

Communities, Transport and Environment Policy Development and Scrutiny Panel

Date: Thursday, 27th September, 2018

Time: 10.30 am

Venue: Council Chamber - Guildhall, Bath

Councillors: John Bull (Chair), Brian Simmons (Vice-Chair), Neil Butters, Alan Hale, Richard Samuel, Peter Turner, Ian Gilchrist, Michael Evans and Patrick Anketell-Jones

Cabinet Member for Development and Neighbourhoods: Councillor Bob Goodman

Chief Executive and other appropriate officers
Press and Public

Michaela Gay

Democratic Services

Lewis House, Manvers Street, Bath, BA1 1JG

Telephone: 01225 394411

Web-site - <http://www.bathnes.gov.uk>

E-mail: Democratic_Services@bathnes.gov.uk

NOTES:

1. **Inspection of Papers:** Papers are available for inspection as follows:

Council's website: <https://democracy.bathnes.gov.uk/ieDocHome.aspx?bcr=1>

Paper copies are available for inspection at the **Public Access points:-** Reception: Civic Centre - Keynsham, Guildhall - Bath, The Hollies - Midsomer Norton. Bath Central and Midsomer Norton public libraries.

2. **Details of decisions taken at this meeting** can be found in the minutes which will be circulated with the agenda for the next meeting. In the meantime, details can be obtained by contacting as above.

3. **Recording at Meetings:-**

The Openness of Local Government Bodies Regulations 2014 now allows filming and recording by anyone attending a meeting. This is not within the Council's control.

Some of our meetings are webcast. At the start of the meeting, the Chair will confirm if all or part of the meeting is to be filmed. If you would prefer not to be filmed for the webcast, please make yourself known to the camera operators.

To comply with the Data Protection Act 1998, we require the consent of parents or guardians before filming children or young people. For more information, please speak to the camera operator.

The Council will broadcast the images and sound live via the internet www.bathnes.gov.uk/webcast The Council may also use the images/sound recordings on its social media site or share with other organisations, such as broadcasters.

4. **Public Speaking at Meetings**

The Council has a scheme to encourage the public to make their views known at meetings. They may make a statement relevant to what the meeting has power to do. They may also present a petition or a deputation on behalf of a group. They may also ask a question to which a written answer will be given. **Advance notice is required not less than two full working days before the meeting. This means that for meetings held on Thursdays notice must be received in Democratic Services by 5.00pm the previous Monday.** Further details of the scheme:

<https://democracy.bathnes.gov.uk/ecCatDisplay.aspx?sch=doc&cat=12942>

5. **Emergency Evacuation Procedure**

When the continuous alarm sounds, you must evacuate the building by one of the designated exits and proceed to the named assembly point. The designated exits are signposted. Arrangements are in place for the safe evacuation of disabled people.

6. **Supplementary information for meetings**

Additional information and Protocols and procedures relating to meetings
<https://democracy.bathnes.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13505>

**Communities, Transport and Environment Policy Development and Scrutiny Panel -
Thursday, 27th September, 2018**

at 10.30 am in the Council Chamber - Guildhall, Bath

A G E N D A

1. WELCOME AND INTRODUCTIONS

2. EMERGENCY EVACUATION PROCEDURE

The Chair will draw attention to the emergency evacuation procedure as set out under Note 6.

3. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

4. DECLARATIONS OF INTEREST

At this point in the meeting declarations of interest are received from Members in any of the agenda items under consideration at the meeting. Members are asked to indicate:

(a) The agenda item number in which they have an interest to declare.

(b) The nature of their interest.

(c) Whether their interest is **a disclosable pecuniary interest** *or* an **other interest**,
(as defined in Part 2, A and B of the Code of Conduct and Rules for Registration of Interests)

Any Member who needs to clarify any matters relating to the declaration of interests is recommended to seek advice from the Council's Monitoring Officer or a member of his staff before the meeting to expedite dealing with the item during the meeting.

5. TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN

6. ITEMS FROM THE PUBLIC OR COUNCILLORS - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS RELATING TO THE BUSINESS OF THIS MEETING

At the time of publication no notifications had been received.

