

CONSTITUTION AND ETHICS COMMITTEE	AGENDA ITEM No. 4
30 SEPTEMBER 2019	PUBLIC REPORT

Report of:	Fiona McMillan, Director of Law and Governance	
Cabinet Member(s) responsible:	Councillor Farooq, Cabinet Member for Digital Services and Transformation	
Contact Officer(s):	Paulina Ford, Senior Democratic Services Officer	Tel.01733 452508

UPDATE ON REVIEW OF SCRUTINY GUIDANCE AND FUNCTIONS

R E C O M M E N D A T I O N S	
FROM: Director of Law and Governance	Deadline date: N/A
<p>It is recommended that the Constitution and Ethics Committee:</p> <ol style="list-style-type: none"> 1. Note the response to the actions requested at the meeting of the Committee held on 8 July 2019 in regard to the Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities and advise if any further actions are to be taken. 	

1. ORIGIN OF REPORT

1.1 This report is submitted to the Constitution and Ethics Committee following a request from the Committee at its meeting on 8 July 2019 to provide further information.

2. PURPOSE AND REASON FOR REPORT

2.1 The purpose of this report is for the Committee to consider the responses provided to actions requested by the Committee at its meeting on 8 July 2019 where the Committee considered the new Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities which was published by the Ministry of Housing, Communities and Local Government in May 2019.

The guidance has been put in place to ensure local and combined authorities are aware of the purpose of overview and scrutiny and how to conduct it effectively.

2.2 This report is for the Constitution and Ethics Committee to consider under its Terms of Reference No. 2.7.2.1

Authority to oversee the operation of the Council's Constitution and authority to make recommendations to Full Council as to amendments and improvements to the Council's Constitution (including the codes and protocols) subject to the receipt and consideration of a report prepared by the Monitoring Officer, with the exception of those matters under the remit of the Executive.

2.3 This report links into each of the three Corporate Priorities:

- Pride in our communities and environment
- First rate futures for our children, young people - and quality support for our adults and elderly

- Better jobs and quality homes

3. **TIMESCALES**

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
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4. **BACKGROUND AND KEY ISSUES**

4.1 **STATUTORY GUIDANCE ON OVERVIEW AND SCRUTINY IN LOCAL AND COMBINED AUTHORITIES**

Overview and scrutiny committees were introduced by the Local Government Act 2000 and were put in place to act as a counterweight to the new executive arrangements. There had not been an assessment of the effectiveness of overview and scrutiny since they had been put in place. In 2017 the Communities and Local Government Select Committee therefore decided to set up an inquiry into the Effectiveness of Local Authority Overview and Scrutiny committees. The terms of reference placed an emphasis on considering factors such as the ability of committees to hold decision-makers to account, the impact of party politics on scrutiny, resourcing of committees and the ability of council scrutiny committees to have oversight of services delivered by external organisations.

The outcome of the inquiry was published on 14 December 2017. The report can be accessed via the following link:

<https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/369/36902.htm>

Following the report [statutory guidance](#) was produced on 7 May 2019 by the Ministry of Housing, Communities and Local Government which is aimed at local and combined authorities. It includes a number of policies and practices authorities should have due regard to when deciding how to carry out their overview and scrutiny functions. In particular, it provides advice for senior leaders, members of the overview and scrutiny committees, and support officers.

Key areas covered in the guidance are:

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

Having considered the new guidance at its meeting in July the Committee recommended the following:

The Constitution and Ethics Committee considered and RESOLVED (unanimous) to:

1. Note the recently published Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities attached at Appendix 1;
2. Recommend that Democratic Services and the Monitoring Officer look at the following areas around Scrutiny and report back findings to the next Constitution and Ethics Committee:
 - a. Joint Scrutiny Arrangements with Cambridgeshire County Council
 - b. The Council's current call-in procedures
 - c. Chairmanship of the Scrutiny Committees and the Constitution and Ethics Committee
 - d. Outside bodies and experts reporting to Scrutiny
 - e. Scrutiny Committee's reporting to Full Council

- f. Resources to support the Scrutiny function within the Council
3. Recommend that Chairpersons of all Scrutiny Committee's view current functions of their respective committee and how these could be developed.

Democratic Services and the Monitoring Officer have looked at the areas requested and can now report back to the committee with the following information.

Joint Scrutiny Arrangements with Cambridgeshire County Council

- 4.2 Cambridgeshire County Council operate a Committee system whereas Peterborough City Council operate a Cabinet system. The Localism Act 2011 removed the obligation for councils using the committee system to have an overview and scrutiny committee however Cambridgeshire County Council do have a Health Scrutiny Committee which sits as part of its Health Committee function when required.

