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**Old Habits Die Hard?  
Overview and scrutiny in  
English local authorities**

**by Mark Sandford and Lucinda Maer**

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The **Constitution** Unit

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# *Foreword*

This briefing forms part of the Constitution Unit's research into the scrutiny process. The Unit is currently engaged on a two-year project examining the process of 'scrutiny' at all levels of government in the UK: national, devolved, regional and local. The aim of the work is twofold. First, we aim to show what work is being carried out under the name of 'scrutiny'. Scrutiny can hold very different meanings according to the actors, policy context, and tier of government under discussion. The majority of academic work and guidance produced so far on scrutiny processes has been aspirational, stating what ideal practice should be and what basic mistakes should be avoided: far less has examined the actual behaviour of the political authorities which have to make sense of the 'scrutiny role'.

Second, our research is analytical, drawing conclusions about the effectiveness of the different interpretations put on scrutiny by different authorities, and demonstrating why particular practices may be more effective than others. We do not have a concrete definition of 'effective scrutiny', but hope that our work may lead towards one.

The Unit's research has been carried out on procedures which are, at the most, two and a half years old. Some of them have already gone through one reform, due to authorities' discontent at the previous structure. Some authorities have been pressing ahead and exploring the reach of the scrutiny role, whilst others have been unable to do so due to lack of political will and resources. The research provides a snapshot of what has been, and can be, achieved, as well as pointers for future development.

The research would not have been possible without the enormous amount of help given by our points of contact (most of whom, though not all, are scrutiny officers) from the nine case study authorities with whom we worked. We would therefore like to thank Rob Andrew, Geoff Bonner, Steve Dugdale, Eleanor Hoggart, Patrick Kilgallon, Ian McKenzie, Mike Thomas, Paul Wickenden, and Tim Young, for their assistance in explaining to us how their authorities work and for helping with obtaining paperwork and arranging interviews with members and other officers. We also owe thanks to all of the officers (both local authority and external), elected members, and others who gave up their time to answer apparently arcane questions about the process of conducting enquiries and committee meetings. Thanks are also due to Jo Dungey at the Local Government Information Unit for assistance at the outset and for comments on a draft of this report. Lastly, we would like to thank colleagues at the Constitution Unit for their assistance with the work, particularly Saskia Gretton, who spent several voluntary days gathering basic information about our case studies, and Robert Hazell, Matthew Butt, and Meredith Cook. Responsibility for the contents rests, of course, with us alone.

Mark Sandford  
Lucinda Maer



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## *Executive Summary*

- There is a wide variety in the structures set up by local authorities to conduct the overview and scrutiny function. The majority of authorities had set up committees whose subject remits are recognisably similar to the old committee system, but some had deviated from this norm. We could not demonstrate an obvious link between structures and effectiveness.
- The existence of a scrutiny co-ordinating body is a vital guard against issues falling between committee remits, against overlap between committees, and between issues getting lost in the division, practised by some authorities, between 'overview' and 'scrutiny'.
- Some local authorities which we studied did not allocate committee chairs in proportion to seats held. For all parties to buy in to the process, it is useful for chairs to be spread amongst parties. Overview and scrutiny chairships do not represent power in the manner that old-style committee chairships do, and majority parties should not be afraid of permitting opposition chairs of some committees.
- Many authorities conduct general business through overview and scrutiny committees, and appoint time-limited panels to carry out subject-specific enquiries leading to reports (the main activity of the committee role at Westminster and the devolved assemblies). Panels are normally smaller than their 'parent committees', and any non-executive member can be appointed, allowing those with expertise or an interest to take a lead role.
- In some authorities the status of panels was not clear, as they were not provided for in the constitution. Where informal panels exist, this creates issues of freedom of information and potentially the lack of an audit trail. Informal, non-minuted meetings should be avoided where possible.
- Timetabling of business, and committee enquiries, takes place in some detail: often each separate part of an enquiry is allocated a set length at the outset.
- In many councils policy development constitutes the main role of overview and scrutiny. Where holding to account, or questioning cabinet members, takes place, it is often linked to Best Value, the CPA, or performance indicators. However, increasingly, councils are developing regular reporting sessions where committees can question cabinet and senior officers on recent progress.
- Scrutiny officers did not number more than ten in any of the authorities studied. In some cases they shared this role with other duties within the chief executive's office. Where no scrutiny officers at all existed the overview and scrutiny role was noticeably underdeveloped, lacking a champion within the authority to make sense of the role.
- There was no evidence of a hard divide between overview and scrutiny and the rest of the council, as is the case in the larger governments at Westminster and devolved level. Scrutiny officers enjoyed close relationships with senior departmental officers and cabinet members, on whom they normally rely for information on policy and state of play. It was common for scrutiny committees to allow relevant departments to comment on their terms of reference, to give evidence to them, and to read through draft reports. This state of affairs was felt to be a natural part of working corporately as a council.
- Despite the above point, we did find examples of executive officers carrying out policy reviews whilst a scrutiny panel on the same subject was under way, which does not seem an effective use of time.
- A significant proportion of members interviewed, though not the majority, remain disaffected with the new overview and scrutiny committees. Some of these saw the new committees merely as weak versions of the old committees, and were dismissive of their role. There had been a considerable turnover of councillors in the case study authorities, which may lead to the waning of this problem.
- Many members had trouble adapting to a culture of asking questions, under overview and scrutiny, in place of one of making statements, under the old system. Preceding a question with a long political position statement is not an effective means of obtaining information, nor is asking four or five questions at once.
- Unlike Westminster and the devolved assemblies, it was rare for scrutiny officers to provide members with pre-written questions.

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- The call-in power has been used quite infrequently, only about once per year in some councils. It tends to be regarded as a 'nuclear option', and as an indication that council procedures have failed to resolve disagreement adequately. Nevertheless, the existence of the power of call-in informs the rest of the running of the council.
  - On some occasions call-ins were referred in the first instance to committees with a ruling party majority, which could decide not to proceed with the call-in. This appears to be against the spirit of the 2000 Act.
  - The use of research, and expert advice, was more common in the larger councils where resources permit officers to spend more time servicing overview and scrutiny.

# Introduction

This briefing examines the practice and progress of scrutiny in nine local authorities in England. Even by the standards of the new fashion for scrutiny, local authorities are newcomers. The overview and scrutiny role was introduced for local authorities in England and Wales in the Local Government Act 2000 (this Act did not extend to Scotland and Northern Ireland). This research only covers local authorities in England: in Wales certain reforms, such as the health scrutiny power and the Comprehensive Performance Assessment, have not been adopted.

The 2000 Act required all local authorities to adopt one of three new political management systems which distinguished the executive of the authority from the 'scrutiny' part (or, in Westminster parlance, the back-benchers). These were: a directly-elected mayor and cabinet; a directly-elected mayor and council manager; and a leader and cabinet. An amendment to the Act provided for a fourth option of a 'streamlined committee system' for authorities of a population under 85,000.<sup>1</sup>

The same Act introduced the Best Value system, replacing compulsory competitive tendering. Best Value requires councils to routinely examine service provision to ensure that it is of the highest possible quality. There are affinities between this requirement and the work of overview and scrutiny. Some authorities use the same committees to carry out Best Value and overview and scrutiny, whilst in others the processes are distinct. The field is further complicated by the introduction of the Comprehensive Performance Assessment (CPA) by the Government in 2001. This general assessment of authority performance takes place through a wide range of indicators, and this has led to some overview and scrutiny committees spending considerable time examining performance indicators and questioning executive members on that basis. The challenge for local authorities has been to ensure that these performance assessments do not swallow up overview and scrutiny.

The 2000 Act also introduced a new ethical code for councillors, and a new concept of a 'community leadership role' for councils. It also required that each council have a written constitution, which should specify the functioning of the overview and scrutiny structures (normally they also specify number, membership, and powers/rights of committees). Constitutions must also define the working of the 'call-in' function (explained below). Authorities were required to submit their new structures for approval, and have them up and running, by July 2002.

Many councils have interpreted the 'community leadership role' to encompass scrutinising other external agencies. The character and practice of this 'external scrutiny' has quickly become an important sub-set of the general debate about overview and scrutiny—the Greater London Authority and English Regional Chambers face similar issues of how to make external scrutiny effective. Section 21 (2) (e) of the 2000 Act explicitly permits external scrutiny by local authorities, and the Government's guidance reiterates this role (paras 3.36–3.67).

The Health and Social Care Act 2001 introduced a 'health scrutiny' role for local authorities. This intended replacing the Community Health Councils (CHCs) with a role for local authorities in scrutinising the work of local health trusts and other health issues. Authorities were also permitted to set up joint committees (with one another) for this purpose. The precise nature of the scrutiny role was similarly ill-defined in this Act. The Government left open the question of how scrutiny could influence the decision-making of a body outside the local authority (although where a scrutiny committee is dissatisfied with the response to its report on a 'substantial variation' of service by a health body it can refer the matter to the Secretary of State).

There was little indication at the time of the 2000 Act on what the scrutiny role should consist of, as the Government's interest was focused on the executive function. Subsequent detailed

<sup>1</sup> It was initially expected that large numbers of local authorities would adopt a mayoral structure, which had to be approved by a local referendum. In the event, just 11 elected mayors exist at the time of writing, of which one (Stoke-on-Trent) is the mayor-council manager option. 59 local authorities operate the 'fourth option' (as it is commonly known), leaving 316 operating the leader and cabinet system.

guidance, however, indicated that ‘scrutiny’ should include policy development work as well as holding the executive councillors to account—hence the invention of the phrase ‘overview and scrutiny’ to describe the new structures. Guidance also suggested that overview and scrutiny might range over topics outside the council’s remit, linking in with the community leadership role; and that party politics should be absent from scrutiny committee work. Councils were allowed considerable latitude to structure the scrutiny process as they saw fit, and a considerable variety of structures has been put in place.

It is important to note the fundamental practical difference between the old and new systems. Under the old system, committees took decisions on behalf of the council. Councillors are and were accustomed, therefore, to committee meetings consisting of political debate, followed by a decision-making vote. Under the new system, most policy-related decision-making rests with the cabinet members: the decisions which remain with the full council include passing the annual budget and the quasi-judicial functions such as planning and licensing. Scrutiny committees have no decision-making power, and therefore cannot be expected to work as if they were a weak version of the old system. Overview and scrutiny is a qualitatively different system, and it therefore need to be approached and used in a qualitatively different way.

# Chapter 1: Methodology

There are 386 local authorities in England and 22 in Wales which are covered by the provisions for scrutiny committees in the Local Government Act 2000. Faced with the multiplicity of practice, we opted to carry out our research through a small number of case study authorities. We wrote to some 100 authorities inviting them to take part in the study, and were able to select nine. These nine represented a broad range of type of authority, political management arrangements, and political control. Basic details of the nine authorities are set out in Table 1 below.<sup>2</sup>

We obtained background information, scrutiny reports, internal guidance documents, meeting agendas, and minutes, plus copies of enquiry reports, from the nine case study authorities, in June and July 2003, and interviewed members and officers from the authorities between June and September. Semi-structured interviews were conducted with between eight and seventeen individuals from each authority, making a total of some 60 interviews. A questionnaire was also distributed to around 12–15 councillors in each authority, in order to obtain basic information and opinions from a broader range of members. Lastly, in Preston, Kent, Cornwall and North Tyneside, the researchers attended meetings of overview and scrutiny committees.

As the case study authorities all used widely differing names for their different committees and groups, instead of referring to the committees by their proper titles we are using the following nomenclature for the remainder of this report (see Table 1 for a list of the names used by councils for different committees):

- **‘Overview and scrutiny committees’** refers to committees which have both policy development and scrutiny roles;
- **‘Overview committees’** refers to committees which have only a policy development role;

- **‘Scrutiny committees’** refers to committees which have only a scrutiny, and not a policy development, role;
- **‘Panels’** refers to task and finish groups or working parties, set up to undertake an enquiry into a specific issue and then disbanded.

We realise, of course, that in reality there is not a clear divide between ‘overview’ and ‘scrutiny’, and that it is potentially misleading to talk as if they are discrete processes. Nevertheless, they are treated as separate or distinct by many of the authorities we studied, and there are differences between the role of policy development and the role of holding to account. We have therefore used the distinction, for clarity, as if it were a clear one, throughout the report.

The report is approximately set out in the chronological order of a typical scrutiny/policy enquiry. This has been done in order to conform to the template established by our previous publication of this research project, *Scrutiny under Devolution: Committees in the Scottish Parliament, National Assembly for Wales, and Northern Ireland Assembly*. At times we have deviated from this template because of the differences between issues in local authorities and devolved bodies. We also found that some issues were more important in local authorities than at devolved level (for instance, committee structure) and we have therefore devoted more space to exploring those issues in the present report than in the previous one.

<sup>2</sup> In our previous briefing, *Scrutiny under Devolution*, we used six enquiry reports as case studies for the practice of scrutiny. It was not possible to use individual reports as case studies when researching the local authorities, partly because the number of local authorities studied would have made this unworkable in the time available and partly because some of our case studies had not produced any reports.

*Table 1: Scrutiny structures in the nine case study authorities (December 2003)*

Name	Type	Political structure	Politics	Committee structure	Name of permanent Committees
London Borough of <b>Camden</b>	Unitary	Labour leader/cabinet	Lab 35 Con 11 LD 8	Single <b>Overview and Scrutiny Commission</b> plus task and finish panels	Overview and Scrutiny Commission
<b>Cornwall</b> County Council	County	All-party leader/cabinet	LD 36 Ind 25 Con 9 Lab 9	One <b>Co-ordination Board</b> , five <b>Policy Development and Scrutiny Committees</b> plus task and finish <b>Single Issue Panels</b>	Community Life Lifelong Learning Public Protection Resource Management Health and Social Care
<b>Durham</b> County Council	County	Labour leader/cabinet	Lab 52 Con 2 LD 4 Ind 3	<b>Overview and Scrutiny Committee</b> , plus six sub-committees and task and finish <b>working groups</b>	Overview and Scrutiny Committee Promoting strong, healthy and safe communities Corporate Management Issues Building a Strong Economy Looking after the Environment Developing Life Long Learning Health Scrutiny
London Borough of <b>Ealing</b>	Unitary	Labour leader/cabinet	Lab 48 Con 17 LD 4	Four <b>Scrutiny Committees</b> , task and finish <b>Task Groups</b> and a <b>Scrutiny Co-ordinating Committee</b>	Council Borough Community Individual

<p><b>East Cambridgeshire</b> District Council</p>	<p>District Hung, fourth option*, shared policy committee chairs</p> <p>LD 18 Con 15 Ind 6</p> <p>Four <b>Policy Committees</b>, one <b>Overview and Scrutiny Committee</b> with ad hoc sub-committees</p> <p>Overview and Scrutiny Environment and Transport Policy Committee Policy and Resources Committee Community Services Policy Committee Strategic Development Policy Committee</p>
<p><b>Kent County Council</b></p>	<p>County Conservative leader/cabinet</p> <p>Con 52 Lab 22 LD 10</p> <p>One <b>Cabinet Scrutiny Committee</b>, three <b>Policy and Overview Committees</b> with task and finish <b>Select Committees</b> and a <b>Policy and Overview Co-ordinating Committee</b></p> <p>Cabinet Scrutiny Committee Policy Overview Co-ordinating Committee Education and Libraries Social Care and Community Health Strategic Planning</p>
<p><b>North Tyneside</b> Borough Council</p>	<p>Unitary Conservative mayor/cabinet, Labour majority on council</p> <p>Lab 31 Con 20 LD 8</p> <p>One <b>Overview and Scrutiny Committee</b> and five sub-committees (two under construction)</p> <p>Overview and Scrutiny Committee Health Scrutiny Sub-Committee Budget monitoring sub-committee Best Value sub-committee</p>
<p><b>Preston City Council</b></p>	<p>District Labour minority cabinet, Conservatives hold all scrutiny chairs</p> <p>Lab 25 Con 17 LD 10 Other 5</p> <p>One <b>Scrutiny Committee</b>, four <b>Review Boards</b></p> <p>Scrutiny committee Environment and sustainability review board Housing and direct services review board Regeneration, community and leisure services Resources and performance</p>
<p><b>West Oxfordshire</b> District Council</p>	<p>District Conservative leader/cabinet</p> <p>Con 29 LD 12 Ind 6 Lab 2</p> <p>Three <b>Overview and Scrutiny Committees</b> and task and finish <b>Review Groups</b></p> <p>Environment Finance and Management Economic and Social</p>

\*The Liberal Democrats had a majority on East Cambridgeshire until May 2003



## Chapter 2: Overview and Scrutiny Structures

The conduct of scrutiny by local councillors was an innovation in the manner in which local government business is conducted. The legislation and the government guidance leaves the detail of the design of appropriate structures up to the individual councils. This means that the appropriate structure of overview and scrutiny committees is a more central issue for local authorities than it is for the devolved institutions or for Parliament. The structures will be determined by the local authority's vision of what the role of overview and scrutiny constitutes.

