

Committee: Overview and Scrutiny Commission

Date: March 21st 2018

Wards: ALL

Subject: Communities and Local Government Committee: Effectiveness of local authority overview and scrutiny committees report - Merton response

Lead officer: Julia Regan, Head of Democracy Services julia.regan@merton.gov.uk

Lead member: Councillor Peter Southgate, Chair of the Overview and Scrutiny Commission.

Contact officer: Julia Regan, Head of Democracy Services julia.regan@merton.gov.uk; 020 8545 3864

Recommendations:

- A. That the Overview and Scrutiny Commission consider the findings and recommendations made by the Communities and Local Government Committee on: The effectiveness of local authority overview and scrutiny committees.
 - B. That the Overview and Scrutiny Commission agree the proposed actions it will take in 2018-19 as set out in section 2.82 of the report.
 - C. That the Overview and Scrutiny Commission consider whether there are additional actions it wishes to take.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The purpose of the report is to provide the Commission with the main findings and recommendations of the effectiveness of local authority overview and scrutiny committees report. This is an opportunity to reflect on the current practice in Merton and identify areas for improvement. The Commission is asked to note that recommendation two in the report urges local authorities to *'take note of the findings of the report and consider their approach'*

2 DETAILS

- 2.1. On 11th December 2017 the Communities and Local Government Select Committee published its highly anticipated report entitled: *Effectiveness of local authority overview and scrutiny committees*. This is the first national assessment in many years to consider how scrutiny committees operate. The report looks at why scrutiny is important and the role it should play in local authorities.
- 2.2. The terms of reference included:

- The ability of the scrutiny function to hold decision makers to account;
- The impact of party politics on scrutiny; and
- Resources for the scrutiny function.

2.3. The Chair of the Overview and Scrutiny Commission was keen to support this review and Merton responded to the select committee's call for evidence, both in writing and by a telephone interview. Merton Councillors also attended a session at Portcullis House, run by the select committee, to highlight the work of overview and scrutiny.

2.4. A large number of submissions were received from local authorities across the country. Amongst these, Merton was highlighted as a good practice example for its work on pre-decision scrutiny:

2.5. Pre-decision scrutiny is also a vital part of a committee's role. By commenting on and contributing to a decision before it has been made, scrutiny committees are able to offer executives the benefit of their ability to focus on an issue in greater depth over a longer period of time. For example, **the London Borough of Merton's Children and Young People Overview and Scrutiny Panel** considered a site proposal for a new secondary school. As a result of its work, the Panel was "able to provide a detailed reference to Cabinet focusing on how to optimise use of the selected site and mitigate any negative impact", helping the Cabinet to make a more informed and considered decision.
Effectiveness of local authority overview and scrutiny committees, Page 9.

2.6. **An overview of the report and recommendations and Merton's response**

2.7. Overview and scrutiny committees were created by the Local Government Act 2000 and were designed to offset increased centralised power established by the Leader and Cabinet executive arrangements. Many of the current issues and challenges faced by scrutiny arrangements across the country relate to the need to redress the balance between the executive and scrutiny. The Select Committee found evidence that the scrutiny function is treated in many authorities as peripheral rather than an integral part of the council's work.

2.8. The report endorses the Centre for Public Scrutiny's four principles of good scrutiny:

- Provides a constructive "critical friend" challenge;
- Amplifies the voices and concerns of the public;
- Is led by independent people who take responsibility for their role; and
- Drives improvement in public services.

2.9. **The Role of Scrutiny**

2.10. The report recognises that the role of scrutiny has continued to evolve since its inception. Local government is facing a number of challenges including

ageing populations and budget shortfalls. As a result, services are increasingly being delivered through partnership arrangements and shared services. The last government guidance on scrutiny dates back to 2006 and the report recommends that this should be updated to reflect the changes within the scrutiny role.

