

House of Commons - Communities and Local Government Select Committee

Review of Overview and Scrutiny in Local Government - written evidence submitted by the Unitary Councils' Officer Overview and Scrutiny Network

Background to the Network

The network was formed in 2003 as a forum for scrutiny practitioners to meet on a regular basis to exchange practices, thoughts and ideas. It also gave a specific focus group for engagement by government departments and other agencies in order to seek views on working practices and enhancing the engagement of the scrutiny process in local authorities.

It meets on a quarterly basis in London and its agenda is set and owned by scrutiny officers. It enjoys excellent engagement with the Centre for Public Scrutiny and Care Quality Commission. In addition it has been able to have good dialogue with the Department of Health on the health scrutiny function.

This submission has been compiled as the result of comments submitted by scrutiny officers in a number of authorities. They do not necessarily reflect the views of the authorities that they are employed by.

1. Whether Scrutiny Committees in local authorities in England are effective in holding decision-makers to account

- 1.1 This question implies that the sole purpose of scrutiny is to reactively question whether the right decisions have been made. Whilst there is undoubtedly an arm of scrutiny that must hold decision makers responsible, this single focus can miss much of the value of the whole scrutiny function. The wider and more salient question however should be 'does scrutiny ensure robust, evidence-based decisions are made in the public interest?'
- 1.2 This is a much harder question to answer and cannot be measured by arbitrary metrics (How many topics were questioned in public/are decisions changed as a result of scrutiny etc.). A measurement of success would be the quality of decisions over time and would require a more longitudinal study.
- 1.3 Scrutiny in a number of authorities can undoubtedly enable those members not involved in decision making to contribute to policy development, lobby local MPs and central government and conduct evidence-based challenge on behalf of the people that they serve. A good example of this can be seen from Devon County Council where this is particularly the case in task group reviews:
<http://democracy.devon.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13627>
- 1.4 Scrutiny provides the potential opportunity to achieve great things. It continues to have the power to hold to account and review policy detail which in turn leads to the avoidance of bad or unintended consequences that can only come to light through a process of detailed examination. The original reasons for introducing the leader/cabinet model including scrutiny still stand as strong as ever. Indeed, elected Members in one authority have advised their newly elected Members:

“Scrutiny provides one of the best opportunities to understand the detailed workings of the Council which in turn leads to better decision making.”

- 1.5 The increasing complexity of local government, and increasingly restricted budgets, mean that scrutiny *achievements* are harder to gain compared to ten or fifteen years ago. So, whilst the opportunities are present, they are less apparent to many elected Members who have found that the many competing priorities distract from the hard work that scrutiny entails. To achieve great things with scrutiny requires commitment of time and energy by Members which, they often say, they don't have for. To ensure that scrutiny remains a valuable function one solution could lie with encouraging elected Members to make full use of the benefits of effective, time saving community engagement methods that social media, and other tools, offer so as to free up capacity for activities such as scrutiny.
- 1.6 The effectiveness of scrutiny could be undermined by the option for local authorities to adopt a committee system with no return to the executive/scrutiny model. The impression can be given that a committee system is “more democratic” but the valuable role scrutiny can play is often overlooked. In looking at any change the option of improving scrutiny arrangements should be included. Whilst the matter is one for local choice there must be adequate consideration given to the advantages and disadvantages for the scrutiny function against a committee system.
- 1.7 Generally the legislative and procedural mechanisms by which decision-makers are held to account are seen as sufficient, in the sense that the powers available to a scrutiny committee are used (for example, the call-in of decisions, or the power to make recommendations to the Council's Executive).
- 1.8 The experience of this accountability in practice, however, has been variable according to a number of different factors. These include the appetite of individual chairs, the extent to which scrutiny is prioritised by decision-makers, and the degree of political influence individual chairs may have. There are examples of information not being provided, or containing insufficient detail to enable effective scrutiny, however this is also reflective of how budget planning is conducted across local government (for example, final settlements from central government not being known until after the approval of a budget by Council).”
- 1.9 The LGA Peer Review processes could be enhanced to include an element to assess the effectiveness of scrutiny. This could be through either a peer review process that focuses specifically on scrutiny or by increasing the profile of scrutiny in the current review process. A separate scrutiny peer review process would, however, require resourcing. Peer reviews normally include reviewers who are Cabinet Members, Directors/Heads of Services and Service Users – but not scrutiny officers or members. Including these roles with an expectation that the Peer Review letter and recommendations will include specific comments/recommendations on the effectiveness of scrutiny could be a way forward.

