

## **Part 2 - The Articles**

### **Chapter 8 – Overview and Scrutiny Committee and Call-in**

#### **1. Status, Membership, Quorum and Meeting Frequency**

- 1.1 The Overview and Scrutiny Committee is a committee established under Section 21 of the Local Government Act 2000, as amended by the Localism Act 2011.
- 1.2 The membership of the Committee shall be 10 Councillors and the quorum shall be three.
- 1.3 The Assembly shall appoint the membership, including the Chair and Deputy Chair, at its Annual Meeting. Political balance requirements of Section 15 of the Local Government and Housing Act 1989 apply when determining membership.
- 1.4 The Assembly shall also appoint four Co-opted Members to the Overview and Scrutiny Committee, representing the bodies listed below, to scrutinise education matters only. The Co-opted Members shall have voting rights in respect of educational matters, and non-voting rights in respect of all other matters:
  - i) One Church of England Diocesan Board of Schools representative;
  - ii) One Roman Catholic Brentwood Diocesan Schools Commission representative;
  - iii) One secondary school parent governor representative;
  - iv) One primary school parent governor representative.
- 1.5 The Committee may also co-opt a representative(s) of the BAD Youth Forum, in a non-voting capacity.
- 1.6 The Overview and Scrutiny Committee shall meet approximately every four weeks. Additional meetings may be arranged to deal with specific matters such as the Cabinet's budget proposals, Call-in's etc. if considered necessary.
- 1.7 Informal meetings of the Overview and Scrutiny Committee, such as task and finish groups and site visits, may be arranged as appropriate; however, only one group may be in place at any one time.

#### **2. Functions and Responsibilities**

- 2.1 The Overview and Scrutiny Committee has the following functions and responsibilities:

##### **(a) Statutory Functions**

- i) **Call-in** - The Overview and Scrutiny Committee will be responsible for addressing any Call-in that is received, unless the subject primarily relates to health matters in which case it will be dealt with by the Health Scrutiny Committee. The Call-in Procedure is detailed in paragraph 6 of this Article.

- ii) **Councillor Call for Action** - The Overview and Scrutiny Committee will be responsible for considering Councillor Calls for Action (CCfA) (section 119, Local Government Act 2000), unless the subject primarily relates to health matters in which case it will be dealt with by the Health Scrutiny Committee. A CCfA shall be dealt with in accordance with the relevant best practice guidance jointly issued by the Centre for Public Scrutiny and the Improvement & Development Agency. The CCfA procedure is detailed in paragraph 7 of this Article.
  - iii) **Crime and Disorder scrutiny** - The Overview and Scrutiny Committee shall:
    - a. Act as the Crime and Disorder Committee within the meaning of Section 19 of the Police and Justice Act 2006;
    - b. Review or scrutinise decisions made, or other action taken, in connection with the discharge by the responsible authorities of their crime and disorder functions;
    - c. Make reports or recommendations to the local authority with respect to the discharge of those functions;
    - d. Make recommendations to the Cabinet and/or Assembly with respect to any matter which is a local crime and disorder matter in relation to a Member of the authority; and
    - e. Consider any crime and disorder matters referred by any Member of the Council.
  - iv) **Education** - The Council shall, in accordance with Section 499 of the Education Act 1996 and Section 9F of the Local Government Act 2000, appoint co-opted members to the Overview and Scrutiny Committee to scrutinise education matters only.
  - v) **Flood risk management** - In accordance with the Flood Risk Management Overview and Scrutiny Committee (England) Regulations 2011, the Overview and Scrutiny Committee has the power to request information and scrutinise the local flood risk authority's plans to mitigate flooding.
- (b) Functions Determined by the Assembly**
- (i) Scrutiny of matters relating to the provision of services to children and young people living or using services within the borough;
  - (ii) Working with the Council and other partners to secure the continuous improvement of services for children and young people and assisting in improving outcomes for the borough's young people;
  - (iii) Scrutiny of the provision, planning, management and performance of services relating to adult social care;

- (iv) Scrutiny of the provision, planning, management and performance of housing, regeneration, economic development, public realm and transport matters;
- (v) Scrutiny of matters relating to the provision of business, jobs and skills within the Borough;
- (vi) Scrutiny of the provision, planning, management and performance of public services related to culture, libraries, heritage, arts and community safety; and
- (vii) Scrutiny of issues relating to social inclusion, equalities, cohesion and faith; engaging with the community and voluntary services operating in the Borough and, where appropriate, holding them to account for their performance.

