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To: Scrutiny Committee – 12 June 2014

Subject: The Role of the Scrutiny Committee

Summary: This report is intended to act as a discussion document to help shape the future role of the Scrutiny Committee.

1. Background

- 1.1 Following the informal discussion about the role of the Scrutiny Committee on 3 April 2014, the Chairman agreed that this report be submitted to the Committee to give Members a more formal opportunity to discuss the role of the Committee and examine the Committee's ways of working and areas which are working well as well as areas that could be improved.

2. Legislative background

- 2.1 The Centre for Public Scrutiny (CfPS) defines scrutiny as:

“an independent function led by local elected councillors that works with local people and other local bodies to improve services. It makes recommendations to the Council's Executive to bring about these improvements”.

- 2.2 Overview and Scrutiny Committees (OSCs) were introduced by the Local Government Act 2000 and councils operating a Leader and Cabinet system (or a hybrid system as in Kent) are required to have at least one Overview and Scrutiny Committee, which is composed of Members not on the Cabinet. Under the Local Government Act 2000, the OSC must have the following powers:

- (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 with respect to matters which affect the authority's area or the inhabitants of that area; and
- (f) In the case of the OSC 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 that 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.

2.2 Section 9F states that the power of an OSC to review or scrutinise a decision made but not implemented includes power:

- (a) to recommend that the decision be reconsidered by the person who made it; or
- (b) to arrange for its function to review or scrutinise a decision made but not yet implemented to be exercised by the authority.

2.3 The Localism Act 2011 brought in a number of changes for local government. For scrutineers, the principal changes are a consolidation of existing scrutiny legislation, which is now all located in a new Part 1A of the 2000 Act. Of particular note are the following provisions:

- (a) OSCs may co-opt members from outside the authority (as non-voting members) (Section 9FA)
- (b) Attendance to answer questions (Members of the executive and officers may be required – this confers a duty to attend); others may be invited. (Section 9FA)
- (c) County and Unitary Authorities must designate a Scrutiny Officer to promote the role of overview and scrutiny; support OSCs; and provide advice to officers and Members about OSCs. The designated Scrutiny Officer cannot be the Head of Paid Service, the Monitoring Officer or the Section 151 Officer. (Section 9FB). In Kent, the Head of Democratic Services is the designated Scrutiny Officer.
- (d) OSCs can require the authority or the executive to consider and respond to recommendations indicating what if any action the authority or executive proposes to take. This response should be published and provided within 2 months. (Section 9FE)

(e) Partner Authorities are required to “have regard to” reports and recommendations from OSCs. (Section 9FF)

- 2.3 As can be seen from the statutory provisions outlined above, the role of the OSC is much wider than purely a call-in committee for executive decisions. The Terms of Reference of KCC’s Scrutiny Committee are attached at **Appendix 1**.

3. The working relationship between the Executive and the Scrutiny Committee

- 3.1 The Scrutiny Committee should provide, through strong leadership by Members, a good environment for the constructive challenge of decision-makers. The Chairman should foster discussion and encourage all concerned to be involved in the process, whilst ensuring that all opinions are expressed in a constructive manner that contributes to the intended outcome of the process.

- 3.2 The Centre for Public Scrutiny advises that if scrutiny is to be at its most effective, becoming a “critical friend” of the Cabinet, it is important that it stays separate from party politics. One of the Centre’s policy briefings states that:

“Scrutiny’s remit is neither to act as an appreciation society nor to provide political opposition for the Council’s Cabinet. It works best if it is able to side-step the dividing lines between political parties. Scrutiny is and always should be regarded as a party politically impartial forum. That is not to say that scrutiny committee members should be encouraged to think and act apolitically. Councillors are elected politicians and it would be unreasonable to expect them to leave their points of view, values and beliefs at the committee room door. Issues being discussed by scrutiny will be inherently political. The skill...is to channel political debate in such a way that it is evidence-based, positive and constructive”.

- 3.3 In relation to an item being considered by the Committee, it is often helpful for the Chairman and Spokesmen to have informal discussions to collectively agree a line of questioning and develop a joint cross-party approach. Productive and constructive scrutiny is not about trying to catch decision-makers out; it is often useful to give advance warning to decision-makers of the likely question areas so that their responses and, therefore, the debate that follows is as full and productive as possible. Given the wide range of demands on the Committee’s limited time, good use should be made of the time it spends questioning decision-makers. The work of the Cabinet Committees also complements the Scrutiny Committee, as these cross-party executive Committees have a key role to play in advising and making recommendations to the Cabinet and Cabinet Members about forthcoming executive decisions.

