

Sandwell Metropolitan Borough Council

Constitution

Part 3.2 – Scrutiny Procedure Rules

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Scrutiny Procedure Rules

1. Arrangements for Scrutiny Boards and Powers

- 1.1 Full Council must appoint one or more Boards to discharge its duty of Overview and Scrutiny of Executive functions and may appoint as many Boards as it sees fit to discharge these functions.
- 1.2 In these rules, Overview and Scrutiny Boards will be referred to as 'Scrutiny Board(s)'.
 - 1.2.1 In these rules, the term 'Scrutiny Board(s)' shall include any sub-committee or sub-group of the Council or any other body established by the Council for the purpose of discharging its functions.
- 1.3 Full Council will determine the terms of reference of Scrutiny Boards and may amend those terms of reference as it sees fit. The terms of reference for Scrutiny Boards shall be as set out in Part 3 of this Constitution.
- 1.4 Each Scrutiny Board will discharge the Council's function of Overview and Scrutiny with its terms of reference including:
 - 1.4.1 to review or scrutinise decisions made, or other action taken, in connection with the discharge of any Executive functions;
 - 1.4.2 to make reports or recommendations to the authority or the Executive with respect to the discharge of any Executive functions; and
 - 1.4.3 to make reports or recommendations to the authority or the Executive on matters which affect Sandwell, or the inhabitants of Sandwell.
- 1.5 A Scrutiny Board may establish one or more Working Group(s) to discharge any of its functions but may not discharge any other functions. The membership of a Working Group:
 - 1.5.1 must not include an Executive (Cabinet) Member; and
 - 1.5.2 may include a member who is not a Councillor in a non-voting capacity (except as otherwise provided in these rules).
- 1.6 Scrutiny Boards, the Executive and Officers will discharge the Council's function of Overview and Scrutiny in accordance with the Council's Scrutiny Protocol, unless agreed otherwise by the Chair of the relevant Scrutiny Board, the relevant Cabinet Member, and the Chief Executive (or their nominee).

2. Membership

- 2.1 Any Councillor may be a member of a Scrutiny Board except:
 - 2.1.1 the Leader or a Cabinet Member; and
 - 2.1.2 councillors who have been involved in making the decision being scrutinised.
- 2.2 The membership of Scrutiny Boards must reflect the political balance of the Council unless Full Council agrees without any Councillor dissenting to waive any political balance requirements.

Education Scrutiny: Statutory Co-opted Members

- 2.3 The Scrutiny Board responsible for education must include in its membership the following co-opted voting representatives:
 - 2.3.1 one Church of England diocesan representative;
 - 2.3.2 one Roman Catholic diocesan representative; and
 - 2.3.3 two parent governor representatives.
- 2.4 Co-opted voting representatives shall only have voting rights where this Scrutiny Board discharges functions relating wholly or in part to any education functions.
- 2.5 Co-opted voting representatives shall not have voting rights in respect of any other matter but may speak on any matter.

2.6 Other Co-opted Members

- 2.7 A Scrutiny Board may co-opt any person who is not a Councillor to be a member of the Board, but they may not vote on any item. The Board should seek advice from the Scrutiny Officer before appointing any Co-opted Members.

3. Meetings

- 3.1 Full Council shall agree a schedule of meetings of each Scrutiny Board and that Board may agree to call additional meetings as it considers necessary to discharge its functions.

3.2 Meetings will be held at Sandwell Council House or such other venue as may be specified in the summons for the meeting.

3.3 Meetings of the Scrutiny Boards are subject to the Access to Information Rules at 3.4 of this Constitution.

4. Quorum

4.1 The quorum for each Scrutiny Board shall be one third of the membership eligible to vote, or the nearest whole number above one third subject to a minimum of four Councillors. The quorum of the Children's Services and Education Scrutiny Board shall be five Councillors.

5. Scrutiny Working Groups

5.1 Scrutiny Working Groups (which may also be known as Scrutiny Panels or Task and Finish Groups) are an essential part of the scrutiny process.

