

**This is the response from the Association of Democratic Services to the consultation on scrutiny guidance. We are grateful to have had the opportunity to be able to assist and hope that continues.**

**Please do not hesitate to contact us should you require any clarification on any of the points made.**

**1. How can the guidance help by making it clear to council executives/senior officers the kind of support that should be given to scrutiny (in a cultural sense)?**

As we highlighted to the Select Committee and in the subsequent response to the Government's initial findings, we are under no illusion that scrutiny and challenge can be fraught and contentious. However, scrutiny has a role and legitimacy that needs to be valued. Good governance is essential, as highlighted by Grenfell, Carillion, Northamptonshire and Rotherham, to name but a few.

It is crucial that the guidance spells out the equality of importance between scrutiny and the executive, the benefits and value of scrutiny, in particular the way in which scrutiny assists the executive to make the best decisions in the interests of the public that we are serving. The executive should be encouraged to rely increasingly on well-planned, considered, evidenced reviews which enable the decision-makers to make decisions that are much better informed and therefore much more in the interests of residents.

We would define the right culture as one where:

- roles and expectations are clearly defined, supported and encouraged throughout the local authority and amongst partners,
- the statutory scrutiny officer is given the appropriate value and status,
- challenge is welcomed and trust, transparency, openness, plus shared goals are evident; and
- only essential political input exists.

However, we appreciate that achieving these objectives can be challenging and not always a consistent or easy journey. Positive relationships can be undermined by tokenistic - or even good - challenge and through change. Equally, negative relationships can be improved through improved outcomes, empathy and mutual understanding and professionalism.

The point here is that it requires effort and there is no room for complacency. Senior officers need to value scrutiny as much as they do the executive. Building a positive relationship with all members, not just those in the majority group or cabinet, is essential. Executive members need also to recognise the legitimacy of scrutiny. Ultimately, the different roles provided by the executive and scrutiny should be mutually respected. Seeing scrutiny as the ideal place to deal with some of the difficult strategic matters would be a step forward.

Most authorities have a scrutiny function in one form or another and to allow the scrutiny function to tick over or even fail, is a waste of a valuable resource. Scrutiny needs to be conducted respectfully and professionally. It should promote itself positively through good practice and be accountable for its performance. Focussed work programming, evidenced based reviews and decision making, quality questioning and positive outcomes should help achieve the respect and credibility sought. There are a number of examples of good scrutiny, which should be used to drive up performance. Where organisations have the evidence that their scrutiny function is not operating effectively, they have a responsibility and a duty to improve it.

**2. In a more general sense how might the guidance help scrutiny to build a positive relationship with the executive, emphasising the need for scrutiny's independence?**

We agree with the comments that the role of the scrutiny chair is crucial and believe the role should be seen on a par with that of a cabinet member. A key role of the chair should be to nurture positive relationships, which includes the executive. Current legislation is clear that decision makers cannot serve on scrutiny. However, for councillors scrutinising colleagues from the same political party it can be difficult. This has to be acknowledged. We would welcome a discussion with political representatives on the political context. Whilst we are not suggesting inappropriate behaviour, local government scrutiny operates within a political context. The guidance should acknowledge the political legitimacy that elected representatives have and seek to prevent it from becoming an unnecessary block within the scrutiny function itself, or outside forces trying to undermine it.

The guidance should promote effective and independent scrutiny as a health indicator for the governance of the authority. It can improve the reputation of the Council. Trust and confidence in politicians is low and scrutiny can play an important role in engaging communities, achieving positive outcomes with them and helping to rebuild the relationship.

Attendance by executive members at scrutiny meetings has, in our experience divided opinion, and has had mixed success. It can depend on the culture of the authority. We have seen some good examples where cabinet member presence at scrutiny meetings is valued. Executive councillors often regard their attendance as one of their priorities, which is positive. In one example, an authority has a designated slot on scrutiny agendas for 'questions to Cabinet Members'. There are occasions, however, where executive members have potentially 'overstepped' the mark and have been seen to be introducing officer reports and trying to influence what recommendations the scrutiny committees subsequently come up with. Whilst we accept that this should be down to local choice and culture, the guidance could set out good practice protocol for the role and conduct of executive members when attending scrutiny committees - based on the principle that they are there by invitation (accepting their legal obligations to attend) and that they are obliged to co-operate with the review in question.

**3. Should the guidance highlight the need for a greater profile and respect for scrutiny by the executive?**

We are not sure this can be forced. We believe that if the culture is right, and scrutiny shows its value, the rest should fall into place. Some of the measures highlighted above should also assist. We do feel that Chief Executives need reminding of their statutory responsibilities to support the scrutiny function and should be willing to intervene if the executive chooses to consistently undermine scrutiny. We see very little evidence of this happening as Chief Executives (in some ways understandably) see their priority to be supporting the executive.

