

SCRUTINY

What Elected Members Need to Know



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About this Notebook

‘Scrutiny: What elected members need to know’ is a shorter notebook to scrutiny for elected members who want to know and understand the fundamental points around scrutiny. For a more detailed consideration of the issues this notebook covers, please refer to our full-length [Scrutiny Notebook](#)



1. What is Scrutiny?

1.1 Introduction

When we talk about scrutiny within councils, we mean the process of holding ‘others’ to account through monitoring, examination and questioning of decisions, actions and performance.

‘Scrutiny’ refers both to this process of inquiry and to the formal committees where the principal activity is ‘scrutiny’ in contrast to those committees where the core remit is ‘decision-making’. In this notebook, we use the broad term ‘scrutiny committees’ to refer to all those committees and panels which undertake predominantly scrutiny work.

The objective of scrutiny is improvement. Pressure to continuously improve is driven by reducing resources, and increased customer and service user expectations. Additionally, the aspirations of elected members and council officers are key motivations for improvement, while statutory obligations to deliver ‘Best Value’ and to ‘Follow the Public Pound’ impose specific demands in pursuing improvement.

Whichever governance system a council operates, scrutiny is an essential part of ensuring that the local authority remains open and

accountable. A brief survey of council governance arrangements since the May 2017 local government elections suggests that 11 councils operate an executive usually accompanied by a distinct scrutiny function. Of the remainder, one appears to operate a hybrid executive/scrutiny/committee system and the remaining 20 operate a committee system, but invariably also have separate scrutiny committees or panels of one sort or another. The variation in approach reflects the fact that scrutiny within councils in Scotland is predicated on council Schemes of Administration, not directly on statute. In other words, the shape and content of arrangements is a matter for elected members to determine in consultation with officers.

In councils where there is no discrete scrutiny committee and each executive directorate reports to a distinct service committee, the driving of improvements through scrutiny within those committees is still expected to take place.

Scrutiny is every elected member’s job and as democratically elected representatives, this gives you a moral right to scrutinise the decisions, arrangements and performance of local services. Whether or not you are involved directly in your council’s



scrutiny function, understanding how scrutiny works and how to apply the skills upon which effective scrutiny depends will help you across the broad range of roles you are called upon to undertake as an elected member.

Alone among the organisations which provide local services and constitute community planning partnerships, councils are fully democratically controlled. Thus, elected members have a unique standing not possessed by others. Arguably, this gives them a moral right to scrutinise the decisions, arrangements and performance of local providers on behalf of the citizens they represent.

1.2 Context

The Accounts Commission notes that ‘in a climate of reducing resources the importance of scrutiny has never been greater. Scrutiny arrangements must add demonstrable value in monitoring the planning, execution and follow-up of key decisions. The public needs to have confidence that their council’s arrangements are transparent, independent and effective. If they are not, the public interest is not being met.’ [p4-5 Audit Scotland ‘An Overview of Local Government in Scotland 2016’]. Scrutiny must be seen as an investment in improvement.

‘Best Value’ and ‘Following the Public Pound’ are foundational concepts in undertaking scrutiny and in meeting these challenges. To them should be added a clear focus on ‘outcomes’.

Best Value

Councils have a statutory duty, introduced in the Local Government (Scotland) Act 2003, to make arrangements to secure Best Value. In summary, the legislation obliges each council to:

- work with its partners to identify a clear set of priorities that respond to the needs of the local community
- be organised to deliver those priorities
- meet and clearly demonstrate that it is meeting the community’s needs
- operate in a way that drives continuous improvement in all of its activities.

In public policy terms, scrutiny will be pursuing the right objective if its purpose is to embed the principles of Best Value within the activities of the council.



Following the Public pound

Closely related to Best Value is 'Following the Public Pound' aimed at ensuring that there is proper accountability for public funds used in delivering services, when the council decides to fund external organisations that deliver services that might otherwise be delivered by the council itself. 'Following the Public Pound' does not apply when the council's financial relationships with external organisations are on a straightforward contractual basis, such as those resulting from open tender, but, it does apply to all other arrangements, ranging from one-off grants to voluntary organisations to large-scale regular contributions to the operating costs of organisations created by

the council to provide services that it previously provided directly.

Outcomes

Increasingly, scrutiny is less about the activities that services undertake than it is about the outcomes they deliver. The last decade has seen the development of a new approach to public policy in Scotland, which focuses on societal progress through measuring wellbeing as a function of improvements in quality of life, material conditions and sustainability. This has found its principal expression in the Christie Commission and the National Performance Framework now enshrined in legislation through the Community Empowerment (Scotland) Act 2015.



