



Council

10 December 2018

REPORT TITLE:	Call-In of Cabinet Committee decision on Wirral Health and Care Commissioning Pooled Fund Arrangements
REPORT OF:	Director of Governance and Assurance

1. REPORT SUMMARY

- 1.1 The Adult Care & Health Overview and Scrutiny Committee met on 27th November 2018 to consider the 'Call-In' to review or scrutinise the decision Joint Strategic Commissioning Board Cabinet Committee to authorise the entering of a Section 75 agreement for 2018/2019 forming Wirral Health and Care Commissioning Pooled Fund Arrangements.
- 1.2 The Committee resolved to arrange for this function, so far as it relates to the decision, to be exercised by a meeting of full Council for the reasons set out in this report (minutes to follow).

2. RECOMMENDATION

- 2.1 That, in exercising the 'call-in' function of the Adult Care & Health Overview and Scrutiny Committee to scrutinise the decision of the JSCB Cabinet Committee 16th October 2018 relating to the Wirral Health and Care Commissioning Pooled Fund Arrangements (Section 75 agreement for 2018/2019), the meeting of full Council may either:
 - not object to the decision that has been made by the Cabinet Committee (as a result of which the decision will become effective on the date of the Council meeting); or
 - refer the decision, or part of the decision, to which it objects back to the Cabinet Committee, together with the Council's views on the decision

3. SUPPORTING INFORMATION

- 3.1 At the meeting of 16th October 2018 of the Joint Strategic Commissioning Board the Cabinet Committee resolved:
- (1) That the Joint Strategic Commissioning Board endorses and supports the approach taken to mitigate financial risk; and
 - (2) That the Section 75 agreement for 2018/2019 is agreed for sign off by Chief Officers on behalf of NHS Wirral CCG and Wirral Council.
- 3.2 In accordance with the Call-In procedure for executive decisions (the Council's Scrutiny Procedure Rules set out in Council Standing Order 35), the procedure was activated on 5th November 2018 by six Members. Officers considered there was sufficient information provided to enable the Call-In to proceed.
- 3.3 The relevant Members and officers were notified of the valid call-in and all action to implement the decision ordered to be ceased until the call-in procedure has reached its conclusion.
- 3.4 Whilst the call-in requested that the decision was scrutinised by two committees, the procedure requires it to be allotted to one of the overview and scrutiny committees, designated through consultation with the Chairs of the committees. In this case, that was the Adult Care & Health Overview and Scrutiny Committee and the meeting was arranged for 27th November 2018.
- 3.2 The lead Member listed on the call-in schedule was Councillor Kate Cannon. Several reasons were given for the Call-In, which are provided in the Call-In document included with the agenda of the meeting on 27th November 2018, along with the minutes of the JSCB meeting. They can be found [here](#).
- 3.3 The meeting heard evidence submitted by two witnesses proposed by the members listed on the call-in schedule and from two witnesses proposed by Cllr C. Jones as Chair of the Cabinet Committee.
- 3.4 Subject to approval of the minutes, the meeting resolved that:

“This matter be referred to Council because the Committee has the following concerns:

1. *The Cabinet (Committee) needs to review and reconsider the developing and proposed contract with Wirral CCG to ensure that:
 - (a) the Council retains control of its statutory duties; and
 - (b) the Council's budgetary position is protected.*
2. *In view of the substantial funds pooled and managed by the new organisation, further channels of communication need to be developed with Adult Care & Health Overview and Scrutiny Committee so that the Committee might have more insight and make more meaningful contributions to the oversight of that body.*
3. *That similar parallel arrangements be made for Children and Families Overview & Scrutiny Committee.*
4. *In addition, work on the preparation of the system sustainability plan should be placed before Members at the earliest opportunity."*

3.5 The Committee's draft minutes will be provided as soon as they are completed.

4. LEGAL IMPLICATIONS AND CALL-IN PROCEDURE

- 4.1 The Local Government Act 2000 (as amended) sets the framework for Overview and scrutiny Committees and call in and, in exercising these functions, regard must be had to any guidance for the time being issued by the Secretary of State. The current statutory guidance was issued in 2006 (and following the review of last year, is due to be replaced by new guidance December 2018).
- 4.2 Sections 9F and 9FA of the Act require that the Council's executive arrangements ensure that an overview and scrutiny committee has power to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the executive.
- 4.3 In conducting a 'call-in', the power of an overview and scrutiny committee under subsection 9F(2)(a) to review or scrutinise a decision made but not implemented includes a power:

- (a) to recommend that the decision be reconsidered by the person who made it, or
- (b) to arrange for its function under subsection (2)(a), so far as it relates to the decision, to be exercised by the authority.