Please refer to paragraph 1 above, for our comments on the Statutory Scrutiny Officer position.

**4. Should the guidance go into detail on issues around work planning – recommending focus and prioritisation?**

It is about balance. The guidance needs to be helpful, highlight best practice whilst allowing operational and local flexibility. It also needs to acknowledge the financial climate within which all authorities are operating. Good approaches to scrutiny should be highlighted, such as prioritisation, focus and a 'less is sometimes more' approach. The guidance should promote proactive scrutiny techniques whereby scrutineers set the agenda by proper scoping, preparing lines of enquiry and questioning, obtaining evidence, analysing evidence and formulating their own recommendations. It should also warn against the dangers of scrutiny committees getting bogged down with detailed officer led reports and adopting (intentionally or by default) a 'committee style' approach.

The challenge for some authorities might be the level of resource required to support the function. We would counter this by saying that if the function works well, the organisation should benefit. Scrutiny should be a fundamental part of an organisation not an add-on. Organisational buy in and support is therefore crucial for it to succeed. This should be spelt out in the guidance.

**5. How can the guidance help scrutiny guidance to access to and use of information?**

Restricted information should not be the norm and organisations should be encouraged to be as open as possible. Legislation currently provides the basis upon which members can request information with 'a need to know'. If scrutiny is to work, scrutiny members should be provided with all relevant information that exists in order to allow them to make a decision. The guidance should emphasise that point. It should also remind members of the responsibility they have when handing confidential information, of the sanctions and penalties that can be issued should there be a breach and the resultant loss of trust in the scrutiny function.

**6. Local councillors are best placed to understand the needs of local people, but how can the guidance help scrutiny councillors to ensure that scrutiny is supported to engage with the public in this way?**

The links between the role of the ward councillor and scrutiny should be emphasised. The local member can be a useful source of intelligence and information in relation to what's going on in the area – service/performance issues can for example be identified and addressed earlier. They also know the key contacts in wards and can sometimes 'open doors' within communities that other parts of the Council can't. As a strategic function, scrutiny can help improve performance and service delivery and challenge where necessary. On that basis, we see engagement being a method that scrutiny should follow. The best scrutiny we have seen has had stakeholders at the heart of the reviews. Local authorities undertake a number of consultations and this information should be utilised for scrutiny. Scrutiny should be allowed to influence the Council wide consultation programme to support their work, subject to timing. Councils should be encouraged to link consultation programmes with scrutiny work programmes to improve synergy between the two. Scrutiny should actively challenge and probe consultation that may have been undertaken on the subject matter being reviewed, or where residents state they have not been listened to. Some reviews may require specific consultation and one would seek to encourage authorities, through the guidance, to support that process as they would any other consultation, providing it is planned, proportionate and can be justified.

**7. How can the guidance help scrutiny more generally to develop a positive profile for itself at a local level?**

The guidance should recommend that scrutiny activity is promoted positively and should form part of any corporate communications plan. The importance of the function and the unique nature of an organisation challenging itself publicly, should be welcomed. See paragraph 2 above for the benefits in relation to reputation and trust. Anything more prescriptive could be seen as a hinderance. Scrutiny committees should be encouraged to consider making better use of their annual reports to increase accountability and a focus on demonstrable outcomes.

**8. Are there any sections/elements that you think might be helpful/unhelpful?**

We are aware that there have been suggestions to allow scrutiny to refer matters for consideration directly to Council. As previously advised, we believe this should be considered with caution. It risks increasing bureaucracy and delaying decision making, which seems contrary to the intention of the Local Government Act, 2000. Councils operate within a legislative framework, with specific powers conferred to the executive and to other decision making bodies. Council is required to approve the budget and policy framework. Executive decisions do not go to full council meetings. There is therefore a danger of a 'ping pong' effect with issues going from scrutiny, to full council, back to the executive and so on. There is also the possibility of the full council supporting a scrutiny proposal and the executive rejecting it. In addition, there are only a limited number of full council meetings and we should avoid creating unnecessary blockages in the decision making process.

As an alternative, the guidance could provide for scrutiny to be allowed to suggest topics for debate at full council – some authorities already have this provision in their constitution where issues of importance to scrutiny are identified for debate. We are also aware of an authority where this provision was removed from their constitution as it was never used. In addition, a request by a defined number of members could also be considered. In any event, scrutiny members should be requested to identify (a) why the matter is important for debate and (b) the outcome sought.

Better use should also be made of the Scrutiny Annual report that should highlight key reviews undertaken with outcomes for debate at council. In our experience, very little time is allocated on council agendas to this report.

