

Report to Council



Date of meeting: 17 December 2013

Report of: Overview and Scrutiny Review Task and Finish Panel

Chairman: Councillor K Angold-Stephens

Subject: Overview and Scrutiny Review

Recommendations:

- (1) That a report be submitted to the Council recommending that the proposals arising from this review of Overview and Scrutiny as set out in Appendix 1 be approved;
- (2) That the amendments set out in Appendix 2 (Overview and Scrutiny Procedure Rules and "Call In" Protocol) be approved and recommended to the Council for adoption and publication in the Constitution;
- (3) That this report be referred to the Audit and Governance Committee as previously requested.

Report:

1. Introduction

- 1.1 We were appointed by the Overview and Scrutiny Committee on 7 April 2012 to review Overview and Scrutiny arrangements within the Council with particular reference to working relationships with the Cabinet.
- 1.2 We were originally set a deadline of completing this review and making recommendations with a view to introducing the proposed changes by the beginning of the current Council year. In practice this did not prove to be possible in view of the discussion prompted by feedback from consultation.

2. Approach to the Review

- 2.1 We were provided with a comprehensive summary of all the statutory provisions relating to the Overview and Scrutiny (OS). If any members of the Council wish to review this information it can be found appended to the agenda for our meeting on 6 December 2012 (Agenda Item 5 – Appendix – Page 15). We were satisfied that the Council had met its statutory obligations and that the Council's Constitution and, more particularly, the Overview and Scrutiny Procedure Rules adequately reflect the statutory arrangements which apply.

- 2.2 Within the same Panel agenda, members will find further research which we commissioned as part of the review. This included:
- (a) a summary of outcomes from previous OS reviews;
 - (b) a digest of views received during consultation from Councillors and Officers about OS;
 - (c) examples from other Councils of good OS practice.
- 2.3 We reported to the Committee on 20 May 2013 with our provisional recommendations and the Committee made a number of comments and raised questions about some of our proposals. These included:
- (a) a query as to whether a call-in is still to be reported to the Overview and Scrutiny Committee even if it had been withdrawn by mutual consent;
 - (b) views regarding the proposal to allow only a lead “call-in” sponsor to speak to the call-in, thereby excluding other signatories;
 - (c) questions regarding our proposals for a new seating plan to deal with scrutiny of external organisations and call-in; and
 - (d) the question of whether the public should be asked to raise questions at OSC meetings or make presentations on matters of concern.
- 2.4 These concerns from the Committee had been addressed at our most recent meeting and we explain below that we have responded positively to the comments made.
- 2.5 The Audit and Governance Committee requested an opportunity to review our interim findings and also the process of the review itself, to seek assurance, from the point of view of good governance, that the review was robust. The Audit and Governance Committee received a report with the interim proposals at its meeting on 27 June 2013 and was happy with the process.
- 2.6 However, the Committee also asked for sight of the final proposals before these are submitted to the Council. With this in mind, we have asked for this report to be supplied to the Audit and Governance Committee at its next meeting.

3. Findings and Recommendations

- 3.1 Appendix 1 to this report shows our recommendations for changes to Overview and Scrutiny arrangements. A commentary is given below of our main findings in relation to a number of separate topic areas.

Overview and Scrutiny Committee – Chairman

- 3.2 At present, there are no specific rules concerning the appointment by the Council of an Overview and Scrutiny Committee Chairman. It is clear to us however that OS should not be a political process. We received representations as part of the consultation that the Chairman of OSC should automatically be a member of a minority party but feel that the only requirement should be that the Councillor appointed should have experience and understanding of OS in order to be qualified for the position. We also would like the Chairman of OSC to be able to attend the agenda planning group if he or she so wishes.

