

Report to:	Overview and Scrutiny Committee (Adult Social Care and Health)	Date of Meeting:	4 September 2018
	Overview and Scrutiny Committee (Regulatory, Compliance and Corporate Services)		11 September 2018
	Overview and Scrutiny Committee (Regeneration and Skills)		18 September 2018
	Overview and Scrutiny Committee (Children's Services and Safeguarding)		25 September 2018
Subject:	Effectiveness of Local Authority Overview and Scrutiny Committees – Government Response to DCLG Select Committee Report		
Report of:	Head of Regulation and Compliance	Wards Affected:	All
Cabinet Portfolio:	Adult Social Care Children, Schools and Safeguarding Communities and Housing Health and Wellbeing Locality Services Planning and Building Control Regeneration and Skills Regulatory, Compliance and Corporate Services		
Is this a Key Decision:	No	Included in Forward Plan:	No
Exempt / Confidential Report:	No		

Summary:

To advise Members on the Government's response to the Communities and Local Government Select Committee report titled "Effectiveness of Local Authority Overview and Scrutiny Committees"

Recommendation:

That:-

- (1) the report be noted;
- (2) a further update be submitted to the Committee once the Government have published updated guidance in respect of recommendations 1 (a) to (e) and 6 and further consideration has been given to recommendation 2; and
- (3) if consultations are allowed to be undertaken as referred to in paragraph 4 then the views of the Overview and Scrutiny Management Board and individual Overview and Scrutiny Committees be obtained for inclusion in the consultation process.

Reasons for the Recommendation(s):

To make Overview and Scrutiny Committees aware of current issues affecting local authority scrutiny functions.

Alternative Options Considered and Rejected: (including any Risk Implications)

No alternative options have been considered.

What will it cost and how will it be financed?

There are no direct financial implications arising from this information report. Any financial implications arising from the implementation of updated Government guidance regarding the scrutiny function will be set out in future reports at the appropriate time.

(A) Revenue Costs – see above

(B) Capital Costs – see above

Implications of the Proposals:

Resource Implications (Financial, IT, Staffing and Assets): None
Legal Implications: None
Equality Implications: There are no equality implications.

Contribution to the Council’s Core Purpose:

Protect the most vulnerable: None directly applicable to this report.
Facilitate confident and resilient communities: None directly applicable to this report
Commission, broker and provide core services: None directly applicable to this report.

Place – leadership and influencer: None directly applicable to this report.
Drivers of change and reform: None directly applicable to this report.
Facilitate sustainable economic prosperity: None directly applicable to this report.
Greater income for social investment: None directly applicable to this report.
Cleaner Greener: None directly applicable to this report.

What consultations have taken place on the proposals and when?

(A) Internal Consultations

The Head of Corporate Resources (FD 5215/18) has been consulted and notes the report indicates no direct financial implications arising for the Council. The Head of Regulation and Compliance (LD4439 /18) has been consulted and has no comments on the report.

(B) External Consultations

Not applicable

Implementation Date for the Decision

Immediately following the Committee meeting.

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Appendices:

The following appendices are attached to this report:

- First Report of Session 2017–19 Effectiveness of local authority overview and scrutiny committees
- Government Response to the Communities and Local Government Committee First Report of Session 2017-19 on the Effectiveness of Local Authority Overview and Scrutiny Committees

Background Papers:

There are no background papers available for inspection.

1. Introduction/Background

- 1.1 The Communities and Local Government (CLG) Select Committee, on 24 January, 2017 launched an inquiry into overview and scrutiny in local government; as the CLG Committee wanted to consider whether overview and

scrutiny arrangements in England were working effectively and whether local communities were able to contribute to and monitor the work of their councils.

1.2 The CLG Committee had noted that overview and scrutiny arrangements were introduced by the Local Government Act in 2000 as a counterweight to increasing decision-making powers of Leaders and Cabinets or directly elected mayors; and had made reference to shortcomings that had been exposed, following a number of high profile cases, including child sexual exploitation in Rotherham, poor care and high mortality rates at Mid Staffordshire NHS Foundation Trust and governance failings in Tower Hamlets.

1.3 Clive Betts MP, Chair of the CLG Committee, said:

“This inquiry is long overdue. Local authority executives have more powers than ever before but there has not been any review about how effectively the current overview and scrutiny arrangements are working since they were introduced in 2000.

Local authorities have a considerable degree of discretion when it comes to overview and scrutiny. We will examine these arrangements and consider what changes may be needed to ensure decision-makers in councils and local services are better held to account.”

