

CLG select committee report on the effectiveness of local authority overview and scrutiny committees

Summary

This briefing summarises the findings of the CLG select committee inquiry into [local authority overview and scrutiny committees](#). ([PDF document](#))

The inquiry heard evidence of considerable failings in current scrutiny arrangements, including:

- a lack of resources
- the low status accorded to scrutiny
- potential conflicts of interest arising from the same officers working with scrutiny and with the executive
- a lack of real challenge from members
- an over-reliance on officer reports rather than a range of evidence
- political pressures limiting the effectiveness of scrutiny.

It did also hear evidence of cases where scrutiny was working well; invariably, these were from authorities where the leadership had a positive attitude towards scrutiny.

The report makes various recommendations, which are in bold type in the body of this briefing. Notably, the report calls upon the government to:

- issue updated guidance for local authorities on the role of scrutiny
- develop a pilot scheme to test the merits of electing scrutiny chairs by secret ballot
- make it clear that information deemed commercially sensitive should not be withheld from scrutiny members
- extend the requirement of a statutory scrutiny officer to all councils, with the seniority of this role on a par with the corporate management team
- give scrutiny committees the power to require attendance by external service providers and LEPs
- monitor the impact of the scrutiny-related funding it makes available to the LGA
- emphasise the role of scrutiny and provide adequate funding for it in future

devolution deals.

It calls upon local authorities to:

- arrange for scrutiny committees to report to full council rather than the executive
- make greater use of expert witnesses
- ensure that members of the executive do not participate in scrutiny except as witnesses
- consider how to raise the profile of scrutiny to promote public engagement, including digital engagement.

This briefing will be of interest to councillors and officers with a scrutiny role in all councils. However, as scrutiny is a cross-cutting function which is closely connected with the culture of the organisation, it should be useful to other councillors and senior officers as well.

Briefing in full

The inquiry into local authority overview and scrutiny committees was launched because of concerns that scrutiny in local authorities is not as effective as it should be. In particular, a number of councils which adopted the leader and cabinet model have since reverted to the committee system, citing (among other factors) the limited effectiveness of scrutiny. The inquiry is the first comprehensive assessment of how scrutiny committees operate.

Oral evidence sessions were supplemented by a workshop for councillors and officers held in October 2017. A large number of written submissions were also received.

The role of scrutiny

The report begins by considering the role of scrutiny. It notes that while good scrutiny can be hard to define, the consequences of inadequate scrutiny can be severe and very apparent. For example, both the Francis Report into the Mid Staffs NHS Trust in 2013 and the Casey Report into Rotherham Council in 2015 highlighted a lack of challenge on the part of scrutiny members.

The inquiry found that scrutiny varies widely across the country. Beyond the statutory requirement for councils with a leader and cabinet model to have at least one overview and scrutiny committee, consisting of non-executive members, and a few additional requirements such as health scrutiny committees, scrutiny arrangements are a matter of local discretion. While some councils have a number of scrutiny committees covering different departmental functions, others have only one committee but make use of task and

finish groups.

The report endorses the [Centre for Public Scrutiny's](#) (CfPS) four principles, which state that good scrutiny:

- Provides a constructive “critical friend” challenge;
- Amplifies the voices and concerns of the public;
- Is led by independent people who take responsibility for their role;
- Drives improvement in public services.

The report highlights that scrutiny can help to develop policy as well as responding to executive decisions. For example, in Birmingham, a scrutiny review of the council's work on child sexual exploitation resulted in extra resources being allocated to the team working on the issue as well as changes to the council's licensing statement.

Another aspect of scrutiny's role is to scrutinise proposals before decisions are made. The extra time spent examining a proposal can lead to a deeper understanding of the issues, and recommendations which can inform the cabinet's decision.

The report notes that the latest government guidance on scrutiny dates back to 2006, while several legislative changes have occurred since this date and local government has changed considerably. **The report recommends that this guidance be updated to take into account the evolving role of scrutiny.** It also calls on the Local Government Association to look at ways to enable the sharing of scrutiny best practice among local authorities.

