

TONBRIDGE & MALLING BOROUGH COUNCIL



EXECUTIVE SERVICES

Chief Executive

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NB - This agenda contains proposals, recommendations and options. These do not represent Council policy or decisions until they have received proper consideration through the full decision making process.

Contact: Democratic Services
committee.services@tmbc.gov.uk

29 June 2022

To: MEMBERS OF THE OVERVIEW AND SCRUTINY COMMITTEE
(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the Overview and Scrutiny Committee to be held in the Council Chamber, Gibson Drive, Kings Hill on Thursday, 7th July, 2022 commencing at 7.30 pm.

Members of the Committee are required to attend in person. Other Members may attend in person or participate online via MS Teams.

Information on how to observe the meeting will be published on the Council's website.

Yours faithfully

JULIE BEILBY

Chief Executive

A G E N D A

1. Guidance on the Conduct of Meetings 5 - 6

PART 1 - PUBLIC

2. Apologies for absence

3. Notification of Substitute Members 7 - 8

4. Declarations of interest 9 - 10

Members in any doubt about such declarations are advised to contact Legal or Democratic Services in advance of the meeting.

5. Minutes 11 - 18

To confirm as a correct record the Minutes of the meetings of the Overview and Scrutiny Committee held on 10 March and 5 May 2022

6. Any Executive Decisions which have been 'called in' 19 - 20

Matters for Recommendation to the Cabinet

7. Executive Scrutiny Protocol 21 - 62

The report presented a draft Executive Scrutiny Protocol for consideration, comment and approval.

Decisions to be taken by the Committee

8. Scrutiny Work Programme 2022/23 63 - 72

To consider future topics for consideration by Overview and Scrutiny Committee.

Matters for Information

9. Budgetary Changes and Strategic Risk Register 73 - 76

An information report giving Members of this Committee high level information in terms of the budget position and direction of travel. In addition, it points Members to the red rated risks on the Strategic Risk Register.

10. Urgent Items 77 - 78

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

Matters for consideration in Private

11. Exclusion of Press and Public 79 - 80

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

PART 2 - PRIVATE

12. Waste Contract 81 - 108

(Reasons: LGA 1972 - Sch 12A Paragraph 3 – Financial or business affairs of any particular person; and (ii) LGA 1972 - Sch 12A Paragraph 5 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings)

Following a request from Members, the report provided details in respect of the Borough Councils Waste Services Contract.

13. Urgent Items 109 - 110

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

MEMBERSHIP

Cllr Mrs A S Oakley (Chair)

Cllr A E Clark (Vice-Chair) and Cllr M O Davis (Vice-Chair)

Cllr M C Base

Cllr C Brown

Cllr R I B Cannon

Cllr A Cope

Cllr R W Dalton

Cllr D Harman

Cllr F A Hoskins

Cllr S A Hudson

Cllr Mrs F A Kemp

Cllr D W King

Cllr J R S Lark

Cllr H S Rogers

Cllr M Taylor

Cllr D Thornewell

Cllr F G Tombolis

GUIDANCE ON HOW MEETINGS WILL BE CONDUCTED

- (1) All meetings of the Borough Council will be livestreamed to YouTube here, unless there is exempt or confidential business be discussed:

<https://www.youtube.com/channel/UCPp-IJISNgoF-ugSzxjAPfw/featured>
- (2) There are no fire drills planned during the time a meeting is being held. For the benefit of those in the meeting room, the fire alarm is a long continuous bell and the exits are via the doors used to enter the room. An officer on site will lead any evacuation.
- (3) Should you need this agenda or any of the reports in a different format, or have any other queries concerning the meeting, please contact Democratic Services on committee.services@tmbc.gov.uk in the first instance.

Attendance:

- Members of the Committee/Advisory Board are required to attend in person and be present in the meeting room. Only these Members are able to move/ second or amend motions, and vote.
- Other Members of the Council can join via MS Teams and can take part in any discussion and ask questions, when invited to do so by the Chairman, but cannot move/ second or amend motions or vote on any matters. Members participating remotely are reminded that this does not count towards their formal committee attendance.
- Occasionally, Members of the Committee/Advisory Board are unable to attend in person and may join via MS Teams in the same way as other Members. However, they are unable to move/ second or amend motions or vote on any matters if they are not present in the meeting room. As with other Members joining via MS Teams, this does not count towards their formal committee attendance.
- Officers can participate in person or online.
- Members of the public addressing an Area Planning Committee can participate in person or online. Please contact committee.services@tmbc.gov.uk for further information.

Before formal proceedings start there will be a sound check of Members/Officers in the room. This is done as a roll call and confirms attendance of voting Members.

Ground Rules:

The meeting will operate under the following ground rules:

- Members in the Chamber should indicate to speak in the usual way and use the fixed microphones in front of them. These need to be switched on when speaking or comments will not be heard by those participating online. Please switch off microphones when not speaking.
- If there any technical issues the meeting will be adjourned to try and rectify them. If this is not possible there are a number of options that can be taken to enable the meeting to continue. These will be explained if it becomes necessary.

For those Members participating online:

- please request to speak using the 'chat or hand raised function';
- please turn off cameras and microphones when not speaking;
- please do not use the 'chat function' for other matters as comments can be seen by all;
- Members may wish to blur the background on their camera using the facility on Microsoft teams.
- Please avoid distractions and general chat if not addressing the meeting
- Please remember to turn off or silence mobile phones

Voting:

Voting may be undertaken by way of a roll call and each Member should verbally respond For, Against, Abstain. The vote will be noted and announced by the Democratic Services Officer.

Alternatively, votes may be taken by general affirmation if it seems that there is agreement amongst Members. The Chairman will announce the outcome of the vote for those participating and viewing online.

Overview and Scrutiny Committee – Substitute Members (if required)

	Conservative	Liberal Democratic	Green	Ind. Kent Alliance	Note
1	Sue Bell	Tim Bishop	Mark Hood	Wendy Palmer	
2	David Cooper	Paul Boxall	Nick Stapleton	Tim Shaw	
3	Nick Foyle	Trudy Dean			
4	Nicolas Heslop	Roger Roud			
5	Brian Luker	Michelle Tatton			

Members of Cabinet cannot be appointed as a substitute to this Committee

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Declarations of interest

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TONBRIDGE AND MALLING BOROUGH COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

MINUTES

Thursday, 10th March, 2022

Present: Cllr M O Davis (Vice-Chairman, in the Chair), Cllr Mrs A S Oakley (Vice-Chairman), Cllr S Bell Cllr R I B Cannon, Cllr A Cope, Cllr R W Dalton, Cllr F A Hoskins, Cllr S A Hudson, Cllr Mrs F A Kemp, Cllr D W King, Cllr J R S Lark, Cllr M Taylor, Cllr F G Tombolis,

Councillors S Bell, D Harman, M A J Hood and B J Luker were in attendance as substitute members in accordance with Council Procedure Rule 17.

Councillor Mrs T Dean was also present pursuant to Council Procedure Rule No 15.21.

Councillors R Betts, M D Boughton, P Boxall, V M C Branson, D Keers, P J Montague, M R Rhodes, K B Tanner and Mrs M Tatton participated via MS Teams and joined the discussion when invited to do so by the Chairman in accordance with Council Procedure Rule No 15.21.

Apologies for absence were received from Councillors J L Sergison, M C Base, H S Rogers, N G Stapleton and D Thornewell

PART 1 - PUBLIC

OS 22/9 NOTIFICATION OF SUBSTITUTE MEMBERS

Notification of substitutes members were recorded as set out below:

Cllr D Harman - substitute for Cllr Base
Cllr B Luker - substitute for Cllr Sergison
Cllr M Hood - substitute for Cllr Stapleton
Cllr S Bell – substitute for Cllr Brown

In accordance with Council Procedure Rules 17.5 to 17.9 these Councillors had the same rights as the ordinary member of the committee for whom they were substituting.

OS 22/10 DECLARATIONS OF INTEREST

For reasons of transparency, Councillor Mrs Dean, who was not a member of the Committee and therefore had no voting rights, advised that she was Chairman of West Malling Parish Council whose response

in respect of the transfer of public toilets would be considered under agenda item 7. As this did not represent a Disclosable Pecuniary or Other Significant Interest there was no requirement to leave the meeting.

OS 22/11 MINUTES

RESOLVED: That the Minutes of the meeting of the Overview and Scrutiny Committee held on 18 January 2022 be approved as a correct record and signed by the Chairman.

MATTERS FOR RECOMMENDATION TO THE CABINET

OS 22/12 PUBLIC TOILETS

The report of the Director of Street Scene, Leisure and Technical Services provided an update on the current position regarding Borough Council owned public toilets in Hadlow, Snodland and West Malling. A proposed way forward for each was set out in the report.

Careful consideration was given to the written response of West Malling Parish Council which detailed their views in respect of the future of the public toilets in the town centre. Reference was made to the current location of the facilities, the temporary funding arrangements organised by the local County Member and the views of local residents, businesses and visitors. It was felt by the parish council that the permanent closure of the public toilets would have implications for footfall and discourage people from visiting the shops, the Farmers Market and the various events held throughout the year.

The Committee recognised that there was no funding allocated to public toilets in these locations after 2020/21 and this position had been approved when setting the budget for 2022/23. Any changes in arrangements would represent budget growth.

In conclusion the wishes of West Malling Parish Council had to be balanced against the Borough Council's difficult financial position and the views of other parish/town councils to ensure a consistent approach was applied across the Borough.

However, the Borough Council remained open to exploring alternative venues, grant funding streams, outside of the Borough Council, and community toilet schemes with West Malling Parish Council.

RECOMMENDED: That

- (1) it be noted that the future of the toilets in Borough Green, Wrotham, Tonbridge, Larkfield, East Peckham and Aylesford, as set out in 1.1.2 of the report, was resolved;

- (2) the toilets in Hadlow and Snodland remain closed and that a report be taken to a future meeting of the Finance, Innovation and Property Advisory Board to consider alternative uses and/or disposal; and
- (3) in respect of West Malling, the toilets remain open until July 2022, as funded under the current arrangement with the County Member, and a further report be taken to the Finance, Innovation and Property Advisory Board to consider alternative uses and/or disposal.

***Referred to Cabinet**

OS 22/13 EQUALITY POLICY STATEMENTS AND OBJECTIVES

The report of the Chief Executive presented an updated Equality Policy Statement which set out the organisations objectives and areas of focus and action.

The Borough Council continued to take a proportionate approach to responding to its duties under the Equality Act (2010) reflecting the demographics of its communities.

It was proposed that four equality objectives, detailed in Annex 1, be adopted. These were:

- Training
- Equality of Opportunity
- Employment
- Housing (Temporary Housing Support)

RECOMMENDED: That the updated Equality Policy Statement and Objectives, set out in Annex 1 to the report and summarised above, be approved. 

