



BUSINESS SUPPORT OVERVIEW AND SCRUTINY COMMITTEE

4 JULY 2019

NEW STATUTORY GUIDANCE ON OVERVIEW AND SCRUTINY IN LOCAL AND COMBINED AUTHORITIES

Report from: Perry Holmes, Chief Legal Officer

Report author: Julie Keith, Head of Democratic Services

Summary

In May 2019 the Ministry of Housing, Communities and Local Government (MHCLG) published new statutory guidance on Overview and Scrutiny in Local and Combined Authorities having taken into account the findings and recommendations of the House of Commons CLG Committee report on the effectiveness of local authority Overview and Scrutiny Committees which was published in December 2017. In his foreword to the new statutory guidance the Minister for Local Government urged all Councils to cast a critical eye over their existing overview and scrutiny arrangements and to ensure they embed a culture that allows overview and scrutiny to flourish.

This report summarises the recommended policies and best practice included in the statutory guidance that local authorities should adopt, or consider adopting, with an overview of how the current arrangements in Medway measure up and some suggested areas for possible further discussion and development.

1. Budget and Policy Framework

- 1.1 The Council's Overview and Scrutiny Rules are set out in Part 5 of Chapter 4 of the Council's Constitution. Any changes to the Council's Overview and Scrutiny arrangements may require a change to these rules which would require the approval of full Council.
- 1.2 Local and Combined Authorities must have regard to the new statutory guidance on Overview and Scrutiny published by the MHCLG when exercising their functions. This does not mean that the sections of the guidance have to be followed in every detail, but that they should be followed unless there is good reason not to in a particular case.

2. Background

- 2.1 In December 2017 a House of Commons (Department of Communities and Local Government) Select Committee published its report on the Effectiveness of Local Authority Overview and Scrutiny Committees, having considered information and evidence from a range of organisations and witnesses, including a cross-party submission from Medway Council.
- 2.2 The Select Committee Inquiry was prompted by concerns expressed about the limited effectiveness of Overview and Scrutiny and the lack of any assessment of how Overview and Scrutiny had been operating since it was introduced by the Local Government Act 2000 as a counterweight to the increased centralised power of the new executive arrangements. The Inquiry looked at the ability of Overview and Scrutiny Committees to hold decision-makers to account, the impact of party politics on scrutiny, resourcing of Committees and the ability of Council Scrutiny Committees to have oversight of services delivered by external organisations.
- 2.3 The Select Committee made 21 findings and recommendations underpinned by two key conclusions; that effective scrutiny requires the right organisational culture, working best where constructive challenge and democratic accountability is welcomed and that the independence of Overview and Scrutiny needs strengthening. As requested at the agenda planning meeting for this Committee Appendix C to this report sets out the 21 findings and recommendations of the Select Committee with the post-inquiry outcome against each.
- 2.4 In particular the Select Committee called on the Government to revise and re-issue the statutory guidance issued to Councils in 2006, under the Local Government Act 2000, to take into account the evolving role of scrutiny. It also called on the Local Government Association to consider how it can best provide a mechanism for the sharing of innovation and best practice across the scrutiny sector to enable Committees to learn from one another.
- 2.5 In March 2018 the Secretary of State for Housing, Communities and Local Government published the Government response to the Select Committee report stating its belief that every Council is best placed to decide which scrutiny arrangements suit its individual circumstances and committing to ensure that they have the flexibility they need to put those arrangements in place. The Government, in its response, committed to revise and re-issue the statutory guidance on Overview and Scrutiny.
- 2.6 The revised guidance was published in May 2019 and is attached at Appendix A.
- 2.7 The Centre for Public Scrutiny, a national centre of expertise on scrutiny, assisted in drafting the new guidance and has, in the last week, published an update to their Good Scrutiny Guide which has been written to complement the statutory guidance.

3. Overview and analysis of the Statutory Guidance

3.1 The introduction to the new statutory guidance states that Overview and Scrutiny Committees were introduced in 2000 as part of new executive 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. Overview and Scrutiny Committees have statutory powers to scrutinise decisions the executive is planning to take, those it plans to implement and those that have already been taken/implemented. The Guidance emphasises that recommendations following scrutiny enable improvements to be made to policies and how they are implemented and also that Overview and Scrutiny Committees can play a valuable role in developing policy.

3.2 The guidance restates the four principles of effective Overview and Scrutiny which 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.

3.3 The guidance highlights that legislation provides a great degree of flexibility to local authorities to determine which overview and scrutiny arrangements best suit their own individual needs and that the Government, in producing the guidance, fully recognises the democratic mandate of local authorities as well as the changing nature of local government with Councils increasingly delivering key services in partnership with other organisations or outsourcing them entirely.