2. Publication of the CLG Report

2.1 The report of the Select Committee, titled “Effectiveness of Local Authority Overview and Scrutiny Committees” was published by the House of Commons on 15 December 2017; and a copy of the published report is attached as **Appendix 1**.

2.2 The proposed revisions to Government guidance on Overview and Scrutiny Committees contained in the report were as follows:-

- That overview and scrutiny committees should report to an authority’s Full Council meeting rather than to the executive, mirroring the relationship between Select Committees and Parliament.
- That Scrutiny committees and the executive must be distinct and that executive councillors should not participate in scrutiny other than as witnesses, even if external partners are being scrutinised.
- That councillors working on scrutiny committees should have access to financial and performance data held by an authority, and that this access should not be restricted for reasons of commercial sensitivity.
- That scrutiny committees should be supported by officers that are able to operate with independence and offer impartial advice to committees. There should be a greater parity of esteem between scrutiny and the executive, and committees should have the same access to the expertise and time of senior officers and the chief executive as their cabinet counterparts.
- That members of the public and service users have a fundamental role in the scrutiny process and that their participation should be encouraged and facilitated by councils
- That overview and scrutiny committees should be given full

- access to all financial and performance information, and have the right to call witnesses, not just from their local authorities, but from other public bodies and private council contractors. They should be able to follow and investigate the spending of the public pound.
- That the DCLG works with the Local Government Association and the Centre for Public Scrutiny to identify councils to take part in a pilot scheme where the impact of elected chairs on scrutiny's effectiveness can be monitored and its merits considered.

3. Government Response to the CLG Report

3.1 The Government's response to the CLG report was published on 12 March 2018; and the 8 CLG recommendations and accompanying Government responses are set out below in paragraphs 3.2 to 3.9. A full copy of the Government response is attached to the report as **Appendix 2**.

3.2 Recommendation 1:

Proposed revisions to Government guidance on scrutiny committees
(Note: this recommendation was in five parts (a) to (e) and the individual recommendation and Government response are set out consecutively)

Government Response:

The Government acknowledges that the current guidance was issued in 2006 and is happy to ensure it is updated. New guidance will be published later this year.

a) That overview and scrutiny committees should report to an authority's Full Council meeting rather than to the executive, mirroring the relationship between Select Committees and Parliament.

Government Response:

a) The Government notes the evidence supplied to the Committee. Updated guidance will recommend that scrutiny committees report to the Full Council.

b) That scrutiny committees and the executive must be distinct and that executive councillors should not participate in scrutiny other than as witnesses, even if external partners are being scrutinised.

Government Response:

b) The Government accepts the need to limit the executive's involvement in the scrutiny meetings. Updated guidance will make clear that members of the executive should not participate in scrutiny other than as witnesses.

c) That councillors working on scrutiny committees should have access to financial and performance data held by an authority, and that this access should not be restricted for reasons of commercial sensitivity.

Government Response:

c) Scrutiny committees already have powers to access documents and updated guidance will stress that councils should judge each request to access sensitive documents on its merits and not refuse as a matter of course. We will also have discussions with the sector to get a better understanding of the issues some

scrutiny committees appear to have in accessing information and whether there are any steps the Government could take to alleviate this.

d) That scrutiny committees should be supported by officers that are able to operate with independence and offer impartial advice to committees. There should be a greater parity of esteem between scrutiny and the executive, and committees should have the same access to the expertise and time of senior officers and the chief executive as their cabinet counterparts.

Government Response:

d) Updated guidance will make clear that support officers should be able to operate independently and provide impartial advice. It will also stress the need for councils to recognise and value the scrutiny function and the ways in which it can increase a council's effectiveness. However, the Government believes that each council should decide for itself how to resource scrutiny committees, including how much access to senior officers is appropriate to enable them to function effectively.

e) That members of the public and service users have a fundamental role in the scrutiny process and that their participation should be encouraged and facilitated by councils.

Government Response:

e) The Government fully believes that local authorities should take account of the views of the public and service users in order to shape and improve their services. Scrutiny is a vital part of this, and scrutiny committees should actively encourage public participation. Updated guidance will make this clear.

3.3

Recommendation 2:

That DCLG works with the Local Government Association and Centre for Public Scrutiny to identify willing councils to take part in a pilot scheme where the impact of elected chairs on scrutiny's effectiveness can be monitored and its merits considered.

Government Response:

The Government will give further consideration to this recommendation.

