

OVERVIEW AND SCRUTINY GUIDANCE BY THE MHCLG

Executive Summary

This report explores the provisions of the statutory guidance on overview and scrutiny published by the Ministry of Housing, Communities and Local Government (MHCLG) in 2019. Furthermore, the report reviews the Council's arrangements in light of the guidance and identifies a wide ranging series of recommendations for the Members of the Committee to consider as a means of strengthening the Council's overview and scrutiny work.

This report follows recent training on overview and scrutiny which highlighted the 2018/19 review of overview and scrutiny undertaken by the Government, and the subsequent guidance. Whilst the Council established a task group in 2018 to review the findings of the review and recommend any changes to the Council's arrangements, due to competing priorities the Council was unable to undertake a similar exercise following the publication of the Government's guidance.

This report seeks to consider the Government's guidance in the context of recent developments at Woking Borough Council which impact in particular on the way in which the scrutiny responsibility of the Authority is taken forward. These include the changes arising from the recommendations put forward by Dr Gifty Edila. The guidance needs to be seen in the context of the Council's own arrangements which include a number of cross party oversight panels.

Subject to the decisions of the Committee, the Work Programme will be updated in light of the proposals to include those matters which need to be brought back for consideration by the Members of the Committee.

Recommendations

The Committee is requested to:

RESOLVE That

- (i) a formal opportunity for discussion between the Chairman of the Committee and the Leader of the Council be established;
- (ii) a draft Executive / Overview and Scrutiny Committee protocol be drawn up for consideration by the Overview and Scrutiny Committee and recommendation onto the Executive, in consultation with the Chairman and Vice Chairman of the Overview and Scrutiny Committee and the Leader of the Council;
- (iii) a report be brought to a future meeting of the Overview and Scrutiny Committee proposing the adoption of management arrangements for the release of, reporting on and audit of, the Scrutiny budget, the proposals to be drafted in consultation with the Chairman and Vice-Chairman of the Committee;
- (iv) a communications plan be established on the work of the Overview and Scrutiny Committee which would promote the work of the Committee within the resources available;

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- (vi) the Scrutiny Tool Kit be updated to include, amongst other points, reference to the new Officer support arrangements, the budget available for Scrutiny work and the guidance available, notably that issued by the Local Government Association, the MHCLG, South East Employers and the Centre for Governance and Scrutiny;
- (vii) the Members of the Overview and Scrutiny Committee, where possible, raise any questions or areas of concern arising from the 'Green Book' with the Chairman of the Committee in advance of the meeting of the Committee;
- (viii) a report summarising the points raised on the 'Green Book' and responses given be presented to the subsequent meeting of the Committee;
- (ix) the guide to scrutiny of risk and commercialisation published by the Centre for Governance and Scrutiny, be brought to a future meeting of the Committee for consideration;
- (x) before agreeing a topic for scrutiny review, a scrutiny review topic form to be completed by the Member/Officer proposing the review, for agreement at the next available Overview and Scrutiny Committee;
- (xi) any consideration of topics for scrutiny to highlight the benefits of the work for residents and take into account the Work Programme in assessing the resources necessary, and the work of each Scrutiny Review Task Group be informed by the practices and approaches endorsed by the Scrutiny Tool Kit.

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

Background Papers:	None.
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1.0 Introduction to the Government's Review of Overview and Scrutiny

- 1.1 In December 2017 a House of Commons (Department of Communities and Local Government) Select Committee published its report on the Effectiveness of Local Authority Overview and Scrutiny Committees, having considered information and evidence from a range of organisations and witnesses.
- 1.2 The Select Committee Inquiry was prompted by concerns expressed about the limited effectiveness of Overview and Scrutiny and the lack of any assessment of how Overview and Scrutiny had been operating since it was introduced by the Local Government Act 2000 as a counterweight to the increased centralised power of the new executive arrangements. The Inquiry looked at the ability of Overview and Scrutiny 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.
- 1.3 The Select Committee made 21 findings and recommendations underpinned by two key conclusions; that effective scrutiny required the right organisational culture, working best where constructive challenge and democratic accountability was welcomed and that the independence of Overview and Scrutiny needed strengthening.
- 1.4 In particular the Select Committee called on the Government to revise and reissue the statutory guidance issued to Councils in 2006, under the Local Government Act 2000, to take into account the evolving role of scrutiny. It also called 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.
- 1.5 In March 2018 the Secretary of State for Housing, Communities and Local Government published the Government response to the Select Committee report stating its belief that every Council is best placed to decide which scrutiny arrangements suit its individual circumstances and committing to ensure that they have the flexibility they need to put those arrangements in place. The Government, in its response, committed to revise and re-issue the statutory guidance on Overview and Scrutiny.
- 1.6 The revised guidance was published in May 2019 and is attached at Appendix 2.
- 1.7 The Centre for Governance and Scrutiny, a national centre of expertise on scrutiny, assisted in drafting the new guidance and published an update to their Good Scrutiny Guide which has been written to complement the statutory guidance. This guide is freely accessible through the Centre's website and a copy is attached at Appendix 3.

