

Agenda Item No:



Report to Overview and Scrutiny Committee

OVERVIEW ITEM – CLG Select Committee findings on effectiveness of local authority overview and scrutiny committees.

The Overview and Scrutiny Committee is asked:

1. To note the content of the report.
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Date of O&S meeting: Tuesday 23 January 2018

Chair of O&S Committee: Cllr Brendan Chilton

Relevant Portfolios: Legal and Democratic (Deputy Leader)

Background Papers: **Final Report of Air Quality Task Group**, report to Overview and Scrutiny Committee

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Report Title: CLG Select Committee findings on effectiveness of local authority overview and scrutiny committees

Introduction and Background

1. The Commons Communities and Local Government Committee Inquiry into the effectiveness of local authority overview and scrutiny committees was initially launched in January 2017, however the dissolution of Parliament and the General Election held in June 2017 prevented any oral evidence sessions from taking place.
2. In response to the volume of written evidence submitted, the inquiry was relaunched in September 2017, utilising written evidence submitted by Councils, officers, Members and stakeholders prior to the General Election to inform the basis of a workshop event and oral evidence sessions held in October and November 2017. A full list of contributors is appended to the full Select Committee report, which can be found at <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/369/36902.htm>.
3. The Committee considered why scrutiny is important, challenges to the and what the role of scrutiny committees in local authorities should be. The final report proposes revisions to the existing Government guidance on scrutiny committees in a number of key areas, principally to reflect the changing role of scrutiny since its creation under the Local Government Act 2000. This report summarises the points most relevant to Ashford Borough Council's scrutiny function, however a full list of recommendations from the report is attached as appendix A.
4. The final recommendations of the inquiry relate principally to Government revising and re-issuing guidance on scrutiny to local authorities; however to date the Ministry of Housing, Communities and Local Government (MHCLG) has not responded to the inquiry's findings and as such, **no commitment to implement the recommendations of the Inquiry has been made.**

The Role of Scrutiny

5. It was recognised that whilst scrutiny fulfils different roles in different areas, the Committee felt that at its best, scrutiny holds executives to account, monitors decisions affecting local residents and contributes to the formulation of a policy agenda. The Committee also supported the four principles of good scrutiny put forward by the Centre for Public Scrutiny (CfPS), wherein effective 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.
6. It was noted that whilst identifying ‘good’ scrutiny is not always possible, the consequences of ineffectual scrutiny can be extreme and very apparent. The Committee’s report notes the failings of scrutiny in regard to the Francis Report (on Mid Staffordshire NHS Trust) and the Casey Report (on Rotherham Council) in delivering effective challenge.
 7. The Committee also felt that as well as reacting to decisions and proposals from local decision makers, pre-decision scrutiny is a vital part of the committee’s role and offers an opportunity to executives to have focus on issues in greater depth over a longer period of time; ultimately helping the executive make a more informed and considered decision.
 8. As part of its recommendations for improving scrutiny’s effectiveness, the Committee calls on the Local Government Association (LGA) to consider how it can best provide a mechanism for the sharing of innovation and best practice across the scrutiny sector. The Select Committee also urges local authorities to take note of the findings of the report and consider their approach to scrutiny.

Party Politics and Organisational Culture

9. In response to written and oral evidence, the Select Committee noted concern that the relationship between scrutiny and the executive had a tendency to become too unbalanced; and that with decision-making powers centralised in the executive, scrutiny can be seen as the less important branch of a council’s structure.
10. The Committee noted that lacking parity of esteem, where the importance of the scrutiny function is not explicitly recognised by Councillors or officers, means that scrutiny cannot be effective. Whilst scrutiny must demonstrate that it is effective, the Select Committee advise that “*all responsible council leaderships should recognise the potential added value that scrutiny can bring, and heed the lessons of high profile failures of scrutiny such as those in Mid Staffordshire and Rotherham.*”
11. Comparison was drawn between the independence of Parliamentary Select Committees and local authority scrutiny committees, noting that whilst the former report to the House of Commons as a whole rather than the Government, the majority of the latter report to the executive that they are charged with scrutinising.
12. In response to this concern and evidence from INLOGOV and others, the Select Committee called for the Government to issue revised guidance that, to reflect scrutiny’s independent voice and role as a voice for the community, makes clear that scrutiny committees should report to Full Council rather than the executive. Where scrutiny committees publish formal recommendations and conclusions, these should be considered by a meeting of Full Council,

with the executive response reported to a subsequent Full Council within two months.

