

REPORT OF THE HEAD OF DEMOCRATIC SERVICES

Reporting Officer: Head of Democratic Services

(i) URGENT IMPLEMENTATION OF DECISIONS

RECOMMENDATION: That the Urgency decisions detailed below be noted.

Information

1. The Constitution allows a Cabinet or Cabinet Member decision to be implemented before the expiry of the 5 day call-in provided there is agreement from the Chief Executive and the Chairman of the Executive Scrutiny Committee to waive this. All such decisions are to be reported for information only to the next full Council meeting.
2. Since those noted at the 4 July 2019 Council meeting, the following decisions have been made using urgency procedures:

Date of Decision	Decision Type / Nature of Decision	Decision-Maker
02/07/2019	School Condition Programme 2019/20: Lady Bankes Infant and Junior Schools - Windows Replacement Project (Release No. 1)	Leader of the Council and Cabinet Member for Finance, Property & Business Services
02/07/2019	Housing Revenue Account Works to Stock 2019/20: Appointment of a Works Contractor for properties in Lundy Drive caused by Fire and subsequent water damage - New Build and Refurbishment (Release No.18)	Leader of the Council and Cabinet Member for Finance, Property & Business Services
11/07/2019	Uxbridge Christmas Market Contract	Leader of the Council
16/07/2019	Housing Revenue Account - Major Adaptations to Property for residents 2019/20 – (Release No.1)	Leader of the Council and Cabinet Member for Finance, Property & Business Services
19/07/2019	Tender Acceptance for Major Adaptations to a property in Glebe Avenue, Ickenham	Leader of the Council and Cabinet Member for Finance, Property & Business Services
26/07/2019	School Condition Programme 2019/20: Whiteheath Junior School Replacement of Mobile Classroom - Appointment of Contractor with Capital Release (Release No 2)	Leader of the Council and Cabinet Member for Finance, Property & Business Services
26/07/2019	Managed Service for the Supply & Distribution of Materials for the In-House Repairs Team	Leader of the Council and Cabinet Member for Finance, Property & Business Services
12/08/2019	Disabled Facilities Grants to residents 2019/20 (Release No.1)	Leader of the Council and Cabinet Member for Finance, Property & Business Services
12/08/2019	Housing Revenue Account - Major Adaptations to Property for residents 2019/20 (Release No.2)	Leader of the Council and Cabinet Member for Finance, Property & Business Services

Date of Decision	Decision Type / Nature of Decision	Decision-Maker
20/08/2019	Highways, Carriageway & Footways Detailed Visual Inspection Contract	Leader of the Council and Cabinet Member for Planning, Transportation & Recycling
28/08/2019	Private Sector Renewal Grant (PSRG) 2019/20: Essential Repairs and Grant – Release No.1	Leader of the Council and Cabinet Member for Finance, Property & Business Services
04/09/2019	Award of Contract: Appointment of a Contractor for the Refurbishment of Council Libraries and Associated Capital Release.	Leader of the Council / Cabinet Members for Finance, Property and Business Services & Central Services, Culture & Heritage

Background Papers: Decision Notices

(ii) CONSIDERATION OF THE 2019 STATUTORY GUIDANCE ON OVERVIEW AND SCRUTINY IN LOCAL AND COMBINED AUTHORITIES ISSUED BY HM GOVERNMENT

RECOMMENDATION: That Council considers the 2019 Statutory Scrutiny Guidance and

- a) adopts the new Protocol on Overview & Scrutiny and Cabinet Relations as Table 2 in Schedule E - Policy Overview, Scrutiny and Select Committee Procedure Rules in the Council’s Constitution (see pages 17 & 18), and
- b) agrees the associated new Paragraph 19 to those Rules, as set out in section c) of this report (see page 18).

