



Effective Scrutiny: tools and intended outcomes

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Executive Summary

- The process of ‘scrutiny’ is ill-defined, and the word has come to be identified with the practice of the various institutions charged with carrying it out: the new devolved institutions, local government, Regional Chambers, the Greater London Authority and the House of Commons.
- The intended and desired outcomes of the scrutiny process have never been made explicit by Government. Especially in initial stages, this has led to some floundering by committees of assemblies and authorities. This has been especially true of local government, changing from its traditional committee system to one of overview and scrutiny, and of devolution in Scotland, Wales and Northern Ireland, where mammoth reviews of policy by committees were common.
- The majority of scrutiny processes carried out by committees can be defined either as policy review or accountability. Policy review refers to the study of past policy practice tied to recommendations for future changes, whilst accountability refers to questioning of executive officials or elected members about their decision-making and political judgements.
- We can also divide the potential intended outcomes of the scrutiny process into two categories: policy impacts and outcomes related to the democratic process. The former can be further subdivided into four aims: gathering information, investigating grey knowledge, accountability and pressure for change. The latter can be subdivided into public engagement, use of expertise and stimulating public awareness.
- We have identified a number of the tools that are used to carry out the scrutiny process, and have attempted to cross-refer them to the intended outcomes which we have identified. Many scrutiny committees make only hazy reference to their intended outcomes when deciding how to undertake an inquiry, and the grid we have devised is intended as a guide to that end.
- There also exist a number of necessary conditions for scrutiny to take place, which relate to the constitution of the relevant committee rather than to specific inquiries and the tools used by them.

Introduction

1. This is the final report of the Cons

Habits Die Hard?, but extends it to account for the differences between tiers of government. Thirdly, we outline the tools of the scrutiny process that we have encountered during the research. Fourthly, we make an initial analysis of which tools fit which type of scrutiny. This section inevitably involves value

The desired outcomes of scrutiny

12. Scrutiny is a new process in the government of the UK. Even eight years ago, in 1997, it was rare to hear any reference to it in the context of the business of government. Since then it has become ubiquitous. Scrutiny requirements have been introduced at all tiers of government in the UK, though all of them are permissive rather than prescriptive. There is no unambiguous statement about the role of scrutiny.
13. In the House of Commons, the standing orders of the departmental Select Committees require them “to examine the expenditure, administration and policy of the principal government departments” (Standing Order 152 (1)). They are given powers “to send for persons, papers and records” and “to appoint specialist advisers”. The majority of the work of select committees has (historically) focused on matters of policy (Drewry 1989). Expenditure in particular has been relatively neglected. On occasions when serious shortcomings in departmental administration have become apparent, committees have looked critically at these matters.
14. The performance of House of Commons select committees was strengthened in 2002 by the adoption of a series of ‘core tasks’ by Parliament. These largely restated functions that were already being undertaken by many committees. However, the effect of the core tasks has been to provide a reference point against which committees can judge their own performance:

“What they have done is force committees to look at the areas of their remit that they have least been interested in. It has always been easy to get committees interested in big political subjects, government policy documents and that sort of thing. Less so with public expenditure, delegated legislation, pre-legislative scrutiny... Committees don’t want to be seen not taking [the core tasks] seriously and it does mean that, given the committees know they will be reporting at the end of the year against the core tasks, part of the way through they year we ask how far we are fulfilling these things.”²
15. The core tasks, however, list only the areas which committees should be investigating. They do not suggest what the desired outcome of the investigations might be. The result of this omission has been a historical focus on the inputs of the scrutiny process rather than intended outcomes. Select committees, the longest established scrutiny bodies, have focused strongly on inviting witnesses and written evidence and producing lengthy written reports on selected subjects to feed into the Government’s policy-making process. The tasks and content of the scrutiny process are important, but it was not often linked to the influence which a select committee could have on policy or decision-making.
16. Similar problems were visible in the initial scrutiny work of the three devolved institutions in Scotland, Wales and Northern Ireland. In particular, in the first

2-3 years of these bodies' life there was a strong tendency to focus on very large policy reviews, where members heard from dozens of witnesses and produced a comprehensive compendium of policy options. One respondent mentioned a committee "that was notorious in its desire to change the world".³ Although an excellent report may result from such a process, that does not necessarily translate into impact on executive decision-making. This may be because the policy debate has moved on by the time of publication, or because the report proposes a massive programme of policy change that the executive is not prepared to contemplate. More focused, limited reviews, which make recommendations about policies which are currently identified as problems by the executive, may be less impressive but are more likely to have an impact on policy outcomes.