The Health Scrutiny Committee at Peterborough already has within its Terms of Reference a paragraph relating to the establishment of Joint Health committees across local authority boundaries. This was included in the terms of reference in 2016 to allow for a Joint Scrutiny Committee to be formed between Cambridgeshire County Council and Peterborough City Council to scrutinise the proposed merger of Hinchingsbrooke Health Care NHS Trust and Peterborough and Stamford Hospitals NHS Foundation Trust.

“To review and scrutinise matters relating to the Health Service and to make reports and recommendations to local NHS bodies in accordance with section 244 of the National Health Service Act 2006. This will include establishing joint health committees in relation to health issues that cross local authority boundaries and appointing members from within the membership of the Committee to any joint health overview and scrutiny committees with other local authorities.”

The facility for Joint Scrutiny arrangements regarding Health matters is therefore already in place in both Cambridgeshire County Councils Health Committee Terms of Reference and our Health Scrutiny Committee and can be used as and when required. As there are no other Scrutiny Committees in place at Cambridgeshire County Council then this requirement is not relevant to the other scrutiny committees.

The Council's current call-in procedures

- 4.3 The call-in process is not used excessively in Peterborough and there are approximately one to two call-ins per year which seems to be in line with most other authorities as this procedure should only be used in exceptional circumstances. The current call-in procedures are attached at Appendix 1.

Each scrutiny committee has a standing item on the agenda for the Forward Plan of Executive Decisions where the committee have the opportunity to ask for further information or a report on any of the key decisions. All major policies have to go through pre-decision scrutiny for comment and input before being approved. The Forward Plan of Executive Decisions is published fortnightly and therefore gives all Members the opportunity to ask for more information on any of the decisions published prior to implementation and to meet with the Cabinet Member or Lead Officer to discuss any possible concerns.

Other Authorities

A number of other authorities have been contacted to examine their approach to call-in. A large number of councils allow call-in of all executive decisions (both key and non-key), however Peterborough only allow call-in of Key Decisions. This is in line with guidance issued by the Centre for Public Scrutiny (CfPS) on call-ins <https://www.cfps.org.uk/wp-content/uploads/PG-4.pdf>. Any key decision made by the Executive, an Officer or other body with delegated authority

from the Executive is subject to call-in. A key decision can only be called-in once. The Peterborough procedure requires any two members of the relevant Scrutiny Committee to make the request, which is in line with the original New Constitutions Guidance and the CfPS guidance. The number of councillors required to sign a request for call-in at other authorities are varied, a number of examples are listed below:

Name of Authority	How many Members are required to call-in a decision?	Approximately how many call-ins do you have per year?
Peterborough	Any two Members of the relevant Scrutiny Committee	0 to 2
Merton Council	3	0 to 4 Call-ins per year
Telford and Wrekin Council	5	No call-ins since 2012/13 and then only 2 one of which was rejected
Devon	The Chair of the relevant scrutiny committee, 3 members of the relevant scrutiny or 5 members of the council.	2 to 3 per year
Thurrock	Chair of Scrutiny, 2 Members of Scrutiny, 3 non-executive members/ a voluntary group/ a local business/ 10 members of the public	2 to 3 per year
Wiltshire Council	10 Councillors	Average 1 a year
Kent County Council	Any two Members from more than one political group	1 to 2 per year
Surrey County Council	A decision may be called in for scrutiny by the select committee Chairman or Vice-chairman or any two or more other select committee members from more than one political group	1 since 2017
East Sussex	3 members of the relevant scrutiny committee	Non for years
Suffolk County Council	Any 5 or more councillors may submit a call-in	The underpinning assumption is that the call-in procedure will be used in exceptional circumstances only and its use is limited to no more than ten occasions in any municipal year. In practice, we have about 2-3 maximum a year.
West Sussex County Council	A group of 5 cross-party members of the scrutiny committee, including Chairman and vice Chairman). In terms of making the request, the threshold is 4 members to support the request (which includes the requestor);	2018/19 - 9 requests (3 accepted); in 2017/18 - 3 requests (2 accepted). 2018/19 was a bit of an unusual year as we had a number of big savings decisions that all had requests for call-in. Average over the years would be 2 a year. 2019 so far this year we have had 1 request (not accepted).
City of Wolverhampton Council	The decision to make a call-in can be made by any of the following: a. the Chair of the Scrutiny Board	2 call-ins during the last four years.

