

Report for: Overview and Scrutiny Committee – 3 June 2019

Item number:

Title: Further Development of Overview and Scrutiny – Response to new Statutory Guidance on Overview and Scrutiny and Scrutiny Stocktake

Report authorised by: Cllr das Neves, Chair of Overview and Scrutiny Committee

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Ward(s) affected: All

**Report for Key/
Non Key Decision:** N/A

1. Describe the issue under consideration

1.1 This report outlines the main issues arising from the new statutory guidance on Overview and Scrutiny. In addition, it also refers to the outcomes of the recent Scrutiny Stock Take.

2. Cabinet Member Introduction

2.1 N/A

3. Recommendations

3.1 That a revised Scrutiny Protocol be developed on the basis outlined in the report and addressing the issues highlighted, with this process initiated by an independently facilitated workshop of Scrutiny and Cabinet Members and senior officers;

3.2 That the changes in working methods for Committee and its panels outlined in the report be approved and in particular:

- More work to take place outside of meetings, particularly where the primary aim is information gathering;
- Avoidance of excessive numbers of standing items on agendas; and
- Consideration of how IT can be used to reduce reliance on formal meetings.

3.3 That the remits of the Committee and its four standing scrutiny panels be reviewed, with recommendations on any changes necessary made to the final meeting of the Committee in the current Municipal Year;

3.4 That the Committee consider further the arrangements for scrutiny of the budget with the aim of developing a more iterative process and that recommendations on this be submitted to the next meeting of the Committee;

3.5 That regular briefings for Chairs on Performance, Finance and Risk to be set up once the new reporting framework for these has been finalised.

4. Reasons for decision

4.1 To respond to the recent new statutory guidance for overview and scrutiny as well as the outcomes the recent Scrutiny Stock Take process.

5. Alternative options considered

N/A

6. Background information

6.1 The Ministry of Housing, Communities and Local Government has recently published new statutory guidance on Overview and Scrutiny, which is attached as Appendix A.

6.2 The guidance states that 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.

6.3 The guidance is comprehensive and includes chapters on the following:

- Culture;
- Resourcing;
- Selecting Committee Members;
- Power to Access Information
- Planning Work; and
- Evidence Sessions

6.4 The main issues raised closely mirror those highlighted within the recent Scrutiny Stocktake exercise that was undertaken by scrutiny chairs and facilitated by Ann Reeder, an independent adviser. In the light of these, it is proposed that the arrangements for overview and scrutiny be updated. This is not envisaged as entailing major changes to structures. The actions proposed instead focus more on culture and relationships as well as further developing working methods so that overview and scrutiny is able to maximise its influence.

6.5 In undertaking this exercise, it would also be pertinent to draw on lessons from places where *ineffective* scrutiny has been deemed to have contributed to severe service failures, such as Mid Staffordshire and Rotherham. The Centre for Public Scrutiny identified three key questions for scrutiny members arising from these:

- “How do I know that the Council will be aware when significant problems rear their head and do I have confidence that this information will be acted on?”

- Does scrutiny itself have access to information which will allow me to confidently challenge, on the basis of evidence, the council's assertions about the quality of a service?
- Do council officers and officers from other agencies agree and accept that scrutiny has this role to play? “

Culture

- 6.7 The overriding message of the new guidance is the importance of developing a culture that supports scrutiny. It states that this can enable it to add real value through improved policy making and more efficient delivery of public services. Culture can be difficult to change though, particularly where it has become embedded.
- 6.8 The guidance nevertheless proposes a number of practical ways in which it considers a strong organisational culture for scrutiny can be established:
- Recognising scrutiny's legal and democratic legitimacy;
 - Identifying a clear role and focus;
 - Ensuring early and regular engagement between the executive and scrutiny;
 - Managing disagreement;
 - Providing the necessary support;
 - Ensuring impartial advice from officers;
 - Communicating scrutiny's role and purpose to the wider authority;
 - Maintaining the interest of full Council in the work of the scrutiny committee;
 - Communicating scrutiny's role to the public; and
 - Ensuring scrutiny members are supported in having an independent mindset.
- 6.8 The guidance emphasises that the Executive should not try to exercise control over Scrutiny's work. This can 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).

