



Email: committeeservices@horsham.gov.uk
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Overview and Scrutiny Committee

Monday, 3rd June, 2019 at 5.30 pm
Conference Room, Parkside, Chart Way, Horsham

Councillors:

Roy Cornell	Richard Landeryou
Michael Croker	Tim Lloyd
Leonard Crosbie	Louise Potter
Brian Donnelly	Josh Potts
Billy Greening	Jack Saheid
Frances Haigh	David Skipp
Nigel Jupp	Ian Stannard
Lynn Lambert	

You are summoned to the meeting to transact the following business

Glen Chipp
Chief Executive

Agenda

	Page No.
1. Election of Chairman	
2. Apologies for absence	
3. Appointment of Vice Chairman	
4. To approve the time of the meetings of the Committee for the next year	
5. Minutes	3 - 8
<i>To approve as correct the minutes of the meeting held on 25th March 2019 (Note: If any Member wishes to propose an amendment to the minutes they should submit this in writing to committeeservices@horsham.gov.uk at least 24 hours before the meeting. Where applicable, the audio recording of the meeting will be checked to ensure the accuracy of the proposed amendment.)</i>	
6. Declarations of Members' Interests	
To receive any declarations of interest from Members of the Committee	
7. Announcements	
To receive any announcements from the Chairman of the Committee or the Chief Executive	

8. **Confirm Membership of the Scrutiny Committee Working Groups**
9. **Information about planning extensions** 9 - 12

This information was requested by Members at minute SO/74 of the minutes from the Overview and Scrutiny Committee on 25th March 2019.
10. **Overview and Scrutiny Work Programme** 13 - 14
11. **Cabinet Forward Plan** 15 - 22
12. **New Scrutiny Guidance from the Government** 23 - 54
13. **Matters arising from Overview and Scrutiny on 25th March**
 - Number of extensions to planning applications
 - To consider the report on the Highwood Community Centre – Development Proposal and Construction Contract Award and the report on the re-provision of the athletics track
[Link to Cabinet agenda for 6th June](#)
14. **Urgent Business**

Items not on the agenda which the Chairman of the meeting is of the opinion should be considered as urgent because of the special circumstances

Overview and Scrutiny Committee 25 MARCH 2019

Present: Councillors: Leonard Crosbie (Chairman), Toni Bradnum, Billy Greening, Nigel Jupp, Lynn Lambert, Mike Morgan, Brian O'Connell, Kate Rowbottom and Michael Willett

Apologies: Councillors: David Coldwell, Paul Clarke, Matthew French, Tim Lloyd and Ben Staines

Absent: Councillors: Jonathan Dancer

SO/72 DECLARATIONS OF MEMBERS' INTERESTS

There were no declarations of interest.

SO/73 ANNOUNCEMENTS

The Chairman of the Committee had held a thank you gathering prior to the Committee for everyone involved in the work of Overview and Scrutiny. Members confirmed their gratitude to the previous Overview and Scrutiny Committee Support Officer, other officers involved with the Committee and the Councillors involved with the Committee. The Chairman of the Council was present during this item and expressed his thanks especially to the former Overview and Scrutiny Committee Support Officer and the Chairman of the Committee.

SO/74 CORPORATE PLAN PRIORITIES FINANCE AND PERFORMANCE REPORT Q3

The Committee received the report on the Council's Corporate Plan Priorities, Finance and Performance for quarter three.

The Director of Corporate Resources highlighted that the financial information in the report was for the year to January 2019 and the performance information for the year to December 2018.

There were no major areas of concern regarding performance although the speed of processing housing benefits and council tax support was just below target due to the emphasis on quality and the lack of benefits staff available at the start of the new arrangements in July. There was currently a 0.3% error rate with claims processed. The Director of Corporate Resources said that the new partnership with LGSS was providing a good service and once the IT transfer from Mid Sussex's servers was complete the issue with the speed of processing would be resolved due to LGSS's resilience arrangements.

A budget monitoring forecast was presented. The forecast outturn had moved from a £177,000 surplus in period 9 to a surplus of £195,000 in period 10. This was due to some significant re-forecasts.

It was noted that performance indicators for the speed of determining planning applications were on target. Councillors asked about the number of applications where the Council had sought an extension of time. Members requested that this information be included in future KPI monitoring reports.

It was explained regarding the target for the percentage of invoices paid on time that measures were being put in place to allow more automatic payments. Councillors were keen to know whether the issues were an IT problem or a processing problem. The Director of Corporate Resources said it was a mixture of both.

Asked about the slow spend of the capital budgets the Director of Corporate Resources acknowledged that forward planning by officers could be over ambitious, although there were inevitably unpredicted and uncontrollable delays such as changes in the design of the Roman Way flats requested by Councillors and the incident with the Piries Place redevelopment.

The Director of Corporate Resources also explained that the Council had £3,000,000 per year to purchase property but could not control when the properties became available so some years this money was spent and in others it was not.

The Director of Corporate Resources reminded Councillors that local authority capital projects generally did not make a financial return but that whilst not spending left the Council better off, this was not a good approach for Horsham District's communities.

Asked about the spend profile on the salaries budgets the Director of Corporate Resources stated that there had been recruiting difficulties with many services leading to the use of agency and temporary staff. This had been a particular problem in the refuse collection service where posts could not be left vacant. The Head of Service was working with Human Resources on the issue.

Councillors questioned whether there needed to be more money in the Council budget for planning compliance.

The Chairman noted that the compliments received by the Council far outweigh the complaints and considered the information in the report to reflect well on the Council.

RESOLVED

That the Head of Development be asked to advise the Committee on the number of extensions to planning applications.

That a review of planning compliance be considered by the Overview and Scrutiny Committee in the new Council year.

SO/75 **RECEIVE THE REPORT OF WSCC S106 TASK & FINISH GROUP**

The Committee considered the report of the West Sussex County Council S106 Task and Finish Group. The Chairman of the Group stated that West Sussex County Council had never lost money due to section 106 applications being out of time. He stated that the process for allocating funds was sound but the existing protocol needed updating.

It was agreed that the first recommendation in the report be amended to include reference to the introduction of CIL.

Recommended to Council:

- 1) That the current protocol agreed between West Sussex County Council and Horsham District Council be reviewed and updated as required, as agreed by the West Sussex County Council Team Manager in conjunction with Horsham District Council in accordance with new legislation regarding CIL.
- 2) That the protocol be reviewed by the Business Improvement Working Group on an annual basis
- 3) That the West Sussex County Council Team Manager be invited to attend the Business Improvement Working Group annually to update members and talk through current procedures employed and review effectiveness
- 4) That a training seminar be offered to parish clerks and members on the S106 procedure and how to interpret the monthly reports issued to parishes.
- 5) That the annual report produced by West Sussex County Council be distributed to all Members and Parish Councils.

SO/76 **AGREE THE MEMBERSHIP OF WORKING GROUPS - FINANCE AND PERFORMANCE, BUSINESS IMPROVEMENT AND COMMUNITY**

The Committee considered the proposed membership of the Finance and Performance, Business Improvement and Community working groups. Membership would need to be reviewed following the Council elections on 2nd May 2019:

Finance and Performance

Leonard Crosbie
Nigel Jupp
Lynn Lambert
Tim Lloyd
Paul Clark

Community

Toni Bradnum
Matthew French
Mike Morgan
Billy Greening

Business Improvement

Paul Clark
Tim Lloyd
Brian O'Connell
Toni Bradnum
Nigel Jupp
Lynn Lambert

It was noted that the groups did not have to be politically balanced. The Committee agreed to hold one seat on each working group for any new Member of the Overview and Scrutiny Committee joining after the May election.

SO/77 **CABINET FORWARD PLAN**

The Committee considered the Cabinet Forward Plan.

There was a discussion around whether the Council's budget had now reached the bottom and whether any more cuts could be made without affecting performance. The Director of Corporate Resources explained the Fair Funding Review, the Localisation of Business Rates and the Rebaselining of Business Rates were unlikely to favour District Councils in south east England. She said she felt there was always room for more efficiencies with new technologies such as artificial intelligence coming in.

