

TOWARDS ONE COUNCIL

JOINT OVERVIEW AND SCRUTINY TRANSITION BOARD 19 DECEMBER 2008

DEVELOPING ARRANGEMENTS FOR OVERVIEW AND SCRUTINY FOR THE NEW WILTSHIRE COUNCIL

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Introduction

1. I have been asked by Wiltshire County Council to provide external independent advice to the Joint Overview and Scrutiny Transition Board (JOSTB) to assist it in formulating and developing overview and scrutiny arrangements for recommendation to the new Wiltshire Council when it comes into being next year. I met with Councillors Tony Molland and Jeff Osborn Chairman and Vice Chairman of JOSTB respectively, Paul Kelly Scrutiny Manager, Karen Linaker Scrutiny Officer and Janine Gassman Admin Support Officer on 30 July 2008 to discuss with them how the arrangements for the new Council would be developed and the likely timetable for implementation.
2. In developing the Overview and Scrutiny arrangements for the new Council, JOSTB will be conscious of the need to ensure that the outcome of their work should be a proposed structure and set of arrangements which enables effective overview and scrutiny to be delivered as soon as possible after the start of the new Council. This report therefore uses as its starting point the current legislative framework for Overview and Scrutiny, proposed future legislative changes, and the nationally recognised roles which overview and scrutiny committees currently undertake. The report goes on to look at the overview and scrutiny models in use by other English Councils and the different approaches being taken to the new roles of O&S in relation to scrutiny of the Local Area Agreement (LAA) and partners. The report then examines the O&S arrangements in the current County and District Councils in Wiltshire. A framework for evaluating new scrutiny arrangements based on the Centre for Public Scrutiny's four principles of effective scrutiny is then put forward for consideration by JOSTB. Finally, the issues which JOSTB will need to take into account when developing the arrangements are suggested for consideration.

Background

3. In developing arrangements for Overview and Scrutiny the context within which those arrangements are set and the culture which is subsequently developed will be important in determining the effectiveness of those arrangements and the outcomes which can be achieved. Overview and Scrutiny does not of course exist in a vacuum but is an integral part of a local authority's governance arrangements. In developing arrangements it is essential to take into account the

Executive and other governance arrangements which are proposed for the new Council.

4. It is useful as a reminder to look at the legislative basis for Overview and Scrutiny. In structural terms, the Local Government Act 2000 requires an authority operating executive arrangements to have one or more Overview and Scrutiny Committees. Those Committees can establish sub-committees and the general law relating to local authority meetings such as political proportionality and access to information were applied to them. The Act also enabled Overview and Scrutiny Committees to require information from and the attendance of Executive members and Council officers at a meeting. Within that broad framework local authorities were able to choose how those committees operated. The essence of this system is a separation between decision makers and those who hold them to account. As with Parliamentary Select Committees the primary role of Overview and Scrutiny is to hold decision makers to account. Unlike Parliamentary Select Committees however, the powers to require attendance at meetings and to provide information were restricted to Executive members and officers of the authority. The thrust of subsequent legislation has been to widen the scope and powers of Overview and Scrutiny committees.
5. The Health and Social Care Act 2001 extended the remit of Overview and Scrutiny Committees of social services authorities in relation to health scrutiny and to require information and attendance from local NHS executives. In structural terms most authorities, as was the case in Wiltshire, created a dedicated health overview and scrutiny committee. The Local Government Act 2003 gives powers to make a scheme to give voting rights to co-opted members of Overview and Scrutiny Committees.
6. The Police and Justice Act 2006 extended the powers of Overview and Scrutiny Committees to scrutinise police, crime and disorder issues and Crime and Disorder Partnerships and local authorities need to have an O&S Committee which discharges those functions. It is expected that these powers will be brought into force on 1 April 2009. The latest legislation, the Local Government and Public Involvement in Health Act 2007 amongst other things, extends the powers of overview and scrutiny committees to scrutinising the targets of Local Area Agreements (LAA) and holding LAA partners to account; extends the powers of health scrutiny to social care and creates the Councillor Call for Action (to enable Councillors to require an issue in their area to be put on an agenda of an Overview and Scrutiny Committee). The Act also requires an executive to give a response to overview and scrutiny recommendations and for LAA partners to have regard to them. The new Wiltshire Unitary Council will have all the powers contained in the legislation above, some of which are currently split between County and District Councils. This will need to be taken into account in developing the Overview and Scrutiny arrangements.
7. Following a period of consultation which ended on 30 October, Regulations and Guidance on the 2007 Act provisions are promised by 1 April 2009. The Guidance will be produced by the Centre for Public Scrutiny and will focus heavily on providing practical advice on issues facing both Councils and stakeholders in operating the new legislation.
8. The Government are continuing to legislate to increase the scope and powers of overview and scrutiny. On 5 December 2008 the Local Democracy, Economic