**(c) General Role**

- (i) Review and scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (ii) Assist the Assembly and the Cabinet in the development of the budget and policy framework by in-depth analysis of policy issues, as required;
- (iii) Review and scrutinise the performance of the Council, other public bodies and partner organisations in the area, invite them to address the Overview and Scrutiny Committee, and prepare reports about their initiatives and performance;
- (iv) Conduct pre-decision scrutiny to test the robustness and impact of budget savings and other key decisions to be considered by the Cabinet;
- (v) Engage with and represent local people and create opportunities to involve them in the scrutiny process;
- (vi) In all of the above, make reports and recommendations to the Cabinet and/or Assembly and/or any Committee in connection with the discharge of any functions; and
- (vii) Produce an annual report which the Chair of the Overview and Scrutiny Committee shall present to the Assembly.

**3. Petitions**

- 3.1 The Overview and Scrutiny Committee will be responsible for receiving and debating petitions, unless the subject relates primarily to health scrutiny matters, in which case they will be dealt with by the Health Scrutiny Committee. Petitions shall be dealt with in accordance with the Council's Petition Scheme which can be found on the Council's website <http://www.lbbd.gov.uk/petitions>

#### **4. Overview and Scrutiny Sub Committee**

- 4.1 The Overview and Scrutiny Committee shall appoint a Sub-Committee which shall be convened as necessary to consider Call-Ins and petitions, upon receipt and validation.
- 4.2 The Sub-Committee shall consist of the Chair of the Committee and four other Members of the Committee. The quorum shall be two Members.

#### **5. Scrutiny Procedure Rules**

(Note: These provisions shall apply to both the Overview and Scrutiny Committee and the Health Scrutiny Committee.)

##### **5.1 Work Programme**

5.1.1 The Committee shall be responsible for setting and maintaining the work programme, which will be agreed at the start of the municipal year in consultation with the Council's Designated Scrutiny Officer.

5.1.2 The Committee may receive suggestions from the following for particular topics to be scrutinised:

- Members of the public
- Relevant partner organisations
- Officers of the Council
- Co-optees
- Cabinet
- Individual Members of the Council

5.1.3 The Committee shall typically go through a topic selection process in order to shortlist the areas for review.

##### **5.2 Scrutiny Reviews**

5.2.1 A Scrutiny Review is an in-depth investigation into local policy and performance issues. Topics chosen for in-depth investigation are developed in consultation with Councillors, officers, partners and members of the public with a view to making recommendations to improve a particular service area. The Committee may undertake scrutiny reviews on any matter that is consistent with its functions and responsibilities.

5.2.2 Before conducting a scrutiny review, The Committee will ensure the topic selected meets the **PAPER** criteria:

- Public Interest;
- Ability to Change;
- Performance;
- Extent of the Issue; and
- Replication.

5.2.3 The Committee shall not undertake a scrutiny review on any matter directly or indirectly linked to work being undertaken by the Cabinet or a Policy Task Group.

5.2.4 The Committee may take all reasonable steps to assist or inform its deliberations, including a general call for evidence, commission research, site visits, public surveys, public meetings and the involvement of the local community.

5.2.5 The Committee may appoint advisers and call witnesses to assist in its work and pay reasonable fees and expenses for such assistance within available budgets.

5.2.6 Scrutiny reviews and reports will follow the process below, subject to any variation agreed with the Chair in consultation with the Designated Scrutiny Officer:

- Gather evidence from Council officers, Members, statutory authorities and other consultees;
- Identify where processes, policies or services could be improved;
- Develop formal draft recommendations to deliver these improvements and discuss them with the relevant portfolio holder(s) and, if appropriate, relevant statutory authorities either at a committee meeting or in writing;
- Submit the draft final report, with recommendations, to the relevant portfolio holder(s) and, if appropriate, relevant statutory authorities for comment;
- Present the final report (including portfolio holder comments) to the Committee for approval;
- Publish the approved report on the Council's website and circulate to relevant stakeholders, including those who gave evidence to the Committee;
- Present an action plan to the Committee for approval, allocating the recommendations to the decision-maker (as determined by the Scheme of Delegation) and agree a timeframe for their implementation;
- Decision-maker reports back to the Committee within six months with a progress update on the implementation of the recommendations; and
- Further follow-up reports requested, if the Committee deems it necessary.

5.2.7 Where the Overview and Scrutiny Committee produces a report and/or makes recommendations on matters relating to local crime and disorder it will provide a copy of the report to the relevant responsible authorities, notifying them of their duty (under section of the Police and Justice Act 2006) to:

- i) consider the report or recommendations;
- ii) respond to the Overview and Scrutiny Committee in writing within 28 days indicating what (if any) action it proposes to take, and;
- iii) have regard to the report or recommendations in exercising its functions.

