

SWT Scrutiny Committee

Wednesday, 17th July, 2019,
6.15 pm

**Somerset West
and Taunton**

**The John Meikle Room - The Deane
House**

Members: Gwil Wren (Chair), Libby Lisgo (Vice-Chair), Ian Aldridge, Sue Buller, Norman Cavill, John Hassall, John Hunt, Marcus Kravis, Sue Lees, Dave Mansell, Hazel Prior-Sankey, Phil Stone, Nick Thwaites, Danny Wedderkopp and Keith Wheatley

Agenda

1. Apologies

To receive any apologies for absence.

2. Minutes of the previous meeting of the Scrutiny Committee

To approve the minutes of the previous meeting of the Committee.

3. Declarations of Interest

To receive and note any declarations of disclosable pecuniary or prejudicial or personal interests in respect of any matters included on the agenda for consideration at this meeting.

(The personal interests of Councillors and Clerks of Somerset County Council, Town or Parish Councils and other Local Authorities will automatically be recorded in the minutes.)

4. Public Participation

The Chair to advise the Committee of any items on which members of the public have requested to speak and advise those members of the public present of the details of the Council's public participation scheme.

For those members of the public who have submitted any questions or statements, please note, a three minute time limit applies to each speaker and you will be asked to speak

(Pages 5 - 16)

before Councillors debate the issue.

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| <p>5. Scrutiny Committee Forward Plan
To receive items and review the Forward Plan.</p> | <p>(Pages 17 - 18)</p> |
| <p>6. Watchet Library Asset Transfer Negotiations Report of the Localities Manager (attached).</p> | <p>(Pages 19 - 26)</p> |
| <p>7. Climate Change Strategy - Joint Scrutiny Task and Finish Group. Report of the Strategy Specialist (attached).</p> | <p>(Pages 27 - 38)</p> |
| <p>8. SHAPE Legal End of Year Report - Year 4. Report of the Head of Performance and Governance (attached).</p> | <p>(Pages 39 - 74)</p> |
| <p>9. Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities. Report of The Head of Performance and Governance (attached).</p> | <p>(Pages 75 - 110)</p> |



JAMES HASSETT
CHIEF EXECUTIVE

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If an item on the agenda is contentious, with a large number of people attending the meeting, a representative should be nominated to present the views of a group. These arrangements do not apply to exempt (confidential) items on the agenda where any members of the press or public present will be asked to leave the Committee Room. Full Council, Executive, and Committee agendas, reports and minutes are available on our website: www.somersetwestandtaunton.gov.uk

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SWT Scrutiny Committee - 12 June 2019

Present: Councillor Gwil Wren (Chair)

Councillors Ian Aldridge, Sue Buller, Norman Cavill, Caroline Ellis (In place of Phil Stone), John Hassall, John Hunt, Marcus Kravis, Sue Lees, Libby Lisgo, Dave Mansell, Hazel Prior-Sankey, Nick Thwaites, Danny Wedderkopp and Keith Wheatley

Officers: Tim Bacon, James Barrahan, Nick Bryant, Paul Fitzgerald, Chris Hall, Laura Higgins, Gerry Mills, Marcus Prouse and Clare Rendell

Also Present: Councillors Chris Booth, Hugh Davies, Habib Farbahi, Mike Rigby, Francesca Smith, Federica Smith-Roberts, Brenda Weston and Loretta Whetlor

(The meeting commenced at 6.15 pm)

1. **Appointment of Vice-Chair**

Resolved that Councillor L Lisgo be appointed Vice-Chair of the Scrutiny Committee for the remainder of the Municipal Year.

2. **Apologies**

An apology was received from Councillor P Stone.

3. **Minutes of the previous meeting of the Scrutiny Committee**

(Minutes of the meeting of the Shadow Scrutiny Committee held on 14 March 2019, Taunton Deane Borough Council (TDBC) Scrutiny Committee held on 5 March 2019 and West Somerset Council (WSC) Scrutiny Committee held on 14 February 2019 circulated with the agenda)

Resolved that the minutes of the Scrutiny Committees be noted.

4. **Declarations of Interest**

Members present at the meeting declared the following personal interests in their capacity as a Councillor or Clerk of a County, Town or Parish Council or any other Local Authority:-

Name	Minute No.	Description of Interest	Reason	Action Taken
Cllr N Cavill	All Items	West Monkton	Personal	Spoke and Voted
Cllr C Ellis	All Items	Taunton Charter Trustee	Personal	Spoke and Voted
Cllr J Hunt	All Items	SCC	Personal	Spoke and Voted
Cllr S Lees	All Items	Taunton Charter	Personal	Spoke and Voted

		Trustee		
Cllr L Lisgo	All Items	Taunton Charter Trustee	Personal	Spoke and Voted
Cllr D Mansell	All Items	Wiveliscombe	Personal	Spoke and Voted
Cllr H Prior-Sankey	All Items	SCC & Taunton Charter Trustee	Personal	Spoke and Voted
Cllr D Wedderkopp	All Items	SCC & Taunton Charter Trustee	Personal	Spoke and Voted
Cllr G Wren	All Items	Clerk to Milverton PC	Personal	Spoke and Voted

5. Public Participation

Agenda Item 6 – Scrutiny Work Programme – Watchet Library Transfer.

Councillor John Irvén, Chairman of Watchet Town Council (WTC), spoke about an item on the work programme that had been scheduled for 17 July 2019 – Watchet Library transfer.

Briefly, in order to prevent its closure WTC requested a freehold asset transfer of Watchet Library as a condition of funding a Conservation Leadership Programme (CLP) where WTC covered all building costs and liabilities. The initial request was rejected by WSC’s Asset Management Team in closed session, despite evidence that the building was gifted by L. L. Stoaite to the people of Watchet and only held in trust by WSC for Somerset County Council (SCC) to lease and operate the library.

WTC’s argument, supported by legal opinion, had to be taken directly to the leaders of WSC and TDBC to obtain a review which led to a published decision to transfer the asset which stated “the freehold transfer of the building was viewed as the most appropriate way of enabling library services to continue, via a CLP between WTC and SCC.”

Officers were delegated to finalise terms, which initially included an overage clause clawing back any increase in value. WTC rejected this as you would be in breach of your duties as trustees by keeping an option to benefit financially from an asset you hold in trust. Officers acknowledged the trust status and agreed to remove overage.

However, a remaining clause granting a pre-emption right to Somerset West and Taunton Council (SWT) to take back the freehold was considered inappropriate because SWT has not demonstrated its ability to discharge its duty to protect the asset for the trust, rather than acting in its own interest.

WTC proposed instead more appropriate means of asset protection of the trust, of which my colleague Peter Murphy of Watchet Library Friends would give more detail. This remaining issue was therefore to be taken back to a Senior Leadership Team (SLT) meeting, where WTC were assured that the matter would be revisited and that the normal democratic route of Scrutiny, Executive and Council would be followed in the interests of openness and transparency. However, we have been told that the closed SLT session decided not to do this whilst reinstating the overage clause.

We ask for your help and noted that at the WSC Cabinet meeting held on 9 January 2019, he requested ‘that the governance of your asset management process be reviewed to ensure that such problems could be avoided as WSC

transitioned into the new council structure.’ Although unanswered by WSC, we were assured the new council would resolve this, but it appeared SWT had exacerbated the issue with governance which I suggested was still not fit-for-purpose.

I would ask that the Scrutiny Committee agreed to consider the transfer to ensure the process was open and transparent and resolved to WTC satisfaction.

Peter Murphy, Chair of Watchet Library Friends (WLF), spoke and gave more background information, Leonard Laity Stoate, a Watchet philanthropist purchased the old lifeboat station from Watchet Urban District Council, refitted it and ‘gifted it back to the people of Watchet for the West Somerset District Council to hold in trust for the inhabitants of Watchet to be used as a library. This was recorded in the lease of 1951 whereby the SCC took on a full-repairing responsibilities for 99 years to run a library service from the building.

In 1974, the building and its responsibilities under the trust passed to the newly formed WSC.

In 2011 when SCC threatened the closure of the library, WTC offered to take the building back which was refused. WLF joined a successful Judicial Review of the County’s decision undertaken by Friends of Somerset Libraries and the library remained open. A descendant of Leonard Laity Stoate joined us at the hearings at the High Court in Birmingham in support of the legal action.

During the latest review of library services, WLF supported WTC in its offer to establish a CLP by taking the building back and fulfilling the terms of the trust. In the face of an initial refusal by WSC to return the building or acknowledge the existence of the trust, WLF obtained letters from descendants of Leonard Laity Stoate which supported WTC’s position. WSC subsequently agreed to transfer the building.

Currently SWT’s position was to include in the deed of transfer overage and pre-emption clauses which WLF consider acted against the spirit of the trust by seeking to profit from it whilst doing nothing to carry out the obligations of the trust to provide library services in Watchet. This might be ultra-vies and open to legal challenge, with the Nigel Stoate letter that indicated “should it be required, I reserved the right to bring further action if the parties failed to protect the charitable gifts of Leonard Laity Stoate in a manner consistent with the trusts”. WTC had proposed maintaining the building on the Community Asset Register and consulted WSC, the people of Watchet and the descendants of the trust should the building be considered no longer fit to use as a library, a proposal which we believed did meet the Stoate criteria. If Town and District Councils cannot agree, WTC had the option to cancel the CLP and the library would close. WLF appeal to this Scrutiny Committee to encourage SWT to work with the community of Watchet in the spirit of the original trust and enable WTC to properly discharge the responsibilities it wished to take on for the inhabitants of Watchet.

Councillor Loretta Whetlor spoke in support of Councillor John Irven and Peter Murphy.

Chris Hall, Locality Manager gave the following response:

The Council though an Executive decision agreed to transfer the freehold of the Watchet Library to WTC to support the Library Partnership.

The Council stood by this decision and had been working with WTC to finalise the terms of the transfer.

SWT were protecting the asset for the people of Watchet and sought to continue the protection provided since 1951 through the terms of the transfer.

The clauses of pre-emption and overage were not considered unreasonable when handing over an asset for less than any market rate, in this case the asset was to be handed over for the sum of £1.

WTC wished for the asset to be transferred for £1 without those protections being put in place by SWT.

Those protections in no way impacted on the use of the building as a library which was WTC's stated use of the asset.

The clauses would only come into effect in the event of a change of use or in the event that WTC would wish to dispose of the asset, therefore ceasing to use it as a library.

The letters from Mr Nigel Stoate (family descendant) were not understood to be direct responses to the clauses, but more general statements concerning how the asset was protected for the people of Watchet. If read literally the letter challenged the Council's ability to dispose of the asset at all.

The concerns from WTC and the Stoate family could be better understood if SWT were proposing to sell the asset on the open market, placing the library at risk, which to his knowledge had not been proposed at any stage.

Through the proposed clauses the Council was not trying to make an income but protect the asset from other uses as was the view of the spirit of the trust. It should be noted that there was no trust deed but the Council accepted the existence of the trust at the time the lease was entered into.

He urged the Scrutiny Members to support the position being taken to protect the asset for the people of Watchet through these reasonable clauses.

Agenda Item 11 – Regeneration of Firepool

Dr Susie Peeler spoke on behalf of the Extinction Rebellion Taunton (ERT).

ERT might have a reputation for causing lots of big disruptions but they also wanted to help build communities and wellbeing within Taunton. So their idea for the Firepool space involved two stages. Initially they proposed a creative re-wilding, this would involve using the space for a meal share, re-wilding, sustainability workshops etc which would bring in plants and creative projects that people of all ages and ethnicities could get involved with.

In the longer term ERT saw the space as giving an ideal opportunity to show the region that Taunton was indeed a garden town and would like to suggest the site be used as an environmental education centre that focused on practical projects around re-greening and planting for a carbon reducing future.

ERT's vision was that this site could be used for something like 'We the Curious' in Bristol or even an opportunity for showcasing sustainable alternatives such as the 'Centre for Alternative Technology' in Wales.

Their longer term view for the Firepool development could incorporate a community wooded/orchard type space, a space to benefit the health and wellbeing of the whole community not something that just produced profit for the few.

SWT had declared a climate emergency. This was a fantastic start! What ERT knew about climate change was that too much carbon dioxide was still be emitted

into the atmosphere. This was not something far away and irrelevant. We needed to act now the Intergovernmental Panel on Climate Change (IPCC) report (2018) stated that global warming was likely to reach 1.5°C between 2030 and 2052 if it continued to increase at the current rate. This would cause sea level rise, mass extinctions of animals, climate-related risks to health, livelihoods, food security, water supply, human security, and economic growth.

The IPCC also stated that pathways limiting global warming to 1.5°C with no or limited overshoot would require rapid and far-reaching transitions in energy, land, urban and infrastructure (including transport and buildings). Many of the current ideas for Firepool involved yet more building using concrete. Commercial and public buildings were responsible for 3.6 gigatonnes of carbon dioxide production per year (New Internationalist June 2019 p22). Yet we knew that halting deforestation and actively planting trees could reduce carbon emissions by 2 gigatonnes per year (New Internationalist June 2019)

What better way was there to remove carbon and to provide habitats for animals and community sustaining spaces than creating our own environmental education centre surrounded by trees and a dedicated creative community space?

If the Firepool site was planted with fruit trees and willow structures for example this would actively reduce the CO2 levels, promote oxygen levels and provide a space for the community to enjoy.

We would like to make this a community project harnessing local skills and thus reducing cost for the Council, ERT could provide trees for this project and manpower to water and tend. We also saw this as an inclusive project encouraging all sectors of the community to be involved.

To conclude our vision was a short term experience that could show the sustainable potential for the space and a longer term green initiative that could make a huge impact on Taunton as a garden town and indeed the planet.

6. **Work Programme Scrutiny**

During the discussion, the following points were raised:-

- The Chair suggested that the Watchet Library item was added to the Work Programme for the July meeting and that the officers progressed with the report with that deadline in mind.
- Councillors requested clarification on how to add items to the Work Programme.
The Governance and Democracy Specialist clarified the process.
- Councillors made suggestions on how to work moving forward with the Scrutiny Work Programme.
The Chair agreed with the idea for an informal Scrutiny meeting and would follow up with the clerk to arrange.
- Councillors gave positive feedback on the training they had received on Scrutiny and requested that the portfolio holder information was added to the Work Programme.

Resolved that the Scrutiny Work Programme was noted.

7. **District wide Local Plan: Local Development Scheme**

During the discussion, the following points were made:-

- Councillors queried once the document had been completed in 2021, how much weight it would hold.
In this country there was a plan led system in law, however, we delivered in a 'nuance' system where decisions were made in accordance with the government plan unless material consideration indicated otherwise.
- Councillors queried whether the document was able to adapt to the continually changing targets set by Central Government.
Policy and legislation was constantly changing and officers were used to dealing with that.
- Councillors requested clarification on the statement 'the plan was to give the local community certainty' and concern was raised over individual planning decisions and that the plan would not carry much weight.
- Councillors queried what the plan's remit was? Concern was raised on issues with local infrastructure.
- Councillors requested that officers incorporated into the plan any expected conditions for planning applications to address climate change matters.
The Chair advised that comments could be addressed in the consultation and as part of councillor engagement. The Head of Strategy advised that the policy was positively worded, so it gave information on what applicants could do rather than what they could not do, however, developers worked around that. The Planning Committee would need to be aware of that.
- Councillors highlighted how infrastructure and climate change were included in the plan. They further queried how community engagement was carried out in the rural areas as they were not mentioned. They suggested that the wording used for climate change was not strong enough and that they needed to include that the Council was working toward carbon neutrality by 2030.
- Councillors requested that points were added to the document about solar panels and electric car charging points.
- Concern was raised that the Government's figures on housing needed to be revised as the original figures were too high.
- Councillors also wanted to amend the recommendation to read that any amendments were made in agreement with the portfolio holder instead of in consultation.
That would be addressed when the recommendations were put to the vote.
- Concern was raised that there was no up to date countywide transport strategy included.
The Chair agreed that although SWT had no direct responsibility for transport that we should be enabling that.
- Concern was raised that several stakeholders had not been involved.
- Councillors requested improved religious information was included in the plan.
- Councillors queried when in 2021 would the document be adopted. They further requested that officers could improve the wording used as the whole document was in 'corporate speak'.
- Councillors requested that the percentage of affordable housing was revised to include an amount of passive housing.

- The Chair advised that although it was a SWT document, that information from the Somerset County Council and Exmoor National Park should not be excluded.

Councillor Mansell proposed the following amendment to the motion:

That the following wording be added to the first bullet point 'with the addition of working towards carbon neutrality within the key drivers'.

That was seconded by Councillor Buller. The amendment was put to the vote and lost.

Resolved that with regard to the production of the District wide Local Plan, Scrutiny Committee recommended to Executive that:

- Executive approved the Local Development Scheme (enclosed as Appendix 1); and
- Delegated authority was given to the Head of Strategy to agree any necessary final amendments prior to its publication in agreement with the Portfolio Holder for Planning and Transport.

8. **District wide Local Plan: New Member Steering Group - Nominations**

Resolved that with regard to the production of the Review of the District wide Local Plan, Scrutiny Committee recommended to Executive that:

- A cross working party was set up to support the Review Local Plan.
- 8 Members were nominated to sit on the new Local Plan Member Steering Group.
- The Portfolio Holder for Planning and Transport and/or Chair would give a verbal update at the meeting on the nominations to the new Member Steering Group.
- The Member LDF Steering Group would run until the District wide Local Plan was adopted by the Council and would meet on average on a quarterly basis. The draft terms of reference were enclosed as Appendix 1.
- To remove the text 'and have in the past been actively involved in this process' from section 5.2 in the report.

9. **Statement of Community Involvement (SCI): Draft for Consultation**

During the discussion, the following points were raised:-

- Councillors requested that the list of stakeholders needed to be checked as they had spotted some inaccuracies. Also, there were no provisions mentioned on how they were going to consult in the unparished area of Taunton.

Resolved that with regard to the production of the Statement of Community Involvement (SCI), Scrutiny Committee recommended to Executive that:

- Executive approved the contents of the draft SCI document (enclosed as Appendix 1); and
- Delegated authority was given to the Head of Strategy and the Principal Planner Specialist to agree any necessary final amendments prior to its publication for consultation in agreement with the Portfolio Holder for Planning and Transport.

10. **Local Plan Issues Document - Approval for Public Consultation**

During the discussion, the following points were made:-

- Councillors queried whether they could recommend changes to the document. They suggested that due to the Council's commitment to climate change, the wording needed to be checked and they wanted to know how Planning could be immobilised to deliver on climate change. *The Chair suggested that they proposed an amendment to the recommendation when they were addressed at the end of the discussion. The Head of Strategy advised that they would look to incorporate climate change more robustly in the papers and would make it clear that the Council had declared a climate emergency.*

Resolved that the Scrutiny Committee recommended to Executive they resolved to:

- Approve the Somerset West and Taunton Local Plan Issues Document for public consultation (Appendix A);
- Authorise the Head of Strategy to make any necessary editorial corrections and minor amendments to the documents, and to agree the final publication style.
- To clearly reference council policy to make Somerset West and Taunton carbon neutral by 2030 in the Local Plan Issues document.

