

PARLIAMENTARY REVIEW OF OVERVIEW AND SCRUTINY FUNCTIONS

Executive Summary

A Parliamentary Select Committee - the Communities and Local Government Committee – has completed a review of the effectiveness of overview and scrutiny in local government and has published a series of recommendations to address shortcomings in the current arrangements. The findings of the Committee were published on 15 December 2017 and on 5 March 2018 the Government published its response.

The review was closely followed by the Chairman and Vice-Chairman of the Overview and Scrutiny Committee, who together drafted a response to the Select Committee's consultation in 2017, setting out the Borough Council's perspective.

Both the Chairman and Vice-Chairman now feel that the Council has the opportunity to benefit from the findings of the Select Committee and take forward any initiatives which would strengthen the roles of overview and scrutiny in the Borough of Woking. To this end, it is proposed that a Task Group is established to review the full report of the Select Committee and the subsequent response by the Government. Any proposals drawn from the study would then be recommended to Council for adoption in Woking.

Recommendations

The Committee is requested to:

RESOLVE That

- (i) a cross party task group (the 'Effective Scrutiny Task Group') consisting of five Councillors be established to review the findings of the Communities and Local Government Committee through its review of the effectiveness of the overview and scrutiny functions of local government;
- (ii) the membership of the Task Group to consist of Councillor I Johnson, Councillor K Davis, Councillor J Kingsbury, Councillor M I Raja and Councillor J Bond; and
- (ii) the Task Group to report its findings to the Overview and Scrutiny Committee at its meeting on 18 June 2018.

The Committee has the authority to determine the recommendations set out above.

Background Papers: None.

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1.0 Introduction

- 1.1 During 2017, a review of the effectiveness of overview and scrutiny functions of local government was undertaken by the Communities and Local Government Committee. The findings of the Committee were published on 15 December 2017 and set out a range of recommendations, including several proposing legislation changes to the Government. On 5 March 2018 the Government published its response to those recommendations calling on it to implement changes.
- 1.2 It is now considered an appropriate time for Woking Borough Council to study the report of the Communities and Local Government Committee, together with the response of the Government, and determine what, if any, of the recommendations could be taken forward in Woking. It is proposed that the initial review is undertaken by a Task Group established with the purpose of reporting back to the first meeting of the Overview and Scrutiny Committee in the new Municipal Year, on 18 June 2018.

2.0 Background

- 2.1 Overview and scrutiny committees were introduced by the Local Government Act 2000 and were tasked with acting as a counterweight to the increased centralised power of the new executive arrangements. Whilst some authorities were not covered by the changes brought in by the Act, the Leader and Cabinet system is the predominant model of governance in English local authorities.
- 2.2 Since the Localism Act 2011, Councils have had the option of reverting to the committee system of governance. Several authorities choose to do so and many expressed dissatisfaction with the new executive arrangements, including concern at the limited effectiveness of scrutiny. Noting these concerns, and that there has not been a comprehensive assessment of how scrutiny committees operate, a Parliamentary Select Committee – the Communities and Local Government Committee – decided to conduct an inquiry into the effectiveness of overview and scrutiny.
- 2.3 The terms of reference placed an emphasis on considering factors such as the ability of committees to hold decision-makers to account, the impact of party politics on scrutiny, resourcing of committees and the ability of council scrutiny committees to have oversight of services delivered by external organisations.
- 2.4 As part of the review, the Committee invited feedback from Local Authorities (both Members and Officers involved in overview and scrutiny) and other Stakeholders. In March 2017 a formal response to the invitation for feedback was drawn up and submitted by the Chairman and Vice-Chairman of the Overview and Scrutiny Committee (Appendix 1).
- 2.5 The Committee acknowledges that scrutiny varies significantly across the Country, and the level of interest in the inquiry enabled it to hear from a wide range of authorities and form a representative picture of local authority scrutiny in England. To assist in forming this picture, and to ensure as many authorities as possible were consulted, the Committee held oral evidence sessions and a less formal workshop event in October 2017. The workshop was attended by over 45 councillors and officers working in scrutiny across the Country.
- 2.6 In December 2017, the Committee published its findings in a detailed report and the Government has now published (5 March 2018) its response to those recommendations which would require Government approval. A summary of the recommendations of the Select Committee are set out in Appendix 2 to this report.