4. Committee Work Programme

- 4.1 It is good practice for the Scrutiny Committee to have a work programme for the following 12 months and to review achievements against the objectives outlined in the work programme on a regular basis. The Committee's work programme should ensure that all work being delivered by the Committee:
- makes a positive impact on services
 - promotes good practice
 - challenges underperformance
 - acts as a catalyst for change
 - deals, where appropriate, with relevant partnership issues
- 4.2 There will be set dates in the County Council calendar that will influence the work programme, such as the budget setting process, where scrutiny activity can be planned for. However, the work programme must remain flexible to allow for the scrutiny of other important strategic decisions that come forward during the year, the timing of which might not always be clear from corporate or business plans or the list of Forthcoming Executive Decisions (FED).
- 4.3 Flexibility is also important in relation to matters proposed for scrutiny by Committee Members, the Cabinet, regulators or the public.
- 4.4 The consideration by the Scrutiny Committee of budget and performance monitoring information on a regular basis will also assist the Committee to hone in on areas for scrutiny and to decide how much time to allocate to certain matters in its work programme. Scrutiny can and should be supportive to the Cabinet in relation to making recommendations for service improvement.
- 4.5 The work programme should also feature regular reports on crime and disorder matters and flood risk management as well as updates from Select Committees in accordance with the Committee's Terms of Reference.
- 4.6 Subject to the Committee's views, it is suggested that the Head of Democratic Services be asked to prepare a draft work programme in consultation with the Chairman and Spokespersons, for the Committee's consideration at a future meeting.

5. Briefings for Members

- 5.1 The briefing sessions for Scrutiny Committee spokesmen provide the opportunity to request further information on issues being considered for inclusion on the agenda. In future, it might be worth expanding these briefing sessions to include all Scrutiny Committee Members and to include these briefings as part of the Committee's work programme.

6. Select Committees

- 6.1 The Scrutiny Committee has a role in establishing Select Committees, which are cross-party sub-committees of the Scrutiny Committee, undertaking detailed, evidence-based and in depth reviews of the Council's services or issues which affect the lives of Kent residents. At the end of a Select Committee review the Committee would produce a report making recommendations to the Council and other partner agencies to improve services. It is suggested that the Head of Democratic Services be asked to seek suggestions for new Select Committee topics from Members and bring forward a report to the Committee for consideration.

7. Facing the Challenge – Towards a Commissioning Authority

- 7.1 At its meeting on 15 May, 2014, the County Council considered and approved a report from the Leader of the Council entitled 'Facing the Challenge: Towards a Commissioning Authority' (attached at **Appendix 2**). The County Council agreed to ask the existing cross-party Transformation Board to examine in more detail the changing role of elected Members in commissioning.

8. Recommendation

- 8.1 The Scrutiny Committee is asked to consider and comment upon this report.

Terms of Reference for the Scrutiny Committee

11 Members

Conservative: 6; UKIP: 2; Labour: 2; Liberal Democrat: 1; and (for relevant education items only): Churches: 3; Parent Governors: 2.

1.1 The Council has appointed this Committee under section 21 of the Local Government Act 2000 to:

(a) review or scrutinise decisions made, or other action taken, in connection with the discharge of any executive or non-executive functions.

(b) make reports or recommendations to the County Council or the executive, requiring them to consider and respond, indicating what (if any) action they propose to take, within 2 months.

(c) in the case of executive decisions made but not implemented, recommend the decision be reconsidered or refer the review of the decision to the County Council.

(d) request, but not require, that implementation of a decision be postponed when considering any decision taken by an officer or by a Committee exercising functions delegated by the Council.

(e) to make reports or recommendations to the County Council or the executive on matters which affect the authority's area or the inhabitants of the area.

(f) require the Leader, Cabinet Members and Senior Managers to attend before it and answer questions. It is the duty of any Member or officer to comply with such a requirement.

(g) require any other Member to attend before it to answer questions relating to any function which is exercisable by the Member by virtue of section 236 of the Local Government and Public Involvement in Health Act 2007 (exercise of functions by local councillors in England).

(h) invite other persons to attend meetings of the Committee to answer questions and gather evidence with their consent.

(i) appoint one or more sub-committees to discharge any of its functions.

(j) co-ordinate the programme of Select Committee reviews during the year.

1.2 When exercising the powers in relation to education functions, this Committee will include persons nominated by the Diocesan Boards of Education of the Canterbury and Rochester Dioceses of the Church of England and the Roman Catholic Bishop whose diocese includes Kent (paragraph 7 of Schedule 1 to the 2000 Act), as well as persons elected as representatives of parent governors at schools maintained by the Council as the local education authority for Kent (paragraph 9 Schedule 1 to the 2000 Act).