

## **PART 5 - OVERVIEW AND SCRUTINY RULES**

### **1. What will be the number and arrangements for Overview and Scrutiny Committees?**

- 1.1 The Council will have four Overview and Scrutiny Committees and one Joint Health Scrutiny Committee with Kent County Council as set out in Article 6 and will appoint to them as it considers appropriate from time to time. Such Committees may appoint Sub-Committees. Overview and Scrutiny Task Groups may also be appointed for a fixed period to undertake in-depth reviews on completion of which they shall cease to exist.

### **2. Who may sit on Overview and Scrutiny Committees?**

All Councillors except members of the Cabinet may be members of an Overview and Scrutiny Committee. However, no member may be involved in scrutinising a decision with which he/she has been directly involved. (Note: A member of the Health and Wellbeing Board may not be appointed to any Overview and Scrutiny Committee with responsibility for scrutiny of health services).

### **3. Co-optees**

Each Overview and Scrutiny Committee or Sub-Committee shall be entitled to recommend to Council the appointment of a number of people as non-voting co-optees as set out in the terms of reference for Overview and Scrutiny Committees at the end of this procedure rule.

### **4. Education representatives**

- 4.1 Each relevant Overview and Scrutiny Committee/Sub-Committee dealing with education matters shall include in its membership the following voting representatives:

- (a) 1 Church of England diocesan representative;
- (b) 1 Roman Catholic diocesan representative;
- (c) 2 parent governor representatives.

- 4.2 A relevant Overview and Scrutiny Committee/Sub-Committee in this paragraph is one which has responsibility for scrutiny of education functions within the remit of the Leader and Cabinet. If the Overview and Scrutiny Committee/Sub-Committee deals with other matters, these representatives shall not vote on those other matters, though they may stay in the meeting and speak.

## 5. Meetings of the Overview and Scrutiny Committees

There shall be at least six meetings scheduled for each Overview and Scrutiny Committee in each year which can be cancelled by the chairperson in consultation with the Chief Executive. In addition, extraordinary meetings may be called from time to time as and when appropriate. An Overview and Scrutiny Committee meeting may be called by the chairperson of the relevant Overview and Scrutiny Committee, by a third of the Members of the Committee or by the proper officer if he/she considers it necessary or appropriate.

## 6. Quorum

The quorum for an Overview and Scrutiny Committee shall be as set out for Committees in the Council procedure rules in part 1 of this chapter of the Constitution.

## 7. Who chairs Overview and Scrutiny Committee meetings?

Overview and Scrutiny Committees/Sub-Committees will be chaired by a Councillor who is a member of that Committee/Sub-Committee.

## 8. Work programme

The Overview and Scrutiny Committees/Sub-Committees will be responsible for setting their own work programme. In doing so they shall take into account the wishes of all members on that Committee.

## 9. Agenda items

9.1 Any member of an Overview and Scrutiny Committee or Sub-Committee shall be entitled to give notice to the proper officer that he/she wishes an item relevant to the functions of the Committee or Sub-Committee to be included on the agenda for the next available meeting of the Committee or Sub-Committee, having regard to the Access to Information Rules. On receipt of such a request the proper officer will ensure that it is included on the next available agenda.

9.2 Any member of the Council who is not a member of an Overview and Scrutiny Committee may give written notice to the proper officer that he/she wishes to refer to that Committee any matter relevant to the Committees functions which is not an excluded matter. If the proper officer receives such a notification, then he/she will include the item on the first available agenda of the relevant Overview and Scrutiny Committee for consideration by the Committee. The member concerned shall be entitled to address the Committee.

9.3 The definition of an excluded matter in paragraph 9.2 of these rules is as follows:

- (a) a local crime and disorder matter which may be referred to the relevant Overview and Scrutiny Committee under the provision of paragraph 9.5 of these rules;
- (b) any matter relating to a planning or licensing decision;
- (c) any matter relating to a person in respect of which that person has a right of recourse to a review or right of appeal conferred by or under any enactment;
- (d) any matter which is vexatious, discriminatory or not reasonable to be included in the agenda or discussion at a meeting of an Overview and Scrutiny Committee or Sub Committee.

A matter will not be defined as an excluded matter under paragraphs a) to c) above if it consists of an allegation that a function for which the Council is responsible has not been discharged at all or that its discharge has failed or is failing on a systematic basis.

9.4 The Overview and Scrutiny Committees shall also respond, as soon as their work programme permits but within the set timescales, to requests from the Council and if appropriate the Cabinet, to review particular areas of Council activity. Where they do so, the Overview and Scrutiny Committees shall report their findings and any recommendations back to the Leader/Cabinet (as appropriate) and/or Council. The Council and/or the Leader/Cabinet (as appropriate) shall consider the report of the Overview and Scrutiny Committee within one month of receiving it or as soon as practicable thereafter.

9.5 Any member of the Council who is not a member of the relevant Overview and Scrutiny Committee has the right to refer a crime and disorder matter affecting his or her ward to the relevant Overview and Scrutiny Committee. The power to do this is known as raising a Councillor Call for Action (CCfA) but must be exercised in accordance with the guidance and procedures set out in section 22 of the Overview and Scrutiny rules. Any Councillor who is already a member of the relevant Overview and Scrutiny Committee and who wishes to refer a crime and disorder matter to the Committee may do so under 9.1 but must have regard to the guidance in section 22 of these rules if the matter being raised is a CCfA.

