

O&S Terms of Reference

EXTRACT FROM CONSTITUTION MAY 2021

OVERVIEW AND SCRUTINY COMMITTEES

1.1 Principles of Good Scrutiny

- i. Good Overview and Scrutiny adds value to Councils as it:
 - a) Amplifies public voice and concerns;
 - b) Drives improvement in public services;
 - c) Provides constructive “critical friend” challenge;
 - d) Is led by ‘independent minded people’ who take responsibility for their role.

1.2 Role

- i. Overview and Scrutiny Committees will:
 - Make reports and/or recommendations to the full Council, the Executive and / or other organisations in connection with the discharge of the functions specified in their terms of reference;
 - Consider any matter covered in their terms of reference that may affect or be likely to have an effect on the citizens of Birmingham; and
 - is relevant to the Council’s strategic objectives; and/or
 - is relevant to major issues faced by officers in managing a function of the Council; and/or
 - is likely to make a contribution to moving the Council forward and achieving key performance targets.
 - Exercise the “request for call-in” and “call-in” any Cabinet, Cabinet Committee or Cabinet Member decisions made but not yet implemented by the Executive.
 - Overview and Scrutiny Chairs should maintain regular engagement with Cabinet Members to enable flexibility to be built into the Overview and Scrutiny work programme, so as to respond to the Council’s policy priorities in a timely way.

1.3 Functions

- i. *Policy development and review:* Overview and Scrutiny Committees may:
 - Assist the Council and / or the Executive in the development of its budget and policy by appropriate analysis of policy and budget issues;

- Conduct appropriate research, community and other consultation in the analysis of policy and budget issues and possible options;
 - Consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
 - Question Members of the Executive and/or Chief Officers about their views on issues and proposals affecting their areas of responsibility; and
 - Liaise with other external organisations operating in the city, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.
- ii. *Scrutiny*: Overview and Scrutiny Committees may:
- Review and scrutinise the Executive decisions made by and performance of the Executive and/or Chief Officers in relation to decisions taken by them or in relation to their areas of responsibility / department;
 - Review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and / or particular service areas – including the areas of responsibility of the Regulatory and Non-Executive Committees, but not the actual decisions of the Regulatory and Non-Executive Committees;
 - Make recommendations to the Executive, Chairmen of Committees, Chief Officers and/or Council arising from the outcome of the scrutiny process;
 - Review and scrutinise the performance of other relevant public bodies in Birmingham (including Health Authorities) and to invite reports from them by requesting them to attend and engage with the Overview and Scrutiny Committee about their activities and performance;
 - Question and gather evidence from any person (with their consent); and
 - Establish sub-committees to undertake aspects of that committee’s remit, or Task and Finish Committees to carry out specific time limited enquiries as agreed with the eight Overview and Scrutiny Committee Chairs and subject to available resources.
- iii. Any member of an overview and scrutiny committee (or sub-committee) may ensure that any matter relevant to the remit of the committee (or sub-committee) be placed on the agenda and discussed at a meeting of the committee (or sub-committee) (“Councillor Call for Action”).

1.4 Membership

- i. All Councillors, except Cabinet Members (and the Lord Mayor) can be members of an Overview and Scrutiny (O&S) Committee. Members are appointed by Full Council. Chairs of these committees are appointed by the Full Council and Deputy Chairs are elected by each committee at its first meeting, for the purpose of substitution for the Chair if absent.
- ii. Membership of each of the O&S Committees will be eight; with the exception of the Co-ordinating Overview and Scrutiny Committee, which will consist of 12 members:

the chair of the committee and the seven other Overview and Scrutiny Committee chairs along with four places for opposition group members to ensure proportionality. Education and Children's Social Care O&S Committee will have an additional four co-opted places, as set out below.

- iii. Quorum for the Co-ordinating O&S Committee and Education and Children's Social Care O&S Committee shall be four; and three for the other O&S Committees.
- iv. No substitute members shall be appointed to an Overview & Scrutiny meeting.
- v. Where a member stands down from a Cabinet role, that member should not be appointed to the O&S Committee scrutinising the portfolios to which that role related for a period of six months.
- vi. A Chair of an Overview & Scrutiny Committee should not be appointed to serve as a Director on any of the City Council's wholly owned companies where the activities of that company overlap with the remit of that Overview & Scrutiny Committee.

1.5 Terms of Reference of Overview and Scrutiny Committees

- i. There shall be eight Overview and Scrutiny Committees as set out in the terms of reference below.

