

Sandwell Metropolitan Borough Council

Constitution

Part 3.1 – Scrutiny Protocol

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Explanatory Note:

This guidance is for illustrative purposes only and is not part of the Constitution.

This explanatory note sets out the purpose, principles and operational framework of the Council's Scrutiny Protocol. It is intended to support Elected Members, Officers and Stakeholders in understanding how the Council's Scrutiny arrangements function and how they contribute to transparent, effective, and accountable decision making.

The Protocol outlines the relationship between the council's executive (Cabinet) and the non-executive councillors involved in scrutiny, ensuring a constructive and effective review process of council decisions and policies. Scrutiny should be carried out in a politically impartial, evidence based, and outcome focused way.

Scrutiny Protocol

1. Introduction

- 1.1 This Scrutiny Protocol provides a clear and consistent approach to how the Council's Scrutiny function operates. It outlines the respective roles and responsibilities of Members, Officers and external partners, and sets out expectations for how information is shared and how Scrutiny reviews are conducted.

The aim is to ensure that Scrutiny:

- 1.1.1 holds decision-makers to account;
 - 1.1.2 supports the improvement of public services;
 - 1.1.3 engages constructively with the Cabinet and Senior Officers;
 - 1.1.4 provides opportunities for the voice of residents and service users to be heard;
 - 1.1.5 reviews the findings of previous Scrutiny reviews and workshops
- 1.2 The protocol is to be read alongside the Scrutiny Procedure Rules. The protocol provides guidance on the practical working arrangements for Scrutiny and key relationship between Scrutiny and the Council's Executive to deliver better outcomes for Sandwell, its residents and communities, including:

- 1.2.1 setting out good Scrutiny practice for achieving real impact and adding value to Council decision making;
 - 1.2.2 the roles and responsibilities of Scrutiny Boards and the Executive;
 - 1.2.3 enabling open, trusting relations between the Executive and Scrutiny;
 - 1.2.4 supporting focused transparent and timely scrutiny of Council business;
 - 1.2.5 facilitating effective scrutiny work planning and objective setting;
 - 1.2.6 enabling Scrutiny Boards to influence Council business in a meaningful way;
- 1.3 The Scrutiny Procedure Rules state that Scrutiny Boards, the Executive and Officers will discharge the Council's function of overview and scrutiny in accordance with this protocol, unless agreed otherwise by the Chair of the relevant Scrutiny Board, the relevant Executive member, and the Chief Executive (or their nominee).

2. Effective Scrutiny

- 2.1 Effective scrutiny adds value to the Council's policies and decisions by;
 - 2.1.1 providing constructive 'critical friend' challenge to decision-makers;
 - 2.1.2 amplifying the voices and concerns of the public and communities to be heard;
 - 2.1.3 being led by independent people who take responsibility for their role; and driving improvement in public services.

3. Scope and Application

- 3.1 This protocol applies to:
 - 3.1.1 overview and Scrutiny Boards and Scrutiny working groups established to lead on reviews;
 - 3.1.2 spotlight sessions;
 - 3.1.3 call-in procedures;
 - 3.1.4 pre- decision scrutiny;

3.1.5 statutory scrutiny functions (e.g. health, crime and disorder, flood risk).

4. An Independent Viewpoint

- 4.1 It is vital that all scrutiny members and Boards can adopt an independent viewpoint on any matter. This underpins the role of scrutiny as a check and balance on the Leader and Cabinet's decision-making power. This is also an important part of scrutiny being 'member led.'
- 4.2 Independence does not mean scrutiny should be adversarial. Whilst scrutiny holds the Executive to account, there is a shared goal of improving outcomes for the Council, and the residents and communities of Sandwell.
- 4.3 The Council has agreed that the party whip should not apply to scrutiny work, but this protocol also requires members to avoid using scrutiny for party political purposes.
- 4.4 The Council may, but is not obliged to, appoint opposition members as Chairs or Deputy Chairs of Boards so long as the political balance of the Board is maintained.

