

**BOROUGH OF POOLE**

**EXTRAORDINARY COUNCIL**

**12<sup>TH</sup> FEBRUARY 2008**

**PROPOSED CHANGES TO THE CONSTITUTION RELATING TO OVERVIEW  
AND SCRUTINY – REPORT OF THE HEAD OF LEGAL AND DEMOCRATIC  
SERVICES (FOLLOWING CONSIDERATION BY THE SERVICE PROVISION  
SCRUTINY AND AUDIT COMMITTEE)**

**1.0 PURPOSE OF REPORT**

- 1.1 It is proposed that changes are made to the Council's Constitution affecting the way in which Overview and Scrutiny duties are discharged by the Authority. As required by the Constitution, these proposals have been referred to the Council's Service Provision Scrutiny and Audit Committee, and this Report deals with the Committee's recommendations.

**2.0 RECOMMENDATIONS**

- 2.1 It is recommended that this Extraordinary meeting of the Council be asked to approve the following.
- i) That the Council move from its current system of Scrutiny Committees and separate Overview Groups to a unified Overview and Scrutiny system with each Overview and Scrutiny Committee establishing its own Terms of Reference.
  - ii) That Council approve amendments to its Constitution to allow up to eight Overview and Scrutiny Committees, broadly themed around the Council's corporate priorities.
  - iii) That the Council continues with a redefined Overview and Scrutiny Board and that the work of the Overview and Scrutiny Committees be co-ordinated by the Overview and Scrutiny Board comprising Chairs of Overview and Scrutiny Committees and such other members as are required for political balance.
  - iv) That the Call-In Scrutiny Committee be retained and its operation reviewed after one municipal year (May 2009).
  - v) That the Head of Legal and Democratic Services be requested to prepare and present a business case to evidence the resource requirements arising from the combining of the Overview and Scrutiny function.
  - vi) The establishment of a separate Audit Committee.

- vii) The Service Provision elements of the suggested Service Provision Partnership and Audit Overview and Scrutiny Committee proposal be absorbed into the five other suggested Overview and Scrutiny Committees, as detailed at Appendix 2 to the Report to the Service Provision Scrutiny and Audit Committee.
- viii) The Joint Working Party of the Review of Council's Constitution and Review of Overview and Scrutiny be reconvened to work up the final details of the proposals for approval before the beginning of the next municipal year (May 2008).
- ix) No amendment to the Council's Constitution with regard to Transportation Advisory Group (currently constituted by Cabinet), but that its Chairmanship and operation within the Council's constituted framework be reviewed.
- x) That an Annual Report on Scrutiny undertaken by the Overview and Scrutiny Committee be prepared to the Council by each Overview and Scrutiny Committee Chair.

*NOTE: The Minutes of the Service Provision Scrutiny and Audit Committee meeting on the 22<sup>nd</sup> January 2008 are attached to this Report at Appendix 1.*

### **3.0 BACKGROUND**

- 3.1 In Autumn 2007, the Head of Legal and Democratic Services was asked to facilitate the preparation of alternative proposals for the discharge of the Statutory Overview and Scrutiny function by the Borough of Poole. Two meetings of the jointly convened Overview and Scrutiny Working Party and the Review of the Constitution Working Party were held in November and December, and proposals went forward from those meetings to a meeting of the Service Provision Scrutiny and Audit Committee on the 22<sup>nd</sup> January 2008. The Scrutiny Committee undertook a full debate on the proposals, and the meeting was attended by a good number of Members of Council, some of whom also contributed by permission of the Scrutiny Committee.
- 3.2 Full details of the advice given to that meeting and those discussions are contained in the Minutes of the meeting (attached to this Report at Appendix 1) and the Head of Legal and Democratic Services' Report at Appendix 2. Members are urged to read both these documents with care.
- 3.3 This is a complex area, and every effort has been made to ensure that Members are appraised of the issues. To this end, the rest of this Report is laid out in sections as follows.
  - Legal basis for Overview and Scrutiny

- Proposed Changes to Overview and Scrutiny recommended by the Service Provision Scrutiny and Audit Committee
- Other consequential changes
- Issues relating to participation in Overview and Scrutiny
- Resource Implications
- Conclusions

#### **4.0 LEGAL BASIS FOR OVERVIEW AND SCRUTINY**

4.1 The Local Government Act 2000 required Councils to introduce the principle of executive decision making, and as a counter-balance to this, also required each Authority to put in place a system of Overview and Scrutiny Committees. The 2000 Act makes no particular distinction between the functions of Overview and Scrutiny, indeed, wherever they are referred to in the Act, they are bracketed together and there appears to be an assumption that Councils will set up Joint Overview and Scrutiny Committees. The duties of Overview and Scrutiny Committees are as follows:

- a) *To review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the Executive.*
- b) *To make reports or recommendations to the Authority or the Executive with respect to the discharge of any functions which are the responsibility of the Executive.*
- c) *To review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are not the responsibility of the Executive.*
- d) *To make reports or recommendations to the Authority or the Executive with respect to the discharge of any functions which are not the responsibility of the Executive.*
- e) *To make reports or recommendations to the Authority or the Executive on matters which affect the Authority's area or the inhabitants of that area.*
- f) *In the case of the Overview and Scrutiny Committee or Committees of an Authority to which Section 7 of the Health and Social Care Act 2001 applies, to review and scrutinise, in accordance with regulations under the section, matters relating to the Health Service (within the meaning of that section) in the Authority's area, and to make reports and recommendations on such matters in accordance with the regulations.*

*(Section 21 Local Government Act 2000).*

- 4.2 The discretion given to Overview and Scrutiny Committees is thus wide. However, it has been felt for some time that the Borough's current system of separate Overview and Scrutiny Committees is not fulfilling all of the expectations from Members in terms of having an efficient and effective Overview and Scrutiny system. The Overview groups have tended to focus very much on service issues and, in some senses, they operate akin to non-decision making service committees. At the same time, the Scrutiny Committees, divorced from direct service issues and focusing on sometimes contentious areas, have become bogged down in detail rather than providing an adequate challenge to the Executive.
- 4.3 Because of the lack of clarity in some areas over the split between Overview and Scrutiny, agendas have become somewhat crowded with items, and sometimes there is duplication between Overview and Scrutiny.
- 4.4 A considerable amount of work has been done over the last twelve months to improve the focus and operation of the Council's Scrutiny Committees, including the establishment of a Scrutiny Board. This has now started to pay dividends in terms of better forward planning and the treatment of items that come forward for Scrutiny. However, Officers feel, and are on record as having advised previously that the system could operate more efficiently if Overview and Scrutiny were combined.
- 4.5 The Independent Panel on Members' allowances is in the process of examining the Council's allowances scheme and making recommendations for the next four year period. The Panel have observed, that taking all things together, the Council has an inappropriately high number of special of responsibility allowances, and one of the key reasons for this is the non-combination of Overview and Scrutiny.
- 4.6 Early feedback from the recent CPA inspection also raised concerns over the effectiveness of the Council's current arrangements.

## **5.0 PROPOSED CHANGES TO OVERVIEW AND SCRUTINY**

- 5.1 It is proposed that the current system of separate Scrutiny Committees and Overview Groups be discontinued as from the beginning of the next municipal year (May 2008).
- 5.2 The Service Provision Scrutiny and Audit Committee felt that this was the right way forward, whilst acknowledging that the Council would take some time to adjust. It was noted that Members would require further training on how to combine Overview and Scrutiny in order for it to work well in tandem. Clear Terms of Reference for each Overview and Scrutiny Committee would need to be agreed, and there may well be a need for greater frequency of meetings if the functions are combined.