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3.0 Findings of the Communities and Local Government Committee

- 3.1 The Communities and Local Government Committee concluded that the most significant factor in determining whether or not scrutiny committees are effective is the organisational culture of a particular council. Having a positive culture where it is universally recognised that scrutiny can play a productive part in the decision-making process is vital and such an approach is common in all of the examples of effective scrutiny that were identified.
- 3.2 The Committee found that senior councillors from both the administration and the opposition, and senior council officers, have a responsibility to set the tone and create an environment that welcomes constructive challenge and democratic accountability. When this does not happen and individuals seek to marginalise scrutiny, there is a risk of damaging the council's reputation, and missing opportunities to use scrutiny to improve service outcomes. In extreme cases, ineffective scrutiny can contribute to severe service failures.
- 3.3 The inquiry identified a number of ways that establishing a positive culture can be made easier such as the adoption of a more balanced relationship between the overview and scrutiny functions and the Executive, with clear independence of the Committee from the Executive. Organisational culture was found to impact on the access of Overview and Scrutiny Committees to the information needed to carry out their work, citing examples of where Committees had formally submitted Freedom of Information requests to their own authorities.
- 3.4 The Communities and Local Government Committee felt that scrutiny committees are ideally placed to review any public services in their area. However, study found that there can be a conflict between commercial and democratic interests, with commercial providers not always recognising that they have entered into a contract with a democratic organisation with a necessity for public oversight. The Committee therefore concluded that scrutiny's powers in this area need to be strengthened to at least match the powers it has to scrutinise local health bodies. The Committee further considered that Councils to consider at what point to involve scrutiny when it is conducting a major procurement exercise.
- 3.5 The Committee is keen to emphasise that it is not seeking to impose particular models on councils, though does conclude that there should be an organisational culture that welcomes constructive challenge and has a common recognition of the value of scrutiny, both in terms of policy development and oversight of services. In order to achieve this, scrutiny committees must be independent and able to form their own conclusions based on robust and reliable data, and that decision-makers should not seek to obstruct their role by withholding information.

4.0 Moving Forward

- 4.1 It is felt that the findings of the review by the Communities and Local Government Committee should be explored in detail by Woking Borough Council to identify whether any of the recommendations could be adopted in the Borough. In doing so, it should be noted that a number of the recommendations are aimed at upper tier authorities and unitary authorities; however, it is felt by both the Chairman and the Vice-Chairman of the Overview and Scrutiny Committee that the opportunity to benefit from the work of the Select Committee should be embraced.
- 4.2 It is therefore recommended that a cross-party Task Group is established by the Overview and Scrutiny Committee to look at in detail the full report of the Communities and Local Government Committee, together with the response by the Government. The Task Group will complete its work in the coming weeks and will therefore be based on the 2017/18 Membership of the Overview and Scrutiny Committee. Following consultation with the Chairman and Vice-Chairman of the Committee, it is proposed that the Task Group consists

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of five Members, comprising the Chairman (Councillor I Johnson), the Vice-Chairman (Councillor K Davis), Councillor J Kingsbury, Councillor M I Raja and Councillor J Bond.

- 4.3 The Members of the Task Group will be asked to consider the report and discuss what, if any, recommendations should be adopted by Woking Borough Council. The Members will be charged with preparing a report for the Overview and Scrutiny Committee at its meeting on 18 June 2018, with a view to any recommendations being referred to Council. It is envisaged that the Members of the Task Group will hold at least one meeting in the coming weeks to draw together their initial thoughts, with the Members invited to review the documents in advance.

5.0 Implications

Financial

- 5.1 There are no direct financial implications arising from this report.

Human Resource/Training and Development

- 5.2 The proposals within this report will require the involvement of Members and Officers and will therefore have a resource impact on the Authority. However, it is envisaged that the work can be completed within a matter of weeks and any human resource impact can be met through existing resources. No training and development implications are envisaged as part of this review.

Community Safety

- 5.3 There are no community safety implications arising from this report.

Risk Management

- 5.4 There are no risk management implications arising from this report.

Sustainability

- 5.5 There are no sustainability implications arising from this report.

Equalities

- 5.6 There are no equalities implications arising from this report.

Safeguarding

- 5.7 There are no safeguarding implications arising from this report.