2. The extent to which Scrutiny Committees operate with political impartiality and independence from Executives

- 2.1 The answer to this question can vary significantly within authorities and during different times. In the run up to an election, politics comes into play much more than

at other times. Experience indicates that scrutiny operates most effectively when its challenge comes from a need to understand the evidence base upon which decisions are made and the systems in place to improve people's lives.

- 2.2 Scrutiny in local government however lacks the advantages of independence that is enjoyed by the parliamentary select committee system. Creating wholly independent, self-managing scrutiny secretariats in local authorities is impractical and unaffordable in the current financial climate. Statutory Scrutiny Officers undoubtedly keep scrutiny's profile higher than it would otherwise be where they exist. But being one is not easy in practice. It requires a skilful balance between encouraging and enabling elected Members to be effective scrutineers which is not always welcomed in practice by senior officers including, occasionally, your own boss.
- 2.3 Scrutiny is part of the democratic process and therefore unlikely to be fully impartial and independent. Having a chairman from political group that does not hold the control of the council help demonstrate a willingness for challenge but the effectiveness of this is reliant upon the political composition of the rest of the committee. This option could also be viewed as making the chairman's post a political one whereas the key element is good chairing and communication skills.
- 2.4 In any Council environment with a clear political majority for the most part, individual committee members and chairs will operate independently of the Executive. This can be demonstrated by examples where scrutiny chairs have taken an assertive approach to scrutinising key topics, particularly where there is a public pressure being applied by residents or key advocacy groups. There can be occasions where items have been deferred, or councillors have shown a certain reluctance to pursue an item due to its political sensitivity. This can have a positive impact as well, where councillors may work to pursue the interests of scrutiny more informally through their political groups, rather than reverting to formal mechanisms.

3. Whether scrutiny officers are independent of and separate from those being scrutinised

- 3.1 Independence is crucial to the successful operation of scrutiny. There is a wide range of practice in the actual departmental location of scrutiny officers. In many these form part of the overall staffing for the whole democratic services function. In others the function is within a policy team.
- 3.2 Strengthening the Statutory Scrutiny Officer's role and offering it some protection may assist with retaining a visible point of support for scrutiny in a small number of authorities where such a spotlight would be perceived as positive. However, for many, whether scrutiny succeeds or fails depends more upon the senior management/leadership culture than the presence of an effective Statutory Scrutiny Officer.
- 3.3 Individuals can find themselves working closely with officers across the local authority, and this is required to develop the professional relationships and networks necessary to ensure things are being scrutinised appropriately. While it is conceivable that this may influence how scrutiny is conducted, it must be set against the fact that work primarily is led by committee members, and not officers. There have been few cases where there has been a clear conflict of interests, for

example scrutiny of democratic services budgets, and these have been led by committee members with minimum risk of influence from officers.

- 3.4 From work carried out by the West Midlands Scrutiny Network it was shown that the separation between the Executive and Select Committees in Parliament is much greater than in Local Government Scrutiny, e.g. the Ministers and Secretary of State would not see a draft of the report before it was published and this separation of power and roles is also apparent through the process to appoint Select Committee chairs which is covered in the response to the following question.