RESOLVED

The Committee would consider the report on the Highwood Community Centre – Development Proposal and Construction Contract Award and the report on the re-provision of the athletics track at a future Overview and Scrutiny meeting.

SO/78 **OVERVIEW AND SCRUTINY WORK PROGRAMME**

The Committee considered the Overview and Scrutiny work programme. As noted above, the Committee would like to consider the papers regarding the review of the Highwood Community Centre and the athletics track.

The Chairman proposed the recent public order issues with groups of youths in Horsham and Southwater be considered by the Community Working Group.

The Chairman would review monthly report data with the Director of Corporate Resources before the next meeting of the Finance and Performance Working Group.

SO/79 **URGENT BUSINESS**

There was no urgent business.

The meeting closed at 7.09 pm having commenced at 5.30 pm

CHAIRMAN

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Use of extensions of time for planning applications

Legal requirements

Planning authorities are required by law to determine valid applications within set timescales, generally 13 weeks for a major application and 8 weeks for non-major and most other applications.¹ Where these timescales are missed, applicants have a legal right to appeal to the Secretary of State. This removes the planning decision for that application from the local authority's control, as well as having potential cost implications if costs are awarded.

Local authorities are also subject to minimum performance standards for speed of determining both major and non-major applications. Currently, at least 60% of applications should be determined 'in time'. Authorities which fall below this threshold may be 'designated', losing the right to determine planning applications.²

While statutory timescales are considered long enough for most applications, it is recognised that applications may vary in complexity, and provision is made for an extended period to be agreed with the applicant. Applications are considered 'in time' if determined within the agreed period, in terms of both designation and the right of appeal.

- **Planning Performance Agreements** allow bespoke timescales for complex applications which may not be adequately considered within the statutory timescales. They are agreed before the application is submitted, and are primarily intended to assure the quality of outcomes.³
- **Extensions of Time** are agreed after the application has been submitted, but before the statutory period has expired. They allow for an agreed path (and extra time) for dealing with issues and obstacles that emerge while the application is being considered.
- **Environmental Impact Assessments** are required for certain applications likely to have a significant impact on the environmental. Examples include building major transport infrastructure, chemicals manufacture, quarries or new large-scale agriculture developments. Where an Environmental Impact Assessment is necessary, a timescale of 16 weeks is allowed.⁴

While these provisions extend the time available for planning applications to be considered, they are principally intended to maintain the quality of the planning system. For this reason, the Planning Advisory Service notes that "timeliness in dealing with applications is not the whole measure of a successful development management service."⁵ However, "untimely decisions are certainly an indicator of failure" and "for the overall credibility of the planning system, extensions of time should really be the exception and efforts made to meet the statutory timescale wherever possible."⁶

¹ Town and Country Planning (Development Management Procedure) (England) Order 2015

² <https://www.gov.uk/government/publications/improving-planning-performance-criteria-for-designation>

³ <https://www.gov.uk/guidance/before-submitting-an-application#planning-performance-agreements>

⁴ The Town and Country Planning (Environmental Impact Assessment) Regulations 2017

⁵ <https://www.local.gov.uk/pas-topics/planning-applications/positive-planning-agreements-extension-time-applications>

⁶ <https://www.local.gov.uk/pas-topics/planning-applications/decisions-positive-planning-agreements-extension-time>

Use of extension of time by Horsham District Council

Extensions of time by application type

Horsham District Council made over 3,200 planning decisions during 2018. Of these, over 2,500 related to application types which have a legal basis for agreeing an extension of time.⁷ Most of these applications were in three categories: householder consent, full planning applications and discharge of conditions.

Across all application types, an extension of time was requested in just over a quarter. This was most likely for full and outline applications, Listed Building Consents and Reserved Matters. Just 5% of applications for discharge of conditions had an extension of time.

Table 1) Applications using extensions of time by application type (January – December 2018)		
	Applications determined	% with extension of time request made
Householder	881	26%
Full	495	52%
Discharge of Conditions	419	5%
Listed Building Consent	156	41%
Non-material Amendment	132	5%
Certificate of Proposed Lawful Use	126	2%
Prior Approval (all types)	119	11%
Removal of Condition	109	37%
Advertising consent	48	23%
Certificate of Existing Lawful Use	36	28%
Outline	19	58%
Reserved Matters	12	75%
Change of use	5	40%
Cert. Lawfulness Proposed Works (Listed Building)	1	0%
Total	2,558	26%

Source: Horsham District Council planning system (Uniform)

⁷ Applications where extensions of time are not relevant include pre-application advice, neighbouring authority consultations, notifications and consents relating to trees and hedges. Figures also exclude applications which were withdrawn, returned or invalid.

Extensions of time by development type

Planning applications are also classified according to their development type.

- **Major developments** are those which either:
 - provide 10 or more dwellinghouses, or dwellinghouses on a site of 0.5 hectares or more;
 - provide a building or buildings with floor space created of at least 1,000m², or on a site with area of 1 hectare or more; or
 - involve extracting minerals or waste development
- **Non-major developments** are those below these thresholds. This also includes applications for change of use⁸ and householder applications.⁹
- **Non-designated categories** is a term used in this report to cover other types of application where an extension of time may be agreed.¹⁰ These are consents for advertisements, listed buildings (both alteration and demolition), and lawful development certificates.

Extensions of time were twice as prevalent on major applications as on non-major (being used in two thirds and one thirds of cases respectively). Relatively few were used for non-designated categories.

Table 2) Applications using extensions of time by development type (January – December 2018)		
	Applications determined	% with extension of time request made
Major	54	67%
Non-major	1,465	35%
Non-designated categories	1,039	12%
Total	2,558	26%

Source: Horsham District Council planning system (Uniform)

Comparison with other local authorities

Table 3 compares the use of extensions of time¹¹ with a 'comparator group' of twenty other district authorities. These have a similar make-up and performance to Horsham across a range of outputs, factors and conditions relevant to development management; in particular, all handle relatively large volumes of planning applications.¹²

⁸ Some examples of different use classes include shops, financial/professional services, business, general industry, hotels, dwellinghouses, assembly/leisure and sui generis.

⁹ such as smaller extensions, conservatories and loft conversions

¹⁰ 'Designated' refers to the same criteria mentioned on page 1 of this report.

¹¹ including Planning Performance Agreements and Environmental Impact Assessments. These are a relatively rare for non-major applications, but more common for major applications.

¹² The comparator group was selected in a Productivity Review of Development management carried out in 2018. For details of the selection criteria, see 2018, Horsham District Council. Future Horsham Productivity Review: Strategic Planning and Development Management.

Among the comparator group, Horsham District Council had the 7th highest usage of extensions of time for major applications, and 6th highest for non-major applications – above average in both cases.

Out of the 201 local district authorities in England, Horsham District Council usage of extensions of time was the 57th highest for major applications, and 50th highest for non-major applications.

