

**Report for:** **Special Overview and Scrutiny Committee**  
**3<sup>rd</sup> December 2019**

**Title:** **Joint report of the Monitoring Officer and the Chief Finance Officer on the Call-In of a Decision taken by the Cabinet on 12<sup>th</sup> November 2019 relating to the SEND transport to invest business case**

**Report authorised by:** Bernie Ryan, Monitoring Officer and Jon Warlow, Chief Finance Officer & Section 151 Officer

**Lead Officer:** Raymond Prince, Deputy Monitoring Officer

**Ward(s) affected:** N/A

**Report for Key/  
Non Key Decision:** N/A

**1. Describe the issue under consideration**

To advise the Overview and Scrutiny Committee on the call-in process, and in particular whether the decision taken by Cabinet on 12<sup>th</sup> November 2019 relating to the contract award for the provision of the SEND transport service, is within the policy and budgetary framework.

**2. Cabinet Member Introduction**

N/A

**3. Recommendations**

That Members note:

- a. The Call-In process;
- b. The advice of the Monitoring Officer and Chief Financial Officer that the decision taken by the Cabinet was inside the Council's policy and budgetary framework.

**4. Reasons for decision**

The Overview and Scrutiny Committee is expected to take its own decision with regard to whether a called-in decision is outside or inside the policy and budgetary framework when considering action to take in relation to a called-in decision.

**5. Alternative options considered**

N/A

**6. Background information**

## Call-in Procedure Rules

- 6.1** The Call-In Procedure Rules (the Rules) appear at Part 4, Section H of the Constitution, and are reproduced at Appendix 1 to this report.
- 6.2.** The Rules prescribe that once a validated call-in request has been notified to the Chair of Overview and Scrutiny Committee (OSC), the Committee must meet within 10 working days to decide what action to take. In the meantime, all action to implement the original decision is suspended.
- 6.3** If OSC Members determine that the original decision was within the policy framework, the Committee has three options:
- (i) to not take any further action, in which case the original decision is implemented immediately.
  - (ii) to refer the original decision back to Cabinet as the original decision-maker. If this option is followed, the Cabinet must reconsider their decision in the light of the views expressed by OSC within the next 5 working days, and take a final decision.
  - (iii) to refer the original decision on to Full Council. If this option is followed, Full Council must meet within the next 10 working days to consider the call-in. Full Council can then decide to either:
    - take no further action and allow the decision to be implemented immediately, or
    - to refer the decision back to the Cabinet for reconsideration. The Cabinet's decision is final
- 6.4** If OSC determine that the original decision was outside the budget/policy framework, it must refer the matter back to the Cabinet with a request to reconsider it on the grounds that it is incompatible with the policy/budgetary framework.
- 6.5** In that event, the Cabinet would have two options:
- (i) to amend the decision in line with OSC's determination, in which case the amended decision is implemented immediately.
  - (ii) to re-affirm the original decision, in which case the matter is referred to a meeting of full Council within the next 10 working days. Full Council would have two options:
    - to amend the budget/policy framework to accommodate the called-in decision, in which case the decision is implemented immediately, or
    - to require the decision-maker to reconsider the decision again and to refer it to a meeting of the Cabinet, to be held within five working days. The Cabinet's decision is final.

## The Policy Framework

- 6.6** A definition of The Policy Framework is set out in the Constitution at Article 4 of Part Two (Articles of the Constitution) which is reproduced as follows:

### ***“Policy Framework***

*These are the plans and strategies that must be reserved to the full Council for approval:*

- *Annual Library Plan*
- *Best Value Performance Plan*
- *Crime and Disorder Reduction (community safety) Strategy*
- *Development Plan documents*
- *Youth Justice Plan*
- *Statement of Gambling Policy*
- *Statement of Licensing Policy*
- *Treasury Management Strategy*

*Any other policies the law requires must be approved by full Council.*

*Such other plans and strategies that the Council agrees from time to time that it should consider as part of its Policy Framework:*

- *Housing Strategy”*

- 6.7** The policy framework is intended to provide the general context, as set by Full Council, within which decision-making occurs. In an Executive model of local government, the majority of decisions are taken by the Executive – in Haringey’s case this being the Cabinet/Leader/Cabinet member. Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 the determination of a matter in the discharge of an Executive function nonetheless becomes a matter for the full Council if the proposed determination would be contrary to a plan or strategy adopted or approved by Full Council in relation to the function in question. Case law makes it clear that it would not be a proper use of a full Council approved plan or strategy to seek to make it a means for Full Council to micro-manage what ought to be Executive decisions.

