

**OVERVIEW AND SCRUTINY PANEL
(SERVICE DELIVERY AND RESOURCES)**

7TH SEPTEMBER 2004

**OVERVIEW AND SCRUTINY PANEL
(PLANNING AND FINANCE)**

14TH SEPTEMBER 2004

**OVERVIEW & SCRUTINY – REVIEW OF OPERATION
(Report by Head of Administration)**

1. INTRODUCTION

- 1.1 As part of the review of the constitution earlier in the year, all Panels of the Council and individual Members were invited to submit comments as to how the internal operation and structure of the Council might be improved. Following consideration by the Standards Committee, proposals were submitted to the Council but those issues which emerged from the review in relation to overview and scrutiny were referred back by the Council to the Overview and Scrutiny Panels for them to discuss.
- 1.2 The two principal issues relate to the capacity of the two Panels to deal with the volume of business on their agenda and the question as to whether a system of substitution should be introduced for Members who were unable to attend meetings. The relevant extracts from the report submitted to the Standards Committee are attached as Annex A to this report.
- 1.3 In rejecting any change to the role of the Panels in relation to the development of the budgetary and policy framework, the Council also asked that the Chairmen of the Panels be reminded of the opportunity provided by the Overview and Scrutiny Procedure Rules to invite members of the public to speak at meetings under the existing constitutional arrangements.

2. CURRENT ISSUES

- 2.1 The proposals submitted by the Panels to the Standards Committee and the Council can be summarised as follows.

Capacity

- 2.2 It was the view of both Panels when commenting upon the constitution that the level of business on their agenda merited the establishment of a third panel. The lack of capacity was identified as a weakness in the CPA report which stated that scrutiny agenda are congested given the current volume of business. In part, the development of the Panels' business has reflected Members' growing interest and confidence in the overview and scrutiny process, one of the principles of scrutiny being that agenda are set by Members themselves who determine which matters they wish to scrutinise or review.

APPENDIX A.

- 2.3 However there a number of contributory causes to the size of agenda and length of meetings, i.e.
- agenda sometimes lack clarity as to why an item has been tabled
 - subjects which are of a corporate nature can appear on the agenda of both Panels
 - studies can lack focus and direction
 - there is a lack of appreciation of the actions that can be taken outside Panel meetings
 - Members are not sufficiently familiar with the opportunities available under the Overview & Scrutiny Procedure Rules.

These are addressed later in this report.

Agenda Planning

- 2.4 Because, prior to the portfolio changes in July, the terms of reference of each Panel broadly reflected half of the executive powers of the Cabinet, there has been a tendency to refer any matters of a corporate or budgetary nature to both Panels which has lead to duplication. Examples are the Best Value Performance Plan, Corporate Plan, Comprehensive Performance Assessment and annual budget preparation. Although both Panels have an interest in the subject areas, it is doubtful whether comments are required from both, given the constraints upon their time.
- 2.5 In terms of agenda items themselves, it is apparent that, on occasion, there is some confusion as to why an item is appearing. This may have been the result of a Member raising a subject scheduled on the Forward Plan; it may form part of an ongoing study into a particular subject or it may be an item upon which the comments of the Panels are being sought as part of the budgetary or policy framework. Because of the wide variety of such reasons, it can appear confusing for Members and Officers alike and can curtail or hinder debate/questioning at the meeting. In future, a more explicit explanation of its origin will be given in the agenda item, unless this is apparent from an accompanying report.

Studies

- 2.6 This is arguably the most rewarding of the Panel's roles. However progress in its development has slowed recently which can be attributed to a number of factors:-
- there have only been a few new suggestions coming forward from Members for investigation;
 - it can be difficult for Members to keep abreast of business and decision making across the Council;
 - studies can take too long to complete which means that they lose focus and Members have difficulty in recalling the evidence that they have heard;
 - the scope of a study can be too large to manage effectively;
 - there is a lack of understanding of the aims and purpose of a study;

APPENDIX A.

- studies have mostly been undertaken at Panel level with few working groups having been established;
- it has sometimes proved difficult to obtain background information and reports from officers, given their conflicting priorities and workloads.