11. **Regeneration of Firepool Report**

During the discussion, the following points were raised:-

- Councillors were excited about the project.
- Concern was raised on the comment made that SWT sought a development partner or investor and was led to believe that SWT would then be working in partnership which they did not want. Further concern was raised that the exchange would happen whilst the completion date was still being debated. They highlighted that the advice given was clear to re-examine the option of a third party to take on some of the financial risk. *The Head of Commercial Investment confirmed that the hotel partner would be an investor. That was the same as other land deals, some had a prescriptive approach and wanted flexibility. He also confirmed that there was a completion date for the exchange.*
- Councillors were unaware of the capacity of the performance venue and queried whether figures from Cardiff and Bristol had been used which was not appropriate as they would be on a much larger scale than the Firepool venue. *Officers were working on the specification for what the capacity would be for the performance venue.*
- Councillors had been contacted by members of the public with concerns that another large supermarket was being placed on site and they wanted reassurance that it was a small 'express' sized shop. *The Head of Commercial Investment confirmed that the supermarket would be an 'express' sized property.*
- Concern was raised that the hotel had now been placed in a specified location when they had been advised it could be changeable. *The hotel had been placed in block five as it sat nicely within that location.*
- Councillors wanted reassurance that the area would be well lit and made safe for all those that used the site. *Officers were working on the boulevard safety aspects.*

- Concern was raised on flooding in the area.
- Councillors had visited other buildings which could offer a good starting point for the project and suggested that a conference facility should be built with a hotel attached.
The Head of Commercial Investment was happy to discuss any ideas with Councillors.
- Councillors suggested avoiding the use of a single developer and that it was a good idea to keep SWT as the master planner.
- Councillors highlighted the importance of tree planting throughout the development to help mitigate against climate change and help alleviate flood risk.
- Councillors suggested that SWT should work with the Environment Agency to introduce a hydroelectric generation project along the weir.
- Councillors highlighted that they did not want the Firepool Project to end up as any other typical development and wanted to ensure it was an 'eco' project that was community led.
The Head of Commercial Investment advised there were grants available for both tree planting and hydroelectric projects.
- Councillors suggested that officers should use other projects for guidance on power generation.
Officers would approach the Environment Agency for guidance.
- Councillors were interested in revenue generation.
The Head of Commercial Investment advised there were solid business cases for income generation.
- Concern was raised on the visuals used in the presentation along with the block approach and Councillors wanted to be clear on the intentions of the site, they were not going against the proposals, but wanted to be clear on income generation and community need.
The Head of Commercial Investment understood that the brief was to deliver the master plan which was the outline planning consent. That meant to bring forward the project in a way it would be attractive to market. What had emerged was the wider purpose of the scheme which had been looked at with the intent for the development to take place there was a commercial imperative, therefore the best way to cross subsidise the cost was to include more residential units on the site. The other uses of the site would then compliment the residential units.
- Councillors welcomed the idea of the introduction of a Project Board.
- Councillors wanted to ensure the hotel offered more than majority of the other hotels in the area.
Officers would look at the options available for the development of the hotel.
- Councillors highlighted the increased use of the riverside frontage and concern on the lack of parking in the design.
Officers would check the information included.
- Councillors queried how much CO2 would be produced in the construction of the site.
A written answer would be distributed.
- Councillors queried how much capital would be invested and how much income would be generated for SWT from the project.
A written answer would be distributed.

Resolved for Scrutiny Committee to comment on the report and in particular the following recommendations that would be presented to Executive and Council for approval:

- That the broad principle of the conceptual block plan design was progressed to Framework Masterplan and that indicative designs for all of the blocks were developed. In-particular Blocks 1, 2, and 5 be progressed to detailed business case and to provide authority to appoint a design team following due process.
- To endorse the approach that the Council further considered the business case to act as the lead commercial and masterplan developer and to delegate authority to the Head of Commercial Investment in consultation with the Portfolio Holder to enter into relevant transactions. This would include hard market testing of Blocks 1, 2 and 5 to inform completion of business cases.
- To endorse the principle that the Council might also be the developer of some of the plots each being considered on a case by case basis and subject to a detailed business case and further Council approval.
- To note the review of the Hotel development project, to cease the current Council investment plans and instead to seek a development partner/investor to deliver this scheme as an alternative to the previously approved Council development, and on a different part of the site. A specialist property adviser would be appointed to undertake a thorough hard marketing exercise
- To commission a suitable performance venue expert to establish the business case and conduct soft market testing with suitable operators for such a facility on site.
- To report back with progress as and when required and set up a project governance Board to oversee the direction of the project.
- Approval of a total budget of £275,000 to progress those work streams and that to be funded from New Homes Bonus funds.

12. **Time Extension**

The Chair proposed a 30 minute time extension which was carried.

13. **Exclusion of the Press and Public**

Resolved that the press and public be excluded during consideration of agenda item 12 on the grounds that, if the press and public were present during the item, there would be likely to be a disclosure to them of exempt information of the class specified in Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 as amended as follows:

The item contained information that could release confidential information that related to the financial or business affairs of any particular person (including the authority holding that information). It was therefore agreed that after consideration of all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

14. **Confidential Report**

The purpose of the report was to update the Scrutiny Committee on a commercial asset management issue.

Resolved that the Scrutiny Committee commented on the report and made recommendations to be presented to the Executive and Full Council for approval.

(The Meeting ended at 9.45 pm)

DRAFT

Scrutiny Committee – Work Programme 2019/20

17 th July (DH)	14 th August (DH)	4 th September (WSH)	9 th October (DH)	6 th November (DH)	4 th December (WSH)	TBC
Appointment to Somerset Climate Change Strategy Task and Finish Group – G. Thompson	Strategic Flood Scheme – Ann Rhodes	HPC Funding Strategy – M. Leeman	Voluntary and Community Sector Grants Annual Fund Review – C. Gale	Social Value – M. Leeman		Leisure Operator Performance Update
SHAPE Y3&4 Report – C.Fraser		East Quay Wall Repairs – C Hall				Travellers Policy Update
Watchet Library Transfer – Chris Hall						Somerset Waste Partnership – Business Plan and budget
Scrutiny Statutory Guidance – A. Tregellas						

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Somerset West and Taunton Council Scrutiny Committee – 17th July 2019

Watchet Library Asset Transfer Negotiations

Report of Localities Manager – Chris Hall

(This matter is the responsibility of Executive Councillor Chris Booth)

1. Executive Summary

This report was requested by Scrutiny Members to support a discussion on the progress to transfer the freehold of the Watchet Library following the Executive decision published on 3 January 2019. The key point for discussion should be whether the council should follow legal advice or disregard it in this instance.

2. Recommendations

This committee is recommended to note the content of this report.

3. Risk Assessment

Risk Matrix

Description	Likelihood	Impact	Overall
Risk: The library fails to be protected and is lost to the community of Watchet.	Possible (3)	Major (4)	Medium (12)
<i>Mitigation: The lease remains in place for up to a further 31 years for the use as a library. WTC have worked hard to instigate a new way of operating that protects this for the people of Watchet but are not bound to do so on expiry of the lease.</i>	Unlikely (2)	Major (4)	Medium (8)
Risk: The lease expires and no protection of the library exists.	Possible (3)	Major (4)	Medium (12)
<i>Mitigation: In this instance the freehold owner has no restriction on them in how the asset is used. Either party could look to continue the library or cease it.</i>	Possible (3)	Major (4)	Medium (12)
Risk: The building is used for an alternative purpose without the District being in control of any future use or development for the benefit of the community.	Possible (3)	Moderate (3)	Medium (9)
<i>Mitigation: Both potential freehold owners are public bodies and are duty bound to serve the public with any increased value or use of the asset.</i>	Possible (3)	Minor (2)	Low (6)

Risk: To allow this transfer to be undertaken without the protections identified could be considered to set a precedent in asset disposal practice.	Likely (4)	Moderate (3)	Medium (12)
<i>Mitigation: The council would not be bound by such a standard or tradition but may be forced to defend why legal advice in not being universally applied.</i>	Possible (3)	Moderate (3)	Medium (9)

4. Background

- 4.1 The building was purchased from Watchet Urban District Council by a private individual, before being passed back in trust to Watchet Urban District Council with a 99 year lease to Somerset County Council for its use as a library. This is confirmed by the recitals in the lease that was granted to SCC.
- 4.2 The property was leased to SCC as a library from 1951 for 99 years. Upon the natural expiry the asset would have been held by WUDC with nothing to suggest that the library had to continue beyond this point.
- 4.3 The Council has not seen a copy of the trust deed and the terms of the trust, therefore its continued existence can only be assumed.
- 4.4 There is no copy of the conveyance to the trust or private individual who provided funding, or copy of the conveyance back to WUDC and no evidence that a covenant was imposed at this time to restrict the use of the property to that of a library.
- 4.5 The Council has been trying to negotiate the continued use of the building as a library at Watchet for some time, and in January 2019 the decision was communicated to Watchet Town Council (WTC) that a transfer of the freehold was approved. ***“The decision is to transfer the freehold of the Watchet Library Building from West Somerset Council (WSC) to Watchet Town Council (WTC), with detailed terms to be finalised by the Asset Management team in consultation with the Cabinet Member for Resources and Central Support.”***
- 4.6 The negotiation has stalled as the protections that West Somerset Council sought to put in place were considered unacceptable to WTC.
- 4.7 It is in the interest of the people of Watchet that the library continues to operate and that a suitable compromise is reached.
- 4.8 SCC can terminate the lease if there is a cessation of funding for the library and this implies that SCC are not under an obligation to maintain the library status. It is suggested that there is no evidence of an intention for the property to be used as a library in perpetuity and if funding failed the use as a library could come to an end.
- 4.9 During exploration of the options the asset management team discussed with SCC their ability to sublet the property to WTC for the remainder of the 99 years. Under

this arrangement SCC would remain, as they are currently, responsible for the ongoing maintenance of the building.

5. The Trust

- 5.1 From documents provided by WTC we recognise the existence of the trust at the time of the lease, but without the trust documents the content of the trust and its intent at the end of the lease period with SCC cannot be proven. It is possible that at the time of the trust's creation the documents that we may consider normal now, were never produced.
- 5.2 We have however reviewed the documentation available to us which includes the lease and information from members of the Stoa family, and consider in good faith the information provided that the library was to be protected for the people of Watchet. What it does not provide evidence of is any everlasting effect, there is no statement that it is to be retained in perpetuity. SCC have a lease structured in such a way that it can be broken without protection of the library. No protection of this building as a library beyond the lease is therefore assumed. Furthermore the property register contains no restriction on the use of the asset now or on expiry of the lease.
- 5.3 SCC had confirmed to WSC that should the funding cease then the lease would break and the asset return to WUDC's successor SWaT.
- 5.4 The council have written to the survivor of the family to confirm that there is no intention to put at risk the current library arrangements, it is in fact our intention to protect the asset whilst it is covered by the lease.

6. The Remaining Terms

- 6.1 All other terms have been agreed, leaving only the issue of overage and pre-emption unresolved.
- 6.2 WSC have been negotiating the transfer with an overage and/or a pre-emption clause as it was felt that this best protects the asset or any value in it should WTC decide to dispose of the asset in the future. These were considered by WSC and now SWaT as normal and reasonable protections given the status of the lease.
- 6.3 **Overage** – This is an agreed payment back to SWaT in the event that the asset grows in value due to a change in use, which is possible on expiry of the lease. Overage is proposed on the basis that the asset is being transferred at a rate that is under its potential market value, in this case £1.
- 6.4 Overage could be considered as inappropriate whilst the lease is in place. Whilst it could provide a financial return it appears to suggest that we would approve of a change of use which goes against the spirit of the Trust, to protect the library for the people of Watchet.

- 6.5 However should the lease break naturally or at an earlier date, the use of the building could change as there are no restrictions on the title and at that point the value of the property could increase.
- 6.6 A matter for consideration is should any increase in value be realised should this be held by SWaT or if WTC? Either party could use any realised funds effectively for the people of Watchet.
- 6.7 **Pre-emption** – this is a contractual right of first refusal in the event of a disposal. It would give SWaT the opportunity to repurchase the property for the original consideration of £1. It has also been suggested that a covenant could be imposed which would limit the use of the property to public purposes. Whilst it is noted that covenants can be released this should give some protection and it supports the intention to retain the property for use by residents of Watchet.
- 6.8 WSC and subsequently SWaT consider that a right of pre-emption would be a suitable means of protecting the spirit of the Trust during the period of the lease. It would not be to the detriment of WTC with their stated intention to retain the asset as a library for the people of Watchet. It would not impact on the operation of the asset and would only ever be of significance if disposal was to be considered by WTC.
- 6.9 Both of these terms would actively discourage WTC from using the asset for anything other than as a library and therefore it could be argued that these serve as an additional protect for the building's continued use as a library.
- 6.10 WTC have resisted both of the terms of overage and pre-emption proposed on the basis of the building was transferred by means of a trust to Watchet Urban Council and therefore they consider that no party should benefit financially as that was not the spirit of the Trust as they see it. They also consider themselves able to protect the asset for the people of Watchet and should not need the pre-emption to return it to SWaT.
- 6.11 Through the proposed clauses the Council is not trying to make an income but protect the asset from other uses as is our view of the spirit of the trust.
- 6.12 At the end of the lease period, naturally or otherwise the disposal of the asset and any financial benefit could be realised with any financial gain being retained by a public body, either SWaT or WTC. This would then be used to support the community as that is the nature of a District or Town Council. It could be considered that should this occur the community is protected through the benefits from the asset being administered by a public body regardless of which body that is.
- 6.13 WTC state that the continued involvement of SWaT is unnecessary as they too are a publicly accountable body and therefore have the same level of transparency in protecting this asset for the people of Watchet. They further argue that a decision to retain some level of control goes against the principles of localism which are to deliver services as the most appropriate government level for the people of that community.

- 6.14 WTC propose that the freehold should be transferred without provision for overage or a right of pre-emption in favour of SWaT on the grounds that they are equally able to ensure the protection of the asset for the people of Watchet as a tier of local government. Furthermore they argue that the existence of a trust means that the asset is not therefore owned by the council in the traditional sense and should not be subject to what we would consider as normal commercial terms.
- 6.15 SWaT acknowledge that they are the custodians of the asset and therefore it is for them to consider how they reasonably protect it for use as a library.
- 6.16 The lack of protection beyond the current lease term and with the opportunity of a break clause in the lease means that a change of use could occur much earlier than was initially envisaged, should SWaT decided to transfer the freehold of this asset without a right of pre-emption then any future use or regeneration of the building or the land on which it sits would not be in their control.
- 6.17 This final aspect that is being negotiated would become relevant in the event that the lease expires and that the body responsible for the freehold wishes to dispose of the asset or change its use. WTC have proposed the following in order to mitigate some of our concerns around the future use of the building were it to be transfer to them without the overage or pre-emption:
- WTC will relist the building as an Asset of Community Value
 - Should WTC be in a position of disposal then they would consult with the descendants of the trust, the people of Watchet and SWaT.
 - Keep the lease extent to acknowledge the existence of the Trust.
- 6.18 Whilst relisting the building as an Asset of Community value shows their intent it provides only limited protection.
- 6.19 WTC believe that accepting SWaT as a consultee in the future is a further step to show their transparency. This is appreciated but does not offer the level of protection that a right of pre-emption would.
- 6.20 During the negotiations WTC have expressed concerns that in the District's desire to protect the asset, we have been asking to see documented evidence of the trust and raised concerns over its current status. As part of this it is considered that through the evolution of councils, Watchet Urban District to West Somerset Council to Somerset West and Taunton Council, the council's responsibilities as a trustee may not have been fully understood. We would have reasonably expected to hold the paperwork ourselves and not have to ask a third party for it. This places doubt in the minds of WTC's Members as to the importance the council places in the trust status of this building.
- 6.21 Officers have exhausted their ability to negotiate as legal opinion is to include the terms of overage and pre-emption whilst WTC have expressed that they are unable to move on these clauses.

7. Finance / Resource Implications

- 7.1 The finance comments contained are limited to the overage and pre-emption clauses. They are provided noting the lack of trust documentation and lack of any restrictions on the title of the property.
- 7.2 The Comments do not provide further analysis of the principle of a freehold transfer as this is an existing executive decision. The comments are based on the view provided to finance by officers that the Trust should be acknowledged to have existed at the time the lease was entered into.
- 7.3 The asset's current value is limited due to the existence of the lease and acknowledgement of the trust. However there is a point in time when any related restrictions fall away and the building could have a market value.
- 7.4 The overage provisions proposed by officers would ensure SWaT gain a share of any value gain in the asset should WTC seek to deviate from the current use following termination of the lease.
- 7.5 The right of pre-emption offers protection for the community and in the event that WTC wanted to dispose of the asset SWaT would have the opportunity to repurchase it for £1.00. This means that any value in the asset would also be passed back along with control of the use. It seems a reasonable protection of any future value that this clause is retained.

8. Legal Implications

- 8.1 WTC within their local government role must act in the interests of the public and operate within their constitution.
- 8.2 Previous advice supplied makes recommendations to include overage and pre-emption provisions within the Heads of Terms and documentation for the disposal, although there is an acceptance that the commercial terms may not be necessary where the transfer is to another public body bound by the same public accountability as SWaT.
- 8.3 Legal advice remains that the greatest level of protection for SWaT comes from at the very least a right of pre-emption in favour of SWaT. Protection for the community can be provided by either public body, thus it must be a decision for the council to consider who is best placed to ensure the continuation of the benefit for the community, either as a library or any other use in the future.
- 8.4 Without restrictions on the title or a trust deed which provides details of the terms of the trust on which the property is held, and with the conditions of the lease to SCC allowing for termination, protection of the library in perpetuity cannot be established and therefore future uses of the asset may be permissible on expiry of the lease.

9. Environmental Impact

- 9.1 There are no implications resulting from this report.

10. Safeguarding and/or Community Safety Implications

10.1 There are no implications resulting from this report.

11. Asset Management Implications

11.1 The Asset Management Team has been involved in the negotiation throughout and support the content of this report.

12. Data Protection Implications

12.1 There are no identified implications of this report on data protection.

13. Consultation Implications

13.1 There is no formal consultation required in relation to this report. The decision that supports a freehold transfer has already been through a Member decision process.

14. Equalities Impact

14.1 There are no identified equalities implications of this report.

15. Partnership Implications

15.1 The Watchet Library Partnership need not be at risk as a result of any decision from this report. The freehold has been agreed and it is only final terms that are subject to this report.

Democratic Path:

- **Scrutiny – 17 July 2019**

Reporting Frequency: One off

Contact Officer

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Risk Scoring Matrix

Likelihood	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Possible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)
	2	Unlikely	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)
	1	Rare	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)
			1	2	3	4	5
			Negligible	Minor	Moderate	Major	Catastrophic
Impact							

Likelihood of risk occurring	Indicator	Description (chance of occurrence)
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

Somerset West and Taunton

Scrutiny Committee – 17 July 2019

Climate Change Strategy – Joint Scrutiny Task and Finish Group

This matter is the responsibility of Executive Councillor Peter Pilkington (Climate Change Portfolio Holder)

Report Author: Graeme Thompson, Strategy Specialist

1 Executive Summary

- 1.1 Work has recently begun on a Somerset-wide Climate Change Strategy. This report updates Scrutiny Committee on progress to date, sets out a timetable for completion of the strategy and requests recommendation of two Members to sit on a Joint Scrutiny Task and Finish Group. The report also updates members on the wider climate governance arrangements, both for Somerset and SWT, and development of an SWT specific strategy.
- 1.2 In February 2019, the SWT Shadow Council passed a motion declaring a Climate Emergency and committing to achieving carbon neutrality by 2030. A £25,000 budget was approved for development of a Carbon Neutrality and Climate Resilience Plan.
- 1.3 All five Somerset Councils have now passed similar motions (though specific details vary a little). The motion passed by the County Council committed to *“facilitate stronger Somerset-wide action through collaboration at a strategic, community and individual level; and...to work with partners...to identify ways to make Somerset carbon neutral by 2030 taking into account both production and consumption emissions”*. Arising from this, the development of a joint Somerset-wide Climate Change Strategy has been proposed, that will identify measurable ways in which to make Somerset carbon neutral by 2030, be developed by a joint Strategic Management Group and be overseen by a Joint Scrutiny Task and Finish Group as well as a Joint Cabinet Portfolio Holders Group. SWT’s Scrutiny Committee should recommend two Members to sit on this Joint Scrutiny Task and Finish Group. Approximately £10,000 of the £25,000 approved budget is anticipated to be put towards this joint work.
- 1.4 The Somerset-wide Strategy will focus on evidence gathering; development and assessment of Strategy options and recommendations; and the development of high level action plans for County-wide issues. It is anticipated that a draft of the joint Somerset-wide Strategy and an early indication of Action Plans will be completed by Autumn 2019, with the final Strategy and Action Plan complete in time to feed into budget setting for the 2020/21 financial year. Councils across Somerset are also committed (through their respective climate emergency resolutions) to developing authority-specific strategies and detailed action plans. These strategies, whilst containing commitments and actions relevant and specific to each district, will also complement the joint Somerset Strategy, particularly where a co-ordinated response to tackle the climate challenge

would be more effective.

