

TONBRIDGE & MALLING BOROUGH COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

14 September 2023

Report of the Director of Central Services & Deputy Chief Executive

Part 1- Public

Delegated

1 REVIEW OF GOVERNANCE ARRANGEMENTS

1.1 Introduction

1.1.1 On 6 April 2023 a scoping report was brought to the Overview and Scrutiny Committee that invited Members to review the Council's governance arrangements and identify any opportunities to amend or improve existing procedures.

1.1.2 Members were invited to reflect on whether the issues identified by the Peer Review team had been addressed, what had worked well and whether there were opportunities for improvement.

1.1.3 A suggested focus for the next stage of the review was detailed in the report and is set out below for reference. This was agreed by the Committee.

- Has the increase in the number of scrutiny committees, and the scope of such committees created a stronger, member-led scrutiny function?
- Are the scrutiny committees able to effectively set their agendas and work programmes? Is the process for agreeing topics for future meetings effective e.g., who can request items for the agenda and how are such requests considered by the Committees?
- How do the 3 Scrutiny Select Committees impact upon the strategic role of the Overview and Scrutiny Committee? Are there issues of overlapping?
- Is the Executive/ Scrutiny protocol fit for purpose or are revisions required?

1.1.4 Due to the upcoming local elections, the Committee felt that a review should be undertaken later in the year to enable any newly elected councillors to experience a meeting cycle before assessing arrangements. Concern was expressed that the current governance arrangements did not reflect the reduction in councillors arising from the recent boundary review i.e., a reduction from 54 to 44. However, Members also welcomed the opportunity to identify whether improvements could be made to the Scrutiny Select Committees structure and remove potential duplications with the main Overview and Scrutiny Committee.

- 1.1.5 Finally, it was felt that there should be further assessment on the format of Area Planning Committees and the review into governance arrangements offered opportunity for this to be revisited.
- 1.1.6 This report focusses on a review of the governance changes introduced in 2022. It does not therefore address the format of Area Planning Committees. Should Members wish to undertake a review of Area Planning Committees, it is suggested that this is carried out separately via the Housing and Planning Scrutiny Select Committee.

1.2 Background to the review

- 1.2.1 For the benefit of new Members of the Overview and Scrutiny Committee, the background to the governance changes (introduced in May 2022) is set out below.
- 1.2.2 Since 2002 the Borough Council has operated under executive arrangements, with a leader and cabinet executive being the chosen form of such arrangements.

Prior to May 2022

- 1.2.3 Prior to May 2022 the executive arrangements within the Constitution were as follows: -

- The executive was comprised of 7 Councillors (Leader plus 6).
- Meetings of the executive (Cabinet) were ordinarily held on 8 occasions per municipal year. The Constitution provided that Cabinet met on 'at least' 5 occasions per year but in practice the frequency of meetings was higher.
- Cabinet was supported by 5 Advisory Boards e.g., Communities & Housing Advisory Board and 2 Advisory Panels (Parish Partnership Panel/ Tonbridge Community Forum). These did not align directly with the Cabinet Portfolios and Cabinet Members were not appointed to the Boards.
- Individual members of the executive were able to take non-key decisions within their portfolios, but all such decisions were subject to specific conditions as set out in the constitution, as follows: -

A decision made by an Executive Member shall not have effect unless

(a) there has been a written report circulated to all Members prior to the meeting of an Advisory Board or an Area Planning Committee from the appropriate Chief Officer(s) stating that the decision is in conformity with the Council's budget and policy framework and that any reports are not substantially altered by supplementary reports circulated at the meeting.

(b) the report has been considered by an Advisory Board or an Area Planning Committee, which has recommended that the decision be made.

- (c) *the decision has been recorded in writing in the manner specified by the Monitoring Officer; and*
- (d) *the decision has been counter-signed by the Leader of the Council and the Chief Executive (save for a decision made by the Leader of the Council, which shall be counter-signed only by the Chief Executive).*

Key Decisions

Key decisions of the Council are defined in Article 8 of the Constitution. Prior to May 2022 these were decisions which were likely either

- to result in the Council incurring expenditure which is, or the making of savings which are, significant (i.e., in excess of £250,000) having regard to the local authority's budget for the service or function to which the decision relates; or
- to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the area of the Borough.

