Effective Scrutiny:
tools and intended outcomes

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Executive Summary

- The process of 'scrutiny' is ill-defined, and the word has come to be identified with the practice of the various institutions charged with carrying it out: the new devolved institutions, local government, Regional Chambers, the Greater London Authority and the House of Commons.

- The intended and desired outcomes of the scrutiny process have never been made explicit by Government. Especially in initial stages, this has led to some floundering by committees of assemblies and authorities. This has been especially true of local government, changing from its traditional committee system to one of overview and scrutiny, and of devolution in Scotland, Wales and Northern Ireland, where mammoth reviews of policy by committees were common.

- The majority of scrutiny processes carried out by committees can be defined either as policy review or accountability. Policy review refers to the study of past policy practice tied to recommendations for future changes, whilst accountability refers to questioning of executive officials or elected members about their decision-making and political judgements.

- We can also divide the potential intended outcomes of the scrutiny process into two categories: policy impacts and outcomes related to the democratic process. The former can be further subdivided into four aims: gathering information, investigating grey knowledge, accountability and pressure for change. The latter can be subdivided into public engagement, use of expertise and stimulating public awareness.

- We have identified a number of the tools that are used to carry out the scrutiny process, and have attempted to cross-refer them to the intended outcomes which we have identified. Many scrutiny committees make only hazy reference to their intended outcomes when deciding how to undertake an inquiry, and the grid we have devised is intended as a guide to that end.

- There also exist a number of necessary conditions for scrutiny to take place, which relate to the constitution of the relevant committee rather than to specific inquiries and the tools used by them.

Introduction

1. This is the final report of the Constitution Unit's two-year programme of research on effective scrutiny. It consolidates the findings of the previous pieces of research into the process of 'scrutiny' at the different tiers of government in the UK. Its aim is to draw some cumulative conclusions from those individual pieces of research, and to suggest that a number of similarities exist between the scrutiny processes taking place within the different tiers.

2. The purpose of the research programme was to study the aims and implementation of the 'scrutiny' process in the different tiers of government in the UK. Between 1999 and 2002, scrutiny was introduced to Scotland, Wales and Northern Ireland through the establishment of the devolved governments with their innovative committee systems; through the establishment of the London Assembly, as a counterbalance to the Mayor; into the regions of England, through the activities of Regional Chambers/Assemblies; and into local authorities, as part of the 'modernisation' programme introduced through the Local Government Act 2000. Scrutiny had taken place in Parliament since the establishment of the system of departmental select committees in the House of Commons in 1979, and through the more limited system maintained in the House of Lords. The term 'scrutiny' was rarely used to describe select committees before 1999.

3. In each of these tiers of government, the establishment of scrutiny was directly related to the arrangements for the exercise of executive power. In local government, the scrutiny role was intended as a counterweight to the requirement in the 2000 Act that one of four options for a separately-constituted executive be chosen (a directly-elected mayor with either a council manager or a cabinet, a leader and a cabinet, or a streamlined committee system).[1] Decision-making power was to be concentrated in the executive: the role of the scrutiny process was to question the executive's decisions and to hold the executive to account.

4. Similarly, in Scotland and Northern Ireland the new devolved institutions concentrate power in the executive: the subject committees in each institution are entitled to enquire into the executive's work, and to question their decision-making. The same applies in Wales, although this is complicated by the fact that in the National Assembly for Wales the executive ministers sit as full members of the relevant subject committee. In the GLA, the bulk of executive power is held by the Mayor, elected separately from the London Assembly: the Assembly's role is to hold the Mayor to account for his decisions and policies. In Parliament, executive decisions are made by the Government, with select committees empowered to examine the work of departments of state. In each instance the scrutiny role lacks veto power or any other formal sanction over the decision-making responsibilities of the executive.

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[1] See DETR, *Modern Local Government: In Touch with the People*, HMSO, London, 1999

5. The research programme sought to understand what scrutiny committees can achieve in this context. Lacking sanction over executive powers, they must make their voice heard in other ways – through consensual positions, reasoned factual argument, and the ability to embarrass departments through pointing out errors or bad judgements. They may also wish to lend their support to government priorities. The research focused entirely on scrutiny carried out by *committees* of elected members within political authorities. It did not examine the work of bodies such as the Audit Commission, which audits the performance and financial probity of public bodies. Though this is certainly scrutiny of a sort, it is carried out by professional auditors and does not have a party political dimension. Also, in order to maintain the coherence and workability of the programme, we omitted legislative scrutiny (which takes place in the House of Commons, House of Lords, Scottish Parliament and Northern Ireland Assembly) from the research.

6. Although scrutiny was introduced into UK government with the aim of holding executives to account and enquiring into policy matters, Government has also prescribed very little about how scrutiny should be carried out: White Papers and guidance have made suggestions, but have not obliged scrutiny committees to use particular methods. In most instances scrutiny committees are obliged by their own standing orders or in statute to do certain things: for instance, London Assembly committees must scrutinise Mayoral strategies, and Scottish Parliament committees must scrutinise legislation and annual budgets. Outside these obligatory activities, scrutiny committees have largely made up the rules as they have gone along. This means that, lacking a defined boundary, activities which have taken place under the rubric of 'scrutiny' have come to be identified with it. This has included a wide range of policy development and consultative work which would not be automatically associated with the word 'scrutiny', which connotes investigation and criticism.

7. This report draws together the experience of the scrutiny process at all of the different tiers of UK government. When using the word 'scrutiny', we include the entirety of the 'overview and scrutiny' process in local government, and the process known as 'policy development' in the National Assembly for Wales. Although scrutiny has grown up somewhat haphazardly, one of the hypotheses of our research was that each tier of government would show similarities in the type of activity which was carried out under the scrutiny process and in the tools which were used.

8. The report then outlines a typology of scrutiny which is undertaken within local authorities, parliaments, assemblies and chambers within the UK. We have not included during our research the wider conception of 'public scrutiny' which has been promoted by the Centre for Public Scrutiny (Ngan 2004). Our concern is with scrutiny as a constitutional innovation, and as a function of *political assemblies*. The paper goes on to examine what type of outcome is expected from each of these types of scrutiny.

9. We also set out here a typology of scrutiny processes. This builds upon the typologies set out in our earlier reports *Scrutiny under Devolution* and *Old*

Habits Die Hard?, but extends it to account for the differences between tiers of government. Thirdly, we outline the tools of the scrutiny process that we have encountered during the research. Fourthly, we make an initial analysis of which tools fit which type of scrutiny. This section inevitably involves value judgements, both as to which tools are effective under which circumstances (for which we can adduce evidence from the research) and as to what outcomes scrutiny should be trying to achieve (which is a more normative judgement). The value judgements that we have used derive from the observations and reports of our respondents within authorities, assemblies and parliaments during the research. We are not uncritical of their observations, however, and stand by the judgements, whether expressed or implicit, as our own.

10. I would like to thank again all of the interviewees throughout this research who made the work possible, giving up their valuable time to be interviewed on an often confusing, usually abstract subject which was rarely at the top of their priorities. Unattributed quotes from many of them are reproduced here. All of these quotes have been used in the other reports produced under this programme. Where the quotes are reproduced, the reports are referred to by their titles in the footnotes.

11. I would also like to thank the steering group established at the start of the project, who have been invaluable in reining in some of the wilder ideas during the work's progress. Thanks are also due to my colleagues Robert Hazell, who conceived the work and supported it throughout; Matthew Butt, who has organised events and publications superbly; and Lucinda Maer, without whose work throughout the research it would have been impossible to produce any of the outputs. Lastly, of course, thanks are due to the Esmee Fairbairn Foundation for their generous support of our work.

The desired outcomes of scrutiny

12. Scrutiny is a new process in the government of the UK. Even eight years ago, in 1997, it was rare to hear any reference to it in the context of the business of government. Since then it has become ubiquitous. Scrutiny requirements have been introduced at all tiers of government in the UK, though all of them are permissive rather than prescriptive. There is no unambiguous statement about the role of scrutiny.