In these authorities, where there is no clear understanding of the purpose and possibilities of scrutiny, or the structure makes no provision for certain council activities or links poorly between committees, overview and scrutiny suffers. Structures can do much to engage the maximum number of councillors in the overview and scrutiny process, and to make the process relevant and clear to those involved with it.

Authorities must make two vital decisions when creating a structure:

- whether 'overview and scrutiny' are two separate or opposed activities, or whether they are two sides of the same coin;
- how to divide up committee portfolios.

### *Overview or Scrutiny?*

The name of 'overview and scrutiny' does not entirely capture the processes set out in Government guidance and literature. We set out below (see page 23–24) the range of activities that overview and scrutiny committees can carry out. But there is a fundamental distinction between policy development (helping or advising the executive) and holding to account (interrogating or critiquing the executive). Authorities must decide whether to run these two roles through the same committee, or whether they are sufficiently opposite to one another to require separate committee structures.<sup>3</sup> No preference is shown in the government guidance.

*“Local authorities should also consider whether policy development and review in relation to a particular function or policy area should be carried out by the same committee which scrutinises decisions in that policy area or whether separate committees are needed for policy development depending on local circumstances. The Secretary of State believes that this is a matter for local choice.”*

### *Committee portfolios*

There are three basic options for the content of committee portfolios:

- matching executive member portfolios;
- matching the authority's service directorates;
- cross-cutting committees which match neither portfolios or directorates.

The government guidance suggests the cross-cutting model:

*“Overview and scrutiny committees should take a cross-cutting rather than narrow service-based view of the conduct of the local authority's business.”<sup>4</sup>*

This was also the most common model in our case study authorities. Limited time and number of members preclude local authorities from matching a committee to each cabinet portfolio as in Westminster and the devolved assemblies. Most local authority cabinets contain 7–9 members. None of the authorities studied here had more than 6 scrutiny committees. Normally these committees would cover one or two cabinet portfolios in their entirety, possibly including small parts of one or two others, and often including issues which were not clearly within the competence of the council (such as health or community safety). The exception to the pattern of rough mirroring was Ealing (see Box 1).

<sup>3</sup> The same committees carry out both roles in the devolved institutions, though in many cases there are some tensions between the two roles.

<sup>4</sup> Local Government Act 2000: Guidance to English Local Authorities, s3.21.

## ***Box 1: London Borough of Ealing***

Ealing has set up four thematic scrutiny committees:

**Council** deals with issues of internal management of the authority;

**Individual** deals with services provided for individual residents of the borough (e.g. education, housing, social services);

**Borough** deals with the services provided for all people living and working in the borough (e.g. highways, waste and cleaning, parks, planning and regulation);

**Community** deals with community-related services (e.g. health, sports and leisure, libraries and culture).

The purpose of this unusual structure is to make the scrutiny process more transparent to the public. Respondents stated that most councillors and members of the public understood the system when the fit between committee title and theme was explained. There is a rough fit between the traditional directorate structure of the authority and the committees.

The largest problem with the system is the unequal balance of work between committees. The Council Scrutiny Committee finds itself doing relatively small amounts of work on quite obscure issues (such as a scrutiny of the council's post room), whilst the Borough Scrutiny Committee examines health, education and social services (each of which could deserve a committee in its own right).

### ***Other considerations***

Once these decisions have been made, they must be followed with other structural considerations. Should there be a co-ordinating body or a formal panel of chairs? Should committees set up sub-committees or working groups to carry out some of the overview and scrutiny functions?

Our case study authorities had all faced these issues differently. However, three basic types of structure could be identified:

- 1 A Co-ordinating Overview and Scrutiny Committee (which may have responsibility for call-in), with a number of committees, sub-committees or panels reporting to it. Panels may report either to the co-ordinating committee or to sub-committees.
- 2 A number of committees, not reporting to a co-ordinating body. In authorities with these structures, a panel of chairs usually acts as a mechanism to stop overlap. This resembles Parliamentary Select Committees. As shown below, some authorities are moving from this structure to establish panels of chairs

- 3 One scrutiny committee and multiple overview committees: some councils have interpreted overview and scrutiny as two separate pursuits and have different committees for each.

In some authorities, health scrutiny committees had been set up which did not fall neatly into the above typology. Mostly they resembled overview committees, but sometimes they would be titled 'scrutiny' committees whilst other overview committees included 'policy' or 'review' in their titles.

In the majority of these authorities, policy enquiries were carried out and reports written by single-issue, time-limited **panels**, often referred to as 'working groups' or 'task groups'. A chair and members would be selected by the parent committee, though normally there is no requirement that these members must themselves sit on the parent committee. They would then liaise directly with scrutiny officers, allowing the parent committee to concentrate on wider overview and scrutiny of the council. Sometimes these groups were not formally constituted, and they might not be politically proportional; in some authorities, but not others, they are mentioned in the constitution. Normally

these groups would disband when their report was produced.

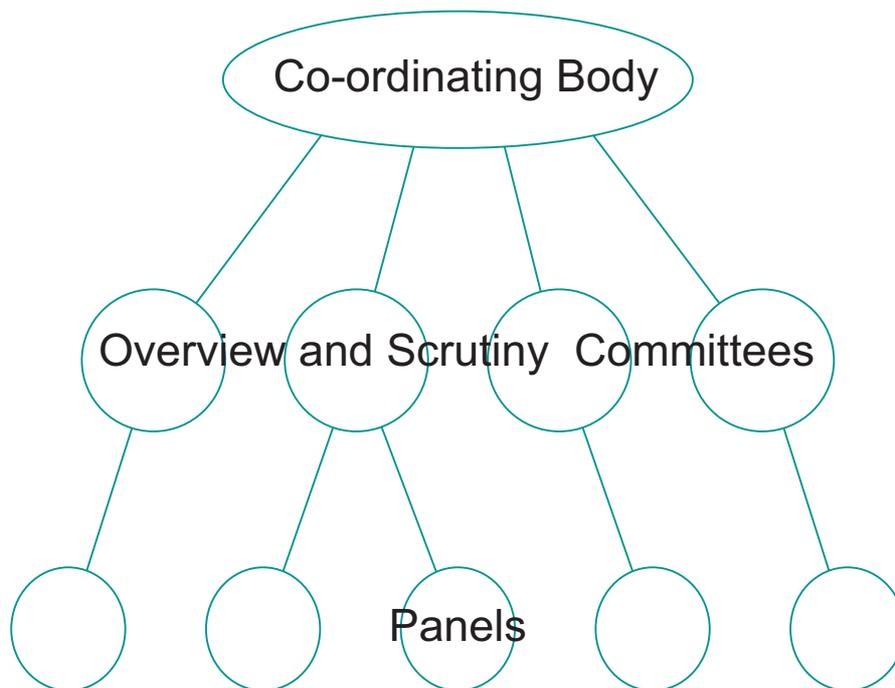
### ***Co-ordinating bodies***

Councillors we interviewed from almost all the authorities identified the need for communication between the committees. Whatever structure and set of committee portfolios exists, there will always be the potential for cross-over and confusion. We found some examples of members who were entirely unaware of developments in other committees on their own council.

Some sort of co-ordinating body is therefore extremely helpful. It permits regular communication between the committee chairs, and thus helps prevent overlap and enables chairs (and members) to know what other committees are doing. It may also be used as a forum to decide on call-ins, or to make the final decision on whether to undertake a given enquiry or not.

*“it is intended that the areas of work should be wide ranging and cut across the organisational structure of the Council. As a result there may at times be overlap between the interests of two or more Committees. In such a case the chairmen of the committees*

### ***Type 1***

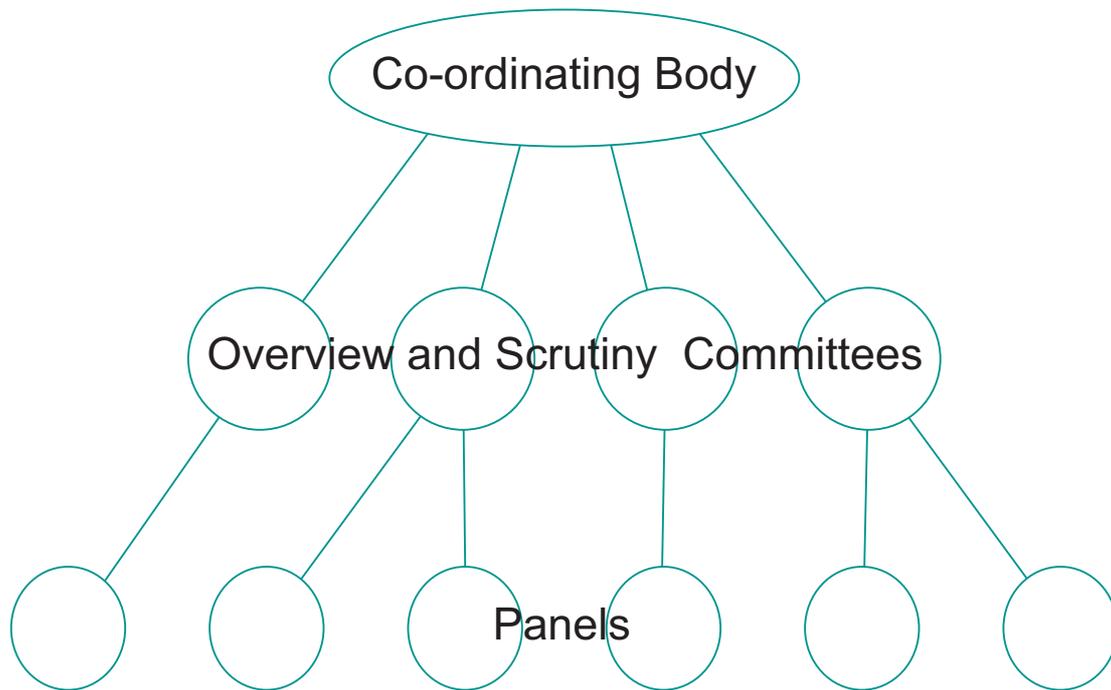


**London Borough of Camden** has a single Overview and Scrutiny Committee which co-ordinates the work of a range of time-limited panels. The OSC is chaired by a member of the majority party. Panels are chaired by members of any political party (so far in rough proportionality). (Type 1)

**Durham County Council** has a single Overview and Scrutiny Committee containing all back-bench members which co-ordinates the work of the six sub-committees, which are broadly thematic, and the time-limited working groups. (Type 1)

**North Tyneside Borough Council** has a single overview and scrutiny committee and five sub-committees which are broadly thematic. (Type 1)

**Type 2**



**London Borough of Ealing** has four scrutiny committees which do cross-cutting work (Type 2), but it is developing a co-ordinating committee, hence moving to Type 1.

**Cornwall County Council** has five Policy Development and Scrutiny Committees (type 2), but is developing a Co-ordination Board, hence moving to Type 1.

**West Oxfordshire District Council** has three overview and scrutiny committees and no co-ordinating panel. It also runs review groups. (Type 2)

**Type 3**



**Preston City Council** has four Review Boards and one Scrutiny committee. The overview committees are broadly thematic. (Type 3)

**Kent County Council** has one Cabinet Scrutiny Committee and three Policy and Overview committees, and an NHS Overview and Scrutiny Committee. (Type 3)

**East Cambridgeshire District Council** has four policy committees and one overview and scrutiny committee. (Type 3)

*should agree how the situation should be managed.”*

North Tyneside reviewed its scrutiny structures, partly with the issues of overlap and communications between committees in mind. They had previously run a system of four select committees, carrying out overview and scrutiny. The new system, with an overarching committee and sub-committees, was created “basically to have some sort of umbrella system for these committees to follow a structure. Where before they were autonomous select committees that could pick their own themes, there were not necessarily the same themes that were going on in the authority.”

Camden avoids the problem of co-ordination between standing committees by having one single Overview and Scrutiny Commission, which sets up panels to undertake specific enquiries. This also reduces the likelihood of matters falling between committee remits, as the single committee is responsible for all overview and scrutiny. This structure also avoids any complex procedures of joint committees when a cross-cutting enquiry is carried out.

West Oxfordshire lacks a panel of chairs or an overarching committee. This has created dissatisfaction within the committees. One member stated that “the chairs should between themselves sit down and have regular meetings where they decide who looks at what. Let’s face it, [the scrutiny committees are] finance, economic and environment: you could have everything through all three—homelessness for example.”

Kent’s lack of a co-ordinating committee leads to a different problem: opposition members complained that there was no opportunity to scrutinise the council’s corporate functions. The single Cabinet Scrutiny Committee does not have sufficient time or authority to investigate council performance in detail, whilst Policy and Overview Committees are not permitted to do so at all. It may be particularly easy for matters to fall between stools in this way where there are separate overview and scrutiny committees, without a co-ordinating panel to allocate work between them. As the divide between overview and scrutiny is not an absolutely clear matter, it is

helpful for an arbiter to prevent a situation where neither ‘side’ of overview and scrutiny takes on any given matter.

In Ealing, meanwhile, control over call-ins has been transferred from individual chairs (some of whom are not from the governing party) to the new co-ordinating committee, leading some opposition members to claim that the opportunity to call in decisions has been reduced.

### ***Party balance in committees and amongst chairs***

The Local Government Act 2000 does not specify that committees must be chaired by members of a range of parties. It is a feature of House of Commons select committees, and committees in the devolved institutions, that chairs are divided proportionately according to party representation.<sup>5</sup>

In many local authorities, the ruling group provides either all or most of the overview and scrutiny chairs. From a Westminster or devolved assembly perspective this appears odd, even when panel chairs are frequently drawn from minority parties. Interviews indicated that many minority parties were unhappy about the situation where it exists. Amongst majority-rule authorities, the equal spread of chairships (Ealing) and the proportional spread of chairships in the London Borough of Camden were the exception.

