

Mr. Clive Betts MP
Chair, Housing, Communities and Local Government Select Committee
House of Commons
Westminster
London SW1A 0AA

2 July 2019

Dear Mr. Betts,

**UPDATE ON CENTRE FOR PUBLIC SCRUTINY ACTIVITY:
HCLG COMMITTEE RECOMMENDATIONS ON OVERVIEW AND SCRUTINY**

I write with reference to the inquiry carried out in 2017 by the Committee, the Committee's subsequent report and recommendations, and your letter of 16 May asking for our comments on the now-published statutory guidance.

This letter is intended both to provide you and the Committee with further information about activity that we and our partners have undertaken to act on your recommendations, and to respond to the questions in your letter.

Original recommendations and CfPS updates

We [...] 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.

We have worked closely with MHCLG to produce this guidance, which has now been published. We have worked with sector bodies such as the Association of Democratic Services Officers (ADSO), the Local Government Association (LGA) and others to ensure that scrutiny members and officers have had an opportunity to actively feed in to its development.

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. (Paragraph 13)

We have worked with the LGA to put together plans for further dissemination of information, further to our Memorandum of Understanding with the LGA and Government on the support that we collectively provide to the sector. As a consequence of this we are undertaking / have undertaken the following activities:

- We published in March a new edition of "Scrutiny frontiers", our guide highlighting notable practice from scrutiny functions around the country – we will now produce a

new edition of this publication every year as part of our Memorandum of Understanding with the LGA/MHCLG;

- We are working with LGA Political Group officers to develop and disseminate specific messages and insights directly to members, rather than using council officers to mediate those messages;
- We are working with the LGA Research and Information Team to strengthen and develop our research capability specifically in the gathering and dissemination of good practice; we plan to use our mailing list to more regular share examples of good practice;
- Our annual survey of overview and scrutiny in local government will this year be designed to focus specifically on interesting or notable practice, which we will feature prominently on our website and through direct mailing;
- We continue to attend regional scrutiny networks, engaging with scrutiny practitioners directly.

We are able to gather insights on interesting and innovative practice through our engagement with work carried out by the LGA connected to their delivery of activity against the MHCLG improvement services grant. We will be developing ways to more systematically share these insights.

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. (Paragraph 23)

You will note that there was, within the sector, significant disagreement with this recommendation. In particular practitioners were concerned that a need to report to Full Council, then the executive, then Full Council again at consecutive meetings would unreasonably delay scrutiny's activity and the implementation of scrutiny recommendations. We have worked with MHCLG to ensure that the guidance avoids this eventuality. It emphasises the importance of reporting scrutiny's work to Full Council as a matter of course (reflecting the Committee's focus on the profile, accountability and transparency of the Full Council link).

We therefore recommend that DCLG strengthens the guidance to councils to promote political impartiality and preserve the distinction between scrutiny and the executive. (Paragraph 25)

The guidance focuses on these issues in some depth.

We therefore recommend that DCLG works with the LGA and CfPS to identify willing councils to take part in a pilot scheme where the impact of elected chairs on scrutiny's effectiveness can be monitored and its merits considered. (Paragraph 35)

We have found that some councils are interested in the principle of direct election of chairs and anticipate that we would be able to find some willing participants for this exercise. Indeed, we recognise that some councils operate approaches which look very similar to this form of direct election. In some councils under no overall control, for example, the allocation and management of committee chairships is not under the control of a single party.

It has proven difficult to find councils interested and able to take this forward in the absence of the wider contextual information provided by the statutory guidance, and the delays to publication of the guidance has been, in part, the cause of our inability to take this forward.

We plan to reassess appetite and interest as part of the evidence-gathering for our annual survey of overview and scrutiny in local government, and will bring a proposal to MHCLG in due course; likely to be the New Year with a view to piloting beginning with the start of the 2020/21 municipal year.

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. (Paragraph 42)

The guidance provides additional clarification on the information rights available to councillors. In addition, our "good scrutiny guide" will provide additional resources for councillors on information access rights, and we will consider in the light of both whether further communication with councils and councillors will be necessary later in the year, possibly in collaboration with local authority Monitoring Officers.

