Mid Devon District Council

Standards Committee

Wednesday, 14 March 2018 at 6.00 pm
Exe Room, Phoenix House, Tiverton

Next ordinary meeting
Wednesday, 6 June 2018 at 6.00 pm

Those attending are advised that this meeting will be recorded

Membership

Cllr Mrs J B Binks
Cllr Mrs F J Colthorpe
Cllr C J Eginton
Cllr F J Rosamond
Cllr Mrs E J Slade
Cllr C R Slade
Cllr Mrs M E Squires
Cllr L D Taylor
Cllr Mrs N Woollatt

A G E N D A

Members are reminded of the need to make declarations of interest prior to any discussion which may take place

1 **APOLOGIES AND SUBSTITUTE MEMBERS**
To receive any apologies for absence and notices of appointment of Substitute Members (if any).

2 **DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT**
Councillors are reminded of the requirement to declare any interest, including the type of interest, and reason for that interest, either at this stage of the meeting or as soon as they become aware of that interest.

3 **PUBLIC QUESTION TIME**
To receive any questions relating to items on the Agenda from members of the public and replies thereto.

Note: A maximum of 30 minutes is allowed for this item.

4 **MINUTES** *(Pages 5 - 10)*
Members to consider whether to approve the minutes of the last meeting as a correct record.

Committee Administrator: Julia Stuckey
Tel: 01884 234209
Email: jstuckey@middevon.gov.uk

5 **CHAIRMAN'S ANNOUNCEMENTS**
To receive any announcements the Chairman of the Committee may wish to make.

6 **MOTION FROM COUNCIL** *(Pages 11 - 28)*
The following Motion has been forwarded from Council to the Standards Committee for consideration and to receive a report from the Monitoring Officer in connection with the motion and other issues.

Motion 541 (Councillor Mrs J Roach – 30 November 2017)

This Council reconsiders the time and times that it allows ward members to speak at the planning committee. The present system gives many opportunities to speak but allows the local member only one opportunity. At the very least Council should give elected Councillors the opportunity to correct incorrect statements, something that exists within standing orders but not allowed at the planning committee. At the last planning committee the situation that exists at the moment prevented me as the elected Councillor for Silverton for pointing out that the Highways advice was inconsistent with previous advice given on the same site.

Please note: Having considered the above Motion the Policy Development Group are asked to consider whether this Motion should either be supported or rejected. This decision will be referred back to full Council on 25 April 2018.

7 **MONITORING OFFICER UPDATE**
To receive an update from the Monitoring Officer.

8 **EFFECTIVENESS OF SCRUTINY** *(Pages 29 - 92)*
At the request of the Scrutiny Committee to consider and review the conclusions and recommendations within the attached Government paper. The Chairman of the Scrutiny Committee has provided a personal view.

9 **INTIMIDATION OF MEMBERS** *(Pages 93 - 180)*
The Committee to consider a review by the Committee on Standards in Public Life regarding 'Intimidation in Public Life'.

10 **COMPLAINTS**
To receive an update from the Monitoring Officer with regard to any on-going complaints being dealt with. During the discussion it may be necessary to consider passing the following resolution to protect the Members of District, Town and Parish Council's being discussed.

During discussion of this item it may be necessary to pass the following resolution to exclude the press and public having reflected on Article 12 12.02(d) (a presumption in favour of openness) of the Constitution. This decision may be required because consideration of this matter in public may disclose information falling within one of the descriptions of exempt

Committee Administrator: Julia Stuckey
Tel: 01884 234209
Email: jstuckey@middevon.gov.uk

information in Schedule 12A to the Local Government Act 1972. The Committee will need to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption, outweighs the public interest in disclosing the information.

ACCESS TO INFORMATION ACT – EXCLUSION OF THE PRESS AND PUBLIC

RECOMMENDED that under section 100A(4) of the Local Government Act 1972 the public be excluded from the next item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act, namely information relating to an individual

11 **IDENTIFICATION OF ITEMS FOR THE NEXT MEETING**

Members are asked to note that the following items are already identified in the work programme for the next meeting:

Monitoring Officers Annual Report to the Committee
Complaints

Stephen Walford
Chief Executive
Tuesday, 6 March 2018

Anyone wishing to film part or all of the proceedings may do so unless the press and public are excluded for that part of the meeting or there is good reason not to do so, as directed by the Chairman. Any filming must be done as unobtrusively as possible from a single fixed position without the use of any additional lighting; focusing only on those actively participating in the meeting and having regard also to the wishes of any member of the public present who may not wish to be filmed. As a matter of courtesy, anyone wishing to film proceedings is asked to advise the Chairman or the Member Services Officer in attendance so that all those present may be made aware that is happening.

Members of the public may also use other forms of social media to report on proceedings at this meeting.

Members of the public are welcome to attend the meeting and listen to discussion. Lift access the first floor of the building is available from the main ground floor entrance. Toilet facilities, with wheelchair access, are also available. There is time set aside at the beginning of the meeting to allow the public to ask questions.

An induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter. If you require any further information, or

Committee Administrator: Julia Stuckey
Tel: 01884 234209
Email: jstuckey@middevon.gov.uk

If you would like a copy of the Agenda in another format (for example in large print) please contact Julia Stuckey on:
Tel: 01884 234209
E-Mail: jstuckey@middevon.gov.uk

Public Wi-Fi is available in all meeting rooms.

MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **STANDARDS COMMITTEE** held on 18 October 2017 at 6.00 pm

Present Councillors Mrs J B Binks (Chairman)
Mrs F J Colthorpe, F J Rosamond, C R Slade, Mrs M E Squires, Mrs E J Slade and Mrs N Woollatt

Apologies Councillor(s) L D Taylor and C J Eginton

Also Present Officer(s): Kathryn Tebbey (Group Manager for Legal Services and Monitoring Officer), Sally Gabriel (Member Services Manager) and Julia Stuckey (Member Services Officer)

54 **PUBLIC QUESTION TIME**

There were no questions from the members of the public present.

55 **MINUTES**

The Minutes of the last meeting were approved as a true record and signed by the Chairman.

56 **CHAIRMAN'S ANNOUNCEMENTS**

The Chairman thanked Members for their attendance and input at the recent Standards informal workshop, reminding them that there would be another session in January.

57 **APOLOGIES AND SUBSTITUTE MEMBERS**

Apologies were received from Cllrs C J Eginton and L Taylor.

58 **INDEPENDENT PERSONS**

The Monitoring Officer reminded Members that they had agreed at the last meeting to ask the Independent Persons to attend a selection of meetings, to sit at the back and observe, as a member of the public, to see how business was transacted. Unfortunately one of the Independent Persons (IP) had resigned from his post, due to other commitments. The requirement in law was to have one IP but it had been agreed that it was preferable to have two in case the IP was unable to assist due to other lack of availability or a conflict of interest. The officer informed Members that she would make enquiries with neighbouring authorities with regard to sharing.

Mr Smith, IP, informed the Committee that he had attended a range of meetings, just sitting at the back as a member of the public, not looking for anything in particular but

to see how the meeting went and how it may appear to a Member of the public. He had attended Full Council and Audit. Mr Smith informed the Committee that he intended to continue attending meetings. The IP reported that the meetings he attended had been well chaired, managed and interesting. He considered that from a public point of view Councillors behaved extremely well. He appreciated that each Councillor was an individual with their own strengths and weaknesses. He witnessed a well-argued debate with points from both sides and some persuasive points. Some points of view had been strongly held but he said he had nothing but praise for the way in which Councillors behaved and how the meetings had been chaired. He had observed that Audit was a short meeting with a reliance on officers for technical input but the Members had clearly ready the papers and made positive contributions. He thought Members had performed very well and had no adverse comments to make.

Discussion took place regarding the role of the IP and whether it would be compromised by attendance at meetings. The IP was able to reassure Members that he would be careful to maintain his neutrality. He was not introduced at meetings and acted as a member of the public. Mr Smith did remind Members that there could be occasions when he could be conflicted due to knowing personally a Member or complainant, but this was already the case due to having lived in the town for a long time and would not be affected by his attendance at meetings.

The update from the Independent Person and the implications arising from it were **NOTED**.

The Monitoring Officer provided an update from Mr Williamson, the former IP, who due to his resignation was not present at the meeting.

Mr Williamson had attended what might be seen as the more contentious meetings, Planning and Scrutiny. He had reported that these meetings had been more emotive and lengthy. He had no concerns regarding the way the meetings were managed but, recognising the challenging nature of the subject matter, felt that Members had, at times, dropped their guard and that after a period of discipline would let slip a comment that might not be well received. He appreciated that this could be due to fatigue. He had stressed the point that although the meeting had been long in length, the public may not appreciate a jovial comment at their agenda item. He wondered how Members could be reminded of the importance to remain professional throughout the meeting, regardless of the length.

Discussion took place regarding:

- A reminder could be put in WIS;
- The seriousness of each agenda item at planning;
- The importance of striking a balance for the seriousness of the matter and the passion felt by Members;
- The difficulties in chairing these particular meetings.

The Chairman thanked the Independent Persons for their updates.

59 REVIEW OF CONSTITUTIONAL ITEMS

The Monitoring Officer reminded Members that she had undertaken to review matters arising from the Constitution at the last meeting.

Concerns had been raised regarding Cabinet meetings and the authority for the Leader of the Council to allow any Member to speak during the business of the meeting. This section of the Constitution had now been addressed and changes made. These changes fell within the remit of the Monitoring Officer. Members had not been alerted to this change as current practice had not changed.

The Monitoring Officer had also expressed concerns regarding the wording for the State of the District Debate. The officer informed the Committee that along with her deputies she was undertaking a review of the entire Constitution to make sure that all references were correct. She proposed to bring this forward in a report to the March meeting and the wording regarding the State of the District Debate would be considered as part of this exercise.

A query had also been raised regarding the rights of a member of the public to speak at Planning Committee. The Monitoring Officer apologised that her workload had been such that she had as yet been unable to undertake this piece of work. This was a matter that should not be rushed and would be undertaken as part of the Constitutional updates already mentioned.

A leaflet, providing instructions regarding procedure at Planning Committee had been circulated to Members and was available on the website. This leaflet was used if members of the public telephoned to ask for advice and could be emailed to them. It was **AGREED** that the link to this leaflet be forwarded to Town and Parish Clerks, a reminder be placed in WIS and made available at reception.

The Chairman thanked the Monitoring Officer for her update.

60 DISQUALIFICATION CRITERIA FOR COUNCILLORS AND MAYORS

The Committee had before it draft a consultation document * on Disqualification Criteria for Councillors and Mayors.

The Committee looked at each question in turn:

Q1. Do you agree that an individual who is subject to the notification requirements set out in the Sexual Offences Act 2003 (i.e. is on the sex offenders register) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

It was **RESOLVED** that the Committee agreed with the content of question 1.

(Proposed by the Chairman)

Q2. Do you agree that an individual who is subject to a Sexual Risk Order should not be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or the London Mayor?

The Committee discussed the term 'sexual risk order' and what this meant. Members were unhappy with the wording within question 2 and the explanation provided. They considered that the information given fell short of allowing them to make an informed decision.

It was **RESOLVED** that the Committee did not agree with the content of question 2.

(Proposed by the Cllr Mrs N Woollatt and seconded by Cllr C R Slade)

Q3. Do you agree that an individual who has been issued with a Civil Injunction (made under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014) or a Criminal Behaviour Order (made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

It was **RESOLVED** that the Committee agreed with question 3.

(Proposed by the Chairman)

Q4. Do you agree that being subject to a Civil Injunction or a Criminal Behaviour Order should be the only anti-social behaviour-related reasons why an individual should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

It was **RESOLVED** that the Committee agreed with question 4.

