

## **PART 5 BRIGHTON & HOVE CITY COUNCIL**

### **OVERVIEW & SCRUTINY COMMITTEE**

#### **TERMS OF REFERENCE AND PROCEDURE RULES**

##### **1. Arrangements for Scrutiny**

- 1.1 The Council will appoint an Overview & Scrutiny Committee to perform the statutory Overview & Scrutiny functions in relation to health, crime and disorder and flood risk. The Committee will also:-
- have the power to undertake wider Overview & Scrutiny work;
  - oversee and co-ordinate the work of policy panels commissioned by policy committees;
  - monitor the implementation of outstanding scrutiny recommendations; and
  - administer the call-in procedure for the Council through an urgency sub-committee.

##### **2. Terms of Reference of the Overview & Scrutiny Committee**

- 2.1 To exercise powers with regard to the scrutiny of health services pursuant to the National Health Service Act 2006 and in particular:-
- To scrutinise matters relating to the planning, provision and operation of the health service in the Authority's area and contribute to the development of policy and services to improve health and reduce health inequalities;
  - To comment on proposals for a substantial development or variation in the provision of the health service in the Authority's area in accordance with the requirements of the National Health Service Act 2006 and associated Regulations;
  - To review and scrutinise the impact of the Authority's own services and of key partnerships on the health of its population;
  - To encourage the Council as a whole to take into account the implications of their policies and activities on health and health inequalities;
  - To make reports and recommendations to the National Health Service, the Council, the committees and sub-committees, and to other relevant bodies and individuals;
  - To monitor and review the outcomes of its recommendations.

In all of the above, to liaise with other bodies that represent patients' views in order to seek and take account of the views of the local populations.

- 2.2 To undertake the scrutiny of flood and coastal erosion plans as required by the Localism Act 2011;
- 2.3 To be the designated Crime and Disorder Committee as required under the Police and Justice Act 2006;
- 2.4 To review and scrutinise matters, decisions and service provision relating to Council functions and services not covered by paragraphs 2.1-2.3 above;
- 2.5 To monitor the outcome of Overview & Scrutiny recommendations;
- 2.6 To have the power to establish an urgency sub-committee to administer the call in of policy committee decisions in accordance with these Overview & Scrutiny Committee Terms of Reference and Procedure Rules.

### **3. Functions of the Overview & Scrutiny Committee**

- 3.1 The Overview & Scrutiny Committee will:
  - a) Approve a scrutiny and review work programme, to ensure that there is efficient use of resources and that the potential for duplication of effort is minimised;
  - b) Receive consultations for comment from an NHS body or relevant NHS service provider pursuant to the NHS Act 2006 and associated Regulations;
  - c) Receive requests from Councillors and partner organisations, and suggestions from officers of the council, for particular topics to be scrutinised and determine the appropriate action;
  - d) Have the power to call-in and review policy committee decisions, or key decisions made by an officer with delegated authority, as set out in the these Rules;
  - e) Oversee the work and monitor the recommendations of Policy Panels commissioned by policy committees to undertake time limited policy reviews;
  - f) Co-ordinate training and development arrangements for Overview & Scrutiny Committee members and co-optees;
  - g) Monitor and review the outcomes of Overview & Scrutiny recommendations.

- h) Ensure that the communities of Brighton & Hove and specific users of services are able to be involved in and inform the work of the committee.
- i) Appoint an Urgency Sub-Committee as necessary to exercise its powers. The Membership of such Urgency Sub-Committee shall consist of the Chair of the Committee and two other Members nominated by Leaders, to meet the requirements for the allocation of seats between political groups. Such Urgency Sub-Committee may exercise its powers in relation to matters of urgency on which it is necessary to make a decision before the next ordinary meeting of the Committee. Every decision of the Urgency Sub-Committee shall be reported for information to the next ordinary meeting of the Committee as appropriate.