The Government fully accepts that the chair of a scrutiny committee can have a great impact on its effectiveness. As the then Minister told the Select Committee at the oral evidence session on 6 November 2017, a chair needs to have the requisite skills, knowledge and acumen to take on the functions and achieve the outcomes that the scrutiny committee needs to achieve.

The Government also accepts that, in some instances, the election, rather than the appointment, of a chair might help ensure that the right individual is ultimately selected, but feels that this is a decision for every council to make for itself - we note that the Select Committee is "wary of proposing that [election] is imposed upon authorities by Government".

A local authority is already free to elect a chair if it wishes, and the updated guidance will recommend that every council bears this in mind when deciding on a method for selecting a chair.

The Government is happy to explore with the sector how best to establish the impact of elected chairs on scrutiny committees' effectiveness, but is not yet convinced that running pilot schemes is the best way to achieve this. The Government will therefore discuss this recommendation with the sector, including the Local Government Association and Centre for Public Scrutiny, and write to the Select Committee on this matter when we publish updated guidance.

3.4 Recommendation 3:

Councils should be required to publish a summary of resources allocated to scrutiny, using expenditure on executive support as a comparator.

Government Response:

The Government does not accept this recommendation.

Many councils do not have dedicated scrutiny support staff - officers work on issues and engage with committees as part of the flow of business - so this would make quantifying the support that scrutiny committees receive very difficult. In the Government's view, the quality of the support is the more important issue.

The Government firmly believes that each individual authority is best-placed to decide for itself how to support scrutiny most effectively.

3.5 Recommendation 4:

That the Government extend the requirement of a Statutory Scrutiny Officer to all councils and specify that the post-holder should have a seniority and profile of equivalence to the council's corporate management team. To give greater prominence to the role, Statutory Scrutiny Officers should also be required to make regular reports to Full Council on the state of scrutiny, explicitly identifying any areas of weakness that require improvement and the work carried out by the Statutory Scrutiny Officer to rectify them.

Government Response:

The Government does not accept this recommendation.

As the then Minister outlined during the oral evidence he gave to the Select Committee, decisions about the allocation of resources for the scrutiny function are best made at a local level. Each council is best-placed to know which arrangements will suit its own individual circumstances. It is not a case of one size fits all.

The key requirement for effective scrutiny is that the culture of the council is right. Where councils recognise the benefits effective scrutiny can bring, and put in place suitable arrangements, it is working well. Local authorities with a strong culture of scrutiny may invite regular reports to full council on the state of scrutiny in the council and this idea will be reflected in the updated guidance.

3.6 Recommendation 5:

The Department to put monitoring systems in place and consider whether the support to committees needs to be reviewed and refreshed. We invite the

Department to write to us in a year's time detailing its assessment of the value for money of its investment in the Local Government Association and on the wider effectiveness of local authority scrutiny committees.

Government Response:

The Government does not accept this recommendation.

Local authorities are independent bodies and it is for them to ensure that their scrutiny arrangements are effective.

The Government firmly believes that every council should be able to access the training it needs to carry out its functions effectively, and recognises that Government itself has a role to play in making this happen. That is why we provide funding to the Local Government Association for sector-led improvement work. It should be noted that this funding is to support local authorities on a wide range of improvement work. It is not purely to assist with overview and scrutiny.

The funding is determined annually and for 2017/18 is £21 million. The package of work that is funded from the grant is set out in a jointly agreed Memorandum of Understanding between the Department and the Local Government Association, which is refreshed annually to ensure that it remains relevant to the sector's needs.

The Government is, of course, very keen to ensure that this funding provides value for money and that local authorities feel that the training on offer serves their needs. To this end, the Department has quarterly performance monitoring and review meetings with the Local Government Association, which are chaired by the Director-General for Local Government and Public Services.

The Government notes that not all the councillors who provided evidence to the Select Committee felt that the scrutiny training provided was as effective as they would have liked, and that the Local Government Association wrote to the Committee on 20 December 2017 to provide more information on the feedback it received on its support work.

The Government will ensure that the 2018/19 Memorandum of Understanding with the Local Government Association clearly sets out our expectation that they remain responsive to feedback they receive to ensure all training, including scrutiny training, remains relevant and effective.

3.7

Recommendation 6:

Scrutiny committees must be able to monitor and scrutinise the services provided to residents. This includes services provided by public bodies and those provided by commercial organisations. Committees should be able to access information and require attendance at meetings from service providers and we call on DCLG to take steps to ensure this happens

Government Response:

Updated guidance will remind councils of the requirements set out in regulations that allow scrutiny members to access exempt or confidential documents in certain circumstances. As mentioned in response to the Select

Committee's recommendation on guidance, the Department will also have discussions with the sector to get a better understanding of the issues some scrutiny committees appear to have in accessing information and whether there are any steps the Government could take to alleviate this.