Protocol

- 6.9 The guidance suggests the development of an executive-scrutiny protocol as a way of developing positive relationships and addressing the practical expectations of scrutiny members and the executive. It comments that the value of such a protocol lies in the dialogue that underpins its preparation. It also states that it is important that these protocols are reviewed on a regular basis.
- 6.10 The guidance further suggests that a protocol could include sections on the following:
- The way scrutiny will go about developing its work programme;
 - 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;
 - 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.
- 6.11 The Stock Take process stated that there was a need for greater clarity in the role of scrutiny for the Executive and officers and, like the guidance, suggested that this might be assisted by the development of a protocol. It was felt that this could:
- Guide the relationship between scrutiny members, the executive and officers;
 - Help to address any tensions; and
 - Promote greater openness and capacity.
- 6.12 In addition to the issues referred to above, a protocol could also help to address a number of other issues raised within the Guidance and the Stock Take:
- Increasing awareness of scrutiny amongst all officers and Members;
 - Ensuring that scrutiny has access to appropriate information on a timely manner; and
 - Avoiding call-ins by early involvement of scrutiny.
- 6.13 Haringey already has a scrutiny protocol that was drafted in 2012 but practice has since diverged from this. It is therefore proposed that the Scrutiny Protocol be reviewed and updated. It is important that it is led and owned by Members and that this includes both those within the Cabinet and within Scrutiny, as stated in the guidance. A useful starting point might be the development of a shared vision of the role of scrutiny and what an effective scrutiny function might look like. The revised protocol could also address a number of additional issues that have either been highlighted in the either the guidance or the Stock Take or come to light in scrutiny activities in recent years.
- 6.14 To begin this process, it is proposed that a workshop be arranged of scrutiny members, senior officers and Cabinet Members. This could be facilitated by an external person in order to bring an independent perspective.

Access to Information

- 6.15 Scrutiny committees need access to relevant information and to receive this in good time if it is to be able to do its job effectively. Scrutiny committees have a statutory right to access information and this is in addition to other rights such as those under the Common Law and the Freedom of Information Act. However, in some local authorities scrutiny members have had to resort to Freedom of Information requests to access information.
- 6.16 The guidance states that “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". It suggests that before an authority takes a decision not to share information, it should give serious consideration to whether the information can be shared in closed session. It also states that commercial confidentiality should not preclude the sharing of information as committees can meet in closed session.

- 6.16 Having closed sessions of scrutiny goes against its ethos of transparency and openness though. In addition, the guidance also states that the default position for meetings should be that they are held in public. Before such a course of action is followed, it may therefore be good practice to establish whether the information requested is absolutely necessary for the scrutiny body to fulfil its duties.

Engagement with Stakeholders and the Community

- 6.17 The guidance emphasises the fact the important role of scrutiny in amplifying the voices and concerns of the public. This builds on the report of the Communities and Local Government Select Committee on the "Effectiveness of local authority overview and scrutiny committees" which stated that members of the public and service users should have a fundamental role and participation encouraged.
- 6.18 There is no explicit recognition of the distinct role of scrutiny in engaging with the community in the Constitution or the current Scrutiny Protocol and therefore any person or organisation wishing to contribute is subject to the same procedures as any other Council body. Despite this, there have been a number of successful engagement exercises that have been carried out. Of particular note is the involvement of the community in developing the current work plan for the Committee and its panels.
- 6.19 Scrutiny has a broad role in respect of public services and need not be restricted to just those provided by the Council. The number of services that local authorities are directly responsible for has diminished and therefore just focussing on these may lead to limited effectiveness and an inability to influence the key concerns of the local community. A key consideration in involving partners and other stakeholders is the potential that there is to bear influence on them. The guidance emphasises the need to involve partners in scrutiny activity and suggests that this should not just be limited to evidence gathering as they can provide valuable insights on a range of issues.

Evidence Sessions

- 6.20 The Committee and its panels can currently undertake in-depth reviews on specific issues. These can be undertaken through specific "evidence sessions" which are not public meetings. However, there is no currently provision within the Council's Constitution for separate processes for scrutiny "evidence sessions".
- 6.21 Holding "evidence sessions" in private allows them to be more informal and flexible in nature. It has also been felt that holding them in public could inhibit witnesses in giving evidence. However, such evidence is used to inform review reports which are in the public domain and scrutiny bodies could find

themselves in a difficult position in having to decide whether information provided in private can or should be published. Greater clarity would be helpful to witnesses so they are aware of the status of any evidence that they give.

- 6.22 Holding sessions that are not in public can appear contrary to the principles of transparency and openness. As previously mentioned, the default position should be that all scrutiny meetings are held in public. The Council's Constitution also states that "all Overview and Scrutiny meetings shall take place in public (except where exempt or confidential matters are considered)."