9.6 If the relevant Overview and Scrutiny Committee decides not to review or scrutinise a matter or not to make a report or recommendations to the Council or Cabinet (as appropriate) following the referral of a member's Item of a crime and disorder matter to the Committee, the Committee must notify the Councillor who made the referral of its decision and the reasons for its decision. The Committee must provide the member with a copy of any report or recommendations it makes to the Council or Cabinet in relation to the matter.

## 10. Policy review and development

- 10.1 The role of the Overview and Scrutiny Committees in relation to the development of the Council's budget and policy framework is set out in detail in the budget and policy framework procedure rules in part 3 of this chapter.
- 10.2. In relation to the development of the Council's approach to other matters not forming part of its policy and budget framework, Overview and Scrutiny Committees or Sub-Committees may make proposals to the Cabinet for developments in so far as they relate to matters within their terms of reference.
- 10.3 Overview and Scrutiny Committees may hold enquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may pay to any advisers, assessors and witnesses a reasonable fee and expenses for doing so, in so far as budget provision has been made by the Council for these purposes.

## 11. Reports and recommendations from Overview and Scrutiny Committees

- 11.1 Once it has formed proposals or recommendations on any matter, the Overview and Scrutiny Committee will formally report these to the proper officer for consideration by the Leader/Cabinet (as appropriate) (if the proposals are consistent with the existing budgetary and policy framework), or to the Council as appropriate (e.g. if the recommendation would require a departure from or a change to the agreed budget and policy framework).
- 11.2 If an Overview and Scrutiny Committee cannot agree on one single final set of proposals or recommendations to the Council or Leader/Cabinet (as appropriate), then a minority view which is supported by the largest minority, but at least three members, may be prepared and submitted for consideration by the Council or Leader/Cabinet (as appropriate) with the proposals and recommendations supported by the majority of the Committee. The names of those who dissent may, at a member's request, be recorded on the main submission.
- 11.3 Where the Overview and Scrutiny Committee makes a report or recommendations to the Council or Leader/Cabinet (as appropriate) the Committee may publish its report or recommendations and must by notice in writing require the Council or Leader/Cabinet (as appropriate) to consider the report or recommendations, and to notify the Overview and Scrutiny Committee what (if any) action it proposes to take. This must be done within two months of the Council or Leader/Cabinet (as appropriate) receiving the report or recommendations or (if later) the notice. For crime and disorder matters (including crime and disorder CCfAs) the Council or Leader/Cabinet (as appropriate) and any of the other responsible authorities or co-operating

bodies to whom the report or recommendations have been sent must respond in writing and within 28 days from the date of the report or recommendations, or if this is not reasonably possible, as soon as reasonably possible thereafter. The Overview and Scrutiny Committee must provide the Councillor who made the referral of the local government or crime and disorder matter in accordance with paragraph 9.6 of these Rules a copy of any report or recommendations made to the Council or Leader/Cabinet (as appropriate) after consideration of that referral by the Overview and Scrutiny Committee. If the Overview and Scrutiny Committee has published its report then Leader/Cabinet will publish its response.

- 11.4 When a report or recommendations are referred to full Council by the Overview and Scrutiny Committee because the contents would have implications for the Council's budget and policy framework, the proper officer will also serve a copy on the Leader/Cabinet and the chairperson of the relevant Overview and Scrutiny Committee with notice that the matter is to be referred to Council. The Leader/Cabinet will have one month in which to respond to the Overview and Scrutiny report, and the Council shall not consider it within that period. When the Council does meet to consider any referral from an Overview and Scrutiny Committee on a matter which would impact on the budget and policy framework, it shall also consider the response of the Leader/Cabinet to the Overview and Scrutiny proposals and shall respond to the Overview and Scrutiny Committee within two months of receiving the report or recommendations.
- 11.5 Where an Overview and Scrutiny Committee or Sub Committee prepares a report for consideration by the Cabinet in relation to a matter where the Leader or Council has delegated decision making power to another individual member of the Cabinet, then the Overview and Scrutiny Committee will submit a copy of their report to that individual for consideration. At the time of doing so, the Overview and Scrutiny Committee shall serve a copy on the Proper Officer and Leader. If the member with delegated decision making power does not accept the recommendations of the Overview and Scrutiny Committee then he/she must then refer the matter to the next available meeting of the Cabinet for debate before exercising his/her decision making power and responding to the report in writing to the Overview and Scrutiny Committee. The Cabinet member to whom the decision making power has been delegated will respond to the Overview and Scrutiny Committee within four weeks of receiving it. A copy of his/her written response to it shall be sent to the proper officer and he/she will attend a future meeting to respond.
- 11.6. For crime and disorder matters (including crime and disorder CCfAs) the Council or Leader/Cabinet (as appropriate) and any of the other responsible authorities or co-operating bodies to whom the report or recommendations have been sent must respond in writing and within 28 days from the date of the report or recommendations, or if this is not reasonably possible, as soon as reasonably possible thereafter. The Overview and Scrutiny Committee must provide the Councillor who made the referral of the local government or crime and disorder matter in accordance with paragraph 9.5 of these Rules a copy of any report or recommendations made to the Council or Leader/Cabinet (as appropriate) after consideration of that referral by the

Overview and Scrutiny Committee. If the Overview and Scrutiny Committee has published its report then the Leader/Cabinet will publish its response.

