

COMMITTEE ON STANDARDS IN PUBLIC LIFE

LOCAL LEADERSHIP AND PUBLIC TRUST: OPENNESS AND ACCOUNTABILITY IN LOCAL AND LONDON GOVERNMENT

Response from the Centre for Public Scrutiny

Introduction and Summary

The Centre for Public Scrutiny promotes the value and potential of scrutiny in modern and effective government - to hold executives to account and to create a constructive dialogue between the public and its elected representatives - to improve the quality of public services. We believe that 'better scrutiny means better government'.

We promote four principles of good scrutiny that are mutually reinforcing and lead to improved public services through community leadership. Good public scrutiny, illustrated in the cycle diagram below:

1. provides 'critical friend' challenge to executive policy-makers and decision-makers
2. enables the voice and concerns of the public
3. is carried out by 'independent minded governors' who lead and own the scrutiny role
4. drives improvement in public services



The CfPS Four Principles of Good Scrutiny and Accountability Cycle¹

¹ *The Good Scrutiny Guide* 2nd edition, CfPS 2006

We have not answered all the questions in this consultation, focusing only on those where we believe we have something to contribute in relation to scrutiny. Our response can be summarised under the following points:

- Talking about an effective accountability framework for "local government" is no longer relevant. CfPS believes that we should be seeking to enhance good governance and accountability across all public bodies, particularly in the context of increasing partnership-working.
- CfPS does not believe that a "culture of scrutiny" is meaningful on its own. It is vital to look at the culture of governance across the whole organisation (or partnership) and to seek one which values challenge and scrutiny as part of accountable decision-making, policy-making and review (see our cycle of decision-making which tries to identify the key accountability points).
- The CfPS four principles of effective scrutiny provide an established framework for judging scrutiny and we can identify some conditions which are likely to lead to successful scrutiny, although finding quantitative measures for evaluating scrutiny's effectiveness is notoriously hard for a number of reasons (for example a reluctance of executives to give scrutiny credit for its work).
- We believe that resources for scrutiny are more important than formal powers, but the issue of culture referred to above is also important.
- However, simplifying the current legislative framework for overview and scrutiny, which has developed piecemeal and contains key gaps, would help further empower and strengthen scrutiny in the context of increasing cross-sector and cross-authority boundary partnerships, joint executive arrangements etc.
- Further progress is needed in scrutiny's capacity to actively engage and involve the public in decision-making consistently across the board, though there are lots of examples of excellent practice which show what can be done. If local government as a whole grasps this and sees the potential for engaging the public through a properly supported scrutiny process and thereby enhancing public perceptions of openness in public sector decision-making, there is great potential for improving openness and accountability as well as making scrutiny more effective.
- In relation to arrangements in London, we believe that the first four points above apply equally to London as to local government. The GLA needs a governance culture which values challenge and scrutiny as part of an accountable decision-making, policy-making and review process. This includes ensuring a public decision-making process but more importantly a robust scrutiny framework which is respected by all parts of the Authority.
- We believe that there is scope for greater collaboration between the London Assembly and the London boroughs' scrutiny functions. The Assembly brings a London-wide, strategic approach, while the boroughs bring local knowledge and –

in the case of health scrutiny, for example – greater formal powers to hold decision-makers to account. We believe both could benefit from closer working and that London-wide public accountability would be enhanced.

Issue 1 Local government: leadership and decision-making

In practical terms, what are the differences between the mayor and cabinet model and leader and cabinet model?

From the CfPS Annual Survey of Overview and Scrutiny in Local Government there are no reported significant differences in the operation or effectiveness of scrutiny in mayoral and non-mayoral authorities. The only difference from the norm is that scrutiny in mayoral authorities appears to be better resourced than in non-mayoral authorities, with 3.5 dedicated staff on average (2.9 is average for all respondents) and an average discretionary budget of £31,200 (compared to an average of £11,200 for all). However, this may be skewed since only two of the mayoral authorities are district councils (Bedford and Mansfield) which is out of line with the distribution of districts overall. Allowing for the districts factor, mayoral authorities seem to have slightly fewer staff than the average for non-district councils, but a larger discretionary budget.

In line with other responses, scrutineers in mayoral authorities feel that they are most effective at carrying out policy review and policy development, but one third cited 'holding the executive to account' as one of their most effective roles. Party politics appears to play no stronger or more negative role in scrutiny in mayoral authorities than in non-mayoral authorities, and they are as likely as other authorities to share scrutiny chair positions across the parties regardless of who is in the majority or holds the mayoralty.²

Given the small number of mayoral authorities, we believe it is dangerous to try to generalise about whether this model better supports the seven principles of public life than any other. For the examples of poor governance (Doncaster, Stoke-on-Trent), there are equally examples of good governance (Hackney, Lewisham, Hartlepool) in mayoral authorities, and in Hackney the mayoral model has explicitly helped to tackle historic governance failures and formed part of a new culture of doing things differently.

Issue 2 Local government: openness and accountability

What are the key elements of an effective accountability framework for local government, and how well do current arrangements work in practice?

