



**Committee:** OVERVIEW AND SCRUTINY COMMITTEE

**Date:** THURSDAY, 1 AUGUST 2024

**Venue:** MORECAMBE TOWN HALL

**Time:** 6.00 P.M.

Councillors are reminded that as Members of Overview and Scrutiny they may not be subjected to the Party Whip, which is prohibited under the Lancaster City Council Constitution.

## AGENDA

**1. Apologies for Absence**

**2. Minutes**

To receive as a correct record the Minutes of the Meeting held on 29th May 2024 (previously circulated).

**3. Items of Urgent Business authorised by the Chair**

**4. Declarations of Interest**

To receive declarations by Councillors of interests in respect of items on this Agenda.

Councillors are reminded that, in accordance with the Localism Act 2011, they are required to declare any disclosable pecuniary interests which have not already been declared in the Council's Register of Interests. (It is a criminal offence not to declare a disclosable pecuniary interest either in the Register or at the meeting).

Whilst not a legal requirement, in accordance with Council Procedure Rule 9 and in the interests of clarity and transparency, Councillors should declare any disclosable pecuniary interests which they have already declared in the Register, at this point in the meeting.

In accordance with Part B Section 2 of the Code Of Conduct, Councillors are required to declare the existence and nature of any other interests as defined in paragraphs 8(1) or 9(2) of the Code of Conduct.

**5. Work Programme, Training and Appointment Report (Pages 3 - 4)**

Report of Chief Officer – Governance.

**6. Scrutiny Protocol (Pages 5 - 46)**

Report of Chief Officer – Governance.

## **7. Forthcoming Key Decisions**

The List of Forthcoming Key Decisions can be viewed [here](#)

### **ADMINISTRATIVE ARRANGEMENTS**

#### **(i) Membership**

Councillors Brett Cooper (Chair), Sally Maddocks (Vice-Chair), Suhir Abuhajar, Martin Gawith, Chris Hanna, Paul Hart, Abi Mills, Sue Penney and John Wild

#### **(ii) Substitute Membership**

Councillors Sophie Maddocks, Isabella Metcalf-Riener, Joyce Pritchard, James Sommerville and Jackson Stubbs

#### **(iii) Queries regarding this Agenda**

Please contact Jenny Kay, Democratic Support - email [jkay@lancaster.gov.uk](mailto:jkay@lancaster.gov.uk).

#### **(iv) Changes to Membership, substitutions or apologies**

Please contact Democratic Support email [democracy@lancaster.gov.uk](mailto:democracy@lancaster.gov.uk).

MARK DAVIES,  
CHIEF EXECUTIVE,  
TOWN HALL,  
DALTON SQUARE,  
LANCASTER, LA1 1PJ

Published on Tuesday, 23<sup>rd</sup> July 2024.

## OVERVIEW AND SCRUTINY COMMITTEE

### Work Programme, Training and Appointment Report

**1<sup>st</sup> August 2024**

### Report of Chief Officer - Governance

#### PURPOSE OF REPORT

The Committee is requested to consider its Work Programme for 2024/25, feedback on scrutiny training recently provided and note the scrutiny representative appointed to the Mainway Project Board.

**This report is public.**

#### RECOMMENDATIONS

**(1) That Members consider the report.**

**1. Introduction**

1.1 The Committee is requested to consider its Work Programme for 2024/25, feedback on scrutiny training that has been recently provided by the Centre for Governance and Scrutiny (CfGS) and note the scrutiny representative appointed to the Mainway Project Board.

**2. Work Programme**

2.1 Rule 9 of the Constitution, set out below, advises of the process to be undertaken to consider and prioritise its Work Programme.

#### **Rule 9 - Work Programme**

(a) The Overview and Scrutiny Committee and Budget and Performance Panel will be responsible for setting their own Annual Work Programme within the Terms of Reference set out in Part 2, Section 5, 9 and 10 of this Constitution.

The Overview and Scrutiny Committee shall write to all Councillors and the Chief Executive and ask the public for issues that should be considered for inclusion in the Scrutiny Work Programme. A meeting to be arranged with the Chair of the Overview and Scrutiny Committee, Chair of Budget and Performance Panel, the Pre-Scrutiny Champion and members of the Council's Leadership Team. This meeting will allow a preliminary prioritisation of submissions to be conducted and report back to the Overview and Scrutiny Committee. This being subject to the arrangements for consulting on future Work Programme items as set out in the Constitution continuing and the Work Programme being finally agreed by the Overview and Scrutiny Committee.

(b) The Overview and Scrutiny Committee shall meet in its capacity as crime and disorder committee no less than once in every twelve-month period.

2.2 In accordance with the Constitution items were requested and a meeting with the Chair of the Overview and Scrutiny Committee, Chair of Budget and Performance Panel, the Pre-Scrutiny Champion and members of the Council's Leadership Team to consider these was arranged and a preliminary prioritisation has been undertaken. The Committee is asked to consider the recommendations regarding the preliminary prioritisation of items and agree a Work Programme for the current municipal year.

**3. Scrutiny Training**

3.1 Scrutiny training has been provided by Camilla de Bernhardt Lane, Centre for Governance and Scrutiny (CfGS), on 17<sup>th</sup> July 2024. Members of the Committee are asked to provide any feedback and advise whether any further training is needed.

**4. Appointment to the Mainway Project Board**

4.1 The Committee is asked to note the appointment of Councillor Chris Hanna as the scrutiny representative on the Mainway Project Board.

**Conclusion**

5.1 The Committee is asked to consider the recommendations regarding the preliminary prioritisation of the Work Programme, any feedback on scrutiny training and note appointment of a scrutiny representative on to the Mainway Project Board.

<b>SECTION 151 OFFICER'S COMMENTS</b>	
As there are no financial implications arising from this report the S151 officer has no comments to make.	
<b>MONITORING OFFICER'S COMMENTS</b>	
The Monitoring Officer has been consulted and has no further comments to add.	
<b>BACKGROUND PAPERS</b>	<b>Contact Officer:</b> Stephen Metcalfe <b>Telephone:</b> 01524 582073 <b>E-mail:</b> sjmetcalfe@lancaster.gov.uk
None.	

**OVERVIEW AND SCRUTINY COMMITTEE****STATUTORY GUIDANCE ON OVERVIEW AND SCRUTINY  
IN LOCAL AND COMBINED AUTHORITIES****CABINET – SCRUTINY PROTOCOL****1<sup>st</sup> August 2024****Report of Chief Officer - Governance****PURPOSE OF REPORT**

To consider a report on the introduction of a Pre-Decision Scrutiny Protocol.

**This report is public.**

**RECOMMENDATIONS**

- (1) **The Committee is requested to consider the introduction of a Pre-Decision Scrutiny Protocol.**

**1. INTRODUCTION**

- 1.1 Consideration was requested to be given to the introduction of a Cabinet – Scrutiny Protocol by the Committee. Such arrangements are in place in other authorities and assist both Cabinet and Scrutiny to work together more effectively for the good of the district.
- 1.2 At its meeting, held on 6 September 2023, the Committee was provided with a report and a copy of the Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities, previously reported to the Committee on 14 June 2023.

After considering the report it was agreed:

- (1) That the Pre-Scrutiny Champion meets informally with Democratic Support Officers to consider the Forthcoming Key Decisions on a regular basis.
- (2) That the Committee consider the draft Protocol in the new Municipal Year.
- 1.3 Councillor Gawith was appointed as the Committee's Pre-Scrutiny Champion and regular meetings have been held with Democratic Support. To assist with the

process a link to the latest Forthcoming Key Decisions has been included as a standard agenda item.

## **2. DLUHC UPDATED STATUTORY GUIDANCE**

- 2.1 Since the last report to the Committee DLUHC has updated the Statutory Guidance on overview and scrutiny.

DLUHC informs that the guidance reflects new developments such as the further devolution of powers and funding to local areas and the establishment of combined authorities and combined county authorities. Just as the principles in this statutory guidance apply to the good scrutiny function of councils, they are equally fundamental to that of English institutions with devolved powers. The accountability of these institutions is core to the success of areas with devolution agreements, and they should use this guidance alongside that in the English Devolution Accountability Framework and the Scrutiny Protocol.

- 2.1 A copy of the updated Guidance and the report dated 6 September 2023 including the comments of Statutory Officers are appended. A copy of the Guidance has also been emailed to Members of the Committee and has also been downloaded to your Councillors Scrutiny intranet page. The Committee is now asked to consider the draft Protocol, as previously requested by the Committee.

## **3 PROPOSED DETAILS**

- 3.1 The proposed details were submitted to the Committee at its meeting on 6 September 2023 for consideration. These are provided below.

- 3.2 After considering the report and Appendix the Committee requested that officers report back on a Cabinet – Scrutiny Protocol for consideration by this Committee.

