

**Overview and scrutiny in combined
authorities: a plain English guide**

processes devolution **design principles**
public scrutiny framework **rev**
transparency governance **research**

**Overview and scrutiny in combined
authorities: a plain English guide**

focus responsibilities arrangements
picture agreement commitment **maxim**
sequence solution negotiation

Written by Ed Hammond, Centre for Public Scrutiny

Contact: ed.hammond@cfps.org.uk / 020 3866 5109

This guidance has been funded by the Local Government Association.

CfPS is grateful for the assistance of both the LGA and the Department for Communities and Local Government in the production of this guidance, as well as for advice and suggestions given by the officers and members involved in overview and scrutiny at combined authority level. The guidance represents the views of CfPS, not of the individuals or organisations who provided this assistance.

All rights reserved ©

Devolution in general

Devolution is the process by which power and control is being passed from the Government to local areas. The idea is to give local areas the power to effect real change on issues like transport, economic development, skills and public health.

For most areas, the mechanism through which this will happen is through the establishment of a “combined authority”. Combined authorities draw together councillors from their “constituent” councils to make joint decisions on issues of mutual importance. They are not an additional tier of local government, but a way of linking up neighbouring councils which have common aspirations.

Combined authorities need strong governance to work well. They provide a forum and a framework for joint decision-making, and as such their systems and processes need to be designed with care, for two reasons. Firstly, to ensure that decisions, when they come to be made, are made in as streamlined, consistent and open a way as possible. Secondly, to ensure that the combined authority does not grow and evolve into a remote, bureaucracy-heavy institution – working against the very idea of devolution, that power should be passed and pushed down as far as possible.

A part of that strong governance is overview and scrutiny – audit will also play an important role, but is not covered by this guidance.

Overview and scrutiny (which we will shorten to “scrutiny” throughout this publication for the sake of simplicity) is a legal requirement for combined authorities, but the matter does not end there. In numerous publications (notably “Devo how? Devo why?” (CfPS, 2015) and “Charting the way” (CfPS, 2016)), we have noted how important good scrutiny and accountability are to the delivery of devolution’s outcomes. This publication further explores that point and suggests methods and approaches that practitioners might use to put good scrutiny into place on a practical basis.

This document is based on two previous publications:

- Combined authorities: a plain English guide (LGA, 2016). This provides a broader introduction to governance in combined authorities more generally;
- Scrutiny evaluation framework (CfPS, 2016 – published in draft). This provides a tool that practitioners can use to evaluate and improve the scrutiny functions of local authorities. Elements of this have been adapted for this paper.

It looks in detail at provisions made in legislation on the subject of combined authority overview and scrutiny. The key pieces of legislation are:

- The Local Democracy, Economic Development and Construction Act 2009;
- The Cities and Local Devolution Act 2016;
- The Combined Authorities (Overview and Scrutiny, Access to Information and Audit Committees) Order 2017 (SI 67).

Explanatory notes are available for these pieces of legislation, which will provide useful further context for non-experts. Furthermore, DCLG will be publishing Plain English Guides setting out their views on where accountability will sit in each devolution area.

The Order referred to above was made, further to powers given in Schedule 5A of the 2009 Act; other powers relating to overview and scrutiny can be found in Schedule 5A of the 2009 Act, as amended by the 2016 Act.

We do not refer in detail to every line of the legislation in this guidance, but the key aspects – relating to the powers of scrutiny, the composition and chairing of committees and the powers of call-in – are covered in depth.

WHY SCRUTINY?

In a Mayoral combined authority, there will be three points of power and accountability.

- The directly elected Mayor;
- The Combined Authority (CA), as represented by the local authority Leaders and others who sit on it;
- The CA overview and scrutiny committee (CA OSC), holding both to account.

Ultimately, all three of these sets of people are accountable to local people. The direct election of the Mayor in particular gives them a unique and immediate accountability to all those living in the area.

Given these accountabilities, the relationship between all three of these individuals or groups must be clear and well-understood. Only two have decision-making authority (the exception being overview and scrutiny) but all three will hold each other to account in some way. All have their own source of democratic legitimacy. All should have priorities which are broadly aligned. For decision-makers, this should mean that their activities reflect a collective vision for the future of the area; for scrutiny, this is about ensuring that the focus of the function engages closely with that vision.

However, different political, and other, perspectives will hopefully lead to some positive, creative tension.

In their governance schemes, combined authorities have sought to define the division of responsibilities between the Mayor and the CA – where decision-making powers lie, and those issues on which matters will be decided jointly and separately. These relationships will not be set in stone, although the framework governing them will be set out in the bespoke Orders being prepared for each area. Relationships will in fact change – particularly once the Mayor is elected. At this point that Mayor/CA relationship may come to be renegotiated. The CA OSC needs to be part of that process, and any agreed protocol or system for shared decision-making will need to have independent scrutiny integrated within it.