13. In the House of Commons, the standing orders of the departmental Select Committees require them "to examine the expenditure, administration and policy of the principal government departments" (Standing Order 152 (1)). They are given powers "to send for persons, papers and records" and "to appoint specialist advisers". The majority of the work of select committees has (historically) focused on matters of policy (Drewry 1989). Expenditure in particular has been relatively neglected. On occasions when serious shortcomings in departmental administration have become apparent, committees have looked critically at these matters.

14. The performance of House of Commons select committees was strengthened in 2002 by the adoption of a series of 'core tasks' by Parliament. These largely restated functions that were already being undertaken by many committees. However, the effect of the core tasks has been to provide a reference point against which committees can judge their own performance:

> "What they have done is force committees to look at the areas of their remit that they have least been interested in. It has always been easy to get committees interested in big political subjects, government policy documents and that sort of thing. Less so with public expenditure, delegated legislation, pre-legislative scrutiny… Committees don't want to be seen not taking [the core tasks] seriously and it does mean that, given the committees know they will be reporting at the end of the year against the core tasks, part of the way through they year we ask how far we are fulfilling these things."[2]

15. The core tasks, however, list only the areas which committees should be investigating. They do not suggest what the desired outcome of the investigations might be. The result of this omission has been a historical focus on the inputs of the scrutiny process rather than intended outcomes. Select committees, the longest established scrutiny bodies, have focused strongly on inviting witnesses and written evidence and producing lengthy written reports on selected subjects to feed into the Government's policy-making process. The tasks and content of the scrutiny process are important, but it was not often linked to the influence which a select committee could have on policy or decision-making.

16. Similar problems were visible in the initial scrutiny work of the three devolved institutions in Scotland, Wales and Northern Ireland. In particular, in the first

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[2] *Select Committees under Scrutiny*, p. 14

2-3 years of these bodies' life there was a strong tendency to focus on very large policy reviews, where members heard from dozens of witnesses and produced a comprehensive compendium of policy options. One respondent mentioned a committee "that was notorious in its desire to change the world".[3] Although an excellent report may result from such a process, that does not necessarily translate into impact on executive decision-making. This may be because the policy debate has moved on by the time of publication, or because the report proposes a massive programme of policy change that the executive is not prepared to contemplate. More focused, limited reviews, which make recommendations about policies which are currently identified as problems by the executive, may be less impressive but are more likely to have an impact on policy outcomes.

17. Local government scrutiny varies enormously across the 408 local authorities in England and Wales (the provisions of the Local Government Act 2000 do not apply to Scotland and Northern Ireland). Some authorities have used the changes as an opportunity to innovate considerably in committee work. In some, however, there has been a tendency to operate committees as they were operated under the old system. Vast numbers of policy papers are passed through committees, which monitor the work of the executive in intense detail. The quantity of work precludes committees from having much influence over decisions made by the executive. The focus in such authorities is on the inputs to committee work i.e. a belief that committees of elected members must be entitled to see and express their approval for all policy papers. Under the previous committee system, the committees were the decision-making authority: monitoring all executive papers enables them to maintain the illusion of this control. In Cornwall County Council, for instance, committees still passed resolutions in favour of policy papers – making a shadow decision, in effect. This reflects a mistaken understanding of the purpose of the new system, which is not to make decisions but to examine the decisions of others:

> "I think in the main most councillors have struggled. They still can't get their head around what it means from being in committees that have made policy and implemented policy to having to scrutinise policy… I think if you went around the majority of members would prefer to return back to the old system."[4]

18. The Local Government Act 2000 specifies that "executive arrangements by a local authority must ensure that their overview and scrutiny committee has power…
(a) to review or scrutinise decisions made, or other action taken…
(b) to make reports or recommendations to the authority …
(e) to make reports or recommendations to the authority or the executive on matters which affect the authority's area or the inhabitants of that area."[5]

19. The London Assembly, meanwhile, is given even less indication of the intended outcomes of the scrutiny process in the GLA Act and the Green and

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[3] *Scrutiny under Devolution*, p.15
[4] *Old Habits Die Hard?*, p.51
[5] Local Government Act 2000, s.21 (2)

White Papers which preceded it. The Assembly is entitled "to investigate, and prepare reports about ... any other matters which the Assembly considers to be of importance to Greater London".[6] It is also obliged to regularly question the Mayor, to scrutinise the statutory strategies which the Mayor must produce, and to examine the Mayor's budget. Outside this, however, it is free to set its own remit: the White Paper on the GLA merely states that the Assembly should be "the means by which what the Mayor says and does will become subject to public scrutiny and, where necessary, criticism" (DETR 1998:20). The Assembly found establishing its role hard in its first eighteen months of operation, initially eschewing a standing committee structure for an overlapping and confusing system of ad hoc committees carrying out specific investigations. This system was largely driven by members' interests.

20. The Regional Chambers in the eight regions of England outside London are permitted to monitor the work of the Regional Development Agency (RDA) in their region, under sections 8 and 18 of the Regional Development Agencies Act 1998. The Regional Chambers have very limited funding and have no executive powers, though the RDAs are obliged to take into account their views. Regional scrutiny centres on the Regional Economic Strategies that each RDA is obliged to produce. Chambers, like the GLA, have taken some time to organise their scrutiny processes. Many of them now operate two-to-three-year programmes of scrutiny, focused on the main priorities expressed in the Economic Strategies. Scrutiny of organisations other than the RDAs rarely takes place.

A typology of scrutiny processes

21. Different tiers of government have therefore interpreted the 'scrutiny' role in different ways. At the outset of this research, the scrutiny process was only just beginning to coalesce as a particular branch of government. The London Assembly was finding its feet; regional chambers were only just seeing the benefits of increased government funding; and the House of Commons was undergoing the reform debates instigated by Robin Cook as its Leader in 2001-02. The local government overview and scrutiny agenda was beginning to develop, with a clear brief to play a part in 'modernising' local government by trying new ideas and new methods, and a number of local authorities were beginning to respond to this. We began the research with the working hypothesis that we would be able to identify commonalities between the scrutiny processes at different tiers of government. But the potential range of scrutiny activity was so wide that there was no guarantee of this.

22. The priorities of scrutiny have been different across the tiers of government studied during this programme. In the Scottish Parliament and Northern Ireland Assembly (when the latter has sat), committees are obliged to scrutinise legislation, and most have found that the time taken to meet this obligation has crowded out much of the other subjects of interest to members. Other main interests have been the investigation of failures in government: the Scottish enquiry into the distribution of school exam results in 2000 is an

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[6] GLA Act 1999, s.59 (2) (e)

example of this. We also referred above to the disproportionate number of broad policy reviews in the first years of the devolved institutions. These were in part a response to the opportunity to develop a truly territorial policy for the first time. The latter was also true in the National Assembly for Wales.

23. Local government priorities have varied across different authorities. Some authorities have linked scrutiny activities quite strongly with the other performance assessment regimes that influence local government. In Preston City Council, the scrutiny committee co-ordinates the council's response to the Comprehensive Performance Assessment. Elsewhere, the priorities of scrutiny are closely related to areas identified for attention by recent Best Value reviews. This is an interpretation of scrutiny with reduced political content. On other occasions, authorities have produced a range of reports examining the services provided by the council and suggesting changes: on some occasions to the organisation of the service, on others to the policy behind high-level decisions within the service.