Knowledge Of Overview & Scrutiny Procedure Rules

- 2.7 In their CPA report, the Audit Commission suggested that the Panels were not as focused as they could be on strategic issues. They nevertheless found that there were examples of the scrutiny function working innovatively, for example taking on a broad range of issues put forward by parish councils, voluntary organisations and the public, having a dedicated budget to appoint specialist advisers, taking meetings out into the District and having specific training for scrutiny Members.
- 2.8 Although the Panels have a Development Plan which was established twelve months ago and a variety of training sessions have been arranged for members of the Panels and others, there appears to remain a lack of appreciation about the wide ranging nature of scrutiny and the options open to Members to pursue specific subjects.

3. POTENTIAL DEVELOPMENTS

Development Plan

- 3.1 Last autumn, the Panels approved an action plan for overview and scrutiny which is being progressively implemented, within the resources available to support the scrutiny process. The Panels have diverged somewhat on their implementation of the plan but most of the measures agreed have been implemented by one or other or both of the Panels. These are summarised in Annex B attached.

The Panels are invited to consider progress against the Action Plan and the extent to which this requires amendment.

Capacity

- 3.2 Both Panels felt that the business before them was too large, a fact reinforced by the Audit Commission in the CPA outcome. Nevertheless the Council has rejected the request for the creation of a third panel which was not supported by the Cabinet.
- 3.3 If the Panels wish to reduce the business at their meetings, there are a number of options open to them.

Size of Panels

- 3.4 The constitution makes provision for the membership of the Panels to be a maximum of 16. Currently only 12 Members are appointed to each Panel by the Council. If the size of the Panels were to increase, this would not necessarily reduce the scale of business for each Panel (indeed it may extend the length of meetings) but it would generate a larger pool of Members with experience of the scrutiny process and create a greater capacity for working groups to be established to investigate and report upon specific subjects or investigations.

APPENDIX A.

- 3.5 It is becoming increasingly apparent that it is difficult to maintain studies involving the whole Panel. They can take too long to complete, changes in membership of the Panel leads to a lack of continuity, the absence of meetings in May and August creates further problems of continuity, the gathering of evidence can be time consuming and may be rushed when there is a long agenda still to be dealt with at Panel meetings, formal Panel meetings may not be the most conducive setting to obtain evidence and not all Panel Members may have an interest in the subject being investigated.
- 3.6 One alternative is to create more working groups with specific time limited objectives. If the size of the Panels were to increase, this would create a larger pool of membership from which the working groups are drawn. Co-option on to the working groups also could be considered either from other Members or from members of the public. Provided that a working group does not involve a member of the Cabinet, its membership can be open to any Member of the Council. The added advantage of appointing non-Panel Members is that there may be councillors with a particular interest or expertise in a subject who can make valuable contributions to the investigation to be undertaken. It also helps to broaden the scope of scrutiny and create a more inclusive process.
- 3.7 In order to improve their records, the Democratic Services Section will shortly be carrying out a survey of Members to ascertain particular expertise, experience and interests which will be of benefit both in meeting training requirements and identifying those who may be interested in participating in working groups.
- 3.8 A further option is to co-opt members of the public on to working groups. The Local Government Act 2000 makes specific provision for the co-option of members of the public to overview and scrutiny panels. Persons co-opted are unable to vote but provision is made in the Local Government Act 2003 for the introduction of voting rights for co-opted members under regulations to be made by the Secretary of State. The introduction of co-option of members of the public may help to increase awareness of the role of overview and scrutiny and to encourage interest in the democratic process.

The Panels are invited to consider –

- (i) whether to recommend an increase in the membership of each Panel to the maximum permissible in the constitution of 16;*
- (ii) whether to make greater use of working groups to undertake studies or investigations;*
- (iii) whether to consider co-option either to the Panels or working groups of other Members or members of the public.*

