

Practice guide 5

Statutory officers

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Centre for
Public
Scrutiny

accountability, transparency, involvement

Issue 1

June 2014

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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?

In England, the [Local Democracy, Economic Development and Construction Act 2009](#) introduced a new statutory position of “scrutiny officer” – an officer of the council with responsibility for promoting the role of overview and scrutiny, supporting overview and scrutiny committees, and providing advice to officers and members about overview and scrutiny committees. The law relating to this officer post now sits at [s9FB of the Local Government Act 2000](#) (having been incorporated into that Act by the [Localism Act 2011](#)). In Wales, the [Local Government \(Wales\) Measure 2011](#) obliges councils to appoint a Head of Democratic Services, with a broadly similar role.

Councils in both England and Wales are also required to designate a person as a Monitoring Officer. This person is responsible for ensuring that the council operates within the law. This guide explores the role of each of these officers and explains how they should work together to support the scrutiny function.

Why is it important to understand the mutual roles of the statutory scrutiny officer and the monitoring officer?

These statutory officers share between them a responsibility to protect and promote the scrutiny function. They should be considered to be ultimately responsible for securing good governance within the authority.

From time to time questions and concerns will arise about the operation of the scrutiny function, and an officer will need to make a determination about what the law says, and how this should be applied to that particular situation. Members and officers working in scrutiny need to understand how the statutory scrutiny officer/Head of Democratic Services, and the monitoring officer, are empowered to do under those circumstances. Those occupying these statutory roles need to have a nuanced and meaningful understanding of the scrutiny function in order to accurately make judgments about its operation when disagreements or other issues arise.

How do the mutual roles and responsibilities intersect?

Statutory scrutiny officer (England only)

Originally introduced by the Local Democracy, Economic Development and Construction Act 2009, the requirement for English councils to designate a “statutory” scrutiny officer can now be found at s9FB of the Local Government Act 2000 (the legislative framework having been altered by the Localism Act 2011). This duty does not apply to district councils in areas for which there is also a county council (shire districts in two-tier areas).

The scrutiny officer’s role is (these points paraphrase the precise wording of the Act, which can be found at <http://www.legislation.gov.uk/ukpga/2011/20/schedule/2>):

- To promote (with no definition of that word being provided) the role of the authority’s overview and scrutiny committee(s);
- To provide support to the authority’s O&S function and to local councillors;
- To provide guidance to members and officers of the council in relation to O&S’s functions.

The scrutiny officer cannot be the authority’s head of paid service, the Monitoring Officer or the chief finance officer (s151 officer).

Different councils have taken different approaches to who they designate as their scrutiny officer. Some have chosen a chief officer – usually the chief officer for the department in which the scrutiny function sits, as long as that person isn’t also the Monitoring Officer (see, for example, **West Buckinghamshire** or **East Sussex**). Others have chosen the most senior person in the authority with a day-to-day responsibility for providing support to the scrutiny function (such as **Calderdale**). There are pros and cons to each approach.

The arguments in favour of appointing a senior officer are:

- Gives scrutiny a high profile at a corporate level;
- Commensurate with other statutory posts such as the Monitoring Officer and s151 officer;

The arguments in favour of appointing a more junior officer are:

- Empowers those involved in scrutiny day-to-day with a statutory role and duty, which bolsters their visibility to the rest of the organisation;
- The responsibility for providing advice and guidance on scrutiny is a more obvious fit, in terms of skill-set, with an officer with practical experience of scrutiny;
- The other statutory posts relate to corporate functions across the authority, where the scrutiny officer role relates specifically to the council’s non-executive activity, which is usually supported by a team or individual.

No formal Government guidance has been issued on this subject, other than what can be found in the Act’s Explanatory Note (<http://ow.ly/wAdHm>), which states:

“Typically, a scrutiny officer will promote the scrutiny function generally within the authority and local government partners more widely, and provide advice and support to members of the authority's committee(s) in undertaking their work. This may include the provision, or management, of committee secretariat services, research, analysis of data and report preparation for example.”

In order to comply with the Act, councils subject to the duty to designate a scrutiny officer have generally done so through a report to Full Council, with the designation then being reflected in the council's Constitution.

