

Holding politicians to account? Overview and scrutiny in English local government

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Recently, there has been little research published on overview and scrutiny. This article revisits the early literature. By restating and developing six conditions for the effectiveness of overview and scrutiny set out in UK government guidance in 2002, it demonstrates why success has been patchy but that scrutiny can work well when the conditions are met. The system exemplifies the doctrine of the separation of powers, in that the politicians who sit on overview and scrutiny committees are charged with holding to account another group of elected politicians who form the executive or cabinet. The practice of scrutiny could be strengthened if it was embedded as part of a wider process in which the full council holds the executive to account.

Keywords: Councils; councillors; local government; overview; scrutiny; separation of powers.

The Local Government Act 2000 introduced overview and scrutiny committees to most local councils in England. With the exception of some ‘fourth option’ authorities (with populations less than 85,000), decision-making powers were placed with small ‘cabinets’ or ‘executives’, or delegated to individual cabinet members or to paid officials. This split has been parodied as a disenfranchisement of backbench councillors from the decision-making process. However, this is only accurate where authorities have failed to facilitate overview and scrutiny as an effective tool within the council’s political management processes. It need not be so.

This article revisits the requirements for successful overview and scrutiny. It is not based on survey research. Instead, it uses earlier research findings and experiential papers produced by officers and members studying at the University of Birmingham (Coulson, 2010) to study the hurdles that have to be jumped for scrutiny to succeed.

Separation of powers in UK local government: the Local Government Act 2000

The system of local government in England created by the Local Government Act 2000 exemplifies the doctrine of the separation of powers, in that the elected politicians who sit on overview and scrutiny committees are charged with holding to account another group

of politicians who form the executive or cabinet.

From the Municipal Corporations Act 1835, the first of a number of statutes which created forms of local government in Britain that were prescribed and regulated by central government, power was held collectively. Decisions were taken formally at meetings of the council but, in practice, debate and discussion took place mainly in functional committees whose composition reflected the strengths of the political parties in the council.

Committee agendas largely comprised papers with draft recommendations for decision prepared by council officials, and the councillors from each political party met privately before the meetings to decide where they stood on these papers, those from a party with a majority knowing that they could win any votes that were taken. The system focussed power in the chief and senior officers who drafted the papers, and the chair and vice-chair of the committee who met with them a few weeks before any committee meeting to plan the agendas. It reinforced silos—chairs and chief officers whose main preoccupation was to protect their departmental interests. Taking a decision could take months, especially for cross-cutting issues which involved many committees. It gave councillors who were not chairs or vice-chairs of committees opportunities to influence the detail, and an impression that they were in control—though their influence was in most

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cases much less than that of the chair and senior officers.

The Local Government Act 2000 replaced this with a system where decisions are taken by a strong executive—a directly-elected mayor or a council leader (an elected councillor, normally the leader of the largest political party group) and a cabinet of up to 10 councillors. Councils with populations below 85,000 were permitted, if they wished, a ‘fourth option’ where decisions were taken by a streamlined set of committees. Committees were retained to deal with quasi-judicial matters requiring reasoned judgements on the basis of law and precedent—notably development control, licensing, environmental health, and standards—and for agencies run at arm’s-length, such as the fire and police authorities. In practice, only in 15 council areas, and in Greater London, have the electorate chosen, in referenda, to have directly-elected mayors (one subsequently reverted to the leader and cabinet system; two of these, the London Borough of Tower Hamlets and Leicester City, elected their first mayors in 2010 and 2011 respectively). The Local Government, Economic Development and Construction Act 2009 further strengthened the positions of council leaders, giving them four year terms of office and the power to appoint their cabinets from the elected councillors.

Councils (other than the fourth option) were required to create at least one ‘overview and scrutiny committee’, of councillors who were not members of their ‘executives’. They were empowered to make reports and recommendations on any matter that impacted on the council or its area and, if they had doubts about a decision, individual members could initiate a ‘call in’, whereby a decision is suspended until a hearing has been held and the decision reviewed (the precise number of members required to initiate a call in, and the procedures to be followed, are specified in the constitutions of individual councils). They were given powers to study decisions and policies of bodies other than councils operating in their areas, and to require council officials and cabinet members to attend and answer questions. They were not given executive powers to make or alter decisions—but, like parliamentary select committees (Russell and Benton, 2011), they could make recommendations and propose changes, which would then be considered by the executive.