24. Local authorities were encouraged by the White Paper that led to the 2000 Act, *Modern Local Government*, to use the scrutiny process as a means to joining up the work of different authority departments – "overview and scrutiny committees should take a cross-cutting rather than narrow service-based view of the conduct of the local authority's business."[7] Joining up has long been a concern of the current Government, and scrutiny was perceived as one means to enable it to happen. Local authorities were encouraged to constitute scrutiny committees with remits which related to the perceptions of the electorate about council functions. This would enable the committees to carry out enquiries and produce reports which paid heed to the needs of the community rather than the pre-ordained division of tasks within the council. In practice, cross-cutting scrutiny committees of this kind have been the exception rather than the rule. The London Borough of Ealing set up four scrutiny committees, known as the Council, Borough, Community and Individual scrutiny committees. The Individual committee deals with services provided to individuals, such as housing, education and social services; the Community committee deals with sport, leisure, health and culture. The Borough committee deals with services for the whole of the electorate – highways, waste, parks and planning, whilst the Council committee looks at internal issues. The work programme of these four committees varies widely: housing, education and social services are large enough to have their own dedicated committees in other authorities, whilst the Council committee has carried out inquiries into matters as arcane as the functioning of the council's post room.[8]

External scrutiny

25. Local authorities were also encouraged to undertake scrutiny of public and private bodies outside of the council's remit, a practice that has become known as 'external scrutiny'. External scrutiny, which is also practised in the London Assembly and the Regional Chambers/Assemblies in England, differs

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[7] *Local Government Act 2000: Guidance to English Local Authorities*, paragraph 3.21
[8] See *Old Habits Die Hard?*, p.16

in substantial ways from 'internal scrutiny'. Most obviously, authorities conducting external scrutiny not only have no control over decision-making in other bodies, but, unlike in the local authority itself, there are no political links between elected members on committees and in the executive. Party pressure and informal contacts, which are vital means to ensuring that scrutiny processes impact on policy-making, cannot be used in this situation.

26. The effect of this distribution of power is that most external scrutiny that has been conducted so far has been conducted in a spirit of partnership. This applies particularly to the process of 'health scrutiny', a form of external scrutiny introduced by the Health and Social Care Act 2001, which permits local authorities to scrutinise the functioning of their local health services. The subjects of health scrutinies are often discussed with the 'scrutinees' in advance, the scoping and work programme of the scrutiny committee is often approved or signed up to, and the final report is read through in draft by the health authority. As a result, a particular character of scrutiny emerges. The focus is on ensuring that the elected councillors' voices are heard in the development of policy by an external organisation: far less attention is paid to holding external organisations to account.

27. In the London Assembly, external and internal scrutiny run alongside one another. Internal scrutiny applies to the workings of City Hall and to the four 'functional bodies' the boards of which are appointed by the Mayor: Transport for London, the London Development Agency, the London Fire and Emergency Planning Authority, and the Metropolitan Police Authority. According to one respondent, "there's a different flavour [between the two] – when it's officials from the [GLA] group, everyone's polite and [they] try to give as good an account as they can, but members might be tempted to give them a bit of a hard time on occasion".[9]

28. In Regional Chambers, which have no executive powers, all scrutiny is external scrutiny. Hence, all of the Chambers' scrutiny activity has been characterised by partnership with the Regional Development Agencies. Regional Chambers permit the RDAs to take part in the planning and scoping process for scrutinies, and to comment on draft reports before they are published. This does not mean that the process of external scrutiny is entirely ineffective. One London Assembly respondent stated that scrutiny in London was "much more friendly – and as a consequence perhaps even more rigorous."[10] The effectiveness of scrutiny should not be measured by the noise of battle but by the outcomes which result.

29. Scrutiny, however, everywhere has the same fundamental aims: to hold accountable, and influence the policy of, the executive. The number of different tools available towards this end is limited: and the number of different types of inquiry that can be undertaken to achieve the twin ends is also limited. Through our research we have been able to identify a typology of scrutiny processes, set out in Table 1. These take on slightly different formats

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[9] *Issues of Importance*, p.17
[10] *Issues of Importance,* p.26

depending on the tier of government, but are identifiably similar processes exhibiting similar aims.

Table 1: a typology of scrutiny

Type of scrutiny	Sub-categories
Policy	Large scale policy review
	Cross-cutting policy review
	Focused policy review (includes mayoral strategy in GLA)
	Reporters' report (Scottish Parliament/GLA)
	External scrutiny
Accountability	Event/disaster inquiry
	Regular questioning of ministers
	Scrutiny of NDPBs (principally devolved assemblies)
	Scrutiny of public appointees
Audit	
Budget scrutiny	
Legislative scrutiny	Secondary legislative scrutiny

30. ***Policy*** and ***accountability*** are the mainstay of the scrutiny process. The former refers to forward-looking reviews, the latter to reviews of events that have taken place. Obviously, these are often two sides of the same coin, and scrutiny enquiries will fall into both of these 'categories'. A forward-looking review can hardly avoid researching existing knowledge by way of background, and a committee reviewing past events will often feel impelled to make recommendations for the future. We believe that the distinction is conceptually useful: but also, unlike some of the practitioners interviewed in the research, we believe that policy work is a valid part of the 'scrutiny' process:

    "[I wonder] how far using committees to actually bring forward detailed recommendations on policy is the right thing to do. If you go for a commission, working in a very intensive way, it is able to do detailed analysis and quantification and all those kind of things and come forward with recommendations in a way that a committee could never do."[11]

31. We define ***policy*** as the influence sought by the backbenchers of any given council or assembly over the policy-making process, the formal levers of which are in the hands of the executive members. 'Policy' is referred to as 'overview' in local government, and as 'policy development' in the National Assembly for Wales. Here, for clarity across tiers of government, we treat it as an integral part of the scrutiny process.

32. ***Accountability*** is the process through which those holding executive office (whether in the executive of the assembly/council or elsewhere) are made publicly accountable for their actions. The types of scrutiny listed under this

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[11] *Scrutiny under Devolution*, p.14

heading are really variations on the theme of decision-makers answering questions about the policies they have instigated and the decisions they have made, and those questions and answers being on the public record. Large-scale enquiries may also come under this heading, especially where public projects have failed in a large and visible way. Such enquiries are held primarily for accountability purposes but will also take considerable amounts of background evidence through which alternative policies and actions can be suggested.

33. Other forms of scrutiny tend to take up less of the time of committees than policy and accountability. *Audit* is carried out by specialised committees and/or specialist institutions composed of professionals. *Legislative scrutiny* takes place only in the House of Commons, Scottish Parliament and Northern Ireland Assembly (and secondary legislative scrutiny takes place in the National Assembly for Wales). This examines legislation in the context of its aims, suggesting potential amendments both on managerial and political grounds. Scrutiny of assemblies' and authorities' *budgets* is normally an integrated part of the annual budget process, and combines policy and political debate with comment on the relationship between budgeting and policy intentions. The remainder of this paper investigates the way in which policy and accountability are handled by scrutiny committees.

Intended outcomes

34. The lack of definition of desirable outputs and outcomes reflects the origin of the concept of scrutiny within the Westminster system of government. The scrutiny function does not have a formal basis within either the theory or practice of UK government. In relation to the new tiers of government, it did not originate from a clear vision of the complementary roles of executive and accountability functions but was something of an afterthought. In each tier of government, scrutiny committees have minute quantities of formal power. They cannot order the reversal of executive decisions. They cannot, except under exceptional circumstances, force the resignation of a member of the executive. Their limited resources mean that they can rarely bring detailed evidence to bear on policy decisions. They are normally excluded from seeing confidential policy information. Their actual power, in short, rests almost entirely on influence within the political process, strong arguments, and attracting public attention.

35. The precise nature of scrutiny committees' power differs between tiers. For instance, the power of 'call-in' of a policy decision is available only to local government scrutiny committees, and this gives them a strong sanction against being entirely ignored. Call-in is used as much in the threat as the execution, requiring a greater degree of consultation with backbench local authority councillors during policy-making than is the norm at other tiers. The London Assembly can reject the Mayor's budget on a two-thirds majority, forming a blunt but potentially effective lever with which to conduct more detailed policy negotiations.

36. The intended outcomes of scrutiny inquiries have never been clear, largely because the scrutiny process has grown organically: much of the standard

scrutiny process began its life in the select committees of the House of Commons. Formal witness sessions, the production of a dense report, and a large range of (sometimes unrealistic) recommendations were not uncommon, with little consideration on whether or not policy impact would be achieved. The focus was on being right rather than being effective.

