

# Scrutiny Protocol

## 1. Introduction

- 1.1. The Levelling Up White Paper set out a mission that by 2030, every part of England that wants one will have a devolution deal with powers at or approaching the highest level of devolution and a simplified, long-term funding settlement.
- 1.2. In providing areas with more powers and funding flexibility, these powers need to be used appropriately to support local and national priorities. This means having local leaders and institutions that are transparent and accountable, seek the best value for taxpayer's money and maintain strong ethical standards.
- 1.3. Strong and accountable local leaders are a fundamental part of thriving local democracies. The English Devolution Accountability Framework (EDAF) sets out how these institutions with devolved powers are accountable to local people and the UK Government, and how their decisions will be scrutinised and made transparent for local politicians, business leaders, and local communities of their area. This Scrutiny Protocol is a key part of making sure that institutions' overview and scrutiny arrangements are of the highest possible standards for holding them to account for delivery as well as for playing a critical role in policy and strategy development. This is particularly important when scrutinising devolved powers.
- 1.4. Effective scrutiny is critical for ensuring there is appropriate accountability for the decisions made by local decision makers. When done well, local scrutiny should drive understanding, enhance the performance of services and improve the outcomes for those people affected by those decisions.
- 1.5. This Scrutiny Protocol sets out the relationship between mayors and directly elected leaders, and the combined authority, combined county authority, county council or unitary authority they lead. It also sets out how the overview and scrutiny and audit Committees hold these institutions with devolved powers and their mayor or directly elected leader to account.
- 1.6. In adopting the key principles and provisions of this Scrutiny Protocol, each institution will ensure it has a focus on a sustained culture of scrutiny. Membership on committees should be prized and competed for. Retention of members for several years should be common. Members must be able to devote the time to the role. Committees should have the profile and cachet to ensure that their findings are brought to the attention of the public wherever necessary through strong communications.
- 1.7. The Government considers the Scrutiny Protocol a key factor in implementing Level 4 and single department-style funding settlements. Institutions with devolved powers should utilise the principles of the Scrutiny Protocol and requirements of the EDAF (including Local Assurance Frameworks) to ensure transparent and accountable decision-making and delivery of value for money on devolved funds.
- 1.8. In the future, the Government will expect areas to adopt MP sessions to further enhance scrutiny, similar to those arrangements being established in GMCA and WMCA and any lessons learned from the application there. This will be considered when institutions receive single department-style funding settlements.

## Who the Scrutiny Protocol is for

- 1.9. This Scrutiny Protocol (“the Protocol”) applies to the arrangements of overview and scrutiny committees (“committees”) in all English institutions with devolved powers, including combined authorities (mayoral and non-mayoral), combined county authorities (mayoral or non-mayoral) and, with regard to their devolved powers, county councils and unitary authorities that have agreed devolution deals.
- 1.10. The Protocol provides guidance for chairs and members of overview and scrutiny committees as well as scrutiny officers to help them carry out their roles effectively. The Protocol also provides guidance for those responsible for making appointments to overview and scrutiny committees.
- 1.11. Overview and scrutiny committees have statutory powers to scrutinise the decisions of the executive, the combined authority or the combined county authority. Members and officers should recognise that recommendations following scrutiny enable improvements to be made to policies and how they are implemented.
- 1.12. London has different arrangements. The Greater London Authority Act 1999 (as amended) sets out the arrangements for the Greater London Authority and Assembly. Where applicable, the GLA and Assembly should look to implement the guidance identified in this Protocol.

## **How to use this Protocol**

- 1.13. This Protocol is non-statutory guidance but should be seen as supplementary to statutory guidance and relevant legislation.
- 1.14. This Protocol primarily refers to “shoulds” – good practice, and key principles and additional scrutiny that Government considers a key factor in implementing Level 4 and single department-style funding settlements.
- 1.15. This Protocol also refers to requirements arising from legislation and statutory guidance that must be adhered to<sup>1</sup>.