***Referred to Cabinet**

OS 22/14 SCRUTINY TRAINING

Consideration was given to a proposal in respect of training for Members of the Overview and Scrutiny Committee as it was recognised that the Borough Councils difficult financial position required effective scrutiny, robust challenge and informed decision making.

It was proposed that a Member development session be held one evening at the Council offices and that all Members of the Overview and Scrutiny Committee would be strongly encouraged to attend. Further details of the proposal were set out in Annex 1.

Reference was made to the financial and value for money considerations and the proposal was considered 'essential spend' given the challenges ahead.

RECOMMENDED: That the approach to training as set out in the report, and detailed in Annex 1, be endorsed. 

***Referred to Cabinet**

MATTERS FOR INFORMATION

OS 22/15 BUDGETARY CHANGES AND STRATEGIC RISK REGISTER

Careful consideration was given to the report of Management Team which provided high level information in terms of the budget position and direction of travel. Members were also directed to the red rated risks on the Strategic Risk Register.

Reference was made to the potential areas of risk that could arise as a consequence of the ongoing conflict in the Ukraine. These included increased prices for fuel and energy.

MATTERS FOR CONSIDERATION IN PRIVATE

OS 22/16 EXCLUSION OF PRESS AND PUBLIC

There were no items considered in private.

The meeting ended at 9.15 pm

TONBRIDGE AND MALLING BOROUGH COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

MINUTES

Thursday, 5th May, 2022

Present: Cllr M O Davis (Vice-Chairman in the Chair), Cllr Mrs A S Oakley (Vice-Chairman), Cllr R I B Cannon, Cllr R W Dalton, Cllr F A Hoskins, Cllr S A Hudson, Cllr Mrs F A Kemp, Cllr D W King, Cllr J R S Lark, Cllr H S Rogers, Cllr M Taylor, Cllr D Thornevell, Cllr F G Tombolis, Cllr A E Clark, Cllr D A S Davis, Cllr D Harman, Cllr M A J Hood and Cllr B J Luker.

Councillors A Clark, D Davis, D Harman, B Luker and M Hood were in attendance as substitute members in accordance with Council Procedure Rule No. 17.

Councillors Mrs P A Bates, R P Betts, T Bishop, M D Boughton, P Boxall, V M C Branson, G C Bridge, M A Coffin, N Foyle, D Keers, P J Montague, W E Palmer, M R Rhodes, K B Tanner and Mrs M Tatton participated via MS Teams and joined the discussion when invited to do so by the Chairman in accordance with Council Procedure Rule No. 15.21.

Apologies for absence were received from Councillors J L Sergison, M C Base, C Brown, A Cope and N G Stapleton

PART 1 - PUBLIC

OS 22/17 NOTIFICATION OF SUBSTITUTE MEMBERS

Notification of substitute members were recorded as set out below:

Cllr A Clark – substitute for Cllr Cope
Cllr D Davis – substitute for Cllr Brown
Cllr D Harman – substitute for Cllr Base
Cllr B Luker – substitute for Cllr J Sergison (Chairman)
Cllr M Hood – substitute for Cllr N Stapleton

In accordance with Council Procedure Rules 17.5 to 17.9 these Councillors had the same rights as the ordinary member of the committee for whom they were substituting.

OS 22/18 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

OS 22/19 CALL IN - DECISION NOTICE D220046CAB - REVIEW OF GOVERNANCE ARRANGEMENTS

The report of the Scrutiny Officer advised that in accordance with the Overview and Scrutiny Procedure Rules set out in the Constitution, three members of the Committee had raised a valid 'call-in' request in relation to the decision taken by the Leader of the Council on changes to executive arrangements.

Decision Notice [D220046CAB](#) (attached at Annex 1) had been published on 28 April 2022 and subsequently called-in by Councillors Oakley, Hoskins and Thornewell.

The grounds for call-in were set out in the report, at paragraph 1.1.2, and the decision was 'deferred' pending consideration by the Overview and Scrutiny Committee.

Members of the Committee considered the grounds for the call-in and had regard to the responses provided by the Leader of the Council. There was detailed discussion on the merits of the proposals and the concerns raised around changes to the call-in process, agenda setting and identifying items of business. In addition, concern was expressed about the risk of disenfranchising back bench councillors and removing their ability to influence decision makers. The Leader indicated that the introduction of scrutiny select committees would improve and enhance effective scrutiny of decisions.

It was proposed by Councillor Thornwell and seconded by Councillor Hoskins that the Leader be asked to consider:

- (i) that the number of members required to call in decisions be retained as 3; and
- (ii) that the Chair of Overview and Scrutiny Committee retain powers to call-in decisions

Following a formal vote this proposal was rejected with 11 Members voting against and 7 voting in favour.

It was proposed by Councillor Hudson and seconded by Councillor Harman that there be no further recommendations made to the Leader and that the decision should be implemented as taken.

Following a formal vote this proposal was supported with 12 Members voting in favour, 2 voting against and 2 abstaining.

As the Overview and Scrutiny Committee had no further recommendations to make to the Leader the grounds for call-in were not supported.

RECOMMENDED: That there were no further recommendations to make to the Leader and the decision would come into immediate effect. Therefore, the proposals in respect of governance would come into effect from 10 May 2022.

OS 22/20 EXCLUSION OF PRESS AND PUBLIC

There were no items considered in private.

The meeting ended at 9.05 pm

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Agenda Item 6

Any Executive Decisions which have been “called in”

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TONBRIDGE & MALLING BOROUGH COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

07 July 2022

Report of the Director of Central Services & Deputy Chief Executive

Part 1- Public

Matters for Recommendation to Cabinet

1 EXECUTIVE – SCRUTINY PROTOCOL

1.1 Introduction

1.1.1 Members of the Committee will be aware that changes to the Council's governance arrangements were made by the Leader on 27th April 2022, those changes taking effect on 10th May. These changes were introduced in light of the report of the Local Government Association Corporate Peer Challenge (March 2022), and in response to the recommendation from the Local Government Boundary Commission for England to reduce the number of Councillors from 54 to 44 with effect from the May 2023 elections.

1.1.2 One of the principal aims and objectives of the changes introduced by the Leader was to increase the scope, role, and responsibility of the Overview & Scrutiny Committee so that it can effectively discharge its functions. To that end the Leader created 3 new Scrutiny Select Committees as follows

Housing & Planning Scrutiny Select Committee

Finance, Regeneration & Property Scrutiny Select Committee

Communities and Environment Scrutiny Select Committee

1.1.3 To ensure that there is a constructive relationship between the Executive and the Overview and Scrutiny Committee, the joint report of the Leader and I to Council dated 27th April 2022 also proposed to introduce in due course an Executive-Scrutiny Protocol. In accordance with the 2019 statutory guidance on overview and scrutiny the protocol was to be the subject of initial dialogue between the Leader and the Chair of the Overview and Scrutiny Committee before coming to Members for approval.

1.1.4 A draft protocol has been prepared (attached as **Annex 1**) and agreed between the Leader and Chair of Overview and Scrutiny. The Leaders of the other groups have also been consulted on the terms of the draft. The protocol is now submitted to the Overview & Scrutiny Committee (and then to Cabinet) for approval.

1.1.5 A separate briefing has also been provided to the Chairs/ Vice-Chairs of the Overview and Scrutiny Committee/ Scrutiny Select Committees on the operation of the new Scrutiny Committees.

1.2 Draft Protocol

1.2.1 The statutory guidance highlights the benefits of adopting a protocol to clarify the relationship between the Executive and the Overview and Scrutiny Committee to support a framework of strong democratic transparency and accountability and to establish effective communication between Scrutiny and Executive Members. Such protocols can lead to more effective scrutiny of and support for the Executive, resulting in better outcomes for the residents of the Borough.

1.2.2 The draft protocol adopts the broad approach suggested in the statutory guidance and seeks to include the following areas: -

- **Principles** – setting out the principles underpinning the relationship between the Executive and Scrutiny
- **Development of Scrutiny Work Programme** - the way in which Portfolio Holders & senior officers will work with scrutiny chairs to ensure that the scrutiny committees can identify forthcoming policies that they may wish to scrutinize.
- **Expectations of Cabinet** e.g., specifying the nature and form of responses that scrutiny can expect when it makes recommendations to the Executive and when it makes recommendations that Cabinet Members and Senior Officers attend meetings
- **Expectations of the Overview and Scrutiny Committee** – clarifying that the Committee will provide constructive ‘critical friend’ challenge to the Cabinet’s proposals and decisions
- **Call-in** – how call-ins may be made together with the procedure to be followed at meetings
- **Compliance with Protocol** e.g., confirmation of the role of the statutory scrutiny officer

1.3 Legal Implications

1.3.1 In May 2019, the Ministry of Housing, Communities and Local Government issued statutory guidance under the Local Government Act 2000 and the Local Democracy, Economic Development and Construction Act 2009. Local Authorities must have regard to this guidance when exercising their functions.

1.3.2 At paragraph 11(d), the guidance states

Managing disagreement – effective scrutiny involves looking at issues that can be politically contentious. It is therefore inevitable that, at times, an executive will disagree with the findings or recommendations of a scrutiny committee.

It is the job of both the executive and scrutiny to work together to reduce the risk of this happening, and authorities should take steps to predict, identify and act on disagreement.

One way in which this can be done is via an ‘executive-scrutiny protocol’ (see annex 1) which can help define the relationship between the two and mitigate any differences of opinion before they manifest themselves in unhelpful and unproductive ways. The benefit of this approach is that it provides a framework for disagreement and debate, and a way to manage it when it happens. Often the value of such a protocol lies in the dialogue that underpins its preparation. It is important that these protocols are reviewed on a regular basis.

1.4 Financial and Value for Money Considerations

1.4.1 None arising from this report.

1.5 Risk Assessment

1.5.1 The agreement of a protocol between the Executive and Scrutiny will assist in defining the relationship between the two within our new governance structure. This will in turn assist in reducing the risks of disagreement and ensuring that the scrutiny function is effective in holding the executive to account.

1.6 Equality Impact Assessment

1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.7 Recommendations

1.7.1 Members are requested to **RECOMMEND** to Cabinet that the draft protocol at Annex 1 be approved.

Background papers:

Nil

contact: Adrian Stanfield/
Kevin Toogood/ Gill Fox

Adrian Stanfield
Director of Central Services and Deputy Chief Executive

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Overview & Scrutiny – Cabinet Protocol

This protocol sets out the relationship between the Council's Cabinet and its Overview & Scrutiny Committee/ Scrutiny Select Committees. This includes the processes that these bodies will follow, where they will interact with each other, and how they expect the other to conduct itself. The Protocol is in addition to requirements set out in the Council's Code of Conduct and the Officer/Councillor Protocol.

