

Scrutiny Procedure Rules – Part 4d

Report of the Director of Legal and Democratic Services

Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.

1) Recommendation

That Council be recommended to adopt the proposed minor amendments to Part 4(d) – Scrutiny Procedure Rules, as annotated as Appendix A.

2) Background / Introduction

Following the proposed work programme of the Governance Review Working Group, a review of the Scrutiny function commenced in early September. This review is ongoing but has, to date, focussed on the previous reviews undertaken by the Council on the Scrutiny function including the Francis Review (2013), Health Scrutiny Review (2017), Scrutiny Symposium (2018), Outcomes from Scrutiny Statutory Guidance (2019), Scrutiny Action Plan (2020) and the 2021 Children’s Scrutiny Review and resultant action plan.

It was noted early in the review that not many Constitutional changes would be required as part of the review.

In early October, the Governance Working Group revisited the analysis undertaken in 2019 following the publication of Scrutiny guidance, updating the summary of the main findings and suggestions for effective Scrutiny from the statutory guidance. It further agreed it would consider the scrutiny and governance lessons that could be surfaced from failing authorities, which it did on the 16th of October.

Engagement with and from the public and the matter of communications and promotion were considered at the meeting on 30th October and the final action plan for Scrutiny working practice would be considered by the Governance Working Group on 27 November 2023.

3) Consultations / Representations / Technical Data

Views were sought from the Governance Working Group and benchmarking data from across other Authorities as well as specialist support from the Local Government Association (LGA).

4) Proposed Changes

As highlighted earlier, the Scrutiny review is unlikely to result in many significant changes to the Constitution, but the Governance Working Group considered a small number of proposed changes at its meeting on 2 October 2023.

These changes were intended to update current working practices and ensure alignment to other parts of the Constitution.

The changes proposed were as follows, reflected in Appendix A.

A rewording of section 10, which ensured that the ability of Members of the Committee to submit agenda items under Standing Order 23, reflected the Member led process of Scrutiny in aligning such matters to its agreed work programme.

The changes also reflected the updated terminology of spotlight reviews, standing overview groups and masterclasses.

The proposed changes also removed the reference to the Joint Budget Scrutiny which was removed from Council processes several years ago.

Scrutiny also routinely undertakes site visits which was in contradiction to the current guidance, so again this had been updated.

5) Strategic Plan

This proposal aligns to the Council's Strategic Plan 2021 – 2025. The proposal supports the commitment of ensuring that the Council makes good decisions and is transparent and supports being a trusted and inclusive Council that hears the voices of communities and listens and learns.

6) Financial and Legal Considerations

There are no financial or legal considerations.

7) Environmental Impact Considerations (Including Climate Change, Sustainability and Socio-economic)

There are no environmental related issues.

8) Equality Considerations

There are no equality related issues.

9) Risk Management Considerations

No risks have been identified, although there is inherent risk in not consulting local Members in Council decisions making.

10) Summary / Conclusions / Reasons for Recommendations

The proposed amendments seek to update current processes, removing references to outdated practice and ensuring alignment with other areas of the Constitution.

Name

Director of Legal and Democratic Services – Maria Price

Cabinet Member

Councillor Saywell – Cabinet Member for Organisational Development, Workforce & Digital Transformation

Electoral Divisions:

All

Local Government Act 1972: List of background papers

NIL

Contact for enquiries: Karen Strahan; 01392 382264, G31, County Hall, Exeter, EX2 4QD.

Scrutiny Procedure Rules

1.0 NUMBER OF AND ARRANGEMENTS FOR SCRUTINY COMMITTEES

- 1.1** At its Annual Meeting, the County Council will appoint one or more Scrutiny Committees and decide their membership and terms of reference. The current arrangements are set out in Part 3 of the Constitution.

2.0 MEMBERSHIP OF SCRUTINY COMMITTEES

- 2.1** All councillors except the Chair of the Council and members of the Cabinet may be members of a Scrutiny Committee. However, no member may be involved in scrutinising a decision of another committee in which they have been directly involved.

3.0 CO-OPTEEES (Voting Scheme)

- 3.1** A Scrutiny Committee is entitled to recommend to the Council (which shall appoint committees in accordance with Standing Order 21) the co-option of one or more persons as voting or non-voting members of the Committee.

4.0 OTHER REPRESENTATIVES

- 4.1** The Children's Scrutiny Committee (or any successor committee dealing with education matters) shall include in its membership the following voting representatives:

- a) 1 Church of England diocesan representative; and
- b) 2 parent governor representatives representing primary and secondary and special schools in the county.

who shall vote only on matters relating to the Council's functions as a Local Education Authority and not on other matters considered by the committee although they may remain in the meeting and speak to those other items.

- 4.2** The Health & Adult Care Committee (or successor committee) shall include in its membership 1 voting representative of City, Borough and District Councils in the administrative County of Devon, to collate and represent the views of the District Councils.

5.0 MEETINGS OF SCRUTINY COMMITTEES

- 5.1** There shall be at least 5 ordinary meetings of each Scrutiny Committee in each year in accordance with the Council's Calendar of Meetings. In addition, extraordinary meetings may be called from time to time as and when appropriate by the Chair or by the Chief Executive if either considers it necessary or appropriate.

6.0 QUORUM

- 6.1** The quorum for a Scrutiny Committee shall be as set out for committees in the Council Procedure Rules (Standing Order 26) in this Part of the Constitution.