	<p>b. the Vice-Chair of the Scrutiny Board</p> <p>c. the Leader or Deputy Leader of the main opposition group.</p>	
Nottingham City Council	<p>3 councillors are required to request a call in</p> <p>Where there are three or less non-majority group councillors then two signatures are required to call-in a decision. Where there are four or more non-majority group councillors then three signatures are required to call-in a decision. In both cases, signatories can also sit on the Call-In Panel provided that their view on the matter is not predetermined.</p>	0 – 3 per year

It is therefore recommended that the call-in procedure currently in place at Peterborough remains the same.

Chairmanship of the Scrutiny Committees and the Constitution and Ethics Committee

4.4

The CfPS guidance “Good Scrutiny Guide” states:

“Technically, chairing and membership is in the gift of full Council, and the Council AGM in May is the usual point at which decisions on this are made. In practice, this means that things are largely in the gift of the executive. Membership of committees must be politically proportionate, but chairing need not be, and a council’s leadership can entirely legally give all scrutiny committee chairships to majority party members. A number of councils make chairships available across party groups, proportionately, but there is no requirement to do so.”

The Statutory Guidance states:

“The method for selecting a Chair is for each authority to decide for itself, however every authority should consider taking a vote by secret ballot.”

An amendment was put forward at the Annual Council meeting on 20 May from Councillor Sandford as follows for item 10 APPOINTMENTS TO COMMITTEES AND OTHER AUTHORITIES as follows:

“Delegates authority to each of the Council’s committees to elect their own Chair and Vice-Chair for the 2019/2020 municipal year and suspends standing order 24.8 in relation to the election of committee Chairs and Vice-Chairs for the 2019/2020 municipal year in order for these elections to be carried out by secret ballot, following a process to be agreed by the Monitoring Officer.”

The amendment was defeated and therefore in accordance with the Council's Constitution which contains a procedure rule known as the "six month rule" which states that once council has made a decision on an issue it cannot be returned for an alternative decision to be considered until at least six months have passed (unless the Notice of Motion is signed by at least five members).

In terms of the chairmanship of the Constitution and Ethics Committee there are a variety of arrangements in existence at other local authorities regarding which members of the Council chair this meeting (or an equivalent meeting).

At a number of authorities, the function of updating and changing the Council's constitution lies with the Audit Committee, this is either chaired by a member of the largest party, or in a number of cases by an independent person. Many authorities still retain a Standards Committee with powers to update the code of conduct and conduct any hearings in terms of any breaches, generally chaired by a member of the largest party. Often, as in Peterborough, the two functions are merged into a Constitution & Ethics Committee, Governance & Ethics Committee or a Civic Affairs Committee.

Below are some examples of how this committee is chaired:

- Northampton Borough Council – Chairman of the Standards Committee is a member of the largest party (not a Cabinet Member) and has the responsibility of reviewing the code of conduct. An Independent person chairs the Audit Committee with responsibility for Constitution aspects.
- Northamptonshire County Council - Independent Chairman of Audit Committee with responsibility for Constitution aspects. Chairman of the Standards Committee is a member of the largest party (not Cabinet Member)
- Central Bedfordshire Council - Chairman of the Audit Committee with responsibility for constitution aspects is a member of the largest party (not Cabinet Member). Chairman of the Standards Sub Committee is appointed at each meeting to hear code of conduct complaints.
- Lincolnshire County Council - Chairman of the Audit Committee with responsibility for constitution aspects is a member of the largest party (not Cabinet Member). Chairman of the Standards Committee is a member of the largest party (not Cabinet Member).
- Rutland County Council - Opposition member chairs Audit Committee with responsibility for Constitution changes, separate Conduct Committee looking at code of conduct chaired by Cabinet Member of the ruling party.
- Cambridgeshire County Council – Chairman of the Constitution and Ethics Committee is current Vice-Chairman of Council.
- South Cambridgeshire District Council - Chairman of the Civic Affairs Committee is the Chairman of Council.
- Cambridge City Council - Deputy Mayor chairs Civic Affairs Committee
- Bristol City Council - Values and Ethics Committee (4 elected members of the Council and 4 independent members, with an independent member taking the chair for the municipal year).
- Nottinghamshire County Council - Governance & Ethics Committee chaired by a member of the largest party
- Milton Keynes Council - Constitution Commission made up of three members to look at Councils constitution chaired by same person as Standards Committee. Chairman of the Standards Committee is a member of the largest party (not Cabinet Member) this hears breaches of code of conduct and any changes to the code.
- Hackney Council - Deputy Statutory Mayor & Cabinet member chairs Standards Committee

Outside bodies and experts reporting to Scrutiny

Outside bodies and external experts are frequently called upon to give evidence when conducting a Scrutiny review through time limited Task and Finish Groups. Recent examples

4.5 of this have been with the two Growth, Environment and Resources Scrutiny Task and Finish Groups and this has been the practice with all previous Task and Finish Groups.