- 1.5 Work on an SWT-specific Carbon Neutrality and Climate Resilience Plan will begin whilst the Somerset-wide work is in development and be completed following the Somerset-wide work, so that it can take account of the evidence and high level strategy and action plans agreed through it. It is anticipated that a draft SWT-specific Strategy and indicative Action Plan will be completed alongside or shortly after the draft Somerset-wide Strategy in Autumn 2019, and the final Strategy and Action Plan will be completed by Summer 2020.
- 1.6 Officer and Member governance arrangements for both the SWT and Somerset-wide Strategy work are outlined within this report.

2 Recommendations

- 2.1 **That Scrutiny Committee note and endorse the scope, process, budget implications, governance arrangements and timescale associated with developing the joint Somerset-wide Climate Change Strategy, and related SWT-specific Carbon Neutrality and Climate Resilience Plan.**
- 2.2 **That Scrutiny Committee endorse the nomination of Councillor David Mansell and Councillor Loretta Whetlor to serve on the Joint Scrutiny Task and Finish Group, which will oversee development of the joint Somerset-wide Climate Change Strategy.**

3 Risk Assessment

Risk Matrix

Description	Likelihood	Impact	Overall
(1) Failure to endorse the approach or recommend members for the joint task and finish group could result in a Somerset-wide strategy being developed without SWT representation or input.	5	4	20
<i>(1) The mitigation for this is to endorse the approach and nominate two members to sit on the joint task and finish group.</i>	1	4	4
(2) Failure to join county-wide work on a joint Climate Change Strategy could result in higher costs for developing our own SWT-specific strategy and action plans as well as missing out on potential economies of scale for delivery of action plans.	4	5	20
<i>(2) The mitigation for this is to endorse the approach and nominate two members to sit on the joint task and finish group.</i>	1	5	5

Risk Scoring Matrix

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4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

4 Background and Full details of the Report

Introduction

- 4.1 In February 2019, the SWT Shadow Council passed a motion declaring a Climate Emergency and committing to achieving carbon neutrality by 2030. The full motion can be read in the [minutes of the February Shadow Council meeting](#). As part of this, a £25,000 budget was approved for development of a Carbon Neutrality and Climate Resilience Plan.
- 4.2 Since this Council passed its Climate Emergency motion, each of the four other Somerset local authorities (Mendip District Council, Sedgemoor District Council, Somerset County Council and South Somerset District Council), have also passed similar motions. Whilst the details of the motions vary slightly, they all commit to achieving carbon neutrality, and all commit to production of a climate change strategy or words to that effect with an associated budget for the work. The motion passed by Somerset County Council committed to “*facilitate stronger Somerset-wide action through collaboration at a strategic, community and individual level; and...to work with partners...to identify ways to make Somerset carbon neutral by 2030 taking into account both production and consumption emissions*”.

Joint Somerset-wide Strategy

- 4.3 Arising from this, the development of a joint Somerset-wide Climate Change Strategy

has been [proposed](#). Many of the issues impacting upon the levels of greenhouse-gas emissions emanating from and as a result of activities within SWT as an administrative area are shared across the county (and indeed the country and beyond) – such as transport, energy, agriculture and industry. As such, it makes good strategic and financial sense to work together on establishing the baseline evidence, broad strategy, high level action plans for cross-cutting issues and ultimately on delivery of certain actions. That being the case, participation in the development of a Somerset-wide Strategy, working in partnership with the other Somerset authorities will be essential if SWT as an administrative area is to achieve its carbon neutral commitment. Governance arrangements for this are explained in paras 4.11 – 4.24 and in the attached governance diagram at Appendix A.

- 4.4 The joint Senior Management Group tasked with developing this Somerset-wide Strategy has met twice and has begun to drill down into the scope of the joint strategy, how it will be developed, timescale for completion, and the relationship with more detailed strategy and action plan development for each individual authority.
- 4.5 The scope is still in flux and may change as work begins to dig down into detail, but at present, the joint Somerset-wide Climate Change Strategy is anticipated to:
- Cover the geographical area (i.e. not just Council functions);
 - Be focused around six main areas:
 - natural environment;
 - waste, recycling and resource management;
 - energy;
 - built environment;
 - travel and transport; and
 - economy and business;
 - Consider three overarching themes:
 - awareness;
 - engagement; and
 - behaviour change
 - Look into both direct (Scope 1 and 2) and indirect (Scope 3) emissions associated with Council functions, identifying ways for the Councils to lead the way.
 - Gather evidence;
 - Develop and assess strategy options and recommendations; and
 - Develop high level action plans for County-wide issues.
- 4.6 Through this scoping work to date it has been identified that, with no dedicated internal resource and considering the skills and expertise required, external consultancy support is required to help in drawing the joint strategy together. Approximately £10,000 of the £25,000 approved budget is anticipated to be put towards appointment of this support for the joint strategy work. The Senior Management Group met on 28th June to conduct soft market testing with a number of potential suppliers and subject experts to help with setting the scope of the strategy and what a consultant brief / invitation to tender might include. At this stage, it is felt that the best use of external consultancy support will be in providing objective expertise on specific issues and the interventions we could take. A verbal update on progress with this will be made to Scrutiny on the day of the meeting.
- 4.7 It is envisaged that a draft Strategy and “early indication” action plan will be completed and presented to the Chief Executives and members Task and Finish group by end September 2019 and onward for approval by the constituent local authorities. Following feedback a final strategy document will be completed and a costed Action Plan developed. (The aim is to feed this into the financial planning cycles of the participating

authorities and financial plans for 2020-21 (and onwards).

SWT Carbon Neutrality and Climate Resilience Plan

- 4.8 A more detailed and area-specific strategy and action plan will also be developed by SWT. This will need to take account of the Somerset-wide Strategy which will provide an evidence base and high level framework to build on. This may entail detailing precise projects that can deliver on action plans from the Somerset-wide Strategy, but also development of additional strategy responses and action plans relating to issues that are of particular relevance within SWT. It will also provide an opportunity to develop a monitoring framework against which we can assess our delivery and performance.
- 4.9 There will also be a greater focus on what the Council can do corporately itself, as such corporate action, procurement, communications and funding will be additional cross-cutting themes.
- 4.10 Whilst completion of this SWT-specific Strategy cannot reasonably be completed until after the Somerset-wide work, early scoping, planning and capacity building can begin immediately and the intention will be to develop as much of the Strategy alongside the Somerset-wide work. The governance arrangements below detail a structure where there is a two-way dialogue between production of the Somerset-wide Strategy and the SWT-specific Strategy, ensuring that they both influence one another, enable sharing of knowledge and experience and avoiding duplication of efforts. On this basis, it is hoped that a draft of the SWT-specific Strategy and an early indication Action Plan could be completed alongside or just after the Somerset-wide Strategy in Autumn 2019, and the final Strategy and Action Plan completed by Summer 2020.

Governance arrangements

- 4.11 Separate, but aligned and complementary governance arrangements are required for development of the Somerset-wide and the SWT-specific strategies. The governance arrangements below aim to ensure that there is an effective project management structure in place and also that the strategies are developed with the necessary levels of leadership engagement and ownership. A diagram covering the governance arrangements for both strategies and the interrelationships between them is included in Appendix A.

Somerset-wide Strategy governance

- 4.12 To demonstrate commitment at the highest leadership level the Somerset Leaders and Chief Executives have requested that the Project reports directly into their group. Brendan Cleere (SWT Head of Localities) will be the Senior Officer Sponsor (SoS), reporting in to the Somerset Leaders and Chief Executives.
- 4.13 A joint Scrutiny Task and Finish Group comprising two Members from the participating authorities will:
- Oversee the development of the Somerset-wide Strategy;
 - Contribute to and review the scope of the Strategy, and provide recommendations on the content and intended outcomes;
 - Engage with relevant stakeholders, e.g. businesses, business groups, the Local Enterprise Partnership, environmental groups, community groups and individuals to provide expertise to contribute to the review of the strategy and provide recommendations to further corporate approaches;
 - Provide guidance and advice to the Strategic Management Group; and

- Act as a conduit between the Strategic Management Group and relevant Scrutiny committees
- 4.14 Following discussion with the Leader and Portfolio Holder, the Chairman of Scrutiny Committee has nominated Councillor David Mansell and Councillor Loretta Whetlor to be SWT's representatives on this group. Scrutiny Committee are asked to endorse these nominations in the recommendations to this report. The first meeting of the Joint Scrutiny Task and Finish Group is anticipated to be held in August 2019.
- 4.15 A group comprising cabinet/executive members with responsibility for climate change (1 per authority) will be also established, to provide the necessary political leadership and ownership across the participating authorities. This group will consider the advice and recommendations emerging from the above Scrutiny/Task and Finish group. As Portfolio Holder for Climate Change, Councillor Peter Pilkington will serve on this group.
- 4.16 To manage, co-ordinate and undertake the work required to develop the Strategy and ensuing action plan, a Strategic Management Group of Senior Officers from each of the 5 Councils has been convened. It is the intention to set up a number of working groups to support the Strategic group, which will operate on a task and finish basis and will stand as work is required and be stood down once the tasks have been completed. These working groups may include members of the Strategic Management Group, but will also include subject matter expert officers from the participating authorities.
- 4.17 Michele Cusack – Director Economic and Community Infrastructure Commissioning at Somerset County Council (SCC) will chair the Strategic Management Group, oversee the Officer Working Group(s) and will report on progress to the SoS.
- 4.18 Communication and stakeholder engagement activity will be undertaken throughout the process and arrangements will be established to facilitate this.
- 4.19 It is also envisaged that the Heart of the South West Joint Committee will maintain a strategic overview of climate change strategy across the Devon and Somerset area. Detailed reporting arrangements have yet to be established but it is anticipated that respective senior officers and elected members from Devon and Somerset will facilitate collaboration and shared learning to tackle climate change across the joint committee area.

SWT-specific Strategy governance

- 4.20 The SWT internal governance arrangements have been designed to complement the Somerset-wide arrangements and build upon the established Authority PMO processes.
- 4.21 The project will ultimately report to the SWT Executive Committee, via Scrutiny Committee. However, a new Climate Change Member Working Group will oversee development of the strategy, action plan and delivery of projects. This Member Working Group will be comprised of the nominated joint Scrutiny Task and Finish Group members, the Chair of Scrutiny Committee, the Climate Change Portfolio Holder and the Leader, supported by key officers.
- 4.22 A Programme Board comprising the Senior Officer Sponsor (Brendan Cleere), Strategy Lead (Graeme Thompson), Programme Management Lead (Erica Lake) will oversee development of the strategy and action plan and delivery. It will receive reports on progress, ensure strategic alignment and agree and delegate tasks between the Member Working Group and the Operational Delivery Groups. Common membership between

the Somerset-wide Strategic Management Group, SoS and the SWT Programme Board will ensure strategic overview. Communications and Engagement involvement at this level will be important to ensure we are owning and promoting important internal and external messaging in relation to the work we are doing.

- 4.23 Work on drawing up the SWT strategy response, developing up action plans and ultimately delivery in relation to specific areas and themes will be the remit of Operational / Delivery Groups. These groups will be aligned to the thematic working groups on the Somerset-wide Strategy, and be comprised of relevant officers from across the Council, with appropriate external support as necessary. These groups will work up SWT-specific responses, monitor and deliver projects and report progress to / seek approval from the Programme Board. These groups will be organised around the Authority PMO process so they have a delivery focus with strong project management resource. Many of the individuals working within each of the specific areas and themes for the SWT-specific Strategy may also form part of the thematic working groups for the Somerset-wide Strategy.

Delivery and resource implications

- 4.24 The above governance arrangements have been designed so as to ensure a strong emphasis on delivery and use individual's technical skills and expertise for the best purposes. Many officers within the Council will need to be involved, particularly in the Operational / Delivery Groups identified above. There may be circumstances where additional technical skills and expertise are required, that we do not currently have in-house. As the need for these skills and expertise arises, the Council(s) will need to consider how best to respond to this – whether this is through procurement of additional external consultancy support, or through appointment of additional temporary or permanent staff (including potentially on a shared/pooled basis across the county).
- 4.25 Whilst it is important that we develop coherent and comprehensive strategies and action plans, it is important that we start delivering action as soon as possible. Whilst in some circumstances it will be important to wait until the strategy approach has been fully considered and action plans identified, in others this can be an unnecessary burden. Bringing forward smaller, oven-ready projects in the meantime can provide important local evidence and data as proof of concept / trialling of proposals. Processes should therefore avoid overly stifling “quick wins”, so long as there is a reasoned logic to bringing forward delivery ahead of the strategy being completed, and provided that any evidence, data and knowledge arising from the project is shared to enable further understanding of rollout on a wider basis.

5 Links to Corporate Aims / Priorities

- 5.1 Climate change is not currently reflected in the corporate priorities of the previous Taunton Deane or West Somerset Corporate Strategies. However, a new Corporate Strategy is under development and will reflect the increased priority given by this authority towards tackling the climate emergency.

6 Finance / Resource Implications

- 6.1 A £25,000 budget has already been assigned for development of a Carbon Neutrality and Climate Resilience Plan. Approximately £10,000 of this is expected to be used towards engaging expert consultants in developing the Somerset-wide Strategy. The remaining £15,000 would be available for development of the SWT-specific Strategy or potentially kick-starting key delivery projects.

6.2 Long-term, development of these strategies will amount to commitments to action, and these actions will have substantial financial costs associated with them. The costs of implementing the action plans developed by this work are not included in this report. However, these financial costs should be considered alongside avoided financial, environmental and social costs associated with inaction (for example flood damage, stranded assets, homelessness and health and wellbeing impacts as a result of increased flood risk and rising sea levels).

7 Legal Implications (if any)

7.1 There are no specific legal implications associated with this report

8 Environmental Impact Implications (if any)

8.1 Development of the Somerset-wide and SWT-specific Strategies will directly and indirectly impacting on addressing the climate emergency through action plans that will help to achieve carbon neutrality and climate resilience. Specific impacts relating to specific action plans / projects will need to be assessed at a later stage.

9 Safeguarding and/or Community Safety Implications (if any)

9.1 Climate change is the greatest risk to the ongoing safety of our communities. The proposal is to develop a strategy and action plan to help address and reduce this risk.

10 Equality and Diversity Implications (if any)

10.1 This strategy will be produced for and impact on all residents of the area including both those persons who share relevant protected characteristics and those who do not. The impacts of action will benefit all residents. The impacts of inaction will disproportionately impact on lower income groups and more vulnerable parts of the population.

11 Social Value Implications (if any)

11.1 The development of a climate change strategy and action plan will inherently add social value in itself.

12 Partnership Implications (if any)

12.1 This project relies heavily upon partnership working with Somerset County Council and the other local authorities across Somerset. External consultancy support is to be procured for assistance in producing the Somerset-wide Strategy, with costs associated with this support being shared between the constituent authorities. Procurement of the services is likely to be undertaken by Somerset County Council who will then need to invoice SWT for their portion of the costs (anticipated to be approximately £10,000).

13 Health and Wellbeing Implications (if any)

13.1 The development of a climate change strategy and action plan will inherently deal with health and wellbeing issues and encourage in itself.

14 Asset Management Implications (if any)

14.1 Development of the strategies and action plans will directly impact on management of our own assets. For instance, in order to achieve carbon neutrality and ensure our communities are resilient to climate change we will need to consider how we deal with

retrofitting our retained Council housing stock, how we develop sites in our ownership, how we manage and maintain our open spaces, and how we fuel our fleets. Specific impacts relating to specific action plans / projects will need to be assessed at a later stage.

15 Data Protection Implications (if any)

15.1 There are not anticipated to be any Data Protection Issues arising from development of the strategy.

16 Consultation Implications (if any)

16.1 There will need to be extensive public engagement and consultation on the strategies as they are developed. Specific arrangements will need to be worked up and agreed through the governance processes outlined above.

Democratic Path:

- **Scrutiny / Corporate Governance or Audit Committees – Yes**
- **Cabinet/Executive –No**
- **Full Council –No**

Reporting Frequency: **Once only** **Ad-hoc** **Quarterly**
 Twice-yearly **Annually**

List of Appendices (delete if not applicable)

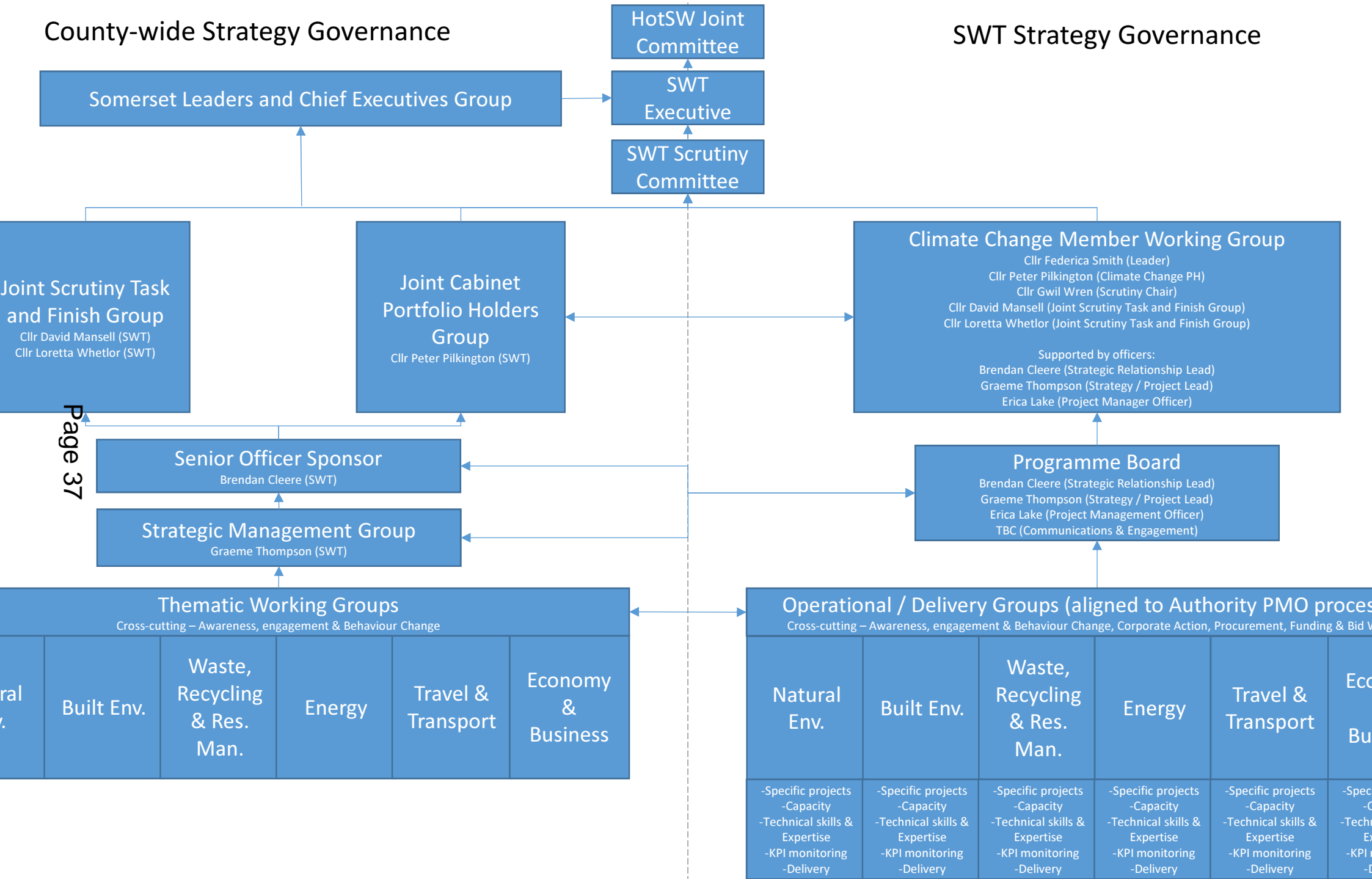
Appendix A	Governance arrangements diagram
Appendix B	
Appendix C	

Contact Officers

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County-wide Strategy Governance

SWT Strategy Governance



Somerset West and Taunton

Scrutiny Committee – 17th July 2019

SHAPE Legal End of Year Report – Year 4

This matter is the responsibility of Executive Councillor for Corporate Resources

Report Author: Christine Fraser, Head of Performance and Governance

1 Executive Summary / Purpose of the Report

To present the Committee with the SHAPE Legal end of year report – year 4.