- 2.11. The report found that while good scrutiny can be difficult to define and quantify, examples of poor practice can have a big impact. One of the biggest challenges to the reputation of the scrutiny function in recent years was its role in the failings at Mid Staffordshire NHS Trust and at Rotherham Council. The Francis report into Mid Staffs in 2013 criticised scrutiny committees for having a lack of understanding and grip on local healthcare issues, weak challenge of the information and an over willingness to accept explanations. The Casey report into Rotherham council in 2015 also criticised scrutiny for its lack of challenge.
- 2.12. Select Committee recommendations on the role of scrutiny
- 2.13. ***Recommendation one:*** *We therefore recommend that the guidance issued to councils by DCLG on overview and scrutiny committees is revised and reissued to take account of scrutiny's evolving role.*
- 2.14. ***Recommendation two:*** *We call on the Local Government Association to consider how it can best provide a mechanism for the sharing of innovation and best practice across the scrutiny sector to enable committees to learn from one another. We recognise that how scrutiny committees operate is a matter of local discretion, but urge local authorities to take note of the findings of this report and consider their approach.*
- 2.15. Merton's response to recommendations 1&2
- 2.16. Merton scrutiny has recognised the changing role of local services and this is reflected in agenda items and task group activity. For example, the Commission conducted a task group review on shared and outsourced services in 2016. Also the Commission and Panels regularly scrutinise services provided by external organisations such as the police, NHS, Clarion and Veolia.
- 2.17. Guidance on scrutiny can be a useful tool to clarify procedures, strengthen relationships with local partners and raise the profile of the function. A refresh of the DCLG guidance is welcome but it is important that DCLG work closely with local authorities to do this. It is also vital to ensure local discretion on scrutiny arrangements is maintained and undue burdens are not placed upon the function.
- 2.18. **Party politics and organisational culture**
- 2.19. The review found that the most important factor in determining if scrutiny is effective in a local authority is whether the executive and senior officers welcome constructive challenge. This will mean scrutiny is well resourced, listened to and is taken seriously.
- 2.20. A poor organisational culture will mean:

- Lack of parity of esteem between scrutiny chair and cabinet portfolio holder; and
 - Dominance of party politics - scrutiny is supposed to be apolitical and should not be used for political point scoring.
- 2.21. The report argues that another problem with the status of scrutiny is that it reports to Cabinet which is the body it is supposed to be scrutinising.
- 2.22. Select Committee recommendations on party politics and organisational culture
- 2.23. **Recommendation three:** *However, all responsible council leaderships should recognise the potential added value that scrutiny can bring, and heed the lessons of high profile failures of scrutiny such as those in Mid Staffordshire and Rotherham.*
- 2.24. **Recommendation four:** *To reflect scrutiny's independent voice and role as a voice for the community, we believe that scrutiny committees should report to Full Council rather than the executive and call on the Government to make this clear in revised and reissued guidance. When scrutiny committees publish formal recommendations and conclusions, these should be considered by a meeting of the Full Council, with the executive response reported to a subsequent Full Council within two months.*
- 2.25. **Recommendation five:** *We believe that executive members should attend meetings of scrutiny committees only when invited to do so as witnesses and to answer questions from the committee. Any greater involvement by the executive, especially sitting at the committee table with the committee, risks unnecessary politicisation of meetings and can reduce the effectiveness of scrutiny by diminishing the role of scrutiny members. We therefore recommend that DCLG strengthens the guidance to councils to promote political impartiality and preserve the distinction between scrutiny and the executive.*
- 2.26. **Recommendation six:** *It is vital that the role of the scrutiny chair is respected and viewed by all as being a key part of the decision-making process, rather than as a form of political patronage.*
- 2.27. **Recommendation seven:** *We believe that there are many effective and impartial scrutiny chairs working across the country, but we are concerned that how chairs are appointed has the potential to contribute to lessening the independence of scrutiny committees and weakening the legitimacy of the scrutiny process. Even if impropriety does not occur, we believe that an insufficient distance between executive and scrutiny can create a perception of impropriety.*
- 2.28. **Recommendation eight:** *We believe that there is great merit in exploring ways of enhancing the independence and legitimacy of scrutiny chairs such as a secret ballot of non-executive councillors. However, we are wary of proposing that it be imposed upon authorities by government.*
- 2.29. Merton's response to recommendations 3-8
- 2.30. Many of the recommendations have been developed in light of evidence of an organisational culture in local authorities where scrutiny is disregarded and dominated by the executive. The report recognises that there are vast

differences in the status of scrutiny in local authorities. However the select committee is proposing a standard top-down approach to addressing this issue rather than empowering local politicians to determine what will work best in their local area.