## **2. Key principles for Good Scrutiny**

- 2.1. Scrutiny is most effective when it is highly focussed and seeks to achieve a clear outcome. There should be a commitment to focussing scrutiny activity through developing a clear, outcome-driven, and member-led work programme which is delivered through a committee

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<sup>1</sup> Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009

The Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017

Schedule 1 to the The Levelling Up and Regeneration Act 2023 (the 2023 Act) and regulations made under the 2023 Act

The Overview and Scrutiny: statutory guidance for councils and combined authorities (which will be updated to include CCAs once the secondary legislation is made, subject to the will of parliament).

Sections 9F – 9FI of the Local Government Act 2000

Combined Authorities must also have regard to any such provision in its statutory constitutional provisions.

structure that can enhance the delivery of that work programme to best effect. This could be a single committee or multi-committee model.

2.2. In combined authorities and combined county authorities, a single committee model should be considered to provide a shared platform from which all committee members can develop a strategic overview across all portfolio areas and an understanding of the interconnection of key policies to effectively scrutinise cross cutting issues. If another model is used it should be clear how this model is able to meet the key principles identified in this Protocol. These are:

- a pool of members
- politically balanced membership
- geographically balanced membership
- appointing a chair
- sustained appointments made on interest and skills
- well-resourced training
- inviting technical expertise
- remuneration and status
- holding the mayor or directly elected leader and the institution to account
- participation in pre-policy and pre-decision scrutiny
- provision to call in
- regular performance monitoring including agreed outcomes
- robust work programming
- focused task and finish exercises
- strong relationships with stakeholders
- regular self-evaluation and reflection
- access to data, research, and analysis
- strong relationship with audit committees

#### **Case Study – Greater Manchester Mayoral Combined Authority (GMCA)**

GMCA have been successful in implementing a single committee model with 20 members and 20 additional members in a substitute pool. This single committee model has been implemented to provide the flexibility and resilience for scrutiny to work effectively whilst being well-attuned to the cross-cutting nature of Combined Authority business.

2.3. County councils and unitary authorities with devolution deals should look to incorporate the scrutiny of any new activity arising from their devolution deal into their existing scrutiny arrangements. As there could be multiple committees looking at specific service areas, members are encouraged to maintain and develop a strategic overview of the service areas within their remit and work collaboratively with other committees where appropriate if issues involve more than one service area. It may also be worthwhile to undertake a review of current scrutiny arrangements as part of implementing their devolution deal to ensure that they will be suitable for the new activity.

#### **Key Principle 1 – a pool of members**

2.4. Enabling the interconnection of policies across a number of portfolio areas requires members to have an advanced level of knowledge across a range of subjects. To achieve this, all committee members whether appointed to a committee or acting as substitutes should be

treated as a single body and have access to the same induction and training opportunities as well as regular subject briefings. In doing so, members will feel suitably well-informed to engage effectively at meetings and take part in task and finish exercises (where required).

- 2.5. Well informed and active substitute members also provide a greater pool of membership to ensure that meetings are quorate and enable wider engagement of members across the authority area.

### **Key Principle 2 – politically balanced membership**

- 2.6. Membership must be politically balanced in line with the proportionality across the institution as far as reasonably possible.

### **Key Principle 3 – geographically balanced membership**

- 2.7. Due to the increased geographical size of a combined authority or combined county authority committee membership should also be geographically balanced as far as possible to ensure that the committee draws on a whole area perspective at meetings. Nonetheless, institutions with devolved powers are strategic organisations delivering across a functional economic geography and as part of their role members should be able to pivot between their local understanding and the need to take a wider strategic/functional view when considering issues applying to the whole institution and the geography it represents. This will aid effective scrutiny of priorities, performance, and delivery.

### **Key Principle 4 – appointing a chair**

- 2.8. In combined authorities and combined county authorities, the chair of the committee must be seen as an independent voice. They must either be an independent person or an appropriate person (as defined by legislation). This ensures a healthy degree of separation to allow a greater level of objectivity in the committee's scrutiny activity. Such practice should be considered for county councils and unitary authorities for the scrutiny of any new activity arising from the devolution deal that is being brought into their existing scrutiny arrangements.
- 2.9. It is the responsibility of the chair to be 'apolitical' to ensure the committee remains in line with its terms of reference and is the voice of the committee at combined authority, combined county authority or cabinet meetings.

