

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/covid-19-notice/>.

This is the second edition of 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.

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Contents

1. **Scrutiny's importance**
2. **Overview and scrutiny – outreach and support**
 - a. *A new medium term role and focus for the function*
 - b. *Supporting councillors to carry out a new role*
3. **A practical model for scrutiny**
 - a. *Making these systems operate for joint and cross-partnership work*
 - b. *Making these systems work for shire districts*
4. **Task and finish work**
5. **The use of call-in**
6. **Support: members' and officers' roles**
7. **Scrutiny's role in debriefing and reflection**

1. Scrutiny's importance

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

- Substantial decisions are 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.

Regular scrutiny meetings have now returned in most authorities.

In some councils scrutiny has been placed on indefinite hiatus, and replaced with a system that allows scrutiny chairs to attend certain meetings, or by some sort of “enhanced” information protocol for members. Some councils are attempting to justify this hiatus by saying that committee meetings will return in September, or that officer capacity does not permit member-level meetings to happen.

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.

More detail on practitioners’ experiences with scrutiny during the crisis – and their expectations for its role in the reflection and recovery period – can be found at <https://www.cfps.org.uk/?publication=scrutiny-and-covid-19-practitioners-voices>

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. It is a model of scrutiny which a number of councils have already adopted, and we anticipate that it will continue to be a sensible way to carry out scrutiny for much of the rest of the calendar year.

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.

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.

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. A separate guide on this point 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;

- Maintaining oversight on matters relating to council finances. Financial matters are critically important as councils struggle with increased expenditure associated with the pandemic alongside significant losses of income. Guidance on this can be found here. A comprehensive guide to financial scrutiny was published by CfPS and CIPFA in June 2020 and can be found here.
- 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.

CfPS is offering support to councils to evaluate their authorities’ scrutiny functions’ fitness for purpose during the crisis, and helping them to put in place some of the models and approaches set out in this guide. [You can find more information here.](#)

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.

Carrying on with a full slate of scrutiny meetings, and existing work programmes, is untenable. Some councils are planning a return to a full committee calendar over the course of the summer but for others this will be impossible, and we recommend that practitioners do not put themselves under pressure by thinking that they have to step the number and frequency of formal meetings back up.

Councils can continue to operate more streamlined 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. We explain more about how this approach has been adopted by councils in practice in a separate, more detailed publication setting out scrutiny practitioners’ practical experiences at the time of writing (June 2020).

- **A single scrutiny committee**, meeting 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**. Either questions being submitted beforehand, or through live questioning – probably via text. 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 of public health matters.

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 immediate crisis is over. We are aware that some councils are planning to pick up some suspended task and finish work in the autumn; councils will though need to be aware that the way that existing task and finish work is scoped and framed will need to be rethought, given the impact of the pandemic.

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. We explain more about uses of task and finish working in an accompanying publication.

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. We are not aware of any use of call-in by councils so far during the crisis.

6. 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.

7. Scrutiny’s role in reflection and recovery

At the time of writing (June 2020) lockdown and associated restrictions have begun to ease. Although a substantial operational response continues, more time is available to begin to think about how councils should reflect on the early phase of the response, and how that reflection might continue in the coming months.

There will not be a time when the crisis “ends” and a period of debrief and reflection subsequently “begins”. There will be a substantial overlap, and in this respect the current crisis will be very different from previous emergencies.

We have [reflected separately](#) on some of the challenges and opportunities for scrutiny around reflection and recovery. Some of these opportunities lie in identifying where planned reflective activities may be insufficient robust – where, for example, it is expected that the council will in due course return to “business as usual” with a resumption of previously existing business and corporate plans. Challenging these inbuilt assumptions can be an important early task for the scrutiny function.

Conversations around scrutiny’s role in this reflective activity need to begin now. As the crisis begins to ease, scrutiny can do two things:

- Provide a member-led, strategic debrief to accompany the officer-led operational debrief. Having this reflective activity led by members other than those on the executive will help the council to understand the way that it has met the challenge it has faced, and it mirrors the likely approach that will be taken nationally. While scrutiny will not proceed like the expected national public inquiry, it will increase public confidence to see councillors taking and considering evidence on the impacts of the pandemic across the area – and to take lessons for the future from those impacts and experiences;
- Provide a leading role in reshaping the organisation. Every area will be profoundly changed by their experiences of the pandemic. Local people’s needs will be different; councils will need to reassess how they work, and how they understand these changed needs. The financial challenge on councils is also likely to precipitate some big shifts. Reflection and debriefing can, through effective scrutiny, become a forward-looking exercise – seeking to understand and tackle the issue of what these shifts need to be and how they can be made to happen. Scrutiny can challenge councils to be innovative and creative – having wider member input and backing will give senior officers and the executive confidence to develop, refine and implement plans for change which are fit for purpose.

In order to perform these tasks, planning needs to get underway. Scrutiny practitioners will need to understand what debriefing and reflection activity is planned, and will need to proactively insert themselves into those plans. CfPS plans to continue with work on these issues over the course of summer 2020.

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