5.2 Each Scrutiny Board may appoint Scrutiny Working Groups to support the discharge of its functions. The appointing Scrutiny Board ('the parent board') will agree the terms of reference for the Scrutiny Working Group(s), including, but not limited to:

5.2.1 the terms of reference and intended outcome;

5.2.2 its membership and support arrangements;

5.2.3 arrangements for its meetings; and

5.2.4 a defined time limit for within the municipal year for completion of its work and for its recommendations to be submitted to the parent board.

5.3 Scrutiny Working Groups are for the purpose of detailed consideration of specific issues, and their arrangements may reflect this taking account of any statutory guidance.

5.4 Scrutiny Working Groups are not required to comply with the Access to Information Rules in this Constitution. Recommendations and outcomes must be reported to the Parent Board in a formal meeting of that Board.

6. Chairing of Scrutiny Board Meetings

- 6.1 Full Council will appoint a Chair and Deputy Chair to each Scrutiny Board at its annual meeting.
- 6.2 In the event of a vacancy in the position of Chair arising, the Deputy Chair shall undertake the role and responsibilities of Chair until full Council appoints a new Chair.
- 6.3 In the absence of a Chair at a meeting, the Deputy Chair shall preside at the meeting.
- 6.4 In the absence of both the Chair and Deputy Chair, a chair shall be elected from amongst those members present for the duration of the meeting.

7. Annual Scrutiny Work Plan

- 7.1 Each Scrutiny Board must agree, at its first meeting of a municipal year, an annual work plan, which must have regard to :-
 - 7.1.1 the Council's corporate plans and priorities for the year;
 - 7.1.2 consultation with the relevant Cabinet Member and other Members;
 - 7.1.3 the views of the Chief Executive and relevant Executive/Service Directors;
 - 7.1.4 the views of key stakeholders, including data that reflects the views of those living and working in the Borough;
 - 7.1.5 the desirability of making provision for the consideration of items of business within the remit of the Board, but not in the work plan arising during the year (an 'unplanned scrutiny item'); and
 - 7.1.6 advice from the Scrutiny Officer on any matter.
- 7.2 Each Scrutiny Board may include on its work programme, one or more in-depth review of a particular topic, and in determining that topic, shall have regard to: -
 - 7.2.1 the Council's strategic priorities and policies, including the policy framework and budget and spending plans and their impact on service delivery and outcomes for the people of Sandwell;

- 7.2.2 the Cabinet Forward Plan and Executive Work Programme;
 - 7.2.3 suggested items/topics arising from annual engagement activities, with key stakeholders living and working in the Borough;
 - 7.2.4 any previous scrutiny activity on the topic;
 - 7.2.5 guidance from the relevant chief officer on the appropriateness and timeliness of the review.
- 7.3 No boards shall have more than one active scrutiny review taking place at any one time.
- 7.4 Each Scrutiny Work Plan will include a timetable and may include the establishment of Scrutiny Working Groups. The plan must have regard to the Council's and Board's resources to deliver the plan and any provision for unplanned Scrutiny items.

8. Matters within the remit of more than one Scrutiny Board

- 8.1 Where a matter for consideration falls within the remit of one or more other Scrutiny Boards, the decision as to which Board(s) will consider it will be determined as followed:
- 8.1.1 by agreement between the relevant Scrutiny Board Chairs;
 - 8.1.2 by the informal Scrutiny Management Group or if this is not reasonably practicable; or
 - 8.1.3 by the Scrutiny Officer in consultation with the Chairs of the relevant Scrutiny Boards.

9. Scrutiny Annual Report

- 9.1 Each Scrutiny Board will contribute to an Annual Report setting out progress and outcomes of the completed municipal year to the next ordinary Full Council meeting after the Annual Council meeting.

