Party Politics and Scrutiny in Local Government: clearing the hurdles

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The Centre for Public Scrutiny is very pleased to publish this thinkpiece by Professor Steve Leach, which represents a significant contribution to the debate on the progress and development of the overview and scrutiny function in local government. Four years ago, we published Professor Leach’s report, “Practice, Progress and Potential: an assessment of the local government overview and scrutiny function according the CfPS’ four principles of good scrutiny”. This piece reflects his updated thinking, based on the further extensive work he has done since that time working directly with a large number of local authorities.

“Practice, Progress and Potential” concluded that, “despite considerable progress, local authorities ‘could do better’ in tackling the barriers which still exist to achieving the full potential of effective scrutiny”. This report focuses on the specific barrier that overly partisan party politics continues to pose to achieving effective scrutiny and highlights the approaches that authorities have taken to tackle this. Providing both a clear analytical framework and very practical, experience-based solutions, we hope that this report will be valuable to policy-makers and practitioners alike.

One of the key points which Professor Leach makes is the important influence of the particular local political culture, and with this in mind CfPS does not endorse or advocate wholesale adoption of any of the approaches highlighted in the report. What works in one local authority may be wholly inappropriate for another. However, I believe that we can all learn from critically reflecting on our own experience in the light of the experiences of others, and CfPS commends Professor Leach’s report as an important contribution to this process.

We also endorse his call for a ‘new settlement’ between party politics and overview and scrutiny in local government. If local government is successfully to address the major challenges of economic development, unemployment and shrinking public and private resources, it needs to be able to draw on all the talent and resources at its disposal. This includes all members of the council, whatever role or position they are in, front or backbench, administration or opposition. Likewise, overview and scrutiny must play its part - not least because if scrutiny cannot demonstrate that it is able to contribute constructively to these major tasks, questions are bound to be asked about its impact and relevance.

Where it is enabled and supported to work constructively and effectively, overview and scrutiny has contributed to finding better ways of delivering services, to efficiency savings and to developing community consensus over difficult issues. These will all be vital in the coming years, and while political values remain as important to local government as they have ever been, overly partisan party politics must be replaced with a more mature attitude to political debate, or it is not only overview and scrutiny that will continue to suffer.

Jessica Crowe
Executive Director, CfPS
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Introduction

The prevalent view is that overview and scrutiny has been slow to realise its potential as a refreshingly different and more productive way of doing business in local authorities, compared with the committee system it has displaced. One of the explanations for this slow progress has been the political resistance to the new function. The behavioural expectations associated with overview and scrutiny were not perceived, in most instances, to be compatible with traditional aspects of party politics in local government, in particular the operation of the party group system, with its expectations that private arenas rather than public ones should be used to resolve internal differences of view.

Over time, there has been some degree of relaxation of the traditional features of party group behaviour which had hindered effective scrutiny. The Centre for Public Scrutiny has been exemplary in encouraging change of this nature, and advocating a set of realistic but potentially beneficial changes in political behaviour that are needed. But change has been slow and patchy, and there remain too many authorities where the impact of overview and scrutiny is still too limited.

There is now a good opportunity to speed up the process of change. The nature of overview and scrutiny is changing. Following the 2007 Local Government and Public Involvement in Health Act, there is a greater emphasis on the role of local authorities in scrutinising the performance of external agencies in areas beyond health and community safety which were addressed by previous legislation. External scrutiny of this nature has always been less problematical politically than internal scrutiny. There is also encouragement for the function to be strengthened at a neighbourhood (or sub-authority) basis. These changes can be utilised to break down traditional, unhelpful patterns of behaviour in overview and scrutiny, and to enhance the chances of the function realising its full potential over a wider range of authorities.

This publication seeks to contribute to this momentum for change. It is structured in three sections. On the premise that it is important to understand the roots of the resistance to overview and scrutiny (which remain influential today), the first section discusses the continued influences of the way the Local Government Act 2000 was drafted, the resilience of the traditional committee process, and the way this has been exploited by majority parties and chief officers who wished to minimise the threat which they perceived from the new function. The second section reviews the nature of the political strategies which developed and which (at their worst) rendered overview and scrutiny virtually ineffective. Key distinctions are drawn between dismissive, manipulatory and responsive strategies. Readers may wish to assess which model best fits recent practice in their own authorities.

“The nature of overview and scrutiny is changing...”
In the third section a range of structures, processes, support mechanisms and (feasible) behavioural changes are identified and discussed, all of which have the potential to facilitate the move to a more productive role for party politics in overview and scrutiny. These possibilities are drawn largely from my own experience of carrying out in-depth reviews of overview and scrutiny in 19 different authorities between 2002 and 2008. The analysis in the second section - political strategies - draws on the same source. Individual authorities are not identified, except in circumstances where what they have introduced can be viewed in positive terms.

At its best overview and scrutiny has resulted in positive experiences for members with much greater job satisfaction than was possible in the old committee system. It has resulted (believe it or not) in experienced councillors choosing to chair overview and scrutiny panels rather than accept offers of cabinet places. It has led to changes in relationships between political parties which enable legitimate differences of view to be expressed in ways which contribute to changed outcomes, rather than being dismissed as (party) political posturing. But none of these outcomes are easily achieved. The possibility of their achievement depends crucially on a sensitive reading of the different political dynamics of different authorities. This publication is intended as a contribution to the achievement of a ‘new settlement’ between party politics and overview and scrutiny.

“At its best overview and scrutiny has resulted in positive experiences for members...”
The Roots of the Problem

The Local Government Act 2000 - in the way it separated out the executive (cabinet) and scrutiny functions - provided a great opportunity for local authorities, and in particular local politicians, to break out of the traditional committee-dominated way of doing business. The opportunity was there for a major and potentially beneficial change, in which the ability to challenge constructively could be strengthened, the quality of debate raised and the life of the non-executive councillor made infinitely more interesting, whilst retaining the important role which political parties and party politics play in local government.

This opportunity has been realised only slowly. Initially there was a widespread resistance to the behavioural changes implied by a move to an executive/scrutiny split. The roots of the resistance to the changes implied by the 2000 Act are threefold; flaws in the legislation; the resilience of the attachment of political parties to the committee process; and the advantages to chief officers of exploiting both of these factors.

The Flawed Legislation
In the government’s initial intentions, the parliamentary model of executive authority tempered by the ‘holding to account’ role of the select committees was to be replicated at the local level. That would have provided a clearer focus for scrutiny than the version which emerged as a result of concessions made in the House of Lords, which added a ‘supportive’ function (overview) to the ‘holding to account’ function (scrutiny). Scrutiny committees were expected to support executives, to carry out pieces of work which they would find valuable, as well as to challenge them. The term ‘critical friend’ came to be used as a metaphor for the role of overview and scrutiny. In this move, the clarity of the ‘holding to account’ role has been lost, and in many authorities a mode of operation has been established which places a far greater emphasis on the support role than that of challenge. Select Committees in Parliament do not experience a similar blurring of priorities. Their function is clearly to challenge and ‘hold to account’, although they may, as a result, make recommendations for change. Supporting the executive is undertaken elsewhere, in the standing committees which amend parliamentary bills. In local authorities, there is every reason to provide an equivalent ‘support’ opportunity. However to merge the ‘challenge’ and ‘support’ roles in a single institutional mechanism has often proved counterproductive.

The Attractions of Replicating a ‘Committee System’
This blurring of roles provided an incentive to replicate the committee system, which would have not been compatible with a purer form of challenge-based scrutiny. If the new overview and scrutiny function is there (inter alia) to support the executive, then it may seem logical to establish a
set of overview and scrutiny committees which match the portfolios of the executive members. There is then, in certain circumstances, a scenario whereby they became de facto advisory committees to the cabinet member, and hence replicate the traditional committee system which the new function was intended to replace.\(^1\) There was a particularly striking example of this phenomenon in one of the earlier scrutiny reviews I carried out in a shire county (see box below):

The portfolio holder for education (as it was then) attended every meeting of the Education Scrutiny Committee, as was expected of cabinet members in the authority. But not only did she attend, she totally dominated the proceedings, speaking (frequently) when she chose to, explaining to the committee the justification for the various policy papers they were being asked to consider, and generally operating as the chairperson – much more so than the nominal committee chair. Committee members made a few comments (of varying degrees of relevance) which were noted. The committee behaved in effect as a tokenistic advisory committee to the cabinet, having been steered through the agenda by the cabinet member concerned.

It is in fact more common for the role played in the above example by the cabinet member to be taken on by the director of the service concerned. The opportunity provided in the legislation for a ‘dual role’ for overview and scrutiny provides a different (although compatible) opportunity for a service director.

