

Scrutiny Protocol



1. Aim

- 1.1 The aim of this protocol is to clarify the relationship between the Overview and Scrutiny Committee (OSC) and The Cabinet to ensure the smooth conduct of business in accordance with The Constitution. This protocol details how the OSC and The Cabinet should interact, in a manner which ensures effective communication and respect. This will clarify the role of the OSC and enhance the good working relationship between the OSC and The Cabinet, to ensure the OSC continues to make a valuable contribution to the efficient running of the Council.

2. Foundation and Principles

- 2.1 Under Section 9F of the Local Government Act 2000 and paragraph 1 of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009, overview and scrutiny committees have statutory powers to scrutinise decisions of the executive (The Cabinet). These decisions can include those which The Cabinet is planning to make, those it has taken and plans to implement, and those that have already been taken and implemented.
- 2.2 Therefore, one of the primary functions of any Overview and Scrutiny Committee is to act as a "critical friend" to the executive.¹ Proper scrutiny should help decision making be more robust and transparent, ensuring that decisions are properly informed and made in the best interests of residents. For this reason, it is paramount that recommendations and reports from the OSC are presented clearly, and that The Cabinet and the Council pay due regard to them.
- 2.3 This protocol also seeks to maintain proper separation of powers between The Cabinet and Overview and Scrutiny, with the OSC acting as a critical friend to The Cabinet, as noted above.
- 2.4 The Council's Constitution² is the principal authority on matters of governance and takes precedence over this document. This protocol should be read in conjunction with, and as a supplement to, that document.

¹ [Overview and scrutiny: statutory guidance for councils, combined authorities and combined county authorities - GOV.UK](#)

² [The Constitution](#)

3. Reports and Representations of the Overview and Scrutiny Committee to The Cabinet

- 3.1 The Chair of the OSC (or, in his/her/their place, the Vice-Chair or another member of the Committee) will attend meetings of The Cabinet and will provide input on matters which have been considered by the OSC. The OSC Chair will, where appropriate, also be invited by the Leader to raise other matters discussed by the OSC which are not on The Cabinet's agenda, but which the OSC reasonably considers ought to be drawn to the attention of Cabinet members.
- 3.2 In exceptional circumstances, subject to approval by the Chief Executive, an overview or briefing report may be requested by the OSC prior to The Cabinet taking a decision, in order to allow the OSC sufficient time to consider the recommendations or compose a report. This preliminary report may take the form of a verbal update at a meeting or a written briefing note. Furthermore, at the scheduled OSC meeting, additional information may be requested by the OSC which might assist in its recommendations to The Cabinet. The provision of this information may inform The Cabinet's decision, or it may inform the OSC's considerations regarding whether it will recommend that the decision be deferred, pending further investigation. Therefore, best efforts should be made for it to be supplied at or before the subsequent meeting of The Cabinet.
- 3.3 Matters arising from the OSC, and matters referred specifically to the OSC for consideration, will be presented to The Cabinet by the OSC Chair alongside a written report.
- 3.4 In addition to The Cabinet, the OSC is able to make recommendations to the Council (see part 8, below). Any such recommendations will be dealt with under a separate agenda item.

4. The Cabinet Forward Plan and OSC Work Programme

- 4.1 At each regular meeting of the OSC, there will be an item on the agenda dedicated to the reports proposed for consideration at the subsequent meeting of The Cabinet. This will be an opportunity for pre-decision scrutiny, to assist with ensuring that decisions continue to be taken in accordance with Article 13 of the Council's Constitution (Decision Making)³ and also ensure openness and transparency with regard to these decisions in a public forum.
- 4.2 Prior to publication of each OSC agenda, a meeting will be held between the Chief Executive or, in his/her/their absence, the Deputy Chief Executive, the Chair of the OSC, the Leader of the Council, the Monitoring Officer or, in his/her/their absence, the Deputy Monitoring Officer, and the Scrutiny Officer. The purpose of this meeting will be to decide which of the items on The Cabinet Forward Plan the OSC should prioritise for consideration.