*“It is natural that Overview and Scrutiny is looked after by [the ruling party]. It might well be that people say ‘well, you have to be politically balanced etc’ but equally so the Overview and Scrutiny could easily start calling in every decision.”*

The history of party politics within local government accounts for much of the reasoning behind this. In the previous structure of local government, it was standard practice for parties which held a majority on the council to not only hold all committee chairships, but to agree a position on agenda items prior to the committee meetings, and use their majority to vote it through. In East Cambridgeshire, where the use of the fourth option means that much procedure

<sup>5</sup> In Westminster, this is a convention, not required by Standing Orders.

has been retained from the old system, the Liberal Democrats did exactly this until they lost their overall majority in May 2003.

In Kent County Council the Cabinet Scrutiny Committee is chaired by the leader of the Labour Party group (the principal opposition). Its proportionality reflects that of the council. However, the three Policy and Overview Committees are all chaired by members of the ruling group. One stated that “it would be difficult to make the process work with a foreign chair”.

Government guidance states that:

*“Where there is a majority group, local authorities might consider it appropriate to have all or some of these committees chaired by members outside the majority group or by church or parent government representatives.”<sup>6</sup>*

We found that in authorities where the ruling party took all of the chairs, most opposition respondents suggested that scrutiny would work better if the chairs were split between parties. Where chairs are shared, there is no sign that the system is being abused as a consequence. Minority party chairing can permit a minority party member to take a leading, even pivotal role, in the development of specific policies, or to direct the attention of the committee to certain issues. It would be hard in practice for the minority chair to use an overview and scrutiny committee to conduct a guerrilla war for the opposition: minority party chairs cannot, after all, prevent a determined party from using its numerical majority.

### ***Committee size***

Those working within local authorities have realised that different sized committees are particularly good at doing different things. They use large overview and scrutiny committees to receive officer reports, scrutinise the cabinet and manage enquiries, and use panels to carry out detailed policy research.

Durham County Council’s Overview and Scrutiny Committee contains all 50 non-executive members of the council and up to six

co-optees. It looks at performance indicators and best value plans and passes work down to the sub-committees. It also receives all reports produced by sub-committees and working groups. There is also a panel of chairs which meets regularly. Not only does this ensure co-ordination of scrutiny, allowing the council as a whole to pursue the most relevant scrutiny themes, but it also allows “buy-in” of the scrutiny process by all non-executive members of the council. As one councillor stated: “I think things need to be reported back so that everyone is on board.” To a large extent councillors thought that this had worked. However, the ability of the Overview and Scrutiny Committee to be effective was questioned by some: “My impression is that the steering is all effectively done by the chairmen of the committees”. However, the existence of both co-ordinating bodies means that there is hardly any duplication of work between committees, and that cross-cutting issues can be spotted and allocated to working groups.

East Cambridgeshire District Council’s fourth option structure has one Overview and Scrutiny Committee which consists of every member of the council except for the four chairs of the policy committees (34 members in total). The thinking behind this replicates the thinking in Durham: every member who is not a policy chair (the closest approximation to a cabinet member under this system) has the right to be involved in overview and scrutiny. However, the full committee only meets once a year.

Most authorities do not operate committees as large as this. Durham is a special case. It uses this big committee to give overview and scrutiny power within the authority, which is particularly important there because of the very large Labour majority. Large committees can be difficult to manage and find it hard to do detailed work. In *Scrutiny under Devolution* we found that attendance and attention within smaller committees was far better.<sup>7</sup> This also applies within local government. With smaller committees, there is less tendency to make political points during evidence sessions as there is less of an audience. Questioning can be more focused if there are fewer members wanting to have their say.

<sup>6</sup> ODPM, *Local Government Act 2000: Guidance to the English Local Authorities*, para 3.30.

<sup>7</sup> See Sandford and Maer, *Scrutiny Under Devolution*, p.9.

Generally permanent committees at local government have around 12–15 members. Panels rarely have more than eight members, and sometimes have as few as two. Panels are more often used for policy development work rather than for scrutiny, although this is a point where overview and scrutiny overlap—it is possible for authorities (such as Camden) to investigate past executive decisions as part of a panel process. Time-limited panels which exist solely for scrutiny are rare, being found in some authorities (such as Kent) to examine parts of the council budget in some detail. The use of panels can be compared to the reporter system used by the Scottish Parliament whereby one or two committee members are tasked with researching either background issues to a wider enquiry or investigating a focused topic.

*“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.”*

*“I think [the large number of members] is a bit unwieldy, because when you get committees of 4, 5 or even smaller, invariably you get quite a good working atmosphere where everyone’s digging in, nobody’s looking over their shoulder saying that’s not the party line.”*

*“A lot of good work happens through working parties. From my point of view that is where the best work is done on the council.”*

It is standard practice in Ealing, Camden, Durham and North Tyneside for an invitation to be sent to all members asking for those interested in working on a specific issue to put their name forward to be on the working group.

*“Our experience of the select committee suggested that there were risks of them being too much like ‘traditional’ committees and that, depending on the subject matter of particular studies some members were not taking an active role. The new model of ‘study groups’ means that they will include in their membership only those members who want to be there because of the subject matter.”*

Some councils have found that permanent working groups on issues such as the budget have been useful. Durham has a permanent panel looking at the budget. This has allowed continuous detailed scrutiny of this vital work of the council.

*“we were very concerned last year that the stage they were getting involved was towards the back end of the year when things had happened. Really what we wanted to do was get involved in the budget from the beginning of the next cycle. They wanted to hear about the problems as they were emerging.”*

Respondents were unanimous that panels were an advantage of overview and scrutiny over the committee system. Even respondents who were severely critical of overview and scrutiny (either in their authority or generally) praised panels for taking evidence from members of the public and service users and developing detailed knowledge of an issue. One witness in Cornwall said to a panel, “I’ve been waiting seventeen years to tell you what I think”.

## **Recommendations**

- Authorities should establish a co-ordinating body to prevent unnecessary duplication of tasks and to prevent issues falling between committee remits. This could take the form either of a panel of chairs or a single co-ordinating overview and scrutiny committee.
- The use of time-limited panels should be encouraged in those authorities where they are not used. They are largely an effective way of realising the 2000 Act’s aim of moving the scrutiny process away from party politics.
- As smaller committees generally work more effectively than larger ones, for most purposes numbers should be kept low if possible. This might also enable more committees to be established, reducing the workloads of councillors on the existing committees (though this has staffing implications).
- Committee chairs, and vice-chairs, should be held by members of all political parties in rough proportion to the number of seats the party holds on the Council. Where there is a ruling party, this will help to offset

any defensiveness of the cabinet against overview and scrutiny.

- It is not clear whether overview and scrutiny are best carried out by one committee or divided between two classes of committee. If the latter, however, it is important that information is shared between the two types of committee. It should also be possible to ask searching questions in an overview committee, and probe alternatives in a scrutiny committee: the two activities are not so distinct as to require total separation.

# Chapter 3: The practices of overview and scrutiny committees

## Functions of committees

*“The single biggest problem that we have as an overview and scrutiny committee is knowing what we are supposed to do.”*

There is a range of types of work that scrutiny can carry out, which are comparable across levels of government. In Table 2 we have attempted to classify the types of work carried out. We are not suggesting that this classification is a final and binding set of definitions. The purpose of it is to demonstrate that there are

distinctions in the *type* of work that overview and scrutiny committees do; to demonstrate the affinities between these types and the types of work carried out in the devolved institutions; and to suggest the need for balance between types of work.

It is open to local authorities to carry out all of these functions, and, amongst our case studies, practice of each of these functions was in evidence. The notable difference between authorities was in the balance between the types of work carried out as overview and scrutiny.

**Table 2: Classification of the work of overview and scrutiny committees**

Type of work	Description	Devolved equivalent*
Policy Enquiries	Wide-ranging review of an existing policy area, examining past practice and recommending future practice. Use of research, witnesses and evidence, resulting in a report ('classical scrutiny').† These might either relate to a single directorate of the council or be cross-cutting in their focus.	Strategic Policy Reviews
Policy proposals	Review of a more limited policy area, where the Executive's formulation of the issues is accepted in its essentials, but overview and scrutiny produces suggestions for future policy.	Forward Policy Proposals
External scrutiny	Normally a sub-set of policy enquiries or proposals, but looking at external agencies leads to differences in approach.	N/A
Monitoring	Receiving officers' reports, questioning of officers or cabinet members on their content. Similar to the old committee system, but no decisions are taken.	Regular work
Holding to Account	Questioning cabinet members on performance, possibly including performance indicators.	Links to Event Enquiries and the Ministerial Monthly Report (National Assembly for Wales only)
Best Value / CPA	Review of services or performance indicators.	N/A
Annual budget	Examining council and/or departmental spending allocations for the coming financial year.	Annual budget

\*See Appendix 2 for a reproduction of the classification of reports in the three devolved institutions.

†See Sandford and Maer (2003), op. cit. 'Classical scrutiny' was used to describe the standard, Westminster-inspired practice of a weighty report on a policy issue backed up by written and oral evidence from witnesses, interest groups and/or the public. (p.18).

Often we found that either best value, monitoring, policy enquiries or holding to account predominated, sometimes due to patterns of work becoming set early in the overview and scrutiny process. Committees can contribute to the running of the council from a number of angles if they exercise the full range of their powers.

There is less tendency in local authorities to regard a weighty report as the zenith of the scrutiny process. Informal enquiries and meetings, allowing a few members to develop expertise and to feed in to full council and officers on given subjects, were more common in local authorities than at other levels of government—as were public meetings and visits to local service providers and users.

In less well developed overview and scrutiny structures, we found a lot of confusion about the purpose of overview and scrutiny. Often we found committees were behaving as though they were still in the previous system of local government, receiving officer reports and noting their recommendations. In these authorities, both questionnaire and interview data indicated that councillors wanted to go back to the old system:

*“[Overview and scrutiny] has been an almost unmitigated disaster, and a gift for majority parties to take complete control of all aspects of the council’s functions with no effective oversight at all.”*

The committees within some authorities have concentrated entirely on looking at past decisions of the cabinet. Although this may be considered to be scrutiny in the traditional sense, overview and scrutiny is more than this. Government guidance makes it clear that not only should decisions of the cabinet be scrutinised, but that cabinet members should be held to account, and committees should assist in the development of policies and strategies taking into account the views of ‘hard to reach groups’, (i.e. not just council officers).

In contrast, other authorities have concentrated almost entirely on policy development, neglecting to ask the hard questions of officers and executive members. Elsewhere, the scrutiny process has been dominated by Best Value and

assessment of service performance against targets. Although this is an important (and mandatory) part of performance management, it is not the only contribution that overview and scrutiny can make.

## ***Setting the agenda and the forward work-plan***

In most of the case study authorities, members had an input into the committees’ work plans. For instance, in Cornwall each committee sets itself a work-plan annually following the approval of the council budget. This is led by the chair and the vice-chair, but respondents indicated that all members have an opportunity to participate in this, and the committee will collectively prioritise between different suggestions. In Durham, a great emphasis is placed on the role of the councillors themselves in deciding the work of the committees:

*“The whole process has to be member led. We are there to support and assist, and occasionally give advice about a direction members might want to go in or a particular theme they might want to draw out.”*

Putting the members in control of their committee’s work is vital to engage the councillors in the work of the committee. It also gives them a feeling of control over the system. We found that in councils where members had some control over their work-plan, they were less likely to be disaffected by the new structures.

The Local Government Act 2000 clearly gives all members of committees an equal right to put items on their committee’s agendas:

*“Executive arrangements by a local authority must include provision which enables:*

- (a) any member of an overview and scrutiny committee of the authority to ensure that any matter which is relevant to the functions of the committee is included in the agenda for, and is discussed at, a meeting of the committee, and*
- (b) any member of a sub-committee of such a committee to ensure that any matter which is relevant to the functions of the sub-committee*

<sup>8</sup> Local Government Act Section II, 8a.

*is included in the agenda for, and is discussed at, a meeting of the sub-committee.”<sup>8</sup>*

However, in some authorities, opposition members felt that their agenda items often tended to fall to the bottom of the agenda: one opposition member remarked, “I don’t think they try [to push items down the agenda], I think it kind of happens on a knee-jerk basis.” Another said “in theory you should be able to put forward ideas, but there’s no way an idea put forward by a Conservative [opposition] councillor will get in”. Although formally the agenda might be agreed by the chair, vice-chair and officers, all members should feel that they have an input into this. In some authorities, many of the respondents seemed unsure about how items appeared on the meeting’s agendas.

*“In the first year I think that it was almost entirely officer set. But I think the officers were probably tearing out their hair trying to get any member to say that we want such and such a thing on the agenda. [In the] second year there was much more attempt to do that and it takes the form of at the beginning of the year that members are invited to put something forward to you on the work programme.”*

*“[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.”*

*“The agenda is drawn up by the officers in consultation with myself. Before each meeting, I have a one and a half hour session with the environment heads of service in which we discuss the agenda. We put items on the agenda for that meeting and for future meetings.”*

West Oxfordshire District Council has no scrutiny officers and relies heavily on the heads of service for agenda items is a result of this. But this is obviously problematic when it is these heads of service which the committee should be scrutinising. Issues surrounding this are discussed below.

In the London Borough of Ealing, not only do members have a chance to put an item on the agenda, but residents do also. They have a ‘scrutiny referral form’ on their website which members of the public can fill in. “Committees will consider requests from any stakeholder, group or business to examine issues put forward.” However, this is very rarely used by the public in practice. In West Oxfordshire there is room on every committee agenda for members of the public to raise issues. Those interviewed could only think of one occasion where a member of the public took this up (this member of the public was elected to the council at the next election).

In most authorities there was no evidence of direct attempts by cabinet members to either influence or direct the agenda of scrutiny committees. Where minority party members were unhappy with agenda-setting, this appeared mostly to be due to the internal compasses of the majority party members rather than overt interference. One exception to this was in Kent, where the three policy committees are overtly used as a means of policy advice to the Cabinet as opposed to having a more independent existence. One of the overview committee chairs in Kent suggested that his role was:

*“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 directorate...they’re very good at suggesting things.”*

This leads to curious situations such as this:

*“I was dealing with a local issue that was very heavy, and I wrote to [the chair] saying ‘Can we put this item on the agenda?’, and I got a letter back saying ‘We don’t want it on the agenda, we’re very busy, we might look at it in the future’. But it wasn’t sent by [the chair], it was sent by the cabinet member.”<sup>9</sup>*

<sup>9</sup> This approach makes some sense if the policy committees are regarded as extensions of the Cabinet—an analogy might be with the Cabinet sub-committees at Westminster, as opposed to the departmental select committees. However, it is not clear that either the legislation or the guidance anticipated overview and scrutiny committees being used in this way.

## ***Concentrating on the decision making process***

In some authorities, overview and scrutiny is a passive rather than pro-active process. The purpose of scrutiny is regarded as being to look at every executive decision (monitoring). Here 'overview' is squeezed out by 'scrutiny'. There are three problems with this approach:

- Members are concentrating on a decision making process over which they have no power;
- Their agendas are lists of officer reports which they note. No positive action results, and no recommendations are made;
- They do not have any time to do any other types of work.