We would argue that, building on the CfPS four principles of effective scrutiny outlined above, there are three elements required for successful and effective scrutiny as part of a clear accountability framework:

² 2007 Annual Survey of Overview and Scrutiny in Local Government, CfPS 2008

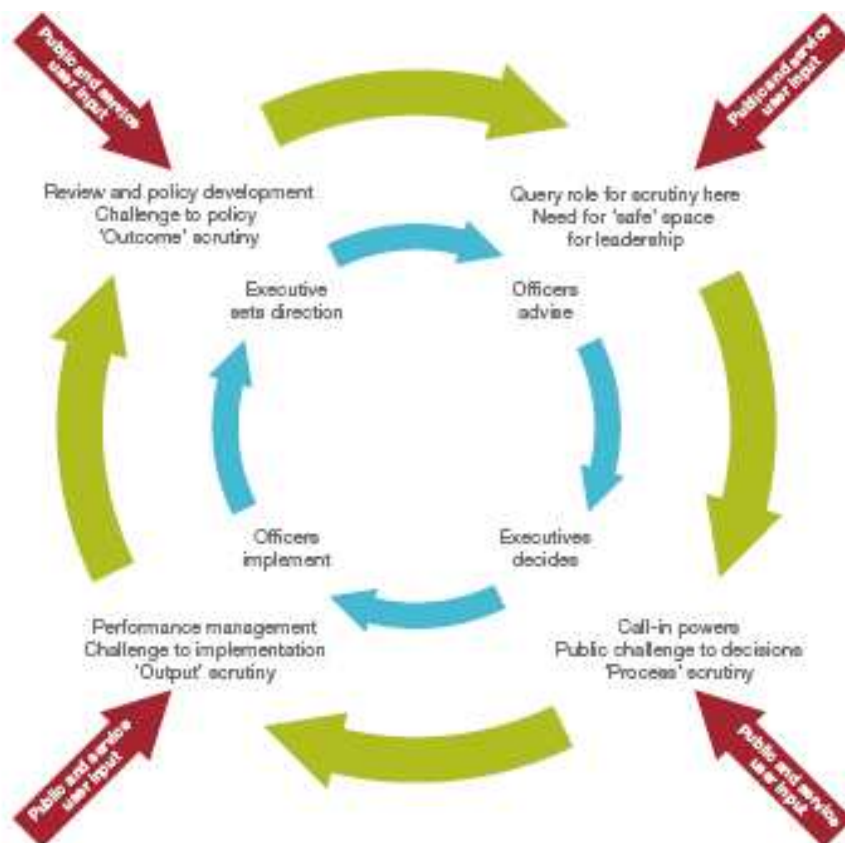
- **leading beyond authority boundaries** - being willing to look outward, beyond scrutiny of the council executive to scrutiny of all agencies whose activities affect their local place
- **authority recognition of and support for scrutiny** - the sign of a confident and mature authority and its leadership is a willingness to be challenged and to see robust (and resourced) challenge as a necessary part of good governance
- **members taking responsibility for their own effectiveness** - scrutiny must be led and owned by elected members and there is much that members themselves can and should do to improve their own performance, skills and capacity.³

While the first of these elements would be enhanced by a clearer legislative framework with unequivocal and extended powers to require information, attendance and responses from a wider range of external bodies, the other two are largely within the powers of local government itself to achieve.

CfPS has developed a decision-making framework (overleaf) to identify the points at which clear accountability mechanisms are needed. Since form should follow function, the form of accountability required will vary depending on the nature of the decisions, the point in the decision-making cycle, and the intended outcome of the exercise of accountability at that point. The cycle itself is based on an expanded conception of the traditional “officers advise, members decide” process, recognising that it is more of an iterative and deliberative process, creating different points at which public accountability for the intended outcomes is needed. The cycle also acknowledges the need for leaderships to have private space for internal debate as part of the process of developing policy and arriving at a point where decisions can be made.

We believe that explicitly recognising and being clear about how decisions are made and reviewed, and how decision-makers are held to account, improves governance and will contribute to achieving the seven principles of public life. Mutual trust and respect between a robust scrutiny function and decisive, but open, leadership is key to this framework.

³ *Leadership of Place: the role of overview and scrutiny*, Leadership Centre 2009



Decision-making framework showing key points of accountability and scrutiny

How should effective scrutiny be judged, and to what extent do current measures lead to effective scrutiny?

The Centre for Public Scrutiny has developed four principles of effective scrutiny against which we believe scrutiny can and should be judged across the public sector. To recap the points made in the introduction, we believe that effective public scrutiny:

- provides 'critical friend' challenge to executive decision-makers
- enables the voice and concerns of the public
- is led and owned by independent-minded lay governors
- drives improvement in public services⁴

We concur with the main aims of the separation of the executive and scrutiny functions of local political management structures, as cited in the 1998 White Paper, *Modern Local Government: in touch with the people*, namely to improve efficiency, transparency and accountability.⁵ In other words, the persons responsible for a

⁴ *The Good Scrutiny Guide* (2nd Edition), CfPS 2006

⁵ *Modern Local Government: in touch with the people*, DTLR 1998, par 3.14

decision or service should not be the only persons to determine whether it was the right decision and whether the service is being properly delivered. In practice there have been some limitations on how these aims have been achieved since the 2000 Act legislative changes came in. There is, however, evidence that where scrutiny works, it has contributed to meeting the policy objectives set out by the government in 1998.

Factors which militate against effective scrutiny

Stoker et al's evaluation of the local government modernisation reforms in 2004 found that the introduction of overview and scrutiny with its presumption against the application of the political group 'whip' had been "problematic" for local government with its strong tradition of party political groupings. The research found that 35 percent of councillors attended political party group pre-meetings and 16 percent of councillors admitted that they had been whipped by their party group prior to overview and scrutiny. Perhaps more of concern was the finding that almost 32 percent of councillors believed that party group pre-meetings were *necessary* before scrutiny committee meetings.