The Task and Finish Group to review Fly Tipping and Waste Policy invited representatives from the following organisations to give evidence:

- Keep Britain Tidy
- PES Enforcement Team
- Cambridgeshire Fire Service
- Cambridgeshire Constabulary
- Amey
- Peterborough Federation of Small Businesses
- Mick George Ltd

The Task and Finish Group to inform the development of an air quality ambition statement and action plan invited representatives from the following organisations to give evidence:

- Campaign for Better Transport
- Stagecoach East
- Stagecoach
- Principal Investigator / Impact Fellow at the Birmingham Institute of Forest Research, University of Birmingham
- Head of Transport Strategy & Economics, Combined Authority
- Transport Programme Manager, Combined Authority

Inviting technical expertise from outside bodies to give evidence ensures that the Task and Finish Groups are provided with the evidence required to make sound recommendations.

The Statutory Guidance states the following with regard to **“Co-option and technical advice 35. While members and their support officers will often have significant local insight and an understanding of local people and their needs, the provision of outside expertise can be invaluable.**

36. There are two principal ways to procure this: • Co-option – formal co-option is provided for in legislation¹¹. Authorities must establish a co-option scheme to determine how individuals will be co-opted onto committees; and • Technical advisers – depending on the subject matter, independent local experts might exist who can provide advice and assistance in evaluating evidence”.

The Scrutiny Committee Procedure Rules has a co-option scheme in place and states that Scrutiny Committees can co-opt up to four non-voting members to the Committee with at least one position is reserved for a Parish Councillor from a rural area. This has proven to work well and in particular with the Health Scrutiny Committee where outside bodies from the NHS are required to give evidence to the Committee. The Committee have co-opted a retired doctor to the group to provide technical challenge and questions regarding Primary Care and the NHS.

The Children and Education Scrutiny Committee have also co-opted the Chair of a School Governing Body on to the group to assist with knowledge and questioning around school's performance.

Therefore the facility to co-opt expertise on to each of the Scrutiny Committees and request technical experts to provide support to the committee is already in place and the Committee may consider does not require any changes.

Scrutiny Committee's reporting to Full Council

Scrutiny Committees already have the power to report to Full Council as set out in the Constitution at Part 4, Section 8 – Scrutiny Committee Procedure Rules where it states the following:

4.6 **“REPORTS FROM SCRUTINY COMMITTEES**

6.1 *The Scrutiny Committee will submit reports to the Council. If the proposals are an executive function and consistent with the existing Budget and Policy Framework Scrutiny Committees will submit reports to the Proper Officer for consideration by the Executive.*

6.2 *If a Scrutiny Committee cannot agree on one single final report then two or more opposing Members of the Committee can submit a minority report. Only one minority report can be submitted alongside the majority report. The minority report must set out the alternative recommendations and the reasons.*

6.3 *The Executive will consider the report of a Scrutiny Committee within one. In the case of a report to Council the Proper Officer will submit the report for consideration at the next Council meeting.*

6.4 *When the Council considers a report from a Scrutiny Committee, if it impacts on the Budget and Policy Framework, Council will also consider the Executive’s response to the proposals.*

6.5 *Scrutiny Committees will have access to the Forward Plan of.*

6.6 *If a Scrutiny Committee thinks that a key decision relating to their terms of reference has been taken which was not: (a) Included in the Forward Plan for a period of no less than 28 clear days. (b) The subject of the general urgency exceptions. (c) The subject of the special urgency exceptions. The Committee can require the Cabinet to submit a report to the Council within such reasonable time as the Committee specifies. This power is also delegated to the Monitoring Officer, who can require such a report on behalf of the Committee following a request by: The Chairman. Any five members of the Committee.*

6.7 *The Scrutiny Committee can also pass a resolution to raise the requirement at its meeting.*

6.8 *The Cabinet will submit a report to the next available meeting of the Council. If the next meeting of the Council is within nine days of receipt of the written notice, or the resolution of the Scrutiny Committee, then the report can be submitted to the following Council meeting.*

6.9 *The report to Council will set out: Details of the decision. The individual or body making the decision. If the Leader considers that it was not a key decision, the reasons for that opinion.”*

However, the Committee may wish to recommend that an Annual Report summarising the work that Scrutiny has undertaken during the previous year be submitted to Full Council at the first Full Council meeting of each municipal year.

