

Overview and Scrutiny Management Board – 27th March, 2018

Report of the Lead for Law and Governance and the Scrutiny Officer

Report of the House of Commons Communities and Local Government Committee - Review of the Effectiveness of Local Authority Overview and Scrutiny Committees

Purpose

1. To report on the conclusions and recommendations of the House of Commons Communities and Local Government (CLG) Committee on a review of the effectiveness of local authority overview and scrutiny committees. The Government has now published a response to specific recommendations and these are also summarised below.

Recommendations

2. That the conclusions and recommendations of the House of Commons Communities and Local Government Committee, as set out in the Appendix, be noted.
3. That the Government's response to the specific recommendations, as outlined in this report, be noted.
4. That the Overview and Scrutiny Management Board consider the issues summarised in this report and identify any key points to be included in a future review of the Council's overview and scrutiny arrangements.

Background

5. The House of Commons Inquiry on the effectiveness of local authority overview and scrutiny committees was initially launched in 2017, prior to the dissolution of Parliament and the General Election in June 2017. Following the General Election, the reconstituted Communities and Local Government Committee continued the Inquiry and its report was published on 15th December, 2017. The full [report of the Communities and Local Government Committee](#) is available on the Parliament Website.
6. A summary of the conclusions and recommendations of the Communities and Local Government Committee is set out in the Appendix. The [Government response to the CLG Committee](#) report was published in early March 2018. In general, the Government has expressed the view that every Council is best placed to decide scrutiny arrangements to suit individual circumstances and to have flexibility to put those arrangements into place.

7. Set out below are observations on how the CLG Committee recommendations and the Government's response relate to the overview and scrutiny arrangements operated by Dudley MBC. The Board is invited to comment on any issues that it would recommend for inclusion in a future review of this Council's overview and scrutiny arrangements.
8. ***CLG Committee Recommendation – We therefore recommend that the guidance issued to councils by DCLG on overview and scrutiny committees is revised and reissued to take account of scrutiny's evolving role as follows:***
- (a) That overview and scrutiny committees should report to an authority's Full Council meeting rather than to the executive, mirroring the relationship between Select Committees and Parliament.***
 - (b) That scrutiny committees and the executive must be distinct and that executive councillors should not participate in scrutiny other than as witnesses, even if external partners are being scrutinised.***
 - (c) That councillors working on scrutiny committees should have access to financial and performance data held by an authority, and that this access should not be restricted for reasons of commercial sensitivity.***
 - (d) That scrutiny committees should be supported by officers that are able to operate with independence and offer impartial advice to committees. There should be a greater parity of esteem between scrutiny and the executive, and committees should have the same access to the expertise and time of senior officers and the chief executive as their cabinet counterparts.***
 - (e) That members of the public and service users have a fundamental role in the scrutiny process and that their participation should be encouraged and facilitated by councils.***

Government Response

Government guidance was last issued in 2006 and will be updated to:

- Provide for Scrutiny Committees to report direct to the full Council
- Clarify that Cabinet Members should not participate in scrutiny other than as witnesses
- Confirm that requests for access to documents should be considered on their merits
- Ensure that scrutiny support officers should operate independently and give impartial advice
- Encourage active public participation in Scrutiny Committees.

Dudley MBC Position

- (a) The minutes of all overview and scrutiny committees are submitted to full Council in the White Book with provision for the Chairs to be asked questions under Council Procedure Rule 11. Specific scrutiny recommendations are usually submitted to the Cabinet either as part of individual reports or under the standing item on the Cabinet agenda for 'Issues arising from Scrutiny Committees.' The Constitution does, however, provide for reports/recommendations from Scrutiny Committees to go to full Council in

appropriate circumstances. The Constitution would need to be reviewed in line with any future guidance, including the requirement for the Cabinet to submit its response to full Council in an appropriate timescale (2 months).