Background to overview and scrutiny

- 1.1 Larger local councils are required to have more than one overview and scrutiny committee as part of their core governance arrangements. The structure is local choice and most unitary councils have a number of such committees usually structured around cross-cutting service areas, engaging Councillors not in the executive in a variety of activities. Their role is similar to that of select committees in Parliament, broadly to:
 - i) assist in the development of council policy;
 - ii) question and evaluate the actions of the executive, both before and after decisions are taken; and
 - iii) have the power to make reports and recommendations on such matters.
- 1.2 Since 2010, overview and scrutiny in Hillingdon has been separated into “scrutiny” and “policy overview” to provide greater clarity in exercising these functions.
- 1.3 Overview and scrutiny in Hillingdon has made a difference. Over the years, committees have undertaken successful in-depth reviews of Council services, policies and also of our external partners. This has resulted in a number of positive changes locally, with some also influencing changes at a national

level. Such committees engage Members in a wide range of Council activity and build a greater understanding about service provision to residents.

- 1.4 Ultimately, the committees' efforts have been at their best when external witnesses and residents participate. In support of this, Committees have undertaken their own consultations, surveys, called expert technical witnesses, held site visits, informal networking events and, most importantly, have heard testimony directly from the community, including residents, businesses, schools, charities, parents and young people. This wide engagement has added value to recommendations made to the decision-making Cabinet to improve local service provision and affect policy.
- 1.5 At the Council AGM on 10 May 2018, it further reviewed its overview and scrutiny arrangements and streamlined the number of Policy Overview Committees, enabled the operation of new multi-year work programmes to provide more flexibility for committee work programmes and in-depth reviews, whilst also integrating important corporate parenting responsibilities directly within these governance arrangements.
- 1.6 An annual report is presented to Council each May highlighting the work of overview and scrutiny and from June 2019 all committees started broadcasting live on YouTube, further promoting and engaging residents in this vital part of Hillingdon's local democracy.

National consideration of overview and scrutiny

- 1.7 On 15 December 2017, the then Communities and Local Government Select Committee finalised their inquiry into local authority overview and scrutiny arrangements and made a number of recommendations to improve their effectiveness, following feedback from a wide range of witnesses, local councils and the Centre for Public Scrutiny (CfPS).
- 1.8 In 2018, the Government published its response to the Select Committee's review and whilst supporting many of the findings, it acknowledged that key aspects should remain 'local choice' for councils themselves to determine based on local circumstances. The Government did concur with a central recommendation from the Select Committee that overview and scrutiny committees should report to an authority's full Council meeting rather than to the executive, mirroring the relationship between Select Committees and Parliament. Some practical concerns were expressed that this would delay the democratic process given that it would ordinarily be the decision-making Cabinet that would be responsible for implementing any recommendations. The Government also accepted that more could be done to scrutinise external service providers and contractors so that overview and scrutiny could fully follow the "council pound". This latter aspect was welcomed by many local councils.
- 1.9 To bring this national exchange together into firmer policy, the Government agreed to update its Statutory Guidance to local authorities.

The new Statutory Guidance

- 1.10 After some delay, in May 2019, the Ministry of Housing, Communities and Local Government published new Statutory Guidance on Overview and Scrutiny and extended this to include the new combined authorities now in existence. The Guidance was prepared with the assistance of the CPfS and Association of Democratic Services Officers (ADSO) who also co-ordinated input with local councils.
- 1.11 The Statutory Guidance is attached in **Appendix A** for all Members to fully consider. In the Guidance, the Government stresses the strong organisational culture that should underpin overview and scrutiny, the role it can play in holding an authority's decision-makers to account, ensuring the efficient delivery of public services and driving improvements within a council and beyond. Fundamentally, the Government also recognises that councils have their own democratic mandates and are ultimately accountable to their electorate, and that councils themselves are best-placed to decide their arrangements based on local circumstances. However, the Government does ask that all councils cast a critical eye over their existing arrangements to ensure a culture that allows overview and scrutiny to flourish. The Statutory Guidance is based around key sections of:
- Culture – how a strong organisational culture can support scrutiny's work to add value and the relationship with the executive;
 - Resourcing – best using organisational resources to sustain an effective scrutiny function;
 - Members - selecting committee members, chairmen, training and co-opted members;
 - Information - power to access council information and information and attendance from external partners and contractors;
 - Planning – co-ordinating work programmes, witnesses, information sources, shortlisting topics to review etc...and;
 - Evidence – planning for witness sessions, developing recommendations.
- 1.12 The Statutory Guidance also includes hypothetical illustrative scenarios on creating an executive-scrutiny protocol setting out their relationship, along with guidance on how committees can secure independent advice for their reviews and approaches to external organisation to appear before a committee.
- 1.13 As Statutory Guidance, by law councils must have regard to it when exercising their functions. The phrase 'must have regard', when used 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 do so in a particular case. In addition, the Guidance advises that councils may have regard to other material they might choose to consider, including that issued by the CfPS, when exercising their overview and scrutiny functions.
- 1.14 In light of this, therefore Members should note that the CfPS and ADSO have been engaged in updating the *Good Scrutiny Guide* which was published in June 2019. This has been circulated to Committee Chairmen and Democratic

