



West Midlands
Combined Authority

Overview & Scrutiny Committee

Date	4 September 2018
Report title	'Effectiveness of Overview & Scrutiny Committees' - Government Response to the Communities & Local Government Select Committee's First Report
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Recommendation(s) for decision:

Overview & Scrutiny Committee is recommended to:

- (1) Note the Government response to the Communities & Local Government Select Committee's First Report of Session 2017-19 on the 'Effectiveness of Local Authority Overview & Scrutiny Committees'.
- (2) Note that revised scrutiny guidance will be issued by the Government later this year and that the West Midlands Combined Authority will be required to review its scrutiny function, as appropriate, after the publication of this revised guidance.

Purpose

1. To inform members of the report of the Communities & Local Government Select Committee on the 'Effectiveness of Local Authority Overview & Scrutiny Committees', and the Government's response to the report's recommendations.

Background

2. The Communities & Local Government Select Committee published its report on the Effectiveness of Local Authority Overview & Scrutiny Committees in December 2017.
3. The select committee report made seven recommendations that were developed through the consideration of issues set out in eight distinct subject headings:
 1. The role of Scrutiny
 2. Party Politics and Organisational Culture
 3. Accessing information
 4. Resources
 5. Member training and skills
 6. The role of the public
 7. Scrutinising public services provided by external bodies
 8. Scrutiny in Combined Authorities
4. The Government responded to the select committee report in March 2018, giving details on the recommendations it had accepted and those that it did not.

Governments Response the Recommendations:

5. **Recommendation 1: Proposed revisions to Government guidance on scrutiny committees:**
 - i. That overview and scrutiny committees should report to an authority's Full Council meeting rather than to the executive, mirroring the relationship between Select Committees and Parliament.
 - ii. That scrutiny committees and the executive must be distinct and that executive councillors should not participate in scrutiny other than as witnesses, even if external partners are being scrutinised.
 - iii. That councillors working on scrutiny committees should have access to financial and performance data held by an authority, and that this access should not be restricted for reasons of commercial sensitivity.
 - iv. That scrutiny committees should be supported by officers that are able to operate with independence and offer impartial advice to committees. There should be a greater parity of esteem between scrutiny and the executive, and committees should have the same access to the expertise and time of senior officers and the chief executive as their cabinet counterparts.
 - v. That members of the public and service users have a fundamental role in the scrutiny process and that their participation should be encouraged and facilitated by councils.

Government's Response:

6. The Government acknowledges that the current guidance was issued in 2006 and is happy to ensure it is updated. New guidance will be published later this year.
 - i. The Government notes the evidence supplied to the Committee. Updated guidance will recommend that scrutiny committees report to the Full Council.
 - ii. The Government accepts the need to limit the executive's involvement in the scrutiny meetings. Updated guidance will make clear that members of the executive should not participate in scrutiny other than as witnesses.
 - iii. Scrutiny committees already have powers to access documents and updated guidance will stress that councils should judge each request to access sensitive documents on its merits and not refuse as a matter of course. We will also have discussions with the sector to get a better understanding of the issues some scrutiny committees appear to have in accessing information and whether there are any steps the Government could take to alleviate this.
 - iv. Updated guidance will make clear that support officers should be able to operate independently and provide impartial advice. It will also stress the need for councils to recognise and value the scrutiny function and the ways in which it can increase a council's effectiveness. However, the Government believes that each council should decide for itself how to resource scrutiny committees, including how much access to senior officers is appropriate to enable them to function effectively.
 - v. The Government fully believes that local authorities should take account of the views of the public and service users in order to shape and improve their services. Scrutiny is a vital part of this, and scrutiny committees should actively encourage public participation. Updated guidance will make this clear.

Recommendation 2: That the MHCLG works with the Local Government Association and Centre for Public Scrutiny to identify willing councils to take part in a pilot scheme where the impact of elected chairs on scrutiny's effectiveness can be monitored and its merits considered

Government Response:

7. The Government will give further consideration to this recommendation.
8. Local Authorities are free to elect Chairs if they wish and the Government is happy to explore with the sector how best to establish the impact of elected Chairs on Scrutiny Committees. It is not convinced that running pilot schemes is the best way to achieve this.

Recommendation 3: Councils should be required to publish a summary of resources allocated to scrutiny, using expenditure on executive support as a comparator

Government Response:

9. The Government does not accept this recommendation.

10. Many councils do not have dedicated scrutiny support staff - officers work on issues and engage with committees as part of the flow of business - so this would make quantifying the support that scrutiny committees receive very difficult. In the Government's view, the quality of the support is the more important issue.
11. The Government firmly believes that each individual authority is best-placed to decide for itself how to support scrutiny most effectively.