7.0 CHAIR

- 7.1** The Chair and Vice-Chair of any Scrutiny Committee will be appointed by the Council at the Annual Meeting (see also Annex, paragraph 2)

8.0 WORK PROGRAMME

- 8.1** A Scrutiny Committee will be responsible for setting its own work programme taking into account the wishes of all members of that Committee in line with these procedure rules (see also paragraph 9 below and Annex, paragraph 3)

9.0 AGENDA ITEMS

~~Any member of a Scrutiny Committee shall be entitled to give notice to the Chief Executive that they wish an item relevant to the remit of the committee to be included on the agenda for the next available meeting of the committee. On receipt of such a request the Chief Executive will ensure that it is included on the agenda for that meeting.~~

- 9.1** In line with Standing Order 23 any Member of a Scrutiny Committee shall be entitled to give notice to the Chief Executive that they wish an item relevant to the remit of the committee to be included on the agenda for the next available meeting of the committee. On receipt of such a request the Chief Executive will ensure that it is included on the agenda for that meeting and the Member can explain to the Committee why the issue is important and then the Committee can determine whether the matter is added to its work programme.

- 9.2** Any member of the Council who is not a member of a Scrutiny Committee may give written notice to the Chief Executive that they wish an item on any local government matter and relevant to the functions of that Committee to be included on the agenda of that Committee and such an item will be included on the agenda of the next meeting of that Committee.
- 9.3** A Scrutiny Committee will also respond, as soon as practicable, to any petition referred to it by the Cabinet under the Council's Petitions Scheme (Part 4 of the Constitution) or where any such petition contains the required number of signatures, a Scrutiny Committee shall require a relevant senior council officer (i.e. a Chief Officer, as defined in Part 6 of the Council's Constitution, Chief Officer Employment Procedure Rules) to attend and give evidence to it to explain progress or to explain the advice previously given to councillors to assist in their decision making. A Scrutiny Committee shall then report its findings and any recommendations to the Cabinet.
- 9.4** A Scrutiny Committee will also respond, as soon as practicable, to requests from the Council and/or the Cabinet to review particular areas of Council activity. Where it does so, the Scrutiny Committee shall report its findings and any recommendations to the Council and/or the Cabinet.

10.0 POLICY REVIEW AND DEVELOPMENT

- 10.1** The role of a Scrutiny Committee in relation to the development of the Council's budget and policy framework is set out in detail in the Budget and Policy Framework Procedure Rules.
- 10.2** In relation to the development of the Council's approach to other matters not forming part of its policy and budget framework, a Scrutiny Committee or sub-committee-group may make proposals to the Cabinet for developments in so far as these relate to matters within its terms of reference.
- 10.3** A Scrutiny Committee may investigate the available options for future direction in the development of the Council's policies and may appoint advisers and assessors to assist it in this process. It may ask witnesses to attend to address it on any matter under consideration and may pay any advisers, assessors and witnesses a reasonable fee and expenses for doing so.
- 10.4** A Scrutiny Committee undertaking the Council's functions in relation to the scrutiny of the health service and, in particular, where being formally consulted by the NHS or Health Providers will ensure that all relevant partners in the locality affected, including local authority partners, will have the opportunity to

contribute and that those views will be taken into account in making its recommendations to the NHS, Health Provider or Secretary of State for Health.

- 10.5 A Scrutiny Committee may, in accordance with Standing Order 21, appoint sub-committees or ad hoc task groups, **spotlight reviews** to investigate specific topics on its behalf on a time-limited basis. **It can also establish a standing overview group or masterclasses to increase understanding and awareness for Committee Members.**
- 10.6 ~~With the agreement of the Procedures Committee,~~ a Scrutiny Committee may hold an inquiry in the nature of a "select committee hearing" **such as a task group or spotlight review** into an issue which is not directly related to the exercise of the Council's functions, but which has a bearing upon its statutory responsibility for the promotion of the economic, social and environmental wellbeing of the area.

11.0 REPORTS FROM SCRUTINY COMMITTEES

- 11.1 Once it has formed recommendations on any proposal or Cabinet decision, a Scrutiny Committee will prepare a formal report and submit it to the Chief Executive for consideration by the Cabinet or to the Council as appropriate.
- 11.2 If a Scrutiny Committee cannot agree on one single final report to the Council or Cabinet as appropriate, then up to one minority report may be prepared and submitted for consideration by the Council or Cabinet alongside the majority report.
- 11.3 The Council or the Cabinet shall consider the report of the Scrutiny Committee within two months of it being submitted to the Chief Executive.

12.0 CONSIDERATION OF SCRUTINY COMMITTEE REPORTS BY THE CABINET

- 12.1 The agenda for Cabinet meetings shall include an item entitled 'Issues arising from Scrutiny Committees'. The report of a Committee referred to the Cabinet shall be included at this point in the agenda (unless it will be considered in the context of the Cabinet's deliberations on a substantive item elsewhere on the agenda) within two months of the Scrutiny Committee completing its report/recommendations.

12.1.1 When the Cabinet considers any such report from a Scrutiny Committee the record of the meeting at which that report is considered shall state:

- what will be done about the recommendations and the time scale for those actions.
- where the Cabinet rejects or decides not to act on a Scrutiny Committee's recommendations, the reasons for so doing.

