



# Scrutiny: Theory and Practice in Local Governance

Edited by Andrew Coulson

with contributions from:

Jane Burke, Andrew Charlwood, James Dearling, Craig Goodall,  
Sarah Harvey, Christopher Kemp, Dan Kemp, Steve Leach, Karen Linaker,  
Brij Madahar, Steve Milton and David Tutt



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and a preface by  
Steve Leach

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*for the  
dedicated scrutiny officers  
and scrutiny chairs  
who have pioneered  
this new service*



# Preface

It is now nearly ten years since ‘Overview and Scrutiny’ was formally introduced into the operations of local government in England and Wales (although both functions had of course previously operated more informally and less systematically within the traditional committee system). After a decade of experience it is timely to seek to make a balanced assessment of the effectiveness of this ‘new’ function. In the early years, there was a good deal of disquiet and uncertainty, a tendency to rely on the familiar processes of the committee system, and numerous references to ‘steep learning curves’. Since then, however, councillors with an experience-based predisposition for the traditional committee system have diminished in numbers, much experience has been shared, not least through the Centre for Public Scrutiny’s excellent web site, and overview and scrutiny have become increasingly embedded in the culture of local authorities. Is there evidence that it is having the kind of impact its protagonists hoped for? Or are we still dealing with an activity that has failed to enthuse large numbers of councillors (and mainstream officers) and has provided little in the way of ‘added value’?

The varied and eclectic contributions to this timely volume suggest a positive response to these questions. We are not of course dealing here with a random sample of authorities. Those agreeing to contribute presumably did so from a

standpoint that what was happening in their authorities merited a wider audience. So the fact that overview and scrutiny is flourishing in South Norfolk (and East Sussex) does not necessarily imply that this is the case in North Norfolk (and West Sussex). However on the evidence of these contributions, there is indeed an increasing amount of interesting and influential work taking place through the overview and scrutiny process, a conclusion which is congruent with my own experience. As the editor argues, the content of the book suggests that scrutiny ‘has the potential to propose and assess innovative measures and to break through conventional vested interests’. The contributions demonstrate, in different ways, how this potential can be realised.

Amongst the uniformly interesting papers, several can be highlighted. There are of course many different kinds of contribution which overview and scrutiny can make to the quality of policy and decision-making and the democratic viability of the decision-making process. Jonathan Partridge’s contribution provides a helpful exploration of how the impact of overview and scrutiny can be quantified in these various ways. The potential of the function to identify ‘what went wrong’ in a particular policy or development which is causing public concern and learn from it is well-illustrated by Dan Kemp’s paper on the Clissold Leisure Centre in Hackney. Christopher Kemp provides a fascinating piece of philosophical analysis which traces the influence of a range of philosophers (Madison, Montesquieu and others) on the development of the ‘separation of powers’ doctrine and its recent manifestation in the executive/scrutiny split. Steve Milton’s analysis of the way in which overview and scrutiny contributed to change in sheltered housing policy in Salisbury is valuable, not just for the quality of the analysis, but also for the ‘conclusions for practitioners’ – for example ‘party politics cannot be avoided, but robust, evidence-led scrutiny can shift political perspectives’. How true; and what a testament to the potential power of scrutiny this is!

Readers should be aware, as I’m sure they are, that there are many other authorities dealing with overview and scrutiny in an imaginative way – Nottingham City Council, London Borough of Merton, and Telford and Wrekin are examples from my own experience. Indeed there is an increasing sense

that overview and scrutiny is overcoming its much-publicised ‘teething troubles’ and is increasingly adding value in the way it operates. Much could still be done to increase this momentum; greater use of the ‘select committee’ model; wider awareness of the necessity of dedicated support; changes in attitudes amongst mainstream officers; and more relaxed attitudes amongst party groups. But the momentum is there, as this publication demonstrates, and will hopefully be sustained whatever the outcome of the next general election.

Steve Leach  
Emeritus Professor of Local Government  
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# Ten Years of Scrutiny in Local Government

Andrew Coulson

Scrutiny was sprung on British local government in 2000. There was little precedent, other than the experiences of a handful of councils who had pioneered the new arrangements for a couple of years before the passing of the Local Government Act 2000. The reforms transformed decision-making in local government. They all but abolished the committee system which, from the point when the workings of local government were codified in statute law, starting with the Municipal Corporations Act in 1835 and concluding with the establishment of London boroughs in 1899, had vested political responsibility in cross-party committees whose decisions were confirmed at public meetings of the full council. The committee system was envied for its inclusiveness and democracy, and promoted as a civilising force in many parts of the world. It was not particularly quick – important decisions would be debated at least once and often at several committees or sub-committees before being confirmed at a meeting of the full council. The committees were not composed of equals. Members of a party with a majority on the council could force a change through, and they would normally agree their position in a private meeting before the public committee. And the chairs of main committees who developed close links with powerful chief officers had huge power to influence their service areas. But the committee system engendered a sense of community, and gave all councillors elected to serve not just the electors in their wards but the wider

community in the whole council area a sense of purpose, and a feeling that, in the last resort, they were involved and in control.

So why did Tony Blair's Labour administration, in its early years, make such a radical reform? There was clear disappointment with the way local government took decisions and often ended up in conflict with central government, expressed by some of the New Labour ministers, such as Hilary Armstrong who had found the unwieldy Education Committee in County Durham frustrating and patronising. The system depended on a large number of meetings, with the final outcome of a controversial matter uncertain until it had been confirmed by the full Council. And it entrenched departments whose senior officers had great influence on the committees they nominally reported to, and the existence of these "silos" made it difficult to co-ordinate decisions when they affected more than one committee. Underlying the reform was also frustration from central government ministers and civil servants who wanted one or a small group of people who they could rely on and found the distributed leadership of the committee system frustrating and delaying. From a central government perspective, it was a system in which no one person or group was forced to take responsibility, and which almost inevitably put local government in opposition to central government.

The change put day-to day decision making (with a few exceptions, including the passing of the annual budget and quasi-legal administrative decisions, such as approvals of planning applications and licenses. And councils in Wales, and very small councils in England, could opt out of the new arrangements) into the hands of small Executives, or, if local areas so chose, directly elected mayors. Subsequent legislation has further entrenched this, giving the power to appoint cabinets to Leaders elected for four-year terms of office.

Overview and Scrutiny was introduced at the same time. Nominally, it was presented as a means of holding the new Executives to account, although with hindsight this was clearly unrealistic when all the power was in the hands of the new Executives, there were no requirements for councils to provide independent officer support for the scrutiny function, and little understanding

of how party politics would impinge on the process by which a decision could be “called in” or delayed pending further hearings. It was claimed that it was a means by which councils could keep in touch with local communities, though precisely how was never clear. A cynical perspective is that it was to keep non-Executive councillors occupied.

Just as local authority Executives (or Cabinets) were loosely modelled on the Cabinet at Westminster, so local authority scrutiny could have been modelled on the select committees. Had this happened, overview and scrutiny would have been given explicit powers to require any individual with an interest in a topic being discussed to appear and give evidence, and to be served by a cadre of officers specifically working for scrutiny, to share chairs proportionally to political representation on the council, and for scrutiny committees to be the creation of and report back to the full council, which in such a model would be clearly established as the parliament for the local area, the body that holds the Executive to account. But in 1999 the select committees had not achieved the prominence that they have today, especially through their power to compel individuals to attend and answer questions about matters of contemporary importance and concern, and much less use had been made of their unique constitutional position. The opportunity to properly entrench scrutiny in local government was lost.

In practice, as heralded even in the pilot scrutiny councils, scrutiny committees found their salvation through policy reviews – carrying out in-depth studies of aspects of policy where recommendations for improvement or change could be made. This work has kept non-Executive councillors in touch with the policy process, and has generally been conducted in a non-political manner, drawing on the custom and practice in this regard of the parliamentary select committees. For some councillors who do not want the near full time commitments involved in being in the Executive, or who prefer to understand a few matters in depth rather than many superficially, and who are interested in policies and have enquiring minds, this kind of scrutiny has proved very rewarding.

It is highly dependent on its officer support. A few councils, including most counties and London boroughs, a number of metropolitan districts and unitaries, and a much smaller number of shire districts realised this and employed small teams of officers to service the function. Other councils expected committee services officers to add support for scrutiny to their existing work. Later on, some of the councils with larger numbers of scrutiny support staff, including several of the original pilots, drastically reduced their numbers and downplayed their importance. Yet overall up till 2006, according to surveys carried out by the Centre for Public Scrutiny, the numbers of scrutiny officers rose, and research at the University of Warwick concluded, plausibly, that without scrutiny officers to assist with obtaining evidence (including persuading relevant people to come and answer questions or provide background documentation, and drafting reports and recommendations for later discussion by the members) good scrutiny was very difficult. Meanwhile the skills needed by scrutiny officers were becoming more apparent: research skills, diplomatic skills, political awareness, project management skills.

It was in this context that in 2007 the Institute of Local Government Studies established a five-day course which could also be assessed as a module in a post-graduate qualification. This was open to experienced scrutiny officers who wanted to validate and develop their skills but also to less experienced staff who wanted a firm foundation for their work. It was also open to councillors, a small number of whom came on the course.

The studies in this collection started life as coursework in this module. Part 3, Chapters 8-12, includes five case studies which give a strong flavour of the scrutiny process at its best. The first described how scrutiny developed in a district council. The other four are studies of particular scrutiny investigations: a review of the removal of full time wardens from sheltered housing in a district, interesting for the way the focus and conclusions of the investigation suddenly changed when one particular individual showed that what the council was proposing to do was probably illegal; a review of placements for children and young people in homes, special schools and foster care, focussing particularly on the allocation of scarce financial resources; and the management of

adolescents with eating disorders, an example of a review which crossed the interface between health and social care, adding to the studies of this kind of “health scrutiny” published by the Centre for Public Scrutiny. The final case study in this section is of a disastrous piece of public architecture, a leisure centre and swimming pool where there were extensive delays and cost overruns, but where the scrutiny investigation enabled the local public to gain an understanding of what had happened, and why the facility had not opened and was costing so much. It is of particular interest in that the process and the dilemmas and choices it raised are described from the perspective of the councillor who chaired the scrutiny committee. Both this and the study of sheltered housing are examples of “scrutiny as public inquiry” where a scrutiny committee picks up and throws light on a matter of intense local concern.

Part I provides a basic introduction to the scrutiny function in local government. The first chapter, by the Leader of Eastbourne Borough Council, describes the process, its legal foundation, and looks at the current positions of the three political parties. The second chapter uses information from the annual surveys of the Centre for Public Scrutiny to summarise what the emerging function of local government looked like in 2009. The third compares scrutiny with audit and inspection, emphasizing that scrutiny is inevitably selective, and bringing out its political and lay nature – a process carried out by politicians who are not experts in the matter concerned, unless coincidentally, but who can still make useful recommendations and propose improvements. The final chapter in this section is a study, by a councillor who is also a historian and a practising solicitor, of the origins of the “separation of powers” between executive and scrutiny in the American constitution, and in subsequent custom and practice, concluding that the powers are not necessarily as separate as some theoreticians would like.

Part 2 contains three chapters which look at the workings of the scrutiny process. The first is a study of the role of the scrutiny officer, demonstrating the key qualities which scrutiny officers need for the whole process to run smoothly and shed light on the issues under consideration. The second is a study of attempts to involve the public in the scrutiny process, and a corrective for

anyone who thinks that scrutiny is without problems or straightforward. The third explores the issues of how councils may quantify the impact of the scrutiny process, which is not a straightforward matter when others, most often the council's Executive, make the decisions which follow a scrutiny investigation.

Part 4 looks to the future, and comprises just two chapters. The first is an example of joint scrutiny, a process which the government has recently legislated to encourage, in this instance about whether to promote joint working in waste disposal between a county council and its constituent districts. The final chapter is a discussion of some of the issues which arise in the scrutiny of Local Area Agreements, another area where recent legislation has given scrutiny new powers, but also one where there are many players involved, and many sensitivities, and where it is important that scrutiny, if it devotes time and energy to this, is able to contribute in ways that others cannot.

All the contributors to this book have an affection for, and commitment to, the scrutiny process, as well as direct involvement in it. Their work brings out its potential, in a much more direct manner than conventional academic studies. It suggests that while scrutiny in local government may not be doing quite what those who created the legislative framework in the Local Government Act 2000 intended, it nevertheless has the potential to research and investigate problematic policy areas, to propose and assess innovative solutions, and to break through conventional vested interests. It would work even better if it was more strongly entrenched and protected, and given greater officer support. But even with present limitations, it has developed highly specialist ways of using the political skills of councillors and communicating with the wider public.

# The Foundations of Overview and Scrutiny



# Overview and Scrutiny - A Child of the New Millennium

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County Council

The Local Government Act 2000 established an Executive (Cabinet) function within Local Government. Section 21 of this act then established the following requirements for ensuring that the Executive body is robustly held to account:

- authorities operating executive arrangements must set up overview and scrutiny committees; members of the executive are not able to be members of an overview and scrutiny committee.
- overview and scrutiny committees must have powers to make reports and recommendations, either to the executive or to the authority, on any aspect of council business, or on other matters which affect the authority's area or its inhabitants.
- an overview and scrutiny committee can require officers and members of the executive to appear before it. It is also allowed to invite any other person to appear before it.
- The overview and scrutiny committees can review or scrutinise any executive decision which has been made and recommend that it is reconsidered by those responsible; or else to arrange for the authority to review the decision and, where necessary, ask those responsible for the decision to reconsider. This is often described as the power to “call in” a decision.

- Any member of an overview and scrutiny committee is able to ensure that any relevant matter is put on the agenda and discussed at a meeting of the committee.
- Overview and scrutiny committees are able to co-opt people who are not members of the authority. However, in general, such co-optees will not have voting rights.

## **Roots of Scrutiny**

The concept of scrutinising the work of an Executive was not new. Its roots can be found in US political thinking more than 200 years ago, and in the operation of select committees in the UK Westminster parliament.

### *The US Congressional Committee System*

In the United States the “separation of powers” between those who legislate, those who implement and those who police has been a fundamental part of the Constitution since it was first drafted in 1787. As of now there are approximately 200 committees and subcommittees which comment on draft legislation, monitor the performance of the executive (this is often described as “oversight”), and conduct investigations into matters of importance or public interest.

All bills are scrutinised line by line by at least one and often more than one Standing Committee in each house (House of Representatives and Senate): “The vast mass of bills flow to the Standing Committees for their scrutiny, investigation, and approval or disapproval. These also carry out the oversight function, and conduct investigations. Select Committees are set up to undertake particular tasks or to investigate matters of importance or current interest - for example the Select Committee, chaired by Senator Sam Ervin, into the Watergate affair” (Levine and Cornwell 1979, p. 203).

The UK Parliament has Bill Committees which scrutinise draft legislation and Select Committees scrutinise the workings and decisions of the Government. They provide a valuable role for both opposition MPs and Government backbenchers, and generally operate as teams across the Party divides, although party whips may attempt to exert influence behind the scenes . The Chairs of

these committees are drawn from all political parties, roughly in proportion to the number of MPs from the different parties, and a Chair who is respected for being able to operate in a truly non-partisan way can add considerable credibility to a committee's report. However party politics does sometimes impact upon the working of these committees and the committee may then produce both a majority and minority report, reflecting the different views held by its members. The Select Committees are not decision-making, but their reports go to Parliament and the press, and are taken increasingly seriously, not least because of the cross-party basis on which they work.

### **What makes Scrutiny effective?**

“Overview and scrutiny is potentially the most exciting and powerful element of the entire local government modernisation process. It places members at the heart of policy making and...is the mechanism by which councillors can become powerful and influential politicians” (Snape *et al.*, 2002, quoted by Wilson and Game, 2006). Wilson and Game go on however to say: “That at least was the theory. The practice, certainly in the early years, proved to be rather different, and it has undoubtedly been the hardest part of the modernisation package for councils and councillors to make this work effectively.” What then works well?

The comments which follow are based on the author's personal experience, supplemented by discussions with officers and elected members from across the political spectrum. As an elected member at both County and Borough level, he was a member of the County Cabinet which piloted the new ways of working from 1999. A change of political control in 2001 led to him becoming the Chair of the County's “Audit and Best Value Scrutiny Committee”. At Borough level he was the Deputy Leader of the Council from 2002-2004, Leader of the Opposition from 2004-07 and from May 2007 Leader of the Council.

### *Top Level Commitment*

When working effectively Scrutiny should be supporting an authority to improve. As such neither Directors nor Cabinet Members should be fearful of the work it seeks to do. Where those at the top of the organisation are simply defensive, they may stifle the effectiveness of the Scrutiny function but are unlikely to help their Authority to progress.

### *Officers*

For Scrutiny to be fully effective it needs to be supported by officers who are committed to the scrutiny role and are not afraid to support the process of challenging the way in which the local authority operates. The management structure can assist in facilitating this. But it is not helpful for scrutiny officers to be accountable to a Director whose Department carries responsibility for a topic they are reviewing.

In order to help scrutiny officers gain experience in this role, it can be helpful for them to spend some time seconded to another authority with a strong scrutiny function, or to swap jobs on a temporary basis with scrutiny officers from another authority.

### *Members*

The most effective Scrutiny results come in Authorities where party politics are kept out of Scrutiny. Some think it is naive to expect those elected on a political ticket to act in a truly independent way, but the author would argue that there are plenty of other opportunities to express political opinions. Those who can compartmentalise their different roles and act independently when working on scrutiny provide not only the chance of a better outcome to scrutiny reviews but also enhance both their own standing and that of politicians in general in the eyes of the public.

Members who are recognised as being capable of acting in an unbiased manner (whether from the controlling group or the Opposition) are more likely to gain the support of others. An opposition chair can add much to the credibility of a review.

A good chair has the skill to ensure that the committee keeps to the subject in hand but at the same time ensures that everyone has the opportunity to contribute.

### *Process*

Elements which contribute positively to a review include:

- clear terms of reference
- careful scoping
- careful monitoring to avoid allowing the review to unconsciously change its remit
- a clear plan including timelines
- recommendations which have SMART (Specific, Measurable, Achievable, Realistic and Timed) targets and which are assigned to named individuals
- a robust review of progress at predefined dates after the review has been completed.

### *Involvement*

External inputs from experts with technical expertise in the area concerned, special interest groups and the public in general (in order to gain a lay view) can assist many reviews. Benchmarking with others can sometimes assist but needs to be managed with care to ensure that like for like is being compared.

A budget to commission research or visits, specific to the scrutiny function, can also make a big difference.

Authorities are constantly seeking new ways of improving the scrutiny process, one of which is the introduction of performance standards for scrutiny itself as recently introduced in Northamptonshire County Council (APSE 2008, p.9).

## **Evolution**

Since the 2000 Act there has been subsequent legislation which has added to the Scrutiny brief:

### *Health and Social Care Act 2001*

This extended the powers of councils, giving them new powers to scrutinise local health services, and in particular a power to refer their comments directly to the Secretary of State for Health when there were “substantial variations” in the provision by health services Trusts. The detail is specified in *The Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations*, Statutory Instrument 2002 No.3048

### *Police and Justice Act 2006*

This introduced new roles for Overview and Scrutiny Committees in relation to local crime and disorder issues and gave them new powers to scrutinise Crime and Disorder Reduction Partnerships.

### *Local Government and Public Involvement in Health Act 2007*

This strengthened the role of scrutiny by allowing committees to require a specified list of partner agencies to provide information to overview and scrutiny committees relating to targets in Local Area Agreements. The bodies would then have to “have regard to” the comments of the scrutiny committees relating to these targets.

It also created a “Call for Action” through which councillors can request discussion of matters of importance in their wards where they want a more effective response from the Council Executive.

This legislation also created new means for the public to be involved in the scrutiny of local health and social care provision, replacing Patient Advice and Liaison Service (PALS) and Patient and Public Involvement Forums with Local Involvement Networks (LINKs) which can feed their conclusions to Overview and Scrutiny Committees.

## *Local Government, Economic Development and Construction Bill 2008*

This bill, before Parliament at the time of writing, includes a provision to require councils other than shire districts to appoint a named officer responsible for the scrutiny function.

### **What Might the Future Hold?**

The future for Scrutiny is in the hands of the political parties and so it would seem sensible to look at how they view the future.

#### *Labour*

The modernisation of Local Government which established Executive (Cabinet) and Scrutiny roles was created in 2000 by the relatively new Labour Government. Since then they have demonstrated their support for this format, firstly by adding the responsibility for Health Scrutiny and more recently through giving scrutiny committees new powers in relation to Local Area Agreement targets and the Councillor Call for Action. A recent Consultation Paper sought to expand the role more widely by giving councils powers to scrutinise “all of the issues that matter to the local community” (DCLG 2009, p.18) and giving scrutiny committees powers to require officers and board members of relevant local organisations to attend and answer questions. Whilst there are undoubtedly those in the Labour Party who would prefer to see a return to the former Committee system, it would seem safe to assume that Labour will not only retain the Scrutiny role but seek to expand and refine it.

#### *Conservatives*

Conservative thinking on local government was set out in a Green Paper introduced by David Cameron in February 2009. One of its main proposals is to give all councils the powers to organise their decision-making as they choose, which would include the option of returning to a streamlined form of the committee system. Ten named councils would be required to hold referenda on whether to be governed by directly elected mayors. The Green Paper says

nothing explicit about scrutiny, but the assumption must be that it will continue. More detail is expected, and any future announcements will be looked at seriously, not just to understand the possible time frame for the legislation that would be required, but also to clarify the position on scrutiny.

### *Liberal Democrats*

Official Liberal Democrat policy is to oppose the Executive/Scrutiny formula. In Policy Paper 79 they state that “Liberal Democrats would abolish the need for Councils to have an executive–scrutiny split in decision making. Councils that wished to could return to the committee decision making structure, which provided an opportunity for all Councillors to be involved in policy making.” They do however concede in another part of the same paper that “The Government could develop scrutiny powers councils have over other public service providers in the area” (the previous paragraph had mentioned the Highways Agency). It goes on to draw attention to the fact that at present there are “no requirements for partners to implement any of the scrutiny committee recommendations.”

Despite their commitment to allow Councils to return to the old Committee system the fact that they do not say that all councils should do this is perhaps an acknowledgement that where scrutiny works, it works well and has the support of many of their members at local level.

## **Conclusion**

The new style of local government which provides both executive and scrutiny functions replaced the former committee system. Given that the changes are still fairly recent it is not surprising that many wish to see a return to the former system. In doing so they argue that the new system is: less democratic, that is leaves backbenchers (of both the administration and opposition) without a meaningful role, and that the old specialist skills that councillors used to bring to committees are lost. They conveniently forget the fact that under the old system with not only committees but also sub-committees an issue could take a seemingly endless amount of time to determine as it was sent to a series of

sub-committees who would forward recommendations on to their parent committees. It was not uncommon for these to reach different conclusions and when an issue finally reached a full Council meeting for it to be referred back for further consideration. By contrast the new ways of working provide faster decision making and the opportunity to look in detail at how decisions are implemented.

As to the future, with the potential for a change of Government there must be some uncertainty for the future of the scrutiny function. However both supporters and detractors of the new system cross party boundaries and despite the teething problems that the new ways of working have experienced, it is reasonable to expect scrutiny of local government in one form or another to be with us for some time to come. It does not work well everywhere, but in those places where a commitment to Overview and Scrutiny exists, and it is properly resourced, there are many examples of how effective this way of working can be.

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# Overview and Scrutiny: The Position in 2008-09

Andrew Charlwood,  
London Borough of Barnet

## Early Research

Much of the early academic writing on O&S used a combination of qualitative and quantitative data, with the latter often drawn from a limited evidence base (Ashworth, 2003; Snape *et al*, 2002; Ashworth *et al*, 2004). Whilst this information provided scrutiny practitioners with useful information on best practice or emerging trends, the limited quantitative data used in these studies prevented them from providing any real value to those trying to assess how O&S was developing and how embedded it had become in decision-making structures.

Academics recognised these shortcomings. In 2004, Ashworth and Snape commented that early evidence was constrained to identifying common pitfalls and providing “good practice guidance and advice for local authorities”, rather than providing an assessment of impact based on quantitative evidence. At the conclusion of their paper, they proposed a way forward for the O&S research agenda, suggesting that there was a need for “longitudinal studies” to accurately chart the development of O&S over time.

In 2003, the Office of the Deputy Prime Minister (then responsible for local government) commissioned a research project, *Evaluating Local Governance: New Constitutions and Ethics* (ELG), a five year evaluation of the new council constitutions and ethical frameworks. The project encompassed three research projects, undertaken between 2003 and 2005. Overall findings were published in 2005. Whilst this research covered a wider range of issues than just O&S, the survey did seek to gauge members and officers attitudes on the effectiveness of scrutiny in the new decision-making structures arrangements.

The ELG project was not without its limitations. The evidence base varied across the three surveys: in 2003 there were visits to 40 local authorities and a census survey of 386 authorities; in 2004 there were visits to 20 local authorities and a survey of a further 40 authorities; and in 2005, a follow-up survey was undertaken of 40 authorities, with a response rate of 45%. Additionally, the ELG research is based on the opinions of councillors and officers in the early stages of implementation of a new decision-making structure which might create biased results. Asking councillors whether they prefer the cabinet/scrutiny model to the old committee system during the early stages of the new system, most would express a preference for the latter, possibly impacting on their opinions about the effectiveness of scrutiny. Likewise, council officers have much less to fear from cabinets than they had from either old committees or scrutiny, both of which can be unpredictable and put them under pressure, again possibly affecting their perceptions of scrutiny in the context of the ELG survey.

## **The Centre for Public Scrutiny Annual Surveys**

Dacombe (2007) recognised the limitations of the early research, suggesting that “many of the early studies are concerned primarily with the transition from the previous form of political organisation to the new, ‘modernised’ arrangements...”, making them less relevant today as the “...new constitutional structures have bedded in.”

However, he identified a “notable exception” to research that relied on “data acquired from a small number of cases”, namely the Centre for Public Scrutiny

(CfPS) Annual Surveys of Overview and Scrutiny in Local Government which have been undertaken since 2003. He recognised the CfPS surveys as a “significant resource”, particularly as they were focussed on charting information on matters such as: numbers of councillors involved in O&S; staff and budgets; type of work undertaken; and perceptions of members and officers.

The CfPS surveys are the only source of quantitative evidence on which an assessment of the situation in 2009 can be made. They provide an invaluable source of data for scrutiny practitioners and academics seeking to evaluate how embedded (or otherwise) O&S has become in the local authority decision-making process. The surveys are completed in the main by members and officers involved in delivering scrutiny, and detail emerging trends in scrutiny practice.

Whilst the surveys are a key resource in charting the development of O&S over time, it should be noted that response rates have varied over time, ranging from 40% in 2003 to 67% in 2008, a factor that might impact on survey results. In addition, it was only in 2007 that the Centre sought to establish what proportion of survey respondents were members and what proportion were officers, a factor that might impact on the survey results. In the two years that this information was collected, the member/officer response ratio changed significantly. In 2007, the ratio of members to officers was 11% to 89% and in 2008, 39.9% to 51.2%.

The earlier CfPS surveys (2003-2004) were constrained to identifying trends in officer support, budgets, committee structures, member engagement and perceptions. Later surveys (2005–2008) increased the amount of data captured, including the extent to which recommendations were accepted by the Cabinet or Council; perceptions about the success or otherwise of the different identified roles of O&S committees; and the roles of members and officers in the O&S function. Whilst the ongoing evolution of the surveys make year on year comparisons problematic, much of the key information captured has not changed.

### *Roles for Overview and Scrutiny*

Identified roles for O&S in the CfPS annual surveys are: performance monitoring; holding the executive to account; policy review; policy development; pre-decision scrutiny; external scrutiny; scrutiny of partnerships, health scrutiny; and best value reviews.