Substitution

- 3.9 The Council have asked the Panels to consider the feasibility of named substitutes at Panel meetings. This was considered and rejected by the Council during the review of the constitution in 2003 and a copy of a potential substitution scheme that was submitted at that time is attached for information as Annex C. During the most recent review, the Service Delivery and Resources Panel and Councillor P J Downes suggested that substitution be introduced for all committees of the Council. If this was unacceptable for all committees, Councillor Downes suggested that this be introduced for the overview and scrutiny panels.
- 3.10 There are conflicting arguments about the merits of substitution and indeed about its legality. However it has been adopted by many local authorities, often where no one party has overall political control. In the case of overview and scrutiny, the introduction of substitution could broaden the experience and expertise of other Members of the Council and it should ensure that a full complement of 12 Members attends each Panel meeting. As substitution is dealt with on a party political basis, it would ensure that attendance at Panel meetings would always reflect the political balance of the Council.
- 3.11 Conversely, the political balance of the Overview and Scrutiny Panels should not be a significant cause for concern since political considerations should rarely feature in Panel debates. The nature of Overview and Scrutiny with ongoing studies and attendances by executive councillors and officers means that continuity is important and there is a potential difficulty for substitutes to make an effective contribution to debate. Repetition and duplication also can occur if substitutes raise issues that have already been dealt with. Moreover if the Panel are minded to recommend an increase in the size of their membership, to create more working groups to undertake studies or to co-opt other Members or members of the public, the absence of Members from a monthly Panel meeting becomes less significant.

The Panels are required to report to the Council on the feasibility of the introduction of substitution at their meetings.

Studies

- 3.12 Since their inception, the Panels have undertaken a series of studies or investigations. Mostly these have been dealt with by the Panel as a whole but paragraph 2.6 above illustrates some of the problems that can occur. The creation of working groups to undertake a study offers considerably greater flexibility. For example smaller groups would find it easier to undertake visits, to concentrate their investigation into a shorter timescale, to meet at times convenient to witnesses, to involve Members with a particular interest in a subject and to co-opt other Members or members of the public.
- 3.13 At times, the studies have tended to lack focus or direction which largely stems from the investigation not having been scoped satisfactorily at its commencement. A smaller group may enable this to be handled more effectively. More importantly however, the Panels have sometimes failed to appreciate the opportunities available to them to gather evidence, commission advice or support, question

APPENDIX A.

witnesses, undertake visits etc. Although a template has been produced previously in helping to scope studies, this is somewhat out of date and a new template is attached as Annex D for consideration by the Panels. If used as the basis for any study or investigation, this should help identify the aims of a study and shape its direction at the outset.

The Panels are invited to consider the use of the template in Annex D to assist in undertaking studies and investigations.

4. OTHER ISSUES

- 4.1 A number of other issues were raised in the review of the constitution that were referred to the Panels for their further attention.

Public Speaking at Panel Meetings

- 4.2 A suggestion was made by Councillor Downes during the course of the review that Paragraph 13 of the Overview and Scrutiny Procedure Rules be extended to permit a Chairman to invite a member of the public in the public gallery at a meeting to address a Panel for up to 2 minutes where it is considered that the person might have a valuable contribution to make to the debate. The Cabinet were of the opinion that there was no need for further amendment to the Rules and the Council accepted a recommendation from the Standards Committee that the Panel Chairmen be reminded of the opportunities available within the existing Rules for members of the public to be permitted to address meetings of the Panels.
- 4.3 Paragraph 13 permits a Panel to invite residents, stakeholders and members and officers from other parts of the public sector to attend and address a meeting. The wording of the paragraph is broad and does not require prior notice to be given by a person who wishes to speak. Its interpretation is therefore open to the Chairmen and they may, if they wish at the outset of a meeting or at the start of a discussion, ask any member of the public who is present whether they wish to address the Panel on the subject to be debated.

The Panels are invited to consider whether they wish to adopt a procedure of inviting members of the public who are present at a meeting whether they wish to speak on a subject to be discussed.

Budget and Policy Framework

- 4.4 In the course of the review of the constitution, the Service Delivery and Resources Panel suggested that proposals for any change to an existing policy and for the implementation of new policy should be submitted to the Overview and Scrutiny Panels as a matter of course and that where Panels have made recommendations to the Cabinet, the latter should respond formally to the Panels with their own recommendations.

APPENDIX A.

