

Scrutiny and Executive Protocol

Why do we need a protocol?

- 🔍 The need to address the culture of the organisation in relation to our understanding and engagement in the scrutiny process was identified in the 2019 Review of Scrutiny in Sandwell.
- 🔍 Government Guidance highlights a number of ways to improve the scrutiny function. During the review, Members recommended a protocol for Scrutiny and the Executive to address the following points highlighted:
 - 🔍 Ensuring early and regular engagement between the Executive and Scrutiny
 - 🔍 Managing disagreement
 - 🔍 Identifying a clear role and focus
 - 🔍 Being clear about Scrutiny's role
 - 🔍 Who to speak to
 - 🔍 Developing recommendations
- 🔍 Centre for Governance & Scrutiny guide to 'Engaging with council officers and the executive' (June 2014) highlights that the Local Government Act 2000 (at s9F onwards) says that Cabinet members and officers of the council must:
 - 🔍 Attend meetings, where required to do so. The word "require" is not defined in the Act but it can be assumed that it does not confer a choice as to whether or not to attend;
 - 🔍 Provide information, where required to do so. Again, this must be complied with. The usual exclusions apply for confidential and exempt information, although councillors are entitled to see certain kinds of information which cannot be published;
 - 🔍 Respond to recommendations. Scrutiny committees may set out the way in which they expect their recommendations to be responded to. This may include the requirement to provide reasons when a recommendation is rejected.
- 🔍 The protocol is not intended to change the respective constitutional positions, roles or responsibilities of either Overview and Scrutiny function or the Executive. It is intended to clarify relationships between the two, to create a culture for change, to develop agile and flexible working and to help ensure the smooth conduct of Overview and Scrutiny business and encourage effective communication between Overview and Scrutiny and the Executive.
- 🔍 The Scrutiny and Executive protocol is a guide for elected Members and other parties outlining the interface between Scrutiny and the



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Executive and the procedural elements that underpin the relationship.

- 🔍 In addition to the 'Scrutiny and Executive Protocol' other protocols, role descriptions and agile ways of working have been developed to support members to develop the scrutiny function and create a culture for change to deliver the scrutiny work programme.
- 🔍 Further information on Scrutiny will be provided in the Scrutiny Handbook. The protocol draws on the relevant sections of the Constitution of Sandwell Council, which can be found on the Council's website at www.sandwell.gov.uk/.
- 🔍 Monitoring and Review of Protocol: The protocol shall be monitored annually at the joint informal meetings between the Overview and Scrutiny Chairs and the Executive

Introduction

- 🔍 This Protocol applies to all Members of the Scrutiny Panels any Member who may sit on a scrutiny panel and all Members of the Executive (comprising the Leader and the various Cabinet Members). It provides guidance on the way in which both types of Members interact to enable the Authority to carry out the Overview and Scrutiny function. The Protocol also outlines the framework and procedures underpinning the operation of scrutiny.

Objectives

- 🔍 The objectives of the protocol align to the main findings of the Review of Scrutiny 2019 with the Government guidelines:
 - 🔍 **Roles:** To enable Scrutiny Members, Officers and Cabinet Members to fully understand their powers, roles and responsibilities in relation to the Overview and Scrutiny function, role descriptions have been developed, so as to maximise their personal effectiveness.
 - 🔍 **Culture:** To establish a positive framework and the necessary procedures to enable scrutiny to work effectively and to create a culture for change.
 - 🔍 **Executive Scrutiny Relationship:** To promote an ethos of mutual respect, trust and courtesy in the interrelationships between Scrutiny Members and Cabinet Members and to foster a climate of openness leading to constructive debate, with a view to ensuring service improvements.
 - 🔍 **Holding to Account:** To create a culture of holding the Executive to Account on behalf of the electorate, by monitoring the



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effectiveness of the Council's policies and through the regular review of its performance in relation to service delivery.

- 🔍 **Training and Development:** To work in conjunction with the Member Development Programme scheme to develop the skills and knowledge of components of the scrutiny process.



Understanding the roles - The Councils Constitution

Scrutiny Role

That Scrutiny boards, within their terms of reference, as set out in Article 6 of the Council Constitution:

- 🔍 Will review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions and responsibilities;
- 🔍 Will make reports and/or recommendations to the Council and/or the executive and/or any committee in connection with the discharge of any functions;
- 🔍 Will consider any matter affecting the area or its inhabitants, including the operation of any partner organisations;
- 🔍 Will consider referrals to call-in, for deliberation, decisions made but not yet implemented by the executive and/or any non-Quasi-Judicial committees; and
- 🔍 Will consider referrals under the Call for Action process.