The following tables are taken from the Centre for Public Scrutiny 2008 Annual Survey of Overview and Scrutiny in Local Government:

Rank (change)	Role	Percentage of authorities	Change (+/-) from 2007
1 (1)	Performance monitoring	85%	-8
2 (2)	Holding the executive to account	79%	-12
3 (3)	Policy review	78%	-13
4 (4)	Policy development	69%	-12
5 (5)	Pre-decision scrutiny	62%	-11
6 (6)	External scrutiny (not health)	60%	-2
7 (7)	Scrutiny of partnerships	60%	-2
8 (8)	Health scrutiny	54%	-7
9 (9)	Best Value reviews	31%	-4
10 (10)	Other	4%	new

In 2008, survey respondents identified that O&S was most effective at policy review, policy development and performance monitoring, and least effective at scrutinising partnerships and holding the executive to account, two of the roles of scrutiny enshrined in legislation. These trends were also reflected in earlier surveys.

The 2008 survey saw a significant increase in the number of elected members responding to the survey, a welcome development which gives the survey a more balanced picture of Member roles and their perceptions of O&S.

<b>Member role</b>	<b>Percentage of authorities</b>	<b>Percentage change (+/-)</b>
Presenting recommendations	84%	+2
Monitoring outcome of previous work	81%	+2
Critically challenging decision-makers	84%	+7
Proposing/writing recommendations	66%	+3
Presenting an annual report to Council	63%	+1
Conducting research outside of meetings	59%	+3
Proposing scrutiny topics at the public's request	55%	+9
Writing reports	21%	+3

### *Impact and Influence*

Since 2003, the survey has been asking what percentage of recommendations made by O&S were accepted and acted upon by the organisations to which they were directed. In 2008, an average 80% of recommendations were accepted, with 70% of these actually implemented. More recent surveys incorporated a statistical analysis of the impact of party politics. It has been identified that in authorities where party politics is considered to have a greater impact on the work of O&S, recommendations are less likely to be accepted and implemented. This suggests that the ability of members to depoliticise the scrutiny process will have a direct impact on outcomes. Removing party politics remains a significant challenge for many authorities, evidenced in the fact that 38% of authorities give no scrutiny chairs to the opposition parties.

O&S committees have the power to “call-in” decisions taken by the executive or their sub-committees, forcing the cabinet to provide additional justification

for their proposals and preventing decisions from being implemented until O&S has been afforded an opportunity to review a decision. Survey respondents were requested to identify the number of call-ins that there had been during the last year, with the average being 2.5. The number of decisions amended as a result of a call-in was 0.43. Although call-in is a statutory power of O&S, it is widely recognised that involving O&S members in the formulation of policy before reports are presented to cabinet (pre-decision scrutiny) is much more productive than calling-in decisions after they have been taken.

Referring to the evaluation of scrutiny, the most popular method of assessing the work of the O&S function was via an annual report (88%). In addition, a large proportion (70%) identified that receiving regular updates on recommendations was an important way to evaluate the work of scrutiny. For members and officers involved in scrutiny, regular monitoring of the implementation of recommendations is essential to demonstrating outcomes, evaluating success and ensuring that their work is taken seriously and acted upon by the Cabinet and chief officers. Without such mechanisms in place, O&S members can quickly become disillusioned with the scrutiny process.

### *Committee Structures*

As local authorities have the discretion to institute whatever O&S arrangements they consider to be most appropriate, a number of different models have emerged. As the table below suggests, the majority of authorities have adopted the “multiple overview and scrutiny committees” approach. These committees are generally subject-specific and their remits are determined in a number of ways, for example through alignment with corporate directorates, Local Area Agreement targets or corporate goals.

<b>Committee structures</b>	<b>2008</b>	<b>2007</b>	<b>2006</b>	<b>2005</b>
Multiple overview and scrutiny committees	64%	65%	54%	59%
One "scrutiny" committee and multiple "overview" committees	7%	12%	8%	16%
One OSC that commissions time-limited panels	19%	17%	12%	14%
One OSC that does all the work	11%	7%	8%	7%

Much of the business of O&S is undertaken in a formal committee setting. However, O&S committees often elect to commission time limited panels (or short life working parties) to look at a particular issue. These take the form of an in-depth investigation, undertaken by a small number of backbench members with an interest or detailed knowledge of an issue, supported by scrutiny officers and other relevant officers of the authority. Typically, review panels set out their aims and objectives (scope), undertake detailed research, make evidence based conclusions and present their findings in the form of recommendations to the Cabinet or Council. The 2008 CfPS Annual Survey identified that the average number of reviews per authority per year was six. However, there is a wide variation in the number of reviews undertaken per year, ranging from nil to 28.

### *Scrutiny of Partnerships*

With the introduction of LAAs and the growing number of public sector services delivered by external organisations (such as Public/Private Partnerships), local authorities are increasingly being required to scrutinise the performance of partnership organisations and private bodies. In recognition of this, the 2008 survey included a section on models and structures for the scrutiny of partnerships. 47% of authorities reported that there would either be no change, or were undecided on what structural changes would be made to facilitate the scrutiny of partnerships. Of the authorities that had determined what arrangements they would adopt, the preferred methods were the use of ad hoc

task and finish groups (20%), or standing or ad hoc joint committees (11%) to look at the performance of partnerships. A minority of authorities (9%) had aligned their O&S committees to LAA blocks.

In terms of developing an understanding with partnership bodies concerning the operation of scrutiny in the future, 36% of authorities reported that they were not sure what approach to take, with 27% engaging with partners as and when necessary. Only 15% have a formal and 22% an informal understanding on sharing information with partners. 21% have identified partnership working as the least effective aspect of scrutiny work.

With the enactment of regulations associated with the Police and Justice Act 2006, local authority O&S committees are now required to scrutinise crime and disorder issues affecting a local authority area. Whilst the increased powers for O&S are welcome, there must be a clear demarcation between the remit of O&S and the role of Crime and Disorder Reduction Partnerships in order for crime and disorder scrutiny to be effective.

### *Scrutiny of Public Services Delivered by External Organisations*

In 2004, Ashworth and Snape concluded that “external scrutiny remains a marginal activity.” They suggested that this could be attributed to members and officer’s preference for focussing on internal processes before looking externally, and the potential impact that scrutiny work might have on the relationship with the external organisation. The 2008 survey supports this, with only 7% of respondents considering that external scrutiny was effective.

External scrutiny should also include reference to the extent that O&S is engaging outside of the authority, particularly with external bodies and members of the public. The CfPS surveys identify that only a minority of authorities have O&S review topics suggested by the general public and that there are wide variations between authorities in the number of external witnesses being invited to attend O&S meetings. These findings suggest that further work is required to encourage the public, external agencies and partnership bodies to participate in the scrutiny process.

Authorities wishing to improve their O&S function should concentrate on developing effective external scrutiny arrangements, particularly by engaging with the public, businesses and partnership bodies.

### *Support for Scrutiny*

The success of O&S is often dependent on the resources at its disposal. There is a disparity amongst local authorities regarding the level of support that O&S is provided. Large metropolitan boroughs, unitaries and county councils are best resourced, with an average of 3.3 full time equivalent (fte) officers in unitary authorities and 5.3 fte officers in London boroughs. District and borough councils on the other hand are often working with much scarcer resources, reflected in their average of 1.4 fte officers to support the scrutiny function.

The CfPS identifies three different support models which are, perhaps, indicative of the either the resources at their disposal or the importance that authorities afford the O&S function:

*Committee Model* – committee officers who provide support for other decision-making bodies, also provide support to O&S

*Integrated Model* – support is provided on an ad hoc basis from committee officers, corporate support officers and other departments

*Specialist Model* – dedicated scrutiny support unit, supported by officers only undertaking overview and scrutiny work.

Support for O&S comes from a number of sources within local authorities. In most instances, officer support is within Democratic Services (46%), with other popular destinations including Chief Executives, Policy and Performance, and Corporate Services. 47% of authorities have a specialist scrutiny team (specialist model). 37% elect to provide support for O&S through officers who support other decision-making bodies (committee model), with 16% drawing on resources from across the authority (integrated model). In authorities that have a dedicated scrutiny officer resource, the average number of officers was 2.9, a significant increase from the number recorded in 2004 of 1.2.

Whilst providing a useful data for authorities to benchmark their resourcing arrangements against, the CfPS survey does not seek to address whether a link exists between staffing / budgetary resources and scrutiny outcomes.

### *Emergence of Scrutiny as a Profession*

In the 2008 White Paper, *Communities in Control: Real Power, Real People*, there was a proposal that there would be a requirement for “some dedicated scrutiny resource” in authorities, perhaps a statutory officer similar to the Monitoring Officer or Section 151 Officer. This recognises that in order to undertake effective scrutiny, a dedicated scrutiny resource should be in place to support the function.

In addition, in the 2008 survey, the CfPS sought to identify whether there would be any appetite amongst scrutiny practitioners to develop professional standards. The proposal to develop a membership body for scrutiny was supported by 65% of scrutiny managers/officers, 38% of other local government officers and 24% of elected members. Survey respondents considered that attending ad hoc O&S development events as and when required was the most appropriate form of personal development, supported by 90% of scrutiny managers/officers, 69% of other local government officers and 66% of elected members.

## **Conclusion**

Instituting effective O&S arrangements has not been easy for local authorities. Demonstrating the position O&S has achieved across the spectrum of local government in 2009 is challenging for a number of reasons: authorities have been able to determine their own arrangements, making like for like comparisons difficult; there are wide variations in resources, both financial and human; party politics can have a significant impact on outcomes; and legislation and public service delivery arrangements are continually evolving.

The CfPS surveys demonstrate that scrutiny is alive and well. Local authority O&S committees have undertaken some valuable work which challenges decision-makers and improves the way services are delivered to the public.

Recent legislation increasing the powers and responsibilities of O&S committee suggests that scrutiny will increase in importance and play enhanced role in local government decision-making in future years.

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# Scrutiny: Contrasts with Audit, Regulation and Inspection

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Snape, Leach and Copus (2002), whilst acknowledging that “there has been a great deal of confusion over the exact meaning of the term” identified a number of key roles for overview and scrutiny:

- Holding the executive to account
- Performance Review
- Policy Development and Review
- External scrutiny

Audit, regulation and inspection are functions delivered by statutory bodies, who have prescribed roles in monitoring the activities of local authorities to ensure that services are improving, procedures are being adhered to, and that councils are financially sound. The Crerar Review (Crerar 2007 p.13) provides a useful distinction between these functions:

- |                   |  |
|-------------------|--|
| <b>Audit</b>      | “the periodic [external] scrutiny of corporate governance and management; financial statements and underlying financial systems; and performance, performance management and reporting of public bodies” |
| <b>Regulation</b> | “focuses on providing a licence to operate, enforcement of legislation and regulations, and monitoring the quality of services provided. Regulation may also include elements of service                 |

inspection, and can be designed to drive up quality as well as to enforce standards.”

**Inspection** “periodic, targeted scrutiny of specific services, to check whether they are meeting national and local performance standards, legislative and professional requirements, and the needs of service users.”

In recent years there has been a shift in the purpose of external inspection of local public services, from being predominantly about economy and efficiency of local services to improving the quality and responsiveness of public services. “The main inspectorates were no longer charged simply with assessing current performance and checking compliance with minimum standards, they now had to judge prospects for improvement.” (Downe & Martin 2005 p.1).

It is interesting to note that in seeking to define these terms, the words can become interchangeable. For example, when referring to audit, regulation, and inspection, the word scrutiny is often used; and when seeking to explain scrutiny it can be easier to use words such as inspection, analysis, enquiry and examination, which could just as easily be applied to audit, regulation or inspection. So, is scrutiny the same as audit, regulation or inspection? Are they all sides of the same dice? We will proceed by identifying the similarities and differences.

## **Similarities**

Scrutiny, audit, regulation and inspection all share a common purpose: the accountability and improvement of public services.

“Scrutiny provides the system of checks and balances and ways by which public services are held to account and helped to improve. The OSC function in local government needs to be seen as part of a wider system of scrutiny; a system which also includes the functions of internal audit, external audit, inspectorates and the Commissioner for Local Administration in Wales.” (ACiW 2005, p.9)

In an article on ‘How best to hold Local Government to account’ David Walker comments that “the new (political) arrangements have made the exercise of power more transparent and for the first time created a specific role, among politicians, for monitors and ‘auditors’” (Walker 2006). He goes on to describe scrutiny as part of the ‘regulatory jungle’ There is a recognition here of the similarities between each of these and the close relationships between them. All four are about inspection and checking. All sit in judgement of performance, recognising strengths but highlighting weaknesses and suggestions to remedy these and improve service outcomes.

Indeed, one of the main objectives of the Scrutiny Champions Networks across the UK is to develop the case for scrutiny by raising its profile nationally as an effective means of self regulation. Interestingly, it is important to recognise that scrutiny, as a function of local government, itself could become the subject of external audit or inspection.

### *Providing Assurance to the Public*

Another similarity between scrutiny, audit, regulation and inspection is that they all seek to provide assurance to the public that public money is being spent prudently, efficiently and effectively to achieve quality services. Here the focus is on the public as the beneficiary of their activities, through well managed services that offer the best possible value for money. Each can be regarded as acting as watchdogs on the corporate governance and activities within Local Government, acting in the public interest: Are services meeting the needs of service users? Are levels of performance consistent with national and local performance standards and targets?

### *Recommendations*

The result of scrutiny, audit, regulation and inspection will, generally speaking, be the production of a set of practical recommendations which will lead to an improvement in the matter examined (although regulators also have specific powers, for example to prosecute, or to close down a facility). Detailed ‘investigations’ will usually be clearly defined at the outset, with a range of stakeholders engaged, and evidence gathering will then lead to conclusions

being drawn and recommendations made. The recommendations will then be shared with the subject organisation and a response sought, which will be followed up periodically.

### *Spreading Learning*

Another common feature in all these strands is the importance placed on spreading learning. The journey to improvement in all cases is guided by the learning elsewhere and scrutineers, auditors, regulators and inspectors in making assessments on the delivery and performance of services will search for and spread best practice. Each report produced, following an ‘investigation’ adds to the pool of learning.

### *Independence*

A key similarity between scrutiny and audit, regulation, and inspection is the independence of these actors from the bodies under review. “Such independence, together with their perceived operational independence (whether formal or not) from government, ensures that these agencies can ‘speak as they find’ and ‘without fear or favour’ in a wholly objective way. It serves to reinforce the authority of their findings and the assurance they provide to stakeholders and the public, and is crucial for public confidence in their processes and findings.” (Public Audit Forum 2002). They maintain independence by avoiding directing a body as to how it should respond to findings and recommendations.

### *Limited Resources*

As with scrutiny, auditors, regulators and inspectors are faced with balancing activities with limited resources. None are able to do everything, and work programmes will be informed by some form of prioritisation method and selective approach. It is critical therefore that work plans focus on the right things. The planned programme of audit, regulation and inspection activity within a Local Authority (commonly referred to as a regulatory plan) is likely to adopt a risk based approach. Scrutiny work programmes will also be focused, ideally, on strategic, significant issues. Wide remits coupled with limited time and resources require measured activity.

## Differences

Although a number of similarities have been identified between scrutiny and audit, regulation and inspection, there are significant differences which place scrutiny apart from these.

### *Clarity of Role*

Whilst audit, regulation and inspection would seem to have clear roles, one of the challenges for scrutiny is that the legislation is far from prescriptive and the details are left to local choice. Scrutiny has many possible roles (more so than audit, regulation or inspection) and it is often not easy to balance these.

As Downe and Martin point out: “At first sight, the purposes of the overview and scrutiny function as set out in the legislation and guidance (DETR 2000) appear to share some important similarities to the objectives of external inspection. Scrutiny is, the Government has said, intended to encourage improvement and increase accountability by making executive councillors accountable both for the performance of services and the quality of their strategic decisions. However, unlike inspection, scrutiny has struggled to establish a clear role for itself. It is perceived as being less powerful and less well resourced.” (Downe & Martin 2005 p.1-2)

### *Internal Scrutiny v External Audit, Regulation & Inspection*

Auditors, regulators and inspectors all exist outside local government; scrutiny is a function within. It can be described as a form of ‘internal (or self) regulation’. It sets out to be independent, but in practice that can be open to debate depending on the party allegiance of those leading scrutiny, and the relationships between individuals.

In contrast external assessment is more clearly independent (though even that can be questioned in some sensitive cases). There are times when external regulation can provide the stimulus for change and improvement, and possibly have more weight than internal voices, where they may be resistance from within. Amongst all the areas of work, financial probity is critical and requires ongoing independent checks.

## *Expertise*

Rachel Ashworth quotes Hogg and Jenkins (1999, p.143) to the effect that “holding modern government to account involves expert knowledge, real understanding of how things are done and a determination to explore not just minor or major misdemeanours but the whole way in which a policy is pursued or a service run”. She then comments herself: “Clearly, scrutiny committees are likely to require financial and technical resources, information (both from the executive and external sources) and support systems (strong officer support, along with technical advice). The extent to which these are made available to local scrutiny committees will have a huge impact on their effectiveness” (Ashworth 2003 p.4).

Auditors, regulators and inspectors are skilled professionals. Those carrying out this work are experts in their fields and one might guess well rewarded. Scrutiny, on the other hand, is carried out by local councillors, who are non-professional and it could be argued not particularly well rewarded for their work. Neither can scrutiny councillors devote their attention to scrutiny on a full-time basis. Whilst Scrutiny Committees may have access to officer support and to technical advice it is essentially a lay-persons’ view which is formed at the end of any review, as distinct from a highly technical, expert view given by auditors, regulators and inspectors.

## **What Does Scrutiny Add?**

Whilst there are some differences between scrutiny and audit, regulation and inspection which may support those who view scrutiny as a ‘poor relation’, a number of other differences can be identified which place scrutiny in a unique position of strength and demonstrate how it can be additional.

## *A Wider Role and Flexibility*

Scrutiny is not solely concerned with public spending, but with the effectiveness of public services and whether the needs of people are being met. Audit, regulation and inspection generally follows a prescriptive route and seek out quantitative evidence and hard facts, whereas scrutiny can be flexible, and follow where the evidence leads, and place emphasis on qualitative data. According

to Walker, “auditors ensure money is being spent according to law. They may ask if spending is effective. But it is not their job to ask whether a policy is worthwhile”. However scrutiny is concerned with what an Authority is doing, its policies and the way it delivers services, led by councillors who can challenge their political colleagues.

Audit, inspection and regulation in simple terms may be regarded as a tick-box exercise. However scrutiny is about examining the detail of policies as they are delivered, through dialogue and deliberation.

Scrutiny offers an opportunity to look at very local services and issues, where by contrast auditors, regulators and inspectors would tend to focus on more general services. Scrutiny can also be undertaken in many different ways, for example coming at a topic as an appreciative inquiry.

### *External Scrutiny*

Under the Local Government Act 2000, overview and scrutiny has a special power to make reports and recommendations on other matters which affect the authority’s area or the area’s inhabitants. This means that scrutiny also has a legitimate right to challenge external partners and public services which may not necessarily be provided by the Authority. This is possible even if these organisations have other arrangements for accountability. By contrast, the reach of auditors, regulators and inspectors is prescribed and therefore limited. One might regard this ability and power as scrutiny’s ‘ace card’, which has been strengthened by further legislation, including the Health & Social Care Act 2001, Police and Justice Act 2006 and the Local Government and Public Involvement in Health Act 2007.

### *Councillor Involvement / Political Leadership*

Scrutiny is led by councillors and has an advantage in that politicians are very directly involved in taking responsibility for performance monitoring and service improvement. By contrast, auditors, regulators and inspectors could be considered quite remote from the Authority and lack local knowledge. Scrutiny councillors, being part the Authority, are potentially more capable in developing

constructive relationships with those involved in the management and delivery of services.

### *User Perspective*

There has been criticism of external inspections lacking a user perspective drawing on “superficial evidence of users’ views and experiences” (Downe & Martin 2005) and a lack of public communication. Scrutiny, by contrast, is an engaging, involving process in which public participation is a key element.

Auditors, regulators and inspectors don’t necessarily engage widely, and in the main will review evidence from the Authority itself before making an assessment, whereas effective scrutiny would involve wide engagement with both those inside the Authority and outside, be it external organisations and/or the public. “Scrutineers already use a wide range of traditional and more innovative methods of involving partners, the public and experts to gather evidence and examine issues. Scrutiny probably can therefore provide better insights into users’ perspectives and priorities than current Audit Commission approaches allow” (Downe & Martin 2005 p.14).

The processes of audit, inspection & regulation are largely carried out in private; however scrutiny takes place under the public gaze. Whilst informal discussions may take place in private, the progress of scrutiny, findings and reports are delivered in public. Potentially this means that scrutiny work can be more affected and informed by the public than the work of auditors, inspectors or regulators. Scrutiny brings the technical/expert and the non-expert together (public) and can allow a fresh challenge, allowing more stakeholders into the discussion. At its best, scrutiny can bring the public in.

### *Cost*

“In contrast to external inspection scrutiny appears to be reasonably cheap” (Downe & Martin 2005, p.13). The cost effectiveness of inspection regimes is unproven. A common complaint from organisations under review has been that the auditors, regulators and inspectors tell them what they already know and charge excessive fees.

Scrutiny can offer a relatively low cost analysis of issues and suggestions for improvement. There is a view that “.. at a time when the efficiency of local government is being put under the spotlight once again, scrutiny may offer a more cost effective means of holding services to account. Scrutiny could form an important element of any emerging self-regulation from within local government.” (Downe & Martin 2005, p.13)

## **Future Relationships**

Scrutiny is clearly related to audit, regulation and inspection. One could reasonably ask when does scrutiny stop and audit begin. One view is that “there is of course a formal, statutory answer but it’s a good question. Much scrutiny ends up asking about value for money, which otherwise might be said to be the province of the Audit Commission. Questions posed, in scrutiny, of a primary care trust might be replicated in assessments by the Healthcare Commission.” (Walker 2006)

Scrutiny could be described as a distinct form of regulation and because of this relationship it is important that a link is maintained to avoid duplication, improve co-ordination, and promote awareness of activity etc. The view of the Wales Audit Office is that there is room for both in the future, but with better joint planning and working. Scrutiny will need to complement external inspection, and not work in isolation.

Coordination is necessary as according to a key report “inspected bodies...consider the burden of inspection to be too high, both in terms of resources and its effect on service delivery and often to be disproportionate to the risks involved. Many of those giving evidence as service providers highlighted the fact that inspections often took large amounts of staff time and stretched already tight resources. Several of the respondents emphasised the fact that inspection preparation often diverted staff away from their main purpose of service provision so exacerbating performance issues.” (NAfW 2005).

Viewed negatively, scrutiny can be perceived to be adding to the burden, and it is therefore important that the role of scrutiny is clarified, as not necessarily an

add-on but a complementary feature of inspection. “OSCs have the potential to connect review mechanisms such as external and internal audit with policy and to focus the outputs of regulation in order to promote improvement and enhance accountability. For example, where OSCs use regulatory reports as the basis to review, challenge and recommend, they can provide an effective conduit for translating audit outputs into positive outcomes for the authority, service users and the public at large.” (ACiW 2005)

A key issue for the future is whether the balance between self-regulation and independent regulation is right. A key recommendation of the National Assembly for Wales’ Local Government & Public Services Committee (NAFW 2005) is about the role of scrutiny in assessing risk. In oral evidence, the WLGA supported the role of scrutiny as “an effective form of regulation....if we have issues....that are not of critical high risk should they not be dealt with by scrutiny committees, maybe with the independent advice of an inspector alongside them, as opposed to a full inspection?” (NafW 2005, p.34).

## **Concluding Comments**

The comparison of scrutiny with audit, regulation and inspection shows that, whilst there are some similarities, such as having a common interest in accountability and improvement, scrutiny is distinctive and has a scope which goes beyond the others. Scrutiny has much to offer which complements them. There are features that make scrutiny additional, such as the key role played by councillors, the involvement of service users, value for money, and its wider role and flexibility.

For some there is “a need for the centre to step back from.....over prescription and over regulation, giving local government more scope to contribute more to the system of government as a whole” (Goldsmith 2004). We may see a greater responsibility on those who provide services to assess and report their own compliance, performance and capacity to improve, to reduce, some might say the over-crowded landscape.

Scrutiny is still developing, although it is fair to say that much of its potential is not yet fully realised. Whilst scrutiny may not be able replicate the work of auditors, regulators or inspectors, the more effective scrutiny becomes the less will be the need for external examination, given the risk based approach in determining work programmes. In the meantime, it is clear that there is a valuable role for all.

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# Madison, Montesquieu and the Separation of Powers

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*The accumulation of all power, legislative, executive and judiciary in the same hands, whether of one, or few, or many, and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny.*

James Madison, *The Federalist*, No.47, 303

The above quotation comes from a piece of polemical journalism written by James Madison and first published in *The Independent Journal* on 30<sup>th</sup> January 1788. Madison's task was to persuade the thirteen states to ratify the Constitution of the United States which he contended embodied the principle of the separation of powers as it had been formulated by Charles, Baron de Montesquieu, in his book *L'esprit des Loïs*, published in 1748. Montesquieu was revered by the founding fathers as "the oracle who is always consulted and cited on this subject" (*The Federalist* No.47, 303). Though his accustomed empirical methodology (Neumann 1949, xxix) required him to proceed from description to prescription, his account "Of the Constitution of England" (*L'esprit des Loïs*, Book XI, c.6), from which the conception of the separation of powers developed, departs from this methodology. But here Montesquieu was seeking to construct an idealised state, for his purpose "was the discovery of a

constitutional principle which ... to him was the sole means of assuring political liberty” (Neumann 1949, lv).

As it happened, “at the precise moment when Montesquieu was formulating his principles, the British government was assuming a form inconsistent with the doctrine of the separation of powers” (Carpenter 1928, 35). Indeed, Shackleton (1949, 32-38) has shown that it was exposure to the polemical ideas of Henry St John, Viscount Bolingbroke, during his visit to England between 1729-31, and not observations of the contemporary British Government in practice that chiefly influenced Montesquieu’s espousal of the separation of powers.

Concerns for the assurance of political liberty were shared by the founding fathers. They were profoundly distrustful of “the turbulence and follies of democracy” and were seeking “such a check as to keep up the balance, and to restrain, if possible, the fury of democracy” (Farrand 1966, 1:51, 58, quoting Edmund Randolph of Virginia). Thus they were inspired to adopt Montesquieu’s “checks and balances” version of the separation of powers (*L’esprit des Lois*, Book XI, c.6) “which for the framers ... embodied a counter-ideal of liberty” (Kramnick 1987, 47). This version had originated in the reaction to the rule of the Rump Parliament in England in the early years of the post-Civil War *interregnum* and Oliver Cromwell’s military autocracy that followed (Gwyn 1965, 54-56; Vile 1969, 47-52; Reid 2004, 52-57).

Under the interim Constitution of the United States, the Articles of Confederation, all governmental powers had been focused in Congress, a unicameral assembly of state delegations; an arrangement which had proved to be both indecisive and ineffective (Pear 1963, 37; Mezey 1989, 25-27). The situation in the thirteen states was equally troubling. Though the separation of powers had been adopted on paper, in practice the state legislatures had been enlarging their powers at the expense of the executive and judicial branches (Carpenter 1928, 32-34; Pear 1963, 29-31; Kramnick 1987, 23-28). The founding fathers’ fear, as expressed by Madison, was “that a mere demarcation on parchment of the constitutional limits of the several departments [of government],

is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands” (*The Federalist* No.48, 312). Their object in adopting the separation of powers was to strengthen “these parchment barriers against the encroaching spirit of power” (*The Federalist* No.48, 309).