In a combined authority which does not, for the moment, have a Mayor, the dynamic between the CA and scrutiny will still be important, and needs discussion and agreement from all sides for scrutiny to work well, within the framework provided by any transitional governance arrangements which might exist.

Effective scrutiny is not just the responsibility of scrutiny members and the officers who support them. It is a collective duty. The Mayor and CA leadership are just as responsible for making it work.

THE LEGAL ARRANGEMENTS AND THE SEQUENCE

There are certain legal requirements to be taken into account when thinking about scrutiny. These requirements can be found in several places – the Schedule 5A of the Local Democracy, Economic Development and Construction Act 2009 (which was introduced by the Cities and Local Government Devolution Act 2016), an Order made further to that legislation in 2017, and the bespoke Orders made to set out governance arrangements in individual devolution areas.

Those legal requirements provide the framework for a more general discussion of scrutiny. Thought has to go into the establishment of scrutiny arrangements if they are going to work effectively. Even if a committee has already been established and has been meeting for some months (or, indeed, years), the arrival of an elected Mayor in May 2017 will bring about a different dynamic in CA decision-making (as we have noted above) which will require a different approach to be taken by the scrutiny committee.

This guidance combines commentary on the legal position with advice on the approach that combined authorities might wish to put in place to make scrutiny work effectively. It aims to present a sequence of issues that members, and the officers supporting them, will need to think about as they organise scrutiny to meet the challenge of operating scrutiny in a strategically-focused Mayoral combined authority covering a wide geographical area.

Our advice is not exhaustive; equally, short-cuts can be made through some of it where CAs feel either that they can deal with those issues through other means, or when a committee is up and running. CAs can decide to take an entirely novel approach. We have written this guidance and advice for combined authorities whose scrutiny councillors may need support to understand the issues they need to resolve, but where there may be no officer of the CA with a comprehensive professional understanding of the detail of the scrutiny process; it should not be interpreted as providing a prescription.

This approach is, however, based on our support work on devolution since 2015, and has been designed so as to be as practical as possible, and to navigate around the pitfalls that we encountered in the course of that research. It reflects the broader “sequence” for combined authority governance which we set out in our report “Cards on the table”. It also reflects the fact that the beginning of the CA/scrutiny relationship presents the best opportunity to get things right.

A SEQUENCE FOR ACTION

Exploring and agreeing scrutiny’s role

This section includes advice from us about the need for key individuals to come together to agree what scrutiny is going to do.

Who needs to be involved in designing these arrangements?

Good scrutiny involves a large range of potential partners. At combined authority level there is the additional complexity of a range of local overview and scrutiny committees, all with their own stake in the process. Although the duties of the Mayor and CA focus on strategic matters, they will have a direct impact on local areas and the responsibilities of the individual constituent authorities – scrutiny will need to recognise those links and act on them.

Given this complexity it would be easy to allow the design process to become bogged down in a

ceaseless round of consultations. In reality, limited time and resources is likely to be available. Ultimately, it will be for the chair of the overview and scrutiny committee to agree the new arrangements, probably in concert with the Mayor and CA, in a way that aligns to their mutual responsibilities as set out in the CA's governance scheme.

Ideally, all other members of the committee would be involved in active discussions at every stage. In reality, this is unlikely to happen. At the outset, the Chair should probably come to a judgment about which are the key issues which will demand buy-in from other members, and should decide how this will happen. In this, they will be supported by the Governance Manager (or another appropriate officer) of the CA.

Discussing scrutiny's role with the Mayor will be important. Where Mayoral elections are about to take place for the first time, officers and members of the CA will be working to design a programme of activity and induction with the Mayor, following those elections. Scrutiny needs to be an important part of that activity, and statutory scrutiny officers (see below) and CA OSC Chairs will need to talk to others in the CA about how their role will be introduced to the Mayor on election, in order to ensure that the Mayor and CA OSC understand each other and the jobs they have to perform respectively and together.

The CA Audit committee will also be an important partner. The roles of scrutiny and audit are distinct, but the CA OSC is likely to want to keep a watching brief over finance issues as part of its work, and the OSC's wider work on policy development and review of the CA's substantive activities will provide useful context for Audit.

What are our priorities for devolution – the outcomes we are trying to achieve?

The first step in understanding scrutiny's role under devolved arrangements will be to understand what devolution is "for" in the area. The driving force of the devolution agenda will not be the same everywhere, so scrutiny needs to look different too. Scrutiny will need to be outcome-focused, and its ways of working and ultimate forms and structures must reflect this purpose if it is to have real impact.

This understanding of outcomes is something that should come from an understanding of the deal itself, and the approach that the Mayor and CA, and their partners, plan to take to deliver it. This is why early discussion with the Mayor about scrutiny's role will be important. It will also help to identify the partners – beyond the CA and Mayor – with whom the CA OSC will need to engage if it is to work effectively. We comment on this in more detail in the section on co-option below.

How can scrutiny add value to achieving the CA priorities?