7. PILOT SCHEME TO INCREASE ENFORCEMENT ACTIVITY FOR ENVIRONMENTAL CRIME (Pages 5 - 26)

This report sets out the call-in received by 10 Councillors of the decision relating to the 'Pilot scheme to increase enforcement activity in relation to environmental crimes'. The role of the Panel is to consider the issues raised by the call-in notice and to determine its response.

The Committee Administrator for this meeting is Michaela Gay who can be contacted on 01225 394411.

Bath & North East Somerset Council	
MEETING:	Communities, Transport & Environment Policy Development and Scrutiny Panel
MEETING DATE:	27 th September 2018
TITLE:	Call-in of decision E3088
WARD:	ALL
AN OPEN PUBLIC ITEM	
<p>List of attachments to this report:</p> <p>Appendix 1 Cabinet Decision</p> <p>Appendix 2 Accompanying Report for the Decision</p> <p>Appendix 3 Call-in Request</p> <p>Appendix 4 Call-in Guidance Note</p> <p>Appendix 5 Terms of Reference for the Call-in</p>	

1 THE ISSUE

- 1.1 Any 10 Councillors not in the Council's Cabinet may request that a Cabinet or Single Member Decision made but not yet implemented be reconsidered by the person or body who made it. This is called a "call-in" and has the effect of preventing the implementation of the decision pending a review of the decision by a Policy Development and Scrutiny Panel.
- 1.2 This report sets out the call-in received by 10 Councillors of the decision relating To the pilot scheme to increase enforcement activity in relation to environmental crimes. The role of the Panel is to consider the issues raised by both call-in notices and to determine its response.

2 RECOMMENDATION

THE PANEL IS ASKED TO:

- a. Consider the call-in request received (refer to Appendix 3).
- b. Approve the Terms of Reference of the Call-in.
- c. Decide whether it will reach a conclusion about whether to uphold or dismiss the call-in; or refer the matter to the Council itself to undertake the role of the Panel, at this meeting or if a further meeting is required.

d. If a further meeting is required to hear and determine the call-in, the Panel is asked to agree the date for this. [The constitutional requirement is for that meeting to take place before the end of the 10th October 2018 (this timescale would not apply if the Panel decided to refer their role to the full Council)].

3 FINANCIAL IMPLICATIONS

3.1 The Panel should be aware that the Council's Constitution (Part 4E, Rule 13) requires that

"Where an Overview and Scrutiny Panel makes a recommendation that would involve the Council incurring additional expenditure (or reducing income) the Panel has a responsibility to consider and / or advise on how the Council should fund that item from within its existing resources or the extent to which that should be seen as a priority for future years' budget considerations".

3.2 It is important, therefore, in its consideration of the call-in that the Panel gives consideration to the alternative options available to the decision-maker and the financial consequences of these.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSALS

4.1 A Call-in is a statutory process pursuant to the Council's Constitution Part 4E.

5 THE REPORT

BACKGROUND

5.1 The decision which is now subject to a call-in request was a Cabinet Decision made on the 5th September 2018 (Appendix 1) following consideration of the officer report (Appendix 2). The Council Solicitor, on behalf of the Chief Executive, has validated the call in and confirms that it conforms to constitutional requirements in terms of time of receipt and number of Members validly subscribing to it. Appendix 3 sets out the reasons for the call-in request.

ASSESSING THE CALL-IN REQUEST

5.2 The Terms of Reference (Appendix 5) will indicate the suggested scope of the Call-in. This will outline the information and contributions the Panel is advised to consider in order to determine the call-in. It will have been prepared in consultation with the Chair. Panel members are invited to comment on the terms of reference and any changes they request will be taken into account in an updated version which will be circulated at the meeting.

5.3 The Policy Development and Scrutiny Panel Chairs have approved guidance on the handling of call-in requests which make clear that there is a presumption that every validated call-in will proceed to a public meeting stage. The process for that meeting is set out in paragraph 5.3 below. If a second meeting of the Panel is required to complete the review it needs to take place no later than 10th October to comply with the constitutional requirement that the total period of overview and scrutiny involvement in a call-in must not exceed 21 working days.