#### **4. Policy Panels**

- 4.1 Any Policy Committee may appoint Policy Panels to carry out short, sharply focused pieces of policy review and development work. 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.
- 4.2 All proposals to establish Policy Panels will be discussed at an Informal Chairs' Meeting to assist in managing the available resources and to identify cross-cutting issues. Where cross-cutting issues are identified, these will be referred to the Overview & Scrutiny Committee, or Overview & Scrutiny Urgency Sub-Committee, to agree the best approach with a view to avoiding duplication and ensuring an effective use of Policy Panel resources.
- 4.3 Policy Panels will not have Sub-Committee status and the political balance rules in section 15 of the Local Government and Housing Act 1989 will not apply, but they will normally be established on a cross-party basis. The Policy Panel will report to the Policy Committee that commissioned its work and will also provide a copy of their report to the Overview & Scrutiny Committee. The Overview & Scrutiny Committee will monitor the implementation of recommendations of Policy Panels.
- 4.4 Membership of the Policy Panels will be sought from the political groups, taking into account the expertise and experience of available Members. Co-optees may be appointed to the Policy Panels as set out at paragraph 7 below.
- 4.5 There should not normally be provision for substitute Members to attend meetings of Policy Panels.

- 4.6 The relevant Policy Committee shall ensure that the number of Policy Panels commissioned does not exceed the capacity of the Member and Officer resources available to support their work.
- 4.7 In considering whether or not any matter should be agreed for a Policy Panel, the relevant Policy Committee will have regard to:
- The importance of the matter raised and the extent to which it relates to the achievement of the Council's strategic priorities, the implementation of its policies or other key issues affecting the well being of the City or its communities;
  - The potential benefits of a review especially in terms of possible improvements to future policies and procedures and/or the quality of Council services;
  - The proposed Overview & Scrutiny approach (a brief synopsis) and resources required,
  - The resources available to support the work as set out at paragraph 4.5 above.

## **6. Membership of the Overview & Scrutiny Committee**

- 6.1.1 Membership of the Overview & Scrutiny Committee will reflect the political composition of the Council and be subject to section 15 of the Local Government and Housing Act 1989. No member of the Council's Health and Wellbeing Board may be a member of the Overview & Scrutiny Committee. No Councillor may be involved in scrutinising a decision in which s/he has been directly involved.

## **7. Co-optees**

- 7.1 The Overview & Scrutiny Committee will include non voting co-opted members from the Older People's Council, the Youth Council and LINK/Healthwatch.
- 7.2 The relevant Policy Committee may agree the appointment of non voting co-optees for each Policy Panel. In appointing co-opted Members to Policy Panels, regard will be given to both the expertise of the individual and the representative nature of the position.

## **8. Meetings of the Overview & Scrutiny Committee**

- 8.1 The Overview & Scrutiny Committee will meet six times per annum. In addition, an extraordinary meeting may be called by the Chair or the Chief Executive at any time if they consider it necessary or desirable.
- 8.2 Policy Panels shall meet as many times as necessary to successfully carry out their investigations, they shall however be time limited in nature.

## **9. Quorum**

- 9.1 The quorum for Overview & Scrutiny Committee meetings shall be as set out for committees and sub-committees in the Council Procedure Rules in Part 3 of this Constitution.

## **10. Chair of Overview & Scrutiny Committee and Policy Panels**

- 10.1 The Council will appoint the Chair of the Overview & Scrutiny Committee.
- 10.2 The relevant Policy Committee will appoint the Chair of any Policy Panels it establishes.
- 10.3 If the relevant Policy Committee fails to appoint a Chair, the Policy Panel will make the appointment at its first meeting.

## **11. Work programme**

- 11.1 The Overview & Scrutiny Committee will be responsible for setting its own work programme.

## **12. Agenda items**

- 12.1 Agenda items shall be set by the Overview & Scrutiny Committee identifying issues which they wish to consider.
- 12.2 Any Member of the Council may notify Democratic Services that s/he wishes an item relevant to the functions of the Overview & Scrutiny Committee to be included on the agenda for the next available meeting of the Committee.

## **13. Submission of reports from Overview & Scrutiny Committee**

- 13.1 Once it has formed recommendations on any matter, the Overview & Scrutiny Committee will prepare a formal report and submit it to the Chief Executive of the Council or relevant organisation for consideration at the relevant decision-making body.
- 13.2 If the Overview & Scrutiny Committee cannot agree on one single final report then up to one minority report may be prepared and submitted for consideration by the relevant Policy Committee meeting with the majority report.
- 13.3 The relevant Policy Committee shall consider the report within eight weeks of it being submitted to the Chief Executive or at its next scheduled meeting, whichever is the later, and shall prepare a response to the recommendations detailing whether each recommendation is agreed or not agreed.

13.4 The Chair of the Overview & Scrutiny Committee shall be invited to the Committee meeting at which the report is considered. .