The next stage is deciding where, given those priorities, scrutiny can play a productive role.

Scrutiny will not be able to take a broad-brush approach to CA business. It will not be able to shadow all aspects of the CA decision-making process or conduct detailed task and finish style inquiries into a wide range of CA responsibilities cutting across – for example – economic development, skills and transport. Quite apart from anything else, the resources will not exist to carry out such work. In order to have an impact, scrutiny will have to carefully consider the skills, capabilities and experience of its own members, and how these might map onto the CA priorities. This is not about picking individual priorities, or parts of priorities, for scrutiny to look at, to the exclusion of other work. Instead, it is likely to be about looking at how those priorities intersect, the work that has gone into developing them and thinking about delivering against them, and thinking about the different contributions that scrutiny might make to that whole process.

Given that, what should scrutiny's role be?

The law

The framework for agreeing scrutiny's role is provided in the legislation. Scrutiny has the power to:

- Review or scrutinise actions taken or decisions made by the authority;
- Make reports or recommendations on the above;
- Make reports or recommendations on any issue affecting the authority's area or the area's inhabitants.

This relates to activities either by the CA, or the Mayor.

A CA OSC may require that an officer or member of the authority attend meetings to answer questions. This includes the Mayor or Deputy Mayor. Members of a CA OSC have enhanced rights to access information held by the authority; any information (including exempt or confidential information, excluding advice) must be provided on requests. We cover more on the access to and use of information below.

The law also covers call-in. This will be covered later in more depth, alongside discussions of pre- and post-decision scrutiny.

Sections 1 & 2, Schedule 5A, Local Democracy, Economic Development and Construction Act 2009, as inserted by the Cities and Local Government Devolution Act 2016

Article 7(1)-(3) [responding to recommendations], Articles 8 & 10 [use of information], Combined Authorities (Overview and Scrutiny, Access to Information and Audit Committees) Order 2017

These broad powers provide the framework within which scrutiny's role can be considered.

A sense of the priorities for devolution in the area, and the opportunities that might exist for scrutiny to contribute to these priorities, will make it easier for members to discuss and agree scrutiny's actual role.

Scrutiny might, for example, provide assistance in the development of policy, by:

- Reviewing the local community impact of major investment plans;
- Overseeing and evaluating how the CA prioritises decisions on major investments;
- If the CA takes a sector-based approach to its economic development plans, it might look at the ways in which individuals and organisations within those sectors are engaged and involved in the decision-making process;
- Highlighting issues or areas identified by the CA as high-risk, and studying them further.

Resources dictate that these examples are exclusive; it would be difficult to try to do more than just one of these. This illustrates just how targeted scrutiny will need to be.

AGREEING SUPPORT AND RESOURCES

This section includes advice on the way that scrutiny is supported by officers, given its overall role.

Given scrutiny's role, what resources should be devoted to support it?

With agreement of scrutiny's role will come a much more accurate sense of the resources this role will require to support it.

For most areas, we expect that the resource available will be small. Government has made no requirement about the level of resource that should be provided to scrutiny; CAs are however keen to ensure that they are not an additional "tier of government", and with that comes a commitment to an extremely light touch approach to the officer corps. This understanding needs to underpin the decision, above, on scrutiny's role – but it is only once that is understood that detailed agreement of scrutiny's resource can happen.

There is much to consider such as: where the division of responsibility will lie between governance officers and officers working on substantive policy; how senior officers will be involved; and how members' and officers' expectations of the likely amount of work can be managed.

A robust process of work programming will help to manage this. Work programming is not just about organising committee meetings – it is about prioritising what work scrutiny does, and providing resources accordingly. A good work programme will involve members making difficult decisions about what will, and will not, be considered in committee or in a task and finish group.

Where should those resources "sit"? Who will be responsible for them?

The law

A statutory scrutiny officer – an officer of the CA, not one of the constituent councils – must be appointed.

The scrutiny officer may be someone seconded to the CA from another council.

Article 9, Combined Authorities (Overview and Scrutiny, Access to Information and Audit Committees) Order 2017

There are two models for CA staffing – one where the CA's staff complement is made up of directly employed full-time officers, and another where those staff are seconded, permanently or temporarily, to the CA from one of the constituent councils. Either kind of staff member can be appointed as the statutory scrutiny officer – that person does not need to be an actual employee of the CA. However, staff working for the CA and for a constituent authority, as part of a jobshare arrangement, might not be eligible to be the statutory scrutiny officer, as the Order specifies that this person cannot be an officer of a constituent authority.

Members may also wish to think about the support that might be provided by the scrutiny functions of constituent (and non-constituent) authorities. This may depend on the substantive links built between the CA OSC and those scrutiny functions, which we cover below.

AGREEING SCRUTINY'S WAYS OF WORKING

This section deals with the links between scrutiny at CA and local level, and other ways of working available to scrutiny, including call-in and pre-decision scrutiny. It also covers work programming.

