

PARLIAMENTARY REVIEW OF OVERVIEW AND SCRUTINY FUNCTIONS

Executive Summary

At its meeting on 26 March 2018, the Overview and Scrutiny Committee considered a proposal to examine the outcome of a Parliamentary review of overview and scrutiny functions had been undertaken over the past year. The Members of the Committee supported the proposals and appointed a Task Group to undertake the work. This report summarises the findings of the Task Group and sets out the recommendations drawn up by the Members of the Task Group. Included in the report are Officer comments on the proposals.

The Members of the Overview and Scrutiny Committee are now invited to consider the recommendations of the Effective Scrutiny Review Task Group and recommend accordingly to Council.

Recommendations

The Committee is requested to consider the recommendations from the Effective Scrutiny Review Task Group and recommend accordingly to Council.

The item above will need to be dealt with by way of a recommendation to Council.

Background Papers: None.

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1.0 Introduction

- 1.1 In March 2018, the Overview and Scrutiny Committee received a proposal to examine the outcome of a Parliamentary review of overview and scrutiny functions had been undertaken over the past year. The extract from the minutes of the Overview and Scrutiny Committee is set out below.

“The Members of the Committee were advised that a Parliamentary review of overview and scrutiny functions had been undertaken over the past year. The Chairman and Vice-Chairman had submitted a representation to the review as part of the Select Committee’s evidence gathering, a copy of which was attached to the report. The review had concluded at the end of 2017 and the Government had recently published its response to the recommendations.

The report before the Committee proposed that a cross party task group should be established to review the findings of the work and the Government’s response, with a view to determining whether any of the recommendations could be adopted for the benefit of Woking. It was anticipated that the Task Group would only need to meet once before reporting back to the next meeting of the Committee.

RESOLVED

- 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
- (iii) the Task Group to report its findings to the Overview and Scrutiny Committee at its meeting on 18 June 2018.”

2.0 The Effective Scrutiny Task Group

- 2.1 The Members of the Effective Scrutiny Task Group met on Monday, 16 April 2018 to consider the recommendations from the Parliamentary Select Committee together with the responses by the Government.
- 2.2 The minutes of the Task Group are attached at Appendix 1. A number of recommendations were put forward by the Members of the Task Group for consideration by the Committee. These recommendations are set out below, together with an Officer comment.

3.0 Recommendations of the Effective Scrutiny Task Group

Appointment of Chairman and Vice-Chairman of the Overview and Scrutiny Committee

- 3.1 The Members of the Task Group considered that the Chairman and Vice-Chairman of the Overview and Scrutiny Committee should not be appointed from the same political party and agreed to recommend accordingly.

RECOMMENDED

- That (i) the Constitution be amended to ensure that the Chairman and Vice-Chairman of the Overview and**

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Scrutiny Committee are not appointed from the same Political Group;

3.2 Officer Comments

3.3 It is understood that this recommendation stems in part from the desire to avoid the Committee being dominated by one political party, in particular the majority party, and in part from the positive relationship between the Chairman and Vice-Chairman over the past two years.

3.4 Council should retain the freedom to appoint the appropriate persons to undertake the roles of Chairman and Vice-Chairman irrespective of their political group. It should be noted that the Council appointed Councillor Johnson and Councillor Hughes, both Members of the Liberal Democrat Group, as Chairman and Vice-Chairman of the Committee for the current Municipal Year. Had the Constitution been amended as proposed, it would not have been possible for Council to appoint both Councillor Johnson and Councillor Hughes as Chairman and Vice-Chairman.

3.5 In view of this, Officers would advise that the recommendation is not taken forward.

Voting Arrangements for the position of Chairman of the Overview and Scrutiny Committee.

3.6 The Members of the Committee proposed that the election of the Chairman of the Overview and Scrutiny Committee should be undertaken by all Members of the Council with the exception of Members of the Executive. This would result in 22 Members taking part in the election, comprising nine Conservative Councillors, seven Liberal Democrat Councillors, three Labour Councillors and three Independent Councillors. The proposal would require a change to the Constitution.

RECOMMENDED

That (ii) the suggestion that the Chairman of the Overview and Scrutiny Committee should be elected through a vote by all Members of the Council, with the exception of Executive Members, be explored further.