37. What, therefore, might positive outcomes for scrutiny look like? We suggest that there are two headings under which positive outcomes can be grouped. These are outcomes related to **policy impacts** and outputs related to **the democratic process**. These are not intended as a normative typology. They are derived from the implicit aims of much of the scrutiny work that we witnessed during the research. The word 'implicit' is used because, whilst scrutiny inquiries often stated their aims, aims were frequently expressed by extremely broad statements using phrases like "to inquire into", "to examine".

38. What, therefore, are scrutiny processes expected to achieve? We suggest seven possible intended outcomes of scrutiny below. As we will see, these intended outcomes are not mutually exclusive. Framing them helps to focus attention on what the scrutiny process can achieve.

The democratic process

39. *Engagement*. By 'engagement' we refer to what one respondent called "the process of interchanging the institution with the people".[12] Engagement refers to the opportunity to meet committee members and speak to them on equal terms – often in a less formal setting than that of the committee session (see also 'site visits'). Engagement may take place with members of the public, or with *stakeholders*: individuals or representatives of organisations which have expertise and/or an interest in the subject being enquired into. It is possible for stakeholder engagement to take place with the aim in mind of developing a more consensual policy recommendation. For instance, the National Assembly for Wales's Higher Education inquiry deliberately took evidence from a wide range of stakeholders in order to include them in the policy-making process (even though many produced similar evidence). There was considerable speculation about the future existence of some Welsh universities, and the inquiry process enabled their voice to be heard.

40. *Expertise*. Expert advice on matters of fact may be used by committees to help them reach their conclusions, and then to give their conclusions credibility before the public and before the executive. Written submissions to an inquiry will often come from organisations or individuals regarded as experts in their field. Committees can also decide to retain advisers, make use of in-house research facilities or consultants, and to invite those who submit written evidence to expand on their views. The use of expert advisers is a vital addition to the expertise of committees, which are scrutinising the work of executives with huge resources and knowledge.

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[12] *Scrutiny under Devolution*, p.19

41. *Public awareness*. Some scrutiny processes may simply have the function of raising awareness of an issue. This may consist of raising public awareness of something that has come to light as a result of other investigations, or flagging up policy decisions which will reach a crunch point in the near future. It may also refer to scrutiny committees making *decision-makers* aware of an issue or issues which are matters of public concern but which receive little co-ordinated policy attention. The public's relationship to government does not divide along the boundaries of government departments or local authority directorates, and a scrutiny committee can potentially approach the executive from the position of public perception rather than audit of departments. Preston City Council carried out a scrutiny on grass cutting in council housing estates. Though this sounds a very minor subject, it is a major concern for many residents. The London Assembly carried out an inquiry into graffiti, to which the same points apply.

Policy outcomes

42. *Gathering information*. We found a few instances where committee members had undertaken an inquiry because its subject was current, in order to educate themselves for future policy development. One of the stated purposes of committee scrutiny is to enable back-bench members to develop specialisations in particular policies. The outcome of this type of investigation would be a bank of information, plus contacts with experts, which could be used as a basis for future work. An example of this was the numerous housing enquiries in the Northern Ireland Assembly, in advance of an anticipated housing Bill. This kind of inquiry can also be used to enable the scrutiny committee to frame the debate on a policy subject that has not yet become 'current' because of limited public or executive awareness.

43. *Grey knowledge*. Because of the secretive nature of much government decision-making in the UK, it is often unclear how government reaches its decisions; what evidence has been used in reaching decisions; what precisely has been decided by public officials. We have used the term 'grey knowledge' to refer to information which is almost never volunteered by public officials, yet which is not necessarily withheld if the correct question is asked. Establishing exactly why a decision was made, what combination of departments and officials made it, and for what reason, is the work of continued and penetrating questioning, and this can reveal much about the source of significant changes and large-scale mistakes. An example of the former was the inquiry into EU Objective 1 funds in the National Assembly for Wales, where continual questioning from the Economic Development Committee was able to uncover the source of specific decisions about match funding. An example of the latter was the inquiry by London Borough of Camden into the failure of the West Hampstead Housing Association (WHHA), where persistent questioning established the information available to the Housing Corporation in advance of the WHHA's collapse.

44. *Accountability*. Many facets of the scrutiny process have the purpose of discharging the democratic function of public accountability. This enables the electorate to find out the details of the decisions and judgements made by

executive members and senior public officials. Most of their day-to-day decision making is never exposed to public accountability, because of the other demands on elected members' time: but it is vital that this accountability takes place, even if only from time to time, as public money is spent as a result of their decisions. Scrutiny of non-departmental public bodies in the devolved assemblies serves this function.

45. *Pressure for change*. Most of the activity of scrutiny implies pressure for change, because without this it would have no purpose. But an efficient scrutiny inquiry will focus the pressure for change on a small number of points, which are either of high political salience or on which clear evidence of mistakes or poor judgement has been found. That does not happen in many scrutiny inquiries: reports containing large numbers of recommendations covering a broad range of subjects are the norm, and this is likely to dilute their effectiveness. Evidence from central government in particular indicates that most policy is overdetermined: there are a large number of influences feeding in to officials' decision-making. In that scenario, a scrutiny committee will have a strong influence only if it makes a clear and authoritative statement (see 'expertise').

Tools for scrutiny

46. If these are the options for intended outcomes of the scrutiny process, which outcomes should a given scrutiny enquiry aim towards? Ultimately, this is a decision for committees to make depending on the aims of the committees themselves, the subjects chosen for scrutiny, and on the committees' own political context. Furthermore, considering whether some of these intended outcomes are more suitable for policy inquiries and some for accountability inquiries does not produce satisfying answers. None of these seven possible outcomes are demonstrably particular to either policy or accountability, which itself demonstrates the closeness of those two concepts.

47. This section seeks to match the intended outcomes of scrutiny with a number of *scrutiny tools* that we have identified in the course of our research. Table 2 shows our suggestions for which scrutiny tools should be used according to which outcomes are intended. Again, this is not a definitive statement matching the two so much as a framework for considering how best to carry out a scrutiny inquiry. Frequently in our research we found that scrutiny committees used various available tools with little thought as to whether they were suitable. Examples of this include the frequent hiring of subject experts as special advisers who were then required to provide a great deal of basic research, which could easily have been provided in-house; and a large number of repetitive oral evidence sessions. In this section we analyse the scrutiny tools in greater detail, giving examples of their use from the other research reports produced during this research programme.

48. In Table 2, the columns represent the intended outcomes of scrutiny as set out in the previous section. The rows represent available tools of scrutiny (which are discussed at greater length below). An 'X' indicates that, where the outcome in that column is sought, the tool indicated in that row is a

particularly valid one to use. The table is not entirely exclusive: therefore, for instance, we are not claiming that it is never valid to use stakeholder involvement to seek grey knowledge, but that greater priority should be given to the tools indicated by the 'X' in this table.

Table 2: scrutiny tools and intended outcomes

	Engage	Expert	Public aware	Gather info	Grey	Acct	Press change
Questionnaires	X			X			
Conferences & seminars	X			X			
Site visits	X		X	X			X
Hard to reach groups	X		X				
Stakeholder involvement	X	X					X
Special advisers		X			X	X	
Rapporteurs	X	X		X			
Written questions				X	X	X	
Written evidence		X	X	X			X
Oral evidence sessions		X			X	X	
Report/ recommendations					X	X	X
Media use			X			X	X

Questionnaires

49. Questionnaires, sent either to a randomised selection of the public or to a specific list of stakeholders, are only very rarely used by scrutiny committees. To provide valid results, a questionnaire ought to be designed, and preferably analysed, by an expert: but they can be administered by the committee. Their primary selling point is that they can be used to gather *basic* information and opinions quickly and at a minimal cost. By contrast, we saw many examples of oral evidence sessions being used to ask for basic information, which might just as easily have been obtained through written questions or questionnaires. Committees can then invite more detailed responses from certain respondents on the basis of the spread of information in a questionnaire set.