Development and Construction Bill was published. The Bill contains proposals set out in the Communities in control: real people, real power White Paper for Councils to produce Petition Schemes (which will include the involvement of O&S Committees), proposals to boost capacity and raise awareness of O&S through the creation of a statutory post of scrutiny officer and broaden the scope of what joint overview and scrutiny committees created under the 2007 Act can consider. The Department of Health is also to undertake a review of health overview and scrutiny to “establish how local authority overview and scrutiny committees and the NHS can work more effectively together to achieve better, safer, modernised health services”. The terms of reference for the review are currently being drafted and a formal consultation document will be published early in 2009.

The Roles of Overview and Scrutiny

9. Since the introduction of the Local government Act 2000, practice within the local government community has developed and the roles and activities which should be undertaken by an effective Overview and Scrutiny function have been defined. The Centre for Public Scrutiny has identified the following roles of Overview and Scrutiny:-
 - Holding Executive to Account
 - review of executive decisions, pre-decision from the forward plan or call-in
 - scrutiny of past performance or events
 - Performance Monitoring
 - keep under review implementation of council plans and strategies
 - contribute to improvement of performance.
 - Policy Review
 - keep council policies and strategies under review, including in-depth reviews
 - Policy Development
 - contribute to development of new council policies and strategies (and budget)
 - carry out in-depth reviews on related issues
 - External Scrutiny
 - scrutiny of the local NHS, and Local Strategic Partnership
 - holding to account other public services (through the LAA)
 - scrutiny of crime and disorder reduction partnerships
 - representing the community and promoting the best interests and well being of the area, including locality scrutiny
10. In those authorities where Overview and Scrutiny has been considered to be most effective, a range of different methods have been used for carrying out the different roles for example this would typically be:
 - Holding to account - pre-decision scrutiny, call-in and review of executive decisions – formal O&S Committee meeting
 - Performance monitoring – formal O&S Committee meeting - some authorities have also created standing task groups with responsibility for specific areas of performance

- Policy Review contributing to policy plans and budget as part of the budget and policy framework – formal Committee meeting sometimes informed by more in-depth work undertaken by a small task and finish groups
 - Policy development reviews require in-depth investigation normally using a time limited task and finish group
 - External Scrutiny formal O&S Committee meeting - in-depth work by task and finish group
11. The development of Overview and Scrutiny has allowed many authorities to explore different ways of working. Formal Committee meetings will operate under the requirements of an authority's Constitution and some will adopt a "Select Committee" hearing style for meetings. Some will also meet in locations other than the Council offices. Task groups either standing or time limited will operate in flexible ways often using a range of techniques to undertake their work. Although not as common as task groups, some Overview and Scrutiny Committees have also charged individual members with leading pieces of work or investigating issues for consideration by an O&S Committee. In some authorities individual members are also tasked with following through recommendations of O&S committees which have been agreed by the Executive and reporting back progress.
12. These roles will be undertaken in differing ways within local authorities and in some, depending upon the constitutional arrangements may not be the responsibility of O&S Committees. Currently, all those roles are undertaken by the O&S functions of the Wiltshire Councils and it is assumed that this will continue within the arrangements for the new Council. There will though be a choice about the balance to be accorded to them. JOSTB in looking at the new arrangements will want to look at how these roles are undertaken in the current Wiltshire Councils. However, it might be useful first to look at the structural models currently in use within English local authorities and how authorities are handling the new roles of overview and scrutiny particularly around scrutinising partnerships and the LAA.