3.7 Officer Comments

3.8 The Chairman of the Committee should be elected by the Members of that Committee. Under the current arrangements, the Chairman is elected by the ten Members of the Committee itself, of whom non serve on the Executive. The Members of the Task Group were advised that the proposed change could result in the Council electing a Chairman for whom no Members of the Committee itself had voted.

3.9 In view of this, Officers would advise that the recommendation is not taken forward.

Enterprise M3

3.10 The Members of the Task Group noted that the Overview and Scrutiny Committee had not to-date scrutinised the work of Enterprise M3. It was therefore suggested that a copy of the Local Enterprise Partnership's annual report should be brought to the Committee in future years, setting out the work undertaken and future aspirations of the LEP. It was also suggested that the Enterprise M3 LEP should be invited to make a presentation to the Overview and Scrutiny Committee.

RECOMMENDED

That (i) Enterprise M3 be requested to submit an annual report on its activities to the Overview and Scrutiny Committee; and

(ii) Enterprise M3 be invited to make a presentation to a future meeting of the Overview and Scrutiny Committee.

3.11 Officer Comments

3.12 Enterprise M3 produce an annual report which will be brought to a future meeting of the Overview and Scrutiny Committee. Representatives from Enterprise M3 will be invited to attend the meeting to introduce the annual report.

Annual Budget for the Committee

3.13 The Members of the Task Group considered that the Overview and Scrutiny Committee should have a budget of its own for the specific purpose of secure impartial advice. The budget level was not discussed though the importance of 'checks and balances' if the Committee was to be responsible for its own budget was emphasised.

RECOMMENDED

That an annual budget be established for the Overview and Scrutiny Committee to secure impartial advice.

3.14 Officer Comments

3.15 In considering this recommendation it should be noted that the Council, when it first established the Overview and Scrutiny Committee in 2005, resolved that a budget of £20,000 should be established, by way of transfer from existing budget provision, to enable the Committee to fund public consultation, publicity and public involvement through the Task Groups. However, the budget was not called upon in subsequent years and the Council has adopted the approach that any expenditure anticipated by the Committee would be agreed by the Executive or Council. To-date, however, no such requests have been received.

3.16 The Council as a corporate identity employs officers to provide the necessary advice to the Council and its Committees, including the Overview and Scrutiny Committee. The option already exists for the Council to obtain specialist advice in appropriate cases.

3.17 In view of this, Officers would advise that the recommendation is not taken forward.

4.0 Implications

Financial

4.1 There are no financial implications arising directly from this report. However, it is noted that a proposal to establish a budget for the Committee has been made by the Effective Scrutiny Task Group. Such a proposal would need to be brought to Council once the amount proposed and the governance arrangements have been drawn up by the Committee. The financial implications will be considered at that stage.

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Human Resource/Training and Development

- 4.2 There are no human resource or training and development implications arising from this report.

Community Safety

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

Risk Management

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

Sustainability

- 4.5 There are no sustainability implications arising from this report

Equalities

- 4.6 There are no equalities implications arising from this report

Safeguarding

- 4.7 There are no safeguarding implications arising from this report

5.0 Conclusions

- 5.1 This report sets out the recommendations of the Effective Scrutiny Task Group. The Committee is invited to consider the recommendations and determine which are to be submitted to Council. Officer comments have been added in respect of each recommendation.

REPORT ENDS

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Effective Scrutiny Task Group

Minutes of a Meeting held on Monday, 16 April 2018

Present: Councillor J Bond
Councillor K Davis
Councillor I Johnson
Councillor J Kingsbury (In the Chair)
Councillor M I Raja

1. Election of Chairman

Councillor Kingsbury moved and Councillor Raja seconded the election of Councillor Johnson as Chairman of the Task Group.

Councillor Davis moved and Councillor Johnson seconded the election of Councillor Kingsbury as Chairman of the Task Group.

The matter was put to a vote, with two Members in favour of Councillor Johnson and three Members in favour of Councillor Kingsbury. Accordingly, it was

RESOLVED

That Councillor Kingsbury be elected Chairman of the Task Group.