Organisational culture

The culture of an organisation is a much more important factor in the success of scrutiny than the particular model adopted. Jacqui McKinlay of CfPS emphasises the importance of buy-in from the executive and senior officers: this usually means scrutiny is well-resourced, whereas “[i]f your leadership is closed to that sort of challenge, it does not just affect scrutiny; it affects a lot of how the organisation is run”. The report agrees, observing that “[a]ll of the examples of effective scrutiny that we have heard about have in common an organisational culture whereby the inherent value of the scrutiny process is recognised and supported.”

One of the barriers identified in the report was the lack of parity of esteem between the executive and scrutiny, with scrutiny often being perceived as an add-on rather than an integral part of the council's work. Part of the challenge is the difficulty of quantifying scrutiny's impact, since scarce resources are more likely to be allocated to areas where the

impact is obvious.

The responsibility for a positive culture around scrutiny lies with opposition groups as well as the executive. Where the opposition treats the executive with respect and challenges it where necessary, rather than for the sake of challenge, scrutiny is likely to be better regarded.

Another problem with the status of scrutiny is its position in relation to the full council. The report draws a contrast with parliamentary select committees, which must report to parliament, whereas there is no guidance on which body scrutiny committees should report back to. In practice, the majority report to the executive, which again suggests a hierarchy.

The [Institute of Local Government Studies](#) at the University of Birmingham notes that when scrutiny committees present reports to full council, it provides “the opportunity to create a relevant and interesting debate on a matter of local concern which has been investigated in depth by a group of councillors.” The report agrees with its recommendation that **reports from scrutiny should be on full council agendas.**

The role of party politics is identified as another barrier to effective scrutiny. While executive members cannot sit on scrutiny committees, the report expresses concern that there have been some moves towards this in practice, with meetings scrutinising the NHS being essentially chaired by executive members. It cautions against any such move, warning that it risks further politicisation of meetings and dilution of the role of scrutiny members. It **calls upon the Department for Communities and Local Government to strengthen its guidance on the separation of scrutiny and the executive.**

In considering the appointment of scrutiny chairs, the report notes that processes vary: while many councils state that chairs must be from opposition parties, others routinely appoint members of the majority party to all chairships. The report cautiously avoids advocating any particular process for selecting chairs, but expresses concern that appointments made by the executive can be used to minimise trouble for the leadership and thereby weaken the legitimacy of scrutiny.

The report notes that the government has prescribed that chairs of combined authority scrutiny committees must be from a different party to the executive mayor, and cites evidence from Newcastle City Council, where chairs are always from opposition parties, that this system encourages effective challenge.

In 2010, following recommendations from the [Reform of the House of Commons Committee's report 'Rebuilding the House'](#), elections by secret ballot of all MPs were introduced to elect chairs of select committees.

In 2015, the Institute for Government published [an assessment of parliamentary select committees and their impact in the 2010–15 Parliament](#). The report found that electing chairs had increased the legitimacy and effectiveness of select committees, since chairs knew they were in the role as a result of support from their peers rather than as a matter of political patronage.

The report stops short of endorsing this approach for scrutiny committee chairs, notably due to a concern from the Minister for Local Government, Marcus Jones, that this could actually increase party-political pressures. However, it does **call for the DCLG to work with the LGA and CfPS to develop a pilot scheme where willing local authorities can trial a system of elected scrutiny chairs.**

Accessing information

The inquiry revealed significant difficulties for scrutiny committees in accessing the information they need, including instances of committees submitting Freedom of Information requests to their own authority.

The report also raises the widespread issue of information being withheld for reasons of commercial sensitivity. Some submissions to the inquiry argued that a tighter definition is needed of what information can be kept confidential on these grounds. The report acknowledges that it may not always be in the public interest to make such information publicly available, but argues that there is no justification for withholding it from councillors, who already have access to restricted information and who require it in order to do their job.