- 3.3 Appended to this report are details of the Appendix to the Guidance. This advises that the protocol, as agreed, may contain sections on:

- *The way scrutiny will go about developing its work programme (including the ways in which senior officers and Cabinet members will be kept informed).*
- *The way in which senior officers and Cabinet will keep scrutiny informed of the outlines of major decisions as they are developed, to allow for discussion of scrutiny's potential involvement in policy development. This involves the building in of safeguards to mitigate risks around the sharing of sensitive information with scrutiny members.*
- *A strengthening and expansion of existing parts of the code of conduct that relate to behaviour in formal meetings, and in informal meetings.*
- *Specification of the nature and form of responses that scrutiny can expect when it makes recommendations to the executive, when it makes requests to the executive for information, and when it makes requests that Cabinet members or senior officers attend meetings.*

- *Confirmation of the role of the statutory scrutiny officer\*, and Monitoring Officer, in overseeing compliance with the protocol, and ensuring that it is used to support the wider aim of supporting and promoting a culture of scrutiny, with matters relating to the protocol's success being reported to full Council through the scrutiny Annual Report.*

\* **Note:** a Statutory Scrutiny Officer is not a requirement for city/borough/district councils.

3.4 Most of the bullet points above are already fully covered in the Council's Constitution either in the Overview and Scrutiny Procedure rules in Part 3, Section 3 or elsewhere: -

- The development of the scrutiny work programme is already fully covered by Rule 9.
- Rule 14 sets out the requirements for Cabinet Members, Chairs of Committees, Chief Executive and Chief Officers to attend for matters within their remit.
- Regarding behaviour by Councillors in meetings, that would already appear to be fully covered by the Code of Conduct in the Constitution.
- Rules 10 and 11 both say that Cabinet or Council shall consider any report of Overview and Scrutiny at the first available meeting.
- Pre-scrutiny was featured in the Overview and Scrutiny Annual report, however there was no pre-scrutiny last year. If and when it resumes, it will be reported.

3.5 Taking the above into account and not wishing to duplicate the rules in the Constitution, the area where a protocol would seem to be useful is:

- *The way in which senior officers and Cabinet will keep scrutiny informed of the outlines of major decisions as they are developed, to allow for discussion of scrutiny's potential involvement in policy development. This involves the building in of safeguards to mitigate risks around the sharing of sensitive information with scrutiny members.*

3.6 With this in mind, it would seem that formalising a "Pre-Decision Scrutiny Protocol", rather than a "Cabinet – Scrutiny Protocol" would cover that aspect and provide reassurance to scrutiny members that they are fully able to feed in views before Cabinet decisions are made.

3.7 In order to draft a Protocol for consideration the Committee is asked to consider the following:

- **What the Committee would like to do when they receive the forthcoming list of Key Decisions notice.**

In previous years this has been undertaken with the Chair and Vice Chair of the Committee, Chair and Vice Chair of the Budget and Performance Panel, the Pre-Decision Scrutiny Champion and relevant officers identified by the Chief Executive. This enabled those Members to query and question officers on issues that were to be considered at the next Cabinet meeting and obtain information on background papers.

- **More informal meetings between the Pre-Decision Scrutiny Champion and Scrutiny Chairs and Leader/Deputy Leader/Portfolio Holders.**

The Leader, Deputy Leader and Portfolio holders are asked to attend meetings of the Committee and Panel to discuss and answer questions and queries on their Portfolios.

In developing a Protocol the Committee may wish to cultivate a closer working relationship with Cabinet Members.

- **Cabinet Briefings**

The Committee may want to request that the Pre-Decision Scrutiny Champion be invited to Cabinet briefings and be permitted to ask questions at those briefings. After those briefings the Pre-Decision Scrutiny Champion could raise issues with the Chairs of the Scrutiny Committee and Panel if it is felt that further scrutiny or discussion is necessary.

3.8 The Committee may want to consider the above and other actions it may want to take when considering a Protocol.

3.9 Once the Committee has advised of what it wishes to be included in the Protocol, Officers will produce a draft for consideration by the Committee and Cabinet.

## **4 CENTRE FOR GOVERNANCE AND SCRUTINY (CfGS) – CASE STUDIES**

4.1 Since the last report to the Committee the Centre for Governance and Scrutiny (CfGS) has made available a number of case studies. Members will be aware that the CfGS provides support to local government, the public, corporate and voluntary sectors in ensuring transparency, accountability and greater involvement in their governance processes. Details regarding improvements to the scrutiny function are set out in a recent case study for Cambridge and Peterborough Combined Authority – Strengthening the Scrutiny Function. A couple of the areas the Committee may also wish to consider are:

- Forward Plan – Commitment to provide an extended forward plan of 6-12 months to better enable scrutiny identification of future decisions for early pre-scrutiny.
- Create an informal planning meeting of Overview & Scrutiny Committee with timetabled dates to review the Forward Plan and performance data in order to identify areas of focus for the formal Committee meeting.

4.2 More information can be found on the CfGS website [here](#)

## **5 DETAILS OF CONSULTATION**

5.1 Other local councils in Lancashire were asked to provide details of their Cabinet/Executive-Scrutiny Protocols. These were wide-ranging documents covering areas that would have duplicated our existing rules in the Constitution, so were not that helpful.

5.2 Prior to a final Protocol being considered consultation will need to be undertaken with Members of Cabinet for their input and views, particularly around the inclusion of the Scrutiny Champion at Cabinet briefings, if that is something that this Committee would wish officers to investigate further.

## **6 CONCLUSION**



- 6.1 If the Committee wishes to recommend the adoption of a Pre-Decision Scrutiny Protocol the Monitoring Officer could then take this forward for a decision regarding inclusion in the Council's Constitution after consultation with Cabinet Members and final consideration by this Committee.

**RELATIONSHIP TO POLICY FRAMEWORK**

There are no direct implications as a result of this report.

**CONCLUSION OF IMPACT ASSESSMENT  
(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

There are no direct implications as a result of this report.

**LEGAL IMPLICATIONS**

The Overview and Scrutiny Committee has overall responsibility for the performance of all Overview and Scrutiny functions (under the Local Government Act 2000) on behalf of the Council and ensuring its effectiveness.

There is no legal requirement for the Council to have a Protocol although it is considered best practice in the 'Overview and Scrutiny: Statutory Guidance for Councils and Combined Authorities (MHCLG)' document published in May 2019.

Any recommendations that require Constitutional amendments will be referred to and be considered by the Monitoring Officer for referral to Council Business Committee and/or Council.

**FINANCIAL IMPLICATIONS**

There are no financial implications as a direct result of this report. Any further reports on specific issues contained within this report will require further consideration of the financial implications.

**OTHER RESOURCE IMPLICATIONS, such as Human Resources; Information Services; Property; Open Spaces:**

None.

**SECTION 151 OFFICER'S COMMENTS**

The Section 151 Officer has been consulted and has no further comments.

**MONITORING OFFICER'S COMMENTS**

The Monitoring Officer has been consulted and has no further comments.

**BACKGROUND PAPERS**

DLUHC Overview and Scrutiny: statutory guidance for councils, combined authorities and combined county authorities – 22.04.24.  
To view please click [here](#)

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[Department for  
Levelling Up,  
Housing &  
Communities](#)

Statutory guidance

# Overview and scrutiny: statutory guidance for councils, combined authorities and combined county authorities

Published 22 April 2024

## Applies to England

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# Ministerial foreword

The role that overview and scrutiny can play in holding an authority's decision-makers to account remains fundamentally important to the functioning of local democracy. Effective local authority decision-making is crucial for sector sustainability, and this updated guidance reinforces the role that overview and scrutiny has in making such decisions.

Effective scrutiny helps secure the efficient delivery of public services and drives improvements within the authority itself. Conversely, poor scrutiny can be indicative of wider governance, leadership and service failure.

It is vital that councils, combined authorities and combined county authorities know the purpose of scrutiny, what effective scrutiny looks like, how to conduct it and the benefits it can bring. This guidance aims to increase understanding in all four areas.

Authorities with effective overview and scrutiny arrangements in place share certain key traits, the most important being a strong organisational culture. Authorities who welcome challenge and recognise the value scrutiny can bring reap the benefits. But this depends on strong commitment from the top - from senior members as well as senior officials.

This guidance reflects new developments such as the further devolution of powers and funding to local areas and the establishment of combined authorities and combined county authorities. Just as the principles in this statutory guidance apply to the good scrutiny function of councils, they are equally fundamental to that of English institutions with devolved powers. The accountability of these institutions is core to the success of areas with devolution agreements, and they should use this guidance alongside that in the English Devolution Accountability Framework and the Scrutiny Protocol.

Government recognises that all authorities have democratic mandates, are ultimately accountable to local people and that authorities themselves are best placed to know which scrutiny arrangements are most appropriate for their own individual circumstances.