### **Key Principle 5 – sustained appointments made on interest and skills**

- 2.10. Scrutiny requires a certain set of skills and it is therefore imperative that those who are appointed to the committee are done so based on their experience, interests, and skill set while also considering geographical and political balance. When seeking appointments, a clear role description should be used to inform interested parties of the key skills required as well as the demands of the role (an example of a role description is attached at Annex A).
- 2.11. Where possible members should also be appointed for more than one year to enable them to provide continuity to the work of the committee and ensure that the shared level of knowledge remains high. Working from the foundation of an informed committee allows members to be more confident in their challenge and ultimately more effective in their scrutiny.

### **Key Principle 6 – well-resourced training**

- 2.12. All institutions should provide and adequately fund training for all members including knowledge briefings, peer to peer groups, and training on key functions including finance, commercial and data interrogation. This training should include an induction for the chair and members on the institution, its powers, roles, and responsibilities should be required at the beginning of every municipal year.
- 2.13. All members should be offered additional knowledge briefings outside of the formal meeting structure and ahead of reports being presented, where they can have access to further information to assist them in their scrutiny activity. These briefings should be informal and provide a safe space where members feel able to ask those questions that they may not feel able to in a committee meeting. Further briefings should also be organised at members request on any other subject matter where they feel this will strengthen their knowledge base, and offered to all members and substitutes where needed.

### **Key Principle 7 – inviting technical expertise**

- 2.14. Committees should invite technical expertise to meetings to enhance scrutiny of decisions. Technical experts can provide a different perspective on the issues being discussed at meetings and help members with their line of questioning leading to enhanced scrutiny.
- 2.15. Technical expertise should also be commissioned to provide training and briefings to the chair and members of the committee to support them in their roles and ensure they have access to technical and independent knowledge, and information to enhance their scrutiny of the institutions' priorities, performance, and delivery.

#### **Case Study – West Yorkshire Combined Authority (WYCA)**

WYCA's scrutiny has invited external experts to scrutiny committee meetings (and working groups) and made good use of the professional expertise of existing scrutiny members. A local academic who had independently tested the accuracy of the Real Time Bus Information system managed by WYCA was invited to answer technical questions alongside officers, which resulted in the committee recommending that officers partner with the academic and the university to iron out the technical issues. Councillors with an expertise and background in psychology have also led presentations and discussions, based on their own research and experience, on the topic of how behaviour change techniques and principles could be employed to encourage people to change how they travel to support decarbonisation goals.

### **Key Principle 8 – remuneration and status**

- 2.16. Combined authorities and combined county authorities should remunerate committee members directly, reflecting the responsibility and status of the role. This must be done transparently through the use of an Independent Remuneration Panel (IRP) who recommend an allowance level for approval by the combined authority or combined county authority (to be provided for in forthcoming secondary legislation, subject to the will of Parliament). Combined authorities and combined county authorities should pay the maximum recommended by the IRP to ensure that members commit the time required to the role. Substitute members should also be remunerated, but their payment should also reflect the number of meetings that they have attended. The chair should receive an additional level of remuneration in recognition of their specific role.

- 2.17. County councils and unitary authorities can make provision for the payment of special responsibility allowances for those councillors who have either assumed significant responsibilities following agreement of their devolution deal or want to reconsider other policies in light of it.
- 2.18. Scrutiny should be seen as central to the good governance of the authority. Committees and chairs should receive some dedicated resource with support provided across a range of areas such as research, policy, and administration. Clear processes should be in place for their recommendations to be received and responded to as appropriate and they should have the visible support of senior officers and members of the institution. Committees and chairs should have access to information including matters of commercial sensitivity, matters awaiting government approval and other confidential matters (in line with Access to Information Procedure Rules).