In terms of service providers' attendance at meetings, when councils are tendering contracts with external bodies they should carefully consider including requirements to ensure they are as open and transparent as appropriate. Ultimately, however, it is up to each council to decide how best to hold to account those who run its services.

3.8 **Recommendation 7:**

The Government to make clear how LEPs are to have democratic, and publicly visible, oversight. We recommend that upper tier councils, and combined authorities where appropriate, should be able to monitor the performance and effectiveness of LEPs through their scrutiny committees. In line with other public bodies, scrutiny committees should be able to require LEPs to provide information and attend committee meetings as required.

Government Response:

The Government agrees on the importance of clear and transparent oversight of Local Enterprise Partnerships (LEPs). The Industrial Strategy made clear the continuing important role of LEPs in delivering local economic growth.

The MHCLG Non-Executive Director Review (published in October 2017), looked at a range of governance issues for LEPs. The Review made a series of recommendations that we have accepted in full and are now implementing. As part of this we have published guidance for LEPs on a range of issues including publication of agenda and papers for LEP Board meetings. This will make the proceedings of LEPs more transparent for local people.

The National Assurance Framework for LEPs states that democratic accountability for the decisions made by the LEP is provided through local authority leader membership of LEP Boards. In places where not all local authorities are represented directly on the LEP board it is important that their representatives have been given a mandate through arrangements which enable collective engagement with all local authority leaders. Many LEPs already go much further in allowing democratic scrutiny of their decision making.

The MHCLG Non-Executive Director Review into LEP governance and transparency explored the extent to which scrutiny was embedded into LEP decision making. The review acknowledged that each LEP had their own arrangements to reflect: legal structure, the complexity and needs of the locality and local requirements to ensure value for money; engagement; and democratic accountability. The Review concluded that it was not appropriate to be prescriptive on the specific arrangements that all LEPs needed to adopt due to the variation in LEP operating models.

The Government committed in the Industrial Strategy White Paper to reviewing the roles and responsibilities of LEPs and to bringing forward reforms to leadership, governance, accountability, financial reporting and geographical

boundaries. Working with LEPs, the Government committed to set out a more clearly defined set of activities and objectives in early 2018. MHCLG will write to the Select Committee following the conclusion of this Ministerial review into LEPs to provide an update.

3.9 **Recommendation 8:**

We are concerned that effective scrutiny of the Metro Mayors will be hindered by under-resourcing, and call on the Government to commit more funding for this purpose. When agreeing further devolution deals

and creating executive mayors, the Government must make clear that scrutiny is a fundamental part of any deal and that it must be adequately resourced and supported.

Government Response:

The Government accepts this recommendation.

At the Budget it was announced that the government will make available to mayoral combined authorities with elected mayors a £12 million fund for 2018-19 and 2019-20, to boost the new mayors' capacity and resources. Combined Authorities could use some of this resource to ensure that scrutiny and accountability arrangements within the CAs are effectively resourced and supported.

Further to this, the recent Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017, developed with assistance from the Centre for Public Scrutiny and the National Audit Office, provides for the rules of operation for local overview and scrutiny and audit committees to robustly hold combined authorities and mayors to account. The order ensures that there are strong scrutiny arrangements in place consistently across every combined authority area and sets out clear requirements, strengthened appropriately to match the new powers and budgets being devolved, for the arrangement of overview and scrutiny and audit committees in all combined authorities.

Combined authorities are subject to existing relevant legislation applying to local authorities, including the strong finance and audit requirements around ensuring value for money and sustainability. Local democratic accountability, including through the scrutiny of directly-elected mayors, is a crucial and fundamental aspect of devolution.

4. **Centre for Public Scrutiny Involvement**

It has been established from a recent County/Unitary Scrutiny Network meeting involving Ed Hammond at Centre for Public Scrutiny (CfPS), that CfPS are hoping to be commissioned to help the Government produce the updated statutory Scrutiny Guidance which was promised in the response to the CLG Select Committee's report on the Effectiveness of Local Authority Scrutiny. If so, CfPS will seek to obtain the views of a wide range of interested parties during the drafting stage and there may be the possibility for the Council's Overview and Scrutiny Management Board and Committees to contribute as part of the consultation phase.