SUGGESTED FORMAT FOR THE MEETING TO DETERMINE THE CALL-IN

5.4 When the Panel determines the call-in, it is suggested that the following format be adopted:

- (1) Remind itself of the issues to be considered and consider any additional written information supplied.
- (2) Hear from and ask questions of the Cabinet Member(s) and Lead (or other agreed) Officers.
- (3) Hear from and ask questions of Councillor(s) representing the call-in signatories.
- (4) Hear from and ask questions of any public speakers. appropriate external contributors (a “panel” style contributors’ session is suggested).
- (5) Call-in Councillor and Cabinet member(s) have the opportunity to make comments on any new considerations that may have arisen during the debate.
- (6) Discuss and draw conclusions from the written and oral information presented.
- (7) Consider and formulate the Panel’s determination of the call-in.

6 RATIONALE

6.1 The recommendations were suggested pursuant to the Council’s constitution.

7 OTHER OPTIONS CONSIDERED

7.1 Not applicable

8 CONSULTATION

8.1 This report has been prepared following consultation with the Chair and Vice Chair of the Policy Development and Scrutiny Panel.

9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

Contact person	<i>Donna Vercoe, Senior Scrutiny Officer, 01225 396053</i>
Background papers	<i>none</i>
Please contact the report author if you need to access this report in an alternative format	

This page is intentionally left blank

Cabinet Meeting Resolution

**Executive
Forward Plan
Reference**

E3088

Pilot Scheme to increase enforcement activity for environmental crime

Date of Meeting	5-Sep-18
The Issue	<i>The Cabinet is asked for approval to enter into a pilot scheme with a private sector provider to significantly increase enforcement activity in the District for environmental crime - such as litter dropping, dog fouling and fly tipping.</i>
The decision	<p>RESOLVED (unanimously) that the Cabinet agreed:</p> <ol style="list-style-type: none"> 1) That the Group Manager for Neighbourhood Environmental Services, in consultation with the Cabinet member for Development and Neighbourhoods to enter in to a 12 month pilot scheme to increase the enforcement of environmental crime throughout the district with the following provision: <ol style="list-style-type: none"> a) the contract is at zero cost to the council b) the contract is flexible to include additional enforcement activity as deemed appropriate c) the providers take a proportionate approach in accordance with the legislation d) that education and awareness raising of the consequences of environmental crime are prioritised e) that if successful, proposals for a more permanent arrangement are developed towards the end of the trial.
Rationale for decision	<p>Fixed Penalty Notices are a valuable enforcement tool for dealing with the unauthorised deposit of litter, dog fouling flytipping and specific Duty of Care offences. They help to further the Council's commitment to take enforcement action against those who cause litter.</p> <p>By entering into a contract with a third party provider the Council can significantly increase its enforcement activity in relation to environmental crime as requested by residents, and help to keep the District cleaner and reduce pollution.</p> <p>Cleaner greener healthier communities form part of the Councils key priorities.</p>
Other options considered	<p>To directly employ additional enforcement officers in-house. This option has been discounted due to the increased overhead costs and administrative support that will be required to implement a significant increase in FPN's and to prepare files for prosecution. Outsourcing this function reduces financial risk to the Council whilst increasing capability.</p>
The Decision is subject to Call-In within 5 working days of publication of the decision	

This page is intentionally left blank

Bath & North East Somerset Council		
MEETING/ DECISION MAKER:	Cabinet	
MEETING/ DECISION DATE:	On 5 th September 2018	EXECUTIVE FORWARD PLAN REFERENCE:
		E3088
TITLE:	Pilot scheme to increase enforcement activity in relation to environmental crimes.	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report: None included		

1 THE ISSUE

- 1.1 The Council has recently adopted the newer higher level of £150 permitted for a Fixed Penalty Notice ("FPN") under the Environmental Offences (Fixed Penalties) (England) Regulations 2017 for litter dropping.
- 1.2 The Council has limited enforcement resource and cannot cover the whole district 7 days per week. Current enforcement activity is focussed in the city centre in partnership with the BID. The public would, however like us to take a much more proactive stance throughout the whole district with a view, to reducing environmental crime and have cleaner, greener communities.
- 1.3 The proposal is to enter into a pilot scheme with a private sector enforcement provider at zero cost to the Council, to increase the amount of enforcement activity that is undertaken in relation to environmental crime such as litter dropping, dog fouling, fly tipping, waste Duty of Care breaches and to ensure that an enforcement presence is available 7 days per week in the district including parks and public spaces.

