

REPORT TO: SCRUTINY COMMITTEE

DATE: 15 OCTOBER 2019

TITLE: REVIEW OF OVERVIEW AND SCRUTINY

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RECOMMENDED that the Committee:

- A** Sets up a Working Party (with the terms of reference attached as Appendix A to the report) to carry out a review of the Council's overview and scrutiny functions.
- B** Amends its process for determining its work plan to take into account the suggestions in paragraphs 9 to 17 of this report, pending any alternative proposals from the review.
- C** Recommends to Cabinet that the Cabinet Overview Working Group's Work Plan is developed in line with paragraph 17 of the report.

BACKGROUND

1. The Ministry of Housing, Communities & Local Government (MHCLG) has published new statutory guidance on Overview and Scrutiny in Local and Combined Authorities (May 2019) (attached as Appendix B to the report). This guidance contains a number of policies and practices that the ministry are suggesting that the Council should adopt, or consider adopting. This is statutory guidance of which the authority 'must have regard' to in exercising the functions.
2. The guidance does give the Council the trigger to review its current arrangements for both Policy Review (Overview) and Scrutiny and also the relationships between the executive and scrutiny.
3. Under the Cabinet system the Council is required to establish a Scrutiny Committee. Its Terms of Reference are set out in Article 7 and rules in Part 4 of the Constitution. The Committee can report on the discharge of any functions of the Council or Cabinet or any matter affecting the Council's area or inhabitants. Part of this Committee's function is also to enable decisions of the Cabinet to be called in. The Council's Scrutiny Committee has a Call In Sub Committee which fulfils this purpose.
4. More generally, the Committee should look to add value to the Council and to improve outcomes for the town as a whole.

5. On the Cabinet side, the Cabinet Overview Working Group (COWG) helps to develop policies for the Cabinet.
6. Both the Committee and COWG have their own separate work plans. The Committee is able to determine its own work plan, but the COWG's is determined by Cabinet and cannot set its own work plan.
7. The Guidance is wide ranging and covers the following topics:
 - a) Work Planning
 - b) Culture
 - c) Resourcing
 - d) Selecting Committee Members
 - e) Power to Access Information
 - f) Evidence Sessions
8. The Guidance raises a number of points. The ones which are most likely to require action are set out in the issues/proposals section below.

ISSUES/PROPOSALS

Work Planning

9. The Committee needs to be encouraged to make a long term plan, and Cabinet needs to develop longer term plans for the COWG. The Committee ordinarily agrees a work plan at the first meeting of each municipal year. It then adds items throughout the year.
10. The COWG's work plan is agreed at the first Cabinet meeting of the municipal year. Additions to the work plan need to be agreed by Cabinet.
11. Reviews need to be outcome focussed. This means that the Committee should consider both what it wants to achieve by carrying out the review, but more importantly, what it thinks it can achieve. Whilst a review inevitably involves identifying issues that had not been previously identified, Councillors normally suggest reviews for topics where they know there is an issue. Establishing these issues, possible solutions and the costs of these solutions will allow the Committee to be more strategic.
12. The Committee should be made aware of the resource implications of carrying out reviews, especially when multiple reviews fall under the same service. Officers should look to provide advice on the likely timescales of reviews. This will aid Councillors in determining which items they wish to review in the municipal year. Whilst resource implications and cost should not deter the

Committee or COWG from carrying out work, these need to be balanced against likely outcomes and the urgency of work. Allocating a maximum number of longer and shorter term reviews per municipal year will ensure that resources are not over-stretched, but vitally will allow Councillors to more robustly scrutinise topics.

13. Using the information above, the Committee can prioritise items that can help deliver real value to Harlow and that can be carried out within the Council's resources.
14. To aid the Committee in this, the Chair of the Committee in their discussions with Officers prior to the first meeting of the year, will suggest an order. Members of the Committee looking to add items to the work plan should contact Governance Support informing them of the item that will be added. The Councillor should also state:
 - a) Where in the priority order they feel the item should be; and
 - b) What they feel the review can achieve.
15. Governance Support will then ask the relevant Head of Service to establish the likely timescale for the review. This will be reported to the Committee meeting.
16. These procedures will enable the Committee to create a more strategic, outcome focussed work plan, which works within existing departmental resources. It is recommended that this procedure is implemented immediately. It can then be reviewed and changed, if necessary, following the outcome of the wider review into the Council's overview and scrutiny functions.
17. Due to the way in which the COWG work plan is agreed, it is recommended that the work plan is reviewed as part of the regular meetings between the Cabinet members and the Senior Management Board (SMB). This will allow the COWG work plan to be continually developed in line with the Council's corporate priorities.

Culture

18. The guidance stresses the importance of Scrutiny. It has a statutory legitimacy, acting as a 'critical friend' to the Executive. Understanding of the role of scrutiny is seen as key to the setting of a strong culture within the Council. The guidance also raises the need to ensure that there is early and regular engagement between the executive and scrutiny.
19. The guidance expresses the importance of the Cabinet being held to account at meetings. This means that the focus of questioning should be aimed at Cabinet members, rather than Officers. Cabinet members rarely attend meetings so this is not really achieved.