Resources to support the Scrutiny function within the Council

The Statutory Guidance States *the following with regard to “Providing the necessary support - while the level of resource allocated to scrutiny is for each authority to decide for itself, when determining resources an authority should consider the purpose of scrutiny as set out in legislation and the specific role and remit of the authority’s own scrutiny committee(s), and the scrutiny function as a whole.*

4.7 *Support should also be given by members and senior officers to scrutiny committees and their support staff to access information held by the authority and facilitate discussions with representatives of external bodies.”*

The current level of dedicated resources to scrutiny at Peterborough within the Democratic Services function is 2 full time officers, one Senior Democratic Services Officer and one Democratic Services Officer. However additional support can be called upon from the wider Democratic Services team if required.

The committees supported consist of 4 scrutiny committees, the Joint Scrutiny of the Budget Committee and currently two Task and Finish Groups. The Task and Finish Groups are ad hoc and only formed when requested by one of the scrutiny committees. The officers also provide scrutiny training on an annual basis and coordinate additional ad-hoc training and topic related visits when required.

Directors and Officers from all service areas provide additional support at committee meetings in respect of technical expertise when delivering reports in response to requests for information. They are also available at any time to members should they require additional information or support when scrutinising a particular topic.

The Council also must have a Statutory Scrutiny Officer whose role is to: • promote the role of the authority's scrutiny committee; • provide support to the scrutiny committee and its members; and • provide support and guidance to members and officers relating to the functions of the scrutiny committee.

It is not unusual in the current financial climate for a Local Authority to have only two officers supporting overview and scrutiny.

Recommend that Chairpersons of all Scrutiny Committees view current functions of their respective committee and how these could be developed.

4.8

Following recent changes to the Service Directorates it was felt that it would be a good opportunity before going to the Chairs of each Scrutiny Committee to ask the Corporate Management Team for their views on the functions of the respective scrutiny committees to see if they were still appropriately aligned. Following consultation the proposed changes were put forward by the Corporate Management team to ensure that the Scrutiny Committees functions are more in line with the current service directorates and to make sure all the joined up working for the Think Communities is under one Scrutiny Committee.

Proposed changes:

- Move Libraries, Arts & Museums from the Growth, Environment and Resources Scrutiny committee to the Adults & Communities Scrutiny committee as this now falls under Adrian Chapman
- Keep Tourism, Culture & Recreation with Growth, Environment and Resources Scrutiny Committee as these fall under Steve Cox.
- Move Adult Learning & Skills from the Children & Education Scrutiny Committee to the Adults and Communities Scrutiny Committee
- Move Youth Service from Children & Education Scrutiny committee to Adults & Communities Scrutiny Committee

The Scrutiny Chairpersons and relevant Cabinet Members (Cllr Ayres, Cabinet Member for Children's Services and Education, Skills and University and Cllr Walsh, Cabinet member for Communities) were asked to consider the proposed changes to the functions of Children and Education Scrutiny Committee, Growth, Environment and Resources Scrutiny Committee and Adults and Communities Scrutiny Committee.

All Scrutiny Chairpersons (apart from Cllr Aitken who was away) and both Cabinet Members agreed with the proposed changes and felt it was a sensible way forward. The above proposals would not affect Cllr Aitken's Health Scrutiny Committee.

It is therefore recommended that if approved by this committee and at Full Council that the proposed changes to the functions of the Children and Education Scrutiny Committee, Growth,

Environment and Resources Scrutiny Committee and Adults and Communities Scrutiny Committee take effect from the January 2020 schedule of meetings.

5. CONSULTATION

- 5.1 Reference section 4.8 consultation was undertaken with the Corporate Management Team, Scrutiny Chairs and Cabinet Members for Communities and Children's Services and Education, Skills and University.

6. ANTICIPATED OUTCOMES OR IMPACT

- 6.1 The Constitution and Ethics Committee will consider the content of the report and decide whether any further action will be required.

7. REASON FOR THE RECOMMENDATION

- 7.1 The recommendation has been made so that the Committee can consider the responses to the actions requested at their meeting held on 8 July 2019 and whether any further action is required to be taken following on from this report.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 None

9. IMPLICATIONS

Financial Implications

- 9.1 None at present.

Legal Implications

- 9.2 None

Equalities Implications

- 9.3 None

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

- 10.1 [Effectiveness of Local Overview and Scrutiny Committees](#)

11. APPENDICES

- 11.1 Appendix 1 – *Part 4, Section 8 – Scrutiny Committee Procedure Rules*, Call-in procedure rules