



Constitution Uni



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Foreword

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

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


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

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

Mark Sandford
Lucinda Maer



The call-in power has been used quite infrequently, only about once per year in some councils. It tends to be regarded as a 'nuclear option', and as an indication that council procedures have failed to resolve disagreement adequately. Nevertheless, the existence of the power of call-in informs the rest of the running of the council. On some occasions call-ins were referred in the first instance to committees with a ruling party



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

The 2000 Act required all local authorities to adopt one of three new political management systems which distinguished the executive of the authority from the 'scrutiny' part (or, in Westminster parlance, the back-benchers). These were: a directly-elected mayor and cabinet; a directly-elected mayor and council manager; and a leader and cabinet. An amendment to the Act provided for a fourth option of a 'streamlined committee system' for authorities of a population under 85,000.¹

The same Act introduced the Best Value system, replacing compulsory competitive tendering. Best Value requires councils to routinely examine service provision to ensure that it is of the highest possible quality. There are affinities between this requirement and the work of overview and scrutiny. Some authorities use the same committees to carry out Best Value and overview and scrutiny, whilst in others the processes are distinct. The field is further complicated by the introduction of the Comprehensive Performance Assessment (CPA) by the Government in 2001. This general assessment of authority performance takes place through a wide range of indicators, and this has led to some overview and scrutiny committees spending considerable time examining performance indicators and questioning executive members on that basis.

guidance, however, indicated that 'scrutiny'
should include policy development work as well

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

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

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

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

‘Scrutiny committees’ refers to committees which have only a scrutiny, and not a policy development, role;

- **‘Panels’** refers to task and finish groups or working parties, set up to undertake an enquiry into a specific issue and then disbanded.

We realise, of course, that in reality there is not a clear divide between ‘overview’ and ‘scrutiny’, and that it is potentially misleading to talk as if they are discrete processes. Nevertheless, they are treated as separate or distinct by many of the authorities we studied, and there are differences

ities (December 2003)

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





The conduct of scrutiny by local councillors was

Other considerations

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

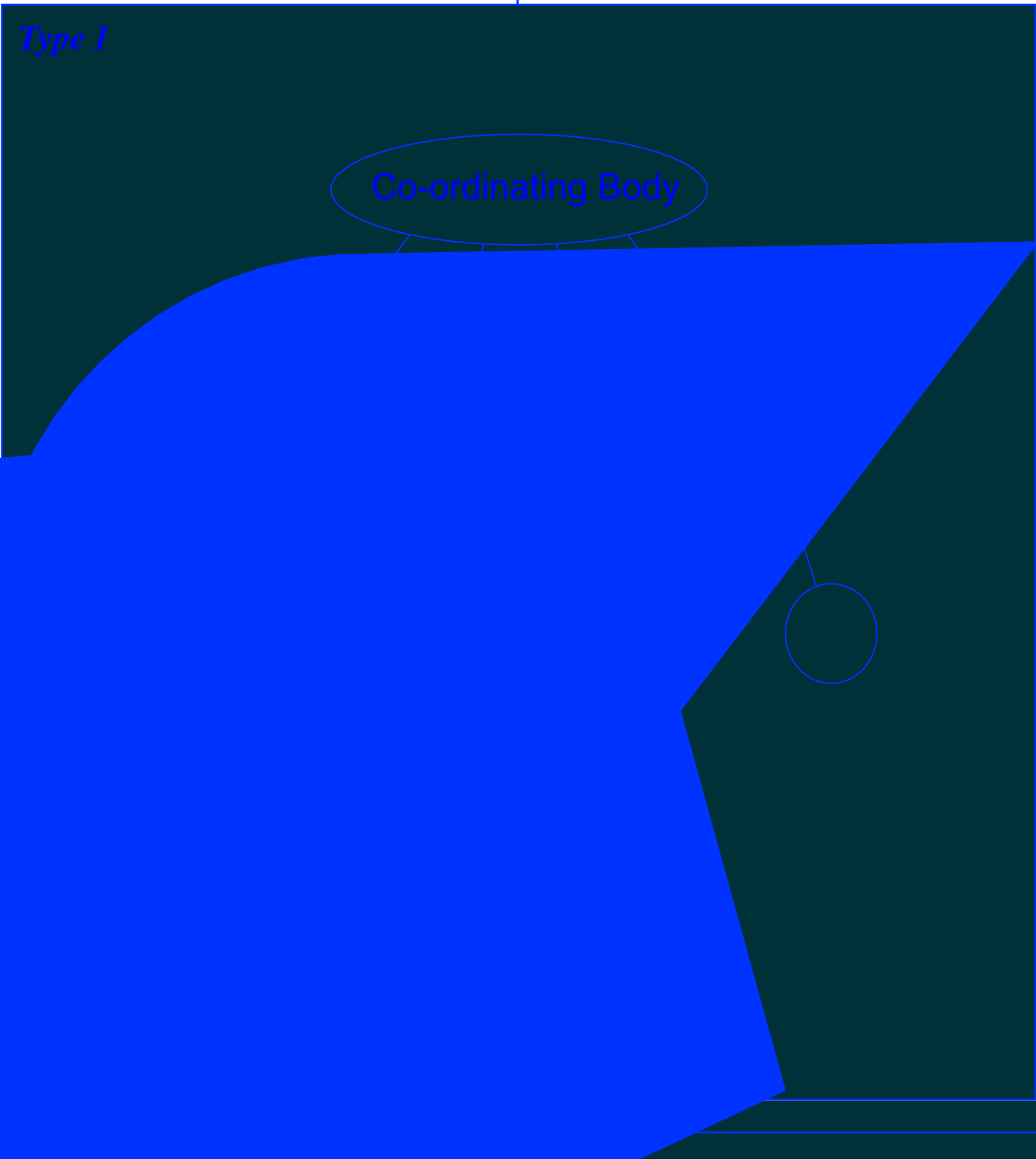
Our case study authorities had all faced these issues differently. However, three basic types of structure could be identified:

