

COVID-19 support to councils

Guide 2: Approaches to scrutiny during the crisis

The Centre for Public Scrutiny is supported by the Local Government Association to provide advice, guidance and support to councils on governance and scrutiny. At this time of crisis we are working closely with national partners, and local authorities, to develop practical solutions to the challenges that this situation poses. This includes a series of five guides on key governance responses to the crisis which will be periodically updated.

CfPS operates a helpdesk through which we can provide support to councils and councillors on matters relating to governance and scrutiny. This can include answering questions as well as problem-solving assistance and help with member training and development.

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We are working closely with other partners – particularly the Association of Democratic Services Officers and Lawyers in Local Government – to ensure that advice of consistent and accurate.

More information can be found at <https://www.cfps.org.uk/home-2/covid-19/>.

This is the second of five guides for councillors (and those supporting them) on managing some of the challenges associated with carrying out their governance roles during the COVID-19 crisis.

It covers the key arguments in favour of continued, robust member-led scrutiny in this time of crisis, and sets out an approach to provide that scrutiny in a way that is proportionate and fits within the constrained resources that councils will have at their disposal. It focuses on the operational of scrutiny under executive arrangements in local authorities. In due course we plan to produce material covering the role that combined authority scrutiny might perform.

Some of the changes we talk about below are likely to necessitate changes to standing orders. CfPS is funded by the LGA to provide direct support to councils on matters relating to governance and scrutiny and would be happy to speak to councillors and officers about how these changes might be made. .

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1. Why carry on with scrutiny?

[We published our first thoughts on this subject in a blog at the end of March.](#)

Since then things have moved on – and if anything, the way that things have developed highlight even further to us the critical importance of maintaining some form of scrutiny at this time.

Maintaining a form of scrutiny in the current crisis is critical for several reasons:

- Substantial decisions will be being made which are likely to have an impact on the lives of residents and the places they live.
- The council and its partners should be trying to draw on the perspective of as broad as possible a range of people as it responds to the crisis;
- Scrutiny activities do not take senior officers and senior members away from the task in hand – they *are* the task in hand. Councils are democratic institutions, which is why they are leading the local response – councillors have a vital role in feeding into and bolstering this response in the communities they serve, and the scrutiny function provides a mechanism for this work to feed into overall strategy;
- This crisis will not be ending any time soon. Suspending scrutiny arrangements for a few weeks was necessary – while remote working arrangements were impossible to make and as councils tackled the immediate need for an operational response. But this suspension cannot be indefinite.

Some have suggested that scrutiny should be suspended now in its entirety, or that it should be substituted with a system that allows scrutiny chairs to attend certain meetings, or by some sort of “enhanced” information protocol for members.

This is wrong. Councils do not have the discretion, even at this time, to decide to dispense with a substantial part of their governance framework. Councils have to give effect to scrutiny and support its work. In return, scrutiny councillors and the officers who support them have to commit to conducting scrutiny in a way that is timely, supportive and proportionate. This guide engages with this challenge.

2. Overview and scrutiny – outreach and support

One model of many for effective scrutiny

What we set out in this section, and the rest of this guide, is one suggested model for scrutiny which we think will be of benefit for councils needing direction and support on this issue.

Some councils may have carved out a relevant and compelling role for themselves which does not align with what we have suggested. This will reflect unique sets of local circumstances. The important thing is that scrutiny should continue – what form it takes is down to members..

a. A new role and focus for the function

The current crisis will involve a contraction of scrutiny's usual role in investigating any issues "affecting the area or the area's inhabitants". A tighter focus on a smaller range of issues – essentially, critical business focusing on "life and limb" matters for local people – is we think the best way to proceed.

Overall this involves a shift to recognise that scrutiny can be doing two things additionally to traditional "overview and scrutiny" activities:

- **Outreach** – getting an understanding from the local community and from the councillor corps generally about the kind of issues and challenges that local people are experiencing;
- **Support** – understanding and supporting the council and its partners as they grapple with an unprecedented situation, providing assistance in understanding complex issues and in resolving associated problems.