While the Act defines the statutory role as the “scrutiny officer”, many councils appoint officers whose job title is “scrutiny officer”, but who are not actually the statutory scrutiny officer. The role of statutory scrutiny officer in those councils may in fact be given to an officer who may not have the word “scrutiny” in their job title.

Head of Democratic Services (Wales only)

Section 8 of the Local Government (Wales) Measure 2011 requires every local authority in Wales to designate a Head of Democratic Services. The role of this officer is set out in **s9** and is broader than the statutory scrutiny role in England, applying as it does to all council committees and democratic functions. The parts of the role specific to overview and scrutiny are essentially identical to those applying in England. The postholder must also produce reports setting out the amount of resource required to deliver democratic services functions (which includes O&S).

This suggests a more evidence-based approach to budget setting around scrutiny. The Explanatory Notes (<http://ow.ly/wAe5l>) state,

“The purpose of the post is to ensure that councillors outside the executive are provided with sufficient support to enable them to carry out their duties effectively, with the necessary administrative and research provision.”

The job of designating the Head of Democratic Services sits with the authority's Democratic Services Committee, rather than “the authority”. The statutory guidance to the Measure suggests that the Head of Paid Service should recommend to the DSC who should be so designated, but also states that, “in many cases, this will be an obvious person who already fulfils most of the HDS function”. In practice, this has led to the HDS position in Wales generally being one for a relatively senior manager with overarching responsibility for democratic and legal services (by and large, a manager who reports directly to the Monitoring Officer).

Monitoring Officer (England and Wales)

The Monitoring Officer's role is set out **section 5 of the Local Government and Housing Act 1989**, which was amended by **Schedule 5** of the Local Government Act 2000. Additional responsibilities relating to standards and conduct can be found in **Part III** of the 2000 Act. The role cannot be exercised by the authority's head of paid service, except in a county, county borough, district or London borough, or the Greater London Authority.

The Monitoring Officer has three principal responsibilities:

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- To report on matters they believe are, or may be, illegal or amount of maladministration. There is particular provision in the 1989 Act as to how these reports should be framed, and how they should be responded to. These are slightly different for authorities operating executive arrangements, and other authorities;
 - To be responsible for the conduct of councillors and officers;
 - To be responsible for the operation, review and updating of the constitution. This includes providing advice on the interpretation of the constitution, and making determinations where necessary.

The third of these responsibilities is arguably the one most relevant to overview and scrutiny.

Like the other two statutory roles, the role of Monitoring Officer will sit with an officer who has a broader array of duties. The Monitoring Officer will usually be the council's Director of Legal Services, or similar, and a chief officer. As such they will be involved in assisting with setting and delivering the direction of the authority at a senior level, as well as safeguarding good governance and the constitution. This makes the role of Monitoring Officer an extremely complex one.

Intersection between the roles

The roles of statutory scrutiny officer and Head of Democratic Services (HDS) are similar. However, it should be noted that in both England and Wales, support for scrutiny tends to be provided by those whose skillset aligns more closely to that of a policy officer, and the HDS title should not be taken as meaning that scrutiny support should in either jurisdiction be something which should automatically be the responsibility of the council's democratic services function.

Within the authority the view of the Monitoring Officer on the meaning of the law as it relates to local government, and the constitution, is final. However, there is clearly a responsibility on the scrutiny officer / HDS to formally provide advice to the Monitoring Officer and for the Monitoring Officer to take note of that advice in reaching a decision or determination.

What can statutory officers do to handle organisational and political difficulties around the operation of the scrutiny function?

Difficulties will inevitably arise where there are disagreements about scrutiny's powers, role and remit. For example, questions over scrutiny's rights to require the attendance of certain people at meetings, disagreements over work programming, difficulties with acquiring and using information effectively, issues over resourcing, and so on. The role of the statutory scrutiny officer (and Head of Democratic Services) is a broad one, and the holder of that position is required to advocate on behalf of the function (and to protect its independence). In the first instance this will involve a discussion between the Monitoring Officer and the statutory scrutiny officer to consider the issues involved. In the interests of openness, councils in England may wish to follow the Welsh model, and have the statutory scrutiny officer prepare a report, reflecting members' views, to inform decisions about O&S which may be made by the Monitoring Officer and Full Council.