(Proposed by the Chairman)

Q5. Do you consider that the proposals set out in this consultation paper will have an effect on local authorities discharging their Public Sector Equality Duties under the Equality Act 2010?

It was **RESOLVED** that the Committee agreed with question 5.

(Proposed by the Chairman)

Q6. Do you have any further views about the proposals set out in this consultation paper?

The document did not make reference to unitary authorities.

It was **AGREED** that the Monitoring Officer be asked to respond to the consultation.

Note: - Document * previously circulated and attached to Minutes.

61 **DRAFT GUIDELINES ON MEMBERS CORRESPONDENCE**

Arising from matters discussed at the last meeting of the Committee, Members had before them for consideration a report of the Monitoring Officer and draft guidelines for Members correspondence.

At the meeting on 26 July 2017, the Monitoring Officer discussed concerns raised with her by a member of the public about the alleged failure of a Member of the Council to reply to correspondence. In that particular incidence, the Monitoring Officer had dealt with the issue informally. However, as Members of the Committee indicated at the meeting, it did raise issues about how Members should be expected to deal with their correspondence, particularly in relation to that received from Members of the public from their electoral ward.

The Monitoring Officer asked Members to consider:

(a) Whether guidance should be given to Members on dealing with correspondence in the form attached at Appendix 1;

(b) Whether a Member's failure to reply to correspondence in a timely manner (or at all) could on its own, and in principle, amount to a breach of the Code of Conduct; and

(c) Whether to recommend that the Local Assessment Criteria be amended.

Discussion took place regarding:

- Whether guidelines should be necessary and Members should deal with correspondence anyway;
- Various ways of responding to guidance such as in person or by telephone;
- Some correspondence could be difficult to answer and time consuming;
- It was not always possible to give people the answer they were looking for;
- Some roles carried out by Members generated more correspondence than others and sometimes there were reasons why they could not be replied to;
- Members could benefit from advice rather than guidelines;
- Guidelines that were specific timewise would not allow for busy periods, holidays or ill health;
- Whether Group Leaders should be the ones to issue instruction;
- Advice could be issued in WIS;
- Confusion regarding blind copy and when this should and shouldn't be used;
- Further clarification was required regarding confidentiality.

It was **RESOLVED** that the Monitoring Officer be asked to take some key points from the draft guidelines and provide information for WIS as a set of principles and that an informal workshop to be put in place regarding confidentiality.

(Proposed By Cllr C R Slade and seconded by Cllr N Woollatt)

Note: - Report * previously circulated and attached to the Minutes.

62 **COMPLAINTS**

The Monitoring Officer informed the Committee that she was in receipt of one complaint, for which she had consulted the Independent person. It was considered to merit taking forward as it was a potential breach of the code of conduct. The process of investigation was ongoing and the officer would report back in due course.

63 **MEMBERS' ACCESS TO (AND USE OF) INFORMATION AND EXEMPT INFORMATION**

The Committee had before it the Protocol * on Member/officer relations. The Monitoring Officer informed the Committee that she had added this item to the agenda following concerns about emails from officers being forwarded to the press without discussing this first with the officer concerned. The current protocol covered Part II information but did not cover this particular scenario.

Discussion took place regarding a number of sections of the protocol which were not current or correct. The Monitoring officer agreed that these would be looked at as part of her ongoing review of the Constitution.

The Monitoring Officer asked that Members give consideration to the matter and feedback to her any other comments on the existing protocol that they wished her to take into account.

Note: - Protocol * previously circulated and attached to Minutes.

64 **IDENTIFICATION OF ITEMS FOR THE NEXT MEETING**

Members were asked to consider items for the next meeting and it was agreed that this would form of the next informal workshop.

Complaints
Updates to the Constitution

(The meeting ended at 8.00 pm) **CHAIRMAN**

STANDARDS COMMITTEE
14 MARCH 2018

PROTOCOL OF GOOD PRACTICE FOR COUNCILLORS DEALING WITH PLANNING MATTERS

Cabinet Member(s): Councillor Margaret Squires and Councillor Richard Chesterton

Responsible Officer: Group Manager for Legal Services and Monitoring Officer, Kathryn Tebbey

Reason for Report: To consider whether to make changes to the Protocol of Good Practice for Councillors dealing with planning matters (Protocol).

RECOMMENDATIONS: That the Standards Committee considers:

(a) whether to recommend changes be made to the Protocol addressing the points set out in this report, in particular by reference to paragraphs 2.5, 3.6 and 4.6; and

(b) accordingly, whether to support Motion 541 moved by Cllr Mrs J Roach and referred to this the Standards Committee (reproduced at paragraph 4.1 of this report

Relationship to Corporate Plan: A sound process for determining applications through Planning Committee assists the Council in fulfilling Priority 2: Homes - Aim 3 Planning and Enhancing the Built Environment

Financial Implications: None arising from this report.

Legal Implications: These are explained in the Introduction to this Report.

Risk Assessment: None arising from this report.

Equality Impact Assessment: None arising from this report.

1.0 **Introduction**

1.1 Section 9 of the Protocol of Good Practice for Councillors Dealing with Planning Matters ("the Protocol") on page 238 of the current version of the Constitution reads as follows:

9.1 Public Question Time is available at the beginning of the meeting for those present to ask questions of the committee, this allows an opportunity for those additional people who wish to speak on an application.

9.2 A clear procedure for speaking at committee meetings was approved by Council on 31 August 2016, for applications reserved for individual consideration, the Cahirman will call those who have indicated a wish to speak in the following order: officer, objector (1),

applicant/agent/supporter (1), parish council (3 minutes each) and ward member(s) (5 minutes each). (for clarity: only one person may speak in favour of an application and one person in objection).

9.3 Questioning of speakers for reasons of clarification be allowed through the Chairman and apply to the applicant and objector only.

1.2 Rights to speak at Planning Committees up and down the country are rarely seen to be perfect from the standpoint of a person interested in a particular matter – whether it's the order of the speakers, how many can speak and for how long, or whether there is a right of reply or comeback during the course of members' debate. The challenge is to get an appropriate balance between the proper conduct of the meeting and consideration of each item of business (lawfulness, fair process, orderly conduct, duration etc.) and the participation of those with an interest in such business.

1.3 In terms of process and procedure, the consideration and determination of many planning matters (whether applications or other formal processes) is partly derived from statute (e.g. consultations, time limits etc.) and partly from the Council's own Constitution (e.g. delegations, call-in etc.). It is the Council's Constitution which determines public speaking rights – in theory, no public speaking rights could be accorded, but that would clearly be contrary to all reasonable expectations of public participation and fairness.

1.4 The Monitoring Officer's principal concern is that, whatever procedure is adopted, it should be clearly set out and be applied in a manner which is fair, consistent and balanced – apart from appeals and challenges to the substantive planning merits of a decision, the procedure followed, if tainted by bias or procedural impropriety, is also subject to scrutiny by Planning Inspectors (awards of costs) and the courts (judicial review).

1.5 It is recognised that public perception of the planning system is often unfavourable – and the Council is not unique or different in that respect from many others. Often this perception derives from an inherent conflict between the interests of those promoting or affected by development proposals and the balance applied by the Planning Committee when assessing such proposals against the development plan and relevant material considerations. Although quasi-judicial in terms of its role, the Planning Committee is not a court examining a point in forensic detail and is not adversarial in nature. It starts with the development plan and then considers whether relevant material considerations indicate a decision which differs from the development plan. Crucially, however unpalatable, the Planning Committee is expected to be impartial – it is not there to decide an application in accordance with what the applicant or objector or local community wants and this is often an uncomfortable position to be in.

2.0 **Paragraph 9.1 of the Protocol – Public Question Time**

2.1 The Protocol allows people to speak in relation to a planning application at Public Question Time – others then speak when the application itself is called for debate. Currently, PQT is used by many (lawfully in accordance with the Constitution) as an opportunity to speak on an application or to criticise the

Planning Committee or officers, with a question tagged on at the end for good measure. This presents a number of challenges, in that PQT:

(a) becomes lengthy thus increasing the duration of meetings;
(b) circumvents the deliberate choice to restrict the order and number of speakers on a planning application;
(c) creates an imbalance in favour, for the most part, of objectors; and
(d) becomes divorced from the consideration of the application itself.

2.2 The question is this – if additional speakers are to be allowed at PQT, what is the point of a limit when it comes to the application itself? Why not instead allow the Chairman to use his/her discretion - perhaps if an application is major or particularly contentious or the impacts clearly vary between objectors? It is always a difficult position for the Chairman to be in when it comes to the use of discretion and deciding whether to use it or not. However, the key outcome must be that the overall balance between the objectors and the applicant (or agent/support) is preserved, with more time given to the applicant to address the additional points made.

2.3 The Monitoring Officer has not seen PQT used at any of the other 7 planning committees she has advised previously in the way it is at Mid Devon. Of course, she recognises that this may be exactly how members wish it to operate and that it is a neat way to overcome the constraints of the rules regarding those who may speak on an application - but the issues highlighted above are of concern and could be addressed shifting the focus to the public speaking rights in section 9.2 of the Protocol. Indeed, many of the planning committees restrict questions to those relating to items other than planning applications and enforcement items.

2.4 If, however, the view is that PQT should continue to allow the means of additional speaking rights, the Monitoring Officer suggests that the focus should be brought back to clear questions which require a factual answer relevant to the planning merits and impacts of the particular application - and assist the Planning Committee in understanding those merits and impacts. Contrast this with the rhetorical style often used e.g. "*will the Planning Committee do the right thing and refuse the application?*" The Chairman could then allow the speaker to explain briefly the reasons behind the question asked.

2.5 Options in relation to paragraph 9.1 of the Protocol might therefore be:

(a) Leave it as it is;
(b) Change the wording to:

> "*Public Question Time is available at the beginning of the meeting for those present to ask questions on agenda items, other than planning applications, enforcement reports and tree preservation orders to which paragraph 9.2 applies. Unless the Chairman indicates otherwise, one question per speaker per agenda item will be allowed. The Chairman may then, after the question has been put, invite the speaker to explain briefly the reasons behind the question*."

(c) As (b) above, but deleting from the first sentence "*other than planning applications …… 9.2 applies.*"

2.6 The options above are put forward for discussion. Members may have other ideas or suggestions.

3.0 **Paragraph 9.2 of the Protocol – Ward Members and Objectors**

3.1 Members will recall that the Monitoring Officer had concerns about the application of this paragraph to Ward Members. Firstly, in relation to single member district wards, a Ward Member may not be able to attend Planning Committee. In most instances, this may be overcome by the Ward Member asking the Chairman to read out a statement in lieu of attending – it may be second-best, but at least the Ward Member's views will be put. However, if the Ward Member has a disclosable pecuniary interest ("DPI") in an application, they would not be able to speak, leaving the Ward without representation. In such circumstances, do members think that a neighbouring Ward Member should be allowed to step in at the request of the actual Ward Member? The risk of such an approach is that the neighbouring Ward Member may not be aware of the issues and/or might be perceived as the mouthpiece of actual Ward Member with a DPI – thus appearing to circumvent the prohibition on members with DPIs taking part.

3.2 Are there any other issues relating to single member wards which pose problems in terms of Ward Member representation at Planning Committee?

3.3 The Monitoring Officer would also invite the Standards Committee to consider the following circumstances:

(a) Is there an issue of fairness and balance in multi-member wards where each Ward Member wishes to speak, particularly if they all want to make the same point for or against an application? Should they not nominate one to speak, as objectors and applicants do?