This has a detrimental effect on the morale of non-executive members. In one local authority where the committees did little to no pro-active work the number of respondents who believed that overview and scrutiny was "a waste of time" and that they should "abolish the cabinet and return to the committee system" was very high. The councillors interviewed stated that:

*"If everything is going right there shouldn't really be any problems for overview and scrutiny anyway...if the decisions are correct by cabinet and we are implementing policy as laid down by council, well, overview and scrutiny can go home and have a cup of tea."*

*"The problems arise inevitably in the new system because you have the cabinet making the decisions, a lot of the other members feel detached. They don't feel involved in the decision making process which they used to feel. Now you have the cabinet meeting every week or every other week. They make decisions and if they are not called in they go through. That is it."*

It is true that committees have no power to overturn a decision of the cabinet, and that the committee cannot compel the cabinet to follow its recommendations. However, the committees do have the power to produce evidence based reports which can feed into, and be critical of, council decisions. Not every decision of the cabinet needs to be considered by the overview and scrutiny committees—this is to confuse

scrutiny with audit and performance assessment. This is a particularly important point as overview and scrutiny can slow down decision-making, when one of the aims of the 2000 Act was to speed it up. Overview and scrutiny therefore ought to be carried out judiciously.

Key decisions should be identified in the cabinet's work plan, and should appear on the agenda of the relevant committee before rather than after the decision is made. In Kent there was an example of a school closure that was delayed until late October, leading to pupils transferring mid-term, due to repeated reviews of the decision both through the scrutiny process and other tribunals. A respondent elsewhere stated that the process of the new system meant that "we make decisions four times where we used to make them once". In this council, a policy may be drawn up by an overview committee, be passed to the Cabinet, possibly referred back to the overview committee for refinement and then approved by the full council. This can lead to significant delays.

There is always more that could be done than can be done: committees should focus on areas where they can have the greatest effect. For instance, on certain subjects, the council may be under-performing, policy may need renewing, or there may be a strength of public feeling. The aim is to avoid resources and time being thinly spread and to make positive suggestions to the cabinet.

In Preston City Council, the single scrutiny committee focuses on decisions which have been made by the cabinet.

*"It was felt that scrutiny [rather than overview] should take place after a decision has been taken, not scrutinising prior to when the decision was taken."*

Where four policy committees exist, as in Preston, a scrutiny committee will more naturally concentrate on cabinet decisions, leaving the policy committees to feed into decision-making before the event. By contrast, this distinction was not welcomed in Cornwall, where the overview and scrutiny committees did not consider themselves bound to the decision-making process:

*“We were all concerned that [scrutiny] would be after the event. There has been some of that, but not as much as we feared, because we’ve learnt to spot those issues where there will be a member interest. Often we go to the executive with a recommendation that it should go to scrutiny, or to a panel. In effect, as officers we are managing it in a slightly different way.”*

## **Policy development and review**

*“A key element of the work of an overview and scrutiny committee is to be able to review and make recommendations either to the executive or to the full council and assist in development of future policies and strategies.”<sup>10</sup>*

*“Scrutiny’s been very much about policy review, advice, development on major service areas, like rural issues, policy review of residents’ parking, as opposed to challenging the line which the Executive has taken. I think that was the council’s preference.”*

Conversely to the previous section, any of the case study authorities concentrated far more on policy development than scrutiny. This appeared to be motivated by two main factors: allowing members to investigate and make recommendations about specific issues (the closest thing available to decision-making); and the desire to avoid politicised debate. Although a party political disagreement rarely leads to a policy review, policy reviews are not mere ciphers for the cabinet. Some have produced surprising recommendations, which have been adopted. Often, these committees which handle both policy and scrutiny concentrate more on policy. In Cornwall, for instance, the Policy Development and Scrutiny Committees in Cornwall rarely call in the cabinet member or senior officers to ask critical questions about perceived failings. By contrast, it was quite common for panels in Camden to hold cabinet members and senior officers to account, particularly if serious problems were being investigated.

Other councils, including Preston and Camden, have established a range of mechanisms through which holding to account takes place. For instance, performance indicators and Best Value reports are frequently used as opportunities to hold individual portfolio holders to account. Some councils have established annual, or bi-annual, reports to the full council by the leader (or the mayor, in North Tyneside), which may be open to the public. There is also some opportunity, though it is more limited, to hold executive members to account in full council.

## **Panels**

Most councils’ policy development work takes place through panels. Overview and scrutiny committees themselves identify subjects for in-depth enquiry, establish and manage the panel, and the overview and scrutiny chair will take the lead in reporting to cabinet on the panel findings. This allows a small group of interested members to do in depth work into an issue. These groups take evidence and produce reports in a manner recognisable from other tiers of government. They normally consist of between 5 and 8 members. Where panels were specified in the council constitution, they are politically proportional: in some cases, ‘informal member groups’, which need not have been proportional, carried out similar roles.

The work of the panels in almost all authorities was almost unanimously praised by respondents. This is one feature of the new system which did not take place at all under the old one, and was welcomed by many respondents as “essential”. It is important to emphasise the freshness of this approach: for most authorities, overview and scrutiny has provided the first formal meeting where members of the public can speak to councillors.

Whilst many authorities specify the role of panels in their constitution, in some, panels are a more informal part of the process. This creates issues of accessibility of the information available to the panel, and details of its proceedings.

*“The problem with public participation is the way the papers are produced. They are all on green paper. They are all confidential.”*

<sup>10</sup> s3.54.

*This does not encourage public participation.”*

Public accountability and access to information are blurred for informal panels, which is less than satisfactory if their conclusions lead to significant policy changes. Without this form of accountability it is not possible to trace the discussions and reasoning which led to a particular decision being recommended by a panel. Part of the justification for the changes of the 2000 Act was to improve the transparency of decision-making: this is not helped by holding panels the proceedings of which can never be accessed by the electorate. In order for panels to be successful, the method of appointment to them, and their functions, should be clearly defined in the constitution or by a protocol document. In West Oxfordshire there existed a great deal of confusion over the operation of panels (‘working groups’).

*“I think the overview and scrutiny committees are in theory the parents of some of the...I forget whether it is either the best value review groups or the working group but in effect other than having a report often back to the overview and scrutiny committee it seems not to matter or be considered very important to what the overarching structure is. It is a very loose system of accountability.”*

*“We are still waiting for an exact definition of the difference between a sub-committee and a working party.”*

Panel meetings in Cornwall were mostly not open to the public: respondents defended this on the grounds that witnesses would speak more freely and members could brainstorm more freely without fearing that anything they said would be used in evidence against them (this fear related as much to the media as to members of the public).

In West Oxfordshire, the ability for panels to be open to all members is further limited by the fact that they hold all-day meetings. This prohibits those in full-time employment from participating (and this is obviously true for potential witnesses and public participants as well). Other councils manage to have panel meetings in the early evening. This would allow for greater participation in the overview and scrutiny process.

*“I think there is an understandable reluctance on the members part to do a lot of investigative work themselves. For a lot of us, there are quite a few pressures. In many ways I would love to do some sort of investigative things but with a job, quite honestly, I haven’t got time.”*

*“I think certainly from the non-majority point of view you think, ‘right, I’ll do all this work’, but at the end of the day if the majority isn’t going to listen to it, and they have the chairs, if anything you suggest has policy implications or financial implications they are not going to be happy with it, you will have put all this work in and it will have been for nothing.”*

Although it is understandable that some members cannot take on review work because of pressures on their time, members should feel that the work is worthwhile. This implies a substantial shift in the culture of the council.

In Kent and Preston, where policy and scrutiny committees were distinct, it was almost unknown for the scrutiny committee to commission panels (which they are entitled to do in the 2000 Act). The purpose of the scrutiny committee was perceived as being to check on the work of the executive, rather than to permit any in-depth development of alternatives. In Kent in particular this appeared to be perceived as potentially politically divisive. In fourth-option East Cambridgeshire, scrutiny sub-committees existed, but policy committees did not establish panels—enquiries were considered to be part of scrutiny, not policy-making.

### ***Choosing issues to investigate***

In most councils, issues to investigate would be suggested by members of the relevant committee in the first instance. These would then have to be approved by the committee, and a chair is then selected for the task and finish panel. Often the departmental officers will be consulted on the issue, and may contribute to refining the terms of reference. Many officers admitted that they had requested postponement of suggested panels, or refinement of terms of reference, on the grounds that they would not have time to deal with the panel. Although this seems a perverse feature of a scrutiny process, the small size of local authorities often means that departmental officers are the only available

source of expertise both about policy debates and about council practice. It is therefore important that they are signed up to the process—even if grudgingly—and are willing to make time and resources available to assist an overview and scrutiny committee. The necessity of this joint working could give officers the opportunity to scupper a useful scrutiny process if they were so inclined.

In Durham County Council, the scrutiny officers see the issues for improvement raised by the Comprehensive Performance Assessment as priority areas. Concentrating on areas which are known to be lacking puts increased pressure on council officers and the executive to raise their game.

*“In many ways the best thing that happened was the CPA. We try to concentrate on those issues that CPA concluded needed improvement.”*

*“Some projects have come about because of member concerns and constituency issues which is right and proper, and that is what members are encouraged to do, to go out and build a bridge between communities and the council.”*

There was a tendency by some councils to investigate issues of public concern over which the local authority had no control. An example of this is the six-term school year. Although choosing external topics is a response to the Government’s aspiration for community leadership through external scrutiny, we had the impression on occasion that these topics were investigated at the expense of focused enquiries into council performance. Both external and internal scrutiny are important elements of the scrutiny process.

The character of external scrutiny is inevitably different from scrutiny of a local authority itself: as an external institution is under no obligation to listen to recommendations (or co-operate with the enquiry), committees will inevitably be less free to criticise, and will work more in a spirit of partnership, than they might do when speaking to council officers. This has been a feature of the health scrutiny committees set up in county and unitary authorities: in some cases they have

spent up to 12 months building relationships with the local health community through seminars, plans, and meetings, before moving on to actual policy development.

One member suggested that the focus on external issues, in his local authority, was political:

*“It’s part of the whole propaganda scheme of the administration of this council. It’s got nothing to do with scrutiny requirements. If you say we should look at primary school under-performance, they don’t really want to know about that. But they would like to look at financing of local education, and use that as a vehicle for criticising the Government for getting certain things wrong.”*

In some local authorities we found examples of ‘executive pre-emption’, a notable problem in the devolved bodies.<sup>11</sup> Some scrutiny respondents stated that they had found out, either in the middle or at the end of an enquiry, that directorate staff had been conducting their own research or trials in the same policy area:

*“Several weeks ago I went to (a neighbouring town), [to investigate a new policy being tested there]. Well, some of the officers from here had already been to (the same town). It might not have been the cabinet. It might have just been the housing officer [who organised it]. But I feel that they are just giving us jobs to keep us happy.”*

*“The panel did not know that the housing department were in tandem creating their new repairs system without the panel knowing—I do not know if the cabinet knew. I know that our recommendations are being discussed by the executive but I suspect the recommendations may conflict with those contained in the Housing Department Repairs scheme—and these nine months may have been for nothing.”*

## Scoping

One of the most important parts of the scrutiny process is planning enquiries or scrutiny

<sup>11</sup> See Sandford and Maer (2003), op. cit., p. 14–15

hearings. It is important to work out what is trying to be achieved, and how this would be best done. Durham County Council takes this very seriously:

*“At the first meetings of any working group we discuss our terms of reference and who we want to call for witnesses so we set the benchmark before we start and we are not just jumping from one thing to another.”*

To assist this process they have devised a ‘Scrutiny Checklist’ (see Appendix 1). This is not so much a list of requirements for a piece of overview and scrutiny work, but a list of things to consider whilst planning. This checklist is constantly being updated and modified as the officers and councillors learn from their experiences.

Camden’s scrutiny team sets out a timetable for each panel enquiry before it begins. Members decide, with the assistance of the officers, on who to invite in as witnesses. The timetable is often constructed around the availability of these people. Unlike at other tiers of government, each stage of the enquiry process is timetabled—a given number of meetings is set aside for studying written evidence, for taking oral evidence, for visits, and for deliberation on the final report. This is a very helpful way of guarding against enquiries becoming over-long, which has been a common problem in the devolved assemblies in particular. Camden initially set a limit of six months on all panel enquiries, though this has subsequently been extended to nine months (though panels may report earlier on topical issues).

Scoping of scrutiny hearings tends to be less sophisticated: some authorities, such as Preston, use a pre-meeting as preparation time before the meeting proper of the scrutiny committee. Members use this time to agree the division of questions between members and parties, so as to avoid overlap. We found very few instances of detailed questioning being prepared by members and officers jointly for scrutiny sessions, in the manner of parliamentary select committees. Most respondents indicated that members would ask questions off the cuff, responding to what officers or cabinet members said in the sessions, rather than coming with a prepared set of issues. Indeed, in Kent County Council the officers who

assist the overview committees are explicitly forbidden to assist the scrutiny committee.

## **Call-in**

*“I don’t think [scrutiny] works. Because actually I think the Labour group know that if they want to get promoted elsewhere, they can’t be seen to be calling in decisions.”*

The Local Government Act 2000 provides that an executive’s decision may be called in by a scrutiny committee. The effect of the call-in is to suspend the decision until a scrutiny meeting has been held. The meeting may either endorse the original decision, or may send the decision back to the executive to be rethought. The scrutiny committee is at liberty to make its own suggestions.

In the majority of authorities studied, call-ins had been used infrequently. Often they seemed to be perceived as a last resort, after a failure to reach agreement through the normal processes of discussion and debate. Mostly they were not perceived as part of the week-to-week business of either scrutiny or local politics. The respondent who declared “I want to see more call-ins—call-ins are the spice of life” was an exception, not the rule.

The 2000 Act requires councils to have a call-in procedure. In the authorities studied, procedures might typically require between two and four signatures, normally from any councillors, to be brought to an overview or scrutiny committee in order to trigger a call-in. In some instances (such as Cornwall) scrutiny committee chairs can call a decision in on their own. Where a single scrutiny committee exists the call-in is brought to that forum in the first instance, and the decision is endorsed or sent back to the executive. In other authorities the decision may go to a specially-convened scrutiny committee, to the over-arching scrutiny committee, or to full council.

Most call-ins in majority authorities resulted in the original decision being endorsed, by virtue of the ruling party’s majority on the relevant committee. We found few clear examples of a majority authority changing a called-in decision. One example comes from Kent, where the executive published two consultation papers at the same time making contradictory recommendations: it had to accept that it had made a mistake. The

call-in resulted in the executive clarifying its position. Though not a tough political battle, this event does demonstrate how “good scrutiny means good government” in practice.