2 Recommendations

That the Committee:

1. Notes the report and progress made to date
2. Endorses the development of growth and marketing plans that include promotional activities, identifying new clients and exploring opportunities for income generation
3. Notes that a review and recast of the partnership will take place before the end of the financial year to ensure that the partnership continues to support the strategic direction of the Council moving forward

3 Risk Assessment

- 3.1 Failure to have adequate and appropriate legal provision puts the Council at risk of acting unlawfully or being subject to legal challenge.

4 Background and Full details of the Report

4.1 The SHAPE Legal Law and Governance Partnership is now in the fifth year of its 5-year business plan. Mendip District Council continues to maintain its “host authority” status within the Partnership and satellite offices continue to be maintained within their partners’ premises at Deane House and West Somerset House for Somerset West and Taunton Council. Law and Governance staff work across the partnership offices as required by the work.

4.2 It is to be noted that work profiles have changes and may continue to do so as a result of many factors influencing the strategic direction of travel of the partners, namely but not limited to:

- The coming into being of Somerset West and Taunton Council to replace Taunton Deane Borough Council (TDBC) and West Somerset Council (WSC)
- The Local Government elections at the beginning of May 2019

- The more commercial approach being taken in relation to corporate assets, and
- The transformation agenda of the individual partners

4.3 Key achievements to date include:

- Supporting TDBC and WSC to enable these partners to be stood down on the 31st March 2019 and for the new authority, Somerset West and Taunton Council to stand in their place on the 1st April 2019
- Continued support to our partners in major projects/initiatives
- Supporting all partners in preparation for General Data Protection Regulations (GDPR)
- Expanding our customer base and the variety of work commissioned

4.4 Key priorities for the next 12 months include:

- Continued support for the new Authority
- Commissioning a client satisfaction survey
- To work with the Assets Team at Somerset West and Taunton to streamline the commissioning of work and processes thereafter
- Implementing a growth and marketing plan
- Reviewing and recasting the partnership so that it continues to support the strategic direction of the partner authorities moving forward

4.5 Section 2 of this report sets out three recommendations. A review of the Partnership will commence shortly to ensure that the future arrangements provide the support needed by the Council and gives taxpayers good value for money. The review will be carried out by the Head of Performance and Governance and the Governance Manager in conjunction with SHAPE Legal

5 Links to Corporate Aims / Priorities

5.1 Having an effective and efficient Legal Service is a fundamental element of being a 'well managed' council. This also enables key corporate projects to be delivered.

6 Finance / Resource Implications

6.1 The budget for the Partnership has already been set for 2019/20. Any changes to the Partnership for 2020/21 onwards will be factored into the budget setting process

7 Legal Implications

7.1 Failure to have adequate and appropriate legal provision puts the Council at risk of acting unlawfully or being subject to legal challenge.

8 Environmental Impact Implications (if any)

8.1 None arising from this report

9 Safeguarding and/or Community Safety Implications (if any)

9.1 None arising from this report

10 Equality and Diversity Implications (if any)

10.1 None arising from this report

11 Social Value Implications (if any)

11.1 None arising from this report

12 Partnership Implications (if any)

12.1 None arising from this report

13 Health and Wellbeing Implications (if any)

13.1 None arising from this report

14 Asset Management Implications (if any)

14.1 None arising from this report

15 Data Protection Implications (if any)

15.1 None arising from this report

16 Consultation Implications (if any)

16.1 None arising from this report

Democratic Path:

- **Scrutiny Committee – Yes**
- **Cabinet/Executive – No**
- **Full Council – No**

Reporting Frequency: Annually

List of Appendices (delete if not applicable)

Appendix A	SHAPE Legal Year End Report – Year 4
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Contact Officers

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Law & Governance

End of Year Report - Year 4

MENDIP DISTRICT COUNCIL
TAUNTON DEANE BOROUGH COUNCIL
WEST SOMERSET COUNCIL



SHAPE
PARTNERSHIP
SERVICES

April 2019

Authors: David Clark, Lesley Dolan
Document Name: LAW & GOVERNANCE Report – Year 4
Document Number: 03
Effective Date: 1 April 2019
Date due for review:
Responsible for review: Head of Partnership
Version:

Version control

Number	Effective Date	Reviewer	Comments (e.g. details of any policies being replaced)

Dissemination

Name or Team	Method	Date	Version

Publication of current version

	Location	Date of Publication

Approvals for current version

Name	Date of Approval

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1. EXECUTIVE SUMMARY

Our Shared Vision

To create a dedicated service to support public and third sector clients with specialist and cost-effective advice

Law & Governance is now in the fifth year of its 5-year business plan. It was the first SHAPE Partnership Service to come into being and has now been joined by the Building Control Partnership which was launched in March 2016.

Mendip District Council continues to maintain its “host authority” status within the Partnership and satellite offices continue to be maintained within our partners’ premises at The Deane House (TDBC) and West Somerset House (WSC).

Law & Governance staff work across the partnership offices as required by the work.

It is to be noted that work profiles have changed and may continue to do so as a result of many factors influencing the strategic direction of travel of the partners namely but not limited to –

- the coming into being of Somerset West and Taunton Council to replace Taunton Deane Borough Council and West Somerset Council
- the Local Government elections at the beginning of May 2019.
- the more commercial approach being taken in relation to corporate assets, and
- the transformation agenda of the individual partners.

Key achievements to date include:

- Supporting TDBC and WSC to enable these partners to be stood down on the March 2019 and for the new, authority Somerset West and Taunton to stand in their place on the 1 April 2019
- Continued support to our partners in major projects/initiatives
- Successful application of the new tools and powers under the Anti-Social Behaviour, Crime and Policing Act 2014, to secure Closure Orders (x2) for TDBC and Public Space Protection Orders (PSPOs) (x3) for MDC
- Supporting all partners in preparation for GDPR
- Supporting the streamlining of enforcement powers (MDC)
- Expanding our customer base and the variety of work commissioned

Key priorities for the next 12 months include:

- Continued support for the new Authority.
- Commissioning a client satisfaction survey.
- To work with the Assets Team at Somerset West and Taunton to streamline the commissioning of work and processes thereafter.
- Implementing a growth and marketing plan.
- Reviewing and recasting the partnership so that it continues to support the strategic direction of the partner authorities moving forward.

RECOMMENDATIONS:

- Endorse progress made to date.
- Endorse the development of growth and marketing plans that includes promotional activities, identifying new clients and exploring opportunities for income generation.
- Review and recast the partnership so that it continues to support the strategic direction of the partner authorities moving forward.

2. POLICY & STRATEGIC CONTEXT

In accordance with the Business Case approved by all three partner authorities in February 2015, a new single legal practice (“the Shared Legal Service”) was established and went live with effect from 1 April 2015. .

The objectives of this tri-Council project were as follows:

- Delivery of a 10% and 15% budget saving for WSC and TDBC respectively;
- The creation of a flexible resilient model, with a ‘critical mass’ of expertise;
- Provision of enhanced efficiency and effectiveness; and,
- Agreeing a minimum initial period of five years, subject to a service review at the end of Year 4.

We are now in the third phase of the five-year business plan, the “Growth Phase”, which includes a review and appraisal of expansion and/or growth strategies, as well as the development of a second business case.

In order to continually assess and deliver demand management, an in-depth review has been undertaken of the service’s operation. The results of that review are set out in the following Chapters of this Report.

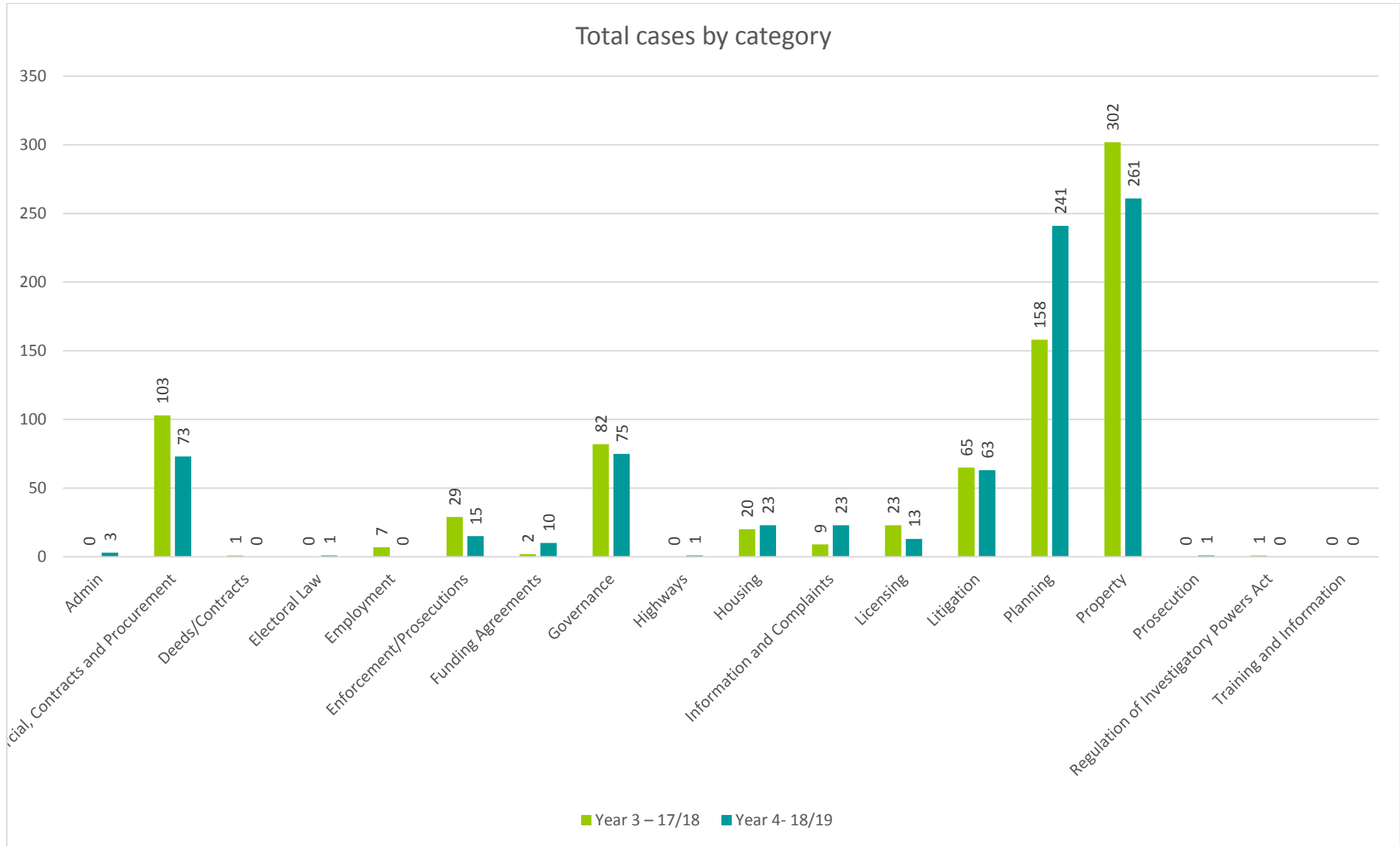
3. EVIDENCE BASE – CASE WORK LAW & GOVERNANCE YEAR 3 TO YEAR 4

3.1 Cases by category for Year 3 to Year 4

Category	Year 3 – 17/18		Year 4- 18/19	
	Number	%	Number	%
Admin	-	0	3	0.37
Commercial, Contracts and Procurement	103	12.84	73	9.09
Deeds/Contracts	1	0.12	0	0
Electoral Law	0	0	1	0.12
Employment	7	0.87	0	0
Enforcement/Prosecutions	29	3.62	15	1.87
Funding Agreements	2	0.25	10	1.25
Governance	82	10.22	75	9.34
Highways	0	0	1	0.12
Housing	20	2.49	23	2.86
Information and Complaints	9	1.12	23	2.86
Licensing	23	2.87	13	1.62
Litigation	65	8.1	63	7.85
Planning	158	19.7	241	30.01
Property	302	37.66	261	32.5
Prosecution	-	0	1	0.12
Regulation of Investigatory Powers Act	1	0.12	0	0
Training and Information	0	0	0	0
TOTALS	802	100	803	100

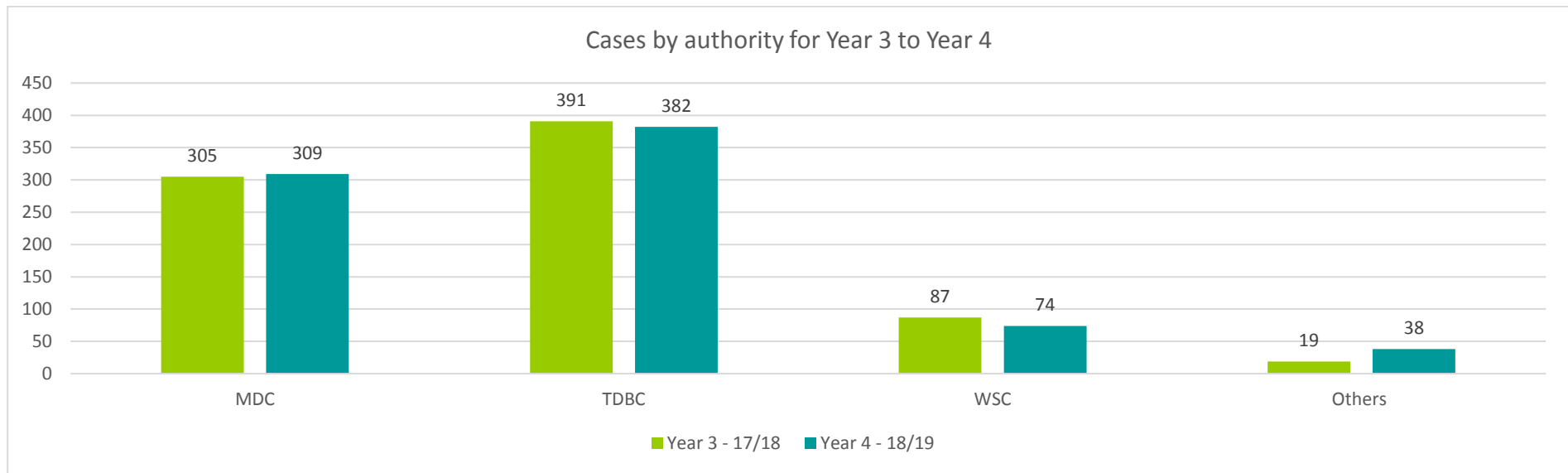
Commentary

Whilst the total number of referred cases remains constant, there are variations in the diversity of cases as indicated in the above table. The biggest increase in the number of referred cases relates to Planning followed by information and complaints and then funding agreements. Referrals have decreased in the categories of Commercial, Contracts & Procurement, Enforcement & Prosecutions, Licensing and Property. The reasons for these changes are unclear.



3.2 Cases by authority for Year 3 to Year 4

Authority	Year 3 – 17/18		Year 4- 18/19	
	Number	%	Number	%
MDC	305	38.03	309	38.48
TDBC	391	48.75	382	47.57
WSC	87	10.85	74	9.22
Other	19	2.37	38	4.73
TOTALS	802	100%	803	100%

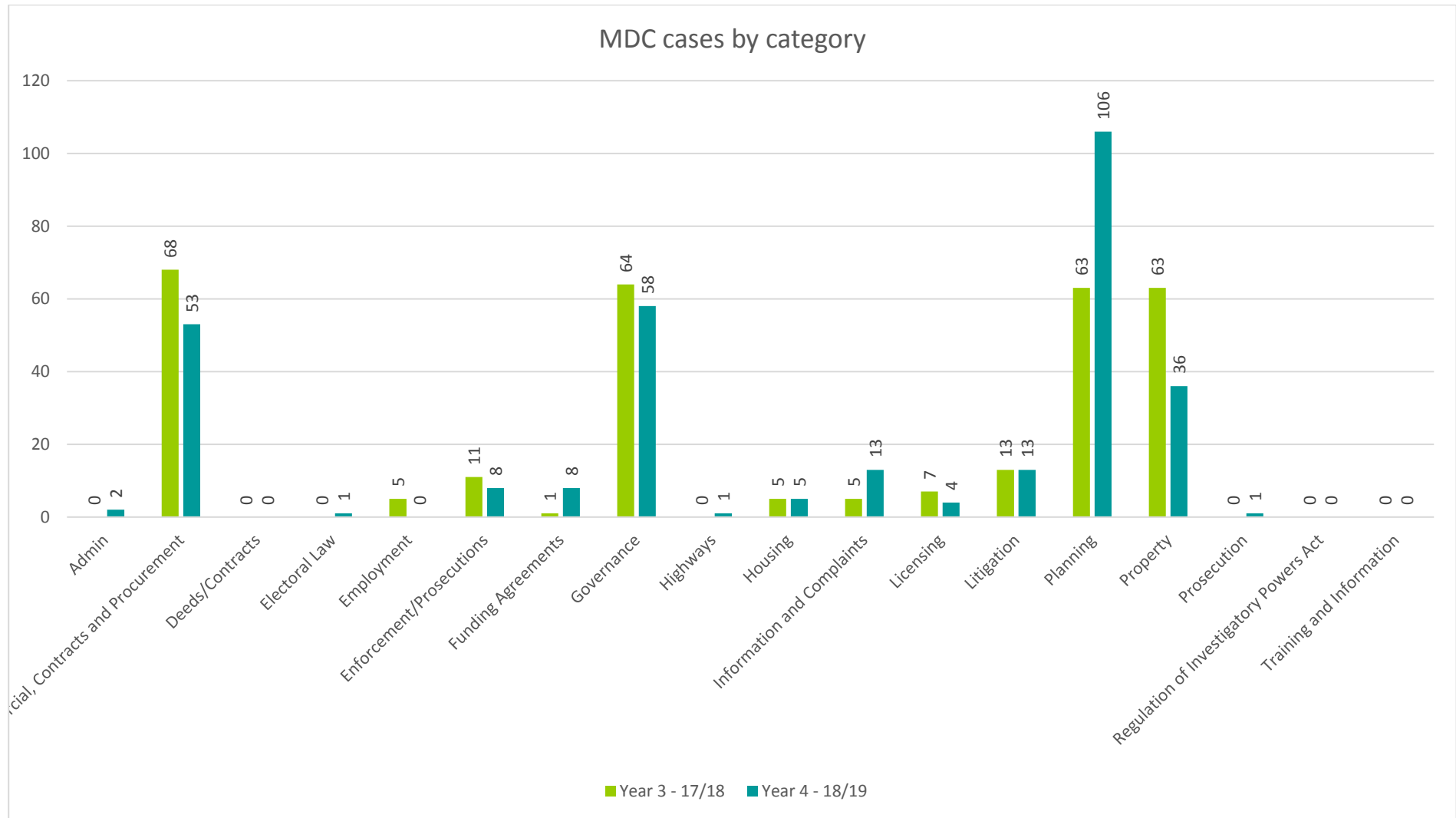


Commentary

The 'Other' Category in the above table relates to new clients. Whilst the Marketing and Growth Plan is not yet fully implemented it is bearing fruit as new clients have been taken on board – new commissions have been received from South Somerset District Council, Mid-Devon Council, Somerset County Council (Section 38 Agreements), East Hampshire District Council and Havant Borough Council.