- 5.3 Members, in their deliberations, were particularly concerned to create a system that is sufficiently workable and flexible, not only for the needs of the current administration, but for future administrations and future structures. Proposals from the Joint Working Party were designed to allow flexibility with the decision being taken annually as to the number of Overview and Scrutiny Committees being required. The Local Government Act 2000 requires a minimum of one Overview and Scrutiny Committee to be created with no upper limit. The Scrutiny Committee proposed that there should be an upper limit of eight, with no minimum set, save as required by legislation.
- 5.4 The Committees should be broadly themed round the Council's corporate priorities (whilst acknowledging that these do change from time to time). Members of the Scrutiny Committee entertained various ideas which would allow maximum flexibility in terms of the Constitution, but recognised that the Council was in the process of transition and development with regard to Overview and Scrutiny and there needed to be some structure.
- 5.5 The Scrutiny Committee also considered the continuance of the Scrutiny Board, which would need to be redefined as an Overview and Scrutiny Board. Members felt that this was a positive development and should be retained, but that it would only work well if all Chairs of Overview and Scrutiny were involved. Recognising that to gain maximum impact the Overview and Scrutiny Board would also need to be politically balanced, it was agreed that such other Members should be added to the membership of the Overview and Scrutiny Board as might be required to achieve political balance in the light of the political affiliations of the Chairs of Overview and Scrutiny.
- 5.6 Last year the Council established a system whereby Call-Ins would go to a separate Call-In Scrutiny Committee. This was in order to ensure that Call-Ins were dealt with outside the normal agenda of Scrutiny Committees which had in the past sometimes caused problems of timing, programming and distraction for Members. Although the number of Call-Ins experienced by the Borough is generally low, there have been a number dealt with already by the Call-In Scrutiny Committee. On balance, the Service Provision Scrutiny and Audit Committee felt that it was appropriate to continue with this arrangement for another year before reviewing it.

## **6.0 OTHER CONSEQUENTIAL CHANGES**

- 6.1 The Audit Commission have recently restated their advice to Authorities that it is necessary to have a separately constituted Audit Committee. They do not consider that our current arrangements entirely meet with best practice. The law does not (on a strict interpretation) permit Scrutiny Committees to sign off the Annual Accounts and a separate Audit Committee would facilitate this. The alternative to this would be to revert to the previous position where Full Council signed off the annual accounts and other Audit duties could be dealt with under the auspices of Scrutiny as before.

- 6.2 The Local Government and Public Involvement in Health Act 2007 makes a number of changes with regard to the provision regarding Scrutiny. These provisions are not yet in force and will not require significant changes to our current Constitution. They deal principally with how the outcomes of Overview and Scrutiny are considered by the Council and with the rights of Members to ask for items to be scrutinised.

## **7.0 ISSUES RELATING TO PARTICIPATION IN OVERVIEW AND SCRUTINY MATTERS**

- 7.1 The law does not permit members of the Executive from being members of full blown Overview and Scrutiny Committees. Under the Council's current Constitution, Portfolio Holders are members of Overview Groups as the Groups are deemed to have a policy development/advisory capacity and are appointed by the Cabinet. Some Members have expressed concern that a revised Overview and Scrutiny system may not only result in the exclusion of Executive members when this is appropriate, but also prevent them having the necessary dialogue with Overview and Scrutiny, particularly in relation to matters of service delivery and policy development.
- 7.2 It is clearly important that members of the Executive maintain an open dialogue with other members and in particular, with Overview and Scrutiny. There is important work to be done around the area of policy, development, and service development where it is appropriate for members of the Executive to be involved. Where, however, the business of the Overview and Scrutiny Committee specifically relates to scrutinising a decision or decisions made by the Cabinet, or by an individual Portfolio Holder, a prejudicial interest arises and that Member or Members may only attend to give evidence or answer questions (to be called to account). The normal rules relating to prejudicial interests would apply in that when not giving evidence or answering questions, Members would not be expected to remain in the meeting. This would obviously be particularly relevant in the case of Call-Ins where the position is very clear. Some sensitive decisions will need to be made in relation to the attendance of Portfolio Holders when Scrutiny items are being discussed. The key touchstone is that any inference that the Executive are influencing an Overview and Scrutiny Committee, or seeking to procure certain outcomes, must be avoided. If the Overview and Scrutiny Committee is undertaking a review of a particular area within the responsibility of the Portfolio Holder, it would not be expected that they would be present except for the purposes listed above in terms of assisting the Overview and Scrutiny Committee.
- 7.3 Issues have also arisen over the provisions of the Constitution which extend these requirements more widely, stating that a Member may not be involved in scrutinising a decision that they have made. This has recently caused some difficulties in connection with decisions made by TAG, albeit in an advisory capacity, where the proximity to the Portfolio Holder's decision is seen to be extremely close. Members are reminded that decisions on interests are always about perception, and it is important to ensure that

members of the public can be sure that there is clear transparency in the Council's decision making process. The Head of Legal and Democratic Services has undertaken research on this point and the provision as currently drafted in the Borough of Poole Constitution is something which was taken from the original modular Constitution published by the Government following the Local Government Act 2000.

- 7.4 In the light of practice in some other Authorities, it is suggested that the wording be altered slightly to refer to "decisions in which the Member was directly involved". Proximity to the decision making process is the key issue here, and in general terms, having been involved in policy development or prior Scrutiny/consultation, particularly where time has elapsed and where decisions have gone on to be implemented by the Executive and then are scrutinised at a point in the future, would not be expected to preclude Members from being involved in Scrutiny. For the avoidance of doubt, a Member would be considered to have been directly involved in a decision where they made a decision either individually or collectively, or where they were directly involved as a voting Member in consultative or advisory arrangements, and there has been no intervening development or implementation before Scrutiny of the decision. This would be most likely to occur in Call-In work rather than general Overview and Scrutiny, but in most cases it is considered that there would be sufficient distance between any initial consultation or policy development work and subsequent Scrutiny following implementation to prevent this problem arising. Additionally, if the Council chooses to retain the Call-In Scrutiny Committee arrangements rather than having Scrutiny or Call-Ins dealt with by each Scrutiny Committee in turn, then the opportunities for conflict of interest are further limited because policy development or consultation would not take part within the Call-In Scrutiny Committee. The issue would only arise if a Member was also a member of another committee which had recently considered the matter.

## **8.0 RESOURCE IMPLICATIONS**

- 8.1 The Service Provision Scrutiny and Audit Committee also considered the Head of Legal and Democratic Services' advice with regard to potential resource implications for these changes. Because the final structure is not yet resolved, and because we do not have experience of a combined Overview and Scrutiny system, it is very difficult to quantify the type and amount of resources required. However, the Scrutiny Committee were supportive of the likely need for additional Officer support for the particular type of work needed to support Scrutiny. Overview and Scrutiny will only succeed to the extent to which it is properly resourced, and the need for training for both Officers and Members in preparing reports to, and researching for Overview and Scrutiny Committees was recognised as a necessity. The Head of Legal and Democratic Services has been asked to carry out further work on this, which will be presented at a later stage.

## **9.0 CONCLUSIONS**

- 9.1 These proposed changes present an opportunity to change the way the Council undertakes Overview and Scrutiny. There will be implications in terms of Members' current expectations around Overview and Scrutiny and it is proposed that additional training and development will be arranged, if Council approve these changes, to help Members prepare for and implement these changes.
- 9.2 It is proposed that if these proposals are agreed, the Working Party and the Service Provision Scrutiny and Audit Committee consider a final report on the finer detail of the changes before April Council in preparation for implementation in May 2008.

**T M Martin**  
**Head of Legal and Democratic Services**

**30<sup>th</sup> January 2008**



**BOROUGH OF POOLE**

**SERVICE PROVISION SCRUTINY AND AUDIT COMMITTEE**

**22<sup>ND</sup> JANUARY 2008**

The meeting commenced at 7.00pm and concluded at 10.54pm.