The crucial political relationship for a director is of course with the one or more portfolio holders whose responsibilities match those of the director. All directors have a ‘professional’ view of what should be done in their field of expertise. They will seek to convince these portfolio holder(s) whom they brief of the appropriateness of policies and decisions within their remit, within the context of the political priorities adopted by the majority group or coalition concerned. It is a process of negotiation, as a range of studies of relationships between minister/civil servants and portfolio holders/chief officers have illustrated.

Once the negotiation has been resolved, portfolio holder and director have a common interest in maximising the probability of the acceptance of the outcome at cabinet/directors board level. In this context, the possibility of challenge from an overview and scrutiny panel is likely to seem as an obstacle, rather than potential benefit. On the other hand, if director and portfolio holder are reasonably confident that the relevant scrutiny panel will endorse the preferred policy/decision outcome, there will be a perceived benefit in referring it to the relevant overview and scrutiny panel. If the panel

\(^1\) It is not necessarily the case that this practice was necessarily encouraged deliberately to reduce the ‘challenge’ role of overview and scrutiny. In implementing the 2000 Local Government Act, many authorities were genuinely uncertain as to what was expected of them. The reliance on an established precedent - the committee structure - was an understandable response, in the circumstances.
is prepared to ‘accept’ the recommendations in the report this strengthens
the bargaining power of director and portfolio holder in their respective
reference groups (directors board and cabinet respectively).

An example of one authority in which (some) directorates dominated the
overview and scrutiny process can be illustrated by an extract from my report
to that authority:

The strength of the link between directorates and overview and scrutiny
committees is manifested in the following ways

• typically, a dominant role for the directorate in the formulation of the
  agenda...
• …resulting in a large number of items which consist of reports which are
to be noted (such reports may have a useful informational function, but
rarely result in members ‘adding value’ beyond a smattering of ‘ad hoc’
comments)
• the director (or one of his/her staff) typically (though not always) sitting
  alongside the chair and acting as an advisor
• long reports, written by directorate staff (in many cases reports which
  have gone or will go to executive) with little or no interpretative commentary
for overview and scrutiny which would help them to constructively
challenge them

Given the familiarity of local politicians with the committee system, and the
initial concerns about the propensity for overview and scrutiny to act as
a medium of political (and/or personal) embarrassment for the dominant
party and its cabinet members, it is not surprising that a structure designed
and operating in a similar way to traditional committees was seen as a way
of defusing potential criticism, or at least a means of ‘damage limitation’.
In some authorities there developed what can best be described as an ‘unholy trinity’ of portfolio holder,
scrutiny committee chair and director, committed
to steering through the agenda negotiated between
director and portfolio holder with as little hassle as
possible. There are of course advantages in these three
participants discussing work programmes, so long as
the Scrutiny Committee Chair can (and does) insist on
going against the advice of the Director and portfolio
holder when unconvinced by it. It is when the Chair has
in effect been ‘incorporated’ that the epithet ‘unholy
trinity’ is most apposite.

“The reality of the committee system
never matched the glowing perception
which was accorded to it retrospectively...”
The Illusion of the ‘Golden Days’ of Committees

The reality of the committee system never matched the glowing perception which was accorded to it retrospectively. It did have some advantages, in particular the way in which it allowed a group of councillors to specialise and develop knowledge and expertise in a service of particular interest to them.

But comparisons made frequently in the first few years of the new system between committees as genuine decision-making bodies and scrutiny committees as powerless irrelevancies always reflected an illusion rather than a reality. Committees were dominated by their chair, who enjoyed privileged access to the relevant chief officer(s). Party groups often met before the final committee meeting, to be guided through the agenda by the chair/chief officer partnership. If there had been a prior discussion in a party group meeting to agree a line, members would be reminded of this. There was a decision-making process, but it was not one in which ordinary committee members played a significant role.

Opposition members rarely enjoyed a prior briefing from the chief officer concerned. The quality of responses to specific questions varied depending on the political traditions of the authority. At the meeting itself questions could be raised and criticisms made, but such interventions would rarely be informed by evidence which had been sought from and provided by the officer structure. In any event, in a politicised authority with a dominant party, interventions from the opposition only very rarely changed a pre-determined stance from the majority party members.

In essence, the new executive/scrutiny system provided a real opportunity to ‘break the mould’. In practice, due to the opportunities provided by revisions in the legislation and the strength of the traditional institutions of committee and party group behaviour, the impact of the change was greatly diluted. Over time, the influence of the ‘traditional committee’ model has reduced, as fewer and fewer councillors have previous experience of it. But its resilience remains and has been apparent in the most recent reviews (2007-08) which I have carried out. The challenge of ‘breaking with tradition’ still remains a formidable one in many authorities.

“Over time, the influence of the ‘traditional committee’ model has reduced, as fewer and fewer councillors have previous experience of it.”
Political Strategies for Dealing with Scrutiny

To make progress, an understanding is needed of the negative side of the picture. There are many devices which a majority party (or, to a lesser extent, a coalition) can operate to render the overview and scrutiny function largely or wholly ineffective. These devices are identified here not in any sense as positive guidance but rather as an attempt to increase their transparency; to clarify the way they are used so that councillors in authorities where such devices are prevalent can recognise them for what they are.

Marginalisation
If a cabinet feels threatened, for whatever reason, by the overview and scrutiny process, it can (virtually) ignore it. It can choose not to meet with scrutiny chairs (of individual panels, or as a co-ordinating collective). It can develop mechanisms for policy development which in effect by-pass the overview and scrutiny process. In some authorities there has developed the practice of ‘cabinet working groups’, which typically involve an informal and private approach to policy development involving cabinet members and relevant officers. In those authorities which have designated a second tier of cabinet membership - a group of majority party members who operate in effect as junior ministers, attending cabinet meetings, but not formally cabinet members - it is likely that one of their roles will be policy development/advice on topics which, in other circumstances, would fall within the remit of overview and scrutiny. (This phenomenon of de facto ‘junior ministers’ also has the effect of reducing the number of proactive members available to hold positions of responsibility in the overview and scrutiny structure).

A cabinet with this attitude to overview and scrutiny will nonetheless have reports (with recommendations) directed to it as a result of the work of task-and-finish groups. However even where there is a protocol which requires the cabinet to respond to such reports (as in most cases there is) it is difficult to develop guidelines which ensure that a considered and detailed response is provided. There are authorities where a few lines of response is felt to be adequate. There are authorities where the cabinet delays its response in a way which in effect puts the report ‘on the shelf’ and minimises its potential influence. These practices are extremely frustrating to the councillors who have contributed to a series of meetings of a task-and-finish scrutiny group, often with a considerable degree of enthusiasm.
Manipulation

There is a rather more subtle approach on the part of the cabinet, which involves a superficially positive attitude to the work of overview and scrutiny, but seeks to control what it does in a way which steers its activities into relatively ‘safe’ (as far the cabinet is concerned) activities. In principle, of course, overview and scrutiny is supposed to be ‘independent’ of the cabinet, but there are ways of making it the cabinet’s de facto accessory.

A key ingredient of this approach is to ensure that the overview and scrutiny structure is controlled by one or more cabinet sympathisers. Clearly if all the chairs are from the majority party, then the requisite responsiveness on the part of overview and scrutiny can be greatly facilitated. But even where chairs are shared, if there is a co-ordinating committee with a relatively strong role (e.g. the power to set the scrutiny work programme for the year) then the appointment of a senior member of the majority party as the chair of the co-ordinating committee can produce a similar effect. In this situation he or she can act as a ‘go-between’, checking out with cabinet colleagues which pieces of work they would welcome, and which they would not.

The dangers of having a member of the administration as chair of a Co-ordinating Committee is illustrated by the following extract from a review I carried out:

“The fact that the chair of the Scrutiny Commission is a member of the majority party and attends meetings of the pre-cabinet strategy group is helpful in relation to developing a capacity of overview and scrutiny to support the executive, but problematical in terms of its capacity to hold it to account. Whatever the qualities and integrity of the member holding the post, there will always be a perception on the part of the opposition that this personal link with the cabinet may on occasions be used to limit the possibilities of political embarrassment. The use of the chair’s casting vote to prevent a contentious call-in is an example of the way in which opposition members will tend to be sceptical of the chair’s motivation, (whatever the intrinsic arguments surrounding the call-in).”

A manipulative approach is however preferable to that whereby the cabinet largely ignores overview and scrutiny. It means that the topics which are seen by the cabinet (in consultation with their ‘go-between’) as appropriate for in-depth study by overview and scrutiny will result in reports which are likely to be taken seriously and responded to positively by the cabinet. It means that committee chairs are able to exert some influence, rather than being largely ineffective. But it results in an unbalanced outcome, whereby the ‘overview’ role of the function is emphasised (largely on the cabinet’s terms) whilst the ‘scrutiny’ role - holding the cabinet to account - is relatively neglected.
A variant of this approach is to use overview and scrutiny panels as advisory sub-committees to the cabinet, channelling through to them items which will be considered at future cabinet meetings for comment and advice. With a built-in majority for the administration on each panel, it is likely that many of the comments made will be accepted by the cabinet, thus creating the impression of a positive, influential role on the part of overview and scrutiny. In a sense it is, but very much on the margins, and possible only on an understanding that the overview and scrutiny accepts the implicit deal of not embarrassing the cabinet, in return for this limited degree of influence.

