

Audit and Governance Committee

Briefing Note

The Audit and Governance Committee have been asked to monitor progress on the following issues. This briefing contains the latest position as of 3rd June 2021.

Subject: Governance around Scrutiny Process

During the course of the last meeting of the Committee (22nd April 2021) Chair received a request to look at the governance around scrutiny and the following entry has been made on the Tracker:

DATE OF MEETING	RECOMMENDATION / ACTION	RESPONSIBLE	PROGRESS/COMMENTS
22 nd April 2021	<u>AC.60 AUDIT AND GOVERNANCE COMMITTEE WORK PROGRAMME</u> 1) That the suggestion for the governance around the scrutiny process be brought back before the Committee at the first meeting of the next municipal year	Chief Legal Officer (Monitoring Officer)	

This coincided with a workstream already in place encompassing informal meetings of Group Leaders and Deputies with the Statutory Scrutiny Officer, Monitoring Officer and Democratic Services Manager, to inform the annual review of the Constitution. A report was ultimately presented at the Council's AGM on 27th May 2021 together with the Annual Scrutiny Report, which provides context and details of the structure of our scrutiny arrangements: <https://democracy.nelincs.gov.uk/wp-content/uploads/2021/05/11-Scrutiny-Annual-Report-2021.pdf>

As part of the review of the Constitution, it was established that clarity around the role of scrutiny and those Members and Officers attending would be beneficial. A report was presented to Full Council which included the following references to scrutiny:

“The forum considered various matters relating to the operation of scrutiny and felt that there should be a relaxed approach to the rules of debate in terms of allowing members to speak and have their say with the panel Chairs having the responsibility to ensure that this was done in a fair but structured way. The forum considered a draft protocol on Scrutiny Panel/Cabinet Member Relations, aimed at providing clarity over expectations of how scrutiny and Cabinet members should interact at panel meetings. It also clarified the role of officers at meetings.

Recommendation – That the protocol on Scrutiny Panel/Cabinet Member Relations be approved for inclusion as an appendix to the Overview and Scrutiny Procedure Rules.

Concerns were raised about late circulation of papers and presentation slides at panel meetings. The forum felt that this needed to be done at least four calendar days prior to the meeting otherwise they would not be accepted for consideration at that meeting.

Recommendation - That Section 8 (Agenda Items) of the Overview and Scrutiny Procedure Rules be amended to make specific reference to the requirement for papers and presentation slides to be circulated at least four calendar days prior to the scrutiny panel meeting, (save in exceptional circumstances and supported by the Chair of the scrutiny panel) otherwise they would not be accepted for consideration at that meeting.

The forum considered accessibility of the Executive and Scrutiny Liaison Board to all Elected Members.

Recommendation – That the minutes of the Executive and Scrutiny Liaison Board be circulated to all Elected Members once agreed.”

The protocol is set out at **Appendix 1** of this Briefing Note.

Full Council accepted the report and resolved to accept the recommendations as set out.

The protocol sets out clear objectives, brings clarity to the role of scrutiny, summarises the powers of individual panels including working groups and select committees and also clarifies the participation of portfolio holders and officers within the scrutiny context.

Subsequent to the adoption of the protocol, all members of Leadership Team and Assistant Directors across the Council have been served with a copy with a request that it be cascaded to appropriate team members and partner organisations in order to raise awareness.

It is hoped that the above assures both Chair and members of the Committee that the issue of scrutiny has been adequately addressed.

3rd June 2021

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Appendix 1:

Protocol on Scrutiny Panel / Cabinet Member Relations

1. Introduction

- 1.1 This Protocol applies to all members of scrutiny panels, any member who may sit on a scrutiny panel and all members of the Executive (comprising the Leader and the various Cabinet Members). It provides guidance on the way in which both types of members interact to enable the authority to carry out the overview and scrutiny function. The Protocol also outlines the framework and procedures underpinning the operation of scrutiny and provides guidance on role of officers who support this process.

2. Objectives

- 2.1 To enable scrutiny members, officers and Cabinet Members to fully understand their powers, roles and responsibilities in relation to the overview and scrutiny function, so as to maximise their personal effectiveness.
- 2.2 To establish a positive framework and the necessary procedures to enable scrutiny to work effectively.
- 2.3 To promote an ethos of mutual respect, trust and courtesy in the interrelationships between scrutiny members and Cabinet Members and to foster a climate of openness leading to constructive debate, with a view to ensuring service improvements.
- 2.4 To maintain a culture of holding the Executive to account on behalf of the electorate, by monitoring the effectiveness of the Council's policies and through the regular review of its performance in relation to service delivery.
- 2.5 To define and clarify the role of the Executive as an integral component of the scrutiny process.

3. Holding the Executive to account

- 3.1 One of the underpinning principles of overview and scrutiny is the ability of non-executive members to hold the Executive to account. A key method of ensuring accountability is through critically and routinely considering the performance and decisions taken by the Executive.
- 3.2 To facilitate this approach, a scrutiny panel may challenge the Executive about decisions, which it has taken either collectively, or by way of portfolio holder (Cabinet member) decisions. A scrutiny panel may also consider any relevant performance information in respect of the delivery of services. In addition, the panel may query or make recommendations in relation to decisions which the Executive is proposing to take, as set out in the Forward Plan.

