NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

EXECUTIVE MANAGEMENT TEAM'S
REPORT TO ECONOMY, ENVIRONMENT AND PLACE SCRUTINY COMMITTEE

17 December 2019

1.   **Report Title**   **Statutory Guidance on Overview and Scrutiny Committees**

       Submitted by: **Chief Executive**

       Portfolios: **All**

       Ward(s) affected: **All**

Purpose of the Report

To update Members on the recent statutory guidance issued by the Ministry of Housing, Communities and Local Government to help Councils carry out their Overview and Scrutiny functions effectively. This has been complemented by launch of The Good Scrutiny Guide by the CfPS which replaces their earlier guidance issues in 2014. The two papers are intended to ensure councils are aware of the purpose of Overview and Scrutiny, know what effective Scrutiny looks like, and understand how to conduct it and the benefits it can bring.

Recommendations

That Members:

1.   Note the requirements within the Statutory Guidance and the recommendations within the CfPS Good Scrutiny Guide.
2.   Agree to benchmark current practice against the Statutory Guidance and to explore the option of commissioning external support to assist in the benchmarking process.
3.   Agree to develop an Action Plan based on the recommendations within the Statutory Guidance and the Good Scrutiny Guide.
4.   Agree to develop an "Executive-Scrutiny Protocol" in accordance with the guidelines at Appendix A
5.   Agree to commission training for Scrutiny Members to build on their current skills in undertaking effective scrutiny reviews

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Reasons

Local Authorities must have regard to the statutory guidance from the Ministry of Housing, Communities and Local Government when exercising their functions, i.e. the guidance must be followed unless there is good reason not to in a particular case. The Good Scrutiny Guide does not have the formal status of statutory guidance but represents best practice across the sector.

1.   **Background**

1.1   The Ministry of Housing, Communities and Local Government issued new Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities in May of this year primarily aimed at Senior Leaders, Members of Overview and Scrutiny Committees and Support Officers. Although the Guidance recognises that authorities themselves are best-placed to know what Scrutiny arrangements are most appropriate for their own individual circumstances, it includes a number of policies and procedures which all Councils are urged to adopt. In his foreword the Minister urges all Councils to cast a critical eye over their arrangements in the light of the guidance and above all to embed a culture which allows Overview and Scrutiny to flourish.

1.2   The Centre for Public Scrutiny (CfPS) subsequently issued their Good Scrutiny Guide which was designed to complement the Statutory Guidance. Taken together the two reports provide a practical guide to effective scrutiny.

2. **Issues**

2.1   The Statutory Guidance states that effective overview and scrutiny should:

- Provide constructive "critical friend" challenge
- Amplify the voices and concerns of the public
- Be led by independent people who take responsibility for their role
- Drive improvement in public services

2.2   It goes on to identify the key factors which help determine whether scrutiny will succeed or fail. These include:

- The organisational culture
- The allocation of sufficient resources,
- The selection of committee members
- The power to access information
- Effective work planning.

2.3   These key factors are explored further below.

3.0   **Culture**

3.1   Chapter 2 of the Statutory Guidance deals with organisational culture and underlines that, while everyone in the authority has a role in creating a strong culture to support the Scrutiny function, it is important that this is led and owned by Elected Members. Both Members and Senior Officers should note that the performance of the Scrutiny function will often also be considered by external bodies, such as regulators and inspectors and therefore highlighted in public reports, so that the lack of effective Scrutiny can help create a negative public image of the work of the Council as a whole.

3.2   The guidance advises that authorities can help establish a strong organisational culture in the following ways:

Recognising Scrutiny's legal and democratic legitimacy – by recognising that it was created to act as a check and balance on the Executive and it is a statutory requirement for authorities to establish Overview and Scrutiny committees

Identifying a clear role and culture – by ensuring Scrutiny has a clear focus and role and can demonstrate it adds value. This means it needs to focus on delivering work of genuine value and relevance to NULBC. Councils should also ensure that there is a clear division of responsibilities between the Audit and Scrutiny function.

Ensuring early and regular engagement between the executive and scrutiny – Councils should ensure early and regular discussions take place between Scrutiny and the Cabinet regarding the Cabinet Work Plan. However, the Cabinet should not try to exercise control over the work of the Scrutiny Committee, whether that is through whipping, patronage or by directing specific matters are considered. Everyone should recognise that Scrutiny has a role of "critical friend" and is not "de facto" opposition.