- 2.31. Scrutiny is working well in Merton compared to many other authorities. The Merton Member Survey of 2017 highlights that 75% of members rated the scrutiny function as effective. However some concerns were raised about the negative impact of party politics on scrutiny.
- 2.32. Merton's topic suggestion process and flexible work programmes help to identify failings in local services. Members of the public and local organisations are contacted annually and invited to suggest topics for scrutiny panels to include in their work programmes over the year ahead. The work programmes can also respond if a local issue is brought to the attention of the Panel. For example the health scrutiny panel invited a local mental health charity and Merton Clinical Commissioning Group when challenges with the service were raised.
- 2.33. Training and member development sessions are held on a regular basis to help members challenge the information they receive at scrutiny. Both the Sustainable Communities and Children and Young People's Panels recently held training sessions looking at how to analyse their performance data. The Children and Young People's panel also receives written guidance on questioning that is specific to the subject being addressed.
- 2.34. The organisational culture in Merton includes areas of strength and good practice. For example during the budget scrutiny process, the Cabinet seeks a response from scrutiny before finalising its proposals. Provision for this is made in the council's constitution whereas this is not the case for many other councils.
- 2.35. Cabinet also places value on the cross party and evidenced based approach taken by scrutiny task groups. For example the Cabinet Member asked for the findings of a task group review of Crossovers (dropped kerbs) to inform final decisions on changes to this policy area. Cabinet generally responds positively and implement the majority of task group recommendations.
- 2.36. In Merton the Chair of the Overview and Scrutiny Commission presents the scrutiny annual report to Full Council. Provision for this is also set out in Merton's constitution, which is not replicated in other authorities. Task group reviews are conducted independently with the support of a dedicated scrutiny officer and presented to Cabinet upon completion. The vast majority of task group report recommendations are agreed by the Cabinet at Merton, which is a testament to the effectiveness of the scrutiny process.
- 2.37. It is good practice to share the chairing of scrutiny to promote its independence. The council may want to consider if it wishes to share the chairing of scrutiny committees more widely with opposition groups than at present. The Commission is asked to take a view and decide if it wishes to add to the list of actions set out in Paragraph 2.82
- 2.38. **Accessing Information**

- 2.39. The report highlights concerns about scrutiny committees not being given access to information. It is important for councils to be transparent and scrutiny committees should be deemed as having a 'need to know' status to give them the legal right to access exempt or confidential information. An example was given of a scrutiny committee that had to submit a freedom of Information request to its own organisation. "Commercial Confidentiality" was also cited as a barrier to scrutiny committees receiving the information they need for effective scrutiny. The report argues that information of this nature should not be withheld from councillors.
- 2.40. Select committee recommendations on accessing information:
- 2.41. **Recommendation nine:** *Scrutiny committees that are seeking information should never need to be 'determined' to view information held by its own authority, and there is no justification for a committee having to resort to using Freedom of Information powers to access the information that it needs, especially from its own organisation. There are too many examples of councils being uncooperative and obstructive.*
- 2.42. **Recommendation ten:** *Councils should be reminded that there should always be an assumption of transparency wherever possible, and that councillors scrutinising services need access to all financial and performance information held by the authority.*
- 2.43. **Recommendation eleven:** *We do not believe that there should be any restrictions on scrutiny members' access to information based on commercial sensitivity issues. Limiting rights of access to items already under consideration for scrutiny limits committees' ability to identify issues that might warrant further investigation in future, and reinforces scrutiny's subservience to the executive. Current legislation effectively requires scrutiny councillors to establish that they have a 'need to know' in order to access confidential or exempt information, with many councils interpreting this as not automatically including scrutiny committees. We believe that scrutiny committees should be seen as having an automatic need to know, and that the Government should make this clear through revised guidance.*
- 2.44. **Recommendation twelve:** *We note that few committees make regular use of external experts and call on councils to seek to engage local academics, and encourage universities to play a greater role in local scrutiny.*
- 2.45. **Recommendation thirteen:** *We commend such examples of committees engaging with service users when forming their understanding of a given subject, and encourage scrutiny committees across the country to consider how the information they receive from officers can be complemented and contrasted by the views and experiences of service users.*
- 2.46. Merton's response to recommendations 9-13
- 2.47. Merton has a long history of giving scrutiny councillors greater rights of access to information than is the case in other local authorities. All councillors are entitled to view exempt committee reports and this was the case long before legislation changed permissions. Merton task groups are also provided with policy, service and financial information that has been categorised as commercially sensitive.

