

COMMUNITY LEADERSHIP OVERVIEW AND SCRUTINY COMMITTEE

8 FEBRUARY 2021

Report Reference for this Committee: A.3

Key Decision Required:	NO	In the Forward Plan:	YES
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CABINET

29 JANUARY 2021

REPORT OF THE CORPORATE FINANCE & GOVERNANCE PORTFOLIO HOLDER

A.7 PROTOCOL FOR CABINET AND OVERVIEW & SCRUTINY ROLES

(Report prepared by Lisa Hastings and Keith Simmons)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

This report asks Cabinet to approve the draft Protocol for Cabinet and Overview and Scrutiny roles, which has been produced following consultation undertaken with the Chairman of the relevant Committees and Portfolio Holders for recommendation onto the Overview and Scrutiny Committees and full Council for adoption and incorporation into the Council's Constitution.

EXECUTIVE SUMMARY

In May 2019, Statutory Guidance was published by the Ministry of Housing, Communities & Local Government in May 2019 on Overview and Scrutiny in Local and Combined Authorities. The Council in operating a Leader and Executive Governance Model must have regard to it when exercising their functions and should be followed unless there is a good reason not to in a particular case. The Guidance is attached as Appendix A to this Report.

Section 2 of the Government's Statutory Guidance refers to Culture and expressly states

"The prevailing organisational culture, behaviours and attitudes of an authority will largely determine whether its scrutiny function succeeds or fails.

While everyone in an authority can play a role in creating an environment conducive to effective scrutiny, it is important that this is led and owned by members, given their role in setting and maintaining the culture of an authority.

Creating a strong organisational culture supports scrutiny work that can add real value by, for example, improving policy-making and the efficient delivery of public services. In contrast, low levels of support for and engagement with the scrutiny function often lead to poor quality and ill-focused work that serves to reinforce the perception that it is of little worth or relevance.

Members and senior officers should note that the performance of the scrutiny function is not just of interest to the authority itself. Its effectiveness, or lack thereof, is often

considered by external bodies such as regulators and inspectors, and highlighted in public reports. Failures in scrutiny can therefore help to create a negative public image of the work of an authority as a whole.”

The Guidance recommends an ‘executive-scrutiny protocol’ to help define the relationship between the two arms of the organisation, dealing with the practical expectations of scrutiny committee members and the Executive, as well as the cultural dynamics. Councils should consider adopting a protocol, e.g. formal agreement at scrutiny committees and Cabinet, then formal integration into the Council’s constitution.

The Council already has strong measures in place to demonstrate the openness of Cabinet being held to account and introduced some time ago that Group Leaders of all political groups would have the right to attend Cabinet meetings, speaking on agenda items although not being able to vote. The Terms of Reference of the Resources and Services Overview and Scrutiny Committee state that the position of Chairman and Vice-Chairman will normally be a Member of a political group not represented on the Cabinet. Informal Group Leaders meeting are also held at which the Leader or Deputy Leader can share information in advance of going to Cabinet or other topics, which proved particularly useful during the Council’s response to the COVID-19 pandemic. The Chief Executive holds regular All Member Briefings, at which Portfolio Holders have presented ideas on early strategies and policies for discussion. And furthermore the Deputy Leader chairs a Constitution Review Working Group, whose membership is made up by all other political Groups of the Council

As previously requested by Cabinet, Senior Officers produced a draft Protocol for Cabinet and Overview and Scrutiny roles for consultation with Chairman of Overview and Scrutiny and Audit Committees and the Deputy Leader and Portfolio Holder for Partnerships. The Statutory Guidance has been considered in the production of the draft Protocol together with taking into account comments received through consultation.

The draft Protocol introduces a number of principles and how it applies between the roles of Cabinet and Overview and Scrutiny building upon a relationship of trust whilst both bodies are performing their statutory functions, acknowledging the inter-relationship with Audit too. It is designed to sit alongside the range of other commitments to openness and inclusiveness set out above.

The draft Protocol sets out how Policy Development Overview and Pre-Decision Scrutiny can work in addition to the traditional views of solely holding the Cabinet to account. The importance of timely overview and scrutiny in budget setting and monitoring throughout the year is highlighted to show how the process can add value, by reviewing whether the financial plans and strategies of the Council are sound and have taken into consideration all relevant factors.

Performance Measurement and reporting provides insight into whether value is being achieved and whether improvements are necessary, feasible and affordable. The purpose of reporting general performance data to an Overview & Scrutiny Committee enables scrutiny as to capturing the right level of data to support delivery of services or priorities – and to make recommendations, if necessary. In some instances further enquiry of an activity may be warranted and the Committee will factor how that work can be accommodated in the Committee’s work programme.