- 11.7 The Overview and Scrutiny Committee responsible for the review and scrutiny of the exercise of flood and coastal erosion risk management functions may require information and a response to any report it makes to the Leader/Cabinet or full Council as Medway Council is a lead local flood authority.
- 11.8 The Council and its Overview and Scrutiny Committees may make reports and recommendations to a relevant NHS body or relevant health service provider on any matter it has reviewed or scrutinised relating to the planning, provision and operation of the health service in its area. Where the relevant NHS body or relevant health provider is requested to respond it must do so within 28 days.
- 11.9 Overview and Scrutiny Committees will have access to the Cabinet's Forward Plan and timetable for decisions and intentions for consultation. Even where an item is not the subject of detailed proposals from an Overview and Scrutiny Committee following consideration of possible policy/service developments, the Committee will at least be able to respond in the course of the Cabinet's consultation process in relation to any key decision.

## 12. Rights of Overview and Scrutiny Committee members to documents

- 12.1 In addition to their rights as Councillors, members of Overview and Scrutiny Committees have the additional right to documents, and to notice of meetings as set out in the access to information rules in part 2 of this chapter of the Constitution.
- 12.2 Nothing in this paragraph prevents more detailed liaison between the Cabinet and Overview and Scrutiny Committee as appropriate depending on the particular matter under consideration.

## 13. Members and employees giving account

- 13.1 Any Overview and Scrutiny Committee or Sub-Committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the scrutiny role, it may require any member of the Cabinet, the Chief Executive and/or any director, deputy director, assistant director and service manager to attend before it to explain in relation to matters within their remit:
  - (i) any particular decision or series of decisions;
  - (ii) the extent to which the actions taken implement Council policy;
  - (iii) their performance;

and it is the duty of those persons to attend if so required.

13.2 Where any member or employee is required to attend an Overview and Scrutiny Committee under this provision, the chairperson of that Committee will inform the proper officer. The proper officer shall inform the member or employee in writing giving at least five working days notice of the meeting at which he/she is required to attend. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the Committee. Where the account to be given to the Committee will require the production of a report, then the member or employee concerned will be given sufficient notice to allow for preparation of that documentation.

13.3 Where, in exceptional circumstances, the member or employee is unable to attend on the required date, then the Overview and Scrutiny Committee shall in consultation with the member or employee arrange an alternative date for attendance to take place.

#### 14. Attendance by others

14.1 An Overview and Scrutiny Committee may invite people other than those people referred to in paragraph 13 above to address it, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and members and employees in other parts of the public sector and shall invite such people to attend.

14.2 The Overview and Scrutiny Committee designated as a Crime and Disorder Committee under Section 19 of the Police and Justice Act 2006 may require the attendance before it of an officer or employee of a responsible authority or of a co-operating person or body in order to answer questions. (These are the authorities responsible for the crime and disorder strategy in relation to the local authority area as set out in Section 5 of the Crime and Disorder Act 1998).

14.3 As set out in the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 the Council and Overview and Scrutiny Committees with delegated authority to review and scrutinise the health service may require any member or employee of a relevant NHS body or relevant health service provider to attend before the authority to answer such questions as appear to the authority to be necessary for discharging its relevant health scrutiny functions.

#### 15. Call-in

15.1 When a decision is made by the Leader, Cabinet, an individual member of the Cabinet or a Committee of the Cabinet, or a key decision is made by an employee with delegated authority from the Leader/Cabinet, or under joint arrangements, the decision shall be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within two working days of being made. All Councillors will be sent copies of the records of all such decisions within the timescale, by the person responsible for publishing the decision.

- 15.2 That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of five working days after the publication of the decision, unless the call-in procedure is triggered.
- 15.3 During that period, the proper officer shall call-in a decision for scrutiny by the relevant Overview and Scrutiny Committee if so requested in writing and signed by one third of the whole number of members of an Overview and Scrutiny Committee or any six members of the Council. The proper officer shall then notify the decision-taker of the call-in. (Note: Any one parent governor or diocesan representative on the Overview and Scrutiny Committee(s) dealing with education matters may also provide written notice of a request for call-in on education matters).
- 15.4 Once a decision has been called in it will be considered by the next available meeting of the relevant Overview and Scrutiny Committee. A decision can only be called in once.
- 15.5 If, in the view of the Chief Executive, the matter falls within the remit of more than one Overview and Scrutiny Committee the proper officer shall refer the request to the most relevant Overview and Scrutiny Committee following consultation with the relevant Committee chairpersons.
- 15.6 If, having considered the decision, the relevant Overview and Scrutiny Committee is still concerned about it, then it may refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns or refer the matter to full Council. If referred to the decision-maker they shall then reconsider the decision at the next available meeting, amending the decision or not, before adopting a final decision. The relevant Overview and Scrutiny Committee may make representations to the decision-maker during reconsideration of the matter.
- 15.7 If following receipt of a request for a matter to be called-in the Overview and Scrutiny Committee does not meet as scheduled, or does meet but does not refer the matter back to the decision making person or body, the decision shall take effect on the scheduled date of the Overview and Scrutiny meeting.
- 15.8 To avoid the possibility of very many emergency Council meetings Overview and Scrutiny Committees should normally only use the power to refer a matter to the full Council for consideration with a request for referral back to the decision-maker if it considers either:
- (i) that the decision is contrary to the policy framework or contrary or not wholly in accordance with the budget;
  - (ii) where a request for call-in is signed by six or more members representing at least two political groups.
- 15.9 If a matter is referred to full Council and the Council does not object to a decision which has been made, then no further action is necessary and the



decision will be effective in accordance with the provision below. However, if the Council does object, it has no locus to make decisions in respect of an executive decision unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget. Unless that is the case, the Council will refer any decision to which it objects back to the decision making person or body, together with the Council's views on the decision. That decision making body or person shall choose whether to amend the decision or not before reaching a final decision and implementing it. Where the decision was taken by the Cabinet as a whole or a Committee of it, it will be referred for reconsideration to the next available meeting. Where the decision was made by an individual, the individual will reconsider within ten working days of the Council request.