50. Questionnaires have been used only very rarely in scrutiny processes. Some Regional Chambers have discussed using them as an efficient means of gathering information. Other tiers of government have not, on the whole, considered their use. Questionnaires are less likely to be useful for accountability processes, which require a more dynamic style of questioning (see below).

Conferences and seminars

51. Conferences and seminars are also used only rarely. The tourism inquiry in the Northern Ireland Assembly held two conferences to assess a wide range of stakeholder opinion.[13] These cost a total of £22,000. The two conferences were identical in form but were held in two different venues in Northern

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[13] *Scrutiny under Devolution*., p.27

Ireland. The enquiry had begun with the appointment of a special adviser to delineate the main themes with which a broad-ranging enquiry into tourism in Northern Ireland should concern itself. The adviser produced eight themes: these were subsequently used as the titles of break-out groups within the two conferences. Invitees to the conferences came from the lists of organisations and individuals which had already submitted written evidence to the enquiry, plus an extra dozen organisations who had not but which were known to the Committee.

52. The workshops were chaired by elected Committee members. The members were expected to take on board the views expressed in their workshops, though some respondents claimed that this had not taken place to their satisfaction. The workshop chairs then reported back in plenary sessions, during which issues were thrown open for general discussion. Following the two conferences, clerks began work on a draft report (which was interrupted by the suspension of the Assembly). Respondents suggested that the process had been useful for colleting a lot of evidence in a short space of time, and that it had facilitated brainstorming: "people felt free and relaxed and able to express their idea… A lot of ideas bounced from one to another".[14]

53. The London Assembly has made slightly more use of consultative seminars (for instance, on tram systems). These are often free-standing seminars, not linked to a specific scrutiny process, and a short summary report will be produced afterwards. These are also useful ways of gathering a large quantity of information at a relatively low cost. Conferences and seminars also fulfil a useful public relations role: they signify that elected representatives are interested in the views of public, constituents and stakeholders, and that they are open to debate. They are useful for enquiries where a substantial public input will lend weight to recommendations that the committee makes.

54. Scottish Parliament committees use away-days, in effect private seminars, to help them plan their programme of work for the coming year. A select group of stakeholders is invited to discuss issues of importance with them. Seminars are also used in some Regional Chambers. In the South-West, an invited audience takes part in a discussion forum lasting some two hours the task of which is to identify the subjects which the scrutiny committee should address in oral hearings with the senior staff of the RDA. This forum takes place in the morning, and the oral hearing follows the same afternoon. Members of the scrutiny committee are thus well-informed immediately in advance of the pivotal point of the scrutiny process.

Site visits

55. Committees, or a selection of committee members, often conduct visits either to see for themselves the outcome of public services, to see practice in other countries or jurisdictions, and to establish their presence outside of the institution in which they sit. Visits are inherently informal events, which has consequences for the nature of committee members' experience. As no formal

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[14] *Scrutiny under Devolution*, p.27

record is taken of proceedings, committee members may disagree about what happened or what has been learnt at a later date. Visits can be used for the purpose of engaging with hard-to-reach groups (see below), or to engage in a form of outreach to communities or particular regions. The London Assembly's inquiry into GP recruitment visited a GP surgery in East London which had pioneered the provision of a wide range of services in a very deprived district.

56. Visits may also be used to talk at first hand to policy-makers elsewhere, to discover innovative working in other localities or countries. As this report was being completed a controversy erupted over the House of Commons's ODPM Select Committee spending some £30,000 on a fact-finding trip to Singapore and New Zealand. The key for such visits is to demonstrate their additionality, as against writing or Internet communication. In comparison, the same Select Committee held hearings on regional disparities in Taunton and Newcastle during 2002, which were well-attended by the public and got good media coverage.

57. Visits are likely to be best used when a committee is examining a detailed policy proposal. Broader policy proposals are unlikely to gain a great deal from insight from a site visit, where, inevitably, only a small and focused aspect of policy can be viewed. We found that visits were far more common in local government scrutiny, motivated by councillors' desire to be closely in touch with their constituents' concerns. Visits provided councillors with an opportunity to 'escape from the town hall' and to view the provision of services at first hand: they also allowed voters to meet councillors without needing to take part in formal proceedings:

> "A group of us went out and talked to some parents in a pretty deprived village and we visited a support group at a nursery school. Asking them to give a presentation to the committee wasn't really on. But on the other hand they had things that they wanted to say and they needed to say."[15]

58. This relates closely to Government guidance. Overview and scrutiny in local authorities was viewed by the Government as part of a wider package of reform, another aspect of which was effective representation *to* councils *by councillors*. Asserting that constituency work was a leading role for councillors that had been too often neglected, the Government presented local government scrutiny as a means to exercising the constituency role over against the executive:

> "Overview and scrutiny committees should be a key mechanism for enabling councillors to represent the views of their constituents and other organisations to the executive and local authority and hence ensure that these views are taken into account."[16]

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[15] *Old Habits Die Hard?*, p.41
[16] ODPM, *Local Government Act 2000: Guidance to the English Local Authorities*, paragraph 3.19

Involvement of hard-to-reach groups

59. Enabling hard-to-reach groups, such as children, old people, service users, or ethnic minorities, to be involved in the political process tends to be a stronger priority the smaller an authority is. Involvement of these groups normally goes hand in hand with visits. Evidence from the activities of authorities so far suggests that meeting hard-to-reach groups on their 'own turf' is far more productive than inviting them to formal committee meetings, which can be intimidating for those not used to them. By the same token, this process normally takes place on a face-to-face basis. This tool is best used as part of a focused review of a specific policy, introducing the perspective of service users. As a result, there are a number of types of review for which this would be unsuitable – for instance, those which do not examine public services. It is also likely to be more effective the more locally focused the inquiry is: we found virtually no use of this method by House of Commons select committees.

60. A central aspect of engagement with hard-to-reach groups is avoiding the formal atmosphere of the council chamber and the committee meeting, and hence it is often linked with site visits (see above). This is not always true, however. In the Scottish Parliament's enquiry into failures in the Scottish Qualifications Authority's distribution of exam results, young people who had been personally affected by the SQA's failings were interviewed in committee meetings. Similarly, in the Northern Ireland enquiry into establishing a children's commissioner, a formal meeting was held with groups of young people. The young people themselves refused to nominate one or two spokespeople and insisted that they all meet the committee:

> "We went up to Derry and met the young people first, so there was a mingling, and then we went into the hall and took evidence. There… seemed to be a freer exchange of information. Normally when we take evidence we have may be three people at the most, a key person and a person either side. This was much more open and I think it was more informal. We were trying to have a proper engagement with young people."[17]

Stakeholder involvement

61. Stakeholders – activist groups, think tanks, voluntary sector groups, employer representatives and others – naturally cluster round committees of elected representatives, as they are a possible route to policy influence. Most committee enquiries which call for evidence always receive contributions from a range of stakeholders. There are two possible benefits from this from committees' point of view. Firstly, it may be valuable for scrutiny committees which are taking part in developing policy to take evidence from as many groups in the policy area as possible, in order to give the groups themselves the sense that they have been listened to. This can be problematic: sometimes

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[17] *Scrutiny under Devolution,* p.26

we found that they same groups had also contributed to the executive's own policy review in the same subject.

62. The second benefit of stakeholder views is that they can constitute expert advice. This benefit is particularly useful where the scrutiny committee is commenting on, or challenging, the government's policy. If it can draw on the opinion of a wide range of stakeholders in support of its position, its recommendations potentially have much more weight. Kent County Council's inquiry into Early Years school/nursery provision drew upon a wide range of both public and private stakeholders, resulting in useful and realistic recommendations.