### **Key Principle 9 – holding the Mayor or directly elected leader and the institution to account**

- 2.19. One of the key roles of the committee is to hold the Mayor or directly elected leader (and where necessary other members and officers of the institution and its partners) to account for their performance.
- 2.20. The Mayor or directly elected leader and institution should commit to engage regularly with the committee both informally and formally, and must attend the committee when requested.
- 2.21. Members who are portfolio leads (or equivalent) should also commit to engaging regularly with the committee and attend when requested. Even if members of the institution have assigned or delegated areas of responsibility to others, it should be standard practice for them to attend to present any reports within their portfolio alongside the appropriate officers.
- 2.22. There should be a standing invitation for the chairs of committees to attend the combined authority, combined county authority or relevant cabinet meetings to create an opportunity for the committee's comments on particular proposed decisions or issues to be shared directly.

### **Key Principle 10 – participation in pre-policy and pre-decision scrutiny**

- 2.23. The practice of bringing decisions for scrutiny shortly before they are taken should be avoided (whilst recognising the need for urgent exceptions). Instead, members should be engaged early in the development stage of a policy so that they can help shape its design and add real value.
- 2.24. A Forward Plan of key decisions is essential. Having regular opportunities to consider this also enables the committee to have a breadth of sight across all the work of the institution and determine those areas for further scrutiny. Moreover, institutions should ensure that there is a culture of the Forward Plan being used appropriately with decisions being placed on the plan well in advance of them being taken.
- 2.25. The committee should also contribute to all policy and strategy development in respect of high-profile complex issues affecting the whole geographical area. As a result, when a report is taken for a decision, the committee's comments and amendments can be highlighted. This may include matters of commercial sensitivity, matters awaiting government approval and

other confidential matters (in line with Access to Information Procedure Rules), that need careful handling and might involve the exclusion of the public.

### **Case Study – West Midlands Combined Authority (WMCA)**

Ahead of the WMCA submitting its deeper devolution deal offer to DLUHC, its overview and scrutiny committee held a series of workshops that undertook a deep dive into each of the offer's key proposals, testing the scope and ambition of each 'ask', and challenging whether the ambition of these proposals were sufficient to address the region's needs. This work resulted in the strengthening of the deal document ahead of its formal adoption by the CA and its constituent authorities.

2.26. To inform their scrutiny of policies and decisions, and using all available evidence or assessments, members should consider the viability of funding sources, financial propriety, and the extent to which the policy or decision being scrutinised is likely to provide value for money.

#### **Key Principle 11 – provision to call in**

2.27. The committee should use their power to 'call in' decisions to ensure that any decisions receive further scrutiny where the committee thinks it is necessary. However, good scrutiny should focus on uncovering potential issues with decisions before they need to be called in.

#### **Key Principle 12 – regular performance monitoring**

2.28. An initial focus on the institutions' key strategies will enable the committee to understand its priorities, and begin to monitor performance against delivery and ultimately recommend where action is needed, including improvement activity, more quickly. This should be supported by regular reports highlighting the evidential challenges and where further scrutiny could support delivery against a target, including any outcomes that may have been agreed as part of devolution deals.

2.29. However, it is important that performance monitoring does not monopolise the work programme of the committee, but that it is used as a tool to highlight those areas where further scrutiny would be most effective.

#### **Key Principle 13 – robust work programming**

2.30. Areas highlighted through the performance monitoring of the institutions' key strategies should formulate the skeleton of the committee's work programme, from which members can then select other areas of interest through a formal report or task and finish exercise where they feel scrutiny could add further value.

2.31. It is important that the work programme remains robust and flexible enough to cope with a dynamic devolution environment where the priorities of the institution change so that scrutiny can be undertaken on policy development as it evolves. A combination of long-term pre-policy scrutiny interspersed with more immediate performance scrutiny will ensure the work programme remains appropriate and can dovetail with the work of the institution.

2.32. Committees should have a clear process by which it develops its work programme, who it will engage as part of its work programme and how it will prioritise what it should undertake further inquiry on. It is expected that committees will take in a wide range of views from the institution itself (officers, the executive or the combined authority or combined county authority), constituent members, partner organisations and residents.

#### **Key Principle 14 – focused task and finish exercises**

2.33. The chair and members should consider when it is relevant to focus on an area of the work programme through task and finish activities which can provide the opportunity for ‘deep dive’ scrutiny that a committee meeting setting often does not allow. This approach is often most valuable when it brings together stakeholders to discuss and debate complex topics but should be member-led and have tangible outcomes that will benefit the work of the institution.