Overview and Scrutiny Structures

13. In the 2007 survey of overview and scrutiny in local government sent to every English local authority (63% response rate) the Centre for Public Scrutiny identified the following as the most common structures in use:
- **One Overview and Scrutiny Committee** (sometimes termed Commission) which commissions multiple time-limited policy and review panels. In this model, the Committee is normally the body which discharges the challenge function in relation to the Executive. The Committee also sets the work programme and manages the O&S function. The size of the Committee is usually small, and other non-executive members will be involved in the O&S function through time limited task and finish groups established by the Committee. The model also aids effective team working which is regarded as an essential skill for effective scrutiny.

This model is used by, amongst others, Worcestershire County Council. In their structure there are lead scrutiny members for particular themes. They believe that it gives a stronger leadership to and focus for O&S, and a clearer relationship between the Chair of the Committee and the Leader of Council.

They have a separate Health Overview and Scrutiny Committee. Nottinghamshire County Council also has this model and whilst they have a joint Health Overview and Scrutiny Committee with the adjoining Unitary Nottingham City, the health powers for the rest of the County are undertaken by the Overview and Scrutiny Committee. Whilst this model gives a tight and focussed management for O&S it involves few non-executive members in that process, or in considering issues coming before the Committee.

- **One Scrutiny Committee and multiple Overview Committees** – in this model there is a structural separation within the overview and scrutiny function between the holding to account role and policy development. Broadly, the usual distinction is Scrutiny - challenge, performance management, holding the executive to account; Overview - more in-depth policy development and review.

It is argued that this structure facilitates the different skills and behaviours required from members when providing challenge which differ from the more investigative and deliberative skills required in doing more in depth analytical work. It also enables a clear focus to be given to the different roles of O&S so that it is clear where for example the holding to account role is carried out within the structure. This model also separates the often short term work in relation to the holding to account role and the longer term policy review and development work. More non-executive members will be involved in the work of the Committees than in the first model. This structure is used, for example, at Dorset County Council where an Overview and Scrutiny Committee undertakes the holding to account role and Overview Committees develop and propose policies and monitor the performance of services.

- **Multiple Committees** in this model there is no structural separation between scrutiny in terms of the holding to account role or overview in terms of policy review and development they are combined into one or more Overview and Scrutiny Committees. The number of committees, functional areas of responsibility and size differ across the Country and there is little correlation between size or type of local authority and the number of committees. This structure is in use in the majority of English authorities, and is the model which is most similar to a traditional local authority committee structure. In order to differentiate Overview and Scrutiny Committees from traditional decision making committees, some authorities have used the term “select committee” to describe them. They consider that the terminology also sets expectations about the role of those committees. In some authorities there have been concerns that it has been difficult to develop an effective overview and scrutiny culture as the committee structures have tended to reinforce a more traditional style of working.

The functional areas for the O&S committees will normally mirror groups of executive portfolio responsibilities or around key issues, as in the case of Cumbria County Council, where they are grouped around key themes in the Council Plan. Increasingly, authorities are organising their Committees around the themed blocks of the Local Area Agreement. They feel that this enables them to build up more effective relationships with partners and take a more joined up approach to scrutinising the LAA and Sustainable Communities Strategy. Where there are multiple committees many authorities have one of the Committees which is responsible for managing the scrutiny function or

they have created a co-ordinating group of the Chairmen and/or Vice – Chairmen of the O&S Committees to carry out this role. The management body will lead the O&S function, set the overall work programme and allocate resources to activities. Oxfordshire County Council has this model.

The Local Area Agreement, Partners and Localities

14. As the thrust of both legislation and practice within local government over the last few years has been to expand the external focus of Overview and Scrutiny, this has meant that many authorities have been looking at the implications of this for their O&S arrangements. Whilst the arrangements for scrutinising the LAA are still in their infancy, methods of undertaking this are beginning to emerge. As stated above, some authorities have changed their structures to match the LAA themes, others have created a dedicated scrutiny committee (in addition to Health which in most remains a separate committee), with some including co-opted members from other partners such as non-executive members of fire & police authorities and the voluntary sector. Others have incorporated LAA work into their existing arrangements and work programmes. Examples are given in the box below, however, these Councils all have a multiple overview and scrutiny committee model:
15. Irrespective of the structures being used to undertake scrutiny of the LAA and partners, in deciding how to scrutinise the LAA, many authorities have recognised

Cambridgeshire County Council: has established an extra Scrutiny Committee to scrutinise the LAA, this is called the Joint Accountability Committee. It comprises five County Councillors (one from each of its four existing Scrutiny Committees, and one other County Councillor) one member from each of the five District Councils and one member of the Police Authority. The Committee will be chaired by a District Councillor for first 2 years.