**Present:**

Councillor Mrs Haines (Chairman)  
Councillors Brooke, Burden, Mrs Butt (substituting for Councillor Gregory),  
Chandler, Clements, Mrs Dion (from 7.20pm), Martin, Rampton and  
Wilson (from 7.05pm) (substituting for Councillor Eades)

**Also Attending:**

Councillors Adams, Ms Atkinson, Brown (from 8.05pm), Mrs Deas, Mrs Long,  
Gillard, Leverett, Mason, Mrs Moore, Parker, Sorton, Mrs Stribley and Mrs Walton

Members of the public present: 1

**SPS52.08 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Gregory (substituted by Councillor Mrs Butt) and Eades (substituted by Councillor Wilson). Councillors Mrs Dion and Wilson gave apologies as they were unable to make the start time of the meeting but were to attend as soon as possible.

**SPS53.08 DECLARATIONS OF INTEREST**

The Chairman informed the Committee that the Head of Legal and Democratic Services and the Monitoring Officer had advised that no Members in receipt of the Special Responsibility Allowance had a prejudicial interest in any of the items before this Committee as all Members were in receipt of Allowances.

A Member queried whether since a number of the Members present including himself had been part of the Working Party formulating the recommendations to the Scrutiny Committee, whether they had, a prejudicial interest in matters before the Committee as they had been part of the recommendation formulation process.

The Head of Legal and Democratic Services and Monitoring Officer advised that no Members had an interest in this issue as it affected all Members of the Council. They were acting in an advisory capacity as the final decision was to be made at Council.

**SPS54.08 OVERVIEW AND SCRUTINY, RECOMMENDATIONS FROM THE JOINT REVIEW OF THE COUNCIL'S CONSTITUTION AND REVIEW OF OVERVIEW AND SCRUTINY WORKING PARTIES: REPORT OF THE HEAD OF LEGAL AND DEMOCRATIC SERVICES**

The Chairman invited the Head of Legal and Democratic Services to introduce his Report.

He drew Members' attention to Section 3 of his Report which detailed the background in relation to Overview and Scrutiny. Members noted that the Local Government Act 2000 made no particular distinction between the functions of Overview and Scrutiny and that where they were referred to in the Act, they were bracketed together and there appeared to be an assumption that Councils will set up "Overview and Scrutiny Committees". The twin purposes of Overview and Scrutiny were to assist the formulation of policy and to hold the Executive to account. Separating the role of Scrutiny from Overview had created a less holistic approach to the process and had caused tensions and stresses within the system which were detracting from the primary roles of the Committees.

Within the Borough of Poole legislation was complied with as the duties required by the Local Government Act 2000 to be discharged by Overview and Scrutiny Committees were contained within the Council's Scrutiny Committee's Terms of Reference.

The Head of Legal and Democratic Services drew Members' attention to the issues of not combining Overview and Scrutiny such as the opportunity for duplication between Scrutiny Committees and Overview Groups, the lack of appreciation that Overview Groups were not decision making and the tendency for them to be used as Service Committees. The effect of a non-unified Overview and Scrutiny structure was a plethora of meetings and, although the system had been in place in Poole for some years, there was now an emerging consensus that the system of Overview and Scrutiny as a whole was not working as well as it could.

The Independent Remuneration Panel and Members' Allowances was in the process of examining the Council's current Scheme of Members' Allowance and making recommendations for the next four year period. The Panel had observed that the Council had an inappropriately high number of Special Responsibility Allowances and one of the key reasons for this was the non-combination of Overview and Scrutiny.

The Joint Working Party had reached a broad consensus in favour of moving forward with proposals to combine the current Scrutiny Committees and Overview Groups into a single unified structure. Members were particularly concerned to create a system that was sufficiently workable and flexible not only for the needs of the current Administration but for future administrations. With this in mind the Working Party had suggested that the Constitution reflected a requirement to appoint a minimum of four Overview and Scrutiny Committees and a maximum of eight with the number and membership to be determined each year at Annual Council. It had been suggested that the broad themes of the Overview and Scrutiny Committees should reflect the Council's corporate priorities and numbers would be influenced by

the legal requirement for political balance and the need to provide an effective realistic challenge to the Executive.

It was acknowledged that the recently established Scrutiny Board was a useful tool in terms of guiding the scrutiny process and should Council accept the proposals, its remit would need to be expanded to include Overview. It was hoped that a new unified system of Overview and Scrutiny would allow non-Executive Members to develop a stronger role in terms of being champions for the issues that influence service delivery and for matters raised by the public.

The Head of Legal and Democratic Services referred to the role of the Portfolio Holders under the proposed combined system explaining that the intention of the Local Government Act 2000 was to create Executive style governance for each Local Authority. The hallmark of such governance was clear accountability for decisions, policies and service delivery with those accountable being the Leader of the Council and Portfolio Holders. It was envisaged that in order to develop policy in discussion with Officers that Portfolio Holders, whilst being prohibited by law from being a voting Member of an Overview and Scrutiny Committee, would need to engage with the Overview and Scrutiny process on many levels both in terms of accountability and in terms of policy development.

It was expected that Portfolio Holders would attend Overview and Scrutiny Committees regularly (except the Call-in Scrutiny Committee from which any Cabinet Member involved in making of a particular decision under Scrutiny would, by the Code of Conduct, be excluded having deemed to have a prejudicial interest) and that they could contribute to the debate by the consent of the Committee. The Head of Legal and Democratic Services clarified that Cabinet Members could not be Members of such Committees and would not have a vote.

There were also some issues which were less clear cut arising when Members had been involved within some aspect of decision making or detailed consultation. The Head of Legal and Democratic Services was currently undertaking researched on how these matters were dealt with under other Councils' Constitutions, due to difficulties that had arisen with interpreting the Borough of Poole's Constitution as currently drafted.

The Head of Legal and Democratic Services referred to a recommendation from the Council's Interim Audit Relationship Manager of the Audit Commission, that the Local Authority should have a separate Audit Committee. Under the current proposals it was suggested that the audit function was carried out by the Service Provision Partnership and Audit Overview and Scrutiny Committee. The Relationship Manager had indicated that the same membership of such an Overview and Scrutiny Committee would be acceptable to form an Audit Committee but that it should meet separately and be formed as a separate entity.

The Head of Legal and Democratic Services advised the Meeting that this advice had been received too late to be included in the Report but that he had discussed this matter with the Chairman.

Members commented that there was also no proposals within the Report as to how the issue of the Transportation Advisory Groups should be addressed and it was agreed this would be dealt with later in the Meeting.

The Chairman thanked the Head of Legal and Democratic Services for his presentation and explained that she intended to take each recommendation of the Working Party in turn, allowing Committee Members to speak first, then other Members of the Council.

#### Proposal to unify Overview and Scrutiny

A number of Members welcomed the proposal whilst others were less sure querying what was meant by combined Overview and Scrutiny and fearing that the Council would in effect only be undertaking Scrutiny.

It was explained that Scrutiny was not separate but Overview and Scrutiny were two complementary strands of governance. Whilst acknowledging that the Council would take some time to adjust, it was felt this was the way forward. It was explained that Overview and Scrutiny functions were combined in virtually every other Authority and it appeared to be working well. In some instances opposition Members were Chairs or Vice-Chairs of Overview and Scrutiny Committees and this, a Member commented, gave clearer transparency.

A Member commented that there was no proposal to subsume Overview but that Members required training on how to combine Overview and Scrutiny in order for it to work well in tandem. Part of this issue could be addressed by clear Terms of Reference for each Overview and Scrutiny Committee. It was acknowledged there may be more meetings of greater frequency required under this process.

It was moved and seconded

“that detailed Terms of Reference to be agreed by each Overview and Scrutiny should be part of the process.”

On being put to the Meeting this proposal received unanimous support.

#### Number of Overview and Scrutiny Committees

The Committee considered the recommendation of “to require a minimum of four and maximum of eight Overview and Scrutiny Committees .....”.

Members agreed it was important to have some degree of flexibility. A Member suggested that if this was decided annually it should not be for Cabinet to dictate the number. The Head of Legal and Democratic Services advised that this was not a decision for Cabinet but one Annual Council would make. There ensued a discussion as to whether the wording of the recommendation should be changed to delete “broadly themed around the Council’s corporate priorities” as a Member commented that the Council’s priorities had been variously named over the years and this definition maybe too prescriptive.

