

This Report will be made public on 13 October 2020

Report Number **C/20/35**

**To:** Cabinet  
**Date:** 21 October 2020  
**Status:** Non key  
**Responsible Officer:** Amandeep Khroud, Assistant Director Governance and Law  
**Cabinet Member:** Councillor Monk, Leader of the Council

**SUBJECT:** CABINET AND OVERVIEW AND SCRUTINY PROTOCOL

**SUMMARY:** Following the recent review into the council's Scrutiny arrangements, this report proposes adoption of a Cabinet and Overview and Scrutiny Protocol, to clarify relationships between the Cabinet and Overview and Scrutiny Members, help to ensure the smooth conduct of Overview and Scrutiny business and encourage effective communication between the Overview and Scrutiny Committee and the Cabinet. The protocol was endorsed by the Overview and Scrutiny Committee at its meeting on 6 October 2020.

**REASONS FOR RECOMMENDATIONS:**

The adoption of the protocol will ensure clarity of expectations on members of both Overview and Scrutiny and Cabinet, thereby assisting in making the council's scrutiny process more effective.

**RECOMMENDATIONS:**

1. To receive and note report C/20/35.
2. To approve and adopt the Cabinet and Overview and Scrutiny Protocol, set out at appendix 1.

## **1. BACKGROUND**

- 1.1 On 25 September 2019, a motion was put to Full Council regarding a review of the council's governance arrangement. The Council subsequently agreed that a cross party working group of all group leaders be set up to consider the issues of moving to a committee system, or an alternative system.
- 1.2 The working group met twice in November 2019, and again in January 2021, and it was made clear that Members did not feel that Overview and Scrutiny arrangements were fit for purpose.
- 1.3 Ian Parry from the Centre for Governance and Scrutiny (formerly the Centre of Public Scrutiny) was commissioned to assist with a review of the Council's Scrutiny arrangements. A series of workshops were held with all Members in February and March 2020. As a result of these workshops various changes were proposed.
- 1.4 One of the suggested improvements was the implementation of a protocol, in order to clarify relationships between the Cabinet and Overview and Scrutiny Members, helping to ensure the smooth conduct of OSC business and encourage effective communication between the Overview and Scrutiny Committee and the Cabinet.
- 1.5 The protocol is not intended to change the respective constitutional positions, roles or responsibilities of either the Cabinet or the Overview and Scrutiny Committee.
- 1.6 The proposed protocol is set out at Appendix 1.
- 1.7 The protocol was approved by the Overview and Scrutiny Committee at their meeting on 6 October 2020.

## **2. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS**

### **2.1 Legal Officer's Comments (AK)**

The legal issues are covered in the main body of the report.

### **2.2 Finance Officer's Comments (RH)**

There are no financial implications to this report.

### **2.3 Diversities and Equalities Implications (GE)**

There are no equalities implications directly arising from this report.

## **3. CONTACT OFFICERS AND BACKGROUND DOCUMENTS**

Councillors with any questions arising out of this report should contact the following officer prior to the meeting:

Jemma West, Committee Services Specialist  
Telephone: 01303 853369  
Email: Jemma.west@folkestone-hythe.gov.uk

The following background documents have been relied upon in the preparation of this report:

None.

**Appendices:**

Appendix 1: Cabinet and Overview and Scrutiny protocol

## **Cabinet and Overview and Scrutiny Committee protocol**

### **1. Introduction**

- 1.1 The aim of the protocol is not intended to change the respective constitutional positions, roles or responsibilities of either the Cabinet or the Overview and Scrutiny Committee.
- 1.2 It is to clarify relationships between the two and help ensure the smooth conduct of Overview and Scrutiny business and encourage effective communication between the Overview and Scrutiny Committee and the Cabinet.
- 1.3 This Protocol applies to all Members of the Overview and Scrutiny Committee, any sub – committee, and any Member who may sit on a Scrutiny Task and Finish Group and all Members of the Executive (comprising the Leader and the other Cabinet Members).
- 1.4 The protocol provides guidance on the way in which Members fulfilling their different roles interact to enable Folkestone and Hythe District Council to carry out the Overview and Scrutiny function. The Protocol also outlines the framework and procedures underpinning the operation of Overview and Scrutiny and provides guidance on role of officers who support this process.
- 1.5 The key responsibilities of Overview and Scrutiny at the Council are set out in the Council's constitution, they are to hold the cabinet to account and for scrutinising Cabinet decisions before, or after, they have been implemented, to make recommendations on future policy options and for reviewing the general policy and service delivery of the Council

### **2. Objectives**

- 2.1 To enable Overview and Scrutiny Members, Officers and Cabinet Members to fully understand their powers, roles and responsibilities in relation to the Overview and Scrutiny function, so as to maximise their personal effectiveness.
- 2.2 To establish a positive framework and the necessary procedures to enable the scrutiny function to work effectively.
- 2.3 To promote an ethos of mutual respect, trust and courtesy in the interrelationships between Overview and Scrutiny Members and Cabinet Members and to foster a climate of openness leading to constructive debate, with a view to ensuring service improvements.
- 2.4 To create a culture of holding the Executive to account on behalf of the electorate, by monitoring the effectiveness of the Council's policies and through the regular review of its performance in relation to service delivery.