In some authorities we found that call-ins would be referred to a panel of chairs or a scrutiny committee in the first instance, before being passed to the executive—and that sometimes, or even often, the ruling party majority on that committee would prevent the call-in from going any further. In part this relates to the provisions for call-in which are laid down in the individual authorities’ constitutions. There is a difficult balance to draw between majority parties voting down irksome call-ins and allowing minority parties to call in enormous numbers of decisions. If the balance is skewed towards majority parties, this may affect motivation, as suggested by this parent-governor representative:

*“The ruling party always gets its way. It is like the Arsenal back four, one ruling party hand goes up, all ruling party hands go up. Many times, logic, at least to me, has indicated that this has been the correct course of action...[but] if I was a minority party representative I would seriously be questioning all the considerable effort I put into council activities.”*

One difficulty with call-ins is that the members who call a decision in may have difficulty in justifying the call-in on anything other than political grounds. This is starkly illustrated by East Cambridgeshire, where members of the Labour group called in the entire annual budget.<sup>12</sup> A sub-committee of the scrutiny committee was convened to hear the call-in, but the Labour group did not present any alternative proposals for the budget, merely stating their unhappiness with it. Although this appears to be an ill-thought out move by the Labour group, it would be very difficult for a party to come up with properly costed alternative proposals of any policy (let alone the entire budget). In this instance the director of finance offered his services in the future to any party group which wished to consider alternatives.

In Durham, meanwhile, the large majority of the Labour Party leads to most significant disagreements being sorted out through informal means rather than through the all-in. By contrast, in North Tyneside there had been five call-ins in the previous twelve months when the research took place. This is linked to the cohabitation between the Labour council and the Conservative mayor and cabinet.

For the most part the call-in procedure tends to be used fairly rarely, although the fact that the procedure exists is certainly a factor affecting the behaviour of the various actors in the authority.

## **Outreach**

In doing policy development and review work, it is crucial that committees make recommendations based on evidence. This should not just be the evidence provided internally within the council, but the evidence of those whose lives are affected by the issues under consideration. The Government’s guidance makes it clear that it is a key role of overview and scrutiny:

*“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.”<sup>13</sup>*

*“In particular local authorities and their overview and scrutiny committees should pay particular attention to obtaining views from ‘hard to reach groups...’<sup>14</sup>*

This was realised in the local authorities where scrutiny was considered to be working the best, and where there was the least back-bench dissatisfaction with the new local government structures. Taking evidence from external witnesses was an integral part of policy enquiries. This has advantages for the committee, which can access information not available to the executive, and to the community, which can meet councillors and speak to them directly. This was far less true of scrutiny

<sup>12</sup> See Table 1—the four-strong Labour group on East Cambridgeshire all lost their seats in May 2003.

<sup>13</sup> ODPM, *Local Government Act 2000: Guidance to the English Local Authorities*, para 3.19.

<sup>14</sup> ODPM, *Local Government Act 2000: Guidance to the English Local Authorities*, para 3.56

sessions, where public involvement was minimal:

*“I think that the most important thing that a scrutiny committee does is look at a particular part of an area and look at the service that is supposed to be provided, then goes and discusses with stakeholders how they see the service. Looking at the difference between what we are doing on paper, and what the recipients see.”*

Committees' outreach work is far more common at local government level than at Westminster, or even devolved, level. Several examples of visits to service users, and of public meetings in relevant parts of the authority's area, were found. Camden held a panel on private finance initiatives on one housing estate and one school in the borough, and held a well-attended public meeting in both the housing estate and the school. The panel chair chaired the meeting, explained the role of the panel and invited members of the public to make their views known. There are affinities between this process and methods of consultation and public participation. However, not all councils have followed the spirit of the government's recommendations:

*“This council does not embrace public participation, it puts up with it.”*

## **Recommendations**

- Overview and scrutiny is an ideal opportunity to expand participation, in particular because of the opportunities for councillors to connect with their electorates. Participation and visits should be routinely used in enquiries.
- Committees should aim to carry out a variety of work, balancing the types of work described above. Time limits, and in some cases confusion, has often led to certain patterns of work getting locked in early on in the process.
- Forward planning of the overview and scrutiny process is particularly important, to enable councillors to plan their personal diaries in advance. This is particularly so for part-time councillors, and where time-limited panels are used.
- Committees should spend at least part of their time on focused work, instead of simply monitoring. Receiving reports is a

passive process and does not make the best use of the power available to committees.

- Procedures should be in place to ensure all committee members have an equal right to place an item on an agenda. Officers need to be prepared and able to ensure that items do not get repeatedly or routinely ignored.
- As the Government has recommended, the presumption in overview and scrutiny committees, and panels, should be towards public meetings and openness. Where meetings are not held in public, minutes and agendas should be available to the public. Overview and scrutiny is weakened if it becomes a private, internal practice.
- Panels are a valuable part of the process of overview and scrutiny. Opportunities should be given to members to work on them. This implies making the panels accessible in terms of time and members' existing workload.
- It is particularly important to balance work between scrutiny of internal and external matters. These are distinct roles, but both properly part of overview and scrutiny. External scrutiny enables relationships to be built with other organisations, allowing the council to exercise its community leadership role. But monitoring and critique of the council's own performance and working practices should not be excluded from overview and scrutiny.
- Overview and scrutiny committees should consider how they might develop relationships with the executive to prevent duplication of work. It is rarely a good use of time for both executive and overview to review the same policy. This might, for instance, take place through formal protocols or through regular meetings between the executive and a co-ordinating panel.
- All parts of an enquiry should be timetabled well in advance. Local councillors' time is very limited and precious, as most of them are part-time. It is particularly important that enquiries do not sprawl out of the initial time allocated to them, as has been common in Scotland, Wales and Northern Ireland.

## Chapter 4: Expertise and support

There are a number of sources of expertise and support open to councillors when carrying out their overview and scrutiny function.

### Officers

#### *The importance of dedicated scrutiny officers*

As local authorities are bodies corporate, their officers serve all of their members. Under the 2000 Act, the executive is not a separately constituted body but results from an administrative division within the council. The Act does not oblige councils to distinguish between officers who work on executive and scrutiny issues. However, the government guidance states that:

*“To be effective, overview and scrutiny committees must have effective and properly resourced support from officers. Members...will need help in researching the policy area or decisions they are examining and in deciding which avenues of enquiry to pursue and which witnesses to call.”<sup>15</sup>*

Our research supports this. West Oxfordshire and East Cambridgeshire have no dedicated scrutiny support. Committee chairs will rely on the officers from the council departments for advice on what to scrutinise, and how to do it. Yet the people they are seeking the advice from are the very same people who will be called to account for the work of the department.

*“If an officer wants to push something through in a particular manner you can manipulate the system and I don’t think that is a good way to do it.”*

Whereas in authorities with a split in officer tasks, councillors can be more confident:

*“the good thing about it is that scrutiny has its own officers which helps so that there is a split distinctly between the two so there cannot be any sort of compromise on the outcomes or the questions being asked.”*

However, for a small authority with a limited budget such as West Oxfordshire and Preston,

the employment of a full time scrutiny officer may not be seen as a necessity. Scrutiny officers are vital to the effective conduct of scrutiny. This is not purely because of the potential conflict of interests of the officers. Councils with dedicated officers do more pro-active work; they can support more working groups; the members are better prepared for meetings; evidence is taken from people outside the authority as the officers are able to spend time identifying witnesses; and, as a result, recommendations are accepted by the cabinet because they are thoughtfully written and presented. Respondents suggested more officer time, dedicated research staff and a more pro-active approach by officers as ways of improving overview and scrutiny within the council.

*“Because we are dealing with lots of different officers on lots of different topics you can get shunted around a bit. It also means that if we, as a committee, want to pursue a particular project, time has to be made from existing officers time sheets.”*

However, one councillor saw the problem lying just as much with fellow councillors as it did with the lack of officer support:

*“I think the difficulty is that in a district council with relatively low levels of overall resources you are not going to have one officer who is going to provide full time support for this sort of thing. I initially thought that without that it wouldn’t get off the ground. The fact that it hasn’t got off the ground may be thought to confirm my original view but I think the tendency would be that if officer support had been provided it wouldn’t have been taken up by members.”*

The government has not provided local authorities with a budget for overview and scrutiny stating that overview and scrutiny will in the long term create savings for local authorities: thus it is self-financing. However, in order for scrutiny to be effective enough to create savings, it needs officer support. This is an issue for central government to address. As one interviewee stated:

<sup>15</sup> ODPM, *Local Government Act 2000: Guidance to the English Local Authorities*, para 3.45

*“Really you should have totally independent people for both sides. But...staff are expensive, and it would create very large financial problems to be able to do that properly.”*

### ***Councils with dedicated officer support***

Where committees do have dedicated officer support, these officers provide all the support for the committees. Even the largest authorities such as Camden have no more than seven officers working on scrutiny. In some authorities scrutiny officers have other responsibilities. These individuals therefore need to be able to grapple with vast amounts of detailed knowledge. Where there are only two or three officers, they must, by definition, be generalists. As councillors attempt to do more in-depth scrutiny of service provision they may benefit from more specialist support. Already the officers sometimes rely on those they are scrutinising for advice. This may well be an inevitable part of overview and scrutiny at such a small scale, and should not necessarily be judged by the standards of national or devolved institutions.

*“In terms of individual expert witnesses we are reliant sometimes on what the officers from the departments are telling us. They are the ones that have the specialist knowledge.”*

For authorities with only one or two officers, there is a limit to how much the staff members can be asked to do. Each ad hoc working group that is set up stretches the officers' capability. It is not always possible to do as much at one time as members would like. Ealing runs an informal limit of two panels per committee at any one time, though committees are not obliged to stick to this. Limits such as this will help in prioritising between scrutiny projects, but there may be a time when lack of support becomes a constraint.

*“There have been two study groups to date—there would have been more but for the problems we have had in terms of lack of capacity in officer support for the scrutiny process.”*

*“One of the problems is that there hasn't been enough officer support for scrutiny to give the lead officers and their committees the help that they need.”*

Councils that do have dedicated officer support often base the scrutiny unit within the Chief Executive's office—and in some cases the same officer teams are responsible for servicing both cabinet and overview and scrutiny committees. Interviews did not find any evidence that this led to a direct conflict of interest between scrutiny and executive sides of the council. Links between the cabinet and their fellow party members are also strong.

### ***Departmental officers***

As intimated previously, in local authorities there is a much less clear division between executive and back-bench roles than at Westminster or the devolved institutions. Local authorities are far smaller in size and more accustomed to working corporately. It was common for departmental (as opposed to scrutiny) officers to be involved quite closely at every stage of an enquiry process: the policy-making role was regarded as a joint role of back-bench members and officers. On paper this is an eccentric feature of a 'scrutiny' role. At Westminster or the devolved assemblies, it might be expected to allow officers or the executive to capture the system. However, at local government level we found that the relationship between executive, back-benchers, and officers, was far more co-operative and consensual than at higher tiers of government.

In many authorities, departmental officers are consulted when overview and scrutiny committee workplans are drawn up, and are consulted on the timing and terms of reference of panels. They will then be required to provide written, and normally oral, evidence to the panel, and will also be consulted on the draft report and recommendations. Senior officers will also frequently be required to draft a response on behalf of the cabinet. Hence officers are involved at every stage of the scrutiny process. Few of our respondents regarded this as inappropriate, seeing such a joint culture as the natural shape of the authority.

There is evidence from our case studies that some officers were reluctant to accept the possibility that significant changes, different to those aspired to currently by the executive or officers themselves, might result from a scrutiny process. Frequently they would attend to monitor the development of committee thinking (though occasionally officers would be asked by the committee not to attend), and would feed back to

the executive member regularly. One officer stated that part of his role was “internally agreeing with my own departmental management team what we wanted the outcomes of the panel to be...one of our objectives was to influence the outcome as much as we could.” Another remarked:

*“There was no point in [one panel enquiry proposal] from our point of view, because the old system was about to end and we’re bringing in a new system, contract criteria have been set. And you didn’t really want scrutiny saying either this is fine or this is awful. Whichever way they decided to go it would have been fairly irrelevant.... All the officers in that area were working in relation to getting ready for the new contract, and we didn’t really have a spare resource to service the scrutiny panel.”*

On the other hand, several respondents in different authorities thought that officers were increasingly coming to terms with the possibility that scrutiny processes might lead new ways of thinking or cause changes in Executive prioritisation of matters. In Cornwall, there was some evidence that officers and members formed an unspoken alliance to press the case for certain policy changes. The existence of an all-party cabinet leads to a different dynamic between committee and executive:

*“[Public rights of way] got £500,000 in a difficult budget year, because of pressure from the panel, other members and the portfolio holder. Under the old structure, there would simply be an officers’ report. This way, there are 7 members who have seen 20 witnesses, produced a 30-page report, and can back up their recommendations.... We all know that officers only ever want more money, but if the members want more money, with good reason, and this is why, then there’s greater ownership [of the policy].”*

Officers are normally involved at all stages, including that of scoping, where they will advise the committee on the usefulness of a proposed enquiry:

*“They wanted to look at the early years curriculum initially, so that they could instruct all early years providers, both private and voluntary, as well as [the*

*council], what they had to teach. There wasn’t any discussion about the fact that they could come up with whatever they wanted to and nobody was going to take a blind bit of notice of them...[We convinced them that] it would be better for them to concentrate on the benefits or otherwise of early years education, because that was something they could do something about.”*

## **Research**

Committees at all levels of government carry out or commission research into their areas of competence. Whether this is the comparison of higher education systems carried out by the Education Committee of the National Assembly for Wales, or research carried out into the setting of government targets by the Public Administration Select Committee of the House of Commons, it is considered a key way of producing evidence and setting out the boundaries of inquiries.

Research can be of the same use to committees in local government. Again, time and money limit the capacity of local authorities to carry it out. We found only one instance of the appointment of a special adviser in the manner of Westminster or the devolved institutions (a panel on floods in Camden). However, many authorities were able to interview and consult fairly senior experts on certain issues (often through personal knowledge of members or officers). County and unitary authorities would often allocate a panel enquiry to one scrutiny officer, who would assemble documents and brief members on issues. This officer would not necessarily have any prior knowledge of the policy under review, but might quickly become an expert. An alternative example comes from Kent, where a PGCE student was hired on a short-term contract to service an enquiry into early years education.

Use of officers to carry out research for scrutiny rather than overview is much more restricted. Most respondents who raised the issue were opposed to the possibility that scrutiny officers would be required to systematically question the work of other departments within the council. It was felt that this would not be good for officer morale, nor for the scrutiny officers’ careers.

Durham County Council has contracted Northumbria University to provide research to the

overview and scrutiny committees in the council. They are especially useful to the committees in carrying out comparative work:

*“They have provided us with some very valuable work. Particularly when looking at best practice elsewhere—which councils are doing things better than us and why they are doing it—looking at a particular area of service delivery that is not doing so well here.”*

Some councils might find it difficult to allocate money for work of this kind. However, Durham is helped by the fact that the current leader of the council had been a previous scrutiny chair. This might have had some impact in keeping the executive’s mind open to scrutiny.

### **Co-optees**

A source of constant expertise open to committees is the ability to co-opt members onto committees, sub-committees and working groups. Instead of just calling these people to give evidence, giving them a role in the design and process of an inquiry can help to give the investigation the most appropriate focus. Most respondents favoured the use of co-optees, citing better links into the community and a more expert focus as reasons to bring them on board. The actual use of co-optees was rather less common than the popularity of the idea, though both Durham and Camden have made regular use of co-optees:

*“The most important community involvement is from the co-opted members in the scrutiny process. We take these experts from all walks of life. For the environment: from Agenda 21; for education: parent governors. They give you a different slant on the problem.”*

### **The members**

Members can be a source of expertise themselves. They are resident in their authority, and have contact with their electorate on the issues which affect them the most. However, members are not always expert in the scrutiny process itself.