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

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

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

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




Type 1

Co-ordinating Body



Type 2





should agree how the situation should be managed.”

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

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

Government guidance states that:

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

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

Committee size

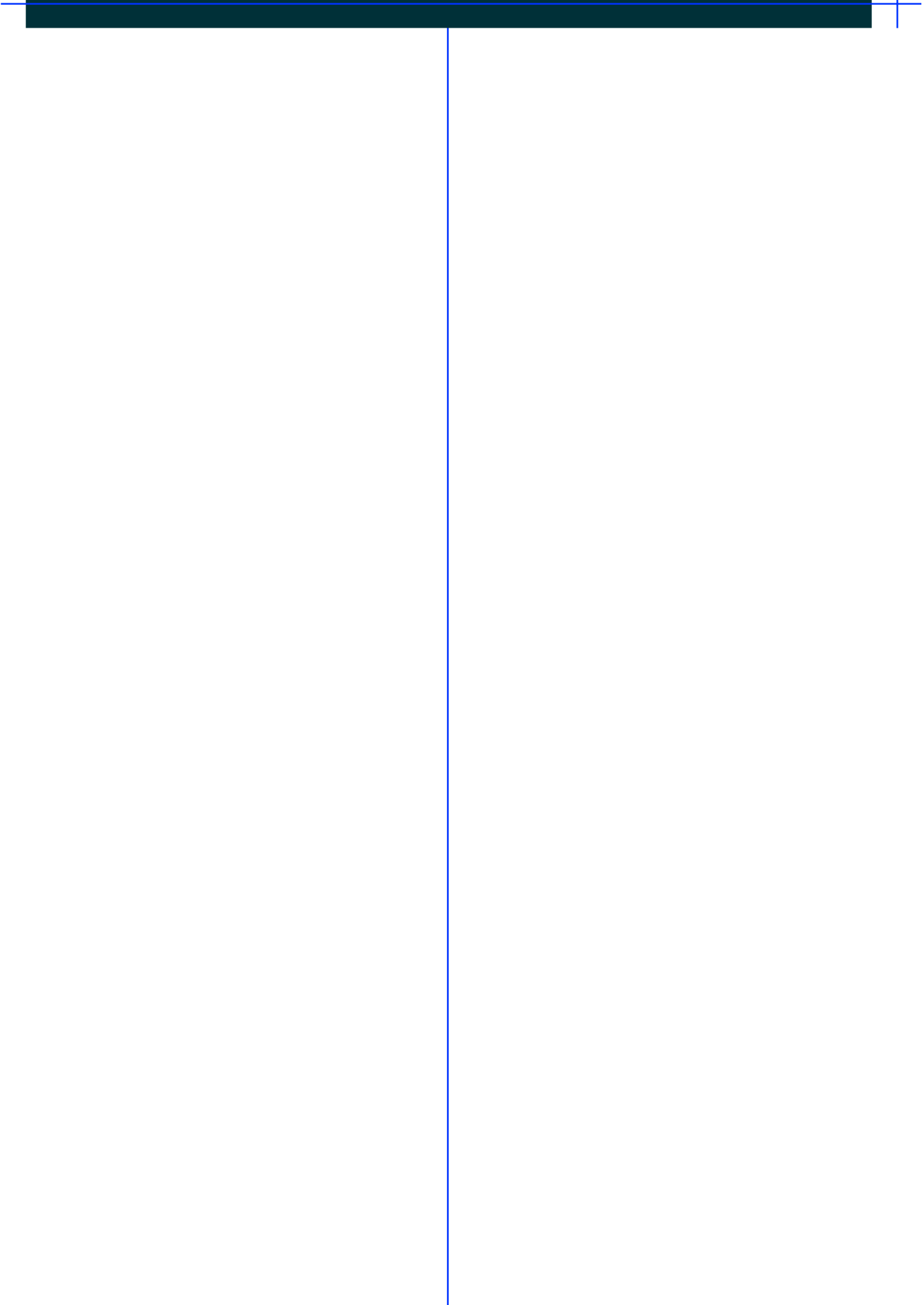
Those working within local authorities have realised that different sized committees are particularly good at doing different things. They use large overview and scrutiny committees to receive officer reports, scrutinise the cabinet and manage enquiries, and use panels to carry out detailed policy research.