(b) If a Ward Member, sitting on the Planning Committee, elects to speak as Ward Member in accordance with paragraph 9.2 prior to any debate, are they at risk of pre-determining the matter?

3.4 In some instances, a particular planning application may have material implications across ward boundaries – for example, the recent residential developments approved in Halberton Ward but adjacent to Uffculme village (Lower Culm Ward). Strictly speaking, the Ward Member is for Halberton. Should the adjacent Ward Members have the right to speak as well? And what about parish councils? Should this be spelled out or left to the discretion of the Chairman?

3.5 Turning to the question of how many objectors may speak, it is generally true that in most cases there are more objectors than there are supporters. However, part 1 of this report points out that a balanced and fair process is the core focus and this includes the applicant. For example, if five objectors chose to speak, but the applicant were limited to 3 minutes, this would hardly be balanced or fair and would probably not accord the applicant sufficient time

to address the points of objection. A general limit on speakers and that they nominate a spokesperson is common to many councils. It is recognised that, in some instances, it may be appropriate to depart from such a restriction, but if you allow up to a certain number, there may be cases where that would also prove unsatisfactory to some – and could still result in a potential imbalance in favour of the objectors. Rather, as discussed in part 4 of this report and in line with the general trend in other councils, the discretion of the Chairman should be emphasised. This has been captured in the suggestion at paragraph 3.5 below.

3.6 The Monitoring Officer puts forward the following change to the Protocol for discussion:

(a) Delete the following words from 9.2

"*(for clarity: only one person may speak in favour of an application and one person in objection).”*

(b) Add a new paragraph 9.3 as follows and renumber 9.3 to 9.4:

Only one objector and one supporter (applicant, agent, representative or supporter) may speak under paragraph 9.2. If the Chairman considers it reasonable and fair to do so, he/she may exercise his/her discretion to allow more than one objector or supporter to speak, but will ensure that a reasonable balance of time between objectors and supporters is maintained. Where the application would have demonstrable and material impacts on an adjacent parish and/or district ward, the Chairman may permit the parish council of that adjacent parish and/or the adjacent Ward Member to speak in addition to the rights of the parish council and Ward Member in whose area the application site is located.

4.0 Paragraph 9.3 (existing) of the Protocol – clarification, correction etc.

4.1 In the past few months, private individuals, councillors and a parish council have all raised concerns over why there is no right of reply or means to correct perceived errors of fact which arise during the course of members' (closed) debate on an application. Further, in December, Cllr Mrs Jenny Roach put forward the following motion to Full Council:

Motion 541 (Councillor Mrs J Roach – 30 November 2017)

*The Council has before it a **MOTION** submitted for the first time:*

This Council reconsiders the time and times that it allows ward members to speak at the planning committee. The present system gives many opportunities to speak but allows the local member only one opportunity. At the very least Council should give elected Councillors the opportunity to correct incorrect statements, something that exists within standing orders but not allowed at the planning committee. At the last planning committee the situation that exists at the moment prevented me as the elected Councillor for Silverton for pointing out that the Highways advice was inconsistent with previous advice given on the same site.

4.2 The Monitoring Officer can confirm that such right of reply has not been included in planning committee procedures at other authorities she has advised. For that reason, she has taken the opportunity to raise the issue with counterparts nationally to see whether they do anything different. These are the comments made:

- *We had exactly this issue at my Council. What we eventually adopted as a process whereby the Local Ward Councillor (if not sitting on Planning Committee) was given an extra minute to speak at the end of the debate to correct any inaccuracies. In the interest of fairness, if the local cllr took up this opportunity then all of the other public speakers were also given an extra minute to speak. However, if the Ward Cllr chose not to use the extra minute, the other public speakers were not given the extra minute*

- *We use the Chair's discretion to allow limited clarification from objector or applicant/agent on occasions, but ensure this does not develop into negotiation*

- *Rather than write something into the Constitution (procedure rules or public speaking protocol) it may be better to rely on the common law right of the chair of the committee to invite a member of the public or professional to speak again as part of the discussion and debate on what they have heard, to check facts or issues more broadly, taking the sense of the room. The Chair may need to be even handed if this is perceived to favour the "for" or "against" but provided it is an open question and a fixed time limit and fair and even handed it could be one proponent and one opponent, rather than everyone who has spoken.*

- *If it is a question of accuracy or something that appears pressing and/or important our Chair may adjourn the meeting for a few minutes for a planning officer to speak with the person concerned and then report back to committee. That seems to satisfy all – even if the vote does not go with them!*

- *I advise planning committees in two councils and, while the rules are not materially different, the two chairmen take markedly different approaches to allowing public speakers to contribute again. Neither approach is wrong, and each is pragmatic, based on the culture of the organisation and the chairman's instinctive understanding of the needs of the meeting*

- *We allow public speakers to respond with factual information if a question arises after the public speaking session is over. This only happens if we invite their contribution: we don't allow unsolicited interruptions from eh public gallery. It works well, has never developed into an undisciplined free for all, and has been useful in clarifying facts. Below is an extract from our public speaking protocol which governs it:*

  "At the Chairman's discretion, members of the Strategic Planning Board or Planning Committee may ask, through the Chairman, any of the speakers listed above to clarify an issue of fact after their

statement is concluded. Visiting Members, including Ward Councillors, may be questioned for 5 minutes, or longer at the Chairman's discretion. ***The Chairman may also ask that questions of fact are answered by any speakers during the Members' discussion to clarify matters.*** *Speakers will not be permitted to ask questions of the Strategic Planning Board or Planning Committee or other speaker or to interrupt the Members' discussion on an individual planning application. The Constitution (paragraph 58 of the General Procedure Rules) provides Chairmen with powers to ensure good order during meetings."*

4.3 These are some of the issues that need to be considered:

(a) Preservation of good order – no free for all
(b) The duration of meetings
(c) Fairness and balance
(d) The nature of any right of reply or clarification – who for, how long, in relation to what and, crucially when

4.4 In the comments received and mentioned above, significant emphasis is placed on the role of the Chairman in Planning Committee – a difficult role and not one which should be undermined. The current paragraph 9.3 recognises this – but it relates only to issues of clarification identified by the Planning Committee. Further, if every speaker took up a right of reply, this could easily add more than 5 minutes to the consideration of each application, often at the crucial moment when a decision is about to be taken – possibly leading to further debate and certainly requiring the re-statement of the proposal before taking a vote. Each meeting could easily be extended by up to an hour.

4.5 At a time when the length of meetings has been criticised, do members consider that such a right is justified and required? If a right is included, it will in all probability be taken up in most cases. If it is left to the discretion of the Chairman (perhaps if a hand is raised), the management of the meeting remains with the Chairman, recognising that this is quite a weighty responsibility. It is important that members support the Chairman in getting the balance right – pulling in different directions will not assist the Planning Committee or achieve better decision-making.

4.6 If members are of the view that they would like to see a limited right of reply, rather than allowing interruptions during the course of the debate or a minute to re-address the Planning Committee on all matters, do members feel that there should be a very brief (e.g. 30 seconds max) opportunity prior to a vote to correct any material errors of fact <u>which have arisen during the course of the debate</u> – so no opportunity for further expression of views on the application or the proposal, or to go over issues which were raised the first time (or could have been)?

4.7 The application of any new rights would need to be strictly managed to ensure that they are in line with what is agreed and stated in the Protocol – yet respecting the Chairman's inherent jurisdiction. Should any changes be introduced on trial basis for a fixed period to see how they work?

5.0 **Issues raised at Standards Committee last year**

5.1 Mr N Quinn made the following requests for changes to public speaking rights (minute 42 July 2017):

(a) That more objectors be allowed to speak – "*having a limit of only one person being able to speak in objection of an application appears biased towards the applicant since there is normally only one applicant but tend to be many objectors". He also asked "Could the system be changed where there was a disagreement on who should speak?* See parts 3 and 4 of this report.

(b) *Can this Committee make some provision to allow for the challenge of a verbal statement made during the consideration of an application?* See part 4 of this report.

(c) *Could the system be changed to offer more support for this who are obviously concerned but whose objection is invalid? Would this Committee consider a requirement to offer support to objectors to help them with their presentation and/or do it for them*? The Council, its officers and the Planning Committee need to remain impartial. It is recognised that applicants will have commissioned professional and expert input. That option is also available to objectors – and some do so. However, for the most part, objectors represent themselves.

6.0 **Next steps**

6.1 If members conclude that changes should be made to the Protocol, these should be recommendations to Full Council. However, as the procedures affect the Planning Committee's conduct of its meetings, the recommendation to Full Council should be sent via the Planning Committee on 21 March 2018 before going to Full Council on 25 April 2018. If Planning Committee disagrees with the recommendation, whilst it is open to the Standards Committee to insist on such changes being made, it would seem appropriate that the views of Planning Committee are referred back to the next meeting of the Standards Committee for it to decide on whether to revise its recommendation

Contact for more Information: Kathryn Tebbey, Legal Services Manager and Monitoring Officer, 01884 234210, monitoringofficer@middevon.gov.uk

Circulation of the Report: Cllr M Squires, Cllr R Chesterton, Cllr P Colthorpe, Cllr J Roach

List of Background Papers:
Protocol of Good Practice for Councillors Dealing with Planning Matters
Minutes of Standards Committee – 26 July 2017 and 18 October 2017

Appendix J – Protocol of Good Practice for Councillors Dealing in Planning Matters

Protocol of Good Practice for Councillors in Dealing with Planning Matters

1.0 Introduction: The Need For Guidance

1.1 This Guidance has been written to inform all parties of Mid Devon District Council's standards in its operation of the town and country planning system within the district. The Guidance applies to all Mid Devon District Councillors and staff involved in operating the planning system within Mid Devon

1.2 The successful operation of the planning system in Mid Devon depends upon the Council always acting in a way that is seen to be fair and impartial. This relies upon a shared understanding of the respective roles of Councillors and officers, and upon trust between them. The following quotation from the Local Government Association serves to illustrate the point:-

"The role of an elected member on a planning committee involves balancing representing the needs and interests of individual constituents and the community, with the need to maintain an ethic of impartial decision-making on what can be highly controversial proposals. It is this dual role which, can give rise to great tensions".

1.3 The Local Government Association has advised local planning authorities, such as Mid Devon, to set out clearly their practices and procedures on handling planning matters in a local code of good practice. Much of the guidance set out in this document is derived from the Probity in Planning issued by the Local Government Association in 2013. (Approved by Council as best practice – 31 August 2016) Councillors and staff should read this Guidance thoroughly and apply it consistently. Failure to do so without good reason could be taken into account in investigating allegations of breaches of the Members and Officers Codes of Conduct or maladministration.

This Guidance does not form part of the Members or Officers Codes of Conduct- it is a local protocol that compliments those Codes. However, there is an expectation that all members and officers who deal with planning matters in Mid Devon will comply with this Guidance and failure to do so could result in a referral to the Standards Committee (members) or disciplinary action (officers)- see paragraph 12

1.4 It is intended to review the Guidance regularly to keep it up-to-date and relevant. If there are points which are unclear or which need review, please contact the Monitoring Officer or the Deputy Monitoring Officer as soon as possible. They will be pleased to help you.

2.0 General Role and Conduct of Councillors and Officers

2.1 Councillors and officers have different, but complementary, roles. Both serve the public but Councillors are responsible to the electorate, while officers are responsible to the Council as a whole. A successful relationship between Councillors and officers can only be based upon mutual trust and

understanding of each other's position. This relationship, and the trust that underpins it, must not be abused or compromised.