5. Roles and Responsibilities: The Critical Friend' Model

- 5.1 Developing a constructive relationship between the Executive and scrutiny is fundamental to effective scrutiny by:
 - 5.1.1 facilitating the identification, prioritisation and delivery of key strategic issues within Scrutiny Annual Work Plans;
 - 5.1.2 promoting pre-decision scrutiny and avoiding the need for 'call in;'
 - 5.1.3 early engagement in policy development and decision making;
 - 5.1.4 adopt a 'cards on the table' approach with regular communication and sharing of information, but balanced with a respect for confidentiality when required; and.
 - 5.1.5 acceptance of the need for scrutiny to have an independent mindset.

- 5.2 The success of this model lies in scrutiny being 'member led.' This means that the scrutiny agenda will be set by scrutiny members but also means that Councillors are accountable for its success. This will require the proactive engagement and commitment of both the Executive and scrutiny as well as the officers that support them.

The Leader and Cabinet will:

- **Be proactive in identifying policy areas that would benefit from pre-decision scrutiny** and timetabling sufficient time to allow this to happen
- **Facilitate the input of scrutiny in decision making** through:
 - actively engaging in the development of Scrutiny Annual Work Plans, identifying topics or decisions that will benefit from scrutiny's input and challenge;
 - regularly meeting with scrutiny and officers to discuss the progress and delivery of the Annual Work Plan and any new issues that may benefit from scrutiny; and
- **Ensure their availability to attend meetings of Scrutiny Boards** when invited, and providing all necessary information requested to assist with the delivery of the scrutiny function.
- **Positively receive scrutiny input to Cabinet meetings**, even where there is robust challenge or recommendations and including 'call ins' of Cabinet decisions.
- **Provide information on time** and in accordance with any agreements reached with scrutiny.
- **Respond promptly to scrutiny recommendations**, and within the timescales set out in law.

Scrutiny Boards will:

- **Promote a culture of openness and transparency** during meetings, ensuring that questioning and debate take place in an environment of mutual respect and trust between the Board and all participants
- **Ask challenging and insightful questions** that encourage decision-makers to explain and justify their actions;
- **Agree an Annual Work Plan** which prioritises the Board's work for the year allowing for effective and informed Executive engagement and officer support.
- **Represent the community** – bring forward the views and concerns of local residents and organisations.
- **Plan strategically** – collaborate with colleagues to develop a clear work plan, prioritise topics, allocate time and resources effectively, and scope activities thoroughly.
- **Build constructive relationships** – communicate positively and professionally with Cabinet members, officers, partners, and fellow scrutineers.
- **Take an evidence-based approach to their work**, triangulating anecdotal evidence with data, reports, and other evidence, and applying appropriate questioning techniques to gain deeper understanding.
- **Run effective meetings** – stay focused, give clear notice of requirements, and ensure actions are followed up promptly.
- **Make clear, actionable recommendations** – specify what changes are needed, set realistic timescales, and identify those responsible for implementation
- **Monitor impacts** – track the implementation of recommendations and evaluate success based on measurable outcomes.

- **Regularly meet with the Lead Cabinet member and Executive Director** to discuss progress on the Annual Work Plan and any new issues that may benefit from scrutiny.
- **Ensure requests for information and reports are reasonable** and take account of the limited resources of the Council and other duties of lead members and officers.
- **Respect the confidentiality of information provided to scrutiny.**
- **Avoid an adversarial approach** in meetings or when questioning other Councillors and officers.
- **Be independently minded.** It is naïve to require scrutiny members to be apolitical, but effective scrutiny should seek to avoid divisions on political group lines or the use of the Scrutiny Board agenda or 'call in' to include items to score political points or where it does not add value.
(The Scrutiny Procedures Rules are clear that the party whip should not apply in Scrutiny Boards and must be declared.)
- **Make requests through the Statutory Scrutiny Officer** and, where possible, to Executive Directors or Chief Executive.
- **Not approach junior officers directly** for information or evidence.