4. How Chairs and Members are selected

- 4.1 Chairs of the 19 Departmental and 3 other Parliamentary Select Committees are elected by secret ballot of the House and this could be seen to strengthen the independence of the Committees and result in a much higher profile for their work. (The Chairs of the remaining 5 Committees are elected by the Committee members who are appointed by the House).
- 4.2 This election process was introduced after Local Government Scrutiny was introduced in the early 2000s. The CfPS Annual Survey of Local Government Overview and Scrutiny (2013/14) reported that 19.2 % of Councils assign their Chair and Vice Chair politically proportionally. The CfPS report does not report the process through which the Chairs are nominated and selected. The Select Committee inquiry provides an opportunity to consider if Local Government Scrutiny Committee Chair's should be elected in a similar manner to Select Committee chairs. Much of the literature about effective scrutiny has focused on the culture within the authority and between the executive, officers and scrutiny function. Culture is important but a more structured framework that clarifies and demonstrates the independence of scrutiny could help.
- 4.3 In one unitary authority the constitution states that the chairman must not come from the controlling group. This appointment is made by the full council and not just non executive members. This approach could be viewed as making the chairman's post a political one whereas the key element is good chairing and communication skills. Members on scrutiny committees are appointed by group leaders – often on basis of who can attend the meetings and not skills, knowledge or expertise. Additionally there is no longer a restriction on executive members taking a position on a scrutiny committee when they no longer fulfil an executive role.
- 4.4 There is a disparity between Combined Authorities, Police Panels and Fire Authorities. Members that take a lead role in the scrutiny function of fire and police bodies receive remuneration in recognition of the time it takes to perform their duties. A Combined Authority offers no remuneration for any of its lead roles, e.g. Chair or Vice Chair of its overview and scrutiny committee.
- 4.5 Members may become overloaded if they accept a special responsibility position at their substantive authority, then undertake a Combined Authority role. Taken on top of the role as a local councillor there must be a question as to them having the time to undertake all these effectively in the interest of the community that they represent. Scrutiny of a combined authority is new and developing and as such takes time and commitment both to develop the function and to form the necessary

relationships to ensure that it fulfils its role of being open and transparent in holding the Executive function to account.

4.6 With regard to member confidence and skills many do not appreciate the potential that scrutiny has. They often believe that they lack the support or motivation to develop the skills and confidence to make it work for them. It is important that members are given every opportunity to obtain the knowledge and experience so to offer a real challenge and press witnesses on difficult questions thereby not missing real opportunities to have a positive impact.

4.7 Members can change when they realise they are able take control and turn scrutiny into an effective tool. A scrutiny committee, with the right support and motivation, works superbly as a team to explore a complex or important issue and generate new insights and solutions to the benefit of the community.

4.8 A way of helping make this happen is to:-

- encourage local authorities to recruit scrutiny support staff with the right combination of skills, experience and understanding as to what can be achieved, and how;
- make sure that the commitment to scrutiny emanates from the top: for example, require the senior management team of each authority to publish annually the specific initiatives that they have introduced to encourage a positive scrutiny culture; this may stimulate debate within the authority as to what those measures ought to be;
- encourage good practice that works well for parliamentary select committees through such mechanisms as the reporting of scrutiny reports and findings in the media.

4.9 Another major issue that requires consideration is that of Parent Governor Representatives on education related scrutiny bodies. Councils are currently required under legislation to co-opt these as voting members on the appropriate committee. With increasing 'acadamisation' this regulation should be urgently reviewed as in some areas it is impossible to fill the positions available.

5. Whether powers to summon witnesses are adequate

5.1 The powers to summon local witnesses appear to be adequate. That would include officers of the local authority itself as well as local NHS bodies (CCGs/Providers). Where additional powers would be most useful is in requiring National Bodies that would not otherwise be compelled to attend to attend.

5.2 The way that Council's deliver services is changing, with a greater emphasis on commissioning and enabling, and less direct service delivery. Scrutiny has no real teeth to summon Council service providers to committee, although in practice providers tend to be willing to co-operate.

5.3 Best practice is for officers and Executive Members to prioritise attendance over other engagements. It is also helpful if the leader also sets an expectation about

attendance to the Executive Members at the beginning of the Council, and this remains the case for the majority of meetings.

5.4 There are greater challenges in summoning external partners, for example in the case of Local Economic Partnerships, private sector and Local Authority Trading Companies. This can be dependent on the willingness of these partners to engage with the political process, and their understanding of the role of scrutiny. The Council's constitution can often set out procedures around the scrutiny of contract arrangements, and this has been used where difficulties are encountered.

