

Practice guide 6

Scrutiny bodies: membership and political management

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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 membership of scrutiny committees and informal scrutiny “task and finish” groups. It looks at four distinct issues – the use of co-optees (at committee, and as members of T&F groups), minority party chairing, membership of T&F groups and having “Cabinet assistants” as members of scrutiny committees. It also covers political management/whipping.

Why is membership important?

Committees and task and finish groups need to have the right people on them, and the right people chairing, in order to have the maximum possible effect. Having inappropriate people sitting on scrutiny bodies – or missing out on opportunities to bring people in from outside the council – can both harm scrutiny’s credibility and reputation, and risk that its work will be ineffective.

How should co-option be managed?

The law: non-education matters

Council scrutiny functions have the opportunity to co-opt people from outside the council to sit either on scrutiny committees (as voting or non-voting co-optees), or on task and finish groups.

In relation to formal appointments to committees in England, this power is conferred by **s9FA(4) and (5)** of the **Local Government Act 2000**. This provides for the co-option of a person onto a committee to occupy a non-voting position. Under **Schedule 1** of the 2000 Act (originally introduced by **s115** of the **Local Government Act 2003**), a local authority may put in place a scheme to appoint voting co-optees to sit on overview and scrutiny committees.

In Wales, the powers relating to co-option are identical but can instead be found in **s21** of the Local Government Act 2000.

There is no legal provision for co-option to task and finish groups, as T&F groups themselves are not mentioned in legislation. Task and finish groups may co-opt members without restriction.

Statutory education co-optees

There is a requirement, where a council is responsible for education functions in both England and Wales, for certain voting co-optees to be appointed to the relevant committee. These include representatives specifically mentioned in s499 of the **Education Act 1996**. The provisions in the 1996 Act apply to overview and scrutiny committees by virtue of **Schedule 1** of the 2000 Act.

For most authorities, this will be two diocesan representatives (one Church of England or Church in Wales, one Catholic) and two parent governor representatives (one primary, one secondary, and both from maintained schools). Such co-optees have voting rights and are treated as opposition councillors for the purposes of political proportionality (in order to assure that the largest party retain an absolute majority at committee).

Parent governor representatives are elected by all parent governors in the authority's areas. This election needs to be carried out by the authority wishing to co-opt them. For Wales, CfPS carried out research on scrutiny of education issues with the WLGA in 2009, "**Scrutiny of schools and education issues**", which can be found at <http://ow.ly/wA5tU>. For England, CfPS has separately produced "**Parent Governor Representatives on scrutiny committees: an induction pack**" (2005, <http://ow.ly/wAa4e>), which was funded by the Department for Education and Skills.

Practice: at committee

Few councils co-opt members onto their overview and scrutiny committees. **Guildford** co-opts social housing tenant representatives onto one of its committees, an arrangement which has been in operation since 2004. **Cambridgeshire** appoints three non-voting co-optees to its children's services committee, representing the interests of teachers and those working in early needs. **Waveney** co-opts a member of its Youth Council onto one of its overview and scrutiny committees. **Suffolk** co-opts some district council members onto its scrutiny committees, and gives them voting rights. **Richmond** conducted a comprehensive recruitment exercise for co-optees onto their scrutiny committees in 2010. **Durham** has a protocol for the appointment of non-voting co-optees, which can be found at <http://ow.ly/wA6VH>.

Useful evidence on the process for appointing co-optees can be found by looking at the approach taken by Police and Crime Panels to appoint independent members in 2012. While the situation is not identical it may assist – particularly in developing a person specification for the role.

Most councils make provision in their constitution for the appointment of non-voting co-optees to scrutiny committees. Where an appointment is planned, arrangements for the selection of an appropriate person tend to involve an external organisation being asked to nominate one of their members, or a formal recruitment process being carried out if the person is being co-opted from the general population.

Many authorities have found it more proportionate to invite experts to give evidence at specific meetings, finding this a better use of their time than a standing position on a committee. This is increasingly the case where committees have a wide remit, and there may not be items at every meeting which reflect the areas of the co-optees' expertise.

Practice: task and finish groups

Task and finish groups are informal, time-limited bodies established by scrutiny committees to gather evidence and produce recommendations on a specific subject. This role lends itself to the appointment of co-optees, as the focus will be on a comparatively narrow area of policy.

Some authorities' approach to co-option are more formal than others. Increasingly, councils are seeking to adopt more transparent arrangements for the appointment of co-optees to task groups. Some, like **Kirklees** retain co-optees in a "pool", drawing on their skills as necessary. Others carry out recruitment exercises for every review, which can vary in their degree of formality.

Some councils have protocols which limit co-optees to one per task and finish groups (**Lincolnshire**, <http://ow.ly/wAaSb>, p8) but others have no formal limit. The identity of co-optees is generally chosen at scoping stage by the parent committee. The co-optee's role is identical to that of a councillor member of the review group, but when it comes to making a final decision on a report or recommendations, in practice it will be councillors' views that take precedence.