I strongly urge all councils, combined authorities and combined county authorities to cast a critical eye over their existing arrangements and, above all, ensure they embed a culture that allows overview and scrutiny to flourish.

**Simon Hoare MP**  
**Minister for Local Government**

## About this guidance

## Who the guidance is for

This document is aimed at councils, combined authorities and combined county authorities in England to help them carry out their overview and scrutiny functions effectively. In particular, it provides advice for senior leaders, members of overview and scrutiny committees, scrutiny officers and any officers with a role in supporting scrutiny committees.

## Aim of the guidance

This guidance seeks to ensure councils, combined authorities and combined county authorities are aware of the purpose of overview and scrutiny, what effective scrutiny looks like, how to conduct it effectively and the benefits it can bring.

As such, it includes a number of policies and practices all authorities should adopt or should consider adopting when deciding how to carry out their overview and scrutiny functions.

The guidance recognises that authorities approach scrutiny in different ways and have different processes and procedures in place, and that what might work well for one authority might not work well in another.

The hypothetical scenarios contained in the annexes to this guidance have been included for illustrative purposes and are intended to provoke thought and discussion rather than serve as a 'best' way to approach the relevant issues.

While the guidance sets out some of the key legal requirements, it does not seek to replicate legislation.

## Status of the guidance

This is statutory guidance from the Department for Levelling Up, Housing and Communities. Overview and scrutiny committees of local authorities, combined authorities and combined county authorities must have regard to it when exercising, or deciding whether to exercise, any of their functions. The phrase 'must have regard', when used in this context, does not mean that the sections of statutory guidance have to be followed in every detail, but that they should be followed unless there is a good reason not to in a particular case.

Not every authority is required to appoint a scrutiny committee. This guidance applies to those authorities who have such a committee in place, whether they are required to or not.

This guidance has been issued under section 9Q of the Local Government Act 2000 (<https://www.legislation.gov.uk/ukpga/2000/22/section/9Q>) and under paragraph 2(9) of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009 (<https://www.legislation.gov.uk/ukpga/2009/20/schedule/5A>) and under paragraph 2(9) of Schedule 1 to the Levelling-up and Regeneration Act 2023 (<https://www.legislation.gov.uk/ukpga/2023/55/schedule/1/paragraph/2/enacted>), which require authorities to have regard to this guidance.

In addition, authorities may have regard to other material they might choose to consider, including that issued by the Centre for Governance and Scrutiny, when exercising their overview and scrutiny functions. Areas with a devolution deal should further consider the Scrutiny Protocol issued by government on 22 November 2023 (see paragraph 7).

## Terminology

Unless 'overview' is specifically mentioned, the term 'scrutiny' refers to both overview and scrutiny<sup>[footnote 1]</sup>. Where the term 'authority' is used, it refers to councils, combined authorities and combined county authorities. Where the term 'Council' is used, it means a county council in England, a district council or a London borough council, this definition includes unitary authorities<sup>[footnote 2]</sup>.

Where the term 'scrutiny committee' is used, it refers to an overview and scrutiny committee and any of its sub-committees. As the legislation refers throughout to functions conferred on scrutiny committees; that is the wording used in this guidance. However, the guidance should be seen as applying equally to work undertaken in informal task and finish groups commissioned by formal committees.

Where the term 'executive' is used, it refers to executive members.

For combined authorities, references to the 'executive' or 'cabinet' should be interpreted as relating to the mayor (where applicable) and all the authority members including non-constituent members and associate members as well as constituent council members.

For authorities operating committee rather than executive arrangements, references to the 'executive' or 'cabinet' should be interpreted as relating to councillors in leadership positions.

## Expiry or review date

This guidance was published on 22 April 2024 and replaces guidance published on 7 May 2019.

This guidance will be kept under review and updated as necessary.

# 1. Introduction and context

## Legislative context

1. Overview and scrutiny committees were introduced in 2000 as part of new executive governance arrangements to ensure that members of a local authority who were not part of the executive could hold the executive to account for the decisions and actions that affect their communities.

2. The requirement for councils in England to establish overview and scrutiny committees is set out in sections 9F to 9FI of the Local Government Act 2000 (<https://www.legislation.gov.uk/ukpga/2000/22/part/1A/chapter/2/crossheading/overview-and-scrutiny-committees>) as amended by the Localism Act 2011. The Localism Act amended the Local Government Act 2000 to allow councils to revert to a non-executive form of governance - the 'committee system'. Councils who adopt the committee system are not required to have overview and scrutiny but may do so if they wish. The legislation has been updated since 2000.

3. Requirements for combined authorities are set out in Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009 (<https://www.legislation.gov.uk/ukpga/2009/20/schedule/5A>)<sup>[footnote 3]</sup> and those for combined county authorities are set out in Schedule 1 to the Levelling-up and Regeneration Act 2023<sup>[footnote 4]</sup>.

## What overview and scrutiny committees do

4. Overview and scrutiny committees have statutory powers<sup>[footnote 5]</sup> to scrutinise decisions the executive is planning to take, those it plans to implement, and those that have already been taken/implemented. Combined authority and combined county authority overview and scrutiny committees also have powers to review or scrutinise decisions made, or other action taken, in connection with the discharge by the mayor of any general (i.e. non-PCC) functions. Overview and scrutiny committees may make reports or recommendations to the authority or mayor about the discharge of their



respective functions, and also on matters that affect the authority's area or the inhabitants of the area. Recommendations following scrutiny enable improvements to be made to policies and how they are implemented. Overview and scrutiny committees can also play a valuable role in developing policy.

Effective overview and scrutiny should:

- provide constructive 'critical friend' challenge
- amplify the voices and concerns of the public
- be led by independent<sup>[footnote 6]</sup> people who take responsibility for their role
- drive improvement in public services and strategic decision-making

5. Current overview and scrutiny legislation recognises that authorities are locally accountable<sup>[footnote 7]</sup>. Authorities themselves are best placed to determine which overview and scrutiny arrangements best suit their own individual needs, and so gives them a great degree of flexibility to decide which arrangements to adopt.

6. In producing this guidance, the government fully recognises these authorities' democratic mandate and that the nature of local government has changed in recent years, with, for example, the creation of combined authorities and combined county authorities, and councils increasingly delivering key services in partnership with other organisations or outsourcing them entirely.

7. The ongoing deeper devolution of powers and funding to local areas brings the requirement and provision for greater accountability. It is crucial that the local scrutiny of institutions with devolved powers sets robust standards to hold them to account for delivery, as well as playing a critical role in policy and strategy development. This is particularly important when scrutinising devolved powers. To strengthen the scrutiny for those English institutions with devolved powers, government has published the Scrutiny Protocol guidance (<https://www.gov.uk/government/publications/scrutiny-protocol-for-english-institutions-with-devolved-powers/scrutiny-protocol>) which can be considered a supplement to this advice for those institutions.

## 2. Culture

8. The prevailing organisational culture, behaviours and attitudes of an authority will largely determine whether its scrutiny function succeeds or fails.

9. While everyone in an authority can play a role in creating an environment conducive to effective scrutiny, it is important that this is led and owned by

members, including any directly elected mayor, given their role in setting and maintaining the culture of an authority.

10. Creating a strong organisational culture supports scrutiny work that can add real value by, for example, improving policy-making and the efficient delivery of public services. In contrast, low levels of support for, and engagement with, the scrutiny function often lead to poor quality and ill-focused work that serves to reinforce the perception that it is of little worth or relevance.

11. Members and senior officers should note that the performance of the scrutiny function is not just of interest to the authority itself. Its effectiveness, or lack thereof, is often considered by external bodies such as regulators and inspectors, and highlighted in public reports, including best value inspection reports<sup>[footnote 8]</sup>. Failures in scrutiny can therefore help to create a negative public image of an authority as a whole.

## How to establish a strong organisational culture

12. Authorities can establish a strong organisational culture by:

### (a) Recognising scrutiny's legal and democratic legitimacy

All members and officers should recognise and appreciate the importance and legitimacy the scrutiny function is afforded by the law. It was created to act as a check and balance on the executive and is a statutory requirement for all councils operating executive arrangements and for all combined authorities and combined county authorities.

Scrutiny committee members have a unique legitimacy derived from their being democratically elected councillors in the first instance. The insights that they can bring by having this close connection to local people are part of what gives scrutiny its value.

### (b) Identifying a clear role and focus

Authorities should take steps to ensure scrutiny has a clear role and focus within the organisation, i.e. a niche within which it can clearly add value. Therefore, prioritisation is necessary to ensure the scrutiny function concentrates on delivering work that is of genuine value and relevance to the work of the wider authority – this is one of the most challenging parts of scrutiny, and a critical element to get right if it is to be recognised as a strategic function of the authority (see [chapter 6](#)).