Co-option and Technical Advice

- 6.23 The guidance states that, whilst Members and support officers will often have significant local insight and an understanding of local needs, the provision of outside expertise can be invaluable. It suggest two ways in which this can be procured:

1. Co-options. Haringey already allows each scrutiny body to co-opt up to three people. These are non voting, as specified in the relevant legislation. However, it does not provide any additional guidance on the criterion for appointment, the appointment process and the term of office. In addition, the Council is required to appoint a number of statutory co-optees representing the church and parent governors to any scrutiny body responsible for education issues. These are able to vote in education issues. There are currently four statutory co-optees and they sit on the Children and Young People's Scrutiny Panel and the Committee; and
2. Technical Advisers. These are described as independent local experts who might provide advice and assistance in evaluating evidence. In the past, external expert advisers have been appointed to assist on specific pieces of scrutiny work and have been of considerable assistance. However, such individuals normally require payment for their assistance and the Council has not been in a position to continue this practice due to budget constraints. The issue could nevertheless be re-visited as it may sometimes still be possible to involve such people provided that this is at no cost or very modest cost.

Setting Priorities

- 6.24 Scrutiny will always have limits on its capacity. It is therefore needs to use the time and resources available to greatest effect and in areas where there is the greatest scope to deliver outcomes. The requires effective prioritisation and is already a key part of the work planning process. In finalising their work plans, each scrutiny body considered the following:

- How best to take forward the issues identified to date;
- Other work that may be taking place within the Council on issues raised;
- Whether issues may have already been looked at recently; and
- Where impact is likely to be the greatest.

- 6.25 A number of additional ways of ensuring that space at formal meetings is prioritised for in-depth consideration of issues, where there is most scope for delivering outcomes, were suggested through the Stock Take process.

- More work to take place outside of meetings, particularly where the primary aim is information gathering (e.g. “to note” reports);
- Avoiding excessive numbers of standing items on agendas; and
- Consideration of how IT can be used e.g. teleconferencing, Skype, to reduce reliance on meetings.

6.26 The terms of reference for the Committee and its standing panels have remained broadly similar since 2014-15. The current Protocol states that it is for the Committee to determine the terms of reference for the four standing scrutiny panels. It was felt at the Stock Take that they should be reviewed, particularly in the light of the Council’s new Borough Plan. This is unlikely to create any additional capacity though but may provide a more balanced work load between scrutiny bodies.

6.27 There is a report elsewhere on the agenda for this meeting on terms of reference for scrutiny bodies for the current year. Some small changes are proposed to ensure better alignment with Cabinet portfolios. It is proposed that a more comprehensive review take place later in the year and that if it is felt that significant change is required, this be approved in preparation for the next Municipal Year.

Performance, Finance and Risk

6.28 As previously mentioned, a key consideration in undertaking scrutiny is to ensure that it has the necessary information to function effectively. Performance, finance and risk are particularly important areas and it is therefore proposed that regular briefings for Chairs to be set up once the new reporting framework has been finalised.

6.29 The Stock Take suggested that budget scrutiny is developed and starts earlier in the year. It is therefore proposed that this become more of an iterative process. In respect of scrutiny of the MTFS, it was felt that this should take place when both relevant finance and service officers were present so that Members could obtain a clear view of proposals and their implications. It is therefore proposed that the current arrangement whereby individual scrutiny panels undertake this role in respect of proposals relating to areas within their terms of reference continue.

7. Contribution to strategic outcomes

7.1 The contribution of scrutiny to the corporate priorities will be considered routinely as part of the Committee’s work.

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance

To follow

Procurement

N/A

Legal

- 8.1 In exercising its function, the Committee must have regard to the “Statutory Guidance on Overview and Scrutiny In Local and Combined Authorities” referred to in the report. The Committee should follow the Guidance unless there is a good reason not to in a particular case.

Equality

- 8.2 The Council has a public sector equality duty under the Equalities Act (2010) to have due regard to:
- Tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation;
 - Advance equality of opportunity between people who share those protected characteristics and people who do not;
 - Foster good relations between people who share those characteristics and people who do not.
- 8.3 The Committee should ensure that it addresses these duties by considering them within its work plan and those of its panels, as well as individual pieces of work. This should include considering and clearly stating;
- How policy issues impact on different groups within the community, particularly those that share the nine protected characteristics;
 - Whether the impact on particular groups is fair and proportionate;
 - Whether there is equality of access to services and fair representation of all groups within Haringey;
 - Whether any positive opportunities to advance equality of opportunity and/or good relations between people, are being realised.
- 8.4 The Committee should ensure that equalities comments are based on evidence. Wherever possible this should include demographic and service level data and evidence of residents/service-users views gathered through consultation.

9. Use of Appendices

Appendix A: Statutory Guidance on Overview and Scrutiny

10. **Local Government (Access to Information) Act 1985**