

## **AGENDA ITEM**

### **REPORT TO EXECUTIVE SCRUTINY COMMITTEE**

**5 FEBRUARY 2008**

### **REPORT OF DIRECTOR OF LAW AND DEMOCRACY**

## **SCRUTINY DEVELOPMENTS**

### **SUMMARY**

This report presents a summary of recent scrutiny developments and makes recommendations for widening the involvement of partners in scrutiny including the approach for setting next years scrutiny work programme.

### **RECOMMENDATIONS**

- (1) That Council be recommended that the Housing and Community Safety Select Committee be the committee to fulfil the requirements of the Crime and Disorder Committee.
- (2) That the performance monitoring reports presented to Executive Scrutiny Committee be extended to include monitoring of LAA improvement targets.
- (3) That further reports on Councillor Calls for Actions be presented to Executive Scrutiny Committee and Cabinet following the receipt of Guidance and Regulations.
- (4) That the Renaissance Board be consulted as part of the process for setting the scrutiny work programme.
- (5) That the PICK system be adopted as a tool for selecting items for in depth scrutiny reviews.
- (6) That further discussion on scrutiny structures and capacity be held at the Executive Scrutiny Away Day on 27 February 2008.

### **DETAIL**

1. The past year has seen the publication of the White Paper "Strong and Prosperous Communities", the implementation of the Police and Justice Act and the Local Government and Public Involvement in Health Act. These new developments seek to strengthen the role of scrutiny and the powers of Overview and Scrutiny Committees.
2. An extension of scrutiny powers is proposed in two main policy areas. Firstly, the "place shaping role" of a Council whereby an Authority will be able to oversee relevant aspects of the work of named agencies which are covered by a statutory duty to co-operate and a Councillor's community leadership role whereby he/she will be able to refer a call for action.

## **CRIME AND DISORDER COMMITTEE**

3. The Police and Justice Act requires every Local Authority to have a committee to review or scrutinise decisions made by the Local Authority in connection with the discharge of their crime and disorder functions and to make reports or recommendations to the local authority. A local Authority or other body must consider and have regard to the report or recommendations and respond to the committee indicating what if any action it proposes to take. It is proposed that the Council's Housing and Community Safety Select Committee fulfil this role.

## **EXTERNAL/ PARTNERSHIP SCRUTINY/ DUTY TO CO-OPERATE**

4. There has been a strong emphasis in the recent legislation on developing the role of Local Authorities in relation to external scrutiny and specifically scrutiny of LAA partners in relation to local improvement targets.
5. The Local Government and Public Involvement in Health Act creates a statutory framework within which the Government's new performance framework can operate across all the main bodies involved in delivering local public services. This is achieved by defining partners required to co-operate in the establishment of LAAs containing improvement targets, on which all the relevant local partners have been consulted. The "duty to co-operate" will strengthen scrutiny giving overview and scrutiny committees the power to request information from LAA partners in relation to local improvement targets and make reports and recommendations to partners who, in turn, have a duty to consider them and respond.
6. The Act also requires the Authority or Executive to consider and publish a response to an overview and scrutiny report or recommendations within a 2 month period following receipt of the report or recommendations. The Executive must respond saying what, if any, action it proposes to take. If the matter originated from a Councillor Call for Action, the Executive must provide a copy of the response to the Member who referred the matter.
7. In addition, the Police and Justice Act places a similar duty on responsible authorities to consider and respond to reports or recommendations from the crime and disorder committee.
8. Section 121 of the Local Government and Public Involvement in Health Act concerns the information which "relevant partner authorities" must provide to overview and scrutiny committees and that which may not be disclosed. It does not contain the actual powers but enables the Secretary of State to implement them through regulations. Details of the "relevant partner authorities" are set out in Appendix 1.
9. The I&DeA paper "A Wider Conversation: effective scrutiny of local strategic partnerships" emphasises the different roles of scrutiny in relation to the scrutiny of LSPs:

**Holding to Account** – through Calls for Action and working in ways that create greater openness and accountability to communities, ensuring that partnership structures are open and fit for purpose

**Performance Management** – Involvement in developing and reviewing the LAA and examining how well the LAA is being implemented and achieving its goals

**Policy Review and Development** - in depth investigations of topics to contribute to partnership work

10. It is proposed that the regular performance reports presented to Executive Scrutiny Committee and Cabinet be extended to include information relating to LAA improvement targets.