#### **14. Councillor Call for Action**

14.1 The “Councillor Call for Action” (CCfA) as set out in Section 119 of the Local Government and Public Involvement in Health Act 2007 and amended by the Localism Act 2011 enables any member of the council to refer to an Overview & Scrutiny committee any local issue which directly affects their ward.

14.2 A CCfA should only be raised where other means of resolving the matter have been exhausted. Any Member of the Council may raise a CCfA, which should be sent to the Democratic Services. In seeking to raise a CCfA a Councillor needs to:

- State why they consider the issue should be looked at by the Overview & Scrutiny Committee;
- Give a brief synopsis of what the main areas of concern are;
- Supply evidence in support of the CCfA;
- Indicate areas or groups affected by the CCfA;
- Summarise mediation and attempts at resolution undertaken;
- Indicate deadlines associated with the CCfA of which the Health Scrutiny Committee needs to be aware.

14.3 Upon receipt of a CCfA, the Overview & Scrutiny Committee, or Overview & Scrutiny Urgency Sub-Committee if the matter is urgent, will use the following criteria to decide whether or not to take the matter further:

- Is the committee satisfied that all reasonable attempts have been made to resolve the issue by the ward councillor? Do the responses received by the referring councillor demonstrate that the matter is not being progressed?
- Has the committee considered a similar issue recently – if yes, have the circumstances or evidence changed?
- Is there a similar or related issue which is the subject of a review on the current work programme? It may be more appropriate to link the new issue to an existing review, rather than hold a separate CCfA hearing.
- Relevant time pressures on resolving the CCfA should be taken into account.
- Have all relevant service areas or partner organisations been informed and been given enough time to resolve the issue? What response has the councillor received?
- Does the matter referred have the potential for recommendations which could realistically be implemented and lead to improvements for anyone living or working in the referring member’s ward?

- Is the matter an excluded matter, as set out in paragraph 14.9 of these Rules.
- 14.4 In considering the CCfA, the Overview & Scrutiny Committee will invite the relevant Members and officers to discuss the issue and answer any questions, if the committee considers this relevant.
- 14.5 If the committee decides not to accept the CCfA referral it must inform the Councillor and provide reasons. If the committee decides to accept the CCfA referral, it must decide how it intends to take the matter forward and include the CCfA in its work programme.
- 14.6 The Overview & Scrutiny Committee, in considering a CCfA, may undertake any of the activities as outlined in the Overview & Scrutiny Committee Terms of Reference and Procedure Rules.
- 14.7 The power to refer a matter is available only where the matter is of direct concern to the ward which the Councillor represents. A Councillor can refer a matter even if no citizen has asked him/her to consider it.
- 14.9 The following matters are excluded from referral as a CCfA:
- Individual complaints concerning personal grievances or commercial issues.
  - Any matter relating to an individual or entity where there is already a statutory right to a review or appeal (other than the right to complain to the Local Government Ombudsman), for example:
    - § Planning and licensing applications and appeals;
    - § Council Tax/Housing Benefits complaints and queries;
    - § Issues currently under dispute in a court of law.
  - Any matter which is vexatious, discriminatory or not reasonable to be included on the agenda for, or to be discussed at, a meeting of the Overview & Scrutiny Committee.

## **15. Call-in**

- 15.1 Call-in is a process by which the Overview & Scrutiny Committee can recommend that a decision made by a Policy Committee but not yet implemented be reconsidered by the body which made the decision, or recommend that the full Council consider whether that body should reconsider the decision.
- 15.2 Call-in does not provide for the Overview & Scrutiny Committee or the full Council to substitute its own decision, but merely to refer the matter back to the decision-maker. A decision maker can only be asked to reconsider any particular decision once.