Key Decisions could not be taken by individual executive members but instead were referred to a meeting of Cabinet for a decision. The threshold of £250,000 was a locally set figure. Whilst there is currently no statutory guidance in this regard, previous guidance issued under S38 of the Local Government Act 2000 makes clear that the local authority should agree as a full council, limits above which items are significant and publish these limits. A local authority is able to set different thresholds for different services or functions, bearing in mind the overall budget for those services and functions and the likely impact on communities of each service or function.

- If a Cabinet Member did not agree with a recommendation from an Advisory Board then their only course of action was to refer the matter to Cabinet for a collective decision.
- The Council had a single Overview and Scrutiny Committee, scheduled to meet 5 times per municipal year.
- Certain non-key executive decisions were delegated to officers (Part 3 of the Constitution).

Decisions of the executive (whether taken at meetings of Cabinet/ by individual executive members or by officers under delegated powers) were able to be called-in for scrutiny by the Overview & Scrutiny Committee.

Peer review

- 1.2.4 Following recommendations from the LGA (Local Government Association) Peer Review, held in 2022, the Council adopted a new governance structure. The relevant sections from the Peer Review feedback report are below:

'TMBC's hybrid governance structure may have served the authority well historically, but it is resource intensive, and impedes the council's ability to respond to the changing landscape as governance requires many decisions go through the advisory boards prior to being considered by cabinet, with sometimes up to five months wait between meetings. The peer team heard from a number of sources that there were "far too many boards, meetings and committees."

In addition:

"The council's advisory boards also create a challenge around the scrutiny function which is devoid of having any real impact. The peer team observed that scrutiny is struggling to find a place and a role, and is disempowered by the advisory boards, evidenced by the lack of call ins over the last 20 years. There is no apparent scrutiny work programme where members can examine in greater depth a topic of interest or concern to the community bringing recommendations to the council and no pre-development work. As a result, scrutiny has become officer led who suggest what is discussed. Members do not see its value with very little debate or questions being asked. The peer team suggests increasing the status of scrutiny within the council and the role of the chair, to address this...

If TMBC is to move forward and make change at the pace required, it is recommended that the council reviews the current governance structure".

- 1.2.5 Recommendation 10 of the report therefore advised that the Council should review its current governance structure, as follows:

'Review the council's governance arrangements, with particular attention to area planning committees and the impact of advisory boards on decision making and the role of overview and scrutiny'

- 1.2.6 To address these issues, the Leader undertook a review of the Council's executive governance arrangements with the following aims and objectives: -

- To increase the scope, role, and responsibility of the Overview & Scrutiny Committee so that it can effectively discharge its functions.
- To ensure that Cabinet members are empowered to take decisions within their portfolios.
- To ensure that Cabinet meetings are held at an appropriate frequency.

- 1.2.7 The new governance arrangements were reported to Council on 27 April 2022 and came into effect on 10 May 2022.

1.2.8 The key aspects of the governance changes were as follows: -

- 3 new Scrutiny Select Committees were created to replace the existing Advisory Boards, each Committee containing 15 Members and meeting 5 times per municipal year. The existing Overview and Scrutiny Committee was to remain and be chaired by the Leader of the largest opposition group.
- A new Executive/ Scrutiny Protocol was created to ensure a constructive relationship between the Executive and the Scrutiny Committees (attached as **Annex 1**).
- Cabinet Members were to be empowered to take non-key decisions within their portfolios, save for specified exceptions e.g., where the decision was outside the budget and policy framework or proposed a new or amended strategy.
- In respect of key decisions, the financial threshold was reduced from £250,000 to £100,000.
- Cabinet would be scheduled to meet at least 8 times per municipal year.