Authorities should ensure a clear division of responsibilities between the scrutiny function and the audit function. While it is appropriate for scrutiny to pay due regard to the authority's financial position, this will need to happen in

the context of the formal audit role. The authority's section 151 officer should advise scrutiny on how to manage this dynamic.

While scrutiny has no role in the investigation or oversight of the authority's whistleblowing arrangements, the findings of independent whistleblowing investigations might be of interest to scrutiny committees as they consider their wider implications. Members should always follow the authority's constitution and associated Monitoring Officer directions on the matter. See further [guidance on whistleblowing](https://www.gov.uk/government/publications/whistleblowing-guidance-and-code-of-practice-for-employers) (<https://www.gov.uk/government/publications/whistleblowing-guidance-and-code-of-practice-for-employers>).

#### (c) Ensuring early and regular engagement between the executive and scrutiny

Authorities should ensure early and regular discussion takes place between the scrutiny function, the executive and any directly elected mayor, especially regarding the executive's or directly elected mayor's future work programme. Authorities should, though, be mindful of their distinct roles:

In particular:

- The executive or mayor should not try to exercise control over the work of the scrutiny committee. This could be direct, e.g. by purporting to 'order' scrutiny to look at, or not look at, certain issues, or indirect, e.g. through the use of the whip or as a tool of political patronage, and the committee itself should remember its statutory purpose when carrying out its work. All members and officers should consider the role the scrutiny committee plays to be that of a 'critical friend' not a de facto 'opposition'. Scrutiny chairs have a particular role to play in establishing the profile and nature of their committee (see [chapter 4](#)); and
- The chair of the scrutiny committee should determine the nature and extent of an executive member's or mayor's participation in a scrutiny committee meeting, and in any informal scrutiny task group meeting.

#### (d) Managing disagreement

Effective scrutiny involves looking at issues that can be politically contentious. It is therefore inevitable that, at times, an executive or mayor will disagree with the findings or recommendations of a scrutiny committee.

It is the job of both the executive (including any directly elected mayor) and scrutiny to work together to reduce the risk of this happening, and authorities should take steps to predict, identify and act on disagreement.

One way an authority can achieve this is by setting its own 'executive-scrutiny protocol' (see [annex 1](#)) which can help define the relationship between the parties and mitigate any differences of opinion before they manifest themselves

in unhelpful and unproductive ways. The benefit of this approach is that it provides a framework for disagreement and debate, and a way to manage it when it happens. Often, the value of such a protocol lies in the dialogue that underpins its preparation. It is important that these protocols are reviewed on a regular basis to demonstrate the impact of scrutiny and seek ongoing improvement of scrutiny functions.

Scrutiny committees do have the power to 'call in' decisions, i.e. ask the executive or mayor to reconsider them before they are implemented, but should not view it as a substitute for early involvement in the decision-making process or as a party-political tool.

#### (e) Providing the necessary support

While the level of resource allocated to scrutiny is for each authority to decide for itself, when determining resources an authority should consider the purpose of scrutiny as set out in legislation and the specific role and remit of the authority's own scrutiny committee(s), and the scrutiny function as a whole.

Support should also be given by members and senior officers to scrutiny committees and their support staff to access information held by the authority and facilitate discussions with representatives of external bodies (see [chapter 5](#)).

#### (f) Ensuring impartial advice from officers

Authorities, particularly senior officers, should ensure all officers are free to provide impartial advice to scrutiny committees. This is fundamental to effective scrutiny. Of particular importance is the role played by 'statutory officers' – the monitoring officer, the section 151 officer and the head of paid service, and where relevant the statutory scrutiny officer. These individuals have a particular role in ensuring that timely, relevant and high-quality advice is provided to scrutiny.

#### (g) Communicating scrutiny's role and purpose to the wider authority

The scrutiny function can often lack support and recognition within an authority because there is a lack of awareness among both members and officers about the specific role it plays, which individuals are involved and its relevance to the authority's wider work. Authorities should, therefore, take steps to ensure all members and officers are made aware of the role the scrutiny committee plays in the organisation, its value and the outcomes it can deliver, the powers it has, its membership and, if appropriate, the identity of those providing officer support.

#### (h) Maintaining the interest of full Council in the work of the scrutiny committee

Part of communicating scrutiny's role and purpose to the wider authority should, in a local authority, happen through the formal, public role of full Council –

particularly given that scrutiny will undertake valuable work to highlight challenging issues that an authority will be facing and subjects that will be a focus of full Council's work. Authorities should therefore take steps to ensure full Council is informed of the work the scrutiny committee is doing.

One way in which this can be done is by reports and recommendations being submitted to full Council rather than solely to the executive. Scrutiny should decide when it would be appropriate to submit reports for wider debate in this way, taking into account the relevance of reports to full Council business, as well as full Council's capacity to consider and respond in a timely manner. Such reports would supplement the annual report to full Council on scrutiny's activities and raise awareness of ongoing work.

In order to maintain awareness of scrutiny at the combined authority or combined county authority and provoke dialogue and discussion of its impact, the business of scrutiny should be reported to the combined authority or combined county authority board, and the committee should consider also reporting to the chairs of the relevant scrutiny committees of constituent and non-constituent councils, including councils which nominate non-constituent members.

At those chairs' discretion, particular combined authority or combined county authority scrutiny outcomes, and what they might mean for each individual area, could be either discussed by scrutiny in committee or referred to full Council of the constituent councils and councils which nominate non-constituent members.

#### (i) Communicating scrutiny's role to the public

Authorities should ensure scrutiny has a profile in the wider community. Consideration should be given to how and when to engage the authority's communications officers, and any other relevant channels, to understand how to get that message across. This will usually require engagement early on in the work programming process (see [chapter 6](#)).

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

Formal committee meetings provide a vital opportunity for scrutiny members to question the executive and officers. Inevitably, some committee members will come from the same political party as a member they are scrutinising and might well have a long-standing personal, or familial, relationship with them (see [paragraph 26](#)).

Scrutiny members should bear in mind, however, that adopting an independent mind-set is fundamental to carrying out their work effectively. In practice, this is likely to require scrutiny chairs working proactively to identify any potentially contentious issues and plan how to manage them.

## Directly elected mayoral systems

13. A strong organisational culture that supports scrutiny work is particularly important in authorities with a directly elected mayor to ensure there are the checks and balances to maintain a robust democratic system. Mayoral systems offer the opportunity for greater public accountability and stronger governance, but there have also been incidents that highlight the importance of creating and maintaining a culture that puts scrutiny at the heart of its operations.

14. Authorities with a directly elected mayor should ensure that scrutiny committees are well-resourced, are able to recruit high-calibre members and that their scrutiny functions pay particular attention to issues surrounding:

- rights of access to documents by the press, public and authority members
- transparent and fully recorded decision-making processes, especially avoiding decisions by 'unofficial' committees or working groups
- delegated decisions by the Mayor
- whistleblowing protections for both staff and councillors
- powers of Full Council, where applicable, to question and review

15. Authorities with a directly elected mayor should note that mayors are required by law to attend overview and scrutiny committee sessions when asked to do so (see paragraph 45). In combined authorities and combined county authorities, mayors typically exercise specified functions; scrutiny functions in such mayoral authorities should consider how best to ensure that both the authority and the mayor are held accountable for the exercise of their respective functions. For example, should there be different committees for each?

## 3. Resourcing

16. The resource an authority allocates to the scrutiny function plays a pivotal role in determining how successful that function is and therefore the value it can add to the work of the authority.

17. Ultimately it is up to each authority to decide on the resource it provides, but every authority should recognise that creating and sustaining an effective scrutiny function requires them to allocate resources to it.

18. Authorities should also recognise that support for scrutiny committees, task groups and other activities is not solely about budgets and provision of officer time, although these are clearly extremely important elements. Effective support is also about the ways in which the wider authority engages with those who carry out the scrutiny function (both members and officers).

When deciding on the level of resource to allocate to the scrutiny function, the factors an authority should consider include:

- scrutiny's legal powers and responsibilities
- the particular role and remit scrutiny will play in the authority
- the training requirements of scrutiny members and support officers, particularly the support needed to ask effective questions of the executive and other key partners, and make effective recommendations
- the need for ad hoc external support where expertise does not exist in the authority
- effectively-resourced scrutiny has been shown to add value to the work of authorities, improving their ability to meet the needs of local people
- effectively-resourced scrutiny can help policy formulation and so minimise the need for call-in of executive decisions

## Statutory scrutiny officers

19. Combined authorities, combined county authorities and upper and single tier authorities are required to designate a statutory scrutiny officer<sup>[footnote 9]</sup>, someone whose role is to:

- promote the role of the authority's scrutiny committee
- provide support to the scrutiny committee and its members
- provide support and guidance to members (including any mayor) and officers relating to the functions of the scrutiny committee

20. Authorities not required by law to appoint such an officer should consider whether doing so would be appropriate for their specific local needs.

