

Report to: Other (please specify)
Overview and Scrutiny Committee
Date of meeting: 10 June 2024
Report author: Senior Democratic Services Officer
Report sponsor: Ben Martin, Associate Director of Planning, Infrastructure and Economy
Portfolio Holder: Councillor Kennedy Rodrigues
Report title: Overview and scrutiny: statutory guidance for councils 2024
Nature of report: Information and noting

1.0 Executive summary

- 1.1 In April 2024 the government updated the guidance to ensure councils are aware of the purpose of overview and scrutiny and how to conduct it effectively.
- 1.2 This report includes a summary of the measures included in the guidance and an assessment of how the scrutiny function at Watford meets the guidance.
- 1.3 This report has been reviewed by Corporate Management Board and Portfolio Holders.

2.0 Recommendations

- 2.1 That Overview and Scrutiny Committee note the update.
- 2.2 That Overview and Scrutiny Committee note the following proposed actions arising following the review of the guidance:
 - To explore ways to raise the profile of scrutiny internally and for residents.
 - To consider how conflicts of interest in a scrutiny context are managed as part of any future review of the constitution.
 - To remind scrutiny members of the option to co-opt members or draw on technical advisors for scrutiny reviews on a case-by-case basis.
 - For scrutiny to consider the outcomes of Audit Committee discussions around risk to inform their work programming.

3.0 Report pathway

- 3.1 Next review body: *Not applicable*

Further information:

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Reviewed and signed off by: Ben Martin, Associate Director of Planning, Infrastructure and Economy

4.0 Overview of the Scrutiny Statutory Guidance

- 4.1 The latest statutory guidance from the government was published in April 2024. This statutory guidance, first published in May 2019, has been updated to take account of

deeper devolution and the creation of combined county authorities through the Levelling Up and Regeneration Act 2023

- 4.2 As statutory guidance from the Department for Levelling Up, Housing and Communities, scrutiny committees must have regard to it when exercising, or deciding whether to exercise, any of their functions. 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.
- 4.3 The guidance includes a number of policies and practices all authorities should adopt or should consider adopting when deciding how to carry out their overview and scrutiny functions. It further recognises that authorities approach scrutiny in different ways and have different processes and procedures in place, and that what might work well for one authority might not work well in another.
- 4.4 The impetus for updating the guidance is the ongoing deeper devolution of powers and funding to local areas which brings the requirement and provision for greater accountability. There is a separate protocol for English institutions with devolved powers to further strengthen scrutiny in those areas. The changes to this document, as compared to the 2019 iteration, largely reflects the increase in devolution.
- 4.5 This report covers key requirements and recommendations in the guidance and assesses any further action required.
- 5.0 **Content of the guidance**
- 5.1.1 The Statutory Guidance stresses that it does not wish to prescribe – just to offer ideas and a framework within which local scrutiny functions will need to find their own solutions. Inevitably however, there will be topics that prompt reflection, these are explored below.
- 5.1.2 An analysis of the changes made to the 2019 guidance demonstrate that the changes relate to the specific requirements for combined authorities. There have also been some minor changes to wording and examples used.
- 5.2 **Culture and role**
- 5.2.1 The prevailing organisational culture, behaviours and attitudes of an authority will largely determine whether its scrutiny function succeeds or fails. Authorities can establish a strong organisational culture by:
- Recognising scrutiny’s legal and democratic legitimacy
 - Identifying a clear role and focus for scrutiny
 - Early and regular engagement with the executive, but without directing scrutiny directly or indirectly.
 - Managing disagreements.
 - Providing the necessary support.
 - Ensuring impartial advice from officers
 - Communicating scrutiny’s role and purpose to the wider authority
 - Maintaining the interest of full Council in the work of the scrutiny committee
 - Communicating scrutiny’s role to the public
 - Ensuring scrutiny members are supported in having an independent mindset

5.2.2. The council's Executive/Scrutiny protocol underpins the role and legitimacy of scrutiny, setting out expectations and ways of working to promote a healthy culture that enables effective scrutiny. Furthermore, Scrutiny produces an annual report to full Council which also maintains the profile.

5.2.3 Areas for further development include raising the profile of scrutiny within the organisation and for residents. This report recommends that this be explored further, however any proposals will need to reflect the budget and capacity constraints across services.