5.5 Health scrutiny committees find in the main that NHS partners have a greater clarity around the role of scrutiny and their responsibilities, compared to other external partners. In part, this has been supported by the Department of Health and DCLG guidance around health scrutiny and partners are often keen to demonstrate how they have engaged with local scrutiny mechanisms.

6. The potential for local authority Scrutiny to act as a voice for local service users

6.1 'Service users' is not a term that is universally applicable and scrutiny should be seen as acting as a voice for the whole community. The individuals and groups are often not passive recipients of services and may not even use Council Services.

6.2 Scrutiny serves as almost the only bastion of opportunity for local people to voice an opinion on changes to a wide range of services, not just those provided by the Council. Scrutiny can look at national issues that have a significant local manifestation.

6.3 Scrutiny is not always an adequate vehicle to represent the frustrations of people who do not feel listened to. On many issues consultation has become a necessary step to take but the consultation is on the detail not the principle of the issue. Often the principle has been decided, it is simply the how that local people can have a say over. In some authorities this has included health consultations, where the decision has been taken and the consultation relates to the detail after the change. Complaints by local people do not always have the impact that local people would like if dealt with by scrutiny.

6.4 Many authorities believe that there is potential for scrutiny to act as a voice for residents and service users, though the practice and experience of this is variable. Successful examples require the buy-in of the chair, services and public. The chairs, for the most part, have demonstrated that they are keen to provide a platform for service user voices where there is scope to do so. Certain key issues have seen significant public engagement, for example where a consultation is underway to change services, though this does depend on public awareness and interest. Chairs have occasionally opted to host meetings in different formats and locations in order to support wider community engagement.

6.5 Public engagement tends to reflect certain demographic groups over others, for example vulnerable or disadvantaged groups are less likely to have an awareness of how they can input into scrutiny, unless they do so through specific advocacy groups. This tends to see the same individuals engaging frequently, while a wider range of views are not always taken into consideration. There is also limited scope

to engage those who work or attend education provisions, as the majority of the committee meetings are held during the day. There is scope to co-opt service users, or seek to work collaboratively with advocacy groups to capture views on specific items, and the team would be keen to consider how it can widen public participation in the future.

7. How topics for Scrutiny are selected

- 7.1 A scrutiny committee should have a well balanced workplan comprising of the pre-decision items taken from the forward plan, policy development/review (based upon a published plan of policies and plans and when these were approved and date for review) and performance management to assess services that are over or underperforming.
- 7.2 The value of pre-decision scrutiny is a tool that has been recognised by the Chair of the Public Accounts Committee, Meg Hillier MP, in helping ensure that decisions are more transparent. In local authorities it is seen to strengthen accountability, provide a firmer evidence base and demonstrate that value for money is being achieved with public funds. Scrutiny can be more effective if it is proactive in decision making rather than reactive.
- 7.3 Workplans are generally at the discretion of the members of the scrutiny committees who prioritise and determine what should be included. Knowing what would be fruitful topics to examine partly comes from senior officers highlighting upcoming issues.
- 7.4 Briefing sessions can also give Members more detailed background information on a topic, which then could lead to further work on a specific element of that topic.
- 7.5 The majority of council constitutions enable Members to request items being placed on an agenda. Additionally members of the public can be encouraged to suggest topics.
- 7.6 The development of a mechanism through which information from local authority scrutiny can inform the work of Parliamentary Select Committees is something that has been raised but not progressed to an agreed process.

8. The support given to the Scrutiny function by political leaders and senior officers, including the resources allocated (for example whether there is a designated officer team)

- 8.1 In a declining number of authorities there is a dedicated officer team for the scrutiny function. This can demonstrate that scrutiny is largely well thought of and given support and credence by leaders. In some smaller authorities the scrutiny function forms part of the duties of democratic services officers. There is the statutory requirement to have a named scrutiny officer and this is seen as providing a protected mandate in respect to the scrutiny function in all upper tier local authorities. We believe that this should be extended to all authorities. There is a danger that with the role of a scrutiny officer being combined with other roles within an authority this can dilute the focus on scrutiny to the overall detriment of the democratic function.