This report seeks approval for officers to enter into a 12 month pilot scheme with a private sector provider in consultation with the Cabinet Member for Development & Neighbourhoods

2 RECOMMENDATION

The Cabinet is asked to;

- 2.1 To agree that the Group Manager for Neighbourhood Environmental Services, in consultation with the Cabinet member for Development and Neighbourhoods to enter in to a 12 month pilot scheme to increase the enforcement of environmental crime throughout the district with the following provision:
- a) the contract is at zero cost to the council
 - b) the contract is flexible to include additional enforcement activity as deemed appropriate
 - c) the providers take a proportionate approach in accordance with the legislation
 - d) that education and awareness raising of the consequences of environmental crime are prioritised
 - e) that if successful, proposals for a more permanent arrangement are developed towards the end of the trial.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 The authority has limited in-house resource to enforce against environmental crime such as litter dropping, dog fouling, fly tipping and Duty of Care waste management issues.
- 3.2 Other local authorities (including our neighbours Bristol City Council) have successfully entered into pilot schemes to engage private sector providers to enforce against environmental crime on their behalf. These pilots are undertaken at no cost to the Council and have had a significant impact in raising the awareness of the need to reduce environmental crimes. The schemes have proved popular with the public who wish to see a cleaner environment.
- 3.3 Officers have researched schemes elsewhere and determined that on average 75% of FPNs issued are paid without the need to refer cases to the magistrates' court. The uniformed officers on the streets act as a deterrent, and also as ambassadors for the Council. They usually work closely with other enforcement bodies, Council departments and third parties to share intelligence and tackle cross-cutting issues also.
- 3.4 The Council will usually provide welfare facilities and an operating base for the enforcement officers, who are largely mobile for the period of the trial. Whilst this could be accommodated within one of the Council's waste operational depots the details will be finalised if accommodation proves necessary.
- 3.5 The private sector partner for the pilot, although nil cost to the Council, will be selected through an informal procurement process and monitored by the Council's Waste & Strategy & Contracts team, working closely with the Waste Operational Service. Following the pilot any ongoing contract would be subject to a formal procurement exercise.
- 3.6 The private sector provides all of the enforcement and administrative support required to ensure successful issue of FPN's including all of the mobile technology requirements and access to identify verification information in accordance with statutory requirements.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

4.1 Fixed Penalty Notices for leaving litter

- 4.1.1 Section 87 of the Environmental protection Act 1990 states that it is an offence to throw down, drop or otherwise deposit any litter in any place which is in the area of a principal litter authority and is open to the air.
- 4.1.2 Section 88 (1) of the Environmental Protection Act 1990 provides for an authorised officer to issue FPN's for littering offences.
- 4.1.3 The Environmental Offences (Fixed Penalties) (England) Regulations 2017 and section 88(6A)(a) of the Environmental Protection Act 1990 provides that the amount of a FPN payable in respect of a FPN issued for Litter shall be not less than £50 and not more than £150, with £100 being the default if no amount is specified. If the FPN is not paid within the specified period, then the person it was issued to will be liable to conviction for the original offence in the Magistrates' Court.

4.2 Fixed Penalties for other Environmental Issues

- 4.2.1 Section 34A, 47ZA and 47ZB of the Environmental Protection Act 1990 provides for an authorised officer to issue a FPN's for failures of waste duty or care and incorrect presentation of commercial and domestic waste for collection.
- 4.2.2 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 provides for an authorised officer to issue a FPN for incidents of fly tipping
- 4.2.3 The Dogs (Fouling of Land) Act 1996 provides for an authorised officer to issue a FPN for incidents of dog fouling.
- 4.3 The above mentioned legislation are the primary areas that will be considered as part of the trial, but others could be included during the trial where appropriate.
- 4.4 Once appointed enforcement operatives of the 3rd Party Provider will be authorised to issue FPNs under delegated authority in accordance with the Environmental Services Delegation scheme.
- 4.5 Should offenders chose not to discharge their liability through payment of the FPN, or where a case involves persistent offenders or more serious incidents, the matter will be referred to the council's Legal Services for consideration of criminal proceedings.