2. Appointment of Vice-Chairman

Councillor Johnson moved and Councillor Raja seconded the appointment of Councillor Davis as Vice-Chairman of the Task Group.

RESOLVED

That Councillor Davis be appointed Vice-Chairman of the Task Group.

3. Apologies for Absence.

No apologies for absence had been received.

4. Remit of the Task Group

The Members of the Task Group received a report on the remit of the Task Group. The Task Group had been established by the Overview and Scrutiny Committee at its meeting on 26 March 2018. The purpose of the Task Group was 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, published in December 2017. Furthermore, the Task Group was to take into consideration the Government's response to the recommendations from the Parliamentary Select Committee.

The Overview and Scrutiny Committee had agreed that the Task Group would submit a report to the Overview and Scrutiny Committee at its meeting on 18 June 2018 on its considerations, setting out any recommendations to emerge from the work.

RESOLVED

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That the report be noted.

5. Recommendations of the Select Committee and Response of the Government

The Members of the Task Group had before them a report which set out the key recommendations of the Select Committee published in December 2017 and the subsequent response by the Government, published in March 2018. *A copy of the report is set out in Appendix 1 to this document.*

The Chairman of the Overview and Scrutiny Committee

The Chairman started the discussion by emphasising the importance of the position of Chairman of the Overview and Scrutiny Committee, and seeking to ensure that the Council appointed the 'best person for the job'. The past two years had seen significantly improved work programmes and scrutiny reviews by the Committee, largely as a result of the joint approach adopted by the Chairman (Councillor Davis in 2016/17 and Councillor Johnson in 2017/18) and the Vice-Chairman (Councillor Johnson in 2016/17 and Councillor Davis in 2017/18).

The Members of the Task Group considered whether a different approach could be adopted for the election of the Chairman, with the objective of ensuring that the 'best person for the job' was elected. It was noted that the appointments to Committees were considered initially by Selection Panel, based on the names proposed by each Political Group and the proportionality of the Council (the proportionality on the Overview and Scrutiny Committee for 2017/18 was noted as 6:2:1:1). The Membership of each Committee was then determined by Council, before the Committees themselves elected their Chairman and appointed their Vice-Chairman. It was confirmed that Members of the Executive could not serve on the Overview and Scrutiny Committee. The Task Group considered whether a secret ballot would improve the likelihood that the 'best person for the job' was elected, though it was noted that this would not prevent the Majority Party from electing the Chairman.

Recommendations of the Select Committee

The Members of the Task Group considered each of the recommendations of the Select Committee, and the responses by the Government.

Recommendation 1: Proposed Revisions to Government Guidance on Scrutiny Committees

- a) *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.*

Government Response:

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.

- a) *The Government notes the evidence supplied to the Committee. Updated guidance will recommend that scrutiny committees report to the Full Council.*

The Members noted that the annual report prepared by the Chairman of the Overview and Scrutiny Committee was presented to Council in April each year, and was not considered by the Executive. The distinction between report to Council and making recommendations to the Executive was made. It was felt that the Select Committee had drawn up the recommendation in light of responses from those Authorities where the Overview and Scrutiny Committees reported direct to the Executive, not the Council.

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Recommendation 1: Proposed Revisions to Government Guidance on Scrutiny Committees

- b) *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.*

Government Response:

- b) *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.*

The Government's response to the recommendation was noted. The Members of the Task Group confirmed that Members of the Executive could not serve on the Overview and Scrutiny Committee.

Recommendation 1: Proposed Revisions to Government Guidance on Scrutiny Committees

- c) *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.*

Government Response:

- c) *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.*

The Members of the Task Group agreed with the response by the Government.

Recommendation 1: Proposed Revisions to Government Guidance on Scrutiny Committees

- d) *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.*

Government Response:

- d) *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.*

The Members of the Task Group agreed with the response by the Government.

Recommendation 1: Proposed Revisions to Government Guidance on Scrutiny

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Committees

- e) *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 Response:

- e) *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.*

The Members felt that the Council should look to promote the involvement of Members of the Public by raising the awareness of the work of the Committee.

Recommendation 2: *That DCLG 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 (Paragraph 35).*

Government Response:

The Government will give further consideration to this recommendation.