- 8.2 Attendance, support and reporting from senior officers and senior leaders can be variable in some instances. Although protocols can be in place on working arrangements this does not replace the need for effective working two way communication between the executive and scrutiny functions.
- 8.3 The budget planning process highlights this variance, as the information provided by some services will be more comprehensive than others. There are instances where information is not provided, or the role of scrutiny in the political process is seen as secondary to engaging with the Executive.
- 8.4 In summary, engagement varies, and depends on the extent to which political buy-in will benefit the outcomes for a particular service initiative or policy. The political commitments given to scrutiny will sometimes not be sustained or reflected in practice.
- 8.5 It is understood that that the budget for Parliamentary Select Committees are set separately from other Departmental and Government expenditure. Resourcing for Local Government Scrutiny is an issue and the resourcing for scrutiny is not always transparent as in many cases it will be incorporated into budget for wider council services. Having a clear understanding of the resources that are available within a council for scrutiny and being able to bench mark this effectively could be helpful. There is some benchmarking undertaken by CIPFA as part of its corporate governance benchmarking club. Comparisons can be difficult particularly where officers carry out scrutiny alongside other roles, but providing this information to Members will enable them to decide if this is an effective use of resources. The inclusion of the budget for scrutiny as a separate section in the Council Budget would provide further clarity and accountability.
- 8.6 The development and implementation of Sustainability and Transformation Plans are likely to increase the work for the Health Scrutiny function in Local Government as will be the need to establish Joint Health Scrutiny Committees as service reconfigurations are proposed and consulted upon. There may be an argument for the Select Committee inquiry to look at the resources and capacity within local government and the NHS to enable a constructive health scrutiny process which is capable of delivering effective integrated health and adult social care service.

9. What use is made of specialist external advisers

- 9.1 Unlike the House of Commons Select Committee it is very unlikely that specialist external advisers are willing to become involved in local scrutiny enquiries just on the basis of it being of significance on a cv.
- 9.2 Several authorities have employed external Specialist Advisors where it was felt that Members would benefit from independent support to help them discharge their scrutiny function.
- 9.3 Such specialist assistance can help equip members with the appropriate knowledge to advise and support their work monitoring and challenging service delivery.
- 9.4 Training is one area where external advisers can assist in filling a gap in member development. The service recognises, however, that pressures of public sector

resources mean it is harder to justify the expense of external advisors unless there is a clearly defined benefit to the council”

9.5 There is also scope for scrutiny committees to co-opt advisers.

10. The effectiveness and importance of local authority scrutiny of external organisations

10.1 The effectiveness of scrutiny can be variable. The health scrutiny function is often well regarded by health partners and given a good level of support and attention. It is vital that health scrutiny, Healthwatch and Health and Wellbeing Boards co-operate fully to avoid duplication, confusion and ineffective use of resources.

10.2 In the case of the Police and Crime Commissioner and health services, there are clearly embedded powers, roles and responsibilities in respect to local authority scrutiny. In one respect, having responsibilities defined in guidance positively influences the level of commitment given by external organisations, and there are well defined relationships and a desire to work collaboratively to demonstrate effective working. These powers, however, in the case of the Police and Crime Panel, are limited in practice, and can make it difficult to hold the PCC to account.

10.3 In other areas, the effectiveness of holding external partners to account is difficult to define. There remain questions about the changing relationship of scrutiny to the education sector, and whether educational performance can be scrutinised effectively in a mixed economy of local authority schools and academies. Whilst local authorities retain oversight for a range of education issues the delivery of this is in the hands of others and unlike health scrutiny there is no guidance on how this should be successfully achieved.

10.4 There also remains a question about how best to hold private sector partners, or Local Authority Trading Companies, to account. As more services are commissioned externally processes should be included enabling scrutiny to have a role in reviewing the effectiveness and efficiency of delivery. One major problem surrounds what is deemed to be commercial confidential against the task of public accountability and transparency.

11. The role of Scrutiny in devolution deals and the scrutiny models used in combined authorities

11.1 The Parliamentary Order makes it a requirement that the Combined Authority appoints a scrutiny officer, although the Department for Communities and Local Government has indicated that a seconded officer from a local authority would fulfil requirements. For any scrutiny function to be effective it needs to be resourced properly.