Recommendation 4: That the Government extend the requirement of a Statutory Scrutiny Officer to all councils and specify that the post-holder should have a seniority and profile of equivalence to the council's corporate management team. To give greater prominence to the role, Statutory Scrutiny Officers should also be required to make regular reports to Full Council on the state of scrutiny, explicitly identifying any areas of weakness that require improvement and the work carried out by the Statutory Scrutiny Officer to rectify them

Government Response:

12. The Government does not accept this recommendation.
13. As the then Minister outlined during the oral evidence he gave to the Select Committee, decisions about the allocation of resources for the scrutiny function are best made at a local level. Each council is best-placed to know which arrangements will suit its own individual circumstances. It is not a case of one size fits all.
14. The key requirement for effective scrutiny is that the culture of the council is right. Where councils recognise the benefits effective scrutiny can bring, and put in place suitable arrangements, it is working well. Local authorities with a strong culture of scrutiny may invite regular reports to full council on the state of scrutiny in the council and this idea will be reflected in the updated guidance.

Recommendation 5: The Department to put monitoring systems in place and consider whether the support to committees needs to be reviewed and refreshed. We invite the Department to write to us in a year's time detailing its assessment of the value for money of its investment in the Local Government Association and on the wider effectiveness of local authority scrutiny committees

Government Response:

15. The Government does not accept this recommendation.
16. Local authorities are independent bodies and it is for them to ensure that their scrutiny arrangements are effective.
17. The Government firmly believes that every council should be able to access the training it need to carry out its functions effectively, and recognises that Government itself has a role to play in making this happen. That is why we provide funding to the Local Government Association for sector-led improvement work. It should be noted that this funding is to support local authorities on a wide range of improvement work. It is not purely to assist with overview and scrutiny.

18. The funding is determined annually and for 2017/18 is £21m. The package of work that is funded from the grant is set out in a jointly agreed Memorandum of Understanding between the Department and the Local Government Association, which is refreshed annually to ensure that it remains relevant to the sector's needs.
19. The Government is, of course, very keen to ensure that this funding provides value for money and that local authorities feel that the training on offer serves their needs. To this end, the Department has quarterly performance monitoring and review meetings with the Local Government Association, which are chaired by the Director-General for Local Government and Public Services.
20. The Government notes that not all the councillors who provided evidence to the Select Committee felt that the scrutiny training provided was as effective as they would have liked, and that the Local Government Association wrote to the Committee on 20 December 2017 to provide more information on the feedback it received on its support work.
21. The Government will ensure that the 2018/19 Memorandum of Understanding with the Local Government Association clearly sets out our expectation that they remain responsive to feedback they receive to ensure all training, including scrutiny training, remains relevant and effective.

Recommendation 6: Scrutiny committees must be able to monitor and scrutinise the services provided to residents. This includes services provided by public bodies and those provided by commercial organisations. Committees should be able to access information and require attendance at meetings from service providers and we call on DCLG to take steps to ensure this happens

Government Response:

22. Updated guidance will remind councils of the requirements set out in regulations that allow scrutiny members to access exempt or confidential documents in certain circumstances. As mentioned in response to the Select Committee's recommendation on guidance, the Department will also have discussions with the sector to get a better understanding of the issues some scrutiny committees appear to have in accessing information and whether there are any steps the Government could take to alleviate this.
23. In terms of service providers' attendance at meetings, when councils are tendering contracts with external bodies they should carefully consider including requirements to ensure they are as open and transparent as appropriate. Ultimately, however, it is up to each council to decide how best to hold to account those who run its services.

Recommendation 7: The Government to make clear how LEPs are to have democratic, and publicly visible, oversight. We recommend that upper tier councils, and combined authorities where appropriate, should be able to monitor the performance and effectiveness of LEPs through their scrutiny committees. In line with other public bodies, scrutiny committees should be able to require LEPs to provide information and attend committee meetings as required

Government Response:

24. The Government agrees on the importance of clear and transparent oversight of Local Enterprise Partnerships (LEPs). The Industrial Strategy made clear the continuing important role of LEPs in delivering local economic growth.

25. The MHCLG Non-Executive Director Review (published in October 2017), looked at a range of governance issues for LEPs. The Review made a series of recommendations that we have accepted in full and are now implementing. As part of this we have published guidance for LEPs on a range of issues including publication of agenda and papers for LEP Board meetings. This will make the proceedings of LEPs more transparent for local people.
26. The National Assurance Framework for LEPs states that democratic accountability for the decisions made by the LEP is provided through local authority leader membership of LEP Boards. In places where not all local authorities are represented directly on the LEP board it is important that their representatives have been given a mandate through arrangements which enable collective engagement with all local authority leaders. Many LEPs already go much further in allowing democratic scrutiny of their decision making.
27. The MHCLG Non-Executive Director Review into LEP governance and transparency explored the extent to which scrutiny was embedded into LEP decision making. The review acknowledged that each LEP had their own arrangements to reflect: legal structure, the complexity and needs of the locality and local requirements to ensure value for money; engagement; and democratic accountability. The Review concluded that it was not appropriate to be prescriptive on the specific arrangements that all LEPs needed to adopt due to the variation in LEP operating models.
28. The Government committed in the Industrial Strategy White Paper to reviewing the roles and responsibilities of LEPs and to bringing forward reforms to leadership, governance, accountability, financial reporting and geographical boundaries. Working with LEPs, the Government committed to set out a more clearly defined set of activities and objectives in early 2018. MHCLG will write to the Select Committee following the conclusion of this Ministerial review into LEPs to provide an update.