12.2 Where a Scrutiny Committee prepares a report for consideration by the Cabinet in relation to a matter where the Council or Cabinet has delegated decision making power to a Cabinet Member, then the Scrutiny Committee will submit a copy of its report to that member for consideration and shall send a copy to the Chief Executive. The member of the Cabinet must consider the report and respond in writing to the Scrutiny Committee within 2 months of receiving it. A copy of his/her written response shall be sent to the Leader and to the Chief Executive. The member will also attend a subsequent meeting of the Scrutiny Committee to present his/her response.

12.3 Nothing in this paragraph prevents more detailed or informal liaison between the Cabinet and the Scrutiny Committee as appropriate, depending on the particular matter under consideration.

13.0 REPORT TO COUNCIL

13.1 Reports on the taking of key decisions.

If a Scrutiny Committee thinks that a key decision has been taken which:

- a) was not included in the Forward Plan; or
- b) was not the subject of the general exception procedure under Paragraph 7.0 of the Cabinet Procedure Rules; or
- c) was not the subject of an agreement with a relevant Scrutiny Committee Chair, or the Chair/Vice-Chair of the Council under Paragraph 8.0 of the Cabinet Procedure Rules.

the Committee may by resolution require the Cabinet to submit a report to the Council within such reasonable time as the Committee specifies. The power to require a report rests with the Committee but can also be exercised by the Monitoring Officer when so requested by the Chair (or, in his/her absence, the Vice-Chair) or any 3 members of that Committee.

13.2 Cabinet's report to Council

The Cabinet will then prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 days of receipt of the resolution of the committee or a written notice of the Monitoring Officer, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the individual or body making the decision, and if the Leader is of the opinion that it was not a key decision, the reasons for that opinion.

14.0 SCRUTINY COMMITTEES' ACCESS TO DOCUMENTS

14.1 Rights to copies

Subject to Rule 13.1 of the Access to Information Rules, and any statutory rights any Member of a Scrutiny Committee will be entitled to copies of any document which is in the possession or control of the Cabinet, and which contains material relating to

- a) any business to be transacted at a meeting of the Cabinet; or
- b) any decision taken by a Cabinet Member or Officer.

Copies of such documents shall be made available within 10 clear days unless the Cabinet determine the Member concerned does not have the right to that information in which case the Cabinet must provide a written statement of reasons to the relevant Scrutiny Committee.

14.2 Limit on rights

A Scrutiny Committee will not be entitled to any part of a document which contains exempt or confidential information, unless the Monitoring Officer agrees that information is relevant to an action or decision they are scrutinising.

15.0 ATTENDANCE OF CABINET MEMBERS AND OFFICERS

15.1 A Scrutiny Committee may scrutinise, and review decisions made or actions taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the scrutiny role, it may require any member of the Cabinet and any senior officer to attend before it or a Task Group to explain in relation to matters within their remit:

- a) any particular decision or series of decisions.
- b) the extent to which the actions taken implement Council policy; and/or
- c) their performance.

and it is the duty of those persons to attend if so required.

- 15.2** Where any member or officer is required to attend a Scrutiny Committee under this provision, the Chair of that committee will inform the Monitoring Officer. The Monitoring Officer shall inform the member or officer in writing giving at least 3 working days' notice of the meeting at which they are required to attend. The notice will state the nature of the item on which they are required to attend to give account and whether any papers are required to be produced for the committee. Where the account to be given to the committee will require the production of a report, then the member or officer concerned will be given sufficient notice to allow for preparation of that documentation.
- 15.3** Where, in exceptional circumstances, the member or officer is unable to attend on the required date, then the Scrutiny Committee shall in consultation with the member or officer arrange an alternative date for attendance.

[NB: A copy of the protocol for relationships and communications between the Cabinet and Scrutiny Committees is appended to these Rules for convenient reference].

16.0 ATTENDANCE BY OTHERS

- 16.1** A Scrutiny Committee may invite people other than those people referred to in paragraph 15 above to address it, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and members and officers in other parts of the public sector and may invite such people to attend (see also 10.3 and 10.4 above). ~~Additionally, and in relation only to the Joint Budget Scrutiny meeting normally held in January of each year, a member of the public who is a resident of the administrative area of the County of Devon may also make representations at that joint meeting as set out in Article 3 and in the Public Participation Rules in the Council's Constitution.~~
- 16.2** A Scrutiny Committee undertaking the Council's functions in relation to the scrutiny of the health service may require NHS Providers to attend before it or a Task Group to explain in relation to such matters.

17.0 CALL-IN BY SCRUTINY COMMITTEES

- 17.1** A decision made by the Cabinet, a committee or a Cabinet Member, an officer exercising delegated powers, an area committee or under joint arrangements may be "called in" under the following procedure. Such a call-in of a Cabinet decision or the decision of an Cabinet Member will take precedence over a

request by an individual Member for reconsideration by the Cabinet under Paragraph 11.0 of the Scheme of Delegation set out in Part 3 of this Constitution or Paragraph 10.0 of the Cabinet Procedure Rules.