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. (Paragraph 45)

The guidance has highlighted the role of co-optees and technical advisers. We have noted that part of the challenge here lies for committees themselves (in understanding where appropriate expertise lies at a local level) and for academics (in awareness of scrutiny and the role they can play to support). We continue to discuss with local government academics about how scrutiny and academics can be signposted to each other.

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. (Paragraph 62)

The guidance focuses on resourcing and on the importance of independent officer support; we note however that Government has chosen not to publish a summary of resources as the Committee recommended. In principle we remain supportive of the idea although it remains the case that disaggregating what officer support can be defined as being purely "in support of the executive", as opposed to representing the general corporate core and senior leadership of the council. Our annual survey of overview and scrutiny in local government will provide further, detailed evidence on resourcing which can be used to support further policy action.

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. (Paragraph 65)

While the statutory requirement to designate a scrutiny officer continues only to apply to upper tier and unitary authorities we know that, increasingly, shire districts are taking advantage of the opportunity to designate. We will test this assumption in our annual survey and use the evidence derived from that exercise to engage with those councils who have yet to designate such an officer, to promote and develop an understanding the value of doing so. We consider that, given that scrutiny is a member-led function, it should be members (through the production of a scrutiny Annual Report) whose voice should be heard in Full Council to promote the function and its role. However, we do recognise the importance of officers in supporting this.

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. (Paragraph 76)

Notwithstanding the wider evaluation that MHCLG and LGA may carry out to evaluate and improve the overall approach to sector support and training, CfPS is confident that its training offer meets the needs of councils and councillors. We have completely overhauled our offer, publicising and promoting a new suite of training and consultancy services in January 2019. We are also launching a new scrutiny improvement review (SIR) tool for councils to access, whereby we will provide expert support and advice on scrutiny improvements, actions from which are likely to include the development and implementation of more consistent local training activity.

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. (Paragraph 82)

The new statutory guidance does provide information and advice on the public's role, and we expand on this in our new "good scrutiny guide".

Scrutiny committees must be able to monitor and scrutinise the services provided to residents. This includes services provided by public bodies and those provided by commercial organisations. Committees should be able to access information and require attendance at meetings from service providers and we call on DCLG to take steps to ensure this happens. We support the CfPS proposal that committees must be able to 'follow the council pound' and have the power to oversee all taxpayer-funded services. (Paragraph 90)

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We remain enthusiastic about taking forward this proposal. The expansion of scrutiny's power to investigate anything which affects "the area or the area's inhabitants" needs to be accompanied by a consequence enhancement of powers to access information from across the area. In practice, councils are succeeding in negotiating with local partners to access this information, and we are producing new guidance in partnership with CIPFA and the LGA which will assist with this – but legislative backing would be of substantial assistance.

In light of our concerns regarding public oversight of 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. (Paragraph 96)

The strengthening of external democratic scrutiny for LEPs has been a theme in the new iteration of the National Assurance Framework, as well as the most recent tranche of Annual Performance Review letters sent to LEPs further to governance and performance evaluation in early 2019. We note in the section below further work on which we are engaged in respect of LEPs.

We are concerned that effective scrutiny of the Metro Mayors will be hindered by under-resourcing, and call on the Government to commit more funding for this purpose. When agreeing further devolution deals and creating executive mayors, the Government must make clear that scrutiny is a fundamental part of any deal and that it must be adequately resourced and supported. (Paragraph 104)

CfPS is in receipt of LGA funding to provide convening support to a Combined Authority Governance Network (CAGN), which held its inaugural meeting in September 2018. The CAGN considered scrutiny issues at its meeting in March. Particular areas of focus that were identified related to prioritisation of workload for scrutiny; we think that addressing this is likely to be more productive than the assignment of resources alone. We continue to work with the CAGN and with combined authorities individually to support them to enhance CA scrutiny effectiveness.

The questions in your letter of 16 May

In part, the foregoing should provide partial answers to some of your questions, but in the interests of completeness and notwithstanding the risks of duplication we will deal with these separately below.

"Whether the new statutory guidance adequately reflects all the changes you had hoped to see in advance of both the Committee's inquiry and the Government's review of the guidance"

Inevitably, statutory guidance can only provide clarity on the existing law. You will recall that we had argued in our submission to you, and in oral evidence, for extended powers for scrutiny. We are pleased to see that Government has touched on our long-held aspiration that scrutiny should be able to "follow the council pound" in engaging with contractors, partners and other agencies, but there is of course no legislative backing for this. On balance we consider that the guidance has gone as far as it is possible to go both within the existing legislative framework, and in respecting that councils should have the freedom within that framework to manage scrutiny in the way that works best for them.