3.3. *Cases by category for Mendip District Council for Year 3 to Year 4*

<i>Category</i>	Year 3 – 17/18		Year 4- 18/19	
	<i>Number</i>	<i>%</i>	<i>Number</i>	<i>%</i>
Admin	-	0	2	0.65
Commercial, Contracts and Procurement	68	22.3	53	17.15
Deeds/Contracts	0	0	0	0
Electoral Law	0	0	1	0.32
Employment	5	1.64	0	0
Enforcement/Prosecutions	11	3.61	8	2.59
Funding Agreements	1	0.33	8	2.59
Governance	64	20.98	58	18.77
Highways	0	0	1	0.32
Housing	5	1.64	5	1.62
Information and Complaints	5	1.64	13	4.21
Licensing	7	2.3	4	1.29
Litigation	13	4.26	13	4.21
Planning	63	20.66	106	34.3
Property	63	20.66	36	11.65
Prosecution	-	0	1	0.32
Regulation of Investigatory Powers Act	0	0	0	0
Training and Information	0	0	0	0
TOTALS	305	100%	309	100%

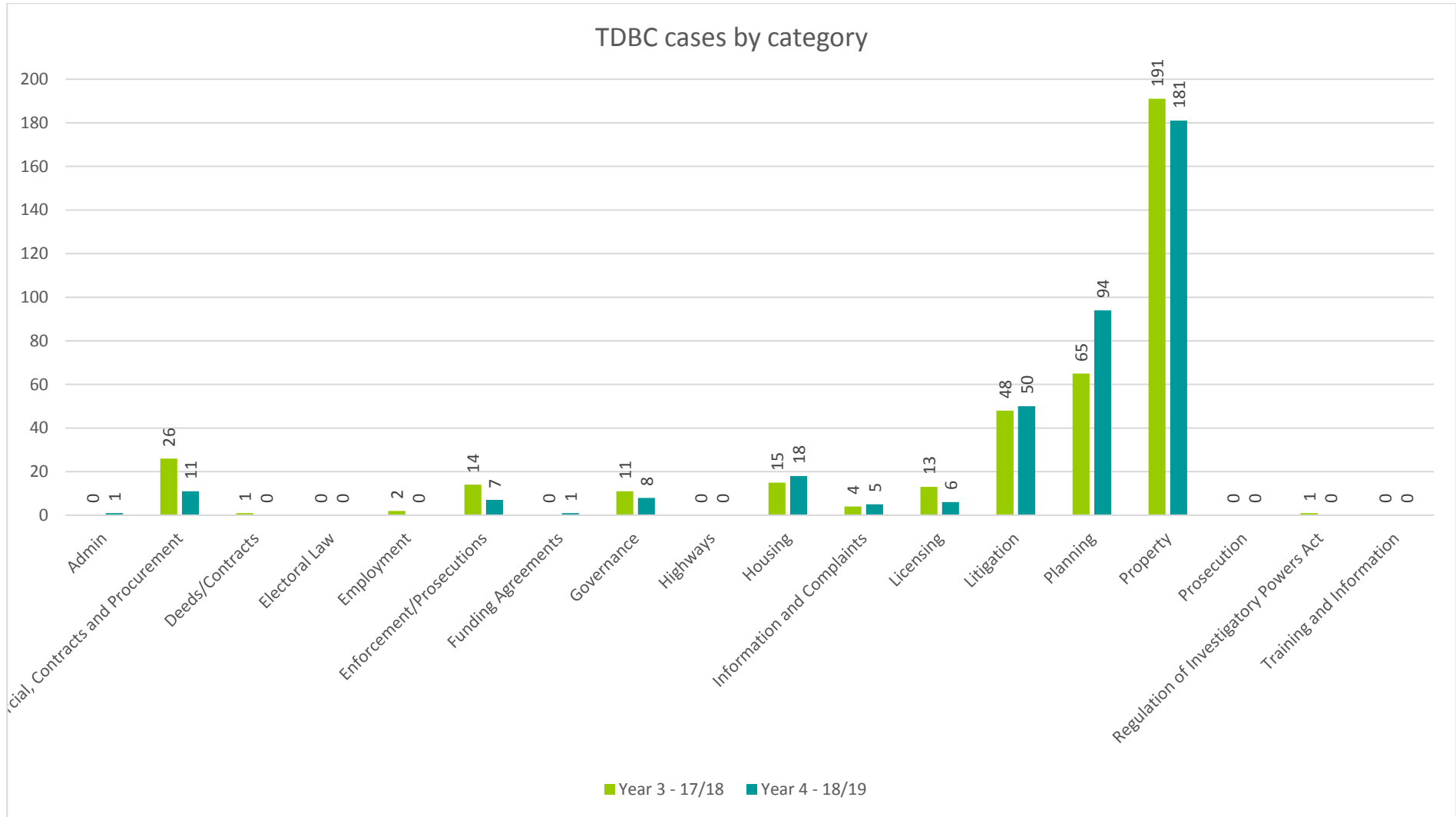


Commentary

The area that has shown the biggest increase in referrals is Planning. Funding Agreements also show an increase from Year 3 with Property entertaining a slight fall.

3.4. *Cases by category for Taunton Deane Borough Council for Year 3 to Year 4*

<i>Category</i>	Year 3 – 17/18		Year 4- 18/19	
	<i>Number</i>	<i>%</i>	<i>Number</i>	<i>%</i>
Admin	-	0	1	0.26
Commercial, Contracts and Procurement	26	6.65	11	2.88
Deeds/Contracts	1	0.26	0	0
Electoral Law	0	0	0	0
Employment	2	0.51	0	0
Enforcement/Prosecutions	14	3.58	7	1.83
Funding Agreements	0	0	1	0.26
Governance	11	2.81	8	2.09
Highways	0	0	0	0
Housing	15	3.84	18	4.71
Information and Complaints	4	1.02	5	1.31
Licensing	13	3.32	6	1.57
Litigation	48	12.28	50	13.09
Planning	65	16.62	94	24.61
Property	191	48.85	181	47.38
Prosecution	-	0	0	0
Regulation of Investigatory Powers Act	1	0.26	0	0
Training and Information	0	0	0	0
TOTALS	391	100	382	100

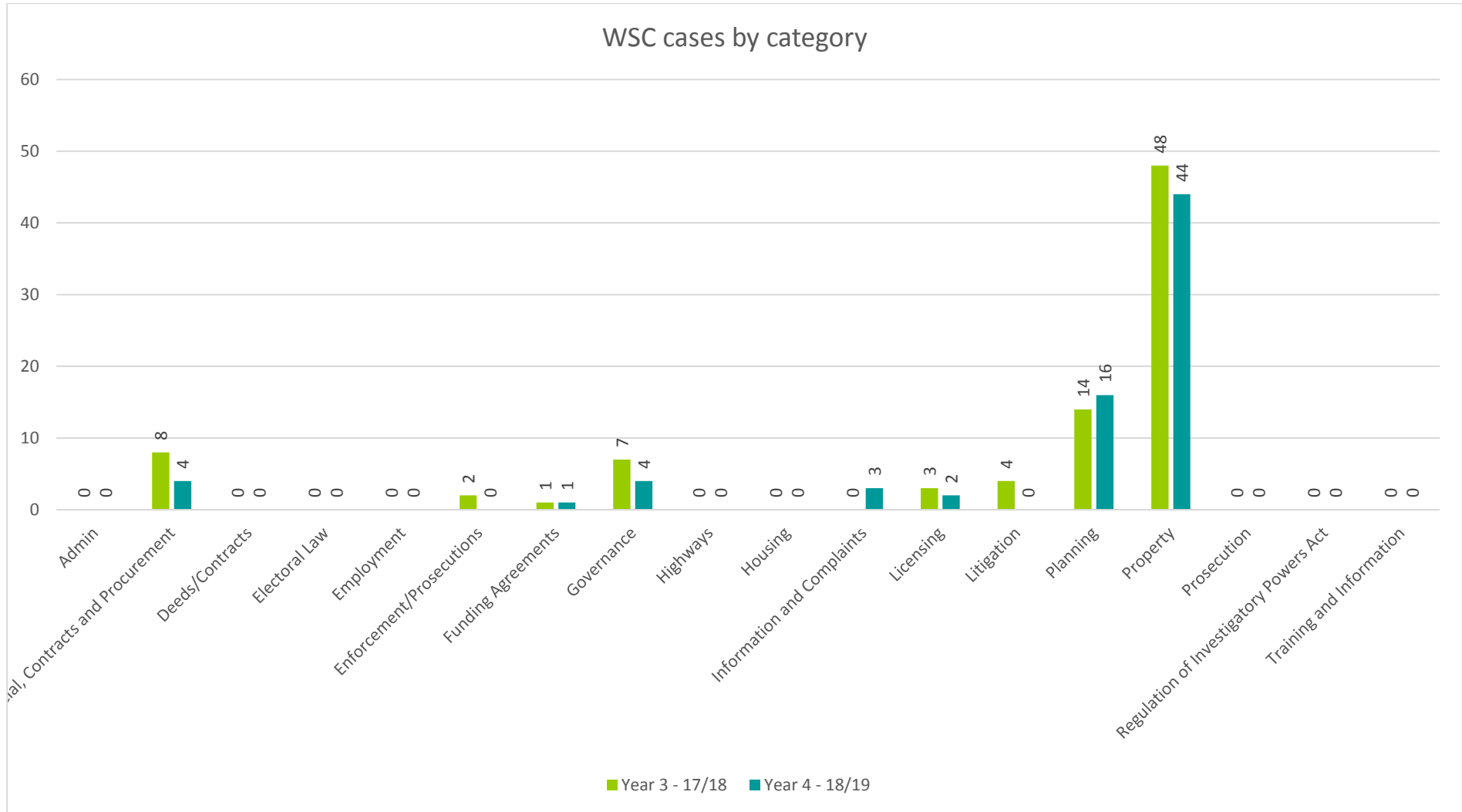


Commentary

TDBC like MDC has shown a big increase in Planning referrals. Increases are also showing in Housing and Litigation referrals.

3.5. *Cases by category for West Somerset District Council for Year 3 to Year 4*

<i>Category</i>	Year 3 – 17/18		Year 4- 18/19	
	<i>Number</i>	<i>%</i>	<i>Number</i>	<i>%</i>
Admin	0	0	0	0
Commercial, Contracts and Procurement	8	9.2	4	5.41
Deeds/Contracts	0	0	0	0
Electoral Law	0	0	0	0
Employment	0	0	0	0
Enforcement/Prosecutions	2	2.3	0	0
Funding Agreements	1	1.15	1	1.35
Governance	7	8.05	4	5.41
Highways	0	0	0	0
Housing	0	0	0	0
Information and Complaints	0	0	3	4.05
Licensing	3	3.45	2	2.7
Litigation	4	4.60	0	0
Planning	14	16.09	16	21.62
Property	48	55.17	44	59.46
Prosecution	-	0	0	0
Regulation of Investigatory Powers Act	0	0	0	0
Training and Information	0	0	0	0
TOTALS	87	100	74	100



Commentary

Although Planning referrals have increased the general trend in most categories shows a decrease

The Table at Appendix 1 shows an analysis of how fees earners time is apportioned across the partnership.

3.6 ***The nature of evolving Casework***

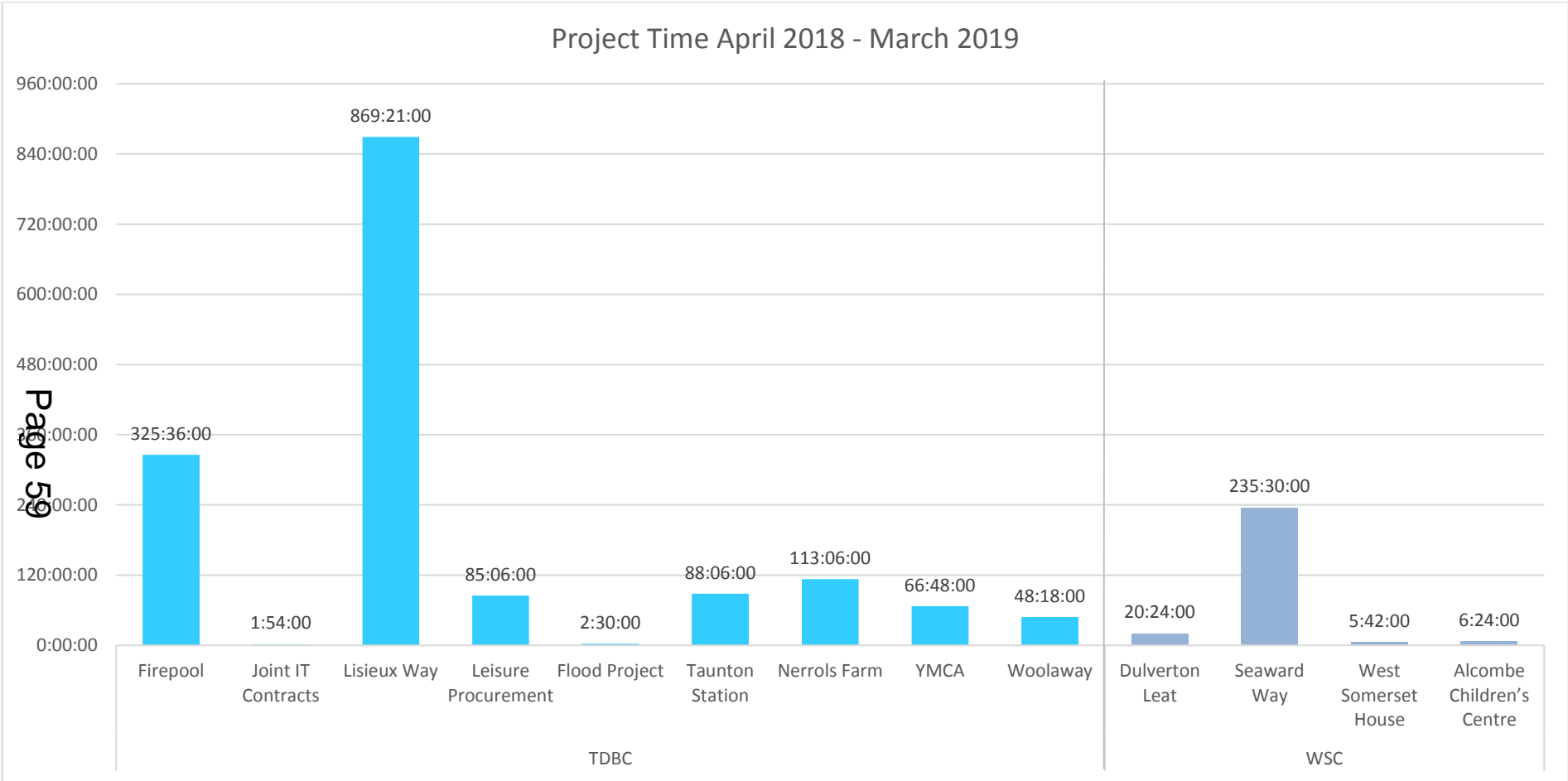
It is evident that emerging case types are changing across the partnership reflecting the individual partner's Transformation and Growth agendas. Many instructions now relate to growth projects such as –

- Firepool
- Firepool – Hotel
- Dulverton Leat
- Lisieux Way
- Leisure procurement
- Taunton Station
- Flood
- IT
- Nerrols Farm
- YMCA
- Alcombe Children's Home
- West Somerset House
- Seaward Way
- Justice Lane
- Saxonvale
- Morlands
- Commercial Road

These are complex strategic projects. Please see Figure 3.6.1 for a breakdown of time spent on each project.

In addition, legal support has been being sought and provided by way of a 'check and challenge' exercise in regard to Code of Conduct complaints connected the Monitoring Officer for TDBC/WSC. As is the case for complex commercial cases, work of this nature is specifically excluded under the IAA and has been provided in the spirit of the partnership. If this support continues to be required, then this should be included in the required discussions regarding the future and remit of the partnership and its associated design.

Figure 3.6.1: Time spent on projects



4. CLIENT SATISFACTION

4.1 *Group Manager - Law & Governance Services*

The shared legal services falls within the Law & Governance Group at MDC which is headed up by David Clark as Group Manager. Acknowledging the staff transformation programme and the fact that there were many new officers at TDBC/WSC who had had no exposure to the shared service, a soft relaunch of it was implemented in February 2019, David Clark and Lesley Dolan, the Business Services Manager, gave a presentation to the Senior Leadership Team at TDBC including the new Chief Executive, James Hassett. It is intended to cascade this soft relaunch to the next level of management.

4.2 *Client Manager for TDBC/WSC*

The Head of Function, Performance and Governance has taken up the role of Client Manager on the client side for the Partnership and several informal catch up meetings have taken place between her and the Business Services Manager during her weekly visits to The Deane House.

4.3 *IAA Management Meetings*

An inaugural meeting has taken place between the newly appointed Client Manager (Head of Function – Performance and Governance), the Group Manager – Law and Governance Services and the Law & Governance Business Services Manager. In furtherance of the provision of the Inter Authority Agreement for the Partnership, these officers will continue to meet on a quarterly basis with a view to discussing the provision of the shared service and any issues that arise that cannot be resolved between officers. They will seek to refine the partnership and continue to seek continuous improvement so that the aspirations of all partner authorities are appropriately supported.

4.4 *Client Meetings*

4.4.1 As well as Shape having lawyers largely based and working out of Taunton the Business Services Manager continues work at The Deane House at least once a week and it is proposed that there will be a re-commitment to the programme of regular meetings undertaken in the 1st and 2nd year of partnership. Meetings have already been programmed in with the MO and the Strategic Procurement Specialist. Meetings with the Interim Asset Manager will continue to be diarised on a regular basis.

The intention of these meetings is to enable the Business Services Manager to assess the service and to discuss how improvements can be achieved and how the shared legal service can continue to meet

the needs of its clients. Similar meetings are to be arranged with clients at MDC.

- 4.4.2 Following discussion with the team, it was decided to discontinue the monthly “surgery” at West Somerset House on the basis that client officers were able to approach and meet with Shape Legal staff at any time.

4.5 ***Lessons from preceding years***

The following lessons stand out –

- Early engagement with the shared service is vital in order to provide a cost-efficient satisfactory outcome for the client.
- Increasingly more than ever pragmatic solutions are required in addition to providing the client with advice about the legal position.
- Good communication and progress reports at all stages of a matter is essential to achieving the desired outcome for the client.

4.6 ***Marketing and Growth Plan***

The marketing plan continues to support the goal of establishing the brand of the Shared Legal Service both internally and externally. The intention is to develop new income opportunities whilst maintaining a high level of service for existing clients. Potential external clients are currently being identified and opportunities explored. An external specialist has been commissioned to assist in the production of a growth and marketing plan and to consider the model of delivery.

5. CMS and IT UPDATE

- 5.1 The CIVICA CMS system went live on the 22 August 2016. We are continuing to develop the database with workflows together with templates/precedents being fed into the workflows.
- 5.2 All Law & Governance workstations in the TDBC/WSC satellite offices have now been fitted with an Ethernet cable to enable direct access to the internet. This has resolved the persistent outages experienced by users when attempting to log on remotely to MDC systems via unstable Wi Fi in these locations.
- 5.3 All our current work groups and work types (carried over from SharePoint) have now been re-created in CIVICA CMS.
- 5.4 Access to reliable printing services when working from Deane House continues to be a source of frustration.

6. Partner £ contributions

6.1 The Partner costs for 2018-19 were agreed as follows.

a) TDBC

TDBC contract cost £303,153

Invoicing 12 x £25,262.75

b) WSC

WSC contract cost £62,945

Invoicing 12 x £5,245.42

6.2 The annual inflationary increase to Partner contributions is calculated as follows:

- The salaries element to be inflated by the annual LGA Pay award (2%)
- All other costs to be inflated by the difference in February RPI

6.3 The Partner contributions are based upon volume of work and a review of the evidence base for Year 4 suggests that volume of casework continues at the same rate as in Year 3. Subject to review and agreement by the partners, it is proposed that the subscription rate for Year 5 remains as per Year 4 subject to the inflationary increases detailed in 6.2 above.

7. STAFF MATTERS

7.1.1 Case Management System

The Civica Legal Case Management System has been in operation since August 2016. During March 2019, the teams' new System Administrator and an existing Super User have received a refresher one-day training session on System Admin. End users have also had a one-day refresher training session.

- 7.1.2 All new case referrals are input and progressed through the case management system. Pre-existing casework at the Go-Live date continues to be progressed through SharePoint.

7.2 Staff /Structure Update

- 7.2.1 The current structure is shown in the chart below.

