



# EXECUTIVE / SCRUTINY PROTOCOL



**ONECOUNCIL** Working Together

## **APPENDIX A**

### **PROTOCOL ON EXECUTIVE & OVERVIEW AND SCRUTINY RELATIONS IN SEFTON**

#### **Contents**

- 1. Introduction**
- 2. Aims of the Protocol**
- 3. Functions of Overview and Scrutiny**
- 4. The Conduct of Meetings**
- 5. The Overview and Scrutiny Work Programme**
- 6. Pre-Scrutiny**
- 7. “Call-In” of Decisions**
- 8. Working Group Reviews**
- 9. Public Participation in the Overview and Scrutiny Process**
- 10. Specific Duty of the Overview and Scrutiny Committee (Adult Social Care and Health) – Joint Health Scrutiny Arrangements**

## APPENDIX A

### 1. Introduction

- 1.2 This Protocol applies to all Members of Overview and Scrutiny (O&S) Committees, co-opted members who sit on O&S Committees, all Members of the Cabinet and senior officers.
- 1.3 The Protocol is not intended to replace *Chapter 6 – Overview and Scrutiny* of the Council's [Constitution](#), nor is intended to replace *Chapter 2 – Members – Code of Conduct*, rather it is intended to enhance and supplement the requirements of the Constitution and set out guidance for good practice.
- 1.4 Scrutiny should be a strategic function of the authority. It should be central to the organisation's corporate governance; a crucial cog in the decision-making machine.

### 2. Aims of the Protocol:

- 2.1 Clarify Relationships
- 2.2 The aim of the Protocol is to clarify relationships between O&S Members and Cabinet Members, to ensure an efficient O&S function, including holding the Cabinet to account on behalf of the electorate, and to encourage good communication between O&S and the Cabinet.
- 2.3 Positive Interaction
- 2.4 The Protocol refers to the respective powers, roles and responsibilities for both O&S Members and Cabinet Members. Guidance is set out on the way in which both O&S Members and Cabinet Members should interact, in order that Members maximise their roles and for the Authority to have an effective O&S function for the benefit of the Council as a whole. It also offers guidance to senior officers who support this process.
- 2.5 Promote a Culture of Mutual Respect
- 2.6 The Protocol aims to promote a culture of mutual respect, trust and courtesy in the relationships between O&S Members, Cabinet Members and senior officers, and to foster a climate of openness leading to constructive debate and communication, with a view to ensuring service improvements for the benefit of Sefton citizens.
- 2.7 Parity of Esteem
- 2.8 "Parity of esteem" means that the scrutiny function of the Council deserves the same respect, and has the same importance in the governance system, as

## APPENDIX A

executive decision-making activities. Requests from scrutiny to engage with, and recommended changes to, policies, plans and activities should be treated with the same respect and consideration as if they came from a Cabinet Member.

### 3. Functions of Overview and Scrutiny

- 3.1 The general role and specific functions of the O&S Committees can be found within Chapter 6 of the Council's Constitution. The key responsibilities of O&S are to:
- (a) Hold the Cabinet, Cabinet Members and senior officers to account for their decisions, on behalf of the electorate;
  - (b) Review Council policy, the way policies are implemented and their impact on local citizens;
  - (c) Scrutinise Executive decisions before they are made and before they are implemented; and
  - (d) Contribute to the development of policy by investigating issues of local concern and making recommendations to the Cabinet, to the Council and to partner organisations.

### 4. The Conduct of Meetings

- 4.1 Cabinet Members are actively encouraged to attend meetings of O&S Committees relevant to their Portfolio, in order to present their Cabinet Member Update Reports and to respond to questions/comments from O&S Members.
- 4.2 Cabinet Members may be required to attend meetings of O&S Committees in particular circumstances, e.g. the consideration of "called-in" items.
- 4.3 The principle of the "critical friend" should always be adhered to between Scrutiny Members and Cabinet Members, senior officers and any external partners.
- 4.4 All Members should promote an atmosphere of openness at the O&S Committee meetings and should strive to ensure that questioning and debate takes place within a climate of mutual respect and trust.
- 4.5 O&S Committee Members should be prepared to ask searching questions and where necessary, provide constructive challenge to Cabinet Members on issues that fall under their Portfolio.