One difficulty with Madison’s definition of tyranny is that it focuses on the structure of government rather than the way in which government is carried on through that structure. For example, British politics at the time of Montesquieu’s visit was dominated by the Whig Party led by Robert Walpole. Sustained by majorities in both Houses of Parliament, it controlled the Government and provided all the senior judges and bishops. But whatever its faults, as Speck has shown (1977, 210-18) this Whig hegemony did not amount to a tyranny. It was a particular skill of Walpole to hold together for twenty-one years an ever-shifting coalition of competing sectional interests, a skill which every American President has been required to emulate in their much shorter spans of office. Indeed, this skill continues to be required in every leader of any successful political party, since party politics “inevitably and not unreasonably involves the existence of more than one temperament and approach within each of the ... parties. In a sense the ... parties are each coalitions of opinion within themselves” (Morrison 1964, 43). These considerations apply alike to a two-party state or to a multi-party state though in multi-party systems consensus-building may be more transparent but less long-lasting.

Moreover, the United States itself has had periods when both Houses of Congress and the Presidency have been held by the same party and the Supreme Court has been dominated by that same party’s nominees (eg: during Madison’s own Presidency 1809-17) but these periods have not led to tyranny. The French experiment, however, was planted in barren soil which gave constitutional monarchy no chance to put down roots before it was subverted by external enemies and internal dissent. In contrast, the United States had fought and won its independence so as to preserve a cherished tradition of liberty and representative institutions. The US Constitution took root, though not without some difficulties, because the soil in which it was planted was more receptive.

“In order to lay a due foundation for that separate and distinct exercise of the different powers of government,” Madison argued, it was essential “that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others” (*The Federalist* No.51, 319). The founding fathers thus proposed a mechanism for the distribution of power between discrete components that were locked into constant tension by an arrangement of checks and balances so as to achieve and sustain a “dynamic equilibrium” (Carpenter 1928, 32). However, as Woodrow Wilson observed, “government is not a machine, but a living thing. ... a body of men, with highly differentiated functions ... but with a common task and purpose” (1908, 56-57). By institutionalising their preferred functional differentiation and circumscribing it with checks and balances, the founders, recognising that power emanated from the people, sought to prevent the totality of such power from ever being united in untrustworthy hands. By guarding against tyranny, they sought to preserve the liberty which they saw as the hard-won prize of the American Revolutionary War.

“Whenever the Power ... for the Government of the People is applied to ... impoverish, harass, or subdue them to the Arbitrary and Irregular Commands of those that have it,” John Locke argued (*Two Treatises*, II, §§201-02), “there it presently becomes *Tyranny*, whether those that thus use it are one or many. ... *Wherever Law ends, Tyranny begins.*” Thus to tyrannical regimes the Law is a resource with which to perpetuate its rule and an instrument to silence its critics. The tyrant has no respect for the Law though it may suit him to pay lip-service; thus he may choose to observe the forms of the Law when dealing with his opponents the better to humiliate them. Tyranny, especially in its modern, totalitarian form, also cannot tolerate the diversity of the pluralist society; minorities must be suppressed or absorbed into the mass of the silenced majority. However, tyranny may first need a vacuum in the regular functioning of the organs of government to become established. History offers many examples of tyrannies arising in such circumstances – the French and the Bolshevik revolutionary regimes being two such examples.

The object of the framers, to use the words of the Massachusetts State Bill of Rights (Article XXX of the Constitution of 1780) was to establish “a government of laws and not of men” but, as Wilson (1908, 17) noted: “There never was such a government. ... governments are always governments of men, and no part of any government is better than the men to whom that part is entrusted.” Nevertheless, belief in the rule of law is an important part of the American political heritage. Their colonial forefathers brought with them its seventeenth-century English concept; that the Law governed ruler and subject alike, that unrestrained power was a threat to liberty and hence unlawful, and that the legal process was open to all, and that all within that process were entitled to fair and equal treatment. As a result of the American Revolutionary War “the two sectors of the British empire had drawn apart over the definition of liberty and the role of rule-of-law” (Reid 2004, 78). It was this seventeenth-century concept which had triumphed over the British eighteenth-century reinterpretation which placed the rule of law within (and subject to) Parliamentary sovereignty. It was the seventeenth-century version which the founding fathers sought to entrench through the US Constitution.

What were the intellectual antecedents that guided and inspired the founding fathers? Their debt to the Scottish Enlightenment is well established. For example, as Fleischacker (2002, 907-10) has shown, Madison’s argument (*The Federalist*, No.10, 122-28) that rivalry between political factions guarantees civil liberty was developed from Adam Smith’s contention (*Wealth of Nations*, Book V, c.1, 744-46) that religious freedom is preserved by toleration of a multiplicity of sects. The founding fathers were familiar with the *Wealth of Nations* (Fleischacker 2002, 898-905) which, by 1789, had run to five editions (Cannan 1937, xxiii-xxvii) and had sold well in America.

Are there parallels between Smith’s famous doctrine of the division of labour and Madison’s espousal of the separation of powers? If it was more productive to divide the manufacture of pins into eighteen separate processes (*Wealth of Nations*, Book I, c.1, 4-5), was it more productive for political work to be divided between the legislative and the executive? Among the founding fathers this “efficiency” version of the separation of powers (Gwyn 32-36) co-existed

with the “checks-and-balances” variant favoured by Montesquieu. For example, John Adams argued in his *Thoughts on Government* (1776) that although the representative assembly was “absolutely necessary, as a branch of the legislative, [it] is unfit to exercise the executive power, for want of two essential properties, secrecy and dispatch” (Adams 1865, IV, 2004). In this respect, Adams was following John Locke who had recognised the need for a “*Power always in being*, which should see to the *Execution* of the Laws that are made” (*Two Treatises*, II, §144, see also §§152-53).

In one sense, what the founding fathers did was to lock American politics into a time-warp of Walpolean politics, what Wilson (1908, 203) calls the “Whig theory of political mechanics.” By Walpole’s time, in England “both parties had mastered the art of parliamentary undertaking, and it was this art which finally brought responsible government to England” (Roberts 1966, 440). Likewise, in the United States, “it has been necessary to keep the several parts of government in some kind of workable combination by ... the closely knit imperative discipline of party, a body that ... is free to tie itself into legislative and executive functions alike by its systematic control of the personnel of all branches of the government” (Wilson 1908, 205; see also Pear, 1963 83-84). By definition a tyranny will suppress opposition; criticism cannot be tolerated; tyranny can only be sustained by a monopoly of power and influence. It is by the competition for votes, by offering the periodic choice of an alternative government, that the party system, despite its many weaknesses, has over more than two centuries been an effective bulwark against any relapse into tyranny. To adapt Walter Bagehot’s definition (1872, 10) of the British Cabinet in the mid-nineteenth century, in the United States the party system acts as “a *hyphen* which joins, a *buckle* which fastens, the legislative part of the State to the executive part.”

“Liberty does not consist in an unlimited freedom,” Montesquieu argued; “Liberty is a right of doing whatever the laws permit” (*L’esprit des Lois*, Book XI, c.3). What then were the liberties which the founding fathers sought to secure by establishing “a major institutional confrontation in the centre of the federal government” (Peters 1986, 21)? To John Locke, “The Reason why Men enter

into Society, is the preservation of their Property” (*Two Treatises*, II, §222). To James Madison, the object was to ensure that “society itself will be broken into so many parts, interests and classes of citizens, that the rights of individuals or of the minority, will be in little danger from interested combinations of the majority” (*The Federalist* No.51, 321). Peters (1986, 20-21, 26) describes these arrangements as tending to “policymaking by the lowest common denominator” with the result that it is “difficult for the policymaking system ... to make hard choices among competing goals and competing segments of society.”

But for Madison, it was not simply a matter of equal rights but of the right to be unequal, of the equal opportunity for men to exercise “different and unequal faculties of acquiring property,” and, in consequence, of possessing “different degrees and kinds of property” from which would arise “a division of the society into different interests and parties” the preservation of which it was “the first object of Government” (*The Federalist* No.10, 124). Locke (*Two Treatises*, I, §42; see also II, §§25-51) had argued that “*Justice* gives every Man a Title to the product of his honest Industry, and the fair Acquisitions of his Ancestors descended to him”. The liberty which the founding fathers thus sought to entrench was essentially socio-economic, the preservation of the rights of property. Their work must therefore be seen against the background of “a popular movement of the debtor classes, mainly rural and agricultural, against the creditor classes, mainly urban” (Williamson 1951, 87) which had led some states to issue “a variety of paper currency – much of it of dubious value” (Pear 1963, 30). It was to address these essentially conservative, middle class concerns that the US Constitution (Article I, §10) prohibited the states from making “any Thing but gold or silver Coin a tender in Payment of Debts; ... or any Law impairing the Obligations of Contracts.”

That the United States Government works within a federal framework can be seen as another intended safeguard against tyranny. The equal representation of the states in the Senate, irrespective of population, enshrines this federal principle. The framers conceived the Senate as something of a “privy council” (*The Federalist* No.64, 375-78, per John Jay; Pear 1965, 125;

Mezey 1989, 40), hence the President’s power to make treaties, by and with the advice and consent of two thirds of the Senate (Article II, §2). However, it took the Civil War to finally settle that the United States was not a league of sovereign states which had pooled some of their sovereignty for common purposes and that the preamble to the Constitution — “We the People of the United States, . . . do ordain and establish this Constitution for the United States of America” — was no mere rhetorical device but an effective assertion of national sovereignty. This outcome was, at one and the same time, a contradiction and a vindication of Thomas Hobbes’ assertion that sovereign power is indivisible “for powers divided mutually destroy each other” (*Leviathan*, Part 2, c.xxix).

However, the federal principle no more guarantees the absence of tyranny than does the separation of powers. According to the words of its National Anthem (1944-91 version, words S. Mikhalkov, music A.Alexandrov), the Soviet Union was “an unbreakable union of freeborn republics” but events showed that until 1989 it was the Communist Party apparatus that held the Union together and that when that tyranny collapsed, the Union was no longer “unbreakable”. Despite Mezey’s (1989, 55) pessimistic view that, in the 1980s “political parties began to move to the periphery of US politics” which would inevitably lead to their “steady disintegration,” there has been no relapse into tyranny because the party system still provides a key guarantor against any such tendency, the periodic availability to the people of an alternative to the incumbent government.

Thus to work successfully within a framework set with traps and obstacles has been the continuing challenge to American politicians for more than two centuries. Given that “the number of clearance points in the federal government . . . makes initiating any policy difficult and makes preventing change relatively easy” (Peters 1986, 20), the founding fathers’ arrangements to avoid the government degenerating into tyranny would appear to have achieved their objective. Because “almost every American takes it for granted that the State has very few—and should have very few—direct operating responsibilities” (King 1973, 418), the political imperative for small, limited government seems

not merely to rest on the words of the Constitution but on “the predominantly anti-Statist tendency of American thinking” (King 1973, 420).

US Supreme Court Justice Robert H Jackson (who had served as the US judge on the Nuremburg War Crimes Tribunal) explained how and why American politicians had made the inheritance of the founding fathers into a workable system of government:

*“The actual art of governing under our Constitution does not and cannot conform to judicial definitions of the power of any of its branches based upon isolated clauses or even single Articles torn from context. While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity”*

(*Youngstown Sheet and Tube Co v Sawyer*, 343 US 579 (1952) 635).

That by far the majority of active participants in the American system of politics share this determination to make their system work is both a measure of the success of the founding fathers and a tribute to their commitment to the spirit (if not always the strict letter) of the US Constitution.

Though it may be doubted whether Madison’s definition of tyranny was ever more than a rhetorical device, the framework which he and the other authors of the US Constitution set has contributed to the absence of tyranny in the United States. However, the lack of opportunities for tyranny to arise from the ruins of a collapse of civil society, the ability of the party system to manage the periodic provision of a choice of governmental alternatives, the respect for the tradition of and the Law as a guarantor of rights and opportunities, as well as the checks and balances of the federal structure and of the separation of powers, have all combined to produce a distinctively American solution to the problem of how to provide a democratic, representative system that has been and shows every sign of being able to continue to evolve and adapt to meet the ever-

changing challenges any system of government must tackle. It is not for nothing that the US Constitution of 1787 is the oldest surviving written constitution in the World (Kramnick 1987, 13).

Thus the Separation of Powers as applied to the Constitution of the United States was ultimately derived from a Frenchman's partial understanding of the British System in operation in the early years of the Eighteenth Century and was consciously used by the Founding Fathers as a model to restrain the feared excesses of democracy. Yet despite these inauspicious beginnings, the Doctrine has evolved in the two centuries since it was first adopted and because those who operate the American Constitution are committed to its principles they have made it work as a guiding principle of American constitutional democracy. It was not the detailed checks and balances that the Founding Fathers devised that secured this but the culture of respect for the rule of law to which their efforts gave birth.

By the same token, though the overt modelling of the executive arrangements required in English Local Government since 2000 on the Separation of Powers started with similar misunderstandings and imperfections, if the American experience is any guide to the future, given a equally effective commitment to the underlying principles, there must be the prospect that the differentiation between the Executive and the Overview and Scrutiny functions can make a lasting contribution to improving the accountability and effectiveness of English Local Government in the Twenty-First Century. To do so will require acceptance that for good local government those functions, though conceived to be in a state of perpetual tension, nevertheless need to work together, to combine constructively, towards the achievement of that objective.

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*NOTE: I have silently converted all American quotations to English spelling. However, in all quotations, original Capitalisation and Emphasis has been retained.*

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# Overview and Scrutiny: A New Local Government Function



# Successful Scrutiny: The Role of the Scrutiny Officer<sup>1</sup>

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Titles and job descriptions for the role of the Scrutiny Officer (SO) vary across different councils, but the literature reviewed for this chapter, and the research done by the author with serving SOs, support the view that the role is integral to the success of the scrutiny function:

*“Each of the six Scrutiny Commissions has dedicated independent officer support for all aspects of the work, which we recognise is a key element in the success of the scrutiny process in Barnsley.”*  
(Councillor Steve Redford, Chair of the Barnsley Scrutiny Commission, in Centre for Public Scrutiny, 2006b. p.11)

*“Recent research commissioned by the government found a strong causal link between the level of investment in officer support for overview and scrutiny and progress in developing effective arrangements; with higher investment leading to greater progress.”*  
(Improvement and Development Agency, 2005)

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<sup>1</sup> The author also gratefully acknowledges the contribution made to the research for this assignment by Scrutiny Officers who took the time to return the questionnaire, giving me their honest thoughts and opinions, enabling a good insight to the role of the Scrutiny Officer in a variety of Councils.

*“I also think it’s a shame some Councils don’t put any resources into scrutiny. They tack it on to the job of someone who already has lots of other responsibilities. It just can’t work like that.” (Scrutiny Officer interviewed by the author, 2007)*

Using opinion, information and data from expert literature and guidance, and from the author’s own research, this chapter explores the requirements of the SO role, the main variations across different councils, their impacts, and considers how the role could develop, both to produce professional, effective SOs, and to ensure that the scrutiny function continues to grow and achieve effective outcomes.

## **Research for this paper**

Questionnaires were sent to a range of Scrutiny Officers in 23 councils. From a potential of around 85 responses, 27 were received, 17 from SOs in County Councils (CCs), 4 from Unitary Councils (UCs) and 6 from Borough Councils (BCs). Some included information about other team members, so some of the quantitative data represents more than 27 responses. The most striking feature was the enthusiasm and commitment that almost jumped off the pages! Even where SOs were clearly finding their role hard, showing disillusionment with the system, or felt marginalised, there was still, in most cases a belief in what the scrutiny function stands for and what could be achieved with changes in practice and culture.

Generically, the SO is seen as an officer who supports the scrutiny function. However, it is clear from literature and from the questionnaire responses that there is no definitive SO role. A research project on the role of the SO underlined this lack of clarity, finding that “the changing nature of officer support for scrutiny is comparatively under-researched...” (CfPS, 2006c). A team from Manchester University noted that guidance “highlights the need for a small group of dedicated officers to support overview and scrutiny but the level of resource to devote to the function was left to local choice” (Bradshaw, Coleman and Gains 2005, p.10). This choice seems to have impacted on all aspects of the role.

However, the need for dedicated scrutiny officer support is highlighted in official guidance and literature, and enthusiastically supported in the questionnaire responses from SOs, although perhaps this is to be expected! Crowe and Ewbank (2007) examined various Comprehensive Performance Assessments and cite several examples, such as a two star Metropolitan District Council, where a noted weakness of the scrutiny function was the lack of dedicated officer support to scrutiny select committees. The Centre for Public Scrutiny Guidance for District Councils states that “there is a very high correlation between levels of support and resources and the success of scrutiny. Providing adequate dedicated support also improves member confidence in the process...” (CfPS,2006a, p.10). Evidence that “the proportion of authorities offering dedicated officer support has risen from 30% to 45% in 2006” (Gains 2006 p.11) would appear to show this is being recognised by many authorities. The questionnaire responses from SOs show a wide range of levels of support, including staff resources, seniority of the post(s), salary levels and level of work undertaken, with some SOs doing much more committee administration, but comments do not necessarily show any direct correlation between the level of support and the perceived success of scrutiny. Other factors seem to have more influence, and these are explored below.

The CfPS report (2006a, 10) also acknowledges that “providing the necessary level of support can be particularly problematic for districts as there are diseconomies of scale.” This could be one reason for the variation in the SO role across councils, but again this is not completely supported by questionnaire responses, which show a variation in the role even across CCs, where similarities might be expected.

One of the most striking variations in responses to the questionnaire was concerning salary bands for the role. The spread of actual salary bands ran from £16,500 to £45,000; those disclosing this information were spread right across the range. Higher salaries and greater resources dedicated to scrutiny did not seem to relate to its perceived importance in that council.

Question 8, asking about difficulties and causes of dissatisfaction, showed nine responses citing issues with other council officers, ranging from not seeing the value of scrutiny, through to “complete marginalisation of the role”, and five responses citing the low level of importance given to scrutiny in comparison with the Executive, with some of those comments coming from the more highly paid and better resourced local authorities. Whilst financial and team recognition is important, these questionnaire responses indicated that there were more important influences on scrutiny and the role of the officer. The biggest of these is the perceived success of the scrutiny function itself, and whether the SO can influence this.

Figure 1 indicates the views of those who responded to the question about the success of scrutiny. Overwhelmingly the answer was positive, but as one respondent commented: “I feel most responses will be yes (to question 13 of the questionnaire) as SOs will want to believe that they make a difference.” This comment is supported by the fact that almost all these responses, including the positive ones, were qualified by additional comments, some indicating constraints over which SOs considered that they had no influence, for example:

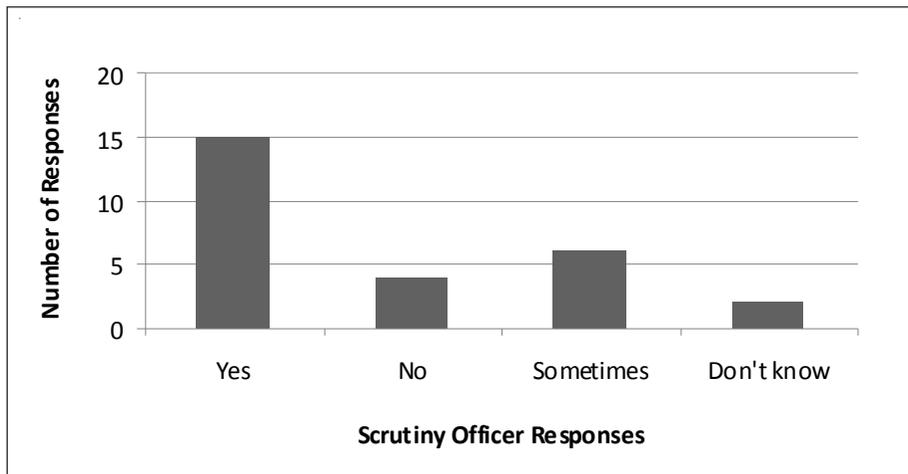
*“Cabinet and Chief Executive undermine scrutiny.”*

*“Recommendations that will really make a difference are usually controversial and don’t get through, whereas those that are ineffectual do.”*

*“Not effective in holding the executive to account - loaded in the executive’s favour in LG Act 2000.”*

Combined with responses to questions which asked for the views and experiences of the SOs about various aspects of their role, it became clear that the major influences on the perceived success of the SO role and the scrutiny function were also some of the main variations between the councils: their party politics, internal politics and organisational structure.

**Figure 1: Is Scrutiny effective and does it achieve outcomes that make a difference?**



Leach and Copus (2004, p.337) suggest that “...the key determinant of the effectiveness of scrutiny in local government will be the attitudes and behaviour of party groups” and further identify how different political scenarios affect scrutiny’s ability to add value and provide the requisite checks and balances. Centre for Public Scrutiny guidance for district councils (CfPS 2006a) also suggested that “those authorities where overview and scrutiny is struggling tend to be those where party politics predominate...” This is strongly supported by the evidence from the questionnaire responses to question 12, which asked about the impact of politics on the SO role.

One response from a SO in a council which had been hung for many years, but now has clear political control, stated that scrutiny is perceived to have been “sliding backwards ever since.” All scrutiny chairs were now members of the controlling group, and group meetings, held prior to scrutiny meetings with no minutes or agenda, undid much of the hard work that had been done to properly inform scrutiny. The effects of such political behaviour was having a huge impact on the SOs, who were left feeling “extremely stuck and trapped in an increasingly marginalised and ignored part of the Council”. Another SO said

that “Yes, (politics impacts on) every aspect of the work. Whilst nominally independent, and non party political, scrutiny functions in a very political way in this authority.” This has impacted on the role of the SO who is now “being absorbed into performance management work.”

Further examples from the responses to the questionnaire indicate different types of scrutiny set up and different levels of support for scrutiny from the Council Leader and the Executive, some of which have an impact on the effectiveness of scrutiny. For example the Chairmanship of Scrutiny Committees can be split between the parties proportionally, and responses from one authority where this was done indicated a more positive attitude to scrutiny and to the SO function, with comments such as “...planting the seeds of change ... critical friend - can step back and take an objective view” but this is tempered by another similar council where “Opposition is looking for scrutiny items which will show up the administration”. Where scrutiny is perceived as successful there is a clear link to the political environment. Leach and Copus (2004, p.346) give an example of a council where the controlling group “takes a deliberate stance that its members should be free to express their own views in scrutiny committee – indeed, they should be encouraged to do so”. In this authority scrutiny had a high profile with a dedicated five-strong scrutiny unit and an executive that is responsive to scrutiny reports and recommendations. However, in this last scenario the controlling group had a large majority, so had some security of tenure and could perhaps afford to have a more positive stance on scrutiny, whereas in the example cited earlier in this essay of the previously hung council, it was much more likely that the controlling group would not be so secure and could well feel threatened by opening up their decisions to real scrutiny.

Internal politics can also be detrimental to effectiveness of the scrutiny function, rendering the role of the SO ineffectual. There are several responses to the questionnaire indicating internal conflicts within councils and the effect of these on SOs and scrutiny outcomes. These include “bullying by senior officers”, and SOs seen as “not respected ... mumbling critics ... messengers who need to be shot”. In this particular case the SO does not perceive the scrutiny function

to be effective. Other respondents cited issues with long established Democratic Services teams, and complex blurring of the edges around responsibilities. Thus one comment refers to “tensions and difficulties between scrutiny and democratic services team” leading to the belief that “[the] Committee Administrator/Scrutiny Officer split makes us look disorganised and amateurish”. It can be argued that the SO role has removed some of the more interesting aspects of the work from those teams. Some SOs have retained committee administration work as part of their role and this also leads to practical difficulties, with such work taking time away from developing the scrutiny function. There was some evidence from the questionnaire and job descriptions received that this practice was more prevalent in smaller BCs and UCs. Snape *et al* (2002) comment on the work of democratic services teams, “... which should not be confused with the provision of analytical support for the scrutiny process (though in some authorities the processes are sometimes confused).”

Internal parts of the organisation, important to spreading the message about scrutiny, are often influenced by both party politics and internal politics. One SO mentions a communication and marketing unit that are unwilling to support scrutiny. Another gives a suggestion for improvement as a “dedicated marketing and communications scrutiny person.”

Many of these issues are described as “petty politics” and “unnecessary bureaucracy”, getting in the way of the SO doing a good job and so hindering effective scrutiny. Such internal politics are hard to separate from the organisational structure which can also cause constraints on scrutiny and frustrations for SOs. Where SOs sit within an organisation, their line management route and their relationships with other officers who were previously, or may in the future be, working colleagues all influence the effectiveness of the scrutiny process.

Dacombe (2007b, p.4) says “A number of studies have suggested that scrutiny works best when seen as a positive career move.” This is supported by comments made in several questionnaire responses. One SO reports that there is “no clear expectation of success - the more we succeed the more hostility

we generate”, culminating in a re-organisation where a supportive and strong line manager has been moved away from scrutiny, and the SOs have become part of corporate performance. The negative impacts of this are seen in the response of the same SO to question 14, which asked whether the SO role will help their future career path, “Used to think so, now worried that it won’t.” There is clearly no encouragement for this particular SO to facilitate and encourage effective scrutiny. Another SO comments that they are “line managed by Head of Democratic Services and Members Services and who is also Cabinet Secretary” pointing out how difficult this makes their role in facilitating effective scrutiny. But in general the role is seen by the SOs responding to the questionnaire as enhancing future career choices.

The organisational structure of councils is such that officers at all levels are there to give support to the Council’s Executive. However well-resourced a scrutiny unit is, and however professional the SOs are, as Snape *et al* (2002, p.81) point out, “...they cannot replicate the full range of professional skills in the authority, any of which they may need access to...”. This means that there may be an expectation on officers who have written a report for the Executive, to provide a different report for scrutiny. Snape *et al* (2002, 81) call this issue “two-hattedness”, and it presents real problems for both the professional officers and the SO. This tension is obvious in responses to the questionnaire which talk about “old-school officers unwilling to change”, “apathy and cynicism of some officers” and “the need for a can-do attitude”. The tendency of most local authorities to work in “silos” can exacerbate this tension by the addition of competition and internal politics between senior managers, leading to more pressures on officers to regard involvement in scrutiny as counter-productive to their career paths.

SOs need a very particular set of skills to deal with these issues. Much is said about the importance of good report writing and research skills, but are other “softer” skills just as, or even more important? Dacombe (2007a) identifies some discrete roles which require very definite skills. These are (in no special order):

- Researcher/Analyst;
- Communicator;
- Negotiator/Diplomat;
- Project Manager and
- Relationship Builder.

These clearly identify a mixture of “hard” and “soft” skills. The questionnaire attempted to find out what the SOs themselves thought about the skills they needed for their role by asking them to place a list of 11 skills in order of importance, from 1 (highest) to 11 (lowest). There was also a space for any additional skills that respondents saw as important, but this was only used by one SO. Table 1 below shows the results of this.

**Table 1: Average score for level of importance of scrutiny officer skills over 27 responses**

<b>Skill</b>	<b>Score</b>
Communication	2.93
Negotiation and Influencing	3.04
Research and analysis	3.60
Relationship Building	4.22
Organisation and Planning	4.70
Facilitation	4.85
Drafting and report writing	5.41
Project management	5.44
Workload management	5.59
Leadership	6.55
Training and Development, Coaching	7.17

Given the issues of working within such a political (large and small p) environment and the issues outlined above it is not surprising that the SOs themselves rank communication and negotiation and influencing as most important, with research and analysis coming third. One omission from this list was “working in a political environment”, and this might well have ranked highly, but issues from it are also covered in several of the higher ranking skills in the table.

When asked about training provided for the SO role very few respondents identified any “soft” skills training, although there was practical help such as training in report writing. Asked about training needs, some SOs highlighted a need in areas like facilitation, but the most frequent requirement was for project management skills.

The importance of good scoping and terms of reference in ensuring the success of scrutiny reviews was referred to frequently in comments on questionnaire responses. These were seen as important in achieving good, evidence based outcomes, which could then be used to persuade senior managers, officer and members that scrutiny could add value. Achievement of good scoping and terms of reference requires many of the skills listed above.