2. The Process of Scrutiny



2.1 The Power of Scrutiny

The principal power of a scrutiny committee is its power to influence the decisions and policies of the council and other organisations involved in delivering public services. Scrutiny has a vital role, investigating 'big ticket' issues for the council and those issues which most affect the local area or the area's inhabitants, but it cannot compel anyone to do anything. It is scrutiny's 'soft power', its capacity to influence, which is the heart of its power.

The significance of this power should not be under-estimated. There are few things more powerful than cogent judgement based upon careful balanced assessment of the evidence. A decision-making committee or executive which insists on a course of action in spite of the evidence may constitute a repudiation of the very principles of Best Value which elected members have a duty to uphold.

The object is to add value to council decision-making, to inject rigour into its policy development, and to provide assurance on improving performance.

2.2 Types of Scrutiny

Scrutiny in local government can be divided into three broad categories:

horizon-scanning scrutiny; pre-decision scrutiny; and post-decision scrutiny.

Horizon-scanning scrutiny looks ahead to changes that are likely to be necessary because of proposed developments or some probable contingency, usually external to the council but with significant implications for its operation. The UK Government's introduction of Universal Credit and other changes to the welfare system, Scottish Government's proposed educational reforms, and the budgetary imperatives likely to flow from future resourcing of local government are all examples of this. The object of the exercise is to inform the council's preparations and put it in the best possible position to respond to likely challenges.

Pre-decision scrutiny examines a council's proposals, objectives and draft programmes to inform their development before they are enacted. In this way, scrutiny can help the council to achieve optimum results by avoiding mistakes and making the best of opportunities.

Post-decision scrutiny looks at the implementation of council policy, projects and performance in retrospect. This enables scrutiny to review the effects of its decision-



making, policy and practice on the basis of direct evidence of actual outcomes measured against intended goals. This enables the council to identify mistakes, or unforeseen consequences so that the decision or activity can be refined and improved.

As for what can be scrutinised, any council activity, or the activity of a partner organisations could be the subject of a scrutiny review. Scrutiny might be of a decision, a policy, a project or programme, the implementation of any of these, or the assessment of a set of circumstances with a view to informing the creation of future policy. It might relate to proposals for spending and investment, the performance of the council or the performance of partner organisations or ALEOs, or the risk, liability and sustainability of a council project or service.

As for who or what might be the subject of scrutiny, it will include all of the following at some point and potentially more than one within the same scrutiny review in many cases:-

- Scrutiny of the Executive or Council Administration, and specifically, the policies, policy implementation, decisions and performance for which they are politically and strategically responsible
- Scrutiny of the council management and particularly the council senior management team - on their analysis, option selections and recommendations to elected members on proposed policies, decisions, and projects
- Scrutiny of partner agencies - what is/will be the impact of their policies, decisions, actions, service delivery on communities; are they contributing to the achievement of the LOIP? Police and fire are key community planning partners, but also directly accountable to local authorities for local service delivery.
- Scrutiny of arm's length external organisations – given that ALEOs are formally separate from a local authority but subject to its control and influence, councils have a clear interest in the decision-making, operation and performance of such organisations. There is however, an important distinction to be made between the corporate governance of these bodies by elected members who sit on the boards of ALEOs, and elected members holding them to account through scrutiny on behalf of the council. Confusion between these roles may lead to problems.



2.3 Meetings

Scrutiny committee meetings, like other formal meetings of the council, must take place in public. There are exceptions to this general rule, however, where the public consideration of matters would breach an ‘obligation of confidence’ or the information is ‘exempt’. In such instances, matters (such as commercially sensitive material) may be dealt with in private business.

Even then, however, good practice holds that efforts should be made to present information publicly where this can be achieved without compromising the pertinence of that information or infringing confidentiality. Scrutiny has a critical role in holding up a mirror to the decisions and actions of the council, assessing them objectively and being seen to do so.

Frequently, scrutiny committees set up sub-committees to increase the focus on specific subject matter. Sub-committees are usually time-limited bodies comprised of a smaller group of elected members, and sometimes, supported by the specific skill sets and experience brought by co-optees or technical advisers. The elected member participants within the sub-committee need not

necessarily be members drawn from full scrutiny committee members. They may be drawn from across the council membership, even from the political leadership where the task involved does not present any conflict of accountability with a portfolio or executive responsibility.

In establishing sub-committees, full scrutiny committees should establish clear terms of reference, setting out the purpose and objects of the group, membership and expectations around the timeframe for reporting on the sub-committee’s work.

Pre-meetings, where members meet in advance of formal committee meetings can help with the planning and preparation of scrutiny activity. No formal business can or should be progressed at a pre-meeting, but it can afford the committee the time and space to discuss lines of enquiry, what kinds of evidence they should be seeking, what questions they should ask, and who should ask them.



