

## **SCRUTINY COMMITTEE'S TERMS OF REFERENCE, ROLE AND POWERS**

### **Scrutiny Committee – 9 June 2015**

Report of Chief Officer Legal and Governance

Status: For information

Key Decision: No

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**Executive Summary:** The report sets out the roles and powers of the Scrutiny Committee, taking into account its powers under the Local Government Act 2000 and the Council's Constitution.

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**Recommendation to Scrutiny Committee:** That the report be noted.

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### **Introduction and Background**

- 1 Prior to 2000, decisions in all English local authorities were taken through council committees. These committees were governed by the Local Government Act 1972 and had power delegated to them directly from Full Council and also had power to arrange the discharge of their functions through sub-committees or officers.
- 2 The Local Government Act 2000 gave effect to the Government's plans to change the way that local authorities made decisions. The central feature of the new system was a division between executive elected members, who would make decisions and non-executive elected members who would scrutinise those decisions. The aim of separating the roles of executive and non-executive elected members was to improve efficiency, transparency and accountability.

### **A Summary of the Role and Powers of Scrutiny**

- 3 The various roles that the Committee can play are laid out in its terms of reference:
  - review and scrutinise decisions (whether made by Cabinet, Portfolio Holders, Officers, Council or Committees)
  - review performance
  - scrutinise other public bodies
  - raise important local matters
  - to oversee the Council's compliance with the Police and Justice Act 2006

It should be noted that the Scrutiny Committee can only influence before a decision is made by way of delaying the decision making process in relation to “key decisions” in order to allow Cabinet time for reflection. The Scrutiny Committee cannot delay the decision making process in relation to any other sorts of decision apart from scrutinising the process in which a decision was made in relation to future decisions.

- 4 The Committee has been given special powers to carry out its unique duties. These are laid out in the Committee’s Procedure Rules:
  - any Member of the Committee may add items to the agenda;
  - “Councillor call for action” which allows any Councillor to raise an important local matter;
  - requesting witnesses from outside bodies, residents or stakeholders;
  - requiring members of the Cabinet, the Chief Executive or Senior Officers to attend to explain decisions, how policy is being followed, or performance;
  - powers to “call in” Key Decisions before they are implemented; and
  - their additional rights to see documents relating to Cabinet decisions.
- 5 As with all Committees, the Scrutiny Committee may establish a small Working Group to direct itself and focus on a particular issue, if necessary.
- 6 All of these powers can be used to help with any of the Committee’s roles set out above.
- 7 The outcomes from Scrutiny may then be reported to Cabinet, Council or outside bodies as is appropriate.

### **Scrutiny’s Main Role**

- 8 The main role of Scrutiny is to hold the Cabinet to account and this is why members of the Cabinet may not sit on a Scrutiny Committee as the Scrutiny Committee needs to be entirely independent.
- 9 The Scrutiny Committee can require Cabinet Members, and senior officers to attend meetings. However, an overriding principle of effective good scrutiny is to provide a “critical friend” challenge to executive policy makers and decision makers. Any person asked to attend a Scrutiny meeting to give information should be treated with respect and courtesy and should be given at least 7 working days notice by the Chief Executive indicating the nature of the item on which he or she is required to attend to give an account and whether any papers are required to be produced for the Committee. Where the account to be given to the Scrutiny Committee will require the production of a report, then the Member or Officer concerned will be given sufficient notice to allow for preparation of that documentation. It is important that Scrutiny should not act in an adversarial manner by placing Members and Officers under cross examination.

### **The Power of “Call In”**

- 10 The Scrutiny Committee has the power to “call in” key decisions which have been taken but not yet implemented in accordance with Appendix C – Scrutiny Committee Procedure Rules.
- 11 “Call in” takes place where it is felt that flaws have been made in the decision making process or where a decision is wholly unreasonable. The only decisions that can be called in are “key decisions”, which must be listed on the Council’s Notice of Key Decisions. A “key decision” will involve expenditure of more than £50,000 and will significantly affect two or more wards.
- 12 However, the Scrutiny Committee has no formal powers to stop the Cabinet doing something or to make it do something, although Scrutiny is far from toothless and can delay the decision making process if a “key decision” is “called in” to enable further consideration of the decision. However, the “call in” process should only be used sparingly when it is felt that there is a real problem with the decision making process. Members should work to build positive relationships with the Cabinet and External Partners, and make recommendations clearly based on evidence, thereby acting as a constructive, critical friend who is able to apply significant influence.

### **The “Councillor Call for Action”**

- 13 The Local Government and Public Involvement in Health Act 2007 includes powers that enable all Councillors to ask for discussions at Scrutiny on issues where local problems have arisen and other methods of resolution have been exhausted. Please refer to Appendix C of the Constitution – Scrutiny Committee Procedure Rules.

