



Board Meeting

Date	7 April 2017
Report title	West Midlands Combined Authority Overview and Scrutiny Committee
Cabinet Member Portfolio Lead	Councillor Bob Sleight – Chair of the WMCA
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Report to be/has been considered by	Met Leaders Programme Board Legal Group

Recommendation(s) for action or decision:

The Combined Authority Board is recommended to:

1. Consider the implications of the Combined Authorities Overview and Scrutiny Committees (Access to Information and Audit Committees) Order 2017.
2. Adopt the membership model as detailed in option 1 of Appendix 2 for the West Midlands Combined Authority Overview and Scrutiny Committee.
3. Note the progress of the Combined Authority Scrutiny Committee.

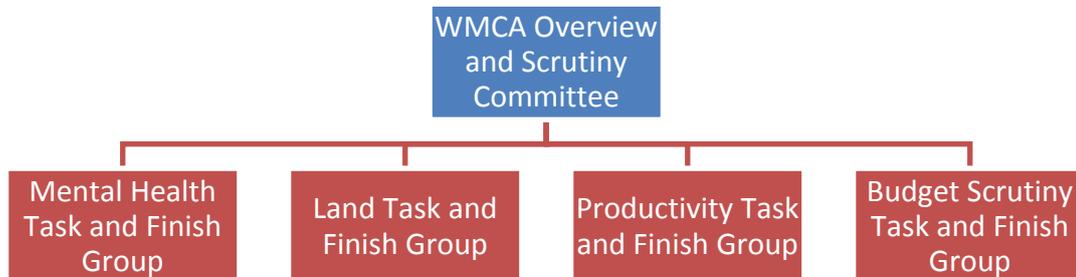
1.0 Purpose

1.1 This report is to apprise the Combined Authority Board of progress with the development of the Scrutiny function, and on the implications contained in the Combined Authorities (Overview and Scrutiny Committees Access to Information and Audit Committees) Order 2017 which comes into force on 8 May 2017.

2.0 Background

- 2.1 The Scrutiny Committee of the West Midlands Combined Authority was established by the Shadow Combined Authority Board on 10 June 2016, and ratified following the inception of the WMCA on 29 June 2016, also referred to as the AGM. The Committee met twice in 2016 and, in addition, held a workshop event to which Combined Authority Board Members (the Executive), Scrutiny Committee Members and Chief Executives attended.
- 2.2 At its first meeting on 15 July 2016, the Scrutiny Committee appointed its Chair, Councillor Peter Hughes, considered its terms of reference and other constitutional related items. At this point it was decided that a workshop to bring together the executive and scrutiny was required in order that a work programme could be developed which would allow the Scrutiny Committee to add value to the work of the Combined Authority.
- 2.3 The purpose of the workshop held on 25 November 2016 was:-
- To learn of the key strands of work being undertaken by the West Midlands Combined Authority (WMCA);
 - To hear of areas where the WMCA believed scrutiny's involvement could add value;
 - To consider a way of working by scrutiny members which balanced the need to hold to account with pre-decision scrutiny;
 - To consider an outline work programme for the Joint Scrutiny Committee.
- 2.4 One area which was given consideration at the workshop event was in relation to how the Scrutiny Committee could maintain links with local authority scrutiny across the Combined Authority Area. This matter had been identified as a key issue with other Combined Authority scrutiny arrangements nationally. However, the West Midlands are fortunate to have an established, mature Regional Scrutiny Network consisting of Local Authority Scrutiny Chairs and Scrutiny Managers. Consultation took place with the Network on 13 January 2017, firstly to apprise them of progress in developing the CA scrutiny committee, and secondly to consider their views on how CA scrutiny should engage with local authorities in the area.
- 2.5 The feedback received from the Network was that it could be utilised for 'calls for evidence' as required by the WMCA Scrutiny Committee but that this should not detract from maintaining a dialog with individual constituent and non-constituent councils. Indeed, contact was made with scrutiny managers of constituent and non-constituent councils in December 2016 seeking views on engagement. Only three responses were received, two with offers to host meetings. To further cement the relationship between WMCA Scrutiny and Local Authority Scrutiny an engagement session is planned to take place on 4 April 2017 where discussion will take place on ways of working and protocols on responsibilities for holding to account.