This Protocol will promote an effective role for Scrutiny and foster a good working relationship between the Overview & Scrutiny Committee and the Cabinet that will ensure the Committee makes a valuable contribution to the effective running of the Council.

In seeking agreement to this protocol, it is acknowledged that there are different rights and roles of both Overview and Scrutiny and Cabinet Members but that both are committed to developing an effective relationship. This will involve but not be limited to:

- Frequent and honest dialogue between Cabinet Members and Overview and Scrutiny Members, either individually or collectively,
- Regular discussions regarding Cabinet and Overview and Scrutiny work programmes/activities including establishing joint activities/projects where possible,
- Establishing effective and formal reporting structures, and
- Respecting the confidential nature of the discussions that may from time to time take place.

Principles

The following principles set out how the working relationship between the Cabinet and the Overview and Scrutiny Committee should operate.

- (a) The Cabinet and members of the Overview and Scrutiny Committee recognise that they each have different functions and responsibilities that contribute to securing the best outcomes for the people who live and work in the borough.
- (b) All participants in the working relationship between Cabinet and the Overview and Scrutiny Committee will do so in a spirit of mutual respect and constructive challenge.
- (c) Meetings of the Overview and Scrutiny Committee should be conducted in accordance with the statutory guidance (Annex 1)
- (d) The Cabinet recognises that the Overview and Scrutiny Committee has several rights, for example requiring Portfolio Holders to attend its meetings or calling-in Cabinet decisions which have not yet been implemented should they consider a decision to be reviewed. The Overview and Scrutiny Committee will exercise those rights responsibly.
- (e) One of the principal responsibilities of the Overview and Scrutiny

Committee is to hold the Cabinet to account. This enables non-Cabinet members to fully scrutinise important decisions made by the Cabinet whilst also allowing routine decision making to take place in a responsive manner. An important method to ensure accountability is through examining performance and decisions taken by the authority. To facilitate this challenge the Overview and Scrutiny Committee may:

- a. The Agenda for Overview and Scrutiny will include as an early standard item, Non-Key Decisions made by members of Cabinet and officers since the last Overview and Scrutiny Meeting.
 - b. Challenge the Cabinet about decisions (whether key or non-key) which have been taken by Cabinet
 - c. Require and consider Key Performance Indicators.
 - d. Query or ask for information about any item on the Notice of forthcoming Key Decisions.
- (f) In addition to their rights as councillors, members of the Overview and Scrutiny Committee and its working groups have additional rights of access to documents as included in the Access to Information rules in the Constitution. This allows the committee access to copies of any documents which are in the possession, or control, of the Cabinet or its committees. There are a few limits on this access, and these are identified in the rules.
- (g) Members of the Cabinet cannot be members of the Overview and Scrutiny Committee.
- (h) The Overview and Scrutiny Committee will report annually to Full Council to evaluate their work during the previous year and to summarise the programme for the forthcoming year.

Development of the Scrutiny Work Programme

Individual Portfolio Holders and Overview and Scrutiny Chairs should consider meeting regularly to identify and plan for policy development work in which all members can participate.

The intention should be to programme such work at an early stage in the development of a policy.

Each meeting of the Committees will include an opportunity to consider forthcoming key decisions. The relevant committee shall identify any forthcoming key decisions which are (i) relevant to the functions of that committee and that (ii) it may wish to scrutinise.

The Chair of the relevant committee will inform the Leader or relevant Cabinet portfolio holder and the Chief Executive of the matters which it may wish to scrutinize.

The Chief Executive in consultation with Management Team will determine the appropriate lead officers for the matter in question.

The relevant Chair, Leader and Chief Executive/ lead officers will discuss the parameters for scoping that matter and any appropriate timescales for the matter to be reported to the Committee, taking into account any key milestones for decision making, including time needed to obtain any advice which is required.

The Scrutiny Work Programme will also have the following standing items (Scrutiny Select Committee identified in brackets where relevant):

Development of the Annual Budget (Overview and Scrutiny Committee)

Corporate Plan (Overview & Scrutiny Committee)

The Medium-Term Financial Strategy (Finance, Regeneration and Property Scrutiny Select Committee)

Any Treasury/Investment/Capital Strategies (Finance, Regeneration and Property Scrutiny Select Committee)

Any property acquisition and/or Disposal Strategy (Finance, Regeneration and Property Scrutiny Select Committee)

Development of the statutory Development Plan (Housing and Planning Scrutiny Select Committee)

Key Performance Indicators (relevant Scrutiny Select Committee)

Expectations of the Cabinet

It is expected that Cabinet Portfolio Holders will attend meetings of the Overview & Scrutiny Committee, when requested, to present reports relevant to their portfolio and answer any relevant questions.

All Members should promote an atmosphere of openness at Scrutiny Committee Meetings and should strive to ensure that questioning and debate takes place within a climate of mutual respect and trust between Scrutiny Committee Members, the Cabinet Member and other participants.

In order to notify Scrutiny Members of upcoming business and potential items to be added to the Committee's Work Programme, the Principal Democratic Services Officer will ensure that the Scrutiny Officer is kept updated of all new items that are added to the Cabinet Work Programme.

If necessary, the Leader will meet with the Scrutiny Officer, Principal Democratic Services Officer and the Chair of the Overview & Scrutiny Committee to consider the best way to deal with any forthcoming items of business.

Where the Overview and Scrutiny Committee (or Scrutiny Select Committee) has made recommendations to a decision-making body or person, that body or person will provide a written response to those recommendations setting out whether the recommendations are accepted or not, and the reasons for that decision.

Overview and Scrutiny Committee and the Scrutiny Select Committees are entitled to such information as is necessary to properly perform their functions. If the Overview and Scrutiny Committee or Scrutiny Select Committee request information from the Cabinet, the Cabinet will respond within 10 working days confirming whether the

information requested exists and, if so, provide the committee with access to that information.

Expectations of the Overview & Scrutiny Committee

The Committee will provide constructive 'critical friend' challenge to the Cabinet's proposals and decisions.

The Committee will remain non-political and be effectively led by Members who take responsibility in their role to drive service improvements.

The Cabinet's response to Scrutiny's recommendations will be published in the agenda of the next scheduled Overview & Scrutiny Committee meeting

The Overview & Scrutiny Committee will monitor the effectiveness of services and undertake regular reviews of performance in relation to the Council's services

Call-in

Call-in is the exercise of the Overview & Scrutiny Committee's statutory power in section 21(3) of the Local Government Act 2000, to review a Cabinet decision that has been made but not yet implemented.

Once made, Cabinet decisions will ordinarily be published by the Democratic Services Team within two working days of the meeting, with date of publication included. Five clear working days are given before the decision can be implemented, in which time the Call-in must be made.

Requests for Call-in can be made by any 5 Members of the Overview and Scrutiny Committee.

Cabinet Members will be expected to attend any meeting of a Scrutiny Committee at which it is intended to consider a call-in request in relation to his/her area of responsibility. Where the relevant Cabinet Member cannot attend a call-in meeting, the Leader of the Council or Deputy Leader should attend in their absence. In the event of both the Leader and Deputy Leader also being unavailable, they should nominate another Cabinet Member to attend and be accountable for the decision.

The following procedure shall take place at call-in meetings:

- The Members who called in the decision should speak first.
- The Chair will then invite the Cabinet Member (decision maker) to respond.
- The Committee can then ask questions of the decision maker who may ask a relevant officer to supply further information if necessary.

The Committee will debate the issue and vote on the outcome

The Overview & Scrutiny Committee cannot overturn the decision that has been called in. It may either agree with the decision/ decide to make no recommendations to the Decision Maker (in which case it will take immediate

effect) or refer it back to the Cabinet/ Leader/ Portfolio Holder (as applicable) for further consideration, including any recommendations from Scrutiny Members.

It is the aim of the Council that call-ins should only be used as a last resort for resolution, and that other less-confrontational means should always be pursued prior to this option.

Compliance with this protocol

The Scrutiny Officer is responsible for overseeing compliance with the protocol and ensuring that it is used to support the wider aim of supporting and promoting a culture of scrutiny. Matters relating to the protocol's success will be reported to full Council through the scrutiny annual report. The role also includes promoting the role of the authority's scrutiny committee, providing support and guidance to members and officers relating to the functions of the scrutiny committee and providing a link between the Cabinet and the Overview and Scrutiny Committee/ Select Committees.

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Ministry of Housing,
Communities &
Local Government

Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities



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Ministerial Foreword

The role that overview and scrutiny can play in holding an authority's decision-makers to account makes it fundamentally important to the successful functioning of local democracy. Effective scrutiny helps secure the efficient delivery of public services and drives improvements within the authority itself. Conversely, poor scrutiny can be indicative of wider governance, leadership and service failure.

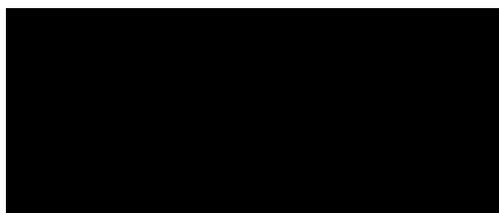
It is vital that councils and combined authorities know the purpose of scrutiny, what effective scrutiny looks like, how to conduct it and the benefits it can bring. This guidance aims to increase understanding in all four areas.

In writing this guidance, my department has taken close note of the House of Commons Select Committee report of December 2017, as well as the written and oral evidence supplied to that Committee. We have also consulted individuals and organisations with practical involvement in conducting, researching and supporting scrutiny.

It is clear from speaking to these practitioners that local and combined authorities with effective overview and scrutiny arrangements in place share certain key traits, the most important being a strong organisational culture. Authorities who welcome challenge and recognise the value scrutiny can bring reap the benefits. But this depends on strong commitment from the top - from senior members as well as senior officials.

Crucially, this guidance recognises that authorities have democratic mandates and are ultimately accountable to their electorates, and that authorities themselves are best-placed to know which scrutiny arrangements are most appropriate for their own individual circumstances.

I would, however, strongly urge all councils to cast a critical eye over their existing arrangements and, above all, ensure they embed a culture that allows overview and scrutiny to flourish.



Rishi Sunak MP
Minister for Local Government

About this Guidance

Who the guidance is for

This document is aimed at local authorities and combined authorities in England to help them carry out their overview and scrutiny functions effectively. In particular, it provides advice for senior leaders, members of overview and scrutiny committees, and support officers.

Aim of the guidance

This guidance seeks to ensure local authorities and combined authorities are aware of the purpose of overview and scrutiny, what effective scrutiny looks like, how to conduct it effectively and the benefits it can bring.

As such, it includes a number of policies and practices authorities should adopt or should consider adopting when deciding how to carry out their overview and scrutiny functions.

The guidance recognises that authorities approach scrutiny in different ways and have different processes and procedures in place, and that what might work well for one authority might not work well in another.