Staffordshire County Council: established a Partnerships Scrutiny & Performance Panel two years ago; this was set up specifically to review the partnerships that the Council was engaged in. The panel currently has 13 County Councillors and the constitution has been amended to include District & Borough Councillors (8), Police, Fire & voluntary sector representatives (non-voting) and will be the body through which the LAA will be scrutinised in Staffordshire.

Rotherham Metropolitan Borough Council: has not created a separate committee to scrutinise the LAA but each of its 5 Scrutiny Panels has taken one of the LAA targets which best relates to its terms of reference and will follow through the performance of that over a 2 year period. The LAA lead partners responsible for delivery of the targets will be expected to attend the relevant Panel when requested. Overall performance of the LAA and the LSP will be undertaken by the Performance and Scrutiny Overview Committee which co-ordinates the scrutiny process.

East Sussex County Council: has taken the view that the LAA is another performance management framework which can be incorporated into the existing O&S work programme and undertaken within their existing structure. Relevant LAA information is monitored and officers draw out relevant links and information only when useful or when needed as part of the work programme or a piece of scrutiny work. They concentrate on using their resources on undertaking 'good Scrutiny' rather than using them to service and support additional structures.

the value of building upon the lessons learnt from health scrutiny. In particular, the importance of developing effective relationships with and between partners. As a first stage in considering how they wish to move forward, with their O&S arrangements, the Shadow Durham Unitary Council held a “mini conference” event at the end of October 2008 for members, officers and partners to establish understanding of O&S and also to begin to look at what might be the most effective ways to scrutinise the LAA and in doing so adding value, breaking down barriers and reinforcing the importance of collaborative working.

16. In addition to the LAA, some authorities are also looking at how to scrutinise Multi-Area Agreements at sub-regional or regional level with their neighbouring authorities. Where appropriate this will need to be taken into account in the overall arrangements for the new Wiltshire Council. Joint arrangements will also need to be considered in relation to partners which cover areas larger than Wiltshire and how this might relate to the new Regional Parliamentary Select Committees. However, it might be appropriate to leave these issues until the new Wiltshire Council’s O&S arrangements are fully in place.
17. In the light of the recent legislative changes and the Communities in control: real people, real power White Paper proposals, authorities are also looking at how they can incorporate area or locality based scrutiny into their arrangements. A further driver for this is the replacement next year of the Audit Commission’s Corporate Performance Assessment by the new Comprehensive Area Assessment. This will look at local areas in the round and authorities are beginning to see that it will be important to demonstrate that scrutiny is an integral part of the Council’s governance of the area and is able to assess the cumulative impact of public services both strategically and at locality or area level. There is little information available on how this aspect of O&S is developing but it appears that where authorities have area committees or neighbourhood panels they have tended to use those structures to create a direct link from the locality through to their main overview and scrutiny committee(s). Often partner bodies will be involved as members of the area or locality structures. The new Durham Unitary Council for example is beginning to explore how they can develop locality scrutiny and the links with their developing area action partnerships.
18. Although experience is again limited, some of those authorities which have begun to introduce the Councillor Call for Action, have taken an innovative view of the CCfA and have seen this very much in the context of partnership working at locality level. An excellent example of this is Birmingham City Council’s Gateway approach which requires the local Councillor to follow a protocol agreed with the Council’s partners when initiating a Call for Action. Some authorities are also starting to consider how they might also use the proposals about petitions in conjunction with locality O&S.

Overview and Scrutiny Arrangements in Current Wiltshire Councils

19. In considering what O&S arrangements to recommend for the new Council, JOSTB will want to look at the current arrangements which are in place within the existing County and District Councils as these will form the basis of what members and officers primary experience of O&S has been to date. Charts showing the current structures are attached for information as Annex 1. North and West Wiltshire Councils have the one Overview and Scrutiny Model with the latter having a standing task group for Performance Monitoring. The other Councils have variations of the Multiple Overview and Scrutiny model, with the

County having three standing task groups. Kennet District Council is different in structural terms as of course, it is a “4th Option” authority. It has policy committees instead of one of the forms of Executive. All except Kennet use time limited task and finish groups.