In 2007 CfPS repeated the Manchester University team's research and found a continuing impact of party politics on scrutiny's operation, but a declining one. In 2007, only 22% of councillors reported party pre-meetings before scrutiny committees, a fall of 13%, and perhaps more significantly, only 15% councillors now believed that it was appropriate to hold political group pre-meetings, showing a significant change in politicians' attitudes towards how overview and scrutiny should operate. The proportion reporting actual 'whipping' of councillors on overview and scrutiny decisions had also declined, albeit only by 1% to 15%.⁶

The reason these statistics are important is illustrated by the qualitative research which CfPS carried out to bring more depth to the bare numbers. This highlights that where a highly politicised environment exists, political party groups - whether in opposition or administration - seek to control debate and recommendations from overview and scrutiny committees for political ends, undermining the principles of transparency and accountability emphasised above.

CfPS does not believe that it is either practical or desirable to seek to prevent politicians from being political and applying their political values to their work. However, it is important for effective scrutiny that members are able to consider the evidence which they hear with an open mind and to reach conclusions and recommendations based on that evidence. Our research shows that often the restrictive impact of party group politics can be self-applied and arise from a perceived culture of what is acceptable or allowable as much as from actual 'whipping' in practice. We will return to the issues of culture and behaviours at an authority again as they are key to the successful practice of effective scrutiny. The same point applies when considering the impact of the new ethical framework brought in by the same Local Government Act 2000.

6 *Life of the Party*, CfPS 2007

Other factors which can militate against effective scrutiny operating in practice include the issues of power and resources, which are covered later.

Conditions which lead to effective scrutiny

The CfPS Annual Survey tells us that scrutineers feel that they are most effective at carrying out policy development and review, followed by performance monitoring. CfPS research in 2007 examining the findings of Comprehensive Performance Assessment reports into local authorities found a clear correlation between high performing authorities and the existence in those authorities of a robust, challenging, member-led and well-resourced scrutiny function⁷. We cannot claim causality, but the link was overwhelmingly clear and reinforces the arguments we make later in referencing the Langlands Commission's Good Governance Standard - robust scrutiny is a key part of a strong culture of good governance and performance.

The CfPS annual series of Successful Scrutiny case studies provide further evidence of what scrutiny can achieve where it works well, within the current framework of powers and resources available to overview and scrutiny:

- **Gloucestershire's** review of agencies' responses to the severe flooding in 2007 which affected many areas of the county held a number of agencies to account as well as the local authorities concerned and influenced the national Pitt Review of flooding. Sir Michael Pitt included recommendations on the importance of involving overview and scrutiny committees in assessing agencies' preparedness for future flood risks in their area.⁸
- **Cumbria and Lancashire's** joint health scrutiny committee examined a controversial NHS proposal to amalgamate 3 health facilities into one which had provoked a major public outcry. The health scrutiny committee was able to negotiate a compromise between the PCT and public campaigners and secured agreement that two facilities would remain open.⁹
- **Richmondshire DC**, despite having no formal health scrutiny powers as a district council, investigated proposed changes to out-of-hours GP services in this very rural area and came up with recommendations that were adopted by the County Council and NHS to find an innovative way of maintaining an out-of-hours GP service by basing it at the ambulance station.¹⁰
- **Cardiff's** scrutiny of social services was considered sufficiently robust by the Care and Social Services Inspectorate for Wales that it was cited as a critical factor in their decision to take Cardiff Children's Services out of the intervention protocol.¹¹

7 *Scrutiny, Performance and Improvement: the road to excellence*, CfPS 2007

8 *Successful Scrutiny 2008*, CfPS 2008

9 *Successful Scrutiny 2006*, CfPS 2006

10 *Successful Scrutiny 2007*, CfPS 2007

11 *Successful Scrutiny 2008*, CfPS 2008

In the early days of the executive-scrutiny split decision-making arrangements, there was a pervasive view that scrutiny was the 'second best' option, a consolation prize for those not able enough or in high enough favour with the leadership to make it into the executive. Although this is still sometimes lamented as being the case, it is by no means as universal as it once was. The CfPS Annual Survey 2007 demonstrates that overview and scrutiny does provide a wide range of roles for elected members – one of the stated objectives of the 1998 modernisation proposals, as the following two tables illustrate:

Roles performed by Overview and Scrutiny Committees

Role	Percentage of councils
Performance monitoring	93% (+1)
Holding the executive to account	91% (+2)
Policy review	91% (+4)
Policy development	81% (+3)
Pre-decision scrutiny	71% (0)
External scrutiny (not health)	62% (+3)
Scrutiny of Partnerships	62% (+1)
Health scrutiny	59% (+2)
Best Value reviews	35% (-9)

Roles performed by members of Overview and Scrutiny Committees

Member role	Percentage of councils
Presenting recommendations	82% (-2)
Monitoring outcomes of previous work	79% (+4)
Critically challenging decision-makers	77% (-2)
Proposing/writing recommendations	69% (+2)
Presenting an annual report to Council	64% (+1)
Conducting research outside of meetings	56% (-7)
Proposing scrutiny topics at the public's request	46% (-4)
Writing reports	18% (-2)

CfPS's publication 'Scrutiny Frontiers' provides further qualitative evidence of members' views of what they are able to achieve through their role as members or chairs of overview and scrutiny committees and how this is different from the old committee system. A flavour of these is provided below:

“Scrutiny has a completely different atmosphere to other council business.”