The hypothetical scenarios contained in the annexes to this guidance have been included for illustrative purposes, and are intended to provoke thought and discussion rather than serve as a 'best' way to approach the relevant issues.

While the guidance sets out some of the key legal requirements, it does not seek to replicate legislation.

Status of the guidance

This is statutory guidance from the Ministry of Housing, Communities and Local Government. Local authorities and combined authorities must have regard to it when exercising their functions. The phrase 'must have regard', when used in this context, does not mean that the sections of statutory guidance have to be followed in every detail, but that they should be followed unless there is a good reason not to in a particular case.

Not every authority is required to appoint a scrutiny committee. This guidance applies to those authorities who have such a committee in place, whether they are required to or not.

This guidance has been issued under section 9Q of the Local Government Act 2000 and under paragraph 2(9) of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009, which requires authorities to have regard to this guidance. 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.

Terminology

Unless 'overview' is specifically mentioned, the term 'scrutiny' refers to both overview and scrutiny.¹

Where the term 'authority' is used, it refers to both local authorities and combined authorities.

Where the term 'scrutiny committee' is used, it refers to an overview and scrutiny committee and any of its sub-committees. As the legislation refers throughout to powers conferred on scrutiny committees, that is the wording used in this guidance. However, the guidance should be seen as applying equally to work undertaken in informal task and finish groups, commissioned by formal committees.

Where the term 'executive' is used, it refers to executive members.

For combined authorities, references to the 'executive' or 'cabinet' should be interpreted as relating to the mayor (where applicable) and all the authority members.

For authorities operating committee rather than executive arrangements, references to the executive or Cabinet should be interpreted as relating to councillors in leadership positions.

Expiry or review date

This guidance will be kept under review and updated as necessary.

¹ A distinction is often drawn between 'overview' which focuses on the development of policy, and 'scrutiny' which looks at decisions that have been made or are about to be made to ensure they are fit for purpose.

1. Introduction and Context

1. 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.
2. Overview and scrutiny committees have statutory powers² 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.

Effective overview and scrutiny should:

- Provide constructive 'critical friend' challenge;
- Amplify the voices and concerns of the public;
- Be led by independent people who take responsibility for their role; and
- Drive improvement in public services.

3. 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.
4. The Localism Act 2011 amended the Local Government Act 2000 to allow councils to revert to a non-executive form of governance - the 'committee system'. Councils who adopt the committee system are not required to have overview and scrutiny but may do so if they wish. The legislation has been strengthened and updated since 2000, most recently to reflect new governance arrangements with combined authorities. Requirements for combined authorities are set out in Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009.
5. Current overview and scrutiny legislation recognises that authorities are democratically-elected bodies who are best-placed to determine which overview and scrutiny arrangements best suit their own individual needs, and so gives them a great degree of flexibility to decide which arrangements to adopt.
6. In producing this guidance, the Government fully recognises both authorities' democratic mandate and that the nature of local government has changed in recent years, with, for example, the creation of combined authorities, and councils increasingly delivering key services in partnership with other organisations or outsourcing them entirely.

² Section 9F of the Local Government Act 2000; paragraph 1 of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009.

2. Culture

7. The prevailing organisational culture, behaviours and attitudes of an authority will largely determine whether its scrutiny function succeeds or fails.
8. 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.
9. 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.
10. 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, including best value inspection reports. Failures in scrutiny can therefore help to create a negative public image of the work of an authority as a whole.

How to establish a strong organisational culture

11. Authorities can establish a strong organisational culture by:

- a) **Recognising scrutiny's legal and democratic legitimacy** – all members and officers should recognise and appreciate the importance and legitimacy the scrutiny function is afforded by the law. It was created to act as a check and balance on the executive and is a statutory requirement for all authorities operating executive arrangements and for combined authorities.

Councillors have a unique legitimacy derived from their being democratically elected. The insights that they can bring by having this close connection to local people are part of what gives scrutiny its value.

- b) **Identifying a clear role and focus** – authorities should take steps to ensure scrutiny has a clear role and focus within the organisation, i.e. a niche within which it can clearly demonstrate it adds value. Therefore, prioritisation is necessary to ensure the scrutiny function concentrates on delivering work that is of genuine value and relevance to the work of the wider authority – this is one of the most challenging parts of scrutiny, and a critical element to get right if it is to be recognised as a strategic function of the authority (see chapter 6).

Authorities should ensure a clear division of responsibilities between the scrutiny function and the audit function. While it is appropriate for scrutiny to pay due regard to the authority's financial position, this will need to happen in the context of the formal audit role. The authority's section 151 officer should advise scrutiny on how to manage this dynamic.

While scrutiny has no role in the investigation or oversight of the authority's whistleblowing arrangements, the findings of independent whistleblowing investigations might be of interest to scrutiny committees as they consider their wider implications. Members should always follow the authority's constitution and associated Monitoring Officer directions on the matter. Further guidance on whistleblowing can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/415175/bis-15-200-whistleblowing-guidance-for-employers-and-code-of-practice.pdf.

- c) **Ensuring early and regular engagement between the executive and scrutiny** – authorities should ensure early and regular discussion takes place between scrutiny and the executive, especially regarding the latter's future work programme. Authorities should, though, be mindful of their distinct roles:

In particular:

- The executive should not try to exercise control over the work of the scrutiny committee. This could be direct, e.g. by purporting to 'order' scrutiny to look at, or not look at, certain issues, or indirect, e.g. through the use of the whip or as a tool of political patronage, and the committee itself should remember its statutory purpose when carrying out its work. All members and officers should consider the role the scrutiny committee plays to be that of a 'critical friend' not a de facto 'opposition'. Scrutiny chairs have a particular role to play in establishing the profile and nature of their committee (see chapter 4); and
- The chair of the scrutiny committee should determine the nature and extent of an executive member's participation in a scrutiny committee meeting, and in any informal scrutiny task group meeting.

- d) **Managing disagreement** – effective scrutiny involves looking at issues that can be politically contentious. It is therefore inevitable that, at times, an executive will disagree with the findings or recommendations of a scrutiny committee.

It is the job of both the executive and scrutiny to work together to reduce the risk of this happening, and authorities should take steps to predict, identify and act on disagreement.

One way in which this can be done is via an 'executive-scrutiny protocol' (see annex 1) which can help define the relationship between the two and mitigate any differences of opinion before they manifest themselves in unhelpful and unproductive ways. The benefit of this approach is that it provides a framework for disagreement and debate, and a way to manage it when it happens. Often,

the value of such a protocol lies in the dialogue that underpins its preparation. It is important that these protocols are reviewed on a regular basis.

Scrutiny committees do have the power to 'call in' decisions, i.e. ask the executive to reconsider them before they are implemented, but should not view it as a substitute for early involvement in the decision-making process or as a party-political tool.

- e) **Providing the necessary support** – while the level of resource allocated to scrutiny is for each authority to decide for itself, when determining resources an authority should consider the purpose of scrutiny as set out in legislation and the specific role and remit of the authority's own scrutiny committee(s), and the scrutiny function as a whole.

Support should also be given by members and senior officers to scrutiny committees and their support staff to access information held by the authority and facilitate discussions with representatives of external bodies (see chapter 5).

- f) **Ensuring impartial advice from officers** – authorities, particularly senior officers, should ensure all officers are free to provide impartial advice to scrutiny committees. This is fundamental to effective scrutiny. Of particular importance is the role played by 'statutory officers' – the monitoring officer, the section 151 officer and the head of paid service, and where relevant the statutory scrutiny officer. These individuals have a particular role in ensuring that timely, relevant and high-quality advice is provided to scrutiny.
- g) **Communicating scrutiny's role and purpose to the wider authority** – the scrutiny function can often lack support and recognition within an authority because there is a lack of awareness among both members and officers about the specific role it plays, which individuals are involved and its relevance to the authority's wider work. Authorities should, therefore, take steps to ensure all members and officers are made aware of the role the scrutiny committee plays in the organisation, its value and the outcomes it can deliver, the powers it has, its membership and, if appropriate, the identity of those providing officer support.
- h) **Maintaining the interest of full Council in the work of the scrutiny committee** – part of communicating scrutiny's role and purpose to the wider authority should happen through the formal, public role of full Council – particularly given that scrutiny will undertake valuable work to highlight challenging issues that an authority will be facing and subjects that will be a focus of full Council's work. Authorities should therefore take steps to ensure full Council is informed of the work the scrutiny committee is doing.

One way in which this can be done is by reports and recommendations being submitted to full Council rather than solely to the executive. Scrutiny should decide when it would be appropriate to submit reports for wider debate in this way, taking into account the relevance of reports to full Council business, as well as full Council's capacity to consider and respond in a timely manner. Such

reports would supplement the annual report to full Council on scrutiny's activities and raise awareness of ongoing work.

In order to maintain awareness of scrutiny at the Combined Authority and provoke dialogue and discussion of its impact, the business of scrutiny should be reported to the Combined Authority board or to the chairs of the relevant scrutiny committees of constituent and non-constituent authorities, or both. At those chairs' discretion, particular Combined Authority scrutiny outcomes, and what they might mean for each individual area, could be either discussed by scrutiny in committee or referred to full Council of the constituent authorities.

- i) **Communicating scrutiny's role to the public** – authorities should ensure scrutiny has a profile in the wider community. Consideration should be given to how and when to engage the authority's communications officers, and any other relevant channels, to understand how to get that message across. This will usually require engagement early on in the work programming process (see chapter 6).
- j) **Ensuring scrutiny members are supported in having an independent mindset** – formal committee meetings provide a vital opportunity for scrutiny members to question the executive and officers.

Inevitably, some committee members will come from the same political party as a member they are scrutinising and might well have a long-standing personal, or familial, relationship with them (see paragraph 25).

Scrutiny members should bear in mind, however, that adopting an independent mind-set is fundamental to carrying out their work effectively. In practice, this is likely to require scrutiny chairs working proactively to identify any potentially contentious issues and plan how to manage them.

Directly-elected mayoral systems

12. A strong organisational culture that supports scrutiny work is particularly important in authorities with a directly-elected mayor to ensure there are the checks and balances to maintain a robust democratic system. Mayoral systems offer the opportunity for greater public accountability and stronger governance, but there have also been incidents that highlight the importance of creating and maintaining a culture that puts scrutiny at the heart of its operations.
13. Authorities with a directly-elected mayor should ensure that scrutiny committees are well-resourced, are able to recruit high-calibre members and that their scrutiny functions pay particular attention to issues surrounding:
 - rights of access to documents by the press, public and councillors;
 - transparent and fully recorded decision-making processes, especially avoiding decisions by 'unofficial' committees or working groups;
 - delegated decisions by the Mayor;
 - whistleblowing protections for both staff and councillors; and
 - powers of Full Council, where applicable, to question and review.