6.0 Conclusions

- 6.1 An opportunity has arisen for the Council to benefit from review of the effectiveness of the overview and scrutiny functions of local government, undertaken by a Parliamentary Select Committee. It is proposed that a small team of Councillors is appointed to review the findings and bring forward any recommendations that would have the effect of strengthening the work of Woking's Overview and Scrutiny Committee.

REPORT ENDS

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Written evidence submitted on behalf of the Woking Borough Council Overview and Scrutiny Committee's Chairman and Vice Chairman

Executive Summary:

- The Woking Borough Council O&S Committee feels able to hold the Executive and other Decision-Makers to account.
- The Committee is currently impartial but, due to the local Constitution, the Committee is aware that this could change in future.
- The Committee has no dedicated Scrutiny Officer or Scrutiny Team but is generally supported by the Democratic Services team, but specifically one support officer who does not administrate any other Committees.
- The Committee is generally supported by all officers, however the Committee and Senior Officers do sometimes oppose each other when it is felt that the other is acting as an obstacle to their aims.
- The Committee has no powers to summon witnesses, although there have been no refusals to date.
- Anyone can suggest a topic for Scrutiny or Review but the Committee does not necessarily have to agree to it.
- The Committee has and will continue to act as a voice for local service-users.
- To date, Woking Borough Council has not been affected by any devolution deals or negotiations.

Introduction:

1. The Woking Borough Council Overview & Scrutiny Committee meets ten times a year. Anecdotally, the Overview and Scrutiny Committee has depended greatly on the drive of its Chairman to be used to its fullest potential and in past years this has meant that the Committee could have been more proactive in its scrutiny. Currently, the Committee is Chaired by Councillor Kevin Davis who has been proactive in seeking out further training in this role and topics for scrutiny; and is Vice-Chaired by an experienced Borough Councillor, Councillor Ian Johnson. Both the Chairman and Vice-Chairman felt that feeding into the House of Commons review was very important in helping to bolster O&S Committees around the country.

The Committee:

2. The make-up of the Woking Borough Council O&S Committee is somewhat unique; in 2015 the Constitution was changed so that any of the 30 members could be nominated to the Committee, to make the Committee more inclusive. However, it did not have the desired effect, as it meant that without a considerable amount of cross-party communication the majority party could vote one of their own in to Chair the Committee.
3. Currently, the Chairman of the Overview & Scrutiny Committee is a member of the Conservative party and the Vice Chairman is a member of the opposition (Liberal Democrats).

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4. The Committee is also supported by a member of the Democratic Services team who carries out tasks that would be delegated to a Scrutiny Officer whilst also carrying out administration for Task Groups and Working Groups. This officer does not administrate any other Committees and so could be considered independent of those being scrutinised.
5. Members of the committee, members of the executive, the Chairman and Vice Chairman as well as members of the public are all able to suggest topics for the Committee. They are asked to fill out a Topic Review Request form and submit it to the Overview and Scrutiny Committee Officer two weeks before the meeting, where it is discussed during the Work Programme item and is then considered by the entire Committee at the meeting.

Political Impartiality

6. Due to the constitution change, the Chairman and Vice-Chairman believe that the Overview and Scrutiny Committee could not be indefinitely impartial; however, the cross-party dynamic of the Committee and the choice of particular chairs does mean that the Committee runs independently from the Executive and *is* currently impartial in meeting out its duties. It is argued that, while the majority party are able to nominate the Chair, the Overview and Scrutiny Committee cannot remain *indefinitely* impartial. Much depends on the current make-up of the Committee and the relationship between the Chair and Vice Chair and this is a concern going forward.

Holding Decision-Makers to Account

7. The Woking Borough Council Committee feel that they are able to hold decision makers to account when necessary, but it was stated that the extent of which the Committee could influence policy and scrutinise Decision-Makers was almost entirely dependent upon whether there were urgent issues that needed addressing and the level of encouragement that was given by the Chairman and Vice Chairman. In cases where there were not as many issues within the Borough – like the past municipal year – the Committee as a whole was more prone to apathy. However, the Overview & Scrutiny Committee's Housing, Finance and Economic Regeneration Task Groups were generally very efficient in dealing with local housing, finance or economic issues and tended to delve into them with more depth than the Committee itself.
8. Key accomplishments from this year include:
 - Setting up a dialogue between local residents and representatives of Thames Water after considerable flooding in the area
 - Influencing the Executive's decision on Gypsy Traveller Site allocations
 - Resurrecting Canal Development Proposals to recommend them to the Executive
 - Reviewing Market Walk and whether it was meeting its KPIs and fulfilling the Council's expectations
9. Moreover, these examples highlight not only the Overview & Scrutiny Committee's capacity to hold decision makers to account but also illustrate how they are and will continue to act on behalf of local service-users. The Committee intends to highlight the latter further by requesting an Overview of the current train services between Brookwood Station and Woking Station once the franchise has been renewed, as there have been significant delays and disruptions on this particular line of late.
10. In summoning witnesses, the Chairman and Vice-Chairman feel that they only have *reasonable* authority to summon anyone either internally or externally, as the articles of association do not specifically say that officers should attend the meetings if summoned and