Many of the SOs responding to the questionnaire indicated that the role had enabled them to develop many of these skills together with a wide ranging knowledge of the workings of their council, something they could not have achieved without stepping outside the normal working “silos” already referred to. This was viewed as very valuable for future career paths.

Ashworth and Snape (2004) comment that “...the characteristics and experiences of the “new breed” of scrutiny support officers and the challenges they face in developing scrutiny is an area that has been neglected”. To attract and retain SOs with the skills to rise to these challenges requires a shift in how the role is viewed by members and senior officers. The culture and attitude within some councils makes this problematic.

In the questionnaire SOs were asked what they would change to improve their role. Comments such as “Better relationships with supporting staff”, “Higher profile for scrutiny within the organisation”, “Clear steer from the top that scrutiny is valued”, “Enhancement in status to carry more weight with senior managers and members”, “Better rewards commensurate with level of responsibility, experience and skills required” and “Manager and Head of Service supportive so ideas and suggestions for improvement implemented and developed where possible” indicate the need for changes in internal politics and organisational structure.

Comments such as “Restore to every elected member a serious decision-making role both in their patch and authority-wide”, “Drop the idea that scrutiny can or should occupy 85% of the councillors and make it a serious role (Special Responsibility Allowances, the works)...”, “Reform Cabinet to give clear line of accountability for decisions, so scrutiny can hold them to account” and “Give scrutiny some teeth” indicate the wider need for change in the party political arena or through changes to the 2000 legislation.

The links between the success of scrutiny as a function and the provision of SO support are already argued, but SOs also need successful scrutiny to give them job satisfaction and allow them to achieve personal recognition and reward, which can be seen as a “catch 22” situation. It would seem that many of the current scrutiny structures in place militate against this achievement. Asked about the organisation of the scrutiny function in their council, some respondents indicated large numbers of committees and councillors serving on them, and commented that fewer committees were needed. Where there were fewer committees there were far less comments about issues in this area. The formation of small distinct groups of councillors who become scrutiny specialists is a compelling way forward. Different reviews could utilise other councillors’ skills and knowledge, possibly in sub-groups or task and finish groups, or just as expert witnesses. However, the main scrutiny function would rest with properly trained scrutiny specialists who wanted to take this role.

In current set ups the ambitious politician may avoid scrutiny because they will not want to be seen to be criticising the decisions of the Executive if they are part of the controlling party. If scrutiny becomes recognised as a particular skill or specialism this stigma could be overcome, with strong members achieving good evidence based scrutiny outcomes as part of their development and, if required, as a good building block for their future political career. A small, skilled group of councillors, working with equally skilled, dedicated officers could achieve this. The added bonus of giving scrutiny higher importance in relation to the Executive makes it more likely that the cynicism and lack of co-operation of professional officers within other parts of the council could be overcome.

It has been demonstrated that the skills necessary for the SO role are wide ranging and require high calibre, dedicated people: “Informed speculation, if not hard data or a complete consensus of opinion, would lead us to expect to see an increasing number of dedicated scrutiny officers ... who, over time, gather round them more specialist staff with different skills, expertise and focus.” (Fox 2004, p.399).

From the responses of SOs it can be seen that attracting and keeping those people is problematical in many councils. Two possible approaches for combating this are proposed below, and are not necessarily mutually exclusive.

Firstly there is the development of the SO role as a career enhancing move, gaining wide experience and developing valuable, exportable skills, many of which are needed in senior management. This is tempered with a need to take a risk in moving to a new and developing area of work, but which gives the chance to gain high regard if successful. To encourage this type of view of the role one council decided on a secondment model and all SOs were recruited on a 2 year secondment to enable them to take their new skills and knowledge back into their old Directorate. However, the outcomes of this were not all positive as the turnover of staff was high and experience and knowledge was constantly lost. In addition chairmen and scrutiny committee members were finding the constant changes in scrutiny support disruptive. Following a review

it was decided to make the roles permanent, with agreed competencies and objectives allowing recognition of the work done and skills demonstrated.

Secondly there is the recognition that this field of work could actually be a discrete profession or specialism, by offering proper qualifications, and recognition of these in terms of seniority and reward. This would need the co-ordinated input from the organisations and academic institutions who are currently involved in scrutiny research, but is achievable and would ensure that it was a challenging but attractive career. If this were adopted it would be possible to have people within the profession at different levels, so that the function could separate itself more, removing some issues, such as inappropriate line management. It could be suggested that this could be taken a stage further, creating a completely independent national or regional scrutiny body, but much of the day to day knowledge of individual councils and the mutually advantageous relationships that develop over time may be lost in this scenario, making scrutiny less local and less able to really make a difference and impact on the lives of service users.

In conclusion, the inferences from the literature reviewed and the research conducted are compelling in indicating the very strong link between dedicated officer support and the success of the scrutiny function. Currently the organisation of scrutiny and the development of the SO role vary widely from council to council. Drawing on the experiences of SOs within those different arrangements it is possible to identify where practices are working well, and what could be done to develop the role and enhance the scrutiny function. Making the members role more specialist and higher profile, and the SO role a profession, will help to turn the “catch 22” situation into a continuous circle of improvement, therefore enhancing the value of scrutiny, enabling sound, evidence based recommendations and outcomes.

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# Overview and scrutiny: Innovative ways of collecting data and involving the public

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Overview and scrutiny offers the possibility of innovative ways of collecting data and involving the public. And nine years after the national establishment of overview and scrutiny within local authorities it is not out of place to question its success at involving the public and to consider how this has progressed.

From the start, central government recognised that a successful overview and scrutiny process was needed to increase openness and transparency and, as Martin (2006) has discussed, develop public accountability under the modernised political arrangements. But its original guidance left many of the arrangements of that process ‘a matter for local choice.’ (ODPM 2001, Sections 3.28, 3.15, and 3.19). It may have hoped that such discretion would lead to innovation within the scrutiny function (or not wanted to encourage actions that would reduce the powers of strong executives). But either way this approach, it will be argued, needs to be reviewed if the overview and scrutiny function is to progress and engage communities on a wider basis. Such an argument is not intended to dismiss or discard the public involvement achieved by innovating overview and scrutiny officers and members – to be sure, there are ground-breaking examples of this, which will be discussed briefly below. Rather it is to simply call for a more unified approach, and for the introduction of minimum standards, particularly of resources.

The literature on overview and scrutiny is heavy with case studies and investigations of the process and recommendations on how to improve it. These include impressive instances of overview and scrutiny engaging the public in its investigations. For example, the use of appreciative inquiry in an investigation of health inequalities in a Stockport ward, the use of an engagement model to establish a community engagement network for health in South Tyneside, and the contracting of a local educational theatre group to lead consultations with people with dementia in Cornwall (Smith, Shacklady-Smith, Boyd, and Johnson 2007, pp.25-28, 22-24; Smith, Shacklady-Smith, and Bradshaw 2006, pp.21-22). However, these pioneering studies remain, by and large, innovations. There are few indications that such methods are being widely taken up by other local authority scrutineers or that these are new areas of scrutiny knowledge or activity into which others yearn to follow.

The *Evaluating Local Governance: New Constitutions and Ethics* project confirmed that the use of overview and scrutiny to engage the public remains disappointing (Stoker et al 2007, p.43). Less than half of local authorities allowed citizens to ask questions at scrutiny committees (including those councils that require submission of questions days beforehand), only slightly over half deigned to hold a scrutiny meeting outside the town hall, over a quarter admitted to not inviting evidence from the public, and fewer than one in seven councils allowed the public any role in the call-in procedure. The 2008 annual survey of overview and scrutiny in local government reported a 'marked decrease' in the number of proposals for scrutiny topics coming from the general public, alongside over half of all responding authorities not receiving any suggestions from the public (CfPS 2009, p.4). According to a 2006 investigation that drew on the constitutions of almost all English councils, only two per cent (five councils) permit the public to call-in a decision (Edwards and Develennes, 2006 pp.4, 23). Little surprise perhaps that the *Evaluating Local Governance* research found the overall extent of public involvement to be poor.

Both the ELG project and the annual surveys and guidance of CfPS underscore the differences between overview and scrutiny in district councils and elsewhere. In terms of resources, the dominant model of support for overview and scrutiny

at district councils is from committee officers also responsible for supporting other political forums (such as the executive). Similarly, single and upper tier authorities are resourced with significantly higher numbers of full-time equivalent scrutiny officers (Benson 2004, p.10; CfPS 2009, pp.6-7.) Almost paradoxically, the Local Democracy, Economic Development and Construction Act requires authorities to appoint a named ‘scrutiny officer’ to promote, support, and provide guidance on overview and scrutiny, but excludes precisely those authorities (district councils in two tier areas) where the function has been resourced least.

Notwithstanding the provisions of the Local Government and Public Involvement in Health Act 2007 and the Police and Justice Act 2006, health scrutiny retains the broadest powers accorded to local authority overview and scrutiny. Yet, a picture of public disengagement is apparent in the sphere of health overview and scrutiny, the effective province of single and upper tier authorities. For instance, Coleman and Harrison (2006, p.84) concluded that, ‘Although a few examples can be cited, involvement of patients and the public in health scrutiny is at best sporadic, having implications for increasing democracy.’ Likewise, the Health Scrutiny Evaluation research project found ‘involvement of the general public has in general been low with few instances of the public attending meetings or contacting the HOSCs [Health Overview and Scrutiny Committees].’ (Johnson et al 2007, p.4). A recent two year research study suggested that successful public engagement in health scrutiny demonstrated the necessity of a substantial commitment of scrutiny resources in conjunction with an emphasis on public engagement that a Local Involvement Network exemplifies (Dacombe 2008, pp. 45-6). As one debate on the state of scrutiny reportedly concluded, scrutiny’s attempts at public involvement have ‘yet to excite the public’s interest and attention.’ (Walker 2006, p.17).

Before expounding measures for overview and scrutiny to involve the public one should define the target group. In view of the clear public accountability role of the overview and scrutiny function an inclusive definition is preferable to a restricted one; rather than an understanding of the term that would exclude all except the users of a particular service, the inclusion of all residents within

a definite area would seem more desirable, especially those in hard to reach or seldom heard groups (for example, the very young, very old, disabled, poor, or ill) (CfPS 2005, p.34). If overview and scrutiny is to broaden public involvement in the political process, and thereby help to reverse prevailing low levels of perceived political disengagement, then the dialogue it enables between citizens and elected representatives must be seen as worthwhile. The scrutiny function must show itself to be highly responsive to public involvement – if the public engage with scrutiny then they need to know that their views will be taken into account. If the public voice is sought then it must have real influence and change enacted as a result of engagement should be demonstrated. In addition, to construct a dialogue of public accountability perhaps implies an iterative exchange between the public and those who govern in their name, rather than any one-off process (Campbell 2007, pp.26-7). It is perhaps this requirement for a frequentative process that partly explains the difficulties of overview and scrutiny in engaging the public. Alternately, hopes for such a dialogue may be unrealistic and the notion of a spectrum of public involvement, engendered by populist investigations, more practicable (Martin 2006, p.64).

Public engagement begins with the selection of issues for investigation that will be of interest and concern to the public, but this can lead to tension between topical scrutiny and strategic scrutiny. As guidance from the Centre for Public Scrutiny suggests, reviews into issues such as procurement initiatives are not likely to activate public engagement (Benson 2004, p.8). Nevertheless, attempts to ‘catch a wave of public interest’ are probably destined not only to disappoint, given that scrutiny is not usually a quick means of dealing with a complex problem, but may also raise unrealistic expectations of the function (CfPS 2004a, p.13). The strategic work of overview and scrutiny should ideally continue alongside those issues which have more immediate impact and importance to local residents.

The public can only become involved in scrutiny reviews if it is aware of them. Overview and scrutiny must be well marketed to attract attention. Publicising the review will attract and allow a range of perspectives to inform scrutiny. Most of the first wave of health scrutiny action learning projects sponsored by

the CfPS chose to organise formal launch and plenary-style events to ensure a high profile, attract participation, and also broadcast its findings (Smith, Shacklady-Smith, and Bradshaw 2006, pp.3,47). Overview and scrutiny is, quite properly, urged to use e-bulletins to publicise scrutiny reviews to interested members of the public and exploit new technology to communicate, gather evidence, and engage (Benson 2004, p.8; Crowe 2007). However, council websites are often problematic for the general public, with scrutiny information difficult to identify (Johnson et al 2007, pp.35, 68).

Online technology should not marginalise more traditional methods of communication. The use of press releases, posters and notices, a collaborative approach with local newspapers (for instance, regular network meetings with media representatives to highlight scrutiny issues), development of links with other public involvement initiatives (such as neighbourhood management arrangements), and recruiting local stakeholder organisations (particularly to access seldom heard groups), should all be exploited to publicise reviews and promote public understanding of scrutiny's role. Innovations such as rapporteur-led scrutiny (as used in selective London Assembly scrutiny investigations since 2002 - see London Assembly 2001 and 2003) can aid publicity by providing a focal point for media attention and stakeholder involvement (CfPS 2006b, p.5). In addition, local government scrutiny can more widely emulate parliamentary scrutineers' attempts to both enhance the public's understanding of select committee work and gather data. The Radio Four consumer affairs programme, *You and Yours*, has been used regularly by select committee chairs to publicise a current inquiry and ask for listeners to contribute evidence by telephone or via a webpage. A memo of all the evidence is submitted to the committee along with background information about the programme's archetypal listener. (See, for an illustrative example, [http://www.bbc.co.uk/radio4/youandyours/items/01/2005\\_46\\_tue.shtml](http://www.bbc.co.uk/radio4/youandyours/items/01/2005_46_tue.shtml))

Case studies of overview and scrutiny investigations have noted that taking scrutiny meetings and events away from council buildings and into the community both raises the profile of the review and encourages public participation - for example Bexley's review of young people's health (Smith, Shacklady-Smith,

and Bradshaw 2006 pp.5-9). Although Snape, Leach, and Copus (2002, p.52) have advanced such informality as a defining characteristic of a participative approach to meetings, as we have seen only slightly over half of all councils currently enact such methods. Besides acknowledging that few members of the public are able and willing to engage fully in the formal meetings that councils thrive upon, the worth of engaging citizens at their convenience in environments in which they are comfortable can be seen as symbolic of a desire to engage. To increase public involvement in scrutiny, the culture and associated protocols of formal meetings must be open to change.

A failure to adopt an outward focus can be discerned in the apparent reluctance of councils to co-opt members of the public onto scrutiny reviews. In a straightforward manner co-options enable councils to broaden public involvement in the scrutiny process. As Bristol City Council has shown, it is possible to retain a pool of potential public co-optees and furnish them with training and support to take full advantage of their engagement. Other councils locate such a pool of co-optees within a full-blown scrutiny media and public engagement strategy (London Borough of Waltham Forest 2007, Minute 4). However, suggestions to improve public engagement in scrutiny by appointing public co-optees by lot are tokenistic (CfPS 2005, p.33; 2004b, p.20). Similarly, the refusal of 83 per cent of local authorities to grant voting rights to co-opted members, particularly given the extremely small numbers concerned, is unlikely to pull off greater public involvement (Ewbank and Wall 2006, p.5).

The capacity of overview and scrutiny, especially its funding, needs to be commensurate with its intended function. Some consideration of the action learning projects for health overview and scrutiny reviews that were funded by the CfPS (as part of the Department of Health's three year support programme) is illustrative here. The project aimed to generate lessons and best practice for other scrutiny practitioners specifically using what were regarded as innovative methods of scrutiny, but it also perhaps unwittingly demonstrated adequate resources to be a condition for public involvement. The report of the first year's action learning case studies suggested that the funding awarded each project (up to a maximum of £20,000) demonstrated that 'relatively small sums

of money can go a long way' (Smith, Shacklady-Smith, and Bradshaw 2006, p.3). The CfPS's 2006 annual survey, however, recorded an average discretionary budget available to the overview and scrutiny function of less than £10,000 per local authority, with an average scrutiny budget excluding district councils of £17,336. By 2008 the average discretionary budget for district councils was £3,735 (CfPS 2009, pp. 8-9). There is a strong case for increased financial resources to better enable scrutiny's progress toward improving public involvement. For example, the London Assembly has dedicated media officers who are able to promote and publicise the scrutiny work of the Assembly. Possibly funding from central government might persuade some local authorities of the importance of the public involvement role of scrutiny.

The intelligent application of performance management could progress the public engagement role of overview and scrutiny. Given that scrutiny has more or less been untroubled by the 'targets and terror' regime of public governance prevalent since 2000 – with its own arrangements largely 'a matter for local choice' – such an initiative can be seen as overdue (Bevan and Hood 2006, pp.517-8). The introduction of local targets and performance indicators might compel councils to distinguish the role and performance envisaged for scrutiny in the short, medium, and long-term. The introduction of a bundle of key performance measures might conceivably lead to a more unified approach to overview and scrutiny nationally and general levelling up of the process. The spread of existing innovative ways of collecting data and involving the public might follow. Reactive gaming by managers responsible for the process might be minimal and so on. The key word is *might*. Before performance measurement is introduced into the sphere of overview and scrutiny, the strategic concerns and ambitions of the scrutiny process and the determinants of its success should be identified. If performance indicators were linked strongly to strategic aims (such as increasing public involvement through the scrutiny process), then they could be used to ascertain the success of the strategy and direct it: a performance management tool rather than a performance measurement one (Kloot and Martin 2000).

An adherence to any so-called hierarchy of evidence is unhelpful to a local authority's overview and scrutiny process, and more than ever if innovation in collecting data is an ambition. As CfPS annual surveys confirm, the sources of information exploited by scrutiny to gather evidence range considerably (CfPS 2006a, pp.11-12,19). All evidence has to be evaluated and interpreted, before it can inform judgments and actions. The types of evidence considered admissible within the legal system are limited. Similarly, the sources of evidence considered acceptable in the field of medical research are neatly ranked within a widely-accepted hierarchy (Davies and Nutley 2000, p.43). Within local authority scrutiny there is not such a culture of privileging one source of information over another, nor is there any such prescription as to what constitutes an acceptable source of information on an issue. There is no prejudgment of a source's likely worth according to a typology, as to do so would risk biasing interpretations of the value of its evidence according to whichever methodology it could be neatest pigeon-holed into. Such openness has reportedly caused differences in health overview and scrutiny between scrutineers and health professionals, with the value of personal experience (the lowest form of acceptable evidence on the health sector's hierarchy) openly questioned, particularly the use of emotive testimony (Smith, Smith-Shacklady-Smith, and Bradshaw 2006, p.47). The elevation by medical researchers of the double-blind randomised control trial (RCT) to the highest status of evidence does not fit with the reality of overview and scrutiny investigations. In addition to costs, the notion that RCTs can be applied to social contexts is mistaken due to the dynamics of human agency and the implausibility of holding every other factor constant except the intervention under investigation (Davies, Nutley and Tilley 2000; Davies 2000). Furthermore, any formal approach that asserted the innate merit of quantitative information sources over qualitative ones would contradict an ethos that avowedly sought to engage and respond to the subjective experiences of ordinary citizens. The inclusion of an evidence hierarchy approach (presumably in a misguided attempt to strengthen the credentials of the scrutiny process) could destroy innovative information collecting and act to curb public involvement.

Since its establishment the process of overview and scrutiny has disappointed in its public involvement role. As has been suggested, innovations in the process of collecting data and involving the public can be seen to largely remain novelties. Involvement needs to be properly funded and include groups who traditionally do not, or cannot, get involved. Whilst the learning action sets funded by the CfPS may have illustrated the capability of the scrutiny process, as argued above the capacity of the process in these case studies was expanded considerably by not insignificant funding. Until funding corresponds to the desired function local authorities will struggle to emulate the best practice forged out by others.

As stated above, an overview and scrutiny process that seeks to engage the public, and enable a meaningful dialogue of public accountability, must show itself to have real influence. Naturally the influence of overview and scrutiny is likely to be increased if it can increase public involvement. Although the features of a more participative brand of overview and scrutiny can be identified – for instance, ensuring widespread publicity for investigations, inviting evidence from the public, and concerted use of co-options – their adoption would be more likely to succeed if introduced as part of a public engagement strategy. Additionally, the intelligent application of performance management, ensuring any hierarchy of evidence is excluded, would help enable such a strategy.

Public involvement in the overview and scrutiny process will be easier attained through a unified approach. As the above discussion illustrates, the measures necessary to progress scrutiny's involvement of the public are far from inexplicable. For example, advice to select and investigate issues of concern to the public if you wish to engage the public is hardly inspired. Equally prosaic is the forecast that without rectification of such clear failings, 'scrutiny meetings are no more likely to generate public interest and attendance than the pre-new constitution committee meetings . . . .' (Snape, Leach and Copus 2002, p.92).

Of course, there are risks with increased public involvement and innovation in overview and scrutiny. For example, if the overview and scrutiny structure is poorly managed, if its role is not understood or appreciated by officers, or by

both executive and non-executive councillors, or if its capacity cannot meet the demands likely from increased public involvement. Equally, introducing an explicit public engagement role and strategy for overview and scrutiny might prove an unpalatable challenge for some councils. It would certainly risk highlighting any past omissions. Progressing public involvement through the scrutiny process is certainly not a panacea for all the ills of democratic accountability or disengagement, but it could be an effective part of the solution to such problems.

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# Quantifying the impact of overview and scrutiny

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*Overview and Scrutiny provides local authorities with a valuable tool for improving performance, addressing the democratic deficit and building more responsive policies and strategy documents. This chapter argues that performance management is critical for councils to quantify the impact of scrutiny locally, and provides a framework to emphasise the potential benefits of developing such a system.*

*I will show there are inherent difficulties with performance management, which may outweigh the costs of implementing such systems but ultimately without the development of an outcome culture and recognition of the impact of overview and scrutiny any commitment towards its delivery will not be developed.*

## Performance Management in the Public Sector

The use of targets and performance management (PM) is intrinsic to the UK public sector. It is a form of indirect control by which central government can exert control over local authorities (Beer 1996) and

*“a framework for continuous improvement in the quality of local government services” (DTLR 2001:23).*

PM requires all public services to exemplify good performance to the public and highlights the importance of achieving best value (Higgins 2005). PM also provides a mechanism by which authorities can learn from the ‘best practice’ of authorities considered to be the best performing (Audit Commission 2002) or provide ‘freedoms and flexibilities’ to top performers (Coulson 2009). Where used effectively PM can motivate frontline staff, enhance service efficiencies and align working practices to council priorities or user expectations (Audit Commission 2003).

As most PM data is published in the public domain there is a distinct role for local authorities to act as a ‘broker’ in the development of public sector added value and to show the public that they are receiving services that are value for money (Jackson 2001). It also encourages authorities to develop indicators that will provide a measure of their capacity to solve ‘wicked’ problems, enhance accountability and develop new strategies (Jervis & Richards 1996). PM in local authorities is driven by the use of pre-defined performance indicators (PIs) that provide an indication to staff of desired results. These PIs enable authorities to exert control over staff (Bevan & Hood 2006). The publication of PM data in the public domain also provides public accountability relating to service quality standards on behalf of the authority.

‘Localism’ places an emphasis on authorities tailoring services to the local community (Audit Commission 2003) and PM is a vital component in setting targets locally that will provide more responsive local services. Despite arguments regarding the *local* nature of targets contained in the Local Area and Multi-Area Agreements (see Coulson 2009) these emphasise the drive to develop a *bottom-up* approach that determines local targets related to locally determined objectives.

## **Outcome Indicators and User Satisfaction**

An integral part of New Public Management (NPM) has been the movement towards measuring outcomes (Wilkinson 2005). Aims and objectives are used to define indicators that measure services achievements in delivering those objectives (Atkinson et al 1997). Effective PM relies therefore on a clear

understanding of a service's aims and objectives and requires PM to be an integral part of service design. It is essential in order to provide an overall assessment of added value that indicators of a services performance, aligned to its objectives, are supplemented by a smaller 'subset' of indicators that provide more detailed assumptions about standards of that service (Bevan & Hood 2006).

The difficulty in measuring value added from Overview and Scrutiny (O&S) is the lack of clarity regarding how much value would have been created without that system being in place. It is difficult to isolate the impact of a specific piece of scrutiny when a variety of policies are implemented at the same time as a review commences (Propper and Wilson 2003).

If O&S can create a responsive policy environment that listens to the views of consumers and service users when developing new policies it should be considered to have added value (Jackson 2001). It is furthermore difficult to define indicators that provide a measure of outcomes or effectiveness due to the unintended consequences that can result from service delivery. It is equally difficult to prove an adequate measure of the impact of a scrutiny where several services operate towards achieving the same objectives (Gaster & Squires 2003), such as the delivery of the Council's priorities.

User satisfaction as a means of assessment and the accumulation of the views of consumers and service users in the monitoring and evaluation of service standards enables authorities to determine service outcomes to provide quality measurement (Gaster & Squires 2003). The definition of what consumers want from a service should also be used to derive the targets that measure the success of that service (Foster & Plowden 1996). The use of consumer satisfaction must however be used with some caution as satisfaction is largely subjective and perceptions of the impact of a service will depend on a person's capacity to access that service (Jackson 2001)

The development of user satisfaction as a measure of impact is more complex due to the co-governance of localities. Co-governance has increased the

numbers of stakeholders with an interest in council services and led to the development of a wide range of indicators for measuring collaborative outcomes. This increase in indicators has been regarded widely as ‘over-burdensome’ and reduced the benefit of their measurement (Wilkinson 2005). This wide range of stakeholders does therefore beg the question if O&S has added value, to who has it added value and if it has not added value unilaterally has it devalued some other area of service delivery or been at the expense of another particular group of stakeholders?

### **Gaming as a Consequence of PM**

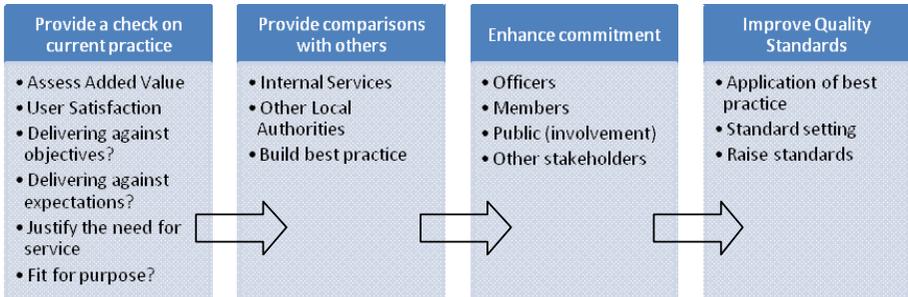
For PM to be effective in local authorities it must “have very clear benefits to staff, to the public and to the organisation” (Gaster & Squires, 2003, page 19). If the benefits of PM are not clear it will be subject to ‘gaming’ or ‘dysfunctional behaviour’ (Bevan & Hood 2006). Le Grand (2003) argues that service providers are either ‘knights’ or ‘knaves’, those that that will provide a true reflection of their services performance (knights) and those that will game in order to receive incentives or prevent intervention (knaves). Bevan & Hood (2006, page 521) describe this behaviour as “hitting the target and missing the point” whereby any PI data will provide an unrealistic picture of the actual function of the service.

The use of PM has encouraged the development of a ‘*naming and shaming*’ culture whereby those authorities considered to be the worst performing are subject to direct intervention from central government. In an effort to avoid this intervention managers have used opportunities to *cheat* to ensure their services are not adversely affected by the use of or publication of performance data (Hood 2002). The development of independent regulators such as the Audit Commission to minimise the potential of gaming provides third-party assurance that performance data is being recorded and presented appropriately.