3.3 The Executive will be required to consider any recommendations or views expressed by a scrutiny panel and to take such action it sees fit. Where any decision taken by the Executive is not in accordance with advice provided by the panel, the relevant Cabinet Member should be prepared to provide an explanation of the reasons for that decision to the panel concerned.

4. Powers of the scrutiny panels

4.1 Article 8 of Part 2 of the Council's Constitution, sets out the relevant powers of the scrutiny panels, which include, inter alia:

- review and scrutinise the key decisions made by and performance of the Cabinet, individual portfolio holders and council officers both in relation to individual decisions and over time;
- assist the Council and the Cabinet in the development of its budget and policy framework by in-depth analysis of policy issues;
- question members of the Cabinet and chief officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
- make recommendations to the Cabinet and/or appropriate Panels and/or Council arising from the outcome of the scrutiny process.

5. Overview and Scrutiny Panel agendas

5.1 The agenda for ordinary meetings of scrutiny panels will contain an item on the Forward Plan. The purpose of this item is to provide an opportunity for members to ask questions or seek clarification about the nature of any key decisions due to be taken within the next four months and to raise with the Cabinet Member any fundamental issues concerning those proposals to ensure that all relevant views are taken into account.

5.2 The agenda for scrutiny panel meetings may include items referred to the panel for pre-decision scrutiny. These may be items either requested by the panel from the Forward Plan or scrutiny may have been included as a consultee on the Forward Plan. In addition, there is a requirement that scrutiny is consulted on budget and policy framework matters prior to consideration by Cabinet and full Council.

5.3 The agenda for ordinary meetings of scrutiny panels will also contain an item allowing panel members the opportunity to ask questions of the relevant Cabinet Member on any matter within their portfolio remit.

5.4 The agenda of each scrutiny panel meeting will be guided by that panel's work programme. The work programme is generally set at the beginning of each Municipal Year but is subject to amendment throughout the year as matters arise. The relevant Cabinet Member may be invited to comment on the panel's proposed priorities within its work programme, to inform the selection process and to undertake a co-ordinating role by providing advice to the panel about any potential conflict between proposed scrutiny

topics and areas of planned policy development. The Cabinet Member may also advise the panel about instances where it may be requested by the Executive to assist in policy development.

- 5.5 The agendas of scrutiny panel will normally include, at such regular intervals as the panels may determine, any relevant performance management information available. The purpose of this item is to assist members to monitor the recent performance of services within its remit against key targets and to make recommendations or to implement a more detailed scrutiny review in relation to those areas of identified weakness.

6. Attendance by Executive Members at scrutiny panel meetings (including 'Call-In' meetings)

- 6.1 Cabinet Members will normally be expected to attend meetings of scrutiny panels within their portfolio remit, for the purposes of being held to account in relation to decisions taken and to answer questions in relation to proposed decisions that have been included within the Forward Plan.
- 6.2 While matters are under debate at scrutiny meetings, Cabinet members in attendance will respond to questions and provide advice on matters under discussion upon request but otherwise not to take part in any debate.
- 6.3 Cabinet Members are encouraged to avail themselves of every opportunity to gauge the views of non-Executive members on any issues falling within their remit. A close working relationship and an open exchange of views will be of particular importance to the Cabinet Member and scrutiny members, where consideration is being given to the development of the Council's budget or policy framework.
- 6.4 Cabinet Members will normally be expected to attend any meetings of scrutiny panels at which it is intended to consider a Call-In request in relation to his/her area of responsibility.
- 6.5 At meetings where call-ins are being considered, the purpose of the Cabinet Member's attendance is to explain the decision taken by Cabinet and answer questions of fact. Cabinet Members need to be careful not to be drawn into the debate, so as to avoid any possible allegations of becoming involved in the scrutiny of their own decisions which may bring them into conflict with the Code of Conduct. It is therefore important to draw the distinction between answering questions of fact and becoming involved in the panel debate into the issue in question.
- 6.6 Unless there are extenuating circumstances, the decision maker should always attend a Call-In meeting. It is accepted however that officers are often better placed to present greater detailed information that led up to the decision and this is deemed to be acceptable although it should always be the decision maker that is held to account.
- 6.7 The following procedure should take place where call-ins are being considered:
- (i) The Member(s) who called in the decision should speak first.
 - (ii) The Chairman would then invite the Cabinet Member (decision maker) to respond.
 - (iii) The Panel can then ask questions of the decision maker who may ask a relevant officer to supply further information if necessary.
 - (iv) The Panel debates the issue and votes on the outcome.
- 6.8 In the event of a situation where the decision maker cannot attend a Call-In meeting, the Leader of the Council or Deputy Leader should attend in their absence. In the event of

both the Leader and Deputy Leader being unavailable, they should nominate another Cabinet Member to attend and be accountable for the decision.