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“Whether you support the Government’s decision to not require that scrutiny committees report to full Council rather than the executive”

Yes, we do. Practitioners expressed to us at the time of your Committee’s report’s publication their concern that an expectation that scrutiny should report formally to full Council would lead to unreasonable delay in the adoption of scrutiny’s recommendations. Given that (with the exception of committee system authorities) Cabinet is the usual decision-maker, and the body to which recommendations should therefore be reported, we agree with those to whom we have spoken who felt that formal full Council reporting would hinder scrutiny’s effectiveness. However, we worked with MHCLG as they drafted the guidance to develop possible approaches – reflected in the guidance – that would give full Council more assurance, and awareness, of scrutiny work as it is transacted, particularly in respect of the preparation of scrutiny annual reports.

“Whether you agree with the Government’s decision to allow members of the executive to participate in a scrutiny committee meeting”

We do not necessarily agree with the way that Government has articulated executive involvement in committee meetings in the guidance. Paragraph 25 restates the position that executive members may not sit on scrutiny committees. The box on page 9 advises councils that the scrutiny chair should determine the circumstances in which executive members may participate in meetings. We consider that this is appropriate, given that different circumstances may require different approaches – active involvement of an executive member, directed by the chair, will be useful as a committee discusses matters relating to policy development.

“Whether the new statutory guidance goes far enough in ensuring that scrutiny committees have access to the information that they need, including from external bodies contracted to deliver council services”

We have mentioned above the guidance’s commentary on “following the council pound”, but note also that in the absence of changes to legislation the formal position remains as it has been for some years. We anticipate that, if this situation persists, councils will continue to struggle to secure consistent access to information about local service provision held by other organisations. We are actively working with our partners, including the LGA, to explore practical means to support councils corporately to support scrutiny to access such information, and we are happy to keep you informed as these plans progress.

“Whether democratic oversight of Local Enterprise Partnerships (LEPs) is likely to significantly improve following the new statutory guidance”

We do not anticipate that the guidance in and of itself will lead to a step-change in the external scrutiny, by councils, of LEPs. However, we are working with individual LEPs, the LEP Network, the LGA and the Cities and Local Growth Unit to support enhancements in LEP governance which will include effective scrutiny.

“Any concerns you have regarding the new Statutory Guidance, if any”

We are somewhat disappointed that the guidance does not engage more constructively with the unique nature of scrutiny in combined authorities. Although it purports to apply equally to local authorities and combined authorities, inevitably the guidance’s focus overwhelmingly centres on models, structures and processes unique to councils. Our support to CA scrutiny

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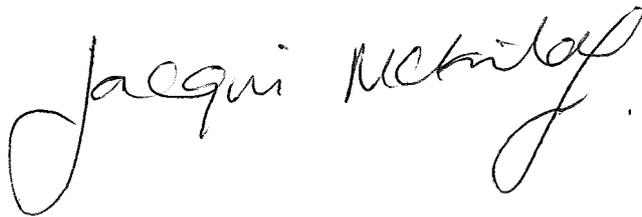
leads us to the conclusion that the demands of this form of scrutiny are quite different to scrutiny at a more local level. This is reflected in comprehensive guidance that we produced, supported by the LGA, on combined authority scrutiny in 2017, so we do not consider the omission to be serious.

I trust that you will find this information of use and interest. CfPS would like to thank you again for your tenacity in pursuing this inquiry to its conclusion, particular given its interruption by the 2017 General Election. While we recognise that action has not been taken against all recommendations, I hope that what has been done, and what has committed to be done, provides you with some reassurance that active steps are being taken by key national partners to support and bolster scrutiny's role in what are exceptionally challenging times for the sector.

We at CfPS of course continue in our commitment to improving practice in this area, and in reflecting on our own performance in doing so – taking into account our own financial and capacity situation, as a small charity with limited resources but a disproportionate wide and deep sector reach.

If you or the Committee's staff on your behalf wish to discuss any of the contents of this letter, or wish to speak about our work more generally, I would be very happy to do so.

Yours sincerely,



Jacqui McKinlay

Chief Executive, Centre for Public Scrutiny