17. Local government scrutiny varies enormously across the 408 local authorities in England and Wales (the provisions of the Local Government Act 2000 do not apply to Scotland and Northern Ireland). Some authorities have used the changes as an opportunity to innovate considerably in committee work. In some, however, there has been a tendency to operate committees as they were operated under the old system. Vast numbers of policy papers are passed through committees, which monitor the work of the executive in intense detail. The quantity of work precludes committees from having much influence over decisions made by the executive. The focus in such authorities is on the inputs to committee work i.e. a belief that committees of elected members must be coeause

White Papers which preceded it. The Assembly is entitled “to investigate, and prepare reports about ... any other matters which the Assembly considers to be of importance to Greater London”.⁶ It is also obliged to regularly question the Mayor, to scrutinise the statutory strategies which the Mayor must produce, and to examine the Mayor’s budget. Outside this, however, it is free to set its

example of this. We also referred above to the disproportionate number of broad policy reviews in the first years of the devolved institutions. These were in part a response to the opportunity to

heading are really variations on the theme of decision-makers answering questions about the policies they have instigated and the decisions they have made, and those questions and answers being on the public record. Large-scale enquiries may also come under this head

scrutiny process began its life in the select committees of the House of Commons. Formal witness sessions, the production of a dense report, and a large range of (sometimes unrealistic) recommendations were not uncommon, with little consideration on whether or not policy impact would be achieved. The focus was on being right rather than being effective.

37. What, therefore, might positive outcomes for scrutiny look like? We suggest that there are two headings under which positive outcomes can be grouped. These are outcomes related to *policy impacts* and outputs related to *the democratic process*. These are not intended as a normative typology. They are derived from the implicit aims of much of the scrutiny work that we witnessed during the research. The word ‘implicit’ is used because, whilst scrutiny inquiries often stated their aims, aims were frequently expressed by extremely broad statements using phrases like “to inquire into”, “to examine”.
38. What, therefore, are scrutiny processes expected to achieve? We suggest seven possible intended outcomes of scrutiny below. As we will see, these intended outcomes are not mutually exclusive. Framing them helps to focus attention on what the scrutiny process can achieve.

The democratic process

39. *Engagement*. By ‘engagement’ we refer to what one respondent called “the process of interchanging the institution with the people”.¹² Engagement refers to the opportunity to meet committee members and speak to them on equal terms – often in a less formal setting than that of the committee session (see also ‘site visits’). Engagement may take place with members of the public, or with *stakeholders*: individuals or representatives of organisations which have expertise and/or an interest in the subject being enquired into. It is possible for stakeholder engagement to take place with the aim in mind of developing a more consensual policy recommendation. For instance, the National Assembly for Wales’s Higher Education inquiry deliberately took evidence from a wide range of stakeholders in order to include them in the policy-making process

Ireland. The enquiry had begun with the appointment of a special adviser to delineate the main themes with which a broad-ranging enquiry into tourism in Northern Ireland should concern itself. The adviser produced eight themes: these were subsequently used as the titles of break-out groups within the two conferences. Invitees to the conferences came from the lists of organisations and individuals which had already submitted written evidence to the enquiry, plus an extra dozen organisations who had not but which were known to the Committee.

52. The workshops were chaired by elected Committee members. The members were expected to take on board the views expressed in their workshops, though some respondents claimed that this had not taken place to their satisfaction. The workshop chairs then reported back in plenary sessions, during which issues were thrown open for general discussion. Following the two conferences, clerks began work on a draft report (which was interrupted by the suspension of the Assembly). Respondents suggested that the process had been useful for collecting a lot of evidence in a short space of time, and that it had facilitated brainstorming: “people felt free and relaxed and able to express their idea... A lot of ideas bounced from one to another”.¹⁴
53. The London Assembly has made slightly more use of consultative seminars (for instance, on tram systems). These are often free-standing seminars, not linked to a specific scrutiny process, and a short summary report will be produced afterwards. These are also useful ways of gathering a large quantity of information at a relatively low cost. Conferences and seminars also fulfil a useful public relations role: they signify that elected representatives are interested in the views of public, constituents and stakeholders, and that they are open to debate. They are useful for enquiries where a substantial public input will lend weight to recommendations that the committee makes.
54. Scottish Parliament committees use away-days, in effect private seminars, to

record is taken of proceedings, committee members may disagree about what happened or what has been learnt at a later date. Visits can be used for the purpose of engaging with hard-to-reach groups (see below), or to engage in a form of outreach to communities or particular regions. The London Assembly's inquiry into GP recruitment visited a GP surgery in East London which had pioneered the provision of a wide range of services in a very deprived district.