Responsibility for functions

That Scrutiny Boards, will operate within the Scrutiny Procedure Rules, as set out in Part 4 of the Councils Constitution to:

- 🔍 Scrutinise recommendations
- 🔍 Consider referrals under the Call for Action process.
- 🔍 Contribute to decision making and policy development through pre-decision scrutiny processes

The responsibility for functions of scrutiny boards are set out in Part 3 of the constitution.

Scrutiny Arrangements

- 🔍 A scrutiny body is one appointed to discharge the functions conferred by Section 21 (Overview and Scrutiny Committees) of the Local Government Act 2000 and any regulations made under that Section.
- 🔍 The Council will have the scrutiny boards set out in Article 6 of the Constitution and will appoint members to them as it considers appropriate from time to time.
- 🔍 All Councillors, except members of the Cabinet may be members of a scrutiny board.
- 🔍 Chairs and Vice- Chairs are appointed at Annual Council.
- 🔍 Co- opted members are appointed at Annual Council:
 - 🔍 Statutory Education representatives
 - 🔍 Tenants Review Panel representative
 - 🔍 SHAPE representative
 - 🔍 Healthwatch representative



Scrutiny Role Descriptions

Role descriptions for Chairs, Vice-Chairs, Co-opted Members and Scrutiny Members have been developed and are set out in the Councils' Constitution.

Executive Role

That the Executive will carry out all of the local authority's functions which are not the responsibility of any other part of the local authority, whether by law or under this constitution.

Part 3 of The Local Authorities (Functions and Responsibilities) Regulations 2000, as amended gives effect to Section 13 of the Local Government Act 2000, specifying local authority functions which are:

- 🔍 Non- Executive, meaning scrutiny roles cannot be undertaken by or be the responsibility of the executive.
- 🔍 Executive or Non- Executive by local choice, those which the council can choose to be the responsibility of the executive if they so wish.
- 🔍 To some extent, the responsibility of the executive.

All other functions given to a local authority, but which are not specified in the Function Regulations are automatically deemed to be the responsibility of the Executive.

Executive Procedure rules, as set out in Part 4)- How the Executive Operates:

The arrangements for the discharge of executive functions will be set out in the executive arrangements from time to time approved, amended and adopted by the Council.

Executive Role Description

The Cabinet Member role description is set out in the Councils' Constitution



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Culture - General Principles, Values and Behaviours







That Scrutiny and Cabinet will agree to operate in line with the below values and behaviours, as set out in Part 5 of the Council's constitution: The Members Code of Conduct.

Values:









To be committed to the values of the Council:

-  **Trust:** show respect, personal impact, open and honest.
-  **Unity:** customer focus, team worker, communicate effectively.
-  **Progress:** open to change, performance focus, team results.

To hold the values in public office:

-  Openness and transparency
-  Honesty and integrity
-  Tolerance and respect
-  Equality and fairness
-  Appreciation of cultural difference
-  Sustainability

Relationship between Executive and Overview and Scrutiny

-  Executive and Overview and Scrutiny functions should maintain high standards of public accountability and mutual respect.
-  Relations between the Executive and Overview and Scrutiny should not be confrontational but a positive and constructive collaboration to secure improvements in Council and other public services for the borough and its people.
-  Overview and Scrutiny Members will work together with the Executive in a nonpartisan environment and aim to adopt a non-adversarial but challenging approach to identify improvements.
-  In seeking agreement to this protocol, it is acknowledged that there are different rights and roles of both Overview and Scrutiny and Executive Members but that both are committed to developing an effective relationship. This will involve but not be limited to:
 -  Frequent and honest dialogue between Executive Members and Overview and Scrutiny Members, either individually or collectively.
 -  Regular discussions regarding Executive and Overview and Scrutiny work programmes/activities including establishing joint activities/projects where possible.
 -  Establishing effective and formal reporting structures.
 -  Respecting the confidential nature of the discussions that may from time to time take place.



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Holding the Executive to Account

- 🔍 One of the underpinning principles of Overview and Scrutiny is the ability of non-Executive Members to hold the Executive to account. A key method of ensuring accountability is through critically and routinely considering the performance and decisions taken by the Executive or may question decisions which the Executive is proposing to take, as set out in the Forward Plan.
- 🔍 The Executive will be required to consider any recommendations or views expressed by the Scrutiny Panel relating to the development of the Council's budget or policy framework.

Training and Development

- 🔍 Executive and Scrutiny Members will engage in the Member Development Programme.
- 🔍 Chairs of Scrutiny will identify training needs for scrutiny members.
- 🔍 The Vice-Chair of 2030 will identify areas for awareness and training and liaise with the Member Development Programme Lead.