A new substantive focus for scrutiny

- Oversight of the system response to COVID-19. The council and its partners will be engaged in a significant amount of activity relating to the operational emergency response. Scrutiny cannot second guess this response or seek to "oversee" it – partners will be moving fast and acting accordingly. But scrutiny can consider how well partners are working together, overseeing the systems that contribute to smooth, effective decision-making, and bringing influence to bear on disagreements or blockages. We think that where scrutiny opts to carry out this role it should be formally written into the Gold command and strategic emergency response activity that is ongoing;
- Particular oversight on life and limb issues. There will be particular services in the local area exposed to unique pressures as a result of the pandemic. Scrutiny can productively keep a watching brief on council and partner action on these matters, which include:
 - Use of the social care powers in the Coronavirus Act. [Our more detailed thoughts on this can be found here](#). Councils will, in due course, have to make exceptionally difficult or contentious decisions in this area which may have negative consequences for local people – such decisions will need to be subject to a form of scrutiny;
 - The council's work to protect vulnerable children; both in the school setting and in their homes. Children and young people will be subject to unique pressures associated with the impact of the crisis, principally related to the closure of educational and childcare settings. Scrutiny can play a role in understanding these impacts and suggesting ways to provide further support and protection;
 - The council and health partners' work and the intersections around public health, community health and acute health where the pandemic will make particular demands;
- Acting as a conduit for community experiences. Local people will feel isolated. Councillors will be doing their best to provide support and assistance at ward level. Mutual aid networks and other voluntary systems have spread to provide support. Councils will need ways of understanding how these trends are developing on the ground – and how voluntary activity may need to be supported differently. The public forum of scrutiny is a convenient and (potentially) high profile way to draw those insights into the council's corporate work.



b. Supporting councillors to carry out a new role

In the statutory scrutiny guidance published in May 2019 and the CfPS material that followed it, we suggested an approach which would see:

- Councillors having regular access to a digest of information about local services, incorporating performance issues;
- Councillors using this information to escalate matters of particular concern to scrutiny for more detailed discussion.

We suggest something similar, although recognise that development of a consistent “digest” of information is likely to be a challenge. The next guide in this series sets out the kind of information to which members might expect to have access during this period; the expectation however would be that members would need to be proactive in drawing this information together, recognising that less officer resource will be available for this support work.

3. A practical model for scrutiny

Having articulated a possible role for scrutiny we can move on to thinking about the ways of working and structures that can support this role.

Clearly carrying on with a full slate of scrutiny meetings, and existing work programmes, is untenable. We expect that councils would seek to continue doing scrutiny by streamlining current structures and processes. This starts from the new focus we discussed in the section above, and follows through to new structures, and new ways of working.

One potential model is described below. In future editions of this guide we will cite specific examples of approaches the councils have taken in practice.

- **A single scrutiny committee**, meeting for 60-90 minutes every three to four weeks. A formal change to the existing committee structure should not be necessary – an existing committee or sub-committee can be repurposed for this task, depending on existing committees’ terms of reference. This frequently-meeting committee does need to be a formal body though rather than an informal meeting (for example, a task and finish group) – publication of agendas, minutes and papers provides both transparency and accountability;
- **A single substantive agenda item for every meeting**, with discussion being supported by a short covering report complemented by verbal updates from officers and other witnesses. Ideally this covering report would be circulated along with the agenda five clear working days before the meeting takes place but given the frequency of meetings and the fast-moving nature of the subjects under discussion we think it most likely that a short timescale might need to be assumed;
- **A clear outcome and objective for this discussion**. These outcomes will have been agreed beforehand by the Chair and others, usually by way of a pre-meeting;
- **An expanded space for questions from the public**. Initially we would suggest that these be submitted in advance but as the situation develops and as confidence in remote tools increases, it might be possible to allow for a form of live questioning. We recognise that it is unusual for scrutiny committees to allow for public questions as

things stand, but making this facility available could be one way of assuring a form of public scrutiny given that other avenues will be closed off to local people;

- **An accompanying update report at each meeting**, prepared by and presented by the chair, setting out:
 - Other matters of which they and the committee are aware and of which the committee are exerting a form of oversight but where it isn't proposed that the committee takes action at the moment;
 - Reflections on the council's, and partners', overall response on the issues where the committee is carrying out work based on community insight and general review of documentation – this could be used to agree a possible item for discussion at the next meeting.