Table 3) % of determined applications which have a Planning Performance Agreement, Extension of Time or Environmental Impact Assessment (January – December 2018)			
Major applications		Non-major applications	
Aylesbury Vale	87%	Winchester	44%
Winchester	81%	Huntingdonshire	44%
Stratford-on-Avon	80%	Aylesbury Vale	39%
Huntingdonshire	77%	Stratford-on-Avon	37%
Chichester	76%	Chichester	36%
Basingstoke and Deane	76%	Horsham	35%
Horsham	72%	Epping Forest	33%
Canterbury	72%	Canterbury	31%
Mid Sussex	71%	Harrogate	30%
Vale of White Horse	69%	Vale of White Horse	29%
Maidstone	63%	South Oxfordshire	26%
Harrogate	63%	Mid Sussex	23%
Test Valley	61%	Test Valley	23%
Guildford	60%	West Oxfordshire	22%
Cherwell	58%	Basingstoke & Deane	20%
South Oxfordshire	58%	Cherwell	17%
South Norfolk	57%	South Norfolk	17%
Epping Forest	56%	Maidstone	13%
Sevenoaks	54%	Chelmsford	13%
West Oxfordshire	49%	Sevenoaks	13%
Chelmsford	48%	Guildford	13%
Comparator group	66%	Comparator group	27%
All district authorities	64%	All district authorities	28%

Source: MHCLG Live Tables P151, P153

Overview & Scrutiny Work Programme
January 2019 – May 2020

Work Programme for **2019**

	Scrutiny & Overview Committee	TASK & FINISH GROUPS	Finance & Performance	Business Improvement	Community
May	Election of Chairman and Vice Chairman Crime and Disorder End of Year Report (TBC)				
June	Q4 Quarterly Corporate Plan and F&P Report Consider the report of the Highwood Community Centre – Development Proposal and construction award and the re-provision of the athletics track before it goes to Cabinet on 6 th June Consider a review of planning compliance				Consider groups of youths needing to be dispersed in town centres.

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**Parkside, Chart Way, Horsham,
West Sussex RH12 1RL**

FORWARD PLAN

This notice sets out details of key decisions that the Cabinet or a Cabinet Member intend to make, and gives 28 days' notice of the decision under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. The notice may also include details of other decisions the Council intends to make.

The reports and any background documents that have been used to inform the decisions will be available on the Council's website (www.horsham.gov.uk) or by contacting Committee Services at the Council Offices.

Whilst the majority of the Council's business will be open to the public, there will be occasions when the business to be considered contains confidential, commercially sensitive or personal information. This is formal notice under the 2012 Regulations that part or all of the reports on the decisions referred to in the schedule may be private because they contain exempt information under Part 1 of Schedule 12A to the Local Government Act 1972 (as amended) and the public interest in withholding the information outweighs the public interest in disclosing it.

If you wish to make representations about why part or all of the papers should be open to the public, please contact Committee Services at least 10 working days before the date on which the decision is to be taken.

If you wish to make representations to the Cabinet or Cabinet Member about the proposed decisions, please contact Committee Services to make your request.

Please note that the decision date given in this notice may be subject to change.

To contact Committee Services:

E-mail: : committeeservices@horsham.gov.uk

Tel: 01403 215123

Published on 01 May 2019

What is a Key Decision?

A key decision is an executive decision which, is likely –

(i) to involve expenditure or savings of £250,000 or more as well as otherwise being significant having regard to the Council's budget for the service or function to which the decision relates; or

(ii) to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the District.

	Subject and Date of Policy Development Advisory Group for consultation	Decision Taker	Date(s) of decision	Is all or part of this item likely to be dealt with in private	Contact Officer Cabinet Member (NB include name, title and email address)
1.	Corporate Plan 2019 to 2023	Cabinet Council	6 Jun 2019 26 Jun 2019	Open	Glen Chipp, Chief Executive glen.chipp@horsham.gov.uk Leader (Councillor Ray Dawe)
2.	Replacement Telephone System Policy Development Advisory Group 8 April 2019	Cabinet	6 Jun 2019	Part exempt	Andrea Curson, Head of Technology Services andrea.curson@horsham.gov.uk Cabinet Member for Finance and Assets (Councillor Brian Donnelly)
3.	Renewal of Microsoft licensing Policy Development Advisory Group 8 April 2019	Cabinet	6 Jun 2019	Part exempt	Andrea Curson, Head of Technology Services andrea.curson@horsham.gov.uk Cabinet Member for Finance and Assets (Councillor Brian Donnelly)

	Subject/Decision	Decision Taker	Date(s) of decision	Is all or part of this item likely to be dealt with in private	Contact Officer Cabinet Member (NB include name, title and email address)
4.	Contract for replacement ANPR car park system Policy Development Advisory Group 09 April 2019	Cabinet	6 Jun 2019	Part exempt	Ben Golds, Head of Parking Services ben.golds@horsham.gov.uk Cabinet Member for Local Economy (Councillor Gordon Lindsay)
5.	Pay Policy Statement 2019/20	Council	26 Jun 2019	Open	Robert Laban, Head of HR & OD robert.laban@horsham.gov.uk
6.	Development of industrial units at Oakhurst Phase 4 Policy Development Advisory Groups 8 April 2019	Cabinet	25 Jul 2019	Part exempt	Brian Elliott, Head of Property & Facilities brian.elliott@horsham.gov.uk Cabinet Member for Finance and Assets (Councillor Brian Donnelly), Cabinet Member for Local Economy (Councillor Gordon Lindsay)
7.	Highwood Community Centre - Development Proposal and Construction Contract Award Policy Development Advisory Group 10 July 2019	Cabinet	25 Jul 2019	Open	Brian Elliott, Head of Property & Facilities brian.elliott@horsham.gov.uk Deputy Leader and Cabinet Member for Leisure and Culture (Councillor Jonathan Chowen)

	Subject/Decision	Decision Taker	Date(s) of decision	Is all or part of this item likely to be dealt with in private	Contact Officer Cabinet Member (NB include name, title and email address)
8.	Contract for Facilities Management Services Policy Development Advisory Group 8 July 2019	Cabinet	25 Jul 2019	Part exempt	Brian Elliott, Head of Property & Facilities brian.elliott@horsham.gov.uk Cabinet Member for Finance and Assets (Councillor Brian Donnelly)
9.	Conservation Area Appraisals and Management Plans for Slinfold and Warnham Policy Development Advisory Group 25 July 2019	Cabinet	26 Sep 2019	Open	Barbara Childs, Director of Place barbara.childs@horsham.gov.uk Cabinet Member for Planning and Development (Councillor Claire Vickers)
10.	Housing Strategy 2019 - 2024 Policy Development Advisory Group 10 September 2019	Cabinet	26 Sep 2019	Open	Rob Jarvis, Head of Housing & Community Services robert.jarvis@horsham.gov.uk Cabinet Member for Community and Wellbeing (Councillor Tricia Youtan)

	Subject/Decision	Decision Taker	Date(s) of decision	Is all or part of this item likely to be dealt with in private	Contact Officer Cabinet Member (NB include name, title and email address)
11.	Capitol Theatre - interim arrangements Policy Development Advisory Group 18 September 2019	Cabinet	26 Sep 2019	Open	Adam Chalmers, Director of Community Services adam.chalmers@horsham.gov.uk Deputy Leader and Cabinet Member for Leisure and Culture (Councillor Jonathan Chowen)
12.	Medium Term Financial Strategy Policy Development Advisory Group 4 November 2019	Cabinet	28 Nov 2019	Open	Jane Eaton, Director of Corporate Resources jane.eaton@horsham.gov.uk Cabinet Member for Finance and Assets (Councillor Brian Donnelly)
13.	Budget 2020/21 Policy Development Advisory Group 6 January 2020	Cabinet Council	23 Jan 2020 12 Feb 2020	Open	Jane Eaton, Director of Corporate Resources jane.eaton@horsham.gov.uk Cabinet Member for Finance and Assets (Councillor Brian Donnelly)

	Subject/Decision	Decision Taker	Date(s) of decision	Is all or part of this item likely to be dealt with in private	Contact Officer Cabinet Member (NB include name, title and email address)
14.	Council Tax Reduction Scheme Policy Development Advisory Group 6 January 2020	Cabinet Council	23 Jan 2020 12 Feb 2020	Open	Jane Eaton, Director of Corporate Resources jane.eaton@horsham.gov.uk Cabinet Member for Finance and Assets (Councillor Brian Donnelly)



Ministry of Housing,
Communities &
Local Government

Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities



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Ministerial Foreword

The role that overview and scrutiny can play in holding an authority's decision-makers to account makes it fundamentally important to the successful functioning of local democracy. Effective scrutiny helps secure the efficient delivery of public services and drives improvements within the authority itself. Conversely, poor scrutiny can be indicative of wider governance, leadership and service failure.

