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Scrutiny, Audit, Cabinet and 3 Rivers – a short note on the interplay of relationship/powers

- 1 Cabinet performs the role of shareholder on behalf of the Council and is responsible (and accountable) for how it goes about that role. If the Cabinet is satisfied with a plan, project or any other part of the work undertaken by 3 Rivers, that is its right – subject to the normal public law principles of decision-making, the Constitutional requirements and taking into account the views expressed to it, including the views (as the case may be) of Scrutiny or Audit Committees.
- 2 When Scrutiny asks to look at a report and background documents relating to a forthcoming key decision on 3 Rivers (or post-decision scrutiny), what is it actually doing? It is not scrutinising 3 Rivers and its performance per se, nor holding the company to account, because that is not the role of Scrutiny. Rather, it is Cabinet being held to account and Scrutiny being the critical friend.
- 3 In pre-scrutiny, the purpose is to look at the forthcoming decision and the information available and make suggestions or recommendations to Cabinet to inform the eventual decision – remembering that the purpose is to add value/improve the outcome. If the Cabinet wishes to make a decision, it can – but the aim for Scrutiny should be to feed into that decision-making process with a view to securing a better (or the best) outcome, recognising that there will be differing views on what that outcome should be.
- 4 In post-decision scrutiny (or call-in), the purpose of Scrutiny is similar, in that it is providing feedback to the Cabinet on its decision-making, or in the performance of the shareholder role. The purpose is still not to hold the company to account, nor to act in that way.

Obtaining information and asking questions

- 5 In performing this role, Scrutiny may feel its needs certain information in order to provide those suggestions, recommendations or comments to Cabinet. However, it needs to keep a firm eye/grip on the purpose i.e. not to have a dry-run of the Cabinet debate, nor to appear to take on the role of Cabinet. Rather the aim should be to gather such information as it thinks reasonably necessary to formulate its suggestions and recommendations to the Cabinet.
- 6 Here are various sections from the Constitution (some of which have their basis in law/statutory guidance):

Scrutiny etc. Procedure Rules:

Policy development – “they may go on site visits, conduct public surveys, hold public meetings And do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration ...”

Councillors and officers giving account – “as well as reviewing documentation, in fulfilling the scrutiny role, it may require a member of the Cabinet, the Head of Paid Service and/or any senior officer to attend before it to explain in relation to matters with their remit:

- (i) Any particular decision or series of decisions;
- (ii) The extent to which the actions taken implement Council policy; and/or
- (iii) Their performance

And it is the duty of those persons to attend if so required.”

Attendance by others – “may also invite people other than [Cabinet members, HoPS and senior officers] to address them, discuss issues of local concern and/or answer questions.”

Conduct towards invitees as part of an investigation –

- (i) Conducted fairly and all councillors given opportunity to ask questions, contribute and speak
- (ii) Treated with respect and courtesy
- (iii) Conducted so as to maximise the efficiency of the investigation or analysis.

Access to Information Rules:

The Scrutiny Committee will be entitled to copies of any document which is in the possession or control of the Cabinet or any of its Committee which contains material relating to:

- Any business transacted at a meeting of the Cabinet
- Any decision taken by an individual member of the Cabinet; or
- Any decision taken by an officer of the Council in accordance with executive arrangements.

Limit on rights – not entitled to a document in draft form; not entitled to any part of a document that contains exempt information unless that information is relevant to an action or decision the Committee is reviewing, scrutinising or intending to scrutinise.

Comment – to be fair, similar rights are available to all members under rules 25.1 and 25.2.

What about Audit?

- 7 The Audit Committee is the governance and risk body of the Council. At times, items considered by Scrutiny may develop into a matter that should properly be considered by Audit. In those circumstances, the Scrutiny Committee can recommend to Audit Committee (and vice versa) – or indeed, ask the Chairman of Scrutiny to discuss a way forward with the Chairman of Audit. However, the Constitution also provides for a Programming Panel and this is another way to resolve which body should consider a particular matter. The Programming Panel meets as and when necessary at the request of the Chairman of Scrutiny, the Leader of the Council or the Head of Paid Service. So it is open to the Chief Executive to convene the Panel where it appears that there is some difference of view over which committee should deal with a particular matter.
- 8 The Audit Committee is responsible for its audit approach and the annual audit programme, involving internal and external audit where appropriate. Generally, the committee will rely on the investigations carried out by internal/external audit resulting in the reports which come before it i.e. it doesn't generally carry out its own investigations, given the special nature of the work. However, as mentioned above, members to have rights to certain information, even when not sitting on Scrutiny.

Conclusions

I was asked whether Scrutiny Committee members are entitled to ask the Company questions of detail about the Plan and to receive answers and whether Audit Committee had the same powers. To sum up from the preceding paragraphs:

- A Scrutiny needs to be clear in its purpose here – its relationship is with Cabinet and holding it to account/acting as a critical friend. It is not there to hold 3 Rivers to account. The Company is answerable to the Cabinet as shareholder and it is the Scrutiny: Cabinet dialogue which should be the focus, rather than looking to create a triangular relationship.
- B In fulfilling its role, Scrutiny Committee's first port of call should be requiring the attendance of Cabinet members and/or senior officers - and obtaining information which falls within the description/limits of the Access to Information Rules. Cabinet/officers may decide they need a director of the Company to attend in support – that is for them to decide.
- C If Scrutiny Committee still feels that it needs more information (acting reasonably and proportionately) it may request a director of the Company attends a meeting or it may send written questions. Again, however, the purpose must be clear and justifiable – and the Committee cannot require such attendance or such answers. Whilst individual members of Scrutiny may decide to ask questions, overall it is important that the Scrutiny Committee acts as a collective – whilst individual councillors have the rights described, the Committee as a whole should be in control of how it goes about its business.
- D Scrutiny should be having the dialogue with the Cabinet – ask it whether it has the information it requires, whether a certain piece of information would be relevant to the eventual decision, why it thinks XYZ etc.
- E The Constitution makes the rights of all members clear, including Audit Committee. In practice, Audit Committee tends to act by commissioning internal or external audit to carry out investigations on its behalf. The shareholder may also commission such reports and, where it does so, it is important that it considers the information sharing/transparency intentions.

Kathryn Tebbey

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