- 15.10 If the Council meets but does not refer the decision back to the decision making body or person, the decision will become effective on the date of the Council meeting.

15.11 Call-in and urgency

The call-in procedure set out above shall not apply where the decision being taken by the Leader/Cabinet is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interests. The record of the decision and notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is an urgent one, and therefore not subject to call-in. The chairperson (or in their absence the vice-chairperson) of the relevant Overview and Scrutiny Committee must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the relevant Overview and Scrutiny chairperson, the vice-chairperson's consent shall be required. The chairperson or vice-chairperson of more than one Overview and Scrutiny Committee shall be consulted if the proper officer considers that an urgent decision falls within the remit of more than one Overview and Scrutiny Committee. In the absence of these consultees the Head of Paid Service or his/her nominee's consent shall be required. All members of a relevant Overview and Scrutiny Committee will be notified in writing (including electronic communication) as soon as it is practicably possible to do so when agreement to waive call-ins is given under this rule.

Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.

The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.

16. The party whip

When considering any matter in respect of which a member of an Overview and Scrutiny Committee is subject to a party whip the member must declare the existence of the whip and the nature of the matter before the

commencement of the Committee's deliberations on the matter. The declaration, and the detail of the whipping arrangements, shall be recorded in the minutes of the meeting.

## **17. Procedure at Overview and Scrutiny Committee meetings**

### **17.1 Overview and Scrutiny Committees and Sub-Committees shall consider the following business:**

- (i) Apologies for absence;
- (ii) minutes of the last meeting;
- (iii) declarations of interest (including whipping declarations);
- (iv) consideration of any matter referred to the Committee for a decision in relation to call-in of a decision;
- (v) responses of the Leader/Cabinet (as appropriate) to reports of the Overview and Scrutiny Committee;
- (vi) the business otherwise set out on the agenda for the meeting.

### **17.2 Where the Overview and Scrutiny Committee conducts investigations (e.g. with a view to policy development), the Committee may also ask people to attend to give evidence at Committee meetings which are to be conducted in accordance with the following principles:**

- (i) that the investigation be conducted fairly and all members of the Committee be given the opportunity to ask questions of attendees, and to contribute and speak;
- (ii) that those assisting the Committee by giving evidence be treated with respect and courtesy;
- (iii) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.

### **17.3 Following any investigation or review, the Committee/Sub-Committee shall prepare a report, for submission to the Leader/Cabinet (as appropriate) and/or Council as appropriate and shall make its report and findings public.**

## **18. Procedure for handling petitions at Overview and Scrutiny Committees**

### **18.1 Overview and Scrutiny Committees have an important role in relation to petitions submitted to the Council. Petitions must be handled in accordance with the Council's petition scheme which is attached as appendix A to the Council Rules in part 1 of chapter 4 of the Constitution.**

## 19. Matters within the remit of more than one Overview and Scrutiny Committee

- 19.1 Where a matter for consideration by an Overview and Scrutiny Committee or Sub-Committee also falls within the remit of one or more other Overview and Scrutiny Committee or Sub-Committee the decision as to which Overview and Scrutiny Committee will consider it will be resolved by the proper officer in consultation with the relevant Committee chairpersons.
- 19.2 Alternatively the relevant Overview and Scrutiny Committee may establish a time-limited, politically balanced Task Group comprising members from each of the relevant Overview and Scrutiny Committee to deal with the matter.
- 19.3 Before submitting its findings to the Leader/Cabinet (as appropriate) and/or Council for consideration, the report of the reviewing Overview and Scrutiny Committee shall be considered by the other relevant Overview and Scrutiny Committee for comment. Those comments shall be incorporated into the report which is then sent to that body for consideration within the set timescales.

## 20. Joint arrangements

- 20.1 Regulation 30 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 states that where a relevant NHS body or a relevant health service provider consults more than one local authority on any proposal which they have under consideration for a substantial development of, or variation in, the provision of a health service in the local authorities' areas, those local authorities must appoint a Joint Overview and Scrutiny Committee (JHOSC) for the purposes of the review.
- 20.2 There will be a Kent and Medway NHS Joint Overview and Scrutiny Committee comprising of members appointed by Medway Council and members appointed by Kent County Council. The rules set out below apply to the joint Committee and any Sub-Committee established by it.
- 20.3 The Committee will appoint a chairperson at its first meeting in each municipal year, and that chairperson will normally be drawn in rotation from Kent County Council members and Medway Council members. Where a review is unfinished at the end of a municipal year, members may agree that the previous year's chairperson (if still a member of the Committee) may continue to preside over consideration of matters relating to that review.
- 20.4 The formal response of the Committee will be decided by a majority vote. If the joint Committee cannot agree a single response to a proposal under consideration for a substantial development of, or variation in, the provision of a health service by a NHS body or relevant health service provider then a minority response which is supported by the largest minority, but at least three members, may be prepared and submitted for consideration by the NHS body or relevant health service provider with the majority response. The names of those who dissent may, at a member's request, be recorded on the main response.

