

## RECOMMENDATION FROM OVERVIEW AND SCRUTINY COMMITTEE –

### EXECUTIVE-OVERVIEW AND SCRUTINY COMMITTEE PROTOCOL

#### Executive Summary

Following the Overview and Scrutiny Committee meeting on 13 September 2021 it was agreed that a protocol between Executive and the Overview and Scrutiny Committee would be drawn up. A protocol was created which was consulted on by Members, Legal and Democratic Services Officers and Corporate Leadership Team Officers. The protocol covers the following areas:

- Key Functions of Overview and Scrutiny at Woking Borough Council
- The Scrutiny Process
- Relationship between Overview and Scrutiny and the Executive
- Expectations of the Executive Members
- Expectations of Overview and Scrutiny Members
- The Work Programme and Executive Forward Plan
- Conduct at Meetings.

The Overview and Scrutiny Committee at its meeting on 22 November 2021 resolved to recommend that the Executive agree the Executive/Overview and Scrutiny Committee Protocol.

#### Recommendations

The Executive is requested to:

##### **RESOLVE That**

the Executive/Overview and Scrutiny Committee Protocol, as set out in Appendix 1 to the report, be agreed.

#### Reasons for Decision

Reason: The Overview and Scrutiny Committee resolved at the Committee meeting on 22 November 2021 to recommend to the Executive that the Executive/Overview and Scrutiny Committee Protocol be agreed.

The Executive has the authority to determine the recommendation(s) set out above.

**Background Papers:** [OSC21-043 Executive – Overview and Scrutiny Protocol](#)

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**Recommendation from Overview and Scrutiny Committee – Executive-Overview and  
Scrutiny Committee Protocol**

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## **Recommendation from Overview and Scrutiny Committee – Executive-Overview and Scrutiny Committee Protocol**

### **1.0 Introduction**

- 1.1 At the Overview and Scrutiny Committee meeting on 13 September 2021, Members received a report which explored the provisions of the statutory guidance on overview and scrutiny published by the Ministry of Housing, Communities and Local Government (MHCLG) in 2019. The report reviewed the Council's arrangements in light of the guidance and identified a wide range of recommendations for the Committee as a means of strengthening the Council's overview and scrutiny work.
- 1.2 Following on from an extensive research and consultation process the 'Executive/Overview and Scrutiny Committee Protocol' was received by the Overview and Scrutiny Committee at its meeting on 22 November 2021. The Committee was requested to recommend to the Executive that the Executive/Overview and Scrutiny Committee Protocol be agreed.
- 1.3 Following the recommendation from the Overview and Scrutiny Committee the protocol has now come to the Executive with the request that the Executive resolve that the protocol be agreed.
- 1.4 If agreed by the Executive work will commence to action the protocol and establish the dates for the quarterly meetings between the Leader of the Council and the Chairman of the Overview and Scrutiny Committee.

### **2.0 Corporate Strategy**

- 2.1 The adoption of a protocol will support a number of areas within the Corporate Strategy but primarily in support of the 'Us' theme – creating an innovative, proactive and effective Council by ensuring democratic transparency and accountability and effective communication.

### **3.0 Implications**

#### Finance and Risk

- 3.1 There are no financial implications from this recommendation.

#### Equalities and Human Resources

- 3.2 There are no equalities and human resource implications from this recommendation.

#### Legal

- 3.3 In May 2019 the Ministry of Housing, Communities and Local Government (MHCLG) published new statutory guidance on Overview and Scrutiny in Local and Combined Authorities having taken into account the findings and recommendations of the House of Commons CLG Committee report on the effectiveness of local authority Overview and Scrutiny Committees which was published in December 2017.
- 3.4 The statutory guidance published by MHCLG in May 2019 was issued under section 9Q of the Local Government Act 2000 and under paragraph 2(9) of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009, which requires Local Authorities to have regard to the guidance.
- 3.5 The Protocol supports the administration process in accordance with the Constitution and statutory guidance and as such there are no other legal implications.

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3.6 In the circumstances that the two questions raised about the Call-In process are debated and a procedural change is recommended and agreed then these details will need to be incorporated into the Constitution at its next review.

### **4.0 Engagement and Consultation**

4.1 The Corporate Leadership Team, Democratic Services Officers, the Leader and Deputy Leader of the Council and Legal Officers were consulted on the draft protocol.

4.2 Following this consultation, the draft protocol went to the Overview and Scrutiny Committee on 22 November 2021. It was resolved at this meeting to recommend to the Executive that the Executive/Overview and Scrutiny Committee Protocol, be agreed.