Services Officers as a useful resource to guide committee advice and activity going forward. It is also a background paper to this report should Members wish to read it further.

- 1.15 **It is advised that the new Statutory Scrutiny Guidance does not require the Council to make any structural changes to its current overview and scrutiny arrangements.** In fact, in anticipation of the Guidance, some relevant changes required were made by Council in May 2018. Furthermore, overview and scrutiny legislation is flexible in that it recognises that councils are democratically elected and best placed to determine their own arrangements.
- 1.16 The Statutory Guidance is regarded by some practitioners as slightly weaker on 'policy' than expected and largely concentrates on best practice about how committees can operate most effectively, e.g. work planning, holding witness sessions, establishing panels and how to develop recommendations.
- 1.17 Whilst Hillingdon's current arrangements already include some of the best practice cited in the Statutory Guidance, e.g. multi-year work programmes for flexibility and in-depth reviews along with effective scrutiny of external partners, both Members and officers will still wish to have full and due regard to the guidance to determine whether any changes are required to further strengthen overview and scrutiny arrangements in Hillingdon.
- 1.18 Democratic Services have comprehensively reviewed the Statutory Guidance. It is considered that many aspects that are *best practice* in nature are best taken forward by individual Chairmen, Committee Members and Democratic Services Officers, having due regard to it during the development of policy reviews and multi-year work programmes.
- 1.19 However, there are some slightly more fundamental aspects of the new Statutory Guidance that should more appropriately be considered by full Council and that may also require constitutional change. These aspects are set out in a) to g) below, along with recommendations after having full regard to the Guidance.

a) access to information

- 1.20 By default, committees have always enjoyed substantial access to a wide range of data and information to support their reviews and multi-year work programmes, whether from within the Council or externally. Any common law "need to know basis" for such Members is rarely considered by officers. For example, information to committees has included contact centre data, statistics, GIS maps, officer reports, case studies, contractor performance data, financial updates, complaints and policy updates. As outlined later, all Members are also provided full details of all Public and Part II confidential executive reports.
- 1.21 Requests for information to support any scrutiny, monitoring or policy review activity are ordinarily made via the Chairman or the Committee agreeing and the Democratic Services Officer supporting the Committee will then commission the request and provide the Committee with the information once analysed and ready. This regular information and intelligence gathering is

undertaken entirely outside of the Members' Enquiries process. Democratic Services Officers also regularly request information from partner organisations and external subject experts.