13. The Select Committee also discussed the role of executive members in regard to scrutiny, noting that there had previously been a Private Members' Bill introduced in 2009 to allow executive members to sit on scrutiny committees during the scrutiny of external bodies. Whilst the Bill was unsuccessful, the Select Committee expressed caution and felt that executive members should only attend meetings of scrutiny committees when invited to do so as witnesses and to answer questions from the committee.
14. The role of the scrutiny chair was also discussed, with the Select Committee expressing concern over the ability of Councils to appoint chairs from majority parties. Whilst the Select Committee noted their belief that there are many effective and impartial scrutiny chairs working across the country, they were concerned that insufficient distance between the executive and scrutiny in terms of the appointment of chairs could create a perception of impropriety.
15. The Select Committee therefore recommended that the MHCLG works with the LGA and CfPS to identify councils willing to take part in a pilot scheme for elected scrutiny chairs.

Accessing Information

16. As part of their oral evidence, the CfPS noted issues where some scrutiny committees had resorted to submitting Freedom of Information (FOI) requests to obtain information needed for a review. The Select Committee felt strongly that there was no justification for resorting to the use of FOI powers, and that there were too many examples of councils being uncooperative and obstructive with regard to information access.
17. Issues of commercial confidentiality were also raised in the evidence submitted to the Inquiry. The Select Committee acknowledged that whilst it is not always in the public interest to publish all information and make it publicly available, they could not see a justification for withholding such information from Councillors; and felt that Councils should be reminded that there should always be an assumption of transparency wherever possible.
18. The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 allow for scrutiny members to access any confidential material if they can demonstrate a 'need to know' on the basis that the information relates to any action or decision under review or included on a scrutiny work programme, however the Select Committee felt that scrutiny committees should be seen as having an automatic need to know and called on the Government to make this clear through revised guidance.
19. It was also noted that few Councils make regular use of external experts when conducting reviews, and the Select Committee recognised that with limited resources for Councils it could be difficult to fund specialist advisors. The

Committee felt that engagement of local academics could be beneficial, and encourage universities to play a greater role in local scrutiny. Additionally, the Select Committee noted successful reviews where service users were engaged and involved in the scrutiny process, and encourage scrutiny committees to consider how officer information can be contrasted and complemented by the views and experiences of service users.

Resources

20. It was recognised that the level of resource allocated to scrutiny had generally reduced in the context of reducing local government budgets; however the Select Committee felt that the bigger issue around this reduction in resource related to organisational culture, with no parity of esteem between the executive and scrutiny. The Select Committee were concerned that resources and status within councils were "*disproportionately focused around Leaders and Cabinet Members, with scrutiny too often treated as an afterthought.*"
21. The Select Committee acknowledged the reduction of scrutiny resources in light of wider local authority reductions, but felt that it was imperative that scrutiny committees have access to independent and impartial policy advice; and expressed concern that in many councils the over-riding priority was supporting the executive, with little regard for the scrutiny function.
22. The final report calls for the Government to revise the guidance on scrutiny; noting that there should be a greater parity of esteem between scrutiny and the executive, with scrutiny committees having the same access to the expertise and time of senior officers and the chief executive as Cabinet. The report also calls for councils to be required to publish a summary of resources allocated to scrutiny compared to expenditure on executive support.
23. Additionally, the Select Committee recommends the extension of the requirement to appoint a Statutory Scrutiny Officer to all local authorities (under the Localism Act 2011, all upper tier authorities must have a designated scrutiny officer). The report also recommends that the post-holder should have a seniority and profile of equivalence to the council's corporate management team, and be required to make regular reports to Full Council on the state of scrutiny, explicitly identifying any areas of weakness that require improvement and the work carried out by the Statutory Scrutiny Officer to rectify them.

Member Training and Skills

24. The quality and value of available scrutiny training for Members was also discussed in the oral evidence sessions, and it was noted that whilst there was no requirement for members to possess specialist skills or undertake training to serve on scrutiny (as opposed to quasi-judicial committees, such Planning or Licensing).

25. The Select Committee felt that it was important for councils to ensure that scrutiny members had enough prior subject knowledge to question effectively and prevent meetings becoming information exchanges; as well as having the capacity to constructively critique the executive rather than following party lines.
26. It was noted that whilst MHCLG allocates £21m per year to the LGA for scrutiny support, there was no apparent monitoring of the impact of this support, and the Select Committee were not satisfied that the training provided by the LGA and partners met the needs of scrutiny, and should be reviewed for effectiveness and best value.