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

co-optees. It looks at performance indicators and best value plans and passes work down to the sub-committees. It also receives all reports produced by sub-committees and working groups. There is also a panel of chairs which meets regularly. Not only does this ensure co-ordination of scrutiny, allowing the council as a whole to pursue the most relevant scrutiny things. They

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any defensiveness of the cabinet against overview and scrutiny.

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

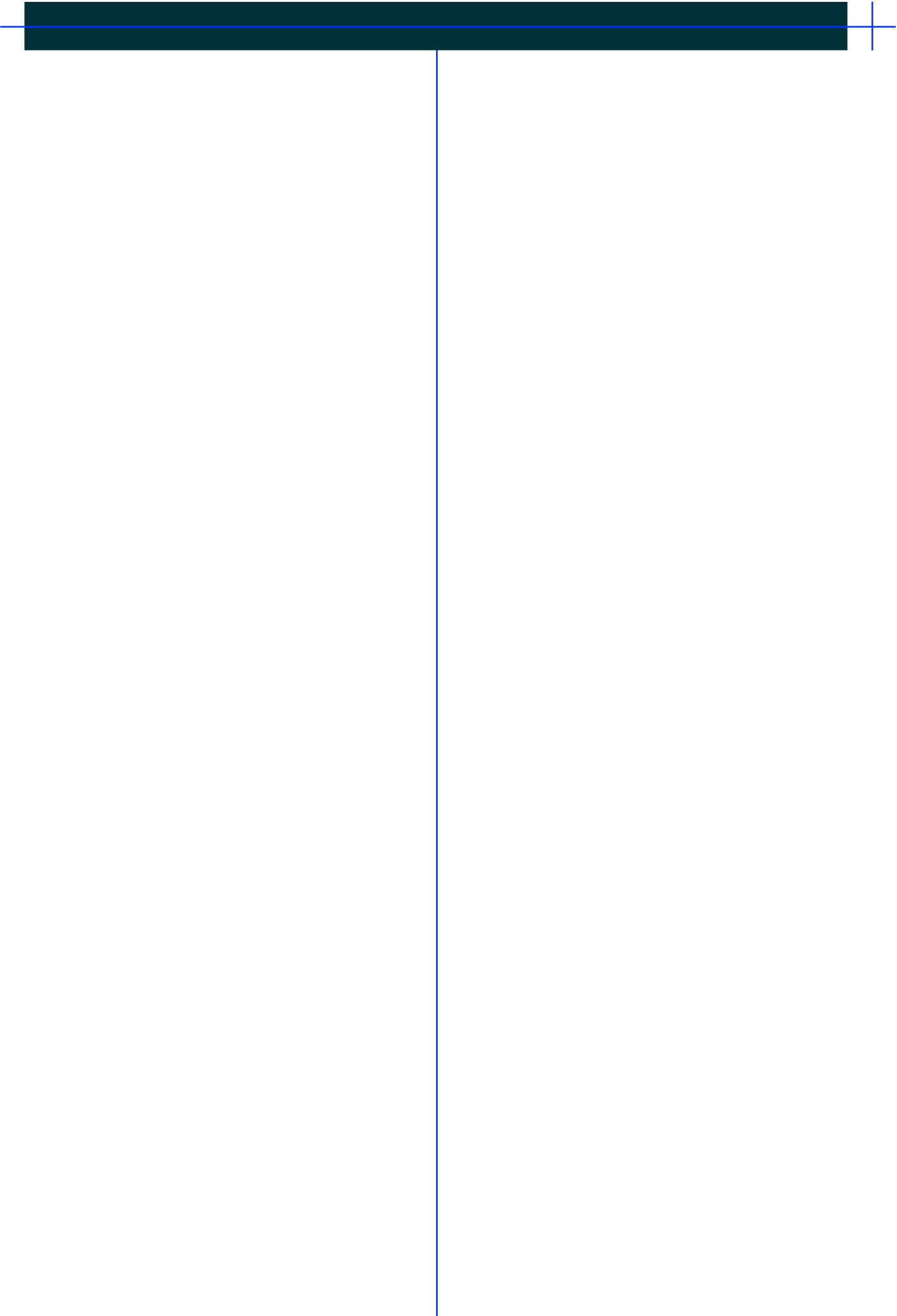
Often we found that either best value, monitoring, policy enquiries or holding to account predominated, sometimes due to patterns of work becoming set early in the overview and scrutiny process. Committees can contribute to the running of the council from a number of angles if they exercise the full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