5.3 Directly-elected mayoral systems

5.3.1 The guidance states that '(m)ayoral systems offer the opportunity for greater public accountability and stronger governance, but there have also been incidents that highlight the importance of creating and maintaining a culture that puts scrutiny at the heart of its operations.' It therefore includes specific recommendations for authorities with a directly-elected mayor and notes that directly elected mayors are required by law to attend overview and scrutiny committee sessions when asked to do so.

5.3.2 Authorities with a directly elected mayor should pay particular attention to issues surrounding:

- rights of access to documents by the press, public and authority members
- transparent and fully recorded decision-making processes, especially avoiding decisions by 'unofficial' committees or working groups
- delegated decisions by the Mayor
- whistleblowing protections for both staff and councillors
- powers of full Council, where applicable, to question and review

5.3.3 There are no specific actions identified as a result of this section but its contents should be specifically noted for scrutiny at Watford, given the governance model.

5.4 Resourcing

5.4.1 The resource an authority allocates to the scrutiny function plays a pivotal role in determining how successful that function is and therefore the value it can add to the work of the authority. The appropriate level of resourcing is for councils to determine locally.

5.4.2 Combined authorities, combined county authorities and upper and single tier authorities are required to designate a statutory scrutiny officer whose role is to:

- promote the role of the authority's scrutiny committee
- provide support to the scrutiny committee and its members
- provide support and guidance to members and officers relating to the functions of the scrutiny committee

The guidance recommends that authorities which are not required to have a statutory scrutiny officer should consider whether it would be appropriate for local needs. At Watford, the functions of a Statutory Scrutiny Officer are fulfilled by the CMT Scrutiny lead.

5.4.3 There are different models of resourcing scrutiny, but the key factor identified is that officers are able to provide impartial advice and put in place any necessary safeguards to enable this.

5.4.4 There are no specific actions identified as a result of this section.

5.5 **Committee members**

5.5.1 The guidance notes that committees made up of members who have the necessary skills and commitment, are far more likely to be taken seriously by the wider authority.

5.5.2 It further recommends that councils should articulate in their constitutions how conflicts of interest, including familial links, between executive and scrutiny responsibilities should be managed, including where members stand down from the executive and move to a scrutiny role, and vice-versa.

5.5.3 The value of co-opting technical advisors onto scrutiny committees/task groups is highlighted, which is not current practice at Watford. This option could be highlighted to scrutiny committees as part of the annual training and in the course of discussions around the work programme.

5.5.4 The role of the chair is vital to the scrutiny function and the guidance highlights that beyond the competencies which are desirable for all scrutiny members, they should also build a sense of teamwork and consensus and guard the independence of the committee.

5.5.5 Training is important in supporting scrutiny members to understand their legal powers and approaches to questioning. This is a requirement to be undertaken biennially at Watford and training in 2023 and 2024 has been/will be delivered by the Centre for Governance and Scrutiny who are the sector experts.

5.5.6 Following this section, it is therefore recommended that:

- any review of the constitution includes a consideration of how conflicts of interest are managed in a scrutiny context.
- scrutiny committees are reminded of the option to co-opt technical advisors on a case-by-case basis.

5.6 **Power to access information**

5.6.1 Legislation gives enhanced powers to scrutiny members to access exempt or confidential information; this is in addition to existing rights for all councillors. The guidance recognises the need for timely and accurate information to enable scrutiny committees to work effectively. It suggests a default approach of sharing information with scrutiny members, on request.

5.6.2 The law recognises that there might be instances where it is legitimate for an authority to withhold information and places a requirement on the executive to provide the scrutiny committee with a written statement setting out its reasons for that decision. However, members of the executive and senior officers should take particular care to avoid refusing requests, or limiting the information they provide, for reasons of party political or reputational expediency. Watford's Executive/Scrutiny Protocol sets out a robust approach to information sharing which meets the approach set out in the guidance.

5.6.3 Key information about the management of the authority is identified as particularly useful including data around performance, management and risk. The recent LGA Peer Challenge made recommendations in relation to increasing the frequency of risk reporting to Audit

Committee and also to Cabinet. The Centre for Governance and Scrutiny's [recent report](#) on Audit, Scrutiny and Risk considers how Audit Committees and scrutiny can work jointly to ensure that risks and the approach to risks are appropriately monitored., by considering them as items on scrutiny agendas. Consideration should be given to how scrutiny can better use outcomes from Audit Committee to inform their work This could include scrutiny dip-testing the policy landscape around individual, systemic risks without duplicating their work or role.