- (b) There is a clear distinction between Cabinet (executive) and scrutiny functions. Cabinet Members may not serve on any Scrutiny Committees. Cabinet Members only attend Scrutiny Committees as 'witnesses' or by invitation. Some Cabinet Members choose to attend meetings as observers, however, it is clear that Scrutiny Committees retain the discretion in terms of allowing participation in any discussions.
- (c) Providing information to Scrutiny Committees is dealt with under paragraph 11 below. There is an automatic presumption that Committees have access to any financial and performance data held by an authority that is necessary for them to undertake their duties and responsibilities. We acknowledge that access to information should not be restricted for reasons of commercial sensitivity. However, under the Code of Conduct, Members are required to respect the confidentiality of any information received by not disclosing confidential information to third parties unless required by law or where there is a clear and over-riding public interest in doing so.
- (d) Scrutiny Committees are supported by Lead Officers and relevant scrutiny meetings are attended by the Chief Executive, Strategic Directors, Chief and other senior officers depending on the items of business. During 2016/17 the Council attempted to recruit two Scrutiny Officers. However, in the light of experience, it has now been decided to establish a [Policy and Transformation Graduate Development Programme](#) to provide additional support to overview and scrutiny and corporate transformation activity.
- (e) All Scrutiny Committees have a 'Public Forum' agenda item to encourage public participation generally and on specific agenda items. Whilst public attendance is variable, there are examples where there has been effective public participation in scrutiny reviews (eg: Land at Hall Street, Dudley Museum, School Crossing Patrols, Travellers site, Anti Social Behaviour and the Black Country Core Strategy).

9. ***CLG Committee Recommendation - We call on the Local Government Association (LGA) to consider how it can best provide a mechanism for the sharing of innovation and best practice across the scrutiny sector to enable committees to learn from one another. We recognise that how scrutiny committees operate is a matter of local discretion, but urge local authorities to take note of the findings of this report and consider their approach.***

Dudley MBC Position

The Council has developed its Overview and Scrutiny functions over the past 15 years by undertaking annual reviews of how scrutiny operates, learning from experience and implementing recognised best practice. The Council has regularly participated in the West Midlands Regional Scrutiny Network. Representatives of this Network visited Parliament in 2015 and met with representatives of the Communities and Local Government Committee at that time. The Council has implemented a clear process to adopt, monitor and review the Annual Scrutiny Programme. There is now a far greater emphasis on involving Scrutiny Committee members in constructive pre-decision scrutiny

through the Scrutiny Development Working Groups. The Council remains committed to strengthening all aspects of its governance arrangements and will continue to learn from experience, innovation and best practice across the sector.

10. ***CLG Committee Recommendation - We recommend that DCLG works with the LGA and Centre for Public Scrutiny to identify willing councils to take part in a pilot scheme where the impact of elected chairs on scrutiny's effectiveness can be monitored and its merits considered.***

Government Response

The Government will give further consideration to this recommendation. It is not convinced that pilot schemes are the best way to achieve this objective. The Government will discuss the issue further with the sector including the Local Government Association and the Centre for Public Scrutiny before publishing updated guidance.

Dudley MBC Position

This recommendation relates to the need for Scrutiny Chairs to maintain 'legitimacy and independence' from the executive decision making process. In particular the CLG Committee is concerned that the way in which Chairs are appointed has the potential to contribute to lessening the independence of scrutiny committees and weaken the legitimacy of the scrutiny process. An insufficient distance between executive and scrutiny can create a perception of impropriety.

The election of Scrutiny Chairs and Vice-Chairs is a matter for the Council to determine. In Dudley, the election of Chairs and Vice-Chairs takes place at the Annual Council meeting. All 72 members have a vote in the event that any Chairs/Vice-Chair positions are contested. It is also a matter for the Council's discretion to decide as to how Chair/Vice-Chair positions are allocated to the various political groups. The CLG Committee has acknowledged that it is wary of Government imposing requirements on local authorities.

11. ***CLG Committee Recommendation - Current legislation effectively requires scrutiny councillors to establish that they have a 'need to know' in order to access confidential or exempt information, with many councils interpreting this as not automatically including scrutiny committees. We believe that scrutiny committees should be seen as having an automatic need to know, and that the Government should make this clear through revised guidance.***

Dudley MBC Position

Although revised guidance is welcomed, this has not been a significant issue for Dudley MBC. The automatic presumption is that elected members are entitled to any information held by the local authority that is necessary to enable them to carry out their duties and functions. Whilst recognising certain legal restrictions, Members should not be required to seek recourse to the Freedom of Information Act to enable them to carry out legitimate scrutiny activity. Scrutiny Committees should not be denied performance or any other information based on 'commercial sensitivity' or similar grounds provided that the information is required for the Committee to undertake its work.

