

## **Looking at the future of Overview and Scrutiny at Mid Devon District Council**

### **Background – and why Overview and Scrutiny?**

Whilst some members were content to review governance arrangements and others did not perhaps see the need, it is now accepted that a specific Cabinet decision has been a particular source of discontent. Now, I think many will agree that you do not usually change the law to deal with a single event, but equally if something isn't broken, it doesn't necessarily mean that improvements are neither necessary nor desirable.

Policy development groups are fine as far as they go, but are they really providing the overview needed across services which feeds into policy development and review? That's not a criticism, but a genuine question. By setting up four groups with responsibility for distinct functions, there is a risk of repeating the historic service silos - which is something that, in my view, needs to change. And, we have to remember the specific statutory powers of Scrutiny to enquire and seek.

I recommend the Governance Working Group grapples with the idea that the Overview part of Scrutiny Committee is not quite where Members want it to be. It isn't just about pre-scrutiny of forthcoming decisions of Cabinet – and such pre-scrutiny is not to be a dry run of the debate at Cabinet; there must be some key focus and purpose which can add value to the Cabinet's decision-making at a later date. There must be a move away from being busy with lots of activity to evidenced impact/outcomes of the overview and scrutiny function. This is why policy development is an important part of the 'Overview' element – even the Council's current Constitution mentions this as being part of Overview and Scrutiny.

### **Purpose of Overview and Scrutiny:**

The purpose of Overview and Scrutiny could be categorised as:

To contribute to the effective and efficient delivery of services that meet the needs and aspirations of Mid Devon's residents, businesses, workers and visitors - as well as the wider policy aims which cut across physical and functional boundaries e.g. employment; crime and disorder; climate change; public health; infrastructure etc.

In fulfilling its purpose, the Overview and Scrutiny Committee will have the following core principles:

- Improving value and performance
- Listening and learning through positive questioning
- Getting underneath the data
- Having an eye on the wider picture
- Checking and benchmarking where appropriate
- Keeping an open mind and balancing disparate views
- Providing constructive criticism, feedback and – where it is due – praise
- Reviewing its own performance

### **Values and culture:**

Unless a council embraces the importance of overview and scrutiny, there is always the danger that it is seen as an 'add on' rather than an integral part of the organisation's governance arrangements. Where the balance is not quite right, the Executive can feel undermined in trying to fulfil its policy objectives and Scrutiny can feel disregarded and undervalued. Officers too can struggle in trying to support, within the Council's decision-making structure, the disparate roles of all councillors without being drawn, unwillingly and/or

unwittingly, into the political fray. As a result the function is not always afforded the prominence it deserves and opportunities to make the most of its potential can be missed. Importantly, an effective Overview and Scrutiny function, coupled with Audit, is an essential component in devising a sound governance risk framework.

## **Chairman**

The role of the Chairman of Scrutiny is a crucial one – it is essential that independence is fiercely maintained, regardless of political background. This means that the Chairman of Scrutiny must be, and must be seen to be, a key cog in the decision-making process in the Council – and should be supported in their independent actions through a culture which affords legitimacy and credibility to the role.

There are particular skills that are desirable in this role – I think it is worth reflecting on this and setting out a more detailed description of the role. This isn't just about selection/election – it is also a useful tool for self-reflection and assessment. We all, at times, need to ask of ourselves those questions – what is my role here and am I delivering? Rather than being something to hold up to the Chairman as any one time, it may actually be quite useful for the Chairman to be able to say – this is my role and that is why I have made that call/decision.

## **Structure:**

As Members have heard/said in previous meetings and in the all member survey/workshop, there is considerable concern around behaviours, as well as actual decision-making and influence. No structural change will fix that, unless the necessary culture and value shift is also embraced. That is why the first part of this paper did not go straight to structure. But now that we are here, my suggestions for consideration are set out below. This is an important part of the governance review – members have expressed their concerns (the 'you said' bit) and the working group should now consider whether changes to the Scrutiny function will go part, some or a lot of the way to giving Members the means (if they embrace them) to address those concerns (the 'we did' bit).

2 Overview & Scrutiny Committees comprising 11 councillors each. 6 scheduled meetings per year. To be clear, additional meetings can be called to deal with urgent business and call-in, where there is a significant gap to the next meeting. Each committee to meet in alternate months to allow the Scrutiny Officer sufficient time (with support from colleagues) to follow-up the scheduled work programme. Work split – see below for options/suggestions.

1 Joint Overview & Scrutiny Committee (all 22 councillors) to meet twice a year, but additional meetings can be arranged if necessary. Rotating chair between the two or stand-alone chair? Purpose – training; briefings; review of practice/how it's going; resolving any concerns about the work split/allocation between the committees; make recommendations to Standards Committee about the structure & procedural rules. Consider inviting Leader and Chair of Audit to attend for certain items – they can attend anyway, but there may be some business on which their views are expressly sought.