2.2 Legislation emphasises the overriding requirement that the public are entitled to expect the highest standards of conduct and probity by all persons holding public office. While this Guidance deals primarily with planning applications, its principles apply equally to consideration of, Local Plans, Supplementary Planning Documents, Development Briefs, enforcement cases and all other planning matters.

2.3 An overriding principle is that when local authorities are dealing with planning matters, they should take into account **only material planning considerations.** Section 54A of the Town and Country Planning Act 1990 established a plan-led system whereby all planning applications are determined by primary reference to the Development Plan. Thus, if the Development Plan is material to the application, then the statutory requirement is that the application should be determined in accordance with the Development Plan unless material considerations indicate otherwise.

2.4 Officers involved in the processing and determination of Planning matters must also act in accordance with the Council's Procedure Rules, the Officer Code of Conduct and (for officers who are Chartered Town Planners) with the relevant sections of the Royal Town Planning Institute's Code of Professional Conduct. This Guidance supplements the provisions referred to above and provides further specific advice and guidance for Councillors and officers involved in planning matters. A key principle is that Councillors should represent their constituents as a body and vote in the interests of the District as a whole. Councillors should take account of all views expressed; they should not be biased towards any person, company, group or locality.

2.5 A further key principle is that local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless that opposition or support is based upon valid planning reasons which can be substantiated.

2.6 Councillors and officers should not accept gifts, nor should they accept hospitality. However, it is acknowledged that in certain circumstances the acceptance of a small degree of hospitality, (e.g. receipt of tea, coffee or other light refreshments) may be unavoidable without giving offence.

2.7 Officers must always act impartially. They should consider carefully whether any private work or interest that they wish to take up causes an actual or perceived conflict with the Council's interests.

2.8 Training will be provided for Councillors to assist them to carry out their planning roles. Only those members who have received training in planning matters will be allowed to sit as members or as substitutes for members on the planning committee.

3.0 Declaration and Registration of Interests

3.1 Councillors

The rules concerning the declaration of interests are contained in the Code Of Conduct. Councillors will need to make themselves familiar with the Code and understand the distinction between personal interests which must be

declared but which do not lead to the councillor having to withdraw and disclosable pecuniary interests that require withdrawal.

3.2 Officers

Where Council Officers become aware that they have a pecuniary, or non-pecuniary interest, in a planning application or other planning matter, they should declare their interest in writing to the Head of Planning and Regeneration immediately. This written record will then be retained on the relevant file. An officer declaring such as interest should subsequently play no part in processing an application, or considering the planning matter, nor in any decision making on it. In determining whether an interest should be declared, officers should use the same tests as Councillors. Examples of interest that should be declared are relatives or friends submitting applications; belonging to a church, club or other social group who has submitted an application; or living in proximity to a site that is at issue.

4.0 Development Applications Submitted By Councillors, Officers and The Council

4.1 Serving Councillors who are members of the planning committee and officers involved with the planning process should never act as agents for individuals (including a company, group or body) pursuing a planning matter. This includes not only pursuing development proposals, but also works under related legislation such as works to protected trees. If Councillors or officers (or close family or friends) submit a planning application to the Council, they should take no part in processing the application, nor take part in the decision-making. The Head of Planning and Regeneration should be informed of all such proposals as soon as they become aware that such an application has been submitted.

4.2 Proposals submitted by Councillors and officers should be reported to the Planning Committee as written reports and not dealt with by officers under delegated powers. They should never seek improperly to influence a decision about the matter.

4.3 Proposals for the Council's own development (or development involving the Council and another party) should be treated strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted (with the specific exception of local finance considerations that the Government advises are material planning considerations). It is important that the Council is seen to be treating all such applications on an equal footing with all other applications, as well as actually doing so.

5.0 Lobbying of and by Councillors, and Attendance at Public Meetings by Officers and Councillors

5.1 When Councillors undertake their constituency roles, it is inevitable that they will be subject to lobbying by interested parties and the public on planning matters and specific planning applications. When Councillors are lobbied, they need to exercise great care to maintain the Council's, and their own integrity, and to uphold the public perception of the town and country planning process.

5.2 Councillors who find themselves being lobbied (either in person, over the phone, or by post, fax or e-mail) should take active steps to explain that, whilst they can listen to what is said, it would prejudice their impartiality if they expressed a conclusive point of view or any fixed intention to vote one way or another.

5.3 Councillors involved in the determination of planning matters should listen to all points of view about planning proposals and are advised to refer persons who require planning or procedural advice to planning officers. Councillors should not indicate conclusive support or opposition to a proposal, or declare their voting intention before the meeting at which a decision is to be taken. Nor should Councillors advise other parties that permission will be granted or refused for a particular development or that land will, or will not, be allocated for development in a Local Plan. To do so without all relevant information and views, would be unfair, prejudicial and could make the decision open to challenge. Taking account of the need to make decisions impartially, Councillors must weigh up all the material considerations reported at each Committee meeting. They should not be biased towards any person, company, group or locality.

5.4 By law, the District Council has to seek comments from the Town/Parish Councils on planning applications and other planning matters so that their comments can be taken into account when the District Council makes planning decisions. Some District Councillors are also Town/Parish Councillors and they take part in Town/Parish Council debates about planning applications and other planning matters. Merely taking part in Town/Parish Council debates on planning matters does not automatically debar District Councillors from decision-making at the Planning Committee. However, *with few exceptions* Town/Parish Councils do not have professional planning advice or complete information on the application and other planning matters when they make their recommendations to the District Council. Therefore, District Councillors who are also Town/Parish Councillors should be careful not to state that they have reached a conclusive decision when they consider planning issues at their Town/Parish Council meeting. Nor should they declare to the Town/Parish Council what their future voting intention will be when the matter is considered at the District Council.

5.5 While Councillors involved in making decisions on planning applications will begin to form a view as more information and options become available, a decision can only be taken at the Planning Committee when all available information is to hand and has been considered. Any relevant papers (including letters, photographs, drawings, petitions etc) passed only to Councillors by applicants or objectors prior to a committee meeting should be notified to officers (preferably the case officer) and reported to the Committee.

5.6 Individual Councillors should reach their own conclusions on an application or other planning matter rather than follow the lead of another councillor. In this regard, any political group meetings prior to Committee meetings should not be used to decide how Councillors should vote on planning matters. Decisions can only be taken after full consideration of the officers' report and information and discussion at the Committee.

5.7 A Planning Committee member who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If the councillor responds to lobbying by deciding to go public in support of a particular outcome - or even campaign actively for it - it will be very difficult for that councillor to argue convincingly when the Committee comes to take its decision that he/she has carefully weighed the evidence and arguments presented at Committee. A councillor should avoid organising support for or against a planning application if he or she intends to participate in its determination at Committee. However, it should be possible for a councillor to say that they will make the views of the public known at the Committee whilst themselves waiting until the Committee and hearing all the evidence before making a final decision upon how to vote.

5.8 Councillors should not lobby other Councillors on proposals in a way that could lead to their failing to make an impartial judgement on the planning merits of these cases when making decisions at Council Committees. Nor should Councillors put undue pressure on officers for a particular recommendation nor do anything which compromises, or is likely to compromise the impartiality of officers

5.9 Officers who are wholly or partly involved in the processing or determination of planning matters should not attend public meetings in connection with pre-application development proposals or submitted planning applications unless their attendance has been agreed by their Head of Service. To do so could lead to allegations of prejudice or bias to a particular point of view. If put in such a position, officers should avoid prejudicing the Committee's decision.

5.10 When attending public meetings, Councillors should take great care to maintain their impartial role, listen to all the points of view expressed by the speakers and public and not state a conclusive decision on any pre-application proposals and submitted planning applications.

6.0 **Discussions With Applicants**

6.1 It is generally recognised that discussions between potential applicants or applicants and the Council prior to the submission of an application can be of considerable benefit to both parties. Discussions can take place for a variety of reasons, for example to establish whether an application can be improved in design, or to overcome planning objections or to meet relevant neighbour concerns. Such discussions will normally take place at District Council offices.

6.2 Councillors involved in any discussions should maintain an independent position and avoid committing themselves to either supporting or opposing the application at committee. Planning committee members should not attend meetings on major applications in the absence of a planning officer. If a Councillor feels that they are being put under pressure to support or oppose an application they should suggest to the applicant/objector that they put their views to the planning officer. Planning officers should always make clear at the outset of discussions that they cannot bind the Council to make a particular decision, and that any views expressed are their professional opinions only based upon the information available at that time. Advice given by planning officers will aim to be consistent and based upon the

Development Plan (Local Plan) and other material considerations. Senior officers will make every effort to ensure that there are no significant differences of interpretation of planning policies between planning officers.

6.3 Planning officers will ensure that their advice and reports, in the sense that they should not favour any particular applicant or objector, are impartial. This is because a consequent report must not be seen as advocacy for a particular point of view. A written note should be made of pre-application discussions and important telephone conversations and placed on the file. Officers will note the involvement of Councillors in such discussions as a written file record. A follow-up letter should be sent, particularly when material has been left with the Council by the applicant or agent for comment.

6.4 Councillors who also serve on Town & Parish Councils should make clear their separate roles in each Council regarding Mid Devon District planning policies. The councillor and other interested parties should be clear at all times when the Councillors are acting as a Town or Parish Councillor, and when they are acting in their role as a District Councillor.

7.0 Reports By Officers To Committees

7.1 Many planning applications are determined by the Head of Planning and Regeneration. These are the smaller and less controversial applications. Where decisions on applications fall to be made by the Planning Committee they will be the subject of full written reports.

7.2 Reports on planning matters aim to be accurate and will contain a description of the development proposed in the application (including dimensions and areas). They will refer to the provisions of the Development Plan and all other planning considerations including a full description of the site, any relevant planning history, and the substance of objections and other views received. All reports requiring a decision will have a written recommendation and will normally be the subject of an oral presentation to committee before the debate begins. Other oral reporting (other than to update an existing report) will only be used on rare occasions and carefully minuted when this does occur. All reports will contain a technical appraisal that clearly justifies the stated recommendation. All reasons for refusal and conditions to be attached to permissions must be clear and unambiguous.

7.3 Any additional information which is material to a planning decision, and which is received after publication of agendas, will be reported to the meeting provided that such information is received by the Head of Planning and Regeneration not less than 24 hours prior to the commencement of the committee at which the matter will be considered. Late information will only be reported to Planning Committee at the discretion of the Chairman. Applicants and objectors should be aware that the provision of late information may lead to a matter being deferred to a later committee so the information can be properly assessed by members by incorporating it into the written report.

8.0 The Decision Making Process and Decisions Contrary To Officer Recommendations and/or The Development Plan

8.1 The law requires that, where the Development Plan is relevant, planning decisions must be made in accordance with it unless other material considerations indicate otherwise (Section 54A of the Town and Country

Planning Act 1990). The relevant Development Plan, and other material considerations, will be identified in officers' reports. Material considerations will vary from case to case. In arriving at a decision, it is a matter of judgement for the Planning Committee as to the weight to be attached to the various material considerations.

8.2 In discussing, and determining a planning application or other planning matter, Councillors should confine themselves to the planning merits of the case. The reasons for making a final decision should be clear, convincing and supported by material considerations and the planning merits.

8.3 Councillors should consider the advice of the officers but ultimately they are free to vote as they choose. If Councillors wish to determine an application contrary to officer advice, or to impose additional conditions to a permission, an officer should explain the implications of such action. The Councillors' grounds for any contrary determination, or for wishing to impose additional conditions, must be clearly stated at the time the propositions are made and votes taken at the meeting. The personal circumstances of an applicant will rarely provide such grounds.