3. Components of Effective Scrutiny



To deliver the benefits of effective scrutiny, there are a number of building blocks, which councils and elected members should strive to have. These comprise:



3.1 Constructive Political Relationships

All elected members need to be committed to ensuring that, while dealing with topics of acute political sensitivity, scrutiny does not descend simply into a party political or similarly partisan contest in which the objectives of good governance and improved decision-making, service provision and cost-effectiveness are negated.

In practice, there is a trade off. An administration is more likely to be willing to endure criticisms where scrutiny makes evidence-based points candidly and cogently, but does not succumb, especially where a scrutiny committee is populated by a majority of opposition members, to the temptation to pursue every opportunity as a means of discrediting the administration.

In a 2004 paper on 'scrutiny and the political party group in UK local government', Leach and Copus concluded that: "...lack of political willingness to make the scrutiny

system work cannot be compensated for by exemplary practice in relation to analytical capacity and appropriate management ... Unless the behaviour of party groups facilitate "effective scrutiny", other influences have relatively little power to add value." [Source: Leach, S & Copus, C (2004) *Scrutiny and the political party group in UK local government: new models of behaviour*]

Therefore, of all the building blocks, this one is of particular importance.

3.2 Effective Organisation of the Scrutiny Function

Scrutiny committees must have clear terms of reference that set out their independent role in scrutinising the council's decisions, performance and practice. The clearest distinction should be made between those forums in the council which are accountable for decision-making, and those which are responsible for scrutiny.

The choice of chair of a scrutiny committee is an important signal of a council's attitude to scrutiny. The Accounts Commission recommends that the chair of a scrutiny committee is not a member of the political administration in the interests of transparency.





The basic composition of a scrutiny committees is also important. Scrutiny must be seen as an all-party activity, in which members of all allegiances and none might be expected to play an equal part. Allocating places on a scrutiny committee proportionate to the relative strength of different groupings on the council, or, if unachievable, giving marginally greater than proportionate weight to opposition parties, is likely to be the simplest way of establishing a committee, which is both balanced and invested in the task of holding the political and officer leaderships of the council to account.

The council leadership, committee chairs or members of an executive are not prohibited from being members of a scrutiny committee. Generally speaking however, it is good practice that they do not sit on a formal scrutiny committee, especially where there is a risk of conflict between possible lines of scrutiny inquiry and their committee or portfolio responsibility.

3.3 Officer support

Officers have a responsibility to provide advice and support to all members of the authority without qualification. Officer attitudes and behaviours towards scrutiny, and their

responsiveness to questions from and support of scrutiny members has a powerful influence over how effective scrutiny can be. Thus, officer support for scrutiny is likely to be strengthened and scrutiny rendered more effective where officers have a good understanding of scrutiny's improvement purpose.

3.4 Training and development

Ensuring that individuals involved in the scrutiny process have the right skills and competencies is a key element of preparing for effective scrutiny. Elected members need to be confident negotiating an increasingly complex environment: able to appraise the merits and disadvantages of different options, capable of assessing performance, and equal to the task of identifying remedies or innovations.

3.5 Planning and focus

Rigour in how scrutiny goes about its work is essential to it having a meaningful and positive impact. This necessitates planning ahead, and being focused on the task in hand. Work should be undertaken efficiently, and targeted in a way which maximises the use of resources. Members should be prepared and disciplined in meetings, with a clear



focus on the purpose of their inquiry. Committees should allow sufficient time for deliberations and conclusions, should arrive at clear conclusions and recommendations, and should follow up on their work to verify that agreed improvement actions were implemented and with what success.

3.6 Working with others

Working effectively with others is an essential element of effective scrutiny. It is likely to involve:

Partner Organisations

Many council services will involve partner organisations in some way, so it follows that those partner organisations will be partners in, and the subjects of, council scrutiny. These may be private sector partners, as well as partners from the public and voluntary sectors. They are likely to include contractors; organisations with which the council has jointly commissioned services; organisations which the council funds to deliver certain services through grant funding or service level agreements; as well as community planning partners.

Whatever the nature of the partnership, the key to effective partnership working is the delivery of the collaborative gain, which would not have been achieved by

the individual partners working on their own. In order to measure how successful the partnership has been at delivering the collaborative gain, the partnership should have a performance management and reporting framework in place. Scrutiny has a central role to play in this.

Co-optees and Experts

Councils can seek to strengthen scrutiny by bringing external voices into the process. This is most usually done by co-opting external parties on to a committee, or by appointing an independent expert or technical adviser to support the process of scrutiny.