Programming Panel – whether a council has one or multiple Overview & Scrutiny Committees, the reality is that it needs to focus, it cannot scrutinise everything. This is where the Programming Panel is invaluable in deciding where that focus is best directed. The Council already has a scrutiny request form and the use of this form will be important i.e. requests should be put into the Panel, rather than directly to any particular meeting. Whilst some may see this as negating the individual rights of members, a degree of planning and filtering should not be seen as a bad thing. I'm sure that a balance can be struck (in the rules).

Membership of Panel - Chairs and Vice-Chairs of the 2 O&S Committees; Chair and Vice-Chair of Audit Committee; Leader (Deputy Leader) of the Council. Meetings (informal) held 1/4ly to review and plan short/longer term programme of work across the 3 committees (2 Scrutiny and 1 Audit). Officer attendance – Chief Executive/Deputy Chief Executive?

**Work split – options:**

**Option 1 – functional split**

Corporate O&S	<ul style="list-style-type: none"> <li>• New policy development</li> <li>• Finance, assets and resources</li> <li>• Digital change/ICT</li> <li>• Corporate matters</li> </ul> <p>NB – this is not audit by another door and the demarcation between Corporate O&amp;S and Audit Committee will need to be clarified.</p>
Community O&S	<ul style="list-style-type: none"> <li>• Reviewing and assessing the impact of current policies and decision-making on Mid Devon communities and stakeholders and recommending changes to Cabinet or to Joint Overview and Scrutiny Committee</li> <li>• Service delivery and performance</li> <li>• Community engagement</li> <li>• Local partnerships</li> <li>• Parish and town councils</li> </ul>

If we take the Cabinet agenda of 7 January 2021, the items could be allocated (for pre or post decision scrutiny) as follows:

CCTV Policy – Corporate

Cullompton Station – Community

Disposal of Park Road Nursery – Corporate

Annual report of Compliments, Comments and Complaints - Community

**Option 2 – subject split (e.g.)**

Economy, Planning and Place	<ul style="list-style-type: none"> <li>• Climate Change</li> <li>• Planning policy and service delivery</li> <li>• Economy, business and tourism</li> <li>• Sport, recreation and leisure</li> <li>• Property Assets</li> </ul>
Community Services	<ul style="list-style-type: none"> <li>• Housing</li> <li>• Environmental Health</li> <li>• Waste Management</li> <li>• Community Safety</li> </ul>

Taking the same four sample items:

CCTV Policy – Community Services

Cullompton Station – Economy etc.

Disposal of Park Road Nursery – Economy etc.

Annual report on compliments - Community

Considerations:

Option 1 is likely to provide greater coverage of the entire council function and avoids a strict silo approach. However, discrepancies and uncertainty will only be ironed out when Members work with the new structure for a period of time and then review it (the revised scrutiny function) after a year (recommended).

**Other matters/questions:**

- 1 Audit Committee comprising 11 councillors – increase from current 7? 6 scheduled meetings per year; special meetings as needed. I think there is a need to review the remit of Audit and its distinction from Scrutiny, making this clear in the Constitution – e.g. governance and risk v policy/decision-making. It's important that an objective Audit function is a step removed from the decision-making processes. As part of this thinking, there is also a need to look at the number of councillors who sit on Audit.
- 2 Abstentions – there is a presumption that councillors who merely abstain from voting are not that far off assenting to the resolution. The principles are drawn from common law. The principle that abstention may amount to acquiescence is at least partly based on the duty that a councillor undertakes in making their declaration of acceptance of office. If a councillor has material concerns, they should show their decision in dissent. However, we know it is not that simple in practice – abstention could be for a number of reasons, but there is a sense that it is used more and more frequently.
- 3 Quorum and number voting for/against – these are the statutory requirements:
  - no business shall be transacted at a meeting of a principal council unless at least one quarter of the whole number of members of the council are present.

For Full Council, the  $\frac{1}{4}$  rule is applied. For other meetings, the Constitution requires at least  $\frac{1}{2}$  of membership of the particular body to be present. So for a Cabinet of 8, this will be 4 members. It is open to the Council to increase the quorum, but accepting the risk of becoming inquorate.

  - Subject to the provisions of any enactment (including any enactment in this Act) all questions coming or arising before a local authority shall be decided by a majority of the members of the authority present and voting thereon at a meeting of the authority

So, unless some legislation specifies a different voting threshold for a particular decision, a majority vote is mandated and cannot be overridden by the Constitution.

- 5 Informal briefings/meetings – there is a perception that all work should be conducted at formal meetings. Yes, it is necessary to guard against taking decisions in private without due process, but initial discussions, briefings and policy shaping can be undertaken informally. The advantage is that more members will have early insight and input. It doesn't mean that the end result brought for a decision will fit the aims and aspirations of all, but at least there will be a greater understanding of where the areas of interest and concern lie and how these might be addressed/answered (where possible).
- 6 Community engagement – not strictly within the remit of this working group, although the quality of local external relationships – public, stakeholders, organisations etc. – can be part of the wider governance framework. You will note that, in option 1 above, the Community O&S would have community engagement as part of its remit.
- 7 What else?

Kathryn Tebbey

Head of Legal (Monitoring Officer)

February 2021