## **APPENDIX A**

- 4.6 Cabinet Members should be willing to respond to any question put. However, it should be noted that that Cabinet Members may not necessarily be in a position to answer every question immediately or in detail. In such circumstances the matter may be referred to a senior officer in attendance or a written answer may be sought.
- 4.7 Cabinet Members should value the contribution of O&S Committee Members who raise issues and respond in an appropriate and manner, in order to make a positive contribution to Scrutiny meetings.
- 4.8 Cabinet Members should, with the permission of the Chair, be permitted by the O&S Committee to speak upon any item on the agenda under discussion and may at any time offer to assist the Committee by the provision of factual information or advice in relation to the matters under discussion.
- 4.9 The Chair, supported by senior officers, shall provide leadership and guidance to the Committee on all scrutiny matters and shall promote the Committee's role in improving services and monitoring the effectiveness of Council policies, through effective scrutiny.
- 4.10 Party politics and the use of the Party Whip shall be avoided during O&S Committees.
- 4.11 Senior officers shall liaise and agree their attendance at meetings of O&S Committees during the Municipal Year.

### **5. The Overview and Scrutiny Work Programme**

- 5.1 The Council's Strategic Leadership Board, comprised of the Chief Executive, Executive Directors and Heads of Service, shall be invited to identify any appropriate items for inclusion in the Work Programme of O&S Committees.
- 5.2 The Work Programme of items submitted to O&S Committees at the beginning of each Municipal Year shall be drafted in liaison with the appropriate Heads of Service, whose roles fall under the remit of the Committee.
- 5.3 A manageable number of items should be identified in order to demonstrate that the scrutiny function "adds value" to the Council.
- 5.4 The O&S Committees will be responsible for setting their own work programme.
- 5.5 O&S Members are reminded at each meeting that they are able to request other items for inclusion within the Work Programme, provided such items fall within the terms of reference of the Committee.

## APPENDIX A

- 5.6 A Member of an O&S Committee is entitled to give notice to the Chief Legal and Democratic Officer that they wish an item relevant to the functions of the Committee to be included on the agenda for the next available meeting of the Committee.
- 5.7 The Cabinet and/or the Council may refer a matter to one or more O&S Committees.
- 5.8 The Chair of the O&S Committee may consider alternative methods of dealing with items in order to avoid over-loading Committee agendas. These may include informal presentations, visits to front-line services, site visits / informal discussions with external partners, etc.

### 6. Pre-Scrutiny

- 6.1 The Key Decision Forward Plan sets out the list of items to be submitted to the Cabinet for consideration during the following four-month period. The Forward Plan is updated and published each month. The Forward Plan appears on the Council's website and an email alert is sent to all Members of the Council when a new Forward Plan is published.
- 6.2 A summary of the latest Forward Plan, setting out the Key Decisions that fall under the remit of each O&S Committee, is submitted to each meeting of the O&S Committees and appears under the Work Programme item, a standing item on each O&S agenda.
- 6.3 O&S Members should peruse Decisions to be taken and may request to pre-scrutinise items from the Key Decision Forward Plan that fall under the remit (terms of reference) of the O&S Committee.
- 6.4 The pre-scrutiny process assists the Cabinet Members to make effective decisions by examining issues beforehand and making recommendations prior to a determination being made. Pre-scrutiny can be used to resolve potential disagreements.
- 6.5 Any items agreed for pre-scrutiny will be included within the O&S Committee's work programme.
- 6.6 Where O&S Committees request to pre-scrutinise a Key Decision, the relevant Cabinet Member should endeavour to attend the meeting concerned, in order to respond to questions, and consider the views put by O&S Members.
- 6.7 Relevant senior officers shall attend an O&S Committee meeting where a Key Decision is pre-scrutinised by O&S Members, in order to respond to questions, and consider the views put by those Members.

