

OVERVIEW AND SCRUTINY COMMITTEE

STATUTORY GUIDANCE ON OVERVIEW AND SCRUTINY IN LOCAL AND COMBINED AUTHORITIES

CABINET – SCRUTINY PROTOCOL

1st August 2024

Report of Chief Officer - Governance

PURPOSE OF REPORT

To consider a report on the introduction of a Pre-Decision Scrutiny Protocol.

This report is public.

RECOMMENDATIONS

- (1) The Committee is requested to consider the introduction of a Pre-Decision Scrutiny Protocol.

1. INTRODUCTION

1.1 Consideration was requested to be given to the introduction of a Cabinet – Scrutiny Protocol by the Committee. Such arrangements are in place in other authorities and assist both Cabinet and Scrutiny to work together more effectively for the good of the district.

1.2 At its meeting, held on 6 September 2023, the Committee was provided with a report and a copy of the Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities, previously reported to the Committee on 14 June 2023.

After considering the report it was agreed:

- (1) That the Pre-Scrutiny Champion meets informally with Democratic Support Officers to consider the Forthcoming Key Decisions on a regular basis.
- (2) That the Committee consider the draft Protocol in the new Municipal Year.
- 1.3 Councillor Gawith was appointed as the Committee's Pre-Scrutiny Champion and regular meetings have been held with Democratic Support. To assist with the

process a link to the latest Forthcoming Key Decisions has been included as a standard agenda item.

2. DLUHC UPDATED STATUTORY GUIDANCE

- 2.1 Since the last report to the Committee DLUHC has updated the Statutory Guidance on overview and scrutiny.

DLUHC informs that the guidance reflects new developments such as the further devolution of powers and funding to local areas and the establishment of combined authorities and combined county authorities. Just as the principles in this statutory guidance apply to the good scrutiny function of councils, they are equally fundamental to that of English institutions with devolved powers. The accountability of these institutions is core to the success of areas with devolution agreements, and they should use this guidance alongside that in the English Devolution Accountability Framework and the Scrutiny Protocol.

- 2.1 A copy of the updated Guidance and the report dated 6 September 2023 including the comments of Statutory Officers are appended. A copy of the Guidance has also been emailed to Members of the Committee and has also been downloaded to your Councillors Scrutiny intranet page. The Committee is now asked to consider the draft Protocol, as previously requested by the Committee.

3 PROPOSED DETAILS

- 3.1 The proposed details were submitted to the Committee at its meeting on 6 September 2023 for consideration. These are provided below.

- 3.2 After considering the report and Appendix the Committee requested that officers report back on a Cabinet – Scrutiny Protocol for consideration by this Committee.

- 3.3 Appended to this report are details of the Appendix to the Guidance. This advises that 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.*

- *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.*

* **Note:** a Statutory Scrutiny Officer is not a requirement for city/borough/district councils.

3.4 Most of the bullet points above are already fully covered in the Council's Constitution either in the Overview and Scrutiny Procedure rules in Part 3, Section 3 or elsewhere: -

- The development of the scrutiny work programme is already fully covered by Rule 9.
- Rule 14 sets out the requirements for Cabinet Members, Chairs of Committees, Chief Executive and Chief Officers to attend for matters within their remit.
- Regarding behaviour by Councillors in meetings, that would already appear to be fully covered by the Code of Conduct in the Constitution.
- Rules 10 and 11 both say that Cabinet or Council shall consider any report of Overview and Scrutiny at the first available meeting.
- Pre-scrutiny was featured in the Overview and Scrutiny Annual report, however there was no pre-scrutiny last year. If and when it resumes, it will be reported.

3.5 Taking the above into account and not wishing to duplicate the rules in the Constitution, the area where a protocol would seem to be useful is:

- *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.*

3.6 With this in mind, it would seem that formalising a "Pre-Decision Scrutiny Protocol", rather than a "Cabinet – Scrutiny Protocol" would cover that aspect and provide reassurance to scrutiny members that they are fully able to feed in views before Cabinet decisions are made.