- 1.22 For clarity, the additional rights of access to information for overview and scrutiny Members and Committees, which are also referred to in the Statutory Guidance, are set out officially in the Council's Constitution and Section 17 of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
- 1.23 In addition to all published public executive reports, these provide for any such committee or committee member to access any published private (Part II) executive report, listed background paper or decision notice, but only if the matter in the private report relates to work the Member is doing as part of the Committee's work programme, e.g. scrutinising a decision, action or for a policy review. If requested, such information should be provided within 10 clear days by the Cabinet or Cabinet Member. Where the Cabinet or Cabinet Member decides otherwise, they must provide the Committee or Member with a written statement setting out the reasons why.
- 1.24 In Hillingdon, however, every Part II private executive report published, listed background paper and decision notice is available to view by all 65 Members of the Council. This has been the practice for many years in the wider interest of full democratic transparency and irrespective of an individual Members' role on any committee. This practice also applies to non-executive Part II reports for other committees, e.g. Audit Committee or planning enforcement reports. Therefore, in the round, all Hillingdon Members have enjoyed, for many years, access to official information that exceeds legal requirements.
- 1.25 If Members wish to conduct their own research, but outside usual Policy Overview, Scrutiny or Select Committee information channels or over and beyond the above legal access to information provisions, then this can be undertaken by themselves, through their respective Cabinet / Shadow Cabinet Policy Officers or via the Members' Enquiries process, subject to the amended Protocol adopted in May 2019 where it does not relate to their ward.
- 1.26 The Statutory Scrutiny Guidance recommends a default position for councils to adopt in respect of requests for information, stating:
- "While each request for information should be judged on its individual merits, authorities should adopt a default position of sharing the information they hold, on request, with scrutiny committee members."*
- 1.27 Additionally, the Statutory Guidance refers to cases where, if it is not possible to make information requested by a committee public, that the committee 'in meeting' should still be able to consider this in private. For example, the previous Corporate Services and Partnerships Policy Overview Committee has considered the Heathrow Airport Cumulo / Business Rate matter in private. In such cases, Democratic Services would appropriately consider a private Part 2 session of a committee meeting in order to ensure overview and scrutiny Members had the fullest possible information to carry out their role effectively.

- 1.28 Given the broad access to information for overview and scrutiny members to council information outlined above, it is not considered any changes are required to existing procedures or the Council Constitution in this regard. However, this will be kept under review by Democratic Services.**

b) information reporting

- 1.29 Policy Overview Committees currently receive a wide range of information to monitor council service provision on a regular basis. This includes service reports, complaints and ombudsman findings, financial updates, the Forward Plan etc...
- 1.30 The Statutory Guidance states that scrutiny will need access to relevant information to inform its work programme and that the type of information will depend on the specific role and function scrutiny plays within the authority. It includes a few examples of information reporting to committees that currently does not take place in Hillingdon, e.g. risk management and options appraisals before Cabinet decisions.
- 1.31 Members should note that currently there is quarterly reporting on risk management (corporate risk register) undertaken by the Audit Committee and reporting to a Policy Overview Committee would duplicate this activity. Additionally, in the case of committees considering, as the Guidance states, 'options appraisals' in advance of key executive decisions, these are matters under the auspices of the Cabinet in the Constitution. However, this is not to say there may be opportunities for such reporting following discussions with Cabinet Members. The proposed protocol set out in c) below may assist with this.
- 1.32 It is considered that the current Terms of Reference of the committees are broad enough to provide for any additional information reporting that is agreed by relevant parties. Therefore, it is not considered that any changes are required to the Constitution in respect of this.

c) scrutiny / executive relationships

- 1.33 The central element of the Statutory Guidance and also the CfPS's Good Scrutiny Guide is how overview and scrutiny committees build an effective relationship with the executive that it is also scrutinising or recommending changes to. The Guidance emphasises the need for a clear acceptance of scrutiny's independent role by a council's executive and an understanding that scrutiny will also have a degree of political dimension. However, the guidance does not encourage an adversarial relationship between scrutiny and executives. The Good Scrutiny Guide states, "*While the executive should not direct scrutiny's priorities, scrutiny work will need to reflect at least some of the executive's priorities in order to ensure that it is adding value*". Furthermore, the Statutory Guidance states that "*the executive is a principal partner*" in discussions on scrutiny's work programme and that conversation will help scrutiny members better understand how their work can be designed to aligned to best influence a council's wider work.