## Officer resource models

21. Authorities are free to decide for themselves which wider officer support model best suits their individual circumstances, though generally they adopt one or a mix of the following:

- committee – officers are drawn from specific policy or service areas
- integrated – officers are drawn from the corporate centre and also service the executive and/or mayor
- specialist – officers are dedicated to scrutiny

22. Each model has its merits – the committee model provides service-specific expertise; the integrated model facilitates closer and earlier scrutiny involvement in policy formation and alignment of corporate work programmes; and the specialist model is structurally independent from those areas it scrutinises.

23. Authorities should ensure that, whatever model they employ, officers tasked with providing scrutiny support are able to provide impartial advice. This might require consideration of the need to build safeguards into the way that support is provided. The nature of these safeguards will differ according to the specific role scrutiny plays in the organisation.

## 4. Selecting committee members

24. Selecting the right members to serve on scrutiny committees is essential if those committees are to function effectively. Where a committee is made up of members who have the necessary skills and commitment, it is far more likely to be taken seriously by the wider authority.

25. While there are political proportionality requirements that must be met<sup>[footnote 10]</sup>, the selection of the chair and other committee members is for each authority to decide for itself. In a combined authority or combined county authority, the chair must be either an independent person or an appropriate person – both terms are defined in legislation.<sup>[footnote 11]</sup>

Members invariably have different skill sets. What an authority must consider when forming a committee is that, as a group, it possesses the requisite expertise, commitment and ability to act impartially to fulfil its functions.

26. Local authorities are reminded that members of the executive cannot be members of a scrutiny committee<sup>[footnote 12]</sup>. Authorities should take care to ensure that, as a minimum, members holding less formal executive positions, e.g. as Cabinet assistants, do not sit on scrutinising committees looking at portfolios to which those roles relate. Local authorities should articulate in their constitutions how conflicts of interest, including familial links (see also paragraph 32), between executive and scrutiny responsibilities should be managed, including where members stand down from the executive and move to a scrutiny role, and vice-versa.

27. Members or substitute members of a combined authority or combined county authority must not be members of its overview and scrutiny committee(s)<sup>[footnote 13]</sup>. This includes any mayor and any non-constituent members and associate members of the authority. It is advised that Deputy Mayors for Policing and Crime are also not members of the combined authority's or combined county authority's overview and scrutiny committee.



## Selecting individual committee members

28. When selecting individual members to serve on scrutiny committees, an authority should consider a member's experience, expertise, interests, ability to act impartially, ability to work as part of a group, and capacity to serve. Combined authorities and combined county authorities may also want to consider the balance of committee members drawn from each constituent council.

29. Authorities should not take into account a member's perceived level of support for or opposition to a particular political party (notwithstanding the wider legal requirement for proportionality referred to in paragraph 25).

## Selecting a chair

30. The Chair plays a leadership role on a scrutiny committee as they are largely responsible for establishing its profile, influence and ways of working.

31. The attributes authorities should and should not take into account when selecting individual committee members (see paragraphs 28 and 29) also apply to the selection of the Chair, but the Chair should also possess the ability to lead and build a sense of teamwork and consensus among committee members.

Chairs should pay special attention to the need to guard the committee's independence. Importantly, however, they should take care to avoid the committee being, and being viewed as, a de facto opposition to the executive.

32. Given their pre-eminent role on the scrutiny committee, it is strongly recommended that the Chair not preside over scrutiny of the decisions made by close friends or relatives<sup>[footnote 14]</sup>. Combined authorities and combined county authorities should note the legal requirements that apply to them where the Chair is an "independent person"<sup>[footnote 15]</sup>.

33. The method for selecting a Chair is for each authority to decide for itself, however every authority should consider taking a vote by secret ballot. Combined authorities and combined county authorities whose chair is an "appropriate person" should be aware of the legal requirements regarding the party affiliation of their scrutiny committee Chair<sup>[footnote 16]</sup>.

## Training for committee members

34. Authorities should ensure committee members are offered induction when they take up their role and ongoing training so they can carry out their responsibilities effectively. Authorities should pay attention to the need to ensure committee members are aware of their legal powers, and how to prepare for and ask relevant questions at scrutiny sessions.

35. When deciding on training requirements for committee members, authorities should consider talking to other similar authorities to share learning and expertise as well as taking advantage of opportunities offered by their sector membership bodies and external providers.

## Co-option and technical advice

36. While members and their support officers will often have significant local insight and an understanding of local people and their needs, the provision of outside expertise can be invaluable.

37. There are two principal ways to procure this:

- co-option – formal co-option is provided for in legislation<sup>[footnote 17]</sup>. Authorities must establish a co-option scheme to determine how individuals will be co-opted onto committees
- technical advisers – depending on the subject matter, independent local experts might exist who can provide advice and assistance in evaluating evidence (see [annex 2](#))

## 5. Power to access information

38. A scrutiny committee needs access to relevant information the authority holds, and to receive it in good time, if it is to do its job effectively.

39. This need is recognised in law, with members of scrutiny committees enjoying powers to access information<sup>[footnote 18]</sup>. In particular, legislation gives enhanced powers to a scrutiny member to access exempt or confidential information. This is in addition to existing rights for members to have access to information to perform their duties, including common law rights to request information and rights to request information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

40. When considering what information scrutiny needs in order to carry out its work, scrutiny members and the executive should consider scrutiny's role and the legal rights that committees and their individual members have, as well as their need to receive timely and accurate information to carry out their duties effectively.

41. Scrutiny members should have access to a regularly available source of key information about the management of the authority – particularly on performance, management and risk. Where this information exists, and scrutiny members are given support to understand it, the potential for what officers might consider unfocused and unproductive requests is reduced as members will be able to frame their requests from a more informed position.

42. Officers should speak to scrutiny members to ensure they understand the reasons why information is needed, thereby making the authority better able to provide information that is relevant and timely, as well as ensuring that the authority complies with legal requirements.

While each request for information should be judged on its individual merits, authorities should adopt a default position of sharing the information they hold, on request, with scrutiny committee members.

43. The law recognises that there might be instances where it is legitimate for an authority to withhold information and places a requirement on the executive to provide the scrutiny committee with a written statement setting out its reasons for that decision<sup>[footnote 19]</sup>. However, members of the executive and senior officers should take particular care to avoid refusing requests, or limiting the information they provide, for reasons of party political or reputational expediency.

Before an authority takes a decision not to share information it holds, it should give serious consideration to whether that information could be shared in closed session.

44. Legislation stipulates a timeframe for executives to comply with requests from a scrutiny member<sup>[footnote 20]</sup>. When agreeing to such requests, authorities should:

- consider whether seeking clarification from the information requester could help better target the request
- ensure the information is supplied in a format appropriate to the recipient's needs

45. Scrutiny committees should be aware of their legal power to require members of the executive, including any directly elected mayor and deputy

mayor, and officers to attend before them to answer questions<sup>[footnote 21]</sup>. It is the duty of members and officers to comply with such requests<sup>[footnote 22]</sup>.

## Seeking information from external organisations

46. Scrutiny members should also consider the need to supplement any authority-held information they receive with information and intelligence that might be available from other sources and should note in particular their statutory powers to invite other persons to attend meetings of the committee and to access information from certain external organisations.

47. When asking an external organisation to provide documentation or appear before it, and where that organisation is not legally obliged to do either (see [annex 3](#)), scrutiny committees should consider the following:

(a) The need to explain the purpose of scrutiny

The organisation being approached might have little or no awareness of the committee's work, or of an authority's scrutiny function more generally, and so might be reluctant to comply with any request.

(b) The benefits of an informal approach

Individuals from external organisations can have fixed perceptions of what an evidence session entails and may be unwilling to subject themselves to detailed public scrutiny if they believe it could reflect badly on them or their employer. Making an informal approach can help reassure an organisation of the aims of the committee, the type of information being sought and the manner in which the evidence session would be conducted.

(c) How to encourage compliance with the request

Scrutiny committees will want to frame their approach on a case-by-case basis. For contentious issues, committees might want to emphasise the opportunity their request gives the organisation to 'set the record straight' in a public setting.

(d) Who to approach

A committee might instinctively want to ask the Chief Executive or Managing Director of an organisation to appear at an evidence session, however it could be more beneficial to engage front-line staff when seeking operational-level detail rather than senior executives who might only be able to talk in more general terms. When making a request to a specific individual, the committee should consider the type of information it is seeking, the nature of the organisation in question and the authority's pre-existing relationship with it.

### **Following ‘the tax-payer pound’**

Scrutiny committees will often have a keen interest in ‘following the tax-payer pound’, i.e. scrutinising organisations that receive public funding to deliver goods and services.

Authorities should recognise the legitimacy of this interest and, where relevant, consider the need to provide assistance to scrutiny members and their support staff to obtain information from organisations the authority has contracted to deliver services. In particular, when agreeing contracts with these bodies, authorities should consider whether it would be appropriate to include a requirement for them to supply information to or appear before scrutiny committees.