2.0 Parliamentary Review Of Overview And Scrutiny Functions

- 2.1 At its meeting on 26 March 2018, the Overview and Scrutiny Committee considered a proposal to examine the outcome of the Parliamentary review of overview and scrutiny functions undertaken over the previous year. The Members of the Committee supported the proposals and appointed a Task Group to scrutinise the recommendations to come out of the review.
- 2.2 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

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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.”

2.3 On 18 June 2018, the Effective Scrutiny Task Group submitted a report to the Overview and Scrutiny Committee following consideration of the recommendations from the Parliamentary Select Committee together with the responses by the Government. A number of recommendations were put forward by the Members of the Task Group for consideration by the Committee, though a number of them were not supported by the Committee, including around the appointment of the Committee Chairman and Vice-Chairman and the establishment of a budget for the Committee.

2.4 An extract from the minutes of the meeting is set out below:

“The report before the Committee summarised the proposals from the Effective Scrutiny Review Task Group, established to review the findings of a Parliamentary Select Committee review of Overview and Scrutiny. The Chairman invited the Members to consider the recommendations in light of the comment by Officers.

The Task Group had proposed that the Chairman and Vice-Chairman of the Overview and Scrutiny Committee should not be appointed from the same political party. However, it was felt that the Council should retain the freedom to appoint the most appropriate persons to undertake the roles, irrespective of their political group. It was further agreed that the proposal that the Council, rather than the Committee, should appoint the Chairman of the Committee, would not be referred to Council. The recommendation to establish a budget for the Committee to secure impartial advice was discussed but was not supported, with members noting that the option to obtain specialist advice already existed. The recommendations in respect of Enterprise M3 were welcomed and it was noted that it was intended to bring the annual report to the September meeting of the Committee.

RESOLVED

That (i) The recommendation in respect of the appointment of the Chairman and Vice-Chairman and the introduction of budget be not supported;

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

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

2.5 It should be noted at this point that Enterprise M3 have recently confirmed their availability to attend the meeting of the Overview and Scrutiny Committee on Monday, 21 February 2022.

3.0 Overview of the Statutory Guidance Produced by the MHCLG

3.1 The guidance by the MHCLG restates the four principles of effective Overview and Scrutiny which should:

- provide constructive “critical friend” challenge;
- amplify the voices and concerns of the public;
- be led by independent people who take responsibility for their role; and
- drive improvement in public services.

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- 3.2 The guidance highlights that legislation provides a great degree of flexibility to local authorities to determine which overview and scrutiny arrangements best suit their own individual needs and that the Government, in producing the guidance, fully recognises the democratic mandate of local authorities as well as the changing nature of local government with Councils increasingly delivering key services in partnership with other organisations or outsourcing them entirely.
- 3.3 The key messages in the guidance are summarised below:
- **Culture** – the prevailing organisational culture, behaviours and attitudes of an authority will largely determine whether its scrutiny function succeeds or fails.
 - **Resourcing** – the resource an Authority allocates to the scrutiny function will play a pivotal role in determining how successful that function is and therefore the value it can add to the work of the Authority.
 - **Selection of Committee Members** – the right people have to be selected to be on committees, and to hold the position of Chairman. The guidance gives a sense of the personal attributes that people in these positions will require. It recognises the political element of the selection of Chairmen and suggests that Local Authorities should consider taking a vote by secret ballot, although ultimately the method for selecting Chairmen is a matter for each Local Authority to decide.
 - **Power to Access Information** – a Scrutiny Committee needs access to relevant information the Authority holds, and to receive it in good time if it is to do its job effectively. This section emphasises the rights that Councillors have to access information and states that Councillors should have regular access to key sources of information which, collectively, will give them a sense of the management of the authority, with a particular focus on performance, finance and risk.
 - **Planning Work** – effective scrutiny should have a defined impact on the ground, with the Committees making recommendations that will make a tangible difference to the work of the Authority. To have this kind of impact, Overview and Scrutiny Committees need to plan their work programme with arrangements in place for a co-ordinated approach.
 - **Evidence Sessions** – good preparation is a vital part of conducting effective evidence sessions. The role of the Chairman in managing the gathering of evidence is seen as especially important – as is the work of Councillors in pulling together focused and achievable recommendations.
 - **Local Enterprise Partnerships** – The Select Committee Inquiry recommended that Scrutiny Committees should be able to require Local Enterprise Partnerships (LEPs) to provide information and attend Committee meetings as required.

4.0 Review of Woking Borough Council Arrangements

- 4.1 A detailed commentary on how Woking Borough Council measures up against the recommended good practice in the guidance is attached at Appendix 1 for consideration by the Members of the Overview and Scrutiny Committee. Whilst the overview and scrutiny arrangements in place at Woking Borough Council are largely consistent with the Government's guidance, there are areas where opportunities exist to improve or clarify the Council's approach to overview and scrutiny, and accordingly a wide range of recommendations have been drawn up.