The government published ministerial guidance on ‘model constitutions’, advising councils as to how they should institutionalize

the new arrangements (ODPM, 2001). It proposed that chairs should be divided between the political parties and whipping discouraged. However, the guidance was not binding, and many local authorities chose to keep the chairs of scrutiny committees within the majority party. A recent survey (Ewbank, 2011) showed that whipping, in the sense that party political groups discuss scrutiny topics and advise their members how to vote, is still prevalent, especially in many smaller councils.

The legislation and guidance left only a small number of matters in the hands of the full council (such as the requirement to approve the annual budget and rate of council tax, and to hold an annual general meeting where members of the executive would be appointed). Little guidance was provided on the roles of opposition councillors, beyond their involvement as members of full council, scrutiny committees and regulatory committees.

Health scrutiny committees were established, for upper tier council areas, under the Health and Social Care Act 2001, with important detail in the ensuing Statutory Instrument No. 3048 of 2002. This gave them the right to be consulted on any ‘substantial variation’ in National Health Service (NHS) provision, and to express any concerns direct to the secretary of state for health, and the right to require officials from NHS trusts to attend and answer questions on any matters the committees chose to scrutinize. These additional powers, and the value of a forum which could review policies at the interface between provision by the National Health Service and by the adult and children’s services of local authorities, led to some of the most innovative scrutiny (Smith *et al.*, 2006, 2007; Coleman, 2006; Johnson, 2007; Coleman *et al.*, 2009).

The Localism Act 2011 further clarified the role of overview and scrutiny committees. Councils who so wish will be permitted to govern themselves once again through the committee system. Where referenda support this, it will be obligatory. But those who retain cabinet forms of government, or have directly-elected mayors, will be required to have at least one overview and scrutiny committee. Some of the specific powers of health scrutiny were discontinued, but health scrutiny committees are still expected to comment on major reorganizations and, under health legislation still before parliament, to monitor and hold to account the work of the new health and wellbeing boards, as well as the new responsibilities for public health which will move to local government.

Research on overview and scrutiny

The scrutiny function was researched before the 2000 legislation made it obligatory, in councils which piloted the new arrangements (Snape *et al.*, 2000; Cole, 2001; Snape and Taylor, 2001a). This led to the production of guides to good practice in the scrutiny function (for example Snape and Taylor, 2001b; Snape *et al.*, 2002) and contributed to the official government guidance (ODPM, 2001). The work continued through an ESRC project run by Rachel Ashworth (Ashworth, 2003; Ashworth and Hunt, 2003), and a number of reviews of the function in its early years (Leach, 2003 and 2005; Ashworth and Snape, 2004; Sandford and Maer, 2004, 2005). The effectiveness of the scrutiny function was considered in the *Evaluation of Local Governance* (ELG) research, the official government study of the workings of the new constitutions in local government, based on surveys of samples of councillors and council officers. Its 2004 report described scrutiny as 'a problematic element of the new constitutional arrangements' (Stoker *et al.*, 2004, p. 9). The final report of this study, in 2007, found evidence of scrutiny investigations were often useful, but that only around a third of councillors and council officers believed that scrutiny was effective (see table 1).

Much of the subsequent published work has concerned the role of political party groups in influencing the scrutiny process (Copus and Leach, 2004; Leach, 2009). Their conclusions, to the effect that party groups frequently discuss scrutiny investigations and influence their conclusions, were confirmed by survey work completed as part of a doctoral thesis by Mark Ewbank (Ewbank, 2011). Case studies showing the value of scrutiny investigations were published by the consultancy Shared Intelligence in 2005 and 2009, and in Coulson

(2010).

From 2003, the Centre for Public Scrutiny (CfPS) surveyed its contacts in all councils annually (there were responses to the 2008 survey from 68% of the councils in England and Wales). Eighty per cent of scrutiny recommendations were being accepted by their executives, though only 70% of these recommendations were subsequently implemented. As with the ELG research, the most effective forms of scrutiny were policy review and policy development; the least effective were scrutiny of partnerships and the broad category 'holding to account'—conclusions which reinforce the view that overview and scrutiny committees are most effective when they carry out investigations to review or develop policy. The average number of full-time equivalent scrutiny officers in councils that reported that they employed dedicated scrutiny staff was 2.9 per council in 2008—but the figure was 5.3 for London boroughs, 4.8 for counties, 4.5 for metropolitan districts, 3.3 for unitaries, and only 1.4 full-time equivalents for shire districts—and many shire districts (and some unitaries) did not employ any dedicated scrutiny officers (CfPS, 2009, p. 7).