“One of the great advantages of the scrutiny function is that you can get out there and have freedom to operate.”

“Scrutiny is more flexible than any other system and there is more scope for public participation than in the old committee style.”

“The thing that I have found most satisfying about scrutiny is that all councillors are involved in running the council.”

We are not just responding to officers' reports – we are driving the agenda, involving outside agencies and working in a completely different way.”¹²

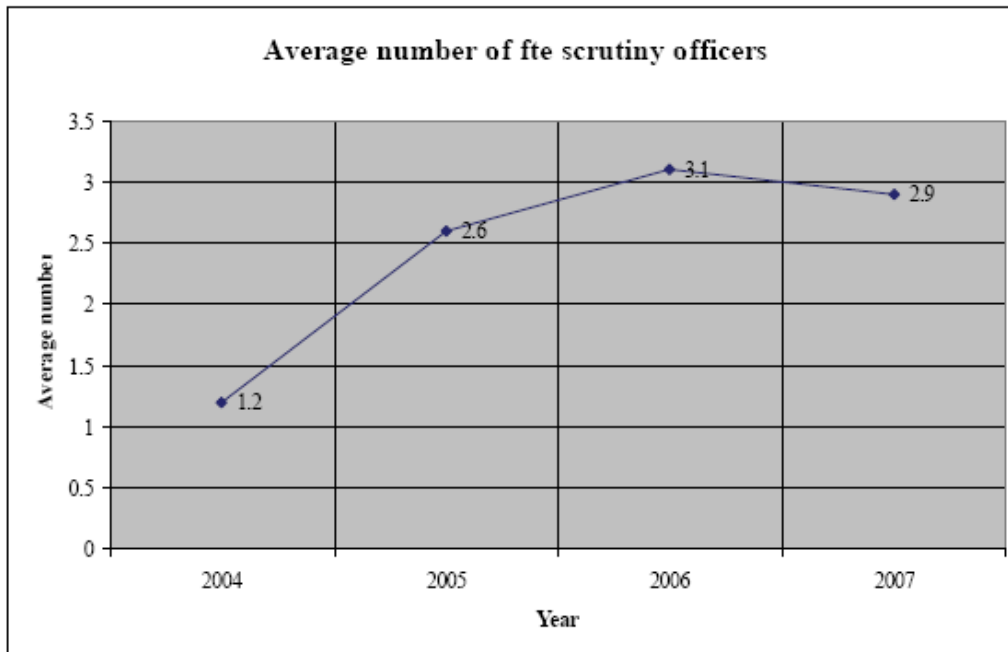
Do overview and scrutiny committees have adequate powers and resources to hold the executive to account, and if not, what additional powers and resources are required?

Resources for scrutiny

The evidence from CfPS's Annual Surveys of Overview and Scrutiny in Local Government clearly shows that in many authorities the scrutiny function is not highly resourced. The chart below shows that the average number of full-time equivalent dedicated scrutiny officers, which had been on a steady increase, fell slightly in 2007 to 2.9 (*we are in the process of analysing the 2008 survey and may be able to update these results later in March*). However, this masks a degree of variation, particularly between district councils (with on average only 1.4 fte scrutiny officers) and top tier authorities (with an average team of around 4.2 scrutiny officers).¹³

¹² *Scrutiny Frontiers: experiences from the scrutiny frontline*, CfPS 2007

¹³ *2007 Annual Survey of Overview and Scrutiny*, op cit



In terms of financial resources to support scrutiny's work, for example to commission independent research, pay for external or expert witnesses to attend and organise public consultation events, again there is a mixed picture. The average discretionary budget available to scrutiny teams in 2007 was £11,853, a figure that has been steadily rising since the first CfPS Survey was carried out in 2003. However, this masks a strong variation:

- 25% authorities report no discretionary budget at all
- district councils have an average budget of £5,323
- Welsh authorities have the highest average budget at £34,374, although this may be skewed by one particularly well resourced authority out of just 22
- without district councils, the average scrutiny budget for all top tier authorities in England and Wales is £19,397.

As a result of recent research carried out by CfPS and the University of Warwick on behalf of Communities and Local Government, SkillsPlus UK and the English Regions Network, we can now begin to link effectiveness in scrutiny to the level – and type – of support that it receives. Our findings suggest that scrutiny works well when it is adequately resourced and supported. While we identified no 'ideal' level of support, we found a number of principles that the participants in our fieldwork believed underpin good public scrutiny. These include:

- Emphasising the value of maintaining dedicated officer support for public scrutiny. It was clear from our findings that where officer support is dedicated

wholly to supporting public scrutiny the participants felt more able to develop expertise in the role, foster good relationships with lay scrutineers and importantly, relieve pressure on the officers themselves.