7. Ethos of the meeting

- 7.1 All members should promote an atmosphere of openness at scrutiny panel meetings and should strive to ensure that questioning and debate takes place within a climate of mutual respect and trust between the scrutiny panel members, the Cabinet Member and other participants.
- 7.2 Scrutiny panel members should be prepared to ask searching questions of Cabinet Members, who in turn should be willing to respond to any question put. It should however be stated that scrutiny panel members should be aware of and show an understanding of the fact that Cabinet Members may not be in a position to answer every question immediately or in detail
- 7.3 Cabinet Members should, in so far as possible, anticipate and be prepared to answer questions on decisions taken, or proposed to be taken, which fall within their remit. Cabinet Members should also value the contribution of scrutiny panel members who raise questions under these headings and respond in an appropriate and professional manner.
- 7.4 Cabinet Members should normally be authorised by a panel to speak upon any item on the agenda and may at any time offer to assist the scrutiny panel by the provision of factual information or advice in relation to the matters under discussion.
- 7.5 The Chairman of the meeting shall at all times ensure that the conduct of the meeting shall be fair and that all participants are treated courteously.
- 7.6 The Chairman, supported by the officers, should provide leadership and guidance to the panel on all scrutiny matters and should promote the panel's role to improve services and monitor the effectiveness of Council policies.

8. Select Committees and Working Groups

- 8.1 Scrutiny may be tasked with assisting the Executive on policy development matters or it may choose to investigate matters within its work programmes in a more focussed way outside of the usual panel setting. This kind of work is usually undertaken via a select committee or working group. These are essentially task and finish groups, who will have spent time considering background information, witness evidence, and formulating their recommendations.
- 8.2 The Chairman or Vice-Chairman of the task and finish group will be invited to present the final report at a Cabinet meeting. The Cabinet can expect a report that:
 - Has clear, concise recommendations;
 - Identifies potential areas for improvement; and
 - Highlights implications including financial, legal, equality, policy, of the recommendations and where possible identify solutions as appropriate.
- 8.3 The relevant Portfolio Holder(s) can assist the review in a number of ways including:
 - At the outset of the review, when the task and finish group is considering the scope, methodology and witnesses to give evidence;

- During the review when the Portfolio Holder can be invited to give evidence;
- At the end of the review after the task and finish group has produced the first draft of the report.

- 8.4 During the review period the Chairman of the task and finish group is recommended to meet with the Portfolio Holder and Officers:
- To discuss the proposed scope, methodology and sources of evidence for the review and ascertain if the Portfolio Holder has any suggestions to make;
 - To highlight and examine areas of potential agreement or disagreement in relation to the report's findings and recommendations to ascertain if any areas of disagreement can be resolved at the draft report stage, or identify if any further work needs to be done by the task and finish group.
- 8.5 Although this dialogue is encouraged, it is recognised that scrutiny and its task and finish groups are independent of the Cabinet and as such agreement may not be possible on all the findings and conclusions in a draft report.
- 8.6 It is recognised that senior officers have a valuable role to play in the scrutiny process in terms of the provision of factual evidence for a review. At the commencement of an internal review, the Chairman of the task and finish group will notify the relevant Assistant Director, who will then contribute to the review in terms of supplying information and helping to identify suitable witnesses.
- 8.7 The Assistant Director will be given the opportunity to comment and/or make recommendations on a completed draft report in terms of any factual errors. The decision as to whether to incorporate any suggested amendments will remain with the task and finish group.
- 8.8 The responsibility for the implementation of scrutiny recommendations that have been approved by Cabinet will rest with the relevant Assistant Director, who will also be responsible for providing regular updates on progress to the appropriate scrutiny panel.
- 8.9 A completed scrutiny report, together with any comments provided by Officers will be forwarded to Cabinet who will consider whether or not to implement the recommendations contained within the report.
- 8.10 If the content of a report, including any recommendations, is likely to impact on any external organisation, Cabinet will have the opportunity to pass comment, including whether or not it endorses the recommendations, before the report is passed to the external body.

9. Attendance by officers at scrutiny meetings

- 9.1 Meetings of the Scrutiny Panels will be attended by the appropriate Assistant Director and Service Managers with responsibility for any agenda item under discussion. The role of the lead officer will be to assist the Committee through the provision of professional advice and to ensure access to relevant information and personnel.
- 9.2 The attendance of other relevant officers at either Scrutiny Panels, Select Committees or Working Group meetings, will be at the request of the Chairman, who will have regard to the appropriate level of seniority of attendees. In general the relevant officer should not be below the level of Service Manager.

- 9.3 An officer in receipt of a request to attend a Scrutiny meeting should make reasonable efforts to do so. Where an officer is unable to attend on a particular date, he/she should notify the Chairman or lead officer as soon as possible, in order to agree the most appropriate course of action, which may include the attendance of an alternative representative.
- 9.4 Officers in attendance at Scrutiny Panel meetings should be prepared to assist the Cabinet Member in the provision of information to the panel in response to any question raised.
- 9.5 Relevant Officers will normally be expected to attend any meeting of the Scrutiny Panel at which it is intended to consider a Call-In request in relation to his/her service area