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To: County Council – 15 October 2009

Subject: Potential to Refocus and Restructure the Overview and Scrutiny Function

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## **Introduction**

1. (1) At the first meeting of this new County Council on 25 June 2009, the Leader announced a thorough review of the Overview and Scrutiny function would be carried out to ensure that it is fit for purpose in relation to the structure and shape of the new Council and in the context of external developments.

(2) The review did not have a remit over the role of the Governance and Audit Committee. That Committee is not a part of the suite of Overview and Scrutiny Committees, which includes the Policy Overview Committees, the Cabinet Scrutiny Committee, the Health Overview and Scrutiny Committee and the Policy Overview Co-ordinating Committee.

(3) Every Member of the Council has had the opportunity to contribute to the preparation of the proposals set out in this paper. I am most grateful for the constructive contribution of Members of all parties.

(4) The report summarises the key features of the extensive discussions which have taken place and concludes with a series of recommendations which I, with my Cabinet colleagues, commend to the County Council as a basis for change and as a firm foundation for further evolution of this important democratic role.

## **Context**

2. Members will be aware of the context and background to this report:

- (a) the financial pressure on all public sector organisations and particularly local authorities;
- (b) the need to ensure the Council maintains the highest standards of probity and good governance in its decision-making;
- (c) the County Council's emerging approach to Localism and the variety of models being established across the county which include, where appropriate, our partners;
- (d) the development of Member roles and the County Council's application for the South East Employers Member Development Charter;

- (e) implementation of the recommendations arising from the Informal Member Group on Member Information, approved by the County Council on 11 December 2008;
- (f) the opportunities, working in partnership with Borough/District colleagues, that may exist to pool resources supporting Overview and Scrutiny activity across the county and to agree shared work programmes on issues which will add value without duplication to the communities which we all serve;
- (g) the emerging scrutiny roles for which legislation/regulations have been published, including scrutiny of the Crime and Disorder Reduction Partnerships and scrutiny of the Local Area Agreement;
- (h) the scrutiny by Members of the wide range of public sector bodies advocated in the consultation document “Strengthening Local Democracy”.

### **Overview and Scrutiny – the Key Challenges**

3. (1) Members are reminded that, as the strategic authority for Kent, the County Council and its Members have a unique community leadership role. The challenge for Members is to:

- (a) lead the provision of public services in the area;
- (b) engage with local communities, tiers of local government and stakeholders;
- (c) assess with them the future of the locality; and
- (d) achieve and deliver the strategies and visions that best serve the people.

(2) The Overview and Scrutiny process was initially designed to help and support policy development and provide challenge to the Council’s own decision making processes and service performance. That remains one aspect of the role, but much of the most effective work has involved engagement with the wider community and across all public service issues. It is now incumbent upon all Members to develop imaginative forms of engagement, to involve local people, service users and others in scrutiny. This is a wider conversation in which all Members can participate.

### **Challenges**

4. (1) The challenges the Council faces include:
- (a) widening the engagement and understanding of elected Members in effective partnership working;
  - (b) bringing Members’ knowledge of local issues and communities to service providers involved in partnerships;

- (c) holding the leadership of strategic partnerships across the public sector, including local authorities, to account.
- (2) Effective Overview and Scrutiny must contribute to effective partnership working. This can be done through:
  - (a) using individual projects to bring partner organisations together to find new ways of working jointly to tackle important local problems;

*(A good example of this was the work of the Health Overview and Scrutiny Committee (HOSC) in the summer of 2008, which facilitated a discussion between the Acute Hospital Trust, the Primary Care Trust, Dover District Council and the County Council to look at what could be the best outcome for Dover residents in terms of future healthcare provision);*

- (b) raising the profile of this work to enhance public understanding and recognition – which clearly forms a part of the Council’s commitment to ‘championing the people of Kent’; and
- (c) building alliances with the Executive and other stakeholders to gain support for recommendations;

*(A good example here is the work of the previous Council through the Select Committees on Autism Spectrum Disorder and Alcohol Misuse, where all the partners that had contributed to the recommendations (which were not wholly in the gift of the County Council’s Executive to deliver) were brought together before the Select Committee report was published to support the recommendations and take ownership for their delivery).*

(3) Without exception, Members have stressed the importance of ensuring that the overview and scrutiny process adds real value, reaching positive and realistic recommendations. It is not about duplicating the work of Regulators and Inspectorates. It is very much about identifying the key issues and widening the conversation to engage local people, service providers, neighbourhood users, communities, as well as elected Members.