20. The Council, as a whole, needs to understand the role of Scrutiny. There is a knowledge gap in this regard. This can be addressed, in part, through better communication to Officers.

Resourcing

21. The Guidance is clear that it is up to the Council to decide how to best allocate resources and how to create a structure which enables effective scrutiny. The Council is not required to have a statutory scrutiny officer (unlike larger councils), but the resource model could be reviewed. There are three main models, which are as follows:

- a) Dedicated Scrutiny Officer/s;
- b) Scrutiny carried out by the service area (the current approach); and
- c) A hybrid.

22. Training also needs to be considered. This can be developed internally, although there are external providers available. Any training would need to cover relevant issues elsewhere in this report and anything identified as part of a fuller review.

Selecting Committee Members

23. The Guidance asks that Committee members have the correct skill sets. Selection of Councillors is up to the political groups. The Council will need to develop the required skills through training and guidance.

Power to Access Information

24. There are certain legal requirements that compel the Council to provide information relevant to their reviews. These are set out in regulations. The Council also has an Officer/Councillor protocol which sets out general requirements when Councillors request information. The Local Government Act 2000 sets out the requirement for Officers to attend meetings and answer questions.

25. The Guidance goes further than the protocol and recommends that the Committee has regular access to information relating to the management of the Council, particularly on performance, management and risk, and this should inform their forward work programme. It does not elaborate on what sort of information needs to be provided. Any review will need to look at this in more detail.

26. It needs to be made clear what evidence external organisations will need to provide. More crucially, where an issue is contentious, the Council needs to be tactful to encourage compliance. There have been instances where organisations have not wanted to attend because the meetings were seen as an opportunity to be critical rather than constructive.

Evidence Sessions

27. Whilst the COWG held an evidence session in relation to House of Multiple Occupation (HMOs), neither the COWG or the Committee hold formal evidence sessions on a frequent basis. If this was pursued it would be important that the Chair established a clear questioning structure and properly guided the sessions so that they added genuine strategic value instead of dealing with minor operational points. There is also no local process.

Conclusions/Next Steps

28. There are a number of areas in which scrutiny and overview can be strengthened, but any review would need to involve Councillors. Not doing so would make it less likely that the required cultural shift would be achieved. This necessitates the Committee and Cabinet being involved in the process.
29. The review can be carried out by Officers but would need the setting up of a smaller panel of members to ensure the process is Councillor driven and achieves a consensus outcome. It is therefore recommended that a Working Party is set up with the terms of reference set out in Appendix A to the report to carry out a review of the Council's overview and scrutiny functions.
30. As an interim measure it is recommended that the process of setting the Committee's work plan is amended to follow paragraphs 9 to 17 above. The Working Party can then look to further change the process as part of its review.
31. It is also recommended that Cabinet is asked to adopt the process set out in paragraph 17 of the report when setting the Cabinet Overview Working Group's Work Plan.
32. In previous reviews for other councils (albeit before the issue of the new Guidance) the Centre for Public Scrutiny (whose work the Guidance suggests councils should follow) has focussed on the following points:
 - a) The Cabinet rarely attend Scrutiny Committee meetings. The Guidance suggests an Executive-Scrutiny protocol is created to formalise the relationship.
 - b) Cabinet should see scrutiny as a 'critical friend' with statutory legitimacy.
 - c) Cabinet members attending to answer questions on reviews. Officers should be there for clarification.
 - d) The Committee should do more pre-scrutiny of upcoming Cabinet decisions (the Forward Plan).
 - e) The Committee needs to look at scrutiny in a more strategic manner. There is a sense that it identifies issues in the town, but without an underlying approach that enables strategic benefits to be delivered. The Corporate Plan should be a key consideration of the Committee.

- f) Scrutiny should be made an integral part of the decision making and policy creating process. An action plan will be created in order to achieve this and other recommendations.
- g) Clarify the respective roles of Scrutiny and the Working Group and discuss how the interrelationship between the two meetings works or could be better coordinated.
- h) Scrutiny would be more effective were members to receive training.

IMPLICATIONS

Environment and Planning (Includes Sustainability)

None specific.

Author: Andrew Bramidge, Head of Environment and Planning

Finance (Includes ICT, and Property and Facilities)

None specific.

Author: Simon Freeman, Head of Finance and Deputy to the Chief Executive

Housing

As outlined in the report.

Author: Andrew Murray, Head of Housing

Community Wellbeing (Includes Equalities and Social Inclusion)

As outlined in the report.

Author: Jane Greer, Head of Community Wellbeing

Governance (Includes HR)

Scrutiny is a statutory requirement and the authority has a duty to consider guidance issued by government periodically to ensure the authority complies with any revised procedures and best practice.

Author: Simon Hill, Head of Governance

Appendices

Appendix A – Terms of Reference

Appendix B – MHCLG Guidance

Background Papers

None.

Glossary of terms/abbreviations used

COWG – Cabinet Overview Working Group

MHCLG – Ministry of Housing, Communities & Local Government

SMB – Senior Management Board