³[Article 13](#)

- 4.3 To assist with the prioritisation of items, the Scrutiny Officer will discuss the items with relevant officers. The PAPER assessment criteria (which gives an item a score out of ten based on Public interest, Ability to Influence, Performance, Extent and Replication) will be used to rank items in terms of the value which scrutiny can add. Consideration for prioritisation should also be given to the Council Plan's aims and areas of focus, for instance, when a decision is relevant to the best interests of residents and communities.⁴ The Chief Executive or Deputy Chief Executive and the Leader of the Council will provide additional information to help the OSC Chair and parties at 4.2 decide which items would benefit the most from scrutiny. The PAPER assessment will be made available to all members of the OSC after each meeting described in paragraph 4.2.
- 4.4 Following this meeting, the Scrutiny Officer will finalise the agenda.
- 4.5 Members, but particularly members of the OSC, may also request Cabinet items to be considered at OSC meetings, having notified the OSC Chair in accordance with The Constitution. All members will also be invited to suggest items for the OSC Work Programme each year and will be encouraged to liaise with parish and town councils and residents in relation to this.
- 4.6 The OSC will consider all quarterly performance monitoring reports and may consider the bi-monthly budget monitoring reports in order to "review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas", in line with the Committee's Terms of Reference.⁵ The OSC should use these reports to consider which areas of the Council might require further scrutiny or support and may subsequently request further information from a member of The Cabinet or officers, either by inviting them to attend a future meeting or via a briefing note.
- 4.7 Discussion of Cabinet matters by the OSC will not strictly be confined to items listed on the agenda, but as these will be the items identified as being of particular interest before the meeting, the relevant officers and portfolio holders will have been invited to attend, as necessary. It should be noted that, if questions are raised which have not been given with notice or are regarding Cabinet items which are not noted within the agenda, it cannot be guaranteed that answers will be provided at the meeting. Members should therefore plan ahead of time what items are of importance and at least what lines of questioning they intend to take.
- 4.8 The OSC must agree an Annual Work Programme, which will list the items it plans to consider during the upcoming year. A mid-year review will also take place each year. Both the Programme and the mid-year review will be referred to Council for noting, to keep members, officers and the public directly informed of the OSC's work plan, priorities and direction.

⁴ [Council Plan 2023 - 2027 | Stratford-on-Avon District Council](#)

⁵ [Part3Item6OverviewandScrutiny.pdf](#)

- 4.9 All members of the Council will be invited to put forward topic suggestions for the Annual Work Programme and will be encouraged to liaise with residents and town and parish councils in relation to this, so that community priorities are reflected in the Work Programme.
- 4.10 The expectation is that the requirements on key decisions will be observed as per The Constitution and in consultation with the Monitoring Officer, where required. This Protocol further recognises the rare occasion where, due to 'special urgency', as defined within The Constitution, the 28-day notice via the Forward Plan needs to be waived. In such circumstances, the agreement of the Chair of the OSC is required.

5. Cabinet Member Attendance at OSC Meetings

- 5.1 The Role Definition – Portfolio Holder in Article 2 of the Council's Constitution includes the responsibility: "attendance at Overview and Scrutiny Committee".⁶
- 5.2 Paragraph 45 of the Government's statutory guidance on overview and scrutiny should also be noted:
- "Scrutiny committees should be aware of their legal power to require members of the executive, including any directly elected mayor and deputy mayor, and officers to attend before them to answer questions. It is the duty of members and officers to comply with such requests."*⁷
- 5.3 It should be noted that this legal power is limited to members and officers of the Council. It does not extend to external bodies which can be invited but not legally required to attend meetings of the OSC.
- 5.4 Members of The Cabinet, alongside the appropriate head of service, will periodically be invited to attend OSC to answer questions on their portfolio.
- 5.5 On other occasions, Cabinet members (in addition to other non-scrutiny members of the Council) may be invited to attend meetings to assist in scrutinising external organisations (when attending the meeting of their own accord and not under any statutory duty to do so) which are within the remit of the OSC to monitor. This will usually be the member whose portfolio relates directly or closely to the external organisation. Cabinet members in attendance will not vote as part of the OSC on any matter, in accordance with The Constitution.⁸
- 5.6 Cabinet members and other non-scrutiny members may similarly be asked to attend, observe and advise task and finish groups.
- 5.7 This Protocol also recognises that Full Council and The Cabinet may also require that a task and finish group is appointed.

⁶ [Article 2](#)

⁷ [Overview and scrutiny: statutory guidance for councils, combined authorities and combined county authorities - GOV.UK \(www.gov.uk\)](#)

⁸ "...members of The Cabinet (including the Leader) may not be members of the Overview and Scrutiny Committee." [Article 4](#)