- 17.2** Call-in by Scrutiny should be used in exceptional circumstances and where Member(s) have evidence which suggests that the decision was not taken in accordance with the Council's Principles of Decision Making set out at Article 13 or the Council's Policy and Budget Framework.
- 17.3** Notice of all such decisions will be sent by email to all members of Scrutiny Committees within 2 working days of being made. The notice will bear the date on which it is published and will specify that the decision which it records will come into force 5 working days after that date unless it is called in.
- 17.4** Within that period, the Chair (or in his/her absence the Vice-Chair), any 3 members of the relevant Scrutiny Committee or any 5 members of the Council whether or not they are members of the relevant Scrutiny Committee may call in such a decision by requesting the Chief Executive to convene a meeting of that Committee to consider it. The Chief Executive will convene such a meeting within 5 working days of that request and will inform the decision-taker of the call-in.
- 17.5** Any Member wishing to call-in a decision is advised to first seek guidance from the Monitoring Officer on the veracity of their stated grounds for the call-in and demonstrate that they have been mindful of that advice when deciding whether or not to proceed with the call-in. Any Member or Members calling-in any decision must specify the reasons for so doing which will be reported to Scrutiny Committee together with any advice received from the Monitoring Officer.
- 17.6** If having considered the decision (the subject of the call-in), a Scrutiny Committee remains concerned, it may refer the decision to the Cabinet for reconsideration and will set out in writing the reasons for its concern and any proposed amendments. If, having considered the decision, the Scrutiny Committee decide not to ask for it to be reconsidered or amended in any way, it shall be implemented with immediate effect.
- 17.7** The Cabinet will reconsider the matter at its next ordinary meeting and may either amend or adopt the original decision, which shall be implemented with immediate effect.
- 17.8** The call-in procedure set out above shall not apply where the decision being taken by the Cabinet is urgent in line with

Paragraphs 7.0 and 8.0 of the Cabinet Procedure Rules. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interests. The record of the decision, and notice by which it is made public shall state whether in the opinion of the decision-making person or body, the decision is an urgent one, and therefore not subject to call-in. The Chair of the relevant Scrutiny Committee (or in his absence the Vice-Chair), as appropriate must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. Decisions taken as a matter of urgency must be reported with the reasons therefore to the next meeting of the Council.

- 17.9** The operation of the provisions relating to call-in, and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.

18.0 THE PARTY WHIP

- 18.1** The Council considers that whipping is incompatible in principle with scrutiny and should only occur in exceptional circumstances. For these purposes whipping means:

“Any instruction given by or on behalf of a political group to any councillor who is a member of that group as to how that councillor shall speak or vote on any matter before the Council or any committee or sub-committee, or the application or threat to apply any sanction by the group in respect of that councillor should they speak or vote in any particular manner.”

- 18.2** Where the whip has been imposed upon a matter, a member must declare the existence of the whip and the nature of it before the commencement of the committee's deliberations on the matter. The declaration, and the detail of the whipping arrangements, shall be recorded in the minutes of the meeting.

19.0 PROCEDURE AT SCRUTINY COMMITTEE MEETINGS

- 19.1** Scrutiny Committees shall consider the following business:

- (a) minutes of the last meeting;
- (b) declarations of interest (including whipping declarations);
- (c) any matter referred to the committee for a decision in relation to call-in of a decision;

- (d) responses of the Cabinet to reports of that Scrutiny Committee; and
- (e) any petition referred to it or received under the Council's Petitions Scheme (paragraph 9.3 above refers)
- (f) the business otherwise set out on the agenda for the meeting.

19.2 Where a Scrutiny Committee conducts investigations (e.g. with a view to policy development), the committee may also ask people to attend to give evidence at committee meetings which are to be conducted in accordance with the following principles:

- (a) that the investigation be conducted fairly and all members of the committee be given the opportunity to ask questions of attendees and to contribute and speak;
- (b) that those assisting the committee by giving evidence be treated with respect and courtesy.

19.3 Following any investigation or review the committee shall prepare a report, for submission to the Cabinet and/or Council as appropriate and shall make its report and findings public.

19.4 The Council has also agreed a protocol governing relationships and communications between Scrutiny Committees and the Cabinet and operating procedures to supplement these Rules. This protocol does not form part of the Council's Constitution but is reproduced in the Annex to these Rules for convenient reference.

20.0 MATTERS WITHIN THE REMIT OF MORE THAN ONE SCRUTINY COMMITTEE

20.1 Where a Scrutiny Committee conducts a review or scrutinises a matter which also falls (whether in whole or in part) within the remit of another Scrutiny Committee, then the committee conducting the review shall invite the Chair of the other committee (or his/her nominee) to attend its meetings when the matter is being reviewed.

21.0 COUNCIL PROCEDURE RULES

21.1 Except where these rules expressly provide for different arrangements, Standing Orders will apply mutatis mutandis to meetings of Scrutiny Committees.

TERMS OF REFERENCE OF SCRUTINY COMMITTEES

Corporate, Infrastructure and Regulatory Services Scrutiny Committee

- (1) To review the implementation of the Council's existing policy and budget framework and ensure effective scrutiny of the Council's Treasury Management Strategy and policies and consider the scope for new policies for the Council's use and management of its resources and the discharge of its corporate and strategic services and governance arrangements and community safety activity, including emergency planning and the Council's functions in the scrutiny of authorities responsible for crime and disorder strategies;
- (2) To review the implementation of existing policies and to consider the scope for new policies with regard to all aspects of the discharge of the Council's 'place shaping and universal population services' functions concerning the environment, economic activity and enterprise, integrated planning and transport and community services, including libraries, arts and cultural heritage of the County, an integrated youth service and post 16 education & skills;
- (3) To assess the effectiveness of decisions of the Cabinet in these areas of the Council's statutory activity and relate overview and scrutiny to the achievement of the Council's strategic priorities and objectives and of delivering best value in all its activities;
- (4) To make reports and recommendations as appropriate arising from this area of overview and scrutiny.