A study of scrutiny officers, carried out at Warwick University, was commissioned jointly by the Department of Communities and Local Government and the CfPS (Dacombe, 2008). This concluded, on the basis of in-depth interviews in 37 councils, that scrutiny is most effective when more officers are employed, there is a budget to support the process and to bring in external expertise when needed, and where the scrutiny officers have good links with all their committee members and with 'senior managers throughout the organization'. For many officers, at least in the smaller councils,

Table 1. Councillors and officers' views on the effectiveness of overview and scrutiny committees (2005).

<i>Agree overview and scrutiny committees have been effective in:</i>	<i>Councillors (%)</i>	<i>Officers (%)</i>
Holding decision-makers to account	37	35
Reviewing service outcomes	51	51
Providing clear lines of accountability	31	18
Ensuring local views are taken into account	39	36
Exploring innovative forms of service delivery	27	20
Involving external stakeholders in their deliberations	47	46
Investigating non local authority service providers	36	30
Influencing council policy	37	42
Providing a forum for community debate	28	21
Reconciling differences of opinion in the community	14	8
Base	885	456

Source: Stoker *et al.* (2007), table 29.

scrutiny was seen as a rewarding and enjoyable part of a career. Similar points were made by Harvey who identified many frustrations and a general lack of support and understanding of scrutiny, especially in the smaller councils, but also that scrutiny officers had been able to develop skills and knowledge of the council which would have been much less likely in other areas of council work. She concluded that scrutiny needs to be strengthened and better recognized, and that 'a small, skilled group of councillors, working with equally skilled, dedicated officers...could...make it more likely that the cynicism and lack of co-operation of professional officers within other parts of the council could be overcome' (Harvey, 2010).

Effective scrutiny: an update

The division of labour between councillors involved in executive decision-making and in scrutiny has now been operational for 11 years—more if the pilot period is added. But those who took part in the early studies of it were coming to terms with something new, and many harked back to the old committee system. It was not possible, at that time, to get a clear perspective of what could be achieved by the new arrangements.

Today, a majority of councillors and many council officers have not experienced any other system. Scrutiny officers and the more experienced and proactive chairs of scrutiny committees understand its strengths, and the choices that must be made if it is to add value and avoid distraction. This article is a distillation of that contemporary experience, gained by and the authors and their colleagues through their work, as consultants and trainers, with councillors who deliver the scrutiny process and officers who support it. They developed a postgraduate module on the subject, and drew on material submitted for academic assessment to create a pioneering publication on overview and scrutiny in UK local government (Coulson, 2010).

It is structured around six conditions, identified in the 2002 report by Snape *et al.*, but not previously explored in detail, which, they asserted, need to be in place for scrutiny to be effective. These are:

- Member leadership and engagement.
- A responsive executive.
- Genuine non-partisan working.
- Effective dedicated officer support and

management of the scrutiny processes.

- A supportive senior office culture.
- A high level of awareness and understanding of the role of overview and scrutiny.

If any of these conditions are not met in a particular local authority, scrutiny is likely to struggle. That alone is sufficient to explain why its performance is patchy. If all of them are in place, the discussion below shows that scrutiny has a good prospect of being able to contribute to policy development, by enabling councillors to explore a small number of issues in depth.

Member leadership and engagement

In a manner not dissimilar to the parliamentary select committees (Maer and Sandford, 2004; Russell and Benton, 2011), the main business of most scrutiny committees has been to carry out reviews into areas of policy, based largely on oral hearings, but with some use of more imaginative methods of collecting information, including workshops, surveys, visits, public meetings and the use of social media. They have found it difficult to add significantly to work on performance, where cabinets and chief officers' management teams have, understandably, taken the lead (Ashworth and Snape, 2004, pp. 547–548), or on budgets, where political parties want to hold back proposals for the budget debate in full council (though the requirement to make savings is now giving more prominence to budget scrutiny).

Policy reviews give councillors an opportunity to get below the surface and understand issues that are holding back change, and to make effective recommendations. They are often conducted by subcommittees, 'short life working parties' or 'task and finish groups'. Much depends on how topics are chosen, and how willing chairs and their committees are to challenge their executives. To engage the councillors involved, topics need to be of local relevance, and with a realistic prospect of leading to change. Leach, while recognizing that useful work has been done, accuses many scrutiny committees of undertaking activities which are 'relatively safe' and do not sufficiently put cabinet members and senior executives under pressure (Leach, 2009, pp. 10–13). This is to a degree inevitable in committees composed of politicians elected on party platforms (similar comments are made about

the UK parliamentary select committees) but it need not prevent worthwhile investigations being undertaken.