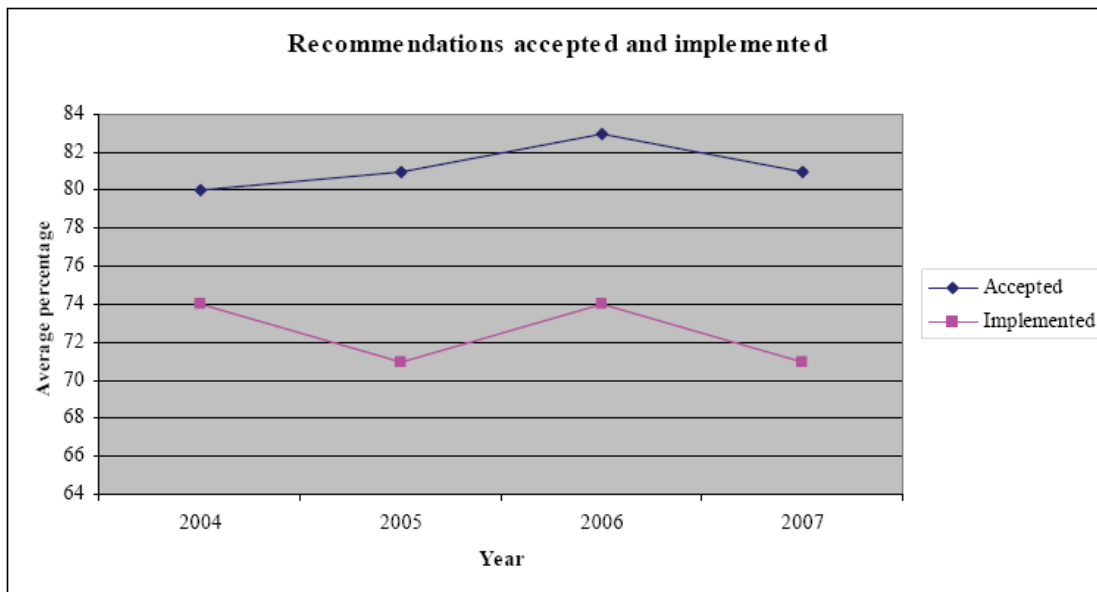
- Encouraging the development of scrutiny arrangements that operate with a degree of independence from other functions of the organisation.
- Ensuring that public scrutiny is supported by a discrete budget, under the control of the senior scrutiny officer, to enable independent commissioning of evidence and research of all kinds to support robust and objective challenge and conclusions.
- Ensuring regular contact with lay scrutineers is seen as a fundamental part of the job as this helps achieve a more effective scrutiny process through building relationships with the lay scrutineers, understanding their aims and priorities and ensuring they can contribute effectively to the process.
- Encouraging close contact between public scrutiny officers and senior management throughout the organisation being scrutinised. This cements the place of public scrutiny in an organisation and makes the 'critical friend' challenge easier and more readily accepted.¹⁴

While there can be a perceived 'political' difficulty in making resources available for a member-focused central service such as scrutiny in a local authority where there may be budget pressures on front-line services, it is possible to create a virtuous circle whereby open and effective scrutiny is seen as a positive for the authority by both the administration and the opposition and can deliver identified benefits in services. The best example is **Cambridgeshire County Council**, winner of the CfPS Financial Scrutiny Award last year, where the scrutiny function initially had a dedicated scrutiny officer post funded on an 'invest to save' basis: the cost of employing the scrutiny officer had to be met through the savings identified annually as a result of scrutiny's service and efficiency reviews. Having done this successfully for two years, the scrutiny function convinced the authority of the benefits of a scrutiny resource and the post is now funded in the base budget.

Powers for scrutiny

It is often argued that overview and scrutiny committees need more powers to be effective since they cannot compel the executive to accept their recommendations. It is undoubtedly the case that in some authorities, overview and scrutiny committees are frustrated at not being taken seriously by the executive. However, CfPS research shows that a high proportion of scrutiny recommendations are accepted and of those a high proportion are then implemented. It is of concern that last year there was a slight fall in both figures, and this needs to be kept under review.

¹⁴ *Supporting Public Scrutiny: understanding and developing the role of the professional scrutiny support officer*, University of Warwick and CfPS 2008



However, as the quotations from Scrutiny Frontiers illustrate, scrutiny can be what its practitioners make of it, and some of the most successful examples of overview and scrutiny in local government have been where it is working at - and even beyond - the limits of its formal power and authority. The example of district council health scrutiny from **Richmondshire DC** is a prime case in point, as are two other district council examples:

- **North Somerset** decided, following a session with representatives of the local youth parliament, that the organisation that they wished to scrutinise was the local press to hold them to account for the way in which local young people were portrayed. Illustrating the point that how you carry out scrutiny can be as important as what you do, they decided to hold a 'Media Summit' involving representatives from the youth parliament and the local papers, rather than a traditional committee-style meeting. Following the Summit, where the young people as well as councillors were able to challenge and debate the issue, the local paper agreed to set aside a page to be written directly by young people, for young people, to provide a more balanced picture.
- **Staffordshire Moorlands** held an inquiry into the state of rural bus services in the district and successfully engaged with local disabled people's and older people's groups as well as the bus companies to get a new bus users forum set up and better engagement from the bus providers regarding the services that they provide.
- In the **Gloucestershire** review of the response to flooding highlighted earlier, they were able to get key agencies like the relevant water company and Environment Agency as well as the county council to engage and respond to recommendations, and where a couple of organisations refused to attend or provide evidence to the scrutiny committee - on the grounds that they were not compelled to - some bad publicity for this refusal brought at least one of the

agencies around and they responded to the recommendations made to them setting out what they planned to do.