6. Conflicts of Interest

- 6.1 Conflicts of interest should be dealt with as set out in the Council's Members' Code of Conduct in Part 5 of the Council's Constitution⁹ and relevant sections of the Localism Act 2011.
- 6.2 Members should seek advice from the Monitoring Officer if unsure about whether or not they have an interest. The Seven Principles of Public Life provide guidance for councillors regarding their behaviour and what may qualify as a disclosable interest.¹⁰
- 6.3 The Overview and Scrutiny Procedure Rules state that members of the OSC should not be members of The Cabinet.
- 6.4 The Government's statutory guidance on overview and scrutiny suggests that constitutions should specify how conflicts between scrutiny and the executive, including familial, should be dealt with.¹¹ A member having a spouse as a Cabinet member does not necessarily preclude that member from membership of the OSC, though members should be conscious of possible conflicts that may arise as a result. The principle of 'integrity' specifies that a conflict arises when a member, their family or friends stand to benefit from the outcome of a decision.¹²
- 6.5 Members may have a conflict of interest with regard to Cabinet items if they have been instrumental in either the development of the proposals or have actively opposed them prior to the meeting, either as a councillor, as a member of another committee, in a political capacity or as a resident.
- 6.6 Members should also speak with the Monitoring officer if they require advice under 6.4 and 6.5 above.

7. Call-in and Restrictions

- 7.1 The OSC should seek to establish that the Council's decision-making principles have been adhered to prior to that decision being taken, where possible, and make recommendations to The Cabinet or Council as necessary. Pre-decision scrutiny, when carried out thoroughly, can mitigate the need for call-in.
- 7.2 Nevertheless, there may be times when members find these principles have not been followed. In such cases, when a key decision has been made, call-in may be used. The full procedure for call-in is explained in detail in the OSC Procedure Rules within The Constitution.¹³
- 7.3 The OSC Procedure Rules advise that an item will not be subject to call-in when it has already been referred to The Cabinet by the OSC; referred by The Cabinet to the OSC; or when The Cabinet has made a recommendation to Full Council.

⁹ [Part5Item1MembersCodeofConduct-LGA May 2022.pdf](#)

¹⁰ [The Seven Principles of Public Life - GOV.UK \(www.gov.uk\)](#)

¹¹ [Overview and scrutiny: statutory guidance for councils, combined authorities and combined county authorities - GOV.UK \(www.gov.uk\)](#)

¹² [The Seven Principles of Public Life - GOV.UK \(www.gov.uk\)](#)

¹³ [Part 4 - Rules of Procedure \(4\) Overview and Scrutiny Procedure Rules](#)

- 7.4 Decisions that are taken by individuals, panels or sub-committees via delegated authority are also subject to call-in if they are key decisions.
- 7.5 For more information on key decisions and the Council's decision-making principles, please see Decision Making (Article 13), as noted above.
- 7.6 The call-in procedure also does not apply to any decision deemed to be 'urgent'. In this circumstance, the Chair must agree not only that the matter should be treated with urgency but also that the decision proposed is reasonable in all the circumstances.¹⁴

It should be noted that this type of urgent decision is distinct from that set out at 4.10, above. It is possible for a decision to be both urgent in relation to call-in whilst also meeting the requirements for special urgency, in which instance the OSC Chair's agreement must be sought in relation to both circumstances. Should this arise, it should be discussed with Monitoring Officer to ensure compliance with The Constitution.

8. Full Council and Other Committees

- 8.1 Whilst much of the work of the OSC is directly related to the work of The Cabinet, it will occasionally be beneficial for there to be cooperation between the OSC and other committees, such as with the Audit and Standards Committee with regard to audit, risk and financial matters. Whilst these committees may cooperate from time to time, The Constitution clearly sets out their distinct functions, and care should be taken to not duplicate work or go beyond the remit of any committee.
- 8.2 Further to this, statutory guidance advises that scrutiny committees should keep Full Council informed of its work, where appropriate.¹⁵
- 8.3 Other relevant matters will, in some instances, require a report to Council. This will often be in the form of updates on, or final responses to, Motions or other matters that have been referred to the OSC by Council, either directly or via The Cabinet, but may also include matters originating elsewhere which require a decision by the Council. On occasion, it may be appropriate for other matters to be reported directly to Council due to significance, importance or requirement for input from councillors. In such circumstances, the Monitoring Officer should be consulted so as to ensure constitutional compliance. Such matters may also need to be referred to The Cabinet in the first instance, depending upon whether there are any executive implications in relation to the recommendations.

9. Conclusion

- 9.1 Overview and scrutiny is a statutory responsibility of the Council, and it should contribute to enhanced decision making and therefore improved outcomes for the District. This Protocol helps to set out how the overview and scrutiny function will be undertaken, particularly in relation to The Cabinet and Council.

¹⁵ [Overview and scrutiny: statutory guidance for councils, combined authorities and combined county authorities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/421211/Overview_and_scrutiny_statutory_guidance_for_councils_combined_authorities_and_combined_county_authorities_-_GOV.UK_(www.gov.uk)_12_(h).pdf) 12 (h)