14. Authorities with a directly-elected mayor should note that mayors are required by law to attend overview and scrutiny committee sessions when asked to do so (see paragraph 44).

3. Resourcing

15. The resource an authority allocates to the scrutiny function plays a pivotal role in determining how successful that function is and therefore the value it can add to the work of the authority.
16. Ultimately it is up to each authority to decide on the resource it provides, but every authority should recognise that creating and sustaining an effective scrutiny function requires them to allocate resources to it.
17. Authorities should also recognise that support for scrutiny committees, task groups and other activities is not solely about budgets and provision of officer time, although these are clearly extremely important elements. Effective support is also about the ways in which the wider authority engages with those who carry out the scrutiny function (both members and officers).

When deciding on the level of resource to allocate to the scrutiny function, the factors an authority should consider include:

- Scrutiny's legal powers and responsibilities;
- The particular role and remit scrutiny will play in the authority;
- The training requirements of scrutiny members and support officers, particularly the support needed to ask effective questions of the executive and other key partners, and make effective recommendations;
- The need for ad hoc external support where expertise does not exist in the council;
- Effectively-resourced scrutiny has been shown to add value to the work of authorities, improving their ability to meet the needs of local people; and
- Effectively-resourced scrutiny can help policy formulation and so minimise the need for call-in of executive decisions.

Statutory scrutiny officers

18. Combined authorities, upper and single tier authorities are required to designate a statutory scrutiny officer,³ someone whose role is to:
 - promote the role of the authority's scrutiny committee;
 - provide support to the scrutiny committee and its members; and
 - provide support and guidance to members and officers relating to the functions of the scrutiny committee.

³ Section 9FB of the Local Government Act 2000; article 9 of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017

19. Authorities not required by law to appoint such an officer should consider whether doing so would be appropriate for their specific local needs.

Officer resource models

20. Authorities are free to decide for themselves which wider officer support model best suits their individual circumstances, though generally they adopt one or a mix of the following:

- Committee – officers are drawn from specific policy or service areas;
- Integrated – officers are drawn from the corporate centre and also service the executive; and
- Specialist – officers are dedicated to scrutiny.

21. Each model has its merits – the committee model provides service-specific expertise; the integrated model facilitates closer and earlier scrutiny involvement in policy formation and alignment of corporate work programmes; and the specialist model is structurally independent from those areas it scrutinises.

22. Authorities should ensure that, whatever model they employ, officers tasked with providing scrutiny support are able to provide impartial advice. This might require consideration of the need to build safeguards into the way that support is provided. The nature of these safeguards will differ according to the specific role scrutiny plays in the organisation.

4. Selecting Committee Members

23. Selecting the right members to serve on scrutiny committees is essential if those committees are to function effectively. Where a committee is made up of members who have the necessary skills and commitment, it is far more likely to be taken seriously by the wider authority.
24. While there are proportionality requirements that must be met,⁴ the selection of the chair and other committee members is for each authority to decide for itself. Guidance for combined authorities on this issue has been produced by the Centre for Public Scrutiny⁵.

Members invariably have different skill-sets. What an authority must consider when forming a committee is that, as a group, it possesses the requisite expertise, commitment and ability to act impartially to fulfil its functions.

25. Authorities are reminded that members of the executive cannot be members of a scrutiny committee.⁶ Authorities should take care to ensure that, as a minimum, members holding less formal executive positions, e.g. as Cabinet assistants, do not sit on scrutinising committees looking at portfolios to which those roles relate. Authorities should articulate in their constitutions how conflicts of interest, including familial links (see also paragraph 31), between executive and scrutiny responsibilities should be managed, including where members stand down from the executive and move to a scrutiny role, and vice-versa.
26. Members or substitute members of a combined authority must not be members of its overview and scrutiny committee.⁷ This includes the Mayor in Mayoral Combined Authorities. It is advised that Deputy Mayors for Policing and Crime are also not members of the combined authority's overview and scrutiny committee.

Selecting individual committee members

27. When selecting individual members to serve on scrutiny committees, an authority should consider a member's experience, expertise, interests, ability to act impartially, ability to work as part of a group, and capacity to serve.

⁴ See, for example, regulation 11 of the Local Authorities (Committee System) (England) Regulations 2012 (S.I. 2012/1020) and article 4 of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017 (S.I. 2017/68).

⁵ See pages 15-18 of 'Overview and scrutiny in combined authorities: a plain English guide': <https://www.cfps.org.uk/wp-content/uploads/Overview-and-scrutiny-in-combined-authorities-a-plain-english-guide.pdf>

⁶ Section 9FA(3) of the Local Government Act 2000.

⁷ 2(3) of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009

28. Authorities should not take into account a member's perceived level of support for or opposition to a particular political party (notwithstanding the wider legal requirement for proportionality referred to in paragraph 24).

Selecting a chair

29. The Chair plays a leadership role on a scrutiny committee as they are largely responsible for establishing its profile, influence and ways of working.

30. The attributes authorities should and should not take into account when selecting individual committee members (see paragraphs 27 and 28) also apply to the selection of the Chair, but the Chair should also possess the ability to lead and build a sense of teamwork and consensus among committee members.

Chairs should pay special attention to the need to guard the committee's independence. Importantly, however, they should take care to avoid the committee being, and being viewed as, a de facto opposition to the executive.

31. Given their pre-eminent role on the scrutiny committee, it is strongly recommended that the Chair not preside over scrutiny of their relatives⁸. Combined authorities should note the legal requirements that apply to them where the Chair is an independent person⁹.

32. The method for selecting a Chair is for each authority to decide for itself, however every authority should consider taking a vote by secret ballot. Combined Authorities should be aware of the legal requirements regarding the party affiliation of their scrutiny committee Chair¹⁰.

Training for committee members

33. Authorities should ensure committee members are offered induction when they take up their role and ongoing training so they can carry out their responsibilities effectively. Authorities should pay attention to the need to ensure committee members are aware of their legal powers, and how to prepare for and ask relevant questions at scrutiny sessions.

34. When deciding on training requirements for committee members, authorities should consider taking advantage of opportunities offered by external providers in the sector.

Co-option and technical advice

35. While members and their support officers will often have significant local insight and an understanding of local people and their needs, the provision of outside expertise can be invaluable.

⁸ A definition of 'relative' can be found at section 28(10) of the Localism Act 2011.

⁹ See article 5(2) of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017 (S.I. 2017/68).

¹⁰ Article 5(6) of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.

36. There are two principal ways to procure this:

- Co-option – formal co-option is provided for in legislation¹¹. Authorities must establish a co-option scheme to determine how individuals will be co-opted onto committees; and
- Technical advisers – depending on the subject matter, independent local experts might exist who can provide advice and assistance in evaluating evidence (see annex 2).

¹¹ Section 9FA(4) Local Government Act 2000

5. Power to Access Information

37. A scrutiny committee needs access to relevant information the authority holds, and to receive it in good time, if it is to do its job effectively.
38. This need is recognised in law, with members of scrutiny committees enjoying powers to access information¹². In particular, regulations give enhanced powers to a scrutiny member to access exempt or confidential information. This is in addition to existing rights for councillors to have access to information to perform their duties, including common law rights to request information and rights to request information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
39. When considering what information scrutiny needs in order to carry out its work, scrutiny members and the executive should consider scrutiny's role and the legal rights that committees and their individual members have, as well as their need to receive timely and accurate information to carry out their duties effectively.
40. Scrutiny members should have access to a regularly available source of key information about the management of the authority – particularly on performance, management and risk. Where this information exists, and scrutiny members are given support to understand it, the potential for what officers might consider unfocused and unproductive requests is reduced as members will be able to frame their requests from a more informed position.
41. Officers should speak to scrutiny members to ensure they understand the reasons why information is needed, thereby making the authority better able to provide information that is relevant and timely, as well as ensuring that the authority complies with legal requirements.

While each request for information should be judged on its individual merits, authorities should adopt a default position of sharing the information they hold, on request, with scrutiny committee members.

42. The law recognises that there might be instances where it is legitimate for an authority to withhold information and places a requirement on the executive to provide the scrutiny committee with a written statement setting out its reasons for that decision¹³. However, members of the executive and senior officers should take particular care to avoid refusing requests, or limiting the information they provide, for reasons of party political or reputational expediency.

¹² Regulation 17 - Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012; article 10 Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.

¹³ Regulation 17(4) – Local Government (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012; article 10(4) Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.

Before an authority takes a decision not to share information it holds, it should give serious consideration to whether that information could be shared in closed session.

43. Regulations already stipulate a timeframe for executives to comply with requests from a scrutiny member¹⁴. When agreeing to such requests, authorities should:

- consider whether seeking clarification from the information requester could help better target the request; and
- Ensure the information is supplied in a format appropriate to the recipient's needs.

44. Committees should be aware of their legal power to require members of the executive and officers to attend before them to answer questions¹⁵. It is the duty of members and officers to comply with such requests.¹⁶

Seeking information from external organisations

45. Scrutiny members should also consider the need to supplement any authority-held information they receive with information and intelligence that might be available from other sources, and should note in particular their statutory powers to access information from certain external organisations.

46. When asking an external organisation to provide documentation or appear before it, and where that organisation is not legally obliged to do either (see annex 3), scrutiny committees should consider the following:

- a) **The need to explain the purpose of scrutiny** – the organisation being approached might have little or no awareness of the committee's work, or of an authority's scrutiny function more generally, and so might be reluctant to comply with any request;
- b) **The benefits of an informal approach** – individuals from external organisations can have fixed perceptions of what an evidence session entails and may be unwilling to subject themselves to detailed public scrutiny if they believe it could reflect badly on them or their employer. Making an informal approach can help reassure an organisation of the aims of the committee, the type of information being sought and the manner in which the evidence session would be conducted;

¹⁴ Regulation 17(2) – Local Government (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012; article 10(2) Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.

¹⁵ Section 9FA(8) of the Local Government Act 2000; paragraph 2(6) of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009.

¹⁶ Section 9FA(9) of the Local Government Act 2000; paragraph 2(7) of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009.

- c) **How to encourage compliance with the request** – scrutiny committees will want to frame their approach on a case by case basis. For contentious issues, committees might want to emphasise the opportunity their request gives the organisation to ‘set the record straight’ in a public setting; and
- d) **Who to approach** – a committee might instinctively want to ask the Chief Executive or Managing Director of an organisation to appear at an evidence session, however it could be more beneficial to engage front-line staff when seeking operational-level detail rather than senior executives who might only be able to talk in more general terms. When making a request to a specific individual, the committee should consider the type of information it is seeking, the nature of the organisation in question and the authority’s pre-existing relationship with it.

Following ‘the Council Pound’

Scrutiny committees will often have a keen interest in ‘following the council pound’, i.e. scrutinising organisations that receive public funding to deliver goods and services.