3.4 The key messages in the guidance are summarised below:

3.4.1 Culture – the prevailing organisational culture, behaviours and attitudes of an authority will largely determine whether its scrutiny function succeeds or fails.

3.4.2 Resourcing – the resource an Authority allocates to the scrutiny function will play a pivotal role in determining how successful that function is and therefore the value it can add to the work of the Authority.

3.4.3 Selection of Committee Members – the right people have to be selected to be on committees, and to hold the position of Chairman. The guidance gives a sense of the personal attributes that people in these positions will require. It recognises the political element of the selection of Chairmen and suggests that Local Authorities should consider taking a vote by secret ballot, although ultimately the method for selecting Chairmen is a matter for each Local Authority to decide.

3.4.4 Power to Access Information – 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. This section emphasises the rights that Councillors have to access information and states that Councillors should have regular access to key sources of information which, collectively, will give them a sense of the management of the authority, with a particular focus on performance, finance and risk.

- 3.4.5 Planning Work – effective scrutiny should have a defined impact on the ground, with the Committees making recommendations that will make a tangible difference to the work of the Authority. To have this kind of impact, Overview and Scrutiny Committees need to plan their work programme with arrangements in place for a co-ordinated approach.
- 3.4.6 Evidence Sessions – good preparation is a vital part of conducting effective evidence sessions. The role of the Chairman in managing the gathering of evidence is seen as especially important – as is the work of Councillors in pulling together focused and achievable recommendations.
- 3.5 The Select Committee Inquiry recommended that Scrutiny Committees should be able to require Local Enterprise Partnerships (LEPs) to provide information and attend Committee meetings as required. Whilst there is no reference to the scrutiny of Local Enterprise Partnerships (LEPS) in the new statutory scrutiny guidance the Government agreed on the importance of clear and transparent oversight of LEPs and there is a section on the accountability of LEPs and scrutiny arrangements in the MHCLG National Growth Assurance Framework which was published in January 2019. This requires LEPS to agree with their Accountable Body the appropriate scrutiny arrangements to ensure that decisions have the necessary independent and external scrutiny in place. In addition LEPs are expected to participate in relevant Local Authority Scrutiny arrangements which may involve attending individual Local Authority Scrutiny Committees on request or creation of a joint Local Authority Scrutiny Committee across participating areas (with or without relevant representatives who can provide scrutiny from a business perspective).
- 3.6 The Centre for Public Scrutiny expects to publish a new guide for Local Authorities and LEPs on effective scrutiny in the Autumn 2019.
- 3.7 In the meantime a revised version of the South East Local Enterprise Partnership (SELEP) Assurance Framework was agreed in March 2019 (to reflect changes required by the January 2019 National Local Growth Assurance Framework). This includes a section on Scrutiny Arrangements which states that “the SELEP welcomes requests to attend local authority partner scrutiny committees and prioritises attendance at these, as part of having decisions and work by SELEP scrutinised by local authorities within the South East.” This is an area for further discussion in the development of the Overview and Scrutiny arrangements in Medway.

4. Next steps

- 4.1 A detailed commentary on how Medway measures up against the recommended good practice in the guidance is attached at Appendix B for consideration by the Business Support Overview and Scrutiny Committee (which has within its remit responsibility for providing guidance and leadership on the development and co-ordination of the scrutiny function for all Overview and Scrutiny Committees, including guidance on priorities for scrutiny activity).
- 4.2 The Overview and Scrutiny arrangements in place in Medway are largely consistent with the recommendations across the six areas covered in the guidance and there is evidence of some excellent practice and outcomes generated by Overview and Scrutiny in Medway.

4.3 The areas suggested for further discussion or potential development are highlighted in bold in Appendix B and summarised below as follows:

Culture	<p>Identifying a clear role and focus - whilst the monitoring of intended impact is undertaken for each Task Group six months after the Cabinet has accepted any recommendations more work could be done to more systematically evaluate and capture learning from the impact of Overview and Scrutiny activity more generally across all Overview and Scrutiny Committees.</p> <p>Communicating scrutiny’s role to the public - The Council’s Communications Protocol (at paragraph 3.5) envisages a proactive role by the Communications Team in reporting and promoting the work of Overview and Scrutiny to the media although this facility is rarely used. There may be an opportunity to harness new digital technology to generate more coverage of Overview and Scrutiny activity.</p>
Selecting Committee Members	<p>Selection of Chairmen by secret ballot – this is a matter for Members to debate.</p> <p>Co-option and technical advice - Expert opinions have assisted our Overview and Scrutiny Committees to reach an informed and well- argued position on the issues of concern. However, in the current financial climate the commissioning of expert advice where there is an associated cost cannot be undertaken lightly.</p> <p>More work could be done to draw on independent local experts where appropriate. For example, the Universities in Medway.</p>
Power to access information	<p>Following “the Council Pound” - In Medway there is an emerging work stream to define and develop the relationship between Overview and Scrutiny Committees and organisations contracted or commissioned by the Council to provide goods and services. In particular there is more work to do to clarify the role of overview and scrutiny to review the performance of our commercial entities. The Centre for Public Scrutiny has recently published a guide for local scrutiny Councillors on scrutiny of risk and commercialisation. It is recommended that this guide should be used to take this area of discussion forward. See item 7 on this agenda.</p>
Planning Work	<p>Authorities should consider how their Communications Officers can help scrutiny engage with the public - There is the potential for Overview and Scrutiny to develop a closer working relationship with the Council’s Communications Team and to consider the scope to improve the connection between Overview and Scrutiny and the public. For example by more use of the Citizen’s Panel.</p>

5. Financial and Legal implications

- 5.1 There is a small budget of £4,025 held by Democratic Services to meet costs associated with overview and scrutiny activity each year. For example, costs associated with Task Group visits and to meet travel expenses for witnesses. Costs associated with expert opinions commissioned by Overview and Scrutiny, usually in connection with contested health service changes, have to be met by the relevant Directorate. Member development events to build capacity for effective overview and scrutiny are funded from the Member Development budget. Any initiatives arising from the statutory guidance will have to be met from within existing resources or planned for in the preparation of the 2020/21 revenue budget for the Council.
- 5.2 The statutory guidance published by MHCLG in May 2019 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 Local Authorities to have regard to the guidance. In addition, when exercising its overview and scrutiny functions, the Council may have regard to other material they might choose to consider, including that issued by the Centre for Public Scrutiny.

6. Risk management

- 6.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. This report reviews the Overview and Scrutiny arrangements put in place by the Council in the context of revised Statutory Guidance on Overview and Scrutiny. This is consistent with the commitment in Article 14 of the Council's Constitution to monitor and review the operation of the Council's Constitution to ensure that its aims and principles are given full effect. It is important that this is done on an ongoing and regular basis to minimise the risk of the Council failing to operate its governance arrangements in line with current legislation and best practice.

7. Recommendations

- 7.1 The Committee is recommended to agree to instruct the Council's Statutory Scrutiny Officer to take the following action, in consultation with the Chairman, Vice Chairman and Opposition Spokesperson of this Committee, in response to the revised Statutory Guidance on Overview and Scrutiny as set out in paragraphs 3.5 and 4.3 of the report:
- a) work to more systematically evaluate and capture learning from the impact of Overview and Scrutiny activity generally across all Overview and Scrutiny Committees;
 - b) explore the potential for Overview and Scrutiny to develop a closer working relationship with the Council's Communications Team with a view to more reporting and promotion of Overview and Scrutiny activity with a particular focus on the use of new digital technology and to consider the scope to improve the connection between Overview and Scrutiny and the public (for example by more use of the Citizen's Panel);

- c) explore the scope to draw more extensively on independent local experts where appropriate in Overview and Scrutiny reviews (for example, the Universities in Medway);
- d) work with the Chief Legal Officer on the scope to require organisations contracted or commissioned by the Council to provide goods and services to provide information and attend Overview and Scrutiny Committees on request;
- e) work with the Chief Legal Officer to develop a framework for overview and scrutiny of the performance of the Council's commercial entities noting that the proposed starting point is a Member Development Session in the Autumn with the recently published Centre for Public Scrutiny guide scrutiny of risk and commercialisation as a point of reference as set out in agenda item 7, and;
- f) consider how scrutiny of SELEP might be incorporated into the Medway Overview and Scrutiny arrangements, noting that the Centre for Public Scrutiny will be publishing guidance on scrutiny of LEPs later in the year.

Lead officer contact:

Julie Keith, Head of Democratic Services Tel: 01634 332760
Email: julie.keith@medway.gov.uk

Appendices:

Appendix A – Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities – May 2019

Appendix B – Analysis of Statutory Guidance – with commentary of how current arrangements in Medway measure up

Appendix C - 21 findings and recommendations of the House of Commons Select Committee Inquiry with the post-inquiry outcome against each.

Background papers:

House of Commons Communities and Local Government Committee – [Report on Effectiveness of Local Authority Overview and Scrutiny Committees December 2017](#)

[Government Response](#) to the CLG Committee Report on Effectiveness of Local Authority Overview and Scrutiny Committees March 2018

[Statutory Guidance](#) on Overview and Scrutiny in Local and Combined Authorities published May 2019