### **Statutory Requirements**

5. The County Council must have:

- (1) one scrutiny committee responsible for the scrutiny of Executive decisions and operating a “call in“ procedure;
- (2) a statutory Health Overview and Scrutiny Committee, which encompasses Adult Social Care as well as NHS matters;
- (3) at least one committee designated as the Crime and Disorder Scrutiny Committee (these new powers currently sit with the Communities Policy Overview Committee); and

(4) statutory co-optees as required, primarily Church Diocesan representatives and Parent Governors, who serve on the Cabinet Scrutiny Committee and the education related Policy Overview Committees.

### **Summary of Discussions in preparation for this Report**

6. (1) There is no real appetite to fundamentally change the existing structure of the Cabinet Scrutiny Committee, the Health Overview and Scrutiny and the Policy Overview Committees.

(2) However, it is essential that all Members are fully engaged in the business of the County Council. Over the last nine years we have evolved a new model of decision making to a maturity which needs some refinement in order to enable further development to meet the challenges described earlier in this report.

(3) As a consequence, this review has provided the opportunity to explore what is needed to enhance the overview and scrutiny function so that it adds greater value to the decision-making processes and to service delivery.

(4) It has been evident from the discussions that the Cabinet model, while improving the effectiveness of decision-making, has created a situation whereby those elected Members who are not in the Cabinet often feel remote from the decision making process, and do not feel that they are able to contribute to it effectively. There is unanimity that this is not sustainable and one way in which this deficit can be addressed is to improve the constructive working relationship between the Executive and the Overview and Scrutiny Committees. The discussions have re-affirmed the view that the role of the Policy Overview Committees should be strengthened to ensure that those committees are looking at the issues where they can exercise greatest influence over the Executive and add most value to the end users, the residents of Kent.

#### *Parity of Esteem*

(5) As the overview and scrutiny function has matured, there is a greater understanding amongst Members that parity of esteem between those Members who are not Cabinet Members is key to the future development of the function and its effectiveness in holding decision makers to account (the constructive critical friend) and the opportunity to develop policy and measure the effectiveness of these policies.

#### *Cabinet Scrutiny Committee and Policy Overview Committees*

(6) There was a very constructive discussion at the Cabinet Scrutiny Committee about clearly defining the role of that committee separately from the Policy Overview Committees. The Committee concluded that its work programme needed to be developed to ensure that it looks at those strategic issues where it can make an impact on decisions taken by the Cabinet or by individual Cabinet Members, leaving other issues to be considered through the strengthened Policy Overview Committees. This paper therefore recommends that the terms of reference of the Cabinet Scrutiny Committee be changed to reflect that its sole purpose will be to operate the “call in” process and hold the

Cabinet and individual Cabinet Members to account for the formal Executive decisions they have made. The Policy Overview Committees will be renamed Policy Overview and Scrutiny Committees. Their prime role will be to develop and scrutinise policy. The Scrutiny Board will exercise the "call in" process for the discharge of any functions which are not the responsibility of the Executive and all officer decisions.

#### *Policy Overview Co-Ordinating Committee*

(7) This paper recommends that the Policy Overview Co-ordinating Committee is re-named the Scrutiny Board as the senior committee in the Overview and Scrutiny suite with revised terms of reference in order to address:

- (a) the operation of the "call-in" process for:
  - (i) decisions made or actions taken in connection with the discharge of any functions which are not the responsibility of the Executive
  - (ii) any actions taken by Cabinet or Cabinet members (other than formal decisions) in connection with the discharge of their Executive functions
  - (iii) all officer decisions

allocating them as appropriate to one or more of the relevant Policy Overview and Scrutiny Committees;

- (b) the need to involve all Members in the policy development and decision making process;
- (c) how overview and scrutiny is commissioned, including cross cutting issues, particularly with the emerging agenda of increased overview and scrutiny of partnerships (e.g. scrutiny of the Crime and Disorder Partnership and the Local Area Agreement);
- (d) agreeing the Select Committee Topic review programme and deploying the resources to support that programme; and
- (e) exploring with our partners the opportunity to work together collaboratively on shared work programmes and resources across overview and scrutiny

#### *Forward Plan of Key Decisions*

(8) The Forward Plan is a key document for all Members of the County Council. Communication and the flow of information between the Executive and non-Executive Members is key to the future development of the Overview and Scrutiny function.