3.7 In order to draft a Protocol for consideration the Committee is asked to consider the following:

- **What the Committee would like to do when they receive the forthcoming list of Key Decisions notice.**

In previous years this has been undertaken with the Chair and Vice Chair of the Committee, Chair and Vice Chair of the Budget and Performance Panel, the Pre-Decision Scrutiny Champion and relevant officers identified by the Chief Executive. This enabled those Members to query and question officers on issues that were to be considered at the next Cabinet meeting and obtain information on background papers.

- **More informal meetings between the Pre-Decision Scrutiny Champion and Scrutiny Chairs and Leader/Deputy Leader/Portfolio Holders.**

The Leader, Deputy Leader and Portfolio holders are asked to attend meetings of the Committee and Panel to discuss and answer questions and queries on their Portfolios.

In developing a Protocol the Committee may wish to cultivate a closer working relationship with Cabinet Members.

- **Cabinet Briefings**

The Committee may want to request that the Pre-Decision Scrutiny Champion be invited to Cabinet briefings and be permitted to ask questions at those briefings. After those briefings the Pre-Decision Scrutiny Champion could raise issues with the Chairs of the Scrutiny Committee and Panel if it is felt that further scrutiny or discussion is necessary.

3.8 The Committee may want to consider the above and other actions it may want to take when considering a Protocol.

3.9 Once the Committee has advised of what it wishes to be included in the Protocol, Officers will produce a draft for consideration by the Committee and Cabinet.

4 CENTRE FOR GOVERNANCE AND SCRUTINY (CfGS) – CASE STUDIES

4.1 Since the last report to the Committee the Centre for Governance and Scrutiny (CfGS) has made available a number of case studies. Members will be aware that the CfGS provides support to local government, the public, corporate and voluntary sectors in ensuring transparency, accountability and greater involvement in their governance processes. Details regarding improvements to the scrutiny function are set out in a recent case study for Cambridge and Peterborough Combined Authority – Strengthening the Scrutiny Function. A couple of the areas the Committee may also wish to consider are:

- Forward Plan – Commitment to provide an extended forward plan of 6-12 months to better enable scrutiny identification of future decisions for early pre-scrutiny.
- Create an informal planning meeting of Overview & Scrutiny Committee with timetabled dates to review the Forward Plan and performance data in order to identify areas of focus for the formal Committee meeting.

4.2 More information can be found on the CfGS website [here](#)

5 DETAILS OF CONSULTATION

5.1 Other local councils in Lancashire were asked to provide details of their Cabinet/Executive-Scrutiny Protocols. These were wide-ranging documents covering areas that would have duplicated our existing rules in the Constitution, so were not that helpful.

5.2 Prior to a final Protocol being considered consultation will need to be undertaken with Members of Cabinet for their input and views, particularly around the inclusion of the Scrutiny Champion at Cabinet briefings, if that is something that this Committee would wish officers to investigate further.

6 CONCLUSION

- 6.1 If the Committee wishes to recommend the adoption of a Pre-Decision Scrutiny Protocol the Monitoring Officer could then take this forward for a decision regarding inclusion in the Council's Constitution after consultation with Cabinet Members and final consideration by this Committee.

RELATIONSHIP TO POLICY FRAMEWORK

There are no direct implications as a result of this report.

CONCLUSION OF IMPACT ASSESSMENT (including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

There are no direct implications as a result of this report.

LEGAL IMPLICATIONS

The Overview and Scrutiny Committee has overall responsibility for the performance of all Overview and Scrutiny functions (under the Local Government Act 2000) on behalf of the Council and ensuring its effectiveness.

There is no legal requirement for the Council to have a Protocol although it is considered best practice in the 'Overview and Scrutiny: Statutory Guidance for Councils and Combined Authorities (MHCLG)' document published in May 2019.

Any recommendations that require Constitutional amendments will be referred to and be considered by the Monitoring Officer for referral to Council Business Committee and/or Council.

FINANCIAL IMPLICATIONS

There are no financial implications as a direct result of this report. Any further reports on specific issues contained within this report will require further consideration of the financial implications.

OTHER RESOURCE IMPLICATIONS, such as Human Resources; Information Services; Property; Open Spaces:

None.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

DLUHC Overview and Scrutiny: statutory guidance for councils, combined authorities and combined county authorities – 22.04.24.
To view please click [here](#)

Contact Officer: Stephen Metcalfe
Telephone: 01524 582073
E-mail: sjmetcalfe@lancaster.gov.uk