The Government fully accepts that the chair of a scrutiny committee can have a great impact on its effectiveness. As the then Minister told the Select Committee at the oral evidence session on 6 November 2017, a chair needs to have the requisite skills, knowledge and acumen to take on the functions and achieve the outcomes that the scrutiny committee needs to achieve.

The Government also accepts that, in some instances, the election, rather than the appointment, of a chair might help ensure that the right individual is ultimately selected, but feels that this is a decision for every council to make for itself - we note that the Select Committee is "wary of proposing that [election] is imposed upon authorities by Government".

A local authority is already free to elect a chair if it wishes, and the updated guidance will recommend that every council bears this in mind when deciding on a method for selecting a chair.

The Government is happy to explore with the sector how best to establish the impact of elected chairs on scrutiny committees' effectiveness, but is not yet convinced that running pilot schemes is the best way to achieve this. The Government will therefore discuss this recommendation with the sector, including the Local Government Association and Centre for Public Scrutiny, and write to the Select Committee on this matter when we publish updated guidance.

The Members discussed further the process for electing the Chairman of the Committee and Councillor Raja considered that the Chairman should be selected from one of the opposition groups. However, the Members felt that a Chairman from the majority Group did not necessarily mean that the individual would not go against the views of their Group (and therefore potentially the Executive). It was also recognised how well the Overview and Scrutiny Committee had performed over the past two years, and how it was more important to consider the 'best person for the job' rather than consider which Political Group should lead the Committee.

The Members agreed that the Council should not put itself forward for the proposed pilot. However, they did feel that the Chairman and Vice-Chairman of the Committee should not be appointed from the same Political Group. Furthermore, the Members felt that a proposal put forward by Councillor Bond – that the Chairman of the Committee should be appointed by a

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vote by all Members of the Council with the exception of the Executive Members – should be explored further. It was noted that the Committee currently appointed its own Chairman, and that no Members of the Executive were involved in the process. It was further noted that allowing all Members of the Council to vote on the election of the Committee's Chairman (with the exception of Executive Members) could leave the Committee with a Chairman which the Members of the Committee themselves had not supported.

RECOMMENDED

- That (i) **the Constitution be amended to ensure that the Chairman and Vice-Chairman of the Overview and Scrutiny Committee are not appointed from the same Political Group; and**
- (ii) **the suggestion that the Chairman of the Overview and Scrutiny Committee should be elected through a vote by all Members of the Council, with the exception of Executive Members, be explored further.**

Recommendation 3: *Councils should be required to publish a summary of resources allocated to scrutiny using expenditure on executive support as a comparator (Paragraph 62)*

Government Response:

The Government does not accept this recommendation.

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.

The Government firmly believes that each individual authority is best-placed to decide for itself how to support scrutiny most effectively.

The Members of the Task Group agreed with the response by the Government.

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 (Paragraph 65).*

Government Response:

The Government does not accept this recommendation.

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.

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.

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The Members of the Task Group agreed with the response by the Government. It was noted that the Democratic Services Team provided support for the Committee, with a member of the Team taking responsibility.

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 (Paragraph 76).*

Government Response:

The Government does not accept this recommendation. Local authorities are independent bodies and it is for them to ensure that their scrutiny arrangements are effective.

The Government firmly believes that every council should be able to access the training it needs 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.

The funding is determined annually and for 2017/18 is £21 million. 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.

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.

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.

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.

The recommendation was not relevant to the Borough Council.

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 (Paragraph 90).*

Government Response:

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

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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.

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.

It was agreed that the Council could not take on the additional powers proposed by the Select Committee. The Council would continue to invite representatives on outside Organisations to attend meetings of the Committee in response to requests for reviews of their services. This could include Elected Members from neighbouring Authorities if necessary.

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 (Paragraph 96).*

Government Response:

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.

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.

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.

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.

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.

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Whilst it was acknowledged that Woking Borough Council was neither an upper tier council nor a combined authority, it was noted that the Overview and Scrutiny Committee had not to-date scrutinised the work of Enterprise M3 and it was suggested that a copy of the LEP's annual report should be brought to the Committee in future years, setting out the work undertaken and future aspirations of the LEP. It was also suggested that the Enterprise M3 LEP should be invited to make a presentation to the Overview and Scrutiny Committee.

