

Briefing Note

Title: Statutory Scrutiny Guidance and Role of Scrutiny Board **Date:** 1 June 2023

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Intended Audience: Internal Partner organisation Public Confidential

1.0 Purpose

- 1.1 To provide Scrutiny Board with a recap on the Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities that was issued by the Government in May 2019 as a reminder for the new municipal year on the approach to scrutiny at Wolverhampton, and as context for an upcoming review of the constitution to ensure Wolverhampton is adhering to good practice.
- 1.2 To provide Scrutiny Board with a recap on the scrutiny procedure rules in the Councils constitution, with a particular focus on the role of Scrutiny Board.
- 1.3 To provide Scrutiny Board with an update on the work underway to review the constitution in line with Scrutiny good practice such as refining the call-in procedure rules.

2.0 Background

- 2.1 The Statutory Scrutiny Guidance seeks to ensure that local authorities and combined authorities are aware of the purpose of overview and scrutiny, what effective scrutiny looks like, how to conduct it effectively and the benefits it can bring. The Guidance includes a number of policies and practices that authorities should adopt or should consider adopting when deciding how to carry out their overview and scrutiny functions.
- 2.2 The guidance recognises that authorities approach scrutiny in different ways and have different processes and procedures in place, and that what might work well for one authority might not work well in another.
- 2.3 The Guidance is classed as statutory which means that Local authorities and combined authorities must have regard to it when exercising their functions. The phrase 'must have regard', when used in this context, does not mean that the sections of Guidance have to be followed in every detail, but that they should be followed unless there is a good reason not to in a particular case.
- 2.4 The Centre for Governance and Scrutiny published, The Good Scrutiny Guide, to complement the statutory guidance.
- 2.5 The Council's constitution is currently being reviewed and to ensure that there is an effective governance framework in place to support decision making. The Centre for Governance and Scrutiny have recently published guidance on reviewing constitutions where they recommend regular reviews proportionately. There are areas of the constitution in relation to scrutiny that have not been reviewed for some years. Therefore, research has been undertaken into good practice such as the recently published Centre for Governance and Scrutiny guidance on call

in's. Both reports can be found in the background papers section. The next constitution update report is scheduled to be taken to Governance and Ethics Committee on 6 July, and this will be shared with both groups prior for comment.

3.0 Statutory Guidance on Scrutiny

3.1 What is Effective Scrutiny?

Effective scrutiny must be able to provide constructive challenge without being seen as a hurdle to be avoided in the decision-making process.

3.2 Scrutiny must be about more than just holding the executive to account, and effective scrutiny should have a defined impact on the ground, with the Committee making recommendations that will make a tangible difference to the work of the authority. (Section 47 of the Guidance).

3.3 Scrutiny must reflect the concerns of the public, with scrutiny councillors bringing forward suitable items for inclusion on the scrutiny work plans.

3.4 The guidance states that all members and officers should consider the role the scrutiny committee plays to be that of a 'critical friend' not a de facto 'opposition'.

4.0 The Scrutiny Work Plan

4.1 Effective scrutiny needs a clear role, providing focus and direction for the work plan; this role must be agreed and understood by the authority as a whole. Scrutiny has the power to look at anything which affects the area or its inhabitants, but such a generalised approach is not effective, and prioritisation is required. (Section 49).

4.2 Effective scrutiny needs to have a clear idea of what it is going to do over a long-term period whilst maintaining enough flexibility for it to respond to any unexpected or short term issues that might occur.

When considering an item for inclusion on the work plan the following (as a minimum) should be considered (Section 55):

1. Do we understand the benefits that scrutiny would bring to this issue?
2. How could we best carry out work on this subject?
3. What do we expect to be the outcome of this work?
4. How does this work link and engage with the work of the executive, other decision-making bodies, partners and the Council Plan?

5.0 Organisational culture

5.1 The Guidance at section 9 highlights the fact that Scrutiny is a member led process and that in order to succeed scrutiny must sit within a strong organisational culture that enables it to add real value to policy making and the efficient delivery of public services.

5.2 Lack of support and engagement with scrutiny will often lead to poor quality and ill focused work. The Guidance at Section 10 reinforces that the effectiveness of scrutiny is often

considered by external bodies (regulators and inspectors) with outcomes being made public. Good scrutiny can impact on the reputation of the authority as a whole.

Section 11 of the Guidance provides a check list for establishing a strong organisational culture including:

- a) Recognition of scrutiny's legal and democratic legitimacy
- b) Identification of a clear role and focus
- c) Ensuring early and regular engagement between the executive and scrutiny
- d) Managing disagreement
- e) Providing scrutiny with the right support
- f) Ensuring impartial advice from officers
- g) Communication of the role of scrutiny to the whole authority and to the public
- h) Providing a voice for scrutiny at Full Council meetings
- i) Ensuring that scrutiny members are supported in having an independent mindset.

