

COMMUNITY LEADERSHIP OVERVIEW AND SCRUTINY COMMITTEE

7 OCTOBER 2019

REPORT OF THE HEAD OF DEMOCRATIC SERVICES AND ELECTIONS

A.3 NEW STATUTORY GUIDANCE ON OVERVIEW AND SCRUTINY IN LOCAL AND COMBINED AUTHORITIES

(Report prepared by Keith Simmons)

PURPOSE OF THE REPORT

The purpose of this report is to bring to the attention of the Committee the publication of new statutory guidance on the operation of overview and scrutiny functions in local authorities and to invite it to consider the guidance. An identical report was submitted to the Resources and Services Overview and Scrutiny Committee. Any recommendations from the two Committees will then be submitted to Cabinet/Council for consideration as appropriate.

In this report, no distinction is drawn between the term 'overview' which focuses on the development of policy, and a narrower definition of 'scrutiny' which looks at decisions that have been made or are about to be made to ensure they are fit for purpose. Instead, the term 'scrutiny' is used to encapsulate both the overview and the narrower scrutiny focus.

INVITEES

None.

BACKGROUND

On 7 May 2019, the Government published new statutory guidance on overview and scrutiny in local and combined authorities. This guidance is available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800048/Statutory_Guidance_on_Overview_and_Scrutiny_in_Local_and_Combined_Authorities.pdf

The following statement is extracted from the guidance and is a good reference point as to its status:

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

The guidance itself follows the report of the House of Commons' Communities and Local Government Committee of 15 December 2017 into the 'Effectiveness of local authority overview and scrutiny committees'. The report of the Select Committee is available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/369/369.pdf>

The Council's Constitution already sets out its compliance with statutory requirements for overview and scrutiny committees, the appointment of members of those Committees, the

appointment of Chairmen and Vice-Chairmen of the same, the procedures for such matters as call-in, and work programming, access to information for members of those committees and member-officer protocols etc. Officers will consider the statutory guidance in their work, through the Monitoring Officer, to ensure that the Constitution is kept up to date.

The Committee may also appreciate being aware that training for officers who present or write reports for Committees and Cabinet is being proposed for the autumn and it is intended that this training will also reference the new statutory guidance.

DETAILED INFORMATION

As set out in the background section of this report, the House of Commons' Select Committee undertook an inquiry into the effectiveness of scrutiny committees in Councils. It is therefore important contextually to the understanding of the guidance that the work of the Select Committee is appreciated.

The terms of reference for the Select Committee inquiry placed an emphasis on considering factors such as the ability of committees to hold decision-makers to account, the impact of party politics on scrutiny, resourcing of committees and the ability of council scrutiny committees to have oversight of services delivered by external organisations.

The Select Committee found that the most significant factor in determining whether or not scrutiny committees are effective is the organisational culture of a particular council. To encapsulate that cultural importance, the report references the advantages to scrutiny of a 'parity of esteem' in Councils between the Executive/Cabinet and Overview & Scrutiny Committees.

The Select Committee identified as key indicators of that 'parity of esteem' were the availability of information to scrutiny committees as it is to the Executive/Cabinet, the officer support for scrutiny and the need for those chairing scrutiny committees to be effective and impartial in that role.

In view of the above, it is not a surprise that the Statutory Guidance is itself organised into chapters looking at an organisation's culture, resourcing for scrutiny, Membership/Chairing of Scrutiny Committees and access to information. It does also have a lot to say about work planning by scrutiny committees and the appropriate formats for evidence gathering by those committees.

The guidance also usefully references the legal basis for scrutiny and access to information. These are not repeated in this report.

A summary of the guidance is set out at Appendix A of this report. Such a summary, by its nature could vary from reader to reader. As such, it is not intended to be exhaustive. It is merely there to assist Members consider the key elements set out in the guidance.

The statutory guidance is there to be referred to as the Committee undertakes its work in the future just as it is important to take stock of the position as it currently exists and ensure that we do comply with the guidance or we have the documented rationale for taking a different approach.

RECOMMENDATION

That the Committee receives the report, determines whether it has any comments or recommendations it wishes to put forward to Council/the Cabinet and otherwise records that it will be mindful of the guidance when it undertakes its work.