Children's Scrutiny Committee

- (1) To review the implementation of existing policies and to consider the scope for new policies for all aspects of the discharge of the Council's functions concerning the provision of personal services for children including social care, safeguarding and special needs services, schools and learning;
- (2) To assess the effectiveness of decisions of the Cabinet in these areas of the Council's statutory activity;
- (3) To relate scrutiny to the achievement of the Council's strategic priorities and objectives and of delivering best value in all its activities;
- (4) To make reports and recommendations as appropriate arising from this area of overview and scrutiny.

Health & Adult Care Scrutiny Committee

- (1) To review the implementation of existing policies and to consider the scope for new policies for all aspects of the discharge of the Council's functions concerning the provision of personal services for adults including social care, safeguarding and special needs services and relating to the health and wellbeing of the people of Devon, including the activities of the Health & Wellbeing Board, and the development of commissioning strategies, strategic needs assessments and, generally, to discharge its functions in the scrutiny of any matter relating to the planning, provision and operation of the health service in Devon;
- (2) To assess the effectiveness of decisions of the Cabinet in these areas of the Council's statutory activity;
- (3) To relate scrutiny to the achievement of the Council's strategic priorities and to its objectives of promoting sustainable development and of delivering best value in all its activities;
- (4) To make reports and recommendations as appropriate arising from this scrutiny to the County Council and to the Secretary of State for Health, in accordance with the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

1. ANNEX

A PROTOCOL FOR RELATIONSHIPS AND COMMUNICATIONS BETWEEN THE CABINET AND THE HEALTH & WELLBEING BOARD AND SCRUTINY COMMITTEES

This protocol supplements the Scrutiny Procedure Rules contained in the Council's Constitution which affect the operation of the Committee process or impact upon individual members. This protocol does not form part of the Constitution but is reproduced here for convenient reference.

1. Chairs and Vice-Chairs of Scrutiny Committees will be appointed at the Annual Meeting of the Council.
2. The positions of Chairs of Scrutiny Committees may be filled by members of minority groups and the positions of Vice Chairs of such Committees by members of the majority group, at the discretion of the Council.
3. Co-ordination of the activities of Scrutiny Committees and their Task Groups shall be undertaken by the Chairs and Vice-Chairs of Scrutiny Committees, meeting jointly, to avoid duplication of effort and to ensure that the resources of the Council are best directed to support the work of Scrutiny Committees through, for example, investigating current or future policy development or scrutinising decisions of the Cabinet in connection with the discharge of the Council's functions rather than simply reviewing or monitoring operational performance; including, for example, guidance on the number of Task Groups that may be supported over a given period of time.
 - 3.1. It should be also regarded as good practice, as part of the regular bi-annual meetings between the Chairs and Vice-Chairs of Scrutiny Committees and the Leader of the Council, to review any such work programmes to ensure optimum resources may be made available or obviate any potential difficulty or conflict with the Council's strategic objectives or policy development.
4. Members of the Council may attend meetings of Scrutiny Committees to observe proceedings.
 - 4.1. To promote communication and understanding, all Scrutiny Committees will extend a standing invitation to Cabinet Members to attend meetings of those Committees most relevant to their responsibilities, to listen to the debate and contribute, if invited.
 - 4.2. Cabinet Members may only speak at Scrutiny Committee meetings at the invitation of the Committee. However, if a Cabinet Member asks to speak, then the Committee is asked to be receptive to that request. (Where the request is made prior to the meeting, it should be referred to the Chair. Scrutiny Officers will act as the contact point for such requests),

- 4.3. Scrutiny Committees are encouraged regularly to call Cabinet Members to account.
- 4.4. Scrutiny Committees are urged to question Cabinet Members directly on the reasons for and merits of member-level decisions.
- 4.5. Scrutiny Officers will draw Cabinet Members' attention to impending investigations that appear likely to affect their areas of responsibility.
- 4.6. Where a Scrutiny Committee specifically wishes to question a Cabinet Member about some aspect of his/her remit:
 - the Scrutiny Officers should give as much notice as possible of the topic under consideration and the date on which it is to be considered;
 - the agenda will include an indicative time for the consideration of the item in question; and
 - that item will appear early on the agenda.
- 4.6.1. The Leader of the Council will seek to ensure:
 - that the appropriate Cabinet Member(s) attends each relevant Scrutiny Committee meeting in the Council's approved calendar; or
 - where the Cabinet Member is not able to attend, then another member of the Cabinet should attend in his/her stead.
- 4.7. All other members may, in line with Standing Order 25 and the Scrutiny Procedure Rules, speak to any item under consideration with the consent of the Scrutiny Committee.
- 4.8. There may be occasions when a Scrutiny Committee will discuss an issue which is of purely local significance relating exclusively to the electoral division of an individual member. In those circumstances even if they are a Member of the Cabinet that Member shall be deemed to have been invited by the Scrutiny Committee and may attend and speak to that meeting in line with Standing Orders.
5. A Scrutiny Committee may ask witnesses to attend to address them on any matter under consideration, as set out in detail in the Scrutiny Procedures Rules in the Council's Constitution.
 - 5.1. Scrutiny Committees' questioning of officers should centre on professional, technical and managerial matters.
 - 5.2. Chief Officers and Heads of Service are asked to ensure that, as far as possible, an officer is present to represent each service when items affecting it feature on a Scrutiny Committee agenda.
 - 5.3. It is recognised that when Scrutiny Committees are exploring options for the development of new policy, professional and technical information

from officers is likely to play a greater role than input from Cabinet Members.