Authorities should recognise the legitimacy of this interest and, where relevant, consider the need to provide assistance to scrutiny members and their support staff to obtain information from organisations the council has contracted to deliver services. In particular, when agreeing contracts with these bodies, authorities should consider whether it would be appropriate to include a *requirement* for them to supply information to or appear before scrutiny committees.

6. Planning Work

47. Effective scrutiny should have a defined impact on the ground, with the committee making recommendations that will make a tangible difference to the work of the authority. To have this kind of impact, scrutiny committees need to plan their work programme, i.e. draw up a long-term agenda and consider making it flexible enough to accommodate any urgent, short-term issues that might arise during the year.
48. Authorities with multiple scrutiny committees sometimes have a separate work programme for each committee. Where this happens, consideration should be given to how to co-ordinate the various committees' work to make best use of the total resources available.

Being clear about scrutiny's role

49. Scrutiny works best when it has a clear role and function. This provides focus and direction. While scrutiny has the power to look at anything which affects 'the area, or the area's inhabitants', authorities will often find it difficult to support a scrutiny function that carries out generalised oversight across the wide range of issues experienced by local people, particularly in the context of partnership working. Prioritisation is necessary, which means that there might be things that, despite being important, scrutiny will not be able to look at.
50. Different overall roles could include having a focus on risk, the authority's finances, or on the way the authority works with its partners.
51. Applying this focus does not mean that certain subjects are 'off limits'. It is more about looking at topics and deciding whether their relative importance justifies the positive impact scrutiny's further involvement could bring.
52. When thinking about scrutiny's focus, members should be supported by key senior officers. The statutory scrutiny officer, if an authority has one, will need to take a leading role in supporting members to clarify the role and function of scrutiny, and championing that role once agreed.

Who to speak to

53. Evidence will need to be gathered to inform the work programming process. This will ensure that it looks at the right topics, in the right way and at the right time. Gathering evidence requires conversations with:
 - *The public* – it is likely that formal 'consultation' with the public on the scrutiny work programme will be ineffective. Asking individual scrutiny members to have conversations with individuals and groups in their own local areas can work better. Insights gained from the public through individual pieces of scrutiny work can be fed back into the work programming process. Listening to and participating in conversations in places where local people come together, including in online forums, can help authorities engage people on their own terms and yield more positive results.

Authorities should consider how their communications officers can help scrutiny engage with the public, and how wider internal expertise and local knowledge from both members and officers might make a contribution.

- *The authority's partners* – relationships with other partners should not be limited to evidence-gathering to support individual reviews or agenda items. A range of partners are likely to have insights that will prove useful:
 - Public sector partners (like the NHS and community safety partners, over which scrutiny has specific legal powers);
 - Voluntary sector partners;
 - Contractors and commissioning partners (including partners in joint ventures and authority-owned companies);
 - In parished areas, town, community and parish councils;
 - Neighbouring principal councils (both in two-tier and unitary areas);
 - Cross-authority bodies and organisations, such as Local Enterprise Partnerships¹⁷; and
 - Others with a stake and interest in the local area – large local employers, for example.
- *The executive* – a principal partner in discussions on the work programme should be the executive (and senior officers). The executive should not direct scrutiny's work (see chapter 2), but conversations will help scrutiny members better understand how their work can be designed to align with the best opportunities to influence the authority's wider work.

Information sources

54. Scrutiny will need access to relevant information to inform its work programme. The type of information will depend on the specific role and function scrutiny plays within the authority, but might include:

- Performance information from across the authority and its partners;
- Finance and risk information from across the authority and its partners;
- Corporate complaints information, and aggregated information from political groups about the subject matter of members' surgeries;
- Business cases and options appraisals (and other planning information) for forthcoming major decisions. This information will be of particular use for pre-decision scrutiny; and
- Reports and recommendations issued by relevant ombudsmen, especially the Local Government and Social Care Ombudsman.

¹⁷ Authorities should ensure they have appropriate arrangements in place to ensure the effective democratic scrutiny of Local Enterprise Partnerships' investment decisions.

As committees can meet in closed session, commercial confidentiality should not preclude the sharing of information. Authorities should note, however, that the default for meetings should be that they are held in public (see 2014 guidance on '*Open and accountable local government*':

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/343182/140812_Openness_Guide.pdf).

55. Scrutiny members should consider keeping this information under regular review. It is likely to be easier to do this outside committee, rather than bringing such information to committee 'to note', or to provide an update, as a matter of course.

Shortlisting topics

Approaches to shortlisting topics should reflect scrutiny's overall role in the authority. This will require the development of bespoke, local solutions, however when considering whether an item should be included in the work programme, the kind of questions a scrutiny committee should consider might include:

- Do we understand the benefits scrutiny would bring to this issue?
- How could we best carry out work on this subject?
- What would be the best outcome of this work?
- How would this work engage with the activity of the executive and other decision-makers, including partners?

56. Some authorities use scoring systems to evaluate and rank work programme proposals. If these are used to provoke discussion and debate, based on evidence, about what priorities should be, they can be a useful tool. Others take a looser approach. Whichever method is adopted, a committee should be able to justify how and why a decision has been taken to include certain issues and not others.

57. Scrutiny members should accept that shortlisting can be difficult; scrutiny committees have finite resources and deciding how these are best allocated is tough. They should understand that, if work programming is robust and effective, there might well be issues that they want to look at that nonetheless are not selected.

Carrying out work

58. Selected topics can be scrutinised in several ways, including:

- a) **As a single item on a committee agenda** – this often presents a limited opportunity for effective scrutiny, but may be appropriate for some issues or where the committee wants to maintain a formal watching brief over a given issue;
- b) **At a single meeting** – which could be a committee meeting or something less formal. This can provide an opportunity to have a single public meeting about a

given subject, or to have a meeting at which evidence is taken from a number of witnesses;

- c) **At a task and finish review of two or three meetings** – short, sharp scrutiny reviews are likely to be most effective even for complex topics. Properly focused, they ensure members can swiftly reach conclusions and make recommendations, perhaps over the course of a couple of months or less;
- d) **Via a longer-term task and finish review** – the ‘traditional’ task and finish model – with perhaps six or seven meetings spread over a number of months – is still appropriate when scrutiny needs to dig into a complex topic in significant detail. However, the resource implications of such work, and its length, can make it unattractive for all but the most complex matters; and
- e) **By establishing a ‘standing panel’** – this falls short of establishing a whole new committee but may reflect a necessity to keep a watching brief over a critical local issue, especially where members feel they need to convene regularly to carry out that oversight. Again, the resource implications of this approach means that it will be rarely used.

7. Evidence Sessions

59. Evidence sessions are a key way in which scrutiny committees inform their work. They might happen at formal committee, in less formal ‘task and finish’ groups or at standalone sessions.

Good preparation is a vital part of conducting effective evidence sessions. Members should have a clear idea of what the committee hopes to get out of each session and appreciate that success will depend on their ability to work together on the day.

How to plan

60. Effective planning does not necessarily involve a large number of pre-meetings, the development of complex scopes or the drafting of questioning plans. It is more often about setting overall objectives and then considering what type of questions (and the way in which they are asked) can best elicit the information the committee is seeking. This applies as much to individual agenda items as it does for longer evidence sessions – there should always be consideration in advance of what scrutiny is trying to get out of a particular evidence session.

Chairs play a vital role in leading discussions on objective-setting and ensuring all members are aware of the specific role each will play during the evidence session.

61. As far as possible there should be consensus among scrutiny members about the objective of an evidence session before it starts. It is important to recognise that members have different perspectives on certain issues, and so might not share the objectives for a session that are ultimately adopted. Where this happens, the Chair will need to be aware of this divergence of views and bear it in mind when planning the evidence session.
62. Effective planning should mean that at the end of a session it is relatively straightforward for the chair to draw together themes and highlight the key findings. It is unlikely that the committee will be able to develop and agree recommendations immediately, but, unless the session is part of a wider inquiry, enough evidence should have been gathered to allow the chair to set a clear direction.
63. After an evidence session, the committee might wish to hold a short ‘wash-up’ meeting to review whether their objectives were met and lessons could be learned for future sessions.

Developing recommendations

64. The development and agreement of recommendations is often an iterative process. It will usually be appropriate for this to be done only by members, assisted by co-optees where relevant. When deciding on recommendations, however, members should have due regard to advice received from officers, particularly the Monitoring Officer.

65. The drafting of reports is usually, but not always, carried out by officers, directed by members.

66. Authorities draft reports and recommendations in a number of ways, but there are normally three stages:

- i. the development of a 'heads of report' – a document setting out general findings that members can then discuss as they consider the overall structure and focus of the report and its recommendations;
- ii. the development of those findings, which will set out some areas on which recommendations might be made; and
- iii. the drafting of the full report.

67. Recommendations should be evidence-based and SMART, i.e. specific, measurable, achievable, relevant and timed. Where appropriate, committees may wish to consider sharing them in draft with interested parties.

68. Committees should bear in mind that often six to eight recommendations are sufficient to enable the authority to focus its response, although there may be specific circumstances in which more might be appropriate.

Sharing draft recommendations with executive members should not provide an opportunity for them to revise or block recommendations before they are made. It should, however, provide an opportunity for errors to be identified and corrected, and for a more general sense-check.

Annex 1: Illustrative Scenario – Creating an Executive-Scrutiny Protocol

An executive-scrutiny protocol can deal with the practical expectations of scrutiny committee members and the executive, as well as the cultural dynamics.

Workshops with scrutiny members, senior officers and Cabinet can be helpful to inform the drafting of a protocol. An external facilitator can help bring an independent perspective.

Councils should consider how to adopt a protocol, e.g. formal agreement at scrutiny committee and Cabinet, then formal integration into the Council's constitution at the next Annual General Meeting.

The protocol, as agreed, may contain sections on:

- The way scrutiny will go about developing its work programme (including the ways in which senior officers and Cabinet members will be kept informed);
- The way in which senior officers and Cabinet will keep scrutiny informed of the outlines of major decisions as they are developed, to allow for discussion of scrutiny's potential involvement in policy development. This involves the building in of safeguards to mitigate risks around the sharing of sensitive information with scrutiny members;
- A strengthening and expansion of existing parts of the code of conduct that relate to behaviour in formal meetings, and in informal meetings;
- Specification of the nature and form of responses that scrutiny can expect when it makes recommendations to the executive, when it makes requests to the executive for information, and when it makes requests that Cabinet members or senior officers attend meetings; and
- Confirmation of the role of the statutory scrutiny officer, and Monitoring Officer, in overseeing compliance with the protocol, and ensuring that it is used to support the wider aim of supporting and promoting a culture of scrutiny, with matters relating to the protocol's success being reported to full Council through the scrutiny Annual Report.

Annex 2: Illustrative Scenario – Engaging Independent Technical Advisers

This example demonstrates how one Council's executive and scrutiny committee worked together to scope a role and then appoint an independent adviser on transforming social care commissioning. Their considerations and process may be helpful and applicable in other similar scenarios.