Regulations from 2012 grant additional access to information for scrutiny members when they can demonstrate a 'need to know'. The report argues that this access should be automatic, i.e. that **membership of a scrutiny committee should constitute a sufficient 'need to know', since restricting scrutiny members' access to information limits their ability to identify issues for further investigation.**

The inquiry also found that councils made very limited use of external advisors, in part for reasons of budget. The report expresses concern that many scrutiny committees are too reliant upon officer reports and do not seek alternative perspectives, meaning that meetings often feel like one-off events rather than part of a process of investigation. It can sometimes also be a problem when the same officers are providing support to the executive and to scrutiny, chiefly because resources are likely to be concentrated on the executive due to lack of parity of esteem. The report **calls on councils to make greater use of external expert witnesses, in particular from the academic world.**

Finally, this section of the report also looks at how the perspectives of service users and the wider public can inform scrutiny. It cites an example of good practice from Brighton & Hove, where a panel on equality for the transgender community worked with partners including a local charity. Significant time was devoted to the consultation process and engagement strategy, which helped to build up trust and resulted in the recommendations being well received by the transgender community as well as adopted by Cabinet. The report **calls on councils to consider how the views and experiences of service users can be used to complement information from officers.**

Resources

The average staff time devoted to scrutiny is now below one full-time equivalent post, with many councils having no dedicated scrutiny support at all. In general, the number of scrutiny committees within a council has reduced in line with the reduction in resources.

Increasingly, officers responsible for scrutiny have to combine this role with democratic services functions or policy and strategy work. This creates a risk that non-scrutiny functions will take precedence, and can also create a conflict of interest, or the perception of one. There is also a danger that committee clerks with no policy background, for instance, may not have the right skillset to work on scrutiny. When there is little resource for scrutiny, reports tend to come straight from the relevant service department, which can result in an overly optimistic picture being painted.

The report expresses concern that under-resourcing of scrutiny can be a deliberate ploy by executives which do not want to be scrutinised. Scrutiny is a soft target for budget cuts. The report **recommends that the government include in updated guidance the requirement that scrutiny committees “must be supported by officers that can operate with independence and provide impartial advice to scrutiny councillors.” It also recommends that councils be required to publish a summary of resources allocated to scrutiny, with expenditure on executive support as a comparator.**

Upper tier authorities are currently required to have a designated scrutiny officer, though this need not be their only role. Workshop participants and the Institute for Local Government Studies expressed the view that these officers are rarely senior enough to be seen as on a par with other statutory roles such as the Section 151 Officer or Monitoring Office, and that the role should have similar status to these.

The report **recommends that the requirement for a designated scrutiny officer be extended to all councils, and that the post-holder should have “a seniority and profile of equivalence to the council’s corporate management team”.** It also

recommends that this officer make regular reports to full council.

Member training and skills

Unlike members of planning and licensing committees, scrutiny members are not required to undergo any training. Members often lack the necessary listening and questioning skills for good scrutiny, with the result that questions at meetings are often merely requests for more information. The report underlines that training should be tailored to the needs of members, which will be different from those of officers – it is more about questioning skills than specific knowledge. One councillor argued that training should be more focused on self-reflection: “What is your role? Are you really going to hold to account?”

The report expresses concern that, according to answers from the Minister, DCLG gives the LGA £21 million a year to support good governance, but does not monitor the impact of this. It **calls upon DCLG to introduce monitoring so it can assess whether this funding represents value for money.**

The role of the public

The report cites various case studies where scrutiny was effective in amplifying the voices of the public, including Exeter’s ‘Dementia Friendly Council’ task and finish group, which invited members of the Torbay Dementia Leadership Group to comment on how the council’s customer service centre could be improved.

The role of digital engagement also needs to be considered, as public meetings tend to be poorly attended and modes of engagement are changing.

The report **calls on the government to promote the role of the public in scrutiny in revised guidance to local authorities. It recommends that councils should consider how raising the profile of scrutiny can encourage more public involvement.**

Scrutinising external bodies

Scrutiny committees are increasingly scrutinising external providers of council services. Here, however, the barriers to accessing information are even greater. The CfPS states that commercial bodies often “do not recognise they are contracting with a democratic organisation that has democratic governance processes.” There can be particular difficulties where the organisation’s management structures are not local. This differs from bodies in the health sector, where the duty to engage with scrutiny is well established.