Scrutiny Development Working Groups provide an opportunity for members to undertake discussions outside the formal committee setting. Formal Scrutiny Committee meetings also reserve the right to consider issues in private session if there is a possibility that confidential or exempt information may be disclosed. In practice, however, it is rare for formal meetings of Scrutiny Committees to consider business in private session due to the need for openness and transparency to maintain public confidence in the way the Council operates.

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

Dudley MBC Position

Provision already exists for Scrutiny Committees to engage external support and witnesses in appropriate circumstances.

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

Government Response

The Government does not accept this recommendation. It is a matter for each Council to decide how to support scrutiny.

Dudley MBC Position

The Council services its overview and scrutiny functions internally by allocating Lead Officers to the various Scrutiny Committees. Lead Officers do not have managerial responsibilities for the functions of the Scrutiny Committees to which they are allocated. Reports to Scrutiny Committees are produced and presented to meetings by the Lead Officers, the relevant Directorates and with support from Democratic Services. The attendance of the Chief Executive, Strategic Directors, Chief Officers and other senior Officers depends on the level of attendance requested by the Scrutiny Committee and/or the nature of the business items. There is clear corporate recognition of the importance of overview and scrutiny functions and Officers recognise their duty to attend any meetings to give evidence or advice to scrutiny meetings as and when required.

The current restrictions on local authority finances is, however, a very significant issue for all local authorities when considering the resourcing of overview and scrutiny functions alongside other corporate priorities and statutory obligations.

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

Government Response

The Government does not accept this recommendation. It is a matter for each Council to decide its arrangements.

Dudley MBC Position

This Council has a statutory obligation to designate a Scrutiny Officer under Section 9FB of the Local Government Act 2000. On 19th May, 2016, the Council formally resolved that Steve Griffiths, Democratic Services Manager, be designated as its statutory Scrutiny Officer.

The Scrutiny Officer currently serves as the Lead Officer to the Overview and Scrutiny Management Board. This involves supporting the Board in developing, monitoring and implementing the Annual Scrutiny Programme and presenting an annual report to full Council. The role also involves monitoring the operation of overview and scrutiny functions generally and making any necessary recommendations via the annual report and/or the review of the Constitution, which is undertaken annually by the Monitoring Officer.

15. ***CLG Committee Recommendation - In the absence of DCLG monitoring, we are not satisfied that the training provided by the LGA and its partners always meets the needs of scrutiny councillors, and call on the Department to put monitoring systems in place and consider whether the support to committees needs to be reviewed and refreshed. We invite the Department to write to us in a year's time detailing its assessment of the value for money of its investment in the LGA and on the wider effectiveness of local authority scrutiny committees.***

Government Response

The Government does not accept this recommendation. Local authorities are independent bodies and it is up to each Council to ensure effective arrangements. The Government will review the 2018/19 memorandum of understanding with the Local Government Association to ensure training remains relevant and effective.

Dudley MBC Position

The Council has a Member Development Steering Group that oversees the Member Development Programme. The Council has engaged with the LGA regarding training and development on overview and scrutiny and further sessions are planned in 2018. A particular focus was given to training for the Children's Services Scrutiny Committee in the light of past Ofsted recommendations. The LGA is also involved in more generic training such as the chairing of meetings and have supported Dudley in running workshops to develop

our Member/Officer working protocols following the Peer Review in 2017.

All aspects of training and development require ongoing monitoring to ensure that the needs of Members are being addressed. Any future feedback will be taken into account in relation to the Member Development Programme and reported to the Member Development Steering Group at the appropriate time.

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

Dudley MBC Position

As referred to above, all Scrutiny Committees have a 'Public Forum' on their agenda and there are many positive examples where members of the public have been engaged in individual scrutiny items. In the culture of openness and transparency, the promotion of public involvement in the work of Scrutiny Committees is supported and encouraged. There are, however, resource implications associated with undertaking more proactive publicity. This would also have practical implications for the management of Scrutiny Committee meetings and the need for clear communication with the public regarding the role of Scrutiny Committees in terms of making recommendations rather than decisions.