Cabinet/Overview and Scrutiny - Liaison

- 3.3 We feel that changes need to be made in order to facilitate closer working between the Cabinet and Overview and Scrutiny. One of the roles of Overview and Scrutiny is to assist the Cabinet in the conduct of its responsibilities whilst at the same time holding the Cabinet to account for the decisions made. However, our view is that there has been too much reliance in the past on call-ins as a way of bringing the Cabinet to account and not enough emphasis on pre-scrutiny.
- 3.4 Pre-scrutiny would allow a discussion to take place between the Cabinet and the Leader of Council and OSC in order to look at the former's programme of work and decide how Overview and Scrutiny could assist in the delivery of that programme. OSC should also regularly monitor progress by the Cabinet in delivering its programme.
- 3.5 We think this can be best achieved by linking the Cabinet's forward plan with the work programme for OS. We are recommending that at the first OSC each year, the Leader of Council and his Cabinet colleagues should present their programme and answer questions. This would also give an opportunity for the Leader of Council to advise OSC of those matters which could be undertaken on the Cabinet's behalf. Likewise, with the benefit of the planning of the OS work programme, will allow OSC to indicate work to be undertaken which affects executive functions.
- 3.6 We would like to see more attendance by Portfolio Holders at Scrutiny Panel meetings as they can then answer questions and provide information which can assist the work of the Panel concerned.
- 3.7 We also propose that progress reports be given after 6 months to OS on the Cabinet forward plan for the year and the delivery of its priorities so that OS has a chance to comment on Executive activities without relying totally on "call-ins".
- 3.8 We have also looked at the process by which the Overview and Scrutiny Committee reviews the Cabinet agenda at each meeting and we think there is scope of improving the arrangements.
- 3.9 The interval between the despatch of the Cabinet agenda and the Overview and Scrutiny Committee meeting is currently very short and we feel that this may not give OS members enough opportunity to really study Cabinet business. Pre –scrutiny of the kind we have described earlier in the report means that none of those items on the Cabinet agenda should be a surprise to OS members as there should have been discussion with the Leader of Council at the beginning of the year. The Cabinet review item is currently placed at the end of the OSC agenda and we think it should be placed earlier on the agenda to give it more prominence and to allow more time for discussion.

Overview and Scrutiny Work Programme

- 3.10 One of our concerns is that the management of the OS Work Programme should be improved.
- 3.11 We have listed in our recommendations a wide range of information from which the OS Work Programme could be drawn. For instance, there may be useful data on public concerns from the complaints or from Freedom of Information requests. We feel that the Cabinet Work Programme should also be taken into account in deciding how the OS programme should be structured.

- 3.12 We would also like to see use made of digests from Directorate Business Plans and information from petitions.
- 3.13 Another area where we feel that more work can be done is following up on previous scrutiny work. We are suggesting that once scrutiny work has been completed there should be 3 monthly oral reports from the Portfolio Holders followed by 6 monthly reviews on implementation. This should include reviews of matters such as Cabinet decisions on scrutiny reports and following up on discussions with external organisations following reviews.
- 3.14 We think the management of the OS Work Programme should be co-ordinated by the officer agenda planning group in consultation with the Chairman or Vice Chairman of the OSC. We would wish that group to review the work programme, review requests from the public and Councillors for reviews (via the pick system) and programme 3 monthly and 6 monthly follow ups. This group could also deal with any requests for reviews which are inappropriate or not relevant to OS. In our view, work programming by OS should start well before the start of the Council year. We are recommending that preparation should begin in February with a pause if necessary during April/May if EFDC Elections are due.
- 3.15 We also re-affirm the use of the “pick “system as the basis of assessing requests for reviews. The Officer Group should be strict in ensuring that items are all submitted on the form and if, requests are unclear or incomplete, refer them back for clarification. The Overview & Scrutiny Committee asked that we clarify in this report that all “PICK” forms which are appropriate as to content and intention, completed correctly and relevant to the District or the Council will be submitted to the Overview & Scrutiny Committee for consideration.

Scrutiny Panels

- 3.16 We have no major proposals in relation to Scrutiny Panels except that we wish to see Panel Chairmen more disciplined in attending meetings of the OSC in order to give progress reports on the work of their Panels.
- 3.17 We looked at the question whether pro-rata requirements for Standing Scrutiny Panels could be discontinued in order to ensure that memberships comprised Councillors who had a keen interest in the subject matter and did not merely attend to fulfil the pro-rata formula. Although in discussion, this did find some support, it was felt that in practical terms this would not be deliverable within the Council and we have therefore decided not to make any proposals in that regard.
- 3.18 Another minor change we wish to make is to dispense with the term “Standing Scrutiny Panel” and replace it with the simpler title “Scrutiny Panel”. We feel that this shortened title will still adequately distinguish these Panels from the “Task and Finish Panels” set up from time to time.
- 3.19 That the rules concerning set up from time to time of Portfolio Holders attending Scrutiny Panels be extended to Portfolio Holder Assistants.

“Call-in” Procedure

- 3.20 The “call-in” process operated by the Council has been reviewed several times and we think that, on the whole, it is working well. We are, however, making recommendations about improving the process as discussed below.

