

The following questions were posed at Scrutiny Committee on 14th September 2020:

Is there any reason, either in statute or within the Council's constitution, that:

- 1 The Overview and Scrutiny Committee should not exercise its statutory functions in respect of all scheduled meetings of Cabinet including those deemed to be "informal". This would include having routine access to the documents associated with all scheduled meetings of the Cabinet?**
- 2 All elected members should not have the right to attend and ask questions at all scheduled meetings of Cabinet including those deemed to be "informal"?**

Background:

Informal meetings of Cabinet can take place without non-Cabinet members. They are the safe space for discussion and the start of policy development, as well as receiving briefing on matters of interest/importance. They are not unusual and not unlawful. They are not subject to the general rules of access by members of the public - and the Council's Constitution, in giving rights to non-Cabinet members to attend meetings of the Cabinet to speak (see page 123, rule 2.6), does not extend to attendance at informal meetings. Scrutiny Committee is also not entitled to any document in draft form (page 113).

At informal meetings, the Cabinet is not meeting as a decision-making body to exercise its statutory executive functions as a decision-maker. Yes, it is a meeting of members comprised in the Cabinet, but that does not make it a meeting governed by the Constitution and members' rights of access. All executive decisions which should be taken by Cabinet at a formal meeting either go through the PDGs, or direct to Cabinet (as per the Forward Plan).

Prior to 2012, there was a statutory prohibition on informal meetings of Cabinet to discuss decisions due to be taken in formal meetings within the next 28 days, if officers were present and the meeting was not for just briefing purposes. The purpose was to stop a Cabinet from taking sensitive decisions in private and rubber stamping them in public. That rule was repealed, but Cabinet must still not pre-determine before a formal meeting, nor make executive decisions outside of the formal processes.

To confirm, the constitutional rights of access, and of Scrutiny, relate to Cabinet when it sits as both a decision-making body and a decision-maker to make executive decisions. Many of the references and passages in the Constitution are derived from regulations¹. For example, the Cabinet is a "decision-making body" but it is not a "decision maker" unless it is making an "executive decision". A "private meeting" (or meeting in private) is a meeting when the public are excluded i.e. Part 2 business.

Answers:

The answer to Q1, is that there is no statutory nor constitutional right to, nor basis for, the scrutiny of informal meetings of the Cabinet. The Constitution sets out the scope of Scrutiny and non-Cabinet members' rights of access/attendance. For the reasons given above, an informal meeting of Cabinet, provided executive decisions are not taken, is outside scope of Scrutiny as of right and as per the current Constitution. If Members want to change this i.e. to bring Informal Cabinet within scope of Scrutiny, there is no statutory bar - but Members would

¹ the Local Authorities (Executive Arrangements) Meetings and Access to Information) England Regulations 2012; the Openness of Local Government Bodies Regulations 2014.

need to decide what rights are available, in what circumstances and how they are exercised. This would involve a change to the Constitution – via the Standards Committee to the Council.

In answer to Q2, the Constitution does not afford non-Cabinet members any rights to attend informal meetings of the Cabinet. It is a matter for the Council, and not me, to decide whether this should change.

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