How will we work with the scrutiny function of constituent, and non-constituent, authorities?

Scrutiny will still carry on in councils across the CA area. Some of this scrutiny may well intersect with work done at the CA – particularly where it relates to devolved matters (commonly, economic development, skills, transport and so on).

If further deals are done, and the responsibilities of the CA increase, the opportunity for such crossover increases.

An important element of the devolution process is the concept of subsidiarity – the idea that responsibility for an issue should be held at the lowest appropriate level. In devolution, that will be important to prevent power from being drawn up to the regional level. This is equally important for the operation of scrutiny.

As such, there will be a wide range of operational issues relating to matters within the CA's responsibility that the CA OSC might want to look at. Tempting though this may be, it could make more sense to leave consideration of such local matters to local OSCs.

There will be no way to easily decide what happens best at what level. Frequent dialogue between the CA OSC and OSCs in constituent authorities will probably be the best way to proceed. Given that most CA OSC members will be members of constituent authorities, this dialogue can be expected to happen as a matter of course, but officers should still keep up informal communication on a regular basis – in particular the sharing of work programmes.

This informal dialogue will prevent risks of overlap and duplication, and highlight opportunities for joint working.

We would not necessarily recommend the development of protocols or memoranda of understanding, or the convening of regular workshops or joint meetings, to share information and approaches. Regular informal dialogue should be enough.

What ways of working are available to us?

Scrutiny at the combined authority will need to be light touch and streamlined, in line with the light touch and streamlined approach to decision-making. A well understood division of duties between the CA OSC and the OSCs of local councils will help with this.

Members will need to start by understanding what ways of working are available. By “ways of working”, we mean the things that scrutiny does in order to fulfil its role – how members meet and discuss issues on their work programme.

Not all of these ways of working will be familiar to all members, bearing in mind that everyone does scrutiny differently. They are likely to include:

- Receiving update reports from officers and others between meetings;
- Call-in (on which we comment in more detail below);
- Committee agendas with multiple substantive items (for example, shadowing Mayoral and CA decision-making);

- Committee agendas with a single substantive item;
- “Short” task and finish groups, which may be commissioned to meet a couple of times to look at an issue;
- “Long” task and finish groups, which may be commissioned to meet several times to look at an issue.

Some ways of working are generally ineffective. Long officer presentations, and committee agendas that cram in large numbers of substantive items, are two examples – everyone will want to avoid the prospect of scrutiny becoming a paper-reviewing machine.

The consideration of detailed performance and finance data (and other data-heavy reports and presentations) at a formal committee is also a practice that tends to be ineffective. It is often best that such information is shared with members between meetings, with member briefings convened if there is felt to be a specific, justified need for face-to-face conversations. Having access to this information means that members can then make more informed choices about what issues they actually escalate to committee for discussion. This reflects the need for councillors to drive the work process, rather than having reports and information brought to them merely for information and comment.

While convenient, the holding of informal meetings – by definition in private – between meetings raises questions around transparency. Where you plan to do this (for task and finish working, or regular communication and updates on CA business) the business of those meetings – the detail of discussions and information shared – should be made public as a matter of course. Where a topic or issue is likely to be of particular public interest, it is likely to be most appropriate to discuss it in a public forum. Holding informal meetings is about providing information to support work in formal meetings – not about having two parallel tracks for scrutiny.

The law

Members of the CA OSC have enhanced rights to access information under the control of the CA or the Mayor. Relevant information is that which relates to any business transacted at a decision-making meeting of the CA, or any matter in relation to which a decision has been made.

Information must be relevant to a matter under scrutiny by the member in question.

Where such a request is refused, a reason must be given.

Article 10, Combined Authorities (Overview and Scrutiny, Access to Information and Audit Committees) Order 2017

What ways of working would allow us to carry out our role most effectively?

We have noted repeatedly the limited resource that is likely to be available to carry out CA scrutiny. As such, ways of working that allow scrutiny to be flexible and targeted are likely to be of most value.

It may be, for example, that you have concluded that your role should be to oversee the approach the CA and its partners take to incorporating the views and concerns of the public into its plans and policies. You might decide that the ways of working you would adopt to fulfilling this role would be to:

- Arrange regular informal meetings between the Chair and senior CA officers to talk about the ways they are “designing in” input from the public when they are developing major decisions, and then sharing the outcomes of these meetings with the public;

- Use discussions with local overview and scrutiny committees to understand where public concerns lie on issues connected to the CA's strategic responsibilities, and decide whether these should be tackled at local level or at CA level;
- Use performance, finance and risk reports produced by the CA or its audit committee (which are communicated to members on a regular basis, between meetings, as they are produced) to highlight and escalate issues where public engagement and buy-in are seen as particular problems;
- Use insight from the local press, complaints from the public and local community and advocacy groups to understand what issues to focus on;
- Using a range of techniques more useful than traditional "consultations" to have a conversation with the public about local services planned by the CA, or with CA involvement;
- Use all of the above to inform two things in how the Mayor and CA are held to account:
 - Firstly, planning public meetings of the CA OSC to maximise the potential for public input;
 - Secondly, using public insight to inform questions asked of the Mayor and CA in public.