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external witnesses are only really intimidated by the Committee's title. However, to date, they have not had any one decline an invitation.

11. The Chairman and Vice-Chairman both agree that local authority Scrutiny of external organisations is highly important for residents to have their voices heard. This is evidenced by the Scrutiny of Thames Water and the following meetings set up for residents, officers and representatives of Thames Water to discuss plans to alleviate the flooding in the area and the creation of the Sheerwater Oversight Panel that was suggested by a local residents to ensure that the Sheerwater residents were updated on the plans for the areas redevelopment.
12. It is suggested that Overview and Scrutiny Committees could be given slightly more authority so that services and utilities in particular could be scrutinised further for the betterment of the local people.

Scrutiny and Devolution Deals

13. Both the Chairman and Vice-Chairman are in agreement that the role of the Overview and Scrutiny Committee in negotiating Devolution Deals would be incredibly important; however, they feel that presently the O&S Committee does not have enough authority to deal with some of the issues that would arise in these negotiations. At the moment, Woking Borough Council has not been impacted by devolution.

Scrutiny in Woking

14. The Chairman feels that the Scrutiny of the Gypsy Site Allocations and flooding of the local area worked very well as clear recommendations were made and followed up. However, there have been a few instances where scrutiny has not worked as well.
 - Scrutiny of the Outdoor Facilities Policy – a couple of members attempted to use this item for their own political ends, focusing on issues regarding the North Meadow rather than scrutinising the policy as a whole.
 - Surrey Joint Waste Contract – this topic had to be withdrawn as it was up for scrutiny during a quiet period in contractual negotiations. This was partly due to a miscommunications between CMG and the O&S Committee.
15. The Committee hope that their views have been helpful and are looking forward to reading the final report when it become available.

March 2017

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**Conclusions and Recommendations
of the Communities and Local Government Committee**

The role of scrutiny

1. *We therefore recommend that the guidance issued to councils by DCLG on overview and scrutiny committees is revised and reissued to take account of scrutiny's evolving role. (Paragraph 12)*
2. *We call on the Local Government Association to consider how it can best provide a mechanism for the sharing of innovation and best practice across the scrutiny sector to enable committees to learn from one another. We recognise that how scrutiny committees operate is a matter of local discretion, but urge local authorities to take note of the findings of this report and consider their approach. (Paragraph 13)*

Party politics and organisational culture

3. However, all responsible council leaderships should recognise the potential added value that scrutiny can bring, and heed the lessons of high profile failures of scrutiny such as those in Mid Staffordshire and Rotherham. (Paragraph 19)
4. *To reflect scrutiny's independent voice and role as a voice for the community, we believe that scrutiny committees should report to Full Council rather than the executive and call on the Government to make this clear in revised and reissued guidance. When scrutiny committees publish formal recommendations and conclusions, these should be considered by a meeting of the Full Council, with the executive response reported to a subsequent Full Council within two months. (Paragraph 23)*
5. We believe that executive members should attend meetings of scrutiny committees only when invited to do so as witnesses and to answer questions from the committee. Any greater involvement by the executive, especially sitting at the committee table with the committee, risks unnecessary politicisation of meetings and can reduce the effectiveness of scrutiny by diminishing the role of scrutiny members. *We therefore recommend that DCLG strengthens the guidance to councils to promote political impartiality and preserve the distinction between scrutiny and the executive. (Paragraph 25)*
6. It is vital that the role of scrutiny chair is respected and viewed by all as being a key part of the decision-making process, rather than as a form of political patronage. (Paragraph 27)
7. We believe that there are many effective and impartial scrutiny chairs working across the country, but we are concerned that how chairs are appointed has the potential to contribute to lessening the independence of scrutiny committees and weakening the legitimacy of the scrutiny process. Even if impropriety does not occur, we believe that an insufficient distance between executive and scrutiny can create a perception of impropriety. (Paragraph 30)
8. We believe that there is great merit in exploring ways of enhancing the independence and legitimacy of scrutiny chairs such as a secret ballot of non-executive councillors. However, we are wary of proposing that it be imposed upon authorities by government.

