

## **EAST HAMPSHIRE DISTRICT COUNCIL**

---

**COUNCIL**

**18<sup>th</sup> July 2019**

### **PROPOSED AMENDMENT TO GOVERNANCE, AUDIT & SCRUTINY COMMITTEE, COMMUNITY ENGAGEMENT AND CABINET ADVISORY PANELS**

**Report by Head of Legal Services**

**FOR DECISION**

**Portfolio: Leader and Chairman of Governance, Audit & Scrutiny  
Committee**

**Director: Lydia Morrison**

**Key Decision: No**

---

**1.0 Purpose of Report:** This paper is submitted to Council

1.1 To consider the principles for

- a) the future engagement of the executive and the scrutiny of the executive function;
- b) to strengthen the independence of the audit function; and
- c) to support the work of the Committee of Standards in Public Life (“CSPL”).

1.2 To agree proposed new Terms of Reference of new separate Committees (Annex 1), to appoint Members to the new Committees and to delegate to the Monitoring Officer authority to make all necessary consequential amendments to the Constitution to give effect to this decision.

1.3 To consider the guidance notes attached for the Role of Scrutiny and to invite the Scrutiny Committee to review the draft guidance notes and inform the future functioning of that Committee (Annex 2)

1.4 To inform Members of the recent report on Local Government Ethical Standards (Annex 3) and the recommendation of the CSPL.

1.5 To inform Members of the recent report and revised statutory guidance<sup>1</sup> on the function of Scrutiny issued on 7 May 2019 (Annex 4)

1.6 Creation of a Cabinet advisory panel in the Constitution.

---

<sup>1</sup> Statutory Guidance is binding on the authority unless the authority can point to a good and substantial reason why the authority should deviate from the guidance.

## **2.0 Recommendations**

- 2.1 To agree the separation of the Governance, Audit & Scrutiny Committee into separate functions. To instruct the Monitoring Officer to make all necessary substantive amendments to the Constitution of East Hampshire District Council to give effect to this resolution. The delegation to the Monitoring Officer to include all minor consequential, consistency and typographical amendments. The revised constitution to be published as soon as reasonably practicable thereafter.
- 2.2 Approve the Committee Terms of Reference for:
  - Overview and Scrutiny;
  - Standards;
  - Audit; and
  - Planning
- 2.3 Appoint the Chairman [and Members if known] to the revised Committees.
- 2.4 The Scrutiny Committee is invited to consider the draft guidance notes and statutory guidance and to recommend to full council a perfected proposal for the adoption of the East Hampshire Scrutiny principles.
- 2.5 To agree the insertion of Standing Order 65.7 in respect of Cabinet Panels
- 2.6 To amend the terminology in the constitution to delete 'Member Project Leads' and replace with 'Portfolio Assistant'

## **3.0 Executive Summary**

- 3.1 Central Government has issued new guidance on the role of Scrutiny and the proposals are designed to help this authority give effect to the statutory guidance and to ensure a smooth, clear and transparent scrutiny process. The guidance recommends the Scrutiny process has a strategic and inquisitorial role.

The scrutiny function is designed to hold the Executive to account. This function is currently conflated with the Non- Executive roles of Standards. The separation of powers is an important governance safeguard and clarity can only be beneficial.

- 3.2 The report by the Committee for Standards in Public Life clearly see the Standards Committee as a separate entity. The report also makes recommendations on strengthening of accountability, transparency and local authority's ethical frameworks (e.g. Conflicts of interests codes) which can only benefit the public interest. A second report has identified number of issues around social media, bullying and attempts to intimidate Members and the Committee can have a role in establishing local protocols and responses particularly in respect of repeated or malicious behaviour.

- 3.3 The role of the Audit Committee is also an essential part of the governance system and the primary purpose is to monitor external and internal audit and the Council's financial and operation resource management. The proposed terms of reference for the Audit Committee suggests the audit of internal control measures and the audit of the arrangements of the discharge of our financial responsibilities.
- 3.4 The separation of the Committees will allow for the frequency of Scrutiny, Standards and Audit to be varied in accordance with need. The number of Members on each committee, the frequency and Members' time can then be more efficiently considered.
- 3.5 The demerging of these committees reduces the potential for challenge as some committees are referenced in legislation, statutory and non-statutory guidance, have different roles in respect of the executive and non-executive functions of the authority.
- 3.6 The Access to Information Rules for Members varies in accordance with the roles they are undertaking. The crossing of information in Members' minds is a hazard to the authority and may result in claims of springboard of information from one role to another.
- 3.7 The proposed amendment to the Planning Committee is to ensure all Planning Committee members are fully conversant and trained in this non-executive function.
- 3.8 The use of Cabinet panels was provided for prior to 2016. The revised version contained in the draft Standing Order 65.7 varies from earlier versions and is designed to facilitate and improve decision-making by gathering the best skills and people to advise the Cabinet on decision-making with the intention that this improves the outcomes.