Managing disagreements – effective Scrutiny can involve looking at politically contentious issues with the potential for the Cabinet to disagree with the findings, or recommendations, of the Committee. One suggestion is that an "Executive-Scrutiny Protocol" can provide a framework in these circumstances and the example from the Statutory Guidance is at Appendix A.

Providing the necessary support – the level of resources for Scrutiny is for the Council to determine but should be adequate to provide an effective Scrutiny function and support should also be given by Members and Senior Officers to Scrutiny Committees.

Ensuring impartial advice from officers – Officers must be free to provide impartial advice to Scrutiny Committees and the Head of Paid Service, s151 Officer and Monitoring Officer have a particular role in ensuring timely and high quality advice is provided.

Communicating Scrutiny's role and purpose to the wider authority – there can be a lack of awareness amongst both Members and Officers of the specific role of Scrutiny and its relevance to the Council's wider work and so Councils should take particular steps to raise awareness of the role.

Maintaining the interest of full Council in the work of the Scrutiny Committee – steps should be taken to ensure full Council is informed of the work of the committee. This might include appropriate reports and recommendations being submitted to full Council to supplement the annual report.

Communicating Scrutiny's role to the public – Councils should ensure that Scrutiny has a profile in the wider community by engaging the Council's Communication team to get the message across.

Ensuring Scrutiny members are supported in having an independent mind-set – formal meetings provide Scrutiny Members with the opportunity to question Senior Members (often from the same political party) and Senior Officers and it is a fundamental requirement that members must adopt an independent mind-set. In practice the Scrutiny Chair will have a role in identifying and managing contentious issues.

4.0 **Resourcing**

4.1 The Guidance recognises that the resource an authority allocates to the Scrutiny function plays a pivotal role in determining how successful the function is and the value it adds to the Council. Resources are a matter for individual authorities but there must be a recognition that creating and sustaining an effective Scrutiny function requires them to allocate resources to it.

4.2 Support is not solely about budgets and officer time but also about the way the wider authority engages with the Scrutiny function. The guidance states that the factors an authority should consider include:

- Scrutiny's legal powers and responsibilities
- The particular role and remit Scrutiny will play at NULBC
- The training requirements of Scrutiny Members and Support Officers especially in effective questioning and making effective recommendations
- The need for ad hoc external support where expertise does not exist in the Council
- Recognition that effectively resourced Scrutiny adds value and improves the ability to meet the needs of local people and can help policy formulation and so minimise the need for the call in of Executive decisions

4.3 Officer resource models vary, but the Guidance stresses that Councils must ensure that all Officers tasked with providing Scrutiny support are able to provide impartial advice.

5.0 **Selecting Committee Members**

5.1 Selecting the right members to serve on Scrutiny Committees is essential if Committees are to function effectively. The Guidance stresses that a Committee of Members with the necessary skills and commitment is far more likely to be taken seriously by the wider authority.

5.2 Members of the Cabinet may not be Members of a Scrutiny Committee and the Constitution should set out how conflicts of interest between Executive and Scrutiny responsibilities should be managed, including where Members stand down from the Executive and move to Scrutiny and vice versa. Family links should also be considered and it is strongly recommended that the Chair must not preside over the scrutiny of their relatives.

5.3 When selecting individual Members to serve on Scrutiny Committees the Council should consider their experience, expertise, interests, ability to act impartially, ability to work as part of a group and capacity to serve. It is not appropriate to consider the perceived level of support or opposition to a particular party and care must be taken by the Chair to ensure that the Committee is not viewed as "de facto" opposition to the Executive.

5.4 The Chair plays a leadership role on a Scrutiny Committee as Chairs are largely responsible for establishing the profile, influence and ways of working. The Chair should possess the ability to lead and build a sense of teamwork and consensus amongst Committee Members.

5.5 The Guidance recommends Members must be offered induction when they take up their role and ongoing training particularly to ensure Members are aware of their legal powers and clear how to prepare and ask relevant questions at Scrutiny sessions.

6.0 **Power to Access Information**

6.1 Scrutiny Committees need to be able to access any relevant information the Council holds and receive it in good time if it they are to be able to do their job effectively. The Access to Information Regulations give enhanced powers to Scrutiny Committee to have access to confidential and exempt information.