56. Visits may also be used to talk at first hand to policy-makers elsewhere, to discover innovative working in other localities or countries. As this report was being completed a controversy erupted over the House of Commons's ODPM Select Committee spending some £30,000 on a fact-finding trip to Singapore and New Zealand. The key for such visits is to demonstrate their additionality, as against writing or Internet communication. In comparison, the same Select Committee held hearings on regional disparities in Taunton and Newcastle during 2002, which were well-attended by the public and got good media coverage.

57. Visits are likely to be best used when a committee is examining a detailed policy proposal. Broader policy proposals are unlikely to gain a great deal from insight from a site visit, where, inevitably, only a small and focused aspect of policy can be viewed. We found that visits were far more common in local government scrutiny, motivated by councillors' desire to be closely in touch with their constituents' concerns. Visits provided councillors with an opportunity to 'escape from the town hall' and to view the provision of services at first hand: they also allowed voters to meet councillors without needing to take part in formal proceedings:

"A group of us went out and talked to some parents in a pretty deprived village and we visited a support group at a nursery school. Asking them to give a presentation to the committee wasn't really on. But on the other hand they had things that they wanted to say and they needed to say."¹⁵

58. This relates closely to Government guidance. Overview and scrutiny in local authorities was viewed by the Government as part of a wider package of reform, another aspect of which was effective representation *to councils by councillors*. Asserting that constituency work was a leading role for councillors that had been too often neglected, the Government presented local government scrutiny as a means to exercising the constituency role over against the executive:

"Overview and scrutiny committees should be a key mechanism for enabling councillors to represent the views of their constituents and other organisations to the executive and local authority and hence ensure that these views are taken into account."¹⁶

¹⁵ *Old Habits Die Hard?*, p.41

¹⁶ ODPM, *Local Government Act 2000: Guidance to the English Local Authorities*, paragraph 3.19

Involvement of hard-to-reach groups

59. Enabling hard-to-reach groups, such as children, old people, service users, or ethnic minorities, to be involved in the political process tends to be a stronger priority the smaller an authority is. Involvement of these groups normally goes hand in hand with visits. Evidence from the activities of authorities so far suggests that meeting hard-to-reach groups on their 'own turf' is far more productive than inviting them to formal committee meetings, which can be intimidating for those not used to them. By the same token, this process normally takes place on a face-to-face basis. This tool is best used as part of a focused review of a specific policy, introducing the perspective of service users. As a result, there are a number of types of review for which this would be unsuitable – for instance, those which do not examine public

we found that they same groups had also contributed to the executive's own policy review in the same subject.

62. The second benefit of stakeholder views

committees where the special adviser has delivered a report that has been absolutely awful”.¹⁹

65. Expert advisers are not necessary for routine data collection and the provision of basic information. They are most likely to be of use in a short, focused inquiry, where their expertise relates closely and in-depth to the job in hand, and their contribution will be less unique in a broad and wide-ranging piece of work. The following comment from Scotland illustrates typical use of special advisers:

“Special advisers will highlight [submissions] of particular importance and summarise all of them... Few people will read them all – the special adviser will read them all and take out the points of interest.”²⁰

66. Special advisers are only very rarely used in local government, in the London Assembly and in Regional Chambers. Chambers have appointed consultants to produce scoping reports or background reports on several occasions, but they have not appointed individuals to be attached to the committee for the duration of the enquiry. The London Assembly also appointed consultants frequently in its initial stages, but now employs a scrutiny staff of 20 to service committees and manage scrutiny research.

Reporters/rapporteurs

67. The use of reporters has been pioneered in the Scottish Parliament, in which reporters are now commonplace. It derives from the concept of ‘rapporteurs’ from the European Parliament, where a single member of a committee is tasked by the committee to report back on a specific subject. The chosen subject may be of particular interest to that member, but not a priority of the committee’s work programme. Alternatively, it may form a pilot for a more intensive committee inquiry.
68. Experiments with reporters have also taken place on the London Assembly on two occasions. On one, a member was tasked with reporting on a specific subject and did so jointly with a team of consultants. On another, a member of a committee pursued a particular interest and produced a full-length report, which was then passed by the committee. The entire committee took part in an oral evidence session leading to the report, with the interested member in the chair (in place of the normal chair). In neither case, however, was the rapporteur scrutiny used as a pilot. Local government respondents also indicated that the rapporteur system has been used there, though rarely formally: respondents simply referred to individual members going to speak to specific groups or officers and reporting back to the full committee. This was regarded as a useful addition to scrutiny rather than a ‘process’ in its own right.
69. Reporters are best used on specific enquiries into focused subjects. In Scotland, they are frequently used as part of the Parliament’s petitions procedure. The

¹⁹ *Scrutiny under Devolution*, p.21-22

²⁰ *Scrutiny under Devolution*, p.19

alongside stakeholder involvement and special advice, as a cross-section of well-informed policy opinion. It is less likely to represent the opinion of the general public.