### **LOCAL INVOLVEMENT NETWORKS (LINKs)**

11. The Local Government and Public Involvement in Health Act abolishes the Commission for Patient and Public Involvement in Health imposing a duty on each local authority to appoint an independent organisation to develop and support Local Involvement Networks (LINKs). Under the legislation, LINKs have the ability to refer social care matters to an overview and scrutiny committee. The committee must acknowledge receipt of the referral and keep the referrer informed of the committee's actions in relation to the matter. Regulations will determine the timescales for consideration of referrals.

### **COUNCILLOR CALLS FOR ACTION (CCA)**

12. The Local Government and Involvement in Health Act strengthens the powers for frontline councillors to refer matters affecting their area for scrutiny. In the initial versions of the Bill, crime and disorder matters were excluded from the CCA as there was a separate and, potentially, much more bureaucratic provision for these in the Police and Justice Act. However, the Government has amended the Police and Justice Act to create a single procedure on the simpler model contained in the Local Government and Public Involvement in Health Act. This will mean that members of the public will not be able to raise a CCA with the Council or Executive themselves but only through a Councillor and there will be no right of appeal (via the council's executive or otherwise).

13. The Act enables **any Member** of the Council to refer to an overview and scrutiny committee a "local government matter" which falls within the committee's remit.

14. A referral in this way will ensure that the matter is **included in the agenda and discussed** at the committee. However, in making such a referral, the Member must have regard to any Guidance issued by the Secretary of State.

15. If the overview and scrutiny committee receives a referral from a Member who is not on the committee, it can choose to do any of the things that it might normally do with a new item. These include: reviewing and scrutinising decisions and actions; and making reports and recommendations. In deciding whether to conduct any of these roles, the committee may "have regard to" two particular points:

- Anything which the Member may have done already in relation to the matter, particularly if they have been empowered to do so in their ward by the Council, and
- Representations made by the Member as to why the committee should take the matter up

16. If the committee decides not to take the matter up, it must explain the reasons why to the Member. However, if the committee chooses to conduct some work on the issue, it must make sure that the Member has a copy of the report or recommendations that it makes in relation to it.

17. The White Paper emphasised that the CCA will be particularly appropriate for the more intractable or strategic issues on which Councillors will need to work with colleagues and take a broader view; in short, a persistent problem which the local Councillor has been unable to resolve through local action and discussion with the Cabinet or relevant services. The White Paper indicated that a Councillor might instigate a CCA after being

approached by an individual constituent or identify an issue which was of significant concern to the communities they represented. The CCA was not, however, intended to be a mechanism for dealing with individual complaints. Councils and partner agencies have well established complaints mechanisms for this purpose. Local councillors will therefore need to make a judgement about whether the issue is a potential CCA or should be dealt with in another way and it is hoped that, wherever possible, Councillors will be able to deal with relatively straightforward issues themselves.

18. Further reports will, however, be presented to Members following the receipt of Guidance and the issuing of Regulations by the Secretary of State. In the meantime, the Secretary of State for Communities and Local Government is consulting on local petitions and Calls for Action, specifically seeking views on what, if any matters should be excluded from the Call to Action and what guidance Government should provide on its operation.

### **INPUT INTO THE SELECTION OF IN DEPTH SCRUTINY REVIEWS**

19. In relation to in depth scrutiny reviews, input has, to date, been sought in the following ways:

- A standing item on Select Committee agendas
- All members have been asked for suggestions for topics
- CMT and HOS have been asked for ideas (Employees have input via line manager/HOS/CD)
- Quasi judicial committees have been asked for suggestions
- Consultation with Health Partners
- Members of the public (though the scrutiny website/ Stockton News/ Scrutiny leaflets and publications)

20. All suggestions have been recorded on a standard pro forma and presented for discussion at Scrutiny Liaison Forum prior to consideration/ approval by the Executive Scrutiny Committee which has ultimate responsibility for co-ordinating the scrutiny work programme.

21. Given the increasing emphasis on external scrutiny and the new legal powers for partnership scrutiny, it is felt timely to review the process for setting future work programmes and consider widening the consultation on potential topics. For example, suggestions could also be sought from the LSP. This could be achieved by asking the Renaissance Board for input into work programme of in depth scrutiny reviews.