- 2.6 A further meeting of the Scrutiny Committee took place on 16 December 2016. The Committee considered a report on the outcomes of the workshop and discussed its work programme and how best to structure its ways of working to deliver against this. It was felt that a key area in which Scrutiny may be able to add value was in relation to the three commissions established by the Combined Authority. The Committee considered that it would 'add value' not by scrutinising the content of commission reports, but by investigating how recommendations from the Commissions may be taken forward and implemented effectively across the Combined Authority area.
- 2.7 Whilst the Scrutiny Committee will retain responsibility for holding WMCA to account, it was decided that (in the first instance) four task and finish groups be established to undertake key strands of work. These Groups reflect the three commissions, plus the requirement to undertake scrutiny of the Combined Authority budget. The structure of the scrutiny function is set out below:-



- 2.8 The Chair of Scrutiny has been working closely with the newly appointed independent Chair of Audit Risk and Assurance to ensure that the two areas work in a complementary, effective way. To further this, the Chair of Audit attended the Scrutiny Workshop on 25 November, 2016 and the Scrutiny Committee Meeting in December. In addition a joint finance training session, for members of both scrutiny and audit, took place on 27 January 2017.
- 2.9 In order for any Scrutiny Committee to be effective it needs dedicated resources both in terms of officer commitment and commitment from its members. Going forward this is paramount to the Committee achieving positive outcomes and applies to the officer support provided to scrutiny, its members and substitute members. Where nominated members are unable to attend there needs to be a culture of sending substitute members to ensure consistent representation of both constituent and non-constituent members. To date the practice of sending substitute members has not been implemented successfully, in order to achieve the quoracy requirements of the Parliamentary Order this will need to be addressed.
- 2.10 On 26 November 2016 a draft order was laid before Parliament, entitled the Combined Authorities (Overview and Scrutiny Committees Access to Information and Audit Committees) Order 2016 [the order] [Update: the Order was ratified on 27 January 2017 and will take effect on 8 May 2017]. The Scrutiny Committee met on 27 January 2017 and discussed key areas of the Order and their implications for Combined Authority Scrutiny

arrangements. A full analysis of the Order is contained in Appendix 1, a summary of significant areas of the Order are summarised as follows:

i) Membership

- The majority of members of the scrutiny committee must be members of a constituent council, all of those members have one vote.
- Where a member is not from a constituent council they don't have a vote automatically, but can be given one by resolution of the combined authority, this provides a mechanism for the scrutiny committee to appoint members from non-constituent councils and/or expert co-optees.
- The spread of the scrutiny committee members from the constituent councils must reflect the overall balance of political parties across the constituent councils, this is the balance of members overall, not just the leadership of the councils.
- Appointments must be accompanied by a public notice.
- Two-thirds of members must be present for a meeting to be quorate.
- There is provision within the Order for WMCA to appoint an independent chair to the Scrutiny Committee.
- It should be noted that whilst the proposals put forward are based upon achieving political balance the Order does state that political balance applies 'as far as reasonably practicable'. This element could be utilised where Leaders feel that membership may need to reflect local circumstances.

In order to achieve a majority of Constituent Council representatives, and achieve political balance, the preferred option of the Chair of the WMCA Overview and Scrutiny Committee is detailed below:-

- i) 12 seats for Constituent Councils
- ii) 3 seats for LEP representatives
- iii) 4 seats for Non-Constituent Councils, 1 place per County area (Warwickshire, Worcestershire, Shropshire and Staffordshire).

Further detail on membership and political balance is provided at Appendix 2.

ii) Chairing

- Where the Chair is an "independent" person (an option open to CAs to include in their governance scheme) it means that they must not be a member or officer now (or in the last five years) of a constituent council, or a parish council which forms part of an area covered by a constituent council, or a close friend or relative of someone with the above characteristics;
- Where the Chair is not an independent person, they must be an appropriate person. This means that they cannot be of the same political party as the Mayor. Where the Mayor is elected as an independent candidate, the scrutiny committee chair must not be of the same party that has the majority of members on the scrutiny committee – or where two or more parties have the same number of members, any of those parties;
- There has to be a public appointment process for the Chair if they are to be an independent person.

