

Governance Committee

24 June 2019

Part I

New National Scrutiny Guidance

Report by Director of Law and Assurance

Summary

At its meeting in May 2019, the Performance and Finance Select Committee carried out its annual scrutiny performance review and was informed that new statutory guidance on overview and scrutiny in local authorities had just been published by the Government. It recommended that a review of scrutiny should be undertaken by the Governance Committee to consider the national guidance and best practice on scrutiny including the appointment of committee chairmen and vice chairmen. In addition, a notice of motion approved at the County Council meeting on 7 June agreed to invite the Governance Committee to consider whether any changes should be made to the Council's scrutiny arrangements.

This report provides details of the new national guidance for the Committee to consider. The report also outlines plans already in place for a number of activities to review scrutiny, including through the annual report to County Council, a member development session and reflection on learning from the recent Ofsted Inspection of Children's Social Care. The Committee may wish to consider how best to take into account the outcomes of these activities.

Recommendations

The Governance Committee is asked to:

- (1) Review the new statutory scrutiny guidance and consider any changes which may be needed to the Council's scrutiny arrangements;
- (2) Recommend any agreed changes to governance arrangements for early implementation for approval by County Council in July 2019; and
- (3) Consider whether a more thorough review of scrutiny should be undertaken for reporting back to the Committee later in the year and, if so, what the focus of this review should be and how it should be carried out.

1. Background and Context

- 1.1 New statutory guidance on overview and scrutiny in local authorities was published in May 2019 by the Ministry of Housing, Communities and Local Government. Current legislation recognises that authorities are best-placed to determine the overview and scrutiny arrangements that best suit their own needs, and so gives them flexibility to decide which arrangements to

adopt. The new guidance was informed by a review of scrutiny undertaken by the House of Commons Select Committee in 2017 to which this Committee provided [comment](#).

- 1.2 The guidance is statutory and therefore local authorities must 'have regard' to it when exercising the scrutiny function. The guidance does not need to be followed in every detail, but it should be followed unless there is a good reason not to. The guidance also recognises that every council approaches scrutiny differently, and that what might work well in one council might not in another.
- 1.3 The statutory guidance is set out at **Appendix 1** and is summarised at paragraph 3, including some specific issues for consideration.

2. Scrutiny at West Sussex County Council (WSCC)

- 2.1 The scrutiny function at the Council was set up following the Local Government Act 2000 which replaced the committee structure in local authorities with new executive governance arrangements. This led to the establishment of overview and scrutiny committees to ensure non-executive members could hold the executive to account. These committees have always been known as select committees at WSCC, and by 2003 six of these were in place. Since that time, the Governance Committee has carried out several reviews of the scrutiny function, including in 2011/12 when the number of committees was reduced to four and more recently in 2016, when proposals to reduce the number of committees were not taken forward.
- 2.2 The Performance and Finance Select Committee (PFSC) has responsibility for an overview of the scrutiny process, including approval and monitoring of the work programme, development and best practice, performance and the training needs of scrutiny members. At its last meeting, PFSC carried out its annual review of scrutiny and a number of issues were raised, including:
 - the independence of scrutiny
 - the appointment of chairmen and vice-chairmen
 - how proactive committees are at identifying topics for scrutiny.

PFSC agreed to recommend to the Governance Committee that it should carry out a review of the scrutiny arrangements at the Council, to take account of the new national guidance and best practice to improve effectiveness.

- 2.3 The annual scrutiny newsletter (which reports on scrutiny activity and development, including feedback from the member survey on scrutiny) is due to be reported to County Council in July 2019. The member survey has highlighted some areas of concern, with low response rates (compared with previous years) relating to:
 - Select committees' ability to influence decisions appropriately
 - Clear, measurable outcomes from the scrutiny process
 - Select committees' opportunity to input into policy development
 - The appropriateness of select committee involvement in issues

- 2.4 These issues are due to be considered by select committee business planning groups (BPGs) as well as at a member day session planned for later in the year. Areas with more positive scores included that the select committee work programme reflects issues of greatest public concern/importance and members ability to commit the necessary time to undertake their role
- 2.5 The Children and Young People's Services Select Committee (CYPSSC) is due to consider the implications of the finding of the recent Ofsted Inspection of Children's Social Care that "oversight, scrutiny and challenge from corporate leaders, including the children's select committee and the corporate parenting panel, have not been sufficiently rigorous". It will identify any specific changes required to ensure a more effective approach to the scrutiny of Children's Social Care, and there may be wider implications from this work for the whole scrutiny function.
- 2.6 A member development session on scrutiny is planned for the autumn of 2019, with input from the national Centre for Public Scrutiny, which will include consideration of:
- Feedback from CYPSSC
 - The effectiveness of scrutiny at WSCC and how this should be monitored and evaluated
 - How to improve scrutiny input into performance monitoring
 - Members' roles in scrutiny (to include questioning skills)
 - Best practice from elsewhere