## A Framework for Measuring Impact

The use of Performance Management to quantify the impact of O&S provides the following key developments:

**Figure 1: Purpose of an OSC performance Management Framework (adapted from Deming’s Improvement Cycle)**



Source: Koch 1991

This performance management framework needs to be considered as a continual process in order to measure value added over time. Deming’s improvement cycle (see Koch 1991) emphasises that consumer demand is constantly changing and as a result of rising expectation services need to be aware of the need to improve. It is necessary to use performance management data regularly to define service changes that will improve performance in line with rising expectations. Impact must be reviewed continually in order to measure improvement against set standards over time. Once service changes have been implemented to *improve quality standards* authorities will need to *check current practices* in order to assess how further improvements can continue to be made.

I will develop a performance management framework to quantify the first element of this framework “*providing a check on current practice*” considering how the measurement of the impact of O&S might be developed in local authorities. I will consider the potential benefits outlined above as well as consider the systems that are already implemented in some local authorities

to assess their suitability. It should be accepted at the outset that no performance management system is perfect and there will always be some aspects of performance that are not reliable indicators of performance (Bevan & Hood 2006).

## **Providing a Check on Current Practices**

### *Value Added and User Satisfaction*

The areas of greatest importance for performance measurement relating to services are the outcomes and impacts resulting from the delivery of that service. Measuring the outcome and impact of a service is however the most difficult to measure (Jackson 2005)

I have already stated that a measure of value added must commence with a clear understanding of the aims and objectives of a service. The role of O&S concerns (i) holding executive Members to account; (ii) undertaking policy development and review; (iii) best value reviews and performance management; and external scrutiny (DETR 2000). A measure of impact of O&S will assess not only the capacity of back-benchers to engage in policy development and review and get involved in decision making processes but will also consider the role that O&S has played in enhancing the democratic deficit and providing opportunities for engaging the wider public in local authority decision making.

Two measures employed by local authorities to measure value added from services are the measure of (1) *gross outcomes* taken at a designated date to measure service delivery against an agreed standard; or (2) *net outputs* resulting from the service over a longer period of time (Propper and Wilson 2003). Both of these measures are however laden with methodological problems in that they do not provide an accurate measure of added value in relation to what would have occurred had the service not been implemented. As the measurement of outcomes and value added can often take a longer period of time to accrue it makes it difficult to quantify the impact of recommendations supplied by O&S or the consideration of an issue by a Committee within a short period of time.

Figure 2 provides examples of indicators recommended by the Centre for Public Scrutiny (CfPS) for measuring the impact of O&S in local authorities.

## Figure 2: Performance indicators used to measure the impact of O&S

% of items arising from the forward plan  
% of Members who feel they are able to add value through the O&S process  
% of recommendations accepted by Cabinet  
% of items with a clear link to the Council's performance management system  
% of items with a clear link to the Council's priorities  
Number of public in attendance at OSC meetings

Source: CfPS); retrieved from <http://72.47.251.196/scrutiny-exchange/wiki/?id=7> on 9 February 2009

The indicators at *Figure 2* are measures of outputs and do not provide any potential for measuring outcomes, results or value added. This focus on *outputs* has been a criticism of most local authority services (see Coulson 2009). Output measures provide a check on the activity being carried out by O&S but indicators such as “% of recommendations accepted by cabinet” do not enable officers to draw any conclusions about the value added by those recommendations; how many of those recommendations were accepted **and** implemented? What effect did the recommendations have? Similarly indicators that measure the “% of items with a clear link to the Council's priorities” do not provide a measure of the outcomes of those items or whether consideration helped the Council to enhance activities aimed at delivering the Council's priorities.

In order to measure added value appropriately authorities should consider the outcomes that they wish to achieve in relation to the original intentions of the Local Government Act (2000). Authorities should be aware of the need to consult with their key stakeholders/service users; namely non-executive Councillors and the public. The effective use of key stakeholders in defining performance indicators to measure outcomes is critical to the success of PM and the definition of appropriate organisational objectives (Gaster and Squires

2003). This stakeholder engagement also requires authorities to consider what these stakeholders really want from a service and what the objectives of the O&S service should be (Neely 2001).

An appropriate measure of added value will consider how the O&S process has added value to them enabling the authority to make services more responsive to their needs. The direct involvement of these stakeholders in assessing service standards will enable managers to ensure that the O&S process provides meaningful involvement and is appropriately organised taking into account what stakeholders want from the service (Harding 2003).

*Figure 3* contains potential measures of added value for each of these key stakeholders in relation to the O&S process and those key objectives outlined above.

The use of these indicators is intended to provide a focus on the key objectives for O&S but is likely to vary locally. Authorities will likely choose to focus on the potential for O&S to achieve one objective rather than all three. The implementation of these indicators within a local authority would likely require key stakeholders to agree on which specific objective they would like to focus.

These performance indicators emphasise the importance of a system for monitoring the implementation of recommendations and outcomes of meetings. Added value and service improvements are unlikely to be visible immediately and more likely to become apparent over time. Scrutiny officers must develop the capacity to evaluate value added through more longitudinal studies of performance that will more appropriately assess the impact of undertaking scrutiny reviews (see Jackson 2005)

Changing stakeholder needs and expectations also demands that assessments as to whether or not the service is *fit for purpose* need to be undertaken regularly. Assessments of the impact of O&S can not therefore be viewed in isolation but must be longitudinal in focus providing benchmark data from which impact can be continually reviewed.

## **Figure 3: Indicators that could potentially provide a measurement of overview and scrutiny outcomes relative to key objectives**

### *1. Policy Development and Review*

- % of recommendations implemented by the executive
- % of scrutiny reviews that have had a direct impact on service improvements
- % of back-benchers who feel able to engage effectively in policy development and review (\*)
- Number of performance indicators that have improved following OSC consideration
- Number of improvements on budgetary overspend following OSC consideration
- Number of service improvements identified in independent audit following investigation by an OSC

### *2. Democratic Deficit*

- % of back-benchers who feel O&S is able to exert influence over Cabinet and / or Senior Management (\*)
- Numbers of partnerships actively engaged during consultation via OSC investigations
- Numbers of service / partnership governance arrangements investigated found to be adequate

### *3. Public Engagement in local authority decision making*

- % of the public who feel more informed about the working of the Council as a result of overview and scrutiny (\*)
- % of public who feel they have influenced local authority decision making (\*)
- % of public who feel they have had an opportunity to express their views with regard to a specific piece of policy (\*)
- Number of items referred to an OSC through 'Council Call for Action' resulting in improved satisfaction with service (\*)

## **Problems with User Satisfaction**

Relying on people's opinions of services is an 'unreliable science' (Coulson 2009). Those measures in figure 3 indicated with (\*) are those that would most likely be measured by user survey and would be based on the opinions of individuals engaging with the service. There are considerable questions about how social bias and economic or political interest effect people's perceptions of service standards (Clarke 2005) in questions such as these. A further difficulty with the use of these indicators is that the acceptable standards of service quality will change over time and as a result measures of added value may change to reflect the growing expectations of those stakeholders involved in the process (Qureshi & Henwood 2000). Measures of user satisfaction rarely measure what they are supposed to and do not provide actual levels of satisfaction experienced by service users (Townsend 2000).

Ultimately whilst user satisfaction alongside officer assessments a of the value added by O&S will provide a more rounded view of the service (Harding 2003) the timely and costly nature of surveys for measuring satisfaction make them an unfeasible regular method of survey for local authorities in quantifying the impact of O&S.

The accurate assessment of added value in O&S will rely on the implementation of a SMART recommendation system (recommendations that are Specific, Measurable, Accurate, Realistic and Timely). Evidence-based recommendations that provide definable actions to officers or Executive Members aimed at developing service / performance improvements make it easier to monitor the implementation of recommendations and the impacts that result. Whilst it might be simple for authorities to implement a system for monitoring implementation of recommendations until Members become more outcome-focused through the use of SMART recommendations measures of value added will be hard to come by for O&S.

In quantifying the impact of O&S authorities should be aware that whilst the overall objectives of the process remain the same by the very nature of scrutiny reviews it is likely that every review will possess different objectives. A system

of measuring impact on a review-by-review basis should therefore be fostered in local authorities to adequately assess the impact of a review against its specific objectives. Whilst it may be easier to provide an objective assessment of the impact of O&S on more defined objectives than *reducing the democratic deficit* it will rely on Members and officers more appropriately defining the objectives of reviews at the outset. Clearly defined objectives and an understanding of the aims of a review group from conception will make it easier to quantify the impact of that group in relation to its objectives.

## **Comments and Conclusions**

Whilst the development of an appropriate PM system is problematic the potential benefits it can provide to O&S make it a critical element of local authority O&S. The use of PM provides transparency in local authorities enhancing commitment from stakeholders to improve outcomes. This transparency is critical in minimising the potential for gaming that could be inherent in the PM system (Clarke, 2005). Frameworks must therefore look beyond just the impacts to the Council and consider interactions between individuals and local partners in enhancing organisational objectives (Hawes 1992).

I argue that PM is critical to quantify the impact of O&S and is the key means in building collective commitment for delivering organisational objectives (CLG 2007). As stakeholders are shown the potential benefits of scrutiny as a result of scrutiny in action they will be more committed to its delivery. Developing an understanding of performance will also enhance an organisational culture of learning (Atkinson et al 1997) providing those partners and officers with the best practice that will help them to achieve the best possible outcomes.

Whilst I have shown there are significant inherent difficulties with any PM framework if it is set locally in consultation with key local stakeholders and users and provides opportunities for local users to define service objectives it will provide a greater measure of success. The drive for *local* indicators is well established (Audit Commission, 2003) in order to promote local innovation. Local authorities will need to be aware of their locality in order to develop a performance framework that meets their local circumstances. A key component

to developing this local framework is the presence of clear ownership locally from those at the most senior levels of the organisation. This commitment will drive service improvements and enable the utilisation of resources to improve commitment and outcome of O&S across the organisation (see Coulson 2009).

The new Comprehensive Area Assessment (CAA) sets out responsibilities for O&S in holding executive Members to account and contributing to improving outcomes (Audit Commission 2009). Scrutiny reviews will also provide a basis of evidence on which the audits of some services may be based. The CAA provides a foundation for local authorities to stress the importance of O&S locally but for their role to be fulfilled a performance culture measuring the impact of O&S will be critical. Authorities must develop an outcome culture that runs throughout all scrutiny reviews undertaken and full assessments must be made over time on a case-by-case basis of the success of those reviews. Where positive outcomes have been achieved they should be publicised as local success stories that can be used by other scrutiny authorities to develop their own services. Where positive outcomes are not achieved authorities must foster an organisational culture that is receptive to learning from the best practice of others in order to develop higher quality service standards.

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# Case Studies of Scrutiny in Action



# Innovation in Scrutiny: the South Norfolk Experience

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*scrutiny* [*latin* scrutinium, from scrutari *search, examine* (originally) *sort rags*, from scruta *trash, rubbish*] ... 2. *Investigation, critical inquiry; ...* 3. *The action of looking closely or searchingly at something*

*Shorter Oxford English Dictionary (5<sup>th</sup> edn, 2002)*

This discussion of South Norfolk District Council’s innovations in Overview and Scrutiny (O&S) structure and practice must begin with a description of the dispositions first made in anticipation of the introduction of “executive arrangements” as required by the Local Government Act 2000.

South Norfolk Council serves an average-sized (population 110,710, 2001 Census) second tier District covering an area to the South of Norwich, with the River Yare to the North, the River Waveney to the South and East and with its Western boundary roughly conforming to the ancient Central Norfolk watershed (Williamson 1993, 15-19). From 1995 until the elections in May 2007 it was Liberal Democrat controlled. From the outset of “executive arrangements” it has had a single Scrutiny Committee and, until May 2007, the Overview function was performed by four Policy Development Panels (“PDPs”) which functioned independently of the Scrutiny Committee.

Any three members may Call In any Cabinet decision. The deadline is 12 noon on the eighth day after the meeting of the Cabinet. There is no limit on the number of Call Ins in which any member may participate or other restriction on which Cabinet decisions might be Called In. In addition, the Council's Constitution specifically assigned to the Scrutiny Committee a continuous oversight of the Council's democratic structures, the conduct of Best Value Reviews and the consideration of the Council's Annual Budget between its adoption by the Cabinet and its approval by the Council.

Because of the autonomy of the PDPs they each had their own work programmes. Their areas of interest were derived from the assigned responsibilities of the Cabinet portfolios, but as there were six departmental portfolio-holders and four PDPs, some degree of overlap was inevitable. A further element of this fragmentation of the O&S function arose from the requirement that PDP Chairmen would each separately report direct to Council as well as the report by the Scrutiny Committee Chairman. O&S thus lacked a single voice in its formal dealings with the whole body of councillors.

Moreover, the majority party prior to the 2007 District Elections evidently saw O&S as a training ground for Cabinet members or as a billet for ex-Cabinet members who intended not to seek re-election and therefore wished to wind-down in semi-retirement. In fact, over the term of the Council 2003-07 there was an almost complete turnover in Cabinet personnel. Only one of the portfolio-holders served throughout the four years. All those who joined the Cabinet during that period had previously served a stint of one or more years as a PDP Chairman and/or a Scrutiny Committee member. Following the change in control in May 2007, five of the seven members of the new Cabinet had served on the Scrutiny Committee during the previous Council. It is evident that O&S was seen as a stage in a councillor's career rather than as a discrete career within Council service in itself.

Broadly, these were the arrangements which were in place when I was appointed Chairman of the Scrutiny Committee in May 2003. I had been a London Borough councillor 1968-94 but this was my first experience of the

new system. Though I was thoroughly familiar with the tried and trusted operation of the traditional Committee system, I have never suffered from nostalgia for the old system. We had to make the best of the system which Parliament had (mistakenly in my view) imposed upon us. In fact I have come across very little nostalgia for the old Committee system. South Norfolk has an all-out election every four years. In 2003 and again in 2007 there was a 50% turnover in members. Of the 46 members elected in 2007, only 13 have had experience of the Committee system and, of these, five gained that experience in other local authorities.

In contrast to many Councils, in 2003 the Chair of the Scrutiny Committee was not seen as a rôle for the Leader of the Opposition. Group colleagues conceived the post as technocratic, not charismatic; forensic, not political. It followed that the Scrutiny Committee was not simply to be treated as part of the machinery of opposition. The Centre for Public Scrutiny's concept of *the critical friend* was embraced. The Liberal Democrat majority had conceded both the Chair and the Vice-Chair of the Committee to the Conservative minority (18 of 46 members) and had allowed them to have a majority of eight to seven on the Committee contrary to Widdecombe principles (*Local Government and Housing Act 1989*, ss.15-17 and Schedule 1).

However, it was made clear by the Liberal Democrats that the continuance of this concession was dependent upon it not being seen by them to be misused. This condition generally proved to be no hardship. O&S is best used within a constructive, consensual framework. In the four years that these arrangements operated, there were only three straight party political votes in the Committee and two of these were at the final meeting of the Committee before the elections in May 2007. Applying the four-form typology of Scrutiny proposed by Stoker *et al* (2004, 58-62), these three atypical instances might suggest an "Opposition Game" classification, but "Apolitical Entrepreneurship" would be far more characteristic of the general run of South Norfolk's Scrutiny.

I found my previous academic studies of value in this connection. I had always doubted the philosophic credentials of the Doctrine of the Separation of Powers

upon which the “executive arrangements” were claimed to have been predicated (DETR 1998, paras 3.12-3.19). As I have already shown in Chapter 4 that Doctrine was intellectually flawed in its conception and had never truly applied in political reality. But there was a model in English Constitutional History which I found applicable to this context.

In the thirteenth and fourteenth centuries, the separate institutions of the Courts of Justice, Parliament and the Privy Council had emerged from the *Curia Regis* as a result of functional differentiation (Baker 2002, 17-18, 204-06; Butt 1969, 31-37). Within this arrangement Parliament’s rôle would come to be defined as the grant of supply and the redress of grievances (Knappen 1964, 149-52). The functional differentiation introduced by the Local Government Act 2000 similarly split off the regulatory (in which I include standards and ethics), deliberative and executive functions and assigned them to distinct (though in reality, interlocking) sub-sets of the whole body of councillors. To that whole body, the Council itself, was reserved, *inter alia* the power to grant supply, i.e.: to approve the Budget and set the Council Tax. And to a specialist sub-set acting for that whole body, the O&S members, was assigned the responsibilities which could be seen, in traditional terms, as “the redress of grievances”. In the Green Paper by which the “modernisation” agenda was launched, the DETR envisioned non-executive councillors “channelling the *grievances*, needs and aspirations of their electorate into the scrutiny process” (DETR 1998, para.3.43, my emphasis). I found this a valuable model for getting to grips with the nature and scope of the O&S duties which it was my task to lead.

It was soon evident that there were several shortfalls in the existing South Norfolk O&S arrangements. For example, though the responsibilities of five of the portfolios were covered by the PDPs, there was no such oversight arrangement in respect of the most important of the portfolios, Resources (which accounted for more than 50% of the Council’s Budget). It was readily agreed that the Scrutiny Committee would fulfil the oversight function in relation to the Resources portfolio thereby plugging this glaring gap in the arrangements for democratic accountability.

Towards the end of the second year of the new Council it was agreed that Scrutiny Committee should carry out a review of the structure and workings of the PDPs. This had been prompted by widespread concerns that the panels were ineffective; for example, in the Autumn of 2004 (the panels met quarterly) all four panel meetings had been cancelled for lack of business. Again, some panel meetings had tended to assume an introspective, almost incestuous character, with stakeholders and partner organisations giving presentations largely to each other (though ostensibly directed at the councillors in attendance) to support their respective cases for project-funding. Many councillors regarded the panels as merely “talking shops”, making no positive contribution to the work of the Council. Indeed, with the development of Local Strategic Partnerships, many argue that such “information exchanges” were more appropriate to those forums.

Another concern was the lack of clarity as to the purpose the panels. The operation of the Panels had been hampered by the lack of alignment between their remits and the Cabinet portfolios. In some panels three portfolios overlapped. This caused confusion and repetition when the same matter had to be considered by two or even three of the panels. There were also occasions when it was unclear to which panel a particular issue should be referred. By way of solution of these specific issues, some form of co-ordinating mechanism was required. My *ad hoc*, informal meetings on an irregular basis with the four PDP Chairmen provided a short-term, partial solution, but a permanent arrangement, embedded within the Council’s Constitution, was clearly indicated.

Against this background of largely successful, co-operative working in the Scrutiny Committee but of poorly co-ordinated and ill-focused Overview through the PDPs, it seemed sensible to use the review to more firmly integrate PDP activities into the O&S function and to achieve certain other necessary innovations. These objectives received cross-party support and were welcomed by the officers who had been working to make the system effective despite its shortfalls.

Following a review by a special Task Group and extensive discussions between the Groups, two principal measures were adopted and applied from the Annual Meeting of the Council in 2005:

1. though all the PDP Chairmen were majority party appointees, the practice in relation to the Vice-Chairmen of PDPs had been inconsistent. Two had majority party Vice-Chairmen, one had a minority party Chairman and the fourth had a co-opted member as Vice-Chairman. It was agreed that in future all four PDPs would have a minority party Vice-Chairman. As a *quid pro quo*, it was agreed that the Scrutiny Committee itself would in future have a majority party Vice-Chairman.
2. to ensure the joined-up operation of the O&S function it was also agreed to institute an Overview and Scrutiny Management Committee (“OSMAC”). This would comprise the Chairman and Vice-Chairman of Scrutiny Committee and the Chairmen and Vice-Chairmen of the PDPs. It would oversee the O&S function and, in particular, control the allocation of work between the Committee and the PDPs and would be chaired by the Scrutiny Committee’s Chairman. Being evenly balanced between the two Groups, OSMAC of necessity became a focus of co-operative, consensual working.

Another problem tackled in this mid-term review was the Call-In. Unlike some authorities, the Call-In was sparingly used (this seems to be a common finding, Stoker *et al* 2004, Fig.8, 48-49) and often only because the Cabinet decision called-in had been based on incomplete information or because the non-executive members had been given little or no opportunity influence or otherwise to contribute to the decision-making process (call ins have been initiated by majority and minority party members). For many matters, therefore, the Call-In was something of a blunt instrument since it suspended the implementation of the decision until the Call-In had been cleared. This could be disruptive to the working of the Council but given the respective strengths of the majority and minority parties, at best a Call-In gave an opportunity to persuade the Cabinet to reconsider its stance.

With these issues in mind, it was agreed to make a distinction between a “suspensive” and a “non-suspensive” Call In. A “non-suspensive” Call In would not delay implementation of the decision in question pending the matter being referred to the Scrutiny Committee. It could be considered by the Committee or it could be referred to a PDP. The destination of a non-suspensive Call In would be a matter for OSMAC. A Call In which was not stated to be “suspensive” would be treated as “non-suspensive”.

Notwithstanding Ashworth and Snape’s view (2004, 544) that emphasis on pre-decision scrutiny signified “scrutiny’s lack of ‘teeth’ or influence”, pre-scrutiny has been effective in South Norfolk and popular with officers, non-executive councillors and cabinet members alike. It is seen by officers as reducing the risk of a suspensive Call In (in South Norfolk no item cleared through pre-scrutiny has yet been subsequently called in); for non-executives it provides an opportunity to participate in the decision-making process and for the cabinet it can usefully commit Administration backbenchers and/or the Opposition to the Cabinet’s preferred policy.

These arrangements worked well for the remainder of the term of the Council. Most Call-Ins proved to be non-suspensive and there was never a disagreement between the Chairman and the Vice-Chairman as to the disposal of such matters. In any event, the Chairman and the Vice-Chairman met frequently, to review the Agenda of forthcoming meetings and to follow up previous Committee decisions. OSMAC became an accepted part of the O&S function. Dissatisfaction with the somewhat amorphous working of the PDPs continued but at least their work programmes were co-ordinated and there was a mechanism for resolving conflicts.

Recently increased to 1.5 full time equivalents, South Norfolk has always enjoyed professional and resourceful dedicated officer support for the O&S function. It has been of particular significance that throughout the six years of O&S in the Council members have had the services of an officer who had formerly been an elected member of a neighbouring authority. This previous experience proved to be invaluable for he could see “from the other side” the implications

of O&S being member-led and he could thus act as an advocate for members' concerns in the transition from the old system to the new, a transition which required flexibility and a willingness to adapt by both officers and members.

The final stage of the innovations to date in South Norfolk's O&S arrangements followed the District Elections of 3<sup>rd</sup> May 2007 when Conservatives won a landslide victory, taking 21 seats from the Liberal Democrats. With only 7 minority party members (and 39 majority party members) it offended political common sense to concede the Chair of the Scrutiny Committee to the Opposition. Because I was prepared to confine my immediate political focus to O&S work which I believe required both dedicated officer support and committed member leadership, I was willing to continue as Chairman and to further develop the consensual approach in the changed circumstances.

The Opposition professed to be unhappy with my reappointment but it was countered that backbench Administration members had just as much reason to hold the Cabinet to account as the Opposition. All 39 Conservative members had been elected on a carefully developed manifesto over which much trouble had been taken to ensure that all candidates "owned" the terms on which the new Administration was to win its mandate. However, it was seen as appropriate to maintain the minority party membership of the Scrutiny Committee at better than Widdecombe proportionality (4 Liberal Democrats, 7 Conservatives) and, moreover, the Vice-Chairman of the Committee would be a Liberal Democrat. I thus agree with the Liberal Democrat majority party Scrutiny Chair interviewed in Cole's study of Devon County Council's pioneering implementation (May 1999) of the executive/scrutiny model when he admitted that he owed a "duty of care towards the opposition" (Cole 2001, 31).

In any event, holding the Cabinet for the time being to account had become just one element of the work of the Scrutiny Committee. During the previous four years the "outreach" element of the Committee's work, making its investigative and forensic skills available to the wider community, had been evolving. South Norfolk had not been inhibited from addressing the "wicked issues" (Wilson and Game, 2006 328-29). For example, in 2004, the impact on the District of

the Medium Term Review of the Common Agricultural Policy was investigated. Again, in 2006 the Broads Authority (which exercises planning functions over parts of the District) was examined, in particular the potential conflict between its three principal duties; to promote safe navigation, to preserve the environment and to promote economic regeneration. These are examples of Scrutiny reviews where the Committee acted as “A deliberative forum with an investigative and even inquisitorial edge ... a far more inclusive process ... involving citizens, communities, stakeholders and experts in a detailed examination of policy problems and possible policy solutions” (Copus 2004, 222-23).

The Community Call for Action (“CCfA”) proposed by the Government’s 2006 White Paper “Strong and Prosperous Communities” confirmed that community outreach was an area of future O&S growth. However, the CCfA as proposed seems fatally flawed, bureaucratic and cumbersome, and unlikely to achieve the stated intention of bringing the community closer to the Council (DCLG 2006, 34-39). Accordingly, South Norfolk has introduced the Community Reference, a simplified, accessible version of the CCfA which was launched in July 2007 and which has already received and dealt with its first grievance.

The other major innovation following the change in control in May 2007 was a more fundamental reorganisation of the Overview side of the O&S function. Independently of this, the Cabinet portfolios had been realigned and the overlaps virtually eliminated. The four PDPs were replaced by three Overview Sub-Committees with a virtually one-to-one relationship with the three new principal service-delivery portfolios. As sub-committees of the Scrutiny Committee, there would now be a single interface between the O&S function and the Council. Instead of five independent work programmes there would now be a single, integrated O&S work programme under the control of the Scrutiny Committee. The Overview function in relation to the non-departmental portfolio, Property, Finance and Resources, would be carried out by the Scrutiny Committee.

Turning to the four-model taxonomy of Party Groups in relation to Scrutiny suggested by Leach and Copus (2004, 337-42) and more fully developed by

Copus (2004, 228-36), I would place the South Norfolk Conservative Group somewhere between the “arbitrator” and “filter” models. For example, both groups arrange pre-Scrutiny Committee sub-Group meetings, but (and I can only speak of the Conservative Group) these are for immediate practical purposes only, e.g. identifying the lead contributor and sharing pre-meeting research on major items of business (reports often give website addresses to facilitate members’ preparation).

“For the full potential of scrutiny to be realised”, Wilson and Game (2006 327) have argued, “at least three conditions are required. First, councillors themselves must approach the process positively, acknowledging that not being part of the executive can be *empowering* at least as much as disempowering. ... Second, scrutiny members need to learn not just new skills, but also new ways of working – constructively across the party divide. ... Third, effective scrutiny requires, in addition to committed and trained members, *dedicated* officer and resource support – in both senses of the adjective. ... officers need to be allocated specifically to the scrutiny process, and ... to view the assignment positively, and not as some kind of second-class, career-blocking posting.” By these criteria, I submit that South Norfolk is well on the way to achieving the full potential of the O&S function within its District.

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# Changes to Sheltered Housing in Salisbury District

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This paper presents an analysis of a scrutiny review by Salisbury District Council of changes to its sheltered housing service, concentrating on aspects that have emerged as common features of overview and scrutiny in the UK (Coulson 2007) and concluding with observations of relevance to practitioners.

## Scrutiny within the Council

In 2001, the council adopted new political management structures based on the 'weak leader' cabinet model (DETR 2000) and established a politically balanced overview and scrutiny coordinating committee chaired by the administration, together with four overview and scrutiny (O&S) panels to mirror cabinet portfolios. The panels were chaired by opposition councillors and were not politically balanced. This reflected the most common form of scrutiny structure in the UK (CfPS 2006). The council provided an annual revenue budget of £16,000 to support the work of the scrutiny panels - over three times the district average (£5,218). The equivalent of 2.5 full-time officers supported the work of scrutiny - significantly higher than most other district councils in the UK (CfPS 2006).

## **The Sheltered Housing Review**

In May 2005, the council's Community and Housing O&S Panel commissioned a review of changes to sheltered housing services. The review focused primarily on public concerns about the removal of live-in wardens from 22 sheltered housing schemes, a change affecting 550 elderly council tenants. There was strong public and media interest in the review and it was highly politicised from the outset. The review was chaired by an independent councillor together with five cross-party backbench members and a co-opted representative of the local Tenants' Panel. The review concluded on 22 November 2005 with the publication of a final report detailing 26 recommendations, all of which were subsequently adopted by the council. The report was highly critical and as a consequence the leader, the cabinet portfolio holder and the chief executive issued personal apologies to the council and the tenants affected by the changes.