One member issue in the new structure was brought up again and again in interviews by members and officers. Under the old committee system new council members would have an opportunity to sit on a policy committee as soon as they were elected, and would be able to build up knowledge of how the council worked and of a particular policy area quite early on. Under overview and scrutiny, it is far less easy for members to do this, meaning that back-bench newcomers may have very little idea of how the council works in practice. In-depth policy reviews are normally carried out by small panels. Normally these are so focussed that the councillors who do sit on them will gain expertise in only a very small area. Councillors may be unable to contextualise their knowledge unless they receive regular reports on a number of aspects of a policy area. On the other hand, the focus of some time-limited scrutiny panels on a problem enables them to cross both departmental and council boundaries and gain a wide understanding of how the Council and other agencies are addressing an issue and to what effect.

Although a balance must be drawn between this perceived problem and the stereotype of long council meetings receiving and noting officer reports, it was noticeable that in some councils there were not enough places on committees for every member to sit on one. This would have been extremely odd in the old structure.

### **Member training**

Although the government guidance states that “Local authorities should ensure that all those who undertake overview and scrutiny duties...are given adequate training to adapt to their new roles”, very few of the case study authorities had provided training for their members in both the skills they would need to carry out effective scrutiny and in the new local government structures of which they were part.<sup>16</sup> Most authorities had given basic training to members and councillors about how the new structures work, but had not made suggestions on how best to utilise the structures.

*“There has been only fairly limited training to date on scrutiny, largely due to the lack of staff resources. Such training as has been*

<sup>16</sup> ODP, *Local Government Act 2000: Guidance to the English Local Authorities*, para 3.53

*provided has concentrated on structures and philosophy.”*

Most of those interviewed and questionnaire respondents (with some exceptions) showed a desire for more training opportunities:

*“I personally think we now need to have another teaching/information session on the way the new committees should be operating.”*

In North Tyneside County Council, the Health Scrutiny sub-committee has carried out a whole year of training and development in readiness for its new responsibilities. This culminated in a pilot scrutiny exercise undertaken over one day. The main purpose of this pilot exercise was to test various scrutiny techniques. Camden has carried out training events in issues such as questioning witnesses and scoping panels: these have taken place regularly since overview and scrutiny was established.

A number of networks of scrutiny officers, and some of members, have been set up (for instance, in the North-East and London).

## ***Recommendations***

- It is vital that overview and scrutiny committees and staff maintain good relations with departmental officers. But this depends upon an authority's officer culture accepting overview and scrutiny's right to investigate; and likewise, upon members treating officers with respect during an investigation.
- Co-opting members from outside the council on to committees can be a useful way of bringing in new experience and expertise into an enquiry. More use could be made of them in some authorities: there are affinities here with the value of outreach. But co-optees should not be treated uncritically, as they may well have professional or personal agendas of their own.



# Chapter 5: Evidence

## Why take evidence?

Not only does taking evidence help committees or panels to reach conclusions, the evidence strengthens those conclusions. When making recommendations to Cabinet and Council, the overview and scrutiny committees cannot compel the executive to take up its recommendations. The effectiveness of scrutiny at all levels of government is partly about the ability of the scrutiny committee to persuade. If recommendations are backed up with reasons, based on evidence—that is both facts surrounding the issue and the opinions of stakeholders, experts and other interested parties—the recommendations begin to have some force.

Evidence based work carries more weight with the executive and is a crucial accountability mechanism. By taking evidence from officers and cabinet members, back-bench councillors have an opportunity to pursue a line of questioning with those who have executive power. This allows both decisions and actions, as well as policy positions to be examined. Questions can be asked in full council as well as committee, but in full council there is rarely the opportunity to take a line of questioning.

Evidence also allows facts to become public. By questioning officers on their reports, the committees can ask for additional information, which is put into the public domain. It is therefore an incentive for officers to maintain performance levels and for cabinet members to have real reasons for their decisions. One councillor explained the value added by this process:

*“The portfolio holder has produced a paper that shows the performance management figures, and we go through that almost on a page by page basis and pull out the ones where we are under performing and say ‘why are we under performing?’, what are you going to do about it?, ‘how much is it costing us for your bad management?’, and ‘we’ll see you again in three months’.”*

The Local Government Act 2000 provides a power for overview and scrutiny bodies to require members of the executive and officers of the local authority to appear before it and answer questions. Committees can ask others to attend and answer questions, but cannot require them to do so. (Health authority staff can be required to attend under the health scrutiny regulations.)

Taking evidence from outside the authority, both from external service delivery bodies and other outside groups including the general public is a crucial part of the scrutiny process. As the government guidance states:

*“Policy development and review will benefit from input from all key stakeholders including the local community and other local public, private and voluntary organisations, and such organisations and representatives should be involved in policy reviews by overview and scrutiny committees. In particular, local authorities and their overview and scrutiny committees should pay particular attention to obtaining the views from ‘hard to reach groups’ such as minority ethnic communities and people with disabilities.”<sup>17</sup>*

*“the Secretary of State encourages overview and scrutiny committees to seek views from as many communities and interested parties as necessary to get a balanced picture of the effects of policy and executive decisions. In particular, an overview and scrutiny committee could conduct a review of how certain decisions have affected a particular community or area, taking advice from area committees or forums and other community groups and representatives.”<sup>18</sup>*

However, some authorities have struggled to adapt to this part of their new functions. For instance, East Cambridgeshire has only held one session where anything approximating to oral evidence from outside sources has been given to the scrutiny committee. West Oxfordshire committees likewise show a great

<sup>17</sup> ODPM, *Local Government Act 2000: Guidance to the English Local Authorities*, para 3.45

<sup>18</sup> ODPM, *Local Government Act 2000: Guidance to the English Local Authorities*, para 3.40.

reluctance to involve outside groups in overview and scrutiny.

## ***Witnesses***

There are five groups of people that committees may want to speak to during the course of their inquiry:

- relevant officers;
- relevant cabinet members;
- external 'experts';
- stakeholder representative groups;
- service users.

### ***Internal witnesses***

Internal witnesses (officers and cabinet members) are, by their nature, the easiest to identify:

*"We sit down and say, 'right, we need witnesses on mental health. Where are the parts of the county council that have the most contact with young people with mental health problems'. It is going to be social services, education, probably the youth offenders services.... We would then normally contact the heads of service in the department. You tell them that members have decided that they want to do the project, 'who do you want to nominate as your lead officer'. They then provide a bridge into the department."*

A lot of authorities only regularly take evidence from their internal witnesses. They will often ask the officer to prepare a report on which they then question the officer or portfolio holder, mimicking the old committee system. Often the reports requested are not linked to a wider issue under scrutiny or review, and the evidence session leads to the report being noted, in the manner of the old system, and no action being recommended by the committee. Although receiving reports in this way may help to identify issues needing attention, solely concentrating on monitoring in this way is not, itself, an effective use of overview and scrutiny.

### ***External witnesses***

Sessions where evidence is taken from external bodies can have a number of different purposes. Sessions where evidence is taken from external

service providers are important to build up relations with those providers.

*"Because scrutiny has only been going for a couple of years, a lot of these outside bodies don't actually know what it is, so there's got to be one or two meetings where they come along and its all scene setting, background information. So they find out what scrutiny is and the members find out what the fire service is."*

*"We see overview and scrutiny as being a bit of a link between us and other agencies to make sure that our objectives get through to them."*

The external experts, representative groups and the service users from whom evidence should be taken can be difficult to identify. However, time invested in identifying witnesses reaps great rewards. Some officer respondents admitted that they felt their experience within several departments within the council eased this process as they had built up extensive networks. Others might not have this experience and therefore lack the necessary insight into the area of investigation.

*"Around mental health we had real difficulty identifying young people with mental health problems. Even health and social services weren't able to say 'we have a support group' or, 'we have a group of young people we consult'. Sometimes it requires quite a bit of forensic work. Sometimes it is a chance remark or something that you see on the web, or something you read in a report and it then provides the way forward."*

### ***Making a witness feel comfortable***

It is very important to create the right atmosphere to take evidence from any particular witness. Making witnesses feel comfortable is particularly important when taking evidence from members of the public who would not usually find themselves in a formal public speaking position. There are many methods available to get the best out of witnesses. Often committees or panels go out and speak to witnesses on their 'home patch'. Committees which have developed these skills most effectively include those in Camden and Durham. In one enquiry members visited a centre for refugees and spoke

to them about their experiences of the various systems and services they had encountered in the UK.

*“We will give witnesses a cup of tea and put them at ease. The members are good at that. If it is a member of the public usually we will go out there and see them. We have been to working men’s clubs and all sorts of places where hopefully people feel a bit more at home.”*

*“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 needed to say and they told us.”*

*“Occasionally chairs or vice-chairs go off and interview people on their own and report back. Sometimes you deal with people who wouldn’t be comfortable in a meeting room—you can visit members of the public in their own rooms.”*

*“It’s about reading how people react to what you ask—body language, getting people to relax and give you answers they wouldn’t give if they were being formal.”*

Internal witnesses are often treated in a more interrogative fashion as they are often being held to account. This is again a throwback to the old committee system, where councillors might often feel uninformed about the authority’s policy and activities and feel the need to demand answers from officers. This is not the case in Durham:

*“We try to make it a non-confrontational atmosphere. That is the best thing to get the best results. People are more open with you.”*

*“...particularly in relation to internal witnesses, you know the word soon gets out if an officer goes along to a meeting and is given a really really hard time then they won’t hold back in telling the rest of the department. The next time we need to call a witness from that department it might be that*

*much more difficult to get a good witness. People are more open and the process is more positive”*

In some authorities, officers approach witnesses before the formal evidence sessions to let them know what they should expect at the hearing. The councillors and officers claimed that this made for better evidence as witnesses could prepare and be relaxed. In Preston one interviewee said that “we were told if we had questions we were to prepare them in advance and email them through so the portfolio holders had them so they could answer the right questions”. One such case was an investigation into the collapse of West Hampstead Housing Association in Camden, where the Housing Corporation was invited to give evidence. The evidence already available to the panel led them to be quite critical of the Corporation’s role vis-à-vis WHHA, and the panel was also aware that the Corporation was under no compulsion to give evidence. The panel had an hour-long meeting to draw up questions, which were supplied to the Corporation before the evidence session itself. The panel also asked unscripted supplementary questions to follow through lines of questioning where the initial answers given demanded a more searching inquiry: being ready to ask supplementary questions is a vital part of preparation for a scrutiny session. However, allowing witnesses to prepare is not necessarily a good thing. It can allow witnesses to prepare stock answers to difficult questions. A fine balance has to be maintained.

Witnesses to Durham Committees are given feedback forms asking them whether they ‘were treated courteously and put at ease’ and if they have any suggestions for improvements in the process. This allows the councillors and officers to seek ways to improve the evidence sessions.

### **Asking questions**

*“Whereas politics before was more about making statements, scrutiny is about asking questions and getting information, which is a quite different technique.”*

We divided questions into the categories of ‘interrogative’ and ‘informative’ in *Scrutiny under Devolution*.<sup>19</sup> The same division can be identified

<sup>19</sup> See Sandford and Maer (2003), p. 29

at local government level. However, local authorities used interrogative questions far less than informative ones: the balance was skewed towards open questions, inviting information from witnesses. In fact, the divide between the two types of question reflects the distinction between 'overview' and 'scrutiny'.

*"If you can get the witness to talk about the subject rather than pinning them down to an alleged fault, that's going to be more constructive on the whole. There is a place for interrogative questions of course, but largely you want the witness to expand rather than retreat into their shell."*

*"You can ask questions for a number of reasons. A good one is a penetrating question where there isn't an answer on the papers in front of you, and you get an answer which wouldn't have otherwise been disclosed. You sometimes ask questions, wearing a political hat, when the answer is absolutely clear on the papers in front of you, where you do it so that you can bring out a point."*

The information obtained from oral witnesses is very much dependent on the questions asked. Although questioning styles may differ, short and focused questions are most likely to produce the answer required. The following two questions were asked by a committee member in a scrutiny committee meeting, attended by one of the authors:

*"How do you intend to improve the council's profile?"*

*"What does 'further work on staffing issues' mean?"*

These are exemplary scrutiny questions. They are short (eight words each); they ask a question which was relevant to the issues being discussed; they do not contain long statements of the member's own position; and they ask about future policy instead of the reasons behind past failures (obliging the portfolio holder to give thoughtful, rather than evasive, answers). Both of these questions caused the portfolio holder and supporting officer considerable difficulty, despite appearing to be fairly simple on paper, and both established that the policies of the council were unclear. Most other questions in this hearing did not achieve either of these ends.

*"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 received would most likely be of a poor quality."*

However, we found much evidence that councillors were using the opportunity to ask questions as an opportunity to make speeches. As one councillor put it, there is a "readiness of members to express their own views." Others expanded:

*"There are certain people of the old style who see the word 'committee' and they go along thinking, this is my opportunity to make a five-minute speech, and then you have to say 'what is your question'? And they add the words 'do you agree?' to the end. Then, because it is a five minute speech by a member, most officers take the view they've had five minutes, I'm going to have ten, to explain why it's not the case that.... That radically throws out the timing."*

*"I do like to ask questions to which I would like to know the answer. That is quite revolutionary sometimes, because... generally people tend to ask questions and make a comment, because it makes them look concerned. It's a statement."*

Inevitably, making statements of this kind brings politics into the overview and scrutiny committee. This can be irksome for witnesses as well as distracting from the purpose of overview and scrutiny. In order for the committee to work cohesively, party political point scoring has to be avoided as it will inevitably cause friction within the committee. The committee must work together if it is to have any impact on the executive. Moreover, witnesses may not be so keen to attend again if they were forced to sit through a number of 5 minute speeches. There was a general agreement by the respondents that members should avoid making long statements in overview and scrutiny committees. Statements and points of view doubtless have more role when deliberations over the output of the process are under way and a report is being drafted, but not when witnesses are present.

In contrast to devolved and national level committees, writing of questions by officers was the exception rather than the rule amongst our

case studies. Questions are sometimes provided by the officers, but most respondents agreed that much of the time panel members do not follow the suggestions, and ask questions of their own which flow from the evidence provided by witnesses. This point applies more clearly to informative rather than interrogative scrutiny. A respondent in one authority stated that:

*“We tried doing that [having prepared questions] and it doesn’t work...I must admit I was surprised when I saw how the select committee system works...but once you see they’ve got the questions there in front of them I just wonder how much homework these guys do. They turn up, read the papers, and then just like actors, read the question out. I’ve got a horrible feeling that’s exactly what they do, they don’t know what they’re asking.”*

It is often as effective to ensure that the committee or panel is sufficiently prepared itself, than to provide them with a list of questions. In Durham County Council the officers often produce a briefing which explains the information they hope to get from the witnesses and a pre-meeting is held. This is an effective way of preparing members for the evidence session as the session will be focused, but there will be sufficient flexibility to respond to answers, and for members to feel empowered rather than led through the process. This approach is common to other authorities:

*“When we had the director of housing and the portfolio holder in, at the meeting prior to them coming we’d actually gone through a list of topics we wanted to ask them. We’d prepared quite extensively in advance. That experience for me was replicated in other task groups I was on.”*

In some authorities, at the end of an evidence session in a scrutiny sub-committee or working group meeting, the chair will ask the scrutiny officer present if they have any further questions for the witness. At other tiers of government, officers or clerks may pass notes to the chair offering possible further questions, but they would not be invited to ask a question themselves.