## **6. Planning work**

48. Effective scrutiny should have a defined impact on the ground, with the committee making recommendations that will make a tangible difference to the work of the authority. To have this kind of impact, scrutiny committees need to plan their work programme, i.e. draw up a long-term agenda and consider making it flexible enough to accommodate any urgent, short-term issues that might arise during the year.

49. Authorities with multiple scrutiny committees sometimes have a separate work programme for each committee. Where this happens, consideration should be given to how to co-ordinate the various committees’ work to make best use of the total resources available.

### **Being clear about scrutiny’s role**

50. Scrutiny works best when it has a clear role and function. This provides focus and direction. While scrutiny has the power to look at anything which affects ‘the area, or the area’s inhabitants’, authorities will often find it difficult to support a scrutiny function that carries out generalised oversight across the wide range of issues experienced by local people, particularly in the context of partnership working. Prioritisation is necessary, which means that there might be things that, despite being important, scrutiny will not be able to look at.

51. Different overall roles could include having a focus on risk, the authority’s finances, or on the way the authority works with its partners.

52. Applying this focus does not mean that certain subjects are 'off limits'. It is more about looking at topics and deciding whether their relative importance justifies the positive impact scrutiny's further involvement could bring.

53. When thinking about scrutiny's focus, members should be supported by key senior officers. The statutory scrutiny officer, if an authority has one, will need to take a leading role in supporting members to clarify the role and function of scrutiny, and championing that role once agreed.

## Who to speak to

54. Evidence will need to be gathered to inform the work programming process. This will ensure that it looks at the right topics, in the right way and at the right time. Gathering evidence requires conversations with:

### The public

It is likely that formal 'consultation' with the public on the scrutiny work programme will be ineffective. Asking individual scrutiny members to have conversations with individuals and groups in their own local areas can work better. Insights gained from the public through individual pieces of scrutiny work can be fed back into the work programming process. Listening to and participating in conversations in places where local people come together, including in online forums, can help authorities engage people on their own terms and yield more positive results.

Authorities should consider how their communications officers can help scrutiny engage with the public, and how wider internal expertise and local knowledge from both members and officers might make a contribution.

### The authority's partners

Relationships with other partners should not be limited to evidence-gathering to support individual reviews or agenda items. A range of partners are likely to have insights that will prove useful:

- public sector partners (like the NHS and community safety partners, over which scrutiny has specific legal powers)
- voluntary sector partners
- contractors and commissioning partners (including partners in joint ventures and authority-owned companies)
- in parished areas, town and parish councils
- in combined authority and combined county authority areas, constituent councils

- in combined county authority areas, councils which nominate non-constituent members
- neighbouring principal councils (both in two-tier and unitary areas)
- cross-authority bodies and organisations, such as Local Enterprise Partnerships<sup>[footnote 23]</sup>

## The executive

A principal partner in discussions on the work programme should be the executive, including any directly elected mayor (and senior officers). The executive should not direct scrutiny's work (see [chapter 2](#), but conversations will help scrutiny members better understand how their work can be designed to align with the best opportunities to influence the authority's wider work.

## Information sources

55. Scrutiny will need access to relevant information to inform its work programme. The type of information will depend on the specific role and function scrutiny plays within the authority, but might include:

- performance information from across the authority and its partners
- finance and risk information from across the authority and its partners
- corporate complaints information, and aggregated information from political groups about the subject matter of members' surgeries
- business cases and options appraisals (and other planning information) for forthcoming major decisions. This information will be of particular use for pre-decision scrutiny
- reports and recommendations issued by relevant ombudsmen, especially the Local Government and Social Care Ombudsman

As committees can meet in closed session, commercial confidentiality should not preclude the sharing of information. Authorities should note, however, that the default for meetings should be that they are held in public (see guidance on [Open and accountable local government](#) (<https://www.gov.uk/government/publications/open-and-accountable-local-government-plain-english-guide>)).

56. Scrutiny members should consider keeping this information under regular review. It is likely to be easier to do this outside committee, rather than bringing such information to committee 'to note', or to provide an update, as a matter of course.

## Shortlisting topics

Approaches to shortlisting topics should reflect scrutiny's overall role in the authority. This will require the development of bespoke, local solutions, however when considering whether an item should be included in the work programme, the kind of questions a scrutiny committee should consider might include:

- Do we understand the benefits scrutiny would bring to this issue?
- How could we best carry out work on this subject?
- What would be the best outcome of this work?
- How would this work engage with the activity of the executive and other decision-makers, including partners?

57. Some authorities use scoring systems to evaluate and rank work programme proposals. If these are used to provoke discussion and debate, based on evidence, about what priorities should be, they can be a useful tool. Others take a looser approach. Whichever method is adopted, a committee should be able to justify how and why a decision has been taken to include certain issues and not others.

58. Scrutiny members should accept that shortlisting can be difficult; scrutiny committees have finite resources and deciding how these are best allocated is tough. They should understand that, if work programming is robust and effective, there might well be issues that they want to look at that nonetheless are not selected.

## Carrying out work

59. Selected topics can be scrutinised in several ways, including:

(a) As a single item on a committee agenda

This often presents a limited opportunity for effective scrutiny, but may be appropriate for some issues or where the committee wants to maintain a formal watching brief over a given issue.

(b) At a single meeting

Which could be a committee meeting or something less formal. This can provide an opportunity to have a single public meeting about a given subject, or to have a meeting at which evidence is taken from a number of witnesses.

(c) At a task and finish review of two or three meetings



Short, sharp scrutiny reviews are likely to be most effective even for complex topics. Properly focused, they ensure members can swiftly reach conclusions and make recommendations, perhaps over the course of a couple of months or less.

(d) Via a longer-term task and finish review

The 'traditional' task and finish model – with perhaps six or seven meetings spread over a number of months – is still appropriate when scrutiny needs to dig into a complex topic in significant detail. However, the resource implications of such work, and its length, can make it unattractive for all but the most complex matters.

(e) By establishing a 'standing panel'

This falls short of establishing a whole new committee but may reflect a necessity to keep a watching brief over a critical local issue, especially where members feel they need to convene regularly to carry out that oversight. Again, the resource implications of this approach means that it will be rarely used.

## 7. Evidence sessions

60. Evidence sessions are a key way in which scrutiny committees inform their work. They might happen at formal committee, in less formal 'task and finish' groups or at standalone sessions.

Good preparation is a vital part of conducting effective evidence sessions. Members should have a clear idea of what the committee hopes to get out of each session and appreciate that success will depend on their ability to work together on the day.

### How to plan

61. Effective planning does not necessarily involve a large number of pre-meetings, the development of complex scopes or the drafting of questioning plans. It is more often about setting overall objectives and then considering what type of questions (and the way in which they are asked) can best elicit the information the committee is seeking. This applies as much to individual agenda items as it does for longer evidence sessions – there should always be consideration in advance of what scrutiny is trying to get out of a particular evidence session.

Chairs play a vital role in leading discussions on objective-setting and ensuring all members are aware of the specific role each will play during the evidence session.

62. As far as possible there should be consensus among scrutiny members about the objective of an evidence session before it starts. It is important to recognise that members have different perspectives on certain issues, and so might not share the objectives for a session that are ultimately adopted. Where this happens, the Chair will need to be aware of this divergence of views and bear it in mind when planning the evidence session.

63. Effective planning should mean that at the end of a session it is relatively straightforward for the chair to draw together themes and highlight the key findings. It is unlikely that the committee will be able to develop and agree recommendations immediately, but, unless the session is part of a wider inquiry, enough evidence should have been gathered to allow the chair to set a clear direction.

64. After an evidence session, the committee might wish to hold a short 'wash-up' meeting to review whether their objectives were met and lessons could be learned for future sessions.

## Developing recommendations

65. The development and agreement of recommendations is often an iterative process. It will usually be appropriate for this to be done only by committee members, assisted by co-optees where relevant. When deciding on recommendations, however, members should have due regard to advice received from officers, particularly the Monitoring Officer.

66. The drafting of reports is usually, but not always, carried out by officers, directed by members.

67. Authorities draft reports and recommendations in a number of ways, but there are normally three stages:

- i. the development of a 'heads of report' – a document setting out general findings that members can then discuss as they consider the overall structure and focus of the report and its recommendations;
- ii. the development of those findings, which will set out some areas on which recommendations might be made; and
- iii. the drafting of the full report.

68. Recommendations should be evidence-based and SMART, i.e. specific, measurable, achievable, relevant and timed. Where appropriate, committees may wish to consider sharing them in draft with interested parties.

69. Committees should bear in mind that often six to eight recommendations are sufficient to enable the authority to focus its response, although there may be specific circumstances in which more might be appropriate.