Co-ordinating Overview and Scrutiny Committee

- ii. To plan and co-ordinate the work of all the Overview & Scrutiny Committees. To fulfil the functions of an Overview and Scrutiny Committee as they relate to any policies, services and activities concerning governance (including transparency, regional working and partnerships): citizens (including communications and public engagement); performance; customer services; social cohesion; equalities and emergency planning.
- iii. These functions include:
 - a) giving such guidance to the Overview and Scrutiny Committees in any cases of uncertainty, as to work which they should or should not be undertaking, as may be necessary to achieve such co-ordination, including the allocation of "call-in" to the appropriate Committee;
 - b) determining, in any cases of uncertainty, the allocation of responsibility for specific tasks between the Overview and Scrutiny Committees;
 - c) ensuring (by means, for example, of issuing appropriate guidance and/or instructions) that the Overview & Scrutiny Committees pay proper attention in their work to the consideration of key cross cutting issues, in particular equalities, transparency and improvement;
 - d) publishing each year an Annual Programme of major scrutiny inquiries as suggested by individual Overview and Scrutiny Committees following consideration of the Council Plan and priorities;

- e) agreeing the establishment of any task & finish groups; and
 - f) considering overview and scrutiny development, working practices and constitutional arrangements.
- iv. Membership of the Co-ordinating Overview and Scrutiny Committee will consist of 12 members: the chair of the committee and the seven other Overview and Scrutiny Committee chairs along with four places for opposition group members to ensure proportionality.

Resources Overview and Scrutiny Committee

- v. To fulfil the functions of an Overview and Scrutiny Committee as they relate to any policies, services and activities concerning finance (including strategic finance, budget setting and financial monitoring); revenues and benefits; treasury management; Council land use and property assets; human resources; contracting, commissioning and commercialisation.

Education & Children's Social Care Overview and Scrutiny Committee

- vi. To fulfil the functions of an Overview and Scrutiny Committee as they relate to any policies, services and activities concerning schools and education, the Children's Trust, vulnerable children, corporate parenting, children and young people's health and wellbeing and other child social care and safeguarding functions of the council.
- vii. The Overview and Scrutiny Committee dealing with education matters shall include in its membership the following voting representatives:
- a) Church of England diocese representative (one);
 - b) Roman Catholic diocese representative (one); and
 - c) Parent Governor representatives (two).

Economy and Skills Overview and Scrutiny Committee

- viii. To fulfil the functions of an Overview and Scrutiny Committee as they relate to any policies, services and activities concerning strategic economy; skills and apprenticeships; inward investment; land use planning; business improvement districts and the Local Enterprise Partnership.

Health and Social Care Committee

- ix. To fulfil the functions of an Overview and Scrutiny Committee as they relate to any policies, services and activities concerning adult safeguarding, social care and public health; and to discharge the relevant overview and scrutiny role set out in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012, including:
- The appointment of Joint Overview and Scrutiny Committees with neighbouring authorities; and

- The exercise of the power to make referrals of contested service reconfigurations to the Secretary of State as previously delegated to the Health and Social Care Overview and Scrutiny Committee by the Council.

Housing and Neighbourhoods Overview and Scrutiny Committee

- x. To fulfil the functions of an Overview and Scrutiny Committee as they relate to any policies, services and activities concerning housing; waste management; neighbourhood management; parks and allotments localisation; bereavement services and community safety.
- xi. This Committee shall be the Crime and Disorder Committee (Police and Justice Act 2006).

Commonwealth Games, Culture and Physical Activity Overview and Scrutiny Committee

- xii. To fulfil the functions of an Overview and Scrutiny Committee as they relate to any policies, services and activities concerning Commonwealth Games; arts and culture; libraries and museums; sport; events.

Sustainability and Transport Overview and Scrutiny Committee

- xiii. To fulfil the functions of an Overview and Scrutiny Committee as they relate to any policies, services and activities relating to sustainability; air pollution; transport strategy and highways.
- xiv. The Committee shall undertake the authority's statutory functions in relation to the scrutiny of flood risk management (Flood and Water Management Act 2010).

1.6 Rules of Procedure

- i. A Scrutiny meeting may be called by the Chair of the relevant Overview & Scrutiny Committee.
- ii. All meetings of an Overview & Scrutiny Committee shall be open to the public in accordance with Section C2 *Access to Information*. In addition to their rights as Councillors, Members on an Overview & Scrutiny Committee have additional rights to documents as set out in Section C2 *Access to Information*.
- iii. No Overview & Scrutiny Committee may undertake a review into:
 - Any decision of the Planning Committee, the Licensing and Public Protection Committee or a Licensing sub-committee;¹
 - Any decisions which may be appealed against under the terms of reference of the Licensing Sub-Committees;

¹ In respect of a licence or permission granted to an individual or in respect of an individual premises