The Public

Engagement with the public should be regarded as integral to the process of scrutiny. This means engagement 'throughout' the process of scrutiny. There is value in bringing the public in before reviews, during them, and after they have completed. Engaging the public before, enables subjects for scrutiny to be selected taking into account the views of local communities, permitting a work programme to be developed which responds meaningfully to the chief concerns of residents. Drawing upon the evidence of the public improves the evidence base for scrutiny recommendations, enabling the public



to share their experiences and be heard by decision-makers. Involving the public in the review and debate of findings and recommendations provides insight into public expectations, allowing the council to contemplate its conclusions carefully. Of course, a public expectation which is not objectively supported by evidence needs to be approached with caution, but feedback even on unpopular choices will provide an insight into the political and community dynamics of proposed actions.



4. Scrutiny Skills

4.1 Assessing Evidence

Evidence can challenge existing assumptions about ways of working and point the way to new solutions and innovative ways of doing things. What kind of evidence you need in scrutiny and where you go to find it will depend on the subject matter of your review. The aim however, is to build a healthy mix of evidence, ensuring that the full complexity of issues is understood, thereby allowing appropriate judgements to be drawn. This involves a process of 'triangulation' in which sources are compared, contrasted and cross-checked to validate, corroborate or distinguish them.

Council-generated Information

Councils generate a huge array of information, ranging from the strategic, such as the corporate plan and budgets, to operational information, such as options appraisals or risk registers. Such information is crucial in scene-setting, but you will want to contextualise it with other evidence. This may well be evidence sourced by the council, but invariably it contains an external perspective, which allows members to interpret council information.

Such evidence includes:

Local Government Benchmarking Framework (LGBF)

The LGBF is a key improvement process, covering seven service areas, which together account for the majority of local government spending. By providing simple metrics on, for example, how much a service costs per user, or satisfaction levels with services, councils can compare performance with their peers year on year.

Reports from External Inspection Agencies

The Accounts Commission and Audit Scotland, and the information they provide is a valuable source of evidence as well as a guide to best practice in scrutiny. Other key national inspection agencies include: Education Scotland, The Care Inspectorate and The Scottish Housing Regulator.

Expert Evidence

This may be in the form of research or evaluation reports, and/or it could be oral evidence from an expert at a meeting of a scrutiny committee. Such evidence is likely to have the added virtue of having been prepared independently, and subject to peer review.



Consultation with Service Users/ Customers and the Public

Data will give you a strong quantitative indication of the consequences of council decisions, or of service outputs, but may tell you little about 'outcomes'. Thus, consultation with those who are on the receiving end of decisions and services is crucial.

Service Providers and Front-line Staff

Typically, officers engaged in delivering a service will have a degree of knowledge and insight into that service, which others making a time-limited inquiry cannot possibly acquire. They may have good ideas about how services are provided, based on close contact with customers or service users, and have an obvious motivation in striving for the highest standards in the services for which they are responsible. Constructive input from staff should be encouraged, though even less comfortable truths may have value in enabling scrutiny to determine the steps required to facilitate improvement. What is important is that, having invited input, officers are not reproached for evidence honestly given.

Whatever the form of evidence, you have an important role in shaping the content and format of information

presented to committee, and should challenge officers where materials are presented in a way which does not permit you to perform your role effectively.

4.2 Questioning

Effective communication is a core skill for elected members. One key strand is 'drawing out, listening to and considering other people's views'. This can be further broken down into the ability to:

- use appropriate questioning techniques (e.g. asking closed, open or probing questions) to draw out information from officers, constituents, other elected members etc.
- check your understanding of the views of others and respond appropriately.
- put people at ease (e.g. officers, constituents) when they are speaking to you.

In other words, all members should seek to develop skills in effective questioning of, and listening to, others.

Before you ask any questions, it is always prudent to do a bit of research first. This enables you to target your questioning more effectively, and by



demonstrating a basic knowledge of the issues, you are more likely to discourage uninformative or evasive answers. Indeed, it is important to recognise that fundamental to successful questioning is balancing your need for answers with the building of a sufficient rapport with participants to maximise the quality and utility of their responses. Contrary to popular belief, overly aggressive

and confrontational questioning is generally counterproductive. You are trying to get as much useful information as you can from participants, not to cause them to clam up.

The full-length Scrutiny Notebook contains a section on 'Questioning Techniques' that elected members may want to refer to.



5. Summary

We hope that this notebook will provide elected members with some key messages to think about with regards to scrutiny. Elected members that sit on scrutiny committees should

consider reading the longer notebook as it contains information that is particularly relevant to the work of scrutiny committees.



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