- 2.5 To define and clarify the role of the Executive as an integral component of the scrutiny process.

### **3. Holding the Executive to Account**

- 3.1 One of the underpinning principles of Overview and Scrutiny is the ability of non-Executive Members to hold the Executive to account. A key method of ensuring accountability is through critically and routinely considering the performance and decisions taken by the Executive.
- 3.2 To facilitate this approach, the Overview and Scrutiny Committee (or its sub-Committee) may challenge the Executive about decisions, which it has taken collectively, or Officer Key Decisions. The Overview and Scrutiny Committee/sub-Committee may also consider any relevant performance information in respect of the delivery of services. In addition, the Committee may query or make recommendations in relation to decisions which the Executive is proposing to take, as set out in the Forward Plan.
- 3.3 The Executive will be required to consider any recommendations or views expressed by the Overview and Scrutiny Committee/Sub-Committee and to take such action it sees fit. The Chairman or Vice-Chairman, or if unavailable, a representative of the Overview and Scrutiny Committee shall attend the Cabinet meeting to present the report and/or recommendations. Where any decision taken by the Executive is not in accordance with advice provided by the Committee, the relevant Cabinet Member, or if unavailable an Executive Member Colleague, shall attend the following meeting of the Committee to provide an explanation of the reasons for that decision to the Committee concerned.

### **4. Powers of the Overview and Scrutiny Committee**

- 4.1 Paragraph 13.2, Part 7.2 of the Council's Constitution, sets out the relevant powers of the Overview and Scrutiny Committees, which include:-
- "Subject to resources being available within the agreed annual budget, the Overview and Scrutiny Committee may:
- a) Review and scrutinise decisions made and look at past performance;
  - b) Investigate options for future direction in Council policy;
  - c) Investigate and make reports and recommendations to the Council, or the Cabinet, on any matter which affects the authority's area, or the inhabitants of that area.

### **5. Overview and Scrutiny Committee Agendas**

- 5.1 The agenda of each Overview and Scrutiny Committee meeting will include an item on the Committee's Work Plan to enable the Committee's priorities for scrutiny for the remainder of the Municipal Year to be included and prioritised.
- 5.2 The Cabinet may be invited to comment on the Committee's proposed priorities within the Work Plan to inform the selection process and to undertake a co-ordinating role by providing advice to the Committee about any potential conflict between proposed scrutiny topics and areas of planned policy development.

5.3 The Cabinet may also advise the Committee about instances where it may be requested by the Cabinet to assist in policy development. Members may at any time propose items for inclusion in the Committee's Work Plan.

5.4 The agendas of the Sub-Committee will include quarterly performance monitoring information at relevant times during the municipal year. The purpose of this item is to assist Members to monitor the recent performance of services within its remit against key targets and to make recommendations or to implement a more detailed scrutiny review in relation to those areas of identified weakness.

**6. Attendance by Cabinet Members at Overview and Scrutiny Committee  
(including 'Call-In' meetings)**

6.1 Cabinet Members with responsibility for the subject matter being considered, will normally be expected to attend meetings of the Overview and Scrutiny Committee, for the purposes of being held to account in relation to decisions taken and to answer questions in relation to proposed decisions.

6.2 Cabinet Members are encouraged to avail themselves of every opportunity to gauge the views of non-Executive Members on any issues falling within their remit. A close working relationship and an open exchange of views will be of particular importance to the Cabinet Member and Overview and Scrutiny Members, where consideration is being given to the development of the Council's budget or policy framework.

6.3 Cabinet Members will normally be expected to attend any meeting of the Overview and Scrutiny Committee at which it is intended to consider a Call-In request in relation to his/her area of responsibility.

6.4 At Call-In meetings, the purpose of the Cabinet Member's attendance is to answer questions of fact and not to present the item. Cabinet Members need to be careful not to be drawn into the debate, so as to avoid any possible allegations of becoming involved in the scrutiny of their own decisions. It is therefore important to draw the distinction between answering questions of fact and becoming involved in the Committee debate into the issue in question.

6.5 Unless there are extenuating circumstances, the relevant Cabinet Member should always attend a Call-In meeting. It is accepted however that Officers are often better placed to present greater detailed information that led up to the decision and this is deemed to be acceptable although it should always be the decision maker that is held to account.

6.6 The following procedure should take place at Call-In meetings:

- The Members who called in the decision should speak first.
- The Chairman would 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 debates the issue and votes on the outcome.

- 6.7 In the event of a situation 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 being unavailable, they should nominate another Cabinet Member to attend and be accountable for the decision.