2.34. Determining the scope of the task and finish exercise alongside an agreed timeframe is imperative, as the realm of the topics can often be immense but the decision process to influence is fast paced.

2.35. The number of task and finish reviews should be determined by the strategic priorities highlighted by members and the capacity of the scrutiny function. Task and finish review meetings can be held virtually but their work should be transparent and their final reports and recommendations (at least) must be made publicly available.

2.36. The institution should formally receive task and finish reports following endorsement from the committee and must respond to their clear set of recommendations within two months. The committee should be responsible for monitoring the progress against these recommendations at agreed periods.

#### **Key Principle 15 – strong relationships with stakeholders**

2.37. Committees should use their power to invite stakeholders to meetings. These could include members and officers of constituent local authorities, and, in county council areas, their district councils and other local stakeholders should be invited to the committee meeting where the organisation delivering services and utilities is being scrutinised.

2.38. To allow scrutiny to be effective it is crucial that the public can easily understand the work and performance of committees. With this in mind, local journalism plays an invaluable role in the fabric of our society, in supporting communities and in ensuring the provision of reliable, high-quality information. Local news publishers remain uniquely placed to undertake the investigative journalism and scrutiny of public institutions at a local level that is vital to helping ensure a healthy local democracy. Local press and media must therefore continue to be able to play a key role in facilitating public accountability, with opportunities created for them to engage with the committees, its members, and their work and findings.

2.39. As well as building relationships with local press and media, institutions should consider how they use their communications function to publicise the committee, and its members, work, and findings while remaining mindful of the recommended code of practice for local authority publicity.

2.40. For combined authorities and combined county authorities, the work of their committees should complement that of their constituent local authority scrutiny committees rather than



create duplication. It is likely that one set of scrutiny activities will raise points that equally apply or are relevant to the other. Strong relationships, including with other key local stakeholders, should therefore be formed to enable work programmes to be shared and reports presented to the most appropriate committee. There is also a role for members of the committee in ensuring effective links with constituent local authority scrutiny committees through appropriate information sharing and ensuring the interconnection of work programmes.

### **Key Principle 16 – regular self-evaluation and reflection**

- 2.41. Members should come together regularly to reflect and direct their own work programme. This could take place in public during a meeting or informally following a meeting, however space should be created for members to be open and honest about the direction of the work of the committee and to provide an opportunity for regular self-evaluation.
- 2.42. Reflecting on the work of the committee and the resulting outcomes of scrutiny activity should also be undertaken through other methods, including regular round-up bulletins, annual reports, or other publications.
- 2.43. An annual report should be published to broadcast the work of the committee, demonstrating how the committee's work influences and benefits the outcomes of the institution and its strategic goals and priorities. For combined authorities and combined county authorities, this should be formally considered by its constituent members. For county councils or unitary authorities, this should be considered at cabinet and full council.
- 2.44. The institution should welcome the continual self-evaluation of the committee but also commit to undertaking its own evaluation exercises, as often as required, to ensure the function remains effective, including seeking feedback from key partners.

### **Key Principle 17 – access to data, research, and analysis**

- 2.45. Committees should use data to improve their knowledge and understanding of their institution's performance, as well as how other institutions are performing to learn lessons and share best practice.
- 2.46. The Office for Local Government (Oflog) will support the improvement of local government performance by fostering accountability through increased transparency. It will provide authoritative and accessible data and analysis about the performance of local government and will publish key data for institutions with devolved powers. This should be considered as part of committee business.

### **Key Principle 18 – strong relationship with audit committees**

- 2.47. Combined authorities and combined county authorities must have an audit committee. Local authorities with a devolution deal should have an audit committee to ensure they maintain robust financial management and controls for accountability to local stakeholders.
- 2.48. Overview and scrutiny committees should work in tandem with the Audit Committee and should be agreeing how to manage shared areas of interest and responsibility. The Audit Committee having responsibility to support and monitor governance, risk management, external and internal audit, financial reporting, control and assurance arrangements. The overview and

scrutiny committee having responsibility for scrutinising decisions the executive, the combined authority or the combined county authority is planning and how they will be implemented.