What	Scrutiny	Executive
<p>Executive and Scrutiny's Critical Friend relationship</p>	<p>Develop a constructive 'critical friend' relationship with officers and executive members</p> <p>Attend meetings (individually or collectively), to be briefed on all matters affecting the relevant service(s), confidential items and the forward plan.</p> <p>Attend and participate in regular informal meetings of Chairs and Vice-Chairs of Overview and Scrutiny with the executive</p> <p>Invite the executive to comment on the findings of task and finish and work group reports</p>	<p>Executive Members will work with Scrutiny Chairs to develop a critical friend relationship</p> <p>Executive Members will attend scrutiny when invited</p> <p>Executive Members will attend and receive briefings on all matters affecting the relevant service(s), confidential items and the forward plan.</p> <p>Executive Members will be encouraged to consult with scrutiny Chairs and gauge their views on matters that fall within their remit.</p> <p>Executive Members will attend scrutiny meetings when invited to present or participate in scrutiny work</p> <p>Cabinet Members will normally be expected to attend any meeting when a matter is called in that falls in their portfolio.</p>
<p>Hold to account</p>	<p>Hold the Cabinet to account for decisions, performance, risk management and budget management.</p> <p>Invite the executive member and relevant Chief Officers to attend call-in meetings.</p> <p>Scrutiny Members should be prepared to</p>	<p>Attend Scrutiny Meetings</p> <p>Attend call-in meetings with in the rules outlined in the constitution</p> <p>Executive Members should respond to questions in as much detail as is possible to inform the scrutiny process. The response could be orally at the meeting, or by</p>



	ask searching questions of Cabinet Members.	reference to a published report, or by requesting officers to provide detail, or in writing following the meeting, if the information is not readily available.
Attendance at meetings	The attendance of Overview and Scrutiny Chairs at Executive and Portfolio Holders at Overview and Scrutiny meetings is particularly helpful in allowing clarification where needed	Attendance by Executive Members at Scrutiny Committees (including 'Call-In' meetings)
Work programme	<p>Consult with the relevant senior Officers, executive member and take into account the views of the public and of partner agencies</p> <p>Scrutinise relevant issues relating to service delivery, policy and decisions taken by the Executive and other decision makers.</p> <p>Consider reports and make recommendations to inform and advise the Cabinet or Council or other decision-making bodies on improvements to policies and service delivery.</p> <p>Planning for Overview and Scrutiny items</p> <p>Individual Portfolio Holders and Overview and Scrutiny Chairs should consider meeting regularly to identify and plan for policy development work in which all</p>	<p>Share the forward plan with Scrutiny</p> <p>Consult with scrutiny to ensure the clarity of topics being scrutinised and to avoid potential duplication</p> <p>The Executive will invite Scrutiny to look at specific issues to add value to the work of the Council</p>



	<p>members can participate</p> <p>Undertake activities or joint work when possible same issue</p> <p>The purpose of Scrutiny is to add value to the work of the Council</p>	
Reporting and recommendations	<p>Present findings of scrutiny work to the Executive and to Council as required.</p> <p>The O&S recommendations to the Executive and the Executive's response to them is vital. The onus is on the respective chair of both Overview and Scrutiny and Executive to keep this issue to the front of their minds when summarising and framing resolutions. Scrutiny Boards, reviews or task and finish groups will have spent time considering witness evidence and formulating their recommendations to the Executive.</p>	<p>The Executive will invite Scrutiny Chairs to present the findings of scrutiny work at Cabinet meetings</p> <p>Responding to Overview and Scrutiny Recommendations: The Executive's response to the report should be in writing dealing with each recommendation making it clear if it is accepted or not and what action will be taken within a maximum of two months.</p>
Monitoring outputs	<p>The Overview and Scrutiny Panel will monitor implementation of the agreed response to their recommendations.</p>	
Development and training	<p>Make adequate and appropriate preparation for meetings, read relevant papers and reports and attend meetings with the Cabinet Member, Director and officers as appropriate.</p>	<p>Where officers are providing briefings to Overview and Scrutiny members on topics, such as a Government consultation paper or a new piece of legislation within the work programme and site visits they should</p>



	Policy Briefings: Attend briefings on topics such as a Government consultation paper or a new piece of legislation	consider inviting the relevant Portfolio Holder.
Be the public voice	Enable the public to engage in the work of the Council by holding public meetings to inquire into matters of local concern.	
Roles	<p>Overview and Scrutiny Members recognises the Executive's role in taking operational decisions on Executive functions.</p> <p>Role descriptions for Chairs, Vice-Chairs, Co-opted Members and Scrutiny Members have been developed</p>	<p>The Executive recognises Overview and Scrutiny Committee's role in policy Development and being critical friend and challenging decisions.</p> <p>Role description is in the Constitution</p>