There are, therefore, ways for overview and scrutiny to be creative in using the powers that they already have to investigate any "matters which affect the authority's area or the inhabitants of that area", even though they only have powers to "make reports or recommendations to the authority or the executive"¹⁵ on these matters. However, the recent reforms in the 2007 Local Government and Public Involvement in Health Act, extending the formal powers of overview and scrutiny to require information from a range of statutory partners and require them to 'take into account' scrutiny recommendations in relation to their activities to deliver Local Area Agreement (LAA) targets are welcome because they provide a clear set of formal 'back stop' powers for scrutiny's role in relation to these partners. The proposal in the current Local Democracy, Economic Development and Construction Bill to extend the powers of joint committees in two-tier areas to remove the restricted scope of LAA targets is also welcome for the same reason.

However, both the 2007 Act and 2008 Bill are unnecessarily complex and ringed around with restrictions and caveats. For example, health and some crime and disorder bodies are excluded from the 2007 Act provisions for external scrutiny because they are deemed to be covered by earlier legislation on health scrutiny and scrutiny of Crime and Disorder Reduction Partnerships, although in the case of CDRP scrutiny this is by no means clear, and the powers have not yet commenced in any case (a delay of three years since the original legislation). The proposed new powers for joint committees are only for joint committees in two-tier areas and do not enable the setting up of joint committees between authorities in other areas with the same range of formal powers. They also seem to give these county-district joint committees greater powers to require partners to provide information to scrutiny than individual authorities' committees will have, since the latter are still restricted to LAA matters. The recent debate in the House of Lords on amendments to this section of the Bill, promoted by the LGA, illustrates the issues surrounding the current framework for joint scrutiny committees.¹⁶

The complexity of the legislative framework on overview and scrutiny reflects the way in which it has developed, piecemeal, over time since 2000, and demonstrates the fact that overview and scrutiny has evolved further than was originally envisaged in the 2000 Act. A simple way of giving authorities a clear framework for joint scrutiny committees, for example, could be achieved by using the same framework which executive functions were given under the 2000 Act and associated regulations, namely a linking of the pre-existing powers to form joint committees in the 1972 Local Government Act with the new executive arrangements. Local government is well used to the 1972 Act framework and such an amendment would give overview and scrutiny clear parity of status with the executive and clear up the current confusion that exists about authorities' powers to form general joint scrutiny committees, other

¹⁵ *Local Government Act 2000*, S.21

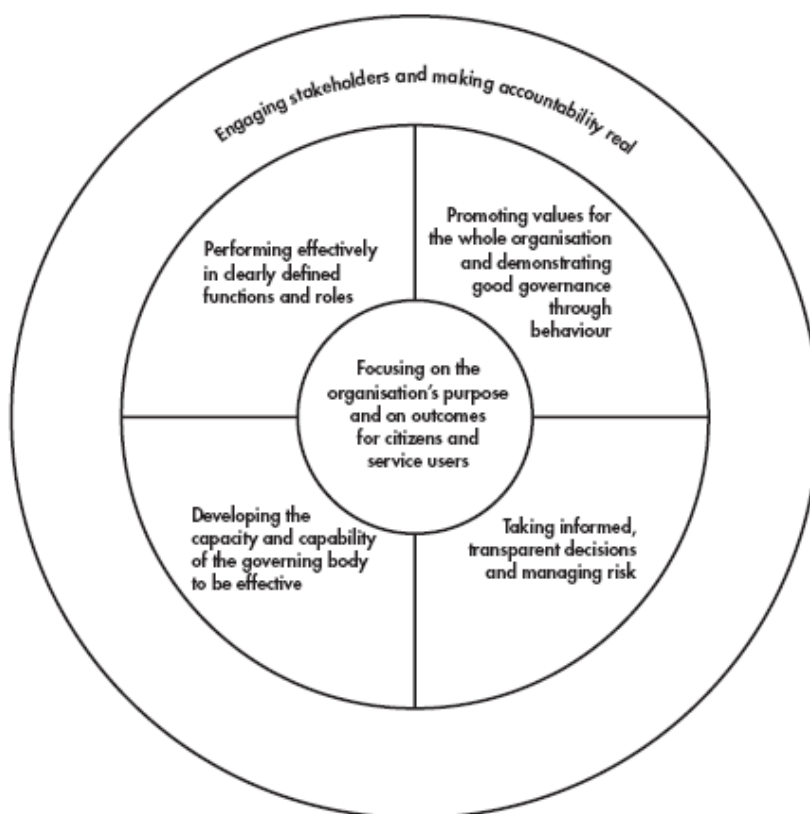
¹⁶ *Hansard House of Lords*, 3rd February 2009,

<http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90203-gc0006.htm>

than under specific health legislation in relation to health scrutiny and 2007 Act in relation to scrutiny of LAAs in two-tier areas.

How effectively have local authorities embedded a culture of scrutiny into their decision-making processes?

This is the most important question in the Committee's inquiry, we believe. We would argue that a 'scrutiny culture' cannot be seen in isolation from the wider political and governance culture of the authority as a whole. As set out in our decision-making cycle earlier, a culture which values and supports challenge and scrutiny as part of its standard decision-making and policy-making processes is vital. In this context the principles of the Langlands Commission on Good Governance in the Public Sector¹⁷ also provide a good overarching framework:



As the Good Governance Standard emphasises, the principles are about the way in which the whole organisation works, its values, purpose and outward engagement with citizens as well as how it takes decisions and the capacity of its governing body. Scrutiny in local government is affected by the culture of the organisation as a whole

¹⁷ *Good Governance Standard for Public Services*, Independent Commission on Good Governance in Public Services, CIPFA and OPM 2004

in which it operates and where scrutiny has struggled to deliver fully to its potential, its failure can often be attributed to these wider values-based issues. Thus we know from the CfPS Annual Survey, for example, that the greatest single change which it was felt (by 24% respondents) would help make scrutiny more effective was gaining more respect across the council.