63. In the policy- or public service-based enquiries that we studied, we found that a majority of contributions of written evidence came from stakeholder organisations. Submitting evidence to enquiries constitutes a branch of their lobbying activities. In the House of Commons especially, it is rare for small organisations or individuals to provide written evidence. Stakeholders have the resources and the expertise to continually produce such documents. We found many examples of committee officials or clerks maintaining lists of such organisations – 'key' organisations or 'usual suspects' – and ensuring that they were informed when a new enquiry was underway which would be of interest to them. This helps the committee itself actually to obtain reliable written evidence on which the members (who may have little expertise) can base their written report. In one instance a respondent told us that "the Committee… knew the key players and [the enquiry] was subject specific",[18] therefore no direct appeals for further evidence were made. This is clearly potentially an exclusive process, and committees therefore need to take care with their engagement with 'key organisations'. There may be instances where this is appropriate, such as a short inquiry or a summary of detailed policy options, but not all scrutiny inquiries will fit these categories.

Special advisers

64. The use of special advisers is quite common in the House of Commons and the devolved institutions, but rare at other levels of government. The appointment of special advisers is something of a tradition, not always done for a specific good reason. Increasingly, special advisers in the devolved assemblies are appointed for more specific tasks. The three devolved institutions all have well-resourced library and research facilities of their own, rivalling the House of Commons, despite the fact that the devolved institutions have far fewer members and committees. Historically the House of Commons' research facilities were extremely limited (the House of Commons Library is provided for individual MPs rather than committees), which may have led to a preoccupation with special advisers. One respondent stated "it is not just a case of having a special adviser for the sake of it, they need to make a contribution and of course they need to be able to deliver. I have been on

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[18] *Scrutiny under Devolution*, p.19

committees where the special adviser has delivered a report that has been absolutely awful".[19]

65. Expert advisers are not necessary for routine data collection and the provision of basic information. They are most likely to be of use in a short, focused inquiry, where their expertise relates closely and in-depth to the job in hand, and their contribution will be less unique in a broad and wide-ranging piece of work. The following comment from Scotland illustrates typical use of special advisers:

> "Special advisers will highlight [submissions] of particular importance and summarise all of them… Few people will read them all – the special adviser will read them all and take out the points of interest."[20]

66. Special advisers are only very rarely used in local government, in the London Assembly and in Regional Chambers. Chambers have appointed consultants to produce scoping reports or background reports on several occasions, but they have not appointed individuals to be attached to the committee for the duration of the enquiry. The London Assembly also appointed consultants frequently in its initial stages, but now employs a scrutiny staff of 20 to service committees and manage scrutiny research.

Reporters/rapporteurs

67. The use of reporters has been pioneered in the Scottish Parliament, in which reporters are now commonplace. It derives from the concept of 'rapporteurs' from the European Parliament, where a single member of a committee is tasked by the committee to report back on a specific subject. The chosen subject may be of particular interest to that member, but not a priority of the committee's work programme. Alternatively, it may form a pilot for a more intensive committee inquiry.

68. Experiments with reporters have also taken place on the London Assembly on two occasions. On one, a member was tasked with reporting on a specific subject and did so jointly with a team of consultants. On another, a member of a committee pursued a particular interest and produced a full-length report, which was then passed by the committee. The entire committee took part in an oral evidence session leading to the report, with the interested member in the chair (in place of the normal chair). In neither case, however, was the rapporteur scrutiny used as a pilot. Local government respondents also indicated that the rapporteur system has been used there, though rarely formally: respondents simply referred to individual members going to speak to specific groups or officers and reporting back to the full committee. This was regarded as a useful addition to scrutiny rather than a 'process' in its own right.

69. Reporters are best used on specific enquiries into focused subjects. In Scotland, they are frequently used as part of the Parliament's petitions procedure. The

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[19] *Scrutiny under Devolution,* p.21-22
[20] *Scrutiny under Devolution*, p.19

Petitions Committee passes petitions from the public to the appropriate subject committee, which then investigates the subject if it is judged worthy of investigation. Alternatively, reporters may be sent on fact-finding missions to prepare a background paper for a main report, and the background paper itself will not be published: one respondent commented that "the reports are more of a political tool for the committee than a full-blown enquiry report".[21]

70. The use of reporters can place a strain on the administrative capacity of the committee staff. A reporter, no less than the committee proper, needs administrative and research support: in effect it is no different from establishing a sub-committee. Either process puts considerable pressure on staff time.

Written questions

71. As implied in the previous two items, written questions are an under-used form of scrutiny. They are most commonly used after oral evidence sessions in event enquiries, at present, to follow up lines of inquiry which were not concluded in the session. They could be far more profitably used before oral sessions, to increase the knowledge of committee members before they face their witnesses. Another facet of this tool is that committees occasionally write letters to, for instance, chief executives of non-departmental public bodies requesting information about recent events. The unspoken implication is that if the committee is not satisfied a full-scale inquiry may follow.

72. A number of respondents noted that written questions might, in certain circumstances, have been as effective as oral questions in obtaining the information made available in hearings:

> "I sometimes feel that the people who come along must have felt short-changed as well. It's quite a daunting process for some of them. I'm sure a lot of them would like to have been pursued on the work that they do and would have come back with some very revealing answers. I felt on occasions if I'd been there I would have been thinking 'Why are you asking me that question? Surely I've already written that to you!'"[22]

Written evidence

73. Written evidence is widely invited in most scrutiny inquiries. Conversely, experience indicates that most respondents to calls for written evidence are serial respondents – large organisations with an interest in the subject, public bodies, and knowledgeable professionals. Contributions from 'ordinary people' are, on the whole, few and far between. The explanation for this is likely to lie in the degree to which the call for written evidence is advertised (people who are not directly interested are unlikely to find out about the inquiry themselves). That suggests that written evidence should be regarded

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[21] *Scrutiny under Devolution*, p.16
[22] *Scrutiny under Devolution*, p.30-31

alongside stakeholder involvement and special advice, as a cross-section of well-informed policy opinion. It is less likely to represent the opinion of the general public.

Oral evidence sessions

74. Oral evidence sessions occupy the position of 'inner sanctum' of the scrutiny process. They are almost always held as the focal point of a scrutiny process. Their mandatory position in most scrutiny enquiries indicates that question and answer sessions are regarded as the place for policy debates to take place between committee and ministers, stakeholders or civil servants. The reality is somewhat more prosaic. All the reports produced during this project noted the poor quality of many questions in scrutiny sessions: repetitive (the same questions asked of many different witnesses, producing the same responses), long-winded, and not sufficiently penetrating to gain any extra knowledge (particularly grey knowledge):

> "You always knew somebody who had just taken this list of questions and wanted to get their name on the record, read a question out, and it was quite clear they hadn't read any of the background. Once they'd got an answer to the question that was it, they didn't want to pursue It any further, they felt they'd done their bit."[23]

75. We would also argue that oral sessions themselves are often overrated: one respondent stated that much evidence-taking was "largely a symbolic activity".[24] Oral evidence sessions are potentially valuable for two reasons: to obtain extra information through in-depth questioning and to place information on the public record (including the mere fact of scrutinising witnesses in public). They are not the only means of obtaining information. In many of oral sessions that we studied, however, oral evidence sessions appeared to assume no prior knowledge on the part of elected members. Questions asked were frequently standard questions which could have been addressed through correspondence or research, and the topics of questions were rarely focused enough to gain extra information. Some respondents, however, were forthcoming on the secret of good questioning:

> "Effective questions are sharp and to the point. If questions are long winded and some of it is irrelevant, then the answer that you would receive would most likely be of a poor quality."[25]

> "For me some of the time it was about creating a situation where a Labour member would say something I needed them to say… You ask a series of questions that can only lead to one conclusion, but you don't actually say it yourself, and then you wait, because someone else will say it."[26]

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[23] *Scrutiny under Devolution*, p.30
[24] *Select Committees Under Scrutiny*, p.24
[25] *Old Habits Die Hard?*, p.42
[26] *Scrutiny under Devolution*, p.31

> "There is a tendency for members to ask very long questions, and long questions are not effective if you are seeking to put a person under pressure. .. A long question… gives the respondent longer to think of the answer – and they'll waffle their way out of trouble. It runs across party, I'm sorry to say."[27]

76. Oral evidence sessions are most important in disaster enquiries or event enquiries, where part of the purpose of scrutiny is to address the decisions of specific individuals. In the Nantygwyddon inquiry in the National Assembly for Wales, for instance, an important element of the inquiry was permitting the public (affected by disease from a waste dump) to meet officials responsible for the waste. In other enquiries they are useful for obtaining perspectives or information about policy plans from executive members. This would be aided, however, if detailed correspondence was entered into in advance of the oral session, so that the session itself could be devoted to exploring specific points in greater detail. The value of oral evidence sessions lies in being able to pinpoint grey knowledge, and time pressures make this difficult if basic knowledge is not available in the session or most of the session is spent in obtaining it. Holding oral evidence sessions is undoubtedly useful, as it leads to a different relationship with the executive to one of simply writing letters.