Whether the scrutiny chairs are elected or appointed, the critical factor in the effectiveness of a chair is their competence, as it is with any other public servant. The guidance could spell out in a job description and person specification the skills, knowledge and characteristics of an effective chair. Low cost high quality training should also be recommended and made available to improve the quality of chairing.

**Specific issues that the Government is keen that the guidance provides further details on. These are:**

**9. Scrutiny of external bodies (this might be bodies operating under contract, commissioned partners, alternative delivery vehicles more traditional partners and so on)**

As we commented in our response to the Select Committee, we believe this is a significant and important principle. Scrutiny should be able to scrutinise activities within the locality, particularly those where services have been commissioned or operate under alternative delivery models, such as social enterprises or academies etc. This should also include partnership arrangements, subject to scrutiny operating within any existing governance framework. We believe that the guidance should grant the ability of scrutiny to hold “other providers” to account, which should be backed up by legislation, so that this provision can be included in contracts and agreements, properly funded within the contract sums. Along with the duty for “other providers” to cooperate. We are mindful that this could be seen as sensitive, however we believe there should be level playing field. All operators need to be accountable.

Scrutiny would have to justify their activity as part of the focussed work programme and prioritisation. There may be an issue over capacity, but the right to undertake such work should be stipulated in the guidance.

Some external organisations are willing to engage with scrutiny. This can be because they see the value in that engagement (from perhaps a commercial or public relations view) and there is good engagement with scrutiny officers who explain and promote scrutiny’s role.

It would be helpful if the guidance differentiated between the role of scrutiny and that of audit in relation to monitoring service performance and outcomes, both internally and externally. Councils can struggle sometimes with the purpose of the respective roles.

We support the CfPS proposal for Local Public Account Committees with powers to follow the “public pound” irrespective of organisational structures.

We do not believe that there should be an explicit difference between ‘internal’ and ‘external’ scrutiny. It’s not something the public will recognise and they are only interested in outcomes and the impact of services.

#### **10. Access to information (access to the use of, information effectively by scrutiny having been a challenge for many practitioners)**

Scrutiny members have extended rights to information. Grenfell, Rotherham, Northamptonshire to name but a few examples demonstrate the consequences when things go wrong. Some of us have witnessed services go from highly achieving to poor, quite rapidly. How could this happen? A stricter monitoring regime, as was the case with OFSTED, is one explanation. Another explanation can be the use of performance information or weaknesses within existing performance measures suddenly being identified. Access to all relevant information that can assist in the decision making process is crucial if scrutiny is to be able to undertake its role effectively. The Monitoring Officer has an important role to play as the arbiter of any disputes, but all officers need to be committed to this principle as well.

Access to information held by external organisations may be difficult, but that is all the more the reason why those organisations should be answerable to the authority, including scrutiny. Agreements, contracts, complaints held by the local authority should be available on the same basis as the comments highlighted in point 5, above.

Our comments in paragraph 5 also apply here. Scrutiny should be trusted to respect the confidentiality of information that is essential to their work – subject to the usual ‘need to know’ test – unless they abuse that trust. Some Councils hide behind the exempt information clauses to withhold information. The balance needs to be shifted towards disclosure to scrutiny unless it can be shown to be against the best interests of the Council.

#### **11. Scrutiny of financial resilience and sustainability of councils (recognising the recent, and continuing, pressures on the sector and scrutiny’s role in helping to understand them)**

This is connected, in part, to the discussion around access to information. Scrutiny’s involvement in budget setting is mixed. Some authorities have standard budget scrutiny or finance scrutiny, others deal with this on a service basis with a focus in the build-up to the budget setting. Timing in relation the budget process and the decisions made is crucial, if scrutiny is to have any influence. The



political dynamic can also play a factor in the budget considerations. But scrutiny should be an integral and compulsory part of the budget process.

We would suggest a focus on budget and financial resilience as it relates to service outcome and organisational priorities as opposed to trying to identify an alternative budget. In our experience, this helps keep focus, takes some of political heat out of the debate and reduces the need for information to be withheld.

We would suggest highlighting this as an area where scrutiny can add value and should be emphasised as such in the guidance. Ultimately, it will be down to the respective scrutiny committees as to their work programme priorities, but we believe this is an important activity. It should be noted that financial resilience and sustainability could be assessed through a number of scrutiny reviews on an on-going basis. It doesn't have to be limited to the Council Tax setting process. Dedicated finance scrutiny review or committee is not the only means by which these matters can be scrutinised.

One should also have regard to any audit committee function. Whilst distinct from scrutiny, a good relationship between the two bodies is important.

**We have welcomed the opportunity to comment and to participate in the recent roundtable at INLOGOV. We would be pleased to contribute further if we can be of assistance.**

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