## **7. Ethos of the Meeting**

- 7.1 All Members should promote an atmosphere of openness at Overview and Scrutiny Committee meetings and should strive to ensure that questioning and debate takes place within a climate of mutual respect and trust between Overview and Scrutiny Committee Members, the Cabinet Member and other participants.
- 7.2 Overview and Scrutiny Committee Members should be prepared to ask searching questions of Cabinet Members, who in turn should be willing to respond to any question put. It should however be stated that Overview and Scrutiny Committee Members should be aware of and show an understanding of the fact that Cabinet Members may not be in a position to answer every question immediately or in detail.
- 7.3 Cabinet Members should, in so far as possible, anticipate and be prepared to answer questions on decisions taken, or proposed to be taken, which fall within their remit. Cabinet Members should also value the contribution of Overview and Scrutiny Committee Members who raise questions under these headings and respond in an appropriate and professional manner.
- 7.4 Cabinet Members should normally be authorised by the Committee to speak upon any item on the agenda which falls into their portfolio area of responsibility and may at any time offer to assist the Overview and Scrutiny Committee by the provision of factual information or advice in relation to the matters under discussion.
- 7.5 The Chairman of the meeting shall at all times ensure that the conduct of the meeting shall be fair and that all participants are treated courteously.
- 7.6 The Chairman, supported by the officers, should provide leadership and guidance to the Committee on all scrutiny matters and should promote the Committee's role to improve services and monitor the effectiveness of Council policies.

## **8. Supporting Overview and Scrutiny Reviews**

- 8.1 These are reports with recommendation that have resulted from the work of the Committee, sub – committee or Task and Finish Group who will have spent time considering background information, witness evidence, and formulating their recommendations. In this and the immediately following paragraph "Chairman" refers to the chairman of the body carrying out the review.
- 8.2 The Chairman will be invited to present the final report at a Cabinet meeting.

The Cabinet can expect a report that:

- Has clear, concise recommendations;
  - Identifies potential areas for improvement; and
  - Highlights implications including financial, legal, equality, policy, of the recommendations and where possible identify solutions as appropriate.
- 8.3 The relevant Cabinet Member(s) can assist the review in a number of ways including:
- At the outset of the review, when consideration is given to the scope, methodology and witnesses to give evidence;
  - During the review when the Cabinet Member can be invited to give evidence;
  - At the end of the review after the first draft of the report has been produced.
- 8.4 During the review period the Chairman is recommended to meet with the Cabinet Member and Officers:
- To discuss the proposed scope, methodology and sources of evidence for the review and ascertain if the Cabinet Member has any suggestions to make;
  - To highlight and examine areas of potential agreement or disagreement in relation to the report's findings and recommendations to ascertain if any areas of disagreement can be resolved at the draft report stage, or identify if any further work needs.
- 8.5 Although this dialogue is encouraged, it is recognised that the Overview and Scrutiny function is independent of the Cabinet and as such agreement may not be possible on all the findings and conclusions in a draft report.
- 8.6 It is recognised that senior officers have a valuable role to play in the scrutiny process in terms of the provision of factual evidence for a review. At the commencement of an internal review, the Chairman will notify the relevant senior officer who will then contribute to the review in terms of supplying information and helping to identify suitable witnesses.
- 8.7 The relevant senior officer will be given the opportunity to comment and/or make recommendations on a completed draft report in terms of any factual errors. The decision as to whether to incorporate any suggested amendments will remain with the body whose report it is.
- 8.8 The responsibility for the implementation of scrutiny recommendations that have been approved by the Cabinet will rest with the relevant senior officer who will also be responsible for providing regular updates on progress to the Overview and Scrutiny Committee.
- 8.9 A completed scrutiny report, together with any comments provided by Officers will be forwarded to the Cabinet who will consider whether or not to implement the recommendations contained within the report.
- 8.10 If the content of a report, including any recommendations, is likely to impact on any external organisation, the Cabinet will have the opportunity to pass



comment, including whether or not it endorses the recommendations, before the report is passed to the external body.

## **9. Attendance by Officers at the Overview and Scrutiny Committee**

- 9.1 Meetings of the Overview and Scrutiny Committee, and any Sub-Committee will be attended by the assigned Lead Officer and senior officer with responsibility for any agenda item under discussion. The role of the Lead Officer will be to assist the Committee through the provision of professional advice and to ensure access to relevant information and personnel.
- 9.2 The attendance of other relevant officers will be at the request of the Chairman, who will have regard to the appropriate level of seniority of attendees. In general the relevant officer should not be below third tier level. Attendance officers below third tier is at the discretion of the Head of Paid Service.
- 9.3 An officer in receipt of a request to attend a Committee meeting should make reasonable efforts to do so. Where an officer is unable to attend on a particular date he/she should notify the Chairman or Lead Officer as soon as possible, in order to agree the most appropriate course of action, which may include the attendance of an alternative representative.
- 9.4 Officers in attendance at Committee meetings should be prepared to assist the Cabinet Member in the provision of information to the Committee in response to any question raised.
- 9.5 Relevant Officers will normally be expected to attend any meeting of the Overview and Scrutiny Committee at which it is intended to consider a Call-In request in relation to his/her service area.