Whatever happens it is important that the co-optee understanding the process and their position in it. If there is any doubt about the appropriateness of a co-optee taking part in the discussions that will lead to scrutiny recommendations, it may make more sense to appoint someone to the group as a technical adviser instead.

How should committee chairing be managed?

Committee chairships can be in the gift of the Leader, although Full Council will usually get an opportunity to vote on committees, chairs and membership at council AGM. To our knowledge no councils take the approach taken in the House of Commons, where chairs of select committees are elected by a secret ballot of all MPs. However, some political groups may hold secret ballots to determine their group's nominations for chairing positions. In **Hackney**, once chosen by the Mayor, Cabinet Members recuse themselves from Group voting on scrutiny chair nominations.

CfPS's 2013 Annual Survey of Overview and Scrutiny in Local Government found that 20.5% of councils appoint chairs by the political proportionality of the authority. This has no appreciable impact, positive or negative, on scrutiny's effectiveness. However, we do still feel that appointing minority party chairs helps to promote a non-partisan culture in scrutiny, and makes it more likely that scrutiny members (and chairs) will think and act independently.

How should membership of task and finish groups be managed?

It is usual for the membership of a task and finish group to be agreed by the group's parent committee.

There are no laws defining how T&F groups should be constituted but the following broad rules of thumb have developed across the country in the years since scrutiny's inception.

- Membership should be defined and agreed by the group's parent committee;
 - The parent committee should also decide on who should chair;
 - While party whips may nominate members to sit on groups, the ultimate decision rests with the committee and the committee chair;
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- As far as possible, membership should loosely reflect the political proportionality of the authority (the only caveat being that attempts are usually made to involve smaller parties where they otherwise would not be entitled to a seat);
 - Members (and even the chair) need not be drawn exclusively from the group's parent committee – any member can be nominated to participate;
 - Decision-making in the group (deciding on the wording of a final report, deciding on recommendations) should be undertaken through consensus rather than through a vote, given the fact that the membership may not directly reflect political proportionality).

Should “Cabinet assistants” sit on overview and scrutiny committees?

“Cabinet assistants” or “Portfolio holders’ assistants” are councillors (usually in the majority party) who have been given an informal role by the council’s Cabinet to assist one or more Cabinet members in carrying out their role. This role will sometimes be specified in the council’s constitution but is not provided for in law. As such, decision-making powers held by Cabinet members cannot be delegated to Cabinet assistants, and Cabinet assistants may take no formal part in decision-making.

As such, Cabinet assistants can technically sit on scrutiny committees (Cabinet members themselves are excluded).

We are not aware of any councils which, in their Constitution, specifically exclude Cabinet assistants from sitting on overview and scrutiny committees, but in most instances their role is circumscribed, owing to the risk of a conflict of interest arising. For example in **Harrogate**, there is a protocol defining the role of such councillors, part of which states that if they have been closely involved with a decision which subsequently comes up at a scrutiny meeting, they may need to recuse themselves from discussions. This is likely to be far easier to determine with post-decision scrutiny, although the informal nature of the Cabinet assistant role makes judgments even here difficult to make, requires subjective determination on the part of the person involved.

It is common, therefore, that in authorities where Cabinet assistants exist and sit on scrutiny committees, they are assigned to sit on committees that do not reflect their portfolios.

What do we mean when we say that scrutiny is “non-political”, and what does this mean for councillors’ independence, and the whip?

Councillors sitting on scrutiny committees should not, at those committees, act in an overtly party political way. Scrutiny is meant to be a forum for the evidence-based discussion of issues affecting local people. This will involve discussion of politically contentious issues, which are likely to include disagreements, but these discussions shouldn’t be framed by party political viewpoints.

Use of the party whip (sometimes known as “political management”) is permitted in England, although illegal in Wales under the **Local Government (Wales) Measure, s79**. In the Measure, the party whip is defined as,

“an instruction (however expressed) which is given on behalf of a political group on a local authority, to a person who is a member of the political group and a member of an overview and scrutiny committee of the local authority. [The whip] is an instruction as to how [the person] should vote on a question falling to be decided by the committee [which] if not complied with would be likely to make [the person] liable to disciplinary action by the political group which gives the instruction”.

Welsh councils are obliged to place provision in their standing orders to give effect to this prohibition.

Some councils in England use their constitutions to control the use of the whip but its informal nature and the fact that the council's Monitoring Officer is unlikely to know the detail of discussions at political group meetings may make these injunctions difficult to enforce. While research has been carried out on the role of party politics in scrutiny (Leach, 2009; Ewbank, 2011) it is difficult to tell whether use of the whip has a negative impact on scrutiny's effectiveness. It would, however, seem likely that it does – the presence or threat of the whip being used as a disciplinary tool risks curtailing political debate and discussion and diminishing scrutiny's role as a neutral forum for meaningful discussion. It could also be seen as limiting the willingness of majority group members to challenge and hold to account their cabinet colleagues.

As such it is our view that the whip should not be exercised on scrutiny committees or task and finish groups, either formally or informally.