77. Respondents in all tiers of government stressed to us the need to allow members to develop a line of questioning, particularly in the more interrogative oral evidence sessions that characterise accountability enquiries. To allow a single member to pursue a subject with several questions was felt to be more beneficial to an enquiry than to simply 'go round the table'. A single questioner, interrogating a witness for several minutes, can pursue details and inconsistencies very effectively.

78. Oral evidence sessions can, alternatively, be used as one-offs, to ask specific questions of executive members, advisers, or non-departmental public bodies on the public record. In the London Assembly, for instance, a scrutiny process might simply take one meeting to ask the Mayor's advisers about progress or lack of progress in implementing the Mayoral strategies. The purpose of such a session is the public accountability of executive actions. Such sessions would need to be dovetailed with good press management and strong questioning, to prevent the results of the session being merely banal. This kind of one-off session might also be of use for a minor 'disaster inquiry': for instance, a serious failure to spend public money with propriety, but one taking place on a small scale which had limited public profile.

79. It is increasingly common at all tiers for regular self-contained oral evidence sessions with executive members / ministers to be held. In Wales, the minister must report monthly to their committee. Most House of Commons select committees now invite their minister (whose department they shadow) at least once a year to speak to the annual plan of the department. Local government scrutiny committees increasingly ask executive members to attend every 6 or 12 months to give a general review of policy and priorities.

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[27] *Issues of Importance*, p.26

Report and recommendations

80. Our reports were frequently critical of the nature of recommendations. A large number of recommendations were extremely general and/or aspirational, and many were also 'conclusions' rather than recommendations. Conclusions suggest a worthwhile research project, but they are not conducive to executive action on any specific policy point. Recommendations are strongest when they are achievable, measurable, and relate to specific policies or aspects of policies. When they are extremely general, it is hard to tell whether they have been put in place or not. One London respondent stated that the key was to:

> "make sure you know who you're recommending it to, what precisely you're recommending, is it manageable and what the cost potentially is. And by when. You can't just say, the mayor should give money to [four things] and if you add it all up it is nonsense. [If we recommend to government], well, 'government' is a big organisation, so which bit? No-one will take responsibility unless it's narrowed down."[28]

81. Local authorities frequently permit service departments to see recommendations before they are published as part of a report. In part this derives from the fact that local authorities still have a corporate spirit which does not exist between, for instance, Parliament and Government or the London Mayor and Assembly. But it may also be a useful part of the scrutiny process. As scrutiny committees have no authority to enforce their recommendations, outlandish recommendations can simply be ignored by the executive. If this occurs enough times the scrutiny process will become discredited:

> "Before we come up with any recommendations they are tested out with the department. The members are fairly independent on this."[29]

> "What I think the more skilful chairs enable is that you open the crack in departments with an idea and build on that idea. So recommendations have to be feasible within the overall political philosophy of the government… They have to be well supported; they have to show a coalition of supporters within civil society. You have to show they are affordable. And you have to show that they can be done gradually."[30]

82. It is vital for scrutiny committees to follow up on the recommendations they make to establish whether or not they have been implemented. Where they have not, there is a further opportunity to question executive members in public and potentially to gain media coverage. This should be a positive experience for the scrutiny committee, as good press coverage will indicate that the committee is performing its task of holding to account:

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[28] *Issues of Importance*, p.29
[29] *Old Habits Die Hard?*, p.46
[30] *Select Committees under Scrutiny*, p.32

> "Our first report had 23 recommendations, then after a year I started following it up. Jaws dropped amongst the officers… I got a note saying 'why have you asked these questions? You made recommendations, now it's up to us to get on with it. There is no need to check up on us.' So… we straightened that out!"[31]

83. Authorities increasingly use tracking systems through which they monitor progress against each of their recommendations. The London Assembly operates a sophisticated grid for this purpose. Regional Chambers are increasingly adopting such grids, as are some local authorities. Grids do not necessarily cause recommendations to be adopted, but they permit committees to keep the pressure on if they know that their recommendations are being ignored or the executive is dragging its feet. They also allow scrutiny committees to point to a definite list of achievements.

Media use

84. A co-ordinated media policy can raise considerably the amount of coverage obtained for a scrutiny inquiry report. In the London Assembly, press releases are dovetailed with interviews with the committee chair by print and broadcast media. Media attention, however, also depends both on the interest in the subject and the angle taken by the committee. For example, reports on the Congestion Charge in London generated considerable publicity before the charge was introduced, but after the Charge's effectiveness became clear press interest died down.

85. Media policy at almost every other tier of government was underdeveloped. The House of Commons and devolved assemblies routinely press-released enquiries, and because of their high profile good coverage was achieved: but coverage on broadcast media was rare, and identification of committee chairs or members as points of contact when the subject was covered again was limited. Local authorities, meanwhile, often lacked the resources to press-release scrutiny reports. Use of the media is very important in a system where the scrutiny committee has no power to compel action by the executive: revealing poor practice or unpopular policy through scrutiny can lead to public and political pressure for change. This kind of indirect outcome has often resulted from scrutiny.

Necessary conditions for scrutiny

86. Tools and intended outcomes depend upon certain conditions without which the chances of effective scrutiny are decreased. Our research has indicated that many of these are also the same across different tiers of government. This is not greatly surprising, as many of them simply relate to effective management. This section outlines some of the required conditions for effective scrutiny, and the debates about them across tiers of government.

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[31] *Old Habits Die Hard?*, p.467

87. Committee size varies widely across institutions. House of Commons committees normally have 11 members. Committees in the devolved institutions have fewer – between 7 and 10. Local government committees may have up to 16-18 members (or even more), but they frequently commission panels of 4-8 members for specific pieces of work; whilst the London Assembly committees typically have 6-9 members.

88. The vast majority of respondents during this project believed that smaller committees were better: they allowed members to participate more, encouraged good attendance records and team-working, and were better at dampening party political positions. The ideal size appears to be around 6-8 members:

> "If you are really investigating a part of a policy I think you need a fairly small compact group – maybe half a dozen or eight, and you can really get into the detail. In terms of the investigative side, small groups are ideal."[32]

> "I thought [a reduction in numbers from 11 to 9] would have a negative impact because we lost a lot of experienced members. But it actually worked better because it felt more like a family or a team effort than it did with eleven. They felt more pressure to turn up. If only one member of the SNP turned up, there could be four Labour so they didn't want to be drowned out."[33]

89. Some large local government committees we studied normally had a general review and monitoring function, setting up smaller task-and-finish groups to carry out specific reviews. In one instance, Durham County Council, all 54 non-executive members sat on one giant scrutiny committee, which managed the work programme of six other committees with more conventional 'subject-based' remits. In this instance, *representation* of the various political groups was a key concern, as was co-ordination between the different policy areas of the council.

90. The importance of constructing a plan of work has been a strong concern of the committees that we have studied. Committees need to draw a balance between a coherent plan of work for the following 6-12 months, and the necessity of putting their plans aside if a topical issue arises that requires immediate attention. Deciding which issues to address, out of the many thousands that any committee could address, is fundamental to the achievement of outcomes. Work-plan decisions must be topical, or they will be ignored by the executive; but if they address issues on which executive policies have already been finalised they are unlikely to have any effect.