8.4 If a resolution is passed which is contrary to a recommendation of the Head of Planning and Regeneration whether for approval or refusal, planning reasons should be given. A record of the Committee's reasons will be made, a copy placed on the application file and recorded in the minutes. If the report of the Head of Planning and Regeneration recommends approval of a departure from the Development Plan, the full justification for this recommended departure should be included in the report.

If Members are minded to refuse an application which is contrary to a recommendation of the Head of Planning and Regeneration, the application should be deferred to allow for an officer report to be received setting out the implications for the proposed reasons for refusal. When deferring the application, Members should indicate the decision they are minded to make and the reasons why.

8.5 Senior planning officers (and legal officers as necessary) should attend meetings of the Planning Committee to ensure that procedures are properly followed and planning issues properly addressed.

8.6 It is important that Councillors who determine planning applications do so only after having considered all material planning considerations. They must take all relevant matters into account and they must disregard irrelevant considerations. It is important that they are seen to do this. For this reason, it is important that Councillors only participate in the debate and vote on a planning application if they have been present throughout the whole of the officers' presentation and the subsequent committee debate. Councillors who arrive at a meeting part-way through consideration of an application or who are absent from the meeting for any part of that consideration may not be aware of all the relevant considerations. In any event, their participation can be seen to be unfair – it could amount to maladministration as well as giving rise to a legal challenge that the decision-making process was flawed.

9.0 Procedure for speaking at Committee

9.1 Public Question Time is available at the beginning of the meeting for those present to ask questions of the committee, this allows an opportunity for those additional people who wish to speak on an application.

9.2 A clear procedure for speaking at committee meetings was approved by Council on 31 August 2016, for applications reserved for individual consideration, the Chairman will call those who have indicated a wish to speak in the following order: officer, objector (1), applicant/agent/supporter (1), parish council (3 minutes each) and ward member(s) (5 minutes each). (for clarity: only one person may speak in favour of an application and one person in objection).

9.3 Questioning of speakers for reasons of clarification be allowed through the Chairman and apply to the applicant and objector only.

10.0 Site Visits By Councillors

The need for site visits

10.1 It is important for the Planning Committee to have a clear rationale for undertaking organised site visits in connection with planning applications and that any visits are conducted properly and consistently. The purpose of a site visit is for Councillors to gain knowledge of the development proposal, the application site and its surroundings. A decision by a Planning Committee to carry out a site inspection should normally only be taken where the impact of the proposed development is difficult to assess from the plans and any supporting information submitted by the applicant, or additional material provided by officers. Site visits cause delay and additional costs, and should only be carried out where Councillors believe a site visit is necessary to make such an assessment. Reasons should be given for the decision to make a site visit.

Who visits?

10.2 Site visits are usually undertaken by the Planning Working Group consisting of the Chair and Vice Chair of the Planning Committee together with 6 members of the Planning Committee. Ward Members, one Parish Council representative, one applicant and one representative from the objectors to the application will be invited to attend the Planning Working Group. The Committee as a whole may undertake a site visit which if possible should be scheduled to take place in advance of the Planning Committee meeting at which the application will be discussed. If the site visit is open to all members of the committee then those members who are not able to attend should carefully consider whether they will be in receipt of <u>all</u> relevant facts when the matter comes back before Committee for determination. Technical/professional consultees may exceptionally be asked to attend a site visit where it is anticipated that their presence on site will assist the Working Group or Committee gain knowledge of the proposal. If technical/professional consultees are requested to attend then reasons for that decision should be recorded.

Procedure on Site

10.3 A detailed explanation of the proposals, and a summary of the officers' report and recommendations, will be made by the planning officer. Councillors will then be given the opportunity to ask questions and to view the site and surroundings from all relevant vantage points.

10.4 Site visits will normally involve Planning Committee members and officers, except for any consultee whose attendance has been specifically requested by the Planning Committee (e.g. the County Highway Authority or an Environmental Health Officer) to assist their understanding of the proposals.

10.5 Councillors should keep together during site visits and not allow themselves to be addressed separately. No decisions are made at site visits although observations may be made to the Committee. An officer will be present to take a written note of the key planning issues and information obtained from the site visit, to be reported to the subsequent meeting of the Planning Committee.

10.6 The Head of Planning and Regeneration and the Member Services Manager will ensure that all correspondence in relation to site visits clearly identifies the purpose of a site inspection together with the format and conduct of the inspection, so that applicants/agents and interested parties are aware of it.

Informal Site Visits

10.7 There are advantages in Councillors making their own individual site visits to gain knowledge of the development proposal, the application site and its surroundings. In doing so, Councillors should observe sites from public vantage points (highways, rights of way or public open space) and should not enter onto private land without permission. Whilst on individual site visits, Councillors should as far as possible avoid engaging in discussion with applicants, objectors or other interested parties. This can lead to accusations of partiality if the views of one party only are heard. Where application sites are not visible without entering onto private land – for example, rear extensions or country houses in larger plots – officers will make an additional effort to provide appropriate visual information at Committee.

11.0 Review of Planning Decisions

11.1 Arrangements will be made for Councillors to visit a sample of implemented planning permissions annually, so that a regular review of the quality of planning decisions can be undertaken. This will include examples from a broad range of categories such as major and minor development, permitted departures, upheld appeals etc.

11.2 The outcome of this review will be reported to the Planning Committee which may lead to identification of possible amendments to existing policies or practice.

12.0 Complaints and Record Keeping

12.1 The Council has a complaints procedure, which can be used by any party to the planning process (applicants, objectors or others) to complain about the way in which a matter has been handled. The complaints procedure is not intended to reopen the planning decision. Copies of a leaflet on the complaints procedure are available on request.

12.2 In order to ensure that planning procedures are undertaken properly and that any complaints can be fully investigated, record keeping will be complete and accurate. Every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings, significant telephone and other conversations and any declarations of interest by Councillors. The same principles of good record keeping will be observed in relation to all enforcement and Development Plan matters. Monitoring of record keeping will be undertaken regularly by the senior planning staff.

12.3 Where a planning application is dealt with under the delegated procedure a complete record will be kept of the planning considerations taken into account in determining the application for 3 years after the decision. This may be electronically

13.0 Contravention of This Guidance

13.1 Where there is contravention of this Guidance by any Councillor the matter should be referred to the Monitoring Officer who will report the matter to the Standards Committee.

13.2 Where any breach of this Code constitutes misconduct by an officer, then it is to be dealt with in accordance with the Council's disciplinary procedure.

House of Commons

Communities and Local Government Committee

Effectiveness of local authority overview and scrutiny committees

First Report of Session 2017–19

Report, together with formal minutes relating to the report

Ordered by the House of Commons to be printed 11 December 2017

HC 369
Published on 15 December 2017
by authority of the House of Commons

Communities and Local Government Committee

The Communities and Local Government Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Communities and Local Government.

Current membership

Mr Clive Betts MP *(Labour, Sheffield South East)* (Chair)

Mike Amesbury MP *(Labour, Weaver Vale)*

Bob Blackman MP *(Conservative, Harrow East)*

Helen Hayes MP *(Labour, Dulwich and West Norwood)*

Kevin Hollinrake MP *(Conservative, Thirsk and Malton)*

Andrew Lewer MP *(Conservative, Northampton South)*

Fiona Onasanya MP *(Labour, Peterborough)*

Mr Mark Prisk MP *(Conservative, Hertford and Stortford)*

Mary Robinson MP *(Conservative, Cheadle)*

Liz Twist MP *(Labour, Blaydon)*

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/clg and in print by Order of the House.

Evidence relating to this report is published on the inquiry publications page of the Committee's website.

Committee staff

The current staff of the Committee are Edward Beale (Clerk), Jenny Burch (Second Clerk), Craig Bowdery, Tamsin Maddock, Nick Taylor (Committee Specialists), Tony Catinella (Senior Committee Assistant), Eldon Gallagher (Committee Support Assistant), Gary Calder and Oliver Florence (Media Officers).

Contacts

All correspondence should be addressed to the Clerk of the Communities and Local Government Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 4972; the Committee's email address is clgcom@parliament.uk.

Contents

Summary

Overview and scrutiny committees were introduced by the Local Government Act 2000 and were tasked with acting as a counterweight to the increased centralised power of the new executive arrangements. Whilst some authorities were not covered by the changes brought in by the Act, the Leader and Cabinet system is the predominant model of governance in English local authorities. However, since the Localism Act 2011, councils have had the option of reverting to the committee system of governance. Some authorities that have chosen to do so have expressed dissatisfaction with the new executive arrangements, including concern at the limited effectiveness of scrutiny. Noting these concerns, and that there has not been a comprehensive assessment of how scrutiny committees operate, we decided to conduct this inquiry. The terms of reference placed an emphasis on considering factors such as the ability of committees to hold decision-makers to account, the impact of party politics on scrutiny, resourcing of committees and the ability of council scrutiny committees to have oversight of services delivered by external organisations.

We have found that the most significant factor in determining whether or not scrutiny committees are effective is the organisational culture of a particular council. Having a positive culture where it is universally recognised that scrutiny can play a productive part in the decision-making process is vital and such an approach is common in all of the examples of effective scrutiny that we identified. Senior councillors from both the administration and the opposition, and senior council officers, have a responsibility to set the tone and create an environment that welcomes constructive challenge and democratic accountability. When this does not happen and individuals seek to marginalise scrutiny, there is a risk of damaging the council's reputation, and missing opportunities to use scrutiny to improve service outcomes. In extreme cases, ineffective scrutiny can contribute to severe service failures.

Our inquiry has identified a number of ways that establishing a positive culture can be made easier. For example, in many authorities, there is no parity of esteem between the executive and scrutiny functions, with a common perception among both members and officers being that the former is more important than the latter. We argue that this relationship should be more balanced and that in order to do so, scrutiny should have a greater independence from the executive. One way that this can be achieved is to change the lines of accountability, with scrutiny committees reporting to Full Council meetings, rather than the executive. We also consider how scrutiny committee chairs might have greater independence in order to dispel any suggestion that they are influenced by partisan motivations. Whilst we believe that there are many effective and impartial scrutiny chairs working across the country, we are concerned that how chairs are appointed can have the potential to contribute to lessening the independence and legitimacy of the scrutiny process.

Organisational culture also impacts upon another important aspect of effective scrutiny: access of committees to the information they need to carry out their work. We heard about committees submitting Freedom of Information requests to their own authorities and of officers seeking to withhold information to blunt scrutiny's effectiveness. We believe that there is no justification for such practices, that doing so is in conflict with the

principles of democratic accountability, and only serves to prevent scrutiny committees from contributing to service improvement. We have particular concerns regarding the overzealous classification of information as being commercially sensitive.

We also considered the provision of staff support to committees. Whilst ensuring that sufficient resources are in place is of course important, we note that if there is a culture within the council of directors not valuing scrutiny, then focussing on staff numbers will not have an impact. We are concerned that in too many authorities, supporting the executive is the over-riding priority, despite the fact that in a time of limited resources, scrutiny's role is more important than ever. We also consider the skills needed to support scrutiny committees, and note that many officers combine their support of scrutiny with other functions such as clerking committees or executive support. It is apparent that there are many officers working in scrutiny that have the required skills, and some are able to combine them with the different skill set required to be efficient and accurate committee clerks. However, we heard too many examples of officers working on scrutiny who did not possess the necessary skills. Decisions relating to the resourcing of scrutiny often reflect the profile that the function has within an authority. The Localism Act 2011 created a requirement for all upper tier authorities to create a statutory role of designated lead scrutiny officer to promote scrutiny across the organisation. We have found that the statutory scrutiny officer role has proven to be largely ineffective as the profile of the role does not remotely reflect the importance of other local authority statutory roles. We believe that the statutory scrutiny officer position needs to be significantly strengthened and should be a requirement for all authorities.