## **7. Current Call-In**

- 7.1** On 21<sup>st</sup> November 2019, a call-in request was received in relation to the Cabinet decision taken on 12<sup>th</sup> November 2019 on the recommendation to approve the award a contract for the provision of SEND Transport Transformation Consultancy Services to the successful tenderer for a period of two years. A copy of the Cabinet report dated 12<sup>th</sup> November 2019; the published draft minutes and the call-in request all form part of the published Agenda pack distributed to Members of the OSC, and so are not reproduced again here as appendices to this report.
- 7.2** The request does not assert that the decision was outside the policy or budgetary framework, and in any event, the Chief Financial Officer also confirms his view that the Cabinet decision is within the budgetary framework.

**7.3** In summary, a key concern in the call-in, is the assertion that the report to Cabinet was not clear on a number of matters namely:

- How it will be ensured that the contractor will deliver genuine efficiency savings as opposed to cuts to service delivery / a reduction in the number of children using the service / adverse implications for staff currently employed to deliver the service.
- Whether the contractor will have an operational or management role as opposed to an advisory role
- The financial consequences which would flow from a decision made by the Council to reject all or part of service delivery changes put forward by the contractor
- The financial consequences which would flow from a decision made by the Council to terminate the contract early

**7.4** The call-in also expressed concern that the decision:

- Represents a large transfer of resources to the private sector
- May lead to changes which are not in accordance with Council's values
- May not represent value for money when compared with other potential alternative options
- May lead to reputational damage to the Council and its leadership for any adverse effects of changes to service delivery implemented by the contractor

**7.5** The request also detailed alternative courses of action, namely for the contract to be rescinded and replaced by an in house project – with such external “non profit making and pro-public sector organisation such as APSE of which this council is a member” resource(s) as required, and in consultation with the trade union and service users – to “identify and progress genuine efficiency savings and service improvements. This to include consideration of bringing the supply of drivers and vehicles in house”.

## **8. Monitoring Officer's Assessment**

**8.1** The Call-In Procedure Rules require that:

*“The [Overview and Scrutiny] Committee shall consider any report of the Monitoring Officer / Chief Finance Officer as to whether a called-in decision is inside or outside the policy / budget framework. The Overview and Scrutiny Committee shall have regard to that report and any advice but Members shall determine whether the decision is inside or outside the policy/ budget framework.”*

**8.2** The Monitoring Officer considered the request on 21<sup>st</sup> November 2019, and determined that it met the 6 criteria for validity as set out in the Call-In Procedure Rules. Following investigation and consideration, the Monitoring Officer made an assessment of whether the decision was outside the policy framework and

concluded that it was not because the subject matter of the call-in is not contrary to the list of plans and strategies which comprise the policy framework set out at paragraph 6.6 above.

## **9. Conclusion**

- 9.1** For the above reasons, the Monitoring Officer concludes that the Cabinet's decision was not outside of the policy framework.

## **10. The Section 151 Officer's Assessment**

- 10.1** The Section 151 Officer's assessment is that the decision taken by Cabinet on the 12<sup>th</sup> of November 19 is within the financial framework of the authority.

## **11. Contribution to strategic outcomes**

N/A

## **12. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities) Finance and Procurement**

The Chief Finance Officer's comments are set out above.

### **Legal implications**

The Monitoring Officer's views are set out above.

### **Equality**

N/A

## **13. Use of Appendices**

Appendix 1 Call-In Procedure Rules

## **14. Local Government (Access to Information) Act 1985**

N/A