

LGiU Briefing

Creating a challenge culture? New statutory guidance on overview and scrutiny

Author: Kerry Ferguson, LGiU Associate

Date: Monday June 10, 2019

Summary

Overview and scrutiny committees were introduced under the Local Government Act 2000 as part of new executive governance arrangements. Their purpose is to scrutinise decisions of the executive and make recommendations on policy development and implementation. However, a select committee inquiry in 2016-17 found that, in many authorities, scrutiny was less than effective and it called on the Government to issue revised statutory guidance. [New guidance on overview and scrutiny in local and combined authorities](#) has now been published by the Ministry of Housing, Communities and Local Government (MHCLG). It reminds authorities of the powers available to scrutiny committees; highlights the benefits of effective scrutiny; and provides practical advice and proposals for improving the function. It focuses on culture, resourcing, selection of committee members, powers to access information, planning of work programmes and evidence sessions.

A central theme of the statutory guidance is the importance of organisational culture and a commitment to scrutiny across an authority, not just amongst those members and officer with a scrutiny role.

This briefing provides a summary of the guidance, section by section. It also comments on the key themes and issues, and highlights some of the differences from the previous guidance. It will be of interest to councillors and officers with a scrutiny role in councils and

combined authorities. However, as scrutiny is potentially relevant to most council services, other councillors and officers may benefit from reading it too.

Briefing in full

The MHCLG has published new [statutory guidance on overview and scrutiny in local and combined authorities](#). It replaces the guidance on new council constitutional arrangements published in 2006, and responds to a key recommendation made by the (then) Communities and Local Government select committee following its 2016-17 [inquiry into the effectiveness of overview and scrutiny](#) (the subject of a previous [LGIU briefing](#)).

Local government and the scrutiny role have changed enormously since 2006; the updated guidance takes into account changes such as the establishment of combined authorities and the increase in commissioned services. It aims to ensure that the purpose of overview and scrutiny is better understood, and provides advice on what effective scrutiny looks like, how it can be achieved and the value this can bring to policy development and decision making. The guidance covers the following issues: culture; resourcing; selection of committee members; powers to access information; planning of work programmes; and evidence sessions.

As statutory guidance, local authorities and combined authorities 'must have regard to it when exercising their functions'. The guidance does not have to be implemented in every detail but should be followed unless there is good reason not to. The Government states that it is not trying to prescribe but to offer a framework for authorities to reflect on their own practice and find solutions that fit their circumstances. Whilst the guidance responds to some of the recommendations of the CLG committee's inquiry, the Government rejected some of the committee's more prescriptive recommendations – about resources and monitoring systems, for instance – preferring to let councils decide which arrangements are best for them.

The Government commissioned the Centre for Public Scrutiny (CfPS) to help with the drafting, and the guidance contains some practical suggestions and case studies for local authorities to consider.

Introduction and context

Overview and scrutiny committees were introduced under the Local Government Act 2000 as part of new executive governance arrangements. Combined authorities are also required to have overview and scrutiny committees. The legislation provides powers for the scrutiny of executive decisions and for making recommendations on policy development

and implementation. This guidance adopts the CfPS's four principles of effective scrutiny:

- Providing constructive challenge – a critical friend role
- Amplifying public voices and concerns
- Independence and responsibility in the role
- Driving improvement in public services

Culture

Organisational culture is identified as a critical factor in effective scrutiny. If scrutiny is embedded in the organisation it is more likely to be valued and improve policy making and service delivery. If it is not well understood or side-lined the committee's work is likely to be of lesser quality and/or lack focus.

Whilst it is everyone's responsibility to create a culture in which scrutiny and challenge are seen as important, the guidance suggests that the role of members is key.

A strong organisational culture can be fostered by:

- Recognising the importance and legitimacy of scrutiny, and its status as a statutory requirement. Furthermore, councillors' democratic legitimacy and role in the community is very valuable for scrutiny
- Clarifying role and focus within the organisation; the scrutiny function should focus on what matters most and where it can add most value. The dynamic between scrutiny and audit functions has to be clearly defined and managed
- Ensuring early and regular interaction between the executive and scrutiny, particularly over the scrutiny work programme. The executive should not try to control overview and scrutiny work e.g. through steering it away from certain topics or using the whip or political patronage
- Managing disagreements and disputes, especially between the committee and the executive over findings and recommendations that may be politically controversial. The guidance offers an 'executive-scrutiny protocol' as one way to manage relationships and conflict, and provides a template example. Scrutiny committees have the power to 'call in' executive decisions – this is by its nature adversarial but can often be avoided through early involvement of scrutiny in the decision-making process
- Providing support to the scrutiny function, including resources, access to information and brokerage of discussions with external bodies
- Ensuring impartial, timely and good quality advice from officers. The statutory officers – the monitoring officer, section 151 officer, head of paid service and