Sharing draft recommendations with executive members should not provide an opportunity for them to revise or block recommendations before they are made. It should, however, provide an opportunity for errors to be identified and corrected, and for a more general sense-check.

## Annex 1: Illustrative scenario – creating an executive-scrutiny protocol

An executive-scrutiny protocol can deal with the practical expectations of scrutiny committee members and the executive, as well as the cultural dynamics.

Workshops with scrutiny members, senior officers and Cabinet can be helpful to inform the drafting of a protocol. An external facilitator can help bring an independent perspective. English institutions with devolved powers should consider the advice in the Scrutiny Protocol (<https://www.gov.uk/government/publications/scrutiny-protocol-for-english-institutions-with-devolved-powers/scrutiny-protocol>) to further inform development of their own protocol.

Councils should consider how to adopt a protocol, e.g. formal agreement at scrutiny committee and Cabinet, then formal integration into the Council's constitution at the next Annual General Meeting.

The protocol, as agreed, may contain sections on:

- The way scrutiny will go about developing its work programme (including the ways in which senior officers and Cabinet members will be kept informed).
- The way in which senior officers and Cabinet will keep scrutiny informed of the outlines of major decisions as they are developed, to allow for discussion of scrutiny's potential involvement in policy development. This involves the building in of safeguards to mitigate risks around the sharing of sensitive information with scrutiny members.
- A strengthening and expansion of existing parts of the code of conduct that relate to behaviour in formal meetings, and in informal meetings.

- Specification of the nature and form of responses that scrutiny can expect when it makes recommendations to the executive, when it makes requests to the executive for information, and when it makes requests that Cabinet members or senior officers attend meetings.
- Confirmation of the role of the statutory scrutiny officer, and Monitoring Officer, in overseeing compliance with the protocol, and ensuring that it is used to support the wider aim of supporting and promoting a culture of scrutiny, with matters relating to the protocol's success being reported to full Council through the scrutiny Annual Report.

## **Annex 2: Illustrative scenario – engaging independent technical advisers**

This example demonstrates how one Council's executive and scrutiny committee worked together to scope a role and then appoint an independent adviser on transforming social care commissioning. Their considerations and process may be helpful and applicable in other similar scenarios.

Major care contracts were coming to an end and the Council took the opportunity to review whether to continue with its existing strategic commissioning framework, or take a different approach – potentially insourcing certain elements.

The relevant Director was concerned about the Council's reliance on a very small number of large providers. The Director therefore approached the Scrutiny and Governance Manager to talk through the potential role scrutiny could play as the Council considered these changes.

The Scrutiny Chair wanted to look at this issue in some depth, but recognised its complexity could make it difficult for her committee to engage – she was concerned it would not be able to do the issue justice. The Director offered support from his own officer team, but the Chair considered this approach to be beset by risks around the independence of the process.

She talked to the Director about securing independent advice. He was worried that an independent adviser could come with preconceived ideas and would not understand the Council's context and objectives. The Scrutiny Chair was concerned that independent advice could end up leading to scrutiny members being passive, relying on an adviser to do their thinking for them. They agreed that some form of independent assistance would be valuable, but that how it was provided and managed should be carefully thought out.

With the assistance of the Governance and Scrutiny Manager, the Scrutiny Chair approached local universities and Further Education institutions to identify an appropriate individual. The approach was clear – it set out the precise role

expected of the adviser, and explained the scrutiny process itself. Because members wanted to focus on the risks of market failure, and felt more confident on substantive social care matters, the approach was directed at those with a specialism in economics and business administration. The Council's search was proactive – the assistance of the service department was drawn on to make direct approaches to particular individuals who could carry out this role.

It was agreed to make a small budget available to act as a 'per diem' to support an adviser; academics were approached in the first instance as the Council felt able to make a case that an educational institution would provide this support for free as part of its commitment to Corporate Social Responsibility.

Three individuals were identified from the Council's proactive search. The Chair and Vice-Chair of the committee had an informal discussion with each – not so much to establish their skills and expertise (which had already been assessed) but to give a sense about their 'fit' with scrutiny's objectives and their political nous in understanding the environment in which they would operate, and to satisfy themselves that they will apply themselves even-handedly to the task. The Director sat in on this process but played no part in who was ultimately selected.

The independent advice provided by the selected individual gave the Scrutiny Committee a more comprehensive understanding of the issue and meant it was able to offer informed advice on the merits of putting in place a new strategic commissioning framework.

## **Annex 3: Illustrative scenario – approaching an external organisation to appear before a committee**

This example shows how one council ensured a productive scrutiny meeting, involving a private company and the public. Lessons may be drawn and apply to other similar scenarios.

Concerns had been expressed by user groups, and the public at large, about the reliability of the local bus service. The Scrutiny Chair wanted to question the bus company in a public evidence session but knew that she had no power to compel it to attend. Previous attempts to engage it had been unsuccessful; the company was not hostile, but said it had its own ways of engaging the public.

The Monitoring Officer approached the company's regional PR manager, but he expressed concern that the session would end in a 'bunfight'. He also explained the company had put their improvement plan in the public domain and felt a big council meeting would exacerbate tensions.

Other councillors had strong views about the company – one thought the committee should tell the company it would be empty-chaired if it refused to attend. The Scrutiny Chair was sympathetic to this but thought such an approach would not lead to any improvements.

The Scrutiny Chair was keen to make progress, but it was difficult to find the right person to speak to at the company, so she asked council officers and local transport advocacy groups for advice. Speaking to those people also gave her a better sense of what scrutiny's role might be.

When she finally spoke to the company's network manager, she explained the situation and suggested they work together to consider how the meeting could be productive for the Council, the company and local people. In particular, this provided her with an opportunity to explain scrutiny and its role. The network manager remained sceptical but was reassured that they could work together to ensure that the meeting would not be an 'ambush'. He agreed in principle to attend and also provide information to support the Committee's work beforehand.

Discussions continued in the four weeks leading up to the Committee meeting. The Scrutiny Chair was conscious that while she had to work with the company to ensure that the meeting was constructive – and secure their attendance – it could not be a whitewash, and other members and the public would demand a hard edge to the discussions.

The scrutiny committee agreed that the meeting would provide a space for the company to provide context to the problems local people are experiencing, but that this would be preceded by a space on the agenda for the Chair, Vice-chair, and representatives from two local transport advocacy groups to set out their concerns. The company were sent in advance a summary of the general areas on which members were likely to ask questions, to ensure that those questions could be addressed at the meeting.

Finally, provision was made for public questions and debate. Those attending the meeting were invited to discuss with each other the principal issues they wanted the meeting to cover. A short, facilitated discussion in the room led by the Chair highlighted the key issues, and the Chair then put those points to the company representatives. At the end of the meeting, the public asked questions of the bus company representative in a 20-minute plenary item.

The meeting was fractious, but the planning carried out to prepare for this – by channelling issues through discussion and using the Chair to mediate the questioning – made things easier. Some attendees were initially frustrated by this structure, but the company representative was more open and less defensive than might otherwise have been the case.

The meeting also motivated the company to revise its communications plan to become more responsive to this kind of challenge, part of which involved a

commitment to feed back to the scrutiny committee on the recommendations it made on the night.

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1. A distinction is often drawn between 'overview' which focuses on the development of policy, and 'scrutiny' which looks at decisions that have been made or are about to be made to ensure they are fit for purpose.
2. As defined in section 9R of the Local Government Act 2000.
3. Added by section 8 of and Schedule 3 to the Cities and Local Government Devolution Act 2016 and further amended by section 70 of the Levelling-up and Regeneration Act 2023.
4. Further provision for combined authority and combined county authority scrutiny is set out in The Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) (S.I. 2017/ 68). Note this SI has been amended by S.I.2024/430.
5. Section 9F of the Local Government Act 2000; paragraph 1 of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009; and paragraph 1 of Schedule 1 to the Levelling-up and Regeneration Act 2023.
6. Combined authority and combined county authority overview and scrutiny committees must have a chair who is either an "independent person" or an "appropriate person" – both terms are defined in legislation.
7. Combined authorities and combined county authorities may have directly elected mayors and their constituent council members are elected members of those councils appointed to the authority.
8. See Part 1 of the Local Government Act 1999.
9. Section 9FB of the Local Government Act 2000; article 9 of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.
10. See, for example, regulation 11 of the Local Authorities (Committee System) (England) Regulations 2012 (S.I. 2012/1020) and article 4 of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017 (S.I. 2017/68).
11. "Appropriate person" is defined at para 3(5) of schedule 1 to the 2023 Act and art.5(6) of S.I. 2017/68 for combined county authorities and at para 3(5) of schedule 5A to the 2009 Act and art.5(6) of S.I. 2017/68 for combined authorities. "Independent person" is defined at art.5(2) of S.I. 2017/68 for both combined authorities and combined county authorities.
12. Section 9FA(3) of the Local Government Act 2000.
13. Paragraph 2(3) of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009 and paragraph 2(3) of Schedule 1 to the Levelling-up and Regeneration Act 2023.