The Council encourages public participation through the 10 Community Forums, which are clearly focussed on issues raised by local residents. The promotion of public involvement in overview and scrutiny should not seek to duplicate the role of the Community Forums. A way of increasing public participation is to issue proactive 'calls for evidence' on specific items of business through media releases and electronic communications. The Council has been involved in innovative digital engagement, in particular the 'Facebook Community Forums' and consideration will be given to how digital engagement can be extended to future scrutiny activity within the resources available.

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

Government Response

The guidance will be updated but it is ultimately a matter for each Council to decide how to hold organisations to account.

Dudley MBC Position

There are numerous examples where Dudley Council's overview and scrutiny committees have issued invitations to external and partner organisations to participate in meetings to give evidence or to present information on specific proposals or aspects of their work. The Health and Adult Social Care Scrutiny Committee has a statutory role to scrutinise external organisations and they can, if necessary, require those organisations to attend. Our practical experience is that external organisations and partners have engaged proactively with Scrutiny Committees and have answered questions, provided information and any advice that is required by Members. However, it is recognised that this positive working culture is not replicated in all areas and the DCLG may take steps to strengthen guidance.

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

Government Response

The Government accepts the importance of clear and transparent oversight of LEPs. A ministerial review in relation to LEPs is ongoing and an update will be given to the CLG Committee in due course.

Dudley MBC Position

Guidance on the role of scrutiny in relation to LEPs would be welcomed. This would clarify the responsibilities of individual local authorities in conducting scrutiny to avoid any duplication with the work undertaken by the Combined Authority. At the Corporate Scrutiny Committee on 4th July, 2017, members raised the possibility of extending an invitation to the Black Country Local Enterprise Partnership to give an overview of issues relating to the Dudley Borough. This could be pursued in the Annual Scrutiny Programme 2018/19.

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

Government Response

The Government accepts this recommendation. Resources have been allocated by the Government to Mayoral Combined Authorities. The Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Regulations 2017 set out rules to hold combined authorities and elected mayors to account.

Dudley MBC Position

For the past two municipal years, the Annual Scrutiny Programme has included an item on West Midlands Combined Authority for consideration by the Corporate Scrutiny Committee. The main purpose of this is to increase Member awareness of emerging developments and any significant implications for the Dudley Borough.

West Midlands Combined Authority has an Overview and Scrutiny Committee, details of which can be viewed on the [WMCA website](#). The Committee includes representatives from the 7 constituent West Midlands local authorities. This allows for scrutiny of the Mayoral Combined Authority's functions, including the budget, devolution deals and the work of the various commissions. We concur with the view that, in order to be effective, scrutiny must be adequately supported and resourced. There is also a need to ensure that there is no duplication between scrutiny work undertaken by WMCA and the constituent local authorities.

Finance

20. The CLG Committee's report acknowledges that, in order to be effective, scrutiny must be adequately supported and resourced. The costs of operating the Council's scrutiny arrangements are met within existing budgetary allocations. The Council's ongoing budget reductions have an impact on the levels of Directorate and Democratic Services support that is available for the scrutiny process. The allocation of resources to scrutiny work has to be viewed alongside other statutory and corporate priorities together with the availability of corporate and Directorate resources to service and support working groups, meetings and various levels of scrutiny activity.

Law

21. Scrutiny Committees are established in accordance with the provisions of the Local Government Act 1972 and the requirements of the Council's Constitution, which was adopted under the Local Government Act 2000, subsequent legislation and associated Regulations and Guidance.

Equality Impact

22. Provision exists within the Council's scrutiny arrangements for overview and scrutiny to be undertaken of the Council's policies on equality and diversity.

Human Resources/Transformation

23. There are no direct human resources or transformation issues arising from this report. The Council's overview and scrutiny arrangements are subject to ongoing review to ensure that we fulfill our statutory obligations, the requirements of the Constitution and that we continue to apply recognised best practice to meet local requirements.



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List of Background Papers

[Report of the House of Commons Communities and Local Government Committee - Review of the Effectiveness of Local Authority Overview and Scrutiny Committees](#)

[Government Response to the CLG Committee Report on the Effectiveness of Local Authority Overview and Scrutiny Committees](#)