11.2 The Fire function could be part of the Combined Authority in 2018, with the Police potentially by 2020. The disparity across these areas needs to be addressed to assist in the facilitation of a smooth transfer.

11.3 Deals appear to be discussed behind closed doors involving only the leader and Chief Executive. Scrutiny is an afterthought. Scrutiny is therefore unable to

challenge the basis upon which deals are agreed and is not one that involves the whole council membership or the wider community.

- 11.4 Where there has been some effort to scrutinise proposals for devolution there appears to be a general reluctance on the part of political leaders and senior officers in this respect. There is a tension evident where things are still subject to negotiation, and witnesses are reluctant to commit publicly when options are still being discussed.
- 11.5 In the case of health devolution there are questions emerging regarding the complex governance arrangements in the NHS, and how this is likely to change as result of Sustainability and Transformation Plans. While the questions of democratic accountability within these new structures still require clarification, external organisations have been keen to engage with the scrutiny function. Joint health scrutiny committees are a consideration in this respect, though it should be recognised that these come with additional resource considerations for the local authorities in question.
- 11.6 For the large part, the governance models by which devolution could happen are being developed without direct input from scrutiny. It is the case that there is a gap that could be addressed in better defining the extent to which scrutiny should be participating in discussions.

12. Examples where Scrutiny has worked well and not so well

12.1 What has worked well?

- 12.2 The Centre of Public Scrutiny has a range of examples of best practice as the result of its annual Good Scrutiny Awards. This demonstrates specific instances where scrutiny has delivered tangible outcomes for the local community and ensured that value for money is being obtained.
- 12.3 Often this work is as the result of utilising Members in task and finish groups. This approach allows the relevant evidence to be collated and key stakeholders to be actively engaged so that their views are at the core of the process. Each inquiry can be tailored made to suit the individual circumstances of the topic provided basic principles of transparency and accountability are followed.

12.4 What hasn't worked so well?

- 12.5 There are examples where scrutiny can be asked to look at a particular issue by officers or lead Members. This sometimes can be more of a tick box exercise so that officers or lead Members can claim that a change has been through scrutiny despite insufficient time or information being allowed for a more in depth look.
- 12.6 Difficulties are encountered in the field of finance scrutiny. Often despite prior agreement with Executive Members timely provision of quality budgetary information has been variable. In some cases information has not been shared. This exposes the lack of powers currently available to scrutiny to secure witnesses and evidence.

12.7 Good productive working relations have been developed over a number of years between the scrutiny network and the Care Quality Commission. This unfortunately has not been the case with Ofsted which often criticises the involvement of scrutiny in school improvement and safeguarding but does not engage with it at any stage in an inspection. There is much that scrutiny could do in advance of any inspection if there is an agreed line of basic challenge. At present scrutiny is trying to react to the results of an inspection that it had no connection with.

12.8 In summary the factors are:

Where scrutiny has worked well

- Timely, quality information
- Political support and senior officer buy-in
- Member interest and curiosity
- Less formal approaches, such as private sessions
- Task & Finish Group

Where scrutiny has not worked so well

- Lack of access to information, or being provided late
- Wavering commitment on the part of the executive and senior officers
- Insufficient Member skill or experience
- Formal, public sessions where councillor and officer candour becomes an issue “

13 **Overall summary**

13.1 The scrutiny function has minimal legislative requirements when compared with executive functions. This has enabled local authorities to develop its approach according to local choice. This has led to innovative approaches being taken together with the ability to act quickly when the need arises. It is an opportunity for members to put political differences aside and be independent, objective and evidence based.

13.2 In a speech made by the Queen referring to 1992 “Annus horribilis” she stated:

“There is no doubt that criticism is good for people and institutions that are part of public life. No institution – city, monarchy, whatever – should expect to be free from the scrutiny of those who give it their loyalty and support, not to mention those who don’t. But we are all part of the same fabric of our national society, and that scrutiny, by one part of another, can be just as effective if it is made with a touch of gentleness, good humour and understanding.”

13.3 Scrutiny should be expected by all those who are responsible for delivering public services. To have its processes made too prescriptive could dilute its ability to deliver what is expected of it.

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