

COUNCIL

16 MARCH 2021

REPORT OF THE MONITORING OFFICER

A.4 PROTOCOL FOR CABINET AND OVERVIEW & SCRUTINY ROLES

(Report prepared by Ian Ford, Committee Services Manager)

PURPOSE OF THE REPORT

To enable Full Council to consider the draft Protocol for Cabinet and Overview and Scrutiny roles, which has been produced following consultation undertaken with the Cabinet and the Council's two Overview and Scrutiny Committees with the view of approving its adoption and incorporation into the Council's Constitution.

EXECUTIVE SUMMARY

Cabinet, at its meeting held on 29 January 2021 (Minute 122 refers), considered the draft Protocol and:-

“RESOLVED that Cabinet –

- (1) approves the draft Protocol for Cabinet and Overview and Scrutiny roles, as set out in Appendix B to item A.7 of the Report of the Corporate Finance & Governance Portfolio Holder;*
- (2) recommends the Protocol to both Overview and Scrutiny Committees for their agreement; and*
- (3) recommends to Council that the Protocol be adopted for inclusion within Part 6 of the Council's Constitution.”*

The Resources and Services Overview & Scrutiny Committee, at its meeting held on 1 February 2021 (Minute 125 refers), considered the draft Protocol and:-

“RESOLVED that the Committee notes and endorses the contents of the report and that it be added it to the work programme for a future review.”

The Community Leadership Overview & Scrutiny Committee, at its meeting held on 8 February 2021 (Minute 19 refers), considered the draft Protocol and:-

“RESOLVED that the Committee RECOMMENDS that:

- Full Council approves the draft Protocol for Cabinet and Overview and Scrutiny roles, as set out in Appendix B to the Portfolio Holder's report;*
- the adopted Protocol be incorporated within Part 6 of the Council's Constitution; and*
- The Constitution Review Working Party revisits the Committee structure in due course.”*

Full Council is now requested to firstly consider the contents of the draft Protocol for the Cabinet and Overview and Scrutiny roles (as set out in Appendix B to this report) and secondly to then decide whether to approve its adoption and subsequent incorporation

within Part 6 of the Council's Constitution.

RECOMMENDATION

That Council resolves:

- (a) that the draft Protocol for the Cabinet and Overview and Scrutiny roles, as set out in Appendix B to item A.4 of the Report of the Monitoring Officer, be approved and adopted;**
- (b) that the Protocol, as so adopted, be incorporated within Part 6 of the Council's Constitution;**
- (c) that the Protocol comes into formal effect on 28th April 2021 i.e. the day after the Annual Meeting of the Council (along with the changes to the Council's Constitution that will have been approved earlier in the meeting); and**
- (d) that the Review of the Constitution Portfolio Holder Working Party be requested, as part of its next annual review of the Council's Constitution, to revisit the committee structure of the Council.**

BACKGROUND INFORMATION

In May 2019, Statutory Guidance was published by the Ministry of Housing, Communities & Local Government on Overview and Scrutiny in Local and Combined Authorities. This Council, in operating a Leader and Executive Governance Model, must have regard to it when exercising its functions and it should be followed unless there is a good reason not to in a particular case. That Statutory 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' in order to help define the relationship between these two arms of the organisation, dealing with the practical expectations of scrutiny committee members and the Executive, as well as the cultural

dynamics. All 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 having introduced some years ago that Group Leaders of all political groups would have the right to attend Cabinet meetings and to speak on agenda items whilst not being able to vote. The Terms of Reference of the Resources and Services Overview and Scrutiny Committee state that the positions of its Chairman and Vice-Chairman will normally be filled by a Member of a political group not represented on the Cabinet. Informal Group Leaders' meetings are also held at which the Leader or Deputy Leader can share information in advance of going to Cabinet or on other topics, which has proved particularly useful during the Council's response to the on-going COVID-19 pandemic. The Chief Executive holds regular All Member Briefings, at which Portfolio Holders have presented initial ideas on strategies and policies for discussion. Furthermore, the Deputy Leader chairs a Constitution Review Working Party (CRWP), whose membership is made up by representatives from all political groups on the Council.

As required by the Leader of the Council, who was acting on behalf of the Cabinet (see the Review of the Constitution Executive Decision published on 24 April 2020), Senior Officers initially produced a draft Protocol for Cabinet and Overview and Scrutiny roles for consultation with the Chairmen of both Overview and Scrutiny Committee and the Audit Committee, the Deputy Leader and Portfolio Holder for Partnerships and the members of the CRWP. The Statutory Guidance was considered in the production of the draft Protocol together with taking into account comments received through the aforementioned consultation. That draft Protocol, as described below, was considered by the Cabinet at its meeting held on 29 January 2021 (Minute 122 refers); by the Resources and Services Overview & Scrutiny Committee at its meeting held on 1 February 2021 (Minute 125 refers); and by the Community Leadership Overview & Scrutiny Committee at its meeting held on 8 February 2021 (Minute 19 refers).

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, whilst also acknowledging the inter-relationship with the Audit Committee. It is designed to sit alongside the range of other commitments to openness and inclusiveness as described above.

The draft Protocol sets out how Policy Development Overview and Pre-Decision Scrutiny can work in addition to the traditional 'view' of solely holding the Cabinet to account. The importance of timely overview and scrutiny in budget setting and monitoring throughout the year to show how the process can add value as well as by reviewing whether the financial plans and strategies of the Council are sound and have taken into consideration all relevant factors has been proved by this Council's experience over many years.

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 relevant Overview and Scrutiny Committee will factor how that work can be accommodated in its work programme.

Through their individual work programmes 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 Cabinet will be asked to highlight any areas where overview & scrutiny may be specifically invited to assist in its work (including Community Leadership areas). The enquiries included within the work programme shall be designed to add value to the Council as a whole and the District of Tendring. The allocation of enquires to a specific Overview and Scrutiny Committee will be made 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 Cabinet 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 support Officers 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 the effectiveness of the Protocol.

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

BACKGROUND PAPERS

There are no background papers (as defined by the Local Government Act 2000) arising from this report.

APPENDICES

A.4

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