6.0 Performance Monitoring and Access to Information

6.1 Scrutiny must be able to show how it can contribute to achieving the objectives set out in the Council Plan.

6.2 The Guidance at Section 40 considers that scrutiny members should have access to a regularly available source of key information about the management of the authority and in particular information on performance management and risk. The Guidance goes on to state that where scrutiny members have access to and are supported in understanding this information the number of unfocused and unproductive questions and requests are reduced. Scrutiny officers may act as a link between scrutiny members and council officers when required to ensure that there is a clear understanding of why and for what purpose the information is required.

6.3 Regulations already exist regarding timeframes within which executives should comply with requests for certain types of information from a scrutiny member (ten clear working days).

7.0 National and regional matters

7.1 Scrutiny must be aware of the context in which it is operating and seek to understand how national and regional issues may impact Wolverhampton. There are direct implications here regarding the West Midlands Combined Authority Overview and Scrutiny Committee and how we work in partnership with this and other organisations to ensure the best for the City.

8.0 Training

8.1 The council will be inviting all scrutiny members to attend the following two training courses over the summer offered in accordance with the Statutory Scrutiny Guidance and delivered by Link Support Services and by a trainer who is a governance professional as well as a former councillor.

Best Practice Scrutiny Training Course

This session is equally suited to new and returning members. It is both a motivating introduction to scrutiny and a valued refresher for experienced scrutineers. It aims to demonstrate the true potential of scrutiny and help to make a beneficial difference to the lives of the communities of Fenland. Thought provoking, challenging and motivating from a veteran trainer of councillors.

This course can include the following elements:

- How does scrutiny link to our purpose as councillors?
- What powers do we have?
- Where are the 'rules' on scrutiny and what are they?
- What are the key characteristics of good practice scrutiny – and how do we make it happen?
- What are the common errors made by scrutineers and how do we avoid them?

Committee Scrutiny Training Course

This session assists members to prepare, participate and 'add value' in the scrutiny committee environment.

This course can include the following elements:

- What does it mean to be efficient and effective in a scrutiny **Committee** environment?
- How can scrutiny members assess whether their individual or committee performance is efficient and effective AND make improvements?
- What should we be aiming to achieve in the scrutiny committee environment?
- Key tips and techniques to achieve **added value** and to make a difference through committee scrutiny, including **effective recommendations** and
- how to avoid some of the 'deadly sins' of committee scrutiny.
- The session will also include real case studies and the opportunity for members to consider **questioning strategies** to improve their effectiveness.

9.0 Creating an Executive-Scrutiny Protocol

An Executive-Scrutiny Protocol would provide clarity regarding the expectations of scrutiny members, executive members and officers of the authority.

The protocol may contain sections on:

1. The way scrutiny will go about developing its work programme (including the ways in which senior officers and Cabinet members will be kept informed);
2. The way in which senior officers and Cabinet will keep scrutiny informed of the outlines of major decisions as they are developed, to allow for discussion of scrutiny's potential involvement in policy development. This involves the building in of safeguards to mitigate risks around the sharing of sensitive information with scrutiny members;
3. Specification of the nature and form of responses that scrutiny can expect when it makes recommendations to the executive, when it makes requests to the executive for information, and when it makes requests that Cabinet members or senior officers attend meetings; and
4. Confirmation of the role of the Statutory Scrutiny Officer, and Monitoring Officer, in overseeing compliance with the protocol and ensuring that it is used to support the wider aim of supporting and promoting a culture of scrutiny, with matters relating to the protocol's success being reported to full Council through the scrutiny Annual Report.

10. Background papers

Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities, Ministry of Housing, Communities and Local Government, May 2019: [Title \(publishing.service.gov.uk\)](#)

The Good Scrutiny Guide, Centre for Governance and Scrutiny, June 2019: [The Good Scrutiny Guide - Centre for Governance and Scrutiny \(cfgs.org.uk\)](#)

The review and redrafting of constitutions: guidance for English authorities, Centre for Governance and Scrutiny, May 2023 [The review and redrafting of constitutions: guidance for English authorities - Centre for Governance and Scrutiny \(cfgs.org.uk\)](#)

The use of call in: guidance for English authorities, Centre for Governance and Scrutiny, May 2023: [The use of call-in: guidance for English authorities - Centre for Governance and Scrutiny \(cfgs.org.uk\)](#)

Councils constitution of 2 November 2022: [Agenda for Constitution on Wednesday, 2nd November, 2022, 10.00 pm :: Wolverhampton City Council \(moderngov.co.uk\)](#)