The Head of Legal and Democratic Services advised that although the terminology may change, the meaning was always apparent.

A Member proposed and it was seconded

that the following amendment be made delete “require” insert “allow”, delete “minimum of 4 and maximum of 8” and insert

“the Council agree amendments to its Constitution to allow up to 8 Overview and Scrutiny Committees broadly themed round the Council’s corporate priorities.” On being put to the vote this Proposal was approved.

A Member suggested there should be greater flexibility than this and that resources should be used in a more fluid manner. A Member accepted that whilst welcoming this “free thinking” there was a need for structure.

### Scrutiny Board

The Working Party considered whether the Council should continue with a redefined Overview and Scrutiny Board of 5 Members, politically balanced. Most Members were supportive of the work of the Scrutiny Board and a Member suggested that every Overview and Scrutiny Committee should be represented on the Board and political balance was crucial. A Member referred to provisions both within the Local Government Act 2000 and the Local Government and Involvement in Public Health Act 2007 where Members had a right to place an item on Scrutiny Committees agendas.

He was advised that this right was already enshrined within the Council’s Constitution and that this was by reference to the Head of Legal and Democratic Services so whilst this was not the role of the Scrutiny Board or if approved Overview and Scrutiny Board, his fears should be allayed that this right could be usurped.

A Member suggested an amendment which was seconded in the following terms:

“That the work of Overview and Scrutiny Committees be co-ordinated by the Overview and Scrutiny Board comprising Chairs of Overview and Scrutiny Committees and such other Members as required for political balance.”

The Committee approved the amendment with one abstention.

### “Call-in” Scrutiny Committee

The Committee considered the recommendation that the “Call-in” Scrutiny Committee be discontinued and that each new Overview and Scrutiny Committee form a “Call-in Sub-Committee” from its own membership.

A number of Members spoke in favour of retaining the current Call-in Scrutiny Committee as it felt this was dealing with any potential disruptive element of including call-ins on agendas of each Overview and Scrutiny. It was felt that a

separate body to deal with “call-ins” was better for public scrutiny and transparency. It was unanimously agreed “that the “Call-in” Scrutiny Committee should be retained and its operation reviewed after one Municipal Year”.

Members sought clarification as to when Members could take part in a call-in and the Head of Legal and Democratic Services assured Members he was undertaking research on this matter.

#### Changes to the Constitution

The Working Party agreed that the Head of Legal Democratic Services should be requested to prepare the necessary technical amendments to the Constitution for Council to consider.

#### Resource implications of the proposed changes

The Head of Legal and Democratic Services had advised both the Working Party and this Committee that the proposed changes to the Council’s way of working and the combination of Overview and Scrutiny would require retraining and additional resources within the Democratic Services Section of his Unit. Until the exact structure was known and the amount of any subsequent work arising it was very difficult to quantify the type and amount of resource required.

Members were supportive of the need for Officer support for scrutiny and commented that this was not just a requirement within Democratic Services but throughout the Authority as the Overview and Scrutiny system would only exceed to the extent in which it was resourced. The need for training of both Officers and Members in preparing reports to and researching for Overview and Scrutiny Committees was recognised as a necessity.

It was moved, seconded and “AGREED”

that the Head of Legal and Democratic Services be requested to prepare and present a business case to evidence the resource requirements arising from the combining of the Overview and Scrutiny function.

#### Structures/Audit Committee

Before discussing the possibilities of where the issues currently considered by Transportation Advisory Group should be addressed in the new structure a Member referred to Appendix 2 to the Report where the Head of Legal and Democratic Services had made some suggestions for Overview and Scrutiny Committees reflecting the Council’s corporate objectives and Council priorities. With regard to the need for a specialist Audit Committee it was suggested that this should be undertaken and that the suggestion for a Service Provision Partnership Overview and Scrutiny Committee incorporating the Local Area Agreement and the Regional Development Agency could be subsumed with the other suggested Overview and Scrutiny Committees.

A Member suggested that any amendments to the Constitution ought to be considered by the Constitution Working Party and that she felt that this Appendix was merely a proposal. The Head of Legal and Democratic Services advised that he had prepared this Appendix for consideration by the Working Party and since no adverse comments had been received he felt this was a useful starting point for proposals to be worked up after Council.

A Member suggested that in order that the correct structure was established by the Council not all Chairmanships of all of the Committees should attract remuneration. He was mindful of the fact that the Independent Remuneration Panel on Members' Allowances had indicated the need for the Council not to exceed 50% of its membership in the award of Special Responsibility Allowances.

A Member commented that the Council's structure needed to be correct and that this should not be reliant upon the number of Special Responsibility Allowances the Council would or would not remunerate.

It was moved, seconded and AGREED

- (i) this Committee support the establishment of a separate Audit Committee;
- (ii) the Service Provision element of the Service Provision Partnership and Audit proposal be absorbed into the other suggested Overview and Scrutiny Committees detailed at Appendix 2 to the Head of Legal and Democratic Services report; and
- (iii) the Joint Working Party on the Council's Constitution and the Review of Overview and Scrutiny should be reconvened to examine the detail of the Proposals.

#### Transportation Advisory Group

With regard to Transportation Advisory Group a Member commented that this Advisory Group was both proactive and reactive. Members were very supportive of the proposal to retain this Forum recognising the public interest in transportation matters and the public right of address in such Forum.

Currently the Transportation Advisory Group was established by Cabinet and the Group considered whether this should become a separate Overview and Scrutiny Committee or whether it should continue in its current form perhaps chaired by a Portfolio Holder. A Member commented that it would be too narrow to have a single issue Overview and Scrutiny Committee. Members concurred.

It was moved, seconded and "AGREED" that there be no amendment to the Council's Constitution be proposed with regard to the Transportation Advisory Group but, in recognition of the importance of its work its operation, it be reviewed together with its Chairmanship and its operation within the Council's Constitutional framework.

On being put to the vote this was AGREED with one abstention.

## Annual Report of Scrutiny to Council

The Committee agreed that in common with other Councils an Annual Report on the Council's Overview Scrutiny function should be prepared and presented to Council by each Overview and Scrutiny Committee Chair. The Committee concurred with this proposal.

## SUMMARY OF RECOMMENDATIONS

It was RECOMMENDED that an Extraordinary Meeting of the Council be asked to approve the following:-

- (i) that the Council move from its current system of Scrutiny Committees and separate Overview Groups to a unified Overview and Scrutiny system with each Overview and Scrutiny Committee establishing its own Terms of Reference;
- (ii) that Council approve amendments to its Constitution to allow up to 8 Overview and Scrutiny Committees, broadly themed around the Council's corporate priorities;
- (iii) that the Council continue with a redefined Overview and Scrutiny Board and that the work of the Overview and Scrutiny Committees be co-ordinated by the Overview and Scrutiny Board comprising Chairs of Overview and Scrutiny Committees and such other Members as required for political balance;
- (iv) that the "Call-in" Scrutiny Committee be retained and its operation reviewed after one Municipal Year (May 2009);
- (v) that the Head of Legal and Democratic Services be requested to prepare and present a business case to evidence the resource requirements arising from the combining of the Overview and Scrutiny function;
- (vi) the establishment of a separate Audit Committee;
- (vii) the service provision elements of the suggested Service Provision Partnership and Audit Overview Committee proposal be absorbed into the 5 other suggested Overview and Scrutiny Committees, as detailed at Appendix 2 to the Report to this Committee;
- (viii) the Joint Working Party of the Review of Council's Constitution and Review of Overview and Scrutiny be reconvened to work up the details of the Proposals for approval before the beginning of the next Municipal Year (May 2008);
- (ix) no amendment to the Council's Constitution with regard to Transportation Advisory Group (currently constituted by Cabinet) but



that its Chairmanship and operation within the Council's constituted framework be reviewed; and

- (x) that an Annual Report on Scrutiny undertaken by the Overview and Scrutiny Committees be presented to the Council by each Overview and Scrutiny Committee Chair.