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

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

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

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





*Concentrating on the decision
making process*

This does not encourage public participation.”

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

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

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

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

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

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

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

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

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

Choosing issues to investigate

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

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

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

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

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

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

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


spent up to 12 months building relationships with the local health community through seminars,

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

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

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

Camden’s scrutiny team sets out a timetable for each panel enquiry before it begins. Members decide, with the assistance of the officers, on who to invite in as witnesses. The timetable is often constructed around the availability of these people. Unlike at other tiers of government, each stage of the enquiry process is timetabled—a given number of meetings is set aside for to be aw(eac16 Tca listagaj0tss is tihe)becom-0.0891-long,ng. ry hasTc0.1386 6(considere, for beor aroumm



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

In some authorities we found that call-ins would be referred to a panel of chairs or a scrutiny committee in the first instance, before being passed to the executive—and that sometimes, or even often, the ruling party majority on that committee would prevent the call-in from going any further. In part this relates to the provisions for call-in which are laid down in the individual

sessions, where public involvement was minimal:

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

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

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

Recommendations

Overview and scrutiny is an ideal opportunity to expand participation, in particular because of the opportunities for councillors to connect with their electorates. Participation and visits should be routinely used in enquiries.

Committees should aim to carry out a variety of work, balancing the types of work described above. Time limits, and in some cases confusion, has often led to certain patterns of work getting locked in early on in the process.

Forward planning of the overview and scrutiny process is particularly important, to enable councillors to plan their personal diaries in advance. This is particularly so for part-time councillors, and where time-limited panels are used.

Committees should spend at least part of their time on focused work, instead of simply monitoring. Receiving reports is a

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

Procedures should be in place to ensure all committee members have an equal right to place an item on an agenda. Officers need to be prepared and able to ensure that items do not get repeatedly or routinely ignored.

As the Government has recommended, the presumption in overview and scrutiny committees, and panels, should be towards public meetings and openness. Where meetings are not held in public, minutes and agendas should be available to the public. Overview and scrutiny is weakened if it becomes a private, internal practice.

Panels are a valuable part of the process of overview and scrutiny. Opportunities should be given to members to work on them. This implies making the panels accessible in terms of time and members' existing workload.

It is particularly important to balance work between scrutiny of internal and external matters. These are distinct roles, but both properly part of overview and scrutiny. External scrutiny enables relationships to be built with other organisations, allowing the council to exercise its community leadership role. But monitoring and critique of the council's own performance and working practices should not be excluded from overview and scrutiny.

Overview and scrutiny committees should consider how they might develop

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Chapter 4: Expertise and support

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

Officers

The importance of dedicated scrutiny officers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*“[Public rights of way] got £500,000 in a difficult budget year, because of pressure from the panel, other members and the portfolio holder. Under the old structure, there would simply be an officers’ report. This way, there are 7 members who have seen 20 witnesses, produced a 30-page report, and can back up their recommendations.... We all know that officers only ever want more money, but if the members want more money, with good
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overview and scrutiny committees in the council. They are especially useful to the committees in carrying out comparative work:

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

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

Co-optees

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

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

The members

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

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

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

provided has concentrated on structures and philosophy.”

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

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

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

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

Recommendations

It is vital that overview and scrutiny committees and staff maintain good relations with departmental officers. But this depends upon an authority's officer culture accepting overview and scrutiny's right to investigate; and likewise, upon members treating officers with respect during an investigation.