1.2.9 Members may wish to note the feedback given by the LGA Peer Review Team during their progress review in November 2022.

“We noted that overall, there was a greater feeling of confidence and speed of decision making in the council. In part brought about by the council’s decision to accept the peer team’s recommendation to review the council’s governance arrangements”.

‘The implementation of new governance arrangements has been implemented at pace, and led to much speedier decision making, something that has been universally welcomed by members and officers. This pace of change is commendable and shows bold leadership, but as acknowledged by the Leader has been at the expense of some political capital.

The peer team heard that the new committee arrangements need time to bed-in, as they are still working under the old advisory board culture, rather than scrutinising the work of Cabinet, with very few call-ins. Therefore, the full accountability benefits of the new model are not being realised. There is also evidence that further training and development is required to provide clarity around the roles and responsibilities of scrutiny members, along with the function of the committees...

It was also acknowledged that the relationship between Cabinet and Scrutiny is still a work in progress, with regular and more structured meetings needed to add further value to the new arrangements.’

1.3 Areas for discussion

Has the increase in the number of scrutiny committees, and the scope of such committees created a stronger, member-led scrutiny function?

- 1.3.1 The creation of 3 new Scrutiny Select Committees has undoubtedly strengthened the scrutiny function of the Council. Whilst the previous advisory boards offered a pre-scrutiny function, their effectiveness was limited. For example, the advisory boards did not set their own work programmes and most Members were therefore unable, as the Peer Review team noted, to bring items of importance to these meetings.
- 1.3.2 Training has been provided to Members on the effective use of scrutiny, most recently on 5 October 2022. Further training is currently being arranged and members will be notified of a date shortly.

Are the scrutiny committees able to effectively set their agendas and work programmes? Is the process for agreeing topics for future meetings effective e.g., who can request items for the agenda and how are such requests considered by the Committees?

- 1.3.3 The future work programme is a standing item on all meetings of the Scrutiny Select Committees and the Overview and Scrutiny Committee.
- 1.3.4 The development of the work programme is addressed in the Executive/ Scrutiny protocol. This provides that the work programme is to be developed as follows: -
- 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.

1.3.5 The protocol also provides that the Scrutiny Work Programme will also have the following standing items:

- 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 & Planning Scrutiny Select Committee)
- Key Performance Indicators (relevant Scrutiny Select Committee)

1.3.6 The identification of the above items within the protocol ensures that key strategic plans of the Council will be scrutinised by the relevant Scrutiny Committee. Other than key performance indicators (which are a standing item for all scrutiny committees), no standing items for the Communities and Environment Scrutiny Select Committee are listed in the protocol. The Housing & Planning Scrutiny Select Committee also only has 1 unique standing item. This does not of course mean that one scrutiny select committee is busier than another simply because of the number of standing items.

1.3.7 Members may wish to consider whether any other strategic plans should be included within the protocol.

1.3.8 Outside of the above, all members of the Committees can request items for the work programme. In practice these requests have initially been made to the Chair of the relevant scrutiny committee so that they may manage the meeting agendas. Members may wish to formalise this process of submitting requests for items to the Chair so that they may liaise with key officers to ensure that the work programme remains balanced throughout the year.

1.3.9 Overall, the approach towards the scrutiny work programme represents a significant departure from the previous advisory board regime – as the purpose of the advisory board was to advise the Executive the work programme was set in consultation with the relevant Cabinet Member(s). Members of the Executive may still invite one of the scrutiny committee committees to consider a matter within their portfolio but they will otherwise have no influence over the agenda.

