

Notes from the  
Centre for Public Scrutiny  
Government Scrutiny Guidance Symposium  
Holborn Library  
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Notes from the session provided by Ed Hammond, Director of Research CfPS, on key components of the guidance. This document provides a commentary on the Statutory Guidance, and covers the main issues addressed in it in an abbreviated form. Members should still read and have regard to the full Guidance document.

The Guidance has been written like many Statutory Guidance documents for local government with the overall tone emphasising a non-prescriptive enabling approach. The Civil Servants have tried to strike a balance between providing prescriptive direction vs allowing authorities to continue to operate effective scrutiny in their authorities. The CfPS were a consultee to the Ministry of Housing, Communities & Local Government, but much of their advice was omitted from the final document. The CfPS have recommended that the Guidance is viewed alongside their own Good Scrutiny Guide (which was updated and republished 20 June 2019) and with their Self-evaluation Framework document.

The advice from CfPS is that each authority which has a scrutiny function should use the Statutory Guidance to reassess their own scrutiny arrangements to see if these are still fit for purpose and that they still provide local scrutineers with the relevant support and structures in place to foster an independently minded scrutiny function. With this in mind each scrutiny authority must “have regard to” the guidance. This will mean that each relevant section should be addressed by each authority, with a clear rationale demonstrated by that authority if it chooses, according to its local circumstances, to move away from the Guidance.

It should be understood that Scrutiny should always be a whole Council endeavour and not just the preserve of the Scrutiny Officer and Scrutiny Members.

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### 2. Culture (pages 8 - 12, paragraphs 7 – 13)

Within culture there should be an emphasis on the commitment of the Council’s political and organisational leadership to make scrutiny work.

Having the right culture in place is critical to making scrutiny effective. It’s possible for an authority to say all of the right things regarding scrutiny but in practice and action not be open to effective scrutiny which results in scrutiny being side-lined and ignored.

The Statutory Guidance highlights that “In particular: The executive should not try to exercise control over the work of the scrutiny committee. This could be direct, e.g. by purporting to ‘order’ scrutiny to look at, or not look at, certain issues, or indirect, e.g.

through the use of the whip or as a tool of political patronage... The chair of the scrutiny committee should determine the nature and extent of an executive member's participation in a scrutiny committee meeting."

The Statutory Guidance also recommends that each authority should a) recognise scrutiny's legal and democratic legitimacy; b) identify a clear role and focus; c) ensure early and regular engagement between the executive and scrutiny; d) manage disagreement (recommended that authorities should consider a joint executive and scrutiny protocol); e) provide the necessary support; f) ensure it provides impartial advice from officers; g) communicate scrutiny's role and purpose to the wider authority; h) maintain the interest of full Council in the work of the scrutiny committee; i) communicate scrutiny's role to the public; and ensure scrutiny members are supported in having an independent mind-set.

### 3. Resourcing (pages 13 – 14, paragraphs 15 – 22)

Resources need to reflect the needs and size of the authority but it also needs to offer some support to the Members who undertake scrutiny or it will not function effectively. Clearly local authorities have been retrenching since 2010 so resourcing scrutiny for many has not been seen as a priority. In two tier areas the lower tier authorities do not have to appoint or designate a statutory scrutiny officer but it is still their decision as to how they should recourse it. Although it is possible to find exceptions, it could be argued that those authorities who dedicate less of a resource to support scrutiny will more than likely have a less effective function. Good governance costs but poor governance can cost a fortune. The CfPS cited the cases of Mid Staffs health scandal and the Rotherham child sex abuse scandal as authorities who had an undeveloped scrutiny function, that might have helped raise concerns in these areas had they been given latitude in their authorities to do so. The CfPS stated that they had hoped that the Guidance would establish that Statutory Scrutiny Officers role would be equal to other statutory appointments within authorities, but the Government did not address this in the Guidance.

It is important to note that resourcing does not just mean specifically designated full time staff but should include all paid staff who provide officer time to assist the scrutiny function with impartial, professional advice. This includes Strategic Directors and Assistant Directors as well as Heads of Service and other staff as well as the support of the Constitutional Services Officers.

### 4. Selecting Committee Members & Chairs (pages 15 – 17, paragraphs 23 – 36)

The Statutory Guidance recommends that within a scrutiny committee that the right members are selected to help the committees function effectively. Those members should have the necessary skills, commitment and knowledge so that the committees can provide adequate challenge in research/questioning skills to effectively hold decision makers and partners to account. "What an authority must consider when forming a committee is that, as a group, it possesses the requisite expertise, commitment and ability to act impartially to fulfil its functions." The method of selecting chairs, whether these are from the majority group or opposition members, should be a matter for each authority to determine. The guidance recommends that each authority should consider selecting their chairs by secret ballot, but reiterates that this is ultimately a matter for each authority to decide.