4.4 The Committee, in this instance, has determined that the scrutiny of the decision subject to the call-in should be conducted by full Council. In this regard, the statutory guidance issued by the Secretary of State states:

“To avoid the possibility of very many emergency council meetings the Secretary of State recommends that overview and scrutiny committees should only use the power in section 21(3)(b) to refer matters to the full council if they consider that the decision is contrary to the policy framework or contrary to or not wholly in accordance with the budget. Where an overview and scrutiny committee refers a decision to the full council there should be clear timescales set out in the local authority's constitution within which the debate should take place to avoid decisions being unnecessarily delayed.”

4.5 These legislative provisions and statutory guidance are reflected in the Council's Procedure Rules (contained at Part 4A of the Council's Constitution) and also its Scrutiny Guidance.

4.6 Standing Order 35 (Calling-In of Decisions) states in relation to the Committee's decision that:

“(4) Having considered the decision, the Overview and Scrutiny Committee may:

- (i) refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns or;
- (ii) refer the matter to full Council. Such a referral should only be made where the Overview and Scrutiny Committee believes that the decision is outside the policy framework or contrary to or not wholly in accordance with the budget. The procedures set out in those rules must be followed prior to any such referral.”

4.7 The Council's Scrutiny Guidance states:

“If the Overview and Scrutiny Committee disagrees with the original decision, it may either ask the Cabinet to reconsider the

decision or refer it to the Council for consideration if it believes that the decision is contrary to the policy framework or not in accordance with the budget.”

5. LEGAL IMPLICATIONS AND CALL-IN PROCEDURE: MEETING OF FULL COUNCIL

5.1 Now that the matter is before the full Council, Standing Order 35 (Calling-In of decisions) provides the Council with two options, being:

“(7) If the matter is referred to full Council and the Council does not object to a decision which has been made, then the decision will become effective on the date of the Council meeting.

(8) If the Council does object the Council may take a decision, which is outside the policy and budgetary framework. Otherwise 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 ten working days of the Council request.”

5.2 The Council’s Scrutiny Guidance adds that:

“The Chair of the overview and scrutiny committee will have the opportunity to explain its views to the Cabinet or Council, as appropriate.”

5.3 As the meeting of Council, in this instance, is sitting to exercise the functions of an overview and scrutiny committee, it must comply with the committee’s obligations. This includes having regard to the statutory guidance that

“(‘The Party Whip’) overview and scrutiny committees are to hold decision makers to account. To do so effectively will require a change in the way members have traditionally questioned decisions. Although this is a matter for political parties to consider, both locally and nationally, the Secretary of State

believes whipping is incompatible with overview and scrutiny and recommends that whipping should not take place.”

As is the case with its overview and scrutiny committees, in exercising the Committee’s scrutiny function no whip should apply to consideration of this call-in referral by full Council.

6. MONITORING OFFICER’S OPINION

- 6.1 It is part of the process, in accordance with the statutory guidance, that a legal opinion is provided by the monitoring officer where there is doubt about the vires for a decision and that the meeting bears this advice in mind where it considers that a decision of the executive might be contrary to the policy framework and therefore referred to full Council.
- 6.2 It is understood that the reasons for referring this matter to full Council are other than on an issue of vires. For completeness, however, it is the view of the monitoring officer that the Cabinet Committee had authority under the Council’s policy framework, budget and scheme of delegation to make the decision, currently awaiting implementation, to enter into an agreement under section 75 of National Health Services Act 2006 between the local authority and an NHS body.
- 6.3 Accordingly, the first sentence of the Council’s Standing Order 35 (8) will not apply, as this will not be a decision that the Council is empowered to make. The Council’s resolution may only take the form of the options as set out in the recommendation.

7 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS, RELEVANT RISKS and EQUALITY IMPLICATIONS

- 7.1 These matters were considered in the originating report and meeting of the JSCB Cabinet Committee of 16th October 2018 and, so far as it was relevant to the call-in, the meeting of the Adult Care & Health Overview and Scrutiny Committee of 27th November 2018.

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Background papers

Agenda, reports and minutes of the Adult Care & Health Overview and Scrutiny Committee on 27 November 2018 may be found [here](#).

Agenda, reports and minutes of JSCB on 16 October 2018 may be found [here](#).