- 7.2.2 The post of Principal and Property Lawyer, despite several efforts to recruit, remains vacant. The Group Manager and the Business Services Manager are currently implementing a re-designation of this post.

- 7.2.3 To provide interim cover in respect of property work and to provide a resource in connection with asset-based projects, a locum has been engaged.

- 7.2.4 When the legal shared service was first created a view was taken that the service would require the administrative support of more than 1 FTE. The possibility of recruiting a Modern Apprentice was explored to support the Senior Legal Administrator however attempts to recruit to this role have been unsuccessful. With the introduction of the CIVICA Case Management System the pressure on legal administration has increased exponentially and it has become apparent that an experienced administrator would be more beneficial to the team.

The role of the Senior Legal Administrator currently far exceeds the capacity of one FTE. In addition, the time sensitive nature of some of the work puts excessive pressure on the team. On top of this work continues to fully embed the CIVICA Case Management System.

An integral part of the 5-year business plan is to grow the service to generate additional income streams via new projects and new clients. The growth and marketing plan will identify new clients and potential new income streams for example Parish Councils. All this will impact of the level of administrative support that will be required over the next 6 to 12 months the Business services Manager will be monitoring demand and capacity to establish where additional resources may be needed to deliver the best possible service.

7.3 **Staff Training**

MDC has paid £792 for training for the legal staff for the period 2018/19. This includes CPD training.

The shared service subscribes to an annual season ticket for training providers CLT (£650) and MBL Seminars (£100) this enables training courses to be booked through these organisations at reduced cost.

The shared service also has an annual subscription of £470 to the LGTP, training program provided by VWV Solicitors (Veal Wasbrough Vizards LLP). Training workshops are offered 4 times a year and membership of this programme enables to 3 delegates to attend the entire training programme without further charge.

In addition, a subscription is maintained for all the lawyers to one of the leading on-line providers of legal reference material (statutory provisions, case precedent and good practice guidance etc.).

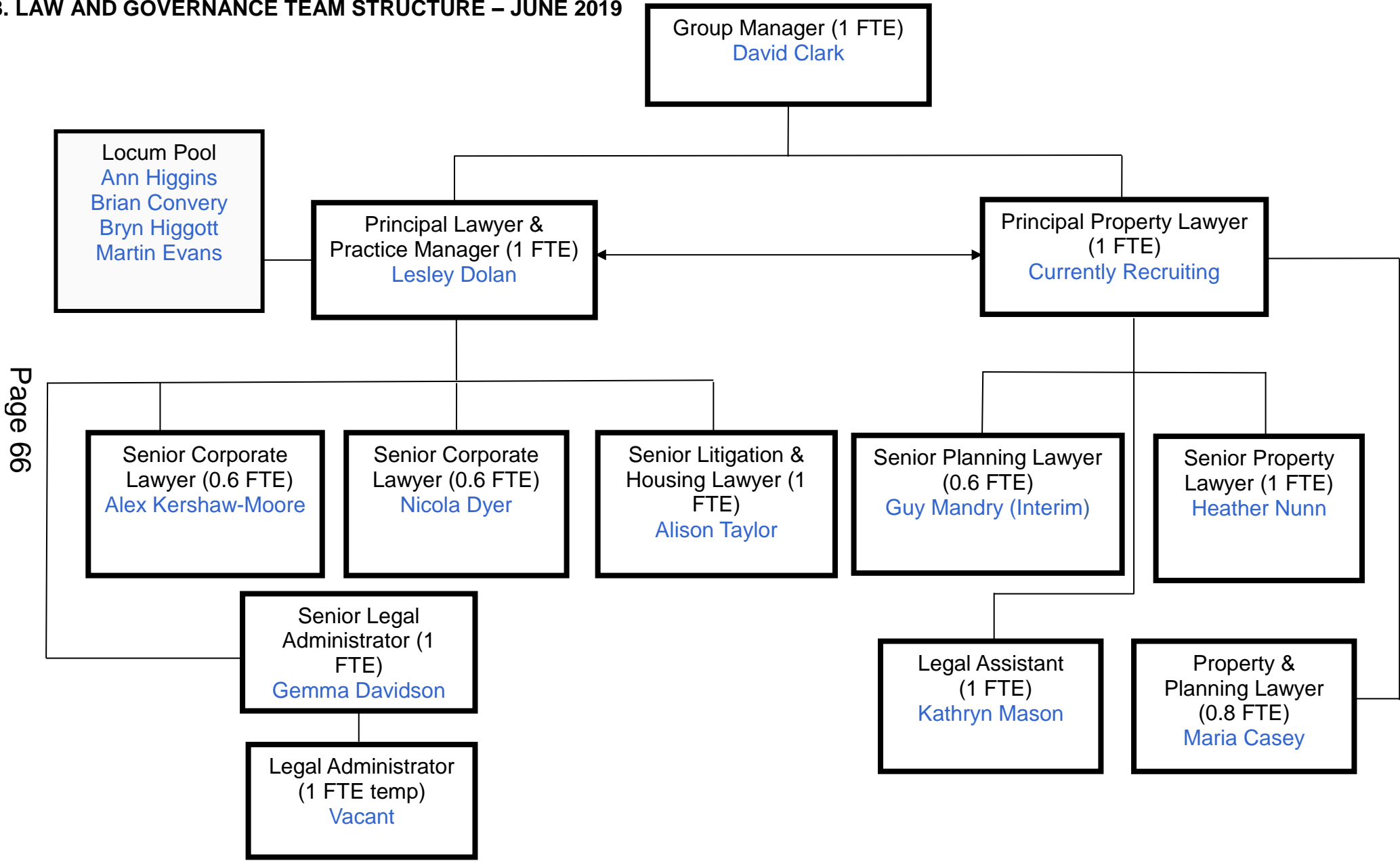
7.4 **Operations Forum**

The Law and Governance team meet once a month. These monthly meetings are proving very beneficial to the continued development of the shared service.

7.5 **Locums**

In addition to the locum referred to above in paragraphs 7.2.3, the service continues to engage three locum lawyers; two dealing exclusively with Section 106 Agreements and related planning matters and the third dealing with property and land matters. Following the departure of the Senior Planning Lawyer (P/T) in January 2019 a part time locum Planning lawyer (0.6 FTE) has been engaged until the permanent post can be filled.

8. LAW AND GOVERNANCE TEAM STRUCTURE – JUNE 2019



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9. FUTURE DEVELOPMENT

9.1 ***Staffing Levels***

It is proposed to review staffing levels following completion of the of the recruitment program and if needs be look at a further restructure at that time.

9.2 ***Second Client satisfaction survey***

This will be carried out in Year 5. It will ask clients how Law & Governance has worked for them and invite suggestions for what enhancements could be introduced.

9.3 ***Performance indicators & Service Standards***

The Key Performance Indicators are currently being reviewed and service standards developed.

9.4 ***Competitive advantage***

Information provided by the management accountant details the true hourly rate of the Business Services Manager, the Senior Lawyer and the Lawyer positions.

The Civil Justice Council publishes a Guideline for Hourly Rates (the "GHR") which is a useful reference point budgeting and managing costs. Originally intended to assist judges in their assessment of costs as a result of the Woolf reforms and the implementation of the Civil Procedure Rules, they have since become widely-accepted as a guideline for the recoverable hourly rate for different grades of fee earner in the different regions of England and Wales.

The existing GHR has been in place since 2010 and amendments were made in October 2014, these continue to apply. Under the GHR, National Grade 2 and 3 have the same rates and these apply to the Shared Legal Service. These rates range from £111 per hour for trainees up to £201 per hour for very senior/experienced solicitor.

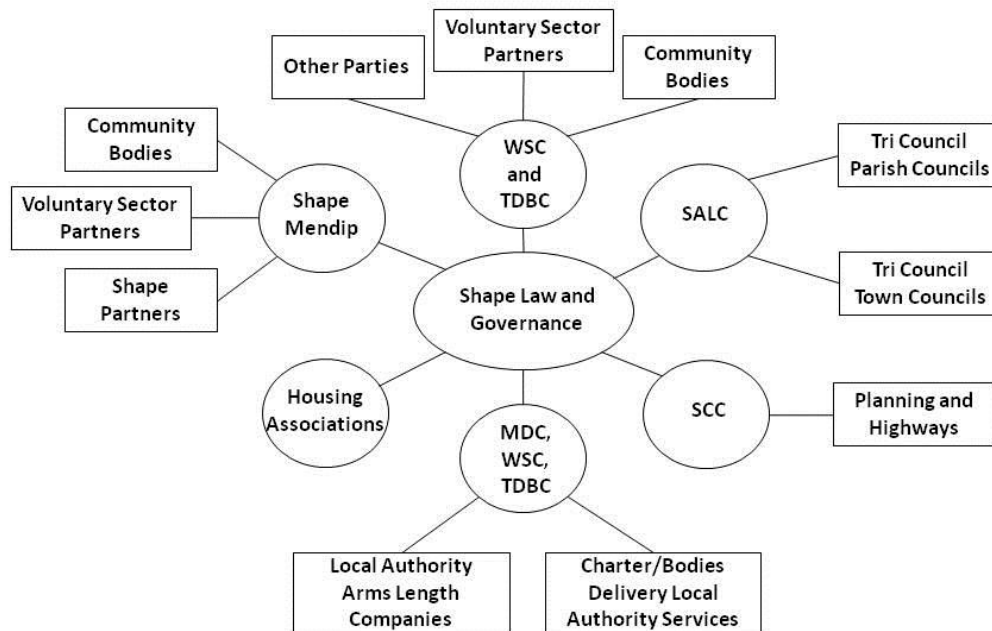
The Shared Legal Service is currently operating within these guidelines. A comparison of rates has been made with the market.

Full details of rates are reproduced at **Appendix 2**.

9.5 ***Growth plan and income generation opportunities***

The service needs to explore income generation opportunities where it can operate without moving into private sector market. The spider diagram below suggests different options for consideration.

INCOME GENERATION OPPORTUNITIES
WITHOUT MOVING INTO PRIVATE SECTOR MARKET



Local authorities have the opportunity to recover costs from third parties or generate income by doing third party work. Under the Local Authorities (Goods and Services) Act 1970, local authorities have powers to act for others. This Act enables local authorities to:

- supply goods or materials;
- provide any administrative, professional or technical service;
- use vehicles, plant or apparatus and appropriate staff; and
- undertake works of maintenance

for other local authorities and a list of other organisations designated as being 'public bodies' by further Acts of Parliament and Statutory Instruments, for example, educational establishments, housing associations, "community associations" and health bodies.

Section 1(3) goes on to state that "*any agreement... may contain such terms as to payment or otherwise as the parties consider appropriate*". This has been interpreted by the courts in the *British Educational Supplier v Yorkshire Purchasing Organisation case (1997)* to mean that a profit can be generated from those activities. Clearly the public body commissioning the services may need to procure, however this may be less of a concern for the providing local authority. In any event, the legal service is not a priority service and would not require full OJEU procurement - so rates are market driven by what a willing buyer is prepared to pay.

There are many more powers, particularly following the introduction of the Local Government Act 2003, which created another landmark with the introduction of new broader charging and trading powers in sections 93/95. These powers are additional - enabling authorities to charge whenever they have a power to provide a service and are not under a duty. Likewise, where there is a desire to trade for a commercial purpose in that function. If there are existing powers to charge and trade elsewhere then the 2003 Act would signpost to those other powers to charge and trade respectively.

9.6 A marketing plan will be developed in parallel with the growth plan.

See Paragraph 4.6

10. RECOMMENDATIONS

- Endorse progress made to date.
- Endorse the development of growth and marketing plans that includes promotional activities, identifying new clients and exploring opportunities for income generation.
- Review and recast the partnership so that it continues to support the strategic direction of the partner authorities moving forward.

Appendix 1:1 Chargeable time per Fee Earner and Client for Year 4

	Ann Higgins	Alex Kershaw-Moore	Alison Taylor	Brian Convery	Bryn Higgott	Caroline Doyle-Wiaczek ¹	Carol Taylor ²	Chris Simmonds ³	Ed Hardy ⁴	Guy Mandry ⁵	Heather Nunn	Kathryn Mason	Lesley Dolan	Maria Casey	Martin Evans	Nicola Dyer ⁶	Nick Hill ⁷	TOTAL
MDC	259:12	590:18	34:06	152:48	53:36	538:36	20:24	51:48	27:36	10:48	106:48	11:54	200:00	79:48	389:30	56:36	104:48	2688:36
TDBC	143:06	166:06	572:42	175:36	1665:30	130:00	3:42	129:24	158:12	96:12	557:24	240:06	151:00	631:36	938:30	45:00	137:06	5941:12
WSC	27:36	64:36	59:30	128:30	284:36	26:48		3:00	6:12	50:24	160:42	9:06		73:06	78:00	0:48	5:30	978:24
SCC				992:36							0:30	0:12			0:30		0:12	994:00
SS		25:42				5:06										8:12		39:00
PWT		10:18				344:48										0:48		355:54
OTHER		3:30	9:42			15:30						0:12	60:00					88:54
TOTAL	429:54	860:30	676:00	1449:30	2003:42	1060:48	24:06	184:12	192:00	157:24	825:24	261:30	411:00	784:30	1406:30	111:24	247:36	11086:00

¹ Between the dates: 1/10/18 - 31/3/19

² Between the dates: 1/4/18 – 17/12/18

³ Between the dates: 4/2/19 - 31/3/19

⁴ Between the dates: 3/12/18 - 3/2/19

⁵ Between the dates: 7/1/19 - 31/3/19

⁶ Between the dates: 1/4/18 – 2/4/18 and 7/1/19 – 31/3/19

⁷ Between the dates: 1/3/18 – 8/1/2019

Appendix 1.2 Table of Fee Earner time apportioned per Work Type

	Ann Higgins	Alex Kershaw-Moore	Alison Taylor	Brian Convery	Bryn Higgott	Caroline Doyle-Wiaczek ⁸	Carol Taylor ⁹	Chris Simmonds ¹⁰	Ed Hardy ¹¹	Guy Mandry ¹²	Heather Nunn	Kathryn Mason	Lesley Dolan	Maria Casey	Martin Evans	Nicola Dyer ¹³	Nick Hill ¹⁴	TOTAL
Commercial, Contracts and Procurement		261:24	0:24		368:00	440:18					1:06		100:00			31:12		1202:24
Corporate Policy Advice		0:18			0:06								35:00					35:24
Debt Recovery			20:06									0:24				13:36		34:06
Enforcement/ Prosecutions		37:36								75:18			81:00		22:30	3:24	9:12	229:00
Governance		121:48	18:18	23:42	9:12	518:12	10:06				18:24	11:00	50:00	7:30		10:30	7:00	805:42
Highways		1:30																1:30
Housing		26:30	141:06			0:12						0:06				0:06		168:00
Information and Complaints		1:24	9:42		2:06	48:06							60:00		60:30	5:54	3:06	190:48
Licensing		34:54										0:36	40:00			8:00		83:30
Litigation		272:48	462:24			53:18						3:00	45:00	34:18	22:30	33:12	6:48	933:18
Planning	429:54	42:36	3:00	1425:48		0:12	0:54			82:06		2:12		190:06	649:48	4:42	219:36	3050:54

⁸ Between the dates: 1/10/18 - 31/3/19

⁹ Between the dates: 1/4/18 – 17/12/18

¹⁰ Between the dates: 4/2/19 - 31/3/19

¹¹ Between the dates: 3/12/18 - 3/2/19

¹² Between the dates: 7/1/19 - 31/3/19

¹³ Between the dates: 1/4/18 – 2/4/18 and 7/1/19 – 31/3/19

¹⁴ Between the dates: 1/3/18 – 8/1/2019

TOTAL	429:54	860:30	676:00	1449:30	2003:42	1060:48	24:06	184:12	192:00	157:24	825:24	261:30	411:00	784:30	1406:30	111:24	247:36	11086:00
Training and Information						0:30	9:24				0:12			2:48		1:54		14:48

Appendix 2 - Shared Legal Service Hourly Rates

Support Staff Recharges calculated on 2019/20 Figures

2016/2017 figures shown in brackets

Post Title	Hourly Rate £
Business Services Manager	36.09 (35.69)
Senior Lawyer	32.81 (31.86)
Lawyer	31.95 (30.68)
Legal Assistant	21.17(18.98)

Shared Legal Services' External Charging Rates with effect from 1 April 2019

	1 April 2016 (£)	1 April 2017 (£) (with CPI inflationary increase applied)	1 April 2019 (with CPI inflationary increase applied)
Hourly rate for Individuals	120	137	140
Hourly rate for "commercial work"	180	190	194

Comparative Hourly Rates

Grade of post	Bevan Brittan	Ashfords	Thrings	Special Hourly Rate for MDC (Bevan Brittan & Ashfords)
Partner	295	325	285	210
Senior Associate	-	-	-	-
Associate	185	200	215	175
Senior Solicitor	-	-	-	-
Solicitor	175	175	200	160
Legal Executive & Senior Paralegal	-	-	-	-
Trainee Solicitor	-	120	-	110
Paralegal	-	75	-	75
Legal Assistant	-	-	-	-
Trainee Solicitor	-	-	-	-

Somerset West and Taunton

Scrutiny Committee – 17th July 2019

Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities

This matter is the responsibility of Executive Councillor for Corporate Resources

Report Author: Christine Fraser, Head of Performance and Governance

1 Executive Summary / Purpose of the Report

To present the Committee with the Ministry of Housing, Communities and Local Government statutory guidance on Overview and Scrutiny in Local and Combined Authorities.

2 Recommendations

That the Committee:

1. Work with the Executive to draft an Executive-Scrutiny protocol, which is then formally approved by the Scrutiny Committee and Executive and added to the Council's Constitution.
2. Resolve that the Chair and Vice Chair meet with the Executive to discuss the Scrutiny Committee work programme
3. Develop a work programme for the remainder of the Municipal Year which can be amended if any new or emerging issues arise

3 Risk Assessment

- 3.1 Failure to put a protocol in place could result in the Council failing to adhere to Statutory Guidance.

4 Background and Full details of the Report

- 4.1 The Ministry of Housing, Communities and Local Government have produced this statutory guidance on Overview and Scrutiny in Local and Combined Authorities.
- 4.2 The report is attached for the Scrutiny Committee to consider as well as the recommendations set out in section 2 of this report.

5 Links to Corporate Aims / Priorities

- 5.1 Having an effective and efficient Scrutiny Committee is a fundamental element of being a 'well managed' council and having appropriate democratic arrangements

6 Finance / Resource Implications

6.1 None arising from this report

7 Legal Implications

7.1 This is Statutory Guidance published by the Ministry of Housing, Communities and Local Government and it needs to be incorporated into the Council's processes and procedures

8 Environmental Impact Implications (if any)

8.1 None arising from this report

9 Safeguarding and/or Community Safety Implications (if any)

9.1 None arising from this report

10 Equality and Diversity Implications (if any)

10.1 None arising from this report

11 Social Value Implications (if any)

11.1 None arising from this report

12 Partnership Implications (if any)

12.1 None arising from this report

13 Health and Wellbeing Implications (if any)

13.1 None arising from this report

14 Asset Management Implications (if any)

14.1 None arising from this report

15 Data Protection Implications (if any)

15.1 None arising from this report

16 Consultation Implications (if any)

16.1 None arising from this report

Democratic Path:

- **Scrutiny Committee – Yes**
- **Cabinet/Executive – No (Yes once the Executive-Scrutiny Committee protocol has been drafted)**

- **Full Council – No (Yes once the protocol has been drafted so that it can be incorporated into the Council’s Constitution)**

Reporting Frequency: Annually

List of Appendices (delete if not applicable)

Appendix A	Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities
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Ministry of Housing,
Communities &
Local Government

Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities



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If you have any enquiries regarding this document/publication, complete the form at <http://forms.communities.gov.uk/> or write to us at:

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For all our latest news and updates follow us on Twitter: <https://twitter.com/mhclg>

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Ministerial Foreword

The role that overview and scrutiny can play in holding an authority's decision-makers to account makes it fundamentally important to the successful functioning of local democracy. Effective scrutiny helps secure the efficient delivery of public services and drives improvements within the authority itself. Conversely, poor scrutiny can be indicative of wider governance, leadership and service failure.