This is just one example of one way of looking at a given issue. It highlights how the approach taken to scrutiny will be highly bespoke – it will hinge on scrutiny's overall role and the ways of working with which members, and the CA itself, are most comfortable.

Effective work programming

Whichever ways of working are adopted by scrutiny, the use of a work programme will be important.

The law

The law does not provide for work programmes, but it does state that any member of the OSC, of the combined authority or of any constituent council may refer an issue to the CA OSC. Referral means placing the item on the scrutiny agenda for discussion.

A member making a referral may make representations to help the committee to decide whether to use its powers to scrutinise that issue. If the committee chooses not to, it should give reasons.

The natural interpretation of this article of the Order is that, where the CA OSC has a work programme which is placed on the agenda for consideration and update at every meeting, it will be sufficient for a referral to be tabled as part of that item, with the committee deciding if it should be placed on the work programme for more detailed substantive discussion at a later date. CAs may want to put in place arrangements to allow for urgency – for example where urgency requires an immediate scrutiny response.

Article 6, Combined Authorities (Overview and Scrutiny, Access to Information and Audit Committees) Order 2017

Where the CA OSC takes a rigorous approach to prioritising its work, and only placing items on the work programme where they will clearly add value, and where they relate to scrutiny's role, the work programme will reflect that exercise. It will demonstrate scrutiny's focus on what's important. Work programming should be a challenging exercise, as members seek evidence to justify plans to consider certain items.

Work programming helps officers supporting the OSC to understand where their input might be

required. It helps them, and members, to plan for scrutiny's work, and makes it more likely that work will have an impact.

Urgent issues are always likely to arise over the course of the year. Work programmes are living documents and a confident and effective CA OSC will be able to make informed judgments about whether something is of sufficient importance to go onto the programme at short notice.

Pre-decision scrutiny

The practice of shadowing Mayoral and CA decision-making deserves further comment. This appears to be a focused and directed way for effective scrutiny to happen – directly targeted at decision-making itself. It aligns closely with specific powers of call-in given to the CA OSC (and on which we comment below). It is an approach which can therefore seem attractive. This could take the form of what some councils call “pre-decision” scrutiny – the practice of reviewing decisions which are due to be made by decision-makers in a few weeks.

We would recommend a degree of healthy scepticism about the value of such scrutiny. It is sometimes of poor value, delivering little real impact – although there can be exceptions. Scrutinising the full spread of executive decisions shortly before they come to be made minimises the opportunity for those decisions to be meaningfully influenced, and members are unlikely to have the information at their disposal to make informed and high-quality recommendations on those points anyway.

Pre-decision scrutiny can be more effective under two sets of circumstances:

- Where a Forward Plan is used to identify a small number of key decisions for scrutiny to look at, focusing members' efforts and allowing more work to be carried out to prepare for the exercise – particularly when those key decisions are one that relate closely to scrutiny's agreed role. The meaning of the phrase “key decision” is covered below;
- When the scrutiny happens a decent time before the decision comes to be made – not a matter of a couple of weeks. Effective CA forward planning should allow for scrutiny to be forewarned months in advance of particularly critical decisions; such forward planning also helps with fitting this form of scrutiny into the committee cycle.

How will call-in work?

One way of working which needs to be treated slightly differently is the power of call-in.

The law

The CA OSC will have the power to call in decisions of the Mayor and Combined Authority which have been made but not implemented. This applies to all decisions, not just “key decisions”.

Section 1(2)(a), Schedule 5A, Local Democracy, Economic Development and Construction Act 2009, as inserted by the Cities and Local Government Devolution Act 2016

A stop can be placed on the implementation of the decision once it is under scrutiny.

Section 4(1), Schedule 5A, Local Democracy, Economic Development and Construction Act 2009, as inserted by the Cities and Local Government Devolution Act 2016

The legislation does not specify the circumstances in which call-in can be triggered.

Key decisions must be publicised. This includes publicity 28 days prior to when they are expected to be made, although urgency provisions do exist which allow the timescale to be shortened – usually, with the agreement of the chair of the CA OSC. *This will help the CA OSC to understand when particularly important decisions may be coming to be made, and to plan to influence them beforehand.*

There is a period of (usually) five clear days after the decision is made for it to be called in. A certain number of members of the committee, or the CA, will be required to sign their names to a call-in for it to be valid.

Once the decision has been called in, a meeting will need to be convened in order to consider the issue and make recommendations.

If a call-in request is valid, the CA OSC may direct that the decision not be implemented for a period of up to fourteen days, to allow a scrutiny meeting to be convened. The power to direct sits with the CA OSC, but they can choose to delegate this function to the Chair as part of the local call-in rules, to avoid the need to convene a second meeting to deal with this issue at short notice.