The Chair of the Overview and Scrutiny Committee (and their political party) for the next Municipal year can only be determined once the Mayoral election has been concluded.

iii) Member references and work programming

- Similar provisions exist here as apply to individual councils. The CA scrutiny committee must put in place arrangements to ensure that any of its members (and, importantly, any member of the combined authority) can refer an issue to the scrutiny committee for discussion;
- Where the committee decides not to accept such reference it has to provide reasons for its decision.

iv) Relations with the Mayor and combined authority

- The provisions here are broadly similar to those that apply to individual authorities. CA scrutiny committees have the power to make recommendations to the combined authority and Mayor, both the CA Board and Mayor are required to respond within two months;
- In relation to call-in (provided for under Schedule 5A of the 2009 Act) a meeting must be convened by the CA Board or Mayor to reconsider the decision no later than 10 days after the scrutiny committee's recommendation is received.
- Where information is provided to a member of a scrutiny committee, the Mayor or CA Board, the usual provisions around confidential and exempt information will apply. Members of scrutiny committees do however have enhanced information rights, broadly similar to those conferred on councillors by virtue of Regulations laid in 2012. In the case of CA scrutiny committee members, such requests must be complied with by the Mayor or CA Board no later than 10 days after they are received.

Appendix 3 to the report details mechanisms for holding the mayor and the Combined Authority to account.

v) Mayoral and CA decision-making – key decisions

- The provisions around “key decisions” are essentially identical to those applying to individual authorities. A key decision is one involving significant (the term is not defined) expenditure or significant issues covering two or more electoral wards or divisions in the area. As usual, the requirement is that certain details of such decisions be published 28 days in advance, although there are certain urgency provisions that apply.
- The special urgency provisions provide for the 28 days requirement, and normal urgency provisions, to be waived if the scrutiny chair agrees. Where the Chair is not available, the duty falls to the Chair of the CA. Where the CA Chair is also the Mayor, this could involve the Mayor making a judgment on the urgency of one of his/her own decisions. The Centre for Public Scrutiny has sought further clarification on this element of the Order. The Department for Communities and Local Government have advised that they do not envisage that the Mayor will be classed as a “decision-maker” under this part, so the Mayor cannot find themselves in the position of giving approval to their own request for special urgency. Further clarification on the definition of “decision-maker” for the purpose of the Order is awaited.

vi) Scrutiny officer

- As with individual councils, the CA must appoint a “scrutiny officer”, with a duty to promote the function. Such an officer must be an employee of the CA – not any of the constituent councils. The Centre for Public Scrutiny has sought further clarification on this element of the order and has provided the following update as of 15 December, 2016: The Department for Communities and Local Government advised that their

reading of this part (Clause 9 of the Order) is that it does not preclude a seconded officer from a constituent council from holding the position of combined authority scrutiny officer.

Sandwell Metropolitan Borough Council has seconded an officer to undertake the role of Statutory Scrutiny Officer for 2.5 day per week for a 12 month period.

2.10 At its meeting on 27 January 2017, the WMCA Scrutiny Committee considered the implications of the Order and provides the following comments that the Board may wish to take into consideration:-

- Membership requires the right balance to ensure that the Committee does not become too large and unwieldy, whilst also ensuring that non-constituent members have a strong voice. The preferred option in terms of political and geographical balance is detailed in Appendix 2, Option 1.
- Protocols between the executive and scrutiny need to be developed to ensure that there is clarity of purpose and accountability.
- Protocols also need to be developed between CA Scrutiny and local authority scrutiny.
- Mechanisms for scrutiny of the CA budget need to be put in place for the 2017/18 Municipal Year.

3.0 Wider WMCA Implications

3.1 The effectiveness of the CA Scrutiny function will contribute to the overall effectiveness of the Combined Authority.

3.2 The CA must ensure that it is compliant with relevant legislation.

3.3 Arrangements for the scrutiny of CA decisions also need to be developed. The WMCA Scrutiny Committee has investigated the process undertaken at the London Assembly. Appendix 3 to this report details how Overview and Scrutiny will achieve this.

4.0 Financial implications

4.1 At present the cost of the officer to support the scrutiny function is being met by Sandwell Metropolitan Borough Council (SMBC). SMBC have agreed to fund this post for a fifteen month period, this period commenced on 1 January 2017.

5.0 Legal implications

5.1 A number of amendments will be required to the WMCA Constitution in light of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017, as detailed in Appendix 1 to this report.

5.2 There are no further legal implications flowing from this report

6.0 Schedule of background papers

6.1 House of Commons Library – briefing paper number 06649, 23 November 2016 Combined authorities.

The Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.

7.0 Appendices

Appendix 1 – Analysis of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2016;
Appendix 2 – Membership of the West Midlands Combined Authority Overview and Scrutiny Committee;
Appendix 3 – Holding the Mayor and the Executive to Account.