- 3.21 We wish to introduce arrangements whereby a Cabinet member and a call-in sponsor could meet before the call in is referred to OSC. Such a meeting would be convened by the Chairman of the Overview and Scrutiny Committee and would explore whether an agreement can be reached on a way forward. This might allow a “call-in” to be withdrawn or modified or allow a Portfolio Holder to agree changes to the decision so as to reflect the concerns expressed. We were asked previously by the Committee about what would happen if a “call-in” is withdrawn as a result of this process. We have looked at this issue and feel that OSC should be advised for information at the next meeting of any prior discussions about the call in and the outcome.
- 3.22 The deadline for a call-in is 5 days following the publication of a notice of the relevant executive decision. We feel that this is a tight timescale, particularly as five members have to sign in order to validate the “call in”. We are pleased that officers now operate more flexible arrangements. We still feel that a signed document is still required but e-mail submissions of support by the 5 call-in sponsors are now accepted and speed up the process. In the longer term we would like the opportunities for an electronic call-in system to be investigated.
- 3.23 We have also looked at the way in which “call in” debates at OSC are structured. We originally felt that the portfolio holder should not respond the “call in” until all five signatories have presented their reasons for calling in. The Overview & Scrutiny Committee has however changed our proposal as members felt that it was onerous for a single Portfolio Holder to have to respond to 5 separate speakers at the same time. Our recommendation is now that the order of speakers should be as follows:
- (a) Lead signatory to present call in;
 - (b) Portfolio holder responds;
 - (c) 4 other “call in” signatories respond;
 - (d) Portfolio Holder responds;
 - (d) debate by OSC (including an opportunity for other “call-in” signatories to the call-in speak if they so wish should they be more than 5 in number);
 - (e) reply by the “lead call” in signatory to the debate;
 - (f) Reply by Portfolio Holder to the debate.
 - (g) voting.

We would emphasise that the discretion has been retained for the Chairman of the Committee/Panel to vary this procedure should circumstances warrant this.

- 3.24 We have made recommendations on the use of the Council Chamber in the section of this report relating to the scrutiny of external organisations (see below). We recommend that the same seating arrangements should apply to call-ins, the relevant Director and the Portfolio Holder being asked sit together in the well of the Chamber to make their presentations and answer questions. We are suggesting that this arrangement should operate on a trial basis over the first 9 months of the Council year 2014/15 and then reviewed.

Scrutiny of External Organisations

- 3.25 We have probably spent more time on how to scrutinise the activities of other agencies who affect the District than on any other issue. Although a procedure regarding how such a scrutiny is to be conducted is outlined in the Overview and Scrutiny Rules we do not feel that this is fully effective.
- 3.26 The essence of scrutiny of external organisations is preparation. Currently, members of OSC have a private meeting on questions to be asked prior to the meeting. This is linked to an earlier invitation in the bulletin to put forward questions. We think that this is probably leaving matters too late for proper preparation and we would like a preliminary discussion to be held at the previous OSC to agree the topics which need to be raised. This should guide the Committee and officers on the kind of topics which need to be explored. We hope that this will enable more background information to be prepared by officers and avoid duplicating questions in debate. It will also enable the issues of concern to be sent to the organisation at an earlier stage, improving the prospects for meaningful answers being given at the meeting. We are also recommending that undertakings given by organisations should be followed up after six months and the outcomes reported back to OSC or the relevant Panel.
- 3.27 In terms of the way in which time is allocated at Overview and Scrutiny Committee meetings for this kind of scrutiny, we think that time limits should be applied to presentations by external bodies. We do not propose to be prescriptive about this as we are content for the Chairman of OSC to do this. However, we do not wish to see a time limit on the period for questions. We feel that an arbitrary time limit can often prevent members from asking significant follow up questions and frustrate the main purpose in inviting external agencies, namely of finding out the true position on how the District is affected.
- 3.28 We also feel that there is an issue around the selection of organisations who attend Overview and Scrutiny Committee meetings. Quite often requests are made simply to allow representatives to come to meetings to present information on some new initiative they are undertaking. In our view, this is not the same as Scrutiny. We feel that in planning the work programme for OS each year there must be regard to real issues for the Council and the community. Our recommendations also cover the important issue of following up on undertakings given by organisations during scrutiny sessions with these undertakings being summarised in the Council Bulletin.
- 3.29 A trial of new seating arrangements for external organisations is recommended. We consider that representatives of the external organisations should be seated in the well of the Chamber because this would provide a better focus for questioning and change the relationship between the organisation scrutinised and the OSC. We are aware that when we reported our provisional recommendations to the Overview and Scrutiny Committee, some reservations were expressed about this idea. However, we still wish to recommend this new seating arrangement because we feel that with representatives of external organisations sitting at the “top table” scrutiny is less effective.
- 3.30 At the end of the trial, we recommend that there should be a review of the effectiveness of this arrangement by the Constitution and Member Services Scrutiny Panel. The trial should be for 9 months but could be extended at the discretion of the Committee if insufficient external reviews have been conducted in that period.