- Any decision taken by an officer under delegated authority which falls within the terms of reference of the Planning Committee, the Licensing and Public Protection Committee or a Licensing sub-committee;²
 - Any code of conduct matter or employment appeals;
 - Except in exceptional circumstances, any decision in respect of which there are:
 - a) Ongoing judicial proceedings, Ombudsman or audit inquiry or complaint under the Council's formal complaints procedure; or
 - b) Individual personnel issues.
- iv. An Overview & Scrutiny Committee may require any Cabinet Member, or Member in relation to a matter where the Member has exercised functions, the Chief Executive and/or any senior officer to attend before it to answer questions and provide information about any matter within its terms of reference.³

1.7 Conflicts of interest

- i. If an Overview and Scrutiny Committee is scrutinising specific decisions in relation to the business of another committee or forum of the City Council of which an Overview and Scrutiny Committee Councillor is a Member, then that Councillor must withdraw from the meeting during the consideration of such matter.
- ii. Where, however, the Overview and Scrutiny Committee is reviewing policy matters, generally, as opposed to a specific decision of another committee or forum of the City Council, the Member must declare his/her interest before the relevant agenda item is reached but need not withdraw.
- iii. If a Cabinet Adviser (or former Cabinet Adviser) is a member of an Overview & Scrutiny Committee and is scrutinising matters to which their role relates, then that Councillor must withdraw from the meeting during the consideration of such matter.
- iv. If an Overview and Scrutiny Committee is scrutinising the work of a relative of a member of the Committee, then that Councillor must withdraw from the meeting during the consideration of such matter.

1.8 Overview and Scrutiny Work and Non-Executive Committees

- i. Overview and Scrutiny Committees are only permitted by law to scrutinise the Executive decisions of the Council – Cabinet, Cabinet Committees, Cabinet Members, and officers.

² In respect of a licence or permission granted to an individual or in respect of an individual premises

³ A Member or officer is not obliged to answer any question which he would be entitled to answer in or for the purposes of proceedings in a Court Section 9FA of the 2000 Act.

- ii. In terms of the Regulatory Committees, these carry out administrative functions and, as such, appropriate appeal rights and procedures apply to the same, which do not involve the Overview and Scrutiny Committees arrangements.

1.9 “Request for Call-In” and “Call-In”

- i. When an Executive decision is taken by the Cabinet, Cabinet Committees, or Cabinet Member(s), the decision shall be published on the website, and copies of it shall be available at the main offices of the Council, normally within three days of being made. All Members and Chief Officers will be sent a notification of all such decisions within the same timescale, by the Committee Services Officer responsible for publishing the decision.
- ii. The relevant notice will bear the date on which it is published and will specify that the Executive decision may be implemented, after the expiry of three working days after the publication of the decision, unless a “Request for call-in” is made of the Executive decision, by at least two Councillors (who are not members of the Cabinet). The “Request for Call In” should state the reason for call-in.
- iii. Once a “Request for Call In” has been received, the Chair of Co-ordinating O&S Committee will agree which Overview and Scrutiny Committee should hear the call-in. That Committee must meet to consider the request. The meeting should take place not later than 15 clear working days after the original publication of the decision.
- iv. It is for the Committee to decide whether to Call In a decision or not. The Council does not expect an Overview and Scrutiny Committee to Call In an Executive decision unless one or more of the following criteria applies.
- v. Where the Committee does decide to call in a decision, the “re-consideration” which is then required must take place at a meeting of the full Cabinet – irrespective of who made the original decision on behalf of the Executive.

Call-In Criteria

	(a) Is the Executive decision within existing policy?
1	the decision appears to be contrary to the Budget or one of the ‘policy framework’ plans or strategies;
2	the decision appears to be inconsistent with any other form of policy approved by the full Council, the Executive or the Regulatory Committees;
3	the decision appears to be inconsistent with recommendations previously made by an Overview and Scrutiny body (and accepted by the full Council or the Executive);
	(b) Is the Executive Decision well-founded?
4	the Executive appears to have failed to consult relevant stakeholders or other interested persons before arriving at its decision;
5	the Executive appears to have overlooked some relevant consideration in arriving at its decision;

	(a) Is the Executive decision within existing policy?
6	the decision has already generated particular controversy amongst those likely to be affected by it or, in the opinion of the Overview and Scrutiny Committee, it is likely so to do;
7	there is a substantial lack of clarity, material inaccuracy or insufficient information provided in the report to allow the Overview and Scrutiny Committee to hold the Executive to account and/or add value to the work of the Council.
	(c) Has the Executive decision been properly taken?
8	the decision appears to give rise to significant governance, legal, financial or propriety issues;
9	the notification of the decision does not appear to have been in accordance with council procedures;