However, there are issues pertaining to a scrutiny culture where the power to change is largely within the hands of overview and scrutiny members and officers themselves – with the important caveat that this is affected by limitations in available resources, as previously identified. In particular we can consider the issue of public engagement in the scrutiny process. Despite one of the four principles of effective scrutiny being to enable the voice and concerns of the public, overview and scrutiny functions have tended to make limited use of the powers available to them to:

- co-opt members of the public and other external people onto scrutiny committees (the average number of non-statutory co-optees on overview and scrutiny committees was three in 2007, with only 13% authorities using the powers from the 2003 Act to give such non-statutory co-optees voting rights);
- invite members of the public to suggest topics for scrutiny reviews (the average number of topics suggested by the public in 207 was just six, with more than half of all scrutiny functions reporting no input directly from the public to their work programme).¹⁸

The research into the role of the scrutiny officer referred to earlier also found that engaging the public was felt to be one of the most challenging roles for which scrutiny officers felt they were responsible:

"The majority of the participants did acknowledge that the public did have a place in public scrutiny and that this was something that should be developed. However, it was generally seen as a lower priority than ensuring member engagement and running an 'effective' public scrutiny process.

"Although most participants were able to provide one or two examples of instances where the public had attended a formal public scrutiny meeting, most admitted that this was a rare occurrence. Similarly, little attempt was made to ensure that the public held a central place in the public scrutiny process – typically, they were involved as passive spectators, with little opportunity to shape the direction of proceedings. In short, we found little evidence of sustained, effective engagement of the public."¹⁹

It would be wrong to seek to blame authorities' scrutiny functions for not effectively engaging the public in the work of scrutiny: for a district council where there is perhaps one officer who can spend just half his or her time on supporting scrutiny, it can be enough of a challenge to organise the meetings for elected members, never

18 *2007 Annual Survey*, op cit

19 *Supporting Public Scrutiny*, op cit

mind think creatively about trying to involve the public as well. However, involving the public more actively in public scrutiny is a key part of developing an effective scrutiny culture, and is also part of developing an open, transparent culture of governance more widely across an authority.

This can be seen in the development of the wider performance improvement framework which, as Comprehensive Performance Assessment has evolved into Comprehensive Area Assessment, has gradually placed more emphasis on hearing the views and experience of the public and service users and on focusing on outcomes rather than processes. The experience of health scrutiny provides some positive lessons as it demonstrates the greatest use of external witnesses to inform scrutiny reviews. However, overall, it is an area where we have to acknowledge that there is still some way to go and where the issue of resources can be an important barrier.

Issue 3 Local Government officers: role and accountability

We believe that there is a fundamental gap in the discussion paper here: why should local government officers be expected to be more publicly accountable than the senior officials who work for other public bodies, such as the local and regional offices of Whitehall-sponsored agencies (or indeed the Whitehall departments themselves)? Since local government officers already have to account for their actions in public to democratically elected councillors through a range of existing mechanisms (public reports and attendance at public meetings under cabinet, scrutiny and regulatory arrangements in local authorities), they are arguably already more accountable than most. If we wish to argue for the principle of much greater accountability and openness to the public, it does not make sense to restrict this using sector-based definitions, which do not mean much to the public anyway.

CfPS has long argued that using the definition from the Data Protection Act 2000, based on carrying out “functions of a public nature” would be more appropriate when seeking to enhance public accountability arrangements. This could bring organisations such as registered social landlords, transport providers, utility companies, others providing public services under contract and government agencies under the ambit of enhanced public accountability arrangements. The public often do not distinguish between providers of public services and spenders of public money: therefore nor should public openness and accountability arrangements.

Does the fact that senior officers are required to support both the executive and scrutiny give rise to a conflict of interest, and if so, how should this conflict be addressed?

Local government senior officers have long had to balance serving the wishes of the democratically elected majority group with providing fair support to the minority opposition parties and in one sense serving both the executive and scrutiny is no different. Officers who can find themselves in a difficult position are those whose primary role is supporting scrutiny which may involve them asking difficult questions of their colleagues on behalf of scrutiny members, and it is not unknown for scrutiny

officers to be hauled in front of the chief executive if a more senior officer complains about this.

One way of tackling the difficult position in which officers who support scrutiny can find themselves is in the government's current proposal for a dedicated scrutiny officer post with a responsibility to support and promote scrutiny. CfPS agrees that requiring resources to be dedicated to scrutiny is essential if scrutiny is to contribute effectively to governance and accountability arrangements in local government. Our research project with Warwick University referred to earlier showed that many scrutiny officers do not see scrutiny as a career path due to the lack of opportunities for progression to higher levels. Indeed, we found that only 12% of officers who responded to our annual survey aspired to progress to other scrutiny posts. By defining specific responsibilities for the dedicated scrutiny officer this has the potential to ensure that it is a respected and relatively senior position, creating the potential for progression within scrutiny and thus making it a more legitimate 'career'.