Community Leadership Overview and Scrutiny Committee 7 October 2019

Summary of Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities as prepared by the Head of Democratic Services and Elections

Introduction and Context

In the introduction to the guidance, the following is provided as a means of identifying good scrutiny:

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

Culture

In the area of developing a strong organisational culture (the most important element to delivering good scrutiny), the guidance identifies:

- Recognising scrutiny's legal and democratic legitimacy
- Identifying a clear role and focus (where Council believes it can add value)
- Ensuring early and regular engagement between the executive and scrutiny (in order that it can truly perform the 'critical friend' role).
- Managing disagreement (when findings are not accepted)
- Providing the necessary support
- Ensuring impartial advice from officers
- Communicating scrutiny's role and purpose to the wider authority
- Maintaining the interest of full Council in the work of the scrutiny committee
- Communicating scrutiny's role to the public
- Ensuring scrutiny members are supported in having an independent mind-set

Resourcing

In the guidance, it is identified that it is up to each authority to decide on the resource it provides for scrutiny support, but every authority should recognise that creating and sustaining an effective scrutiny function requires them to allocate resources to it. The guidance also stipulates that those officers tasked with providing scrutiny support are able to provide impartial advice.

The resourcing section also references the resourcing for training and the securing of ad hoc external support where expertise does not exist in the council.

Selecting Committee Members

In respect of selecting Members to serve on Scrutiny Committees, the guidance states:

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

As such, the above also applies, as stated in the guidance, to the person chairing scrutiny committees. In addition, that person should *"also possess the ability to lead and build a sense*

of teamwork and consensus among committee members.” The guidance identifies that the method for selecting a chairman scrutiny committee is for each authority to decide for itself, however, it then outlines that every authority should consider taking a vote by secret ballot.

Authorities should ensure scrutiny committee members are offered induction when they take up their role and ongoing training so they can carry out their responsibilities effectively. As far as training is concerned, the guidance identifies questioning skills as one that should be considered.

Power to Access Information

A section of the guidance concerns access to information and the following is a direct quotation from the guidance:

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

In relation to seeking information from external organisations, the guidance encourages:

- Explaining the purpose of the scrutiny
- The benefits of an informal approach
- Encouraging organisations to comply by allowing them to ‘set the record straight’.
- Determining the best person to invite based on their level of knowledge of the matter being examined.

Further top the above, the guidance references scrutiny committees having a keen interest in ‘following the council pound’, i.e. scrutinising organisations that receive public funding to deliver goods and services.

Planning work

In this section of the guidance, the reader is reminded that scrutiny works best when it has a clear role and function; focus and direction. While scrutiny has the power to look at anything which affects ‘the area, or the area’s inhabitants’, it will often be difficult to support over generalised activities, particularly in the context of partnership working. It is therefore critical, the guidance states, for good prioritisation of scrutiny activities. The guidance recognises that this will mean that there might be things that, despite being important, scrutiny will not be able to look at. Determining this prioritisation will often benefit from dialogue with the public and stakeholders.

When considering whether an item should be included in the work programme, the guidance sets out the kind of questions a scrutiny committee should consider including:

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

In so far as the guidance then outlines appropriate ways of conducting scrutiny, it outlines options as:

- a) As a single item on a committee agenda – e.g. where the committee wants to maintain a formal watching brief over a given issue;

- b) At a single meeting – where the public or a number of witnesses can provide information relevant to the review;
- c) At a task and finish review of two or three meetings – short, sharp scrutiny reviews are likely to be most effective even for complex topics.
- d) Via a longer-term task and finish review – with perhaps six or seven meetings spread over a number of months to dig into a few of the most complex topics in significant detail; and
- e) By establishing a ‘standing panel’ - where members feel they need to convene regularly to carry out that oversight. The resource implications of this approach means that it will be rarely used.

Evidence sessions

Effective planning - there should always be consideration in advance of what scrutiny is trying to get out of a particular evidence session. Effective planning should mean that at the end of a session it is relatively straightforward for the chair to draw together themes and highlight the key findings. After an evidence session, the committee might wish to hold a short ‘wash-up’ meeting to review whether their objectives were met and lessons could be learned for future sessions.

Annexes to the Guidance

These deal respectively with:

- Creating an Executive-Scrutiny Protocol
- Engaging Independent Technical Advisers
- Approaching an External Organisation to Appear before a Committee