#### *PICK System*

22. In order to assist Members in the prioritisation of topics, it is proposed to operate the PICK system (details are attached at Appendix 2). This would simply require amendment to our existing pro forma which Members or officers are asked to complete when proposing topics for review. Following receipt of the pro formas, Officers will initially be responsible for "scoring" each proposal which could then be reviewed/ amended by the Scrutiny Liaison Forum. Whilst the scoring would not be binding, it would help to give a weighting to the increasing number of suggestions coming forward.

### **WORK PROGRAMME - RESOURCE IMPLICATIONS**

23. In setting the future scrutiny work programme, it will be important to achieve a balance between in depth policy development work and performance monitoring. In depth policy

development work may also be generated from Cabinet referrals and, in the future, from LINks referrals and Calls for Action. As well as consideration of performance information by Executive Scrutiny Committee, there is the facility for Executive Scrutiny Committee to refer a particular performance issue to a Select Committee for more detailed examination. In addition, thematic Select Committees also review progress against implementation of review recommendations.

24. As well as the increase in 2007/08 in the number of Select Committees from six to seven and the expectation for each Select Committee to undertake a programme of reviews, the proposed strengthening of the scrutiny role in relation to external scrutiny and scrutiny of LAA improvement targets will have implications for the resources of the scrutiny function.

25. Factors affecting the workload include:

#### *Current Issues*

- An increase this year in the number of standing Select Committees to seven (approximately 14 in depth reviews overall being completed in each year)
- Referrals from Cabinet (two in the last 6 months)
- Task and Finish Groups operating in tandem with other reviews (two in the current year)
- Strengthening of monitoring arrangements in relation to previous reviews
- The inclusion of other items on Select Committee agendas such as items for information/ consultation – particularly an issue for Adults and Health Select Committee as well as the potential for section 7 and section 11 consultations

#### *Future Pressures*

- An expectation that scrutiny should also be playing a bigger role in scrutinising the performance of partners and the LAA
  - Referrals under the CCA and LINks which must be included on the agenda and discussed by the relevant committee
  - Involving partners in the process for setting the scrutiny work programme and developing links with external bodies will require a significant investment of time and effort
  - The possible division of the Adults and Health Select Committee to enable them to accommodate statutory health consultations and external health scrutiny as well as the adults/ social care role. The current work load of this committee, as it stands, is unsustainable
  - Strengthening of the Council's scrutiny arrangements in relation to its challenge/ holding to account role raised during the CPA inspection (eg stronger performance management role/ scrutiny of the Council's performance against corporate priorities)
26. With the resources available it is proving difficult to deal effectively with all of the current issues identified at paragraph 25. As a result, there is realistically no spare capacity to take on additional work or to increase the number of select committees, as envisaged in the form of future pressures outlined in the previous paragraph.
27. It will therefore be necessary to consider other options for meeting such pressures, and in particular for setting the work programme (as regards the nature and extent of the work it can realistically cover) and for delivering the scrutiny function. Such options (some or all of which are inter dependent) might include:-

- continuing with current practice (in terms of scrutiny reviews and performance monitoring) and relying on this to justify our approach to meeting the new requirements, and not extending the scope of scrutiny or the workload
- reviewing the remit and number of Select Committees; e.g. removing the “adults” remit from the Health Select Committee and allocating this to a different committee to allow adequate focus on health issues, or perhaps having a dedicated select committee to deal with all referral work
- exploring the possibility of additional resourcing for the scrutiny function from a joint appointment with health
- reducing the number of in depth reviews being undertaken to leave capacity for other work and
- prioritising in depth reviews to be undertaken by specifically appointed “commissions” rather than standing committees.

## **FINANCIAL AND LEGAL IMPLICATIONS**

28. Present resources are at full capacity and this needs to be taken into account in setting the overall work programme.

## **RISK ASSESSMENT**

29. Account will need to be taken of emerging guidance to ensure that the Council’s scrutiny arrangements are fit for purpose.

## **COMMUNITY STRATEGY IMPLICATIONS**

30. Service Delivery (Enhance Local Democracy).

## **CONSULTATION**

31. Further reports will be presented to Members following the issue of further Guidance and Regulations.

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Background Papers: None  
Ward(s) and Ward Councillors: Not Ward Specific  
Property Implications: None

### Relevant Partner Authorities

A broad list of “relevant partner authorities” is provided below but for specific definitions please read Part 5, Chapter 1, Section 104 of the Act.