RECOMMENDED

That (i) Enterprise M3 be requested to submit an annual report on its activities to the Overview and Scrutiny Committee; and

(ii) Enterprise M3 be invited to make a presentation to a future meeting of the Overview and Scrutiny Committee

***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 (Paragraph 104).*

Government Response:

The Government accepts this recommendation.

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.

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.

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.

The recommendation was not relevant to the Borough Council.

6. Any Other Business

Attendance by Portfolio Holders

The Members noted that attendance by Portfolio Holders at meetings of the Committee had significantly improved over the past two years. It was hoped that attendance levels would continue.

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Participation by Members of the Committee

Councillor Davis tabled a report which set out all the items of business undertaken by the Committee over the past five years and allocated them against the following headings:

Topics Raised 2013 to 2018	
○ Topics Raised by the Chairman or Vice-Chairman	39 topics.
○ Topics Raised by Members of the Committee other than the Chairman or Vice-Chairman	No topics*
○ Topics Raised by Members not serving on the Overview and Scrutiny Committee or Others	2 topics.
○ Topics Raised by Officers (including standing items)	18 topics.

**It was noted that earlier in the year Councillor Barker had identified the Rail service for review. This was to be considered at the next meeting of the Committee (2018/19 Municipal Year)..*

The report clearly demonstrated that most if not all items considered had been proposed either by the Chairman and Vice-Chairman (66%) or by Officers (30%). Councillor Davis confirmed that no items had been proposed by Members of the Committee itself.

The Members of the Task Group therefore emphasised the importance of appointing proactive Councillors to the Committee who would participate fully in the work undertaken and propose topics for review.

Overview and Scrutiny Committee – Budget for Impartial Advice

The Members of the Task Group felt that there could be an occasion where the Committee wished to receive impartial advice, and therefore proposed that the Council should identify a budget for the Committee.

Councillor Davis emphasised the need for ‘checks and balances’ if the Committee was to be responsible for its own budget.

RECOMMENDED

That an annual budget be established for the Overview and Scrutiny Committee to secure impartial advice.

Training

The importance of training for the Members of the Overview and Scrutiny Committee was discussed and it was agreed that opportunities for training should be identified, including the possibility of arranging a training event on the evening of the first meeting of the Committee following its appointment by the Council. Part of the training would seek to address the perception Members had of the Committee with a view to raising its profile and the participation of Councillors. Councillor Bond added that the training should include instructions for Members on how to propose topics for scrutiny.

Public awareness was further considered, and it was agreed further work was needed to promote the work of the Committee to Members of Public.

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Topics for Scrutiny

Councillor Bond advised that he was keen that the work of the Thamesway Group of Companies and the Victoria Square project were scrutinised. It was noted that, whilst a scrutiny topic selection form could be submitted, Councillors Bond would need to clearly identify what aspects he wished to scrutinise. Furthermore, the Members advised that Councillors could attend the Board Meetings of the Thamesway Group of meetings subject to the completion of a Non-Disclosure Agreement and that an annual presentation was made to which all Councillors were invited. Furthermore, the accounts and business plans of the Thamesway Group were reviewed by the Council each year. In regard to Victoria Square, it was noted that a cross-party group of Councillors had been appointed to maintain oversight of the project.

The meeting started at 5.00pm
and concluded at 7.15pm

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Appendix 1 (to the minutes of the meeting of the Task Group)

EFFECTIVE SCRUTINY TASK GROUP – 16 APRIL 2018

RECOMMENDATIONS OF THE SELECT COMMITTEE AND THE GOVERNMENT'S RESPONSE

SECTION 1 - CONCLUSIONS AND RECOMMENDATIONS OF THE SELECT COMMITTEE

<p>The role of scrutiny</p> <p>1. <i>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)</i></p> <p>Proposed revisions to Government guidance on scrutiny committees</p> <ul style="list-style-type: none">○ 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.○ 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.○ 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.○ 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.○ 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. <p>2. <i>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)</i></p>
<p>Party politics and organisational culture</p> <p>1. 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)</p> <p>2. <i>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</i></p>

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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)