We believe that scrutiny committees are ideally placed and have a democratic mandate to review any public services in their area. However, we have found that there can sometimes be a conflict between commercial and democratic interests, with commercial providers not always recognising that they have entered into a contract with a democratic organisation with a necessity for public oversight. We believe that scrutiny's powers in this area need to be strengthened to at least match the powers it has to scrutinise local health bodies. We also call on councils to consider at what point to involve scrutiny when it is conducting a major procurement exercise. It is imperative that council executives involve scrutiny at a time when contracts are still being developed, so that all parties understand that the service will still have democratic oversight despite being delivered by a commercial entity. We also heard about the public oversight of Local Economic Partnerships (LEPs), and have significant concerns that public scrutiny of LEPs seems to be the exception rather than rule. Therefore, we recommend that upper tier councils, and combined authorities where appropriate, should be able to monitor the performance and effectiveness of LEPs through their scrutiny committees.

We recognise that the mayoral combined authorities are in their infancy, but given the significance of organisational culture in effective scrutiny, it is important that we included them in our inquiry to ensure that the correct tone is set from the outset. We are therefore concerned by the evidence we heard about an apparent secondary role for scrutiny in combined authorities. Mayors are responsible for delivering services and improvements for millions of residents, but oversight of their performance is currently hindered by limited resources. We therefore call on the Government to ensure that funding is available for this purpose. We also argue that when agreeing further

devolution deals and creating executive mayors, the Government must make it clear that scrutiny is a fundamental part of any deal and must be adequately resourced and supported.

Introduction

1. This inquiry was initially launched in January 2017 by our predecessor committee. However, the dissolution of Parliament and the General Election prevented any oral evidence sessions from taking place. Following the Committee's reconstitution, we considered carefully which issues we should initially pursue in our work and how best we could build on the work of our predecessors. It was clear to us from the level of interest and concern expressed in the evidence received that the effectiveness of overview and scrutiny committees in local authorities was something that we should investigate as an immediate priority. We therefore relaunched the inquiry in September 2017 and undertook to take account of the wealth of written evidence provided by councils, officers, members and stakeholders prior to the election.

2. We are extremely grateful to everyone who contributed to our inquiry. Scrutiny varies significantly across the country, and the level of interest in the inquiry has enabled us to hear from a wide range of authorities and form a representative picture of local authority scrutiny in England. To assist us in forming this picture, and to ensure we spoke with as many authorities as possible, we supplemented our oral evidence sessions with a less formal workshop event in October 2017. Our workshop was attended by over 45 councillors and officers working in scrutiny across the country and we thank them all for their attendance and contributions.

3. This report will consider why scrutiny is important and what the role of scrutiny committees should be in local authorities. We do not believe that certain models should be imposed on councils, but we do believe that there should be an organisational culture that welcomes constructive challenge and has a common recognition of the value of scrutiny, both in terms of policy development and oversight of services. In order to achieve this, we believe that scrutiny committees must be independent and able to form their own conclusions based on robust and reliable data, and that decision-makers should not seek to obstruct their role by withholding information. We also consider the role of the public in local scrutiny, both in terms of their participation in committees' work and in how scrutiny committees can represent their interests to service providers, even when those providers are external commercial organisations. The final chapter of this report considers the role of scrutiny in the recently created mayoral combined authorities in an attempt to help these organisations to establish positive working practices as early as possible. Throughout this report we call on the Government to revise the guidance on scrutiny that it issues local authorities. For clarity, the specific points that we believe should be covered by such a revision are listed below.

Proposed revisions to Government guidance on scrutiny committees

- That overview and scrutiny committees should report to an authority's Full Council meeting rather than to the executive, mirroring the relationship between Select Committees and Parliament.
- That scrutiny committees and the executive must be distinct and that executive councillors should not participate in scrutiny other than as witnesses, even if external partners are being scrutinised.
- That councillors working on scrutiny committees should have access to financial and performance data held by an authority, and that this access should not be restricted for reasons of commercial sensitivity.
- That scrutiny committees should be supported by officers that are able to operate with independence and offer impartial advice to committees. There should be a greater parity of esteem between scrutiny and the executive, and committees should have the same access to the expertise and time of senior officers and the chief executive as their cabinet counterparts.
- That members of the public and service users have a fundamental role in the scrutiny process and that their participation should be encouraged and facilitated by councils.

1 The role of scrutiny

4. Before considering whether scrutiny committees are working effectively, it is important to consider what their role is and what effective scrutiny looks like. Local authorities are currently facing a number of challenges and competing demands, from an ageing population to budget shortfalls to promoting local growth in an often-hostile economic environment. It is therefore imperative that all expenditure is considered carefully and its impact is measured. However, measuring the impact of overview and scrutiny committees can be a significant challenge. Whilst identifying 'good' scrutiny is not always possible, the consequences of ineffectual scrutiny can be extreme and very apparent.

5. The Francis Report[1] was published in 2013 following failings at the Mid Staffordshire NHS Trust. Whilst the failings were not attributed to local committees, the report was critical of local authority health scrutiny, highlighting a lack of understanding and grip on local healthcare issues by the members, little real interrogation and an over-willingness to accept explanations. Similarly, the Casey Report[2] in 2015 on Rotherham Council cited particular failings in Rotherham's approach to scrutiny, noting that "Inspectors saw regular reports to the Cabinet and Scrutiny committees, but not the effective challenge we would expect from elected Members."[3] The report also found that scrutiny had been undermined by an organisational culture that did not value scrutiny and that committees were not able to access the information they needed to hold the executive to account. Mid Staffordshire and Rotherham are two of the most high-profile failures of overview and scrutiny committees, but the issues raised in the two reports can easily occur in other local authorities, and we consider some of them in this report.

6. Overview and scrutiny committees were created by the Local Government Act 2000 and were designed to off-set increased centralised power established by the new executive arrangements. The Act replaced the committee system whereby decisions were made either by meetings of the full council or in cross-party committees which managed council services. For proponents of the committee system, one of its strengths was that all members had an active role in decision-making. However, as Professor Colin Copus from De Montfort University told us, it was "an illusion of power. If you put your hands up at the end of a meeting you feel, "I am powerful. I am making something happen". I am sure I am not giving any trade secrets away, but most of those decisions are made two nights before in the majority party group meetings."[4] With the exception of councils with a population under 85,000, the 2000 Act created a requirement for authorities to establish an executive of a leader, or elected mayor, and cabinet members.[5] Mirroring the relationship between Parliament and government, the Act also required the non-executive members of councils to scrutinise the executive by creating at least one overview and scrutiny committee.

1 Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry, HC947, February 2013
2 Report of Inspection of Rotherham Metropolitan Borough Council, HC1050, February 2015
3 Report of Inspection of Rotherham Metropolitan Borough Council, HC1050, February 2015 p65
4 Q38
5 There was also initially an option for Mayor and council manager executive, but this was later repealed. Smaller authorities were able to retain the committee system, as long as there was at least one overview and scrutiny committee. The Localism Act 2011 extended this option to all authorities, but the requirement of a designated scrutiny committee was removed.

However, beyond some statutory requirements (for example designating committees to scrutinise health bodies, crime and disorder strategies, and flood risk management), how councils deliver scrutiny is a matter of local discretion.

7. Some councils have multiple committees that broadly align with departmental functions, while others have fewer formal committees but make greater use of time-limited task and finish groups. Similarly, as the Centre for Public Scrutiny (CfPS) identifies, different councils use different labels for their scrutiny work, including "select committees, policy development committees, or a number of other names. The use of different terminology can prove confusing [but] This is probably a good thing–it reflects the fact that scrutiny has a different role in different places, which reflects local need rather than arbitrary national standards".[6] Throughout this report references to 'scrutiny' and 'scrutiny committees' mean all committees and work associated with the overview and scrutiny committees required by the Local Government Act 2000.

8. Whilst acknowledging that scrutiny fulfils different roles in different areas, we believe that at its best, scrutiny holds executives to account, monitors decisions affecting local residents and contributes to the formation of policy. We therefore support CfPS's four principles of good scrutiny, in that it:

- Provides a constructive "critical friend" challenge;
- Amplifies the voices and concerns of the public;
- Is led by independent people who take responsibility for their role;
- Drives improvement in public services.[7]

9. We believe that as well as reacting to decisions and proposals from local decision makers, effective scrutiny can also be proactive and help to set a policy agenda. For example, Birmingham City Council's Education and Vulnerable Children Overview and Scrutiny Committee carried out a review of the council's work to tackle child sexual exploitation. As a result of the Committee's work, the executive responded and addressed the issues raised:

> The committee heard much harrowing evidence but produced a hard hitting report containing 19 strong recommendations. As a result of the report extra resources were allocated to the team co-ordinating CSE on behalf of the city. The council also undertook to strengthen its approach to safeguarding children by reviewing its statement of licensing and being more pro-active in using its executive powers of "the protection of children from harm".[8]

10. Pre-decision scrutiny is also a vital part of a committee's role. By commenting on and contributing to a decision before it has been made, scrutiny committees are able to offer executives the benefit of their ability to focus on an issue in greater depth over a longer period of time. For example, the London Borough of Merton's Children and Young People Overview and Scrutiny Panel considered a site proposal for a new secondary school. As a

6 Centre for Public Scrutiny (OSG098) para 6
7 Centre for Public Scrutiny (OSG098) para 38
8 Birmingham City Council (OSG087) part 3

result of its work, the Panel was "able to provide a detailed reference to Cabinet focusing on how to optimise use of the selected site and mitigate any negative impact", helping the Cabinet to make a more informed and considered decision.[9]

11. The role of scrutiny has evolved since its inception. The 2000 Act empowers committees to review decisions made by the executive and to make reports and recommendations for the executive's consideration. In the seventeen years since, the way in which scrutiny committees perform their function has understandably changed. One such way has been an increase in scrutiny of external bodies, most notably health bodies. Councils have delivered services through increasingly varied partnership arrangements - including contracting to private companies, creating arms-length bodies or working with other public bodies - and scrutiny has responded by adjusting how it scrutinises the issues that matter to local residents. The Department for Communities and Local Government (DCLG) highlights that "To support local councils adopting good practice, the Department for Communities and Local Government issues statutory guidance, to which councils must have regard when developing their localist scrutiny arrangements."[10] This guidance was last issued in 2006[11] and predates several legislative changes as well as changes to ways of working such as an increasing focus on external scrutiny and public participation (both discussed later in this report). When we asked Marcus Jones MP, Minister for Local Government, about the guidance, he told us:

> It has been some time since we looked at the guidance on scrutiny … The initial evidence that you have taken indicates that in many places scrutiny is working well, but there are also instances in which overview and scrutiny committees could improve. It is therefore important that once we see the outcome of this Committee in the report that you provide, I take those recommendations very seriously. If there are areas where it is sensible and pertinent to update the guidance, we will certainly consider that.[12]

12. We welcome the Minister's willingness to consider our recommendations carefully. We believe that there are many instances across the country where scrutiny committees are operating effectively and acting as a voice for their communities, however there remains room for improvement for too many and we believe that updated guidance from the Department is long overdue. ***We therefore recommend that the guidance issued to councils by DCLG on overview and scrutiny committees is revised and reissued to take account of scrutiny's evolving role.***

13. Throughout our investigations, we heard about a range of positive examples of effective scrutiny, some of which we have referenced in this report. ***We call on the Local Government Association to consider how it can best provide a mechanism for the sharing of innovation and best practice across the scrutiny sector to enable committees to learn from one another. We recognise that how scrutiny committees operate is a matter of local discretion, but urge local authorities to take note of the findings of this report and consider their approach.***