6. Information on a Scrutiny Committee's work programme should be circulated to complement the Cabinet's Forward Plan.
7. A Scrutiny Committee ~~will not normally~~ may undertake site visits or public surveys or hold general public meetings ~~unless it can be demonstrated that if~~ such a course of action is essential to its investigations and would be a cost-effective method of obtaining ~~that~~ information. ~~While a Scrutiny Committee may appoint ad hoc working groups to look at specific topics relating to its terms of reference, the prior approval of the Procedures Committee will be required to the holding of any "Select Committee" style investigation in an area of or upon a subject upon which the Council does not have powers and duties.~~
8. In relation to the preparation and consideration of Reports by a Scrutiny Committee Task Group the following shall apply:
 - 8.1. The Task Group takes evidence from contributors. As those contributions are written up, each contributor is offered a chance to comment on the accuracy of the record of his/her evidence.
 - 8.2. Once all the evidence is taken, the Scrutiny Officer drafts a report and recommendations to reflect the preliminary views of the Task Group. A copy of this will be sent to the relevant Cabinet Member/Chief Officer/Head of Service and when the Task Group meets to consider and sign off the draft it is open to them to ask to attend and highlight any perceived inaccuracies or misunderstandings in the report. The meeting at which the Task Group discusses the draft should normally be held in Part II so that any differences of opinion can be aired in private.
 - 8.3. The entitlement of a Member to reasonable access to all documents within the Council's custody prevails over all other considerations and any commitment given to a witness who gives evidence at a hearing must contain the caveat that, once settled, the notes of the proceedings may be shown in confidence to any County Councillor who can satisfy the Director of Legal and Democratic Services of their "need to know"; accepting that in very exceptional circumstances it may be necessary to provide a member with an edited version of the notes.
 - 8.4. When the Task Group has settled the report and recommendations these go on the agenda for the next Scrutiny Committee meeting.
 - 8.5. When the Scrutiny Committee agenda is published, the Cabinet Member/Chief Officer or Head of Service concerned will receive a copy. If any of the Task Group's final recommendations cause them concern, they can ask to speak at the Scrutiny Committee meeting (Cabinet Members have a standing invitation to attend).

- 8.6. The Scrutiny Committee will consider the Task Group's recommendations and any comments from the Cabinet Member/Chief Officer, then decide whether to refer the recommendations to the Cabinet as they stand or with changes arising from the debate - or occasionally they may ask the Task Group to go back and do more work.
- 8.7. The report and recommendations go to the next Cabinet. That allows sufficient time for the Cabinet Member/Chief Officer to give a written response to any of the recommendations felt to be unacceptable to them in the form set out. The Cabinet can then debate the pros and cons and come to a view (or ask for more information, pending a debate at a later meeting).
- 8.8. The long established principles outlined above in relation to the relationship and communications between the Cabinet and Scrutiny Committees shall apply equally as between Health & Wellbeing Boards and Scrutiny Committees.
- 8.9. Moreover, it is acknowledged that while the Devon Health & Wellbeing Board is responsible for:
- encouraging integrated working between commissioners of NHS, public health and social care services for the advancement of the health and wellbeing of the local population.
 - providing advice, assistance or other support in order to encourage partnership arrangements such as the developing of agreements to pool budgets or make lead commissioning arrangements under section 75 of the NHS Act;
 - preparing, reviewing and monitoring the Devon Joint Strategic Needs Assessment and the Joint Health and Wellbeing Strategy for Devon;

the purposes of the County Council's scrutiny function is to:

- assess the effectiveness of strategic decisions of the Health & Wellbeing Board and of the Cabinet;
- examine the provision and delivery of health and wellbeing services (including health, social care and public health services) in order to review their quality and effectiveness,
- consider, either of its own volition or arising from any external suggestion or request, the implementation of existing policies and consider the scope for new or amended policies for services affecting the health and wellbeing of people and communities in Devon; and
- make reports and recommendations as appropriate arising from this scrutiny.

A PROTOCOL FOR RELATIONSHIPS AND COMMUNICATIONS BETWEEN THE HEALTH & WELLBEING SCRUTINY COMMITTEE AND HEALTHWATCH DEVON

[NB: This protocol supplements the Scrutiny Procedure Rules contained in the Council's Constitution which affect the operation of the Scrutiny process or

impact upon individual members. This protocol does not form part of the Constitution but is reproduced here for convenient reference.]

While Devon County Council's Health & Wellbeing Scrutiny Committee and Healthwatch Devon acknowledge the separate roles of the two organisations this document sets out a protocol intended to clarify how they will work together and to set out, transparently, the principles relating to the relationship between the County Councils Health & Wellbeing Scrutiny Committee (or any successor body) and the Healthwatch Devon ensuring: -

- improved health and social care throughout the administrative county of Devon is a common goal;
- early and inclusive discussions to identify issues of mutual concern or interest are recognised; and
- relationships are based on openness, honesty and accountability.

The protocol will attempt to clarify and codify appropriate mechanisms for:

- exchanging information and work programmes;
- providing an opportunity for issues of mutual concern/interest to be recognised and dealt with co-cooperatively;
- avoid any duplication of effort;
- providing a shared understanding of the process of referrals and arrangements for dealing with such referrals;
- a clear understanding of accountability between the two bodies.

