

# Business Support Overview and Scrutiny Committee

BRIEFING NOTE – No. 05/12

Date: 21<sup>st</sup> December 2012

Briefing paper to: All Members of the Business Support Overview & Scrutiny Committee

## **Purpose:**

At the Committee meeting on 6<sup>th</sup> December 2012, Members asked for further information on the extent to which the law places obligations on other organisations in relation to the activities of Overview and Scrutiny Committees and, in particular, where there is an obligation to respond to requests to provide information and attend meetings.

The current position is as follows:

## **Localism Act 2011 – Sections 9FF and 9FI**

A “relevant partner authority” must provide such information as an Overview and Scrutiny Committee may reasonably require as long as the information is not prohibited from disclosure, the request is made in writing and relates to the functions of the partner organisation in the area of Medway or in relation to the inhabitants of Medway.

Where an Overview and Scrutiny Committee makes a report or recommendations to full Council or the Cabinet relating to the functions of a relevant partner authority (in relation to activities in Medway or in relation to the inhabitants of Medway) the Committee may by notice in writing require the relevant partner authority to have regard to the report or recommendation in question in exercising its functions. Reports and recommendations relating to crime and disorder matters are excluded from this provision as these are covered by separate legislation – see below. Health Service bodies are also excluded if the report or recommendations were made to the health service body as well as the Council or Cabinet under section 244 of the NHS Service Act 2006 – see below.

In Medway, “relevant partner authorities” for the purposes of these sections of the Localism Act are as follows:

The Kent and Medway Fire and Rescue Authority

Kent Probation

The Medway Youth Offending Team

The Chief Police Officer

A National Health Service Trust

An NHS Foundation Trust

The Arts Council for England

The English Sports Council

The Environment Agency

The Health and Safety Executive

The Historic Buildings and Monuments Committee

The Homes and Communities Agency

The Chief Executive of Skills Funding

The Museums, Libraries and Archives Council

Natural England

The Secretary of State (but only in relation to some Employment and Training, Highways, Traffic and Offender Management matters)

### **Police and Justice Act 2006 – Section 19**

The Regeneration, Community and Culture Overview and Scrutiny Committee is the designated Committee with power to review or scrutinise decisions made, or other action taken in connection with the discharge by the “responsible authorities” of their crime and disorder functions and to make reports or recommendations to the Council or Cabinet with respect to the discharge of those functions. In practice this represents an obligation to scrutinise the work of the Community Safety Partnership as a whole at least once a year.

The Committee has power to require responsible authorities or co-operating bodies to provide information and to send an officer or employee to attend meetings subject to reasonable notice being given. There are no provisions stipulating the level or seniority of representation required. This would have to be a matter of locally agreed protocol.

The Council, Cabinet, responsible authorities and co-operating bodies can also be required by the RCC Overview and Scrutiny Committee to consider any report or recommendations relating to crime and disorder functions and to respond within 28 days (or where this is not possible as soon as reasonably practicable) and to have regard to the report or recommendations in exercising its functions.

**The “responsible authorities” are:** those who are responsible for crime and disorder strategies – the Council, probation services in Medway, the chief officer of police, the fire and rescue authority and the PCT/Clinical Commissioning Group – in other words the Community Safety Partnership.

**The “co-operating bodies” are:** probation boards and providers of probation services, parish councils, NHS Trusts, NHS Foundation Trusts, governing bodies of schools in the area maintained by Medway, proprietors of independent schools in Medway, proprietors of an alternative provision Academy that is not an independent school, proprietors of 16 to 19 Academies, the governing bodies of institutions within the further education sector and private registered providers of social housing which are a landlord of social housing.

### **National Health Service Act 2006 – Section 244 (subject to further regulations in early 2013)**

The Health and Adult Social Care Overview and Scrutiny Committee has power to review and scrutinise any matter relating to the planning, provision and operation of health services in Medway. The Children and Young People Overview and Scrutiny Committee has this power in relation to issues affecting children’s health.

These Committees may make reports and recommendations to local NHS bodies, and the Full Council and the Cabinet on health issues and can require a written response from the local NHS body within 28 days of the request.

Local NHS bodies have a duty to provide an Overview and Scrutiny Committee with information about the planning, provision and operation of health services in Medway as the Committee may reasonably require in order to discharge its functions. Where the information relates to NHS services for people living within several local authority areas the duty to provide information will be met if the local NHS body provides information to a Joint Overview and Scrutiny Committee of those areas. There is no requirement for an NHS body to provide information falling within certain categories. For example confidential information relating to a living individual or information which is legally prohibited from disclosure.

An Overview and Scrutiny Committee may require an officer of a local NHS body to attend a Committee meeting to answer questions as long as reasonable notice is given.

Where a local NHS body (other than an NHS Foundation Trust) is considering a substantial development or variation to a health service in Medway it must consult the relevant Overview and Scrutiny Committee. Overview and Scrutiny

Committees have power to refer a service reconfiguration of this nature to the Secretary of State where it is not satisfied that consultation has been adequate in relation to content or time allowed or where it is considered that the proposal would not be in the interests of the health service in Medway.

NHS Foundation Trusts are required to consult on a substantial variation only where this would relate to the provision of protected good and services in Medway and is the subject of an application to Monitor ( the regulator) to vary the terms of the FT authorisation. The right of referral by an Overview and Scrutiny Committee is then to Monitor rather than the Secretary of State.

## **Academies**

Members have asked about the obligation of schools with academy status to provide information to, and attend meetings of Overview and Scrutiny Committees.

A report on academies governance arrangements and the role of the local authority was presented to the Children and Young People Overview and Scrutiny Committee on 31 May 2012. This report explained to members that academies are independent schools, entirely responsible to the Secretary of State for their performance.

<http://democracy.medway.gov.uk/mqconvert2pdf.aspx?id=15256>

The following link takes you to a set of Frequently Asked Questions about academies published by the Department for Education which clearly states there is no statutory requirement for any formal relationship between local authorities and academies beyond that which is required for the delivery of local authority statutory duties, such as the making and reviewing of SEN statements, securing sufficient education in an area and provision of home-to-school transport for eligible children

<http://www.education.gov.uk/schools/leadership/typesofschools/academies/la/a00205173/local-authorities-faqs#faq7>

The DfE says that local authorities will continue to play a strategic role locally and there will be significant advantages for both academies and local authorities in constructive partnership working; for example around planning, 14-19 provision or sharing good practice locally.

In terms of standards in academies (and holding sponsors to account for this) the lead responsibility sits with the Department for Education and the Schools

Commissioner. However the Department for Education makes it clear that local authorities retain a legal responsibility for performance in the area as a whole, under the 1996 Education Act. There is no requirement for an academy, which is struggling to meet the expected level of performance to work with the local authority. However the DfE expects academies in this position to consider carefully whether or not to accept an offer of support from the relevant local authority to help raise standards.

Overview and Scrutiny Committees have no powers to require information from or attendance at meetings by academies, other than for the purpose of scrutiny of the crime and disorder functions of responsible authorities and co-operating bodies under the Police and Justice Act 2006, as set out above. However information and attendance on other matters may be requested as appropriate.

**For further information contact:**

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