Major care contracts were coming to an end and the Council took the opportunity to review whether to continue with its existing strategic commissioning framework, or take a different approach – potentially insourcing certain elements.

The relevant Director was concerned about the Council's reliance on a very small number of large providers. The Director therefore approached the Scrutiny and Governance Manager to talk through the potential role scrutiny could play as the Council considered these changes.

The Scrutiny Chair wanted to look at this issue in some depth, but recognised its complexity could make it difficult for her committee to engage – she was concerned it would not be able to do the issue justice. The Director offered support from his own officer team, but the Chair considered this approach to be beset by risks around the independence of the process.

She talked to the Director about securing independent advice. He was worried that an independent adviser could come with preconceived ideas and would not understand the Council's context and objectives. The Scrutiny Chair was concerned that independent advice could end up leading to scrutiny members being passive, relying on an adviser to do their thinking for them. They agreed that some form of independent assistance would be valuable, but that how it was provided and managed should be carefully thought out.

With the assistance of the Governance and Scrutiny Manager, the Scrutiny Chair approached local universities and Further Education institutions to identify an appropriate individual. The approach was clear – it set out the precise role expected of the adviser, and explained the scrutiny process itself. Because members wanted to focus on the risks of market failure, and felt more confident on substantive social care matters, the approach was directed at those with a specialism in economics and business administration. The Council's search was proactive – the assistance of the service department was drawn on to make direct approaches to particular individuals who could carry out this role.

It was agreed to make a small budget available to act as a 'per diem' to support an adviser; academics were approached in the first instance as the Council felt able to make a case that an educational institution would provide this support for free as part of its commitment to Corporate Social Responsibility.

Three individuals were identified from the Council's proactive search. The Chair and Vice-Chair of the committee had an informal discussion with each – not so much to establish their skills and expertise (which had already been assessed) but to give a sense about

their 'fit' with scrutiny's objectives and their political nous in understanding the environment in which they would operate, and to satisfy themselves that they will apply themselves even-handedly to the task. The Director sat in on this process but played no part in who was ultimately selected.

The independent advice provided by the selected individual gave the Scrutiny Committee a more comprehensive understanding of the issue and meant it was able to offer informed advice on the merits of putting in place a new strategic commissioning framework.

Annex 3: Illustrative Scenario – Approaching an External Organisation to Appear before a Committee

This example shows how one council ensured a productive scrutiny meeting, involving a private company and the public. Lessons may be drawn and apply to other similar scenarios.

Concerns had been expressed by user groups, and the public at large, about the reliability of the local bus service. The Scrutiny Chair wanted to question the bus company in a public evidence session but knew that she had no power to compel it to attend. Previous attempts to engage it had been unsuccessful; the company was not hostile, but said it had its own ways of engaging the public.

The Monitoring Officer approached the company's regional PR manager, but he expressed concern that the session would end in a 'bunfight'. He also explained the company had put their improvement plan in the public domain, and felt a big council meeting would exacerbate tensions.

Other councillors had strong views about the company – one thought the committee should tell the company it would be empty-chaired if it refused to attend. The Scrutiny Chair was sympathetic to this, but thought such an approach would not lead to any improvements.

The Scrutiny Chair was keen to make progress, but it was difficult to find the right person to speak to at the company, so she asked council officers and local transport advocacy groups for advice. Speaking to those people also gave her a better sense of what scrutiny's role might be.

When she finally spoke to the company's network manager, she explained the situation and suggested they work together to consider how the meeting could be productive for the Council, the company and local people. In particular, this provided her with an opportunity to explain scrutiny and its role. The network manager remained sceptical but was reassured that they could work together to ensure that the meeting would not be an 'ambush'. He agreed in principle to attend and also provide information to support the Committee's work beforehand.

Discussions continued in the four weeks leading up to the Committee meeting. The Scrutiny Chair was conscious that while she had to work with the company to ensure that the meeting was constructive – and secure their attendance – it could not be a whitewash, and other members and the public would demand a hard edge to the discussions.

The scrutiny committee agreed that the meeting would provide a space for the company to provide context to the problems local people are experiencing, but that this would be preceded by a space on the agenda for the Chair, Vice-chair, and representatives from two local transport advocacy groups to set out their concerns. The company were sent in

advance a summary of the general areas on which members were likely to ask questions, to ensure that those questions could be addressed at the meeting.

Finally, provision was made for public questions and debate. Those attending the meeting were invited to discuss with each other the principal issues they wanted the meeting to cover. A short, facilitated discussion in the room led by the Chair highlighted the key issues, and the Chair then put those points to the company representatives.

At the end of the meeting, the public asked questions of the bus company representative in a 20-minute plenary item.

The meeting was fractious, but the planning carried out to prepare for this – by channelling issues through discussion and using the Chair to mediate the questioning – made things easier. Some attendees were initially frustrated by this structure, but the company representative was more open and less defensive than might otherwise have been the case.

The meeting also motivated the company to revise its communications plan to become more responsive to this kind of challenge, part of which involved a commitment to feed back to the scrutiny committee on the recommendations it made on the night.

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TONBRIDGE & MALLING BOROUGH COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

07 July 2022

Report of the Chief Executive

Part 1- Public

Delegated

1 SCRUTINY WORK PROGRAMME 2022/23

To consider future topics for consideration by Overview and Scrutiny Committee.

1.1 Background

1.1.1 Following a review of governance arrangements, it is now timely to consider issues and activity concerning the Council that would benefit from further consideration by this Committee. Following a request from the Chair, members of the Committee were asked to submit suggestions, there is also an item outstanding (Planning Enforcement), which will now be programmed into the meeting schedule.

1.1.2 In addition to items suggested by the Committee, the Chair has requested that a list of Non-Key Decisions (since the previous meeting of Overview and Scrutiny) to be included as a standing item on each agenda, for information.

1.1.3 As part of the Scrutiny Work Programme, Members are also reminded that Scrutiny Training is to be undertaken on 5 October 2022 at 19:30 in the Committee Room.

1.2 Review Topics

1.2.1 Planning Enforcement – a Scoping Report was presented to this Committee on 18 January 2022 (attached at Annex 1). The final report was due to go to the next meeting, however staff changes meant that this was not possible. The Final Report of Planning Enforcement will now go to the meeting on 15 September 2022. Although a topic such as this, should go to the Housing and Planning Scrutiny Select Committee under the new governance arrangements, it was felt appropriate to complete the review in the main Overview and Scrutiny Committee as the Scoping Report started with this Committee.

1.2.2 Mandatory services and non-mandatory services - a request has been made to scrutinise which services we are mandated to deliver, and which are fully discretionary or have additionality above mandatory requirements. This will be an

extensive piece of work and it is proposed that a scoping report be presented to the meeting on 15 September 2022, at which point Members can consider areas for priority review with the Final Review at the following meeting (17 November 2022).

- 1.2.3 Local Plan – a request has been made to scrutinise the development of the Local Plan through to Regulation 18 and into Regulation 19, to ensure there is a deliverable strategy to pass inspection. This is appropriate for the Housing and Planning Scrutiny Select Committee and will be programmed into the meeting schedule.
- 1.2.4 Medium Term Financial Strategy (MTFS) – a request has been made to consider the shortfall in the MTFS and reflect on how we are going to meet the necessary savings. This will be programmed into the meeting schedule for the Finance, Regeneration and Property Scrutiny Select Committee.
- 1.2.5 Biodiversity / Climate Change issues – a request has been made to look at a variety of climate and biodiversity issues including solar/wind power on available plots of land, biodiversity audits, use of LED lighting, sustainable procurement, grants, and use of office space. This will be programmed into the meeting schedule of the Communities and Environment Scrutiny Select Committee.
- 1.2.6 Leisure Trust – a request has been made to consider the value for money in relation to the Leisure Trust, looking at how much the Council has saved over the long term. This will be programmed into the Finance, Regeneration and Property Scrutiny Select Committee.
- 1.2.7 This Committee will also review annually the Revenue Estimates and the Capital Plan.
- 1.2.8 The proposed work programme (so far) for the main Overview and Scrutiny Committee is set out in the table below (in addition to those items listed, the standing item “Non-Key Decisions since last meeting” will be included for information):

Date of O&S Committee	Agenda Items
15 Sep 2022	Final Review - Planning Enforcement Scoping Report – Mandatory/Non-Mandatory Service Review
17 Nov 2022	Final Review - Mandatory/Non-Mandatory Services
26 Jan 2023	Revenue Estimates 2023/24 Capital Plan Review 2022/23

1.3 Legal Implications

1.3.1 To be considered as part of each review.

1.4 Financial and Value for Money Considerations

1.4.1 As above.

1.5 Risk Assessment

1.5.1 N/A

1.6 Equality Impact Assessment

1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.7 Recommendations

1.7.1 That the review topics as set out in the report **BE ENDORSED.**

Background papers:

contact: Gill Fox

Nil

Julie Beilby
Chief Executive

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TONBRIDGE & MALLING BOROUGH COUNCIL**OVERVIEW AND SCRUTINY COMMITTEE****18 January 2022****Report of the Director of Planning Housing and Environmental Health****Part 1- Public****Delegated****1 SCOPING REPORT: PLANNING ENFORCEMENT**

A scoping report looking at the existing Planning Enforcement Plan and associated practices to identify opportunities for improvement.

1.1 Background

1.1.1 The Council's adopted Planning Enforcement Plan was first published in 2016 following a report to the Planning and Transportation Advisory Board and subsequent approval by Cabinet. Since that time, a number of associated Protocols have been published seeking to further crystallise best practice around certain specific elements of planning enforcement with a view to improving transparency and consistency in our approach.

1.1.2 This Plan itself sets out the approach the Council will take in relation to breaches of planning control in the Borough, explaining how the Council's planning enforcement service seeks to address breaches of planning control, prioritise its work and communicate with those involved in the investigations.

1.1.3 It has always been the intention for the overarching Plan to be subject to ongoing review to ensure it remains a useful tool both for officers in terms of their day to date ways of working but also for those who come into contact with the Planning Enforcement function.

1.2 Overview of current practice – updating complainants and Members

1.2.1 It is appreciated that effective community engagement is a key part of delivering a responsive and accountable planning enforcement service and this one of the focuses of the Plan as published.

1.2.2 The adopted Planning Enforcement Plan (which was first reported to PTAB in July 2016 and subsequently adopted following approval by Cabinet on 04 November 2016) sets out how the team presently communicate with complainants on the progress of our investigations. It states that we will acknowledge complaints, explain what priority it has been given, the name of the investigating officer, keep complainants informed on progress and advise on the final outcome. The Plan

does not contain a specific framework which sets out how and when complainants will be kept informed about progress.