A scrutiny committee is dependent on the skills of its elected members, and especially its chair. It is only at the final stages of an investigation that officers will prepare a report with draft recommendations. Best practice—not always followed—is that the chair and vice-chair will work with scrutiny officers to decide how to structure the meetings, who to invite, what kind of questioning or other research techniques to use, and how to bring an investigation to a constructive conclusion. But once the meeting starts, the chair requires skills of a high order, to manage time, to be firm but tactful with those answering questions, including senior politicians and powerful officers, but also on occasion with those asking them, and to cope with being both chair and having a view of the matter under discussion. The chair needs to grasp the technical issues around a new topic, to win respect from the officers, and to be able to refuse additional work in order to focus on work already under way.

This is often described as acting as a critical friend—but it is not easy to be a friend and an effective critic at the same time. A minority of councillors are attracted to the role, and have the necessarily independence, character and skills. If the chair does not have these high-level skills, scrutiny committees are not seen as a good use of time, attendance drops, and little is achieved.

A responsive executive

A successful scrutiny chair has to maintain a relationship with the corresponding members of the executive, and with senior officers. Recommendations will, where possible, be crafted and presented in ways that executives or cabinet members can accept—as already noted, the CfPS surveys show that 80% of scrutiny recommendations are accepted (CfPS, 2009, p. 12). Russell and Benton (2011) describe similar pressures to draft resolutions that will gather wide support in the parliamentary select committees.

Many leaders and cabinet members see the benefits of a scrutiny investigation, and may even see questioning in public as a platform to explain policies and respond to legitimate concerns. They may, and often do, suggest topics for scrutiny (this ‘pre-scrutiny’ can be valuable if used in

moderation, as the conclusions of such a review are likely to be taken seriously. If used to excess it undermines the independence from the executive of the scrutiny function.)

Leach argues that many scrutiny committees are effectively controlled by their council executives. He hopes for a greater use of the powers to call in a decision with which they disagree, where action is delayed until a scrutiny committee has held a hearing on the matter (Leach, 2009, pp. 21–22). In 2008 there were on average only 2.5 call-ins per council per year (CfPS, 2009, p. 13). But call-ins are time-consuming, bureaucratic (especially when councils construct strict criteria which must be met before a decision can be called in—see Edwards and Devellennes, 2006), and are often attempts to bolt stable doors after the horses have fled. They seldom lead to fundamental changes in decisions, although they allow for more discussion before a decision is finalized. They risk politicizing the scrutiny process, as call-ins are likely mainly to originate from opposition party members, and if there are many call-ins the executive will lose faith in the scrutiny process. They can provide a safety valve, but not a comprehensive means for holding an executive to account.

Non-partisan working

There is no requirement for a scrutiny committee, or a parliamentary select committee, to work across political parties and, on rare occasions, minority reports can be useful and effective. But practice in both the House of Commons and in local government has shown that, most of the time, the process works best when a committee presents the best evidence available, draws conclusions and recommendations from it, and presents this as an all-party report. In that situation the members from all parties, including a majority from a party with a majority, are publicly committed to the recommendations. Political point-scoring can be conducted somewhere else (see Tutt, 2010).

Even before the reforms of the House of Commons which strengthened the select committees, proposed by the 2009 Wright Committee but introduced by the incoming coalition government in 2010, their chairs were divided between political parties, broadly in line with their representation in the House of Commons, and there is no doubt that this has assisted their

development. It is good practice to do this also in local government, but it is not a legal requirement, and the exception rather than the rule. It has recently become mandatory in Wales (Welsh Assembly, 2009).

Effective officer support

Scrutiny is unlikely to be effective without the support of capable officers (Dacombe, 2008). However, the surveys of the CfPS show that the average number of full-time equivalent staff working on overview and scrutiny in county councils, unitary councils, metropolitan districts and London boroughs was, in 2009, just over four, in shire districts just over one (CfPS, 2009), and numbers are further declining in response to the current financial pressures. Many shire districts do not employ the equivalent of a single full time officer.

Scrutiny officers, including many in district councils who were previously committee services officers, are often relatively junior in council hierarchies, yet expected to deal with senior council officers and executives from outside the council who are invited to come and provide evidence. They work with the chair and vice-chair of a particular scrutiny committee (or short life working party) to plan the research, prepare (or facilitate the preparation of) background reports, invite and brief appropriate witnesses, and write draft reports. As Dacombe concludes, if there are too few officers, or they lack the necessary skills, the quality of the investigations will suffer.

Supportive senior officer culture

The amount of time available to question an individual in a scrutiny hearing is seldom sufficient to gain much information from someone who does not wish to be open. The process therefore depends on individuals who come prepared to share, and expect to get something constructive from the experience. Few will look forward to attending a scrutiny committee, but if they believe that they will be heard fairly, and that their concerns will be taken seriously, and, where relevant, incorporated into scrutiny reports and recommendations, then useful information is likely to be forthcoming.

