



NORTHAMPTON BOROUGH COUNCIL
OVERVIEW AND SCRUTINY COMMITTEE

11 November 2019

**Briefing Note: Statutory Guidance on Overview and Scrutiny in
Local and Combined Authorities**

1. Introduction

- 1.1 On 7 May 2019 the Ministry of Housing, Communities & Local Government published the document, 'Statutory Guidance for Local Authorities on Overview and Scrutiny'. The new guidance seeks to clarify the role and benefits of scrutiny to local authorities, taking into account the significant changes to scrutiny since the previous guidance was published in 2006.
- 1.2 Noting that this is statutory guidance, it also recognises that Local Authorities are best placed to decide how Overview and Scrutiny should operate within their own political structures. As such the guidance highlights best practice and lets individual Councils determine its implementation.
- 1.3 Although a number of parts of the guidance relate to the wider culture of the organisation in respect of Overview and Scrutiny and are therefore outside the remit of the Scrutiny and Overview Committee to directly determine, other sections provide more practical advice. Where the guidance makes practical recommendations, the Committee needs to consider how it wishes those to be implemented. The areas within the remit of the Committee to implement are highlighted in this report. The report goes on to summarise 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 at Northampton measure up and some suggested areas for possible further discussion and development.
- 1.4 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.
- 1.5 Local and Combined Authorities must have regard to the new statutory guidance on Overview and Scrutiny published by the Ministry of Housing, Communities and Local Government (MHCLG) when exercising their functions. It is emphasised that 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. Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities

Background

- 2.1. In September 2017 the Communities and Local Government Select Committee (the Select Committee) undertook a review of the effectiveness of Overview and Scrutiny in Local Authorities. This review took into account a broad range of evidence from a variety of sources. The review concluded with the publication of the Select Committee's findings and recommendations in December 2017.
- 2.2 The Select Committee made 21 findings and recommendations underpinned by two key conclusions; that effective Overview and 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.
- 2.3. The Government published its response to the Communities and Local Government Select Committee report in March 2018, giving a commitment to publish new scrutiny guidance for local authorities by December 2018. Although the publication of the guidance was delayed, it was eventually published in May 2019. A copy of the full guidance is detailed at Appendix A.
- 2.4 The Government Response states that Councils are best-placed to shape scrutiny arrangements to suit local needs and recognises the flexibility Local Authorities need to put those arrangements in place. In particular, the Government Response emphasises that the Government is cautious of imposing particular arrangements on Local Authorities, such as prescribing how Overview and Scrutiny chairs are appointed, resources and training, governance monitoring systems and how to hold external bodies running public services to account.
- 2.5 The Guidance bases 'effective scrutiny' on the Centre for Public Scrutiny's four principles, which set out that good scrutiny:
 - provides a constructive "critical friend" challenge;
 - amplifies the voices and concerns of the public;
 - is led by independent people who take responsibility for their role;
 - drives improvement in public services.

Themes of the Guidance

- 2.6. The guidance highlights a number of specific areas that directly contribute towards the effectiveness of Overview and Scrutiny. These range from practical advice on items such as the importance of work programming to the less tangible and harder to influence, such as organisational culture. The six themes as set out in the guidance are:
 - i. Culture
 - ii. Resourcing
 - iii. Selecting Committee Members

- iv. Power to Access Information
- v. Planning Work
- vi. Evidence Sessions

2.7. The six themes are summarised below:

Culture

- 2.8. The guidance acknowledges that organisational culture within local authorities is one of the key determinates of the success or failure of Overview and Scrutiny, with an emphasis placed on the importance of Scrutiny being owned and Member led.
- 2.9. It is also emphasised that the performance of Overview and Scrutiny and its effectiveness can be considered by external bodies such as regulators and be highlighted in public reports published by those bodies.
- 2.10. The guidance details a number of suggested methods that will help to ensure that the organisational culture is supportive of the role of scrutiny:

a) Recognising Scrutiny's legal and democratic legitimacy

The need for all members and officers within the Council to recognise the importance and legitimacy of scrutiny, and specific legal powers of Scrutiny Committees set out in law, is highlighted within the guidance.

b) Identifying a clear role and focus

It is recommended that there is a need for scrutiny to have a clearly defined role within the organisation and one that is focused on providing value.