- 1.2.3 In terms of keeping Members updated on the progress with our investigations, they receive a weekly list of open and closed cases. Additional updates by the investigating officers are more ad hoc and usually upon individual request. Again, the Plan in its current form does not set out a framework for when any such updates will be given other than at the start and end of an investigation.

1.3 Scope of the review

- 1.3.1 In the above respects, it is understood that there can be frustrations amongst complainants because they do not consider they are being updated early or often enough during our investigations. Similarly, Members have expressed concerns that outside the weekly lists, they do not receive regular, detailed updates on case progression.

- 1.3.2 Whilst the Plan fully acknowledges the importance of effective community engagement, it is equally important to recognise that the team have limited resources available to them and much of their focus must be on undertaking their investigations in a timely manner.

- 1.3.3 With these factors in mind, it is suggested that the scope of the review focus on the following key aspects:

- Review the schemes of prioritisation contained within the Plan (and as set out at Annexe 1 to this report) to ensure that the resources of the team remain focused on the most significant breaches and review the associated target timescales to ensure they remain reasonable, proportionate, and fit for purpose
- Linked to the above, review internal processes regarding case allocation, prioritisation and workflow management systems (the steps contained within Section 5 of the adopted Planning Enforcement Plan) to ensure that the adopted schemes of prioritisation and associated actions are adhered to in all circumstances
- Review the content of the Plan insofar as it relates to communicating with complainants (including where Members are the complainant) with a view to establishing key milestones within our investigations where they will be updated and to establish efficient internal processes to ensure agreed measures this is met
- Review the content of the Plan insofar as it relates to updating Members on enforcement investigations, with a particular emphasis on whether such updates should be focused on cases where Members have asked to be kept updated (either via the weekly open case list or otherwise) and/or for certain case types linked to the scheme of prioritisation, for example, and to

establish efficient internal processes to ensure agreed measures can be met.

1.4 Legal Implications

1.4.1 Without an effective Planning Enforcement Plan in place the Council's decisions to take, or not to take, enforcement action (including prosecutions) may in future be subject to legal challenge through the Courts.

1.5 Financial and Value for Money Considerations

1.5.1 The investigating officers all have significant caseloads and no dedicated administrative support beyond that of the planning technical team. Any additional actions implemented resulting from the review of the Plan and the associated activities of the team are likely to have an additional resourcing cost.

1.6 Risk Assessment

1.6.1 The Planning Enforcement Plan reduces the risk at appeal or by judicial review as it clearly sets out the process and timescales by which enforcement complaints will be investigated and progressed

1.7 Equality Impact Assessment

1.7.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.7.2 Public sector equality duty 2011

1.8 Policy Considerations

1.8.1 Communications

1.8.2 Customer Contact

1.8.3 Equalities/Diversity

1.8.4 Community

1.8.5 Human Resources

1.9 Recommendations

1.9.1 That Members **ENDORSE** the approach identified in Section 1.3 of the report, to review and update the existing Planning Enforcement Plan.

Background papers:

contact: Emma Keefe

Annexe 1: Adopted schemes of prioritisation

Eleanor Hoyle
Director of Planning Housing and Environmental Health

Annexe 1:**Adopted Schemes of Prioritisation (as contained in Planning Enforcement Plan)**

PLEASE BE AWARE: These are target timescales for the undertaking of an initial site inspection and will be adhered to as far as reasonably practicable in the prevailing circumstances. Following the initial inspection, a subsequent investigation will take place the length of which will be dependent on the complexities of the individual case.

Priority ranking	Case characteristics	Target for initial site inspection	Comments
Top Priority	1. Work to Listed Buildings. 2. Work to protected trees. 3. Development likely to have a serious impact on health or public safety.	1 working day	Approach would be to inspect site as soon as possible to prevent irrevocable damage.
High Priority	1. Development causing significant harm the quality of life of a significant number of local residents. 2. Development with some (less serious or immediately threatening) impact on health or public safety. 3. Development causing potential harm to a Conservation Area or Site of Special Scientific Interest. 4. Development potentially causing significant harm to the landscape.	5 working days	Cases with these characteristics are inevitably themselves subject to assessment and judgement during triage – may require engagement with outside specialist bodies which may have more appropriate powers of control or enforcement (e.g. Environment Agency, Health and Safety Executive)
Medium Priority	1. Development which causes limited harm to individuals and/or local communities. 2. Development other than of a wholly minor nature not falling	10 working days	

	within any other category.		
Other Priority	<ol style="list-style-type: none"> 1. Minor developments such as sheds, fences. 2. Most advertisements. 3. Other minor breaches of planning conditions. 4. Minor departures from approved plans. 	As soon as resources allow, bearing in mind other priorities	

This prioritisation reflects the perceived urgency and level of harm arising to amenity or to areas or features that benefit from special protection.

TONBRIDGE & MALLING BOROUGH COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

07 July 2022

Report of the Management Team

Part 1- Public

Matters for Information

1 BUDGETARY CHANGES AND STRATEGIC RISK REGISTER

An information report giving Members of this Committee high level information in terms of the budget position and direction of travel. In addition, it points Members to the red rated risks on the Strategic Risk Register.

1.1 Introduction

1.1.1 At the meeting of this Committee on 2 December 2021, Members recommended at Minute OS 21/29 that:

- 1) Officers be invited to consider how the agenda for each meeting of the Committee include an item on an element of financial matters which identifies any changes in the budgetary position since the previous meeting;
- 2) the Risk Register be reported to the Committee on a regular basis to provide an update on those identified as 'red' and identify actions taken to negate those risks.

1.1.2 This regular report will address these 2 recommendations.

1.2 Budgetary changes

1.2.1 As Members are aware, prior to the recent governance changes, the Finance, Innovation & Property Advisory Board received at each of its meetings - (except for the Estimates meeting in January) - a very detailed report from the Director of Finance & Transformation entitled Financial Planning and Control. The report set out information on key budget areas - salaries, major income streams and investment income together with details of approved variations, virements and issues identified via revenue budget monitoring.

1.2.2 In the future, it has been agreed with the Cabinet Member for Finance, Innovation & Property that regular reports will instead go to Cabinet so that information is readily available and transparent. **At the time of writing, a report**

is to be presented to Cabinet on 5 July just a couple of days before the meeting of this Committee, and it is not the intention of this report to replicate this information. Members are asked to refer to that report which can be found [here](#) for detailed up to date information.

- 1.2.3 An important update with regard to the outturn for 2021/22 and the impact of the current economic climate on the Medium Term Financial Strategy was also presented to Cabinet on 7 June. Again, Members may care to read this report which can be found [here](#).
- 1.2.4 As Members are already aware, **the Savings & Transformation Strategy** which was agreed at the Cabinet Budget Meeting and then at Full Council on 22 February identified that savings/new income of £2.15m needs to be found over the next 5 or 6 years. *(Whilst the word ‘savings’ is used in this report, it should be noted that this is shorthand for savings on expenditure, additional income or new income streams, or most likely a combination of all of these things.)*
- 1.2.5 Members will be aware from the reports to Cabinet in June and July that due to the recent hikes in inflation, energy price rises and the conflict in Ukraine, we estimate that the £2.15m will increase to something in the order of £2.5m to £3m (or even more). As Members will appreciate, these are all things that are outside of the Council’s control and have come to bear since the Budget was set in February and it is very much a “moving target”. It does however reinforce the imperative for a robust programme of savings.
- 1.2.6 This Committee may be interested to note that Cabinet agreed at its meeting on 7 June that in order to ensure that the target of £350,000 is achieved by the start of the financial year 2023/24, a comprehensive report detailing all strands of work being undertaken in respect of the Savings and Transformation Strategy, including progress being made on achieving targets and outcomes be presented to Cabinet in November 2022.
- 1.2.7 As mentioned in the previous report to this Committee, focusing on the shorter term, i.e. **the next 3 years**, Members were advised that the Council needed to prepare to deliver savings of circa £1.5m from this total. Members are advised however that, dependent upon how the impact of the current global economic conditions ‘plays out’ in the next iteration of the MTFs, the sum to be found in the shorter term (3 years) could be more than £1.5m.

1.3 Strategic Risk Register

- 1.3.1 A ‘snapshot’ of the Strategic Risk Register (SRR) is regularly reported to the Audit Committee by Management Team as part of that Committee’s responsibilities in terms of risk management. In addition, on occasion the SRR is additionally reported to the Cabinet to assist Members of the Cabinet in strategic management and policy planning.

1.3.2 It is not the intention to replicate information and Members are initially referred to the report to the last Audit Committee on 4 April 2022 which can be found [here](#)

1.3.3 Members should note that the report highlighted that out of the 17 strategic risks listed, 5 are categorised as RED. These are as follows:

- 1) Financial position/budget deficit
- 2) EU Transition and Economic Uncertainty (severely impacted by Coronavirus Pandemic)
- 3) Corporate Strategy and Savings and Transformation Strategy
- 4) Waste Services
- 5) Local Plan

1.3.4 A further report will be presented to the Audit Committee on 25 July 2022, and Members of this Committee are encouraged to view it.

1.4 Legal Implications

1.4.1 Local Government Act 2003 places a statutory duty on the authority to monitor income and expenditure against budget and to take action if overspends or shortfalls in income emerge. If monitoring establishes that the budget situation has deteriorated, authorities are required to take such action as they consider necessary. This might include action to reduce spending in the rest of the year, to increase income or to finance all or part of the shortfall from reserves.

1.4.2 There is a Health and Safety requirement for effective risk management to be in place and the Strategy supports this requirement.

1.4.3 There is also a requirement in the Accounts and Audit Regulations that accounting control systems must include measures to ensure that risk is appropriately managed.

1.5 Financial and Value for Money Considerations

1.5.1 Financial issues may arise in mitigating risk which will be managed within existing budget resources or reported to Members if this is not possible.

1.5.2 Effective risk management arrangements make a positive contribution to ensuring value for money is provided in the delivery of services.

1.5.3 Progress on meeting this year's savings and transformation contribution of £350,000 to be reported via Cabinet.

1.6 Risk Assessment

- 1.6.1 Budgetary control is a prerequisite of good financial management, financial planning and control and needs to be kept under review to ensure it remains effective and relevant
- 1.6.2 Sound risk management arrangements aid the Council in effective strategic decision-making. The Council's approach to risk should be reviewed on a regular basis to ensure it is up to date and operating effectively

1.7 Policy Considerations

- 1.7.1 Risk management is relevant to all areas of the Council's business

Background papers:

contact: Sharon Shelton

Nil

Julie Beilby
Chief Executive

Sharon Shelton
Director of Finance & Transformation

for Management Team

Agenda Item 10

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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Agenda Item 11

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

**ANY REPORTS APPEARING AFTER THIS PAGE CONTAIN EXEMPT
INFORMATION**

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Agenda Item 13

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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