**CHAIRMAN**

**BOROUGH OF POOLE**

**SERVICE PROVISION SCRUTINY AND AUDIT COMMITTEE**

**22<sup>ND</sup> JANUARY 2008**

**RECOMMENDATIONS FROM THE JOINT REVIEW OF THE COUNCIL'S  
CONSTITUTION AND REVIEW OF OVERVIEW AND SCRUTINY WORKING  
PARTIES RELATING TO OVERVIEW AND SCRUTINY: REPORT OF THE HEAD  
OF LEGAL AND DEMOCRATIC SERVICES**

**1.0 PURPOSE OF REPORT**

- 1.1 It is proposed that changes are made to the Council's Constitution affecting the way in which Overview and Scrutiny duties are discharged by the Authority. As required by the Constitution, these proposals must be referred to a meeting of the Service Provision Scrutiny and Audit Committee before consideration by Council. This Report details the issues that have been covered by the Joint Working Party and makes recommendations.

**2.0 RECOMMENDATIONS**

- 2.1 Members of the Scrutiny Committee are recommended to consider the matters discussed by the Joint Working party and to recommend to Council that:
- (i) The Council move from its current system of Scrutiny Committees and separate Overview Groups to a unified Overview and Scrutiny system'
  - (ii) The Council agree amendments to its Constitution to require a minimum of 4 and maximum of 8 Overview and Scrutiny Committees broadly themed around the Council's Corporate Priorities.
  - (iii) That the Council continue with a re-defined Overview and Scrutiny Board of five Members, politically balanced.
  - (iv) That the "Call-In" Scrutiny Committee be discontinued and that each new Overview and Scrutiny Committee form a "Call-In" Sub-Committee from its own membership.
  - (v) That the Head of Legal and Democratic Services be requested to prepare the necessary technical amendments to the Constitution for Full Council to consider.
  - (vi) That Members consider the resource implications of the changes proposed in this Report.

Note: The Minutes of the Joint Working Party meetings of 19.11.07 and 17.12.07 are attached at Appendix 1

### **3.0 BACKGROUND**

#### **3.1 Overview and Scrutiny – One Function or Two**

- 3.2 The 2000 Act makes no particular distinction between the functions of Overview and Scrutiny, indeed, wherever they are referred to in the Act, they are bracketed together and there appears to be an assumption that Councils will set up 'Overview and Scrutiny Committees'. The twin purposes of Overview and Scrutiny are to assist in the formation of policy and to hold the Executive to account. Separating the role of Scrutiny from Overview has created a less holistic approach to the process and has set up tensions and stresses within the system which are detracting from the primary roles of the Committees.
- 3.3 The duties required by the 2000 Act to be discharged by Overview and Scrutiny Committees are contained within the Borough of Poole's Scrutiny Committee Terms of Reference, and thereby the legislation is complied with. Unusually, Poole also has a structure of five Overview Groups which it is understood evolved out of Policy Advisory Groups. These report to Cabinet and undertake the role of standing advisory Committees on policy. As mentioned above, this system is, whilst legal, unusual, and problems have been identified with it including the opportunity for duplication between Scrutiny Committees and Overview Groups, lack of appreciation that Overview Groups are not decision making Committees, and the tendency for them to revert to Service Committees by another name.
- 3.4 Another effect of the non-unified Overview and Scrutiny structure is that the Corporate Diary becomes crowded with a plethora of meetings, bearing in mind the Council also has a number of other informal but regular Groups, such as Transportation Advisory Group (TAG), Town Centre Bridge Advisory Group (TCBAG), and other Groups and Working Parties.
- 3.5 Although the Poole system has been in place now for some years, there has been an emerging consensus that the system of Overview and Scrutiny as a whole is not working as well as it could. Some of the issues are identified above, but also there has been questioning over the exact role that Overview Groups undertake and issues raised as to whether or not those roles are best undertaken in a different environment from the Scrutiny Committee. Questions have been asked about the legality of the arrangements and, again, whilst these queries have been satisfied, there is some uneasiness amongst both Members and Officers.
- 3.6 A considerable amount of work has been done over the last 12 months to improve the focus and operation of the Council's Scrutiny Committees, including the establishment of a Scrutiny Board. This is now starting to pay dividends in terms of better forward planning and the treatment of items that come forward for Scrutiny. However, Officers feel, and are on record as having

advised previously that the system could operate more efficiently if Overview and Scrutiny were combined.

- 3.7 The Independent Panel on Members' Allowances is in the process of examining the Council's Allowance Scheme and making recommendations for the next four year period. The Panel have observed that taking all things together, the Council has an inappropriately high number of special responsibility allowances and one of the key reasons for this is the non-combination of Overview and Scrutiny.

#### **4.0 PROPOSED CHANGES TO OVERVIEW AND SCRUTINY AND SUMMARY OF THE WORKING PARTY DISCUSSIONS**

- 4.1 It is proposed that the current system of separate Scrutiny Committees and Overview Groups be discontinued as from the beginning of the next Municipal Year.
- 4.2 Following meetings of the Joint Working Party on the 19<sup>th</sup> November 2007 and the 17<sup>th</sup> December 2007, a broad consensus has emerged in favour of moving forward with proposals to combine the current Scrutiny Committees and Overview Groups into a single unified structure.
- 4.3 Members in their deliberations were particularly concerned to create a system that is sufficiently workable and flexible, not only for the needs of the current administration, but for future administrations and future structures. In this regard, Members of the Working Party have suggested that the Constitution reflects a requirement to appoint a minimum of four Overview and Scrutiny Committees and a maximum of eight, the number and membership to be determined each year at Annual Council . The broad themes of the Scrutiny Committees would reflect the Council's corporate priorities prevailing at the time, and numbers would be influenced by the legal requirement for political balance and the need to have a Committee that is neither too small to provide a realistic challenge to the Executive, nor too large to become unwieldy. Currently, our Scrutiny Committees have ten Members and the Working Parties felt that this was around the right number under current conditions and would be unlikely to change. A proposed structure for new Overview and Scrutiny Committees based on the Council's current corporate priorities is attached at Appendix 2.
- 4.4 The relatively recently formed Scrutiny Board was acknowledged by the Working Party to be a useful development in terms of guiding the Scrutiny process. Obviously, its remit will need to be expanded to include Overview and Scrutiny. The Joint Working Party recommended that the Scrutiny Board continue with revised Terms of Reference and with five Members to include some Overview and Scrutiny Chairs and sufficient Members to ensure political balance. Members of the Scrutiny Committee may wish to consider how the twin objectives of driving forward the Overview and Scrutiny agenda and achieving political balance may best be achieved by a revised Overview and Scrutiny Board.

- 4.5 After discussion, it was recommended that the Call-In Committee be discontinued, but in that acknowledging the value of a smaller number of Members dealing with Call-Ins separately, it was agreed that politically balanced sub-Committees of around five Members of each Overview and Scrutiny Committee should be established to consider any Call-Ins relevant to each Committee area.
- 4.6 The Town Centre and Bridge Advisory Group should continue as a Working Party of Cabinet.
- 4.7 The question of Transportation Advisory Group was debated in detail by the Joint Working Party and they noted the requirement for some public interfacing group dealing with transportation issues. No final recommendation was made as to whether this should be a stand alone Overview and Scrutiny Committee or a continuation of the current Transportation Advisory Group.