Officers will:

- **Be accountable** to the Chief Executive for the effective support of scrutiny.
- **Make all reasonable efforts** to support effective scrutiny and explain when it is not possible to meet a request with a view to resolution.
- **The Statutory Scrutiny Officer will be the Council's 'advocate' for effective scrutiny:-**
 - promoting the role of scrutiny;
 - providing support to Scrutiny Board members;
 - providing support and guidance to members and officers in relation to the functions of scrutiny;

- **Provide a watching brief** about scrutiny training opportunities and needs.
- Through Executive Directors, **support the development of scrutiny work plans** and actively engage in regular meetings with Scrutiny and Cabinet Members.
- Through Executive Directors, **respond on time to reasonable requests** for reports, performance data and information from scrutiny
- **Provide impartial advice** to both the Executive and Scrutiny Boards.

5.3 Where a Scrutiny Board, the Leader and Cabinet or the Chief Executive (on behalf of Officers) believes that these standards are not being met on a specific issue, they should seek to resolve it informally through the Statutory Scrutiny Officer.

5.4 Where it is not possible to resolve a matter, it should be referred to the Scrutiny Management Board.

6. Agreeing the Scrutiny Work Plan

6.1 The Scrutiny Procedure Rules require all Boards to agree an Annual Scrutiny Work Plan at the first meeting of each municipal year and set out requirements for the plans. The following approach is recommended:

Determine the Scrutiny priorities

- Collate evidence on scrutiny priorities for the year from:
 - Board Members.
 - The Council's corporate priorities and plans.
 - Relevant lead members and Executive Directors.
 - Review of the previous year's work plan.
- Evidence gathered from other sources such as stakeholders, the public and horizon scanning by the Board or Statutory Scrutiny Officer as appropriate.

Resource Assessment

- Assess the resources available to the Board to deliver its work plan.
This will include:
 - The Board's own capacity, for example number of meetings, availability, other commitments.
 - Officer resources including from the Statutory Scrutiny Officer, support services and from Directorates.
- Assess any training or development needs.

Prioritisation

- It is inevitable that setting the work plan will involve the prioritisation of scrutiny topics and the level of resources that can be committed to each topic.
- The key criterion for prioritisation should be whether the scrutiny of the topic will add value or deliver a benefit to the Council or its residents.
- Other criteria will include:
 - risk;
 - financial impact;
 - the impact on any imminent decisions;
 - avoiding duplication with other Scrutiny Boards and other Committees such as the Audit and Risk Assurance Committee;
 - the timeliness of the scrutiny activity;
 - whether the topic is of high local importance and reflects the concerns of local people;
 - whether appropriate resources are available to conduct a review i.e. time and budget;
 - whether the issue is one the Scrutiny Board can realistically influence;
 - whether the issue is related to or would duplicate an existing piece of work being carried out by the Council or partners;

- whether the activity aligns to the objectives in the Council Plan time in the year should be reserved for unplanned scrutiny work.

Deliver and Monitor Scrutiny Work Plans

- Plans should be delivered over the year and kept under review to ensure relevance.
- The Chair will prepare an Annual Report for submission to the Full Council at the first ordinary meeting after each Annual Council setting out scrutiny activities and outcomes from the previous municipal year.

6.2 Each scrutiny board will hold a work planning workshop at the beginning of each municipal year to which Cabinet Members, Executive Directors and relevant stakeholders will be invited.

7. Drafting Recommendations

7.1 Scrutiny Boards, with the support of officers, will draft recommendations based on the evidence they have collected and examined. Recommendations should be SMART (Specific, Measurable, Achievable, Relevant and Timely).

8. Access to information

8.1 To be able to carry out their statutory functions, Scrutiny Boards need access to relevant information that the Council holds, and to receive it in a timely manner. This includes access to exempt or confidential information. The type of information requested will depend on the specific role and function the Scrutiny Board plays but could include:

- performance information from across the Council and its partners;
- finance and risk information from across the Council and its partners;
- corporate complaints/compliments information;
- reports and recommendations issued by relevant ombudsman (the Local Government and Social Care Ombudsman).