20.5 These rules will take precedence over the rules in the constituent authorities' Constitutions, which will otherwise apply to the Joint Committee. Where the rules of the constituent authorities' constitutions are in conflict, the Chairperson's ruling will determine which applies.

## 20.6 Kent and Medway NHS Joint Overview and Scrutiny Committee

### Terms of Reference

- To receive evidence in relation to proposals for a substantial development of, or variation to, the health service which affect both Kent and Medway under consideration by a relevant NHS body or relevant health service provider where both the relevant Overview and Scrutiny Committees of Medway and Kent have determined proposals to be a substantial development of, or variation in, the health service.
- To exercise the right to make comments under Regulations 23(4) and 30(5) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 on behalf of the relevant Overview and Scrutiny Committees of Medway and Kent on any such proposals under consideration by the relevant NHS body or relevant health service provider.
- To consider whether any proposal for a substantial development of, or variation in, the health service affecting the areas covered by Kent and Medway should be referred to the Secretary of State under Regulation 23(9) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 and to recommend this course of action, if deemed appropriate, to the relevant Overview and Scrutiny Committees of both Kent and Medway in line with their respective Constitutions. (Note: the exercise of the power to make a referral to the Secretary of State has not been delegated to JHOSC).
- To undertake other scrutiny reviews of health services if requested to do so by the relevant Overview and Scrutiny Committees of both Medway and Kent.
- To report on such other scrutiny reviews to the relevant Overview and Scrutiny Committees of Medway and Kent.

## 21. Terms of reference of Overview and Scrutiny Committees

### 21.1 General terms of reference

Each Overview and Scrutiny Committee shall have the following general terms of reference in relation to their specific areas of responsibility:

- i) To make reports or recommendations to the Council or the Cabinet on any matter affecting the area or its inhabitants;
- ii) To review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the Leader and Cabinet (executive functions);
- iii) To review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are not the responsibility of the Leader and Cabinet (Council -side functions);

- iv) To make reports or recommendations to the Council or the Leader and Cabinet with respect to the discharge of executive and Council-side functions;
- v) To be able to call-in executive decisions which have been made but not implemented for review and scrutiny as set out in paragraph 15 of the Overview and Scrutiny rules;
- vi) To hold the Leader and Cabinet to account, usually by the appearance of relevant portfolio holders at meetings of each Overview and Scrutiny Committee on an annual basis;
- vii) To undertake pre-decision scrutiny of decisions listed in the Forward Plan of decisions to be taken by the Leader and Cabinet;
- viii) To review and scrutinise policy framework documents and the Cabinet's draft budget proposals as provided for in Part 3 of Chapter 4 of the Constitution (Budget and Policy Framework Rules) and to contribute to the development of Council policies more generally;
- ix) To monitor performance and identify areas for further review and scrutiny;
- x) To deal with member's items as they arise;
- xi) To scrutinise and review partnership working including the performance of partners;
- xii) To scrutinise and review the operation and effectiveness of alternative models of service delivery;
- xiii) To scrutinise and review the operation of risk management in the Council;
- xiv) To deal with petitions referred to the Committee in accordance with the Council's Petition Scheme;
- xv) To develop a work programme having regard to the Council's overall strategic priorities, key projects and measures of success;
- xvi) To report on the activity of the Committee to each meeting of the Council, with the exception of Annual Council and the Budget Council meeting;
- xvii) To identify topics for in-depth review by Overview and Scrutiny Task Groups and make recommendations to the Business Support Overview and Scrutiny Committee in relation to the overall programme of reviews agreed from time to time;
- xviii) To appoint time limited Task Groups to undertake in-depth reviews within the overall programme of reviews agreed each year by the Business Support Overview and Scrutiny Committee and to make recommendations to the Council and Leader and Cabinet as appropriate.

## 21.2 Specific Terms of Reference

### a) Business Support and Digital Overview and Scrutiny Committee

To provide guidance and leadership on the development and co-ordination of the scrutiny function for all Overview and Scrutiny Committees, including guidance on priorities for scrutiny activity

To determine the priority of topics in the programme for in-depth reviews across all four Committees taking into account the recommendations put forward by each Committee under a criteria based selection system

To fulfil all the functions of an Overview and Scrutiny Committee in relation to the following:-

- i) Development of the Council's revenue and capital budgets together with regular monitoring of budgets and the capital programme
- ii) Development of the One Medway Council Plan overall and regular monitoring of implementation insofar as it relates to the functions within the Terms of Reference of this Committee
- iii) Functions within the responsibility of the Assistant Director, Legal and Governance, including Democratic Services and governance, Elections and Members Services, Legal Services, Licensing, Local Land Charges, and Category Management
- iv) Medway Norse (strategic matters)
- v) Functions within the responsibility of the Chief Operating Officer including Finance Strategy, Treasury Management Policy, Finance Operations, the Revenue and Benefits Service, Internal Audit and Counter Fraud Services, Transformation, Customer Contact, HR, ICT, Organisational Change and Performance and Business Administration including complaints
- vi) Communications
- vii) Equalities in the community and the workplace
- viii) Climate change
- ix) Digital Transformation

### b) Children and Young People Overview and Scrutiny Committee

To fulfil all the functions of an Overview and Scrutiny Committee in relation to the following:-

