

**REPORT OF THE CROSS-PARTY SCRUTINY GROUP
REVIEW OF SCRUTINY**

The motion:

City Council endorses the recommendations set out on page 11 – 12 of this report.

1. Introduction

At the meeting of Council Business Management Committee in November 2017, a cross-party sub-group was established to undertake a review of Overview and Scrutiny. Three years on since the number of committees was reduced, it is timely to review the role of scrutiny in light of changes to council governance, with the removal of District Committees (which had been given a scrutiny role following the Kerslake report) and in anticipation of further changes taking effect from May 2018.

2. Purpose of the Review

The purpose was to review the Council's scrutiny arrangements to ensure that Scrutiny is an effective partner in the council's governance, and is successful in providing constructive challenge and helping to drive improvement across the council and its services.

The key lines of enquiry were:

- To review the role of scrutiny: what role does the City Council want scrutiny to play in the governance of the City Council?
- To review the relationship with the Executive – how can scrutiny's role be better facilitated through the scrutiny / executive relationship?
- To review the structure of scrutiny – what structure (i.e. numbers and remits of committees, balance of standing committees and task and finish) will best deliver scrutiny's role?
- To review the resourcing of scrutiny in light of any proposed changes, bearing in mind the current financial context.

Seven members were appointed to the group: Cllr John Cotton (chair), Cllr Deirdre Alden, Cllr Basharat Dad, Cllr Roger Harmer, Cllr Brigid Jones, Cllr Gareth Moore and Cllr Claire Spencer. Meetings were held between December and February; this included a meeting with the three party leaders in January.

3. Background

Overview and Scrutiny in Birmingham has a long history as a well-respected and high-profile scrutiny function. Work over the years has won a number of awards and has made significant contributions to the governance and efficiency of the council.

A review of scrutiny committee numbers and remits was undertaken in early 2015, as required by the Kerslake Report of December 2014, but also in acknowledgement of the reduction in resources. Because of this review, the number of scrutiny committees was reduced by half, and District Committees were given a local scrutiny role. Nonetheless, the work programmes continue to encompass the full range of council policy and service areas. The number of scrutiny committees may have reduced, but the breadth and depth of work they are expected to cover has not.

Further work was undertaken in late 2016 and early 2017, when the Centre for Public Scrutiny (CfPS) facilitated workshops drawing together a mix of scrutiny members and officers, to discuss future approaches to scrutiny.

Scrutiny has also come under the spotlight nationally: the Communities and Local Government (CLG) Select Committee published its report on the effectiveness of local authority overview and scrutiny committees on 11 December 2017. Birmingham members and officers gave evidence to this review, and good practice from Birmingham was cited in the report (notably scrutiny reports being discussed and agreed by the main City Council meeting, together with good examples of proactive work to help set the policy agenda).

4. The Role of Scrutiny

The role of scrutiny in the governance of the council has three broad strands:

- a) *Holding to account*: the challenging of decisions is a key role and is the key role of the call-in function. Call-in should not be seen as a failure but as a legitimate means of challenging decisions – a view shared by the party leaders. Any cabinet member and officer who have taken a decision should be prepared to debate and defend that decision in public. The review group looked at the guidance on call-in and has set out proposed clarifications in Appendix 1 (see *Recommendations* below).

There are other means of holding to account, including through Cabinet Member attendance at scrutiny meetings (which has taken the place of the Cabinet Member reports to City Council) and it should also be remembered

that scrutiny has statutory powers to hold some partners to account, notably local health bodies.

- b) *In-depth scrutiny and contribution to policy development*: to properly add value scrutiny must get into the detail of issues. This includes both looking back – addressing where things have gone wrong and understanding the reasons – and looking forward, through contribution to policy development. In the CfPS workshops held in 2016, there was general agreement that scrutiny could add most value by active involvement in policy development. The CLG Select Committee also noted the benefits of what is sometimes called “pre-decision scrutiny”: “By commenting on and contributing to a decision before it has been made, scrutiny committees are able to offer executives the benefit of their ability to focus on an issue in greater depth over a longer period of time.”

Again, this work need not focus exclusively on the work of the City Council; whilst legislation gives some powers to require defined partner organisations to have regard to recommendations and to share information, scrutiny can look at any matters which affect the authority’s area or the inhabitants of that area.