Minimising the scope for challenge from opposition members
In either of the approaches discussed so far – ‘marginalisation’ or ‘manipulation’, – there will be a concern to ensure that opposition members cannot use overview and scrutiny to ‘create trouble’ for the ruling group. This outcome is not difficult to achieve. The main potential threat is via the call-in mechanism. Call-ins generated by opposition members can be avoided by the use of a clause in the constitution which sets impossible conditions for opposition members seeking to initiate a call-in, either by specifying that a majority party member must be a signatory to the call-in request, or that a number of signatories is required in excess of the opposition membership in any one panel (one authority in which I worked increased the ‘required number’ after an election, to respond to an increase in strength of the opposition!). Another device for preventing call-ins is to restrict them to ‘key decisions’ with financial and policy requirements which precludes the possibility of call-in of smaller-scale decisions, (but which may nonetheless be of real significance).

Such blatant politicking is of course quite unnecessary, because with a majority on every scrutiny panel the dominant party can ensure that any call-in goes no further than the panel itself. All it takes is the majority party members to vote that the executive decision concerned is to be supported and that no rethink on the part of the cabinet is required. Even if, as a result of an unforeseeable absence, a call-in which advocated a change of decision did actually get as far as the cabinet, they can of course reject the advice involved.

It is not surprising therefore that in authorities that wish to minimise the scope for opposition challenge, the practice of call-in may often come to be regarded by opposition members as a waste of time.

The forward plan provides a further opportunity for opposition members to request that contentious items are brought before an overview and scrutiny panel before being considered at cabinet. For this to be possible requires three conditions:

• a forward plan that is accessible to and understood by members,
• a forward plan which contains a reasonably broad range of items
• a panel chair who is prepared to be open-minded in allowing such items to be placed on the agenda.

In many authorities one or more of these conditions are absent, and even where they are all present, ‘pre-decision’ scrutiny is only really effective where it involves in-depth consideration of the issues concerned. The opportunity to comment on draft reports is unlikely to result in changes of other than a superficial nature.

Overview and scrutiny can only work effectively if it has access to independent advice. Mainstream officers are unlikely to provide information which facilitates challenge of a policy or decision already agreed with (or destined for) the executive. Using the pretence that the officer structure can serve both executive and scrutiny functions with ‘equal effectiveness’, there are still authorities which argue that there is no need for a dedicated scrutiny support unit. Even where such units exist, they may find their role as sources of briefings to scrutiny committees which challenge mainstream officer advice to the executive constrained by the organisational culture of the authority.

**Openness to Challenge**

There is a third possible broad strategy towards overview and scrutiny on the part of a majority-party or coalition-led administration, which is one where the executive is open and responsive to the work of overview and scrutiny, whether it is critical or whether it involves policy recommendations.

In an early (2001) interview, this approach was epitomised by an able council leader who explained that he expected and indeed welcomed challenges from his own party members, as well as the opposition in overview and scrutiny committees. Challenge he recognised, was what overview and scrutiny was there to do, and it was up to him either to justify his own position, or to change his view if convinced by the argument. Sadly his predisposition to be challenged did not meet with a response from his party colleagues in the council, who wouldn’t have dreamt of departing from the long-established tradition of ‘not criticising your leader in public’.

Thus even where the formal or informal guidelines within a party group permit public challenge of this nature, group members may choose to operate a process of ‘self-censorship’ which discourages such challenges.

The development of a more open political attitude to overview and scrutiny is gathering momentum, although there are still many exceptions. A move in the right direction can be encouraged or supported by a series of initiatives of a structural, processual or attitudinal nature, which are discussed in the next section.
Toward a More Productive Involvement of Party Politics in Scrutiny

There are four types of change which can contribute to a better, more productive relationship between politics and overview and scrutiny:

- changes in structures
- changes in processes and procedures
- changes in support mechanisms
- changes in attitudes and behaviour

Of these, by far the most important is the fourth; indeed changes in structures and processes which have potential benefit can always be neutralised by political obduracy.

Beneficial changes in attitudes and behaviour

The Centre for Public Scrutiny is right to challenge the view that overview and scrutiny can or should be apolitical. Scrutiny will inevitably involve analysis and recommendations which have implications for the distribution of benefits and costs amongst the local population, and in this (broader) concept of the term, will be intrinsically ‘political’. But even using the term in a party political sense, it is unrealistic to expect members of a particular political party to sideline their political values, beliefs and commitments when they attend an overview and scrutiny committee meeting. Nor should they be expected to - differences in values and value-based priorities and programmes are an essential ingredient of the local democratic process.

What is crucial is how these different values are expressed in context of overview and scrutiny. The CfPS have drawn attention to the detrimental impact of ‘petty party political points scoring’ (PPPP) on overview and scrutiny. My observations of meetings in nineteen different authorities have confirmed the validity of this view. If opposition members use overview and scrutiny as a vehicle for media-oriented points-scoring of the type familiar from Prime Minister's Question Time, then the effective contribution of scrutiny will be minimal (although productive overview may still be possible - see below). There will be a similar result if the opposition uses overview and scrutiny for ‘filibustering’ tactics or in other ways ‘bends the rules’, undermining the overview and scrutiny process in an attempt to discredit the party in power. What will happen in these circumstances is that the majority party (or coalition) will ‘close ranks’ and any predisposition to permit the opposition to take the debate beyond the overview and scrutiny committee (e.g. by supporting a call in) will cease. If such behaviour takes place when scrutiny chairs have been shared with the opposition, such arrangements may well be rescinded, a power which the majority party can always apply if it so chooses. If it takes place in a situation where all chairs are held by
majority party members, one can be sure that the future sharing of chairs will not be contemplated.

If opposition parties genuinely wish to exert influence through scrutiny, they have to adopt a more subtle approach to the expression of their political values and priorities. There are two essential elements to such an approach:

• a degree of political realism in the identification of topics for in-depth reviews
• a use of evidence and logical argument in the way such topics are debated.

**Political realism in the identification of review topics**

Arrangements for the identification of topics for ‘in-depth’ analysis vary from authority to authority. It is desirable that, subject to appropriate conditions, the process should be as open to opposition members as to majority party members. However there will be circumstances in which a majority group may wish, for good political reasons, to block an ‘in-depth’ study on a topic which reflects a major priority for the administration, and where there is a clear difference of political values involved. For example if a Labour administration has committed itself to the introduction of one or more ‘academies’ within the authority and is in negotiation with various interested parties, it is unlikely to welcome the establishment of a task-and-finish group whose brief is to undertake an in-depth review of the performance of existing academies, with a view to challenging the case for academies per se. It would not be illogical to suggest this topic, but it would be highly unlikely that the administration would welcome – or be prepared to sanction – a study of this nature at that particular point in time. A second example would be the desire by an opposition group to investigate the respective merits of two-tier and unitary local government, when the administration had just submitted a bid for unitary status (as in the process introduced by DCLG in 2006).

“...if a new administration seeks to initiate scrutiny reviews which it hopes will discredit the former administration, it runs the risk of minimising the future possibility of ... positive joint working”

In both cases the initiatives involved are of a high profile ‘flagship’ nature. Any scrutiny review would be likely to result in heated political exchanges, (albeit based on genuine political differences) at a crucial stage in the development of the initiatives concerned. Equally, if a new administration seeks to initiate scrutiny reviews which it hopes will discredit the former administration, it runs the risk of minimising the future possibility of shared ownership of the function and positive joint working. The implication is that opposition (and majority) parties should recognise the likely impact of pushing for reviews of a highly controversial nature, and not do so, in the knowledge
(and understanding) of the political resistance such pressure would encounter, and the potential impact on the political climate of overview and scrutiny in the authority.

If topics of this nature are avoided, then opposition groups have a stronger case for proposing reviews into examples of performance failure - for example an adult social services overspend, the failure to reach recycling targets or evidence of widespread dissatisfaction with the operation of the housing benefits function.

In addition, there is of course scope for reviews of areas of concern which are not necessarily the direct responsibility of the authority, and hence less likely to elicit ‘defensive’ reactions from the administration, several examples of which are listed below. In these cases majority party and opposition members have worked together on ‘political’ topics which transcend party political differences, which has helped to build up a positive experience of inter-party working.