The Guidance provides an emphasis on training for committee members. It is important that scrutiny members are offered induction training when they are new to the role as well as providing ongoing training for established members.

### 5. Powers to Access Information (pages 18 – 20, paragraphs 37 – 46)

It is recognised in law that scrutiny members enjoy powers to access information. In short, members should not have information withheld from them when it is requested. "While each request for information should be judged on its individual merits, authorities should adopt a default position of sharing the information they hold, on request, with scrutiny committee members." There still may be circumstances "where it is legitimate for an authority to withhold information,"... in such circumstances "the executive is required to provide the scrutiny committee with a written statement setting out its reasons for that decision" but the Guidance stresses that "members of the executive and senior officers should take particular care to avoid refusing requests, or limiting the information they provide, for reasons of party political or reputational expediency."

Under this section the Guidance also provides advice about:

- a) The need to explain the purpose of scrutiny
- b) The benefits of an informal approach
- c) How to encourage compliance with the request
- d) Who to approach

#### 6. Planning Work (pages 21 – 24, paragraphs 47 – 58)

The Guidance suggests that "effective scrutiny should have a defined impact on the ground, with the committee making recommendations that will make tangible differences to the work of the authority" to do this scrutiny committees need to carefully consider their work programme, this can be a list of issues they wish to scrutinise which members need to give some prioritisation to but leaving some room for flexibility if issues arise during the year. Where there is more than one scrutiny committee in an authority thought needs to be given to how these are supported by officers and when work is undertaken to spread out the workload.

"Scrutiny has the power to look at anything which affects 'the area, or the area's inhabitants'." To this end the remit can be very broad so some prioritisation and focus needs to be provided to make sure that the themes chosen are manageable and deliverable. Work planning should also consider the strategic importance of an issue and also risk.

#### Who to speak to:

- The public - The Guidance recommends that members should informally gauge the views of the public through their networks to bring forward possible topics, and should consider going out into communities to gather views, rather than expecting the public to engage with the Council. An authorities' communication team should also be engaged in the process of engaging with the public, utilising social media and online platforms.
- The authority's partners – this can include other authorities and public sector partners such as other tiers of local government, the NHS (for upper tier authorities), Police; the voluntary sector; contractors and business partners; cross-authority bodies such as LEPs and large local employers
- The executive – The executive and the authority's senior officers. "The executive should not direct scrutiny's work (covered in chapter 2 Culture), but conversations will help scrutiny members better understand how their work can be designed to align with the best opportunities to influence the authority's wider work" CfPS advice to Council's is that the Scrutiny work programme is their own property and scrutiny can therefore consider suggested work directed to them from the

Executive, Council or partners but ultimately it is their decision whether to pursue an issue or not, scrutiny can say no as well as yes.

Information sources:

- Performance information
- Finance & risk information
- Corporate complaints/Members' surgeries
- Business cases & options appraisals

Shortlisting topics:

- What benefits would be expected from a review?
- How best carry out the work?
- What would be the best outcome?
- How would this work engage with the activity of the executive and partners?

Carrying out work:

- a) As a single item on a committee agenda
- b) At a single meeting
- c) As a task and finish review of two or three meetings
- d) Via a longer task and finish review (six or seven meetings over a number of months)
- e) By establishing a standing panel

7. Evidence sessions (pages 25 – 26, paragraphs 59 – 68)

Good preparation for evidence gathering sessions is vital to having effective meetings and collecting sound evidence.

How to plan:

- Members should be clear what they want to achieve from a session
- Members should prepare for evidence sessions by reading all of the background information provided as well as carrying out their own 'desk top' research. If written evidence and answers to pre-prepared questions are provided by officers then members should digest the information and be ready to ask further questions depending on the oral evidence provided.
- At the end of an evidence session the chair should be able to "draw together themes and highlight the key findings." During these sessions recommendations should emerge.

Developing recommendations:

- The Guidance recommends that for the drafting of recommendations "it will usually be appropriate for this to be done by members. When deciding on recommendations, however, members should have due regard to advice received from officers, particularly the Monitoring Officer."
- Reports and recommendations should be evidence based
- Recommendations should be SMART and low in number, ideally no more than six to eight in number