6.2 Whilst requests for information should be judged on their merits authorities should adopt a default position of sharing the information they hold, on request, with Scrutiny Members. If it is necessary to refuse to provide information, then particular care must be taken to ensure requests are not refused for party political reasons or reputational expediency and before

refusing to share information serious consideration should be given to sharing the information in closed session.

6.3   Scrutiny Members should have access to a regularly available source of key information about management of the Council especially on performance, management and risk.

6.3   Committees should also be aware of the legal power to require members of the executive and officers to attend before them to answer questions.

6.4   From time to time the Committee may need to approach external organisations to supplement information held within the Council should be taken to explain the role of Scrutiny and to consider the option of an informal approach to help reassure the company on the purpose of the approach and the manner in which evidence will be given. Although approaches to external organisations will be on a case by case basis in the case of contentious issues the Committee may want to emphasise this is an opportunity "to set the record straight" in a public setting.

6.5   Finally, in this section the Guidance notes that Committees may have a keen interest in "following the Council Pound" ie scrutinising those organisations that receive public funding to deliver goods and services. This is a legitimate interest and councils are urged to consider requiring such bodies to appear before, or to supply information to, Scrutiny Committees in their contract documentation.

7.   **Planning Work**

7.1   Effective Scrutiny should have an impact and make a tangible difference to the work of the Council. This means that work should be planned so that there is a long term agenda but with enough flexibility to accommodate any urgent short term issues which might arise in the year. Where there is more than one Scrutiny Committee consideration needs to be given to how to coordinate the various Committees to make best use of resources.

7.2   Scrutiny works best with a clear role and functions, which then provides focus and direction. Scrutiny Committees have the power to look at anything which affects the area, or the area's inhabitants, but need to be able to prioritise and consider whether the relative importance of a particular topic justifies the positive impact the Scrutiny Committee's involvement can bring, as it is impossible to scrutinise all matters. In identifying topics the Committee should be supported by key Senior Officers and will need to gather evidence to inform the work planning process.

7.3   The Guidance suggests that gathering evidence requires conversations with:

- **The public** – formal consultation is unlikely to be effective and often asking individual members to have conversations with individuals and groups in their area can work better. Council Communication Officers can help Scrutiny engage with the public and local knowledge and expertise from members and officers can all make a contribution

- **Local Authority Partners –** a range of partners are likely to have useful insights including public sector, voluntary sector, contractors and commissioning partners, town and parish councils, neighbouring authorities, LEPs and large local employers

- **The Cabinet** – although the executive must not direct the Scrutiny programme, ongoing discussions with Cabinet Members will help Scrutiny Members better understand how their work might be aligned to ensure there is the best opportunity to influence the Council's wider work

7.4   To be plan an effective work programme Scrutiny Committees may need to access information from a range of areas, including performance indicators, finance and risk, corporate complaints, business and option appraisals as well as general feedback from members' surgeries and reports and recommendations from the local government ombudsman. As committees can meet in closed session this should not preclude the sharing of commercially confidential information.

7.5   Shortlisting topics can be achieved in various ways but the kind of questions which the committee might ask include:

   - Do we understand the benefits Scrutiny can bring
   - How could we best carry out work on this topic
   - What would be the best outcome of this work
   - How would this work engage with the activity of the Cabinet and or partners

7.6   The guidance concludes that the Committee needs to accept that shortlisting can be difficult and that there may be issues which a Committee wish to look at which is not possible.

7.7   Selected topics can be scrutinised in several ways:

   - **As a single item on a committee agenda** – whilst this may mean there is limited opportunity for effective Scrutiny, this may be appropriate for some issues or where the Committee wants to maintain a formal watching brief over an issue.

   - **At a single meeting –** this could be a Committee meeting or at a less formal meeting. There may be the opportunity to have a single public meeting about a matter or have a meeting where evidence is taken from a number of witnesses.

   - **At a Task and Finish Review of 2/3 meetings –** short, sharp Scrutiny reviews are likely to be effective even for more complex topics. Properly focused they ensure members can swiftly reach conclusions and make recommendations perhaps over a couple of months or less.

   - **Via a long term Task and Finish Review –** this has been the more traditional model with say 6/7 meetings over several months and will still be appropriate for a complex topic where the Scrutiny Committee needs to go into significant detail. However, the resource implications and it length can make it unattractive for all but the most complex issues.