statutory scrutiny officer (where relevant) – have an important role here

- Communicating overview and scrutiny's role to the wider authority: all councillors and officers should be made aware of the purpose of scrutiny, its powers and the value it can add (lack of awareness has been an ongoing barrier to effective scrutiny)
- Maintaining links between overview and scrutiny and full council, as they may be focusing on similar issues and challenges. It may be appropriate to submit some reports from overview and scrutiny to full council rather than solely to the executive. In combined authorities, scrutiny output should be reported to either to the combined authority board, or the chairs of the scrutiny committees in the participating local authorities, or both
- Communicating the role of scrutiny to the wider community through communications functions and a range of relevant channels
- Ensuring committee members have an independent mindset and that possible tensions caused by political affiliation and personal or family relationships are proactively managed by the chair
- Creating a strong scrutiny culture in authorities with directly elected mayors, paying particular attention to access to documents; transparency of decision making; delegated decisions by the mayor; whistleblowing procedures; and the powers of full council to question and review

Resourcing

An effective scrutiny function inevitably requires resources. This is not just about budgets and officer time but the way the wider authority engages with the scrutiny function (members and officers). While the guidance leaves it up to each authority to decide on the resources it allocates, it proposes several issues that should be taken into account when making those decisions: the training requirements of councillors and officers; any need for external expertise; the added-value of effective scrutiny in terms of better public services; and the potential costs of call-ins if scrutiny is not properly involved early in the policy development process.

The guidance offers three alternative officer resource models:

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

Whether these or other models are used, the impartiality of advice to the overview and

scrutiny committee must be protected, which may require safeguards to be put in place.

Selecting committee members

Having the right members on scrutiny committees is vital to their success. It is up to authorities to decide how to select the chair and membership, subject to proportionality requirements. The committee as a whole needs to have the necessary expertise, commitment and ability to fulfil its function effectively. Different councillors will bring different skills, interests and abilities. Political considerations should not determine who is selected.

The guidance reminds councils that executive members cannot be members of scrutiny committees, and care should be taken that those with informal executive positions like executive assistants are not be involved in scrutinising their own portfolios. In combined authorities, members and their substitutes cannot sit on the relevant overview and scrutiny committee, nor can mayors in mayoral combined authorities.

The chair's leadership role can determine the credibility and influence of a committee. The chair should be capable of fostering teamwork and consensus among committee members; they will set the tone of the committee. Although not mandatory, authorities are encouraged to consider electing the chair by secret ballot.

Committee members should be offered an induction on taking up their role and ongoing training and development to help them carry out their role successfully: this may include training on legal powers, on preparing for scrutiny sessions and on asking effective questions.

Overview and scrutiny committees may sometimes require external specialist expertise: outside advisors can be formally co-opted onto the committee or act as technical advisors (a case study of the latter is provided as an annex to the guidance).

Power to access information

Overview and scrutiny committees have legal powers to access information, including enhanced rights to exempt or confidential information. The guidance states that authorities should provide information with scrutiny committee members as the 'default' position.

There may be some instances where information can lawfully be withheld, in which case the executive must provide written reasons. Before a decision to refuse to share information, the option of holding a closed session should be considered. Requests should not be refused for party political or reputational reasons.

Scrutiny committees should have access to regular data on performance, management

and risk – and support to understand and interpret it. This should help avert unfocused and unproductive requests for information.

Councillors also have the common-law right to request information under the Freedom of Information (FOI) Act 2000 and Environmental Information Regulations 2004. The CLG committee heard evidence that in some authorities, scrutiny committees were forced to resort to using FOI due to the reluctance of their authorities to share information.

Committees have the legal power to require executive members and officers to attend before them to answer questions. Scrutiny members may also want to receive information from external organisations. They have the right to access information from certain bodies; however the guidance also provides advice on how to request information or invite representatives to an evidence session, where the organisation is not legally obliged to comply. It suggests that requests are more likely to be fruitful if the purpose of scrutiny is clearly explained. Making an informal approach before a formal one may be helpful, as could framing the request in a way that offers the organisation a chance to put their position on public record. A case study illustrating these tactics is provided as an annex to the guidance.

The guidance recognises that scrutiny committees have a legitimate interest in scrutinising organisations that receive council funding, and it encourages authorities to consider introducing contractual requirements for providers to supply information or appear before scrutiny committees.

Planning work

If scrutiny committees are to have a real impact, they need to draw up a work programme that sets their agenda and clearly prioritise issues of concern based on evidence and judgement about where it can have most impact. Whilst a committee has the power to look at anything which affects 'the area or the areas' inhabitants', time and resource constraints mean that it will be unable to cover all issues of interest to local people.