### **5.3 Public Participation**

5.3.1 In relation to Scrutiny Reviews which include members of the public, the general public participation rules (Part 2, Chapter 3, Paragraph 12) shall not apply and the following rules shall apply instead.

- 5.3.2 Residents of the London Borough of Barking and Dagenham and those working, studying or with a business interest in the area are able to participate in the scrutiny review process by:
- a) Suggesting topics for review by the Scrutiny Committees;
  - b) Attending meetings;
  - c) Presenting petitions;
  - d) Asking a question;
  - e) Making a statement or forming a deputation (lobbying) to the Scrutiny Committee;
  - f) Being involved in a scrutiny investigation;
  - g) Responding to surveys.
- 5.3.3 When there is a scrutiny investigation that would benefit from public participation, the officer supporting the investigation will ensure such participation is facilitated.
- 5.3.4 Those interested in participating in a particular scrutiny investigation can do so by contacting staff in Democratic Services or the Chair directly.

#### **5.4 Accountability and Attendance**

- 5.4.1 The Committee may scrutinise and review any decisions made or actions taken in connection with the discharge of any Council function or other matter that is within their respective terms of reference. As well as reviewing documentation, the Committee in fulfilling the scrutiny role, may require any Member of the Cabinet, Chief Officer and/or senior Officer to attend (only when invited) before them to explain, in relation to matters within their remit:
- a) Any particular decision or series of decisions;
  - b) The extent to which the actions taken implement Council policy;
  - c) The performance of relevant services.
- and it is the duty of those persons to attend if so required.
- 5.4.2 The Committee may also require any Council Member to attend before them to answer questions on any function which the Member has power to exercise.
- 5.4.3 Any Councillor or member of the public shall be entitled to attend meetings of the Committee and to speak on any agenda item at the discretion of the Chair.
- 5.4.4 Where any Cabinet Member, Ward Member or Officer is required to attend a Committee meeting, Scrutiny Officers will, within reasonable time, inform that Member or Officer in writing of the Committee 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.

- 5.4.5 Where the account to be given to the Committee will require the production of a report, then the Member or Officer concerned will be given sufficient notice to allow for preparation of that documentation.
- 5.4.6 Where, in exceptional circumstances, the Member or Officer is unable to attend on the required date, then a substitute may be asked to attend or the Committee may, in consultation with the Member or Officer, arrange an alternative date for attendance, which shall be no later than the next scheduled meeting.
- 5.4.7 The Committee may invite people other than those people referred to above to address it, to discuss issues of local concern and/or answer questions. For example, it may wish to hear from residents; other interested parties, officers in other parts of the public sector, or experts.
- 5.4.8 In undertaking its respective functions, the Committee may invite representatives of local organisations to address them, discuss the issues of local concern and/or answer questions. Representatives of such organisations must attend meetings to provide information needed by the Committee to discharge its functions. However, reasonable notice must be given.

## **5.5 Rights to Information**

- 5.5.1 The Committee will have access to the Forward Plan of key decisions of the Cabinet / Health and Wellbeing Board and the timetable for decisions and intentions for consultation.
- 5.5.2 In addition to their rights as Councillors, Members of the Committee have the additional right to documents and to notice of meetings as set out in the Access to Information rules (Part 2, Chapter 17) and in line with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
- 5.5.3 Nothing in this paragraph shall prevent more detailed liaison between the Cabinet / Health and Wellbeing Board and the Committee if considered appropriate for the particular matter under consideration.

## **6. Call-in**

- 6.1 Call-in is the exercise of the Committee's statutory powers under Sections 9F(2)(a) and 9F(4) of the Local Government Act 2000 (as amended by the Localism Act 2011) to review an executive key decision that has been made but not yet implemented. Where a decision is called-in and the Committee decides to refer it back to the relevant decision-maker for reconsideration, it cannot be implemented until the Call-in Procedure is complete.
- 6.2 Any key decision is subject to Call-in (subject to the exclusions in paragraph 6.15 below). A decision may be called-in only once. A recommendation to the Assembly may not be called-in.
- 6.3 The powers to call-in a decision and to refer a decision back for reconsideration shall be exercised by the relevant Scrutiny Committee whose

terms of reference most closely relate to the subject matter of the decision being called-in.