- 2.48. The scrutiny function in Merton does make use of experts and the non statutory co-opted members are carefully selected for the expertise they bring to the Panels. Task groups can co-opt people with specific expertise; for example a review on climate change had support from a local sustainability charity.
- 2.49. There is room for improvement - scrutiny members have expressed concern about the over reliance on officer reports and would like to see more expert witnesses invited to contribute to specific topics and to provide challenge. This is an important action to be taken forward in 2018-19.
- 2.50. **Resources**
- 2.51. The report expressed concern about the reduction in resources and dedicated support for scrutiny across the country.
- 2.52. Select committee recommendations on resources:
- 2.53. ***Recommendation fourteen:*** *We acknowledge that scrutiny resources have diminished in light of wider local authority reductions. However, it is imperative that scrutiny committees have access to independent and impartial policy advice that is as free from executive influence as possible. We are concerned that in too many councils, supporting the executive is the over-riding priority, with little regard for the scrutiny function. This is despite the fact that at a time of limited resources, scrutiny's role is more important than ever.*
- 2.54. ***Recommendation fifteen:*** *We therefore call on the Government to place a strong priority in revised and reissued guidance to local authorities that scrutiny committees must be supported by officers that can operate with independence and provide impartial advice to scrutiny councillors. There should be a greater parity of esteem between scrutiny and the executive, and committees should have the same access to the expertise and time of senior officers and the chief executive as their cabinet counterparts. Councils should be required to publish a summary of resources allocated to scrutiny, using expenditure on executive support as a comparator. We also call on councils to consider carefully their resourcing of scrutiny committees and to satisfy themselves that they are sufficiently supported by people with the right skills and experience.*
- 2.55. ***Recommendation sixteen:*** *We recommend that the Government extend the requirement of a Statutory Scrutiny Officer to all councils and specify that the post-holder should have a seniority and profile of equivalence to the council's corporate management team. To give greater prominence to the role, Statutory Scrutiny Officers should also be required to make regular reports to Full Council on the state of scrutiny, explicitly identifying any areas of weakness that require improvement and the work carried out by the Statutory Scrutiny Officer to rectify them.*
- 2.56. Merton's response to recommendations 14 to 16
- 2.57. In Merton there are 2.4 dedicated scrutiny officers, which is above the London average. The team work independently of both the executive and the service departments. This means that the team are able to act in an impartial way and support independent member-led scrutiny.

- 2.58. Scrutiny Chairs have direct access to senior officers and cabinet members and make arrangements to meet them to discuss emerging issues and share information. All senior officers offer regular support, advice and attendance to scrutiny meetings.
- 2.59. The Head of Democracy Services is Merton's statutory scrutiny officer and reports directly to the Assistant Director of Corporate Governance (Monitoring Officer).
- 2.60. The annual scrutiny member survey is used each year as an opportunity to identify areas of weakness and to develop an action plan. The action plan is signed off by the Overview and Scrutiny Commission.
- 2.61. While it is important that there should be parity of esteem between the Executive and Scrutiny, publishing a summary of resources allocated to scrutiny would be both impractical and time consuming. A more useful measure of the success of scrutiny will be evaluating the outcomes and achievements of the work programmes.
- 2.62. **Member training and skills**
- 2.63. Select Committee recommendation on member training and skills:
- 2.64. **Recommendation seventeen:** *It is incumbent upon councils to ensure that scrutiny members have enough prior subject knowledge to prevent meetings becoming information exchanges at the expense of thorough scrutiny. Listening and questioning skills are essential, as well as the capacity to constructively critique the executive rather than following party lines. In the absence of DCLG monitoring, we are not satisfied that the training provided by the LGA and its partners always meets the needs of scrutiny councillors, and call on the Department to put monitoring systems in place and consider whether the support to committees needs to be reviewed and refreshed. We invite the Department to write to us in a year's time detailing its assessment of the value for money of its investment in the LGA and on the wider effectiveness of local authority scrutiny committees.*
- 2.65. Merton's response to recommendation 17
- 2.66. In Merton, the scrutiny team regularly looks at ways to provide members with the support they need for effective scrutiny. This includes not only training and development activities but also visits. For example the Sustainable Communities Panel had scrutinised plans to change both the venue and commissioning model for Merton's adult learning. Councillors visited Merton College to see the service following these changes.
- 2.67. Councillors at Merton are not dependent on one organisation for training but participate in a wide range of opportunities hosted by a range of organisations including the London Scrutiny Network, Local Government Information Unit, INLOGOV and the Centre for Public Scrutiny.
- 2.68. The induction programme for new councillors in May 2018 will include an introduction to overview and scrutiny, plus a session on questioning skills in the autumn.
- 2.69. **The role of the public**