While health service providers and bodies delivering crime and disorder strategies can be required to attend scrutiny meetings, in all other cases, participation is up to the invited party. The report argues that councils and contractors should build in democratic oversight

from the start of a contract, including making clear the role of scrutiny. A task and finish group at Suffolk County Council has recommended that any organisation which signs a contract with the council should be made aware that it might be called upon to answer to the scrutiny committee at some stage. The report endorses a CfPS proposal that committees should be able to follow the ‘council pound’ – that is, have the power to oversee all services funded by the authority.

Scrutiny of Local Enterprise Partnerships (LEPs) is another area of concern. The report praises the approach adopted in London, where members of the LEP board have appeared in front of the London Assembly’s Economy Committee. However, it highlights the lack of a standard approach across the country, quoting the [DCLG review of LEP governance arrangements from October 2017](#), which found that conflict of interest policies and attitudes to scrutiny varied considerably. In his evidence to the committee, the Minister indicated that he sees no problem with the current arrangements for LEP scrutiny.

The report **calls on the government to clarify how LEPs will be subject to democratic oversight. It recommends that upper-tier and combined authorities be given the power to scrutinise LEPs through their scrutiny committees.**

Scrutiny in combined authorities

The inquiry heard evidence of a limited and secondary role for scrutiny in the new mayoral combined authorities. Whereas the Mayor of London is held to account by the directly elected London Assembly, which has no executive power but has its own officers and budget for scrutiny, the new combined authorities have no equivalent body. Instead, scrutiny is performed by members of the constituent councils, with the combined authority having a scrutiny officer (in some cases ‘lent’ by one of the constituent councils).

The report notes that combined authorities are required to have minimal overheads, as they were set up to be “capital rich but revenue poor”. However, as mayors now have powers previously held by Secretaries of State, who are subject to much more scrutiny, it concludes that **a stronger role for scrutiny is desirable, and that this should be funded and made clear in the terms of any future devolution deals.**

Comment

This inquiry provides a welcome assessment of the effectiveness of current scrutiny arrangements. Although the report is measured in tone, it must be acknowledged that its findings are damning. With some notable exceptions, submissions to the inquiry paint a picture of a limping scrutiny function: undervalued, underresourced, underskilled, and often

largely ineffective. The revelation that some committees are resorting to FoI requests to their own council sums up the problem – there is a tendency for many councils to see scrutiny as a threat to be neutralised, rather than a resource to be harnessed.

The reluctance of some leaders to welcome challenge is perhaps a product of the UK's extremely adversarial political system, in which it often seems that point-scoring and the apportioning of blame are more important than improving services. A positive culture around scrutiny requires opposition members to relinquish these tendencies too; however, the power lies at the top, and that is where the importance of scrutiny must be recognised. A higher public profile for scrutiny could lead to it being taken more seriously by leadership teams, as its activities would be visible and its role better understood.

A previous LGiU briefing on questions arising for councils from the Grenfell fire raised the issue of how to ensure proper scrutiny of housing arms-length organisations (and other similar organisations). There have been positive examples of effective scrutiny in these situations. Manchester, for example, established a TMO Liaison Committee with an officer from strategic housing regularly attending board meetings, and they set up a reporting mechanism for performance monitoring but it is clearly a difficult area. A council's overview and scrutiny committee should have an important role in monitoring the performance of arms length bodies. The scrutiny committee or panel could have a direct, continuing role in contract monitoring and review, or could have a role in monitoring whether other interested groups and stakeholders are being kept sufficiently involved by the arms length body. Ongoing, detailed review and assessment of operational partnerships or arms length arrangements can sometimes be weak or non-existent, but scrutiny committees do have a valuable role to play here.

The select committee's report's recommendations seem logical and achievable. In particular, the ability to require attendance from external service providers would give scrutiny considerably more strength and relevance, especially if committees were also empowered to make recommendations directly to those external bodies and to require a response. This would also help underline scrutiny's position as parallel to the executive, not subordinate to it.

Whether implementing the report's recommendations will be seen by the government as a priority is another matter. The responses from the (then) Minister for Local Government suggested that, while he is more than happy for local authorities to carry out internal scrutiny, stronger scrutiny of LEPs and elected mayors is not favoured by the government. Embedding scrutiny at the heart of these new bodies is vital for democratic accountability, but may continue to be an uphill struggle.

Related briefing: [Grenfell fire: questions for local government](#)

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