Recommendation 8: We are concerned that effective scrutiny of the Metro Mayors will be hindered by under-resourcing, and call on the Government to commit more funding for this purpose. When agreeing further devolution deals and creating executive mayors, the Government must make clear that scrutiny is a fundamental part of any deal and that it must be adequately resourced and supported.

Government Response:

29. The Government accepts this recommendation.
30. At the Budget it was announced that the government will make available to mayoral combined authorities with elected mayors a £12 million fund for 2018-19 and 2019-20, to boost the new mayors' capacity and resources. Combined Authorities could use some of this resource to ensure that scrutiny and accountability arrangements within the CAs are effectively resourced and supported.
31. Further to this, the recent Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017, developed with assistance from the Centre for Public Scrutiny and the National Audit Office, provides for the rules of operation for local overview and scrutiny and audit committees to robustly hold combined authorities and mayors to account. The order ensures that there are strong scrutiny arrangements in place consistently across every combined authority area and sets out clear requirements, strengthened appropriately to match the new powers and budgets being devolved, for the arrangement of overview and scrutiny and audit committees in all combined authorities.

32. Combined authorities are subject to existing relevant legislation applying to local authorities, including the strong finance and audit requirements around ensuring value for money and sustainability. Local democratic accountability, including through the scrutiny of directly-elected mayors, is a crucial and fundamental aspect of devolution.

Impact on the West Midlands Combined Authority

33. The responses of the Government to the select committee's recommendations have varying impacts on the way overview & scrutiny operates within the WMCA, summarised as set out in more detail below:

Recommendation 1:

34. The Government's guidance on scrutiny committees published in 2006 is to be updated, with new guidance published later in the year. The content of this new guidance will be reported to a future meeting of this committee where it relates to scrutiny within combined authorities. It should be noted that more recent guidance specifically related to scrutiny within combined authorities was provided in the Combined Authorities (Overview & Scrutiny Committees, Access to Information and Audit Committees) Order 2017 as well as the West Midlands Combined Authority Order 2016 which initially established the WMCA.

Recommendation 2:

35. The Government will give further consideration to the suggestion that chairs of overview & scrutiny committees are elected by members of that committee. The outcome of this further consideration will be reported to a future meeting of this committee. Currently, the WMCA Board appoints the chair of this committee (with the statutory requirement that the chair must not be a member of the same political group as the incumbent Mayor).

Recommendation 3:

36. The Government does not accept the recommendation that authorities should publish a summary of resources allocated to scrutiny. The WMCA does not currently publish this specific information.

Recommendation 4:

37. The Government does not accept the recommendation that Statutory Scrutiny Officers should have a seniority equivalent to the corporate management team, or that the Statutory Scrutiny Officer should report to the Full Council [ie. WMCA Board] on areas of scrutiny weakness that require improvement.

38. The WMCA's Statutory Scrutiny Officer (Lyndsey Roberts) does not have a seniority equivalent to the corporate management team, but reports to the Governance Services Manager. The Head of Governance/Monitoring Officer is a member of the corporate management team and is closely involved in the work of this committee, including meeting with the chair and attending its meetings. He has responsibility to bring matters related to the WMCA's governance (including scrutiny) to the attention of the WMCA Board as he considers appropriate.

Recommendation 5:

39. The Government does not accept the recommendation that it should monitor the support scrutiny committees receive, considering that local authorities are independent bodies and for them to ensure its scrutiny arrangements are effective.

40. The Chair of the WMCA's Overview & Scrutiny Committee meets regularly with the Head of Governance and the Governance Services Manager to discuss the operational effectiveness of the committee. He has also recently met with the Chief Executive and the Mayor for a similar purpose.

Recommendation 6:

41. The Government considers that it is up to each authority to determine how best to hold to account those who run its services. The WMCA's constitution makes clear that the Overview & Scrutiny Committee is entitled to scrutinise any matter connected with the discharge of any function which is the responsibility of the West Midlands Combined Authority.

Recommendation 7:

42. The Government committed to reviewing the roles and responsibilities of LEPs and to bringing forward reforms to leadership, governance, accountability, financial reporting and geographical boundaries. In respect of governance, it has undertaken to support the development and publishing of agreements, brought together in a single document with relevant assurance frameworks, which set out the respective roles and responsibilities of LEPs and mayoral combined authorities. Included within this document will be a section detailing how overview & scrutiny committees of mayoral combined authorities interact with LEPs. A report setting this out in more detail will be presented to a future meeting of the committee.

Recommendation 8:

43. At the Budget it was announced that the Government will make available to mayoral combined authorities with elected mayors a £12m fund for 2018/19 and 2019/20, to boost the new mayors' capacity and resources. The WMCA has recently appointed a full time scrutiny officer to lead the work of this committee, and the WMCA Board has committed to considering any further requests for additional funding for overview & scrutiny as and when the need arises.