It is highlighted that there needs to be a clear division of responsibilities between the scrutiny and audit functions.

c) Ensuring early and regular engagement between the Cabinet and Scrutiny

It is recommended that there should be early and regular discussions between Scrutiny and the Cabinet, particularly in regard to the Cabinet's future work programming.

d) Managing Disagreement

The guidance recommends that a protocol is developed to manage any instances when the Cabinet disagrees with Scrutiny recommendations.

e) Providing the Necessary Support

The guidance recognises that determining the level of support available for Scrutiny is a matter for individual authorities, but it does highlight that appropriate support should be given to allow Scrutiny Members to access information required to fulfil their duties.

f) Ensuring Impartial Advice from Officers

The guidance reaffirms the need for officers to be able to give impartial advice to Scrutiny Members, highlighting in particular the importance of the 'statutory officer' roles - the Head of Paid Service, the Section 151 Officer, the Monitoring Officer and the statutory Scrutiny Officer.

g) *Communicating Scrutiny's role and purpose to the wider authority*

The guidance highlights that a lack of awareness of the role of scrutiny across the Council can act as an impediment to its success. Therefore it is vital to communicate the importance of scrutiny and the role it plays in decision making across the Council. This will ensure that officers are aware of the role of scrutiny, its powers and the importance of providing support to the scrutiny function.

h) *Maintaining the interest of full Council in the work of Scrutiny*

The guidance notes that it is important that other non-scrutiny Members are kept informed of the work of scrutiny. The suggested mechanism for this is through submitting reports and recommendations to full Council rather than solely to the Cabinet.

i) *Communicating scrutiny's role to the public*

The guidance suggests engaging with the Council's Communications team to publicise and raise awareness of the work of scrutiny in the local community.

j) *Ensuring scrutiny members are supported in having an independent mindset*

The guidance acknowledges that the difficulty for Members in potentially having to scrutinise colleagues, but emphasises that in order for scrutiny to work effectively. It is fundamental that Members have an independent mindset. It highlights the need for Scrutiny Chairs to work proactively to identify any contentious issues and plan how to manage them.

2.11. As detailed earlier in this briefing note a number of the sections above are outside of the remit of the Scrutiny and Overview Committee to directly influence. As such the Committee should consider highlighting the above to the Governance Review Panel, asking that consideration be given to how these can be implemented.

Resourcing

2.12. The guidance does not recommend prescribe a specific level of officer support allocated to scrutiny, but it does highlight that an appropriate level of support is required to ensure that scrutiny can function effectively.

2.13. In addition to specific officer support, the guidance highlights that any support should also include the way the wider Council engages with scrutiny.

2.14. This section of the guidance is also beyond the remit of the Scrutiny and Overview Committee to directly influence however, Committee should consider reviewing current resource allocation and, if any shortfalls are identified which impact on effectiveness, raise these appropriately.

Selecting Committee Members

2.15. The guidance emphasises the need to consider experience, expertise, interests, ability to act impartially, ability to work as part of a group and capacity to serve when selecting Members to sit on Overview and Scrutiny committees.

- 2.16. A perceived level of support for or against a particular political party should not be a factor taken into account when selecting Members for scrutiny.
- 2.17. The selection of Members to sit on the Overview and Scrutiny Committee at the Council is by the Political groups and is the direct control of the Scrutiny & Overview Committee. However, the Chair of the Overview and Scrutiny Committee ensures Members to the Scrutiny Panels that undertaken Reviews are those with a particular interest or expertise in the issue being reviewed.
- 2.18. The guidance acknowledges the importance the role of Chair plays in the success of scrutiny, with this role being responsible for establishing its profile, influence and ways of working. A suggestion is made for using a secret ballot as a method for selecting scrutiny chairs, but it is acknowledged that it is up to local authorities to choose the best method for their circumstances. Committee should note however, that specific provisions exist in other legislation and the Council's Constitution in relation to voting generally.
- 2.19. It is recommended that ongoing training is provided for Scrutiny Members to allow them to fulfil their roles successfully. In particular the need for Members to be aware of their legal powers and understand how to prepare for and ask relevant questions at Scrutiny meetings are essential.
- 2.20. The guidance also recognises the value that can be added by outside expertise through either co-option of members onto a committee or the use of technical advisors for specific subject. At Northampton Borough Council, a number of co-optees are appointed to the Scrutiny Panels for the life of the reviews however, Committee may also want to consider whether technical experts can add value in relation to particular matters, along with any resulting resourcing requirements.

Power to Access Information

- 2.21. The guidance also highlights the enhanced legal powers for Scrutiny Committees to access information in order to be able to carry out its work. This includes regular access to key sources of information such as data on finance, performance and risk.
- 2.22. The guidance details a number of considerations for Scrutiny when requesting information from external organisations including the need to explain the purpose of scrutiny, highlighting the benefits of an informal approach, how to encourage compliance with the request and who best to approach.
- 2.23. In order to act as a reminder for Members on requests made for further information at Committee meetings and to ensure that the information is provided, a specific section has been added to the minutes of each meeting setting out the requests made. This has ensured more timely responses to requests for information by the Committee.
- 2.24. The wider question of how and when information is provided to scrutiny is something that should be referred to the Constitutional Working Group for further consideration.