- Responding to the needs of asylum-seekers (Salford MBC)
- The challenge of climate change (LB Richmond-upon-Thames (amongst others))
- The impact of a hospital services reconfiguration (Telford and Wrekin Council (amongst others))
- Improving Bus Services in North Staffordshire (Staffordshire CC/City of Stoke-on-Trent)
- Strengthening defences against flooding (York City Council, Worcestershire CC (amongst others))
- Reducing bullying in schools (St Helens MBC)

There are some authorities which have provided a real opportunity for scrutiny committees to influence the budget, within parameters set by the executive. This process works most effectively where scrutiny committees are asked to focus on different options for growth or (more typically) cuts, within their spheres of responsibility. If scrutiny committees are given adequate time to carry out a thorough evaluation of the options, and executives are prepared to accept at least some of their recommendations submitted, then members of the scrutiny committees involved will feel that they have made a worthwhile contribution, and a level of inter-party consensus about the final budget proposed may well result. An earlier report (Leach 2005) used Knowsley’s approach as a positive example:
In Knowsley MBC, the five scrutiny committees were invited to evaluate the appropriateness of the draft budget proposals drawn up by the executive. A range of modifications were proposed, which the executive considered and in several cases accepted. Members of the Liberal Democrat opposition participated fully in the process of review. As a result of the responsiveness of the executive to these representations, the revised budget proposal they presented to full council was supported unanimously.

This process has continued to operate effectively in Knowsley, and has more recently been introduced in Merton LBC and Stoke-on-Trent City Council.

**How Challenge is Expressed**

The second essential behavioural element for opposition groups if they wish to be influential is to operate in a way which is challenging but which avoids direct political confrontation. The key here is to express concerns about a current policy or decision using an evidence-based vocabulary rather than a direct challenge to political values. Thus ‘this scheme is a total waste of council taxpayers’ money’ is unlikely to lead to a productive discussion or an influential piece of analysis, whereas ‘this is in principle a beneficial scheme, but we must be sure it represents value for money’ is a much more promising way of generating a genuine debate. The use of means/ends analysis is also crucial here, ‘we recognise your right (as the administration) to seek to achieve this particular goal, but wish to look at different ways of achieving it’. An investigation which develops from this starting point is less politically threatening than a challenge to political priorities as such. The reality is that in local authorities there is currently relatively little scope for ‘big choices’ based on philosophical/ideological differences, compared with the 1970’s and 1980’s. Many of the key choices are about how best to achieve a government-imposed or constrained outcome, a situation which should leave ample scope for informed debate in an overview and scrutiny setting.

The capacity of overview and scrutiny to gather relevant information, identify and compare viable alternatives, and carry out effective means-ends analysis is of course heavily dependent on the organisational capacity it can draw upon to carry out such tasks. Such capacity is in turn dependent on officer support – not just on the existence of adequately-funded dedicated support, but also on the attitude or behaviour of mainstream officers, at all levels (see p18 below).

The desirability of overview and scrutiny avoiding high profile contentious divisive political topics does not mean it should go to the other extreme and ‘play it safe’, reviewing in detail only such topics that the executive is prepared to approve. There are still authorities where the ‘critical friend’ role of overview and scrutiny is too friendly and insufficiently critical. For scrutiny to play an effective democratic ‘checks and balances’ role, the list
of ‘inappropriate topics for study’ should be minimised (the need for such a list is a reflection of political realism rather than principle). This outcome requires appropriate behaviour and negotiation on the part both of majority and opposition groups.

The main recommendations set out in this section are summarised below.

### Changes in Political Attitudes and Behaviour which would facilitate effective scrutiny

- Avoid petty party political points-scoring
- Avoid scrutiny of high profile ‘flagship’ projects at formative/developmental stage
- Acknowledge that the choice of topics for in-depth scrutiny may often be influenced by political values and motivations...
- …but include some external topics which transcend party political differences
- Seek to establish mechanisms which ensure that the executive takes seriously and responds fully to any recommendations or reports stemming from scrutiny...
- …so long as such recommendations reflect a responsible evidence-based process of policy analysis
- …a process which is only possible if overview and scrutiny is properly supported not just by a dedicated unit, but also by mainstream officers

### Changing the Behaviour of Party Groups

At the root of the political stalemate, which can and still does develop in relation to the role of overview and scrutiny, is the traditional role and mode of operation of party groups in local government. Although there are variations in expectations regarding the limitations placed by party group allegiance on individual behaviour, both between and within the major parties (see Leach and Copus (2004)) the dominant model may be characterised as follows:

- disagreements between party group members over policies and (major) decisions should be expressed and resolved in a private setting (the party group meeting). Once the disagreements have been resolved (even if on ‘a majority’ basis) the support in public arenas of all group members is expected...
- …except for issues of conscience or issues which would seriously affect the chances of re-election in a given ward, in which case there are conventions enabling individuals to express disagreement and/or abstain from voting
- sanctions may be applied to individuals who (persistently) fail to follow these guidelines
Expressed in this form, these guidelines would seriously inhibit the capacity of members of a majority party to engage in a critical analysis of an existing or proposed policy or decision which has previously been discussed and ‘resolved’ at a party group meeting. Effective overview and scrutiny requires a lesser degree of constraint on the public contributions of individual group members, and a greater acceptance of the value of open discussion, especially about alternative means for achieving a given end.

Such openness and freedom from constraint are more apparent in House of Commons Select Committees than they have been in local authority overview and scrutiny committees. In particular members of the governing party are less inhibited in publicly challenging their own ministers (and the civil servants advising them) than is typically the case in local authorities. Select Committee Chairs such as Tony Wright and the late Gwyneth Dunwoody have operated in a relatively independent way which has from time to time proved extremely uncomfortable for ministers (although, as in local government, matters of high political salience tend not to be challenged; it is rather the means of achieving them, or past problems in doing so). One of the reasons for this degree of ‘independence’ lies in the impossibility of a Parliamentary party group (typically 300-400 for a majority party) operating in the same collective face-to-face way as a local authority party group (typically 30-40 – for a majority party). In addition, chairing a Select Committee can be seen as an alternative career structure for able MPs who do not anticipate a position within the executive (again, Gwyneth Dunwoody springs to mind as an example). In local authorities, with a much smaller number in the majority party group, there is a much greater probability of advancement into the executive, an opportunity which too independent a stance as a chair (or member) of an overview committee would normally be perceived to hinder!

In reality, for a reasonably competent and confident executive (majority party or coalition), there is little to lose from an ‘opening up’ of the overview and scrutiny process, and perhaps more to gain than is sometimes realised. Overview and scrutiny has no power, as such, to force an executive to change its mind over a decision or to revise or adopt a particular policy. If the executive receives a policy proposal with recommendations, it can accept it totally or partially, or it can reject it. Similarly if it receives a recommendation as a result of the call-in process to change a decision it has made, it can either accept it, or reject it. If a member of the executive is summoned to an overview and scrutiny meeting to explain or justify a decision, he or she can ensure that they are well-briefed and able to deal with any challenging questions (although ideally they should be ‘open to persuasion’ if faced with a convincing argument).

The most overview and scrutiny can hope to achieve is ‘influence’. It is more likely to do so if the climate of the relationship between the executive
and overview and scrutiny is conducive to influence. If it is not, the only recourse left is that of embarrassment; a public grilling of an executive member (although it is unusual for any members of the public to be present at an overview and scrutiny meeting) or a ‘notice of motion’ debate at full council which draws attention to the inadequate response of the executive (collectively or individually) to a well-researched and argued overview and scrutiny recommendation (a judiciously-worded press release can serve the same purpose - assuming overview and scrutiny are permitted independent access to the media).

The greater the extent to which a recommendation is based on an independent evidence-based analysis, the more difficult it should be to ignore or reject it (and the greater the scope for potential embarrassment). However if these positive analytical qualities are present, there is every reason for an executive to consider the recommendation seriously. After all, what is there to lose by an acknowledgement that a policy option which had been excluded in a report prepared by the Director of Environmental Services may have its merits, as a means of achieving something which the executive wishes to achieve? Or that a decision to close a council facility may have been made too hastily, in the light of subsequent evidence of public support for its retention? Much kudos could be gained from the openness and flexibility demonstrated by a change of mind of this nature - so long as it did not happen too often (in which case the competence of the executive would be called into question). In effect what the councillors as a whole, in an authority which operated in this way, would be supporting is a form of political empowerment which would ‘break the mould’ of key decisions/policies being handled through a direct line between officer(s) and executive, and seek to establish a greater political involvement in the whole process, which a more open, responsive approach on the part of the executive to overview and scrutiny can facilitate.

Is this ‘way of working’ really so difficult to achieve? There have been some occasions where I have made recommendations to this effect and been told that I was being unrealistic, indeed ‘politically naïve’! In such authorities there was, however, typically a large degree of frustration on the part of the vast majority of overview and scrutiny members, a proportion of whom had often ‘voted with their feet’. At best in these circumstances the added value of overview and scrutiny would be limited to ‘task and finish’ group reports on topics sanctioned by the executive. At a time where all parties are finding difficulties in recruiting new candidates (or in some cases retaining existing ones) the demotivation involved in an overview and scrutiny system which is tightly controlled by a majority group is unacceptable, and indeed quite unnecessary.