It is important to acknowledge that neither Healthwatch nor local authority scrutiny is a complaints service. It does not exist to directly inspect, or performance manage the NHS. The organisations that have responsibility for inspecting and performance management are NHS England, the Care Quality Commission (CQC) and MONITOR. While the Health & Wellbeing Scrutiny Committee or Healthwatch Devon may wish to receive regular reports from these and other relevant bodies such as the Health & Wellbeing Board and individual NHS Trusts on performance that is solely for the purposes of obtaining an overview of the pressures on the service and quality of provision; it is not a complaints body.

The County Council's Health & Wellbeing Scrutiny Committee

In accordance with legislation, the County Council's Health & Wellbeing Scrutiny Committee can scrutinise any matter relating to planning, provision and operation of health services in the area. It can hold to account Local commissioners and providers of healthcare service including local NHS organisations, the Health and Wellbeing Board and the County Council itself (as a commissioner or provider of health and/or public health services) for the quality, access and outcomes within the health services and ensure that these reflect the views and aspirations of local communities

The Health & Wellbeing Scrutiny Committee can hold these bodies to account by requesting information, requesting attendance at a scrutiny meeting, asking questions in public and making recommendations for improved services.

A local authority scrutiny committee may also seek evidence from other interested parties such as Healthwatch Devon, its delivery partners, stakeholders, voluntary agencies, other local authorities and public bodies and, perhaps most importantly, from the public. Any recommendations arising from scrutiny of provision or from any Review(s) initiated by the Health & Wellbeing Scrutiny Committee have to be considered and responded to by the relevant organisation/body/commissioner, in a timely way.

NHS Bodies and commissioners, including Clinical Commissioning Groups (CCGs) are also required to consult the Health & Wellbeing Scrutiny Committee on substantial developments or variations to local health services as an official consultee. If the Scrutiny Committee has significant concerns with any proposals, it has the power to make a referral to the Secretary of State for Health (or MONITOR) (jointly with other local authorities, if appropriate). All commissioners and providers of publicly funded healthcare and social care are covered by these powers, along with health and social care policies arising from the Joint Strategic Needs Assessment (JSNA) and the Joint Health and Wellbeing Strategy.

The formal terms of reference of the Health & Wellbeing Scrutiny Committee are:

‘To review the implementation of existing policies and to consider the scope for new policies for all aspects of the discharge of the Council’s functions relating to the health and wellbeing of the people of Devon including the activities of the Health & Wellbeing Board, when established, and the development of commissioning strategies, strategic needs assessments and, generally, to discharge its functions in the scrutiny of any matter relating to the planning, provision and operation of the health service in Devon, including making reports direct to the Secretary of State for Health, in accordance with the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013’.

Healthwatch Devon

Healthwatch is the new independent consumer champion for both health and social care established in April 2013 to work alongside the national body – Healthwatch England – set up in 2012.

Healthwatch Devon is the local body established, in line with Government’s plans, to give people a stronger voice and drive improvements in health and social care services, gathering knowledge, information and opinion, influencing policy and commissioning decisions, monitoring quality, and reporting concerns to inspectors and regulators.

The national vision for local Healthwatch is that it will:

- act as local consumer champion representing the collective voice of patients, service users, carers and the public;
- support individuals to access information about services;
- provide or signpost people to independent advocacy if they need help to complain about NHS services;

- influence commissioners, providers, regulators and Healthwatch England using their knowledge of what matters to local people.

Healthwatch Devon will build on the work of the former Local Involvement Networks (LINKs), to represent the views and experiences of the people and communities of the administrative County of Devon, endeavouring in particular to ensure that the voices of vulnerable people and hard to reach communities are heard. It will gather intelligence from people and use it to inform how decisions about services are made, including highlighting where there are problems and where things are working well, acting as a conduit for its acknowledged Delivery Partners (Devon Senior Voice; Living Options Devon; Citizens Advice Bureau; Devon Carers Voice; Be Involved Devon and Devon Link Up).

Healthwatch Devon will therefore strive to provide a collective voice, not only for these communities of interest but for all people across both health and social care, influencing the Joint Strategic Needs Assessment and Joint Health and Wellbeing strategy – through its links with Scrutiny and through its seat on the Health and Wellbeing Board where local commissioning decisions will be guided.

In particular it will seek to:

- promote and support the involvement of local people in the commissioning, provision and scrutiny of local care services, including asking providers for information which they must make available to the public;
- enable local people to monitor the standard of provision of local care services and whether and how local care services could and ought to be improved;
- obtain the views of local people regarding their needs for, and experiences of, local care services and importantly to make these views known;
- provide advice and information about access to local care services so choices can be made about local care services;
- formulate views on the standard of provision and whether and how the local care services could and ought to be improved; and
- provide Healthwatch England with the intelligence and insight it needs to enable it to perform effectively.

Working Principles and Commitments

Devon County Council's Health & Wellbeing Scrutiny Committee and Healthwatch Devon undertake to:

- share each with the other information through actions, Agenda, Reports and Minutes of their respective bodies, work programmes and Newsletters;
- provide each with an early opportunity to comment on and contribute to the development of the others work programme;
- meet and exchange views on a regular basis to ensure a better understanding of each other's roles and responsibilities and, in

particular, the role of the elected member in this process and to share knowledge and experience on specific topics, in the spirit of partnership working.