Co-opting members from outside the council on to committees can be a useful way of bringing in new experience and expertise into an enquiry. More use could be made of them in some authorities: there are affinities here with the value of outreach. But co-optees should not be treated uncritically, as they may well have professional or personal agendas of their own.



Why take evidence?

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

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

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

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

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

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

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

“the Secretary of State encourages overview and scrutiny committees to seek views from as many communities and interested parties as necessary to get a balanced picture of the effects of policy and executive decisions. In particular, an overview and scrutiny committee could conduct a review of how certain decisions

reluctance to involve outside groups in overview and scrutiny.

Witnesses

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

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

Internal witnesses

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

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

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

External witnesses

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

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

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

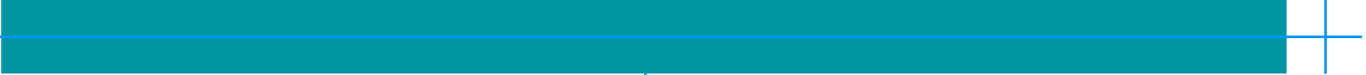
"We see overview and scrutiny as being a bit of a link between us and other agencies to make sure that our objectives get through to them."

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

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

Making a witness feel comfortable

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



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

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

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

“You can ask questions for a number of

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

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

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

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

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

Good chairing

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

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

This is a different process from the traditional task of the committee chair. Under the old committee system, the chair was the leading figure of the committee, the nearest equivalent to a member of the executive. The chair’s role was to deliver decisions on behalf of the full council. Under the new system, the chair’s task is more memcheome to a

Recommendations

External witnesses are one of the greatest advantages of the overview and scrutiny process. Panel enquiries should make use of them at every opportunity.

Members should be prepared to ask questions of witnesses in overview and scrutiny committees instead of making statements. Making statements confuses the new system with the old and will have no positive effect during witness sessions. Short, succinct questions are the most likely to gain useful information from witnesses. This is particularly true where evidence must be coaxed out of portfolio holders or officers who may be unwilling to give it.

The role of the chair in overview and scrutiny is to guide rather than to lead. S/he is not responsible for decision-making but for managing relationships between members, and between members and officers and other witnesses. This suggests that chairs have a particular duty to avoid party political behaviour in committees.



Reports



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

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

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

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

“Before we come up with any recommendation they arTTThe membera pr

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

The review of early years education in Kent indicated the importance of relationships between the different people involved in the overview and scrutiny processes. The panel contained a majority of Conservatives (the majority party), who were able informally to keep their cabinet colleagues informed on the progress of the review. The panel recommended a substantial expansion of council spending on nursery provision, which ran against the grain of the ruling party's efforts to keep spending down and to permit free rein to market provision. However, the majority party on the panel were persuaded that expanded provision was necessary. There was also tacit support for a

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

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

Recommendations:

It is not improper for overview and scrutiny to gauge officer and executive reactions to recommendations in advance. This need not lead to committees abandoning points which they know are opposed by the executive. Knowing likely reactions may lead the committee to stress some recommendations more strongly than others, in order to impact strongly where they can and play down where they cannot. Recommendations by overview and scrutiny committees often relate to issues which are already under discussion by the executive or departmental officers. But an intervention from overview and scrutiny will often push an issue several places up the executive's list of priorities, which in itself is a significant and valuable contribution to the policy-making process. Overview and scrutiny should not be troubled by seeing its contribution in this light.

It is vital for authorities to have a protocol for following up reports, which has been signed up to by the executive, the senior departmental officers, and the lead members for overview and scrutiny. A report which is not followed up stands a strong chance of being ignored, particularly if no follow-up is the typical pattern of events in the authority.

Cultural Hangover

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

Politics in committees

Scrutiny committees at all levels of government are an opportunity for the assembly body to question the executive body. Plenary sessions are the place where the political parties clash. Committees are where the serious questioning



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

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

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

"I think in the main most councillors have struggled. They still can't get their head around what it means from being in committees that have made policy and implemented policy to having to scrutinise policy by a certain view. I think if you went around and the majority of members would prefer to return back to the old system because it has so long been embedded in them and it is still within the culture of the council."

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

"Overview and scrutiny is a waste of time"

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

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

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

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

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

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



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

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

As the Government has recommended, the presumption in overview and scrutiny committees, and panels, should be towards public meetings and openness. Where meetings are not held in public, minutes and agendas should be available to the public. Overview and scrutiny is weakened if it becomes a private, internal practice.

It is not improper for overview and scrutiny to gauge officer and executive reactions to recommendations in advance. This need not lead to committees abandoning points which they know are opposed by the

DURHAM COUNTY COUNCIL



A SCRUTINY CHECK LIST