5 THE REPORT

- 5.1 In common with all local authorities, our district suffers from incidences of littering, fly tipping, dog fouling and poor presentation of waste by commercial operators and by domestic residents.
- 5.2 Litter includes items such as cigarette butts, chewing gum and crisp packets, and can cause harm to the environment and can be hazardous to humans and wildlife.
- 5.3 This Council is determined to reduce littering by carrying out an awareness raising campaign to stress the harm caused by this anti-social behaviour, encouraging people to take personal responsibility for their waste, and also by making best use of the of legislation available to us to enforce against littering behaviour
- 5.4 Where perpetrators of littering are identified, it is appropriate that they receive a penalty reflecting the damage to the environment, local community and cost to the Local Authority

for clearing the litter and enforcing the offence. The penalty should also act as a deterrent against future offending.

5.5 This Council has adopted the maximum amount of fixed penalty that can be used in relation to a FPN issued for littering and flytipping. FPNs offer the opportunity for an individual to discharge any liability to conviction for the offence to which it relates, by payment of a FPN. FPNs are ordinarily used to deal with an incident initially, as an appropriate and proportionate way of dealing with the offending behaviour.

5.6 When individuals choose not to discharge their liability through payment of an FPN, or where a case involves a persistent offender then prosecution action can be taken through the courts.

5.5 The Council wishes to increase its enforcement capabilities to make a positive impact on the reduction of environmental crime, but does not have the capability in-house to do this in the current financial climate. The Council is therefore seeking a private sector provider to assist at zero cost to the Council.

5.6 The Council will seek to enter into a flexible pilot scheme to determine success and to ultimately shape the procurement of a longer term enforcement contract developed using lessons learned throughout the pilot.

5.7 Now that Bristol City Council have reached the end of their pilot, they are currently planning a procurement exercise for a 4 year contract for the provision of these services, Bath & North East Somerset will be a named party on the procurement exercise, giving us the option to join it at a later date if it is suitable for our needs. By being named there is no commitment to have to use the contract in future.

6 RATIONALE

6.1 Fixed Penalty Notices are a valuable enforcement tool for dealing with the unauthorised deposit of litter, dog fouling flytipping and specific Duty of Care offences. They help to further the Council's commitment to take enforcement action against those who cause litter.

6.2 By entering into a contract with a third party provider the Council can significantly increase its enforcement activity in relation to environmental crime as requested by residents, and help to keep the District cleaner and reduce pollution.

6.3 Cleaner greener healthier communities form part of the Councils key priorities.

7 OTHER OPTIONS CONSIDERED

7.1 To directly employ additional enforcement officers in-house. This option has been discounted due to the increased overhead costs and administrative support that will be required to implement a significant increase in FPN's and to prepare files for prosecution. Outsourcing this function reduces financial risk to the Council whilst increasing capability.

8 CONSULTATION

8.1 The Council's Monitoring Officer, Section 151 Officer and Corporate Director have had the opportunity to input to this report.

9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

Contact person	<i>Sarah Alder 01225 394187</i>
Background papers	
Please contact the report author if you need to access this report in an alternative format	

This page is intentionally left blank

Notice requesting a call in of Cabinet Decision E3088

"Pilot Scheme to increase enforcement activity for environmental crime"

The undersigned Councillors wish to call in decision E3088 "Pilot Scheme to increase enforcement activity for environmental crime", taken by the Cabinet on 5 September 2018, for the following reasons:

1. The Cabinet decision report did not demonstrate how the environmental enforcement pilot scheme can be delivered at zero cost to the Council.
2. The proposed "informal procurement process" is opaque and not in line with usual Council procurement procedures.
3. Contract management arrangements were not set out in the Cabinet decision report.
4. No operational details were included in the Cabinet decision report.
5. There is probable equalities impact, which has not been considered, as increased enforcement action is likely to disproportionately affect certain groups. The decision report does not state whether an equalities impact assessment has been carried out.
6. There is a risk of reputational damage to the Council.
7. The proposed approach is not consistent with the Council's "Public Protection and Health Improvement Service Enforcement Policy".
8. The Cabinet decision report does not demonstrate how the pilot scheme will improve cleanliness standards.
9. No consultation has been carried out with Councillors, stakeholders or residents. This is not in line with the Local Code of Corporate Governance.

Signatories:

1. Councillor Richard Samuel (lead).

Richard Samuel.

