

Committee: Scrutiny Committee

Date:

Title: Statutory Guidance on Overview and Scrutiny and Memorandum of Understanding

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Summary

1. This report presents two documents with which all members of the Scrutiny Committee should ensure they are familiar. It sets out the key points of each document.
2. The Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities was published by the Ministry of Housing, Communities and Local Government in May 2019.
3. The Memorandum of Understanding between Scrutiny and Cabinet was approved by the Scrutiny Committee in March 2019 and by the Executive in April 2019.

Recommendations

4. None

Financial Implications

5. There are no direct financial implications associated with this report.

Background Papers

6. None

Impact

- 7.

Communication/Consultation	The Memorandum of Understanding was developed in consultation with the previous Scrutiny chairman and a nominated representative from the previous Cabinet
Community Safety	None
Equalities	None

Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

8. In May 2019 the Ministry of Housing, Communities and Local Government published its Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities (Appendix A).
9. This document provides an overview of the role scrutiny plays in local authorities and all members are encouraged to read and familiarise themselves with it. It is of most importance that members of the Scrutiny Committee and the Cabinet are fully versed in its contents.
10. The guidance recognises that there is no “one size fits all” when it comes to local authority scrutiny and that individual councils should adopt the approach most appropriate to them, paying regard to, for example, available resources and structure.
11. This is statutory guidance, which means Uttlesford District Council must have regard to it when exercising their functions. The document states:

“The phrase ‘must have regard’ in this context, does not mean that the sections of statutory guidance have to be followed in every detail, but that they should be followed unless there is a good reason not to in a particular case.”
12. The guidance sets out that scrutiny committees have statutory powers to scrutinise decisions the executive is planning to take, those it plans to implement and those that have already been taken/implemented. This includes a role in assisting with policy development.
13. This should be the primary focus of the Committee’s work – the scrutiny function is a crucial balance to the executive and, as the guidance states, is there to be a critical friend, rather than opposition, to the executive function.
14. Regulatory committees, such as Licensing and Planning, have their own appeal routes set out in legislation and as such, individual decisions taken by these committees would not fall under the remit of the Scrutiny Committee.
15. The Scrutiny Committee can also play a role in scrutinising the work of external public bodies should it choose to do so.

16. The guidance recognises that some members of the Scrutiny Committee will be of the same political party as the Executive (paragraph 11j) and stresses the importance of adopting an independent mind-set.
17. The guidance reminds councils that:
- Members of the Executive cannot be members of a scrutiny committee; and
 - That as a minimum, councils should take care that members holding less formal executive positions do not sit on scrutinising committees looking at portfolios to which those roles relate.
18. With regard to this second bullet point, officer advice is that Scrutiny Committee members or substitutes who also occupy one of the “topic lead” roles should not take part in any research, discussion or decision on any subject relating to their topic for the Scrutiny Committee or any sub-group of the Committee. The Monitoring Officer will provide advice on when this is the case.
19. The guidance emphasises the point that an effective relationship between the committee and the Cabinet is key to the success of scrutiny. In paragraph 10, it states that the performance of the scrutiny function can have wider reputational impact, for example with regulators and the public. The guidance recommends the adoption of a protocol between the two functions (paragraph 11d).
20. Such a protocol has already been adopted by the Council in the form of a Memorandum of Understanding (Appendix B). This document briefly sets out how each function should behave in respect of the other and how the Scrutiny Committee can use its powers to hold the Executive to account and improve decision-making.
21. The Memorandum of Understanding also emphasises the role of Cabinet Members in presenting reports to the Scrutiny Committee and answering questions about them.
22. A review of the Council’s scrutiny practices by the Centre for Public Scrutiny last year strongly recommended this approach. The Council has therefore moved to a model where reports are presented by the relevant Cabinet Member, with officers in attendance only to provide technical advice should it be required. Paragraph 11f of the guidance states that officers should be able to provide impartial advice and emphasises the importance of the three statutory roles (Head of Paid Service, Section 151 Officer, Monitoring Officer) in this.
23. Separately to the Scrutiny Committee, the Tenant Regulatory Committee (TRP) exists to provide scrutiny of Housing Revenue Account (HRA)-related activities. The TRP comprises council tenants. Previously the TRP has reported its activities on occasion to the Scrutiny Committee. Thought will need to be given as to how this relationship can best be developed.

Risk Analysis

24.

Risk	Likelihood	Impact	Mitigating actions
The council does not follow scrutiny best practice, thus reducing the effectiveness of the function	1 – the guidance issued by the Ministry of Housing, Communities and Local Government is statutory and the council must have regard to it	3 – failure of the scrutiny function to provide an effective balance to the executive could have significant impact on policy	Members have been provided with training and the Statutory Guidance document. Officers will advise when required.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.