It is vital that councils and combined authorities know the purpose of scrutiny, what effective scrutiny looks like, how to conduct it and the benefits it can bring. This guidance aims to increase understanding in all four areas.

In writing this guidance, my department has taken close note of the House of Commons Select Committee report of December 2017, as well as the written and oral evidence supplied to that Committee. We have also consulted individuals and organisations with practical involvement in conducting, researching and supporting scrutiny.

It is clear from speaking to these practitioners that local and combined authorities with effective overview and scrutiny arrangements in place share certain key traits, the most important being a strong organisational culture. Authorities who welcome challenge and recognise the value scrutiny can bring reap the benefits. But this depends on strong commitment from the top - from senior members as well as senior officials.

Crucially, this guidance recognises that authorities have democratic mandates and are ultimately accountable to their electorates, and that authorities themselves are best-placed to know which scrutiny arrangements are most appropriate for their own individual circumstances.

I would, however, strongly urge all councils to cast a critical eye over their existing arrangements and, above all, ensure they embed a culture that allows overview and scrutiny to flourish.

A handwritten signature in blue ink, appearing to read 'Rishi Sunak'.

Rishi Sunak MP
Minister for Local Government

About this Guidance

Who the guidance is for

This document is aimed at local authorities and combined authorities in England to help them carry out their overview and scrutiny functions effectively. In particular, it provides advice for senior leaders, members of overview and scrutiny committees, and support officers.

Aim of the guidance

This guidance seeks to ensure local authorities and combined authorities are aware of the purpose of overview and scrutiny, what effective scrutiny looks like, how to conduct it effectively and the benefits it can bring.

As such, it includes a number of policies and practices authorities should adopt or should consider adopting when deciding how to carry out their overview and scrutiny functions.

The guidance recognises that authorities approach scrutiny in different ways and have different processes and procedures in place, and that what might work well for one authority might not work well in another.

The hypothetical scenarios contained in the annexes to this guidance have been included for illustrative purposes, and are intended to provoke thought and discussion rather than serve as a 'best' way to approach the relevant issues.

While the guidance sets out some of the key legal requirements, it does not seek to replicate legislation.

Status of the guidance

This is statutory guidance from the Ministry of Housing, Communities and Local Government. 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.

Not every authority is required to appoint a scrutiny committee. This guidance applies to those authorities who have such a committee in place, whether they are required to or not.

This guidance has been issued under section 9Q of the Local Government Act 2000 and under paragraph 2(9) of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009, which requires authorities to have regard to this guidance. In addition, authorities may have regard to other material they might choose to consider, including that issued by the Centre for Public Scrutiny, when exercising their overview and scrutiny functions.

Terminology

Unless 'overview' is specifically mentioned, the term 'scrutiny' refers to both overview and scrutiny.¹

Where the term 'authority' is used, it refers to both local authorities and combined authorities.

Where the term 'scrutiny committee' is used, it refers to an overview and scrutiny committee and any of its sub-committees. As the legislation refers throughout to powers conferred on scrutiny committees, that is the wording used in this guidance. However, the guidance should be seen as applying equally to work undertaken in informal task and finish groups, commissioned by formal committees.

Where the term 'executive' is used, it refers to executive members.

For combined authorities, references to the 'executive' or 'cabinet' should be interpreted as relating to the mayor (where applicable) and all the authority members.

For authorities operating committee rather than executive arrangements, references to the executive or Cabinet should be interpreted as relating to councillors in leadership positions.

Expiry or review date

This guidance will be kept under review and updated as necessary.

¹ A distinction is often drawn between 'overview' which focuses on the development of policy, and 'scrutiny' which looks at decisions that have been made or are about to be made to ensure they are fit for purpose.

1. Introduction and Context

1. Overview and scrutiny committees were introduced in 2000 as part of new executive governance arrangements to ensure that members of an authority who were not part of the executive could hold the executive to account for the decisions and actions that affect their communities.
2. Overview and scrutiny committees have statutory powers² to scrutinise decisions the executive is planning to take, those it plans to implement, and those that have already been taken/implemented. Recommendations following scrutiny enable improvements to be made to policies and how they are implemented. Overview and scrutiny committees can also play a valuable role in developing policy.

Effective overview and scrutiny should:

- 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.

3. The requirement for local authorities in England to establish overview and scrutiny committees is set out in sections 9F to 9FI of the Local Government Act 2000 as amended by the Localism Act 2011.
4. The Localism Act 2011 amended the Local Government Act 2000 to allow councils to revert to a non-executive form of governance - the 'committee system'. Councils who adopt the committee system are not required to have overview and scrutiny but may do so if they wish. The legislation has been strengthened and updated since 2000, most recently to reflect new governance arrangements with combined authorities. Requirements for combined authorities are set out in Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009.
5. Current overview and scrutiny legislation recognises that authorities are democratically-elected bodies who are best-placed to determine which overview and scrutiny arrangements best suit their own individual needs, and so gives them a great degree of flexibility to decide which arrangements to adopt.
6. In producing this guidance, the Government fully recognises both authorities' democratic mandate and that the nature of local government has changed in recent years, with, for example, the creation of combined authorities, and councils increasingly delivering key services in partnership with other organisations or outsourcing them entirely.

² Section 9F of the Local Government Act 2000; paragraph 1 of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009.

2. Culture

7. The prevailing organisational culture, behaviours and attitudes of an authority will largely determine whether its scrutiny function succeeds or fails.
8. While everyone in an authority can play a role in creating an environment conducive to effective scrutiny, it is important that this is led and owned by members, given their role in setting and maintaining the culture of an authority.
9. Creating a strong organisational culture supports scrutiny work that can add real value by, for example, improving policy-making and the efficient delivery of public services. In contrast, low levels of support for and engagement with the scrutiny function often lead to poor quality and ill-focused work that serves to reinforce the perception that it is of little worth or relevance.
10. Members and senior officers should note that the performance of the scrutiny function is not just of interest to the authority itself. Its effectiveness, or lack thereof, is often considered by external bodies such as regulators and inspectors, and highlighted in public reports, including best value inspection reports. Failures in scrutiny can therefore help to create a negative public image of the work of an authority as a whole.

How to establish a strong organisational culture

11. Authorities can establish a strong organisational culture by:

- a) **Recognising scrutiny's legal and democratic legitimacy** – all members and officers should recognise and appreciate the importance and legitimacy the scrutiny function is afforded by the law. It was created to act as a check and balance on the executive and is a statutory requirement for all authorities operating executive arrangements and for combined authorities.

Councillors have a unique legitimacy derived from their being democratically elected. The insights that they can bring by having this close connection to local people are part of what gives scrutiny its value.

- b) **Identifying a clear role and focus** – authorities should take steps to ensure scrutiny has a clear role and focus within the organisation, i.e. a niche within which it can clearly demonstrate it adds value. Therefore, prioritisation is necessary to ensure the scrutiny function concentrates on delivering work that is of genuine value and relevance to the work of the wider authority – this is one of the most challenging parts of scrutiny, and a critical element to get right if it is to be recognised as a strategic function of the authority (see chapter 6).

Authorities should ensure a clear division of responsibilities between the scrutiny function and the audit function. While it is appropriate for scrutiny to pay due regard to the authority's financial position, this will need to happen in the context of the formal audit role. The authority's section 151 officer should advise scrutiny on how to manage this dynamic.

While scrutiny has no role in the investigation or oversight of the authority's whistleblowing arrangements, the findings of independent whistleblowing investigations might be of interest to scrutiny committees as they consider their wider implications. Members should always follow the authority's constitution and associated Monitoring Officer directions on the matter. Further guidance on whistleblowing can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/415175/bis-15-200-whistleblowing-guidance-for-employers-and-code-of-practice.pdf.