It is vital that councils and combined authorities know the purpose of scrutiny, what effective scrutiny looks like, how to conduct it and the benefits it can bring. This guidance aims to increase understanding in all four areas.

In writing this guidance, my department has taken close note of the House of Commons Select Committee report of December 2017, as well as the written and oral evidence supplied to that Committee. We have also consulted individuals and organisations with practical involvement in conducting, researching and supporting scrutiny.

It is clear from speaking to these practitioners that local and combined authorities with effective overview and scrutiny arrangements in place share certain key traits, the most important being a strong organisational culture. Authorities who welcome challenge and recognise the value scrutiny can bring reap the benefits. But this depends on strong commitment from the top - from senior members as well as senior officials.

Crucially, this guidance recognises that authorities have democratic mandates and are ultimately accountable to their electorates, and that authorities themselves are best-placed to know which scrutiny arrangements are most appropriate for their own individual circumstances.

I would, however, strongly urge all councils to cast a critical eye over their existing arrangements and, above all, ensure they embed a culture that allows overview and scrutiny to flourish.



A handwritten signature in blue ink, appearing to read 'Rishi Sunak'.

Rishi Sunak MP
Minister for Local Government

About this Guidance

Who the guidance is for

This document is aimed at local authorities and combined authorities in England to help them carry out their overview and scrutiny functions effectively. In particular, it provides advice for senior leaders, members of overview and scrutiny committees, and support officers.

Aim of the guidance

This guidance seeks to ensure local authorities and combined authorities are aware of the purpose of overview and scrutiny, what effective scrutiny looks like, how to conduct it effectively and the benefits it can bring.

As such, it includes a number of policies and practices authorities should adopt or should consider adopting when deciding how to carry out their overview and scrutiny functions.

The guidance recognises that authorities approach scrutiny in different ways and have different processes and procedures in place, and that what might work well for one authority might not work well in another.

The hypothetical scenarios contained in the annexes to this guidance have been included for illustrative purposes, and are intended to provoke thought and discussion rather than serve as a 'best' way to approach the relevant issues.

While the guidance sets out some of the key legal requirements, it does not seek to replicate legislation.

Status of the guidance

This is statutory guidance from the Ministry of Housing, Communities and Local Government. Local authorities and combined authorities must have regard to it when exercising their functions. The phrase 'must have regard', when used in this context, does not mean that the sections of statutory guidance have to be followed in every detail, but that they should be followed unless there is a good reason not to in a particular case.

Not every authority is required to appoint a scrutiny committee. This guidance applies to those authorities who have such a committee in place, whether they are required to or not.

This guidance has been issued under section 9Q of the Local Government Act 2000 and under paragraph 2(9) of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009, which requires authorities to have regard to this guidance. In addition, authorities may have regard to other material they might choose to consider, including that issued by the Centre for Public Scrutiny, when exercising their overview and scrutiny functions.

Terminology

Unless 'overview' is specifically mentioned, the term 'scrutiny' refers to both overview and scrutiny.¹

Where the term 'authority' is used, it refers to both local authorities and combined authorities.

Where the term 'scrutiny committee' is used, it refers to an overview and scrutiny committee and any of its sub-committees. As the legislation refers throughout to powers conferred on scrutiny committees, that is the wording used in this guidance. However, the guidance should be seen as applying equally to work undertaken in informal task and finish groups, commissioned by formal committees.

Where the term 'executive' is used, it refers to executive members.

For combined authorities, references to the 'executive' or 'cabinet' should be interpreted as relating to the mayor (where applicable) and all the authority members.

For authorities operating committee rather than executive arrangements, references to the executive or Cabinet should be interpreted as relating to councillors in leadership positions.

Expiry or review date

This guidance will be kept under review and updated as necessary.

¹ A distinction is often drawn between 'overview' which focuses on the development of policy, and 'scrutiny' which looks at decisions that have been made or are about to be made to ensure they are fit for purpose.

1. Introduction and Context

1. Overview and scrutiny committees were introduced in 2000 as part of new executive governance arrangements to ensure that members of an authority who were not part of the executive could hold the executive to account for the decisions and actions that affect their communities.
2. Overview and scrutiny committees have statutory powers² to scrutinise decisions the executive is planning to take, those it plans to implement, and those that have already been taken/implemented. Recommendations following scrutiny enable improvements to be made to policies and how they are implemented. Overview and scrutiny committees can also play a valuable role in developing policy.

Effective overview and scrutiny should:

- Provide constructive 'critical friend' challenge;
- Amplify the voices and concerns of the public;
- Be led by independent people who take responsibility for their role; and
- Drive improvement in public services.

3. The requirement for local authorities in England to establish overview and scrutiny committees is set out in sections 9F to 9FI of the Local Government Act 2000 as amended by the Localism Act 2011.
4. The Localism Act 2011 amended the Local Government Act 2000 to allow councils to revert to a non-executive form of governance - the 'committee system'. Councils who adopt the committee system are not required to have overview and scrutiny but may do so if they wish. The legislation has been strengthened and updated since 2000, most recently to reflect new governance arrangements with combined authorities. Requirements for combined authorities are set out in Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009.
5. Current overview and scrutiny legislation recognises that authorities are democratically-elected bodies who are best-placed to determine which overview and scrutiny arrangements best suit their own individual needs, and so gives them a great degree of flexibility to decide which arrangements to adopt.
6. In producing this guidance, the Government fully recognises both authorities' democratic mandate and that the nature of local government has changed in recent years, with, for example, the creation of combined authorities, and councils increasingly delivering key services in partnership with other organisations or outsourcing them entirely.

² Section 9F of the Local Government Act 2000; paragraph 1 of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009.

2. Culture

7. The prevailing organisational culture, behaviours and attitudes of an authority will largely determine whether its scrutiny function succeeds or fails.
8. While everyone in an authority can play a role in creating an environment conducive to effective scrutiny, it is important that this is led and owned by members, given their role in setting and maintaining the culture of an authority.
9. Creating a strong organisational culture supports scrutiny work that can add real value by, for example, improving policy-making and the efficient delivery of public services. In contrast, low levels of support for and engagement with the scrutiny function often lead to poor quality and ill-focused work that serves to reinforce the perception that it is of little worth or relevance.
10. Members and senior officers should note that the performance of the scrutiny function is not just of interest to the authority itself. Its effectiveness, or lack thereof, is often considered by external bodies such as regulators and inspectors, and highlighted in public reports, including best value inspection reports. Failures in scrutiny can therefore help to create a negative public image of the work of an authority as a whole.

How to establish a strong organisational culture

11. Authorities can establish a strong organisational culture by:

- a) **Recognising scrutiny's legal and democratic legitimacy** – all members and officers should recognise and appreciate the importance and legitimacy the scrutiny function is afforded by the law. It was created to act as a check and balance on the executive and is a statutory requirement for all authorities operating executive arrangements and for combined authorities.

Councillors have a unique legitimacy derived from their being democratically elected. The insights that they can bring by having this close connection to local people are part of what gives scrutiny its value.

- b) **Identifying a clear role and focus** – authorities should take steps to ensure scrutiny has a clear role and focus within the organisation, i.e. a niche within which it can clearly demonstrate it adds value. Therefore, prioritisation is necessary to ensure the scrutiny function concentrates on delivering work that is of genuine value and relevance to the work of the wider authority – this is one of the most challenging parts of scrutiny, and a critical element to get right if it is to be recognised as a strategic function of the authority (see chapter 6).

Authorities should ensure a clear division of responsibilities between the scrutiny function and the audit function. While it is appropriate for scrutiny to pay due regard to the authority's financial position, this will need to happen in the context of the formal audit role. The authority's section 151 officer should advise scrutiny on how to manage this dynamic.

While scrutiny has no role in the investigation or oversight of the authority's whistleblowing arrangements, the findings of independent whistleblowing investigations might be of interest to scrutiny committees as they consider their wider implications. Members should always follow the authority's constitution and associated Monitoring Officer directions on the matter. Further guidance on whistleblowing can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/415175/bis-15-200-whistleblowing-guidance-for-employers-and-code-of-practice.pdf.

- c) **Ensuring early and regular engagement between the executive and scrutiny** – authorities should ensure early and regular discussion takes place between scrutiny and the executive, especially regarding the latter's future work programme. Authorities should, though, be mindful of their distinct roles:

In particular:

- The executive should not try to exercise control over the work of the scrutiny committee. This could be direct, e.g. by purporting to 'order' scrutiny to look at, or not look at, certain issues, or indirect, e.g. through the use of the whip or as a tool of political patronage, and the committee itself should remember its statutory purpose when carrying out its work. All members and officers should consider the role the scrutiny committee plays to be that of a 'critical friend' not a de facto 'opposition'. Scrutiny chairs have a particular role to play in establishing the profile and nature of their committee (see chapter 4); and
- The chair of the scrutiny committee should determine the nature and extent of an executive member's participation in a scrutiny committee meeting, and in any informal scrutiny task group meeting.

- d) **Managing disagreement** – effective scrutiny involves looking at issues that can be politically contentious. It is therefore inevitable that, at times, an executive will disagree with the findings or recommendations of a scrutiny committee.

It is the job of both the executive and scrutiny to work together to reduce the risk of this happening, and authorities should take steps to predict, identify and act on disagreement.

One way in which this can be done is via an 'executive-scrutiny protocol' (see annex 1) which can help define the relationship between the two and mitigate any differences of opinion before they manifest themselves in unhelpful and unproductive ways. The benefit of this approach is that it provides a framework for disagreement and debate, and a way to manage it when it happens. Often,

the value of such a protocol lies in the dialogue that underpins its preparation. It is important that these protocols are reviewed on a regular basis.

Scrutiny committees do have the power to 'call in' decisions, i.e. ask the executive to reconsider them before they are implemented, but should not view it as a substitute for early involvement in the decision-making process or as a party-political tool.

- e) **Providing the necessary support** – while the level of resource allocated to scrutiny is for each authority to decide for itself, when determining resources an authority should consider the purpose of scrutiny as set out in legislation and the specific role and remit of the authority's own scrutiny committee(s), and the scrutiny function as a whole.

Support should also be given by members and senior officers to scrutiny committees and their support staff to access information held by the authority and facilitate discussions with representatives of external bodies (see chapter 5).

- f) **Ensuring impartial advice from officers** – authorities, particularly senior officers, should ensure all officers are free to provide impartial advice to scrutiny committees. This is fundamental to effective scrutiny. Of particular importance is the role played by 'statutory officers' – the monitoring officer, the section 151 officer and the head of paid service, and where relevant the statutory scrutiny officer. These individuals have a particular role in ensuring that timely, relevant and high-quality advice is provided to scrutiny.
- g) **Communicating scrutiny's role and purpose to the wider authority** – the scrutiny function can often lack support and recognition within an authority because there is a lack of awareness among both members and officers about the specific role it plays, which individuals are involved and its relevance to the authority's wider work. Authorities should, therefore, take steps to ensure all members and officers are made aware of the role the scrutiny committee plays in the organisation, its value and the outcomes it can deliver, the powers it has, its membership and, if appropriate, the identity of those providing officer support.
- h) **Maintaining the interest of full Council in the work of the scrutiny committee** – part of communicating scrutiny's role and purpose to the wider authority should happen through the formal, public role of full Council – particularly given that scrutiny will undertake valuable work to highlight challenging issues that an authority will be facing and subjects that will be a focus of full Council's work. Authorities should therefore take steps to ensure full Council is informed of the work the scrutiny committee is doing.

One way in which this can be done is by reports and recommendations being submitted to full Council rather than solely to the executive. Scrutiny should decide when it would be appropriate to submit reports for wider debate in this way, taking into account the relevance of reports to full Council business, as well as full Council's capacity to consider and respond in a timely manner. Such

reports would supplement the annual report to full Council on scrutiny's activities and raise awareness of ongoing work.

In order to maintain awareness of scrutiny at the Combined Authority and provoke dialogue and discussion of its impact, the business of scrutiny should be reported to the Combined Authority board or to the chairs of the relevant scrutiny committees of constituent and non-constituent authorities, or both. At those chairs' discretion, particular Combined Authority scrutiny outcomes, and what they might mean for each individual area, could be either discussed by scrutiny in committee or referred to full Council of the constituent authorities.

- i) **Communicating scrutiny's role to the public** – authorities should ensure scrutiny has a profile in the wider community. Consideration should be given to how and when to engage the authority's communications officers, and any other relevant channels, to understand how to get that message across. This will usually require engagement early on in the work programming process (see chapter 6).
- j) **Ensuring scrutiny members are supported in having an independent mindset** – formal committee meetings provide a vital opportunity for scrutiny members to question the executive and officers.

Inevitably, some committee members will come from the same political party as a member they are scrutinising and might well have a long-standing personal, or familial, relationship with them (see paragraph 25).

Scrutiny members should bear in mind, however, that adopting an independent mind-set is fundamental to carrying out their work effectively. In practice, this is likely to require scrutiny chairs working proactively to identify any potentially contentious issues and plan how to manage them.

Directly-elected mayoral systems

12. A strong organisational culture that supports scrutiny work is particularly important in authorities with a directly-elected mayor to ensure there are the checks and balances to maintain a robust democratic system. Mayoral systems offer the opportunity for greater public accountability and stronger governance, but there have also been incidents that highlight the importance of creating and maintaining a culture that puts scrutiny at the heart of its operations.
13. Authorities with a directly-elected mayor should ensure that scrutiny committees are well-resourced, are able to recruit high-calibre members and that their scrutiny functions pay particular attention to issues surrounding:
 - rights of access to documents by the press, public and councillors;
 - transparent and fully recorded decision-making processes, especially avoiding decisions by 'unofficial' committees or working groups;
 - delegated decisions by the Mayor;
 - whistleblowing protections for both staff and councillors; and
 - powers of Full Council, where applicable, to question and review.

14. Authorities with a directly-elected mayor should note that mayors are required by law to attend overview and scrutiny committee sessions when asked to do so (see paragraph 44).

3. Resourcing

15. The resource an authority allocates to the scrutiny function plays a pivotal role in determining how successful that function is and therefore the value it can add to the work of the authority.
16. Ultimately it is up to each authority to decide on the resource it provides, but every authority should recognise that creating and sustaining an effective scrutiny function requires them to allocate resources to it.
17. Authorities should also recognise that support for scrutiny committees, task groups and other activities is not solely about budgets and provision of officer time, although these are clearly extremely important elements. Effective support is also about the ways in which the wider authority engages with those who carry out the scrutiny function (both members and officers).

When deciding on the level of resource to allocate to the scrutiny function, the factors an authority should consider include:

- Scrutiny's legal powers and responsibilities;
- The particular role and remit scrutiny will play in the authority;
- The training requirements of scrutiny members and support officers, particularly the support needed to ask effective questions of the executive and other key partners, and make effective recommendations;
- The need for ad hoc external support where expertise does not exist in the council;
- Effectively-resourced scrutiny has been shown to add value to the work of authorities, improving their ability to meet the needs of local people; and
- Effectively-resourced scrutiny can help policy formulation and so minimise the need for call-in of executive decisions.

Statutory scrutiny officers

18. Combined authorities, upper and single tier authorities are required to designate a statutory scrutiny officer,³ someone whose role is to:
 - promote the role of the authority's scrutiny committee;
 - provide support to the scrutiny committee and its members; and
 - provide support and guidance to members and officers relating to the functions of the scrutiny committee.

³ Section 9FB of the Local Government Act 2000; article 9 of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017

19. Authorities not required by law to appoint such an officer should consider whether doing so would be appropriate for their specific local needs.

Officer resource models

20. Authorities are free to decide for themselves which wider officer support model best suits their individual circumstances, though generally they adopt one or a mix of the following:

- Committee – officers are drawn from specific policy or service areas;
- Integrated – officers are drawn from the corporate centre and also service the executive; and
- Specialist – officers are dedicated to scrutiny.

21. Each model has its merits – the committee model provides service-specific expertise; the integrated model facilitates closer and earlier scrutiny involvement in policy formation and alignment of corporate work programmes; and the specialist model is structurally independent from those areas it scrutinises.

22. Authorities should ensure that, whatever model they employ, officers tasked with providing scrutiny support are able to provide impartial advice. This might require consideration of the need to build safeguards into the way that support is provided. The nature of these safeguards will differ according to the specific role scrutiny plays in the organisation.

4. Selecting Committee Members

23. Selecting the right members to serve on scrutiny committees is essential if those committees are to function effectively. Where a committee is made up of members who have the necessary skills and commitment, it is far more likely to be taken seriously by the wider authority.
24. While there are proportionality requirements that must be met,⁴ the selection of the chair and other committee members is for each authority to decide for itself. Guidance for combined authorities on this issue has been produced by the Centre for Public Scrutiny⁵.

Members invariably have different skill-sets. What an authority must consider when forming a committee is that, as a group, it possesses the requisite expertise, commitment and ability to act impartially to fulfil its functions.

25. Authorities are reminded that members of the executive cannot be members of a scrutiny committee.⁶ Authorities should take care to ensure that, as a minimum, members holding less formal executive positions, e.g. as Cabinet assistants, do not sit on scrutinising committees looking at portfolios to which those roles relate. Authorities should articulate in their constitutions how conflicts of interest, including familial links (see also paragraph 31), between executive and scrutiny responsibilities should be managed, including where members stand down from the executive and move to a scrutiny role, and vice-versa.
26. Members or substitute members of a combined authority must not be members of its overview and scrutiny committee.⁷ This includes the Mayor in Mayoral Combined Authorities. It is advised that Deputy Mayors for Policing and Crime are also not members of the combined authority's overview and scrutiny committee.

Selecting individual committee members

27. When selecting individual members to serve on scrutiny committees, an authority should consider a member's experience, expertise, interests, ability to act impartially, ability to work as part of a group, and capacity to serve.

⁴ See, for example, regulation 11 of the Local Authorities (Committee System) (England) Regulations 2012 (S.I. 2012/1020) and article 4 of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017 (S.I. 2017/68).

⁵ See pages 15-18 of 'Overview and scrutiny in combined authorities: a plain English guide': <https://www.cfps.org.uk/wp-content/uploads/Overview-and-scrutiny-in-combined-authorities-a-plain-english-guide.pdf>

⁶ Section 9FA(3) of the Local Government Act 2000.

⁷ 2(3) of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009

28. Authorities should not take into account a member's perceived level of support for or opposition to a particular political party (notwithstanding the wider legal requirement for proportionality referred to in paragraph 24).

Selecting a chair

29. The Chair plays a leadership role on a scrutiny committee as they are largely responsible for establishing its profile, influence and ways of working.

30. The attributes authorities should and should not take into account when selecting individual committee members (see paragraphs 27 and 28) also apply to the selection of the Chair, but the Chair should also possess the ability to lead and build a sense of teamwork and consensus among committee members.

Chairs should pay special attention to the need to guard the committee's independence. Importantly, however, they should take care to avoid the committee being, and being viewed as, a de facto opposition to the executive.

31. Given their pre-eminent role on the scrutiny committee, it is strongly recommended that the Chair not preside over scrutiny of their relatives⁸. Combined authorities should note the legal requirements that apply to them where the Chair is an independent person⁹.

32. The method for selecting a Chair is for each authority to decide for itself, however every authority should consider taking a vote by secret ballot. Combined Authorities should be aware of the legal requirements regarding the party affiliation of their scrutiny committee Chair¹⁰.

Training for committee members

33. Authorities should ensure committee members are offered induction when they take up their role and ongoing training so they can carry out their responsibilities effectively. Authorities should pay attention to the need to ensure committee members are aware of their legal powers, and how to prepare for and ask relevant questions at scrutiny sessions.

34. When deciding on training requirements for committee members, authorities should consider taking advantage of opportunities offered by external providers in the sector.

Co-option and technical advice

35. While members and their support officers will often have significant local insight and an understanding of local people and their needs, the provision of outside expertise can be invaluable.

⁸ A definition of 'relative' can be found at section 28(10) of the Localism Act 2011.

⁹ See article 5(2) of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017 (S.I. 2017/68).

¹⁰ Article 5(6) of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.