Given the fourteen day timescale, the CA OSC would need to quickly notify CA officers of the information required to support the meeting and the officers needed to attend; the Chair, and officers, would need to plan the meeting with those members who had made the call-in to ensure that time at the meeting could be used to best effect.

The CA OSC has two options, on considering a call-in. The first is not to make any recommendations. Under these circumstances, on expiry of the fourteen day (or shorter) the decision can be implemented. The second is to make recommendations. If this happens, whatever the recommendations might be, the CA or Mayor must hold a meeting to reconsider the decision.

Notwithstanding the CA OSC's recommendations, the Mayor or CA can still at this point decide to go ahead with implementing the decision, but it will have to give reasons if this goes against the scrutiny recommendation.

Call-in provisions must be published; the CA itself must sign them off before they take effect.

Section 1(4), (5) and (6), Schedule 5A, Local Democracy, Economic Development and Construction Act 2009

Articles 7(4), 11-13, Combined Authorities (Overview and Scrutiny, Access to Information and Audit Committees) Order 2017

Call-in is a blunt instrument. It can be useful in extremis – when all other methods to influence a decision have failed and members of the CA OSC have such concerns that they consider the decision needs to be delayed. This can bring an issue out into the open and force reconsideration. But reconsideration is all that needs to happen; the relevant decision-maker does not need to change their mind.

What might the potential barriers be to implementing those ways of working, and how can we overcome them?

We have set out above a range of different ways of working for scrutiny; challenges may arise in trying to implement some of these approaches. For example:

- Difficulty in agreeing scrutiny's role. The temptation will always be present not to tie scrutiny to such a role, or to set a role that is deliberately vague such as "holding to account" or "acting as a check and balance". A loosely-defined role for scrutiny will limit its effectiveness, but it is the prerogative of CA OSC members if that is the route they wish to go down;
- Worries around quantity of information being received. With a limited number of meetings, members may be concerned that they need to receive significant quantities of information as part of committee agendas that involve numerous substantive items. A process that sees information shared with members informally, to allow them to then decide what to escalate to committee, will help to resolve this issue;

- Managing relationships. Managing the relationships with the wider CA, the Mayor and individual constituent authorities may be difficult. Clarity of expectations and mutual roles will be important if relationships will work, supplemented by frequent, candid informal discussions about scrutiny's work and the work of the Mayor and CA.

How will we know we're succeeding?

Having some clear method of assessing whether CA scrutiny is working, or not, will be important.

This will need to refer back to scrutiny's role. Members might, at the outset, like to reflect on what success would feel and look like – what a successful and effective scrutiny function would achieve. You could then review this after six months or a year to see if these aspirations had been realised and if not, why not.

Overview and scrutiny at local level has struggled to develop effective “performance indicators” to measure success. If you do go down this route, you might think about softer measures – establishing whether scrutiny is seen as an important part of the governance framework, and the extent to which it is respected by the Mayor and CA executive – than more process-driven ones, like those which measure the number of recommendations accepted and implemented. Such recommendations cannot properly engage with the substance and impact of scrutiny's work.

You should not expect to see success straight away. It is likely that there will be difficulties – particularly in managing the relationships between the key people involved at CA level, and especially during the first few months. But having a sense of what scrutiny's aims are, in terms of its impact and outcomes, will be important in providing something against which to evaluate the function.

AGREEING ON STRUCTURE AND COMPOSITION

This section deals with the committee structure, chairing arrangements (including the appointment of an “independent” or “appropriate” person to act as chair), and the overall composition of the committee, including the appointment of co-optees.

For some, issues around the composition of the CA OSC will have already been resolved. However, we suggest that, following the preceding discussions on scrutiny's role and ways of working, issues of structure and composition be revisited, to check that those arrangements remain fit for purpose in light of scrutiny's agreed role and purpose.

Structure and composition is at the end of our sequence because it is only once scrutiny's function and ways of working have been agreed that you will be able, with confidence, to put in place a committee structure and membership to deliver that function and those ways of working. If this does not happen – if the structural discussion comes first or, indeed, if all that happens is a discussion about structure, there is a real risk that scrutiny will end up being not fit for purpose.

Much of what you need to know about the structure and composition of the overview and scrutiny committee can be found in the Act and the Order. The Act and Order provide a framework for further discussion on these matters.

What does the committee structure look like?

The law

A CA must have at least one overview and scrutiny committee, but it may have more, which may establish sub-committees.

Section 1(1), Section 2(1), Schedule 5A, Local Democracy, Economic Development and Construction Act 2009

Many councils have more than one overview and scrutiny committee, to allow members the opportunity to do a significant amount of their work in public.

While that option is available to combined authorities, you may wish to reflect on how you are likely to best use your time and resources. Covering large geographical areas, the logistical challenges in convening multiple frequent meetings will be significant. With the combined authority having a strategic function, moreover, a lighter approach can be taken.