- 6.4 Requests for Call-in will only be accepted as valid if there is evidence that the decision maker did not take the decision in accordance with the principles of decision making as set out in Part 2, Chapter 16, paragraph 2 of this Constitution.
- 6.5 Call-in of decisions which may be contrary to the Budget and Policy Framework shall be governed by the provisions of the Budget and Policy Framework Procedure Rules in Part 2, Chapter 18, paragraph 6 of this Constitution.
- 6.6 Call-in should be regarded as a measure that is only needed in exceptional circumstances.

### **The Call-In Procedure**

- 6.7 Once made, an executive decision shall be published in the form of a Decision Notice and sent to all Members of the Council within two working days.
- 6.8 The Decision Notice will specify that the decision will be effective on the expiry of five clear working days after the publication of the decision and may then be implemented, unless called-in under this provision within that five working day period.
- 6.9 Any two (or more) Councillors (excluding Cabinet Members), or statutory co-opted Members where the matter relates to education, individually or collectively, may call-in a key decision by submitting a written notification to the Chief Executive within the five-working day period. A call-in form is available on the Council's website <https://www.lbbd.gov.uk/scrutiny>. Any Councillor who has a prejudicial and/or pecuniary interest in a particular issue should not instigate or take part in any Call-In related to that issue.
- 6.10 The form must include:
  - i) the names of the Members requesting the Call-in (at least two are required), one of whom should be identified as the lead;
  - ii) the subject matter being called-in;
  - iii) the decision including, where relevant, whether all or part of the decision is being called-in; and
  - iv) clear reasons for the Call-in, with reference to any evidence that the decision-maker did not take the decision in accordance with the principles set out in Part 2, Chapter 16, paragraph 2 of this Constitution.
- 6.11 The Call-in request will be deemed valid unless either:
  - i) the procedures set out in paragraphs 6.8 to 6.10 have not been properly followed;



- ii) the grounds for Call-in as referred to in paragraph 6.4 above have not been met;
  - iii) the decision has been recorded as urgent in accordance with paragraphs 6.15 to 6.18 below;
  - iv) the Call-in is considered to be frivolous, vexatious or not a proper use of the Call-in provisions taking into account the following factors:
    - a. Whether the matter has been considered as part of pre-decision scrutiny by the Committee or any sub-committee, task group or panel.
    - b. Whether there has been any substantive change in the nature of the decisions being made since any pre-decision scrutiny of the proposals.
    - c. Whether the recommendations or alternative course of action identified in the Call-in request have been previously considered and rejected, in whole or part, as part of pre-decision scrutiny.
    - d. Whether the Call-in request can be dealt with through the clarification of matters.
    - e. Any other relevant factor.
  - v) The Call-in would, in the opinion of the Monitoring Officer, result in the Council failing to discharge its legal duties.
- 6.12 Before deciding on (a) to (e) above, the Chief Executive may seek clarification of the Call-in request from the Member(s) concerned. The Chief Executive shall also consult with the Chair of the Committee prior to making a determination on the validity of the Call-in. The decision of the Chief Executive shall be final and there is no right of appeal.
- 6.13 Upon deciding on its validity, the Chief Executive shall forthwith notify the Member(s) concerned, the Leader and Portfolio Holder, the Chair and Deputy Chair of the Committee, the relevant Strategic and other Directors, and the Council's Designated Scrutiny Officer.
- 6.14 In the absence of the Chief Executive, the Monitoring Officer shall exercise the Chief Executive's functions in respect of the Call-in.

#### **Decisions not subject to Call-In**

- 6.15 The following categories of decision are not subject to Call-in:
- i) recommendations from the Cabinet to the Assembly for final determination, such as the Budget and Policy Framework;
  - ii) decisions for urgent implementation under the Access to Information Procedure Rules set out in Part 2, Chapter 17 of the Constitution;
  - iii) urgent decisions outside the Budget or Policy Framework taken in accordance with paragraph 4 of the Budget and Policy Framework Rules in Part 2, Chapter 18 of the Constitution; and

iv) decisions to award a contract following a lawful procurement process.

### **Call-In and Urgency**

- 6.16 The Call-in procedure set out above shall not apply where the decision being taken is urgent. A decision is urgent if:
- i) A Call-in would prevent the Council reaching a decision that is required by statute or otherwise within a specified timescale;
  - ii) Any delay likely to be caused by the Call-in process would seriously prejudice the Council's or the public's interests and the reasons for urgency are reported to the decision-making body or person before the decision is taken;
  - iii) Any delay likely to be caused by the Call-in process may expose the Council, its Members or its constituents to a significant level of risk, loss, damage or disadvantage.
- 6.17 In the case of the above, the Decision Notice shall state whether a decision is an urgent one, and therefore not subject to Call-in. The consent of the Chair of the relevant Scrutiny Committee is required before a decision is treated as urgent.
- 6.18 Where the Cabinet / Health and Wellbeing Board has recorded a decision as urgent, the Committee may retrospectively review actions arising from that decision but cannot delay its implementation.