- 4.5 The Cabinet, Standards Committee and Council all felt that this was provided for adequately by the Budget and Policy Framework Procedure Rules which require the inclusion of policy changes in the Forward Plan and enable the Panels to discuss such subjects either before they are considered by Cabinet or to call in decisions if they are concerned about their implications. Moreover if there are concerns currently about congestion of the meeting agenda, this could be exacerbated if all policy matters were submitted routinely to the Panels. In addition Cabinet Members and senior officers can be requested to attend Panel meetings at any time to answer questions on such matters.
- 4.6 Questions have been raised previously by both Panels about the inadequacy of the information contained in the Forward Plan and although this has improved significantly, Plans would benefit from a more accurate description of the subject to be discussed. Members are reminded that a procedure has been introduced to address the advance consideration of Forward Plan items and a copy is attached as Annex E
- 4.7 Nevertheless there are sometimes concerns that the Cabinet have considered a subject before a Panel has had an opportunity to comment. Members are reminded that the Leader is required to publish the Forward Plan not less than 14 days before the beginning of the period to which it applies. The Forward Plan is published on the intranet and internet and is available for inspection from that time. If Members observe any item which they wish to bring to the attention of a Panel, they may ask for items to be included on the ensuing agenda. If they think that it would be appropriate for a Cabinet Member or senior officer to attend the meeting to answer questions on the subject, they can also ask the relevant Panel Chairman to arrange for an invitation to be issued.

The Panels are invited to consider whether there is anything further that could be introduced to make consideration of the Forward Plan more effective.

Budget

- 4.8 The Panels are reminded that they have a small budget available of £5,000 each to support them in their function and activities. To date this has been used sparingly. The budget is at the disposal of the Panels and can be used for a variety of purposes such as commissioning research, commissioning specialist support, site visits, room hire and training, although additional resources are also available for the latter.

The Panels are reminded of the availability of the budget to assist in their deliberations and in the scoping their studies and investigations.

Terms of Reference

- 4.9 The terms of reference of the two Panels are defined in the constitution Each reflects the terms of half of the 6 portfolios established by the Leader in 2002 when the constitution was first adopted. Since that time there have been some changes to the terms of reference of individual portfolios but significant alterations both to the number of

APPENDIX A.

portfolios (now 8 in total) and their terms of reference were implemented after the Annual Meeting in June of this year.

- 4.10 A change in the Panels' terms of reference will involve a change to the constitution which will require a report to the Corporate Governance Panel and approval by the Council. Inevitably some time will elapse between any change in portfolio responsibilities introduced by the Leader and its reflection in the terms of reference of the Panels. The Panels have the option of responding to changes and the inevitable time delay caused by the need to obtain Council approval or retaining their terms of reference as originally established in the acknowledgement that some portfolios will cross Panel boundaries.
- 4.11 In order to ease the criticism of agenda congestion, the Panels also need to resolve the duplication that currently occurs when some corporate issues are submitted to both Panels for comment. There are some items such as BVPI reports that clearly are of interest to both Panels but it is arguable whether other corporate issues such as the Community Strategy, budget preparation, Customer First, office accommodation and Waste PFI need to be discussed by both Panels. This creates duplication, leads to executive councillors and senior officers attending separate Panel meetings in successive weeks and can send conflicting messages to Cabinet if the Panels formulate differing comments on a subject.

The Panels are invited to consider –

- (i) retaining their terms of reference unchanged when portfolio responsibilities are altered by the Leader; and*
- (ii) refraining from both considering reports on corporate issues.*

Training and Information

- 4.12 Various training sessions have been arranged for Members on overview and scrutiny and the range undertaken was commented upon favourably in the CPA report. A survey is to be undertaken of Members' needs which may assist in identifying further courses in which Members are interested. However, it would be helpful if the Panels could suggest areas where they would like further training and how best this could be delivered.
- 4.13 Information is increasingly becoming available on the role of scrutiny and the Centre for Public Scrutiny (www.cfps.org) offers support, advice and practical examples of how scrutiny has been developed elsewhere.

Members are invited to suggest subjects and the format of future training sessions.

5. CONCLUSION

- 5.1 The Overview and Scrutiny Panels have made significant progress in their development since the inception of the new constitutional arrangements. The implementation of the current development plan has largely been achieved but there is scope for the further broadening of the Panels' role and the more effective implementation of their

APPENDIX A.

programmes of activities. In particular the Panels will be required to demonstrate how they propose to address the weakness identified in the CPA report about the congestion of their agenda.

- 5.2 The Panels are therefore invited to consider the issues raised in this report.

BACKGROUND PAPERS

Documents attached as annexes to the report.
Audit Commission Comprehensive Performance Assessment of the District Council.

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