   - **By establishing a "standing panel" –** this falls short of setting up a new Committee but may reflect the need to keep a watching brief over a critical local issue where members feel they need to convene regularly to carry out that oversight. However, the resource implications mean this will be rarely used.

8**.   Evidence Sessions**

8.1   Evidence sessions are a key way in which Scrutiny Committees inform their work. This may happen at formal committee meetings, in less formal task and finish groups or at standalone sessions. The Guidance stresses that good preparation is a vital part of conducting effective sessions with Members having a clear idea of what the Committee hopes to get out of each session and appreciating that success will depend on their ability to work together on the day.

8.2   Effective planning need not be onerous. It can be as simple as setting overall objectives and then considering what type of questions will best elicit the information. This applies as much to individual agenda items as for longer evidence sessions and means there should always be consideration in advance of what scrutiny is trying to get out of a particular evidence session. Chairs play a vital role in leading discussions on objective setting and ensuring all members are aware of the specific role each will play during the evidence session.

8.3   The Guidance recognises that although as far as possible there should be consensus amongst members on the objectives for a session, members may have different perspectives and so have divergent views on a particular matter and the Chair needs to be bear this in mind.

8.4   At the end of the session the Chair should draw together themes and highlight key findings. It may be helpful to have a short "wash up" meeting to review whether objectives were met and to see if lessons could be learned for future meetings.

8.5   Recommendations should be developed by members but with due regard to Officer advice, especially by the Monitoring Officer. Scrutiny Reports will normally be drafted by Officers as directed by Members and, whilst practice varies, reports are normally developed through two or three main stages:

- A "heads of report" – which sets out general findings which Members can discuss as they consider the overall structure and focus of the report and its findings.
- The development of the findings – which will set out some of the areas on which recommendation's might be made.
- The drafting of the full report.

8.6   Recommendations should be evidence based and SMART (specific, measurable, achievable, relevant and timed) and it may be appropriate to share them in draft with relevant parties. The Guidance stresses that sharing draft recommendations with Cabinet Members is an opportunity for errors to be identified and for a general "sense-check" but should not provide an opportunity for the Executive to revise or block recommendations. Generally 6-8 recommendations are adequate although a more complex matter may require more.

9.   **Centre For Public Scrutiny – The Good Scrutiny Guide**

9.1   The CfPS has also published "The Good Scrutiny Guide" which has been written to complement the Statutory Guidance. Unlike the Statutory Guidance it has no formal status, but is a comprehensive guide of best practice consisting of some 56 pages divided into 6 sections.

9.2   The CfPS provides a free helpdesk as a resource for all Councils and Councillors wishing to understand how better to carry out the scrutiny role. The Helpdesk is able to provide advice on the Rules and Procedures under which Scrutiny operates, can advise on best practice and signpost to other organisations and resources.

9.3   The Guide is divided into the following sections:

- **An overview of Scrutiny** – stresses the importance of organisational culture in making Scrutiny effective and sets out the range of statutory functions which act as the foundation of Scrutiny work.

- **Scrutiny's Stakeholders –** notes that there are a wide range of stakeholders both within the Council and external to it. Comments on the value of a "Executive-Scrutiny Protocol" and stresses there is no "off the peg protocol" instead the value is in the conversations which precede any document and sets out common themes and principles. Looks at how to work effectively with stakeholders and how to give the public a stake in the scrutiny process. Recommends that Scrutiny has a webpage which clearly sets out Scrutiny's role and links to evidence of recent impact

- **Role and Priority –** urges a move away from a "general watching brief" over everything in the local area to a move to adopt a more primary area of focus. Stresses the need for effective work planning to include an annual work plan but with flexibility for some shifts in priority in topics during the year. Outlines methods and prioritisation and topic choice and gives advice on pre- Scrutiny, post-decision Scrutiny and the call in process

- **Using Evidence and Gaining Experience –** looks at the principle sources of information within the local authority and suggests circulation of an "Information Digest" with key information for Members. Urges Members to "triangulate" evidence by looking at other sources of data to see what themes emerge. Sets out the process for scoping a review, looks at how to gather evidence and how to prevent "scope creep" by departing from the scope and advises how to engage the public.