It should be noted that the enhancement of executive responsiveness
to overview and scrutiny will only be possible if there is an equivalent strengthening of the seriousness with which all officers take overview and scrutiny, and an equivalent commitment to facilitating (within reason) its effectiveness.

A summary of the key ingredients of the changes in attitude which are needed to generate a more open and productive approach to overview and scrutiny are set out in the Conclusions Section.

Beneficial Changes in Process

The Benefits of Call-in

If scrutiny is to result in well-informed productive political challenge, the most important process that has to be made to work effectively is that of call-in. In general ‘call-in’ has not achieved what its advocates, prior to the Local Government Act, expected of it. In most authorities, call-ins are a rarity. To have none at all during the course of a year is not unusual. The CfPS’s 2007 survey of overview and scrutiny in local government showed that the average annual number of call-ins was 2 and that very few had resulted in an amended decision. There are no indications that call-ins have increased in frequency since, and in fact this figure represents a reduction from previous years.

Some of the reasons for this infrequency have been indicated earlier. Conditions for invoking the call-in procedure may be too stringent or deliberately exclusive in relation to opposition parties. A perception that a call-in is (almost) certain not to be supported by councillors from the majority party on the relevant committee may act as a demotivator (‘what’s the point, we know they’ll throw it out’). In some authorities it is only key decisions which can be called in, which precludes decisions with smaller price tags attached to them, but which nevertheless may have a high level of political salience (for example the closure of a branch library). In the majority of authorities, call-in does not play a significant role in the operation of overview and scrutiny. Indeed a further reason for its low profile is that it is not unusual for a call-in to be seen by senior managers and politicians as an indication of failure in the operation of the function.

“It can be argued that in fact the reverse is true. If call-in is used responsibly it can operate as an indication of democratic vitality rather than process failure.”

2 Some authorities have argued that their emphasis on pre-decision scrutiny operates as an alternative to call-in, as a mechanism for holding the executive to account. This may indeed be the case given certain political conditions, notably a receptiveness on the part of the executive to pre-decision scrutiny, and the capacity of the scrutiny committees to develop well-argued evidence-based cases (rather than merely ‘make comments on’ draft reports destined for the executive).
If overview and scrutiny is there (inter alia) to hold the executive to account, then call-in provides a key mechanism for doing so in a way which – provided certain conditions are met - should be acceptable (and indeed beneficial) to majority and opposition parties alike.

What are these conditions? First, to ensure that call-in is used responsibly, it is important that it cannot be invoked too easily in terms of the justification specified for the call-in. Valid reasons must be given. It is not enough that the councillors seeking the call-in disagree with the decision made by the executive; what is required is that they can demonstrate that it is potentially flawed in some way. The box below sets out an example (recommended by the author in recent reviews) of the kind of criteria which are appropriate.

### Suggested criteria for call-in

- Any three members of the council can invoke the call-in procedure
- Call-in requests must be submitted within five working days of the publication of executive decision notice
- Any key decision (whether taken by members or officers) or decision of political significance may be called-in
- A request for call-in should be justified on one or more of the following grounds:
  - decision outside the policy/budgetary framework
  - inadequate consultation relating to the decision
  - relevant information not considered
  - viable alternative not considered
  - justification for the decision open to challenge on the basis of evidence considered
- Monitoring officer to assess whether the justification is valid, with the benefit of doubt being given to those submitting the request

This raises the issue of who should be the arbiter of whether or not a call-in meets these conditions. It should not be the chair of the overview and scrutiny co-ordinating committee (who may, for party political reasons, have a predisposition in favour of call-in, or against it). The officer in the best position to make this judgement is the Head of Scrutiny, although it may be necessary for the Monitoring Officer to ‘sign off’ the Head of Scrutiny’s decision, given that the decision may be politically contentious. It is clearly advantageous if there exists a procedure which requires those contemplating a call-in to discuss their reasons informally with the Head of Scrutiny before deciding whether or not to proceed.

In the case of doubt, the benefit should be given to those seeking the call-in.

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3 Indeed, even if a call-in is (party) politically inspired, there is always the opportunity for a chair of scrutiny to commission in-depth research which at least provides the opportunity for a more balanced and impartial discussion.
However it should also be possible to exclude initiatives which seek solely to cause political embarrassment, or which involve personal crusades in which no-one else is interested. In relation to the latter, there is a case for requiring that a small number (2-4?) of councillors should be signatories to a call-in request, rather than accepting individual submissions (although the ‘councillor call for action’ now provides an alternative route for the latter). In addition it would be beneficial if call-in were not limited to ‘key decisions’. There are a range of executive decisions taken with real political significance which do not (in many authorities) fall into this category. Even where they are formally the responsibility of officers, there is invariably a process (usually informal) of ‘consultation with the executive member concerned’. Such decisions should be brought within the scope of call-in, even if this involves the right of councillors to call-in decisions formally made by officers. The resolution of any disputes of this nature should also be the responsibility of the Monitoring Officer.

Once the legitimacy of a call-in submission has been established the ability of scrutiny committee members will be heightened by two key factors:

- the appearance of the executive member responsible for the decision at the ‘call-in hearing’, to justify the executive’s decision and to answer questions
- a timetable which enables the scrutiny support unit to collect evidence which gives weight to the concerns of those invoking the call-in.

In these circumstances there would be every prospect of a lively well-informed debate. Whilst it is unlikely that a cabinet member would reverse his or her decision on the spot (indeed they may not have the authority to do so), there would be the opportunity to ‘take the decision back’ for reconsideration.

Even if the cabinet member concerned does not feel persuaded that it is necessary (or appropriate) to express this degree of reservation about the decision that has been called in, there should, as part of the call-in procedure, be a clear requirement that the scrutiny committee involved will receive a full and detailed response to its arguments from the executive, within a specified time period, particularly situations in which the executive chooses not to reverse its original decision.

The effectiveness of a call-in procedure will also be facilitated by carrying it out in a setting which is different from the normal committee room layout. Parallels with the room layout arrangements which are used in House of Commons Select Committee (and which have begun to be used in some local authorities for certain types of in-depth investigation) are relevant here. What is needed is a procedural setting and approach which clearly

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4 In many ways, the Parliamentary Select Committees provide a good model for certain types of Scrutiny Review. They are well-supported and have developed ways of working across party divides. Opposition groups have realised that it is often more effective to work with critical members of the majority party to strengthen their critique.
differentiates the call-in from the more routine business of a scrutiny committee, and implies a way of dealing with the executive member which may be very different from normal expectations.

**In-depth Policy Reviews**
The call-in procedure is appropriate for decisions made by the cabinet which can be considered, and confirmed or revised relatively quickly. However it is also important to develop machinery which can deal with issues where there is a legitimate (politically-led) cause for concern which cannot be dealt with within this kind of time frame. There are several kinds of types of issue which may merit this a more detailed long term ‘scrutiny review’.

- services where performance information (e.g. recycling) suggests poor or declining performance, and where the scrutiny committee concerned is not satisfied with the explanation of the cabinet member as to how the performance deficiencies are being remedied.
- current policies (e.g. car parking charges) where there is significant evidence of public dissatisfaction, but where the executive is not prepared to carry out its own review.
- recent decisions which have clearly been problematical, either in their impact or the manner of their implementation (or both) and where although they cannot be reversed, there is felt to be potential value in ‘learning from what went wrong’, so that similar future decisions can avoid the mistakes. (An unpopular traffic management scheme is one possible example).
- a serious overspend in the budget of a particular service (most characteristically adult social services, in recent years).

In all these situations there is a ‘prima facie’ case for an in-depth scrutiny review. Clearly there has to be a degree of selectivity on the part of overview and scrutiny in pursuing such issues and, also (notwithstanding its right to carry out an in-depth review of any issue it chooses) a sense of responsibility. If the issue is one which has, for whatever reason, a level of sensitivity attached to it, so that a review at a particular point of time could be seen as potentially undermining the well-being or good name of the authority, then it should not (at that time) be pursued. If the executive itself acknowledges the need to review a particular policy and has set such a review in motion, there is no point in overview and scrutiny duplicating it. Any post-hoc review of a decision that has had adverse consequences is only viable if there is a potential ‘learning spin-off’ to the authority, which can be applied in the future. There is an important area of negotiation between executive and scrutiny here which can be regulated informally (if there is the right kind of relationship between the two functions) or more formally if the relationship is more problematical. Most authorities already have a set of guidelines to influence the selection of topics for in depth study. The kind of considerations set out above could beneficially be incorporated into such guidelines.
One helpful way of reaching a view about whether an in-depth review of a topic of concern of this nature is required is through a device which Nottingham City Council calls a ‘spotlight review’ (other authorities use different terms for a similar process). This is best characterised as a ‘quick and dirty’ review, which provides an opportunity for the scrutiny committee concerned to judge whether there really is a case for a major commitment of resources on the topic concerned. It also provides an opportunity for executive members and service directors to explain why in their view, a major review is, or is not, a good idea.