High level of awareness and understanding of the scrutiny function

Given the challenges described above, it is not a surprise that levels of understanding of scrutiny, even among councillors, are low,

that the public show little interest unless controversial matters are to be discussed, and that a number of councils have been able to reduce or remove entirely the cadre of officers supporting the scrutiny process.

There is pressure on overview and scrutiny committees to do what they cannot do. Thus they cannot substitute for the audit function or be comprehensive in the way that an audit covers every spending activity (Downe and Martin, 2005; Madahar, 2010). They are not inspectorates, or regulators. Given the limited member time available, they have to be selective; yet they have been given more responsibilities (including calls for action, introduced under the Local Government and Public Involvement in Health Act 2007, through which councillors can call on scrutiny committees to hold hearings on matters where action has not taken place; or the scrutiny of crime and disorder reduction committees deriving from the Police and Justice Act 2006).

Conclusions

This discussion demonstrates why the effectiveness of scrutiny in English local government is variable. If chairs are weak, the council leader and executive hostile, officer support is inadequate, the process has become overly politicized, or there is little support from senior council officers, or lack of understanding of the process, it is extremely hard for scrutiny to flourish. Its capacity is limited by the willingness of councillors to find the time, so it will always be selective, never comprehensive. It does not have a strong position in direct conflicts with the powerful executives created by the Local Government Act 2000 and subsequently strengthened even more, although on occasion the power of call-in can prevent them making decisions they would otherwise regret. Its main role is to complement the work of the executives, by holding hearings into matters of local concern, or areas of poor performance, and writing effective reports, hard-hitting if necessary. In these ways, selectively but not comprehensively, it can hold executives to account.

Scrutiny works well where there are a small number of investigations (three or four per scrutiny committee per year). Ideally these will be undertaken by short life subcommittees, with good questioning, leading to reports written by capable officers, with far-reaching recommendations, tactfully

presented, and sympathetically received and acted upon. Good scrutiny—a member-led process, involving investigations, questioning, and clear recommendations, leading to the understanding of complex problems, and improved outcomes in service delivery—should be seen as a process of research and investigation, conducted diplomatically, more akin to consultancy than to audit, with the potential to think the unthinkable and confront any kind of vested interest. It does not need to confine itself to formal oral questioning, but can use workshops, visits, surveys, the internet, commissioned written reports, and use other research and researchers (for example from universities) to open up discussion. But to do this it needs status, and independence, and a willingness ‘to speak the truth unto power’.

A fundamental weakness of the Local Government Act 2000 was that it largely ignored the full council, beyond requiring it to hold two significant meetings a year—an annual general meeting which makes appointments to political offices and a budget meeting which set departmental budgets and the level of council tax. The act did not enshrine the council as a parliament for its area, a group of politicians chosen by the electors to hold decision-makers to account. Successive UK governments have often found it easier to conceptualize the accountability at national levels, with councils treated as executive agencies, delivering national services on behalf of central government.

It is the full council where the executive should be required to justify its actions and decisions, with scrutiny committees as one of its main mechanisms for making this a reality. This would bring local government in line with national, where ministers are held to account by parliament, with select committees created by parliament to facilitate this. It would strengthen the process if the law was changed so that scrutiny committees are required to report regularly on the scrutiny process to full council (and to the auditors), and to present their reports to the full council. Debates on scrutiny reports in full council showcase the work, and demonstrate that the executive is responding. A reform on these lines would be a small but important step towards strengthening local democracy (Coulson, 2011).

It would be possible to go give scrutiny committees additional powers. They could interview candidates for Leader or cabinet

positions before their approval by full council, or candidates short-listed for key officer positions, including chief officers in charge of council departments. They could have powers not just to return decisions to executives if these were not consistent with policy framework documents or the budget as passed by full council, but to overturn them. They could play a much stronger role in guiding the council in its debates on key policies, by discussing them in detail in advance of council meetings and tabling their responses. The full council meeting could be chaired by a ‘speaker’ chosen to be independent and the servant of all the councillors, or by the leading scrutiny chair, rather than, as at present, a ceremonial mayor or chairman, or a directly-elected mayor.

The Local Government Act 2000 entrenched strong executives and limited the powers of non-executive councillors and political oppositions. A rebalancing, by strengthening of the powers of scrutiny is a route back towards effective oversight, while avoiding the partisan nature of traditional opposition—and in the process local government as a political process would be strengthened.

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