrutinise non - key decisions made by officers under their delegated powers. Where necessary, such scrutiny should be confined to overall reviews of service performance.
- Overview and Scrutiny Committees should not normally scrutinise individual decisions made by other Committees of the Council (particularly in relation to development control, licensing, registration and other consents or permissions). Such scrutiny should normally form part of wider policy reviews.
- Individual Overview and Scrutiny Committee Members should not be involved in reviewing decisions made by other Committees of which they are Members, unless they can demonstrate that they were not in attendance at the meeting when that decision was made.

5.4 **Call-in decisions which are not urgent**

Call-in should only be used in exceptional circumstances. These are where members of the appropriate Overview and Scrutiny Committee have evidence which suggest that the decision was not made in accordance with the principles set out in Article 11 (Decision Making).

- (a) When a decision is made by the Executive, a Committee of the Executive, or a key decision is made by an officer with delegated authority from the Executive, or under joint arrangements, the decision shall be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within 2 days of being made. Chairmen of all Overview and Scrutiny Committees will be sent copies of the records of all such decisions within the same timescale, by the person responsible for publishing the decision. Copies of all decisions will be placed on deposit in each Group Room of all political groups represented on the Council.
- (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 a Overview and Scrutiny Committee objects to it and calls it in.
- (c) During that period:
 - (i) the Chief Executive shall call-in a decision for scrutiny by the

Committee if so requested by the Chairman or any 5 Members of the Committee;

- (ii) five Members of the Council (not being Members of the relevant Overview and Scrutiny Committee) may, within the first 4 working days of the period, give notice to the Chief Executive, requesting that he/she invite the Chairman of the Overview and Scrutiny Committee to exercise the powers of call-in set out above for the reasons set out in the request in respect of the decision specified though not yet implemented. If a Chairman declines the request of the Chief Executive to call-in a decision, he/she shall give reasons for that decision to the Members who made the request. In the absence of the Chairman, the Chief Executive shall refer the request to the Vice-Chairman for determination in place of the Chairman;
 - (iii) the Chief Executive shall then notify the decision-taker of any call-in and shall call a meeting of the Panel on such date as he/she may determine, where possible after consultation with the Chair of the Committee, and in any case within 5 working days of the decision to call-in. Such a meeting to be held within 7 working days of it being called.
- (d) If, having considered the decision, the Overview and Scrutiny Committee is still concerned about it, then it may refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns or refer the matter to the Council. If referred to the decision maker they shall then reconsider within a further 10 working days, amending the decision or not, before adopting a final decision.
- (e) If following an objection to the decision, the Overview and Scrutiny Committee does not meet in the period set out above, or does meet but does not refer the matter back to the decision making person or body (except in the case of a reference of a decision to the Council), the decision shall take effect on the date of the Overview and Scrutiny Committee meeting, or the expiry of the period within which the meeting ought to have been held, whichever is the earlier.
- (f) If the matter is referred to the Council it shall meet to consider the matter within 28 days. If the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective from that date. However, if the Council does object, it has no power to make decisions in respect of an Executive 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. That decision making body or person shall choose whether to amend the decision or not before reaching a final decision and implementing it. Where the decision was taken by the Executive as a whole or a Committee of it, a meeting will be convened to reconsider within 10 working days of the Council request. Where the

decision was made by an individual, the individual will reconsider within 10 working days of the Council request.

- (g) If the Council does not meet the decision will become effective at the end of the 28 day period in which the Council meeting should have been held.

5.5 Call-In - Decisions that are urgent

- (a) The call-in procedure set out above shall not apply where the decision being taken by the Executive is urgent. A decision will be urgent if any delay likely to be caused by the call in process would seriously prejudice the Council's or the public's interests. The record of the decision, and notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is an urgent one, and therefore not subject to call-in. The Mayor of the Council must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the Mayor, the Deputy Mayor's consent shall be required. In the absence of both, the Chief Executive or his/her nominee's consent shall be required. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- (b) The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.

5.6 Call - In Comparisons with other Councils

In order for Members to compare Walsall call-in process with other councils a table is attached at appendix 2 which sets out the process for 'call in' in other Authorities.