5.6.4 In relation to seeking information from external organisations, the guidance sets out an approach which explains the role of scrutiny, the benefits of an informal approach, how to encourage compliance with the request and who to approach. Scrutiny committees at Watford have had productive and positive engagement from external stakeholders and will maintain this approach.

5.6.5 Following this section, it is recommended that scrutiny consider the outcomes of Audit Committee discussions to inform their work programming, whilst not duplicating their work or role.

5.7 **Planning work**

5.7.1 Effective scrutiny should have a defined impact on the ground, with the committee making recommendations that will make a tangible difference to the work of the authority. Given the wide-ranging remit to look at anything which affects the area or the area's inhabitants, prioritisation is vital.

5.7.2 The guidance identifies three key groups to engage with for work planning:

- the public – understanding members' insights from their work as ward councillors is more effective than a consultation exercise.
- External partners – to understand their insights.
- The executive – while maintaining the function's independence.

5.7.3 Potential information sources include performance information, finance and risk information, corporate complaints information, business cases and options appraisals for forthcoming major decisions and reports and recommendations issued by relevant ombudsmen.

5.7.4 When shortlisting topics, committee should consider:

- Do we understand the benefits scrutiny would bring to this issue?
- How could we best carry out work on this subject?
- What would be the best outcome of this work?
- How would this work engage with the activity of the executive and other decision-makers, including partners?

Committees should be able to justify how and why a decision has been taken to include certain issues and not others.

5.7.5 There are no specific actions identified, however the questions in 5.7.3 will be useful tools as the committees determine their work programme.

5.8 Carrying out work and evidence sessions

5.8.1 The guidance sets out the range of ways that reviews can be undertaken and an appraisal of each:

- A single item on a committee agenda: these often present a limited opportunity for effective scrutiny, but may be appropriate for some issues or where the committee wants to maintain a formal watching brief over a given issue.
- A single meeting: most useful for a public meeting on a given issue.
- Short, sharp scrutiny reviews in task groups: likely to be most effective even for complex topics.
- Longer-term task groups: still appropriate when scrutiny needs to dig into a complex topic in significant detail. However, the resource implications of such work, and its length, can make it unattractive for all but the most complex matters.

5.8.2 Setting a clear scope and defining key roles for individual members support effective outcomes. This is well understood in Watford and scrutiny members have found such an approach to be a valuable way to address complex topics.

5.8.3 The guidance further recommends wash-up sessions to determine recommendations and this is the usual practice in Watford. Recommendations should be SMART (specific, measurable, achievable, relevant, and time-bound); this can be challenging but it is the goal that the Watford scrutiny function aims for when undertaking reviews. Limiting the number of recommendations to between six and eight is advised, and this reflects the approach that is already taken.

5.8.4 No further specific actions have been identified.

5.0 Implications

5.1 Financial

5.1.1 The Chief Finance Officer comments that there are no financial implications arising from this report as there are no expected changes to the cost of the scrutiny function within the Council. Effective scrutiny supports the Council's decision-making process.

5.2 Legal

5.2.1 The Head of the Legal Shared Service comments that as stated in the report the council must have regard to this statutory guidance.

5.3 Risks

- That the scrutiny function does not meet the expectations of the statutory guidance, resulting in less oversight of services, performance and budgets.

5.4 Equalities

5.4.1 Having had regard to the council's obligations under s149, it is considered that there are no implications.

5.5 **Human Rights**

5.5.1 There are no human rights implications.

5.6 **Data Protection**

5.6.1 Having had regard to the council's obligations under the General Data Protection Regulation 2018, it is considered that officers are not required to undertake a Data Processing Impact Assessment for this report.

5.7 **Sustainability**

5.7.1 There are no implications.

5.8 **People**

5.8.1 There are no implications.

5.9 **Community Safety**

5.9.1 Scrutiny meets its obligations under the Police and Justice Act 2006 to conduct regular reviews of the local community safety partnership.

5.10 **Property**

5.10.1 There are no implications.

6.0 **Next steps should recommendations be approved**

6.1 To take the report to Overview and Scrutiny Committee.

6.2 To undertake the recommendations for action as set out, once agreed.

Appendices

Appendix 1 - Overview and scrutiny: statutory guidance for councils, combined authorities and combined county authorities

Background papers

The following background papers were used in the preparation of this report. If you wish to inspect or take copies of the background papers, please contact the officer named on the front page of the report.

Watford Borough Council Executive/Scrutiny Protocol