



Bristol City Council

Call in of a decision taken by the Executive

Overview and Scrutiny Rule OSR17 states that where **non-executive councillors** have evidence which suggests that the executive did not take the decision in accordance with Article 14 (Decision Making) of part 2 of the Council’s Constitution, at least **five non-executive members** may ask the proper officer to call-in a decision for scrutiny using the appropriate call-in form (attached). The decision making principles in article 14 are set out below and the members seeking the call-in should identify those principles in Article 14 of the Constitution which they believe have been breached.

Proportionality	The action must be proportionate to the desired outcome.
Due consultation	(a) It may be appropriate to consult with communities, businesses and other third parties who have an interest in the matter. In some cases minimum consultation requirements are prescribed in law. (b) The council is required to act in the interests of the public as a whole so the decision desired by consultees may not necessarily be the right decision to make.
Taking of professional advice from others	Professional advice from the council’s legal, financial and other specialist staff is always essential for the executive.
Respect for human rights	The Human Rights Act 1998 is of great importance to local authorities. Any decision which may breach an article or protocol of the Act should be subjected to “anxious scrutiny” and professional advice sought.
A presumption in favour of openness	Decisions taken by executive members or officers should be taken under this presumption. Access to material contributing to a decision should be made available to anyone with a legitimate interest in it unless this would involve disclosing exempt or confidential information
Clarity of aims and desired outcomes	Decision makers must be clear as to what they are seeking to achieve and why. This will often require thoughtful consideration of other options.
Due regard to public sector equality aims	The Equalities Act 2010 requires that all decisions taken must have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct which is prohibited under the Act; (b) advance equality of opportunity between equality groups and (c) foster good relations between equality groups.

Procedure

1. Where a decision is made by the executive or a key decision is made by an officer with delegated authority from the executive, or under joint arrangements the decision will come into force, and may then be implemented on the expiry of five clear working days from the date the decision was taken unless the decision is called-in. The 5 clear working days run from 8.30am on the day **after** the decision was taken and exclude any day when the Council’s offices are shut - i.e. weekends and bank holidays.

2. The proper officer will first satisfy themselves that the following requirements have been met:
 - (i) the call-in notice has been received within the prescribed timescales
 - (ii) the decision taker's decision has been properly identified and described
 - (iii) the members seeking the call-in have identified those principles of Article 14 of the constitution which they believe have been breached.

3. If the requirements are met the proper officer will call-in the item and within five working days of the request, give notice as to the date on which the call-in will be considered by a Call-In Sub Committee, which will be held within 5 days of the request for call-in being approved by the Proper Officer. If a debate at Full Council is decided by the Call-In Sub-Committee then this will be held within ten days at an extraordinary meeting of the full Council or at the Lord Mayor's discretion.

The following points relate to established working practice in relation to call in:

- The call-in procedure should not be abused or used to unduly delay decisions or slow down the process of decision making
- Members should try to avoid calling in matters which are already within the agreed work programme of a scrutiny commission
- To give notice of a call in, councillors **must use** the form attached to these notes. It should be detached and completed and **send to the Proper Officer**. Members are strongly recommended to deliver their notice in person, or to email the form
- The form must be filled in fully - members must explain in detail how in their view, the decision taken breaches any of the principles in Article 14 of the Constitution. They must also be meticulous in identifying which part of any executive decision they are referring to. Failure to do so could result in the suspension of a complex decision, when in fact the callers in only wish to object to a small part of it.
- The Proper Officer will review all call ins and may reject or refer back to members, any call in notice which does not fully meet the requirements specified in the Constitution

Early submission of a call in is advised. This will maximise the time available to the executive to formulate a response and for arrangements to be made for appropriate representatives of an executive to attend the Call In Panel which will discuss the decision called in.

Bristol City Council

Request to the Proper Officer to call in an Executive Decision

This form should only be completed after the accompanying guidance notes have been read. It should be completed fully in order that the Proper Officer has an adequate basis upon which to call in the decision. Please return the call-in form to the Proper Officer

Names of the non-executive members requesting the proper officer to call the decision in :	Cllr Tim Kent Cllr Mark Weston Cllr Anthony Negus Cllr Claire Hiscott Cllr John Goulandris
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Date and time request submitted :	Monday 10 th September
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Details of Executive (or officer acting under delegated power)	Cllr Craig Cheney, Cabinet 4 th September 2018
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Decision number and date	Agenda Item 9: Arena Update
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Description of decision or part of decision <i>(if you only quote the subject then everything in the decision could be suspended pending the Call In Sub meeting)</i>	All of the decision of Agenda Item 9: Arena Update
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State which principle(s) in Article 14 of the Constitution you believe the executive has breached and set out any evidence to support this.

We set out the main reasons for our call-in of this decision below. We have attempted to limit the reasons to core ones that most pertain to Article 14. It should be noted that the decision was made under delegated authority by Cllr Cheney. But the Mayor has clearly stated on several occasions in news reports that he has made the decision. As he can also withdraw delegated decision making at any time it is clear that this decision was made as much by the Mayor as it was Cllr Cheney.

We have restricted the call-in to 18 breaches of the principles of decision making in Article 14 of the constitution. We understand that we needed only one breach but we felt it important to demonstrate our grave concern with regard to the decision and more importantly the process engaged in making that decision.