4.3 At the meeting on 22 November 2021, Members raised four points for consideration. Two were regarding grammatical errors in the Protocol which have since been rectified. The other two points were questions on functions mentioned in the Protocol which were:

1. Can an item for recommendation be called in?

2. Can a decision be called in more than once (if not acted upon by the Executive).

4.4 The current advice from Officers is that at present the protocol to be followed for Call-ins has to be in accordance with the Constitution. However, the Constitution does not provide clarity on these points and as a result, the questions may require further debate by the Council and any suggested amendments could be incorporated into the next review of the Constitution.

REPORT ENDS

## **Woking Borough Council**

### **Protocol between the Overview and Scrutiny Committee and the Executive**

**November 2021**

#### **1.0 Introduction**

- 1.1 The aim of establishing this Protocol is to clarify the relationship between the Executive and the Overview and Scrutiny Committee in order to support a framework of strong democratic transparency and accountability and to encourage effective communication between Scrutiny and Executive Members. This will promote an effective role for Scrutiny and foster a good working relationship between the Committee and the Executive that will ensure the Committee makes a valuable contribution to the effective running of Woking Borough Council, resulting in positive outcomes for residents of the borough.
- 1.2 This Protocol applies to all Members of the Overview and Scrutiny Committee, any Member who may sit on a Scrutiny Task Group, Working Group, and all Members of the Executive (comprising the Leader and the various Executive Members).
- 1.3 This Protocol provides guidance on the way in which Members in their respective roles 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 the role of officers who support this process.

#### **2.0 Key functions of Overview and Scrutiny at Woking Borough Council**

- 2.1 As per the Constitution and within its terms of reference, the Overview and Scrutiny Committee will:
  - (a) Review and/or scrutinise decisions made (or to be made) or actions taken (or to be taken) in connection with the discharge of any of the Council's functions;
  - (b) Make reports and/or recommendations to Full Council and/or the Leader/Executive;
  - (c) Consider any matter affecting the area or its inhabitants;
  - (d) Exercise the right to call-in, for reconsideration, Executive decisions made but not yet implemented; and
  - (e) Deal with crime and disorder matters referred to it under the Police and Justice Act 2006;
  - (f) Consider any valid Councillor Call for Action.

#### **3.0 The Scrutiny Process**

- 3.1 The Council's Constitution sets out the process for carrying out the Scrutiny role. The Overview and Scrutiny Committee may:
  - (a) Question Members of the Executive and/or Committees and Officers of the Council about their decisions and/or performance;
  - (b) Make requests for information from external organisations and partners authorities;

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- (c) Seek independent expert advice or appoint specialist advisers;
  - (d) Appoint non-voting co-opted members as necessary;
  - (e) Gather information informally by working individually or in small Task Groups.
- 3.2 Once a Scrutiny review topic has been agreed the relevant Executive Member and Corporate Leadership Team Member will be informed of the scope of the review or the Terms of Reference if it is agreed to set up a Task Group (the terms of reference would be added to the agenda for approval at the first meeting of the Task Group). The Executive Member and Corporate Leadership Team Member will also be invited to attend the Committee meeting when the Scrutiny Review/Task Group's final review report is considered.
- 3.3 When a Scrutiny review report is approved for submission to the Executive or Council, the relevant Executive Member and Corporate Leadership Team Member will be invited to submit comments on the report, including which recommendations they accept. For each recommendation accepted they will set out how and when it will be implemented. For each recommendation that is not accepted reasons will be given.
- 3.4 With the approval of the Leader of the Council, the Overview and Scrutiny Committee Chairman and/or Chairman of the relevant task group may attend the relevant meeting of the Executive to introduce the Scrutiny report.
- 3.5 The Executive or Council will consider any Scrutiny review report within two months of receipt. Details of decisions made by the Executive or Council will be circulated to all members of the Council.

### Call-In

- 3.6 The Call-In process is set out in the Constitution and will be used in exceptional circumstances.
- 3.7 The Council's constitution only states that "The notice to the Proper Officer shall state the reasons for the call-in, and these reasons shall be made available to all members of the Council". It does not therefore define what is regarded as a valid reason for a call-in. Notwithstanding this, where the Overview and Scrutiny Chairman or three Members of the Committee want to exercise the right to call-in, then valid reasons will be determined in the context of the following principles:
- o Proportionality (action proportionate to the desired outcome);
  - o Due consultation and the taking of professional advice from Officers;
  - o Human rights will be respected and considered at an early stage in the decision-making process;
  - o A presumption in favour of openness;
  - o Clarity of aims and desired outcomes;
  - o For Executive decisions, details of options taken into account and the reasons for decisions will be recorded.
- 3.8 The Overview and Scrutiny Committee cannot overturn the decision that has been called in. It may either concur with the decision (in which case it will take immediate effect) or refer it

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back to the Executive for further consideration, including any recommendations from Scrutiny Members.