## **5.0 ROLE OF THE PORTFOLIO HOLDER**

- 5.1 A number of issues have been raised by Members with regard to the role of the Portfolio Holder, both under the existing structure and under any proposed altered structure.
- 5.2 It is worth bearing in mind that the intention of the Local Government Act 2000 was to create an Executive-style governance for each Local Authority. The hallmark of Executive-style governance was to create clear accountability for decisions, policies and service delivery, and those accountable would be the Leader and Portfolio Holders. In this respect therefore, whilst it is understandable that Portfolio Holders should wish to both have a role in the development of Policy, but also to share that role with Members, the current system in Poole whereby major policy development is apparently carried out through the Overview Groups, is perhaps not in line with this model. In reality, it is natural for Portfolio Holders to develop policy in discussion with Officers, and if a unified Overview and Scrutiny system was put in place then clearly there would be the opportunity for forward looking Scrutiny in terms of major policy development. The question is posed, however, as to whether or not the current scheme encourages a plethora of reports to Overview Groups on policy and service delivery matters which should perhaps more properly be the subject of Scrutiny.
- 5.3 The law prohibits a Portfolio Holder from being a voting member of an Overview and Scrutiny Committee. At the current time, because Overview Groups are deemed to be 'policy development groups' and not Scrutiny Committees, this has been interpreted as allowing Portfolio Holders to be members of Overview Groups, but not of Scrutiny Committees. Were the Council to change to a unified system, clearly, Portfolio Holders would not be able to be members of Overview and Scrutiny Committees. However, there is a clear need for Portfolio Holders to engage with the Overview and Scrutiny process on many levels, both in terms of accountability and in terms of policy development from time to time.

- 5.4 It is expected that Portfolio Holders will attend Overview and Scrutiny Committees regularly and they can contribute to the debate by the consent of Members. They will not be Members of these Committees and they will not have a vote.
- 5.5 Obviously, there may be occasions when Portfolio Holders are formally called to give evidence when the Scrutiny Committee is exercising its 'call to account' function. The new Code of Conduct clarifies the law on Portfolio Holders' attendance at Scrutiny Committees. The Code (and Standards Board Guidelines) makes it clear that when being called to account in relation to specific decisions that they have taken, then they will have a prejudicial interest. As such therefore, they would be expected to observe the normal protocols which are enforced when Members have prejudicial interests and they would only be able to address the Committee as part of a formal submission and to answer questions, and would not be able to participate in any other part of the discussion of that item because they would need to leave the room.
- 5.6 There are also issues that are less clear cut that arise when Members have been involved in some aspect of decision-making or detailed consultation. The Head of Legal and Democratic Services is currently undertaking research on how these matters are dealt with under other Councils' Constitutions due to difficulties that have arisen with interpreting the BoP Constitution as currently drafted.

## **6.0 ROLE OF NON-EXECUTIVE MEMBERS**

- 6.1 A new unified system of Overview and Scrutiny should allow non-Portfolio Members to develop a stronger role in terms of being champions for the issues that influence service delivery and the matters raised by the public. Members often cite the number of meetings as one of the things that makes their job most difficult and the proposed new structure should create the opportunities for more focused examination of issues that are important to Members.
- 6.2 A unified structure would also allow the concentration of expertise about topics and services in one Committee and encourage opportunities for Members to develop an in-depth understanding of such areas, both enhancing the performance of Overview and Scrutiny and allowing focused training and development work to be undertaken.

## **7.0 ISSUES THAT ARISE AS A RESULT OF ANY CHANGES**

- 7.1 It is proposed that the current arrangement for a Call-In Scrutiny Committee be discontinued because of the additional emphasis now being placed on Overview and Scrutiny. With an expanded number of Scrutiny Committees, Call-Ins should not dominate any one agenda which was a concern in the past.
- 7.2 It is proposed, however, that the recently established Scrutiny Board be retained as it is already proving its worth in terms of forward planning. It is

submitted that forward planning will be even more important in a unified scheme to ensure that appropriate agendas are created. The opportunity for reports “for noting” will be reduced and Members and Officers will need to be disciplined about creating more focused Overview and Scrutiny Agendas. The Board will have an important role in this.

- 7.3 The Council currently operates a Transportation Advisory Group, which is not an Overview and Scrutiny Committee, but which deals with questions of transportation policy and services. There are important issues for the Borough as they are everywhere. However, balanced against this is the need to keep the number of Committees and special responsibility allowances at an appropriate level. It is clear that transport issues, whilst important, can be incorporated within a revised Overview and Scrutiny function and this is something for Members to consider, perhaps by establishing a Transportation Panel from within an appropriate Committee. The Joint Working Party did not make a final recommendation on this matter.
- 7.4 The law provides for the Cabinet to establish Policy Advisory Groups should it so wish (see previous comments on Policy Advisory Groups and Overview Panels). It is not suggested that these should be a permanent feature of any new system. However, there may be key issues where Portfolio Holders and Cabinet would like to establish a cross-party Working Group which will look at something of key importance to the Council which would otherwise be difficult to fit into the existing Overview and Scrutiny Agenda system. There is no reason why this practice should not continue particularly if “task and finish” is used as a principle.
- 7.5 Members are also asked to consider making a requirement for an annual report on Scrutiny to be presented to Council.

## **8.0 RESOURCE IMPLICATIONS**

- 8.1 The Head of Legal and Democratic Services undertook a re-structuring in Democratic Services last year to better focus on the Scrutiny function. Feedback on this change has been positive. Whilst the Overview and Scrutiny function requires the same technical support in terms of publishing Agendas, minuting meetings, etc., best practice also indicates a need to have resources available to assist Chairs and Members to undertake the more searching and evidence based work of Scrutiny. Obviously existing staff will be able to re-focus from supporting the 5 Overview Groups and some retraining will be necessary.
- 8.2 INLOGOV from Birmingham University have made a number of recommendations with regard to responding to the Scrutiny Agenda, namely that all Councils should appoint Lead Officers for Scrutiny who should work with the Chairs of Scrutiny Committees to prepare Agendas, invite witnesses, ensure the smooth running of meetings and write drafts of Scrutiny Reports. Such Officers need to be supported by specialised research and information skills, public relations, and community development specialists where needed, and should have at most only minimal duties outside the Scrutiny function.

- 8.3 INLOGOV also recommend that Scrutiny Committees should have access to the means to purchase external expertise, e.g. where it is not possible to find this within a Council without requiring an official to advise a Scrutiny Committee on a matter where he /she has also advised the Executive, or been involved in a decision.
- 8.4 Neither of these recommendations in any sense contradict the traditional position whereby Officers of the Authority are required to serve all Members of the Authority in an even handed manner. However, they do recognise the reality that Scrutiny is an important function and needs to be resourced properly if it is to be successful. This matter was discussed by the Joint Working Party and a majority of Members felt that in the light of the Council's difficult financial situation and poor Government settlement, any case for additional resources is likely to be unsuccessful. The Head of Legal and Democratic Services still feels that he should, however, advise Members that in his opinion additional resources, particularly along the lines of a Research/Scrutiny Support Officer is required, even taking into account the ability to redeploy some Democratic Services staff from their current duties.

**T M Martin**  
**Head of Legal and Democratic Services**

**10<sup>th</sup> January 2008**



**JOINT MEETING OF THE REVIEW OF THE COUNCIL'S CONSTITUTION AND  
REVIEW OF OVERVIEW AND SCRUTINY WORKING PARTY**

**19<sup>TH</sup> NOVEMBER 2007**

The Meeting commenced at 3.00p.m. and finished at 4.30p.m.

Present:

Review of the Council's Constitution Working Party

Councillors Mrs Hillman (substitute for Councillor Ms Atkinson), Clements, Brown (substitute for Councillor Martin), Sorton and Mrs Stribley

Review of Overview and Scrutiny Working Party

Councillors Brooke, Mrs Butt, Collier, Gregory and Leverett (substitute for Councillor Mrs Haines)

Members of the public present: 0

1. ELECTION OF THE CHAIRMAN FOR THE JOINT MEETING

It was moved, seconded and RESOLVED that Councillor Sorton be elected Chairman of the Joint Working Party.

2. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Martin (substituted by Councillor Brown), Ms Atkinson (substituted by Councillor Mrs Hillman) and Mrs Haines (substituted by Councillor Leverett).