10. Scrutiny Board Agenda

- 10.1 Scrutiny Board agenda will consider items in the following order:
- 10.1.1 declarations of interest;
 - 10.1.2 declaration of any Party Whip

- 10.1.3 approval of the minutes of the previous meeting;
- 10.1.4 call in of Cabinet decisions made but not implemented;
- 10.1.5 scrutiny work plan items, including reports from Scrutiny Working Groups;
- 10.1.6 reports relating to Cabinet decisions to be made ('pre-decision scrutiny');
- 10.1.7 unplanned Scrutiny items and member references.
- 10.1.8 work plan action tracker;

11. Unplanned Scrutiny Business

- 11.1 Unplanned Scrutiny business is an item of business that falls outside the Scrutiny Board's Work Plan, but the Scrutiny Board may agree to consider. This may not include items that could be considered through:
 - 11.1.1 pre-decision scrutiny of Cabinet decisions; or
 - 11.1.2 call in of a Cabinet decision, made but not implemented.
- 11.2 A Scrutiny Board Member may request an item of unplanned Scrutiny business is considered by the Board by giving notice in writing to the Scrutiny Officer, not less than 10 working days before the date of the next Scrutiny Board meeting, stating the reasons for the request and proposed outcome.
- 11.3 The Scrutiny Officer will add the request to the Board agenda and the Board will determine whether the unplanned business shall be considered by the Scrutiny Board either at:
 - 11.3.1 the next scheduled Board meeting; or
 - 11.3.2 an additional meeting held for the purpose of considering the unplanned business.
- 11.4 In either instance a full report will appear on the agenda detailing the matter for scrutiny.

12. Members Right of Reference to a Scrutiny Board

- 12.1 Any Councillor may refer a matter to the Board that is relevant to its functions.

- 12.2 The Member must give notice in writing of the referral to the Scrutiny Officer stating the reasons for the request and proposed outcome.
- 12.3 The Scrutiny Officer will consider whether the referral is relevant to the functions of the Scrutiny Board (and in the case of a Non-Scrutiny or Working Group member that it is not an excluded matter) and if so, will include the referral at the next scheduled meeting of the relevant Board or if within 10 working days of that meeting, the following scheduled meeting.
- 12.4 An excluded matter means any matter which is:
- 12.4.1 a local crime and disorder matter within the meaning of [section 19](#) of the [Police and Justice Act 2006](#) (local authority scrutiny of crime and disorder matters); or
 - 12.4.2 a matter of any description specified in an order made by the Secretary of State for the purposes of this section.

13. Additional Rights of Access to Information of Scrutiny Board Members

- 13.1 In addition to their rights as Councillors, Members of Scrutiny Boards have additional statutory rights of access to information, as set out in this Constitution.

14. Budget Framework

- 14.1 The Leader and Cabinet and Scrutiny Boards will agree a process for the scrutiny of the annual budget and Council Tax setting.

15. Power to Require Attendance of Members and Officers to Answer Questions

- 15.1 A Scrutiny Board or a Working Group may require the Leader and Cabinet and Officers of the authority to attend before it to answer questions. It is the duty of the Leader and Cabinet or Officer to comply with a request to attend the meeting.
- 15.2 All Councillors and Officers will comply with the Council's Scrutiny Protocol in the discharge of and response to this power and will comply with the following principles:

- 15.2.1 the relevant Cabinet Member and Executive Director will attend all Scrutiny Board meetings relevant to their responsibilities and answer all questions where possible;
- 15.2.2 all requests will be made through the Scrutiny Officer or their nominee and will provide the reasons for the request and the matters in which the Cabinet Member or Officer will be questioned;
- 15.2.3 the Chief Executive will seek to ensure the most appropriate Officers attend meetings to answer questions but may propose alternative attendees to ensure compliance with the specified order.
- 15.2.4 Requests will be made in the following order:
 - a. the relevant Cabinet Member or Members;
 - b. the Chief Executive or relevant Chief Officer or Officers; and
 - c. relevant professional specialist or Head of Service.
- 15.2.5 requests will be proportionate and respect Officers' and Members' other work commitments and right to a private life.
- 15.3 A Member or Officer may not be asked or obliged to answer any question:
 - 15.3.1 that falls outside the Board's remit or fall within the remit of another Board or body;
 - 15.3.2 that may be relevant to any disciplinary or other action that may be taken against them by the Council; or
 - 15.3.3 that they would be entitled to refuse to answer in or for the purposes of proceedings in a court in England and Wales.