#### **4.0 Additional Budgetary Implications**

- 4.1 The resource implications of the committees is dependant entirely on Members, except for Audit Committee which must meet regularly.
- 4.2 The Standards Committee only requires minimal formal meetings to receive a report from the Monitoring Officer of complaints. Otherwise the committee will not meet unless it is required to hear a case against a Member or in certain circumstances look at other conduct issues or provide guidance. This may change if the legislative changes proposed in the recent report are enacted.
- 4.3 Audit Committee will require support from Democratic Services but that should not create any significant additional pressure. If Audit chose to become more active, then diversion of resources from elsewhere may be required.
- 4.4 Overview and Scrutiny is not currently supported in accordance with the new guidance. There will need to be a review of the efficiency of this committee after an initial period and consideration given to how it wishes to administer itself, the

procedure rules, and how it should be resourced to add value to the evidence-led decision-making process.

- 4.5 Cabinet Panels will require resource only in so far as they are used. Currently only one panel is suggested, and that group would require Democratic Service support as this relates to grant funding and awards. Therefore, this represents a formalisation of how existing resources are used rather than using new resource.

## **5.0 Background and Corporate Strategy and Directorate Business Plan/s**

- 5.1 East Hampshire has a significant, challenging and ambitious corporate agenda. The delivery of this vital and important programme of work falls to the Executive in the Leader and Cabinet model. The revised guidance is clear that the Executive function is significantly enhanced a by full and directed engagement of Scrutiny at both strategic and operational level. The guidance strongly suggests that proper scrutiny engagement should result in better outcomes and fewer or reduced 'call in' as Members are fully engaged at the policy stage.
- 5.2 Overview and Scrutiny and the separated Audit function will enhance the Corporate Governance framework, and it is suggested in the guidance that increased engagement across the body politic of the members should result in the consequent improvement in outcomes and is thought to be crucial to the future prosperity of the Council.
- 5.3 The Council has a clear investment and commercialisation strategy. The Scrutiny Committee is a large committee of Members and will represent a significant and valuable resource that the Executive may call upon to assist and review the development and implementation of those strategies.
- 5.4 To assist in this a suggested scrutiny protocol is attached only as an early draft consultative document. The functioning and process around the scrutiny function should be carefully considered by the Scrutiny Committee to allow them the opportunity to suggest the methodology which will give the best effect to improving outcomes for the Council. The purpose of the Scrutiny Committee reviewing this issue is to allow them to properly consider and digest the new guidance and to put forward the correct policy considerations to allow them to be the valued partner as suggested in the guidance.
- 5.4 The separation of the audit function is designed to enhance the ability of the Audit Committee to receive and consider audit reports and to make recommendations and hold the organisation to account without the risk of falling into an accidental scrutiny role.
- 5.5 The Terms of reference for Audit at 1.16 and Scrutiny at 1.20 provides responsibility for suggesting constitution changes, this will also be within Cabinet's remit.
- 5.6 There has also been a report on local government issues from the Committee on Standards in Public Life. The first report issued on 30 January 2019

articulates various suggested amendments to primary legislation and the covering letter of Lord Evans of Weardale states:

*“It is clear that the vast majority of councillors and officers want to maintain the highest standards of conduct in their own authority. We have, however, identified some specific areas of concern. A minority of councillors engage in bullying or harassment, or other highly disruptive behaviour, and a small number of parish councils give rise to a disproportionate number of complaints about poor behaviour.”*

The amendments to the Standards Committee will help align the authority with recommendations and the provisions of the Localism Act 2011.

5.6 The second report focuses on the use of social media, harassment and intimidation and the vexatious complainant. In July 2018 the Cabinet Office launched the consultation: ‘Protecting the Debate: Intimidation, Influence and Information’. The Government formally responded on the 8 May 2019. Three legislative changes are proposed:

- Section 1: A new offence in electoral law of intimidating candidates and campaigners during the election period.
- Section 2: Clarification of the electoral offence of undue influence.
- Section 3: Extending the electoral law requirements for an imprint on campaigning materials to electronic communications.