3. 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)*
4. 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)
5. 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)
6. 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)

Accessing information

1. 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)
2. 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)
3. 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)*
4. *We note that few committees make regular use of external experts and call on councils to seek*

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to engage local academics, and encourage universities to play a greater role in local scrutiny. (Paragraph 45)

5. 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

1. 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)

1. *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)

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

Member training and skills

1. 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)

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The role of the public

1. *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

1. *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)*
2. *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

1. *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)*

SECTION 2 – GOVERNMENT'S RESPONSE TO THE RECOMMENDATIONS OF THE SELECT COMMITTEE

Introduction

In September 2017, the Communities and Local Government Select Committee relaunched the inquiry into the effectiveness of local authority overview and scrutiny committees that had been started by its predecessor earlier that year. The Select Committee published its report on 15 December 2017:
<https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/369/36902.htm>.

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The Government will be looking at further ways to extend and improve transparency and is grateful both to the Committee for its consideration of the effectiveness of overview and scrutiny committees and to all those organisations and individuals who provided oral and written evidence.

Scrutiny can play a vital role in ensuring local accountability on a wide range of local issues. It is one of the key checks and balances in the system and the Government is committed to ensuring councils are aware of its importance, understand the benefits effective scrutiny can bring and have access to best practice to inform their thinking.

The Government firmly believes that every council is best-placed to decide which scrutiny arrangements suit its individual circumstances, and so is committed to ensuring that they have the flexibility they need to put those arrangements in place.

The Government is pleased the Select Committee acknowledges overview and scrutiny is functioning effectively in many local authorities and that committees are playing a key role in helping executives develop and review policy. The Government accepts, however, that in some councils scrutiny is not functioning as well as might be expected.

The Select Committee has made a number of recommendations, most, but not all, of which are for the Government to consider. The response in the following pages addresses only those recommendations aimed at the Government.

Recommendation 1: Proposed revisions to Government guidance on scrutiny committees (Page 7)

- a) 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.
- b) 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.
- c) 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.
- d) 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.
- e) 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 Response:

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.

- a) The Government notes the evidence supplied to the Committee. Updated guidance will recommend that scrutiny committees report to the Full Council.
- b) 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.

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- c) 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.
- d) 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.
- e) 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 DCLG 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 (Paragraph 35).

Government Response:

The Government will give further consideration to this recommendation.

The Government fully accepts that the chair of a scrutiny committee can have a great impact on its effectiveness. As the then Minister told the Select Committee at the oral evidence session on 6 November 2017, a chair needs to have the requisite skills, knowledge and acumen to take on the functions and achieve the outcomes that the scrutiny committee needs to achieve.

The Government also accepts that, in some instances, the election, rather than the appointment, of a chair might help ensure that the right individual is ultimately selected, but feels that this is a decision for every council to make for itself - we note that the Select Committee is "wary of proposing that [election] is imposed upon authorities by Government".

A local authority is already free to elect a chair if it wishes, and the updated guidance will recommend that every council bears this in mind when deciding on a method for selecting a chair.

The Government is happy to explore with the sector how best to establish the impact of elected chairs on scrutiny committees' effectiveness, but is not yet convinced that running pilot schemes is the best way to achieve this. The Government will therefore discuss this recommendation with the sector, including the Local Government Association and Centre for Public Scrutiny, and write to the Select Committee on this matter when we publish updated guidance.

Recommendation 3: Councils should be required to publish a summary of resources allocated to scrutiny, using expenditure on executive support as a comparator (Paragraph 62)

Government Response:

The Government does not accept this recommendation.

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.

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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 (Paragraph 65).

Government Response:

The Government does not accept this recommendation.

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.

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 (Paragraph 76).

Government Response:

The Government does not accept this recommendation. Local authorities are independent bodies and it is for them to ensure that their scrutiny arrangements are effective.

The Government firmly believes that every council should be able to access the training it needs 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.

The funding is determined annually and for 2017/18 is £21 million. 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.

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.

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.

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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 (Paragraph 90).

Government Response:

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.

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 (Paragraph 96).

Government Response:

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.

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.

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.

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.

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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. (Paragraph 104)

Government Response:

The Government accepts this recommendation.

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.

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.

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.