9 London Borough of Merton (OSG037) page 12

10 Department for Communities and Local Government (OSG122) para 5

11 Department for Communities and Local Government, *New council constitutions: guidance to English Authorities* (May 2006)

12 Q111

2 Party politics and organisational culture

Organisational culture

14. As discussed above, councils across the country deliver scrutiny in a wide range of different ways. We are of the view that whichever model of scrutiny a council adopts it is far less important than the culture of an organisation. Council leaders, both politicians and officials, have a responsibility to set the tone and create an environment that welcomes constructive challenge and democratic accountability. Jacqui McKinlay from the CfPS explained to us:

> If you have buy-in to scrutiny at the top of the organisation—that is the leader, the cabinet and the chief executive—it tends to follow that scrutiny is resourced … However, if you do not get buy-in to a scrutiny approach—that openness and transparency and the willingness to be questioned, seeing the value of scrutiny—it tends to follow that it is not resourced as well and you do not get that parity of esteem … If your leadership is closed to that sort of challenge, it does not just affect scrutiny; it affects a lot of how the organisation is run.[13]

15. The Minister for Local Government echoed this view when he told us:

> I think that where scrutiny is done properly in local authorities that have the right culture, and where scrutiny is taken seriously, it can perform an excellent function in relation to how the executive works by holding them to account and putting them in a position where they probably make decisions that are more in the interests of the people they represent and local residents than they otherwise might be.[14]

16. All of the examples of effective scrutiny that we have heard about have in common an organisational culture whereby the inherent value of the scrutiny process is recognised and supported. Senior councillors and officers that seek to side-line scrutiny can therefore miss out on the positive contributions that scrutiny is capable of, and put at risk a vital assurance framework for service delivery. The Nottingham City Council Overview and Scrutiny Committee explains that:

> there can be a perception that overview and scrutiny is an 'add on' rather than an integral part of the organisation's governance arrangements… [with the executive arrangements] there can be a tendency for council officers to feel that they are primarily accountable to one councillor which risks overlooking the important role of other councillors, including those engaged in scrutiny activities, within the decision making structure. As a result the function is not always afforded the prominence it deserves and opportunities to make the most of its potential can be missed.[15]

13 Q15
14 Q109
15 Nottingham City Council Overview and Scrutiny Committee (OSG024) para 1.3

The relationship between scrutiny and the executive

17. We are concerned that the relationship between scrutiny and the executive has a tendency to become too unbalanced. With decision-making powers centralised in the executive, scrutiny can be seen as the less-important branch of a council's structure. Professor Copus highlighted that there is no parity of esteem in the eyes of many councillors:

> One of the things I have noted in all of the work I have done on scrutiny since 2002 is I have only ever once come across a councillor who said, "If you offered me a place in the cabinet, I would reject it. I want to stay a chair of scrutiny". I am sure there are more than the one I have met, but that is an indication.[16]

18. Professor Copus argued that this imbalance in esteem is also reflected in council officers:

> I found many officers will know the council leader's name and the name of the portfolio-holder for their particular area of interest, but they might not know the scrutiny chairperson's name. Once you start to see that, you see the whole thing begin to crumble.[17]

19. If neither councillors or officers explicitly recognise the importance of the scrutiny function, then it cannot be effective. Part of the challenge lies in identifying what effective scrutiny actually looks like, as discussed earlier in this report, as councils are more likely to allocate diminishing resources to functions where there can be a quantifiable impact. **However, all responsible council leaderships should recognise the potential added value that scrutiny can bring, and heed the lessons of high profile failures of scrutiny such as those in Mid Staffordshire and Rotherham.**

20. Council leaderships have a responsibility to foster an environment that welcomes constructive challenge and debate. However, opposition parties also have a key role to play in creating a positive organisational culture. We agree with the Minister who told us that:

> At the end of the day, if an opposition takes a reasonable view on these things and treats the executive with respect, but challenges them when challenge is necessary, rather than just for the sake of challenge, I think you can get to a situation where you have—not much of an agreement politically, probably, but there could be mutual respect. That would serve the scrutiny function well.[18]

The role of Full Council

21. Parliamentary select committees have a well-established independence from the executive in that they do not report to the Government, but to the House of Commons as a whole. In contrast, it is less clear where local authority scrutiny committees report to, with most reporting to the executive that they are charged with scrutinising. The Institute

16 Q4
17 Q15
18 Q137

of Local Government Studies (INLOGOV) at the University of Birmingham argues that it should be made clear in guidance that scrutiny reports and belongs to Full Council, not the executive:

> As of now, most scrutiny committees report to the Executive–with only some inviting the scrutiny chair and members who have written a report to present it. A few present reports to the full council. When they do so, this has the opportunity to create a relevant and interesting debate on a matter of local concern which has been investigated in depth by a group of councillors. Such a debate enables other councillors to see what scrutiny has done, and to add their own experiences. Councils should be required to have Reports from scrutiny on all council agendas.[19]

22. Cllr Mary Evans told us that she welcomed the suggestion that scrutiny should be accountable to Full Council.[20] We also heard from Cllr John Cotton from Birmingham City Council, whose scrutiny committees do report to Full Council. He told us that:

> speaking from Birmingham's perspective, due to the fact that everything reports through to full council we have been able to preserve some of that independence of approach, but from the conversations I have been having that certainly needs to be echoed in other authorities.[21]

23. ***To reflect scrutiny's independent voice and role as a voice for the community, we believe that scrutiny committees should report to Full Council rather than the executive and call on the Government to make this clear in revised and reissued guidance. When scrutiny committees publish formal recommendations and conclusions, these should be considered by a meeting of the Full Council, with the executive response reported to a subsequent Full Council within two months.***

The impact of party politics

24. Scrutiny committees must have an independent voice and be able to make evidence-based conclusions while avoiding political point-scoring. In order to do this, they need to be sufficiently resourced, have access to information (both discussed in greater detail below) and operate in an apolitical, impartial way. Committees of local councillors will always be aware of party politics, but sometimes this can have too great an influence and act as a barrier to effective scrutiny. Jacqui McKinlay from the CfPS told us that "We often say that local government scrutiny is a perfect system until you add politics to it. In our last survey, 75% of people say that party politics affects scrutiny."[22] Professor Copus also recognised the party-political dynamic to scrutiny when he described to us:

> members from opposing political parties, one seeing their role as using scrutiny to attack the executive and the other seeing it as a forum in which to defend the executive. If that is the interaction, you are not going to get executive accountability … In terms of a lot of the issues that are problematic for overview and scrutiny, the interplay of party politics is often at the

19 Institute of Local Government Studies, The University of Birmingham (OSG053) page 6
20 Q68
21 Q68
22 Q12

> heart of it. I will quite often hear councillors, even from majority groups, admitting that one of the reasons scrutiny is not as effective as it can be is because of the relationship between the opposing groups.[23]

25. The Local Government Act 2000, and the guidance issued by DCLG, specifies that members of a council's executive cannot also be members of overview and scrutiny committees. A Private Members' Bill in 2009[24] made provisions to allow executive members to sit on committees during scrutiny of external bodies (on the basis that in such instances, it was not the executive that was being scrutinised). The Bill did not pass through the House of Commons, and we are wary of any such attempts to dilute the distinction between executive and scrutiny functions. We heard of instances at the workshop of executive councillors effectively chairing scrutiny committee meetings where the NHS was under scrutiny, and are concerned by such practices. **We believe that executive members should attend meetings of scrutiny committees only when invited to do so as witnesses and to answer questions from the committee. Any greater involvement by the executive, especially sitting at the committee table with the committee, risks unnecessary politicisation of meetings and can reduce the effectiveness of scrutiny by diminishing the role of scrutiny members. *We therefore recommend that DCLG strengthens the guidance to councils to promote political impartiality and preserve the distinction between scrutiny and the executive.***

Committee chairing arrangements

26. Political impartiality can also be encouraged through the process for appointing chairs of committees. Overview and scrutiny committees are required to have a membership that reflects the political balance of a local authority, but there are a range of different approaches for appointing the chairs and vice chairs of committees. Many authorities specify that committee chairs must come from opposition parties, others allocate chair positions proportionally among the parties on the council and others reserve all committee chair positions for the majority party. The Centre for Public Scrutiny states that:

> Legally, the Chairing and membership of overview and scrutiny committees is a matter for a council's Annual General Meeting in May. Practically, Chairing in particular is entirely at the discretion of the majority party. Majority parties can, if they wish, reserve all committee chairships (and vicechairships) to themselves … the practice of reserving all positions of responsibility to the majority party is something which usually happens by default, and can harm perceptions of scrutiny's credibility and impartiality.[25]

27. Chairs from a majority party that are effectively appointed by their executive are just as capable at delivering impartial and effective scrutiny as an opposition councillor, but we have concerns that sometimes chairs can be chosen so as to cause as little disruption as possible for their Leaders. **It is vital that the role of scrutiny chair is respected and viewed by all as being a key part of the decision-making process, rather than as a form of political patronage.**

23 Q12
24 Local Authorities (Overview and Scrutiny) Bill 2009–10
25 Centre for Public Scrutiny (OSG098) paras 130–132

28. Cllr Mary Evans, chair of the scrutiny committee at Suffolk County Council, told us of her efforts to keep party politics out of scrutiny as a chair from a party with a sizeable majority: "We do it by involving the membership of the scrutiny committee at every point of an inquiry … we had a workshop just after our elections in May to look at what our forward work programme would be. The membership together has picked the programme."[26] When asked whether the size of her party's majority made this easier, Cllr Evans explained that "When I first chaired scrutiny, in 2015, we had a majority of only one. I wanted to work across the committee. I did not have the luxury of a large majority … We try to be as open and transparent as scrutiny should be, so the membership is engaged and involved in every aspect of the inquiry."[27] Cllr John Cotton, lead scrutiny member at Birmingham City Council, is also a scrutiny chair from a majority party and he told us that whilst it is important to acknowledge the role of party politics, scrutiny works best when non-partisan:

> In terms of the discharge of the scrutiny function, certainly we proceed on a very non-partisan basis. All of our full scrutiny reports go to full council. I can only recall one occasion in the last 15 years where we have had a minority report because there has been a partisan division. Frequently those reports are moved by the chair and seconded by a member from an opposition party. You then have collective ownership of those recommendations, because they are taken by full council. The scrutiny process draws its strength from the fact that we have those inputs from members across the piece … There is a little bit of grit in the system, if you like, which comes from the party-political roots of members, which you do not want to remove entirely.[28]

29. Cllr Sean Fitzsimons, chair of the Scrutiny and Overview Committee at Croydon Council, echoed this view when he told us that as a chair from a majority party that made critical recommendations of his executive "you have to go along with it if you believe that scrutiny is a function of the backbenches and that you have to put aside your party loyalties in the short term."[29] However, Cllr Fitzsimons argued that scrutiny is at risk of becoming more partisan and that the process for choosing a chair needed consideration:

> My worry is that, as people have drifted away, over time, from what the original aspect of overview and scrutiny was, party politics have played a greater role. If I was looking at this issue, I would look at the political culture of each political party. In the Labour group, under the standing orders of the national party, [scrutiny chairs are] not appointed by the leadership of the Labour group, so I am independent of my leader, so I have a little bit of leeway. My two best chairs that I ever had from the opposition group were so good at scrutiny that they were sacked by their political leader when he was in power. Within the Conservative group, chairs of scrutiny can be appointed effectively by the leader of the council or by the cabinet, and I do think the political cultures of the parties really influence it.[30]

