

Establishment of the Policy Development Groups

Report of the Overview and Scrutiny Board

1. Background

- 1.1 The Overview and Scrutiny Board met on 22 June 2015 to consider a call-in by ten Members of the Council (the majority of whom were members of the Board) of the decision by the Mayor to, amongst other things,:
- establish two Policy Development Groups
 - agree the working arrangements for the Policy Development Groups
 - approve the Decision-Making Route for policy development.
- 1.2 In considering the call-in, the Board sought the views of the Mayor on a number of points which the Board felt would ensure that the Overview and Scrutiny Board would have an appropriate level of influence within policy development.
- 1.3 Having heard from the Call-in Promoter and Supporters and the Mayor, the Board agreed that the issue be referred to the Council for the following reasons:
- The principles of overview and scrutiny at Torbay were agreed by the Council with an overwhelming majority at its meeting held on 26 February 2015.
 - Whilst not part of the Council's formal governance arrangements, the principles were also confirmed by the Conservative Group following the Local Elections in May 2015.
 - All Councillors should have the opportunity to express their views on the Mayor's proposals for policy development and on the governance arrangements of the Council.
- 1.4 This report sets out the issues which the Board raised with the Mayor during the course of the meeting.

2. The Issues

- 2.1 The reasons for the call-in were:
- The report dated 26th February 2015 – Principles of Overview and Scrutiny (an independent report assisted by the Centre for Public Scrutiny) has been rejected by the Mayor. This is in spite of the fact that it was passed by an overwhelming majority of the full Council. Following the independent report and the election, officers have worked hard to try and find how the recommendation could be integrated into the way the Council and Mayor make their decisions. It was subsequently, after

the election, discussed at a Majority Group meeting with agreement that the findings on the report and officer recommendation should be implemented. Having been passed at full Council and had the approval of the majority of Councillors following the election the new arrangements should be returned for debate by all Members if rejected by the Mayor.

- In the report taken to Council it states:- ‘The directly elected Mayor holds all executive powers – it is, therefore, important for credibility and reputation of the Council’s governance system that there are transparent checks and balances.’ [The signatories to the call in felt that] the new PDG system gives even more power to the Mayor: there is a heavy presence of Executive Leads on the PDGs, the agendas will be set with no input from O&S, the independent advice is to have O&S chairing the meetings. The decision is that the new arrangements will last for four years with no period for review.
- In the Decision-Making Route there is no consultation with the Majority Group or Group Leaders. There is no mention of how a decision is fast tracked – who makes that decision, again no mention of involvement of O&S in that decision. In previous fast tracked flow charts there has been consultation involved, this has now been omitted.
- The Centre for Public Scrutiny calls for all Members to work together for the good of the Council. We do not agree that the new PDGs are the best way forward to achieve this and that there are alternatives that need to be agreed by all Members.

2.2 Members of the Board hoped to use the meeting to discuss with the Mayor the issues identified within the call-in notice.

2.3 The Board reminded the Mayor that a nationally recognised expert had been commissioned by the Council to review its governance arrangements (with a particular focus on how non-executive members could add most value and be actively engaged in the Council’s plans for transformation) and his recommendations had not been implemented. The Mayor was asked why he had rejected the proposals within the report “The principles of overview and scrutiny in Torbay”. In response the Mayor asserted that the report was flawed as it failed to take account of Torbay Council as a mayoral authority and did not make any comparisons with other mayoral authorities.

2.4 It was highlighted that paragraph 3.1 of the report acknowledged that “no two councils are the same” and that the report makes frequent reference to the mayoral authority. The Board reject the Mayor's argument that the report does not take account of the mayoral system and that the authors did take account of the current governance arrangements at Torbay Council. However, the Board has subsequently written to the co-author of the report asking him to confirm how he took the existence of a directly elected mayor in Torbay into account in preparing

his proposals and how he drew on experiences in other mayoral authorities. John Cade's response is appended to this report.

- 2.5 In not fully implementing the proposals within the report, the role of overview and scrutiny has been undermined with its primary focus (as set out in paragraph 3 of the Operational Guidance for Policy Development Groups) being on holding decision makers to account and undertaking its statutory roles. It was felt that, by not being recognised as having a role in policy development, overview and scrutiny was not serving local democracy.
- 2.6 Whilst the Board accepted that the Mayor had made manifesto promises, it was the process by which the manifesto was delivered that was under question. Overview and scrutiny should provide the checks and balances and, as it stood, it was felt that overview and scrutiny had been made too small and had not been given the opportunity to do the job that it was tasked to do by law.
- 2.7 The membership of the Policy Development Groups was too heavily weighted in favour of the Executive Leads with the agendas being set by the nominated chair in consultation with the Mayor, Executive Leads and the Executive Director.
- 2.8 There was concern from the Board that the "fast track" route would be used too often and that it was unclear who would make the decision about whether that route should be used. There was no consultation with the Overview and Scrutiny Co-ordinator prior to issued being "fast tracked".
- 2.9 The Board believe that the current proposals have reduced the input from members of the Council and the community into the decision making processes of the Council with Policy Development Groups meeting in private and the Mayor increasingly taking decisions behind closed doors.
- 2.10 The proposals put forward in the "Principles of overview and scrutiny in Torbay" report are more transparent with all members of the Council having input into policy development in a timely fashion.
- 2.11 At the meeting the Mayor was asked whether he would accept some compromises, namely that the overview and scrutiny leads could be the Vice-chairmen of the Policy Development groups; that the Overview and Scrutiny Board could influence the agendas for the Policy Development Groups; and that the Overview and Scrutiny Co-ordinator would be consulted before issues were considered through the fast track route. The Mayor requested that the Board put its views in writing to him before he would consider any changes to his decision. The Board still considers the recommendations and proposals within the report "The principles of overview and scrutiny in Torbay" to be valid and that they should be adopted by the Mayor.