- 2.70. Select Committee recommendation on the role of the public
- 2.71. **Recommendation eighteen:** *The Government should promote the role of the public in scrutiny in revised and reissued guidance to authorities, and encourage council leaderships to allocate sufficient resources to enable it to happen. Councils should also take note of the issues discussed elsewhere in this report regarding raising the profile and prominence of the scrutiny process, and in so doing encourage more members of the public to participate in local scrutiny. Consideration also need to be given to the role of digital engagement, and we believe that local authorities should commit time and resources to effective digital engagement strategies. The LGA should also consider how it can best share examples of best practise of digital engagement to the wider sector.*
- 2.72. Merton's response to recommendation 18
- 2.73. In Merton, the scrutiny team is looking at new ways to encourage attendance at meetings. The team is currently using a questionnaire to capture the experience of public attendees and promote more meaningful interaction.
- 2.74. It is the communications team role to lead on promoting scrutiny through social media, they circulate information about meetings and specific agenda topics. The Sustainable Communities and Overview Panel members have used Twitter to promote specific agenda items over the last year, resulting in greater public attendance.
- 2.75. The challenge for Merton scrutiny is to find new ways for residents and local community organisations to participate in scrutiny in a meaningful way.
- 2.76. **Scrutinising public services provided by external bodies**
- 2.77. Select Committee recommendations on public services provided by external bodies
- 2.78. **Recommendation twenty:** *In light of our concerns regarding public oversight of Local Economic Partnerships, (LEPS) we call on the Government to make clear how these organisations are to have democratic, and publicly visible, oversight. We recommend that upper tier councils, and combined authorities where appropriate, should be able to monitor the performance and effectiveness of LEPs through their scrutiny committees. In line with other public bodies, scrutiny committees should be able to require LEPs to provide information and attend committee meetings as required.*
- 2.79. Merton's response to recommendations 19
- 2.80. Scrutiny committees have an on-going relationship with a range of partners including the NHS, Clarion and Veolia. These organisations regularly attend scrutiny to present reports and answer questions.
- 2.81. In 2008 , Merton agreed an External Scrutiny Protocol to manage working relationships between the scrutiny function and local partners. This Protocol is a useful tool and could be refreshed for 2018-19.
- 2.82. **List of actions to be taken by Merton Overview and Scrutiny Commission in response to the Communities and Local Government recommendations on: Effectiveness of Overview and Scrutiny Committees.**

- 2.83. Use Annual Member Survey results to identify training and development needs for scrutiny councillors.
- 2.84. Continue to have informal meetings between Scrutiny Chair, Cabinet Member and Director.
- 2.85. Endorse the Centre for Public Scrutiny's four principles of good scrutiny as set out in paragraph in 2.8.
- 2.86. Extend training and development opportunities to include a wide range of visits to local services and participation in London Scrutiny Network events.
- 2.87. Increase use of external experts and witnesses to support effective challenge by scrutiny committees.
- 2.88. Refresh the Merton External Scrutiny Protocol which supports local organisations to understand and participate in the scrutiny process.
- 2.89. Investigate potential for greater resident involvement in scrutiny through digital engagement. Increased involvement should focus on participation in task group reviews and agenda items as well as attending Commission/Panel meetings.

3 ALTERNATIVE OPTIONS

The Overview and Scrutiny Commission can select topics for scrutiny review and for other scrutiny work as it sees fit, taking into account views and suggestions from officers, partner organisations and the public.

Cabinet is constitutionally required to receive, consider and respond to scrutiny recommendations within two months of receiving them at a meeting.

- 3.1. Cabinet is not, however, required to agree and implement recommendations from Overview and Scrutiny. Cabinet could agree to implement some, or none, of the recommendations made in the scrutiny review final report.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. The Commission will be consulted at the meeting

5 TIMETABLE

- 5.1. The Commission will consider important items as they arise as part of their work programme for 2017/18

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. None relating to this covering report

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. None relating to this covering report. Scrutiny work involves consideration of the legal and statutory implications of the topic being scrutinised.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. It is a fundamental aim of the scrutiny process to ensure that there is full and equal access to the democratic process through public involvement and

engaging with local partners in scrutiny reviews. Furthermore, the outcomes of reviews are intended to benefit all sections of the local community.

9 CRIME AND DISORDER IMPLICATIONS

9.1. None relating to this covering report. Scrutiny work involves consideration of the crime and disorder implications of the topic being scrutinised.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1. None relating to this covering report

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

11.1. None

12 BACKGROUND PAPERS

12.1. None

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