The revised Standards Committee can act as a buffer in respect of malicious or vexatious complaints against members.

5.7 The Planning Committee is a key non-executive function of the authority. The revised terms of reference are designed to make full use of members experience and expertise in this area whilst ensuring the highest quality of decision-making. Mandatory training and the restrictions on substitute members, to ensure they are fully trained and are likely to sit as substitutes more frequently, are part of the proposal.

5.8 There will be consequential changes to the Constitution to give effect to these decisions and the delegation to the Monitoring Officer is to permit the constitution to be checked for consistency moving forward.

5.7 The amendment to standing orders suggested at SO 65.7 is to give constitutional validity to the advisory role which can add such value to decision making and gives wider engagement, transparency and member involvement. The first proposed advisory panel will relate to grants and awards which is important community funding.

## **6.0 Options and Reasons for Recommending Relevant Option**

Option 1: Do Nothing. This option is the simplest and requires no effort and little resource. However, it means the authority remains static, and lacking the ability to change and meet new challenges.

Option 2: This would align with the government guidance and suggested best practice will increase resilience and longevity in the organisation processes. The key elements allow for a greater and more strategic role for scrutiny and a clear independent audit function which has no executive taint.

## RISK

OPTION COMMITTEES	FOR	AGAINST
1	No/Little cost. Easy. Makes no contribution to meeting the goals of the organisation.	Stagnation of the authority, no acknowledgment of the need to change, increasingly outdated approach to public sector constitution and corporate governance. This leads to increased risk of failure of governance and finance. Should enhance and improve decision making and allow for greater public engagement.
2	Minimal impact on Resource, dependant mainly on behaviour of members. Reduced risk of challenge as systems updated and in line with statutory governance. Increased knowledge base amongst elected members and greater organisation resilience. Improved governance should lead to better evidence-led decision-making that has a greater chance of improved outcome. Reduced risk of poor or financially unsound decision making. Increased transparency and possibility for public engagement	Some resource impact, including training and increased engagement and ownership by members.  Potential escalation if members behave poorly.  Will require Officer resource to amend Constitution and proof read for consistency.
OPTION Constitutional Changes	Minimal cost Provides a mechanism for delivery of changes agreed at full council	Will require greater member participation.

## **Quality & Equality Impact Assessment**

None.

### **7.0 Resource Implications**

#### **7.1 Financial Implications**

There would be some impact on cost through the resourcing of these committees. Democratic Services will also be required to minute the Grants and Awards Panel, this will be required in any event and had not been provided for.

The strengthening of the Audit function may increase the use of financial resources both in cost and time, to provide the correct information to that committee.

#### **7.2 Human Resource Implications**

Democratic Services will need to ensure adequate provision is available although no additional staff implications have been identified.

#### **7.3 Information Governance Implications**

The separation of the Committee mitigates issues in respect of data sharing. The proposed panel structure aids transparency on the award of grants and the financial information of applicants will be protected by a non-disclosure agreement.

#### **7.4 Other Resource Implications**

The key resource demand will be Members time. The commitment to committees, attendance and personnel development for training (planning) and policy development may be considerable.

### **8.0 Legal Implications**

The proposed amendments will reduce the risk of legal non-compliance.

### **9.0 Significant Risks**

The “do nothing” option risks future challenge and increases over time the reputational risk to the authority.

### **10.0 Consultation**

This proposal has arisen as an outcome of recent guidance. Cabinet has been consulted. A full briefing was given via the current scrutiny committee on 24 June 2019 to ensure all members had the opportunity to consider the proposal. Scrutiny Committee also considered the draft and amended some of the

proposals.

## 11.0 Communication

This will be implemented as soon as reasonably practicable on the amendment to the Constitution.

The Constitution will be republished in its amended form.

### Appendix 1

- Terms of Reference Audit Committee
- Terms of Reference Overview & Scrutiny
- Terms of Reference Planning Committee
- Terms of Reference Standards Committee

### Appendix 2 - Draft Scrutiny Guidance Note

### Appendix 3 – [Report of the Committee for Standards in Public Life](#)

### Appendix 4 – [Government Guidance on the Role of Scrutiny](#)

### Appendix 5 - Amendment to Standing Order 65.7 of the Constitution

Agreed and Signed off by:

Monitoring Officer: 7 June 2019

S151 Officer: 7 July 2019

**Contact Officer:** David Brown

**Job Title:** Head of Legal

**Telephone:** 023 9244 6524

**E-Mail:** david.brown@easthants.gov.uk