

Practice guide 2

Pre-decision scrutiny

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This is one of a series of practice guides produced by the Centre for Public Scrutiny to assist those working in the overview and scrutiny functions of local authorities.

What is this guide about?

This guide is about “pre-decision” scrutiny. This is where a council’s overview and scrutiny function looks at a planned decision shortly before (usually two to three weeks) it is made by Cabinet. It is often seen as a contrast with post-decision scrutiny through the council’s call-in arrangements, whereby the implementation of Cabinet decisions can be delayed.

Another way of carrying out pre-decision scrutiny is to try to look at a planned decision several months before it goes to Cabinet.

This guide will explore these two different approaches and use this comparison to explore how councils can carry out pre-decision scrutiny effectively.

Why is pre-decision scrutiny important?

Looking at decisions before they are made provides an important means to influence those decisions, and to improve them. It gives scrutineers an opportunity to challenge assumptions that may have been made as the decision was developed; it also gives them the chance to consider how decision-makers have considered what risks might arise from the implementation of the decision, and how those risks might be mitigated.

Scrutiny councillors bring a different perspective to the decision-making process than that provided by Cabinet members or officers, which can help decisions to be more robust.

Looking at a decision before it is made can often be seen as a more effective means of scrutiny than looking at a decision after it is made (for example, through the call in process), when the opportunity to influence and change that decision is quite limited. Of course, post-decision scrutiny can help to influence future policy changes in the medium to long-term.

When should pre-decision scrutiny be carried out?

There are two common approaches to pre-decision scrutiny.

Immediately before the decision.

This is scrutiny undertaken two or three weeks before the decision is made at Cabinet. It is usually based on the publication of the Forward Plan. Councils in England were obliged to produce a Forward Plan until 2012, when the legal requirement to do was removed by Government. However, councils are still required to give 28 days' notice of a planned decision, which means that the majority of councils still publish a Forward Plan, often giving more than 28 days' notice in doing so. The phrase "key decision" is a legal one and is defined in regulations which apply in England only. In Wales, the concept of a "key decision" does not exist. More details can be found in [Guide 4](#).

A number of councils take the approach of submitting decisions to scrutiny before they go to Cabinet as a matter of course (such as [Oxford](#)), although it is now more common for councils to do as [Medway](#) do (<http://ow.ly/wzrEx>), and allow scrutiny councillors the opportunity to choose which forthcoming decisions will be subject to this kind of scrutiny. This provides councillors on scrutiny committees with the opportunity to consider and make recommendations on decisions in their final form, and can work to minimise the need for call-ins after the decision has been made.

Under this approach, decisions are brought to scrutiny as drafts of the final cabinet report; members will ask questions of the officers responsible and make suggestions as necessary. Because scrutiny meetings convene less frequently than Cabinet (and because some decisions may be more operational in nature) not every item on the Forward Plan may come to a committee for pre-scrutiny. Usually the chair will have discretion to decide what the committee does and doesn't look at. A formal set of criteria for making this decision may exist, or discretion may be placed in the hands of the Chair. However, the focus will need to be on those issues where scrutiny's input at such a stage can make the most difference. The approaches adopted by [Newport](#) (<http://ow.ly/wzt3C>, at Appendix 1) and [Worcestershire](#) (<http://ow.ly/wztfo>) provide a useful example. We have provided more information about the use of selection criteria for work programming (including the use of scoring matrices) in our report, "A cunning plan" (<http://ow.ly/wztoc>).

As a matter of course, councils should not make provision in the Procedure Rules to prohibit or dissuade scrutiny committees from doing this work if they wish to.

Authorities which operate "hybrid" governance arrangements (for example, [Kent](#), <http://ow.ly/wztN0>) have further formalised their pre-decision scrutiny arrangements. In these instances, key decisions are submitted to scrutiny committees (although under these arrangements they might have different names). The committee makes a recommendation to Cabinet, or to individual Cabinet members, that the decision should be approved (or not). This recommendation is rubber-stamped by Cabinet or by an individual Cabinet member. In these circumstances that scrutiny committee has become the de facto decision-maker, and pre-decision scrutiny has effectively become the act of decision-making itself.

Pre-decision arrangements based on the Forward Plan rely on the accuracy and quality of that Plan to work properly. The Forward Plan can be:

- A digest of forthcoming decisions which meet the criteria to be defined as a "key decision" – usually one that will affect more than two wards or divisions, and one with significant financial implications (for example, more than £100,000). This will mean a Forward Plan that contains a mixture of strategic, tactical and operational decisions;
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- A planning document that sets out in a much more general sense the strategic direction of the authority. It will dovetail with the council's broader corporate plan; where operational decisions are present because of their financial implications, their strategic dependencies will be clearly identified.