- 1.34 As all Members will be aware, effective scrutiny can sometimes involve looking at issues that can be politically contentious. It is, therefore, possible that, at times, an executive will disagree with the findings or recommendations of a committee. The Guidance advises that is the job of both the executive and scrutiny to work together to reduce the risk of this happening, and authorities should take steps to predict, identify and act on disagreement and setting out a way to achieve this.
- 1.35 In Hillingdon, this relationship management is appropriately undertaken by Committee Chairman, the Statutory Scrutiny Officer and Democratic Services Officers. For example, this may involve Cabinet Members being briefed at the key scoping and recommendation phases of a committee's policy review, as a key partner, to gauge support. It may also involve consultation with Corporate Directors on future committee reports and suggestions on service areas that may benefit from monitoring as part of a committees multi-year work programme. Additionally, where Committees decide, as is their prerogative, to invite Cabinet Members to attend meetings, this can be extremely useful in supplementing any officer advice and giving a broader understanding of the Council's decisions or policy direction.
- 1.36 In respect of prospective policy review topics, ideas are sought not only from Committee Members but the wider corporate body to ensure any topic can add real value to the Council to improve local service provision.
- 1.37 Ultimately and always, it should be for an individual committee to decide its own priorities and work without any direction from the executive, however, the importance of gaining support from the executive and wider organisation should never be underestimated by committees, as they are constitutionally and legally responsible for policy, council services and implementing any recommendations.
- 1.38 As council budgets have shrunk nationally, Hillingdon has led the way in making taxpayer's money go further, both to maintain and also improve front-line services for residents. It is increasingly important, therefore, for overview and scrutiny committees to ensure they also operate within this same environment. Recommendations from committees that potentially incur new or unplanned in-year costs on a council's budget need to be carefully considered before they are taken forward, for both the benefit of overview & scrutiny but also the executive that oversees the Council's finances.
- 1.39 To assist with pre-decision scrutiny when committees are monitoring the Forward Plan, Cabinet Members may consider authorising (as they sometimes do), that draft executive reports be presented before a committee for their insight and input before it comes to them or the Cabinet for final decision. Furthermore, committees are also statutorily consulted on the annual budget and key strategies prior to any final Cabinet consideration and Council approval. To provide for pre-decision scrutiny, there is a standard section on all executive reports for "Policy Overview Committee Comments".

Protocol on Overview & Scrutiny and Cabinet Relations

- 1.40 In light of the above, and as specifically recommended in the new Statutory Scrutiny Guidance, the Council may wish to formalise and make more

transparent the expected relationship between overview & scrutiny and the Cabinet by agreeing a Protocol, one that also considers local circumstances and dynamics.

- 1.41 As this is a key recommendation within the Statutory Guidance, it is recommended that full Council considers the matter at the earliest opportunity and that a new *Protocol on Overview & Scrutiny and Cabinet Relations* be adopted as part of the Schedule E, the Committee Procedure Rules in the Constitution as Table 2 (Table 1 being the Committee's Terms of Reference).
- 1.42 The Statutory Guidance provides an illustrative approach to such a Protocol and the CfPS's Good Scrutiny Guide sets out common themes and principles that one could embody. Additionally, the Guidance places value on conversations with Members and officers in its development, which has taken place.
- 1.43 All of the above has been taken into account in the development of the Protocol proposed below, which seeks a careful balance that maintains the integrity of these two democratic functions, whilst understanding the need for them to work collaboratively together for the wider benefit of the Council and community:

Table 2 - Protocol on Overview & Scrutiny and Cabinet Relations

This protocol sets out the practical expectations of Policy Overview, Scrutiny and Select Committee Members and Cabinet Members to ensure an effective relationship that adds value to overview and scrutiny governance in Hillingdon.

Notwithstanding their independent role, **Committee Members** are expected to:

- Take into account suggestions from Cabinet Members as well as other stakeholders, on the development of their multi-year work programmes or policy reviews to ensure strong organisational and community support;
- Ensure appropriate early engagement with Cabinet Members on draft policy review recommendations in order to gauge support.
- Seek early engagement with the relevant Cabinet Member, Cabinet Member for Finance, Property and Business Services and Leader of the Council to consider the viability of draft policy review recommendations that may have a financial consequence;
- Seek the support of the relevant Cabinet Member, Leader of the Council and Corporate Director when it considers to compel a particular contractor providing Council services to provide information or attend a meeting;
- Through Democratic Services, ensure Corporate Directors and Cabinet Members are kept regularly informed about the committee's activity and multi-year work programmes.
- Liaise with the relevant Corporate Director, Cabinet Member and Leader of the Council should exceptional financial or officer resources be required in order to undertake a particular future work activity or policy review.