The Role of the Public

27. The final report of the Inquiry identified that ensuring members of the public and local stakeholders play a prominent role in scrutiny can deliver greater legitimacy and independence from the executive for scrutiny committees. Examples of enhanced public involvement reported to the Select Committee included engagement of service users (as discussed in paragraph 19) for both pre- and post-decision scrutiny, and the effective use of digital engagement by councils.

Scrutinising Public Services provided by External Bodies

28. Similar issues to those noted in paragraph 17 (regarding scrutiny of commercially confidential matters) were also noted in evidence presented to the Inquiry over the scrutiny of commercial providers and external partners. The Select Committee felt that scrutiny committees were ideally placed and had a democratic mandate to review any public services in their area.
29. The Select Committee felt that in regard to council contracts, democratic oversight should be built into council contracts from the outset so that both parties understand that the service being contracted will still fall within the scope of scrutiny's democratic mandate to have oversight of service performance.
30. Support was expressed for the CfPS proposal that scrutiny committees should be able to 'follow the council pound' and be able to oversee taxpayer-funded services where those services are funded, wholly or in part, by local authorities. The Select Committee also recommended that scrutiny committees should be able to access information from external service providers and require their attendance at meetings.

Conclusion

31. The Overview and Scrutiny Committee is asked to note the content of the report.

Contact and Email

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Appendix A – List of conclusions and recommendations made by the CLG Select Committee

The role of scrutiny

1. *We therefore recommend that the guidance issued to councils by DCLG on overview and scrutiny committees is revised and reissued to take account of scrutiny's evolving role.*
2. *We call on the Local Government Association to consider how it can best provide a mechanism for the sharing of innovation and best practice across the scrutiny sector to enable committees to learn from one another. We recognise that how scrutiny committees operate is a matter of local discretion, but urge local authorities to take note of the findings of this report and consider their approach.*

Party politics and organisational culture

3. However, all responsible council leaderships should recognise the potential added value that scrutiny can bring, and heed the lessons of high profile failures of scrutiny such as those in Mid Staffordshire and Rotherham.
4. *To reflect scrutiny's independent voice and role as a voice for the community, we believe that scrutiny committees should report to Full Council rather than the executive and call on the Government to make this clear in revised and reissued guidance. When scrutiny committees publish formal recommendations and conclusions, these should be considered by a meeting of the Full Council, with the executive response reported to a subsequent Full Council within two months.*
5. We believe that executive members should attend meetings of scrutiny committees only when invited to do so as witnesses and to answer questions from the committee. Any greater involvement by the executive, especially sitting at the committee table with the committee, risks unnecessary politicisation of meetings and can reduce the effectiveness of scrutiny by diminishing the role of scrutiny members. *We therefore recommend that DCLG strengthens the guidance to councils to promote political impartiality and preserve the distinction between scrutiny and the executive.*
6. It is vital that the role of scrutiny chair is respected and viewed by all as being a key part of the decision-making process, rather than as a form of political patronage.
7. We believe that there are many effective and impartial scrutiny chairs working across the country, but we are concerned that how chairs are appointed has the potential to contribute to lessening the independence of scrutiny committees and weakening the legitimacy of the scrutiny process. Even if impropriety does not occur, we believe that an insufficient distance between executive and scrutiny can create a perception of impropriety.
8. We believe that there is great merit in exploring ways of enhancing the independence and legitimacy of scrutiny chairs such as a secret ballot of non-executive councillors. However, we are wary of proposing that it be imposed upon authorities by government. *We therefore recommend that DCLG works with the LGA and CfPS to identify willing councils to take part in a pilot scheme where the impact of elected chairs on scrutiny's effectiveness can be monitored and its merits considered.*

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Accessing information

9. Scrutiny committees that are seeking information should never need to be ‘determined’ to view information held by its own authority, and there is no justification for a committee having to resort to using Freedom of Information powers to access the information that it needs, especially from its own organisation. There are too many examples of councils being uncooperative and obstructive.

10. Councils should be reminded that there should always be an assumption of transparency wherever possible, and that councillors scrutinising services need access to all financial and performance information held by the authority.