For example a spotlight review was set in motion in Nottingham City Council, following a ‘performance report’ which indicated that the perception of local residents of ‘an ability to influence decisions’ was significantly lower than the target which had been set. Following presentations by officers responsible for this indicator, and a lively discussion, members accepted that there were good reasons for this disappointing performance, that improvement was likely, and that there was little point in undertaking an ‘in-depth’ review on this topic.

Once an overview and scrutiny committee has decided to proceed with an in-depth review of an issue which reflects one of the four circumstances listed above (see p24) then there is much to be gained by replicating - as far as is possible and relevant at the local level – the mode of operation of the Parliamentary Select Committees. The (relatively few) authorities who have operated in this mode has generally found it rewarding. It creates a ‘sense of occasion’, facilitates careful preparation of questioning, and emphasises the key role of evidence in reaching a judgement and making recommendations. It is a much more appropriate way of dealing with this kind of issue than doing it through a normal committee meeting. The ‘select committee’ mode of operation is however much less appropriate for the work of task and finish groups which are considering less politically contentious topics (e.g. a piece of policy development work or a review less directly linked to performance or policy failure). A similar distinction needs to be made in relation to external scrutiny: a publicly-unpopular hospital reconfiguration may be best dealt with in ‘select committee mode’, whereas a piece of joint policy development work on care for the elderly would be likely to need a more informal discursive setting.

**Minority reports**

The ability to submit a minority report is a further mechanism for encouraging opposition members to play a proactive part in overview and scrutiny. In the case of call-ins, it would be possible for include a provision that, if a specified number of members (minimum of 2 to exclude possibility of personal
crusades) are dissatisfied with the conclusion reached at the call-in hearing that the executive should not be recommended to change its decision, they could present a ‘minority’ report to the executive explaining their reasons. If this provision were invoked it is appropriate that the executive should be required to provide a serious response to the points raised. There could be a similar provision in relation to critical reviews of policy, performance or past decisions (see p24 above), as a result of which the executive could choose to respond positively to certain of the proposals in the minority report (as well as or rather than proposals in the majority report). In both instances members would feel that their views were not being ignored.

**Rights of presentation**

It is much more difficult to ignore or marginalise a personal presentation than it is a written submission. Thus the capacity of overview and scrutiny to influence will be strengthened if there is scope, in appropriate instances for the chair involved (or the lead member in a task-and-finish group study) to present their findings to the executive, and then answer questions. The executive should not be expected to commit itself on the spot to the recommendations concerned (whether from a call-in or a policy review) but to require a detailed response from the executive within a reasonable (specified) time scale is good practice.

There are also advantages, on a selective basis, in scrutiny reports being debated in full council, particularly if the executive has not accepted the recommendations. In this situation it should be debated in the next council, in a timed debate, introduced by the scrutiny chair, responded to by the Executive – and in the debate they will then have to explain why they have not accepted any or all of the recommendations. The debate is attractive to members of the scrutiny panel, who can reflect on their research, and to other councillors who have interests in the topic who comment and get involved. The debate cannot be decision making, but the views of the council will be reflected back to the Executive.

**Strengthening Support Mechanisms**

If scrutiny initiatives such as call-in or a select committee style review of poor performance are to be effective, they must be properly supported. If, as will often be the case, the initiative has been set in motion by an opposition party member, this may pose major problems for mainstream officers. The tradition prior to the move to executive government introduced by the Local Government Act 2000, was that information provided by officers to key members of the dominant party – i.e. leader, deputy, committee chairs – was of a different quality to information provided to opposition members (or indeed to ‘backbenchers’ of the majority party or parties). Clearly information had to be provided, if sought, unless it was subject to
commercial confidentiality or was not yet in the public domain (e.g. a draft report to an ‘informal’ meeting of the de facto cabinet). However what mainstream officers certainly did not do was to provide opposition members with helpful briefings which would enable them to challenge proposals made by the administration, in a well-informed evidence-based way. The avoidance of potential embarrassment to the administration was a principle widely (if informally) adhered to in all politicised authorities.

This differentiated approach to the provision of information (and the importance of the avoidance of embarrassment principle) has if anything been accentuated under the executive arrangements introduced under the 2000 Act. The primary loyalty of directors is to the cabinet member(s) they serve. The work of their directorates is primarily oriented towards briefing cabinet members in a way which will encourage them to reach sensible decisions or develop sensible policies and then (assuming this outcome is achieved) to support them in ensuring that these decisions or policies are implemented effectively. The ‘challenge’ role of overview and scrutiny, particularly if it is led by opposition members, does not fit easily into this set of assumptions and ways of working. The idea of a service-based directorate producing a report for overview and scrutiny which challenges a proposal made by that directorate to the executive, or requires them to develop an alternative proposal (a town centre traffic management scheme for example) to one they have agreed with the cabinet member concerned, is probably unrealistic.

Yet for scrutiny to be effective, this is exactly the kind of support that is needed. If it is unrealistic to expect it to be provided through a service director, then an alternative means of provision needs to be sought.

**A Dedicated Scrutiny Support Unit is not Enough**

In some circumstances a dedicated scrutiny support unit may itself be able to provide the material to enable a convincing challenge to be made or alternative to be developed. But this source cannot be relied upon. Even a well-resourced scrutiny support unit of say 5 or 6 cannot be expected to have a range of professional/technical knowledge and expertise to enable it to carry out this role on a comprehensive basis. There will remain, on a periodic basis, the need to draw on objective professional/technical advice within directorates or (failing that) elsewhere.*

One way of accessing such professional/technical advice is the opportunity to draw on a fund which has been set outside for overview and scrutiny to use for this purpose. Increasing numbers of authorities have established such a fund, although sadly it is often underspent. Another is to follow the imaginative Salford MBC initiative set out in the box below:

*There is of course much less of a problem in drawing on directorate support, information and advice for a in-depth piece of policy development work or policy review which the executive has agreed it is appropriate for overview and scrutiny to carry out. In these circumstances there is every incentive for the directorate concerned to be co-operative.
In Salford, a reciprocal arrangement was introduced with the Director of Childrens Services in Blackburn and Darwen, through which external advice was provided by Blackburn and Darwen on selected issues coming before Salford Lifelong Learning and Leisure Scrutiny Committee (and vice versa). To prove effective, such an arrangement requires a predisposition on the part of both directors (or their nominees) to provide objective professional advice on response to the briefs provided by the other authority’s scrutiny committee, and not to feel obliged to support their professional ‘opposite numbers’.

**Scrutiny Link Officers**

A third approach which perhaps has a wider application is the identification within each of the authority’s directorates of one or more ‘scrutiny link officers’, part of whose job description requires them to facilitate the work of overview and scrutiny in the authority. These should not be at director level nor indeed within the upper echelons of the department. The ideal person would be a middle manager with a particular responsibility for research or performance (rather than a specific service delivery responsibility) and whose career aspirations may well lie outside the normal professional expectations within the directorate.

The key relationship under these arrangements, would be with a member of the dedicated scrutiny team, who would seek information and professional/technical advice from the link officer concerned in any circumstances (call-in, spotlight review, in-depth policy review) where the committee concerned needed such expert advice in order to mount a proper evidence-based challenge (or to decide whether one was needed).

There would undoubtedly be tensions in the role of the link officer, whose loyalties would be divided between the parent directorate and the scrutiny committee holding it to account. The arrangements would only work if they were accompanied by a relaxation of the traditional roles of departmental or directorate behaviour – for example that once a departmental policy option has been agreed, everyone in the department supports that outcome (at least in public). The reality is that overview and scrutiny cannot operate effectively unless there is some change of attitude of this nature. The requisite rethinking of political attitudes to overview and scrutiny requires a parallel rethinking on the part of the authority’s mainstream officer structure. Scrutiny link officers provide one opportunity facilitating this process (and certainly a more realistic one than expecting directors to play this link role).

The following brief for the designation and contribution of link officers was set out in my review of Cumbria CC’s overview and scrutiny arrangements (and repeated along similar lines elsewhere).
A strengthened system of link officers could make a major contribution to the effectiveness of overview and scrutiny in Cumbria. The system should have the following characteristics:-

- each ‘link-officer’ should have a ‘scrutiny-specific’ time-allocation as part of his or her job specification (10-20% would be a likely range)

- it would not be appropriate for the corporate director personally to take on the ‘link officer’ role. The potential for role conflict over serving the cabinet vis-à-vis scrutiny is greatest at this level, and is best avoided. A third tier officer - ideally one with policy responsibilities - would be a better level at which to pitch this role

- the role of the of the link officer would be to facilitate the provision of information and advice to aid the work of scrutiny projects, in line with the project brief, not to carry out all the required work personally. The link person would work closely with the scrutiny support unit, and see their role as ‘scrutiny champions’ within each directorate.