However, there is a danger that by creating a minimum requirement of one dedicated scrutiny officer, some authorities will merely maintain or even reduce scrutiny support to meet the baseline statutory requirement. The requirement should be for all local authorities to have a dedicated scrutiny resource and to ensure that the appointment, job description and grading is at a sufficiently senior level. It may be more useful to define 'dedicated scrutiny resources' in financial terms, insisting that sufficient budgets should be in place to facilitate the increasingly important role that scrutiny plays.

CfPS also believes that district councils should be included in any requirement as a great deal of significant service delivery and scrutiny is carried out at second tier level. If powers are to be extended to district councils to review LAAs and establish joint scrutiny committees it seems illogical to exclude them from this provision.

Issue 4 Local Government Accountability and Partnerships

A more radical approach to the whole issue of governance and accountability would be to recognise that as more services are delivered by a range of public bodies acting in partnership – all currently with different governance and accountability systems and different kinds of officer support – a new joined up system of governance and accountability and associated support is required. In many ways, local government has a far stronger system of openness and accountability governing its decision-making processes than other public bodies operating at local level and spending public money: for example health trust boards, school governing bodies and partnership boards on whom there is no requirement to meet in public or to publish their papers, agendas or minutes in the way that local government has done for many decades. Setting a common standard of openness and accountability which as a minimum matched that currently operating in local government would set a level playing field of common expectations.

Taking this further, in ten years time it is not impossible to conceive of a local governance unit existing in an area comprising officers who would:

- provide support to elected councillors, non-executive directors, school governors, police authorities, tenants housing boards, standards committees, audit committees and other lay decision-makers or scrutineers involved both in a range of individual local bodies and the partnerships that may bring them together; and
- manage a joined-up local accountability framework, with common standards of good governance around interests, openness, accountability, ethical behaviour standards, scrutiny and values.

Issue 5 London Government

How effective are arrangements for ensuring openness of the decision-making process in the Greater London Authority; and what steps, if any, should be taken to improve these arrangements?

We believe that many of the responses that we have given in relation to openness of decision-making in local government apply equally in London. As a minimum, the Mayor should follow the same standards of open decision-making that already apply in local government and which we have argued should apply across the public sector:

- publishing key decisions so that they can be called-in if something has gone badly wrong
- publishing a forward plan of forthcoming key decisions to enable pre-decision scrutiny which can often be more effective than post-hoc scrutiny
- taking planning decisions in public, based on public reports, so that the reasons for decisions are clear.

Similarly, the four principles of effective scrutiny developed by CfPS and our decision-making framework provide useful frames of reference against which to test the nature of decision-making and scrutiny in the GLA.

To what extent does a ‘culture of scrutiny’ exist within the Greater London Authority and the London Assembly?

Notwithstanding the points made above about specific improvements to decision-making that could be made in the GLA, we believe that the wider point which we have made earlier about culture, behaviours and expectations is much more important. London is a world-class city and all involved in its governance should be world-class in their approach. This may require all involved to raise their game and their standards. There are examples where London Assembly reviews have had a great impact in terms of enabling effective public scrutiny of the agencies that work in London, for example their review of the 7 July 2005 bombings and more recently their very timely examination of agencies’ responses to the severe snows in London in early February. However, there are other examples where their reviews have not had the public impact which the quality of the review, the seriousness of its findings and

recommendations and the importance of the subject matter would seem to deserve, for example the 2007 review of the LDA's approach to funding cultural projects.

The reasons for this variation in impact are not simple but probably involve a mixture of the readiness of the GLA and its associated bodies to accept and implement the findings of the Assembly's scrutiny, the willingness of the London media to cover some issues and not others according to their own agenda, and the readiness of the Assembly itself to prioritise the key issues for the governance of London and not let them go. These features are not peculiar to London government and indeed the patchiness of effective scrutiny is evident at all levels: from parliamentary select committees through to local authority overview and scrutiny committees. We believe that improving the governance culture in London – as in other organisations – is a responsibility of all those involved and requires the creation of a cycle of decision-making where those making decisions have an expectation that they will be effectively challenged and scrutinised and that this therefore encourages them to adhere to the principles of good governance, creating a virtuous cycle of improvement in public service.

What are the arrangements for ensuring that decision-making across the different levels of London government is open and transparent?

CfPS believes that as the Mayor and leaderships of the London boroughs work closely together to deliver their respective executive functions, there could be benefits from greater collaboration between the London Assembly and the scrutiny functions of the London boroughs. The Assembly brings a London-wide, strategic approach to issues affecting London and could encourage boroughs to look outward to consider regional or sub-regional issues that affect a number of boroughs together. Likewise, the boroughs bring valuable local knowledge of how policies work on the ground which could enhance and provide depth to the Assembly's work.

Interestingly, in some areas – notably health scrutiny – the boroughs actually have greater formal powers of scrutiny than the Assembly does, and arguably the Assembly could better fulfil its responsibilities to examine public health in London if it worked collaboratively with the boroughs who can require evidence and make specific recommendations on health service changes. The boroughs recently formed a Joint Overview and Scrutiny Committee, the largest in the country, to consider the Darzi London healthcare reforms, which was an important and effective development in scrutiny in London²⁰, and closer working between the boroughs and the Assembly has the potential to take this development a step further.

**Centre for Public Scrutiny
March 2009**

²⁰ *Final Report of the JOSOC to review 'Healthcare for London'*, April 2008, available on www.londoncouncils.gov.uk