Respecting the independent role of the committees, **Cabinet Members** are expected to:

- Never personally seek to direct the activity of a committee, though they may make suggestions or request matters of interest to be considered by a Committee;
- Ensure their attendance to provide information when requested by the Committee (noting that further informal and formal provisions by a committee for this are set out in the Constitution).
- Actively support the provision of relevant council information and other requests from the Committee as part of their work programme;
- Fully and openly, consider any findings from a committee following a formal scrutiny call-in or from any final recommendations presented to Cabinet from a policy review.
- Where feasible, provide opportunities for committees to provide their input on forthcoming executive reports as set out in the Forward Plan to enable wider pre-decision scrutiny (in addition to those statutorily required to come before committees);
- Ensure all recommendations from committees approved by the Cabinet are implemented in a timely and effective manner by officers, and that this be monitored regularly by Corporate Directors, as it is with the Committees themselves.

In the unlikely event that that a difference in view occurs between the parties, the Committee Chairman, Committee Member or Cabinet Member should inform the Statutory Scrutiny Officer, who will seek to resolve the matter in accordance with this protocol, the Council's Constitution and other relevant guidance and will consider the best interests of both overview & scrutiny and the executive. Should the matter not be resolved, any final determination will be by the Monitoring Officer. The Statutory Scrutiny Officer will report on the effectiveness of this protocol as part of the Annual Report to Council each year.

- 1.44 A new paragraph 19 will also be required in the Committee's Procedure Rules - Schedule E in the Constitution - in order to reference the Protocol as shown below:

19. Protocol on Overview & Scrutiny and Cabinet Relations

In addition to the procedures set out in Schedule E, a Protocol in Table 2 sets out the practical expectations of Policy Overview, Scrutiny and Select Committee Members and Cabinet Members to ensure an effective relationship that adds value to overview and scrutiny governance in Hillingdon.

d) corporate & officer support

- 1.45 The Statutory Guidance refers to the role of the Statutory Scrutiny Officer in supporting and promoting overview and scrutiny and providing guidance to Chairmen, Committees and Members. In Hillingdon, the Senior Democratic Services Manager is the Statutory Scrutiny Officer and this post is well

regarded as a key strategic role in the Council reporting not only to Members, but also to the Corporate Management Team on a monthly basis advising Corporate Directors on both future executive and also scrutiny business, and where required, their interrelationship and successful progression through the organisation to Members. Furthermore, Corporate Management Team place a high value on the insight of overview and scrutiny to help improve services and they also monitor the implementation of committee recommendations approved by Cabinet through the same tracking system used by Committees to ensure their effective delivery.

- 1.46 The Statutory Guidance refers to different officer support models for overview and scrutiny and advises that councils themselves are free to decide which model best suits their individual circumstances. In Hillingdon, a hybrid arrangement exists that encompasses all three suggested models. A dedicated Democratic Services Officer is allocated to support each Committee and provides both the essential clerking role but also specialist research advice. Additionally, technical officers from the corporate centre or service areas are commissioned to advise a committee, say as part of a policy review. The Statutory Scrutiny Officer strengthens these arrangements by providing strategic advice and challenge.
- 1.47 The Guidance stresses the importance of communicating scrutiny's role and purpose within a council and beyond. In Hillingdon, regular masterclasses are held for staff and managers to better understand the democratic process, which includes overview and scrutiny. Additionally, an online toolkit is available to staff to learn in more detail about how overview and scrutiny works in Hillingdon. Bespoke seminars have also been held for Officers and Members. Beyond this, the decision to broadcast meetings on YouTube will certainly enhance its wider public profile.
- 1.48 Therefore, it is considered that current strategic and operational arrangements to support and promote overview and scrutiny are strong and suitable for the size of the Council.

e) reporting to Council

- 1.49 Notably missing from the Statutory Guidance is the Government's earlier commitment in 2018 for a more fundamental change so that any scrutiny policy reviews would automatically be referred to full Council (instead of Cabinet). This is not included in the new guidance, stating that this should be a matter for scrutiny to decide when it would be appropriate, but also taking into account full Council's capacity to consider and respond.
- 1.50 Full Council is the Borough's primary democratic forum. As previously stated, there is an annual report on the activity of overview and scrutiny in Hillingdon presented to Council each May, keeping Council informed. To supplement this, for any committee report that has already been considered by Cabinet, but that may be of wider community significance, the Constitution allows Cabinet to refer it to an ordinary full Council meeting (for noting only), which could amplify public awareness about a subject, whilst also showcasing how Cabinet and scrutiny collaborate effectively together.