- 15.3 Call-in should only be used in very exceptional circumstances – for example where Members have evidence that a decision was not taken in accordance with Article 11 of the constitution. Day to day management and operational decisions taken by officers may not be called-in.
- 15.4 Any decision made by a Policy Committee, or a key decision made by an officer under delegated powers, shall be published by means of a notice at the main offices of the Council (Kings House – room 131, Brighton Town Hall - reception, Hove Town Hall - reception) and where possible by electronic means, normally within 2 working days of being made. All Members will be sent, if possible by electronic means, copies of all such decision notices at the time of publication.
- 15.5 Any decision made by the Policy Committee, or a key decision made by an officer under delegated powers, may be called in up to five working days from the date of the meeting at which the decision was taken.
- 15.6 During this period, any five Members of the Council, from a minimum of two political groups, may request that a decision be called-in for Scrutiny.
- 15.7 Such a request shall be made in writing to the Chief Executive and shall include the reason(s) for the request and any alternative decision proposed. The Chief Executive may refuse to accept a request which in his/her opinion is frivolous, vexatious or defamatory, or where no reason is given.
- 15.8 If the Chief Executive accepts the request he/she shall call-in the decision. This shall have the effect of suspending the decision coming in force and the Chief Executive shall inform the decision maker e.g. Committee Members, or officer and the relevant Director of the call-in. The Chief Executive shall then call a meeting of the Overview & Scrutiny Urgency Sub-Committee to scrutinise the decision, where possible after consultation with the relevant Chair, and in any case within 7 working days of accepting the call-in request.
- 15.9 In deciding whether or not to refer a decision back, the Overview & Scrutiny Urgency Sub-Committee shall have regard to:
- any further information which may have become available since the decision was made
  - the implications of any delay; and
  - whether reconsideration is likely to result in a different decision.
  - The importance of the matter raised and the extent to which it relates to the achievement of the Council's strategic priorities,
  - Whether there is evidence that the decision-making rules in the constitution have been breached;
  - that the agreed consultation processes have not been followed;



- or that a decision or action proposed or taken is not in accordance with a policy agreed by the Council;
  - What other avenues may be available to deal with the issue and the extent to which the Councillor or body submitting the request has already tried to resolve the issue through these channels (e.g. a letter to the relevant Member, the complaints procedure, enquiry to the Chief Executive or Director, Council question etc.)
- 15.10 If, having scrutinised the decision, the Overview & Scrutiny Urgency Sub-Committee is still concerned about it, then it may refer it back to the decision making body for reconsideration, setting out in writing the nature of its concerns. If it considers the decision is contrary to the policy framework or budget agreed by the Council, the matter may be referred to the full Council to determine whether or not it should be referred back to the decision making body.
- 15.11 If the Overview & Scrutiny Urgency Sub-Committee does not meet within 7 working days of the Chief Executive accepting a call-in request, or does meet but does not refer the matter back to the decision making body or to the Council, the decision shall take effect on the date of the Overview & Scrutiny Urgency Sub-Committee meeting, or the expiry of the period of 7 working days from the call-in request being accepted, whichever is the earlier.
- 15.12 If the decision is referred back to the decision making body, that body shall then reconsider, either at its next programmed meeting or at a special meeting called for the purpose, whether to amend the decision or not before reaching a final decision and implementing it.
- 15.13 If the Overview & Scrutiny Urgency Sub-Committee refers the matter 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, the Council will refer any decision to which it objects back to the decision making body, together with the Council's views on the decision. In this case the decision making body shall consider, either at its next programmed meeting or at a special meeting convened for the purpose, whether to amend the decision or not before reaching a final decision and implementing it.
- 15.14 If the Council does not meet within two weeks of the matter being referred to it, or if it does meet 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 or expiry of that two week period, whichever is the earlier.

## **16. Call-in and urgency**

- 16.1 The call-in procedure set out above shall not apply where the decision being taken 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 if in the opinion of the decision making body the decision is an urgent one and subject to the agreement of the Chief Executive, or in his/her absence the officer acting for him, such a decision shall not be subject to call-in.
- 16.2 The Chief Executive or the Officer acting on his/her behalf shall consult the leaders of the Political Groups before agreeing to the exemption. Any decision to which the call-in process does not apply for reasons of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- 16.3 The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to the Overview & Scrutiny Committee with proposals for review if necessary.

## **17. Call In and Joint Committees**

- 17.1 The principle of call in applies to decisions made by Joint Committees on which the Council is represented. The detailed arrangements relating to call in of Joint Committee decisions shall be agreed between the constituent authorities and included in the Constitution of the Joint Committee.

## **18. Matters excluded from review by the Overview & Scrutiny Committee**

- 18.1 The Overview & Scrutiny Committee should not review individual decisions made in respect of development control, licensing, registration, consents and other permissions. The Overview & Scrutiny process is not an alternative to normal appeals procedures.
- 18.2 The Overview & Scrutiny process is not appropriate for issues involving individual complaints or cases, or for which a separate process already exists e.g. personnel/disciplinary matters, ethical matters or allegations of fraud.