- c) **Ensuring early and regular engagement between the executive and scrutiny** – authorities should ensure early and regular discussion takes place between scrutiny and the executive, especially regarding the latter's future work programme. Authorities should, though, be mindful of their distinct roles:

In particular:

- The executive should not try to exercise control over the work of the scrutiny committee. This could be direct, e.g. by purporting to 'order' scrutiny to look at, or not look at, certain issues, or indirect, e.g. through the use of the whip or as a tool of political patronage, and the committee itself should remember its statutory purpose when carrying out its work. All members and officers should consider the role the scrutiny committee plays to be that of a 'critical friend' not a de facto 'opposition'. Scrutiny chairs have a particular role to play in establishing the profile and nature of their committee (see chapter 4); and
- The chair of the scrutiny committee should determine the nature and extent of an executive member's participation in a scrutiny committee meeting, and in any informal scrutiny task group meeting.

- d) **Managing disagreement** – effective scrutiny involves looking at issues that can be politically contentious. It is therefore inevitable that, at times, an executive will disagree with the findings or recommendations of a scrutiny committee.

It is the job of both the executive and scrutiny to work together to reduce the risk of this happening, and authorities should take steps to predict, identify and act on disagreement.

One way in which this can be done is via an 'executive-scrutiny protocol' (see annex 1) which can help define the relationship between the two and mitigate any differences of opinion before they manifest themselves in unhelpful and unproductive ways. The benefit of this approach is that it provides a framework for disagreement and debate, and a way to manage it when it happens. Often,

the value of such a protocol lies in the dialogue that underpins its preparation. It is important that these protocols are reviewed on a regular basis.

Scrutiny committees do have the power to 'call in' decisions, i.e. ask the executive to reconsider them before they are implemented, but should not view it as a substitute for early involvement in the decision-making process or as a party-political tool.

- e) **Providing the necessary support** – while the level of resource allocated to scrutiny is for each authority to decide for itself, when determining resources an authority should consider the purpose of scrutiny as set out in legislation and the specific role and remit of the authority's own scrutiny committee(s), and the scrutiny function as a whole.

Support should also be given by members and senior officers to scrutiny committees and their support staff to access information held by the authority and facilitate discussions with representatives of external bodies (see chapter 5).

- f) **Ensuring impartial advice from officers** – authorities, particularly senior officers, should ensure all officers are free to provide impartial advice to scrutiny committees. This is fundamental to effective scrutiny. Of particular importance is the role played by 'statutory officers' – the monitoring officer, the section 151 officer and the head of paid service, and where relevant the statutory scrutiny officer. These individuals have a particular role in ensuring that timely, relevant and high-quality advice is provided to scrutiny.
- g) **Communicating scrutiny's role and purpose to the wider authority** – the scrutiny function can often lack support and recognition within an authority because there is a lack of awareness among both members and officers about the specific role it plays, which individuals are involved and its relevance to the authority's wider work. Authorities should, therefore, take steps to ensure all members and officers are made aware of the role the scrutiny committee plays in the organisation, its value and the outcomes it can deliver, the powers it has, its membership and, if appropriate, the identity of those providing officer support.
- h) **Maintaining the interest of full Council in the work of the scrutiny committee** – part of communicating scrutiny's role and purpose to the wider authority should happen through the formal, public role of full Council – particularly given that scrutiny will undertake valuable work to highlight challenging issues that an authority will be facing and subjects that will be a focus of full Council's work. Authorities should therefore take steps to ensure full Council is informed of the work the scrutiny committee is doing.

One way in which this can be done is by reports and recommendations being submitted to full Council rather than solely to the executive. Scrutiny should decide when it would be appropriate to submit reports for wider debate in this way, taking into account the relevance of reports to full Council business, as well as full Council's capacity to consider and respond in a timely manner. Such

reports would supplement the annual report to full Council on scrutiny's activities and raise awareness of ongoing work.

In order to maintain awareness of scrutiny at the Combined Authority and provoke dialogue and discussion of its impact, the business of scrutiny should be reported to the Combined Authority board or to the chairs of the relevant scrutiny committees of constituent and non-constituent authorities, or both. At those chairs' discretion, particular Combined Authority scrutiny outcomes, and what they might mean for each individual area, could be either discussed by scrutiny in committee or referred to full Council of the constituent authorities.

- i) **Communicating scrutiny's role to the public** – authorities should ensure scrutiny has a profile in the wider community. Consideration should be given to how and when to engage the authority's communications officers, and any other relevant channels, to understand how to get that message across. This will usually require engagement early on in the work programming process (see chapter 6).
- j) **Ensuring scrutiny members are supported in having an independent mindset** – formal committee meetings provide a vital opportunity for scrutiny members to question the executive and officers.

Inevitably, some committee members will come from the same political party as a member they are scrutinising and might well have a long-standing personal, or familial, relationship with them (see paragraph 25).

Scrutiny members should bear in mind, however, that adopting an independent mind-set is fundamental to carrying out their work effectively. In practice, this is likely to require scrutiny chairs working proactively to identify any potentially contentious issues and plan how to manage them.

Directly-elected mayoral systems

12. A strong organisational culture that supports scrutiny work is particularly important in authorities with a directly-elected mayor to ensure there are the checks and balances to maintain a robust democratic system. Mayoral systems offer the opportunity for greater public accountability and stronger governance, but there have also been incidents that highlight the importance of creating and maintaining a culture that puts scrutiny at the heart of its operations.
13. Authorities with a directly-elected mayor should ensure that scrutiny committees are well-resourced, are able to recruit high-calibre members and that their scrutiny functions pay particular attention to issues surrounding:
 - rights of access to documents by the press, public and councillors;
 - transparent and fully recorded decision-making processes, especially avoiding decisions by 'unofficial' committees or working groups;
 - delegated decisions by the Mayor;
 - whistleblowing protections for both staff and councillors; and
 - powers of Full Council, where applicable, to question and review.

14. Authorities with a directly-elected mayor should note that mayors are required by law to attend overview and scrutiny committee sessions when asked to do so (see paragraph 44).

3. Resourcing

15. The resource an authority allocates to the scrutiny function plays a pivotal role in determining how successful that function is and therefore the value it can add to the work of the authority.
16. Ultimately it is up to each authority to decide on the resource it provides, but every authority should recognise that creating and sustaining an effective scrutiny function requires them to allocate resources to it.
17. Authorities should also recognise that support for scrutiny committees, task groups and other activities is not solely about budgets and provision of officer time, although these are clearly extremely important elements. Effective support is also about the ways in which the wider authority engages with those who carry out the scrutiny function (both members and officers).

When deciding on the level of resource to allocate to the scrutiny function, the factors an authority should consider include:

- Scrutiny's legal powers and responsibilities;
- The particular role and remit scrutiny will play in the authority;
- The training requirements of scrutiny members and support officers, particularly the support needed to ask effective questions of the executive and other key partners, and make effective recommendations;
- The need for ad hoc external support where expertise does not exist in the council;
- Effectively-resourced scrutiny has been shown to add value to the work of authorities, improving their ability to meet the needs of local people; and
- Effectively-resourced scrutiny can help policy formulation and so minimise the need for call-in of executive decisions.

Statutory scrutiny officers

18. Combined authorities, upper and single tier authorities are required to designate a statutory scrutiny officer,³ someone whose role is to:
 - promote the role of the authority's scrutiny committee;
 - provide support to the scrutiny committee and its members; and
 - provide support and guidance to members and officers relating to the functions of the scrutiny committee.

³ Section 9FB of the Local Government Act 2000; article 9 of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017

19. Authorities not required by law to appoint such an officer should consider whether doing so would be appropriate for their specific local needs.

Officer resource models

20. Authorities are free to decide for themselves which wider officer support model best suits their individual circumstances, though generally they adopt one or a mix of the following:

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

21. Each model has its merits – the committee model provides service-specific expertise; the integrated model facilitates closer and earlier scrutiny involvement in policy formation and alignment of corporate work programmes; and the specialist model is structurally independent from those areas it scrutinises.