(a) Proportionality

1. The decision breached the principle of proportionality by failing to take into account other viable options for the funding and de-risking of the arena island project. The failure to follow up several requests by Stephen Fear and Harvey Goldsmith to meet with an American company interested in developing the arena with private capital is a major breach of process. That this information was withheld in the report makes the decision appear to be very disproportionate.

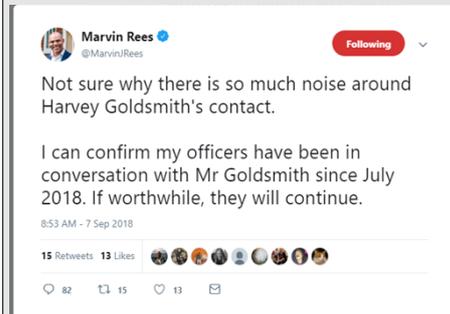
(b) Due consultation

2. The meeting of Full Council the day before the decision gave a clear view of the full council that the Arena should continue and be at Temple island. This meeting was informed by the Cabinet Report and the Mayor's disregard for the outcome of the meeting, his dismissal of legitimate views and failure to take into account significant issues raised was a breach of meaningful consultation.
3. The Mayor failed to consult the general public with regard to the policy change on the Arena. It is clear the Mayor has been intent on deleting the arena project at Temple Island for a long time yet in his recent budget consultation he included plans for the Arena with a budget allocation. He had the opportunity at this point to consult the public on this major change in policy and to the capital strategy and council budget but failed to do this. This was a failure in consultation. The Mayor had in his manifesto 'Our Bristol Plan' that he would 'complete the new city arena'. Temple Meads was the only site at the time with none other being considered and the decision at the Cabinet was to end the Arena project. The new plan is a major departure which has not been tested with the public.
4. The Mayor failed to meet and consult with third parties who have an interest in the decision. Arena Island Ltd have asked for a meeting for over 8 months but the Mayor has deliberately chosen to not meet with them failing in the duty to due consultation and leaving the Council at greater legal and financial risk.
5. The Mayor failed to meet with Stephen Fear and Harvey Goldsmith who had indicated verbally and in emails to him and a senior officer (Nigel Greenhalgh) that they had an alternate funding proposal for the Arena. This was a breach of due consultation as defined by Bristol City Council Constitution.

(c) The taking of professional advice from officers

6. Exempt call-in reason – redacted.

7. Failure of advice with regard to other options – The offer from Harvey Goldsmith and Stephen Fear on June 21st and subsequently in early July to meet the Mayor to discuss the arena was not within the report to Cabinet. Since that decision the Mayor has stated:



From the above statement, by the Mayor, it is clear that he is in command of additional information, given to him by senior officers, that was withheld from the published and exempt reports. That an alternative proposal is being considered, was excluded from all written reports and is an ongoing consideration of the council officers yet the Mayor withheld this information from the final decision maker (Cllr Cheney) meant that Cllr Cheney was not able to take professional advice in this regard.

(d) A presumption in favour of openness

8. The withholding of the offer by Stephen Fear and Harvey Goldsmith and this not being referenced in the report or by the Mayor despite the ongoing work (as referred to by the Mayor) was a breach of a presumption in favour of openness.
9. The Mayor's refusal to meet with the council's own contracted operator, Arena Island Ltd, a failure to use all best endeavours to openly consult in an open manner was a breach of the presumption in favour of openness.
10. The failure to allow Arena Island Ltd and developers Bellway full access to figures and documents used by KPMG in preparing their best value report and a lack of direct engagement with them that led to errors within the report was a breach of a presumption in favour of openness.
11. The Mayor's failure to attend the Overview and Scrutiny Management Committee Meeting on September 3rd despite the request was a breach of OSR15, Members and officers giving account. This is a constitutional breach by the Mayor and a breach of the presumption in favour of openness.
12. The failure to publish the Decision Record within 2 working days as per OSR15 (the requirement to email the decision to members of OSM) is a breach of the constitution, which gives the appearance of an attempt to frustrate the democratic process and call-in and a breach of a presumption in favour of openness.

(e) Clarity of aims and desired outcomes

13. Failure to consider other options. Within the report and the decision making process no mention was made of other alternatives to the funding of the Bristol Arena such as the offer from Mr Fear and Mr Goldsmith. This option appears to have been deliberately not looked at. This is in breach of the need to consider other options in detail.
14. The decision taken is in conflict with the adopted local plan of the council. Not only does this put it outside of the Policy Framework and the adopted strategic plan for the city centre and enterprize zone it also means that it is at significant risk of not being able to obtain planning permission. This appears to contradict the Mayor's claim that the decision has been taken to reduce risk and that the alternative scheme is deliverable.
15. The conflict with the councils adopted policies and its policy and budget framework not only means that the decision is at significant risk of legal challenge it is arguably not one the executive had lawful power to make.
16. The Mayor has now made public statements that he will consider other options for the site, including that of an arena, since this decision was made. The aims seem unclear and this consideration of other options should have been made before the decision was taken.
17. A perception of a conflict of interest has been allowed to develop which has damaged the office of mayor, councillors and Bristol City Council's reputation. Irrespective of the reality in this procurement process this perception has undermined the aims and desired outcomes of the decision making process.
18. In recognising that Temple Island is the best location of the Arena, and voting for the all-party resolution to this effect, only to then perform an about-face on this the following day betrays muddled, contradictory thinking on this.

Signed by Councillors

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