**Scrutiny Champions**

There is a further important ingredient in the support system needed to facilitate a responsible and effective politically-led approach to overview and scrutiny. The function needs an officer, at a relatively high level of seniority preferably with a seat on the authority’s management board, to act as ‘scrutiny champion’. Currently it is rare for the head of even a well-resourced scrutiny unit to operate at this level, and by no means uncommon for members of a scrutiny support unit to complain that, in the face of resistance from a directorate, there is no one they can turn to, to resolve the problem. The lack of a high-level scrutiny champion can be seen as indication of the relatively low status the function still has in many authorities.

There are two potential candidates for the post of ‘scrutiny champion’. The first is the authority’s senior solicitor (who may also be the monitoring officer). The main problem here is that if he or she is also arbiter of the viability of call-ins (see pp22-23 above) there may be thought to be a conflict of interest (can a ‘champion’ also act as ‘arbiter’?). The other is the most senior post in the authority with the responsibility for ‘performance’, on the basis that this kind of responsibility is not oriented to briefing the executive, but rather to seek to ensure that it is delivering. (Sometimes there is a deputy chief executive post with responsibility for performance). Thirdly, there is a strong case in principle for the most senior Scrutiny Officer in the scrutiny support team to play this role, so long as his or her status is high enough to ensure access on a regular basis to the authority’s management team.
Introducing Structures which are more ‘Fit for Purpose’
Structural changes in themselves rarely achieve the aspirations of those who introduce them. They invariably have the capacity to be interpreted in ways in which their advocates had not foreseen. At best they can facilitate other desirable objectives of the authority, or reduce the operation of undesirable behaviour. Informal arrangements - such as imaginative joint training programmes (involving executive members and scrutiny chairs), and pre-meeting meetings to discuss (inter alia) ‘lines of questioning’ for external witnesses - can be just as effective at improving the effectiveness of overview and scrutiny as formal structures. It is in this light that the following recommendations should be reviewed.

The ability of overview and scrutiny to challenge and ‘hold to account’ effectively (as opposed to more supportive practices such as policy development or executive-supported policy review) can be enhanced (all other things being equal) by the following structural mechanisms, which will be discussed in turn.

• a sharing of chairs of the scrutiny panels (or committees) amongst all parties with significant representations on the council, not necessarily proportionately

• the establishment of a overview and scrutiny ‘co-ordinating committee’ to operate as a counterbalance to the existence of the executive

• a structural separation between the ‘scrutiny’ and ‘overview’ roles

Allocation of chairs and vice-chairs
An appropriate political climate for responsible but challenging scrutiny can be facilitated by the sharing of chairs of scrutiny committees. If the majority party (or coalition) claims all the chairs, then the opposition party may understandably feel aggrieved and excluded, and will be more tempted to play a traditional oppositional role. If all the chairs are allocated to opposition members, that too gives an inappropriate message, namely that scrutiny is primarily an oppositional activity rather than the requisite delicate balance between holding to account (scrutiny) and support (overview). Depending on the distribution of seats amongst the different parties, there may be a case for a ‘greater than proportionate’ allocation of chairs to opposition members. In a conventional structure where the scrutiny and overview roles are merged in each committee, it is important that the chair of the co-ordinating committee is an opposition councillor or at the very least a member of the majority party whose independence is widely-acknowledged amongst all party groups.

There is also value in ensuring that the vice-chair of each scrutiny committee is a member of a different party to that of the chair, and that both chair and vice-chair are involved in any briefings involving the support unit, a director,
or a cabinet member. This practice would limit the possibility of a chair becoming a de facto accessory of either a director or a cabinet member (or both). It would minimise the possibility of the ‘unholy trinity’ (see p8 above).

**The co-ordinating committee**

There is value in a situation where the key overview and scrutiny players operate in a collective fashion (whilst leaving a good deal of choice for individual committees or panels). A mechanism of this nature provides a degree of parity with the executive, which of course meets regularly on a collective basis. It strengthens the ability of overview and scrutiny chairs to negotiate with the executive over work programme items. It also provides a forum in which key players from different parties can develop a set of understandings about legitimate processes for (opposition-led) challenge. As noted earlier, it is right that the chair of this collective entity should in most circumstances be an opposition member. The Overview and Scrutiny Co-ordinating Committee (or whatever it is called) should not however have the function of editing and amending the report of a task-and-finish group.

In one shire district where I carried out a review, the Co-ordinating Committee saw it as one of its roles to comment critically on and amend the draft reports of task-and-finish groups, despite not having been involved in the in-depth work involved. This understandably caused a degree of disquiet on the part of the task-and-finish group member who had studied all the evidence.

Recommendations in recent overview and scrutiny reviews I have carried out have identified the following key functions for co-ordinating committees.

**Key Responsibilities of Scrutiny Co-ordinating Committees**

- development and revision of an annual work programme for overview and scrutiny
- co-ordination of the annual input of the overview and scrutiny panels to the budget formulation process
- the power to identify issues for in-depth study and to set up task-and-finish groups on any topic which falls outside the remit of a panel (or which a panel does not regard as a priority)
- to act as a co-ordination mechanism with the cabinet, to facilitate overview and scrutiny’s support role
- to keep under review the effectiveness of the overview and scrutiny function and to recommend where appropriate changes in structures, processes or ways of working.
Separating out ‘overview’ and ‘scrutiny’ structurally

In most overview and scrutiny committees, the roles of ‘overview’ (support) and ‘scrutiny’ (challenge) have been brought together in a way which often confuses members and leads to a one-sided interpretation of the ‘critical friend’ role (more often too friendly rather than critical enough). There is merit in seeking to separate out the two roles, so that in each case members are clear what is expected of them. In particular, whilst overview is an activity to which all members of the council (whatever their party affiliation) can contribute in a positive way, the scrutiny (holding to account) activity is likely to be led, in most circumstances, by opposition parties. Some authorities have established committees with a specific remit to handle call-ins. An alternative model has been adopted in Kingston-on-Thames following a recommendation in a review I carried out of their constitution in 2005.

A proposal to draw a clearer distinction between the Scrutiny and Overview roles.

The scrutiny dimension - ‘holding to account’ should be led by opposition members and operate through a Scrutiny Committee, on which opposition members should have a majority. It could comprise the 6 existing members of the shadow cabinet, with 3/4 majority party members and a representative of the small third political group. (There would need to be a council resolution to suspend proportionality, to introduce this structure).

The scrutiny committee would be able to carry out pre-decision scrutiny (assuming improvements in the forward plan and compatible timetables of meetings could be achieved). It would also be able to call-in executive decisions where it believed there was a better alternative.

In both cases it should be able to draw on the support of a small dedicated scrutiny support unit which would enable it to develop coherent evidence-based arguments. It should also have a budget that enabled it to draw on expert advice from outside the authority, when necessary.

The opposition majority on the scrutiny committee would mean that call-ins would normally reach the executive agenda, and the executive would be required to either justify its original decision (in the face of challenge) or to change that decision.

Provision should be made for a member of the scrutiny committee to argue the case for a change of decision at the executive meeting. This facility would be likely to generate a more genuine form of debate than is likely in the current circumstances. The executive should be required to produce a reasoned response to a call-in including a detailed justification for not changing a decision.

The overview dimension - supporting the executive in its work - would best be carried out through the vehicle of a new Overview Commission. This
would consist of all members not on the executive who wished to involve themselves in this type of activity (again a resolution of council to suspend proportionality would be required).

The Commission as such would need to meet only 4 times a year (perhaps 6 times initially whilst the pattern of work was established). Its main focus would be to commission in-depth pieces of policy review or policy development work from small sub-groups drawn from its membership. Potential source of topics would be threefold.

(i) From the executive itself, requesting the help of the Overview Commission in undertaking specific in-depth studies.

(ii) From the Scrutiny Committee requesting in-depth studies of areas of poor or declining council performance which concerned them.

(iii) From members of the Overview Commission drawing in particular on concerns expressed by their constituents about local issues, whether or not such issues were the primary responsibility of the council.

There should at any one time be a maximum number of working groups in operation (perhaps 6 or 7). The scrutiny committee should have the right to specify two performance issues for in-depth study, at any one time. Otherwise it would be up to the Overview Commission to decide its work programme, although it would be expected that the Commission would be predisposed to respond positively (all other things being equal) to requests from the executive to carry out projects, because of the knowledge that in such circumstances, their reports would find a willing audience and be taken seriously.