20. It is difficult to comment objectively on the effectiveness of these Overview and Scrutiny arrangements as there is little independent evidence to base such judgements upon. The survey of members in the existing Wiltshire Councils on member support which included O&S sent out last month will provide some evidence. However, an impressionist view of how the roles of Overview and Scrutiny have been undertaken taken from early work by County and District officers is as follows:

- Holding Executive to Account – Call-in of Executive decisions is rare, Executive portfolio holders are questioned at O&S Committees. Pre-decision scrutiny is undertaken and the County Council’s standing task groups are effective in focussing on specific issues. The O&S function in all the Councils has actively been involved in Budget and Policy framework issues in particular budget setting and monitoring;
- Performance Monitoring – again all the Councils O&S functions have been actively involved in this area, however, it has been more effective where there has been dedicated officer support to help members with research etc. The County Council’s standing task groups have given a focus for specific areas of work ;
- Policy Review – this role has been carried out by all the Councils’ O&S functions but has been variable in terms of its extent and the outcomes achieved. Task and finish groups have though produced some good work in this area;
- Policy Development – this has normally been undertaken by task and finish groups but again the extent and quality of this is variable and has been dependent upon the level of officer support which is available. There have been some examples of very good work being undertaken;
- External Scrutiny – except for health overview and scrutiny, this area has been underdeveloped and experience limited.

Scrutiny Arrangements for the New Wiltshire Council

21. Recognised good practice in evaluating the effectiveness of Overview and Scrutiny looks at a range of factors. The Centre for Public Scrutiny has been reluctant to give a view about the effectiveness of different structural models and comparisons between authorities are difficult to make because of the range of variable factors involved. They have developed a self evaluation framework which enables authorities to assess the effectiveness of overview and scrutiny against the Centre’s four principles of effective scrutiny:

- Provides critical friend challenge to executive policy-makers and decision-takers
- Enables the voice and concerns of the public and its communities

- Is carried out by independent minded members who lead and own the scrutiny process
- Drives improvement in public services

These principles underpin the delivery of effective overview and scrutiny and the arrangements which JOSTB propose should have these principles as their foundation. An evaluation tool based on the four principles is set out in Annex 2. JOSTB might wish to use this as a checklist when considering the O&S arrangements for the new Council. It could also be used for example to test any proposals which arise from consultation or by the new Council to review how the arrangements, when in place, work in practice.

22. In considering what O&S arrangements to recommend to the new Wiltshire Council, JOSTB has a unique opportunity to be innovative but also needs to balance this against the current stage of development of O&S within the existing County and District Councils. JOSTB should seek to build on what currently works well and in developing the O&S arrangements will need to consider how the following good practice elements will be built into them:

- a structure at the corporate level which includes a strong and independent scrutiny body which can drive, manage and co-ordinate the overall O&S arrangements and enables a “parity of esteem” with the Executive to be developed;
- a structure which can reinforce good scrutiny behaviours in members and officers by encouraging differentiated ways of working to suit the tasks being undertaken and that activities are undertaken at the most effective level;
- a structure where the roles and relationships of the bodies are clear, activities are carried out that do not duplicate things being undertaken elsewhere or divert resources into costly servicing arrangements of a “top-heavy” structure;
- provides transparency, is inclusive, makes effective use of the skills, talents and experience of non-executive members and enables the financial and officer resources dedicated to O&S to be used effectively to help deliver evidence based outcomes which will add value and make a difference to the community and the people served by the new Council;
- takes into account how all the roles of O&S set out in paragraph 7 will be undertaken particularly the new and developing roles of O&S around scrutinising the LAA and partnerships but puts more emphasis into those areas where O&S can have the greatest influence and potential impact;
- how the arrangements will enable scrutiny at the locality level to be undertaken given the commitment for the new Council to be responsive to localities and local issues;
- how relationships will be developed with other groups and organisations for example the Local Involvement Network for health and social care (LINK) and collective learning shared.