Budget Scrutiny

- 3.31 We have reservations about the current involvement of Overview and Scrutiny in budget monitoring. Currently the activities of the Finance and Performance Management Scrutiny Panel ("Scrutiny Panel") seem to mirror the work of the Cabinet Committee to an excessive extent. We received representations as part of consultation about the current practice of submitting the same budget papers to Scrutiny Panel as are discussed by the Cabinet Committee. We feel that all the detailed financial information is rightly the responsibility of the Cabinet Committee and budget scrutiny by Overview and Scrutiny should be on a different basis.
- 3.32 We feel that the Scrutiny Panel should be reviewing the financial issues paper produced by the Director of Finance and ICT by September each year and the mid-term financial strategy document. Throughout the budget process, the Scrutiny Panel should concentrate on policy issues, trends, problems and themes rather than trying to assimilate the vast amount of financial data which the Cabinet Committee must have to meet its responsibilities. We wish to avoid the duplication that currently exists between the Cabinet Committee and this Scrutiny Panel.
- 3.33 At our request the Director of Finance and ICT has developed an OS budget review timetable which is set out in our recommendations. Principally this will involve an initial look at the financial issues paper by September. In November this will be followed by examination of the draft growth lists and savings and the DDF programme (plus fees and charges), followed, in January, by an update of the medium term financial strategy for the next financial year. The timetable would conclude in February with the final form of the draft budget.
- 3.34 We think that this should be the basis of scrutiny of the budget each year. This will allow the Scrutiny Panel to comment on the broad issues affecting the budget without becoming unduly immersed in the detail. This process should, in our view, be coupled with training in financial procedures preceding the beginning of the budget cycle by the end of September. We are happy for the content of that report and also the timing to be left with the Director of Finance and ICT but we feel it is essential that this training is given if OS is to make a real contribution to the budget process.
- 3.35 We wish the Scrutiny Panel's term of reference to be reviewed to avoid duplication with the Cabinet Committee and to see the joint meetings with the Cabinet Finance Committee discontinued. We also would like the Scrutiny Panel to look at the timetable for business plans so that this too can complement the OS work programme for the year.

Scrutiny of Key Performance Indicators

- 3.36 The quarterly review of Key Performance Indicators (KPI's) is currently undertaken by the Finance and Performance Management Standing Scrutiny Panel ("Scrutiny Panel"). We wish to see this continue but we would like KPI monitoring to concentrate on those indicators which are either "red" (below target) or "amber" (i.e. within a target tolerance) although all KPIs will continue to be reported as now. We see limited value in considering indicators which are being met. Furthermore, although we support the co-ordinating role of that Panel, we feel that where other Panels are in being and have a direct interest in any KPI, they should be able to review current performance or the reasons for non achievement if more detailed review is necessary after an initial presentation has been made to the Scrutiny Panel. We are asking that the terms of reference of that Panel should also be amended to reflect this approach.
- 3.37 If there is no separate Panel in being which can deal with any KPI, these further reviews can be dealt with by the Finance and Performance Management Scrutiny Panel.

The Public Profile of Overview and Scrutiny

3.38 At previous reviews of Overview and Scrutiny there has been discussion regarding the public profile of Overview and Scrutiny. We feel that although the Constitution adequately reflects the need for Overview and Scrutiny to engage with the public, this has not been achieved in practice and continues to be a problem. We have a number of ideas as to how we can improve things and these are set out below.

(a) Items from the Public

3.39 The Overview and Scrutiny rules should be amended to allow the public the opportunity to ask questions at Overview and Scrutiny and Panel meetings and to address those bodies on issues of concern.

3.40 This is an issue which was commented upon by Overview and Scrutiny Committee at the provisional recommendation stage because there were fears about the public raising topics which are not otherwise on the agenda. The Committee also felt that Overview and Scrutiny should avoid a situation where the same question or request to address a Committee or Panel can be repeated.