Readers may wish to check out how this innovation has worked out in Kingston before adopting it in their own authorities! Its success is clearly dependent on the opposition operating the Scrutiny Committee in a responsible way. Whatever Kingston’s experience, there remains, in my view, a viable case in principle for separating the scrutiny and overview functions in structural terms, although some practitioners have emphasised to me that they do not support this kind of separation.
Most councils continue to be dominated by party politics, with a clear distinction between the party (or coalition) in power and the party (or parties) in opposition. The primary objective of the party in power is to stay in power, which means avoiding embarrassment and controversy, and demonstrating (and claiming credit for) good performance (however defined) whilst in office. It also implies the maintenance of a high degree of group cohesion. The primary objective of the opposition parties is to embarrass the administration, and highlight poor performance, as means to attaining power. It also implies an ability on the part of the opposition to demonstrate as sharp a degree of differentiation as possible from the party in power. The logic implicit in this political scenario does not appear to provide a good deal of scope for an effective overview and scrutiny process.

The above characterisation is of course an oversimplification. Opportunities for embarrassment may be rare. Perpetual undiluted ‘opposition’ is potentially frustrating. Opposition parties – in local as well as central government – will also wish to influence – to persuade the party in power to modify a particular proposal, or include in a policy a provision which it had not thought of, but which does not challenge the ideological basis of the policy. There is in theory a good deal of scope for such influence in local government; it is often claimed that only 5% of council decisions are politically controversial. By implication, the remaining 90-95% are open to influence, particularly the ‘evidence-based influence’ which overview and scrutiny is encouraged to provide.

The new emphasis in the 2007 Local Government Act on the scrutiny of the contribution of partner organisations to the achievement (or otherwise) of targets agreed in Local Area Agreements provides a further opportunity for parties to work together. It is of course in the interests of a local authority that its strengthened role as community in relation to LSPs (and partnership working more generally) should prove effective (and result in a positive Comprehensive Area Assessment, under the new Audit Commission regime). Overview and Scrutiny has the powers to contribute to this outcome, in a way which does not directly challenge the council’s administration, who have a good deal to gain from scrutiny’s involvement.

From this perspective, there is considerable scope for an effective, evidence-based overview and scrutiny process, in which opposition groups play a constructive and influential role. Indeed it is the one element of the new structures which provides real opportunities of this nature. One would not expect full council, traditionally the main opportunity for explicit political opposition, expressed in terms likely to influence headlines in local papers, to provide such opportunities. Nor would one expect cabinet meetings – at which opposition members would normally be excluded from an

Conclusion
active role – to do so (except in so far as the cabinet might be considering a recommendation from a scrutiny panel). But overview and scrutiny does provide such opportunities, which can be realised if the political circumstances are favourable.

As discussed in Section 2, there are three broad approaches to overview and scrutiny, from the perspective of the ruling party (or coalition) which can be identified.

• **Marginalisation** – which involves an attempt to minimise the potential damage and embarrassment that might emanate from the opposition’s use of overview and scrutiny by seeking to exert political control over it.

• **Manipulation** – which involves an attempt to accentuate the positive aspects of overview and scrutiny, whilst minimising the changes to the administration. Typically this approach uses overview and scrutiny on a consultative (and, where seen as appropriate a policy development) mechanism.

• **Openness to challenge** – which involves an encouragement of and responsiveness to the work of overview and scrutiny whether it is critical or whether it involves policy recommendation.

The third strategy is the one which is closest in spirit to the government’s conception of how overview and scrutiny should work. It requires two crucial conditions if it is to operate. First it requires an executive which is confident enough to cope with public challenge and open-minded enough to change its decisions or modify its policies if convinced by the evidence. Secondly it requires an opposition which is prepared to ‘play by the rules’ of overview and scrutiny, toning down the overtly political nature of its discourse and focusing instead on the basis in evidence of its challenges. Such conditions although by no means common, are not impossible, and indeed can be found (up to a point) in a handful of authorities.

In this paper, I have tried to identify in more detail the requisite conditions for an effective form of overview and scrutiny which accepts the reality of politics (including party politics) but which attempts to channel it in a positive direction. The conditions are summarised below under four headings: attitudinal; processual; structural and support. Their existence cannot guarantee effective overview and scrutiny, and their degree of feasibility will vary from authority to authority. But they can all be seen as initiatives which, all other things being equal, are likely to facilitate effective overview and scrutiny.
Attitudinal Conditions

- A commitment on the part of all parties not to use overview and scrutiny for ‘petty party political points-scoring’. (The council meeting is the right place for points-scoring of this nature – petty or otherwise!)
- An all-party recognition that there may be a limited number of high profile politically-divisive initiatives which – at their current stage of development – may not be appropriate for an in-depth overview and scrutiny review (they could of course be debated at full council)
- An all-party recognition that although overt party politics is not compatible with effective scrutiny, the choice of topics for scrutiny and the arguments developed on the basis of the evidence will be (and indeed should be) influenced by political values and priorities
- An openness of the part of the executive to take seriously recommendations made by overview and scrutiny, so long as they are based on evidence-based policy analysis; and to provide a proper justification for the reasons for its response
- An acceptance on the part of overview and scrutiny that it will only be influential if it operates in a way which assembles and interprets evidence in a responsible way...
- ...an outcome which is only possible if overview and scrutiny is properly supported, not just by a dedicated unit but also by mainstream officers

Processual Conditions

- To ensure that call-in is used responsibly it is important to ensure that it cannot be invoked too easily. Valid reasons must be given from a list of specified criteria.
- Call-in should not be limited to key decisions. They should be permitted for any decision with political significance, even if formally the responsibility of an officer.
- An officer should be identified who has the authority to adjudicate on issues of whether a call-in request meets the specified criteria. The head of scrutiny is one possibility: the monitoring officer another.
- Once the legitimacy of a call-in submission has been established the ability of scrutiny committee members will be heightened by two key factors:
  - The appearance of the executive member responsible for the decision at the ‘call-in hearing’ to justify the executive’s decision and to answer questions
  - A timetable which enables the scrutiny support to unit to collect evidence which gives weight to the concerns of those invoking the call-in.
- The effectiveness of a call-in procedure is facilitated by carrying it out in a setting which is different from the normal ‘committee room’ layout. The House of Commons Select Committee arrangements provide one possible model.
• The Select Committee model is also appropriate for certain types of scrutiny review, for example:
  - Services where performance information suggests poor or declining performance, and where the scrutiny committee concerned is not satisfied with the explanation of the cabinet member as to how the performance deficiencies are being remedied.
  - Current policies where there is significant evidence of public dissatisfaction, but where the executive is not prepared to carry out its own review.
  - Recent decisions which have clearly been problematical, either in their impact or the manner of their implementation and where although they cannot be reversed, there is felt to be potential value in ‘learning from what went wrong’, so that similar future decisions can avoid the mistakes.
  - A serious overspend in the budget of a particular service.
• In reaching a view as to whether an in-depth review of a topic of concern is required, the use of ‘Spotlight Reviews’ is helpful (see p25 for details)
• The ability to submit a minority report is a further mechanism for encouraging opposition members to play a proactive part in overview and scrutiny.
• The capacity of overview and scrutiny to influence will be strengthened if there is scope, in appropriate instances for the chair involved (or the lead member in a task-and-finish group study) to present their findings to the executive, and then answer questions.

**Structures and Support Mechanism**

Support should be provided in the following ways:

• A dedicated scrutiny support unit is essential, but is not in itself enough. Mechanisms have to be identified for accessing objectives professional/technical information and advice from mainstream service directorates, or elsewhere. A fund to enable overview and scrutiny finance access to expert witnesses and advice is a worthwhile contribution to this end.

• Authorities should seek to develop a system of ‘scrutiny link officers’, in each of an authority’s directorates, part of whose job description should require them to facilitate the work of overview and scrutiny in the authority. Ideally such officers should be ‘middle managers’ with a responsibility for policy/performance.

• Overview and scrutiny is facilitated if there is a recognised ‘scrutiny champion’ at a relatively high level of seniority. Possibilities include the monitoring officer, the head of performance or the head of scrutiny (if his or her status is sufficiently senior).

The ability of overview and scrutiny to challenge and ‘hold to account’ effectively can be enhanced by the following structural mechanisms.
• a sharing of chairs of the scrutiny panels amongst all parties with significant representations on the council, not necessarily proportionately
• the establishment of an overview and scrutiny ‘co-ordination committee’ to operate as a counterbalance to the existence of the executive
• a structural separation between the ‘scrutiny’ and ‘overview’ roles

Overview and scrutiny provide a major challenge for party groups. It is unrealistic to expect councillors to forget which party they are affiliated to when they attend a scrutiny meeting, but not unreasonable to expect them to modify the way in which they express party-based concerns and differences when they do so. Parliamentary select committees, at their best, can demonstrate a capacity for evidence-based challenge of government policy to which all members of the committee, whatever their political alignment, make an important contribution. If it is possible at Westminster, it is surely possible in Manchester, Kent and Milton Keynes.
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