- 2.49. Although the focus of the overview and scrutiny committee, is different from the audit committee, there are opportunities for the committees to work collaboratively. Work programmes of each committee should be informed by each other's work and recommendations shared where appropriate. Regular meetings should be organised between the chair of audit and the chair of overview and scrutiny to support a better understanding of the committees' outputs, helping to avoid duplication and ensure important areas are not missed.
- 2.50. Audit committees should receive dedicated resource and there should be clear processes in place for their recommendations to be received and responded to as appropriate.
- 2.51. Audit committees should also publish an annual report to broadcast the work of the committee and how its work influences and benefits the outcomes of the institution and its strategic goals and priorities. For combined authorities and combined county authorities, this should be formally considered by its constituent members. For county councils or unitary authorities, this should be considered at cabinet and full Council.
- 2.52. The institution should welcome the continual self-evaluation of the Audit Committee but also commit to undertaking its own evaluation exercises, as often as required, to ensure the function remains effective.

### **3. Additional Scrutiny – Mayor or directly elected leader's Question Time**

- 3.1. Mayors and directly elected leaders provide greater democratic accountability by having a single visible leader directly accountable to the public at the ballot box for their performance and the decisions they make.
- 3.2. Mayor's or directly elected leaders' question time should also be organised where the Mayor or directly elected leader takes questions from the public, chaired by an independent person – a local journalist or businessperson for example. These should be held at least every three months.

## **Annex A – example member role description**

Local scrutiny is critical for increasing the accountability of decision makers. It should drive understanding, enhance the performance of services and the outcomes for those people affected by those decisions. It is crucial that members of local overview and scrutiny committees in areas with devolution deals set new standards for holding their institutions to account for delivery as well as playing a critical role in policy and strategy development.

This description provides information about the role and responsibilities of an overview and scrutiny committee member. It should be used when deciding which members to nominate to the committee. The information should also be used by overview and scrutiny committee members to understand their role and the responsibilities that they hold as members of the committee.

### **SKILLS AND EXPERIENCE**

Overview and scrutiny committee members and substitute (pool) members should be able to:

- Understand the whole geographical area strategic priorities as set out in the strategy for the combined authority/local authority.
- Think critically about the combined authority/combined county authority/local authority's proposed policies and its performance across a variety of measures.
- Work constructively with public and/or private sector partners to drive improvement of both policy and performance.
- Confidently scrutinise combined authority/combined county authority/local authority members, officers, and the mayor/directly elected leader.

### **RESPONSIBILITIES OF MEMBERS**

Overview and scrutiny committee members and substitute (pool) members are expected to:

- Attend any appropriate induction and training sessions for the role, which will develop members' knowledge of the area's ambitions as well as the challenges that the area faces.
- Attend formal scrutiny meetings regularly. There is also an expectation that members will take part in the work of task and finish groups.
- Use their knowledge and experience to constructively scrutinise issues that come before the committee.
- Collaborate with other members to effectively scrutinise important matters in appropriate depth, including convening task and finish groups to investigate specific areas in more depth.
- In combined authority and combined county authority areas, engage with their respective constituent local authorities to ensure that information is circulated between the local authorities and the combined authority or combined county authority.
- Carry out their duties in accordance with the scrutiny rules of procedure and the members code of conduct as set out in their constitution.

### **ADDITIONAL RESPONSIBILITIES OF THE CHAIR**

The chair of the committee is expected to take on additional responsibilities, which include:

- Working with officers to develop the work programme on behalf of the committee, taking into account the upcoming work of the combined authority/combined county authority/local authority and areas where scrutiny must be carried out.
- Chairing committee meetings effectively so that members can carry out their roles efficiently.
- Facilitating strong team-working between committee members during formal meetings, informal meetings, and task group meetings.
- Monitoring the progression of task and finish groups established by the committee.
- Attendance of combined authority, combined county authority or local authority cabinet meetings in order to feedback recommendations and comments of the overview and scrutiny committee.