The guidance advocates a clear process of prioritisation to draw up a shortlist of topics, supported by key senior officers. It should be informed by evidence gathered from the public, partner organisations and the executive. The guidance encourages public involvement in setting the committee's work agenda but doubts that formal consultations will be appropriate: instead, councillors' conversations with local people and groups and tapping into local forums and online forums, may be better routes for gathering views.

The committee should identify possible topics from information gathered on authorities' performance, finances and risk; customer insight, complaints and casework data; business

cases and other information on major upcoming decisions; and reports from relevant inspectors and ombudsmen. Topics can then be assessed against criteria like the potential for overview and scrutiny to impact on the issue, how the work would be carried out and how the work might align with decision makers' activities.

Once topics are selected, the committee should decide how it will approach the scrutiny of each one. Options include:

- As a single item on an agenda (which may be appropriate for some issues but will provide only a limited opportunity for scrutiny)
- At a single meeting of the committee or a public meeting (useful for gathering evidence from multiple witnesses at one time)
- A short task and finish review (useful for issues requiring swift conclusions and recommendations)
- Longer term task and finish review, the traditional model featuring six or so meetings over several months (useful for complex and detailed reviews but with significant resource implications)
- A 'standing panel' to keep a watching brief on an important local issue (this is an alternative to a new committee but resource implications mean this approach is seldom used)

Evidence sessions

Whatever the format of the evidence sessions, good preparation, clear objectives and skilful chairing are key to successful scrutiny. The chair has an important role in leading preparations, including securing agreement on the objectives, the line of questioning and the role of each member in the session.

Following an evidence session, the committee will formulate its recommendations. The guidance suggests that this should be an iterative process undertaken by members, with advice from officers and co-optees where applicable. Reports are usually drafted by officers. Recommendations should be SMART (specific, measurable, achievable, relevant and timed). The guidance proposes that committees aim for six to eight recommendations, and advocates sharing draft recommendations with the executive to identify any errors or misunderstandings and provide a sense-check. However, executive councillors should not seek to revise or block 'unwelcome' recommendations.

Comment

Despite being instigated as long ago as 2000, overview and scrutiny functions are still often

misunderstood, marginalised and viewed as an irritation. Scrutiny's envisioned contribution to policy making and better public accountability is yet to be fully realised. This statutory guidance therefore hopes to raise the profile of scrutiny committees and increase the effectiveness and relevance of their work.

An essential message of the guidance is the importance of organisational culture and a commitment to scrutiny across an authority, not just amongst those members and officer with a scrutiny role. The CfPS states that effective scrutiny will be "challenging, uncomfortable and potentially politically difficult". The guidance is aimed at helping authorities navigate these issues and maximise scrutiny's impact.

Compared to the previous guidance, which concentrated on explaining the legislation, the new document is practically focused and grounded in the experience of scrutiny in local authorities since the 2000 Act. It contains some helpful suggestions around how to manage some of tensions and difficulties that can hinder effective scrutiny; though some of the content is rather absorbed in the minutiae of planning meetings, writing reports and who-does-what etc. That said, the guidance leaves scope for local practice and does not intend to be prescriptive.

This more light-touch guidance feels more relevant and realistic in a local government sector under continued financial strain. It calls on authorities to make sufficient resources available to scrutiny functions, though leaving it up to councils to decide on resource levels and funding. This is, of course, easy to say but difficult to achieve in reality against competing demands and pressures to prioritise visible, frontline services.

There are some other differences from the previous guidance, reflecting the introduction of combined authorities and the growth in commissioned and outsourced service delivery. Whereas the new document offers some useful ideas on scrutiny of external partners and providers, it is less strong on the strategic scrutiny functions of combined authorities. It offers little practical advice specific to elected mayoral models or combined authorities; this is perhaps to be expected, given the relatively small number of authorities with these forms of governance and the comparative infancy of combined authorities, but it is a clear gap that would be useful to fill as practice develops and learning emerges.

Related briefings

[CLG select committee report on the effectiveness of local authority overview and scrutiny committees](#)

[Local authority scrutiny at a crossroads](#)

Further reading

[Report from CLG Committee on effectiveness of local authority overview and scrutiny committees](#)

[Government response to CLG Committee report on effectiveness of overview and scrutiny](#)

[Centre for Public Scrutiny – comment on the statutory guidance](#)

[Centre for Public Scrutiny – Scrutiny Frontiers 2019](#)

[Centre for Public Scrutiny – Overview and scrutiny in combined authorities: a plain English guide](#)