2. Councillor Alison Millar.

A. Miller

3. Councillor WILL SANDRY

W. Sandry

4. Councillor DINE REMERO

D. Remero

5. Councillor T. M. BALL

T. M. Ball

6. Councillor Michelle O'Boherty

M. O'Boherty

7. Councillor Sue Craig

S. Craig

8. Councillor Andrew Furse

A. Furse

9. Councillor PAUL CROSSLEY

P. Crossley

10. Councillor Ian Gilchrist

I. Gilchrist

This page is intentionally left blank

CALL-IN OF EXECUTIVE DECISIONS

RULE 1 – WHO MAY REQUEST A CALL-IN?

Elected members who do not sit on the Cabinet have the right to request a “call-in” of an executive decision which has been made by the Cabinet, or a person or body to whom the power to make executive decisions has been delegated, but not yet implemented.

These decisions could be made by;

- the Cabinet
- a Cabinet Member,
- a committee of the Cabinet
- an Officer taking a key decision acting on delegated authority from the Cabinet
- an area committee
- a body under joint arrangements

BUT NOT the decisions of quasi-judicial or Regulatory Committees.

Notice of the decision made shall be published to every councillor and the publicity shall specify the period in which the “call-in” right may be exercised.

RULE 2 – SUBMISSION OF A “CALL-IN” NOTICE

A notice requesting a “call-in” of an executive decision shall be in writing and signed by 10 or more elected members (excluding Cabinet Members) making the request. The request shall be deposited with the Chief Executive.

The request shall include individual signatures on the notice or electronic communications from individual members signifying their support for the call-in. If a Member is unable to communicate in writing or electronically he/she may signify support by telephone.

The persons making the call-in request shall state the decision being called in, the decision maker, the date the decision was taken and shall give reasons for the call-in.

No member of the Council is entitled to sign up to more than 5 call-in requests in any Council year.

The Chief Executive shall determine whether a call-in is valid (ie whether it has been received within 5 working days of the decision being published and requested by the appropriate number of members and that the decision may properly be called in under the Constitution) and, if so, consult with Overview & Scrutiny Chairs to decide which Panel should consider it.

The Chief Executive shall make a report of any validated call-in to a meeting of the relevant Overview and Scrutiny Panel which shall meet wholly in public within 14 working days of a valid call-in notice being verified.

A decision may only be called in once.

RULE 3 – CONSIDERATION BY OVERVIEW AND SCRUTINY PANEL

The Overview and Scrutiny Panel shall consider the issues raised in the “call-in” request and the stated reasons for the request. They have the following courses of action open to them;

- a) To dismiss the call-in: the decision shall then take effect immediately;
- b) To refer the decision back to the decision-making person or body for reconsideration, setting out in writing the nature of the Panel's concerns; or
- c) To refer the matter to Council to itself undertake the role of the Panel (which may necessitate an additional Council meeting to meet necessary timescales) [NB: the ultimate decision still remains with the original decision maker].

If the call-in is dismissed, notification will be made to all interested parties and the original decision can be implemented. No amendments can be made to the decision [Six-month rule applies – Part 4(D), rule 15]

If the Panel consider any aspect of the decision requires further consideration, it must refer it back to the decision maker.

In total, the Panel shall ensure that the period of overview and scrutiny involvement in an individual call-in shall not exceed 21 working days.

RULE 4 – CONSIDERATION BY DECISION MAKER

The person or body which made the decision shall consider the report of the Overview and Scrutiny Panel or Council and must;

- (a) confirm the original decision; or
- (b) make some changes to the original decision; or
- (c) make a different decision.

The decision maker may not ignore the report. The decision maker shall undertake this consideration within 10 working days from the date of the Overview and Scrutiny (or Council) meeting.