Some time before the decision.

Pre-decision scrutiny can also be carried out some time before a decision is made – a matter of months, at which point decision-makers will still be weighing up different evidence and assessing available options. This is the point at which pre-decision scrutiny intersects with policy development. An example is work carried out by **Brighton and Hove**, alongside the executive's preparation of a Traveller Strategy (<http://ow.ly/wzIcN>).

This kind of pre-decision scrutiny may well be more in-depth. To be carried out properly it will need more time and resources to be allocated to it. As such, it may make sense to reserve its use to major decisions and significant strategic matters. It will also require a commitment to openness by the executive.

Often, executive councillors and senior officers will be unwilling to do this. There will be political and organisational risks.

On the political side, the risk is that options being considered which may be challenging or unpalatable to the general public will be put into the public domain and misconstrued by the press and public, and that opposition councillors (on and off scrutiny) may use information gathered through the pre-scrutiny exercise as a way to derail developing plans.

On the organisational side, officers may feel that it will limit their ability to provide full and frank advice to councillors as plans develop – particularly on sensitive issues such as risks. The challenge for scrutiny lies in demonstrating that it can add something tangible that justifies working hard to overcome these barriers. This tangible benefit can be described in several ways:

- Challenging assumptions and making evidence-gathering more robust, such as that carried out by **South Cambridgeshire** in relation to a decision to close contact centres (<http://ow.ly/wzHfc>). Scrutiny can gather its own evidence to contribute towards the decision-making process, and can triangulate evidence being used by the council against that held by other partners and stakeholders. It can consult those directly affected by the decision impartially and independently. It can look at projections relating to the impact of the decision – financial, social, economic, environmental – and consider whether those projections and assumptions are justified.
 - Developing realistic plans and targets. Several months before a decision is made, the ultimate outcome – in terms of substantive targets – will probably not have been finalised. Scrutiny can help to impartially develop challenging but realistic target that will be focused on outcomes rather the outputs, and which will be more difficult to “game”.
 - Securing ownership and buy-in to the final decision. Engaging with scrutiny will help the executive to understand the expectations of the wider group of elected members and, by extension, the public (see below). This should ensure that the final decision takes account of such expectations and may reduce the risk of call-in or political disagreements which will hinder the decision's ultimate implementation.
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- Engaging with and satisfying the public. Around the country scrutiny has, in recent years, significantly enhanced its capabilities in engaging with the public. This expertise can be brought to bear in helping the council to understand local needs, with this engagement being led by councillors who approach this discussion with no vested interest or stake in the final decision. Work carried out by **Bradford** on its food strategy (<http://ow.ly/wzHQy>) provides a good example.

How should pre-decision scrutiny be carried out?

The way in which you carry out pre-decision scrutiny will depend on the decision itself, and the level of resource available.

For example, a scrutiny chair may be aware that the council plans, in nine months, to agree a new housing strategy. He or she can plan the committee's work programme to look at some or all of the key elements of that strategy as they are being considered – key pieces of evidence (such as proposed housing targets), emerging priorities (dealing with shortages in social housing), financial implications (budgets to be spent on maintenance) and the extent to which the authority is engaging with key stakeholders (by speaking to tenants and leaseholders). It is important to ensure that this work aligns with the work being undertaken by the executive in developing the final decision. This is the only way that you can be sure that the work will ultimately have value.

Pre-decision scrutiny carried out immediately before a decision is made will demand a different approach – perhaps focused on a hearing at a committee meeting which asks key questions around the decision's implementation, risks and measures of success. For these meetings, questions which delve into the fundamentals of the decision and which bring up radically different options to those which are being proposed are unlikely to be useful or productive – these kinds of debates lend themselves far better to the longer-term work we've described above.

The amount of time devoted to the work will depend on the extent to which it is considered to be a priority by scrutiny councillors. The usual principles around prioritisation and work programming will apply.

In all other respects, pre-decision scrutiny should not differ from other kinds of scrutiny investigations.

Who should be involved?

Pieces of work carried out immediately prior to a decision being made will inevitably focus on questions being posed to the relevant chief officer and cabinet members. Work carried out beforehand, with more resources and time, can open out evidence gathering to include a wider selection of stakeholders, including partners and members of the public.