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- 4.2 The Members of the Committee are asked to consider the review of current practices and the resulting recommendations. These are explained and highlighted in bold in Appendix 1 and set out in full at the start of this report.

5.0 Training and Development

- 5.1 Officers will continue to seek to identify different training and development opportunities around overview and scrutiny, the most recent being a training session offered to all Members and provided through South East Employers. It was at this training event, held on 28 June 2021, that the attention of Members was drawn to the MHCLG guidance, leading to the drafting of this report. Prior to that, at the first meeting of the Committee in June, a comprehensive report on the roles and responsibilities of the Committee, together with the Council's Tool Kit for Scrutiny, was presented to Members.
- 5.2 All Members of the Council are encouraged to identify potential training and development opportunities; these suggestions can then be considered as part of the overall programme of training events and, subject to budget considerations, arranged for a suitable date later in the Municipal Year.
- 5.3 The Council has appointed Lead Members for Member Learning and Development and any Member can discuss their training and development aspirations with them or with their Group Leaders. The Lead Members are Councillor Gary Elson, Councillor Rob Leach and Councillor Ilyas Raja.

Guidance Documents

- 5.4 In considering the guidance by the MHCLG at the centre of this report, Members should note that a range of agencies provide guidance around overview and scrutiny, some general and some specific to topics or approaches. These include the Local Government Association, South East Employers and the Centre for Governance and Scrutiny. The Centre for Governance and Scrutiny, in particular, publishes guidance on specific types of scrutiny, including topics such as financial scrutiny, scrutiny and housing challenges, using evidence in scrutiny, using evidence in scrutiny and the value of scrutiny in the challenges faced by Health services. All such guidance is freely available online through the websites of the respective agencies.

6.0 Corporate Strategy

- 6.1 The role of overview and scrutiny sits across all elements of the Council's Corporate Strategy and beyond, looking at matters that affect residents whether they sit under a Council service or the services of the many agencies, authorities and companies supporting the lives of residents. Key elements, however, include improving the health and wellbeing of all resident, engaging with our communities, promoting a strong economy, strengthening partnerships and improving the Borough's biodiversity and green infrastructure.

7.0 Implications

Finance and Risk

- 7.1 The Council recently established an annual budget of £20,000 to support the Committee in its role of scrutiny (29 July 2021). This report recommends that proposals for suitable management arrangements for the release of, reporting on and audit of the Scrutiny budget should be drawn up in consultation with the Chairman and Vice-Chairman. A report on the proposals would be presented to a future meeting of the Committee.
- 7.2 The report recommends that the Council's arrangements for the identification of future topics for scrutiny are followed to minimise any risks associated with scrutiny reviews, including

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around the level of resources necessary, the time to be taken and the achievement of demonstrable outcomes for the benefit of Woking residents.

- 7.3 At present, there are no cost implications anticipated as a result of the recommendations contained within this report. Should any unexpected costs arise, around the establishment of a webpage for example, these costs will be reported to the Committee.

Equalities and Human Resources

- 7.4 There are no equalities implications arising directly from the proposals within this report.
- 7.5 The recommendations within this report will have an impact on human resources, in particular the Officer and Member time involved in bringing forward the changes. However, it is felt that the recommendations can be achieved within existing resources. Any delays to the implementation of the recommendations will be reported to the Committee.

Legal

- 7.6 The statutory guidance published by MHCLG in May 2019 has been issued under section 9Q of the Local Government Act 2000 and under paragraph 2(9) of Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009, which requires Local Authorities to have “regard” to the guidance. The phrase ‘must have regard’, when used in this context, does not mean that the sections of statutory guidance have to be followed in every detail, but that they should be followed unless there is a good reason not to in a particular case.
- 7.7 The review in this report of the Overview and Scrutiny arrangements against the new statutory guidance is consistent with the commitment in Article 14.01 of the Council’s Constitution to monitor and review the operation of the Council’s Constitution to ensure that its aims and principles are given full effect. The review also permits the Council to receive assurance over the effectiveness of those arrangements as well as take forward any improvements. The effective scrutiny function of the Council helps secure the efficient delivery of public services and can assist to drive improvements within the authority itself.
- 7.8 The Council’s Procedure Rules for the Overview and Scrutiny Committee are contained in Part 4 of the Council’s Constitution and, as such, any significant changes to the Procedure Rules arising from any review will require the approval of full Council.

8.0 Engagement and Consultation

- 8.1 This report has been prepared in consultation with the lead officers around Scrutiny support at Woking Borough Council and follows the Government’s guidance on overview and scrutiny. It builds on the existing practices of the Authority, seeking to strengthen the Committee’s role and the position scrutiny sits within the culture of the Council.
- 8.2 The Chairman and Vice-Chairman were provided with the opportunity to discuss the report with Officers before its publication. The Portfolio Holder for Overview and Scrutiny and Leader of the Council was also invited to comment on the draft proposals.

REPORT ENDS