### **4.0 Relationship between Overview and Scrutiny and the Executive**

4.1 The following principles set out how the working relationship between the Executive and the Overview and Scrutiny Committee should operate:

- I. The Executive and members of the Overview and Scrutiny Committee recognise that they each have different functions and responsibilities that contribute to securing the best outcomes for the residents within the Woking Borough.
- II. All participants in the working relationship between Executive and the Overview and Scrutiny Committee will do so in a spirit of mutual respect and constructive challenge.
- III. Meetings of the Overview and Scrutiny Committee should bear in mind the statutory guidance that scrutiny work should be conducted in a non-party political manner.
- IV. The Executive recognises that the Overview and Scrutiny Committee has a number of rights, for example requiring Portfolio Holders to attend its meetings or calling-in Executive decisions which have not yet been implemented should they consider a decision to be reviewed. The Overview and Scrutiny Committee will exercise those rights responsibly.
- V. One of the principal responsibilities of the Overview and Scrutiny Committee is the ability of non-executive members to hold the Executive to account. An important method to ensure accountability is through examining performance and decisions taken by the authority. To facilitate this challenge the Overview and Scrutiny Committee may:
  - a. Challenge the Executive about decisions which have been taken by Cabinet;
  - b. Consider performance information;
  - c. Query or ask for information about items which are set out in the Forward Plan.

### **5.0 Expectations of the Executive Members**

- 5.1 A Portfolio Holder, in receipt of a request to attend an Overview and Scrutiny Committee, should make reasonable efforts to do so in order to present reports relevant to their portfolio and answer any subsequent/relevant questions or if they have been Called-in.
- 5.2 The Executive, when given written notice, will respond to Scrutiny's recommendations within two months and for each recommendation accepted they will set out how and when it will be implemented. For each recommendation that is not accepted reasons will be given.
- 5.3 The Leader of the Council and the Chairman of the Overview and Scrutiny Committee shall formally meet at least four times during each Municipal Year, in-person or virtually. These meetings should be spaced out quarterly unless there is valid reason not to. The dates of the meetings will be set at the start of each Municipal Year during the first Overview and Scrutiny Committee meeting, with the prior agreement of the Leader of the Council.

### **6.0 Expectations of the Overview and Scrutiny Committee**

- 6.1 That the Committee will provide constructive 'critical friend' challenge to the Executive's proposals and decisions.

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- 6.2 That the Committee will remain non-political and be effectively led by Members who take responsibility in their role to drive service improvements and voice the concerns of the public.
- 6.3 The Executive's response to Scrutiny's recommendations will be published in the agenda of the next scheduled Committee meeting.
- 6.4 To monitor the effectiveness of services and undertake regular review of performance in relation to the Council's services.

### **7.0 The Work Programme and Executive Forward Plan**

- 7.1 The Overview and Scrutiny Committee Work Programme will be updated and reviewed at each meeting. The Chairman, Committee Members and relevant Officers will be able to put forward items to go on the Work Programme, subject to approval.
- 7.2 Alongside the Overview and Scrutiny Work Plan the Committee will be provided with the Executive Forward Plan to enable the Committee to have an oversight of the work being carried out by the Executive and thus be able to deliberate if any items should be brought to the attention of the Committee.

### **8.0 Conduct of Meetings**

- 8.1 The work of the Overview and Scrutiny Committee should be carried out in a bipartisan manner to ensure that the needs of residents in the Borough are being put at the heart of its work.
- 8.2 All Members should promote an atmosphere of openness at Overview and Scrutiny Committee meetings and should strive to ensure that questioning and debate takes place within a climate of mutual respect and trust between Overview and Scrutiny Committee Members, the Executive Member and other participants.
- 8.3 Scrutiny Committee Members should be prepared to ask searching questions of Executive Members, who in turn should be willing to respond to any question put. It should however be stated that Overview and Scrutiny Committee Members should be aware of and show an understanding of the fact that Executive Members may not be in a position to answer every question immediately or in detail.
- 8.4 Executive 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. Executive Members should also value the contribution of Overview and Scrutiny Committee Members who raise questions under these headings and respond in an appropriate and professional manner.
- 8.5 Executive Members should normally be authorised by the Committee to speak upon any item on the agenda which falls into their portfolio area of responsibility and may at any time offer to assist the Overview and Scrutiny Committee by the provision of factual information or advice in relation to the matters under discussion.
- 8.6 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.
- 8.7 The Chairman, supported by the Lead Officer and the Scrutiny and Democratic Services Officer, should provide leadership and guidance to the Committee on all scrutiny matters and should promote the Committee's role to improve services and monitor the effectiveness of Council policies.



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**END**