7 - Protocol for the practical operation of call-in procedure

1. When a decision is made by the Executive (Cabinet), a Committee of the Executive or a key decision is made by an officer with delegated authority, that decision will be published within 2 days by Democratic Services.
2. It will be the responsibility of an officer taking a key decision to notify Democratic Services accordingly.
3. All Members will receive decisions electronically via e-mail and copies will also be placed in each Group Room.
4. The decision notice will bear the date on which it is published and the date on which the decision(s) may be implemented on the expiry of 5 working days after publication unless the decision is called-in.
5. The Chairman or any five Members of the relevant Overview and Scrutiny Committee may request the Chief Executive, in writing or by fax, using the attached form S&PP 1 through Democratic Services, requesting him/her to call-in a decision for scrutiny within 5 working days referred to in paragraph 4 above.
6. Five Members of the Council (not all being Members of the relevant Overview and Scrutiny Committee) may within 4 working days of the period, give notice to the Chief Executive, in writing or by fax, using the attached form S & PP2 through Democratic Services, requesting him/her to invite the Chairman of the relevant Overview and Scrutiny Committee to exercise the powers of call-in set out in the Constitution.
7. If the relevant Overview and Scrutiny Committee Chairman or Vice-Chairman cannot be contacted in person, or by telephone, by the end of the working day in which the request for call-in was received, communication shall be made by e-mail.
8. If the relevant Chairman of an Overview and Scrutiny Committee declines the request of the Chief Executive, the Chairman shall give reasons for that decision to the Members who made the request. In the absence of the Chairman, the Chief Executive shall consult the Vice-Chairman.
9. If the relevant Overview and Scrutiny Committee Chairman exercises his/her power of call-in, the Chief Executive shall notify the relevant decision taker(s) of the call-in and after consultation with the Chairman shall call a meeting within 5 working days of the decision to call-in, such meeting to be held within 7 working days of it being called.

(Note: (1) The call-in procedure set out above will not apply where the decision taken by the Executive is deemed urgent and in need of immediate implementation. A decision will be deemed urgent only if it can be demonstrated to the Mayor, or in his absence the Deputy Mayor, that

any delay would seriously prejudice the interests of the Council or the public generally.

Appendix 2

Authority	Number required to Call-in	How is the decision called in?	Meeting Arrangements
Walsall	a) The Chair of a Scrutiny Committee; b) Any 5 members of a scrutiny committee; c) Any 5 members of the Council	Notice given to Chief Executive:- <ul style="list-style-type: none"> - within first 4 days of the notice of the decision being published when call in requested by 5 members of the council; - within 5 days of the notice of the decision being published when call in requested by the chair or 5 members of a scrutiny committee. 	The Chief Executive shall then notify the decision-taker of any call-in and shall call a meeting of the Panel on such date as he/she may determine, where possible after consultation with the Chair of the Committee, and in any case within 5 working days of the decision to call-in. Such a meeting to be held within 7 working days of it being called.
Birmingham City Council	a) At least two Councillors; b) Any two elected Members from a District Committee (where there is a specific local interest in the issues concerned).	Notice given by email, phone or in writing followed up by completing a pro-forma within 3 working days of the decision being published.	Five Scrutiny Chairs agree which Scrutiny Committee should hear the call-in. The meeting should take place not later than 15 clear working days after the original publication of the decision.
Wolverhampton City Council	(a) the Chair of the Scrutiny Board; (b) the Vice-chair of the Scrutiny Board; (c) the Leader or Deputy Leader of the main opposition group.	Such reviews must be notified to the accountable Cabinet Member and employee within three working days of the decision being reported to the Cabinet (Resources) Panel and will be incorporated into the Scrutiny Board or Panel's work programme.	The Scrutiny Board or appropriate Scrutiny Panel should convene to consider the matter within 10 working days of the call-in being received
Sandwell Council	a) Any member of the Council b) Any co-opted member of a board with voting rights.	The Member may do so either verbally at the time the decision is made or in writing within 3 working days from the day on which the decision was taken (not including the day of the decision), by:- <ul style="list-style-type: none"> (i) declaring his/her wish to refer the matter; and (ii) providing a clear reason or reasons why the matter should be referred. 	The scrutiny board will meet within 10 working days of the receipt of the referral notice.