Through its work programme the Overview and Scrutiny Committees will consider the Cabinet’s adopted priorities in support of the Council’s Corporate Plan, areas of planned policy development over the relevant Municipal Year (and the next) will be provided and

they will be asked to highlight any areas where overview & scrutiny may be specifically invited to assist in work (including Community Leadership areas). The enquiries included within the work programme shall be identified to add value to the Council as a whole and the district. The allocation of enquires to specific Overview and Scrutiny Committees in accordance with their respective terms of reference.

The draft Protocol also refers to how Overview & Scrutiny recommendations to the Cabinet will be dealt with including seeking further clarity if needed.

Some additional operational matters have been included for completeness in determining the relationship covering responding to urgent items of Cabinet Business, Scrutiny Consideration of Confidential Decisions, Call-in and Councillor Call to Action which builds upon the existing requirements within the Constitution.

With due regard to the Council's Statement on Council development, training will be made available for Overview & Scrutiny Committee members, Cabinet Members and Officers in support on the Protocol and elements referenced in it including work planning, budget scrutiny, using performance data and key lines of enquiry.

In the Overview & Scrutiny Annual Report submitted to Full Council each year there will be a section demonstrating the impact of Overview & Scrutiny and effectiveness of the Protocol.

All Members will be expected to adhere to the Protocol in their respective roles, once formally adopted by Council, the Protocol will be incorporated within Part 6 of the Constitution.

RECOMMENDATION

That Cabinet:

- (1) Approves the draft Protocol for Cabinet and Overview and Scrutiny roles, as set out in Appendix B to this report;**
- (2) Recommends the Protocol to both Overview and Scrutiny Committees for agreement; and**
- (3) Recommends to Council that the Protocol is adopted for inclusion within Part 6 of the Council's Constitution.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Agreeing the proposed changes will ensure that the Council demonstrates good governance and operates efficiently in pursuit of its priorities.

FINANCE, OTHER RESOURCES AND RISK

Risk

Providing clarity through clear protocols approved by both Cabinet and Overview and Scrutiny Committees and thereafter contained within the Constitution enhances positive relationships and the Council's overall governance arrangements.

LEGAL

Overview and Scrutiny Committees were introduced in 2000 as part of new executive governance arrangements to ensure that members of an authority who were not part of the Executive could hold the Executive to account for the decisions and actions that affect their communities.

Overview and Scrutiny Committees have a range of statutory powers to scrutinise decisions the executive is planning to take, those it plans to implement, and those that have already been taken/implemented. Recommendations following scrutiny enable improvements to be made to policies and how they are implemented. Overview and Scrutiny Committees can also play a valuable role in developing policy. The requirement for local authorities in England to establish Overview and Scrutiny Committees is set out in sections 9F to 9FI of the Local Government Act 2000 as amended by the Localism Act 2011.

The Statutory Guidance has been issued under Section 9Q of the Local Government Act 2000, which requires authorities to have regard to it. In addition, authorities may have regard to other material they might choose to consider, including that issued by the Centre for Public Scrutiny, when exercising their overview and scrutiny functions.

In accordance with Section 37 of the Local Government Act 2000, as amended, a local authority operating executive arrangements must prepare and keep up to date a document which contains a copy of the authority's standing orders for the time being and such other information as the authority considers appropriate.

Schedule 1 to the Local Authorities (Functions and Responsibilities) Regulations 2000, as amended, sets out functions which must not be the responsibility of the Executive and therefore rests with Council or its committees. The power to make amendments to the standing orders and the Constitution rests with full Council.

Article 15 of the Council's Constitution provides that changes to the Constitution are approved by Full Council after receiving a recommendation from Cabinet following consideration of a proposal from the Monitoring Officer and a recommendation via the Portfolio Holder with responsibility for corporate governance.

Article 12 of the Constitution provides that the Council's Monitoring Officer will ensure the Constitution is up to date. This function takes into account legislative requirements and best practice.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

Consultation has been undertaken with chairman of both Overview and Scrutiny Committees and Audit Committee together with the Portfolio Holder for Partnerships and the Portfolio Holder for Corporate Finance and Governance's Constitutional Working Party in the production of the draft Protocol.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

Following the House of Commons' Communities and Local Government Select Committees Report of December 2017 into the 'Effectiveness of local authority overview and scrutiny committees', the Government published new statutory guidance in May 2019 on overview and scrutiny in local and combined authorities. The Council in operating a Leader and Executive Governance Model must have regard to it when exercising their functions and should be followed unless there is a good reason not to in a particular case.