91. A consistent issue with regard to work plans has been the question of whether members or officers have the leading role in their formulation. Formally, the work plan is written, and enquiries conducted, by members: in reality,

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[32] *Old Habits Die Hard?*, p.21
[33] *Scrutiny under Devolution*, p.9

members have many pressures on their time, and full-time officers naturally play a strong role in influencing decision-making. The degree to which officers make or closely steer decisions varies. In some local authorities, officer influence was very strong, because of the failure of members to understand that proposing topics for scrutiny was part of their role:

> "[Setting of the agenda] is officer led. Mainly officers decide what goes on the agenda. Generally speaking, as far as I know, members don't actually offer to look at this or that, they just don't do it."[34]

92. In other tiers of government (and in many local authorities), members are more proactive, and committees frequently have more suggestions for scrutinies than they can carry out. In these instances, member preferences for subjects generally dictate what is chosen. The chair's preference is often pivotal here: *Select Committees under Scrutiny* records that "a chair… claimed to know himself what the focus of the select committee's work would be over the next session of parliament, even if the rest of the committee didn't know yet".[35]

93. Some committees used the process of constructing their workplans as an opportunity for stakeholder engagement. Committees of the Scottish Parliament, and health scrutiny committees across England, use away-days or conferences to discuss possible issues and approaches to achieve the maximum impact on policy and delivery. Taking expert advice helps to maximise this.

94. Timetabling scrutiny enquiries can potentially be a minefield. Committees are restricted in the number of meetings they can hold in a year, and by the other activities of their members. In the London Assembly and most local authorities, time limits (either in terms of number of meetings or length of time) are set for enquiries and then rigidly adhered to. Time limits are not merely restrictive: they are a bulwark against the very long and broad enquiries in the early days of the devolved institutions. Some such enquiries took up to a year to complete evidence-taking, deliberation, and discussion of the text of the report. One respondent in Scotland said the following about a specific enquiry:

> "The committee decided, all committees do this, that all of a sudden it was very, very urgent. We always see that. It starts off very slowly and usually stops, dips and the last bit is usually really truncated."[36]

95. Long enquiries are often problematic because committees will often wish to respond quickly to topical events. Apart from the concern of members with political events, such responses indicate that elected members and committees take an interest in current issues rather than ignoring them in favour of other preferences. The London Assembly, in its first term, actually kept some blank meetings for its committees in order to have time to respond to unforeseen

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[34] *Old Habits Die Hard?*, p.25
[35] *Select Committees under Scrutiny*, p.21
[36] *Scrutiny under Devolution,* p.15

events or contingencies. Elsewhere, however, they are simply slotted in as required, which can disrupt workplans.

96. In local authorities and Regional Chambers, it is quite common for work-plans to be linked in some way to the strategic plan of the local authority or Regional Development Agency respectively. In this case, scrutiny takes on a kind of audit function, holding the executive to account against its stated aims for the forthcoming year. This is a valid function, one that is much closer to the connotations of the word 'scrutiny' than the policy development role is. However, there is also a risk that committees which work in this way can become entirely focused on executive work – i.e. they allow the executive to set the policy agenda. Scrutiny also has a valid role to play in introducing new issues to the executive – for instance, public concerns that the executive has not acknowledged, or policy issues that promise to rise up the agenda in the near future.

Conclusion

97. This report aims to set out a framework for understanding the options available to authorities carrying out the process of scrutiny. It treats the process of scrutiny as a purely technocratic process. This has been done in order to abstract the parts of scrutiny which can be analysed at a technical level. However, scrutiny is not a purely technical but a *political* process. Decisions about what subjects should be scrutinised, how they should be approached, and the intended outcomes arising from them inevitably have a political hue (either party political or relating to members' own interests and priorities). The political hue of scrutiny is what makes it more than a mere research facility for elected members, because elected members' legitimacy, access to the media, and access to the levers of power within their authority mean that those in executive power will often (though not always) need to listen to their recommendations.

98. Crucially, scrutiny works differently and has different impacts, according to the political arithmetic of the assembly. In the House of Commons, there has been a very large Labour majority since 1997, facing a weak opposition in the Conservative Party. Labour backbenchers have had comparatively weak influence, as it would take a large number of them to vote down government policy. However, select committees have enjoyed an unusual level of press coverage in this period, reflecting the fact that many of them have been very critical of government policy whilst the Parliamentary opposition has not been influential.

99. In the National Assembly for Wales' 2003 elections, a Labour-Liberal Democrat coalition gave way to a Labour government. The quality and quantity of scrutiny changed as a result. The Labour majority attempted to substitute a two-weekly cycle of committee meetings with a four-weekly cycle: a compromise of three weeks was eventually reached. This has reduced the number of meetings available by half, seriously affecting the productivity and momentum of scrutiny work. Similarly, scrutiny was reduced following the 2004 London elections. The London Assembly voted through a resolution

restricting each committee to six meetings per year, despite being controlled by a Conservative-Liberal Democrat alliance facing a Labour mayor.

100.   In local government, whilst it is very difficult to generalise, scrutiny appeared to be freest of party political manipulation where there was either no party in overall control or one party in unchallengeable overall control. In the former case, parties tended to accept the need to co-operate; in the latter, the majority party was secure enough not to feel threatened by critical scrutiny from its opponents. Historical political relations within the authority will also shape expectations and actions: if inter-party relations are particularly poisonous a majority party may do everything it can to avoid scrutiny by its sworn enemies. Without greater interference from the centre, there is no easy solution to such situations.

101.   Party politics also manifests itself in the choice of subjects for scrutiny and the allocation of committee chairs. In Scotland, Wales, Northern Ireland and the House of Commons, the numerical allocation of committee chairs is subject to rules relating to the political proportionality of the assemblies. This is provided for in standing orders. This does not apply in the London Assembly or in local government, though local authority guidance suggests that, where a majority party exists in a local authority, at least one chair should be allocated to a non-majority party. Some local authorities allocate chairs proportionately; in others, the majority party takes all of the chairs. Alternative options exist: for instance, in Preston, Labour is the largest party but has no overall control. There, the Conservative Party holds all committee chairs, but Labour forms a single-party cabinet. In Kent, one scrutiny committee is chaired by the main opposition party, but the governing party holds the three policy committee chairs. This strongly affects the issues that appear on all of the committee agendas. In the case of the policy committees, one chair openly admitted that he saw his role as:

> "to develop policy, which in my view is listening to my opposite numbers from the [other party] groups, but listening harder to the cabinet members and whatever they want to have looked at in terms of policy, and also very much the [staff] directorate."[37]

102.   Decisions on what to investigate and intended outcomes are therefore often imbued with party politics. This is important, because, while party political considerations in the choice of inquiries are likely to have at least some connection to public priorities (otherwise parties would lose their support), they do not necessarily relate to how far governments may be willing to change policies. A subject of great public concern might be scrutinised and the effect on government policy be nil.

103.   A secondary question which follows is whether committees should concentrate solely on issues where an impact on outcomes is likely, or whether they should scrutinise issues where no policy movement is likely but where being seen to criticise or oppose the policy in question is politically useful or a

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[37] *Old Habits Die Hard?*, p.25

matter of principle. Certainly the research has indicated that scrutiny cannot resolve deep party political divides, and that scrutiny on topics which cross them should probably not be attempted. One report in the London Assembly, on asylum seekers, had to be abandoned in April 2004 following persistent failure by the four parties to agree on a set of recommendations. A party political row strongly coloured the National Assembly for Wales's Higher Education enquiry, revolving round a particular evidence session with a witness who had a strong Welsh nationalist perspective.[38]

104.   By the same token, the most important quality required to make scrutiny function at all is the willingness of elected members to make it work. We remarked in *Old Habits Die Hard* that scrutiny committees should not be expected to function as a weak version of the old committee system in local government, but were qualitatively different, and must therefore be handled in a different way. At the same time, scrutiny is, in most places, one amongst many roles that elected members are expected to play. Elected members cannot all be expected to give substantial attention to scrutiny procedure. Scrutiny is not a panacea for advocates of good governance, but a system through which good governance, with the will of participants, can be worked towards.

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[38] See *Scrutiny under Devolution*, p.19

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