22. Authorities should ensure that, whatever model they employ, officers tasked with providing scrutiny support are able to provide impartial advice. This might require consideration of the need to build safeguards into the way that support is provided. The nature of these safeguards will differ according to the specific role scrutiny plays in the organisation.

4. Selecting Committee Members

23. Selecting the right members to serve on scrutiny committees is essential if those committees are to function effectively. Where a committee is made up of members who have the necessary skills and commitment, it is far more likely to be taken seriously by the wider authority.
24. While there are proportionality requirements that must be met,⁴ the selection of the chair and other committee members is for each authority to decide for itself. Guidance for combined authorities on this issue has been produced by the Centre for Public Scrutiny⁵.

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.

25. Authorities are reminded that members of the executive cannot be members of a scrutiny committee.⁶ Authorities should take care to ensure that, as a minimum, members holding less formal executive positions, e.g. as Cabinet assistants, do not sit on scrutinising committees looking at portfolios to which those roles relate. Authorities should articulate in their constitutions how conflicts of interest, including familial links (see also paragraph 31), between executive and scrutiny responsibilities should be managed, including where members stand down from the executive and move to a scrutiny role, and vice-versa.
26. Members or substitute members of a combined authority must not be members of its overview and scrutiny committee.⁷ This includes the Mayor in Mayoral Combined Authorities. It is advised that Deputy Mayors for Policing and Crime are also not members of the combined authority's overview and scrutiny committee.

Selecting individual committee members

27. When selecting individual members to serve on scrutiny committees, an authority should consider a member's experience, expertise, interests, ability to act impartially, ability to work as part of a group, and capacity to serve.

⁴ See, for example, regulation 11 of the Local Authorities (Committee System) (England) Regulations 2012 (S.I. 2012/1020) and article 4 of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017 (S.I. 2017/68).

⁵ See pages 15-18 of 'Overview and scrutiny in combined authorities: a plain English guide': <https://www.cfps.org.uk/wp-content/uploads/Overview-and-scrutiny-in-combined-authorities-a-plain-english-guide.pdf>

⁶ Section 9FA(3) of the Local Government Act 2000.

⁷ 2(3) of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009

28. Authorities should not take into account a member's perceived level of support for or opposition to a particular political party (notwithstanding the wider legal requirement for proportionality referred to in paragraph 24).

Selecting a chair

29. The Chair plays a leadership role on a scrutiny committee as they are largely responsible for establishing its profile, influence and ways of working.

30. The attributes authorities should and should not take into account when selecting individual committee members (see paragraphs 27 and 28) also apply to the selection of the Chair, but the Chair should also possess the ability to lead and build a sense of teamwork and consensus among committee members.

Chairs should pay special attention to the need to guard the committee's independence. Importantly, however, they should take care to avoid the committee being, and being viewed as, a de facto opposition to the executive.

31. Given their pre-eminent role on the scrutiny committee, it is strongly recommended that the Chair not preside over scrutiny of their relatives⁸. Combined authorities should note the legal requirements that apply to them where the Chair is an independent person⁹.

32. The method for selecting a Chair is for each authority to decide for itself, however every authority should consider taking a vote by secret ballot. Combined Authorities should be aware of the legal requirements regarding the party affiliation of their scrutiny committee Chair¹⁰.

Training for committee members

33. Authorities should ensure committee members are offered induction when they take up their role and ongoing training so they can carry out their responsibilities effectively. Authorities should pay attention to the need to ensure committee members are aware of their legal powers, and how to prepare for and ask relevant questions at scrutiny sessions.

34. When deciding on training requirements for committee members, authorities should consider taking advantage of opportunities offered by external providers in the sector.

Co-option and technical advice

35. While members and their support officers will often have significant local insight and an understanding of local people and their needs, the provision of outside expertise can be invaluable.

⁸ A definition of 'relative' can be found at section 28(10) of the Localism Act 2011.

⁹ See article 5(2) of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017 (S.I. 2017/68).

¹⁰ Article 5(6) of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.

36. There are two principal ways to procure this:

- Co-option – formal co-option is provided for in legislation¹¹. Authorities must establish a co-option scheme to determine how individuals will be co-opted onto committees; and
- Technical advisers – depending on the subject matter, independent local experts might exist who can provide advice and assistance in evaluating evidence (see annex 2).

¹¹ Section 9FA(4) Local Government Act 2000

5. Power to Access Information

37. A scrutiny committee needs access to relevant information the authority holds, and to receive it in good time, if it is to do its job effectively.
38. This need is recognised in law, with members of scrutiny committees enjoying powers to access information¹². In particular, regulations give enhanced powers to a scrutiny member to access exempt or confidential information. This is in addition to existing rights for councillors to have access to information to perform their duties, including common law rights to request information and rights to request information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
39. When considering what information scrutiny needs in order to carry out its work, scrutiny members and the executive should consider scrutiny's role and the legal rights that committees and their individual members have, as well as their need to receive timely and accurate information to carry out their duties effectively.
40. Scrutiny members should have access to a regularly available source of key information about the management of the authority – particularly on performance, management and risk. Where this information exists, and scrutiny members are given support to understand it, the potential for what officers might consider unfocused and unproductive requests is reduced as members will be able to frame their requests from a more informed position.
41. Officers should speak to scrutiny members to ensure they understand the reasons why information is needed, thereby making the authority better able to provide information that is relevant and timely, as well as ensuring that the authority complies with legal requirements.

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.

42. The law recognises that there might be instances where it is legitimate for an authority to withhold information and places a requirement on the executive to provide the scrutiny committee with a written statement setting out its reasons for that decision¹³. However, members of the executive and senior officers should take particular care to avoid refusing requests, or limiting the information they provide, for reasons of party political or reputational expediency.

¹² Regulation 17 - Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012; article 10 Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.

¹³ Regulation 17(4) – Local Government (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012; article 10(4) Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.

Before an authority takes a decision not to share information it holds, it should give serious consideration to whether that information could be shared in closed session.

43. Regulations already stipulate a timeframe for executives to comply with requests from a scrutiny member¹⁴. When agreeing to such requests, authorities should:

- consider whether seeking clarification from the information requester could help better target the request; and
- Ensure the information is supplied in a format appropriate to the recipient's needs.

44. Committees should be aware of their legal power to require members of the executive and officers to attend before them to answer questions¹⁵. It is the duty of members and officers to comply with such requests.¹⁶

Seeking information from external organisations

45. Scrutiny members should also consider the need to supplement any authority-held information they receive with information and intelligence that might be available from other sources, and should note in particular their statutory powers to access information from certain external organisations.

46. When asking an external organisation to provide documentation or appear before it, and where that organisation is not legally obliged to do either (see annex 3), scrutiny committees should consider the following:

- a) **The need to explain the purpose of scrutiny** – the organisation being approached might have little or no awareness of the committee's work, or of an authority's scrutiny function more generally, and so might be reluctant to comply with any request;
- b) **The benefits of an informal approach** – individuals from external organisations can have fixed perceptions of what an evidence session entails and may be unwilling to subject themselves to detailed public scrutiny if they believe it could reflect badly on them or their employer. Making an informal approach can help reassure an organisation of the aims of the committee, the type of information being sought and the manner in which the evidence session would be conducted;

¹⁴ Regulation 17(2) – Local Government (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012; article 10(2) Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.

¹⁵ Section 9FA(8) of the Local Government Act 2000; paragraph 2(6) of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009.

¹⁶ Section 9FA(9) of the Local Government Act 2000; paragraph 2(7) of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009.

- c) **How to encourage compliance with the request** – scrutiny committees will want to frame their approach on a case by case basis. For contentious issues, committees might want to emphasise the opportunity their request gives the organisation to ‘set the record straight’ in a public setting; and
- d) **Who to approach** – a committee might instinctively want to ask the Chief Executive or Managing Director of an organisation to appear at an evidence session, however it could be more beneficial to engage front-line staff when seeking operational-level detail rather than senior executives who might only be able to talk in more general terms. When making a request to a specific individual, the committee should consider the type of information it is seeking, the nature of the organisation in question and the authority’s pre-existing relationship with it.