This provides a way to share publicly some of the discussions that committee members, and officers, may have had between meetings.

a. *Making these systems operate for joint and cross-partnership work*

Emergency response is a partnership endeavour and the way that scrutiny looks at and supports these arrangements will need to reflect this. This may involve engaging with partners whose involvement with scrutiny previously has been limited, and who may be unwilling to engage at a time of crisis. In respect of oversight of emergency response systems, it may be most appropriate for the relevant Gold command leads within the council to represent those partner activities at scrutiny, rather than for scrutiny to seek to engage directly with partners.

In some cases, scrutiny will want to look at issues which cut across geographic boundaries. This is particularly the case in respect

b. *Making these systems work for shire districts*

The focus and approach that we suggest above for scrutiny centres on the kinds of life and limb services which are not within the remit of shire districts. This does not mean that scrutiny in districts goes on hiatus. In two tier areas scrutiny at the district and county will need to work together to ensure that insight and intelligence from local people is fed up to influence and inform emergency priorities. We think that scrutiny in districts will have a particular role as a conduit for local community experiences.

Liaison may be informal; or district councillors could be temporarily co-opted to sit on county scrutiny committees (or vice-versa).

4. Task and finish work

Some scrutiny task and finish work may still be in train. This will need to be deferred, and restarted (possibly with shifted scopes) once the crisis is over.

There may be a call for the use of task and finish work while the crisis is ongoing. Councils should think extremely carefully about this. The "lead time" of typical task and finish working will not lend itself to the rapid response needed on this crisis.

We have discussed above a three-week committee cycle for overview and scrutiny meetings. For complex matters, members might want to use this period between meetings to look into more detail on an issue. This might involve:

- The committee agreeing some bullet-point objectives for a short task and finish exercise;
- Methods to include calls with officers and reviewing documents;

- Members of a task and finish group providing a verbal update on the issue (and suggested actions) at the next formal meeting.

This would constitute a limited and focused form of task and finish scrutiny which would reduce the risk, present in longer-term task and finish working, of work losing relevance as time goes by and the policy agenda moves on rapidly.

5. The use of call-in

Many councils will be using emergency or delegated powers to make decisions. Councils will also want to make decisions quickly. The schedule of key decisions may change at short notice. This is not an environment that will lend itself to frequent use of call-in powers.

Call-in has utility as a tool to be used “in extremis”; councils will want to curtail its use where it is a fairly regular occurrence (and councillors may wish to restrain themselves from its use voluntarily). This may involve councils seeking to defer non-business critical decisions, and decisions which might cause political contention, until the crisis is over.

6. “Normal business”: scrutiny of other council work

Everything councils are doing at the moment is framed by COVID-19. There will be little to no business that will be unaffected, but a lot of council activity will still continue, albeit it in a different way.

The framing and focus for scrutiny which we have suggested will limit scrutiny’s input into all but “life and limb” issues, for local people, the area, and the authority. This is based on the assumption that much policy development work that does not relate to COVID-19 will be put on hold as the crisis continues, and that planned changes to other services (including big projects) may largely go on hiatus too.

Scrutiny members will probably wish to maintain a watching brief over general council services and activity. Certain matters may engage with the COVID-19 response and other life and limb matters – in which case they can be escalated to committee. Other matters would probably need to go on hold.

7. Support: members’ and officers’ roles

Many democratic services and scrutiny staff have been deployed to assist in the operational response to COVID-19. Councils have to bolster their ability to manage this for a sustained period and it’s right that councils’ workforces be managed in a flexible way.

An awareness of the resource constraints under which scrutiny (and councils more generally) will need to work has informed our preparation of this briefing. Members should assume throughout that the amount of officer support available for their work is likely to be limited and will need to direct themselves accordingly. This will mean proactively accessing and reading information; it will involve the Chair taking a much more active role than may have been the case hitherto.

Support to chairs

Our proposals ask a lot of scrutiny Chairs in particular. Other members may need to step up to support them. Council groups may want to think about who will “lead” scrutiny during this period. The Chair of the “interim” single committee should be someone at the council with the time, commitment, capacity and capability to take on this role. This person will likely already be a person with a leading role in scrutiny anyway. We are available to provide advice and support to councils, and chairs, in the coming weeks.

8. When it’s all over: debriefing

At some point in the coming months the restrictions will ease and councils will begin the task of reflecting on the crisis and its consequences.

We think that scrutiny can play a strong – perhaps leading – role in this debrief activity. For the moment, there is little that can be done to plan directly for this. Future editions of this guide will begin to explore debrief activities in more detail.

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