### **Consideration of the Call-In**

- 6.19 The Chief Executive will ensure that any valid Call-in is reported to the appropriate meeting.
- 6.20 At least one of the Members submitting the request for Call-in will be expected to attend the meeting to explain their reasons for the Call-in and the alternative course of action or recommendations they wish to propose. Appropriate representation from the Cabinet / Health and Wellbeing Board will be required to explain the reasons for the Cabinet / Health and Wellbeing Board's decision and to answer any questions. Similarly, the relevant Chief Officer shall attend to clarify any aspects associated with the issue in question.
- 6.21 Having considered the Call-in and the reasons given, the Committee (or convened Sub-Committee) may either:
- i) Refer it back to the decision-making person or body for reconsideration, normally in time for its next scheduled meeting, setting out in writing the nature of its concerns and any alternative recommendations;
  - ii) If it considers that the decision is outside the Council's Budget and Policy Framework, refer the matter to the Assembly after seeking the advice of the Monitoring Officer and/or Chief Financial Officer; or
  - iii) Decide to take no further action, in which case the original Cabinet / Health and Wellbeing Board decision will be effective immediately.

## **Decisions referred back to the Decision-Maker**

- 6.22 If a decision is referred back to the original decision maker, that person or body shall then reconsider the matter, taking into account any concerns and recommendations of the Committee (or convened Sub-Committee), and make a final decision, amending the decision or not, and give reasons for the decision.
- 6.23 If a decision relates to an executive function, only the Cabinet / Health and Wellbeing Board can ultimately decide the matter, provided that it is in accordance with the Council's Budget and Policy Framework.

## **7. Councillor Call for Action**

- 7.1 A Councillor Call for Action (CCfA) allows councillors to refer matters of concern within the community to scrutiny. The aim of this measure is to provide councillors with additional powers that enable them to respond to local community concerns which have proved difficult to resolve.
- 7.2 CCfA should relate to matters:
- That are of a genuine and persistent local concern;
  - That are not subject to ongoing legal processes, and
  - Where other courses of action have failed to resolve the matter.
- 7.3 Any Councillor may request the Chief Executive to include a Councillor Call for Action on the agenda of a scrutiny Committee meeting. A Councillor Call for Action request must be made to the Chief Executive. A form is available on the Council's website which sets out the requirements for a Councillor Call for Action request to be considered valid by the Chief Executive.
- 7.4 Upon receipt of a valid Councillor Call for Action, the Chief Executive shall ensure that the item is included on the agenda of the next appropriate meeting of the relevant scrutiny committee, and ensure that the Chair of the committee, relevant Cabinet / Health and Wellbeing Board Members, senior officers and any other members from the ward(s) in question, are informed that a valid Call for Action has been received.
- 7.5 Any Councillor who submits a valid Call for Action will have the right to attend the meeting at which the item is to be considered, to explain the reasons for the Call for Action and to have the item discussed. The Committee will decide either:
- i) To request officers to prepare a report for the next meeting;
  - ii) To request the Councillor submitting the Call for Action to provide further evidence or information to a future meeting;
  - iii) To set up a task and finish group to investigate the matter and report back to the Committee or to agree to undertake a scrutiny review on the matter at the appropriate time;

- iv) To refer the matter to the appropriate person or body be it a senior Officer, another committee such as the Cabinet / Health and Wellbeing Board or an external body, either for information or calling for specific action;
  - v) To take no further action on the request, for stated reasons.
- 7.6 A Councillor Call for Action will be deemed invalid in the following circumstances, and shall not be taken forward:
- i) The procedures set out in paragraphs 7.3 and 7.4 have not been properly followed;
  - ii) It does not affect all or part of the ward for which the referring Member is elected, or any person who lives or works in that ward;
  - iii) It is a matter that has been excluded by Order of the Secretary of State (e.g. planning or licensing appeals and other quasi-judicial matters); or
  - iv) The Chief Executive, in consultation with the Designated Scrutiny Officer, considers it to be vexatious, not reasonable, discriminatory or outside the Councillor Call for Action provisions.
- 7.7 Before deciding on its validity, the Chief Executive may seek clarification of the Call for Action from the Councillor concerned.