- c) *Oversight of performance and finance*: committees should be looking at performance indicators and finance information and have the ability to drill down where there are areas of poor performance. Not having that facility can contribute to serious service failure. The CLG Select Committee report cited the example of the Francis Report (published in 2013 following failings at the Mid Staffordshire NHS Trust): “whilst the failings were not attributed to local committees, the report was critical of local authority health scrutiny, highlighting a lack of understanding and grip on local healthcare issues by the members, little real interrogation and an over-willingness to accept explanations.”

Underpinning each of these roles is the acceptance that scrutiny is an integral part of the governance of the city and should be systematically engaged at the earliest possible stage. There are plenty of good examples to demonstrate the value of this, for example the work undertaken in scrutiny to support the development of policy around the localisation of council tax in 2012; a complex matter that nevertheless has stood the test of time.

Scrutiny can be seen both as a safety net and as a means to drill down and better understand the council’s and partners’ performance and the wider service delivery.

Reports to City Council

Scrutiny reports to City Council were discussed and members of the review group were clear that producing reports for City Council was not scrutiny’s only role. As

noted above, the work undertaken in committee meetings also plays a critical role in the health of the organisation.

However, it is recognised that reporting to City Council is a key line of accountability and one area where Birmingham is ahead in terms of good practice. The Select Committee report recommends 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”, as many local authority scrutiny committees do not do this.

Members also recognised that reports to City Council could also be better used to inform members of the wider work that scrutiny undertakes. A report to City Council in April 2016 introduced some new approaches, including the presentation of short reports summarising work undertaken in committee meetings with a motion or suggested actions; these could include more contentious issues, areas where policy is not yet resolved, or other matters of high political priority, and act as a way of prompting wider policy debate in the chamber. Examples of this approach include the debate on the NHS Sustainability and Transformation Plan in December 2016 and the Maximising Jobs and Skills report in February 2017.

With regards to inquiry style reports to City Council, there have been a number of examples of disagreements between the Executive and Scrutiny on the content or timing of recommendations. The “8 day rule” process should be amended to allow, where necessary, a meeting of the relevant Cabinet Member and scrutiny members to discuss areas of difference; and for scrutiny committees to have the option to outline proposed outcomes and work with the Executive over a longer time period as to how these outcomes could be achieved (see *Recommendations* below).

Reports or letters from scrutiny that are not taken to City Council should be published on the website and sent to all Councillors, together with the Executive response.

In Birmingham, an Annual Report is submitted to the City Council meeting, detailing the work completed in the previous year and plans for the current municipal year. This could also be reviewed, with lead scrutiny members (cross-party) reporting their views on scrutiny and areas requiring improvement as part of the report (see *Recommendations* below).

Given these changes, we believe that a further review of the operation and functions of the full City Council meeting would also be timely.

Measures of success for scrutiny

There was some discussion of what success for scrutiny would look like. Given the political nature of the process, determining performance indicators for scrutiny has proved difficult for local authorities across the country. However, it is crucial that

scrutiny can demonstrate a positive impact. Consideration also needs to be given to the “feedback loop” of scrutiny work back to the Executive. Recommendations are routinely “tracked” for implementation but there’s little consideration of impact or outcomes, and there are examples where scrutiny work has not been heeded, only for similar issues to arise later.

There is a need for a more outcome-focused approach, which would entail scrutiny reports being clearer about what the recommendations are expected to achieve and the Executive reporting back on what has changed, as well as implementation of specific recommendations. A more flexible approach would help to provide better evidence about the impact of scrutiny (see *Recommendations* below). Scrutiny should work with CfPS and/or Inlogov to define useful measures of success. Working with other local authority scrutiny committees on this area would also be beneficial.

5. Relationship with the Executive: Parity of Esteem

The CLG Select Committee report was concerned with the overall relationship between local authority scrutiny and executive members, and notes that “there is no parity of esteem between the scrutiny and executive functions”. This is especially important given that scrutiny was originally introduced as “a counterweight to the increased centralised power of the new executive arrangements”.

These concerns are reflected in Birmingham, where scrutiny members do not always feel that scrutiny is given sufficient weight or access to enable them to carry out the role effectively. In practice, this is about:

- a) *Transparency of work programmes and decisions*: Key decisions (i.e. those that go to Cabinet) are set out in the Forward Plan; however forthcoming Cabinet Member/Chief Officer decisions are not shared in advance, and decisions delegated to officers are rarely published at all. For scrutiny members to be able to contribute effectively, advance notice is needed. Similarly, for policy development, there is currently no way of tracking the development of a policy to enable scrutiny to timetable appropriate involvement. Overall, there is a lack of transparency of Cabinet Member work programmes/decision schedules, and variation in how Cabinet Members and Scrutiny Chairs work together to identify useful pieces of work for scrutiny to undertake (see *Recommendations* below).
- b) *Information sharing*: scrutiny members do not always have access to the information they need to scrutinise areas properly. This can be about timeliness of information (there is often a reluctance to share early information with scrutiny members); or about reduced resources to provide the information; or a lack of understanding of what information members are entitled to.