## **Issue Selection and Scoping**

The council's Community and Housing O&S Panel was presented with a list of possible topic areas for review drawn from various sources, including: member suggestions, the executive forward plan, national government, interest and lobby groups, public consultation and performance information. This approach to topic generation had been introduced following a review of scrutiny arrangements in 2004. The Panel initially determined to examine the impact of the government's *supporting people* programme – a range of centrally funded initiatives aimed at helping vulnerable individuals to live independently (ODPM, 2004). However, before the review had commenced in earnest, a series of articles appeared in the local newspaper drawing attention to public concerns about the sheltered housing service. The Panel revisited the scope of the review in response to the concerns expressed by tenants. The review changed from a consensual policy review into a highly politicised committee of inquiry – an area that is often a difficult role for scrutiny to perform (Snape and Taylor, 2001).

This case suggests that scrutiny panels need to retain an ability to adapt and respond to their own findings and to changing circumstances (including a willingness to abandon work where this is necessary). Members need to be

wary of (although not totally dismissive) of the ‘outside of the terms of reference’ objections that serve to limit the scope and ambition of reviews. It is the purpose of scrutiny to examine and interpret evidence; to then ignore that evidence because it does not fit neatly into the framework would be self defeating.

## **The Role of Officers**

Before 2005, lead service professionals had been appointed to advise each review group and a member of the senior management team had acted as a ‘champion.’ During the council’s 2004 review of overview and scrutiny councillors had raised concerns that senior managers within the council were having too much influence and that rather than championing the process they were acting as a ‘minder.’ The tension created by this ‘twin-hatted’ (or unitary) approach was explored by Fox and Leach who argued in favour of a formal separation of executive and non-executive roles (Fox 2004; Fox and Leach 1999). An informal separation was achieved within the council by ending the advisory role of service professionals, with the lead advisory and research roles fulfilled by the scrutiny team.

This separation had some benefits. Scrutiny was now more independent of the executive and more clearly member-led, reflecting widely accepted best practice (Ashworth 2003, Johnson and Hatter 2004, CfPS 2007, Coulson 2007 amongst many). Scrutiny officers had a well defined and more prominent role within the authority with increased resources. In addition, the unplanned workload that scrutiny previously imposed on service professionals had been removed allowing them to concentrate on achieving the council’s corporate priorities.

This informal separation of roles allows us to examine Fox’s (2004) hypothesis concerning the problem of the ‘unitary’ officer. Salisbury’s experience shows that this division is achievable (at least in part) and there can be benefits. However, this split brings its own set of problems. First, the removal of service professionals and senior managers from direct involvement in scrutiny polarises the organisation and acts against the ‘whole organisation’ approach recommended by the New Local Government Network (2004). It also means

that (in principle) scrutiny is denuded of direct technical expertise and professional knowledge (in practice this has been addressed by interviews, roundtables, external commissioning, benchmarking and best practice reviews). The polarisation of roles can exacerbate negative behaviours and create antagonistic and asymmetrical power relationships - examples will be highlighted later in this paper.

## **The Problem with Interviews**

The scrutiny review included the analysis of written and oral evidence from a range of councillors, officers and tenants. The interview sessions were cordial and participants viewed them as constructive. The interviews were programmed early in the review and led most members of the Review Panel to form the impression that they were getting quickly to the root of the problems. However, as will become clearer later in this account, this impression was false and we need to examine the interview evidence to understand the reasons why.

Under questioning, the service professionals and councillors explained the motivation for the service changes, stating that funding reductions resulting from the new needs-based '*supporting people*' regime was threatening the future of the sheltered housing service, putting at risk the wellbeing of tenants. This, coupled with rising expectations and increasing inequality of service provision, was driving the need for change. The interviewees conceded that consultation with tenants could have been handled better but stated that it was normal for service changes to meet with a degree of initial resistance. The scrutiny review group accepted this account and concluded logically that the main problem lay with the way tenants had been consulted by the council, for which there were plausible explanations such as staff absences and the fact that some of the elderly residents were confused about the messages they had been given (Salisbury District Council 2005).

None of the evidence submitted to the review by interviewees was factually incorrect – no one lied to the review. However, the evidence had covered only selective aspects of the issue and had emphasised certain issues as more important than others. Better questioning might have probed deeper into the

issues, but the review group at that stage had only limited knowledge of the issues based on the partial research completed at the time.

Understanding the theoretical dynamics of scrutiny is important at this point. Firstly, we must examine the theory of gaming. Game theory constructs scenarios where there are winners and losers; in our case the scrutiny inquiry could find failings in the actions of some or all of the interviewees, while giving praise and credit to others. Faced with this, individuals are likely to seek better results for themselves (Hill, 2005). This simple conclusion already offers a plausible - if partial - explanation of events.

Next we will take a brief look at the idea of information asymmetry (Akerlof 1970) and the concept of moral hazard (Baker 1996). Akerlof would maintain that logically the interviewee has a fuller understanding of the facts than the interviewer. The interviewer with limited knowledge of the issue has to rely on the account of the interviewee and is unable to form a view as to whether this is a full or partial account. If the unknown facts reflect poorly on the interviewee it cannot be a realistic expectation for these facts to be volunteered in full. In this situation, the moral hazard is that the interviewee is likely to give only a partial or selective account that creates a false understanding of the situation in the mind of the interviewer. An extrapolation of this theory suggests that the process of presenting, selecting or emphasising certain facts, by omitting others (even those that are unknown) alters or 'others' the real situation (Law 2003). In our case, this presents a risk on two counts – first the interviewee may be selective in their account and, secondly, the scrutineer may then compound the situation by selective reporting or through emphasis of only parts of that account in their own analysis. In such situations scrutiny can further obfuscate or - at worst - validate false or selective accounts of reality. It is only through a process of multiple interviews, comprehensive document analysis and evidence assembly that a fuller and clearer picture of the facts can emerge – scrutiny officers need to be very careful about relying on any single account as we shall see later in this article.

The scrutiny officer also has to be mindful of obvious pitfalls when recording and using the evidence from interview sessions. In our case, the scrutiny officer took long-hand notes of the interviews, retaining only brief written summaries that were first 'cleared' with the interviewee. Clearly, it would be impractical for scrutiny officers to use stenographers or verbatim transcripts in all cases. And here lies a problem, because the analysis of such discourses can have a significant bearing on the way we interpret the reported reality. In this review, the scrutiny officer recorded only those parts of the discourse that were deemed relevant or significant and discarded parts considered inconsequential or irrelevant. The scrutiny officer has thus created a conception of reality that may be influenced (biased) by her own perspective (Antaki, Billig, Edwards and Potter, 2003). This methodological flaw was subsequently compounded by selective quotation in the final scrutiny report. There is some inevitability in this failure, but scrutiny officers need to acknowledge and address the perceptions and prejudgements they might inadvertently bring into the process.

## **Involving Tenants**

The review involved tenants in all aspects of its work. A sheltered housing tenant was co-opted onto the review group, all tenants were surveyed and visits were made to four of the council's sheltered housing schemes.

The involvement of a co-opted tenant was perhaps the single most beneficial aspect of the review, although for the councillors and officers at the time it was a very challenging experience (Green 2007). The representative expressed extremely strong views about the handling of the service changes, sought his own independent legal advice during the review and interviewed scheme wardens and officers privately outside of the review process. Although councillors questioned his role and impartiality, the Chair made a point of keeping him involved in the review. It was through that involvement that the review group became aware of many key issues including - most significantly - the fact that the council had (most likely) broken the law. This introduced an agonistic dynamic that caused the review group to continually reassess and challenge the evidence - an approach recommended by the Centre for Public Scrutiny (2007).

The review group carried out a survey - a simple personal letter from the Chair to each tenant inviting views. 160 (29%) residents responded in writing. This is a respectable response given the client group. The chair wanted to avoid the tick box survey approach preferring a less formal qualitative approach. By writing a simple letter, the chair avoided the common pitfalls associated with many quantitative surveys. As she recalled later, she 'did not want the outcome to be numeric data, (she) wanted issues in the tenants own words' (Green 2007). There is much to commend this approach, but it is difficult and time consuming to analyse responses in this format.

While useful to the overall review, the survey was not without its own methodological problems. By identifying and quantifying key themes from the consultation, the scrutiny officer may have constructed a neat and rational order from a more complex and inchoate set of individual perceptions. A re-reading of the tenants' letters shows that alongside the main shared concerns there were hundreds of more individual concerns. On the face of it these may seem trivial and inconsequential, but taken collectively they may have had a significant influence on overall dissatisfaction. If this is the case, then the impact of the more common issues may have been overstated. Here again we are returning to the theory of 'mess' in social research and recognising that applying order to complex social phenomena may alter the reality (Law 2003).

The Review Group also visited four sheltered housing schemes to have tea with the tenants. On average, the group met around ten tenants at each session. There was no formal agenda for these meetings; the Chair simply introduced the members and invited the tenants to talk about their own experiences. Hearing the issues directly from tenants in their own words was a revelation. After each visit the members took time to reflect on what they had heard and by the end of the sessions a different perspective had emerged. Where officers had spoken about service related issues, tenants spoke about a lack of respect.

## **Drafting and Approving the Final Report**

The scrutiny team had drafted sections of the final report as the review had progressed. This first draft set out the methodology, results of the survey and

laid out the primary evidence that had been gathered. It stopped short of drawing conclusions or making recommendations. This draft was circulated to members by the Chair, who asked each member to reflect on the draft and to add in their own conclusions. All but one of the members complied with this request. The Chair and the scrutiny officer then collated the information, linking conclusions to the evidence and identifying areas of consensus and disagreement – but leaving it to the review group to agree what stayed in and what was cut from the report. After several weeks of meetings and revisions the Group finally signed off the report. In getting to a consensus some contentious issues were emphasised and some were omitted but on the whole, the report was strengthened by the collaborative editing process (Green 2007).

In accordance with the council's internal rules the report was submitted to the senior management team for approval. Shortly before despatch, the Chief Executive met with the lead scrutiny officer to discuss his thoughts on the report and insisted on some changes, one of which was to remove references to a senior colleague. With these changes, the report was despatched for approval by the commissioning O&S Panel and the full council. The Chair of the Review Group made the presentations to the O&S Panel, Cabinet and Full Council.

## **Scrutiny and Politics**

Before we look at the outcome of the review it is worth pausing to examine the role that party politics played in the process. A theory that is now firmly established is that scrutiny works best when party politics are set aside for the common good (Snape and Taylor 2001; Coulson 2005; Johnson and Hatter 2004, and most current practice based literature), but even if this is held to be a self evident truth, it is a theory that should not stand unchallenged. Using the post-modernist idea of ethical relativism (which assumes that objectivity is impossible because social science research is pervaded by values) then the political value system must be considered, along with any other (Rosenau 1992). Taking this argument further would lead us to conclude that the more analytical perspectives that can be brought to bear on an issue, the less opportunity there is for a single perspective to dominate (viewing objects from multiple

perspectives should give a clearer understanding of the nature of the object). Politicians bring their own valuable analysis to scrutiny and this adds new and complex (messy) dimensions. Following Laws (2003) a little further, if scrutiny does not accommodate political perspectives it may fail in its discourse, by ‘othering’ the situations it examines. Nor are political perspectives immovable, so the mess shifts constantly, requiring a fluidity in research methodology that flows with the situation. Politics also introduces healthy agonistic disagreements that challenge competing viewpoints and subjects them to closer and more rigorous examination, thus enhancing the scrutiny process.

The problem for scrutiny is that some perspectives are more equal than others and party political perspectives tend to elbow out competing analyses. Snape and Taylor (2001) originally argued for an increasing politicisation of the Best Value process (one of the original roles of scrutiny) but as scrutiny developed so the emphasis changed. The removal of party politics may retain a nostalgic appeal, but can this be achieved in scrutiny even by restricting the party whip?

In this case, opposition councillors started out demanding the resignation of portfolio holders, then they focused on the failings of officers and finally they came to see the issues in terms of systematic organisational failings compounded by insufficient member vigilance (including scrutiny). Copus (2001; 2003) suggests that we are being optimistic if we think that councillors can switch off from political mode. However, the suggestion of this case study is that party politicians will at least adapt their strategies when presented with strong evidence based research. If this is so (and a lot more corroborative evidence would be needed before that question could be answered), then scrutiny at least has a fighting chance.

## **Outcomes**

The effectiveness of scrutiny must be judged by the quality of the outcomes it delivers. In this case, the review found serious systemic failings in the way in which the council dealt with its tenants and - most damning - it found that the council had probably broken the law in the way it had handled the changes. As a result, the Chief Executive and the council’s housing portfolio holder issued

apologies to tenants and undertook to implement the findings of the review *in full*. The scrutiny panel continued to oversee the development of the implementation plan and to receive progress reports over the next 18 months. The review had included an exhaustive study of national best practice and this had been incorporated into the recommendations. It soon became clear that the introduction of the review recommendations was leading to very significant improvements for tenants and this was evidenced through greater satisfaction and (latterly) national recognition for the council in this field. In her presentation to the Council, the Chair of the review took no great pleasure in the outcome, as she said:

*“I did not at any stage seek to vilify any public official or to score political points, at all times the needs and concerns of tenants were uppermost in my mind. I hope now we can learn from our mistakes and work together to ensure they are never repeated.”*

## Some Conclusions for the Practitioner

This paper covers only some aspects of the review – the final report provides a much more illuminating insight into how the review was managed. However, this paper presents some useful conclusions for scrutiny officers:

1. ‘Scrutiny is essentially a political instrument and scrutiny officers must learn to facilitate and value political discourse by recognising and accommodating the political environment in which they operate.’ (Davies, Nutley and Smith 2004 p.360);
2. Party politics cannot be avoided, but robust evidence-led scrutiny can shift political perspectives;
3. The organisational separation of scrutiny and executive roles may be simpler than perceived by some commentators and does not require wholesale structural changes. It can be achieved by raising the profile, status and skills of scrutiny officers, investing appropriate resources and avoiding reviews that are run by service professionals;
4. Practitioners need not be overly wary of the inquiry form of review. It brings unique challenges, but it can be extremely effective;
5. When scoping reviews it is important to retain a degree of flexibility. Concentrate on the desired outcome of the review rather than seeking

- to constrain it within arbitrary limitations. Allow the evidence to drive the review;
6. Scrutiny officers need a good general awareness of theoretical approaches to research methodology in order to avoid common pitfalls.
  7. Interview sessions are a key part of inquiries but they must be handled very carefully, the following points should be considered:
    - a. Creating a supportive and positive atmosphere is more likely to get the best from interviewees. Adopting an openly distrustful approach is more likely encourage gaming and information asymmetry.
    - b. Consider timing, delay interviews until a base level of knowledge has been established and consider follow-up sessions towards the end of the review when different perspectives have been explored.
    - c. Be careful when summarising not to select statements that support your personal views - consider using a taped transcript.
  8. Public and service user involvement is key to successful scrutiny. It is more effective when it happens face-to-face in an informal environment using venues familiar to service users;
  9. Recognise the limitations of quantitative surveys and take care when analysing the results;
  10. Scrutiny should focus on delivering positive outcomes even when inquiring into service failure – criticism should be balanced with proposals for improvement;
  11. Prepare for ethical dilemmas, it comes with the territory.

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# Contracted Out Placements for Children and Young People

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This chapter is a study of a scrutiny review of contracted out placements for children and young people in fostercare, children's homes, special schools, etc, carried out by Wiltshire County Council (WCC) in 2005-2006, and a commentary on the ways in which this review made a difference to the policies and practices of the council's placement services.

## *Resumé of Scrutiny Review*

WCC's Children's Services Scrutiny Committee commissioned this review in June 2005, because of recurring and significant overspends in the placements' services budgets since 2001/02.

It was carried out by a cross party group of five councillors, appointed from the children's services scrutiny committee, over a period of eight months. This group agreed at its first meeting that the scope of its work should be to review the Department for Children & Education's (DCE) management of:

- placements budgets
- in-house and external placement services
- commissioning strategies.

The key findings and recommendations of the review were informed by a variety of scrutiny research methods, including:

- desktop analysis
- interviews with the relevant cabinet members, senior officers and service user representatives
- a best practice sharing event involving other local authorities, south west regional children's services' commissioning agencies and children's foster care agencies from the private sector.

The review concluded in April 2006, and a detailed report, including fifteen recommendations, was published. This report was considered by the scrutiny committee, cabinet and council in June 2006, and acceptance of its recommendations was publicly recorded.

### *Nature of Scrutiny Exercise*

This piece of work took the form of a policy review and development exercise, and its final report recommended specific actions to strengthen the DCE's ability to manage the cost and demand of placements, to increase its in-house capacity, and to develop improved commissioning strategies.

### *Value Added*

The level of value added by this scrutiny review became clearer during the process of preparing for the DCE's Joint Area Review (JAR) in June 2008. Principally, just as the recommendations intended, the difference that has been made as a consequence of the review, is that:

- the amount of resources allocated to placements' budgets has been increased;
- additional staff and foster carers have been recruited into a more robust management structure;
- a revised commissioning strategy, supported by a five year investment plan, has been published.

## **Analysis of the Scrutiny Review**

### *Leadership & Support Arrangements*

The councillor group commissioned to conduct this review was formed to be politically proportionate, and included members with varying levels of experience in scrutinising children's services issues. The scrutiny office at WCC holds a database of members' interests, abilities and experience, which it has developed since 2000, deliberately to assist this process of assembling an appropriate group of members to conduct scrutiny reviews. The members of the group consequently were able to exercise a mix of corporate parenting, education, procurement, and finance skills in the carrying out of this review. This helped to bring a necessary balance of regard for the welfare of the children placed in care, and attention to the council's ability to finance these services in a cost effective way.

The chairman of the group, despite her lack of chairing experience or training, epitomised this balance. At the time, she was an existing member of the council's budget scrutiny working group, which was concerned to recover a balanced position in placements budgets, and a member of the children's services scrutiny committee, which has a focus on ensuring the best outcomes for children, especially those in care. Her positive working relationship with the relevant cabinet members assisted her overall leadership of the group, and was instrumental in ensuring the successful acceptance of all fifteen recommendations of the report.

The scrutiny officer support for this review comprised one, newly appointed, full time officer, whose additional responsibilities included supporting the children's services scrutiny committee, a separate (concurrently running), in depth review, of school meals, and the budget scrutiny working group.

The officer introduced a sequence of planning / evidence gathering / review meetings for each of the 6 main scrutiny sessions held during this review. The planning meeting comprised separate discussions with the chairman, primarily to ensure that she was able to lead the group with minimal support officer interjections. This was followed by discussions with the whole group, to update

them on desktop research findings and other such new information. The main advantage of these planning meetings was that the group could agree a schedule for how the evidence gathering meetings would proceed, and rehearse the main areas for questioning. This allowed all involved in the meetings to be clear about what each meeting would achieve, how long (approximately) it would take, and who would be involved. Such practicalities were vital to ensure the attendance of the relevant individuals, all of whom managed busy diaries. The review meetings generally took place immediately after each evidence gathering session, and helped the group to consolidate its findings so far, and reassess its intentions to probe further on specific issues at future sessions. These regular planning and review meetings helped the group to grow together as a team of scrutineers, and provided space and time for the members to analyse evidence collected that day – promoting a consistent learning experience which paid dividends when the group came to write its final report.

### *Scoping the Review*

The group started its work with a terms of reference which neatly defined what needed to be reviewed, i.e. the cost and demand of children's contracted out placements. This said, an exercise still needed to be carried out to determine the scope of the review, and this was informed by the support officer's desk-top research.

It is possible that, if this scoping had been facilitated not simply by drawing on the scrutiny officer's information from her desk-top analysis, but also through use of a 'problem tree' exercise, involving both the members of the group, relevant cabinet members and DCE officers, this process could have been improved. For example, the group did not become fully aware of the many different types of children's placements until part way through the review, i.e. special school, foster care, children's home, disability etc. If it had been made aware of this during the scoping stage of the review, it would have started with the benefit of knowing, which type of placement was causing the service the most concern in terms of cost and demand. Consequently, the group would have been able to focus in much sooner on evaluating the cost and demand of the most expensive and the most needed placements.

Having said that, this scoping exercise did provide the group with clarity and a sense of direction from the start of its work, in terms of its desired outputs and where it would need to direct its recommendations at the end of the review.

### *Programme of Scrutiny*

The programme of scrutiny included a set of six evidence gathering sessions, supplemented by the planning and review meetings as described above, and three final meetings to agree the report and recommendations. The group wanted to be able to conclude its review in time for its recommendations to influence the budget setting process for 2007/08.

The evidence was collected through desktop analysis, oral hearings and a best practice sharing session. To fully appreciate the complexity, and consequent expense, of some of the placements the DCE had to provide, it is arguable that the group could have benefited from a visit to a special care centre for children with severe disabilities.

To address some of the apparent resistance to scrutiny from the senior officers, the group could have benefited from holding its oral hearings as breakfast meetings out of the traditional county hall meeting room environment, and in a more relaxed ‘off-site’ venue, conducive to information sharing and relationship building. This could have helped both the officers and members of the executive to appreciate better that the scrutiny exercise was not intent on calling them to account, but more to seek their knowledge and expertise for the group’s policy review and development endeavours.

The group could also have taken more advantage of the seemingly greater openness of some less senior officers, by practising a sequence of questioning techniques promoted by Oxfordshire County Council’s “scrutiny handbook”, i.e. open – probing – hypothetical – summarising – closing.

### *Evidence Collected & Findings*

This review is reputed for its comprehensive and thorough approach. The findings from reviewing the DCE’s management of the placements’ service,

its budgets and commissioning strategy, were well informed. The group also demonstrated an understanding of the wider national and regional issues impacting upon children's placements. However, in needing to conclude the review within a set timescale, the chairman to this day is not fully satisfied that the review captured all of the findings it required to inform the group's recommendations.

The group's findings were however significantly enhanced from the best practice sharing event it held towards the end of the review. This event included input from four other authorities, which were selected by the group because of their proven track record in minimising the cost and demand of children's placements, and the manager of an independent foster care agency. This event provided opportunity for the group to learn about the techniques of others, i.e:

- budget top-slicing and setting this aside as a contingency;
- cultivating a culture of relying more on less expensive in-house placements and only reverting to contracted out placements as exceptions;
- the appointment of one single commissioning manager, as opposed to retaining a series of separate contracts' officers.

### *Development and Agreement of Final Report and Recommendations*

On unanimously agreeing to conclude the group's evidence gathering activities, the support officer was asked to write a first draft of the final report and recommendations. A sequence of meetings then took place to finalise this document, before it was submitted to the children's services scrutiny committee for endorsement, to the cabinet for consideration, and to council for noting.

With the group dynamic having been carefully constructed and cultivated from the start, this process was probably the easiest part of the whole review, and resulted in a report that was unanimously supported by the group.

Also, indicative of the group's willingness to hold the majority of its deliberations with members and officers of the executive present, so as to test its assumptions and draft recommendations during the process, the penultimate meeting of the

group was held with the relevant cabinet members, director and assistant director of the DCE. This meeting sought their views on the group's draft final report and recommendations.

The chairman and support officer have confirmed that whilst there were advantages to this open and inclusive approach to the group's deliberations and final report formulation, there could also be some disadvantages. For example, one advantage, was that, in building a relationship with the group, the executive felt comfortable using it as a form of scrutiny consultation on a number of key proposals relating to its commissioning strategy. The group's recommendations relating to these key proposals have since been referred to on numerous occasions by the DCE (particularly in its preparation for the JAR 2008) as a positive example of scrutiny influencing the executive's policies and strategies. Two disadvantages is that, some of the impact of a scrutiny report can be lost if its draft recommendations are implemented before the group has a chance to publish its report, and that scrutiny can risk losing its control over the process, by the executive using it for its own purposes. In the words of a New Local Government Network report (2003, p.10) "*Executive [officers] should not be allowed to dominate overview and scrutiny meetings – they should be invited to give evidence, at the request of the committee.*"

In finalising the recommendations, the group endeavoured to make them as Specific, Measurable, Attainable, Realistic and Timely (SMART) as possible. Certainly, all of the recommendations were attributed either to the cabinet or to an individual member or officer, and each were given deadlines for implementation. However, some of the recommendations relating to the need for improved budgeting, lacked a specificity in terms of where additional funding should be raised from. Also, a recommendation for the recruitment of a central commissioning manager, was not fully supported with a rationale as to how and why this form of management would be better than existing arrangements.

The final report and recommendations received good exposure through the consideration of the twenty six member children's services scrutiny committee, the cabinet and the council. This served to raise the profile both of the review topic and of the overview and scrutiny function.

On balance, the group's decision not to involve the local media in both the process and final reporting of this review, was sensible. Whilst careful management of a message through the media could have generated a public interest story, i.e. "WCC's scrutiny members are recommending improved arrangements to ensure more cost-effective placements services for vulnerable children and young people in care", there was a risk that it could have led to less favourable coverage.

### *Monitoring Implementation of the Recommendations*

The children's services scrutiny committee requested that progress on the implementation of the recommendations from this report be monitored twelve months after its publication.

During the intervening twelve month period, the chairman of the group, which disbanded following publication of the report, was appointed as the cabinet member for children and families, because of her previous chairmanship of the scrutiny group. This was seen as a compliment to the scrutiny exercise, and, as has become more evident in recent months, this appointment did assist in ensuring that thirteen out of the fifteen recommendations have so far been implemented (but not all within the timescale requested).

In addition, a new Corporate Parenting Group (CPG) has been set up by the council, chaired by the cabinet member for children and families and supported by the same officer who provided scrutiny support for the scrutiny review. The CPG is taking a more detailed and dedicated monitoring role of all matters relating to children in care, but especially with regard to the council's placements' budgets and commissioning arrangements. The scrutiny committee is retaining a higher level / strategic overview.

### *Key findings from Analysis*

Having analysed how this review was carried out, it is clear that most of the right conditions existed to facilitate its successful outcome, i.e. robust member leadership and engagement, a responsive executive, genuine non-partisan working, dedicated scrutiny officer support, a supportive senior officer culture, and a good degree of awareness and understanding of the role of scrutiny.

One main change which could have improved the outcome of the review further, would have been to schedule the best practice sharing session at the beginning of the review, rather than right at the very end, particularly as this was the main element of the exercise to add the most value. In doing this, the recommendations which the group drafted from this particular session, could have been tested and refined during the process.

### **Conclusion**

This analysis therefore concludes that, this review exercised a number of good and effective scrutiny techniques.

For example, the member leadership and support officer arrangements proved successful because of the good mix of member experience and attributes, and the use of regular planning and review meetings during the process.

Also, the review began on a firm footing, and with a specific, well defined remit. This helped the group achieve clarity early in the process in regard to its output and desired outcomes. Perhaps application of a more innovative approach to scoping could have improved this further.

Similarly, the thoroughness and organisational abilities of the group in terms of its programme of scrutiny cannot be questioned. However, more creative approaches to holding meetings to encourage greater openness, in venues outside the county hall, coupled with improved questioning techniques, could have further enhanced the output from evidence gathering sessions.

Finally, the report and recommendations' drafting process followed a robust, open and inclusive approach, but the group ran the risk of losing some of its control over the scrutiny process, by allowing too much influence from the executive. Having said that, this risk did prove worthwhile, with a number of the recommendations which had been influenced by the executive, since being held up during the JAR 2008, as good examples of scrutiny – impacting on the DCE's policies and practices.

Therefore, this analysis concludes that the review, as demonstrated by the thirteen out of fifteen recommendations being implemented over the eighteen months since publication of its report, did indeed 'add value' to the policies and practices of WCC's DCE, even though its style of approach could be regarded as quite traditional and not significantly innovative.