## APPENDIX A

- 6.8 Cabinet Members may wish to seek views from Scrutiny Members on a Key Decision, particularly on policy development and review, before it is taken. The relevant senior officer will be responsible for forwarding the details through to the Scrutiny Manager for inclusion on the agenda.
- 6.9 The O&S Committee may express views or make recommendations in relation to Decisions to be taken.
- 6.10 The Cabinet will consider any recommendations or views expressed by the O&S Committees and to take such action it sees fit.
- 6.11 Utilising the option for pre-scrutiny does not exclude the Decision from being subject to “call-in”. However, it will allow the Cabinet Member(s) the ability to consider different views and perspectives of a Decision, before it is taken and avoid potential conflict and a requirement for “call-in”.
- 6.12 Heads of Service shall be requested to identify any policy/strategy items for pre-scrutiny by the relevant O&S Committee.

### **7. “Call-In” of Decisions**

- 7.1 Decisions taken by the Cabinet appear within the Minutes of Cabinet Meetings. The Minutes indicate the “call-in” period for the Decisions made.
- 7.2 Decisions taken by individual Cabinet Members are subject to “call-in”, are published on the Council’s website, and an email alert is sent to all Members of the Council.
- 7.3 “Call-in” can occur when three non-Executive Members have reasons/evidence to challenge the Decision, based on the guidance set out within Chapter 6 of the Council’s Constitution.
- 7.4 A decision shall only be the subject of one “call-in” by non-Executive Members.
- 7.5 Non-Executive Members shall refer to a specific Decision and in instigating the “call-in”, are required to provide as much information, detail, explanation, evidence and/or facts as possible, within the requisition. This will enable appropriate officers to determine whether the “call-in” is valid or not.
- 7.6 Non-Executive Members shall trigger the “call-in” electronically, using the Council’s Modgov system. This will alert the relevant officers and prevent the Decision from being actioned.

## APPENDIX A

- 7.7 During 2017/18, the O&S Management Board developed a [Call-In Procedure](#) to be used at O&S Committees when dealing with “called-in” items. This was agreed by the four O&S Committees and shall be adhered to at all meetings held to consider “call-in items”.
- 7.8 The following are required to attend the O&S Committee meeting to consider the “called-in” item, in order to address O&S Members on the item and respond to questions / comments raised by O&S Members:
- (a) the lead “call-in” Member;
  - (b) the Leader of the Council and/or relevant Cabinet Member; and
  - (c) relevant senior officer representative(s).
- 7.9 Only the lead call-in Member shall be permitted to:
- Address the O&S Committee, explaining the reason for “call-in”;
  - Respond to questions put by Committee Members; and
  - Sum up the case for “call-in”.
- 7.10 Subject to the agreement of the O&S Committee, a representative of the public may make representations in relation to the “called-in” item, in accordance with the Call-In Procedure previously agreed by O&S Committees.
- 7.11 The “call-in” procedure should not be abused. It should not be used as a substitute for early involvement in the decision-making process. Its use as a party-political tool should be avoided.

### 8. Working Group Reviews

- 8.1 Heads of Service will be requested to consider potential topics for review via the Strategic Leadership Board and these will be submitted to O&S Committees for consideration, along with any other suggestions from O&S Members. The Committee shall approve any topics to be reviewed.
- 8.2 The [Criteria Checklist for Selecting Topics for Review](#) shall be considered in approving topics to be reviewed.
- 8.3 At least 3 Members of the Committee shall be required to sit on a Working Group and one Member will be appointed as the Lead Member. Co-opted Members may sit on a Working Group.
- 8.4 Heads of Service have a valuable role to play in the review process in terms of suggesting appropriate topics for review, possibly contributing to the scope for the review, the provision of factual evidence, and identifying suitable witnesses.



## APPENDIX A

Officers involved in the review shall be open and honest in their discussions with Working Group Members.