1.3.10 Members may wish to consider the guidance issued by the Local Government Association on the setting of scrutiny work programmes. In the Councillor's workbook on scrutiny, it is suggested that the following are/ are not suitable for scrutiny: -

Topics are suitable for scrutiny when	Topics are not suitable for scrutiny when
-scrutiny could have an impact and add value	-the issue is already being addressed elsewhere and change is imminent
-the topic is of high local importance and reflects the concerns of local people	-the topic would be better addressed elsewhere (and will be referred there)
-the resources are available that would be required to conduct the review, in terms of manpower and budget	-scrutiny involvement would have limited or no impact upon outcomes
-it avoids work duplication elsewhere	-the topic may be sub-judice or prejudicial to the council's interest
-the issue is one that the committee can realistically influence	-the topic is too broad to make a review realistic
-the issue is related to an area where the council, or one of its partners, is not performing well	-new legislation or guidance relating to the topic is expected within the next year
-the issue is relevant to all or large parts of the local area	-the topic area is currently subject to inspection or has recently undergone substantial change.
-the review would be in the council's interests	

1.3.11 Members may wish to consider introducing criteria to ensure that only necessary items make it onto the work programmes for the scrutiny committees. This will help in making the scrutiny function as effective as possible. If Members were minded to take this approach, the recommendations of the LGA above could form the basis for the agreed criteria.

How do the 3 Scrutiny Select Committees impact upon the strategic role of the Overview and Scrutiny Committee? Are there issues of overlapping?

1.3.12 The terms of reference for each of the 3 Scrutiny Select Committees and the Overview and Scrutiny Committee are attached at **Annex 2**.

1.3.13 The terms of reference for the 3 Scrutiny Select Committees are subject specific, thus ensuring that matters relating to service delivery are considered by the appropriate committee. Conversely, the terms of reference for the Overview and Scrutiny Committee are more general in nature. This should result in broader strategic issues affecting the whole Council falling to the Overview and Scrutiny Committee. This review of governance is one such example; the Corporate Plan is another.

1.3.14 In practice, there have been a few items considered by the Overview and Scrutiny Committee that could (or perhaps should) have been considered by one of the Scrutiny Select Committees. For example, the Overview and Scrutiny Committee has recently considered several items relating to Planning Services e.g., Development Management Officer Protocol, Member call-in (Development Management) which fall within the terms of reference for the Housing and Planning Scrutiny Select Committee. The same point could be made in respect of the Housing Association Performance Framework.

1.3.15 Members may wish to consider whether regular agenda setting meetings should take place between the Chair of the Overview and Scrutiny Committee and the Chairs of the 3 Scrutiny Select Committees to assist in ensuring that potential issues of overlapping are minimised.

Is the Executive/ Scrutiny protocol fit for purpose or are revisions required?

1.3.16 The Executive/ Scrutiny protocol was agreed by Cabinet on 7 September 2022, following consideration by the Overview and Scrutiny Committee on 7 July 2022. The protocol is attached as **Annex 1**.

1.3.17 The protocol covers a number of areas, as follows: -

- Core principles
- Development of the scrutiny work programme
- Expectations of the Cabinet
- Expectations of the Overview and Scrutiny Committee
- Call-in
- Compliance with the protocol

1.3.18 The development of the scrutiny work programme is considered at paragraphs 1.3.2 to 1.3.10 above.

1.3.19 In respect of call-in, Members are asked to note that the protocol predominantly deals with the procedure. Other matters, such as the number of members of the Overview and Scrutiny Committee required to trigger a call-in (currently 5), are dealt with in the Overview and Scrutiny Procedure Rules at Part 4 of the Constitution. For completeness these rules are also attached as **Annex 3**.

1.3.20 It is suggested that the protocol should be subject to annual review by the Overview and Scrutiny Committee and Cabinet in order to ensure that it remains fit for purpose.

1.3.21 Members are invited to consider the remaining areas of the protocol and make such recommendations as they see fit to the Executive.

1.4 Legal Implications

1.4.1 None arising from this report.

1.5 Financial and Value for Money Considerations

1.5.1 None arising from this report.

1.6 Risk Assessment

1.6.1 N/A

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.

1.8 Policy Considerations

1.8.1 Business Continuity/Resilience

1.8.2 Communications

1.9 Recommendations

1.9.1 Members are invited to consider the issues set out in this report and make such recommendations to the Executive as they see fit.

Background papers:

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Nil

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