- i) Development of the Council's revenue and capital budgets insofar as they relate to the functions within the terms of reference of this Committee together with regular monitoring of budgets and the capital programme
- ii) Regular monitoring of implementation of the One Medway Council Plan insofar as it relates to the functions within the terms of reference of this Committee
- iii) Children's Social Care including: the children's advice and duty service, Children in Need, Child Protection, Child Adolescent

- Support, Looked after Children and proceedings, Adoption, Fostering, the Integrated Family Support Service, Children with learning and physical disability and Quality Assurance and Safeguarding
- iv) Children and Adolescent Mental Health Services
- v) Children's safeguarding and the effectiveness of the Medway Children Safeguarding Board (MCSB) and the Independent Reviewing Officer Service
- vi) School Effectiveness and Inclusion, including school challenge and improvement, Early Years including the family information service, SEN and Inclusion, the behavioural support service, the integrated youth support service including Youth Justice/ Youth Offending Team, the Learning Support Service and Youth and Employment Services
- vii) Opportunities for education, training and learning outside the school environment
- viii) School Organisation and the School's Capital Programme
- ix) School Admissions
- x) Home to School Transport
- xi) Integration of Health, Social Care and Public Health Services including partnership commissioning and the Better Care Fund Plan insofar as these relate to children including Early Help (Children)
- xii) The effectiveness of the Health and Wellbeing Board in relation to identification of children's needs in the Joint Strategic Needs Assessment and delivery of priorities relating to children in the Joint Health and Wellbeing Strategy
- xiii) Public Health Services for children and young people aged 0-18, including school nursing

To review and scrutinise any matters relating to the planning, provision and operation of health services for children and young people in Medway in accordance with the provisions of the Health and Social Care Act 2012, insofar as they relates to the health of children and young people (0-18); in particular:

- (i) the review and scrutiny of services commissioned and provided by relevant NHS Bodies and relevant health services providers;
- (ii) supporting the improvement of health services and the reduction of health inequalities for the children of Medway;
- (iii) considering and responding directly to consultations from relevant NHS bodies and relevant health service providers on any proposal for a substantial development or substantial variation in the provision of health services for children in Medway;
- (iv) Referral of contested health service reconfigurations affecting children to the Secretary of State as permitted under the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

## NOTES:

The Health and Adult Social Care Overview and Scrutiny Committee will be the lead on scrutiny of health insofar as it relates to the transition between childhood and adulthood or where consultation by relevant NHS bodies or relevant health service providers bridge services for children and adults, with participation by representatives of the Children and Young People Overview and Scrutiny Committee when such matters are discussed.

The Health and Adult Social Care Overview and Scrutiny Committee will be the lead on scrutiny of public health.

c) Health and Adult Social Care Overview and Scrutiny Committee

To fulfil all the functions of an Overview and Scrutiny Committee in relation to the following:-

- i) Development of the Council's revenue and capital budgets insofar as they relate to the functions within the terms of reference of this Committee together with regular monitoring of budgets and the capital programme
- ii) Regular monitoring of implementation of the One Medway Council Plan insofar as it relates to the functions within the terms of reference of this Committee
- iii) Adult Social Care and Social Work including Disability Services, Mental Health Social Work, Safeguarding Adults , Home Care, Hospital Social Work, residential, intermediate and day care, domiciliary and respite care
- iv) Integration of Health, Social Care and Public Health Services including partnership commissioning and the Better Care Fund Plan insofar as these relate to adults including Early Help (Adults)
- v) The effectiveness of the Health and Wellbeing Board in relation to identification of adults' needs in the Joint Strategic Needs Assessment and delivery of priorities relating to adults in the Joint Health and Wellbeing Strategy
- vi) Public Health Services

To review and scrutinise any matters relating to the planning, provision and operation of health services in Medway in accordance with the provisions of the Health and Social Care Act 2012, (with the exception of matters relating to children's health which shall be within the remit of the Children and Young People Overview and Scrutiny Committee) in particular:

- i) the review and scrutiny of services commissioned and provided by relevant NHS bodies and relevant health service providers.
- ii) supporting the improvements of health services and the reduction of health inequalities for the people of Medway.
- iii) considering and responding directly to consultations from the relevant NHS bodies and relevant health service providers on any



proposal for a substantial development or substantial variation in the provision of health services in Medway.

- iv) referral of contested health service reconfigurations (excluding changes affecting children) to the Secretary of State as permitted under the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

**NOTE:**

The Health and Adult Social Care Overview and Scrutiny Committee will be the lead on scrutiny of health insofar as it relates to the transition between childhood and adulthood or where consultation by relevant NHS bodies and relevant health service providers bridge services for children and adults, with participation by representatives of the Children and Young People Overview and Scrutiny Committee when such matters are discussed.

The Health and Adult Social Care Overview and Scrutiny Committee will be the lead on scrutiny of public health. The Regeneration, Culture and Environment Overview and Scrutiny Committee will retain public health aspects of promotion of community safety, the local authority's role in dealing with health protection incidents, outbreaks and emergencies (emergency planning) and social inclusion.

The Children and Young People Overview and Scrutiny Committee will have responsibility for public health and health scrutiny in relation to children (defined for this purpose as young people aged 0-18 years).