- 8.5 The role of the Lead Officer for the review will be to assist in drafting the scope for the review, to provide professional advice and to ensure access to relevant information and personnel for Working Group Members.
- 8.6 Further to a report on Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities being agreed by O&S Committees during October/November 2019, Working Groups shall consider if it is appropriate to seek the views of the general public on the matter under their consideration and, if so, how this should be carried out.
- 8.7 Working Group meetings shall be conducted in the manner outlined within paragraph 4 above. Working Group Members shall adhere to the principle of the “critical friend” during the course of a review. Constructive challenge may be adopted during discussions with Council officers, external partners, key stakeholders, etc. However, a culture of mutual respect shall be maintained at all times.
- 8.8 A final report, including any recommendations from the Working Group, will be drafted by the relevant officer from Democratic Services to reflect the views and wishes of the Working Group concerned, subject to any legal and/or financial implications provided by Legal and Finance officers.
- 8.9 Recommendations may be produced that impact on the Council or external partners.
- 8.10 The final report will be presented to the parent O&S Committee, the Cabinet, and finally to full Council.
- 8.11 The Lead Member of the Working Group concerned will normally present the final report to the Cabinet and to the Council. Where this is not possible, an alternative Member of the Working Group will be asked to present.
- 8.12 The relevant senior officer shall ensure that an update on the implementation of recommendations is presented to the parent Committee approximately six months following approval of the final report by the Council. Actions taken since approval of the recommendations should be outlined within the update, together with progress on any implementation required. Where actions have not been carried out, reasons should be given, together with an anticipated timeline for implementation.

### **9. Public Participation in the Overview and Scrutiny Process**

## APPENDIX A

- 9.1 O&S Members should represent the voice of the public.
- 9.2 As outlined in paragraph 3.1 above, key responsibilities of O&S are to:
  - (a) Hold the Cabinet, Cabinet Members and senior officers to account for their decisions, on behalf of the electorate; and
  - (b) Review Council policy, the way policies are implemented and their impact on local citizens;
- 9.3 The Constitution indicates that O&S Committees allow citizens to have a greater say in Council matters by holding public inquiries into matters of local concern.
- 9.4 Citizens may contribute to Council considerations by participating in question time at Council meetings, making representations to the Cabinet, a Cabinet Member or a Committee and may be asked to contribute to O&S Working Group reviews.
- 9.5 The Council's petitions scheme, detailed within the Constitution, allows citizens to address O&S Committees.
- 9.6 As outlined in paragraph 7.11 above, subject to the agreement of the O&S Committee, a representative of the public may make representations in relation to the "called-in" item, in accordance with the Call-In Procedure previously agreed by O&S Committees.
- 9.7 As outlined in paragraph 9.5 above, O&S Working Groups shall consider if it is appropriate to seek the views of the general public on the matter under their consideration and, if so, how this should be carried out.
- 9.8 Senior officers may advise O&S Committees of particular matters of public concern, with a view to the possible establishment of a Working Group review to address such matters.
- 10. Specific Duty of the Overview and Scrutiny Committee (Adult Social Care and Health) – Joint Health Scrutiny Arrangements**
- 10.1 Local authorities may review and scrutinise any matter relating to the planning, provision and operation of the health service in its area.
- 10.2 The NHS Act 2006 (as amended by the Health and Social Care Act 2012) places a statutory duty on commissioners and providers of NHS / health services to consult local authority health overview and scrutiny committees on any proposals for significant development or substantial variation/reconfiguration in health services.

## APPENDIX A

- 10.3 Section 30 of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 provides that where more than one local authority is consulted on proposals for significant development or substantial variation in health services, a joint overview and scrutiny committee may be established to comment on the proposals for change.
- 10.4 The Council has delegated its duties relating to health services to the Overview and Scrutiny Committee (Adult Social Care and Health).
- 10.5 At its meeting on 3 June 2014, the Council approved the [Protocol for the Establishment of Joint Health Scrutiny Arrangements for Cheshire and Merseyside](#).
- 10.6 The Council and the Overview and Scrutiny Committee (Adult Social Care and Health) shall adhere to the Protocol in relation to substantial variations and joint health scrutiny arrangements.