16. Attendance by Others

- 16.1 A Scrutiny Board or Working Group may invite people other than the Members and Officers referred to above to address them, to discuss issues of local concern and/or answer questions including members of the public and expert witnesses.

17. Duration of Meeting (Scrutiny Boards only)

17.1 After two hours from the commencement of the meeting, including any period that the meeting may have been adjourned, a Scrutiny Board may pass a resolution to continue the meeting for up to 30 minutes.

17.2 At the end of this 30-minute period, or if such a resolution is not passed, the Chair of a Scrutiny Board shall dispose of the remaining business as follows:

17.2.1 the agenda item being considered shall conclude within 10 minutes followed by voting;

17.2.2 items not yet considered may be postponed to a future meeting or if requested be addressed through the provision of a factual report to be circulated to members of the Board for information purposes only.

18. Call In

18.1 What is Call in?

18.2 'Call-in' is the process by which a Scrutiny Board exercises its statutory right to scrutinise Executive decisions that have been made but not yet implemented by the Council. The relevant decision maker must consider any recommendations made by the Scrutiny Board before it can be implemented.

18.3 Notice of Cabinet and Key Decisions

18.4 Notice of decisions made by the Cabinet and other key decisions shall be published within **two working days** of the decision being taken on the Council's website and all Councillors shall be sent links to the Notice.

18.5 The Notice shall include the date of publication and that it will be implemented after **5pm on the fourth working day** after the date of publication unless it is called in.

18.6 Right to Call-In

18.7 Where a valid call-in request is received, as set out below, the Scrutiny Officer shall make the necessary arrangements :

- 18.7.1 is submitted in writing, using the [Notice of Call-In](#) by any four Councillors and citing a Lead Councillor by no later than **5pm on the fourth working day** after the publication of the Notice of Decision;
 - 18.7.2 gives reasons in writing for call-in and outlines the alternative course of action, or recommendations proposed; and
 - 18.7.3 it is not excluded from call-in as set out in these Rules below.
- 18.8 The Scrutiny Officer may seek clarification from the Lead Councillor on the call-in when considering its validity but has no obligation to assist Councillors in ensuring that a call-in is valid.
- 18.9 A decision is excluded from call-in where:
- 18.9.1 the urgency procedures below have been followed;
 - 18.9.2 the decision has already been considered by a Scrutiny Board before it was made (pre-decision scrutiny) and there has been no substantive change in the decision (except one to accept a recommendation of a Scrutiny Board);
 - 18.9.3 where the alternative course of action, or recommendations proposed in the call-in have already been considered and rejected; or
 - 18.9.4 where the Cabinet or other decision maker has given notice that it will reconsider its decision without the need for call-in (so long as the decision maker has notified the Chair of the relevant Scrutiny Board and Scrutiny Officer in writing).
- 18.10 The Monitoring Officer, in consultation with the Scrutiny Officer and the Chief Executive, may reject a [Notice of Call-In](#) for the reasons set out below. The reasons for rejection will be reported to the next scheduled ordinary meeting of the Budget and Corporate Scrutiny Management Board:
- 18.10.1 the cited grounds bear no relevance to the decision that is identified for call-in;
 - 18.10.2 the requisition cites grounds for which no relevant evidence is produced in support;

- 18.10.3 those requisitioning the call-in signed the requisition before it was complete (for example signed a blank [Notice of Call-In form](#) in advance);
 - 18.10.4 the call-in includes material which could be defamatory;
 - 18.10.5 the requisition is being used for improper purposes (for example to admonish an officer); or
- 18.11 Any decisions not called in by this deadline will immediately become effective.