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# The Management of Care for 11-16 year olds with Eating Disorders in Buckinghamshire

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This essay considers a scrutiny review that took place in Buckinghamshire County Council during 2006-07. The subject under review, i.e. eating disorders in adolescents aged 11 – 16, was interesting because of its multi-agency external dimension.

The review was carried out by Buckinghamshire County Council's Public Health Overview and Scrutiny Committee (OSC) in 2006 with the findings presented to the County Council's Cabinet, to District Council Cabinets and to Health Boards in January and February 2007. It was part of the OSC's work into reviewing health issues and inequalities. The subject of eating disorders was seen to be topical, of interest to Members, and an increasing health issue for the 11–16 year age group.

Its aims were:

- To identify the extent and incidence of eating disorders in adolescents in Buckinghamshire;
- To assess the management of health and associated care; and
- To make recommendations for improvement.

The OSC appointed a small, politically balanced working group of four members to carry out the review. Evidence was gathered from a series of interviews with professionals from a range of health and local authority providers, and the independent and voluntary sector. Desktop research was also conducted utilising a variety of nationally available documents.

It was expected that members would discover what help was ‘out there’ for individuals, parents and carers, what advice was available, what arrangements and facilities were in schools to identify those at risk, and general awareness of the problem and issues involved. The final outcome would be to develop recommendations which would result in better services locally for those with eating disorders.

### *Planning and Scoping the Review*

The responsibilities of the working group ranged from scoping, collecting evidence, formulating recommendations and presenting of the report to Cabinet and to the various, appropriate health boards. A range of professionals were interviewed, in person and by telephone. Members and contributors were briefed on key lines of enquiry on a meeting by meeting basis. National research and government guidelines were considered.

A changeover of officer support was necessary partway through the review. The new officers found the aims and objectives agreed for the review woolly, with unclear parameters around what was acknowledged to be a vast and potentially overwhelming subject area. There was a lack of clarity around their individual roles and responsibilities and this led to some tasks ‘slipping through the gap’.

Given the complexity of eating disorders, it would have assisted the review if the scope listed a clear set of aims, objectives and expected outcomes, the key issues to be addressed and reasons for selecting the topic. Instead the initial scope was too broad, ill-defined, the key issues were a list of thought triggers, and there was little idea as to what the report was seeking to achieve. It turned

out that eating disorders covered a much wider spectrum than originally thought and the initial scope had to be refined to cover anorexia and bulimia.

Not only would more research around the subject area, prior to the review starting, have kept the working group focused and on track, but key stakeholder involvement in writing the terms of reference would have helped. Cornwall County Council (Centre for Public Scrutiny 2006) involved the NHS Modernisation Team in scoping their project on dementia care pathways and identifying key relevant health colleagues.

### *Timeline*

The original aim was to complete the review in four months. However, due to the change in officer support and the summer recess, the timeline moved closer to eight months. In the end, political pressure from the full committee drew the review to a close at a point when it was felt that further evidence could have been collected. Given the vagueness of the aims and objectives, it was difficult to know what had to be achieved and then to recognise when it had been achieved. The review could not be brought to a natural conclusion and there was an impression amongst members that it was never going to end.

### *Key Findings*

It became evident early on that prognosis for eating disorders is much improved if the problem is identified early on. The data that was available related only to cases at the most severe end of the spectrum, i.e. those young people who had been referred to specialist mental health services. It was impossible therefore for the working group to identify the extent and incidence of eating disorders in the 11-16 year age group in Buckinghamshire.

Members identified the vital role that schools play in identifying young people who may be exhibiting symptoms of eating disorders and in raising awareness of the dangers of these disorders. However, there was little exploration or linkage made of how junior school pupils were being made aware of eating disorder issues. At this early stage the scope of the review should have been revised to ensure that this was included and investigated.

The working group had agreed early on to focus on anorexia and bulimia nervosa, within the age range of 11 – 16 years and to map the pathway of care. However, for historical reasons, the Child and Adolescent Mental Health Service (CAMHS) services had developed unevenly and inconsistently across Buckinghamshire, resulting in inequity of service provision. The working group soon discovered that a lack of definitive treatments and inconsistencies in provision across the county made it impossible to describe and map the management of a ‘typical’ patient’s care.

As a result, and because of the poorly defined brief, there were many occasions during interviews with experts when Members veered off the topic and explored issues around eating disorders which were not directly relevant to the study. Other matters were not discussed. For example, it would have been worthwhile for Members to have spent more time looking at issues around the triggers and what is being done or could be done to ensure that a clear message is given to young people and carers about the dangers of eating disorders.

### *Development of the Recommendations*

Eventually, Members settled for recommendations that related to the professionals needing to map the care pathway, and an acknowledgment that treatment guidelines were available. At the final report writing stage, twenty five disparate recommendations were merged together in four broad themes, making them acceptable to those who had to implement them.

The Chairman of the working group was not sure about this. She liked the first draft with its twenty five recommendations and she spoke of ‘a good dose of officer input’ changing and enhancing the slant of the final report.

The recommendations emerged only after the report had been drafted. A better practice is to engage critical thinking and a challenging approach to the evidence as the review progresses. The role of the officer should be one of keeping the review on track, triangulating the data and discussing where recommendations may be emerging with the full committee.

### *Engaging with Service Users*

The Members heard from GPs, clinical psychologists, psychiatrists, school advisers and school staff. However, apart from some anecdotal evidence and observation of young people in specialist units, the review lacked direct evidence from the young people and their carers. There were reasons for this. The working group had attempted to take part in a support meeting, run by a voluntary organisation, for parents of those with eating disorders. However, this was blocked by the organisation due to confidentiality concerns. It was also felt by the working group that, although they did not or could not speak directly to service users, their perspective was added indirectly by the clinicians. Direct contact with service users would have enhanced the evidence and potentially have given a different slant to the findings of the report. Such evidence could have been obtained via surveys, focus groups or workshops with young people.

An example of good practice was Bexley Council's project on young people's health (Centre for Public Scrutiny 2006), where young people were trained to lead and facilitate discussions with their peers and were also involved in the design of a survey for young people, which gained an impressive 2,500 responses. This data was used to inform and evidence recommendations. Workshops with young people were arranged to discuss issues of value to the project around the topic of healthy schools. These were then discussed with providers. Publication of the key recommendations was through a press release and directly to the local youth parliament.

### *Engagement of the Full Committee*

This was minimal and partly a consequence of the review being delegated to a small working group. Those engaged in the working group were enthusiastic and hard working. Members of the Committee may have been keener to engage if evidence from service users had been sought, rather than the emphasis being on the professional and clinical aspects. Some of the evidence might have been taken in front of the full monthly committee meeting. In addition, any review and refinement of the scoping paper should have been presented to the committee for approval, along with key findings and potential areas for

recommendations. Members could then have been involved in a wider discussion, leading to better engagement and ownership of the report and its findings.

### *Tracking the Recommendations*

The final report, once approved by the full OSC, was presented to the key stakeholder organisations by the chairman of the working group.

The first, crucial recommendation was the requirement of a representative partnership working group to be formed to implement and monitor the agreed recommendations. The appointed group is multi-agency and comprised of commissioners and senior managers who provide various levels of mental health and well-being services. The group was asked to report back to the OSC with its progress in September 2007.

By then some limited progress had been made, particularly around care pathways, awareness raising in schools, early identification and treatment approaches, and a review of resources. A further progress report was promised for March 2008.

There are difficulties with the continued tracking of the recommendations over time, given the number of organisations involved in implementing them. A 'scrutiny champion', as described in the case study provided by Bradford Metropolitan District Council on obesity and overweight (Centre for Public Scrutiny 2006) may provide one way of monitoring the progress. This project was equally challenging because it was a cross cutting public health issue and there had been concerns that enthusiasm from partners would lessen once the scrutiny committee had completed its work. Appointing a 'scrutiny champion' to oversee the implementation of the review's recommendations was seen to be a solution.

Overview and Scrutiny officers in Buckinghamshire have developed a quarterly management system for tracking the implementation of recommendations. This tool could be useful for the tracking of both internal and external reviews.

## *Publicity*

The subject of eating disorders was nationally very topical at the time and the local press were contacted at an early stage. After the publication of the review, interviews with the chairman of the working group featured in three local papers and on the radio. A summary leaflet was produced and distributed to various relevant outlets, including schools, GP surgeries, the PCT bulletin and libraries. CfPS published the full report on its champions' website. However insufficient thought was given to promote the work of the review, for example, a launch event may have been a useful way for the working group to engage with service users.

Coventry City Council (Centre for Public Scrutiny 2006) held a launch conference for its project on 'Supporting mothers who wish to breastfeed'. There was extensive media coverage. The launch generated both public and practitioner interest and gave the project considerable momentum. Although launch events are expensive to arrange they can be a useful way to engage with service users and providers at an early stage.

## **Conclusion**

In conclusion, the review by the Public Health OSC into the management of eating disorders undoubtedly achieved a great deal, namely:

- Genuine improvements will be made to the management of eating disorders in adolescents in the county.
- Scrutiny was given an outward focus and a chance to engage with a range of partner organisations.
- The profile of overview and scrutiny in Buckinghamshire was raised.
- Importantly, it was a learning opportunity for the Council of how future scrutiny reviews, both internal and external, could be carried out.

In terms of what was learned, the fundamental importance of the scoping of the subject area was recognised. Careful research and a sharing and challenging of ideas before any evidence is collected are vital. The scope should be flexible enough to allow it to evolve, particularly where it is found that aspects of the subject under review may not be as easily definable as originally thought.

External scrutiny should, where possible, involve the stakeholders early on and in a variety of ways, and this may help to encourage ownership of the findings and cross-cutting recommendations.

Keeping all members of an overview and scrutiny committee engaged in a review, which is primarily led by a working group, is difficult and worth considering when choosing the review method. Ways to keep members involved should be explored at the outset.

Engagement of service users will ensure that all perspectives are considered and may give a completely different slant on the findings.

Publicity and promotion of the review should be planned at the start of the review and included in the written scoping paper.

A great deal of evidence was collected during the review. Whilst those detailed in the final report clearly supported the recommendations, a full critique would necessitate a review of all the empirical evidence to ensure no bias. This was not possible within the time constraints of this piece of work.

A final learning point is the value of critically evaluating a review before moving on to the next one.

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# The Clissold Leisure Centre Scrutiny

Councillor Dan Kemp, London Borough of Hackney<sup>2</sup>

The Clissold Leisure Centre is a purpose-built leisure centre and swimming pool in East London. It is also an example of cutting edge modern architecture. There were extensive delays in its construction, and huge cost overruns. This chapter is a study of how the scrutiny process worked to identify the facts of the matter and to keep the public informed as the saga unfolded.

One morning in November 2003 a member of Leisure Connection (LC), the private sector company managing the Clissold Leisure Centre (CLC) and the other council-owned leisure facilities in the London Borough of Hackney, went to the basement machine rooms where the water purification, power and other equipment - mainly electric - are housed and found it flooded to depth of a metre and nearly to the height of power sockets. The fire brigade were called, the power cut off, and the centre was closed down, a few months after opening.

The project was already controversial for reasons unconnected with its closure - its location in the north of the borough was allegedly in the “wrong place”; the replacement of several old pools with one state of the art or “flash new one”;

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<sup>2</sup> The author would like to make it clear that he is writing in a personal capacity, and his views and opinions do not necessarily represent those of the London Borough of Hackney.

also the subsequent transformation of a basic design into an ambitious architectural project and the associated rise in costs which inflated as the project overran the initial timings attracted interest (Londonist 2007; Leftly 2007). The controversy reached new levels when the original budget of £7m in 1996 led to a pool costing £34m when it opened in 2002 (Flag Soprema 2008; Leftly 2007). But that was only a taster for the furore when it closed a few months later and the budget for its remedial works and re-opening led it to wild speculation<sup>3</sup> by the Press – and still it was not open!

### *A Scrutiny Investigation*

What had gone wrong? It was a question being asked by council officers and the CEO (Chief Executive Officer); political leaders; the press and building experts; surveyors and the firms' representatives; the technical press (for example, *New Civil Engineer* 2005).

Should scrutiny get involved? At an initial consultation meeting (in April 2004) with members of the public who had demanded an investigation and even a Public Inquiry through the Stoke Newington Neighbourhood Forum, the main grievance was that the pool was closed. Many people felt that £34m was well spent providing much needed facilities - not without flaws but few people harked back to the original controversies, even the key one about replacing the original swimming pools, and clearly this was a flagship project.

My concern was that it would take a long time for the dust to settle and that scrutiny would, by stepping in, become the focus for local discontent and onto a hiding to nothing by not being able to provide answers to questions about whose fault it was that the centre closed. However scrutiny could not walk away as it was a genuine concern of the people. So how could it add any value?

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<sup>3</sup> Various figures were bandied about at the time. Leftly (2007) gives an estimated price of £45m at final reopening. The figures are confidential under the terms of the out of court settlements made with the architect and contractor.

Other dangers were apparent - that scrutiny would be a management tool in the eyes of the public or in fact. Would it be able to assuage public concerns by working in a cross party way, and could the councillors do that? Or would it disintegrate into partisan evaluations of what went wrong? If the furore escalated, voices of reason could be drowned out and councillors tempted to make political capital. The level of public interest therefore can have both positive and negative effects on scrutiny, too much being just as damaging as apathy and disinterest.

### *Member Focus*

The guidance I got from officers was to try drawing positive outcomes from the public engagement already begun. This included the remedial works then being undertaken to rectify some of the flaws closure had exposed. There were defects in the building itself – for example, the flume into the plunge pool had too little headroom. Secondly the remedial works which were informed by the post closure consultations allowed:

- the incorporation of features to comply with the Disability Discrimination Act, including a rear door facilitating disabled access;
- enhanced privacy. Some groups wanted more not just privacy i.e. safety in the knowledge that they could not be seen but also assurances that they would not be able to see others using the centre. More opaque glass was used subsequently;
- Water leaking from the showers into the pool was stopped;
- The plunge pool and flume were re-designed.

Users felt they had no way of voicing their concerns about these issues and routine maintenance. Scrutiny could at least provide a hermeneutic forum while showing a genuine desire to get value for money out of the project on behalf of the local authority. The risk of failure to achieve some ideal of cross party working was evident and compounded by another risk: early site visits by other members of the scrutiny team and me led to a realisation that none of us had any particular expertise in construction.

Moreover the lists of things even an ordinary citizen could see as wrong heightened the suspicion that the CLC was a disaster! As Chair of the CLC scrutiny commission how I would cope with exposing alleged incompetence on a massive scale was at the back of my mind, but the support and goodwill I felt from officers established enough trust for me to proceed in dealing with the public as I did not feel I was being used to cover anything up. I genuinely believed and still do that no one really knew what was at the bottom of the failures at this stage.

### *The Problems*

The first problem scrutiny faced was to understand why the centre closed. The immediate cause was water accumulating in the basement creating a risk of electrocution. “What caused this?” would be the Public’s response.

A full list of the defects is as follows:

- Gutter movement restraint leading to splitting
- Failed sealant junction
- Blocked symphonic drainage outlets
- No stop ends to gutters
- Defects to main roof perimeter flashings
- Water leakage through inclined roof level ventilation grilles to Sports Hall
- Gap at curved roof eaves
- Condensation on steelwork to vertical roof glazing
- Condensation on curved steelwork and inclined roof glazing
- Cuts in Vapour Control Layer
- Open junction internally at side of flat roofs
- Fixing holes through Vapour Control Layer
- Defective installation of Vapour Control Layer
- Failed double glazed units
- Failed sealant to head of inclined curved roof glazing
- Backfall to membrane covered flat roof
- Loose and inadequate fixing of plant room roof parapets
- Possible inadequate drainage of plant room roof
- Defective plant room gutter bolts
- Condensation to underside of the Plant Room roof

- Inadequate access to Plant Room sub-floor void
- Condensation within the Plant Room sub-floor void
- Cracking of Squash Court walls
- Cracking of internal and external wall render finish
- Missing waterproof membrane to ground floor construction under wet areas
- Inadequate waterproofing of perimeter pool water drainage channels
- Leakages through the upper floor changing area
- No waterproof finish to plant area within Health Suite
- Introduction to water area has falls too steep for toddlers
- Water slide structure prevents safe use of the spa pool at its base
- Water damage to storeroom doors
- Water damage to Sports Hall floor
- Leakage into Sports Hall by North West Fire Escape
- Missing infill panels to handrails along glazed wall to Sports Hall
- Ground floor broken Double Glazed units
- Inadequate privacy to female changing rooms
- Inadequate cleaning regime and plant leakage
- Low staircase casting to the basement
- Panels to underside of roof canopy.

No one could explain the buckets left in the roof cavity to collect water from the ceiling - they could have been a consequence of the hasty exit of the builder who had neglected other snagging issues - poor finishing of the squash halls; etc. In fact the squash courts did interest members of the Public on guided tours one Saturday morning in April 2004. Cracks appearing in walls are in fact fairly normal, as after construction buildings often move and walls have to be re-plastered. This illustrates how the public can get hold of an issue and how easy it is to mis-represent facts.

In a similar vein the argument about whether the design was flawed continued. An article in the Architect's Journal in 2005 argued that the CLC was spoilt by poor operational practices rather than a flawed design, whereas the counter argument has been that the problem was the roof. To quote from Jonathan Glancey (2004) in the Guardian:

*Yet these are relatively minor complaints compared with defects number 32, “roof leaking across whole centre”, 33, “roof sweating with condensation”, 34, “glass walls around pools retain fetid water”, 40, “inadequate ventilation to both pool areas”, 56, “significant cracking in squash-court walls” and, last and by no means least, 59, “water damage to sports-hall floor causing warping and lifting at less than 12 months, with injuries sustained by users.*

Jumping into the future, no one asked to see the roof from above at any site visits and nor were we offered the opportunity to. It subsequently transpired that there was a fundamental design problem. A syphonic drainage system required a head of water to build up until the level overtopped the waterproof membrane - and so the rainwater on the roof flowed into the building! In terms of scrutiny issues this was an “unknown unknown” which at this stage scrutiny was unaware of.

How early people knew the fundamental design of the roof was inept, I do not know. In fact whether the design was flawed is still disputed – but the roof has been redesigned and rebuilt.

The roof was not the only problem - all the issues would be subject to compensation claims and so be effectively “sub judice”, and therefore any attempt to go public would risk damaging the bargaining power of the Local Authority in securing compensation. As it turned out, there were few demands from our initial public conversations for an early answer to the big question: “whose fault was it all?”

### *Ideological Divide*

Whether or not public authorities can undertake successful works is central to the scrutiny of CLC. Thatcherism was based on a disbelief of the efficiency of government, corporatism in general, and the inefficiency of nationalised industries. I am committed to the opposite opinion that private industry and the markets alone cannot solve social problems and that public policy can. Building

leisure facilities addresses public needs and the ability to do so is core to winning the electorate's confidence in proceeding with capital projects.

Against this backcloth it was agreed to hold a public open day at CLC and three scrutiny meetings in public in order to ask the parties involved in the construction and management of CLC questions raised by the public and to investigate the more strategic concerns.

The three meetings examined the partnership working and the future:

1. What is the Council going to do about the closure of CLC?  
The focus shifted towards how people would be able to swim; how would people's anger be mollified. Responses were made to facilitate use of other pools; users groups were set up, and a dialogue maintained through a Council monthly newsletter.
2. If the project failed then Sport England might ask for their money back.  
The availability of matched funding had contributed to project creep and there was a threat that Sport England could pre-empt the scrutiny and go for the money. They attended the scrutiny and used it to gauge how Hackney was coping.
3. Leisure Connection (LC) attended to answer their customers' complaints over problems like not maintaining CLC properly and other facilities in the borough.

LC were given a list of questions which scrutiny was hoping to provide the public with satisfactory answers to. On a sunny afternoon they seemed hesitant. However perhaps the pressure of the public at the meeting and probing by scrutiny members led to some defence of their own professionalism: public allegations about cleanliness were scientifically rebutted and it was explained that at another pool, Kings Hall, the water cannot be drained, as the pools would collapse, which was one reason for the unpopular decision to close two other pools in the Kings Hall Centre. However unlike CLC Kings Hall still had a pool open to the Public, no matter how old it was!

In terms of issues facing scrutiny as partnership working develops there may be a need to have due regard for prospective scrutiny in the procurement process so contractors cannot hide from oversight under the umbrella of “commercial confidentiality”. Subsequently this has proven more difficult than anticipated; however accountability lies with the Council Directorate procuring works and managing the capital project concerned and scrutiny can hold that Directorate to account. Few commercial enterprises will submit to scrutiny which they could see as being by councillors on a day to day basis.

Recommendations made at the meetings were re-iterated and, in recognition of the long term nature of commercially sensitive negotiations, the Chair of the Overview & Scrutiny Board recommended that I, as Chair of the CLC ad hoc scrutiny panel, was sanctioned by the OSB to remain as scrutineer of the CLC indefinitely, which I still do.

### *Lessons Learnt from and for Scrutiny*

Members were in the spotlight of press coverage and local interest. A website called “Not the Clissold Leisure Centre” reported on the meetings and entered into web dialogues with members of the Stoke Newington chattering classes. This put some members under a lot of pressure which led to tensions, for example when changes were made on the hoof at one of the public meetings to allow questions from the floor, which departed from the agenda and was misunderstood by members of the scrutiny panel as coming from an ulterior motive on my behalf, when in fact there was not much else to discuss and scrutiny was able to revert to one of its main functions and address concerns of those members of the public attending. But members were under pressure.

Members of the public were angry, but this was controlled except when they did not understand why the scrutiny focused on broader aspects of a “sports strategy”. In fact they were once abusive to officers when the “Strategy” was being explained and I was forced to intervene as Chair to ask for some civility. On reflection this Sports Strategy exposition introduced by Council officers from the Local Authority could have been over-ambitious and unnecessary as the public were just not interested and we were accused of a

cover up or obfuscation at best. Later “Whitewash” was the theme of the “Not the Clissold Centre” website but at actual meetings there was less certainty that scrutiny was behaving as “a management tool” and doing the Council’s dirty work.

The objectives, as set out in the *Report of the Clissold Scrutiny Review (2004-05)*, of the initial public consultation at CLC in April 2004 and the subsequent public meetings of the ad hoc scrutiny commission was to establish communications with users and relate to them how the Council was coping with closure of a leisure facility. By achieving this goal and some public trust scrutiny could then report to the Cabinet on its finding and look at some of the bigger issues:

- the extent of the problems ( mainly the roof) and costings of remedial works;
- the progress of Legal actions and liability;
- finding of the in house investigations into what went wrong and lessons learnt for procurement and capital project management;
- Continuing communications with the Public; user groups and media.

### *What Lessons can be Learnt from the ad hoc Scrutiny Project post CLC Cosure?*

Scrutiny can provide an informal forum to air people’s concerns and to build a foundation between the Executive – those ultimately responsible - and the public.

Scrutiny witnessed the Local Authority coping with a disastrous series of events and managing anger created by a closed facility. By keeping people informed and creating a forum where people could express their views perhaps more than anything the mis-representation of the facts was restricted. For example stories appeared in the *Evening Standard* alleging that CLC was to be demolished after £34m spending! These claims were repudiated straightaway at one of the scrutiny meetings in Stoke Newington. The scrutiny process could be seen as a half way house between a Public Inquiry where the media spotlight creates an arena for petty party political point scoring and where the

trust and the learning processes are therefore restricted, and on the other hand a confidential in-house inquiry where the suspicion would remain that if there was anything seriously remiss it would be covered up.

The Local Authority's learning and communication process, how it was dealing with the remedial works, and how it dealt with capital projects was also under scrutiny and led to some propositions for future projects: notably around the use of more consultants. On large specialist projects there is no need for a Local Authority to have expertise in-house and so bringing expertise in as and when required makes more sense. Having consultants themselves scrutinised by other consultants has been posited as one way of weeding out design faults that were central to CLC. In a similar vein maintaining traditional divisions of labour between for example architects and project managers gives more accountability and less risk to projects.

A more general lesson was that starting a project before the design has been completed is one of the most common causes of failure – with a project damned before it even begins.

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# Scrutiny into the Future



# A Single Joint Waste Authority for East Sussex - The Way Forward?

Councillor David Tutt, East Sussex County Council

This paper examines a Best Value Review conducted in East Sussex during 2005/6, chaired by the author. This looked at the “Strategy for a Joint Waste Partnership/Organisation” and whether this would be of benefit to the County Council and the Boroughs and Districts concerned. It explains what happened at the time and explores how, with the benefit of hindsight, this might have been improved.

## Introduction

East Sussex is a two tier area of Local Government. In addition to the first tier County Council, there are two Borough Councils (Eastbourne and Hastings) and three District Councils (Lewes, Wealden and Rother). Throughout the review the County Council was under Conservative control, as were Eastbourne, Wealden and Rother, whilst Lewes was under Liberal Democrat control. In Hastings control was with Labour at the start of the review but transferred to the Conservatives in May 2006.

The review was suggested by the author of this paper who had chaired the Audit and Best Value Committee of the County Council since May 2001. He identified that a Scrutiny Review conducted by the Transportation and Environment Scrutiny Committee into Recycling (East Sussex, Transport and

Environment Scrutiny Review – Recycling, 2002) recommended “that the County should further explore the strategy of a Joint Waste Authority”, since that time the idea had been discussed but not examined. It was therefore agreed that a Best Value Review should take place. The aim of this review was to “*test the hypothesis that a single Joint Waste Partnership/Organisation would bring benefits, taking into account cost effectiveness, quality, efficiency, environmental and social issues, to the people of East Sussex.*”

## **Choice of Topic**

This review was never going to be the easiest to conduct as it was the first time that a review involving the County Council and all of the Boroughs and Districts had been attempted in East Sussex. The Councils concerned each had different ideas on how waste should be handled and also separate contracts (covering different time periods) for waste collection.

## **Terms of Reference**

In addition to the aim of the review (outlined above) the review had the following Terms of Reference: “To examine:

- effectiveness and efficiency of present arrangements;
- cost implications of a Single Joint Waste Authority (SJWA) option;
- operational implications of a single Joint Waste Authority;
- potential benefits and/or problems associated with a single Joint Waste Authority.

The review set out without any preconceptions or biases on the outcome. There was no assumption that a Single Waste Authority could be achieved. The review aimed not only to report against the “Terms of Reference” but, where possible to provide a collective set of options and recommendations.

## **Membership of the Review Board**

The review had been commissioned by the Audit and Best Value committee of the County Council and had a responsibility to report its findings to this body. This committee had appointed three councillors (one from each political party)

to serve on the review. It was however clear from the outset that such a review would be of little value without the full involvement of all of the borough and district councils within the county. An invitation was therefore sent to each of these to nominate a scrutiny member to join the Board at the inaugural meeting. The early response to this invitation was disappointing, as all of the Boroughs and Districts wanted to send either a Cabinet Member or both a Cabinet Member and a Scrutiny Member. In order to address this the three County Members involved, all of whom also sat as members of their relevant Borough or District Councils, agreed to speak to both their own Councils and their political colleagues at each of the Borough and District Authorities to explain the importance of this being a member-led Scrutiny review. This was agreed.

## **Methodology and Approach**

The Board decided to organise a symposium with presentations from each of the six authorities giving their view of current issues and challenges. This was to be followed by a discussion in the light of those presentations on the implications of a single Joint Waste Partnership/ Organisation, and the issues in East Sussex, grouped under the following headings:

- (a) drivers/motivators/opportunities, and
- (b) challenges/constraints.

It agreed to engage with any relevant consultation exercises. During the course of the review these included:

The Government's consultation document on England's Waste Strategy (February 2006).