### **Police and Justice Act 2006**

- 14 The Police and Justice Act 2006 contains provisions requiring every local authority to have a committee (the “Crime and Disorder Committee”) to review or scrutinise decisions and actions by responsible authorities in connection with their crime and disorder functions. The Scrutiny Committee is the committee responsible for exercising the District Council’s powers in relation to this legislation (scrutiny of crime and disorder matters). A popular misconception of the legislation is that it gives Councillors the power to scrutinise the police. This task rests with the Police and Crime Commissioner, who is held to account by a Police and Crime Panel. The Act enables local authorities to scrutinise the formulation and implementation of crime and disorder reduction strategies. The Act also allows Members to refer any “local crime and disorder matter” raised with them by anyone living or working in their ward to the Crime and Disorder Committee. The Crime and Disorder Committee may then make a report or recommendation with respect to it. There is also the Crime and Disorder Act 1998 which requires responsible authorities to act in co-operation with a range of other bodies and persons in formulating and implementing strategies and this authority is part of a Community Safety Partnership. Crime and Disorder Committees shall meet as often as they consider appropriate to discharge their 2006 Act powers but regulations require that they meet at least once every 12 months to do this.

## **Reviewing Decisions**

- 15 As can be seen from the above the main purpose for Scrutiny Committees is to be a watchdog for the Council and to keep an eye on decisions made by Cabinet and Portfolio Holders, where it is a small number of Councillors making the decisions.
- 16 The Committee has the power to look at most decisions, whether made by Cabinet or Council. However, given the general purpose of Scrutiny Committees and that all Councillors get a say in decisions of full Council, it is common and best practice for Scrutiny Committees to overwhelmingly scrutinise Cabinet decisions.
- 17 There are some decisions it is inappropriate for a Scrutiny Committee to get involved with. The Committee should not:
- get involved in quasi-judicial decision making (e.g. planning, licensing) (unless looking at a systemic failure);
  - become involved where there is a statutory appeal system;
  - become a forum for individual complaints or appeals against the Council; or
  - pre-empt consultations (though the Committee is entitled to feed into a consultation).

## **In Depth Scrutiny**

- 18 The work plan for Scrutiny should be connected to the priorities of the council or local residents. The Council has produced “A Guide to In-Depth Scrutiny” copies of which will be circulated to the Committee as Members new to the Committee may not have been provided with a copy. The guidance recommends that the Scrutiny Committee should aim to keep its work programme to a manageable size and it is probably appropriate that the committee should undertake no more than three major reviews in a year.
- 19 In depth scrutiny is aimed to improve and promote the economic, social and environmental well-being of the District; help to improve the Council’s performance; enable the voice and concerns of the public to be heard and help the Council to deliver services which are sensitive to local needs by involving local people; ensure decision making is clear, transparent and accountable; be carried out by Councillors who lead and own the scrutiny process and aims to improve public services.
- 20 The Scrutiny Committee can look at cross-cutting themes and has the power to work with External Partners to tackle cross cutting issues, particularly where changes are proposed to services and where those changes might have a particular impact on the Council and its inhabitants.
- 21 Topics to scrutinise should be picked where they can add most value to the authority and the wider community. Suggestions for in depth scrutiny can be taken from a variety of sources for example:
- Discussions with senior officers and cabinet members

- Any forward work plans
  - Evidence from peer reviews or inspections
  - Major national trends and their policies, and how they might affect local services
  - Demographic information
- 22 Unlike Cabinet and its Advisory Committees, the Scrutiny Committee does not have the same duties to manage the day-to-day running of the Council. Scrutiny can therefore run over a longer time-frame and focus on particular matters which the Committee has considered need attention. This may either be matters which they feel have been overlooked by Cabinet and its advisory Committees, or the Committee may take the opportunity to use its powers to bring in and question outside organisations.
- 23 In some Councils the entire Committee will consider a theme over a series of meetings, building on evidence from one meeting to the next. In others Working Groups may be charged with looking at a matter.
- 24 Many Councils now carry out the bulk of their detailed scrutiny work in informal, time-limited task groups. These can carry out investigations into issues, collecting evidence from a wide range of sources. They make recommendations which, through a Scrutiny Committee, are sent to the Council's Cabinet for consideration.
- 25 For Members' information the Centre for Public Scrutiny sets out matters that have been recently considered by other local authorities at [www.cfps.org.uk/Library](http://www.cfps.org.uk/Library).
- 26 As with all Committees in the Council, it is recommended that the Committee does not overlap with the work other Committees carry out. The recent introduction of Advisory Committees for each Portfolio Holder at the Council means that policy development may sometimes take place in these forums.

## **Key Implications**

### Financial

There are none arising from this report.

### Legal Implications and Risk Assessment Statement

There are none arising from this report.

## Equality Assessment

The recommendations in this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

### **Conclusions**

The Committee can play a wide role, particularly in holding the Cabinet to account, questioning the impact of decisions, assessing the Council's relationship with partner organisations and in taking on in-depth projects.

### **Background Papers:**

[Local Government Act 2000](#)

[Modern Local Government: In touch with the people](#)

[Sevenoaks District Council Constitution – Part 5 –  
Scrutiny Function](#)

[Sevenoaks District Council – Appendix C – Scrutiny  
Committee Procedure Rules](#)

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