36. There are two principal ways to procure this:

- Co-option – formal co-option is provided for in legislation¹¹. Authorities must establish a co-option scheme to determine how individuals will be co-opted onto committees; and
- Technical advisers – depending on the subject matter, independent local experts might exist who can provide advice and assistance in evaluating evidence (see annex 2).

¹¹ Section 9FA(4) Local Government Act 2000

5. Power to Access Information

37. A scrutiny committee needs access to relevant information the authority holds, and to receive it in good time, if it is to do its job effectively.
38. This need is recognised in law, with members of scrutiny committees enjoying powers to access information¹². In particular, regulations give enhanced powers to a scrutiny member to access exempt or confidential information. This is in addition to existing rights for councillors to have access to information to perform their duties, including common law rights to request information and rights to request information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
39. When considering what information scrutiny needs in order to carry out its work, scrutiny members and the executive should consider scrutiny's role and the legal rights that committees and their individual members have, as well as their need to receive timely and accurate information to carry out their duties effectively.
40. Scrutiny members should have access to a regularly available source of key information about the management of the authority – particularly on performance, management and risk. Where this information exists, and scrutiny members are given support to understand it, the potential for what officers might consider unfocused and unproductive requests is reduced as members will be able to frame their requests from a more informed position.
41. Officers should speak to scrutiny members to ensure they understand the reasons why information is needed, thereby making the authority better able to provide information that is relevant and timely, as well as ensuring that the authority complies with legal requirements.

While each request for information should be judged on its individual merits, authorities should adopt a default position of sharing the information they hold, on request, with scrutiny committee members.

42. The law recognises that there might be instances where it is legitimate for an authority to withhold information and places a requirement on the executive to provide the scrutiny committee with a written statement setting out its reasons for that decision¹³. However, members of the executive and senior officers should take particular care to avoid refusing requests, or limiting the information they provide, for reasons of party political or reputational expediency.

¹² Regulation 17 - Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012; article 10 Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.

¹³ Regulation 17(4) – Local Government (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012; article 10(4) Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.

Before an authority takes a decision not to share information it holds, it should give serious consideration to whether that information could be shared in closed session.

43. Regulations already stipulate a timeframe for executives to comply with requests from a scrutiny member¹⁴. When agreeing to such requests, authorities should:

- consider whether seeking clarification from the information requester could help better target the request; and
- Ensure the information is supplied in a format appropriate to the recipient's needs.

44. Committees should be aware of their legal power to require members of the executive and officers to attend before them to answer questions¹⁵. It is the duty of members and officers to comply with such requests.¹⁶

Seeking information from external organisations

45. Scrutiny members should also consider the need to supplement any authority-held information they receive with information and intelligence that might be available from other sources, and should note in particular their statutory powers to access information from certain external organisations.

46. When asking an external organisation to provide documentation or appear before it, and where that organisation is not legally obliged to do either (see annex 3), scrutiny committees should consider the following:

- a) **The need to explain the purpose of scrutiny** – the organisation being approached might have little or no awareness of the committee's work, or of an authority's scrutiny function more generally, and so might be reluctant to comply with any request;
- b) **The benefits of an informal approach** – individuals from external organisations can have fixed perceptions of what an evidence session entails and may be unwilling to subject themselves to detailed public scrutiny if they believe it could reflect badly on them or their employer. Making an informal approach can help reassure an organisation of the aims of the committee, the type of information being sought and the manner in which the evidence session would be conducted;

¹⁴ Regulation 17(2) – Local Government (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012; article 10(2) Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.

¹⁵ Section 9FA(8) of the Local Government Act 2000; paragraph 2(6) of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009.

¹⁶ Section 9FA(9) of the Local Government Act 2000; paragraph 2(7) of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009.

- c) **How to encourage compliance with the request** – scrutiny committees will want to frame their approach on a case by case basis. For contentious issues, committees might want to emphasise the opportunity their request gives the organisation to ‘set the record straight’ in a public setting; and
- d) **Who to approach** – a committee might instinctively want to ask the Chief Executive or Managing Director of an organisation to appear at an evidence session, however it could be more beneficial to engage front-line staff when seeking operational-level detail rather than senior executives who might only be able to talk in more general terms. When making a request to a specific individual, the committee should consider the type of information it is seeking, the nature of the organisation in question and the authority’s pre-existing relationship with it.

Following ‘the Council Pound’

Scrutiny committees will often have a keen interest in ‘following the council pound’, i.e. scrutinising organisations that receive public funding to deliver goods and services.

Authorities should recognise the legitimacy of this interest and, where relevant, consider the need to provide assistance to scrutiny members and their support staff to obtain information from organisations the council has contracted to deliver services. In particular, when agreeing contracts with these bodies, authorities should consider whether it would be appropriate to include a *requirement* for them to supply information to or appear before scrutiny committees.

6. Planning Work

47. Effective scrutiny should have a defined impact on the ground, with the committee making recommendations that will make a tangible difference to the work of the authority. To have this kind of impact, scrutiny committees need to plan their work programme, i.e. draw up a long-term agenda and consider making it flexible enough to accommodate any urgent, short-term issues that might arise during the year.
48. Authorities with multiple scrutiny committees sometimes have a separate work programme for each committee. Where this happens, consideration should be given to how to co-ordinate the various committees' work to make best use of the total resources available.

Being clear about scrutiny's role

49. Scrutiny works best when it has a clear role and function. This provides focus and direction. While scrutiny has the power to look at anything which affects 'the area, or the area's inhabitants', authorities will often find it difficult to support a scrutiny function that carries out generalised oversight across the wide range of issues experienced by local people, particularly in the context of partnership working. Prioritisation is necessary, which means that there might be things that, despite being important, scrutiny will not be able to look at.
50. Different overall roles could include having a focus on risk, the authority's finances, or on the way the authority works with its partners.
51. Applying this focus does not mean that certain subjects are 'off limits'. It is more about looking at topics and deciding whether their relative importance justifies the positive impact scrutiny's further involvement could bring.
52. When thinking about scrutiny's focus, members should be supported by key senior officers. The statutory scrutiny officer, if an authority has one, will need to take a leading role in supporting members to clarify the role and function of scrutiny, and championing that role once agreed.

Who to speak to

53. Evidence will need to be gathered to inform the work programming process. This will ensure that it looks at the right topics, in the right way and at the right time. Gathering evidence requires conversations with:
 - *The public* – it is likely that formal 'consultation' with the public on the scrutiny work programme will be ineffective. Asking individual scrutiny members to have conversations with individuals and groups in their own local areas can work better. Insights gained from the public through individual pieces of scrutiny work can be fed back into the work programming process. Listening to and participating in conversations in places where local people come together, including in online forums, can help authorities engage people on their own terms and yield more positive results.

Authorities should consider how their communications officers can help scrutiny engage with the public, and how wider internal expertise and local knowledge from both members and officers might make a contribution.

- *The authority's partners* – relationships with other partners should not be limited to evidence-gathering to support individual reviews or agenda items. A range of partners are likely to have insights that will prove useful:
 - Public sector partners (like the NHS and community safety partners, over which scrutiny has specific legal powers);
 - Voluntary sector partners;
 - Contractors and commissioning partners (including partners in joint ventures and authority-owned companies);
 - In parished areas, town, community and parish councils;
 - Neighbouring principal councils (both in two-tier and unitary areas);
 - Cross-authority bodies and organisations, such as Local Enterprise Partnerships¹⁷; and
 - Others with a stake and interest in the local area – large local employers, for example.
- *The executive* – a principal partner in discussions on the work programme should be the executive (and senior officers). The executive should not direct scrutiny's work (see chapter 2), but conversations will help scrutiny members better understand how their work can be designed to align with the best opportunities to influence the authority's wider work.

Information sources

54. Scrutiny will need access to relevant information to inform its work programme. The type of information will depend on the specific role and function scrutiny plays within the authority, but might include:

- Performance information from across the authority and its partners;
- Finance and risk information from across the authority and its partners;
- Corporate complaints information, and aggregated information from political groups about the subject matter of members' surgeries;
- Business cases and options appraisals (and other planning information) for forthcoming major decisions. This information will be of particular use for pre-decision scrutiny; and
- Reports and recommendations issued by relevant ombudsmen, especially the Local Government and Social Care Ombudsman.

¹⁷ Authorities should ensure they have appropriate arrangements in place to ensure the effective democratic scrutiny of Local Enterprise Partnerships' investment decisions.

As committees can meet in closed session, commercial confidentiality should not preclude the sharing of information. Authorities should note, however, that the default for meetings should be that they are held in public (see 2014 guidance on '*Open and accountable local government*':

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/343182/140812_Openness_Guide.pdf).

55. Scrutiny members should consider keeping this information under regular review. It is likely to be easier to do this outside committee, rather than bringing such information to committee 'to note', or to provide an update, as a matter of course.

Shortlisting topics

Approaches to shortlisting topics should reflect scrutiny's overall role in the authority. This will require the development of bespoke, local solutions, however when considering whether an item should be included in the work programme, the kind of questions a scrutiny committee should consider might include:

- Do we understand the benefits scrutiny would bring to this issue?
- How could we best carry out work on this subject?
- What would be the best outcome of this work?
- How would this work engage with the activity of the executive and other decision-makers, including partners?

56. Some authorities use scoring systems to evaluate and rank work programme proposals. If these are used to provoke discussion and debate, based on evidence, about what priorities should be, they can be a useful tool. Others take a looser approach. Whichever method is adopted, a committee should be able to justify how and why a decision has been taken to include certain issues and not others.

57. Scrutiny members should accept that shortlisting can be difficult; scrutiny committees have finite resources and deciding how these are best allocated is tough. They should understand that, if work programming is robust and effective, there might well be issues that they want to look at that nonetheless are not selected.

Carrying out work

58. Selected topics can be scrutinised in several ways, including:

- a) **As a single item on a committee agenda** – this often presents a limited opportunity for effective scrutiny, but may be appropriate for some issues or where the committee wants to maintain a formal watching brief over a given issue;
- b) **At a single meeting** – which could be a committee meeting or something less formal. This can provide an opportunity to have a single public meeting about a

given subject, or to have a meeting at which evidence is taken from a number of witnesses;

- c) **At a task and finish review of two or three meetings** – short, sharp scrutiny reviews are likely to be most effective even for complex topics. Properly focused, they ensure members can swiftly reach conclusions and make recommendations, perhaps over the course of a couple of months or less;
- d) **Via a longer-term task and finish review** – the ‘traditional’ task and finish model – with perhaps six or seven meetings spread over a number of months – is still appropriate when scrutiny needs to dig into a complex topic in significant detail. However, the resource implications of such work, and its length, can make it unattractive for all but the most complex matters; and
- e) **By establishing a ‘standing panel’** – this falls short of establishing a whole new committee but may reflect a necessity to keep a watching brief over a critical local issue, especially where members feel they need to convene regularly to carry out that oversight. Again, the resource implications of this approach means that it will be rarely used.

7. Evidence Sessions

59. Evidence sessions are a key way in which scrutiny committees inform their work. They might happen at formal committee, in less formal ‘task and finish’ groups or at standalone sessions.

Good preparation is a vital part of conducting effective evidence sessions. Members should have a clear idea of what the committee hopes to get out of each session and appreciate that success will depend on their ability to work together on the day.

How to plan

60. Effective planning does not necessarily involve a large number of pre-meetings, the development of complex scopes or the drafting of questioning plans. It is more often about setting overall objectives and then considering what type of questions (and the way in which they are asked) can best elicit the information the committee is seeking. This applies as much to individual agenda items as it does for longer evidence sessions – there should always be consideration in advance of what scrutiny is trying to get out of a particular evidence session.

Chairs play a vital role in leading discussions on objective-setting and ensuring all members are aware of the specific role each will play during the evidence session.

61. As far as possible there should be consensus among scrutiny members about the objective of an evidence session before it starts. It is important to recognise that members have different perspectives on certain issues, and so might not share the objectives for a session that are ultimately adopted. Where this happens, the Chair will need to be aware of this divergence of views and bear it in mind when planning the evidence session.
62. Effective planning should mean that at the end of a session it is relatively straightforward for the chair to draw together themes and highlight the key findings. It is unlikely that the committee will be able to develop and agree recommendations immediately, but, unless the session is part of a wider inquiry, enough evidence should have been gathered to allow the chair to set a clear direction.
63. After an evidence session, the committee might wish to hold a short ‘wash-up’ meeting to review whether their objectives were met and lessons could be learned for future sessions.

Developing recommendations

64. The development and agreement of recommendations is often an iterative process. It will usually be appropriate for this to be done only by members, assisted by co-optees where relevant. When deciding on recommendations, however, members should have due regard to advice received from officers, particularly the Monitoring Officer.

65. The drafting of reports is usually, but not always, carried out by officers, directed by members.

66. Authorities draft reports and recommendations in a number of ways, but there are normally three stages:

- i. the development of a 'heads of report' – a document setting out general findings that members can then discuss as they consider the overall structure and focus of the report and its recommendations;
- ii. the development of those findings, which will set out some areas on which recommendations might be made; and
- iii. the drafting of the full report.

67. Recommendations should be evidence-based and SMART, i.e. specific, measurable, achievable, relevant and timed. Where appropriate, committees may wish to consider sharing them in draft with interested parties.

68. Committees should bear in mind that often six to eight recommendations are sufficient to enable the authority to focus its response, although there may be specific circumstances in which more might be appropriate.

Sharing draft recommendations with executive members should not provide an opportunity for them to revise or block recommendations before they are made. It should, however, provide an opportunity for errors to be identified and corrected, and for a more general sense-check.

Annex 1: Illustrative Scenario – Creating an Executive-Scrutiny Protocol

An executive-scrutiny protocol can deal with the practical expectations of scrutiny committee members and the executive, as well as the cultural dynamics.

Workshops with scrutiny members, senior officers and Cabinet can be helpful to inform the drafting of a protocol. An external facilitator can help bring an independent perspective.

Councils should consider how to adopt a protocol, e.g. formal agreement at scrutiny committee and Cabinet, then formal integration into the Council's constitution at the next Annual General Meeting.

The protocol, as agreed, may contain sections on:

- The way scrutiny will go about developing its work programme (including the ways in which senior officers and Cabinet members will be kept informed);
- The way in which senior officers and Cabinet will keep scrutiny informed of the outlines of major decisions as they are developed, to allow for discussion of scrutiny's potential involvement in policy development. This involves the building in of safeguards to mitigate risks around the sharing of sensitive information with scrutiny members;
- A strengthening and expansion of existing parts of the code of conduct that relate to behaviour in formal meetings, and in informal meetings;
- Specification of the nature and form of responses that scrutiny can expect when it makes recommendations to the executive, when it makes requests to the executive for information, and when it makes requests that Cabinet members or senior officers attend meetings; and
- Confirmation of the role of the statutory scrutiny officer, and Monitoring Officer, in overseeing compliance with the protocol, and ensuring that it is used to support the wider aim of supporting and promoting a culture of scrutiny, with matters relating to the protocol's success being reported to full Council through the scrutiny Annual Report.

Annex 2: Illustrative Scenario – Engaging Independent Technical Advisers

This example demonstrates how one Council's executive and scrutiny committee worked together to scope a role and then appoint an independent adviser on transforming social care commissioning. Their considerations and process may be helpful and applicable in other similar scenarios.

Major care contracts were coming to an end and the Council took the opportunity to review whether to continue with its existing strategic commissioning framework, or take a different approach – potentially insourcing certain elements.

The relevant Director was concerned about the Council's reliance on a very small number of large providers. The Director therefore approached the Scrutiny and Governance Manager to talk through the potential role scrutiny could play as the Council considered these changes.

The Scrutiny Chair wanted to look at this issue in some depth, but recognised its complexity could make it difficult for her committee to engage – she was concerned it would not be able to do the issue justice. The Director offered support from his own officer team, but the Chair considered this approach to be beset by risks around the independence of the process.

She talked to the Director about securing independent advice. He was worried that an independent adviser could come with preconceived ideas and would not understand the Council's context and objectives. The Scrutiny Chair was concerned that independent advice could end up leading to scrutiny members being passive, relying on an adviser to do their thinking for them. They agreed that some form of independent assistance would be valuable, but that how it was provided and managed should be carefully thought out.

With the assistance of the Governance and Scrutiny Manager, the Scrutiny Chair approached local universities and Further Education institutions to identify an appropriate individual. The approach was clear – it set out the precise role expected of the adviser, and explained the scrutiny process itself. Because members wanted to focus on the risks of market failure, and felt more confident on substantive social care matters, the approach was directed at those with a specialism in economics and business administration. The Council's search was proactive – the assistance of the service department was drawn on to make direct approaches to particular individuals who could carry out this role.

It was agreed to make a small budget available to act as a 'per diem' to support an adviser; academics were approached in the first instance as the Council felt able to make a case that an educational institution would provide this support for free as part of its commitment to Corporate Social Responsibility.

Three individuals were identified from the Council's proactive search. The Chair and Vice-Chair of the committee had an informal discussion with each – not so much to establish their skills and expertise (which had already been assessed) but to give a sense about

their 'fit' with scrutiny's objectives and their political nous in understanding the environment in which they would operate, and to satisfy themselves that they will apply themselves even-handedly to the task. The Director sat in on this process but played no part in who was ultimately selected.

The independent advice provided by the selected individual gave the Scrutiny Committee a more comprehensive understanding of the issue and meant it was able to offer informed advice on the merits of putting in place a new strategic commissioning framework.

Annex 3: Illustrative Scenario – Approaching an External Organisation to Appear before a Committee

This example shows how one council ensured a productive scrutiny meeting, involving a private company and the public. Lessons may be drawn and apply to other similar scenarios.

Concerns had been expressed by user groups, and the public at large, about the reliability of the local bus service. The Scrutiny Chair wanted to question the bus company in a public evidence session but knew that she had no power to compel it to attend. Previous attempts to engage it had been unsuccessful; the company was not hostile, but said it had its own ways of engaging the public.

The Monitoring Officer approached the company's regional PR manager, but he expressed concern that the session would end in a 'bunfight'. He also explained the company had put their improvement plan in the public domain, and felt a big council meeting would exacerbate tensions.

Other councillors had strong views about the company – one thought the committee should tell the company it would be empty-chaired if it refused to attend. The Scrutiny Chair was sympathetic to this, but thought such an approach would not lead to any improvements.

The Scrutiny Chair was keen to make progress, but it was difficult to find the right person to speak to at the company, so she asked council officers and local transport advocacy groups for advice. Speaking to those people also gave her a better sense of what scrutiny's role might be.

When she finally spoke to the company's network manager, she explained the situation and suggested they work together to consider how the meeting could be productive for the Council, the company and local people. In particular, this provided her with an opportunity to explain scrutiny and its role. The network manager remained sceptical but was reassured that they could work together to ensure that the meeting would not be an 'ambush'. He agreed in principle to attend and also provide information to support the Committee's work beforehand.

Discussions continued in the four weeks leading up to the Committee meeting. The Scrutiny Chair was conscious that while she had to work with the company to ensure that the meeting was constructive – and secure their attendance – it could not be a whitewash, and other members and the public would demand a hard edge to the discussions.

The scrutiny committee agreed that the meeting would provide a space for the company to provide context to the problems local people are experiencing, but that this would be preceded by a space on the agenda for the Chair, Vice-chair, and representatives from two local transport advocacy groups to set out their concerns. The company were sent in

advance a summary of the general areas on which members were likely to ask questions, to ensure that those questions could be addressed at the meeting.

Finally, provision was made for public questions and debate. Those attending the meeting were invited to discuss with each other the principal issues they wanted the meeting to cover. A short, facilitated discussion in the room led by the Chair highlighted the key issues, and the Chair then put those points to the company representatives.

At the end of the meeting, the public asked questions of the bus company representative in a 20-minute plenary item.

The meeting was fractious, but the planning carried out to prepare for this – by channelling issues through discussion and using the Chair to mediate the questioning – made things easier. Some attendees were initially frustrated by this structure, but the company representative was more open and less defensive than might otherwise have been the case.

The meeting also motivated the company to revise its communications plan to become more responsive to this kind of challenge, part of which involved a commitment to feed back to the scrutiny committee on the recommendations it made on the night.