Oral evidence sessions

74. Oral evidence sessions occupy the position of ‘inner sanctum’ of the scrutiny

“There is a tendency for members to ask very long questions, and long questions are not effective if you are seeking to put a person under pressure. .. A long question... gives the respondent longer to think of the answer – and they’ll waffle their way out of trouble. It runs across party, I’m sorry to say.”²⁷

76. Oral evidence sessions are most important in disaster enquiries or event enquiries, where part of the purpose of scrutiny is to address the decisions of specific individuals. In the Nantygwyddon inquiry in the National Assembly for Wales, for instance, an important element of the inquiry was permitting the public (affected by disease from a waste dump) to meet officials responsible for the waste. In other enquiries they are useful for obtaining perspectives or information about policy plans from executive members. This would be aided, however, if detailed correspondence was entered into in advance of the oral session, so that the session itself could be devoted to exploring specific points in greater detail. The value of oral evidence sessions lies in being able to pinpoint grey knowledge, and time pressures make this difficult if basic knowledge is not available in the session or most of the session is spent in obtaining it. Holding oral evidence sessions is undoubtedly useful, as it leads to a different relationship with the executive to one of simply writing letters.
77. Respondents in all tiers of government stressed to us the need to allow members to develop a line of questioning, particularly in the more interrogative oral evidence sessions that characterise accountability enquiries. To allow a single member to pursue a subject with several questions was felt to be more beneficial to an enquiry than to simply ‘go round the table’. A single questioner, interrogating a witness for several minutes, can pursue details and inconsistencies very effectively.
78. Oral evidence sessions can, alternatively, be used as one-offs, to ask specific questions of executive members, advisers, or non-departmental public bodies on the public record. In the London Assembly, for instance, a scrutiny process might simply take one meeting to ask the Mayor’s advisers about progress or lack of progress in implementing the Mayoral strategies. The purpose of such a session is the public accountability of executive actions. Such sessions would need to be dovetailed with good press management and strong questioning, to prevent the results of the session being merely banal. This kind of one-off session might also be of use for a minor ‘disaster inquiry’: for instance, a serious failure to spend public money with propriety, but one taking place on a small scale which had limited public profile.
79. It is increasingly common at all tiers for regular self-contained oral evidence sessions with executive members / ministers to be held. In Wales, the minister must report monthly to their committee. Most House of Commons select committees now invite their minister (whose department they shadow) at least once a year to speak to the annual plan of the department. Local government scrutiny committees increasingly ask executive members to attend every 6 or 12 months to give a general review of policy and priorities.

²⁷ *Issues of Importance*, p.26

Report and recommendations

80. Our reports were frequently critical of the nature of recommendations. A large number of recommendations were extremely general and/or aspirational, and many were also ‘conclusions’ rather than recommendations. Conclusions suggest a worthwhile research project, but they are not conducive to executive action on any specific policy point. Recommendations are strongest when they are achievable, measurable, and relate to specific policies or aspects of policies. When they are extremely general, it is hard to tell whether they have been put in place or not. One London respondent stated that the key was to:

“make sure you know who you’re recommending it to, what precisely you’re recommending, is it manageable and what the cost potentially is. And by when. You can’t just say, the mayor should give money to [four things] and if you add it all up it is nonsense. [If we recommend to government], well, ‘government’ is a big organisation, so which bit? No-one will take responsibility unless it’s narrowed down.”²⁸

81. Local authorities frequently permit service departments to see recommendations before they are published as part of a report. In part this derives from the fact that local authorities still have a corporate spirit which does not exist between, for instance, Parliament and Government or the London Mayor and Assembly. But it may also be a useful part of the scrutiny process. As scrutiny committees have no authority to enforce their recommendations, outlandish recommendations can simply be ignored by the executive. If this occurs enough times the scrutiny process will become discredited:

“Before we come up with any recommendations they are tested out with the department. The members are fairly independent on this.”²⁹