3.41 We accept those concerns and are proposing that questions and requests to address a Panel or the OSC should be limited to existing agenda items. If requests are received for topics which are not included on the agenda, these need to be dealt with under the "pick" system and submitted to a later meeting. We are sure that officers will look at these proposals carefully to ensure that they are relevant before placing them before members.

3.42 On the question of the same matter being raised again, we are proposing that the rules should say such questions or proposals can only be dealt with once in any one year. We would also like to see more opportunities for Panels to deal with relevant subjects as questions may be better dealt with in a smaller group of Councillors with more background knowledge of the subject matter. However some matters will be more appropriate for OSC.

(b) Encouraging Participation by the Public

3.43 We wish Chairmen to use their discretion whenever possible at both at OSC and Panel meetings, to ensure that the public can easily engage with OS and make a real contribution. We would like to see the website used to encourage the public to come forward with questions and ideas, particularly where scrutiny of external agencies is planned. Specific publicity for those sessions should also be given.

Scrutiny of Community Safety

3.44 We have reviewed the arrangements for scrutiny of Crime and Disorder and NHS issues as these are likely to be of interest to the public and Councillors alike. We are broadly quite happy with the arrangements for crime and disorder. We feel that there is a willingness by the Police and Crime Commissioner to come to this District to answer questions from the public and Councillors and we are confident that this will continue.

- 3.45 There should be adequate advanced publicity for community meetings arranged in the District under the auspices of the Police and Crime Commissioner's office. One recent event was, so far as we can see, advertised only fairly late in the day, with the result that there was a disappointing public attendance. We are recommending that the Commissioner's office should be asked to provide more notice and make use of the Council's resources to publicise such events.

Scrutiny of the NHS

- 3.46 Currently, statutory responsibility for NHS scrutiny lies with the County Council. We recognised the importance of having members of this Council on the County Scrutiny and value their feedback but currently there is no opportunity for this Council to scrutinise the decisions that may affect our local circumstances and to provide a forum for our Members to brief our County Councillor who serves on that Committee on matters that concern us.
- 3.47 We take the view that scrutiny on a County-wide basis may not be at a sufficiently local scale and we are proposing that an approach should be made to the County Council to carry out local review as and when the need arises. We are hopeful that Essex County Council will accept the need for local NHS reviews.

(Note: representations have been received by the Chairman of the Panel from one of the two representatives of the Council on the West Essex Health & Wellbeing Board (HWB) that local scrutiny of health issues by EFDC will conflict with the work of the HWB. This is not a matter which has formed part of our review but if the Council wishes to pursue local scrutiny reviews of health service issues, it will be necessary to liaise with not only with Essex County Council but also the HWB if this is to be pursued. Recommendation (27) in Appendix 1.

Training

- 3.48 We have mentioned training in relation to the budget and we are proposing that the training courses on OS should be reinstated and held each June in the years when there are Epping Forest District Council elections. We think it is very important that Councillors are constantly refreshed regarding Overview and Scrutiny techniques and particularly newly-elected Councillors, who need to be aware of the opportunities which OS opens up to non Cabinet members. We hope that this will not be the only Overview and Scrutiny training to be provided and that more specialist courses will be facilitated as and when needed.
- 3.49 Finally, we have been advised that the Tenants' Federation are forming their own Overview and Scrutiny Committee to monitor their relationship with the Council as housing authority. We are very supportive of this initiative and wish to see representatives of the Federation fully involved in any training sessions held.

4. Constitutional Changes

- 4.1 Revised Overview and Scrutiny Procedure Rules are attached as Appendix 2 and incorporate those proposals which require constitutional changes. The Committee will appreciate that many of the changes mentioned in our recommendations are more operational in character or merely support provisions in the Constitution which exist already. Any changes to the Rules are shown in bold type/underlined and, if approved, should be submitted to the next Council meeting for adoption and publication in the Constitution.

5. Conclusions

- 5.1 Our overriding impression of OS within the Council at present is that constitutionally it is well established but the full scope of the opportunities it offers to Councillors and the community to influence the way in which the Council and others work has yet to be fully grasped.

6. Thanks

- 6.1 The Panel wishes to acknowledge the support and responses received from all those consulted about this review. In particular we acknowledge the work carried out in support of the review by Connor Lattimer and Nicholas Trower in undertaking research and general support for the review during their summer internships in 2012.

K Angold-Stephens (Chairman)