- 1.51 It is widely considered that for overview and scrutiny to be most effective, any recommendations made by committees should go to the relevant accountable body that can consider them, in order to be implemented or become official policy.
- 1.52 In that spirit, Hillingdon's Constitution provides for committee reports and recommendations to be referred to Cabinet as the appropriate body where it complies with the approved budget and policy framework, as is the usual course of events. Conversely, where a committees' proposals seek to deviate from that approved budget and policy framework it would be full Council (not Cabinet) to consider and make such a decision.
- 1.53 Overall, the Constitution provides for the ability to keep full Council well informed about overview & scrutiny and allows for formal reporting to both Cabinet and full Council, in the relevant circumstances. Therefore, it is considered that no changes need necessarily be made in respect of this part of the Statutory Guidance.

f) Members and selecting committee chairmen

- 1.54 The Statutory Guidance gives advice on how councils may wish to select Members to serve on committees, alongside with the importance of training and Member induction. It, along with the Good Scrutiny Guide from the CfPS, places much focus on the important role of chairmen themselves in raising the profile and impact of their committee.
- 1.55 Whilst being clear that it should be for particular councils to decide, the Guidance does request that each council consider taking a vote by secret ballot to appoint all chairmen of overview and scrutiny committees. In Hillingdon, such appointments are made in public at the Council AGM, following political group recommendations. It is suggested that a secret ballot could represent a retrograde step, reducing the transparency of decision-making and that it may not befit a modern, democratic public body. Unless Members consider otherwise, it is not recommended to pursue this particular secret ballot proposal.
- 1.56 The Guidance welcomes the provision of outside expertise on committees and requests councils make clear their arrangements for co-opted members and also, if needed, the use of external technical advisers (e.g. consultants or academic professionals). The Council's Constitution includes the ability to appoint a standing co-opted member with particular expertise to assist committees in their work (this has previously been done). In addition, any technical advisor, if required by a committee, would in effect become a standing witnesses at relevant meetings.

g) following the council pound / scrutinising contractors

- 1.57 The Statutory Guidance seeks to strengthen the way committees can access information from external organisations. It gives advice on how to approach external organisations, particularly those where there is no legal duty to provide committees with information. In Hillingdon, committees have much experience in this regard, fostering good relations with partner organisations, private sector companies and regularly inviting such external organisations to

attend as witnesses for policy reviews, with representatives at both junior and board level.

- 1.58 When necessary, the Guidance encourages the ability for committees to monitor and scrutinise organisations that receive public funding to deliver goods and services, i.e. “to follow the council pound”. This would include services that are contracted out. The Guidance highlights the expectation of such external organisations to provide any information required by a committee and even appear before a committee to answer questions. The Guidance states:

“when agreeing contracts with these bodies, authorities should consider whether it would be appropriate to include a requirement for them to supply information to or appear before scrutiny committees.”

- 1.59 Should a contractor attend a committee meeting in Hillingdon, it would ordinarily be on an informal basis with the relevant ‘client’ service manager present, e.g. if the committee is undertaking an in-depth review of a service area and key aspects of it are undertaken by contractors.
- 1.60 Where a committee ever wished to formally compel a council contractor to supply information or attend a meeting, this would inevitably be in an exceptional circumstance, for example, where contractual performance had affected a large number of residents and lessons may need to be learned by relevant parties.
- 1.61 In Hillingdon, should there be an exceptional need in the future for a committee to compel a particular contractor, the Head of Procurement advises that current contract clauses enable the Council to inspect any document under their control and also requires their officials to attend for interview in connection with the provision of those services. While ordinarily this would be undertaken by officers, the clauses also enable this to be by a committee in an exceptional case.
- 1.62 Crucially, Members should note that it is the Cabinet that is responsible for authorising contracts, and officers for monitoring them, therefore, any consideration to compel a contractor by a committee, should first seek support from the relevant Cabinet Member and Corporate Director. A reference to provide for this vital collaboration this is included in the proposed Protocol in section c).
- 1.63 A core Term of Reference of the Policy Overview Committees in the Constitution is to ‘monitor the performance of council services’ and this would be irrespective of a service being delivered directly by the Council or contracted out.
- 1.64 Full Council is the body responsible for any changes to the Constitution and also the Procurement Standing Orders. It is, therefore, advised that no changes are required to these policies to enable committees to be able to effectively ‘follow the council pound’ as set out in the Statutory Guidance.