19. Urgent Decisions and Waiver of Call In

- 19.1 The call-in procedure set out above shall not apply to urgent decisions.
- 19.2 An urgent decision is one:
- 19.2.1 which is made under the urgency procedures in the Access to Information Rules.
 - 19.2.2 in the opinion of the Monitoring Officer, Service Director - Governance, any delay likely to be caused by the call-in process would be likely to expose the Council, the public or other stakeholders to a significant level of risk, loss, damage or significant disadvantage;
 - 19.2.3 the Chair of the relevant Scrutiny Board has given consent to the waiver of call-in.

20. Call-In Procedure

- 20.1 The following procedure shall apply to a valid call-in.
- 20.2 The Scrutiny Officer will:
- 20.2.1 notify the decision-taker and Chief Executive;
 - 20.2.2 determine the relevant Scrutiny Board to consider the call-in; and
 - 20.2.3 if the request for call-in states that the decision is outside the Budget and Policy Framework, refer it to the Monitoring Officer/Chief Finance Officer for a report to be prepared to the next meeting of the relevant Scrutiny Board.
- 20.3 Once notified of a call-in, the Scrutiny Officer in consultation with the Chief Executive shall take one of the following actions:

- 20.3.1 refer the call in to the next Scrutiny Board meeting if that is within seven working days of the receipt of the request for call-in; if not,
- 20.3.2 convene an extraordinary meeting to take place as soon as practicable; and if not
- 20.3.3 consider the call-in at the next available scheduled meeting with the consent of the decision taker (the Leader in the case of a Cabinet decision and in consultation with the Councillors requesting the call-in).

21. Consideration by Scrutiny

- 21.1 Having considered the decision, a Scrutiny Board may:
 - 21.1.1 confirm the original decision and if so, the decision will be effective from this date.
 - 21.1.2 refer the decision back to the decision-maker for reconsideration, setting out in writing any recommendations and if so, the decision maker will reconsider the decision as soon as reasonably practicable.
 - 21.1.3 refer the matter to Full Council, as set out below.

22. Reference to Full Council

- 22.1 A Scrutiny Board may refer a matter to Council if, in their opinion:
 - 22.1.1 it is contrary to the Policy Framework; or
 - 22.1.2 it is contrary/not wholly consistent with the Budget Framework; or
 - 22.1.3 the Scrutiny Board disagrees with the Monitoring Officer/Chief Finance Officer's view that the decision is legally and/or financially compliant.
- 22.2 The Council will consider the matter in accordance with the Budget and Policy Framework rules.

23. The Party Whip

- 23.1 It is best practice not to apply a party whip to ensure Overview and Scrutiny is an effective check and balance to Executive decision making.
- 23.2 All members must declare where they are subject to the party whip when considering a matter in a Scrutiny Board.
- 23.3 The declaration shall be recorded in the minutes of the meeting.

24. Record of Proceedings at Scrutiny Board meetings

- 24.1 Following each meeting of a Scrutiny Board, a record of the proceedings shall be published, including where practicable by electronic means minutes of proceedings as applicable, normally within ten working days of the Board meeting at Modern.Gov.

25. Scrutiny Management Group

- 25.1 The Chairs and Deputy Chairs of the Scrutiny Boards may meet with the Scrutiny Officer (and other Officers as they see fit) to ensure the effective administration of overview and scrutiny and its work programme. The meetings are not formal and have no decision-making powers.

26. The Statutory Scrutiny Officer

- 26.1 The Statutory Scrutiny Officer has the following duties:
 - 26.1.1 to promote the role of the authority's Scrutiny Boards;
 - 26.1.2 to provide support to the Authority's Scrutiny Boards and Scrutiny Board Members; and
 - 26.1.3 to provide support and guidance in relation to overview and scrutiny functions to Councillors, the Leader and Cabinet and Officers;
 - 26.1.4 to advise on training and development opportunities for Scrutiny Board Members.

27. Annual Review

- 27.1 These rules will be reviewed annually by the Statutory Scrutiny Officer and Monitoring Officer, to ensure they remain fit for purpose, aligned with legislation and reflective of sector best practice.

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