We anticipate that most combined authorities will maintain a single overview and scrutiny committee. That said, as the functions and role of combined authorities change over time, it may be that you will want to keep this under review.

Who chairs?

The law

The Chair can be an “independent” person, or if not, they can be an “appropriate” person.

An “independent” person is not a sitting councillor of one of the constituent councils, or a close friend or family member of such a person. Such a person may, however, be a member of a registered political party. If you want to have an independent person as chair, you will need to carry out a public recruitment process. We provide advice on this process below.

Alternatively, if the chair is not independent they must be “appropriate”. This means that they must be a sitting councillor for a constituent authority. They must also be of a different party to the majority of councillors in the area. In many areas this is likely to mean that the chair will be of a different political party to the CA Mayor and most of the area’s leaders.

Section 3, Schedule 5A, Local Democracy, Economic Development and Construction Act 2009

Articles 5(2) – 5(4), 5(6), Combined Authorities (Overview and Scrutiny, Access to Information and Audit Committees) Order 2017

Who sits on the committee(s)?

The law

The combined authority itself is responsible for appointing members onto the CA OSC. For the purposes of the Order, members fall into three categories:

- Members of the committee appointed from a constituent authority. These members have a vote and are taken into account for the purpose of political proportionality. Such members would be nominated by their home authority, subject to proportionality requirements. There is no

requirement that each council has to nominate one member;

- Members of the committee appointed from a non-constituent authority. These members do not have a vote. Such members would be nominated by their home authority;
- Members of the committee who are co-opted, because of their skills and experience, or for some other reason. These members do not have a vote, and are not taken into account for the purpose of political proportionality. A separate appointment process will be required for these people.

The committee must – when taken as a whole – reflect the political proportionality in effect across the CA authority area. This means that even though non-constituent members do not have a vote, they are taken into account for this purpose.

Following appointment of any member, the combined authority must (within 28 days) formally publicise the appointment, including the period for which the member has been appointed. Following local authority practice the period of appointment is likely to be one year, although it may be different for co-optees (see below).

Articles 3 and 4(1), Combined Authorities (Overview and Scrutiny, Access to Information and Audit Committees) Order 2017

Committee composition: possible procedure

Each area will need to decide the right approach to nominating and agreeing members for positions. This could work as follows:

- CA formally invites constituent authorities to nominate members. The decision as to which area nominates members from which party, in order to satisfy political proportionality, could be decided through a combination of the approaches below. The decision could be made to rotate membership annually to ensure that nominations of minority/majority members work fairly:
 - Based on political control (some councils might be under the control of a majority group of councillors who are in the minority at CA level);
 - Based on which individuals already hold scrutiny chair / vice-chair positions in their own authorities;
 - Based on which members locally have expressed an interest in taking part;
 - Through a semi-random approach (so, the decision could just be made that Authority A and B should nominate a member of the overall majority party while Authority C should nominate a member of the minority party);
- Members are nominated in line with the formula set out by the CA;
- On convening for the first time, the committee decide whether to pursue co-option of additional members, and if so, they resolve to draft and agree a co-option scheme;
- In line with the agreed co-option scheme, co-opted members are sought and appointed.

Notwithstanding the above, it is important to bear in mind that the simplest solutions will usually be the best ones. It is possible to put in place complex criteria for ensuring absolute equity and fairness between councils, and political groups, but designing such systems and putting them in place may be time-consuming. It is probably better to put in place something that is good enough and that, importantly, brings on board councillors who want to take part, with the skills necessary to do scrutiny well.

It is worth remembering that the bespoke Orders prepared for individual areas may set out some of the membership arrangements; if so, then those must be adhered to.

Committee composition: worked examples

These worked examples are based on the assumption that all areas will want to appoint one member from each constituent authority to sit on the CA OSC. Other options – balancing by population or size – are available (subject to the bespoke Orders) but given the potential complexity of such approaches, we have not reflected them in these examples.

Example 1: CA with eight constituent councils wishing to co-opt. Councillor balance in the area is 65% L, 30% C, 5% LD

L hold 5 seats, C hold 3, LD holds 1. LD takes the Chair. The committee meets, reviews their role and skills requirements, identifies gaps in those skills and resolves to co-opt three people accordingly (on which we have commented in more detail below). A scheme and role profile for co-optees is agreed and appointments proceed in line with the scheme. (Under this model the largest number of co-optees that could be on the committee is six, as just under a majority of the committee's total size of 13).

Example 2: CA with ten constituent councils and three non-constituent councils, no co-option. Councillor balance in the CA area is L 60%, C 40%; outside the CA area (amongst non-constituent councils) it is C 70%, L 30%.

Two options:

Option 1: L hold 6 voting seats, C hold 4 (including the chair). Non-constituent councils are dealt with separately, but the total political balance of the committee must reflect the political balance of the area of the CA's constituent authorities, so L hold 2 of these seats and C hold 1.