3. Statutory Guidance on Overview and Scrutiny

- 3.1 The new national guidance states that effective overview and scrutiny should:
- **Provide constructive 'critical friend' challenge,**
 - **Amplify the voices and concerns of the public,**
 - **Be led by independent people who take responsibility for their role; and**
 - **Drive improvement in public services.**
- 3.2 The guidance recognises that local authorities are best-placed to determine the scrutiny arrangements to suit their individual needs, so there is a degree of flexibility in deciding what arrangements to adopt. It stresses the importance of organisational culture to effective overview and scrutiny and recognises that councils that welcome challenge and have a strong commitment to this from the top - both senior members and officers - are the most effective.
- 3.3 The guidance is set out in six themes: culture, resourcing, selecting committee members, power to access information, planning work and evidence sessions. These are summarised below, including specific questions/issues for the Committee to consider:
- 3.3.1 **Culture** (Guidance pages 8 to 12): Organisational culture, behaviours and attitudes of the authority will determine whether its scrutiny function succeeds or fails. Low levels of support for and engagement with the scrutiny

function can lead to poor quality and ill-focussed work that reinforces the perception that scrutiny is of little worth or relevance. It is important that the function is member led. The executive should not try to exercise control over the work of the scrutiny committee and scrutiny chairmen should determine the extent of the executive's participation. The guidance suggests the development of an 'executive-scrutiny protocol' which defines the relationship and how to mitigate any differences of opinion. Impartial officer advice is fundamental to effective scrutiny, particularly statutory officers who have a role in ensuring timely, relevant and high-quality advice to scrutiny.

Issues to consider: If any answer is 'no' or 'not well enough' then the Committee should consider what would change or improve the position:

- a) Are the importance and legitimacy of the scrutiny arrangements recognised and appreciated by all members and officers?
- b) Has a clear role and focus been established for the scrutiny function to deliver work that is of real value and relevance to the authority?
- c) Does early and regular engagement take place between the executive and scrutiny?
- d) Do the executive and scrutiny work together to resolve any disagreement, particularly in relation to the findings and recommendations of scrutiny? - Would an executive-scrutiny protocol would be beneficial?
- e) Are officers able to provide impartial advice to scrutiny committees?
- f) Are all members and officers aware of the role, value, powers and membership of scrutiny committees?
- g) Is Full Council informed of the work of scrutiny? (N.B. At WSCC, there is an annual scrutiny report to County Council and there is the ability for select committees to request a debate)
- h) Is the work of scrutiny communicated to the wider community – and how?
- i) Are scrutiny members able, and supported, to adopt an independent mind-set in order to carry out their work effectively.

3.3.2 **Resourcing** (Guidance pages 13 – 14): Developing and maintaining an effective scrutiny function requires sufficient resource to be allocated. This is not always about budget and officer time but is also about the provision of effective support to those who carry out the scrutiny function (officers and members). Members should be provided with the support needed to be able to ask effective questions and make effective recommendations.

Issues to consider (and comment on for any improvement options):

- a) Are the necessary resources allocated to support the scrutiny function?
- b) Is the role of the statutory scrutiny officer fulfilled appropriately? (N.B. this role sits with the Head of Democratic Services)
- c) Is the officer resource model appropriate to the provision of effective scrutiny? (N.B. At West Sussex there is an integrated model, with officers supporting both the scrutiny and executive).
- d) Are officers providing scrutiny support able to offer impartial advice?
- e) Is the training and support provided to members adequate?

3.3.3 **Selecting Committee Members** (Guidance pages 15 – 17): A committee must 'possess the requisite expertise, commitment and ability to act impartially to fulfil its functions'. The chairman plays a key leadership role in

terms of independence, profile, influence and ways of working. The guidance is not prescriptive on how chairmen should be appointed but suggests all councils should consider taking a vote by secret ballot.

Issues to consider:

- a) How scrutiny members are selected and whether they have the necessary experience, expertise, interest, ability to act impartially and to work as a group.
- b) How the Council appoints select committee chairmen, to include consideration of a vote by secret ballot.
- c) How external advice or evidence is provided – through the co-option of members or invitation of external witnesses to meetings?