3. PROPOSAL FOR REVISIONS TO THE COUNCIL'S GOVERNANCE  
STRUCTURE: OPTIONS FOR CHANGES TO REVIEW TO OVERVIEW AND  
SCRUTINY ARRANGEMENTS: REPORT OF THE HEAD OF LEGAL AND  
DEMOCRATIC SERVICES

The Chairman invited the Head of Legal and Democratic Services to introduce his Report.

The Head of Legal and Democratic Services explained that Council had requested him to lead a Review of the Constitution and the Leader of the Council and Chief Executive had asked that specific consideration be given to the issue of Overview and Scrutiny.

He outlined the legislative background to Overview and Scrutiny explaining that Section 21 of the Local Government Act 2000 introduced the concept of Local Authority Overview and Scrutiny Committees. The Local Government and Public

Involvement in Health Act 2007 introduced further powers and duties for the Local Authority scrutiny function adding additional powers with relation to partner authorities and an explicit duty to scrutinise the discharge of community safety and crime and disorder functions by relevant authorities.

The Meeting noted that the 2000 Act made no particular distinction between the functions of Overview and Scrutiny. The Head of Legal and Democratic and Services explained that the duties required by the 2000 Act to be discharged by Overview and Scrutiny Committees were contained within the Borough of Poole Scrutiny Committee Terms of Reference ensuring that the Borough complied with legislation. Poole had a structure of 5 Overview Groups (6 including Transportation Advisory) which reported to Cabinet and undertake the role of Standing Advisory Committees on policy. Problems had been identified with this system including the opportunity for duplication between Scrutiny Committees and Overview Groups, lack of appreciation that Overview Groups were not decision making forums and the tendency for the Council and officers to use these as old style Service Committees.

The Head of Legal and Democratic Services outlined options and benefits of change. He suggested that although the Poole system had been in place now for some years there was a consensus over time that the system of Overview and Scrutiny as a whole was not working as well as it should. A considerable amount of work had been undertaken over the last 12 months to improve the focus and operation of the Council's Scrutiny Committees including the establishment of a Scrutiny Board which was now beginning to pay dividends in terms of better forward planning and the treatment of items coming forward for Scrutiny. However, the Officers felt and were on record as having advised previously that the System would operate more efficiently if Overview and Scrutiny were combined.

The Head of Legal and Democratic Services suggested that the current system of separate Scrutiny Committees and Overview Groups could be discontinued and in its place a unified structure of Overview and Scrutiny be created which would discharge the statutory functions of Overview and Scrutiny. He reminded Members that this was a major piece of work and it was suggested that the opportunity be taken to examine the current groupings of Overview and Scrutiny and see whether improvements could be made. For the purposes of consistency and transparency it was suggested that the system should reflect the Council's corporate objectives and priorities and he had detailed examples at Appendix 1 to his Report.

The Head of Legal and Democratic Services then referred to the role of the Portfolio Holder explaining that the Local Government Act 2000 under the Leader and Cabinet style model created clearer accountabilities with decisions, policy and service delivery. He explained that the law prohibited a Portfolio Holder from being a voting Member of an Overview and Scrutiny Committee. In Poole, because Overview Groups were deemed to be policy development groups and not Scrutiny Committees, this had been interpreted to allow Portfolio Holders to be Members of Overview Groups but not of Scrutiny Committees. Were the Council to change to a unified system Portfolio Holders would not be able to be Members of Overview and Scrutiny Committees. The need was recognised, however, for Portfolio Holders to engage with the Overview and Scrutiny process on many levels both in terms of accountability and in terms of policy development. It was expected that Portfolio

Holders would attend Overview and Scrutiny Committees and that they could contribute to the debate with the consent of Members of the Committee but, they would not be Members of Overview and Scrutiny Committees and would not have a vote.

There may be occasions when Portfolio Holders were formally called to give evidence when the Scrutiny Committee was exercising its “call to account function”. The 2007 Act clarified the law on Portfolio Holder attendance at Scrutiny Committees making it clear that when being called to account in relation to a specific decisions taken then they would have a prejudicial interest. As such they would be expected to observe the normal protocols which are in force when Members have a prejudicial interest and they would only be able to address the Committee as part of a formal submission and to answer questions and would not be able to participate in any other discussion of an item and would need to leave the room.

The Head of Legal and Democratic Services then referred to the role of non-Executive Members explaining that a new unified system of Overview and Scrutiny should allow these Members to develop a stronger role in terms of being champions for the issues that influenced service delivery and matters raised by the public.

As a result of any proposed changes to the Council’s governance system questions would arise particularly over whether the newly established “Call-in” Scrutiny Committee would be required if the number of Overview and Scrutiny Committees were expanded. The role of the Scrutiny Board, however, was already proving its worth in terms of forward planning and was seen to be pivotal. Other issues, such as the future role of the Transportation Advisory Group and other Working Parties would have to be addressed. It was noted that the law provided for Cabinet to establish Policy Advisory Groups should it so wish but it was suggested that these should not be a permanent feature of any new system but a “task and finish” nature.

The Chairman thanked the Head of Legal and Democratic Services for his excellent report and the Meeting debated the issues.

There was a consensus of opinion amongst Members present that the Council should seize this opportunity to establish a workable system that would be appropriate for this and future Administrations. It was acknowledged that the Members would need to feel comfortable that such a system which would work and if this resulted in a reduction of Special Responsibility Allowance this would also be helpful.

It was suggested that this development work should be undertaken involving all Members of the Council. It was also suggested that Transportation Advisory Group was a scrutiny function and that transportation issues could be dealt with by Area Committees. It was noted that this would require a review of delegation to Area Committees.

A number of Members felt that this approach may prove difficult, as Area Committees could be too parochial.

A Member suggested that examples of good working practices from other Authorities should be sought. It was also suggested that any change to the Committee structure should be implemented from the 1<sup>st</sup> April 2008. A Member suggested that the themes should be the choice of the Leader. A Member disputed this saying it was a matter for the Council. The likely increase in workloads placed on any resulting combined Overview and Scrutiny Committees was also discussed together with the need for support from capacity of Democratic Services.

A Member commented that Overview and Scrutiny Groups needed to reflect the priorities of the Council and its corporate objectives. He agreed that any changes to the Constitution should not be too prescriptive and that the Terms of Reference of the Scrutiny Board would need revisited should any change be implemented. Members all agreed that there was a need for “smarter” working.

In conclusion, Members agreed there was a consensus for change and that the Head of Legal and Democratic Services should prepare a report for the next meeting capturing the essence of the discussion. Group Leaders were to meet together and with their Groups to discuss possible structures and themes and would advise the Head of Legal and Democratic Services of the outcome in order for this to form the basis of his Report.

It was RECOMMENDED that

- (i) Overview and Scrutiny functions in the Council should be combined;
- (ii) the Terms of Reference of the Scrutiny Board to be revised to encompass any proposed change;
- (iii) Members be appraised, in more detail, on changes to scrutiny requirements following the introduction of further powers and duties detailed in the Local Government and Public Involvement in Health Act 2007;
- (iv) the Head of Legal and Democratic Services present a process for dealing with “call-ins” of Portfolio Holder/Cabinet decision;
- (v) the future of the Town Centre Bridge Advisory Group and Transportation Advisory Group and Revitalising the Town Centre Management Board be considered as part of any structure;
- (vi) a clear process be devised on how the Council engages with external agencies;
- (vii) an operative date for the commencement of any new system be agreed;
- (viii) the Head of Legal and Democratic Services undertake research on structures operated by other Councils;

- (ix) a diagrammatic representation showing the relationship between Committees, Portfolio Holders, Service Unit Heads and indicating where and how current business of the Council would be transacted be prepared following the Group Leaders Meeting;
- (x) the possible need for a Seminar development work with Members and Officers be investigated; and
- (xi) the workload resources issues within Democratic Services be addressed as Scrutiny would only succeed to the extent it was resourced.