Following ‘the Council Pound’

Scrutiny committees will often have a keen interest in ‘following the council pound’, i.e. scrutinising organisations that receive public funding to deliver goods and services.

Authorities should recognise the legitimacy of this interest and, where relevant, consider the need to provide assistance to scrutiny members and their support staff to obtain information from organisations the council has contracted to deliver services. In particular, when agreeing contracts with these bodies, authorities should consider whether it would be appropriate to include a *requirement* for them to supply information to or appear before scrutiny committees.

6. Planning Work

47. Effective scrutiny should have a defined impact on the ground, with the committee making recommendations that will make a tangible difference to the work of the authority. To have this kind of impact, scrutiny committees need to plan their work programme, i.e. draw up a long-term agenda and consider making it flexible enough to accommodate any urgent, short-term issues that might arise during the year.
48. Authorities with multiple scrutiny committees sometimes have a separate work programme for each committee. Where this happens, consideration should be given to how to co-ordinate the various committees' work to make best use of the total resources available.

Being clear about scrutiny's role

49. Scrutiny works best when it has a clear role and function. This provides focus and direction. While scrutiny has the power to look at anything which affects 'the area, or the area's inhabitants', authorities will often find it difficult to support a scrutiny function that carries out generalised oversight across the wide range of issues experienced by local people, particularly in the context of partnership working. Prioritisation is necessary, which means that there might be things that, despite being important, scrutiny will not be able to look at.
50. Different overall roles could include having a focus on risk, the authority's finances, or on the way the authority works with its partners.
51. Applying this focus does not mean that certain subjects are 'off limits'. It is more about looking at topics and deciding whether their relative importance justifies the positive impact scrutiny's further involvement could bring.
52. When thinking about scrutiny's focus, members should be supported by key senior officers. The statutory scrutiny officer, if an authority has one, will need to take a leading role in supporting members to clarify the role and function of scrutiny, and championing that role once agreed.

Who to speak to

53. Evidence will need to be gathered to inform the work programming process. This will ensure that it looks at the right topics, in the right way and at the right time. Gathering evidence requires conversations with:
 - *The public* – it is likely that formal 'consultation' with the public on the scrutiny work programme will be ineffective. Asking individual scrutiny members to have conversations with individuals and groups in their own local areas can work better. Insights gained from the public through individual pieces of scrutiny work can be fed back into the work programming process. Listening to and participating in conversations in places where local people come together, including in online forums, can help authorities engage people on their own terms and yield more positive results.

Authorities should consider how their communications officers can help scrutiny engage with the public, and how wider internal expertise and local knowledge from both members and officers might make a contribution.

- *The authority's partners* – relationships with other partners should not be limited to evidence-gathering to support individual reviews or agenda items. A range of partners are likely to have insights that will prove useful:
 - Public sector partners (like the NHS and community safety partners, over which scrutiny has specific legal powers);
 - Voluntary sector partners;
 - Contractors and commissioning partners (including partners in joint ventures and authority-owned companies);
 - In parished areas, town, community and parish councils;
 - Neighbouring principal councils (both in two-tier and unitary areas);
 - Cross-authority bodies and organisations, such as Local Enterprise Partnerships¹⁷; and
 - Others with a stake and interest in the local area – large local employers, for example.
- *The executive* – a principal partner in discussions on the work programme should be the executive (and senior officers). The executive should not direct scrutiny's work (see chapter 2), but conversations will help scrutiny members better understand how their work can be designed to align with the best opportunities to influence the authority's wider work.

Information sources

54. Scrutiny will need access to relevant information to inform its work programme. The type of information will depend on the specific role and function scrutiny plays within the authority, but might include:

- Performance information from across the authority and its partners;
- Finance and risk information from across the authority and its partners;
- Corporate complaints information, and aggregated information from political groups about the subject matter of members' surgeries;
- Business cases and options appraisals (and other planning information) for forthcoming major decisions. This information will be of particular use for pre-decision scrutiny; and
- Reports and recommendations issued by relevant ombudsmen, especially the Local Government and Social Care Ombudsman.

¹⁷ Authorities should ensure they have appropriate arrangements in place to ensure the effective democratic scrutiny of Local Enterprise Partnerships' investment decisions.

As committees can meet in closed session, commercial confidentiality should not preclude the sharing of information. Authorities should note, however, that the default for meetings should be that they are held in public (see 2014 guidance on '*Open and accountable local government*':

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/343182/140812_Openness_Guide.pdf).

55. Scrutiny members should consider keeping this information under regular review. It is likely to be easier to do this outside committee, rather than bringing such information to committee 'to note', or to provide an update, as a matter of course.

Shortlisting topics

Approaches to shortlisting topics should reflect scrutiny's overall role in the authority. This will require the development of bespoke, local solutions, however when considering whether an item should be included in the work programme, the kind of questions a scrutiny committee should consider might include:

- 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?

56. Some authorities use scoring systems to evaluate and rank work programme proposals. If these are used to provoke discussion and debate, based on evidence, about what priorities should be, they can be a useful tool. Others take a looser approach. Whichever method is adopted, a committee should be able to justify how and why a decision has been taken to include certain issues and not others.

57. Scrutiny members should accept that shortlisting can be difficult; scrutiny committees have finite resources and deciding how these are best allocated is tough. They should understand that, if work programming is robust and effective, there might well be issues that they want to look at that nonetheless are not selected.

Carrying out work

58. Selected topics can be scrutinised in several ways, including:

- a) **As a single item on a committee agenda** – this often presents a limited opportunity for effective scrutiny, but may be appropriate for some issues or where the committee wants to maintain a formal watching brief over a given issue;
- b) **At a single meeting** – which could be a committee meeting or something less formal. This can provide an opportunity to have a single public meeting about a

given subject, or to have a meeting at which evidence is taken from a number of witnesses;

- 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. Properly focused, they ensure members can swiftly reach conclusions and make recommendations, perhaps over the course of a couple of months or less;
- d) **Via a longer-term task and finish review** – the ‘traditional’ task and finish model – with perhaps six or seven meetings spread over a number of months – is still appropriate when scrutiny needs to dig into a complex topic in significant detail. However, the resource implications of such work, and its length, can make it unattractive for all but the most complex matters; and
- e) **By establishing a ‘standing panel’** – this falls short of establishing a whole new committee but may reflect a necessity to keep a watching brief over a critical local issue, especially where members feel they need to convene regularly to carry out that oversight. Again, the resource implications of this approach means that it will be rarely used.

7. Evidence Sessions

59. Evidence sessions are a key way in which scrutiny committees inform their work. They might happen at formal committee, in less formal ‘task and finish’ groups or at standalone sessions.

Good preparation is a vital part of conducting effective evidence sessions. Members should have a clear idea of what the committee hopes to get out of each session and appreciate that success will depend on their ability to work together on the day.

How to plan

60. Effective planning does not necessarily involve a large number of pre-meetings, the development of complex scopes or the drafting of questioning plans. It is more often about setting overall objectives and then considering what type of questions (and the way in which they are asked) can best elicit the information the committee is seeking. This applies as much to individual agenda items as it does for longer evidence sessions – there should always be consideration in advance of what scrutiny is trying to get out of a particular evidence session.

Chairs play a vital role in leading discussions on objective-setting and ensuring all members are aware of the specific role each will play during the evidence session.

61. As far as possible there should be consensus among scrutiny members about the objective of an evidence session before it starts. It is important to recognise that members have different perspectives on certain issues, and so might not share the objectives for a session that are ultimately adopted. Where this happens, the Chair will need to be aware of this divergence of views and bear it in mind when planning the evidence session.
62. 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. It is unlikely that the committee will be able to develop and agree recommendations immediately, but, unless the session is part of a wider inquiry, enough evidence should have been gathered to allow the chair to set a clear direction.
63. 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.