[NB: Either party may, with prior approval, reproduce in whole or in part – or refer to - any Reports, Information, Data, Documents or Webpages that have been formally published by the other provided always that the reproduction of any such Report, Information, Data, Document or webpage is clearly acknowledged and credited in any publication, such consent not to be unreasonably withheld.]

The application of the principles and commitments in this protocol will depend on both Healthwatch Officers and the Council's officers (principally, but not exclusively, the Head of Scrutiny/Scrutiny Officers and/or Democratic Services Officers) maintaining effective communication at an early stage.

In particular and in addition to the above, **Healthwatch Devon will also:**

- provide the Health & Wellbeing Scrutiny Committee with a copy of any report that responds to a consultation exercise undertaken by Healthwatch Devon on behalf of local health or social care commissioners and providers or of its own volition;
- provide the Health & Wellbeing Scrutiny Committee with a copy of its Annual Report and Reports arising from any completed reviews;
- assist, where possible, the Health & Wellbeing Scrutiny Committee in its scrutiny of local health and social care issues;
- alert the Health & Wellbeing Scrutiny Committee - when invited to comment on its future work programme - of any planned work **or** work previously undertaken **or** relevant evidence compiled on any item listed therein, to inform that piece of work and/or avoid duplication of effort and resources; and
- may escalate matters to the Health & Wellbeing Scrutiny Committee where there is evidence indicating serious and widespread patient and public concern, having given careful consideration to the making of any such referral as set out below.

Is In particular and in addition to the above, **Devon's Health & Wellbeing Scrutiny Committee will also:**

- issue a standing invitation for a representative of Healthwatch Devon to attend meetings of the Committee and speak on any matter impacting upon the health and social care needs of the local population, at the discretion of the Chair;
- provide Healthwatch Devon with a copy of its Annual Scrutiny Report;
- alert Healthwatch - when invited to comment on its future work programme - of any planned work **or** work previously undertaken **or** relevant evidence compiled on any item listed therein, to inform that piece of work and/or avoid duplication of effort and resources;
- provide Healthwatch Devon with a copy of any Task Group Report(s) relating to matters impacting upon the health and social care needs of the local population;

- invite Healthwatch to contribute to any on-going item of scrutiny work or Task Group by providing information and data, or giving evidence thereto either in writing or in person, as appropriate.

Coordination of Activity

While recognising that Healthwatch Devon and the County Council's Health & Wellbeing Scrutiny Committee are independent organisations - and are therefore free to develop and pursue their own work programmes – it is equally acknowledged that there can be mutual benefit in the co-ordination of activity between the two bodies to achieve the best health outcomes for all.

This protocol recognises the complementary nature of and common functions of both bodies and the inherent ability therefore to be a critical friend to each other and to commissioners and providers in working toward the provision of high quality health and social care services for the people of Devon.

Referrals by Healthwatch Devon to Health & Wellbeing Scrutiny Committee

The County Council acknowledges that under the Local Government and Public Involvement in Health Act 2007 and the Health and Social Care Act 2012 a local Healthwatch may refer a matter relating to health and social care services to a scrutiny committee of a local authority.

Healthwatch Devon undertake that any and all such referrals will only be made by the Healthwatch Devon Board and submitted in writing (electronic form being acceptable) to the County Council's Head of Scrutiny and should normally be where there is significant evidence of patient and public concerns across the administrative area of Devon and where all attempts at seeking a local resolution with the appropriate health and social care commissioners and providers have been exhausted.

The Council's Health & Wellbeing Scrutiny Committee will acknowledge receipt of any referral within 15 working days of receipt, indicating how it is planned to deal with that referral and when a final response will be forthcoming.

The final response will necessarily depend on the subject matter but it may be:

- if the referral is within the Scrutiny Committee's terms of reference and the Committee is of the view that there would be value in scrutinising the issue identified, that it will then do so, either at:
 - the meeting at which the referral is first reported;
 - a future date, to be included in its Work Programme; or
 - through a Task Group, as identified in its Work Programme;
- that it does not wish to scrutinise the issue (and, if that is the case, it will provide a full written explanation as to why it has not chosen so to do).

If the matter is to be scrutinised, the Head of Scrutiny will formally advise the Chair of Healthwatch Devon of the outcome of that consideration in addition to the minutes of the meeting being made available in line with the general principles outlined above.

Referrals by Health & Wellbeing Scrutiny Committee Scrutiny to Healthwatch Devon

The Health & Wellbeing Scrutiny Committee may wish to commission Healthwatch Devon to undertake specific pieces of research or collate evidence or undertake such other work relevant to scrutiny reviews in pursuit of its objectives.

Where timescales do not allow for such requests to be made or endorsed at a meeting of the Health & Wellbeing Scrutiny Committee, a specification or scope for any piece of work or activity (including timescales) shall be prepared by the Head of Scrutiny in consultation with the Chair of the Committee. All requests will be submitted by the Head of Scrutiny to Healthwatch Devon in writing, utilising their Gateway Consultation portal*. Healthwatch Devon will consider any request and respond within 15 working days of receipt indicating if it is able to carry out the work requested within the specified timetable or suggest an alternative means of providing any work/activity so requested.

**[NB: This shall not preclude any informal contact between Healthwatch and the Council's officers simply to ascertain, without prejudice, whether or not Healthwatch Devon would have the capacity to undertake any such research.]*

September 2013