8.2 Scrutiny Boards can meet in private when information may be commercially sensitive, for example. This is in accordance with Schedule 12A to the Local Government Act 1972.

9. Scrutiny Work Outside of the Council

9.1 A lot of services affecting residents are delivered by partners. Effective scrutiny of these services will require working with people from other bodies, the range of partners can include:

- public sector - the NHS and community safety partners
- community and voluntary sector partners
- neighbouring councils
- cross authority bodies/organisations i.e. West Midlands Combined Authority, the West Midlands Police and Crime Commissioner
- others with a stake and interest in the local area e.g. large local employers

9.2 The arrangements for how the Council carries out its powers in relation to the scrutiny of the planning, provision and operation of health services with neighbouring councils are set out in memorandum of understanding agreed with said neighbouring councils.

10. Agenda Setting Meetings

10.1 Agenda setting meetings will be held around six weeks in advance of each Scrutiny Board Meeting. These meetings will be attended by the relevant Scrutiny Board Chair and Deputy Chair, relevant Executive Directors and Service Directors, Democratic Services Support Officer and Statutory Scrutiny Officer. The invitation may be extended to relevant Cabinet Members as required.

10.2 The agenda for meetings will be agreed in accordance with the order set out in the Scrutiny Procedure Rules.

11. Pre-meetings

- 11.1 Boards may hold pre-meetings to ensure formal meetings are an effective use of available time by ensuring there is a shared understanding of the business of the meeting, including time allocations for items. The Chair may be able to give an indication of how (s)he may be minded to address any procedural issues.
- 11.2 It is essential that pre-meetings do not involve any debate of the scrutiny topics at the meeting to ensure compliance with the Access to Information Rules.

12. Monitoring and Tracking

- 12.1 Findings and recommendations of Scrutiny Boards, working groups or similar will be shared with the relevant Executive Director, Service Director, Cabinet Member and the Leader in accordance with a mutually agreed process.

13. Scrutiny Management Group

- 13.1 The Procedure Rules set out the Chairs and Deputy Chairs of Boards may meet on an informal basis to discuss matters to improve the effectiveness of scrutiny.
- 13.2 Cabinet Members and officers may be invited.
- 13.3 These informal meetings should take place on a regular basis and include discussion of:
 - 13.3.1 work plan progress.
 - 13.3.2 oversight of the action tracker.
 - 13.3.3 cross cutting issues / avoiding duplication of effort.
 - 13.3.4 horizon scanning of new topics for scrutiny.
- 13.4 A record of the meeting will be prepared by the Statutory Scrutiny Officer and shared with the Group.

14. Legislative Framework

14.1 The requirement for local authorities in England to establish Overview and Scrutiny Boards is set out in -

14.1.1 Ss.9F to 9FI of the Local Government Act 2000 as amended by the Localism Act 2011;

14.1.2 S.19 of the Police and Justice Act 2006;

14.1.3 S.75 of the Health Act 2006;

14.1.4 Part 5 ss.119 to 128 of the Local Government and Public Involvement in Health Act 2007;

14.1.5 Part 14 ss. 221 to 234 of the Local Government and Public Involvement in Health Act 2007; and

14.1.6 Health & Social Care Act 2012.

14.2 Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities (2024).

14.3 Sandwell Metropolitan Borough Council's Constitution.

15. Annual Review

15.1 This protocol will be reviewed annually by the Monitoring Officer and the Statutory Scrutiny Officer, to ensure it remains fit for purpose, aligned with legislation and is reflective of best practice.

16. Conclusion

16.1 Overview and scrutiny is a statutory responsibility of the Council, and it should contribute to better decision making and therefore deliver better outcomes for the Borough. This protocol helps to set out how the overview and scrutiny function will be undertaken, and the role that needs to be undertaken by those members who either sit on Scrutiny Boards or the individuals who will engage with the Scrutiny Board's work.

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