Section 2 of the Statutory Guidance refers to Culture within an organisation and its importance in whether its scrutiny function succeeds or fails. The Guidance suggests a number of ways Councils can establish a strong organisational culture by:

- **Recognising scrutiny's legal and democratic legitimacy**
- **Identifying a clear role and focus**
- **Ensuring early and regular engagement between the executive and scrutiny**
- **Managing disagreement**
- **Providing necessary support**
- **Ensuring impartial advice from officers**
- **Communication scrutiny's role and purpose to the wider authority**
- **Maintaining the interest of full council in the work of scrutiny committee**
- **Communicating scrutiny's role to the public**
- **Ensuring scrutiny members are supported in having an independent mindset**

The Statutory Guidance covers other areas relating to the scrutiny function although, the Council's Constitution already sets out its compliance with statutory requirements for overview and scrutiny committees, the appointment of members of those Committees, the appointment of Chairmen and Vice-Chairmen of the same, the procedures for such matters as call-in, and work programming, access to information for members of those committees and member-officer protocols etc.

The Resources and Services Overview and Scrutiny Committee received a report on the new Statutory Guidance on Scrutiny in Councils at its meeting in July 2019 and resolved that the Committee noted its contents and officers be requested to consider further training to be provided to Members to support the aims of the Statutory Guidance in achieving good scrutiny.

The Community Leadership Overview and Scrutiny (CLOS) Committee received a report on the new Statutory Guidance on Scrutiny in Councils at its meeting in October 2019 and recommended that Cabinet also received the Guidance and considered the potential of developing an Executive-Scrutiny Protocol to address the way in which both will work together for the benefit of the Council as a whole while confirming the independence of both elements of the decision making process of the Council.

At its meeting in November 2019, Cabinet had before it the Corporate Finance and Governance Portfolio Holder's response to the CLOS Committee's recommendation which was as follows:-

"It is clear that the Committee were aware of the existing provisions in the constitution that provide for a robust and independent scrutiny function at this Council. The receipt of the Statutory Guidance is timely for us all to reflect on the arrangements we have and the opportunity to improve upon them in a collaborative way. This collaborative approach was one that worked really well in the review of the Constitution at the end of last year and earlier this year. In fact we will be picking up that work again soon as we undertake the

review promised after 6 months of operation of the changes to the constitution and, specifically, to the full Council Procedure Rules. The invitation for Cabinet to consider a possible Executive-Scrutiny Protocol as referenced in the Ministerial Guidance is one I would want to integrate into the process around the 6 month review of the changes to the constitution. The working group will, by its nature, involve Cabinet and Scrutiny Committee Members and so will be good forum to examine the potential advantages of a new protocol. Obviously, I would then want to broaden the discussion around any protocol with all the Members of the Overview and Scrutiny Committee Members and Cabinet colleagues before any final recommendations are submitted.”

Having considered the recommendation made by the CLOS Committee together with the Corporate Finance and Governance Portfolio Holder’s response, Cabinet endorsed the approach suggested.

The Review of the Constitution Portfolio Holder Working Party (CRWP) was re-established in January 2020 to conduct the review outlined above and to also consider other various matters that had arisen during the course of the summer and autumn of 2019. The CRWP considered a number of areas for review arising from the Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities issued by the Ministry of Housing, Communities and Local Government during 2019. In respect of *creating an Executive-Scrutiny Protocol to be formally integrated into the Constitution, it was recommended that:*

the Head of Democratic Services & Elections and the Head of Legal and Governance Services & Monitoring Officer, in consultation with the Deputy Leader of the Council, the Chairmen of the overview and scrutiny committees, the Chairman of the Audit Committee and one other Portfolio Holder (to be decided by the Deputy Leader), be authorised to draft a formal Executive-Scrutiny Protocol for this Council and to submit this to the Overview and Scrutiny Committees and Cabinet for adoption.

Following the publication of the Cabinet agenda for its meeting in March 2020 (which was cancelled following the commencement of the COVID-19 pandemic) the Leader made a decision using his urgency powers to approve the above delegation.

Consultation has taken place with the Chairman of the relevant Committees and the Portfolio Holder for Partnerships, in addition to the Deputy Leader’s Portfolio Holder Constitution Review Working Party and the draft Protocol for Cabinet and Overview and Scrutiny roles is attached as Appendix B for Cabinets approval and recommendation onto the Overview and Scrutiny Committees and subsequently full Council for adoption and integration with the Constitution.

The one of the main themes through the consultation was to ensure adequate training is organised for members and officers following the adoption of the Protocol to ensure the positive relationship already in existence can be built upon further.

BACKGROUND PAPERS

None

APPENDICES

APPENDIX A

MHCLG Statutory Guidance on Overview and Scrutiny on

	Overview and Scrutiny in Local and Combined Authorities published May 2019	
APPENDIX B	Draft Protocol for Cabinet and Overview and Scrutiny roles	