Planning Work

- 2.25. The guidance reinforces the importance of work programming in the success of Overview and Scrutiny, with a focus needed on items that can make a tangible difference. In planning its work programme, it is recommended that scrutiny should have in the main a long term plan, but with enough flexibility to ensure

that urgent, short term issues can be considered as needed. At Northampton, there is a very good, structured work programming process in place that considers the views of the public. Space is always left should urgent reviews need to be programmed in; for example, in 2018/2019 an additional review was programmed in – Adult Social Care – Post Unitary.

- 2.26. It is recognised that there needs to be coordination across the work programmes of individual Scrutiny Committees/Sub-Committees with prioritisation being necessary to ensure that the intended outcome for a specific item remained focused. At Northampton, there is just one Work Programme as there is one Overview and Scrutiny Committee but the Scrutiny Panels (Task and Finish Groups) do regular updates on their work as the reviews progress.
- 2.27. The guidance recommends using a variety of sources to inform the work programme including the public, partner organisations, the Cabinet and senior officers. In consulting with the public it does highlight that a formal consultation on scrutiny can be less successful than informal approaches.
- 2.28. At Northampton a variety of sources are consulted when preparing the work programme at the start of the year, including the public and Cabinet regarding their priorities for the year; from this, pre-decision scrutiny items are often determined. The guidance also recommends the use of shortlisting to decide which topics to include in the work programme to ensure that the items chosen are ones in which scrutiny can add value. This is done at Northampton in the annual Overview and Scrutiny work programming event.
- 2.29. The guidance sets out a number of different ways topics can be scrutinised, including having a single item on an agenda, dedicating a whole meeting to one item, a short task and finish group, a longer term task and finish group or a standing panel. The guidance sets out when it might be most appropriate to use each of the above.
- 2.30. At Northampton, single items have been reviewed by the Committee in the past but more detailed reviews are carried out by Scrutiny Panels.

Evidence Sessions

- 2.31. The guidance emphasises that evidence sessions are a key way for scrutiny committees to inform their work and highlights the need for effective planning. In particular it is recommended that consideration is given to setting overall objectives for each session and the types of questions that need to be asked to achieve these objectives.
- 2.32. Evidence gathering via either desktop research or witness evidence is a key part of any Scrutiny review at Northampton. Reviews are planned thoroughly and a scope (terms of reference) is devised. The guidance does also highlight the importance of pre meetings; for example, so that Members can be delegated specific questions to ask a witness and be fully briefed prior to the evidence gathering sessions.

A Work Programme for the Committee is also put together and published so that Members are aware of upcoming items at the overarching Committee meetings.

- 2.33. In developing recommendations from the evidence sessions the guidance advocates the need for them to be evidence based and SMART (specific, measurable, achievable, relevant and timed). The guidance also suggests that a

maximum of six to eight recommendations per topic are usually sufficient to ensure that a focused response is received. All of the recommendations from reviews at Northampton are SMART but on occasions there have been more than the suggested 6-8 recommendations.

- 2.34. At the conclusion of each scrutiny exercise at Northampton a final meeting of the Scrutiny Panel is held for the Panel to finalise its conclusions and recommendations and ensure they are in accordance with the evidence received, i.e. they are evidence based. Monitoring of the accepted recommendations always takes place after Cabinet has considered the report. Cabinet Members attend the Overview and Scrutiny Committee with a completed action plan detailing progress on the implementation of the accepted recommendations.

3 Next Steps

- 3.1 It is proposed that the Overview and Scrutiny Committee is asked to set up a Working Group to look at the guidance in detail and give consideration to the current processes and whether any changes are required as a result of the guidance.

4 Recommendations

- 4.1 It is recommendation that the Committee is asked to convene a Working Group to review the new Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities with a view to identifying any changes to current practice as a result of the guidance that can be directly implemented by the Committee or report to the appropriate bodies in relation to any matters outside its control.

Background Papers

Communities and Local Government Committee – Effectiveness of Local Authority Overview and Scrutiny Committees

Government Response: Effectiveness of Local Authority Overview and Scrutiny Committees <https://www.parliament.uk/documents/commons-committees/communities-and-local-government/2017-19-Correspondence/Government-Response-to-the-Communities-and-Local-Government-Committee-First-Report-on-the-effectiveness-of-local-authority-overview-and-scrutiny-committees.pdf>

Centre for Public Scrutiny – Scrutiny Statutory Guidance published <https://www.cfps.org.uk/scrutiny-statutory-guidance-published-today/>

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