We therefore recommend that DCLG works with the LGA and CfPS 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. (Paragraph 35)

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Accessing information

9. Scrutiny committees that are seeking information should never need to be ‘determined’ to view information held by its own authority, and there is no justification for a committee having to resort to using Freedom of Information powers to access the information that it needs, especially from its own organisation. There are too many examples of councils being uncooperative and obstructive. (Paragraph 37)
10. Councils should be reminded that there should always be an assumption of transparency wherever possible, and that councillors scrutinising services need access to all financial and performance information held by the authority. (Paragraph 41)
11. We do not believe that there should be any restrictions on scrutiny members’ access to information based on commercial sensitivity issues. Limiting rights of access to items already under consideration for scrutiny limits committees’ ability to identify issues that might warrant further investigation in future, and reinforces scrutiny’s subservience to the executive. *Current legislation effectively requires scrutiny councillors to establish that they have a ‘need to know’ in order to access confidential or exempt information, with many councils interpreting this as not automatically including scrutiny committees. We believe that scrutiny committees should be seen as having an automatic need to know, and that the Government should make this clear through revised guidance.* (Paragraph 42)
12. *We note that few committees make regular use of external experts and call on councils to seek to engage local academics, and encourage universities to play a greater role in local scrutiny.* (Paragraph 45)
13. We commend such examples of committees engaging with service users when forming their understanding of a given subject, and encourage scrutiny committees across the country to consider how the information they receive from officers can be complemented and contrasted by the views and experiences of service users. (Paragraph 47)

Resources

14. We acknowledge that scrutiny resources have diminished in light of wider local authority reductions. However, it is imperative that scrutiny committees have access to independent and impartial policy advice that is as free from executive influence as possible. We are concerned that in too many councils, supporting the executive is the over-riding priority, with little regard for the scrutiny function. This is despite the fact that at a time of limited resources, scrutiny’s role is more important than ever. (Paragraph 61)
15. *We therefore call on the Government to place a strong priority in revised and reissued guidance to local authorities that scrutiny committees must be supported by officers that can operate with independence and provide impartial advice to scrutiny councillors. 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. Councils should be required to publish a summary of resources allocated to scrutiny, using expenditure on executive support as a comparator. We also call on councils to consider carefully their resourcing of scrutiny committees and to satisfy themselves that they are sufficiently supported by people with the right skills and experience.* (Paragraph 62)
16. *We recommend 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*

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improvement and the work carried out by the Statutory Scrutiny Officer to rectify them. (Paragraph 65)

Member training and skills

17. It is incumbent upon councils to ensure that scrutiny members have enough prior subject knowledge to prevent meetings becoming information exchanges at the expense of thorough scrutiny. Listening and questioning skills are essential, as well as the capacity to constructively critique the executive rather than following party lines. *In the absence of DCLG monitoring, we are not satisfied that the training provided by the LGA and its partners always meets the needs of scrutiny councillors, and call on 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 LGA and on the wider effectiveness of local authority scrutiny committees. (Paragraph 76)*

The role of the public

18. *The Government should promote the role of the public in scrutiny in revised and reissued guidance to authorities, and encourage council leaderships to allocate sufficient resources to enable it to happen. Councils should also take note of the issues discussed elsewhere in this report regarding raising the profile and prominence of the scrutiny process, and in so doing encourage more members of the public to participate in local scrutiny. Consideration also need to be given to the role of digital engagement, and we believe that local authorities should commit time and resources to effective digital engagement strategies. The LGA should also consider how it can best share examples of best practise of digital engagement to the wider sector. (Paragraph 82)*

Scrutinising public services provided by external bodies

19. *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. We support the CfPS proposal that committees must be able to 'follow the council pound' and have the power to oversee all taxpayer-funded services. (Paragraph 90)*
20. *In light of our concerns regarding public oversight of LEPs, we call on the Government to make clear how these organisations 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. (Paragraph 96)*

Scrutiny in combined authorities

21. *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. (Paragraph 104)*