(9) The Forward Plan is one small but very critical element in the context of how Members' information needs can best be served. Implementation of the recommendations of the IMG: Member Information,

approved by the County Council on 11 December 2008, is key and is being pursued separately.

(10) The statutory provisions for the Forward Plan require that decisions which fall within the criteria for a Key Decision (decisions which are significant in terms of their effect on communities living or working within one or more electoral divisions, and expenditure/savings over £1m) for the forthcoming four months do not provide Members with sufficient information.

(11) It is therefore proposed that the period of time covered by the Forward Plan be extended from four to six months, recognising that the last period is tentative and subject to change.

#### *Co-optees*

(12) Members will be aware that when a Select Committee is established, consideration is given to the potential benefit from the advice/assistance of co opted members.

(13) The Scrutiny Board will need to consider the issue of co-option each time it commissions a piece of work, and keep under review the possible need for a formal scheme of co-option.

#### *Involvement of the Media/Press in Scrutiny*

(14) The County Council has an agreed protocol for publishing and launching Select Committee reports.

(15) The Overview and Scrutiny Committees are keen to develop a constructive dialogue with the media and press. As a bare minimum it has been suggested that the dates of meetings of the Overview and Scrutiny Committees should be widely published by the press and media. However, if a work programme for the Overview and Scrutiny Committees is agreed in advance then there is also an opportunity to promote this through the media and seek the public's views.

(16) Taking this one stage further, it should be possible for the public to email in questions they would like asked as Overview and Scrutiny meetings are progressing. This is an exciting proposal and would need careful consideration by the Scrutiny Board in consultation with the Leader of the Council, Leader of the Opposition, Leader of the Labour Group and independent member before it is implemented.

#### *Rapporteurs*

(17) Members have expressed a wish to develop a rapporteur scheme so that elected Members with a specific interest can volunteer to take ownership of a piece of work, undertake the research themselves and prepare a report. The Health Overview and Scrutiny Committee (HOSC) has expressed a wish to pilot a rapporteur scheme and a number of items currently within the work programme for the HOSC have been identified by members of that committee to take forward. The Regeneration and Economic Development POC agreed

that Members would take responsibility and ownership for working with partners to get an understanding of the economic development and regeneration issues for each of the Borough/District Council areas.

(18) If the County Council agrees to the development of a rapporteur scheme, then it is recommended that the proposed Scrutiny Board in collaboration with the Cabinet and Chief Officers would want to develop clear guidelines on how this would operate, the responsibility of a rapporteur, what they could reasonably do and not do and what level of support might be available to them

#### *Health Overview and Scrutiny Committee (HOSC)*

(19) The HOSC has some very specific issues which it is seeking to address, including how the work programme of the committee can be delivered working in partnership with the Borough and District Councils, Medway Council the Local Involvement Network for Kent (LINK) and other Overview and Scrutiny Committees.

### **Conclusion**

7 Following decisions taken by the County Council on the future direction of the Overview and Scrutiny function, Democratic Services officers are proposing to arrange a series of events in which all Members and a range of officers will be briefed in:

- (a) the role of the Overview and Scrutiny function;
- (b) the powers of the Overview and Scrutiny Committees; and
- (c) the opportunities for all elected members to contribute and influence work programmes for the Overview and Scrutiny Committees.

### **Recommendations**

8. The County Council is recommended to agree the following:

- (a) The refocusing, renaming and strengthening of the role of the Overview and Scrutiny Committees as described in this report;
- (b) To ask the Scrutiny Board (formerly the Policy Overview Co Ordinating Committee) in consultation with the Cabinet to identify and pilot new ways of working to build capacity including a rapporteur scheme, engagement with the press and media, the information and period of time the Forward Plan of Key decisions covers; and
- (c) Note that any consequential changes to the Articles of the Constitution will be brought back to the County Council for approval.