

MAYOR AND CABINET		
Report Title	Response to comments by the Overview and Scrutiny Committee on Legal advice pertaining to Cabinet Member Question and Answer sessions	
Key Decision	No	Item No.
Ward	Borough wide	
Contributors	Head of Law	
Class	Part 1	Date: 5 June 2019

1. Purpose of Report

To consider the report of the Head of Law responding to matters raised by the Overview & Scrutiny Committee on 7th March 2019 as requested by the Mayor and Cabinet on 13th March. This paper sets out the response.

2. Recommendations

2.1 It is recommended that Mayor and Cabinet:

- (a) Note officer comments as set out in this report; and
- (b) Consider whether to provide a response to the Overview & Scrutiny Committee in line with those comments.

3. Background

3.1 On 7 March 2019, Overview & Scrutiny Committee questioned Executive members on their portfolios. Having done so and following discussion, the Committee resolved:

That the updates be noted and that a referral be sent to Mayor and Cabinet requesting that a report be prepared by the Head of Law explaining why written reports had not been prepared for this meeting, including a timeline of events; outlining the current legal advice pertaining to Cabinet Member Question and Answer Sessions; and explaining the procedure going forward.

3.2 This report sets out the response from the Head of Law.

4. Why written reports had not been prepared for the meeting of the Overview and Scrutiny Committee on 7 March 2019, including a timeline of events

4.1 After the January meeting of the Overview and Scrutiny Committee a request was made for written reports from Cabinet members at Question

and Answer sessions rather than verbal updates. There was also a request that follow-up questions and responses to those questions and any actions agreed should be published.

- 4.2 Following further communications on 21 February for written briefings from Cabinet Members and any response to issues raised at Overview & Scrutiny in preparation for the forthcoming meeting on 7 March, those briefings to be received by 25 February if possible, the Head of Law was asked about the appropriate procedure on 27 February.
- 4.3 When she was asked about the appropriate procedure she advised that this approach – production of written briefings by Cabinet members, and publication of follow-up questions and responses to those questions was unusual but not specifically permitted or prevented in the Constitution. She also advised that any report tabled should be as an update and for information only and include financials and legal implications. Her legal advice was also that either the report should be prepared by officers and cleared by the Cabinet member (which would be the usual approach) or if the Cabinet member provided their own report without officer input, officers would need sight of it and be able to table a concomitant report if necessary.
- 4.4 The Head of Law's concern was that published written statements by Cabinet members in response to questions without any officer input could have implications for the Council corporately. It was therefore essential that a process be put in place to ensure that published statements did not have adverse implications for the Council. A formal approach to Question and Answer sessions at Overview and Scrutiny needed to be considered so that all parties understood the appropriate process to be followed and the Council's formal position protected.
- 4.5 Accordingly, the committee clerk for Overview and Scrutiny Committee was asked to hold the reports which had been prepared by Cabinet members, and responses, pending further guidance.

5. An outline of the current legal advice pertaining to Cabinet Member Question and Answer Sessions

- 5.1 The advice given on 27th February remains accurate.
- 5.2 There are a number of provisions in the Constitution which already pertain to the relationship between the Executive and Overview and Scrutiny. They include the following-
 - There is provision for members and officers to attend Overview and Scrutiny to give account, so that decisions and actions can be scrutinised and reviewed, including reviewing documentation. The person requested to attend can be required to produce a report and enough time will be given for preparation of that report;

- More generally, all decisions will be made in accordance with the principles of decision making which are:
 - (a) the decision will be made following an evaluation of options.
 - (b) the decision maker will take professional advice (including financial and legal advice where the decision may have legal and/or financial consequences)
 - (c) the decision will be taken following a consideration of all relevant matters and disregarding irrelevancies
 - (d) reasons for the decision will be recorded as will details of options considered with reasons for their rejection
 - (e) action taken will be proportionate to the result to be achieved
 - (f) respect for human rights will be balanced with the Council's duty to the wider community
 - (g) a presumption in favour of openness, unless there are compelling lawful reasons preventing the consideration of matters in public
 - (h) consultation appropriate to the matter under consideration
 - (i) clarity of aims and desired outcomes
 - (j) the highest standards of ethical conduct, avoiding actual, potential and perceived conflicts of interest;
- Where a decision is being made, that will be done on the basis of written reports which contain service, legal and financial implications;
- Where a meeting is being held, copies of any reports will be open to the public at least five clear days before the meeting unless an exclusion applies;
- Overview and Scrutiny members have particular rights of access to documents relating to executive matters, with information to be supplied as soon as reasonably practicable and in any event within 10 days of the request;
- Overview and Scrutiny Procedure Rules anticipate that there will be liaison between Executive and Select Committees/Business Panels as appropriate;
- When a decision is called-in by a Business Panel, the Business Panel will set out its reasons in writing, which will be brought to the attention of the decision maker. The decision will then be reconsidered.

5.3 However, although there are procedures set out for response by Mayor and Cabinet to formal referrals from Overview and Scrutiny, there are no explicit procedures for Question and Answer sessions and any resultant follow up.

6. **A proposed procedure**

6.1 Given the lack of clarity about the appropriate procedure to be put in place to prevent any further uncertainty, a proposed procedure was discussed between Executive members and the Chair of Overview and Scrutiny with officers present. As a result of that meeting, a proposed procedure emerged. It was suggested that the procedure should operate on a trial basis and if successful should be considered by Constitution Working Party for inclusion in the Constitution. It is suggested that this consideration should be integral to the deliberations about the future role of Overview and Scrutiny suggested by the Local Democracy Review.

6.2 The proposed procedure (which reflects current provisions in the Constitution in relation to formal referrals from Overview and Scrutiny to Mayor and Cabinet) is:

- Where a Cabinet member is to attend Overview and Scrutiny to give account, they may be required or requested to produce a written report or other document.
- The document / report prepared will as appropriate involve input from officers (including from finance and legal where it might have implications for the Council). Enough time will be given for preparation of that document / report.
- The document / report prepared will be published as part of the agenda for the relevant meeting of the Overview and Scrutiny Committee.
- If there are questions or matters arising from the document / report or from discussion during the session when the person is giving account, these matters will be referred to Mayor and Cabinet for response. If necessary, Mayor and Cabinet may ask officers to prepare a written response for their consideration.
- The Mayor and Cabinet response will in turn be provided to Overview and Scrutiny and will be published
- This reflects the procedure adopted in relation to any referral from Overview and Scrutiny to Mayor and Cabinet. It simply extends it to the Question and Answer sessions which have become a more regular feature of Overview and Scrutiny practice in Lewisham

6.3 There are a number of questions which were put in response to Mayor and Cabinet members in Question and Answer sessions to date. Many have already been responded to. At the time of drafting a composite officer report dealing with any outstanding issues is in preparation for submission to Overview and Scrutiny.

7. Financial Implications

None arising.

8. Legal Implications

There are no specific legal implications. If any constitutional changes result from future considerations following a trial period, further legal implications will be addressed.

9. Crime and Disorder Implications

There are no specific crime and disorder implications arising from this report.

10. Equalities Implications

There are no specific equalities implications arising from this report.

11. Environmental Implications

There are no specific environmental implications arising from this report.

12. Conclusion

Mayor and Cabinet is recommended to consider the issues set out in this report and respond to Overview and Scrutiny