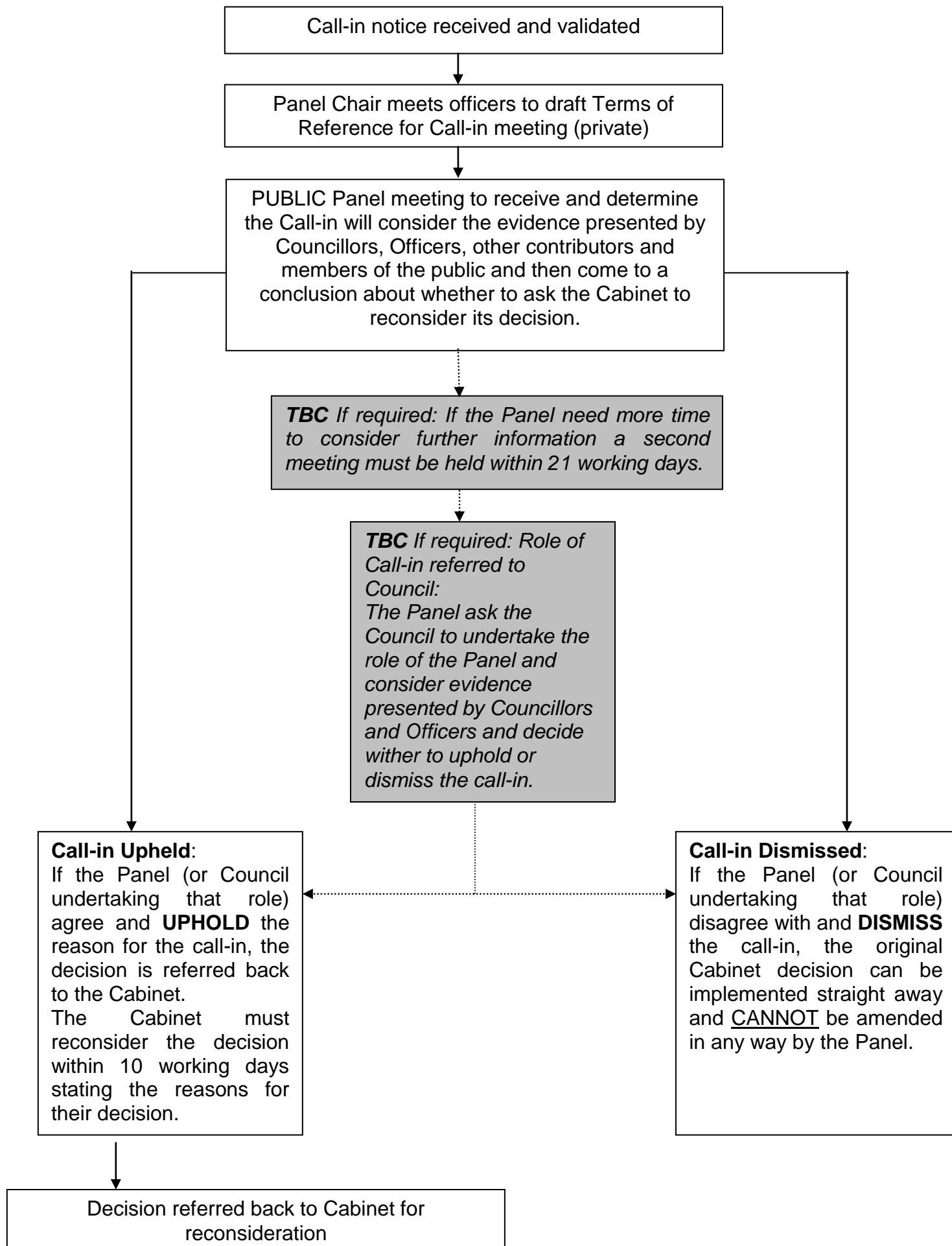
The decision made by the decision maker after considering the report of the Overview and Scrutiny Panel shall be final and will be implemented immediately. There is no further opportunity for "call-in" of the decision.

RULE 5 – EXCEPTIONS TO "CALL-IN"

The rights under this Procedural Rule shall not apply in the following circumstances:

- when the executive decision is urgent as defined in the Urgency Procedure Rules within this Constitution
- the effect of the call-in alone would be to cause the Council to miss a statutory deadline
- a decision taken under the General Exception and Special Urgency Access to Information Rules [Part 4B, rules 15 and 16].

FLOW CHART:



This page is intentionally left blank

APPENDIX 5 - TERMS OF REFERENCE

Call-in of the Cabinet decision: E3088

Introduction

The Cabinet, on the 5th September 2018 resolved as set out below:

- 2.1 That the Group Manager for Neighbourhood Environmental Services, in consultation with the Cabinet member for Development and Neighbourhoods to enter in to a 12 month pilot scheme to increase the enforcement of environmental crime throughout the district with the following provision:
- a) the contract is at zero cost to the council
 - b) the contract is flexible to include additional enforcement activity as deemed appropriate
 - c) the providers take a proportionate approach in accordance with the legislation
 - d) that education and awareness raising of the consequences of environmental crime are prioritised
 - e) that if successful, proposals for a more permanent arrangement are developed towards the end of the trial.
- 2.2 This decision was based on the rationale that Fixed Penalty Notices are a valuable enforcement tool for dealing with the unauthorised deposit of litter, dog fouling fly-tipping and specific Duty of Care offences. They help to further the Council's commitment to take enforcement action against those who cause litter. By entering into a contract with a third party provider the Council can significantly increase its enforcement activity in relation to environmental crime as requested by residents, and help to keep the District cleaner and reduce pollution. Cleaner greener healthier communities form part of the Councils key priorities.