23. In developing the arrangements JOSTB will need to take into account the need to ensure that O&S will be effective at the strategic level and at the same time how it can develop a more local, area-based approach to scrutiny. The

challenge of bringing together both a bottom up and top down approach does not necessarily mean creating additional or parallel structures. What will be important is to maintain a split between executive decision-making and the scrutiny of those decisions. For example, subject to safeguards being put in place to ensure that Members do not scrutinise their own decisions, and subject to complying with legislative requirements in respect of O&S Committees, it should be possible to give the proposed Area Boards responsibility for scrutiny at the local, area level. This would also mean giving many more members a direct role in O&S at a locality level whilst ensuring that the structures at the strategic level are not overly cumbersome, are activity and outcome focussed.

Conclusion

24. Since its inception in the Local Government Act 2000, Overview and Scrutiny has developed and its roles expanded. In structural terms this has resulted in Councils developing a range of different models and arrangements for undertaking these roles. These are set out for JOSTB to consider as part of its deliberations. In order to support Councils in looking at the effectiveness of their O&S arrangements, the Centre for Public Scrutiny has developed a self evaluation framework based on the four principles of effective scrutiny. These principles should underpin the arrangements for the new Wiltshire Council which JOSTB recommend. A checklist based on the four principles is included with the report for JOSTB to use if it wishes. In developing the arrangements JOSTB should build upon what currently works well in the existing arrangements within the Wiltshire Councils but at the same time will also need to ensure that the developing areas of overview and scrutiny particularly scrutiny of the LAA and locality scrutiny are addressed.
25. As well as the structure for O&S in the new Council JOSTB should also include in its recommendations, the arrangements which will need to be put into place to ensure that O&S is undertaken effectively. This should include a programme of development in O&S skills, developing effective relationships both with the Executive and partners and how this can be achieved.

ANNEX 2

**OVERVIEW AND SCRUTINY IN THE NEW WILTSHIRE COUNCIL
FRAMEWORK FOR ANALYSING STRUCTURAL OPTIONS**

In order to assess potential overview and scrutiny structures for the new Wiltshire Unitary Council it is suggested that a framework based on the Centre for Public Scrutiny’s 4 principles of good scrutiny might provide an objective means of testing the proposals. The four principles are:

- Provides critical friend challenge to executive policy-makers and decision-takers
- Enables the voice and concerns of the public and its communities
- Is carried out by independent minded members who lead and own the scrutiny process
- Drives improvement in public services

Each option should be given a rating against each of the principles from 1-5 (1 Poor, 2 Fair, 3 Good, 4 Very Good, 5 Excellent) to each question.

A. “CRITICAL FRIEND” CHALLENGE

Question	Please rate from 1-5
1. How well does the structure provide a clear route for effective challenge to the Cabinet?	
2. How well will the structure enable the Overview and Scrutiny function to operate at a strategic corporate level?	
3. Will the structure enable the Cabinet and senior management to form an effective working relationship with Overview and Scrutiny?	
4. How well will the structure enable the Overview and Scrutiny function to hold other public bodies, and partnerships to account effectively?	

B. ENABLING THE VOICE OF THE PUBLIC

Question	Please rate from 1-5
1. How well will the structure enable the public and stakeholders to become involved in Overview and Scrutiny activities?	
2. How well will the structure enable the views of the Overview and Scrutiny function to be presented to the public with one voice?	

3. How understandable will the structure be to the press and public?	
4. How well will the structure enable scrutiny activities to be co-ordinated and managed?	

C. LEADING AND OWNING THE AGENDA

Question	Please rate from 1-5
1. Will the structure provide clear leadership for the Overview and Scrutiny function?	
2. Will the structure enable Overview and Scrutiny to be seen and act independently from other parts of the authority (officers, cabinet, political groups)?	
3. Will the structure enable an integrated work programme to be developed and delivered?	
4. Will the structure involve all non-executive members effectively?	
5. Will the structure enable Overview and Scrutiny to make best use of resources?	

D. IMPROVING PUBLIC SERVICES

Question	Please rate from 1-5
1. Will the structure enable Overview and Scrutiny to be co-ordinated and integrated into other corporate processes such as service planning?	
2. How well will the structure enable Overview and Scrutiny to contribute to performance management?	
3. Will the structure avoid duplication of activity and prevent overloading those scrutinised?	
4. How well will the structure enable Overview and Scrutiny to deal with locality issues?	

Are there any additional features which should be included?