The Select Committee is clear 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”. They support the CfPS proposal that committees must be able to ‘*follow the council pound*’ and have the power to oversee all taxpayer-funded services.” This includes scrutiny involvement “at a time when contracts are still being developed, so that all parties understand that the service will still have democratic oversight despite being delivered by a commercial entity”.

Practically, consideration needs to be given to the systems in place and how councillors can be given access to information via on-line systems (an area scrutiny could consider in the coming year – see *Recommendations* below). But this is also about building a culture of mutual respect and trust that facilitates the sharing of sensitive information.

- c) *Attendance at Scrutiny Committee meetings*: officers and Cabinet Members should have to attend and give evidence. The Select Committee report says: “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”.

However, it should be made clear that officers should not be asked political questions and Cabinet Members should attend to represent policy decisions. Equally, Cabinet Members should not be expected to have all the operational detail, and those questions are properly directed to officers.

To address these issues, the review group recommends that early in the new municipal year, a new Executive / Scrutiny protocol is drawn up. There should also be a trigger mechanism, written into the Constitution, whereby scrutiny can escalate matters where they feel they are being blocked or held up by the Executive or officers (see *Recommendations* below).

Furthermore, the officer and Cabinet Member requirements regarding attendance should also be included in the Executive / Scrutiny protocol. Whilst there was consensus that scrutiny committees should continue to determine their own work programme, it would also be beneficial to work more closely with the Executive. Early involvement of Cabinet Members in work programme development would assist this, with Cabinet Members and Scrutiny Chairs meeting at the start of the Municipal Year to discuss key and emerging policy issues (see *Recommendations* below).

6. How could/should committees and appointments work differently post-election

Members considered the numbers and remits of Scrutiny Committees, and also membership and the political allocation of Scrutiny Chairs.

With regards to numbers and remits: there was a clear view in favour of increasing the number of Scrutiny Committees. Members agreed that the reduction in the number of scrutiny committees in 2015 had not worked as Committees have struggled to cover the full extent of the work required of them and as a consequence have had a reduced focus on some key issues. The evidence collected suggests there should be at least eight Overview and Scrutiny Committees, although arguments can be made for additional committees. However, consideration should be given to the equitable distribution of workloads amongst committees and the likelihood of resources being available to support these for the next four years.

Health Scrutiny

The workload of the Health and Social Care Overview and Scrutiny Committee (HOSC) has always been a challenge due in part to the statutory nature of the duties placed on the health scrutiny function in relation to scrutinising the planning, provision and operation of local health services in the area and the requirement for consultation where proposals are being considered for a substantial development or variation of health services in an area. Due to the volume and speed of changes happening in the health service currently, the number and range of issues that need to be dealt with through either the main Birmingham HOSC or one of the Joint health scrutiny committees with Solihull and Sandwell, is steadily increasing.

Already, since the beginning of 2018, there have been three health scrutiny meetings in January, the main Birmingham HOSC, a Solihull joint HOSC and a Sandwell joint HOSC. There are currently already three meetings scheduled for March and it can be anticipated that this will be the future pattern of meetings for the foreseeable future.

There are major and controversial changes already happening on the Sandwell side including proposed changes to a range of oncology services, the high-profile impact of the Carillion administration on the completion of the Midland Metropolitan Hospital and proposed changes to GP contracts and the future of walk-in centre services. Similarly, the Solihull Joint HOSC is dealing with major issues such as the merger of the three Clinical Commissioning Groups and transition to one organisation and also the merger of two large hospital trusts, University Hospitals Birmingham NHS Foundation Trust and Heart of England NHS Foundation Trust - both of which are generating significant concerns which will require the continued involvement of the scrutiny committees.

This is exacerbated by the volume of changes and reorganisations already being implemented in Sandwell and West Birmingham as a result of the Black Country STP and this will be happening increasingly across Birmingham as more of the changes planned to take place under the auspices of the Birmingham and Solihull STP begin to be implemented.