- any district council which is not a responsible local authority;
- a fire and rescue authority;
- a National Park authority;
- the Broads Authority;
- a police authority;
- a chief officer of police;
- a joint waste authority established under section 207(1);
- a waste disposal authority;
- a metropolitan county passenger transport authority;
- Transport for London;
- a Primary Care Trust;
- a Regional Development Agency;
- a local probation board;
- a youth offending team;
- a National Health Service trust;
- an NHS foundation trust;
- the Arts Council of England;
- the English Sports Council;
- the Environment Agency;
- the Health and Safety Executive;
- the Historic Buildings and Monuments Commission;
- the Learning and Skills Council for England;
- the Museums, Libraries and Archives Council;
- Natural England;
- the Secretary of State, but only in relation to functions as a highways authority, traffic authority and with regard to employment and training (we assume that this means the Highways Agency and Jobcentre Plus)

The ability to require information from some of the “relevant partner authorities” is already covered in other legislation and so is specifically excluded here. These include:

- the responsible and co-operating authorities for Crime and disorder, as defined in the Crime and Disorder Act 1998 (Police, Local Authority, Police Authority, Fire and Rescue Authorities, Local Health Boards in Wales, Primary Care Trusts (PCTs), Probation Board, Parish Councils, NHS Trusts, NHS Foundation Trusts, Governing bodies of schools, Proprietors of independent schools, Governing bodies of an institution within the further education sector); and

- local NHS Bodies, as defined in the NHS Act 2006 at Section 244 (an NHS Body other than a Special Health Authority – the latter are national service providers such as the National Patient Safety Agency).



### **PICK Priority Setting**

#### **P for Public Interest**

Members' representative roles are an essential feature of Scrutiny. They are the eyes and ears of the public, ensuring that the policies, practice and services delivered to the people of the District, by both the Council and external organisations, are meeting local needs and to an acceptable standard. The concerns of local people should therefore influence the issues chosen for scrutiny. Members themselves will have a good knowledge of local issues and concerns. Surgeries, Parish Councils, Residents Associations and Community Groups are all sources of resident's views. Consultation and Surveys undertaken by the Council and others can also provide a wealth of information.

#### **I for Impact**

Scrutiny is about making a difference to the social, economic and environmental well-being of the area. Not all issues of concern will have equal impact on the well-being of the community. This should be considered when deciding the programme of work, giving priority to the big issues that have most impact. To maximise impact, particularly when scrutinising external activity, attention should also be given to how the committee could influence policy and practice. Sharing the proposed programme of reviews with Members, officer and key partners will assist this process.

#### **C for Council Performance**

Scrutiny is about improving performance and ensuring the Council's customers are served well. Members will need good quality information to identify areas where the Council, and other external organisations, are performing poorly. There is no shortage of Performance Indicators available and areas where performance has dropped should be our priority.

#### **K for Keep in Context**

To avoid duplication or wasted effort priorities should take account of what else is happening in the areas being considered. Is there a Best Value Review happening or planned? Is the service about to be inspected by an external body? Are there major legislative or policy initiatives already resulting in change? If these circumstances exist Members may decide to link up with other processes (e.g. Best Value Review) or defer a decision until the outcomes are known or conclude that the other processes will address the issues. Reference should also be made to proposed programmes of work in the Councils plans and strategies

## PICK Scoring System

- **P**ublic Interest: the concerns of local people should influence the issues chosen

Score	Measure
0	no public interest
1	low public interest
2	medium public interest
3	high public interest

- **I**mpact: priority should be given to the issues which make the biggest difference to the social, economic and environmental well-being of the area

Score	Measure
0	no impact
1	low impact
2	medium impact
3	high impact

- **C**ouncil Performance: priority should be given to the areas in which the Council, and other agencies, are not performing well.

Score	Measure
0	'Green' on or above target performance
2	'Amber',
3	low performance 'Red'

- **K**eep in Context: work programmes must take account of what else is happening in the areas being considered to avoid duplication or wasted effort.

Score	Measure
0	Already dealt with/ no priority
1	Longer term aspiration or plan
2	Need for review raised but not adopted policy
3	Need for review acknowledged and already incorporated into programme or contained in a strategy and/or Council target

Each topic will be scored under each category as indicated above. Where a category is not applicable, no score will be given.