

Wiltshire Council

Overview and Scrutiny Management Committee

18 September 2018

New Statutory Guidance on Overview and Scrutiny in Local Government

Purpose

1. To update the Committee on the drafting of new statutory guidance on Overview and Scrutiny (OS) by Central Government to be published by the end of 2018.
2. To ask the Committee to approve Wiltshire's response to the latest call for evidence in order to ensure that the guidance reflects the needs of councils, local people and of local democracy.

Background

3. In January 2017 the Department for Communities and Local Government (CLG) launched an enquiry looking at whether overview and scrutiny arrangements in England are working effectively and whether local communities are able to contribute to and monitor the work of their councils.
4. The enquiry included a call for evidence from local OS practitioners and in March 2017 Management Committee approved a detailed [response](#) from Wiltshire Council. The response set out how OS works in Wiltshire and what factors are most influential in making it effective. The CLG enquiry also received oral evidence from local authorities, the Centre for Public Scrutiny (CfPS), the Local Government Association and the Minister for Local Government, Rt Hon Marcus Jones MP.
5. The CLG Committee's enquiry led to a [report](#) containing 21 recommendations, one of which was that Central Government revise and reissue the statutory OS guidance to take account of OS's evolving role. The report also highlighted the importance that "organisational culture" (how people act and behave, and their values) has on the success of OS. A [commentary](#) on the CLG report and Government's [response](#) to it was received by Management Committee in March 2018. In its response, Government agreed to produce revised OS guidance by the end of 2018 and has enlisted the Centre for Public Scrutiny (CfPS) and the Association of Democratic Services Officers (ADSO) to help draft certain sections.

Developing the new Statutory Guidance

6. CfPS and ADSO are now inviting officers and councillors to discuss and provide feedback on what the new OS guidance should contain. The guidance will be statutory guidance, issued under section 9Q(1) of the Local Government Act 2000. This means that councils will have to "have regard to" the guidance in the way that they work and the decisions they make. The phrase "have regard

to” has a particular legal meaning, which is essentially that a body subject to such guidance has to have a clear reason for departing from it.

7. The status of the guidance means that it is important that it is supportive of arrangements that promote, support and do not hinder effective scrutiny. CfPS and ADSO are therefore keen to hear from local authorities on what they believe the guidance should (and should not) contain.
8. The CLG enquiry has already received practitioners’ views on OS in general so CfPS and ADSO are not requesting that the council’s response be resubmitted. Instead they are inviting thoughts on the specific questions and themes outlined below.
9. Wiltshire Council’s response to the original call for evidence emphasised that success was reliant on having the right local culture and did not particularly seek greater direction from Central Government. However, the Committee may wish to issue responses to the specific questions now posed to help ensure that aspects of good practice are embedded in the new statutory guidance.
10. CfPS and ADSO ask that in considering the 8 questions below, local councils pay particular regard to 3 key themes:
 1. **Scrutiny of “external bodies”** (this might be bodies operating under contract, commissioned partners, alternative delivery vehicles, more traditional partners and so on)
 2. **Access to information** (access to, and use of, information effectively by scrutiny having been a challenge for many practitioners)
 3. **Scrutiny of financial resilience and sustainability of councils** (recognising the recent, and continuing, pressures on the sector and scrutiny’s role in helping to understand them)
11. Some suggested Wiltshire responses are set out below. These have been formed in consultation with the Chairman and Vice-chairman.

Proposed Wiltshire Council response to the call for evidence

The new guidance could usefully encourage or embed the following, which have proved to be effective in Wiltshire:

- a) **How can the guidance help by making it clear to council executives / senior officers the kind of support that should be given to scrutiny (in a cultural sense)?**

This is addressed in the responses provided below.

- b) **In a more general sense how might the guidance help scrutiny to build a positive relationship with the executive, emphasising the need for scrutiny’s independence?**

- (i) A shared objective of an independent and yet collaborative relationship between the Executive and OS, with the emphasis on regular informal and formal dialogue between the leading members.
- (ii) Acknowledgement that OS determines its own work programme, but also that two-way dialogue on OS activities is desirable and helps to ensure maximum value is added.
- (iii) A convention of the Executive being proactive in bringing potential topics for review to OS.
- (iv) A convention of discussing preliminary OS findings with the Executive prior to being finalised and published; but with the objective being accuracy and ensuring that the full context has been considered, rather than in skewing findings in the Executive's favour.
- (v) Executive councillors never sitting as members on OS committees or other OS groups.

c) Should the guidance highlight the need for a greater profile and respect for scrutiny by the executive?

- (i) OS being seen as an integral part of policy development and decision making, with an expectation that all major programmes and decisions include an opportunity for timely input from OS.
- (ii) In particular, major strategic decisions such as business plans and annual budgets including opportunities for meaningful OS involvement to help ensure councils' financial resilience and sustainability.
- (iii) A culture in which Executive members and senior officers attend relevant OS meetings, and provide relevant requested information, by convention rather than to meet the minimum legislative requirements.
- (iv) OS councillors being invited, where appropriate, to sit on corporate programme boards to enable close OS input.
- (v) An emphasis on the many benefits of this kind of governance culture, such as improving decisions and helping to ensure that the voices of local people are heard.

d) Should the guidance go into detail on issues around work planning – recommending focus and prioritisation?

- (i) Regular informal and formal dialogue between Executive members, senior officers and OS members to discuss the OS work programme.
- (ii) Discussion of significant OS reviews with the Executive and senior officers prior to these being formally established (for the reasons outlined under question b).
- (iii) An acceptance that OS can often use its resources most effectively by a) focusing on the priorities of the council and its partners, and b) doing a few things well rather attempting to address everything.

e) How can the guidance help scrutiny with access to and use of information?

- (i) A presumption that information will be shared with OS unless there are specific reasons for not doing so (e.g. a high degree of commercial sensitivity) and, when appropriate, reasons for not sharing are given.

- (ii) A presumption that appropriate avenues for disclosing sensitive information will be considered in order to enable OS involvement, e.g. taking agenda items under Part 2.
- (iii) OS respecting the sensitivity and confidentiality of information and acknowledging the responsibility conferred in accessing it.
- (iv) Executive supporting and facilitating scrutiny of the councils' external partners and contractors.

f) Local councillors are best placed to understand the needs of local people, but how can the guidance help scrutiny councillors to ensure that scrutiny is supported to engage with the public in this way?

- (i) Acknowledgement that engagement with the public and service users can add great value to OS reviews and therefore council/partner decisions.
- (ii) OS having access to available council resources (e.g. support from relevant officer teams) in order to engage with the public.

g) How can the guidance help scrutiny more generally to develop a positive profile for itself at local level?

- (i) OS having access to available council resources (e.g. support from relevant officer teams) in order to promote its role and work at local level.

h) Are there sections / elements that you think might be particularly helpful – or unhelpful?

[None]

Proposal

- 12. To note that Central Government will be publishing revised Statutory Guidance on OS in Local Government by the end of 2018.
- 13. To receive the new Statutory Guidance once published.
- 14. To approve the proposed Wiltshire Council response to a call for evidence from CfPS and ADSO, which are drafting sections of the new guidance.

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