“What I think the more skilful chairs enable is that you open the crack in departments with an idea and build on that idea. So recommendations have to be feasible within the overall political philosophy of the government... They have to be well supported; they have to show a coalition of supporters within civil society. You have to show they are affordable. And you have to show that they can be done gradually.”³⁰

82. It is vital for scrutiny committees to follow up on the recommendations they make to establish whether or not they have been implemented. Where they have not, there is a further opportunity to question executive members in public and potentially to gain media coverage. This should be a positive experience for the scrutiny committee, as good press coverage will indicate that the committee is performing its task of holding to account:

“Our first report had 23 recommendations, then after a year I started following it up. Jaws dropped amongst the officers... I got a note saying ‘why have you asked these questions? You made recommendations, now it’s up to us to get on with it. There is no need to check up on us.’ So... we straightened that out!”³¹

83. Authorities increasingly use tracking systems through which they monitor progress against each of their recommendations. The London Assembly operates a sophisticated grid for this purpose. Regional Chambers are increasingly adopting such grids, as are some local authorities. Grids do not necessarily cause recommendations to be adopted, but they permit committees to keep the pressure on if they know

87. Committee size varies widely across institutions. House of Commons committees normally have 11 members. Committees in the devolved

members have many pressures on their time, and full-time officers naturally play a strong role in influencing decision-making. The degree to which officers make or closely steer decisions varies. In some local authorities, officer influence was very strong, because of the failure of members to understand that proposing topics for scrutiny was part of their role:

“[Setting of the agenda] is officer led. Mainly officers decide what goes on the agenda. Generally speaking, as far as I know, members don’t actually offer to look at this or that, they just don’t do it.”³⁴

92. In other tiers of government (and in many local authorities), members are more proactive, and committees frequently have more suggestions for scrutinies than they can carry out. In these instances, member preferences for subjects generally dictate what is chosen. The chair’s preference is often pivotal here: *Select Committees under Scrutiny* records that “a chair... claimed to know himself what the focus of the select committee’s work would be over the next session of parliament, even if the rest of the committee didn’t know yet”.³⁵

93. Some committees used the process of constructing their workplans as an opportunity for stakeholder engagement. Committees of the Scottish Parliament, and health scrutiny committees across England, use away-days or conferences

TD.3(ny5Tca)-0.7rdi England, use away-days or

events or contingencies. Elsewhere, however, they are simply slotted in as required, which can disrupt workplans.

96. In local authorities and Regional Chambers, it is quite common for work-plans to be linked in some way to the strategic plan of the local authority or Regional Development Agency respectively. In this case, scrutiny takes on a kind of audit function, holding the executive to account against its stated aims for the forthcoming year. This is a valid function, one that is much closer to the connotations of the word ‘scrutiny’ than the policy development role is. However, there is also a risk that committees which work in this way can become entirely focused on executive work – i.e. they allow the executive to set the policy agenda. Scrutiny also has a valid role to play in introducing new issues to the executive – for instance, public concerns that the executive has not acknowledged, or policy issues that promise to rise up the agenda in the near future.

Conclusion

97. This report aims to set out a framework for understanding the options available to authorities carrying out the process of scrutiny. It treats the process of scrutiny as a purely technocratic process. This has been done in order to abstract the parts of scrutiny which can be analysed at a technical level. However, scrutiny is not a purely technical but a *political* process. Decisions about what subjects should be scrutinised, how they should be approached, and the intended outcomes arising from them inevitably have a political hue (either party political or relating to members’ own interests and priorities). The political hue of scrutiny is what makes it more than a mere research facility for elected members, because elected members’ legitimacy, access to the media, and access to the levers of power within their authority mean that those in executive power will often (though not always) need to listen to their recommendations.
98. Crucially, scrutiny works differently and has different impacts, according to the political arithmetic of the assembly. In the House of Commons, there has been a very large Labour majority since 1997, facing a weak opposition in the Conservative Party. Labour backbenchers have had comparatively weak influence, as it would take a large number of them to vote down government policy. However, select committees have enjoyed an unusual level of press coverage in this period, reflecting the fact that many of them have been very critical of government policy whilst the Parliamentary opposition has not been influential.
99. In the National Assembly for Wales’ 2003 elections, a Labour-Liberal Democrat coalition gave way to a Labour government. The quality and quantity of scrutiny changed as a result. The Labour majority attempted to substitute a two-weekly cycle of committee meetings with a four-weekly cycle: a compromise of three weeks was even proposed.

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