## ***Good chairing***

The committee chair can be one of the most influential factors in a committee enquiry. Key tasks include directing oral questioning, and managing the relationship with witnesses. One chair explained his role as follows:

*“The most important thing is having a clear direction in your mind as to what you are seeking to achieve, and allowing enough time for the meeting to come to a conclusion.”*

This is a different process from the traditional task of the committee chair. Under the old committee system, the chair was the leading figure of the committee, the nearest equivalent to a member of the executive. The chair’s role was to deliver decisions on behalf of the full council. Under the new system, the chair’s task is more facilitative, brokering interaction between political groups, managing the process of taking evidence, welcoming non-members to the meetings, or taking a lead role in visits to services or service-users. This is particularly important if external witnesses are present (which was very rare under the old system).

At Westminster, the role of committee chairs has recently been acknowledged with an increase in payment for those who hold these posts, and chairs are only allowed to remain in post for eight years. In some authorities, chairs and vice chairs have increased allowances, as, occasionally, do panel chairs.

Chairs may need to be particularly active under two circumstances. One is when there is a party political edge to questioning. This was witnessed in Preston City Council, where a Labour member of the scrutiny committee became agitated at the line of questioning taken by a Liberal Democrat member. The situation was skilfully defused by the Conservative chair, who took over the line of questioning himself. The other requirement on chairs is to prevent members from talking for too long. In local government, committees were traditionally the place in which political statements were made and principles set out. As shown above, many members have been unable to move from statement mode into question mode: this is an example of the problem identified earlier of trying to make the new committees work in the same way as the old ones.

## *Recommendations*

- External witnesses are one of the greatest advantages of the overview and scrutiny process. Panel enquiries should make use of them at every opportunity.
- Members should be prepared to ask questions of witnesses in overview and scrutiny committees instead of making statements. Making statements confuses the new system with the old and will have no positive effect during witness sessions.
- Short, succinct questions are the most likely to gain useful information from witnesses. This is particularly true where evidence must be coaxed out of portfolio holders or officers who may be unwilling to give it.
- The role of the chair in overview and scrutiny is to guide rather than to lead. S/he is not responsible for decision-making but for managing relationships between members, and between members and officers and other witnesses. This suggests that chairs have a particular duty to avoid party political behaviour in committees.

# Chapter 6: Outputs

## Reports

*“Scrutiny doesn’t need to be a three month or a six month project. It can be a one-off hour, or an A4 page report.... It might be that a presentation will satisfy members in terms of providing them with information and letting them feed back their views to the relevant officers.... We had an issue with Travellers and we were able to wrap that up in one meeting where we took evidence from a couple of officers.”*

Not all overview and scrutiny activities lead to the publication of a report with recommendations. However, where investigative work is done by a committee or panel, it is often useful to draw the information into a document, laying out the evidence, and showing the conclusions the committee reached and their ideas for further action.

Reports are written by the scrutiny officers in close consultation with members, in particular with the chair. The reports are then agreed by the committee, sub-committee or panel before being passed to the executive. Precise forms of procedure are discussed below.

There are a number of factors involved in getting recommendations agreed by the Cabinet. The three crucial factors are: the writing of smart recommendations, the procedures in agreeing reports, and the relationship between the committees and the executive.

## Recommendations

In order to have a successful uptake in recommendations, the recommendations must be carefully structured. Some respondents were of the opinion that “you can recommend whatever you want—you don’t have a budget. It is all pie in the sky isn’t it.” However, if recommendations are realistic they are more likely to be implemented. They should not ask for things which would be impossible to deliver. They should not be vague, or they cannot be monitored. In Durham County Council, most recommendations are implemented by the Cabinet. As one interviewee stated:

*“We are trying to make sure that the recommendations are sensible, achievable, and that they are things that we can review.”*

A similar process occurs in Camden:

*“The whole process has to be geared to producing results—from choosing suitable topics and setting sensible terms of reference through to making feasible recommendations. We’ve got better on this. At first, members tended to recommend a large number of actions, often quite detailed. Panels are smarter now, and are going more for a smaller number of key recommendations that will really make a difference.”*

*“You have always got to be careful not to make recommendations that have big resource implications. But all of them have resource implications because they involve staff time.”*

*“When we got to the draft report...we weren’t at all happy with it in the department because there was a whole series of completely unsubstantiated comments. I talked through my response with the executive member...and made sure she was happy with it. And she picked up some points to feed in to the chair of the panel.”*

This points also to another key way of ensuring smart recommendations: basing the recommendations on the evidence collated. As mentioned earlier, having evidence adds influencing power to recommendations.

Many respondents felt that the recommendations which had the most effect in the scrutiny process were those made at a practical rather than strategic level. One spoke of a “more subtle and gradual influence on policy”. In Camden, such practical impacts were at the level of establishing a policy on an issue that had not previously had a policy worked out; appointing a new officer to co-ordinate better networking, making changes to delivery in order to improve a service; or obtaining an agreement to better monitor an existing policy.

The practice of external scrutiny raises issues of how far recommendations can be enforced on external agencies. Where a process of partnership exists, as with health, it is more likely that recommendations will be heeded, but equally it is more likely that recommendations will be adopted if they relate to “things that are already on their way” as one respondent said. The contribution of overview and scrutiny can be to speed up or initiate plans for change which had been under consideration. Some panel recommendations ask officers or cabinet to promote matters, or ‘urge’ or lobby other organisations, including central government. Though this may be done, its success depends on timing and attitudes outside the council’s control.

*“There’s no point in me writing to government departments saying ‘we’ve had a scrutiny panel and recommendation 22 says X’. If you’ve got a sensibly constructed scrutiny process that’s running parallel to, or before, a government white paper or initiative, and comes up with sensible proposals that you can feed in to the consultation process, then you stand a very high chance.... But just doing it off the wall is pointless.”*

Durham County Council has almost all the recommendations of the committees agreed by the cabinet. Following the agreement of the draft report by the working group, the report would then be agreed by the relevant sub-committee, then the overview and scrutiny committee. As the overview and scrutiny committee has all non-executive members of the council on it, agreement of each report by this committee means each report is strengthened by the buy-in of all members.

There is an agreement within Durham County Council that draft reports are looked at by the Chief Officers Management Team to make sure that they are realistic.

*“Before we come up with any recommendation they are tested out with the department. The members are fairly independent on this. If someone came along and said ‘well we don’t want you to do that’ they are more likely to say ‘well we are going to do it’ but much depends on the way that the recommendation is framed.”*

The scrutiny officers and relevant committee members explain the recommendations to the officers and discuss them. The report then goes on to the cabinet briefing session (the cabinet meets in camera before the full meeting). The relevant officer and chair of the working group presents the report to the cabinet in the public meeting. The Council Constitution states that the agenda for executive meetings shall include an item entitled ‘issues arising from overview and scrutiny’. Where an item is not considered by the executive within two months, the executive is compelled to explain why this is the case. There is a clear process for moving reports through the council to the cabinet.

In Cornwall, the overview and scrutiny committee chair and the relevant cabinet member present the report together to the rest of the cabinet. The reports are also presented to the Chief Officers’ Management Board. This curious alliance derives from the all-party cabinet and consensual tradition of Cornwall. A cabinet member interviewed stated, “if a panel of members have looked at it, I don’t feel it’s my place, as a member of the executive, to in any way counter, gainsay, or argue with what a panel of members have looked at.” This suggests a level of decision-making involvement for panels that is unusual elsewhere.

In Camden, each panel report goes through a specified process. If it concerns Council departments, it must be read through by the department, which can draw attention to factual errors or points with which they strongly disagree. The report must be approved by the Overview and Scrutiny Commission, who will themselves add or subtract points if they feel they have not been dealt with. The panel chair and the chair of the Commission will then present the report to cabinet. This means that a governing party and, sometimes, an opposition party representative present the report together.

The full acceptance of recommendations by the Cabinet in Durham is undoubtedly, to some extent, the result of the large Labour majority. The members do not feel threatened by the opposition and feel more prepared to accept both criticism and recommendations of the overview and scrutiny committees.

Again, the fact that the current Leader had previously been involved in scrutiny makes a difference.

*“The current leader used to be chair of scrutiny. That makes a big difference because he is very supportive of the process.”*

The review of early years education in Kent indicated the importance of relationships between the different people involved in the overview and scrutiny processes. The panel contained a majority of Conservatives (the majority party), who were able informally to keep their cabinet colleagues informed on the progress of the review. The panel recommended a substantial expansion of council spending on nursery provision, which ran against the grain of the ruling party’s efforts to keep spending down and to permit free rein to market provision. However, the majority party on the panel were persuaded that expanded provision was necessary. There was also tacit support for a change in policy from officers. Hence, it was possible to build up support for the change during the process: if a panel report had been presented to cabinet in a confrontational way the changes might not have taken place so easily.

### ***Implementation and follow-up***

In order for the overview and scrutiny process to be fully effective it must be followed through past the production of a report. The purpose of tracking recommendations is to ensure that members know what has happened as a result either of overview work or of criticisms in a scrutiny committee process. Tracking also aids the collective memory of the scrutiny committees—if members know that a certain policy was unsatisfactory six months ago, and is still not satisfactory, they may redouble their criticism.

*“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.”*

In the above member’s authority, it was his own intervention (as an overview committee chair) which established the propriety of members following up recommendations. Elsewhere, a formal process exists in Camden—there are regular reports back to the overview and scrutiny

committee on progress on action plans which resulted from panel recommendations, and a panel and call-in monitoring report is produced each quarter. In other authorities, neither the constitution nor individual members have established any process, leaving the recommendations of a report in limbo:

*“We produce a report, it gets signed off by committee, goes to the cabinet and then what happens to it? You tell me—I don’t know. I think a lot of the time we are a talking shop.”*

The fact that most detailed enquiries in our case studies were carried out by time-limited panels strengthens the need for an effective follow-up process. Often the responsibility for follow-up would devolve on to the member who had chaired the panel—who, six months later, would then be an ‘ordinary’ member again. Alternatively, the chair of the parent committee sometimes took responsibility for following up. It helps to ensure that there are processes in place in order to know what happens to a report after it goes to Cabinet. Once the cabinet has seen the report, the recommendations they agreed should be tracked through to implementation. North Tyneside are currently developing tracking software for use by both scrutiny and the best value reviews.

*“The key issue emerging now is the need to track recommendations and make sure they are delivered, which is monitoring the departments where the work is actually done.”*

Not only is it a case of tracking recommendations through to implementation, but pressing the executive members and officers on their progress towards implementation on a regular basis.

*“The Council has a tracking system for decisions of the Council and Cabinet. In addition the scrutiny committees and sub-committees periodically call in the Mayor or Cabinet members to report on progress in implementing recommendations.”*

*“We always re-visit our recommendations every six months. We monitor what has been done. I was on a working group on sustainability. We are going to be coming back to that for the second time because we*

*did flag up that we thought that, although they were implementing our recommendations, they weren't implementing them as fast as they could."*

Reports can also be followed up by committees looking into the same policy area or same service provision a number of years on to see what differences can be monitored. Once a committee builds up a level of expertise into an issue, repeating investigations can be a fast process and can retain the pressure on the executive to move towards a certain course of action.

### ***Recommendations:***

- It is not improper for overview and scrutiny to gauge officer and executive reactions to recommendations in advance. This need not lead to committees abandoning points which they know are opposed by the executive. Knowing likely reactions may lead the committee to stress some recommendations more strongly than others, in order to impact strongly where they can and play down where they cannot.
- Recommendations by overview and scrutiny committees often relate to issues which are already under discussion by the executive or departmental officers. But an intervention from overview and scrutiny will often push an issue several places up the executive's list of priorities, which in itself is a significant and valuable contribution to the policy-making process. Overview and scrutiny should not be troubled by seeing its contribution in this light.
- It is vital for authorities to have a protocol for following up reports, which has been signed up to by the executive, the senior departmental officers, and the lead members for overview and scrutiny. A report which is not followed up stands a strong chance of being ignored, particularly if no follow-up is the typical pattern of events in the authority.

# Chapter 7: Old habits die hard?

## Cultural Hangover

A number of authorities ostensibly conduct overview and scrutiny in a similar manner to the old committee system. They receive copies of cabinet reports written by officers, and may question officers, demand more information, or decide to carry out an enquiry through a review. This is not necessarily an entirely ineffective way of conducting overview and scrutiny, but it can lead to similar problems as those encountered under the old system: the need to prepare for huge quantities of paperwork, lack of time in the meeting itself, and lack of focus on what is being done by the council. It can also encourage members to focus on the functioning of the authority and the services it provides—a kind of producer interests mentality—rather than looking at the authority's interaction with its residents.

## Politics in committees

Scrutiny committees at all levels of government are an opportunity for the assembly body to question the executive body. Plenary sessions are the place where the political parties clash. Committees are where the serious questioning of the executive should take place. Party politics only weakens the ability of committees to be effective in their task.

Recommendations which are based on strong evidence gathered during the course of the inquiry are usually not a matter for a political debate. The recommendations will be weakened if the whole committee has failed to agree, particularly if they disagree along party lines. Therefore whipping by parties in overview and scrutiny committees is strongly discouraged by government guidance:

*“Although this is a matter for political parties to consider, both locally and nationally, the Secretary of State believes whipping is incompatible with overview and scrutiny and recommends that whipping should not take place.”*

However, old traditions die hard in local government, and we found plenty of evidence of party political activity within committees. Members normally sit in their party grouping in committees as they would do in plenary. This

may either be a symptom of, or exacerbate, the adversarial relationships within the committees. Contrary to the government guidance, one respondent stated that:

*“Conservatives have pre-meetings. I can't say whether there is whipping in there. I suspect that if not whipping there is a concerted attempt to produce a common view beforehand. It almost defies belief that it doesn't happen.”*

North Tyneside currently has a peculiar political situation, with a Conservative mayor and cabinet but a Labour majority on the council. This creates a source of tension between the two. One interviewee stated that, since the election of the Conservative Mayor “there has been some noticeable party political influence in the way in which meetings have been conducted.” One interviewee expanded on this:

*“[the Cabinet] just put their bullet proof vests on. They see us as assassins. [They] think we are attacking them because they are Tories, not because of their policies. It takes a lot for them to turn round and say that is a valid point. There is a reluctance on the other side to see why we are here.”*

However, this was not the case in all authorities. For instance, Cornwall County Council has a strong tradition of consensus between the political groups. Interviews suggested that this was not an empty boast: the tradition of consensus was referred to by many respondents as a fundamental factor both in making scrutiny work and in influencing the shape that the system has taken on. Cornwall has only had one majority party in its history.

It seemed to be a common theme that, whereas party politics was common in the full committees, panels were much less adversarial when undertaking policy development. This kind of work is more likely to encourage individuals from different parties to work together.