- d) Regeneration, Culture and Environment Overview and Scrutiny Committee

To fulfil all the functions of an Overview and Scrutiny Committee in relation to scrutiny and review of the following:-

- i) Development of the Council's revenue and capital budgets insofar as they relate to the functions within the terms of reference of this Committee together with regular monitoring of budgets and the capital programme
- ii) Regular monitoring of implementation of the One Medway Council Plan insofar as it relates to the functions within the terms of reference of this Committee
- iii) Frontline Services including highways maintenance and parking, waste and other contracted services, safer communities, emergency planning, green spaces, integrated transport, CCTV, Bereavement and Registration, environmental health and trading services
- iv) Physical and Cultural Regeneration including festivals, arts, theatres, and events, sport, leisure, tourism and heritage, planning policy and the Local Plan, development management, regeneration delivery and Capital Projects, economic development and building control

- v) Social Inclusion, Community Development and neighbourhood renewal
- vi) Local Growth Fund projects
- vii) European Matters
- viii) Flood and coastal erosion risk management functions under the Flood and Water Management Act 2010
- ix) Property and Asset Strategy, acquisitions and disposal
- x) Medway Norse (operational matters within the remit of this Committee)
- xi) Strategic Housing, Housing Management and Travellers
- xii) Adult Learning, Community Hubs and Libraries

To be the designated Crime and Disorder Committee for the purpose of scrutiny, at least once a year, of the decisions and actions of the Community Safety Partnership and the partners who comprise it, insofar as their activities relate to the Partnership itself and to consider crime and disorder CCfAs (in accordance with the guidance and procedures on the CCfA as set out in section 22 of the Overview and Scrutiny rules.

NOTE:

The Health and Adult Social Care Overview and Scrutiny Committee will be the lead on scrutiny of public health. The Regeneration, Culture and Environment Committee will retain public health aspects of promotion of community safety, the local authority's role in dealing with health protection incidents, outbreaks and emergencies (emergency planning) and social inclusion.

## 22. Guidance and procedures for Councillor Call for Action on crime and disorder matters

### 22.1 What is a Councillor Call for Action?

Councillor Call for Action (CCfA) is a process for a Councillor to act on behalf of residents to resolve a local crime and disorder issue, acting **as a last resort** for people who cannot get issues resolved through any other means. Ward Councillors should be looking to identify crime and disorder CCfAs in their community, but CCfAs can also be raised by local people directly with their ward Councillors. It will still be up to Councillors to recognise whether an issue is a CCfA and whether it is appropriate to champion that issue.

Crime and Disorder CCfA is a legal requirement under the Police and Justice Act and Councillors are under a **duty** to consider requests from members of the public on crime and disorder issues. If a Councillor declines to refer a local crime and disorder matter to the relevant Overview and Scrutiny Committee the person who asked him/her to consider it may refer the matter to the Cabinet

The definition of a local crime and disorder issue for the purposes of CCfA is as follows:

A matter concerning

- (a) crime and disorder (including in particular, forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment) or
- (b) the misuse of drugs, alcohol and other substances which affects all or part of the ward for which the member is elected or any person who lives or works in that area.

### 22.2 What's different about the CCfA?

What distinguishes the CCfA from items and topics already raised by Councillors for consideration by Overview and Scrutiny is:

- **Any** member can raise a crime and disorder CCfA issue for scrutiny to consider
- The focus of the CCfA is on **neighbourhood** or **locality crime and disorder** issues and specifically the **quality** of public service provision at a locality level.
- The CCfA represents a genuine local **community** concern (based on local Councillors' judgements) and
- It is a **persistent** problem which the local Councillor has been **unable to resolve** through local action and discussion with relevant services and agencies.

Scrutiny reviews resulting from CCfA will be undertaken by Overview and Scrutiny Committees with an invitation to Councillors from the affected locality

to contribute to the discussion. There is an expectation that any scrutiny reviews resulting from crime and disorder CCfA will be 'short and sharp', focused reviews - it is important that the public see this as a responsive and un-bureaucratic process which delivers tangible outcomes.

### 22.3 What is expected of a local Councillor?

Councillors are expected to identify crime and disorder issues of local concern and act with and on behalf of their community to resolve those issues. It is up to Councillors using this guidance to decide:

- which issues to take forward as CCfAs and champion;
- when an issue should be referred to the relevant Overview and Scrutiny Committee and
- when to reject an issue.

It is a matter of judgement for a Councillor to decide which local crime and disorder matters to champion and each local Councillor will be accountable to the local community for these judgements. Championing a request will mean taking the issue up on behalf of the resident(s) concerned and trying to resolve the problem by liaising with Council officers, and/or outside agencies.

Councillors deal with issues of concern on behalf of their constituents as an everyday part of their constituency case work. The CCfA is not intended to add additional bureaucracy to these ward Councillor requests, which will continue to be dealt with in the same way as they are now. If a Councillor or a member of the public is uncertain about whether a request might be appropriate, the Head of Democratic Services and Head of Elections and Members Services can provide advice and assistance.

### 22.4 Checklist for Councillors using a CCfA

#### Initial consideration and actions:

- Discussion with other ward Councillors (to check their actions and intentions and whether they can help).
- Take steps to resolve the issue through existing mechanisms such as contacting Council Officers (including the Overview and Scrutiny Team), liaising with other organisations, use of the Council's complaints procedure or petitions procedure, or checking whether it can be fed into an existing Task Group.
- If the issue is resolved, inform the resident of the outcome and the steps taken, including any difficulties or learning points.
- If the issues remain unresolved, consult the Democratic Services Team and if appropriate formally request that the item be considered by the relevant Overview and Scrutiny Committee.
- A Councillor must take in to account government guidance on CCfA in determining whether to refer a matter to the relevant Overview and Scrutiny Committee

[A flow chart of the CCfA process is attached to this guidance and takes you through each step of the process].