The Lyons Review into local government finance. (Sir Michael Lyons 2006)

It would research the progress made by other local authorities addressing the establishment of a single organisation within the two tier system of local government, and establish evidence on the following:

- the cost implications of a single Joint Waste Partnership/Organisation option;

- the operational implications of a single Joint Waste Partnership/Organisation option;
- the potential benefits and/or problems associated with a single Joint Waste Partnership/Organisation;
- the accountability, sustainability and legal implications of a single Joint Waste Partnership/Organisation

In order to assist with the review the Board employed the services of two experts in this field: John Whiteoak (Managing Director, WA Associates Ltd.), and Terry Leahy (Added Capacity Consulting). The ability of the review to fund this external support was assisted by securing support from the Department of Environment Food and Rural Affairs (DEFRA) in the form of a grant from the Regional Support Fund.

## **Group Dynamics**

The idea of bringing together all of the Boroughs and Districts with the County to conduct a review of what was seen as a sensitive subject might have been seen as either bold or foolish. There were several reasons for sensitivity and whilst some of these involved party political differences, party politics were not the main cause of difficulties. Firstly, there was a related issue in the form of a County plan to build an “Energy from Waste” plant in Newhaven (within the Lewes District) which the District Authority was vigorously opposing. This had led to an undercurrent of suspicion between the two authorities on any waste related issue.

Secondly, there was a clear concern held by the Districts (although not automatically articulated by them) that the whole review was nothing more than an excuse to justify the County taking over responsibility for waste collection. Interestingly this view seemed to be held far more strongly by officers than members and may have reflected feelings of insecurity regarding their own futures.

Finally, there was the issue of the different policy decisions that different councils had adopted and which were supported by the contracts that they had put in

place. There was a clear feeling that whatever potential benefits a Joint Authority might bring, these differences would be difficult to accommodate within a single authority framework.

During the course of the review a good degree of trust was established, due in part to an open style of meeting which ensured that all views were heard and recorded and reassurances by the lead scrutiny officer that the outcome would be determined by the members of the review board. This trust was however weakened towards the end of the review when one of the consultants in seeking to summarise the work to date, made a presentation which was considered by many as unbalanced and made a very strong case for establishing a single authority.

## **Findings of the Review**

The review gathered benchmarking evidence from nine other counties including one (Hampshire) which included two unitary authorities. From the evidence presented it was clear that the concept of a SJWA was very much in its infancy. Of the nine counties researched, their positions varied from Norfolk (where very little resulted) to Shropshire where there was a serious commitment to go ahead.

### *Shropshire (5 districts/boroughs)*

Following an initial joint symposium (called their 'Big Bang' approach) the county and districts undertook a joint benchmarking study (Shropshire County Council – Waste Benchmarking Study, report produced 2003) to examine the options for a joint organisation and contract letting. This exercise identified potential savings of 10-15%. The outcome was to work towards letting a joint contract in 2007.

### *Norfolk (7 districts/boroughs)*

Norfolk undertook a thorough review in 2001. No progress resulted. The report was extensive and outlined significant benefits from a joint organisation, similar to those in Shropshire, but through a different methodology. However, this

project was relatively early work and political difficulties in finding agreement resulted in no action.

Having reviewed all available information including all identifiable benefits and drawbacks with the establishment of an SJWA the East Sussex review (East Sussex County Council, Best Value Review, Final Report on a Single Joint Waste Authority – September 2006) arrived at the following key conclusions:

- Local government and the waste industry generally are experiencing a period of rapid change driven by European Union and United Kingdom legislation, government direction and public desire for a more sustainable approach.
- In East Sussex as a county, and as individual districts and boroughs, there are unique characteristics that are very important to the people who live, work and holiday there. These characteristics need to be, and can be, reflected and enhanced in any approach to joint working.
- In looking at the local issues, the Board felt that there could be benefits to the public in terms of improved and more coordinated service delivery, clearer unified messages from the authorities involved, reduced environmental impact and a change in public perception to improve waste minimisation and recycling rates.
- The Board also expressed concern that some of the benefits identified will improve efficiency and effectiveness ‘behind the scenes’ but would not be seen by the public. Concern was also expressed that change needs to be thought through properly, and delivered with strong leadership and appropriate resources. However, this should not be confused with the fear of change which will inevitably be an issue if the recommendations for change are proposed, accepted and progressed.
- In considering all evidence and debate the Board formulated various options and agreed that there were six options open to it as a result of its findings. These were:

- a. To carry on as we are
  - b. To create a Single Joint Waste Organisation with a single lead authority
  - c. To create a consortium of all authorities
  - d. To construct more formal arrangements to achieve closer and better working relationships
  - e. To revisit the topic in a certain period of time
  - f. To devolve waste disposal to each district and borough.
- The Board tested and considered each of these options in turn. It concluded that there is a clear case for closer joint working and policy formulation by the six authorities with the draft Joint Municipal Waste Management Strategy being a helpful foundation for moving forward.
  - These factors, together with the recognised cost and service performance pressures on each council meant that options (a) and (e) were not feasible courses of action and were rejected.
  - Option (f) was then discounted on the basis of the clear need for joint working and strategic leadership across the County area.
  - The Board, however, did give unanimous support to option (d) - to construct more formal arrangements to achieve closer and better working relationships. This option was, however, extended to include the exploration of the concept of a consortium (see option c above).
  - On the basis of the evidence considered, the Board agreed that there is still a lot of work to be done on being 100% certain of the financial and operational benefits of a Single Joint Waste Organisation.

In addition to the above there were a number of other conclusions mainly in the same vein, but from what has been reproduced it may be possible to identify that the Board were struggling to reach a conclusion upon which they could agree. Whilst of course this is not an essential ingredient of any review there was a genuine desire held by all members to present a recommendation which would enable further work and recognise the potential benefits which might exist.

## *Recommendations*

At the end of a very long session the Board finally arrived at the following form of words by way of recommendations upon which they unanimously agreed:

**That all the authorities in East Sussex should:**

- 1. continue to work towards closer and better working relationships, potentially including Brighton and Hove, and for that purpose create appropriate formal agreements, and**
- 2. explore the creation of a consortium of all authorities**

These recommendations were, in turn, presented to the Audit and Best Value Committee, the Cabinet and the full County Council, and accepted by each of them. They were also eventually presented to each of the Boroughs and Districts who with varying degrees of enthusiasm agreed to the principle of closer working. As such the review could be viewed as a success.

## **Improvement Opportunities**

An alternative way of viewing the outcome would be to see it as a 'fudge' in order to maintain harmony and provide an opportunity to enable progress on this initiative at a later date. Almost two years after the recommendations were agreed however, with the status quo still in place even this possibility must be seriously questioned.

So were there elements of the review which could have been conducted differently in order to have produced a more conclusive result. Remember the review was not seeking to establish a case for a Single Joint Waste Authority, simply to test the hypothesis that one would bring benefits. The result could be seen as inconclusive but a question that can then be asked is whether this was down to the way in which the review was conducted or to a genuine lack of evidence to prove the case positively or negatively.

## **Inhibitors to a More Successful Outcome and Thoughts on How They Could Have Been Overcome**

### *Project Initiation*

The review was initiated by the Audit and Best Value Scrutiny Committee of the County Council, to whom it was due to report. The involvement of the Boroughs and Districts was however vital to its success. In East Sussex there is an undercurrent of tension between the County and the Boroughs and Districts who often feel that the County is seeking to at least direct them, if not take over their responsibilities. It is likely that this feeling existed at the start of this review. A better way of tackling this could have been for the County to seek their views on whether they would support a review before one was established and if it was to go ahead offer one of them the opportunity to Chair it.

### *Scope*

The initial scope of the review deliberately excluded any area outside of the East Sussex boundaries. This included the City of Brighton and Hove which had formed part of the County until Local Government reorganisation in 1997. The City is a partner in the Waste Local Plan (East Sussex and Brighton & Hove - Waste Local Plan 2006) (which is a strategy for the disposal of waste) and during the review it was suggested that they should have been included. The Board took a decision at that point not to extend the scope but to involve Brighton & Hove in any future discussions. In hindsight it might have been better to include them as part of the review.

### *External Consultants*

The use of external consultants clearly brought very useful knowledge and information to the review. They were however suggested by County officers and their perceived enthusiasm for a SJWA solution heightened suspicion that they and the County were working to a secondary agenda. In the interest of expediency they gathered and presented the evidence of what was happening in other Counties. Looking back, a greater degree of trust could have been achieved if the Boroughs and Districts had been given a greater role in selecting the external consultants. It may also have been helpful to have arranged

meetings with one or two of the other counties who were most advanced with their plans, to provide the review Board with the opportunity ask open questions and hear the responses first hand.

### *Timing of the Study*

Arguably there is no ideal time to conduct a review which seeks to break new ground in terms of the ways of working. Either, as with the East Sussex review, there is no real evidence available regarding the possible benefits and so the estimated benefits are largely subjective, or, others are so far ahead, that there is a feeling that your review has come too late. In hindsight however it may have been better not to have chosen to have conducted a review which was seeking to evaluate the potential benefits of a SJWA at a time when one of the Districts was fighting the County's plans to site an Energy from Waste plant within their area.

### *Clarity of Options*

The second recommendation to “explore the creation of a consortium of all authorities” results from an idea suggested by the Chair. This was to establish a consortium of all of the Boroughs and Districts together with the County Council to form a SJWA. The way that it was envisaged that this would operate is that each of the Authorities would have an equal seat on the new body and this body would tender for, and establish a new contract. All existing contracts would be novated to the new body who would have the power to agree the buy-out of any existing contracts if this was seen to be advantageous or to leave them to run their course if this was not the case. In order to ensure that the trust and confidence of each Authority was gained, decision making in terms of the levels of service required would remain at local authority level (e.g. one District may choose weekly collections while their neighbour may choose fortnightly) and the financial contribution to the consortium would vary dependent on the decisions taken. Whilst this was explained it was never set out in writing and it became clear after the review that it had not been fully understood by all.

### *Desire for a Unanimous Decision*

It is possible that the collective desire to reach a set of recommendations upon which everyone could agree meant that the recommendations were watered down too much and it is possible that a more robust way forward could have been established even if this had meant that not all authorities were party to any agreement.

### **Conclusion**

From reading this paper it could be thought that the Best Value review which has been revisited here, had failed. The author believes however that this would be too simplistic an opinion. In East Sussex this was the first time that the County had sought to work together with their Borough and District colleagues to conduct a Scrutiny Review and the work which took place not only broke new ground in this respect, but provided a framework for future joint working. The recommendations could be viewed as a 'fudge', but, also had the benefit of building trust as the fears that the County would ignore the opinions of the other Authorities proved unfounded.

As with everything in life however it is possible to use hindsight as a tool to identify opportunities for improvement. Many of these are set out in the preceding section. The test for the author will be one of whether this new found knowledge, established as a result of this academic exercise, is put to good use in the future!

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# The Scrutiny of Local Area Agreements

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As a result of the Local Government and Public Involvement in Health Act 2007 (LGPIH) all Local Authorities are required to produce a Sustainable Community Strategy (SCS) identifying a strategic vision for the local area. This requires councils to work with the range of public, private, voluntary and community sectors in their area to examine and identify areas of major change that will most benefit local communities. The vehicle through which local authorities and their partners work together is the Local Strategic Partnership (LSP), which involves the leading figures in key organisations active in the council's area.

The intention of the LAA is to be the delivery plan of the SCS. LSP partners are required to identify up to 35 key indicators, from the National Indicator Set (NIS) of performance measures, that will define the priorities of the local area for the life of the LAA. Then they must agree targets for each of these that they will strive to meet, designed to improve the social and economic wellbeing of the area.

The finalised LAA is the agreed priority for all LSP partners. The intention is that by working together and pooling resources better outcomes will be delivered for local people (CfPS 2008).

But working together and pooling precious resources is not without difficulties at political, cultural and technical levels (Balloch and Taylor 2001), and these can have an impact on scrutinising work towards the achievement of joint targets.

## **Political**

The bringing together of partners to form the LSP and negotiate the LAA involves a number of organisations with divergent wider roles and responsibilities in the local community. Representatives of these organisations will bring with them their own views on their own organisations' significance to the LSP, what they are prepared to bring to the LSP, and what they want to take away from it. These attitudes will influence the partner's contribution to all aspects of the LAA, from negotiation through to delivery and of course, scrutiny.

These organisational views can and will be influenced by individuals and how they envisage their roles representing their partner organisations at the LSP. Even personal relationships with the remaining members of the LSP will potentially have an affect on the outcomes of the partnership (Mouritzen and Svava, 2002). These personal opinions will, like organisational opinions, influence attitudes to scrutiny.

The most significant problem to resolve politically at the LSP is that of power. All LSP partners own the same vision and delivery plan in the form of the SCS and LAA. However, whilst all partners have a commitment to drive for the same issues it is easy to see that certain LAA targets will require differing levels of input from a range of partners. This could lead to the Orwellian situation where 'all ... are equal, but some ... are more equal than others' (1987). Or at least they may consider themselves so. It could be argued that the most likely manner in which this situation would occur would be from the large public sector organisations' attitudes to voluntary and community sector organisations whose manpower and resources will be dwarfed by those of their public sector counterparts and whose financial existence depends on receiving funding from their larger partners (Balloch and Taylor 2001).

This perception of status and power could apply to scrutiny. LSP partners will probably have engaged with Cabinet Members (or at least the Leader) and Senior Council Officers at LSP meetings as well as other similar events and meetings. With the exception of health officials there is a strong probability that the remaining LSP partners would not have, and may not wish to, formally engage with scrutiny. Naturally the 'duty to co-operate' enshrined in the Local Government and Public Involvement in Health Act 2007 is designed to prevent these difficulties occurring. Whilst this provision will require partners to engage with scrutiny there could still be problems with regard to the nature and extent of the engagement particularly with regard to the level of consideration given to scrutiny recommendations. It is also important to note that the list of 'duty to co-operate' partners is limited to those listed in statute and there are many other organisations that could be added to the list who would be useful to scrutineers. Scrutiny is required to fill the 'accountability gap' that has been created by the construction of LSP's.

## **Cultural**

The marrying together of multiple organisations in partnerships will require the cultural adjustment and development of each partner's internal and external features. Partnership working makes changes to internal roles, relationships and power dynamics for the organisations entering them (Kanter 1989).

It is necessary for each partner organisation to understand each others' objectives in both delivering the LAA and its wider roles. Agreement and clarification about roles and responsibilities is required to prevent partners stereotyping each other to their traditional functions. A certain amount of professional resistance could be encountered from individuals within partner organisations that could prevent the partnership from working as effectively as it could (Balloch and Taylor 2001). When it comes to working together partner organisations need to bear in mind that they cannot 'order' others to do anything (Kanter 1989).

The combined issues of roles and responsibilities along with professional resistance are the difficulties that could affect scrutiny of LAAs. For many of the organisations involved in an LSP the prospect of being held to account by elected members from a peer organisation would be a new and not necessarily welcomed experience. It is likely that these partners would have been delivering the same range of services for many years without being expected to directly answer to local politicians. In addition to the decision making layer scrutiny needs to bear in mind that they are not able to 'order' partners either. An atmosphere of mutual trust and understanding will be required to ensure that partners engage with scrutiny. The duty to co-operate provides some guarantees but to ensure more than the bare minimum of co-operation the best scrutiny will be achieved through joint working. These are the key cultural barriers that scrutiny has to overcome in order to become effective at scrutinising LAA's.

## **Technical**

The final theme in the difficulties of partnership working is technical issues between organisations. These are structural, technical and managerial changes that will require new information, communications and budgeting systems as well as new approaches to the complex and multiple accountabilities (of which scrutiny is one). Individual organisations are also protective of their own data sources (Balloch and Taylor 2001).

Structural changes are a key feature for partnerships. Particularly when it comes to decision making processes. Differences between processes will be more exaggerated between the public and private sector organisations in the partnership and both types of organisation will need to bare each individual's processes in mind. This includes scrutiny who will have to walk a fine line between holding to account implementation of the LAA without impinging and unnecessarily delaying those organisations who can act quicker than public sector bureaucracies for the benefit of the overall partnership.

On the other hand non-local authority partners will have to learn to engage with scrutiny as local government begins to fulfil its role as the local place

shaper (DCLG 2006; 2008). Making themselves accountable to elected councillors will be a challenge to many organisations - not least the Police who have protested against being made accountable to local politicians since the Police and Justice Act 2006 proposed giving local councils scrutiny jurisdiction over crime and disorder matters in their areas. The potential to increase public accountability of the police was further developed in the policing green paper (Home Office 2008).

*This essay has so far suggested that the principal problems with partnership working are political, cultural and technical differences and recognises that these same issues are naturally going to cause problems for scrutineers. In terms of creating general principles to make this form of scrutiny genuinely additional it could be argued that the following steps should be followed to assist the process.*

## **Knowledge**

Elected Members are not experts in every field that is within the remit of their committee appointments. In order to scrutinise an issue effectively a certain amount of background knowledge is often required to be able to get to the crux of issues. The proliferation of partnership working in recent years requires Members to fulfil a new role as the driving force of the local authority as the 'place-shaper' (DCLG 2006; 2008). This fits earlier predications that scrutiny would enrich the 'community leader' role type of councillors (Snape and Dobbs 2003). This requires a broader knowledge base for successful scrutiny as in order to be able to hold people to account it is necessary to understand what is being explained in order to probe and question the information that is provided. Therefore Members will be required to increase their knowledge and understanding of partner organisations and the specific or general contributions that they are making towards achieving the LAA. This general principle applies to all Members as even Cabinet Members may not have a detailed understanding of partner organisations as revealed by the London Borough of Hillingdon's scrutiny review of their LSP (CfPS 2007).

In addition to the improvement of Member knowledge and understanding it may also be beneficial for scrutiny committees to co-opted external experts into their membership to provide an additional resource to effectively scrutinise external partners and their contribution to the LAA.

### **Atmosphere of mutual respect, trust and understanding**

As already discussed partners cannot ‘order’ each other around (Kanter 1989) therefore it is necessary to promote and adopt an atmosphere of mutual respect, trust and understanding.

Scrutineers need to bear this important factor in mind. Without this type of atmosphere the prospects for scrutiny are limited. One of the strategies to kill scrutiny identified by Ashworth and Snape (2004) was to ‘ensure that cabinet members...never attend [scrutiny meetings] (as a clear sign of their irrelevance)’. If effective scrutiny of the LAA is to take place then the same principle is true of partners. It will be very difficult to legitimately scrutinise a LAA indicator on crime if the police are reluctant to attend scrutiny meetings. Similarly if partners are happy to attend meetings then it is important the scrutiny members do not act in a negative manner to the point that partners will be reluctant to engage with scrutiny in the future or permanently damage the council’s relationship with the partner (Mackintosh and Rathin 1999).

### **Use task and finish groups to contribute to LAA delivery in a positive way**

The impact of negative scrutiny on the LAA and partners has already been discussed as a matter that should be avoided if necessary to ensure partner co-operation.

An additional and, on paper, less confrontational positive measure that scrutiny could undertake towards the LAA would be to positively contribute towards its achievement. For example, through a task and finish group that aims to assist in developing policy to deliver a LAA target. Whilst it has to be acknowledged that some partners could be offended that scrutiny feels the need to undertake the task in the first place hopefully engagement with the project would ease

partner fears of scrutiny and provide them with a positive impression of scrutiny after engaging with it in, arguably, its most effective vehicle (Ashworth and Snape 2004) as well as achieving the two principles already set out in this essay.

## **Use the LAA to inform work programmes**

In order to ensure that their work programmes are matched with corporate priorities scrutineers should use the LAA to inform and influence their work programme. In addition to the task and finish groups already identified scrutineers should pro-actively take on issues that contribute in some shape or form to the LAA. This could be through a wide ranging overall monitoring report at timely intervals. Whilst limited in its scope this report itself could keep partners alert and will assist in identifying potential problem areas early on. In addition to this the LAA should be used to influence and inform the wider choosing of scrutiny committee items. For example the NIS target to reduce per capita CO<sub>2</sub> emissions could influence a scrutiny committee to consider ways of increasing public transport usage in the local area.

## **Make partners accountable for LAA delivery**

The most important general principle to introduce to scrutiny of LAAs is for Members to recognise their new roles as ‘place-shapers’ (DCLG 2006; 2008) and hold LSPs and their partners accountable for their actions. Unlike chief executives of partner organisations councillors are directly elected by the local population. It is important that elected members use this mandate as a legitimacy to lead (Huxham and Vangan 2005) and influence the LSP and prevent the growing dominance of the corporate elite (Crouch 2004). However this necessity to hold partners to account for delivery of the LAA needs to be achieved within the general principles already identified.

## **Devil’s Advocate**

This essay has held a common theme throughout thus far. That being that scrutiny of the LAA is a beneficial and worthwhile exercise. So the question needs to be asked: could scrutiny resources be employed better elsewhere? For example it could be argued that with the vast weight of all LSP partners

behind it all indicators in the LAA will most probably be achieved due to the fact they have been identified as strategic priorities and will have large resources committed to achieving them; which leaves little room for scrutiny to add value. Evidence has shown that when organisations concentrate strongly on maximising outputs in key areas this can have a negative impact on other aspects of the business (De Bruijn 2007). So in the case of achieving the LAA targets other NIS measures could be left to fail. Therefore scrutiny may add more value to the local area by concentrating on other key areas from the NIS, for example, those indicators that were nearly included in the LAA but drafted out at the eleventh hour – maybe in favour of a more achievable target?

Secondly, do Members want to scrutinise the LAA? What if some indicators are poor performing and the only way to rectify them is through significantly increasing local taxes? Will scrutiny members drive for achievement of this type of LAA target or simply accept that the indicator cannot be achieved due to its inherent difficulties. This lack of regulatory will (Mackintosh and Rathin 1999) is another potential problem that could prevent effective scrutiny of the LAA.

## **Conclusion**

The creation of LSPs and LAAs is requiring local government scrutiny to adjust its focus and attentions away from the council chamber and seeing the development of the local councillor as a ‘community leader’ in order to fulfil the place-shaper role outlined by the Government.

The creation of LSPs creates a wide range of problems for scrutineers as different political, cultural and technical systems unite. In order to fulfil their roles scrutineers will be required to overcome these issues on an individual basis and then overcome any prejudices that partner organisations may have to being held to account by another organisation.

In terms of general principles to assist in genuinely additional scrutiny of the LAA the issues are five fold. Scrutineers need to gain the knowledge necessary to be able to hold partners to account. In order to bring partners to the committee

table an atmosphere of mutual respect, trust and understanding is required otherwise there is a risk that partners could make it difficult for scrutineers to hold them to account. It is widely recognised that task and finish groups are one of the most successful vehicles of scrutiny. Engagement of partners in these types of investigations early on will show the commitment of scrutiny to achieving the LAA targets and assist in building relationships and the reputation of scrutiny. Scrutineers should use the LAA to inform the general themes in their work programmes and should monitor general progress on a regular basis. The final general principle is that scrutineers should use their electoral mandate to hold partners to account for the delivery of the LAA on behalf of the communities that they represent.

Finally, whilst scrutiny of the LAA is important it is also crucial that the priorities it identifies are not pursued over and above other important issues for the local area.

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# Afterword

Andrew Coulson

Anyone who has read the studies in this book cannot fail to be impressed by their commitment to the scrutiny process. They will notice the positive outcomes that have been achieved, but also the frank discussions of problems and limitations, the limited capacity of the process as it stands in British local government today, and the fundamental importance of good quality officer support.

Scrutiny is the one feature of the new system which came in with the Local Government Act 2000 that offers the chance to get away from the oppositional, confrontational, debating style politics that we see in Prime Minister's Questions at Westminster and in far too many noisy but unproductive debates in full council meetings. The cabinet system entrenches single party rule whenever one party has a majority in the council. But the development of scrutiny in local government, much like the select committees at Westminster, have shown that when it comes to carrying out investigations, or interviewing key players involved in some matter which is headline news, politicians can work across party lines to clarify the issues at stake and formulate constructive recommendations.

If it is to go beyond instant reaction, scrutiny needs to be evidence based, in so far as this is possible. The investigative processes described in the studies here

illustrate many of the limitations that apply to all social science: that there are often more than one valid interpretations of a situation; the fact that carrying out an investigation influences those who are investigated; that many failures are the consequences of cock-up more than conspiracy, and that there may not be a single person who can be blamed; and that evidence often leads in unexpected directions, so that it is often not possible to scope a particular investigation and then to stick religiously to that scope until the work is complete.

Scrutiny can seldom succeed without high quality officer support. Christopher Kemp, starts Chapter 8 with a dictionary definition of scrutiny based on sorting rags – and it is not reasonable to expect that councillors will do this entirely on their own. The Concise Oxford English Dictionary defines it more prosaically as “critical gaze, close investigation, examination into details”. An experienced scrutiny officer, Dr Jacqueline Gray, of Bedford Council, compares being a scrutiny officer with being a stage manager in a theatre; you are involved in all the preparations and plans, but when the time for the performance comes you can only stand in the wings and hope everything works out as it should. Getting the right people to come, making sure they are asked the telling questions, and then writing a tactful, rigorous report which does not shy away from difficult truths involves very special skills and traits.

The near tragedy of the process (near because this drama is not yet played out) is that scrutiny has been successful despite most of the aspirations that were set out for it when it was first set up. It has not, generally, succeeded as a means of holding an executive, or the leaders of other local organisations, to account in the manner of an audit or inspection, because, as Brij Madahar makes clear in his chapter, it does not have the capacity or the skills to do this. It is not particularly good at linking the public to councils, because scrutiny committees can only make recommendations, not decisions, and therefore are not a quick or particularly effective means of getting redress. They are not the natural places to conduct best value reviews, or reviews of performance, because these are matters that most Executives will be reluctant to delegate to anyone else. They will find it difficult to shed light on budget decisions, because these are the main means by which the political parties can differentiate their

appeals to the electorate, and they will not want to share all their political points ahead of the budget debate in full council.

What scrutiny is good at is investigations, which look at a topic in depth, more than is possible in a single meeting, and get their briefings from the technical specialists who are involved. In this situation the scrutiny committee becomes like a well informed citizens' jury, listening to what it is told, sorting the sensible from the self-serving, challenging the vested interests and the silos. Capable scrutiny officers then put the evidence together, work it into well written reports, and produce draft recommendations which can take matters forward.

But its position, legally and practically, is so weak that individual chief executives who fall out with scrutiny committees, or arrogant Leaders, have been able to all but abolish the scrutiny function in their councils, or to deny it officers or resources. The Local Government Act 2000 missed the chance to give scrutiny a quasi-independent status as the creation of the full council. The Local Government and Public Involvement in Health Act 2007 required it to look at Calls for Action, and gave it modest additional powers in relation to Local Area Agreement targets, but failed to give it the protections it needs to be secure in the future. This is recognised in the most recent consultation, *Strengthening Local Democracy*, which floats the possibility of a duty on council chief executives "to ensure that committees have adequate resources to carry out their work". The Audit Commission and other inspectorates are taking the quality of scrutiny into account in their Organisational Assessments for the Comprehensive Area Assessment. The link which is missing so far is that scrutiny should have a direct link with the full council – which should be required to debate scrutiny reports and send its comments back to Council Executives.

This book will have more than served a useful purpose if it sheds light on what scrutiny has done, what it can do, why it needs to be served by a competent cadre of professionally trained officers, and why it needs more protection.

The authors of the studies in this collection are not a random sample. They are dedicated scrutiny officers (dedicated in every sense of the word), or chairs of

scrutiny committees in councils which have given a prominent position to the scrutiny function. Surveys tell us that many councils are not like this, that many councillors who serve on scrutiny committees are not convinced that what they do is useful, or hark back to the old ways of the committee system, and that many scrutiny officers struggle. So what is here is a cutting edge of progressive practice, which sets a marker or a benchmark as to what is possible. The book is offered in the hope that many others can learn from these experiences, and in the future achieve as much or more than the councils represented here.

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