The number and remit of scrutiny committees is a matter for the Executive to determine following the May elections and the review group does not want to fetter that discretion. Nonetheless, the review group believes that any approach should adopt the following:

- a) A lead scrutiny committee should be created, responsible for oversight of the work programme and overseeing the scrutiny function alongside its substantive remit. The membership of this Committee should include all the Scrutiny Chairs and the Chair of the Committee would be the Lead Scrutiny Member. This would give a clear cross-party steer to the scrutiny work programme as a whole and facilitate transparent prioritisation of scrutiny work.
- b) An O&S Committee or Sub-Committee with a clear remit for finance should form part of the new arrangements, whether that be a Finance Committee or Sub-Committee or a major part of the lead scrutiny committee's remit.
- c) The health and social care responsibilities and statutory duties are onerous and sufficient for one committee (an outline of current workloads is set out above). Therefore, the Health and Social Care O&S Committee should have no other areas of responsibility.
- d) Any future changes to scrutiny remits should be agreed with the lead scrutiny committee, to ensure a full appreciation of the impact of the changes proposed and an equitable balance of workloads across committees;
- e) To maintain stability in committee remits over the municipal years; recent years have seen almost annual changes which have had an impact on the timescales of work produced (see *Recommendations* below).

Scrutiny Chairs and Membership

The allocation of Scrutiny Chairs was discussed, in light of recommendations from the CLG Select Committee report, which states: "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". They believe 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"; though they accept it is for individual authorities to determine this. They do 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".

The allocation of Scrutiny Chair roles is a political decision, and since scrutiny's inception, Birmingham has tended to allocate these to members of the controlling group or groups, with the exception of the 2003-4 municipal year, when they were shared on a cross-party basis. However, the review group was of the view that these

posts should now be allocated on a proportionate basis, in line with national best practice (see *Recommendations* below).

Deputy Chairs should continue to be elected by the Committee, as introduced in 2015. If the current system is retained, then the option of electing deputy chairs from opposition parties could be considered (as already happens in some committees).

Similarly, the four-year election cycle is also an opportunity to have more stability of membership on scrutiny committees. There is a need to balance those members who are “experts” in that area and those who would bring a fresh perspective. Attendance at meetings has also been a concern in the last year and needs to be addressed (see *Recommendations* below).

Member Training

Member training in relation to scrutiny also needs consideration. The Select Committee states that “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”.

Member training should include codes of behaviour in scrutiny committees, questioning skills and chairing skills.

Scrutiny Bulletin

In addition, to ensure that all members of the council are aware of scrutiny’s work programme, a monthly bulletin should be sent to all members.

7. Resources and Officer Support

The Select Committee notes the diminution of scrutiny resources across the country. However, “it is imperative that scrutiny committees have access to independent and impartial policy advice that is as free from executive influence as possible”.

However, it is not just about scrutiny support, but also senior officer support: “Decisions relating to the resourcing of scrutiny often reflect the profile that the function has within an authority ... [however].... if there is a culture within the council of directors not valuing scrutiny, then focussing on staff numbers will not have an impact.”

The review group acknowledged that should the number of scrutiny committees be increased, the overall resource implications for scrutiny would need to be considered

and should match both the number of committees and the role expected of scrutiny (see *Recommendations* below).

With regards to access to advice, it is also suggested that scrutiny builds relationships with local universities and businesses, to access wider sources of information.

To further support Scrutiny Chairs and committees, thought needs to be given to ensuring links between scrutiny and directorates (as well as with Cabinet Members), either through the creation of link officers for each committee, or other links on a themed basis, to support the work programmes.

8. Conclusion

Throughout the range of issues covered in this review, the underpinning theme is that of the culture of the City Council and its openness to challenge. The Select Committee came to the same conclusion, stating:

“We have found 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 we identified. 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.”

Ultimately the success, or otherwise, of scrutiny is the success, or otherwise, of the City Council as a whole. In fostering a culture where challenge is valued rather than seen as a threat, where leadership in democracy and accountability is prized, scrutiny is at its most effective and the whole organisation thrives.

Recommendations

1. That Executive and Scrutiny Chairs work together to:
 - a) Agree a new Executive / Scrutiny protocol to guide new ways of working. This should include guidance on officer and Cabinet Member attendance at scrutiny meetings, and should make clear that officers should not be asked political questions and Cabinet Members should attend to present policy decisions.
 - b) Facilitate early involvement of Cabinet Members in work programme development through an early meeting of Cabinet Members and Scrutiny Chairs at the start of the municipal year (see section 5, page 6).
 - c) Put in place member training for scrutiny as part of the member development programme, to include codes of behaviour in scrutiny committees, questioning skills and chairing skills (section 6, page 9). An understanding of the role and powers of scrutiny and background should also be part of any training, including training for the Executive.
 - d) Ensure effective links between scrutiny and directorates (as well as with Cabinet Members), either through the creation of link officers for each committee, or other links on a themed basis, to support the work programmes.