11. We do not believe that there should be any restrictions on scrutiny members’ access to information based on commercial sensitivity issues. Limiting rights of access to items already under consideration for scrutiny limits committees’ ability to identify issues that might warrant further investigation in future, and reinforces scrutiny’s subservience to the executive. *Current legislation effectively requires scrutiny councillors to establish that they have a ‘need to know’ in order to access confidential or exempt information, with many councils interpreting this as not automatically including scrutiny committees. We believe that scrutiny committees should be seen as having an automatic need to know, and that the Government should make this clear through revised guidance.*

12. *We note that few committees make regular use of external experts and call on councils to seek to engage local academics, and encourage universities to play a greater role in local scrutiny.*

13. We commend such examples of committees engaging with service users when forming their understanding of a given subject, and encourage scrutiny committees across the country to consider how the information they receive from officers can be complemented and contrasted by the views and experiences of service users.

Resources

14. We acknowledge that scrutiny resources have diminished in light of wider local authority reductions. However, it is imperative that scrutiny committees have access to independent and impartial policy advice that is as free from executive influence as possible. We are concerned that in too many councils, supporting the executive is the over-riding priority, with little regard for the scrutiny function. This is despite the fact that at a time of limited resources, scrutiny’s role is more important than ever.

15. *We therefore call on the Government to place a strong priority in revised and reissued guidance to local authorities that scrutiny committees must be supported by officers that can operate with independence and provide impartial advice to scrutiny councillors. There should be a greater parity of esteem between scrutiny and the executive, and committees should have the same access to the expertise and time of senior officers and the chief executive as their cabinet counterparts. Councils should be required to publish a summary of resources allocated to scrutiny, using expenditure on executive support as a comparator. We also call on councils to consider carefully their resourcing of scrutiny committees and to satisfy themselves that they are sufficiently supported by people with the right skills and experience.*

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16. We recommend that the Government extend the requirement of a Statutory Scrutiny Officer to all councils and specify that the post-holder should have a seniority and profile of equivalence to the council's corporate management team. To give greater prominence to the role, Statutory Scrutiny Officers should also be required to make regular reports to Full Council on the state of scrutiny, explicitly identifying any areas of weakness that require improvement and the work carried out by the Statutory Scrutiny Officer to rectify them.

Member training and skills

17. It is incumbent upon councils to ensure that scrutiny members have enough prior subject knowledge to prevent meetings becoming information exchanges at the expense of thorough scrutiny. Listening and questioning skills are essential, as well as the capacity to constructively critique the executive rather than following party lines. In the absence of DCLG monitoring, we are not satisfied that the training provided by the LGA and its partners always meets the needs of scrutiny councillors, and call on the Department to put monitoring systems in place and consider whether the support to committees needs to be reviewed and refreshed. We invite the Department to write to us in a year's time detailing its assessment of the value for money of its investment in the LGA and on the wider effectiveness of local authority scrutiny committees.

The role of the public

18. The Government should promote the role of the public in scrutiny in revised and reissued guidance to authorities, and encourage council leaderships to allocate sufficient resources to enable it to happen. Councils should also take note of the issues discussed elsewhere in this report regarding raising the profile and prominence of the scrutiny process, and in so doing encourage more members of the public to participate in local scrutiny. Consideration also need to be given to the role of digital engagement, and we believe that local authorities should commit time and resources to effective digital engagement strategies. The LGA should also consider how it can best share examples of best practise of digital engagement to the wider sector.

Scrutinising public services provided by external bodies

19. Scrutiny committees must be able to monitor and scrutinise the services provided to residents. This includes services provided by public bodies and those provided by commercial organisations. Committees should be able to access information and require attendance at meetings from service providers and we call on DCLG to take steps to ensure this happens. We support the CfPS proposal that committees must be able to 'follow the council pound' and have the power to oversee all taxpayer-funded services.

20. In light of our concerns regarding public oversight of LEPs, we call on the Government to make clear how these organisations are to have democratic, and publicly visible, oversight. We recommend that upper tier councils, and combined authorities where appropriate, should be able to monitor the performance and effectiveness of LEPs through their scrutiny committees. In line with other public bodies, scrutiny committees should be able to require LEPs to provide information and attend committee meetings as required.

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Scrutiny in combined authorities

21. We are concerned that effective scrutiny of the Metro Mayors will be hindered by under-resourcing, and call on the Government to commit more funding for this purpose. When agreeing further devolution deals and creating executive mayors, the Government must make clear that scrutiny is a fundamental part of any deal and that it must be adequately resourced and supported.