3. The Motion

3.1 It is anticipated that the following motion will be proposed at the meeting of the Council to be held on 23 July 2015:

That, having considered the proposal within the report “The principles of overview and scrutiny in Torbay”, the following amendments to the Operational Guidance for the Policy Development Groups be made:

- a. An Executive Lead and an Overview and Scrutiny Lead should fulfil the roles of Chairman and Vice-chairman of the Policy Development Groups.
- b. The Policy Development Groups should carry out their work both in private and in public according to the nature of the issue being considered with the presumption that they conduct as much of their work as possible in public.
- c. The Work Programme (and therefore the agendas) for the Policy Development Groups to be determined in consultation with the Mayor, Executive Leads, Overview and Scrutiny Leads and the Executive Director ensuring that there is a focus on those issues of critical importance to the Council moving forward. The Chairman and Vice-chairman of the Policy Development Group will each have the right to include items on the agenda.
- d. The Chairman and Vice-chairman of the Policy Development Group will jointly have the authority to “sign-off” reports from the Group prior to the reports being forwarded to the Mayor (or appropriate decision maker).
- e. Items going through Route 2 to be agreed by the Executive Director in consultation with the Mayor, Executive Leads and the Overview and Scrutiny Co-ordinator.
- f. The Members able to vote at the Policy Development Group will be the Chairman, Vice-chairman and the five members nominated in accordance with political balance.

The Council believe that these amendments make a package of measures which will make the Policy Development Groups more effective enabling inclusion of all of the members of the Council in policy development.

Dear Member,

“Principles of Overview and Scrutiny Report”

You asked if I could provide for you an assurance that the report “Principles of Overview and Scrutiny” gives full recognition to the Mayoral system of governance in Torbay. I can readily confirm that it does and takes account of recommended and introduced best practice.

There are seventeen directly Elected Mayors in England (including the Mayor of London, who, incidentally, is the only other Conservative Mayor). You would not want to make comparisons with some, which have had well-documented governance problems (e.g. Tower Hamlets and Doncaster) but I will make reference to others.

Further, what I think will be most helpful, is rather than commenting myself on practice, I extract from key documents what I believe are the salient matters for you.

The Department for Communities and Local Government guidance on Executive/Scrutiny arrangements draws no distinction between the role of Overview and Scrutiny whether it is in an Elected Mayor, Cabinet and Scrutiny structure or a Leader, Cabinet and Scrutiny structure.

The prime source here is “New Council Constitutions; Guidance to English Authorities (2006)”.

➤ Chapter 3, para 3.15

“To achieve enhanced accountability and transparency of the decision making process, effective overview and scrutiny is essential. Overview and Scrutiny Committees are the key element of Executive arrangements. Their role should, therefore, include both:

- developing and reviewing policy; and
- holding the Executive to account.”

➤ para 3.17

“Overview and Scrutiny Committees should be a key mechanism for enabling councillors to represent the view of their constituents and other organisations to the Executive and Local Authority and to ensure that their views are taken into account in policy development.”

➤ Chapter 4, para 4, 60

“The Elected Mayor and Cabinet will need to adopt an inclusive approach to this policy development in order to take account of the needs and aspirations of local communities, in the light of the Elected Mayor’s mandate.”

The proposals around Policy Development Groups sit four-square with this formal guidance.

The Institute of Government undertook a review of Mayoral arrangements in 2011. The publication is “Making the most of Mayors: lessons learnt from the existing Mayoral local authorities”.

It reported:

“Scrutiny can be effective, if it provides a valuable resource for the Executive. Indeed, there is no reason why Mayors should not look to Overview and Scrutiny as a tool which they can draw on to carry out policy reviews, investigate issues and generally help solve problems. The Constitution Unit has praised the London Assembly for some of the scrutiny work they have done, saying they work like an ‘elected think tank’.

Several Mayors also told us about the value of submitting work to Scrutiny panels for pre-legislative scrutiny along the lines of an internal consultation exercise. The potential benefits of these are:

- Improving the quality of legislation and policy
- Helping to secure consensus around a policy and thus avoid unproductive political spats
- Creating and maintaining scrutiny focussed on improving outcomes by ensuring the work of scrutineers feeds into policy making rather than merely “reacting”
- Helping recast scrutiny as a co-operative venture rather than an after the facts criticism of a policy which the Executive has already publicly aligned themselves with”

Finally, to draw from other Mayoral Councils:

- In Bristol, the Mayor has encouraged and supported Overview and Scrutiny working as Commissions to look at policy improvements. The terms of reference are, “To ensure that Overview and Scrutiny directly responds to corporate and public priorities, is used to drive service improvement, provide a focus for policy development and engage members of the public, key stakeholders and public agencies.”
- In Mansfield, the Mayor has also set up Overview Policy Commissions to “assist the Council and the Executive in the development of its budget and policy framework by in-depth analysis of policy issues.”

- In Watford “Scrutiny works at an overview level, considering issues that are to do with policy and strategy matters rather than operations and management.”

I could also add that we have just held a seminar at the University where I spoke to a Scrutiny Chair from Lewisham. He advised that the Mayor (Steve Bullock) was very diligent in including Scrutiny Members in policy development.

I hope this letter gives all concerned the assurance about the foundations for the proposals contained in the report and how they sit firmly with acknowledged good practice.

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