**Reject if it is any of the following:**

- An individual complaint (unless it is a series of individual complaints demonstrating “systematic failure” in a particular area)
- Vexatious, discriminatory or not reasonable (see notes at end).
- It is being used as a “second bite of the cherry” e.g. where a previous call-in has failed, or a petition has already been considered.

**Accept if it is:**

- A crime and disorder issue of genuine local concern; and
- All other avenues for resolution have been followed, and
- this now seems to be the most appropriate way to deal with it.

## 22.5 **How does CCfA fit with the Overview and Scrutiny Committee Work Programmes?**

Any member of an Overview and Scrutiny Committee can put an item on the relevant Committee agenda using the arrangements set out in the Councils Overview and Scrutiny rules. There is also provision for a Councillor to refer a matter to an Overview and Scrutiny Committee of which he/she is not a member subject to some excluded matters.

The aim of Scrutiny is to be as strategic as possible, championing issues on behalf of the community so it is possible that a crime and disorder CCfA topic may already be included in an Overview and Scrutiny Committee work programme.

It is valuable for crime and disorder CCfA issues to feed into Overview and Scrutiny work programmes, and vice versa. The purpose of CCfA is to give members more of a voice, and scrutiny itself is a member-led process. CCfA can sit comfortably alongside existing methods for placing items on the scrutiny work programme. CCfA should make the work programme more relevant and timely.

Currently the Regeneration Culture and Environment Overview and Scrutiny Committee has the remit to deal with crime and disorder CCfAs. The Committee will be asked to identify if a CCfA is appropriate for scrutiny ensuring that the issues scrutinised and reviewed are of genuine community concern.

The Committee will receive an initial report and relevant ward Councillors will be invited to take part in the meeting if they are not members of the Committee. The Committee will then take a view on next steps which may include a Task Group to review the issues in some detail. In deciding whether to take any further action the Committee will take into account any representations made by the Councillor as to why further investigation or review is appropriate.

## 22.6 Consideration of a Crime and Disorder CCfA by an Overview and Scrutiny Committee

Ward Councillors and where possible representatives of the community concerned will be notified of the date of the meeting and invited to attend along with any other relevant bodies. The Chairperson will provide a short introduction and the Councillor bringing the CCfA will be invited to outline their objectives and to answer questions from other members. The discussion will be structured to focus on the issue raised.

### Overview and Scrutiny Checklist for determining a CCfA

The Committee will review the actions taken to date to resolve the issue and all of the criteria set out in paragraph 22. 4 above. It may determine that no action should be taken, for example because:

- The applicant is a vexatious complainant and the issue is being or has been dealt with under the Council's complaints procedure.
- The issue is currently going through the complaints procedure, and it is appropriate for this to be concluded.
- Ward Councillors have not explored the issue fully and exhausted all avenues.

Alternatively, it may conclude that the public interest is best served by setting up a Task Group to consider the matter in more detail. The Committee should endeavour where possible to identify an appropriate "resolution" of the issue.

Where a Committee decides not to take any further action in respect of a Crime and Disorder CCfA (such as to carry out a review of the matter) it will inform the Member who referred the matter, in writing, of its decision and its reasons for that decision.

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## **Notes**

### **Definition of a Complaint**

For the purpose of the Council's procedure the Council accepts the Local Government Ombudsman's definition.

*"An expression of dissatisfaction by one or more members of the public about the Council's action or lack of action or about the standard of a service, whether the action was taken or the service provided by the Council itself or a person or body acting on behalf of the Council."*

Statutory Regulations state that *any matter which "is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee or at a meeting of a sub-committee of that committee is to be excluded"*.

The relevant Guidance states as follows in regard to these terms:

“Vexatious” and “persistent” – it is probably best to refer to the guidance to the Freedom of Information Act which states that:

*Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all the circumstances of the case. There is no rigid test or definition, and it will often be easier to recognise. The key question is whether the request is likely to cause distress, disruption or irritation, without any proper or justified cause.*

Issues around persistency are implied by this definition. However, a persistent request may well be entirely valid – it may relate to a systematic problem that has not been effectively resolved. A request which some members may regard as vexatious, for political reasons, may actually be entirely reasonable.

Councils should not see politically motivated CCfAs, and CCfAs on subjects of high-profile political controversy, as a threat. They should be used as an opportunity for Members to defuse political rows and, jointly, to develop solutions that are satisfactory to all.

“Discriminatory” – a modern interpretation of the word “discrimination” is provided at section 45 of the Equality Act 2006, in relation to religion and belief, as follows:

*A person (“A”) discriminates against another (“B”) for the purposes of this Part if on grounds of the religion or belief of B or of any other person except A (whether or not it is also A’s religion or belief) A treats B less favourably than he treats or would treat others (in cases where there is no material difference in the relevant circumstances).*

“Not reasonable” – it is suggested that, in the interests of transparency, authorities do not interpret “not reasonable” as being the same as the legal word “unreasonable”. It is best to consider it as a qualifier to the word “vexatious”, as a vexatious request is likely not to be reasonable, and a request that is not reasonable is likely to be vexatious.

**Crime and Disorder Councillor Call for Action Flow Chart**