- **Making and Proving Impact –** emphasises this is done by the Committee making effective, high quality recommendations and understanding how those make a difference to local people's lives. Looks in more detail at how to draft recommendations, how to get a response from the Executive and how to monitor recommendations over time. Looks at the value of the Annual Scrutiny Report to Council.

- **Committee structure, chairing and resourcing –** notes there are many different models and approaches to Scrutiny and looks at membership of the Committee, including the possibility of co-option.

10. **Proposal**

10.1 Members are recommended not only to note the requirements within the Statutory Guidance and the CfPS Good Scrutiny Guide but to agree to benchmark current practice against the Guidance. This would probably be best achieved with external support to assist in the process, both from a resource perspective, and in order to bring an independent and objective rigour to the review. Members are also recommended to consider developing an Action Plan based on any recommendations from the review and to look at commissioning training for members to build on their current skills in undertaking scrutiny reviews.

10.2 A further specific recommendation is that Members agree to develop an "Executive-Scrutiny Protocol" in accordance with the guidelines at Appendix A. This is recommended by both the Statutory Guidance and CfPS Good Scrutiny Guide as adding value in structuring a conversation between the Cabinet and Scrutiny Committees by developing and reviewing practical expectations, themes and principles between the parties.

11 **Reasons for Proposed Solution**

11.1 Members must have regard to the Statutory Guidance and an exercise to benchmark current practice against the recommendations within the Guidance would be appropriate, especially in view of the forthcoming Peer Review which is due to take place in early 2020. A detailed

review would act as a springboard for an Action Plan and development opportunities for members in order to build on the work of the three Scrutiny Committees to date.

11.2   An Executive-Scrutiny Protocol is seen as a benefit as it provides a framework for disagreement and debate and the way to manage it should it happen. Much of the benefit of a Protocol is considered to be in the dialogue between the parties in negotiating the Protocol.

12   **Options Considered**

12.1   Members have the option of receiving and noting the report without taking any specific action as a result, however this makes it more difficult to demonstrate there has been due regard for the Statutory Guidance,

13.   **Legal and Statutory Implications**

13.1   Local Authorities must have regard to the statutory guidance from the Ministry of Housing, Communities and Local Government when exercising their functions ie the guidance must be followed unless there is good reason not to in a particular case. The Good Scrutiny Guide does not have the formal status of statutory guidance but represents best practice across the sector.

14.   **Equality Impact Assessment**

14.1   None specifically

15.   **Financial and Resource Implications**

15.1   There will be resource implications if external support is sought and this will need to be scoped.

16.   **Major Risks**

16.1   The performance of the scrutiny function will often be considered by external bodies, such as regulators and inspectors and therefore highlighted in public reports, so that the lack of effective scrutiny can help create a negative public image of the work of the Council as a whole. The Council's forthcoming peer review will be likely to focus on how effective the scrutiny function is as part of the review as a whole.

17   **Sustainability and Climate Change Implications**

17.1   None specifically.

18**.   Key Decision Information**

18.1   Not applicable.

19.   **Earlier Cabinet/ Committee Resolutions**

19.1   None specifically.

20.   **List of Appendices**

20.1   Appendix 1 – Creating an Executive – Scrutiny Protocol

21.   **Background Papers**

21.1   The Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800048/Statutory_Guidance_on_Overview_and_Scrutiny_in_Local_and_Combined_Authorities.pdf

CfPS – The Good Scrutiny Guide
https://www.cfps.org.uk/wp-content/uploads/CfPS-Good-Scrutiny-Guide-v5-WEB-SINGLE-PAGES.pdf

Classification: NULBC **UNCLASSIFIED**

APPENDIX A

Annex 1: Illustrative Scenario – Creating an Executive-Scrutiny Protocol

An executive-scrutiny protocol can deal with the practical expectations of scrutiny committee members and the executive, as well as the cultural dynamics.

Workshops with scrutiny members, senior officers and Cabinet can be helpful to inform the drafting of a protocol. An external facilitator can help bring an independent perspective.

Councils should consider how to adopt a protocol, e.g. formal agreement at scrutiny committee and Cabinet, then formal integration into the Council's constitution at the next Annual General Meeting.

The protocol, as agreed, may contain sections on:

• The way scrutiny will go about developing its work programme (including the ways in which senior officers and Cabinet members will be kept informed);

• 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;

• A strengthening and expansion of existing parts of the code of conduct that relate to behaviour in formal meetings, and in informal meetings;

• 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

• 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.