**CHAIRMAN**

## **BOROUGH OF POOLE**

### **JOINT MEETING OF THE REVIEW OF THE COUNCIL'S CONSTITUTION AND REVIEW OF OVERVIEW AND SCRUTINY WORKING PARTIES**

**17 DECEMBER 2007**

The Meeting commenced at 3:30pm and finished at 6:08pm

Present:

Councillor Sorton (Chairman)

Councillors Brooke, Mrs Butt, Clements, Collier, Gregory, Mrs Haines, Leverett (substitute for Councillor Ms Atkinson) and Mrs Sibley.

Members of the public present: 0

#### **1. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Ms Atkinson (substituted by Councillor Leverett), Eades and Martin.

#### **2. MINUTES**

RESOLVED that the Minutes of the last Meeting of the Joint Working Party held on 19 November 2007, having been previously circulated, be taken as read and confirmed and signed by the Chairman as a correct record.

#### **3. OPTIONS FOR CHANGES TO OVERVIEW AND SCRUTINY ARRANGEMENTS: REPORT OF THE HEAD OF LEGAL AND DEMOCRATIC SERVICES – PART 2**

The Chairman invited the Head of Legal and Democratic Services to present his Report.

##### **Overall Structure**

The Head of Legal and Democratic Services, following the last Meeting, had prepared a report proposing the establishment of Joint Overview and Scrutiny Committees reflecting the Council's corporate objectives as being both legible and transparent for the Council and the public. A paper, giving examples as to where Services would report under the proposed structure, was also tabled at the Meeting for consideration.

Members considered the proposals and it was suggested that, in order for the Constitution to remain as flexible as possible to serve any Administration the titles of this Overview and Scrutiny Committee should not be specified and nor the number, but a range from 4 to 8 Overview and Scrutiny Committees should be appointed.

A Member also suggested that Members could be appointed from a pool to serve on a particular Overview and Scrutiny Committee at a particular time. This did not find favour with the Working Party as it was felt that specialisms amongst Members and use of expertise was important, together with continuity.

A Member commented that, whilst supporting the need for the Constitution to be flexible, there were some statutory responsibilities, such as Children's Services, which had to be addressed and had to be reflected within structure, together with the Council's statutory responsibilities for Adult Social Services and the Council's Audit function.

Consensus was reached that Overview and Scrutiny Committees of between 4 and 8, to be determined at Annual Council, politically balanced with the agreement of Group Leaders and to reflect the Council's priorities, should be appointed.

A Member requested that consideration be given to the legality of political balance being determined after the number of Executive Councillors had been removed from the total number of seats available for allocation, for example, in Poole this would be a political balance of the 32 remaining Members.

#### Scrutiny Board

The Working Party was supportive of the role of the Scrutiny Board in overseeing, advising and guiding the work of Overview and Scrutiny Committees. Currently this Board comprised of the Chairs of Scrutiny and two other Members, was politically balanced and already was proving effective in helping to organise the Work Programmes of the current Scrutiny Committees.

It was agreed that the remit of the Scrutiny Board would need to be expanded to include the new structure of Overview and Scrutiny Committees and that the Board should continue, and be politically balanced. The co-ordinating role between the Overview and Scrutiny Committees undertaken by this Board was agreed.

It was agreed that an Overview and Scrutiny Board should be established with five Members, including the Chairs of Overview and Scrutiny and sufficient Members to ensure political balance as agreed between the political parties on the Council at each Annual Council, depending on the number of Overview and Scrutiny Committees appointed.

Consideration was given as to whether there was a continuing need for a separate "Call-in" Scrutiny Committee under the proposed new structure. On balance, Members agreed that a Sub-Committee of the relevant Overview and Scrutiny Committee appropriate for the issue "Called in" be established with a Membership of 5, the Sub Committee being politically balanced. Should there be any dispute as to which was the appropriate Committee for any issue to be scrutinised, this was to be decided by the Head of Legal and Democratic Services in consultation with the Chair of the Overview and Scrutiny Board and Chair of the Overview and Scrutiny Committee concerned.

### Transportation Advisory Group and Town Centre and Bridge Advisory Group

The importance of the Town Centre and Bridge Advisory Group was acknowledged, and as this was a Working Party of Cabinet, it was agreed this should continue in its current form.

With regard to Transportation Advisory Group, a Member suggested that it should be retained but as a Panel of an Overview and Scrutiny Committee maintaining its public interface. Some Members disagreed, suggesting that it would be appropriate for it to be an Overview and Scrutiny Committee in its own right. The importance of this Group was recognised, together with its local and strategic role in Transportation. It was agreed that this should be reviewed further.

### Resource Source Implications

The Head of Legal and Democratic Services had highlighted the need for adequate resources to ensure Scrutiny was effective. Research from other Authorities had borne out this need. The Head of Legal and Democratic Services drew Members' attention to the re-organisation within his Unit which he had undertaken to begin to address the need for more support for the Scrutiny function under the current structure and he explained that more resources would be required to properly support a revised Overview and Scrutiny Committee structure. A Member explained that he felt that there should be no budget allocated specifically to Scrutiny as this would make the area much easier to identify should budgetary constraints require the Council to reduce budgets across function.

A Member commented that he could not see any need for extra staff as he could not understand what extra work had been created by combining of two functions. He agreed it was the duty of the Head of Legal and Democratic Services to draw this issue to Members' attention but that any additional resource would be a Member decision.

### Programme for future development

Some Members were not supportive of the need for a separate seminar involving all Members on proposals for revised governance arrangements, feeling that a single item agenda on this issue for Service Provision Scrutiny and Audit Committee in January 2008 would suffice.

The Head of Legal and Democratic Services drew Members' attention to the suggestion that any new scheme should commence at Annual Council as this was the Council's administrative meeting and the start of the new Municipal Year. It was explained that the extraordinary Council Meeting, to be held in February 2008, could be requested to extend the current scheme of Members' allowance to Annual Council from whence a new scheme of allowances could be applied to fit any new structure the Council had approved.



**It was RECOMMENDED that**

- (i) Overview and Scrutiny Committees be appointed of between 4 and 8, the number and membership to be determined at Annual Council, the Committees to be politically balanced reflecting the Council's priorities;**
- (ii) that the Scrutiny Board continue with revised terms of reference to incorporate Overview and Scrutiny, it be appointed with 5 Members to include some Overview and Scrutiny Chairs and sufficient Members to ensure political balance;**
- (iii) the "Call-in" Committee be not re-appointed under any new structure but a politically balanced Sub Committee of 5 Members of each Overview and Scrutiny Committee be established to consider "Call-ins" relevant to each Committee area;**
- (iv) The Town Centre and Bridge Advisory Group continue as a Working Party of Cabinet, the possibility of Transportation Advisory Group being a "stand alone" Overview and Scrutiny Committee be considered but the need for some public interfacing Group dealing with transportation issues be acknowledged;**
- (v) The Head of Legal and Democratic Services prepare more detailed proposals for any additional staffing resources to support the revised structure outlining budgetary implications.**

**CHAIRMAN**

## APPENDIX 2

<i><u>CORPORATE OBJECTIVE</u></i>	<i><b>OVERVIEW &amp; SCRUTINY COMMITTEE</b></i>	<i><b>COUNCIL PRIORITY</b></i>
Supporting Children & Young People	<u>Children, Young People &amp; Learning</u>	Transforming Our Schools for the Future
Promoting Health and Well Being	<b>Health and Social Care</b>	Meeting the Needs of Older People
Protecting Poole's Environment	<b>Environment</b>	Reducing Poole's Carbon Footprint
Strengthening our Communities	<b>Building Communities</b>	Improving Housing for Local People
Developing a Dynamic Economy	<b>Stronger Economies</b>	Revitalising our Town Centre
	<b>Service Provision Partnership &amp; Audit</b>	Improving Effectiveness and Efficiency