2. That the Executive should, in the new municipal year, bring forward proposals for the following (or if not, a report to scrutiny explaining why):
 - a) Increasing the number of scrutiny committees, reflecting the view of the sub-group, to increase the capacity of scrutiny to undertake more in-depth work.
 - b) Creating a lead scrutiny committee, responsible for oversight of the work programme and overseeing the scrutiny function as well as its substantive remit. The membership should include all the Scrutiny Chairs and the chair of the committee would be the Lead Scrutiny Member.
 - c) Having an O&S Committee or Sub-Committee, with a clear remit for finance, whether that be a single Finance Committee or Sub-Committee or a major part of the Co-ordinating O&S Committee's remit.
 - d) Having a Health and Social Care O&S Committee with no other areas of responsibility;
 - e) Any future changes to scrutiny remits should be agreed with the lead scrutiny committee, to ensure a full appreciation of the impact of the changes proposed and an equitable balance of workloads across committees.
 - f) Maintaining stability in committee remits over the municipal years (see section 6, page 8);

- g) Appointing Scrutiny Chairs on a proportionate basis (see section 6, page 9);
 - h) Ensuring that resources for scrutiny match both the number of committees and the role expected of scrutiny (see section 7, page 9).
 - i) Publishing a forward plan of non-key decisions (or share these with members); and developing a mechanism for publishing or sharing stages of policy development (such as the House of Commons' bill tracker).
3. That Scrutiny in 2018/19 bring forward proposals to:
- a) Amend the "8 day rule" process to allow, where necessary, a meeting of the Cabinet Member and scrutiny members to discuss areas of difference; and for scrutiny committees to have the option to outline proposed outcomes and work with the Executive over a longer time period as to how these outcomes could be achieved (see section 4, page 4);
 - b) Revise the Annual Report to the City Council meeting, to include lead scrutiny members (cross-party) reporting their views on scrutiny and areas requiring improvement as part of the report (see section 4, page 4);
 - c) Implement a revised method for monitoring the impact of scrutiny, beyond the tracking of the implementation of recommendations (see section 4, page 4);
 - d) Undertake a review of the systems and support available to members to enable the effective and efficient sharing of information (see section 5, page 5);
 - e) Undertake a review of the City Council meeting, including roles, functions and operation;
4. That Council Business Management Committee bring forward amendments to the Constitution (and associated guidance) to:
- a) Amend the procedure for call-in, as set out in Appendix 1 (page 13);
 - b) Introduce a trigger mechanism whereby scrutiny can escalate matters where they feel they are being blocked or held up by Executive or officers (see section 5, page 6);
5. That the party groups try to ensure some stability of scrutiny committee membership across municipal years, and encourage attendance at meetings.

Appendix 1: Proposed Alterations to Call-in Process

A number of issues regarding call-in have been raised in the last couple of years with regards to call-in. In addition, officers have conducted a review of the call-in process in recent months.

Members of the review group considered these and propose that the following clarifications are made to the Call-In procedure note:

1. That, whilst decisions “to note” should not be subject to call-in (as there is no substantive decision for Cabinet to reconsider), the substance of what is being noted can be called to the next scrutiny meeting and the Cabinet Member will be expected to attend the next relevant scrutiny meeting to explain/give further details on the decision/policy.
2. The convention that Cabinet Member, officers and members who are not members of the committee leave the room whilst committee members deliberate (i.e. after the presentations and question and answer part of the Call-In meeting) is retained, even though livestreaming of the meeting will continue.
3. If a lead scrutiny committee or similar is reinstated (see Recommendation 2 above), then where there is uncertainty or dispute about which is the relevant Overview and Scrutiny Committee for a call-in, that decision could lie with the Chair of that committee

It was suggested that the review group consider the reasons for call-in, listed in the Constitution¹, as these are very broad. The review group considered this and agreed that there were no real issues with the reasons set out in the Constitution; however, clearer guidance and more training for officers would be beneficial.

¹ Note: the reasons for call-in are not specified in legislation; these are a matter of local discretion.