Implementation

- 1.65 The key constitutional change being recommended in light of the Statutory Guidance is the adoption of a new *Protocol on Overview & Scrutiny and Cabinet Relations*. This protocol would come into immediate effect following Council approval and communicated to have regard to by the relevant parties.
- 1.66 Full regard has been given to the key aspects of the Statutory Scrutiny Guidance as set out in this report. All other parts of the Guidance and the varied best practice suggestions within will be actively taken forward by chairmen, committee members, Democratic Services Officers and the wider organisation to ensure they have due regard to it when undertaking overview and scrutiny committee activity and work planning.

FINANCIAL IMPLICATIONS

There are no direct financial implications arising directly out of this report. The proposed Protocol seeks to clarify arrangements between overview & scrutiny and Cabinet in relation to future review recommendations that may have a financial impact.

LEGAL IMPLICATIONS

Overview and scrutiny committees are creatures of statute and were first introduced by the Local Government Act 2000 as part of the then Government's models of new executive governance arrangements for local authorities. This legislation has since been strengthened and updated, most notably by the Localism Act 2011.

The practice and operation of overview and scrutiny committees has evolved at Hillingdon over the years but it is important to note that it has at all times been fully compliant with the law.

The Ministry of Housing, Communities and Local Government issued new 'Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities' in May 2019 under section 9Q of the Local Government Act 2000 and paragraph 2[9] of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009.

The legal status of this Guidance, as prescribed by the above legislation, is that such authorities must have regard to it when exercising their functions. It is important to note that the wording, 'must have regard' 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. In addition, authorities may have regard to other material they might choose to consider, including that issued by the Centre for Public Scrutiny, when exercising their overview and scrutiny functions.

The Borough Solicitor advises that the recommendation in this report, which includes the adoption of a new Protocol on Overview & Scrutiny and Cabinet Relations, fully complies with both the Local Government Act 2000 as

amended, and also with the new statutory guidance, and therefore it is lawful for full Council to agree and implement it.

The Borough Solicitor further advises that the new statutory guidance does not require the Council to make any structural changes to its current overview and scrutiny arrangements which explains why there is no recommendation in the report to this effect.

It is important to note that the new statutory guidance should not be confused with the Protocol for Member and Officer Relations which Members of the Council will recall was amended at the AGM in May. Overview and Scrutiny is underpinned by a robust statutory framework and statutory guidance, whereas the Protocol is, as the Borough Solicitor has previously advised, to a large extent a written statement of practice and convention. Moreover, whilst there is a reference in the Protocol to a duty imposed on officers or Members [subject to certain provisos] to attend and answer questions if a Policy Overview, Scrutiny and Select Committee so requires, and that Members of such Committees have greater rights of access to information, there is otherwise no direct correlation between the overview and scrutiny process and the Protocol and therefore they should be treated as separate and distinct from each other.

BACKGROUND PAPERS: i) Communities and Local Government Select Committee review findings into the effectiveness of local authority overview and scrutiny arrangements. ii) The Government's response to the Select Committee's findings. iii) Good Scrutiny Guide - CfPS - June 2019. iv) The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

iii) **AMENDMENT TO THE COUNCIL CONSTITUTION**

Health and Wellbeing Board Membership

1. At the meeting of Council on 9 May 2013, the new Health and Wellbeing Board was formally approved as a Committee of the Council. The Board's Standing Orders specify that changes to its Statutory Membership must be determined by full Council.
2. A replacement is required for the substitute for the Director of Children's Services statutory voting member. It is recommended that Ms Sandra Taylor, Director of Provider Services and Commissioned Care be named as the required substitute member.

RECOMMENDATION: That Ms Sandra Taylor, be named as the substitute for the Director of Children's Services statutory voting member on the Health and Wellbeing Board.

BACKGROUND PAPERS: None