Option 2: L hold 7 voting seats, C hold 3 (including the chair). This allows the political balance of the non-constituent councils to be reflected more accurately without affecting political balance overall (C 2, L 1), but this may be less attractive an option in the event of a vote.

Example 3: CA with nine constituent councils, no co-option. Councillor balance in the area is 55% C, 30% L, 15% Ind. An independent group controls one constituent council in the area and there are other non-affiliated independent councillors representing other wards and divisions in several other councils. L groups are minority administrations in all constituent councils.

C hold 5 seats, L hold 3, Ind holds 1 and the Chair. This reflects a compromise to reflect Ind's control of one authority (but reflecting that Inds elsewhere are not affiliated, so the Ind appointed would probably be from that authority).

Again, as noted above, political proportionality and fairness is something that should be pursued where "reasonably practicable" (the wording used in the legislation) – usually a fair approach will present itself naturally, and where disagreements occur the officer governance lead or CA Monitoring Officer will be able to advise. It is important to focus on the outcomes that scrutiny's work will help to bring about, rather than on the composition of committees, even though the latter is important.

Co-option

Co-opted members can be local people with a particular expertise, or who are connected with another local organisation or body.

Co-optees can perform a hugely valuable role, bringing to bear a different perspective to that of elected members and providing particular subject expertise as well (depending on who is appointed). That perspective could well be one that reflects scrutiny's overall role, purpose and focus, and the objective of doing this could drive the recruitment process overall.

When appointed, co-optees ought to be treated as full members of the committee with just as much right to participate in debate and discussion as any other member – with the critical difference that they do not hold voting rights.

When a local authority wishes to appoint co-optees to scrutiny committees, it needs to do so in accordance with a co-option “scheme” which the authority has agreed. There is no such requirement for a co-option scheme at the combined authority, but you will probably still find it useful to set out some basic principles for the identification and appointment of co-opted members. These might include:

- A public, well-advertised recruitment process with clear selection criteria;
- A requirement for those putting themselves forward as candidates to place on public record their expectations for the role and the contribution they would make on the committee;
- A member-led selection process culminating in an interview (which might take place in public);
- A limited term of office (say, two years), which could be extended by mutual agreement of the co-optee and the committee.

Where the decision is taken to recruit co-optees to meet specific skills requirements, or to provide insight from a particular sector (for example, a representative of local small business), the recruitment process would need to look different. An appropriate local organisation (such as a local Chamber of Commerce or the regional office of the Federation of Small Businesses) could be asked to nominate an individual, but the committee would probably still need to carry out some assurance of its own to ensure that the person being nominated was appropriate.

While the decision could be made to appoint a member of the Board of one or more of the LEPs covering the CA area, this may not be appropriate as the LEP and CA will work closely to define and agree the economic and growth priorities for the area. The same goes for other partners who might have a stake in agreeing devolution policies and priorities. However, bringing on board as co-optees non-executives on the Boards of those organisations may be a productive way of building links.

Co-opted members will be performing an important public role on the committee; they do not have the benefit of having been directly elected by local people and hence care is required to ensure that the way that they are selected is as open and accountable as possible. It goes without saying that co-optees would need to adhere to the same standards and codes of conduct as elected members.

How often do we meet?

Frequency of meetings depends on the role of scrutiny and its agreed workload.

There is no provision in the Order or the Act requiring the committee to meet a certain number of times, but we expect that most scrutiny committees will meet at least quarterly. Where separate task and finish working is happening, the number of formal meetings could be fewer.

Two-thirds of members of the CA OSC need to be present for its meetings to be quorate.

Where do we meet?

Overview and scrutiny meetings need to be easily accessible by the public; as many combined authorities will cover a large area members will need to meet in places that ensure that the maximum number of members of the public can attend. This might be a single location in the area, or the committee might choose to be peripatetic.

Government is planning to permit meetings to be convened through video conferencing (something which is not allowed in individual councils). Government’s current plans would be to require councillors joining meetings remotely to do so from their own council offices (with the public being in a position to observe) – they will not be able to join the meeting from their own home or another location. CAs will need to use their discretion to plan their compliance with these arrangements.

MAINTAINING, CHANGING AND EVOLVING

Devolution is a process, not an event. Greater Manchester and other areas are pursuing new deals, and English devolution is likely to look increasingly iterative. This is to say that it will gradually evolve over time. Hopefully, power and control will continue to be pulled down from Government. As this happens, and where local politicians find themselves with more, new powers, governance will need to evolve too.

In this context stop/start governance reviews are unlikely to be helpful. Having a continued approach to evaluating scrutiny – informed by dialogue and discussion, and the work programming process – will help ensure that governance keeps step with the evolving role of CAs.



77 Mansell Street London E1 8AN
telephone **020 3866 5100** email **info@cfps.org.uk** twitter **@cfpscrutiny**

www.cfps.org.uk

Centre for Public Scrutiny Limited is a registered charity: 1136243 and a Limited Company registered in England and Wales: 5133443