3.3.4 **Power to Access Information** (Guidance pages 18 – 20): Scrutiny committees need access to relevant information and to receive it in good time. They have the power to access information and to require members of the executive and officers to attend to answer questions. Scrutiny members should have access to key information about the management of the authority, particularly on performance management and risk. While each request for information should be judged on its individual merits, councils should adopt a default position of sharing all information they hold with scrutiny committee members.

Issues to consider:

- a) Do members have timely access to the right information on the management of the authority, including performance and risk?
- b) How well do scrutiny members liaise with the executive and officers over information they require and why? (N.B. Select committee BPGs play a role in this)
- c) How select committees seek information from external organisations.

3.3.5 **Planning Work** (Guidance pages 21 – 24): Effective scrutiny should have a defined impact, with the committee making recommendations that will make a tangible difference to the work of the authority. To do this, scrutiny committees need to plan a work programme that is flexible enough to accommodate any urgent issues that arise during the year. At WSCC each select committee has a BPG responsible for planning the work of the committee. BPGs meet three times per year and use a checklist which is used to prioritise issues (set out at **Appendix 2**).

Issues to consider:

- a) How the work programme is developed.
- b) How evidence is gathered – including input from the public, the Council's partners and the executive (including senior officers).
- c) How supporting information is used (performance, finance, risk, business cases) to develop priorities for scrutiny – and whether such information is kept under regular review.
- d) Whether focussed scrutiny takes place.
- e) How issues are prioritised or ranked.

- f) What different ways of working are used to carry out scrutiny – agenda items, themed meetings on single topics, task and finish groups (short and long-term), by establishing standing panels.

3.3.6 **Evidence Sessions** (Guidance pages 25 – 26): These are a valuable way in which scrutiny committees can inform their work and they can happen at formal committees, in informal task and finish groups or at standalone sessions. The County Council rarely holds this type of session, most work being led by officer reports and draft executive decision reports and with preparation and planning for scrutiny primarily carried out through BPGs and by the chairman and vice chairman (including at pre-agenda meetings).

Issues to consider:

- a) Should evidence sessions be used more?
- b) How are the overall objectives for scrutiny developed?
- c) Are all scrutiny members aware of the objectives for scrutinising issues? – How are they involved in work programme planning?
- d) Should ‘wash up’ meetings be held to review whether objectives have been met and whether any lessons have been learnt for future sessions?
- e) The role and value of BPGs and pre-agenda meetings.
- f) How recommendations are developed and whether they are SMART (specific, measurable, achievable, relevant, timed).

3.4 The Committee may consider that these complex and overlapping issues require a more thorough engagement with all members and the benefit of a broader range of information and options for consideration. This could be undertaken through:

- A task and finish group with a specific remit
- Separate consideration by each service select committee
- A member development day
- A report to the Committee with some options for change

In addition, the Committee may identify the need for additional information such as:

- Examples of practice elsewhere
- Feedback from consultation with all members
- Options or ideas from internal and external sources
- The output from the CYPSSC review.

3.5 When considering the range of issues it may be that the Committee is able to identify changes which should be considered at an early stage and recommended for approval at the next meeting of the County Council. Of particular note is the output from the notice of motion at County Council in June which identified the arrangements for the appointment of chairmen and vice-chairmen of select committees as one requiring attention

Factors taken into account

4. Consultation

PFSC carried out its annual review of scrutiny performance 2018/19 in May 2019. This included analysis of the annual scrutiny member survey which will also be reported, through the scrutiny newsletter, to County Council in July 2019. Consultation on the Council's scrutiny structures has been carried out previously, including through a review in 2016. If the Governance Committee decides to carry out a more detailed review of scrutiny, any necessary consultation and evidence gathering will be considered as part of this and to support any recommendations for change.

5. Risk Management Implications

There are reputational and operational risks if an effective scrutiny function is not provided.

6. Other Options Considered

Options for how scrutiny is carried out at the County Council may be considered as part of any further review. In 2016, as part of a Democratic Services Savings review, a number of options were identified and subject to consultation with members. These included reducing the current configuration of select committees from four to three, two or one. These options were not supported by members.

7. Equality Duty

Not applicable as this is an internal report. Any further review of scrutiny will consider equality issues as appropriate.

8. Social Value

Not applicable

9. Crime and Disorder Act Implications

Not applicable

10. Human Rights Implications

Not applicable

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Appendices:

- **Appendix 1** – Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities, May 2019
- **Appendix 2** – Scrutiny work programme planning checklist

Background Papers

None