Another common theme was that new council members were normally more enthusiastic about overview and scrutiny, and less prone to making political statements in committee. Significant turnover in councillors, of 20–35%,

had occurred in all of the case study authorities during the last three years. New councillors tended to abandon party politics more readily in overview and scrutiny, whilst political division and whipping was a key characteristic of the previous local government structures. As older members retire, it is possible that political division will retire with them. And as more members get used to working together on working groups, it is likely for the less adversarial relationships created to spread into the work of the full committees.

## ***The relationship with Cabinet members***

In order for scrutiny to be successful, there has to be a good relationship between the cabinet and overview and scrutiny committees. A good relationship is important because the mutual respect means the cabinet member is more likely to take seriously a recommendation of the committee, and the committee is more likely to work seriously if it feels that its views will be taken account of. While, as suggested earlier, we found relatively few examples of direct attempts to influence overview and scrutiny by cabinet members, it was rare for cabinet members to cultivate committees as positive forums for policy development, especially if committee chairs were not from the executive party.

However, in West Oxfordshire the cabinet members attend overview and scrutiny committees and tend to be vocal during the meetings. Although there can be benefits from this (for instance, cabinet members can be sources of information and expertise) it can threaten the autonomy of the committee.

*“I do have certain misgivings about members of the cabinet turning up for meetings and trying to put forward the cabinet’s position because that is not what overview and scrutiny is about. We try to walk a tightrope there.”*

Possibly the attendance of cabinet members has the biggest impact on members of the majority group:

*“With one or two possible exceptions on the Conservative side there isn’t any real questioning of things. We have cabinet members sitting in on everything. We have cabinet members actually leading*

*discussions on overview and scrutiny committees.”*

The cabinet member interviewed saw nothing wrong with his sitting at the same table as the scrutiny members and intervening in their discussions.

*“Generally I find that they not only question me, but that they are very open in the sense that they chair normally allows non-voting members to put their oar in because they are saying ‘what made you do that decision’. It might well be that I put up my hand beforehand and say ‘we decided that because....’”*

Other authorities witnessed different reactions: on one early occasion in Cornwall, a committee voted to ask the executive member to leave when he attended their meeting. In other meetings in Cornwall, executive members attend and respond when questions are directed at them, otherwise remaining silent. In East Cambridgeshire, the former leader had regularly attended overview and scrutiny sessions and had spoken without any protest.

We found increasing instances of authorities establishing annual or six-monthly scrutiny sessions between each executive member and the relevant scrutiny committee. Where this was taking place it had normally been introduced later than the remainder of the overview and scrutiny structure, in response to a lack of opportunity to ask general questions of the executive. This is a commendable development, mirroring the ‘ministerial monthly report’ in the National Assembly for Wales. It permits committees to range over the portfolio of an executive member more easily than can be done if a specific policy area is under scrutiny.

## ***Back-bench frustration?***

A crucial ingredient to successful overview and scrutiny is the enthusiasm of members. For many of those who were members for a long time before the changes introduced by the Local Government Act 2000, their new role as back-bench members has left them dissatisfied and un-motivated. As overview and scrutiny members it is true that they are no longer involved directly in much of the decision-making in the authority. However, in a sense this battle has already been fought and lost through the

passing of the 2000 Act. For overview and scrutiny to be successful, a different process and culture is needed.

A vital part of this process is simply the willingness to make overview and scrutiny work. It is not a passive system, and it will integrate into the council's activity, and extend its reach into policy, according to the actions of the members who carry it out. Where members do not have a vision for the system, it is unlikely to work. For example, West Oxfordshire appears to be stuck a vicious circle: committees will not carry out investigative work because they think the cabinet will not pay any attention to it, but the cabinet may not pay any attention to the work committees do because it lacks the force of evidence.

A key feature of the findings of much research looking into the new local government structures has been the evidence of frustration at the new system by many councillors. This research project has found that authorities that do no proactive work, have more frustrated back-bench councillors.

*"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 by a certain view. I think if you went around and the majority of members would prefer to return back to the old system because it has so long been embedded in them and it is still within the culture of the council."*

*"There is still, and this is true of all parties, there is still a hankering back to the old committee system and a feeling that this has been foisted on us and therefore they are not particularly interested."*

*"Overview and scrutiny is a waste of time"*

However, it is important to note that this was not the view of the majority of members interviewed. Many welcomed the changes in principle whilst believing that either party politics, or an inappropriate structure, was preventing it from working properly in their own authority. Others believed that the new process was working well and was an improvement on the old system.

Most respondents believed that new members were far more eager than existing ones to get involved in, and make use of the scrutiny process:

*"We've got the old committee members and the new ones. The new ones want to get involved, they're quite happy to take things on. You give them a job to do and they go and do it, whereas the old ones are used to being spoon-fed. They want to sit back...[The younger ones] are the best—they have a broader education and are much less impressed by rhetoric."*

*"There are some that are steeped in tradition and unwilling to change. But as time goes by more and more take part."*

*"More and more members have begun to realise that they have a lot more investigative powers. They can bring about change and hold the cabinet to account and make the cabinet members change."*

A notable theme from respondents in Cornwall was the popularity of the scrutiny system amongst members, many of whom suggested several ways in which it was an improvement on the old system. Even respondents who were sceptical about its effectiveness so far suggested advantages of the new system. One respondent suggested advantages of the new system included "a wider perspective, ability to put pressure on the cabinet, much more involvement in the budget process." Another suggested that members were more knowledgeable about the subjects they investigated and hence more involved.

*"I can give you a dozen examples of people who I know would never, ever have chaired a working party or a committee in their four years on the council, and have chaired a single-issue panel and have become the lead member on that issue and made the portfolio holder's life a misery."*



# Recommendations

This section contains all of the recommendations set out in the previous seven chapters. We have re-arranged the recommendations here by the actors to whom they are addressed.

## *Chairs and committees*

- Committee chairs, and vice-chairs, should be held by members of all political parties in rough proportion to the number of seats the party holds on the Council. Where there is a ruling party, this will help to offset any defensiveness of the cabinet against overview and scrutiny.
- Overview and scrutiny is an ideal opportunity to expand participation, in particular because of the opportunities for councillors to connect with their electorates. Participation and visits should be routinely used in enquiries.
- Committees should aim to carry out a variety of work, balancing the types of work described above. Time limits, and in some cases confusion, has often led to certain patterns of work getting locked in early on in the process.
- Committees should spend at least part of their time on focused work, instead of simply monitoring. Receiving reports is a passive process and does not make the best use of the power available to committees.
- Panels are a valuable part of the process of overview and scrutiny. Opportunities should be given to members to work on them. This implies making the panels accessible in terms of time and members' existing workload.
- It is particularly important to balance work between scrutiny of internal and external matters. These are distinct roles, but both properly part of overview and scrutiny. External scrutiny enables relationships to be built with other organisations, allowing the council to exercise its community leadership role. But monitoring and critique of the council's own performance and working practices should not be excluded from overview and scrutiny.
- Co-opting members from outside the council on to committees can be a useful way of bringing in new experience and

expertise into an enquiry. More use could be made of them in some authorities: there are affinities here with the value of outreach. But co-optees should not be treated uncritically, as they may well have professional or personal agendas of their own.

- External witnesses are one of the greatest advantages of the overview and scrutiny process. Panel enquiries should make use of them at every opportunity.
- Members should be prepared to ask questions of witnesses in overview and scrutiny committees instead of making statements. Making statements confuses the new system with the old and will have no positive effect during witness sessions.
- Short, succinct questions are the most likely to gain useful information from witnesses. This is particularly true where evidence must be coaxed out of portfolio holders or officers who may be unwilling to give it.
- The role of the chair in overview and scrutiny is to guide rather than to lead. S/he is not responsible for decision-making but for managing relationships between members, and between members and officers and other witnesses. This suggests that chairs have a particular duty to avoid party political behaviour in committees.

## *Authorities as a whole*

- Authorities should establish a co-ordinating body to prevent unnecessary duplication of tasks and to prevent issues falling between committee remits. This could take the form either of a panel of chairs or a single co-ordinating overview and scrutiny committee.
- The use of time-limited panels should be encouraged in those authorities where they are not used. They are largely an effective way of realising the 2000 Act's aim of moving the scrutiny process away from party politics.
- As smaller committees generally work more effectively than larger ones, for most purposes numbers should be kept low if possible. This might also enable more committees to be established, reducing

the workloads of councillors on the existing committees (though this has staffing implications).

- It is not clear whether overview and scrutiny are best carried out by one committee or divided between two classes of committee. If the latter, however, it is important that information is shared between the two types of committee. It should also be possible to ask searching questions in an overview committee, and probe alternatives in a scrutiny committee: the two activities are not so distinct as to require total separation.
- As the Government has recommended, the presumption in overview and scrutiny committees, and panels, should be towards public meetings and openness. Where meetings are not held in public, minutes and agendas should be available to the public. Overview and scrutiny is weakened if it becomes a private, internal practice.
- It is not improper for overview and scrutiny to gauge officer and executive reactions to recommendations in advance. This need not lead to committees abandoning points which they know are opposed by the executive. Knowing likely reactions may lead the committee to stress some recommendations more strongly than others, in order to impact strongly where they can and play down where they cannot.
- It is vital for authorities to have a protocol for following up reports, which has been signed up to by the executive, the senior departmental officers, and the lead members for overview and scrutiny. A report which is not followed up stands a strong chance of being ignored, particularly if no follow-up is the typical pattern of events in the authority.

## *Officers*

- Forward planning of the overview and scrutiny process is particularly important, to enable councillors to plan their personal diaries in advance. This is particularly so for part-time councillors, and where time-limited panels are used.
- All parts of an enquiry should be timetabled well in advance. Local councillors' time is very limited and precious, as most of them are part-time. It is particularly important that enquiries do not sprawl out of the initial

time allocated to them, as has been common in Scotland, Wales and Northern Ireland.

- Procedures should be in place to ensure all committee members have an equal right to place an item on an agenda. Officers need to be prepared and able to ensure that items do not get repeatedly or routinely ignored.
- Overview and scrutiny committees should consider how they might develop relationships with the executive to prevent duplication of work. It is rarely a good use of time for both executive and overview to review the same policy. This might, for instance, take place through formal protocols or through regular meetings between the executive and a co-ordinating panel.
- It is vital that overview and scrutiny committees and staff maintain good relations with departmental officers. But this depends upon an authority's officer culture accepting overview and scrutiny's right to investigate; and likewise, upon members treating officers with respect during an investigation.
- Recommendations by overview and scrutiny committees often relate to issues which are already under discussion by the executive or departmental officers. But an intervention from overview and scrutiny will often push an issue several places up the executive's list of priorities, which in itself is a significant and valuable contribution to the policy-making process. Overview and scrutiny should not be troubled by seeing its contribution in this light.

# Appendix 1

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## DURHAM COUNTY COUNCIL



### A SCRUTINY CHECK LIST

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#### CHOICE OF PROJECT

Take into account:

- Best Value Performance Plan and relevant Performance Indicators.
- Comprehensive Performance Assessment
- Council's Medium Term Improvement Priorities 2004-7
- The timing of relevant Best Value Reviews.
- Complaints report.
- Timing of inspections or external/internal audit reports.
- Potential litigation or Ombudsman complaint.

#### PROCESS

(these are possibilities and may not all be appropriate)

- Form Working Group – use existing expertise wherever possible.
- Consider best layout for accommodation.
- How should information be provided – would e-mail only be appropriate (eg. like Sustainability Group)?
- Consider ground rules – timescale, frequency of meetings, any potential conflicts of interest, challenging but positive, effective listening.
- Factual position statement – What are we scrutinising and why?
- What are the criteria by which to judge whether or not the service/policy is effective?

- What might be the outcome?
- Agree terms of reference of project and the scope.
- Consider whether external 'expert' assistance required.
- Consider whether an external stakeholder should be co-opted.
- Consider the four Cs – challenge, compare, consult, compete.
- What specific evidence is needed (Why? From whom?).  
What are the main questions to be asked and of which parties?  
What would be the impact of any proposed changes?  
Prepare questions in advance. (Oral evidence or written?)
- Check on any other scrutiny reports on this topic with the Centre for Public Scrutiny
- Consult/interview stakeholders
- Consult public?
- Site visits (consult/invite local member(s))
- Consult Citizens Panel/Focus Group.
- Consult/Involve 'Investing in Children'
- Discussions with officers.
- Consult/ask for views from local MPs
- Speak to Cabinet member with appropriate portfolio, or members' champion.
- Consider good practice in other areas – how are other authorities dealing with this issue. Is there good practice outside the public sector?
- Consider duty of continuous improvement.
- Frame recommendations.
- Report to Overview and Scrutiny Committee.
- Report to Cabinet and seek action plan/response.
- Set review date.

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## *Appendix 2: Typology of scrutiny in the devolved institutions*

These boxes are reproduced from Mark Sandford and Lucinda Maer, *Scrutiny Under Devolution: Committees in Scotland, Wales and Northern Ireland*, Constitution Unit, London, 2003, p.6–7.

### ***Box 1: A typology of scrutiny***

***Strategic policy review:*** these are large-scale forward-looking reviews into widely-drawn policy areas. Examples include the Review of Higher Education in Wales, a substantial tranche of the Education portfolio; also the Impact of Drugs on Deprived Communities enquiry in Scotland, a cross-cutting issue but with a similarly wide range. Despite being forward-looking in their focus, these reviews often look in depth at recent approaches to the policy field.

***Forward policy proposal:*** these focus on particular issues or policies. Examples are the committee enquiries into proposals for Children’s Commissioners. These may be inspired by proposed or draft legislation.

***Event enquiry:*** These are backward-looking reviews of one-off events. The ‘disaster review’ comes into this category. An example is the Titanic Quarter lease enquiry in Northern Ireland, triggered by allegations made on a television documentary. Compared with strategic enquiries (and legislation), these reviews are relatively rare in the devolved institutions. They offer the best opportunity for press coverage due to their topical quality. As with strategic policy reviews, these reviews often find it necessary to delve into recent policy practice. The Exam Results enquiry in Scotland is an example of this: the committee heard considerable detail about recent reforms within the Scottish Qualifications Authority as background to the analysis of the event (a failure of the SQA computer systems).

### ***Box 2: Other forms of scrutiny***

***Legislative and secondary-legislative:*** subject committees in the Scottish Parliament and Northern Ireland Assembly are obliged to consider primary legislation passing through the institution. This took a very substantial amount of committee time in the first term. The National Assembly for Wales has only secondary legislative powers.

***Annual reports and legacy reports:*** committees are increasingly producing annual reports listing their achievements. Both the Scottish Parliament’s committees and those of the National Assembly for Wales have produced ‘legacy reports’ enumerating the Committees’ achievements and suggesting directions for future work.

***Budget reports:*** these are distinct from the work of public audit committees. The Scottish Parliament’s Finance Committee reports annually on the Executive’s budget, incorporating reports from subject committees. The Northern Ireland Assembly’s Committee for Finance and Personnel produces co-ordinated reports on the Draft Budget and on the financial aspects of the Executive’s Position Report. Practice in Wales has been less assiduous, with some reports produced on annual budgets by the committees.

***Non-departmental public bodies:*** some NDPBs are invited to annual sessions examining their performance and forward work programme. This procedure appears to be most common in Wales: however, opinion over its effectiveness is divided. NDPBs will frequently be present at other committee sessions, particularly if a review of policies which relate to them is taking place: it is in their interest to keep in touch with Committee opinion.