On the 11th September 2018 a call-in notice was received, signed by 10 Councillors, objecting to this decision.

This decision relates to the proposed pilot scheme to increase enforcement activity for environmental crime. Taken by the Cabinet, for the following reasons:

1. The Cabinet decision report did not demonstrate how the environmental enforcement pilot scheme can be delivered at zero cost to the Council.
2. The proposed "informal procurement process" is opaque and not in line with usual Council procurement procedures.
3. Contract management arrangements were not set out in the Cabinet decision report.
4. No operational details were included in the Cabinet decision report.
5. There is probable equalities impact, which has not been considered, as increased enforcement action is likely to disproportionately affect certain groups. The decision report does not state whether an equalities impact assessment has been carried out.
6. There is a risk of reputational damage to the Council.

7. The proposed approach is not consistent with the Council's "Public Protection and Health Improvement Service Enforcement Policy".
8. The Cabinet decision report does not demonstrate how the pilot scheme will improve cleanliness standards.
9. No consultation has been carried out with Councillors, stakeholders or residents. This is not in line with the Local Code of Corporate Governance.

Relevant PDS Panel

The 'call-in' request has been referred to Bath & North East Somerset Council's Communities Transport & Environment Policy Development & Scrutiny Panel to review the decision.

Call-in Meeting

At the Panel meeting on 27th September 2018 the Panel will investigate and determine the matter. They will assess in detail the reasons for the Cabinet decision and consider the objections stated in the call-in notice via a range of information from Councillors, Officers and members of the public (further details below).

Objective

The objective of the Call-in review is to determine whether or not the resolution made by the Cabinet Members should:-

- Be referred back to the Cabinet for reconsideration [**'Uphold' the call-in**]
- Proceed as agreed by the Cabinet [**'Dismiss' the call-in**], or
- Be referred to Full Council to undertake the role of the Panel *[the ultimate decision would still remain with the Cabinet]*.

Method

To achieve its objective, the Panel will investigate the original decision and the objections stated in the call-in notice. The Panel will hear statements from members of the public who have registered to speak about both the substance and processes behind the decision. Public statements will be limited to 3 minutes per speaker or any variation proposed by the Chair. It will also require attendance and/or written submissions from:-

- Representative Councillor(s) : Cllr Richard Samuel
- Lead Cabinet Member – Cllr Bob Goodman (Cabinet Member for Development & Neighbourhoods) and key service officers

Outputs

The Panel's view and supporting findings will be made publicly and will include:

- Minutes & papers from public Panel call-in meetings.
- A summary note will be provided, setting out the result of the call-in meeting

Constraints

The Panel will only address questions from the validated point within the call-in notice.

- **Timescales.** The Panel must hold its initial meeting within 14 working days of the call-in being verified to consider the call-in request. The Panel has a total of 21 working days to reach its decision.
 - Initial Public Meeting must be held by 1st October 2018 [14 working days from receipt of validated call-in request]
 - If meeting adjourned, second public meeting must be held by the 10th October [21 working days from receipt of validated call-in request]
 - If referred directly to the Cabinet, a response must be received by the 12th September [10 working days from date of 1st meeting]
 - If adjourned and then referred to the Cabinet, a response must be received by 25th September [10 working days from date of 2nd meeting]
- **Resources.** The call-in process must be managed within the budget and resources available to the Panel.
- **Council Constitution.** Part 4E, Rule 13 requires that “*Where an Overview and Scrutiny Panel makes a recommendation that would involve the Council incurring additional expenditure (or reducing income) the Panel has a responsibility to consider and / or advise on how the Council should fund that item from within its existing resources*”. Section 3.1 of the cover report (formal agenda papers) provides further explanation.

This page is intentionally left blank