Developing recommendations

64. The development and agreement of recommendations is often an iterative process. It will usually be appropriate for this to be done only by members, assisted by co-optees where relevant. When deciding on recommendations, however, members should have due regard to advice received from officers, particularly the Monitoring Officer.

65. The drafting of reports is usually, but not always, carried out by officers, directed by members.

66. Authorities draft reports and recommendations in a number of ways, but there are normally three stages:

- i. the development of a 'heads of report' – a document setting out general findings that members can then discuss as they consider the overall structure and focus of the report and its recommendations;
- ii. the development of those findings, which will set out some areas on which recommendations might be made; and
- iii. the drafting of the full report.

67. Recommendations should be evidence-based and SMART, i.e. specific, measurable, achievable, relevant and timed. Where appropriate, committees may wish to consider sharing them in draft with interested parties.

68. Committees should bear in mind that often six to eight recommendations are sufficient to enable the authority to focus its response, although there may be specific circumstances in which more might be appropriate.

Sharing draft recommendations with executive members should not provide an opportunity for them to revise or block recommendations before they are made. It should, however, provide an opportunity for errors to be identified and corrected, and for a more general sense-check.

Annex 1: Illustrative Scenario – Creating an Executive-Scrutiny Protocol

An executive-scrutiny protocol can deal with the practical expectations of scrutiny committee members and the executive, as well as the cultural dynamics.

Workshops with scrutiny members, senior officers and Cabinet can be helpful to inform the drafting of a protocol. An external facilitator can help bring an independent perspective.

Councils should consider how to adopt a protocol, e.g. formal agreement at scrutiny committee and Cabinet, then formal integration into the Council's constitution at the next Annual General Meeting.

The protocol, as agreed, may contain sections on:

- The way scrutiny will go about developing its work programme (including the ways in which senior officers and Cabinet members will be kept informed);
- The way in which senior officers and Cabinet will keep scrutiny informed of the outlines of major decisions as they are developed, to allow for discussion of scrutiny's potential involvement in policy development. This involves the building in of safeguards to mitigate risks around the sharing of sensitive information with scrutiny members;
- A strengthening and expansion of existing parts of the code of conduct that relate to behaviour in formal meetings, and in informal meetings;
- Specification of the nature and form of responses that scrutiny can expect when it makes recommendations to the executive, when it makes requests to the executive for information, and when it makes requests that Cabinet members or senior officers attend meetings; and
- Confirmation of the role of the statutory scrutiny officer, and Monitoring Officer, in overseeing compliance with the protocol, and ensuring that it is used to support the wider aim of supporting and promoting a culture of scrutiny, with matters relating to the protocol's success being reported to full Council through the scrutiny Annual Report.

Annex 2: Illustrative Scenario – Engaging Independent Technical Advisers

This example demonstrates how one Council's executive and scrutiny committee worked together to scope a role and then appoint an independent adviser on transforming social care commissioning. Their considerations and process may be helpful and applicable in other similar scenarios.

Major care contracts were coming to an end and the Council took the opportunity to review whether to continue with its existing strategic commissioning framework, or take a different approach – potentially insourcing certain elements.

The relevant Director was concerned about the Council's reliance on a very small number of large providers. The Director therefore approached the Scrutiny and Governance Manager to talk through the potential role scrutiny could play as the Council considered these changes.

The Scrutiny Chair wanted to look at this issue in some depth, but recognised its complexity could make it difficult for her committee to engage – she was concerned it would not be able to do the issue justice. The Director offered support from his own officer team, but the Chair considered this approach to be beset by risks around the independence of the process.

She talked to the Director about securing independent advice. He was worried that an independent adviser could come with preconceived ideas and would not understand the Council's context and objectives. The Scrutiny Chair was concerned that independent advice could end up leading to scrutiny members being passive, relying on an adviser to do their thinking for them. They agreed that some form of independent assistance would be valuable, but that how it was provided and managed should be carefully thought out.

With the assistance of the Governance and Scrutiny Manager, the Scrutiny Chair approached local universities and Further Education institutions to identify an appropriate individual. The approach was clear – it set out the precise role expected of the adviser, and explained the scrutiny process itself. Because members wanted to focus on the risks of market failure, and felt more confident on substantive social care matters, the approach was directed at those with a specialism in economics and business administration. The Council's search was proactive – the assistance of the service department was drawn on to make direct approaches to particular individuals who could carry out this role.

It was agreed to make a small budget available to act as a 'per diem' to support an adviser; academics were approached in the first instance as the Council felt able to make a case that an educational institution would provide this support for free as part of its commitment to Corporate Social Responsibility.

Three individuals were identified from the Council's proactive search. The Chair and Vice-Chair of the committee had an informal discussion with each – not so much to establish their skills and expertise (which had already been assessed) but to give a sense about

their 'fit' with scrutiny's objectives and their political nous in understanding the environment in which they would operate, and to satisfy themselves that they will apply themselves even-handedly to the task. The Director sat in on this process but played no part in who was ultimately selected.

The independent advice provided by the selected individual gave the Scrutiny Committee a more comprehensive understanding of the issue and meant it was able to offer informed advice on the merits of putting in place a new strategic commissioning framework.

Annex 3: Illustrative Scenario – Approaching an External Organisation to Appear before a Committee

This example shows how one council ensured a productive scrutiny meeting, involving a private company and the public. Lessons may be drawn and apply to other similar scenarios.

Concerns had been expressed by user groups, and the public at large, about the reliability of the local bus service. The Scrutiny Chair wanted to question the bus company in a public evidence session but knew that she had no power to compel it to attend. Previous attempts to engage it had been unsuccessful; the company was not hostile, but said it had its own ways of engaging the public.

The Monitoring Officer approached the company's regional PR manager, but he expressed concern that the session would end in a 'bunfight'. He also explained the company had put their improvement plan in the public domain, and felt a big council meeting would exacerbate tensions.

Other councillors had strong views about the company – one thought the committee should tell the company it would be empty-chaired if it refused to attend. The Scrutiny Chair was sympathetic to this, but thought such an approach would not lead to any improvements.

The Scrutiny Chair was keen to make progress, but it was difficult to find the right person to speak to at the company, so she asked council officers and local transport advocacy groups for advice. Speaking to those people also gave her a better sense of what scrutiny's role might be.

When she finally spoke to the company's network manager, she explained the situation and suggested they work together to consider how the meeting could be productive for the Council, the company and local people. In particular, this provided her with an opportunity to explain scrutiny and its role. The network manager remained sceptical but was reassured that they could work together to ensure that the meeting would not be an 'ambush'. He agreed in principle to attend and also provide information to support the Committee's work beforehand.

Discussions continued in the four weeks leading up to the Committee meeting. The Scrutiny Chair was conscious that while she had to work with the company to ensure that the meeting was constructive – and secure their attendance – it could not be a whitewash, and other members and the public would demand a hard edge to the discussions.

The scrutiny committee agreed that the meeting would provide a space for the company to provide context to the problems local people are experiencing, but that this would be preceded by a space on the agenda for the Chair, Vice-chair, and representatives from two local transport advocacy groups to set out their concerns. The company were sent in

advance a summary of the general areas on which members were likely to ask questions, to ensure that those questions could be addressed at the meeting.

Finally, provision was made for public questions and debate. Those attending the meeting were invited to discuss with each other the principal issues they wanted the meeting to cover. A short, facilitated discussion in the room led by the Chair highlighted the key issues, and the Chair then put those points to the company representatives.

At the end of the meeting, the public asked questions of the bus company representative in a 20-minute plenary item.

The meeting was fractious, but the planning carried out to prepare for this – by channelling issues through discussion and using the Chair to mediate the questioning – made things easier. Some attendees were initially frustrated by this structure, but the company representative was more open and less defensive than might otherwise have been the case.

The meeting also motivated the company to revise its communications plan to become more responsive to this kind of challenge, part of which involved a commitment to feed back to the scrutiny committee on the recommendations it made on the night.

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