14. A definition of 'relative' can be found at section 28(10) of the Localism Act 2011 and article 2(2) of The Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.
15. See article 5(2) of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017 (S.I. 2017/68).
16. Article 5(6) of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.
17. Section 9FA(4) Local Government Act 2000.
18. Regulation 17 - Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012; article 10 Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.
19. Regulation 17(4) – Local Government (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012; article 10(4) Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.
20. Regulation 17(2) – Local Government (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012; article 10(2) Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.
21. Section 9FA(8) of the Local Government Act 2000; paragraph 2(6) of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009; paragraph 2(6) of Schedule 1 to the Levelling-up and Regeneration Act 2023.
22. Section 9FA(9) of the Local Government Act 2000; paragraph 2(7) of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009; paragraph 2(7) of Schedule 1 to the Levelling-up and Regeneration Act 2023.
23. Authorities should ensure they have appropriate arrangements in place to ensure the effective democratic scrutiny of Local Enterprise Partnerships' investment decisions.

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**OVERVIEW AND SCRUTINY COMMITTEE**

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

**CABINET – SCRUTINY PROTOCOL**

**6<sup>th</sup> September 2023**

**Report of Chief Officer - Governance**

**PURPOSE OF REPORT**

To consider a report on the introduction of a Pre-Decision Scrutiny Protocol.

**This report is public.**

**RECOMMENDATIONS**

- (1) **The Committee is requested to consider the introduction of a Pre-Decision Scrutiny Protocol.**

**1. INTRODUCTION**

- 1.1 Consideration was requested to be given to the introduction of a Cabinet – Scrutiny Protocol by the Committee. Such arrangements are in place in other authorities and assist both Cabinet and Scrutiny to work together more effectively for the good of the district.

**2. PROPOSED DETAILS**

- 2.1 At its meeting, held on 14 June 2023, the Committee was provided with a report and a copy of the Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities, previously reported to the Committee in 2019.
- 2.2 It was noted that the Guidance refreshed the understanding of the key principles of scrutiny, as defined by the Centre for Public Scrutiny (**note:** now Centre for Governance and Scrutiny) and underlined by the Statutory Guidance, considered the roles of the function and the tools and techniques for effective scrutiny. Details of an Executive – Scrutiny Protocol were provided at Annex 1 to the Guidance. The terminology for the Executive at this Council is Cabinet, therefore it is proposed to use the title ‘Cabinet’ in place of ‘Executive’ on any protocol for Lancaster City Council for clarity.

2.3 After considering the report and Appendix the Committee requested that officers report back on a Cabinet – Scrutiny Protocol for consideration by this Committee.

2.4 Appended to this report are details of the Appendix to the Guidance. This advises that the protocol, as agreed, may contain sections on:

- *The way scrutiny will go about developing its work programme (including the ways in which senior officers and Cabinet members will be kept informed).*
- *The way in which senior officers and Cabinet will keep scrutiny informed of the outlines of major decisions as they are developed, to allow for discussion of scrutiny's potential involvement in policy development. This involves the building in of safeguards to mitigate risks around the sharing of sensitive information with scrutiny members.*
- *A strengthening and expansion of existing parts of the code of conduct that relate to behaviour in formal meetings, and in informal meetings.*
- *Specification of the nature and form of responses that scrutiny can expect when it makes recommendations to the executive, when it makes requests to the executive for information, and when it makes requests that Cabinet members or senior officers attend meetings.*
- *Confirmation of the role of the statutory scrutiny officer\*, and Monitoring Officer, in overseeing compliance with the protocol, and ensuring that it is used to support the wider aim of supporting and promoting a culture of scrutiny, with matters relating to the protocol's success being reported to full Council through the scrutiny Annual Report.*

\* **Note:** a Statutory Scrutiny Officer is not a requirement for city/borough/district councils.

2.5 Most of the bullet points above are already fully covered in the Council's Constitution either in the Overview and Scrutiny Procedure rules in Part 3, Section 3 or elsewhere:-

- The development of the scrutiny work programme is already fully covered by Rule 9.
- Rule 14 sets out the requirements for Cabinet Members, Chairs of Committees, Chief Executive and Chief Officers to attend for matters within their remit.
- Regarding behaviour by Councillors in meetings, that would already appear to be fully covered by the Code of Conduct in the Constitution.
- Rules 10 and 11 both say that Cabinet or Council shall consider any report of Overview and Scrutiny at the first available meeting.
- Pre-scrutiny was featured in the Overview and Scrutiny Annual report, however there was no pre-scrutiny last year. If and when it resumes, it will be reported.

2.6 Taking the above into account and not wishing to duplicate the rules in the Constitution, the area where a protocol would seem to be useful is:

- *The way in which senior officers and Cabinet will keep scrutiny informed of the outlines of major decisions as they are developed, to allow for discussion of scrutiny's potential involvement in policy development. This involves the building in of safeguards to mitigate risks around the sharing of sensitive information with scrutiny members.*

2.7 With this in mind, it would seem that formalising a “Pre-Decision Scrutiny Protocol”, rather than a “Cabinet – Scrutiny Protocol” would cover that aspect and provide reassurance to scrutiny members that they are fully able to feed in views before Cabinet decisions are made.

2.8 In order to draft a Protocol for consideration the Committee is asked to consider the following:

- **What the Committee would like to do when they receive the forthcoming list of Key Decisions notice.**

In previous years this has been undertaken with the Chair and Vice Chair of the Committee, Chair and Vice Chair of the Budget and Performance Panel, the Pre-Decision Scrutiny Champion and relevant officers identified by the Chief Executive. This enabled those Members to query and question officers on issues that were to be considered at the next Cabinet meeting and obtain information on background papers.

- **More informal meetings between the Pre-Decision Scrutiny Champion and Scrutiny Chairs and Leader/Deputy Leader/Portfolio Holders.**

The Leader, Deputy Leader and Portfolio holders are asked to attend meetings of the Committee and Panel to discuss and answer questions and queries on their Portfolios.

In developing a Protocol the Committee may wish to cultivate a closer working relationship with Cabinet Members.

- **Cabinet Briefings**

The Committee may want to request that the Pre-Decision Scrutiny Champion be invited to Cabinet briefings and be permitted to ask questions at those briefings. After those briefings the Pre-Decision Scrutiny Champion could raise issues with the Chairs of the Scrutiny Committee and Panel if it is felt that further scrutiny or discussion is necessary.

2.9 The Committee may want to consider the above and other actions it may want to take when considering a Protocol.

2.10 Once the Committee has advised of what it wishes to be included in the Protocol, Officers will produce a draft for consideration by the Committee and Cabinet.

### **3. DETAILS OF CONSULTATION**

3.1 Other local councils in Lancashire were asked to provide details of their Cabinet/Executive-Scrutiny Protocols. These were wide-ranging documents covering areas that would have duplicated our existing rules in the Constitution, so were not that helpful.

3.2 Prior to a final Protocol being considered consultation will need to be undertaken with Members of Cabinet for their input and views, particularly around the inclusion of the Scrutiny Champion at Cabinet briefings, if that is something that this Committee would wish officers to investigate further.

**4. CONCLUSION**

4.1 If the Committee wishes to recommend the adoption of a Pre-Decision Scrutiny Protocol the Monitoring Officer could then take this forward for a decision regarding inclusion in the Council's Constitution after consultation with Cabinet Members and final consideration by this Committee.

**RELATIONSHIP TO POLICY FRAMEWORK**

There are no direct implications as a result of this report.

**CONCLUSION OF IMPACT ASSESSMENT  
(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

There are no direct implications as a result of this report.

**LEGAL IMPLICATIONS**

The Overview and Scrutiny Committee has overall responsibility for the performance of all Overview and Scrutiny functions (under the Local Government Act 2000) on behalf of the Council and ensuring its effectiveness.

There is no legal requirement for the Council to have a Protocol although it is considered best practice in the 'Overview and Scrutiny: Statutory Guidance for Councils and Combined Authorities (MHCLG)' document published in May 2019.

Any recommendations that require Constitutional amendments will be referred to and be considered by the Monitoring Officer for referral to Council Business Committee and/or Council.

**FINANCIAL IMPLICATIONS**

There are no financial implications as a direct result of this report. Any further reports on specific issues contained within this report will require further consideration of the financial implications.

**OTHER RESOURCE IMPLICATIONS, such as Human Resources; Information Services; Property; Open Spaces:**

None.

**SECTION 151 OFFICER'S COMMENTS**

The Section 151 Officer has been consulted and has no further comments.

**MONITORING OFFICER'S COMMENTS**

The Monitoring Officer has been consulted and has no further comments.

**BACKGROUND PAPERS**

MHC&LG Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities.

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