26 Q65
27 Q66
28 Q66
29 Q66
30 Q66

30. **We believe that there are many effective and impartial scrutiny chairs working across the country, but we are concerned that how chairs are appointed has the potential to contribute to lessening the independence of scrutiny committees and weakening the legitimacy of the scrutiny process. Even if impropriety does not occur, we believe that an insufficient distance between executive and scrutiny can create a perception of impropriety.** We note, for example, the views of the Erewash Labour Group:

> The Scrutiny Committee in this Authority protects the Executive rather than holding them to account. If they are ever held to account it is within the privacy of their own Political Group Meetings which are not open to the public. Most of the important decisions are first made in the Group Meetings … The opposition have made some very sensible suggestions during Scrutiny debates only to be told "We have already decided this." Cabinet Members may not attend Scrutiny Meeting unless by the invitation of the Chair. This rule was brought in to stop Cabinet Members exerting any undue pressure on members by their presence. Now they simply exert pressure in other ways such as by the choice of member selection and also the selection of the chair.[31]

31. It is clear to us that scrutiny chairs must be seen to be independently minded and take full account of the evidence considered by the committee. We note the evidence from the Minister who outlined the Government's prescription that chairs of scrutiny in the new mayoral combined authorities must be from a different political party to the executive mayor in order to encourage effective challenge.[32] Similarly Newcastle City Council where all scrutiny chairs are opposition party members, states that:

> This has taken place under administrations of different parties and we believe that it adds to the clout, effectiveness and independence of the scrutiny process; it gives opposition parties a formally-recognised role in the decision-making process of the authority as a whole, more effective access to officers, and arguably better uses their skills and expertise for the benefit of the council.[33]

32. In 2010, recommendations from the Reform of the House of Commons Committee's report 'Rebuilding the House'[34] were implemented to change the way Parliament worked. One such recommendation was the introduction of elections for select committee chairs by a secret ballot of all MPs. In 2015, the Institute for Government published an assessment of parliamentary select committees and their impact in the 2010–15 Parliament. The report found that electing chairs had helped select committees to grow in stature and be more effective:

> Every chair we spoke to told us that, since the introduction of elections for committee chairs, they had felt greater confidence and legitimacy in undertaking committee work because they knew they had the support of their peers rather than pure political patronage.[35]

31 Erewash Labour Group (OSG013) page 1
32 Q131
33 Newcastle City Council (OSG015) para 10
34 Reform of the House of Commons Select Committee, First Report of Session 2008–09, *Rebuilding the House*, HC1117
35 Institute for Government, *Select Committees under Scrutiny: The impact of parliamentary committee inquiries on government* (June 2015), page 34

33. The positive impact of elected chairs for parliamentary committees has led some to suggest that local authority scrutiny chairs should also be elected by their peers. Under such a system scrutiny chairs, regardless of whether they come from the majority party or the opposition, are more likely to have the requisite skills and enthusiasm for scrutiny by virtue of the election process. Electing chairs would also dispel the notion that being appointed scrutiny chair is a consolation prize for members not appointed to the cabinet. The CfPS argue that:

> such a process would encourage those seeking nomination and election as chairs to set out clearly how they would carry out their role; it would also mean that they would be held to account by their peers on their ability to do so. The legitimacy and credibility that would come from this election could also embolden chairs to act more independently[36]

34. When we asked the Minister about the prospect of electing scrutiny chairs, he was concerned that doing so could actually increase political pressures, but stated that "The important thing is that we have the right person chairing a scrutiny committee with the requisite skills, knowledge and acumen to take on the functions and achieve the outcomes that the scrutiny committee needs to achieve."[37]

35. **We believe that there is great merit in exploring ways of enhancing the independence and legitimacy of scrutiny chairs such as a secret ballot of non-executive councillors. However, we are wary of proposing that it be imposed upon authorities by government.** ***We therefore recommend that DCLG works with the LGA and CfPS to identify willing councils to take part in a pilot scheme where the impact of elected chairs on scrutiny's effectiveness can be monitored and its merits considered.***

36 Centre for Public Scrutiny (OSG098) para 133
37 Q138

3 Accessing information

36. Fostering the positive organisational culture discussed in the previous chapter can also determine another important aspect of effective scrutiny: access to information. When we asked Jacqui McKinlay whether scrutiny committees are able to access the information they need, she told us that:

> The very determined ones can. I met one last week that had put an FOI request in to its own organisation in order to get the information. You should not have to do that, but there are ways there. There needs to be persuasion and influence in order to say, "This is an issue around flooding", or whatever it might be, "that is really important".[38]

37. **Scrutiny committees that are seeking information should never need to be 'determined' to view information held by its own authority, and there is no justification for a committee having to resort to using Freedom of Information powers to access the information that it needs, especially from its own organisation. There are too many examples of councils being uncooperative and obstructive.** For example a submission from a spouse of a scrutiny chair argues that it can seem to not be in council officers' interests to divulge information freely:

> There is an element of 'siloism' within the Authority whereby Directors or Heads of Service do not release, explain or otherwise divulge their operational objectives, strategies or tactics for fear of being challenged. This makes it almost impossible to scrutinise, for after all how can one scrutinise what you don't know? There is also a reluctance by officers to divulge operational (in)efficiencies in case it shows that there is an excess of staff ratios for particular tasks. It leads to obfuscation of such measures in order to protect their fiefdom.[39]

38. Similarly, the Minister told us of the example of an authority to which he used to belong and how culture can affect councillors' ability to scrutinise:

> When I was in opposition on the district authority of which I was a member, the controlling group at the time had this unfortunate situation where they used to bring out their budget at the budget-setting council in March. They used to bring it out through the cabinet at 4 o'clock. That mini-meeting used to finish at 5 and then we used to go straight into the full council at 6 to approve the budget. Where you have that type of culture, even if you have resource and access to information, you are not going to get the outcomes that are in people's best interests.[40]

39. Professor Copus highlighted to us another challenge for scrutiny committees seeking to understand an issue:

> I often think, "If someone is willing to give you something you have just asked for, what are they hiding? Why are they being overly enthusiastic?" It is because it is not causing them any problems. The information that

38 Q31
39 Anonymous submission (OSG006)
40 Q119

> scrutiny really needs is the stuff that people are a little bit more reluctant to hand over, whether that is the council itself or an external body. I hear quite often … of councillors using FOIs against their own council for the want of any other way. It is a sign of an immense frustration among members that they have to do that.[41]

Commercial confidentiality

40. A particular challenge for councillors wishing to access information in order to scrutinise an issue is related to commercial confidentiality. Jacqui McKinlay told us that "Every councillor I meet will talk about the barrier of commercial confidentiality. They will talk about, "We cannot give that information" and a lack of transparency."[42] Local authorities are required by statute to publish all information relating to decisions taken and service delivery, however there are certain categories of information that they can withhold. For example information relating to an individual's circumstances is considered exempt, as is information relating to the financial or business affairs of any particular person - including the authority holding that information. As a consequence, many councils argue that publicly releasing specific details of a contract or a procurement framework such as cost or the details of rival bidders for a contract are withheld on the basis that such information is commercially sensitive and exempt from the access to information rules. Professor Copus told us that:

> Commercial confidentiality is always another cloak behind which people who do not want to provide information can hide. There is a need for a much tighter definition of what is acceptable as an exemption for commercial confidentiality. It is not just not wanting to tell somebody what they have asked you. There needs to be a much tighter definition for scrutiny purposes.[43]

41. Whilst we acknowledge that it is not always in the public interest for local authorities to publish all information and make it available to the public, we cannot see a justification for withholding such information from councillors. Councillors have regular access to exempt or confidential information, often distinguished on agendas by use of different colour paper. As Cllr Marianne Overton told us, "Councils are used to dealing with confidential information, and we recognise if it is on pink paper it is confidential. There is no question about it. There should not be any problem with sharing information with elected members. We are already under rules."[44] **Councils should be reminded that there should always be an assumption of transparency wherever possible, and that councillors scrutinising services need access to all financial and performance information held by the authority.**

42. Legislation dictates what information should and should not be released to councillors. Regulations in 2012[45] clarified the position and granted additional access rights to members of overview and scrutiny committees. The Regulations state that

41 Q32
42 Q30
43 Q32
44 Q32
45 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (SI2089)

scrutiny members can access any confidential material if they can demonstrate a 'need to know' in that it relates to any action or decision that that member is reviewing or scrutinising, or on any subject included on a scrutiny work programme. **We do not believe that there should be any restrictions on scrutiny members' access to information based on commercial sensitivity issues. Limiting rights of access to items already under consideration for scrutiny limits committees' ability to identify issues that might warrant further investigation in future, and reinforces scrutiny's subservience to the executive.** ***Current legislation effectively requires scrutiny councillors to establish that they have a 'need to know' in order to access confidential or exempt information, with many councils interpreting this as not automatically including scrutiny committees. We believe that scrutiny committees should be seen as having an automatic need to know, and that the Government should make this clear through revised guidance.***

Getting data from multiple sources and external advisors

43. Council officers are the primary source of information for many committees, however if they do not present the full picture, then those committees can get very limited assurances about the service they are scrutinising. Whilst scrutiny should be able have access to whatever information it needs, this also serves to emphasise the importance of scrutiny committees seeking to use data from multiple sources and challenge that which they are told. Professor Copus described to us how effective scrutiny should operate:

> In some councils … they are too reliant on officers and too reliant on a single source of advice. In too many councils the flexibility that scrutiny has over the committee system is not used … sometimes, when you examine scrutiny agendas and scrutiny reports, and observe scrutiny meetings, what you see is a committee, and a one-off event that leads to not very much. In other councils, those that have really supported and understood scrutiny, you get a process … Where you get scrutiny viewed as not a single event but a process, then the outcomes are much more effective, and there is a greater access to a wider range. What scrutiny should be doing is not taking one source of evidence and going, "That is from the officers. Great. That is okay. We agree the recommendations". They should be looking at conflicting evidence. There is always conflicting evidence with big policy issues. They need to sift that evidence.[46]

44. Cllr Marianne Overton, Leader of the Independent Group of the LGA, agreed that effective committees seek to triangulate data to build a fuller picture: "That is part of what scrutiny is about … one of the issues about scrutiny is that the whole point is that you can call all kinds of different witnesses … You are not just sitting, looking at the papers that you have been fed."[47] We are concerned that too many committees are overly reliant upon the testimonies of council officers, and that they do not make wider use of external witnesses. Very few councils have the resources to provide independent support to both the executive and scrutiny, and in light of the uneven balance between the two functions discussed earlier, most resources are prioritised upon the executive. This means that officers working in a service department are supporting executive members to develop and implement decisions, and the same officers are then supporting scrutiny committees as

46 Q28
47 Q28

they seek to understand the impact of decisions and performance of departments. Whilst departmental officers may be able to distinguish the two roles and cater their support accordingly, we are concerned that too few councils are hearing alternative perspectives. However, we acknowledge that councils are operating on reduced budgets and that making use of specialist advisors can come at too high a cost for many committees. The LGA explains that:

> Employing specialist external advice as part of oversight and scrutiny arrangements is not common … Where councils do bring in external experts, it is because specific knowledge and skills are needed that are not available in house. Procuring specialist advice comes at a cost and, given the pressures on council budgets, not all committees have funding available to increase their standard staffing compliment, commission professional advice, secure external witnesses or even refresh recruitment of co-optees.[48]

45. We are disappointed that committees do not make greater use of expert witnesses. At the informal workshop event hosted by the Committee, we spoke with councillors and officers on their use of experts such as local academics. One attendee told us that it could sometimes be possible to engage a local academic at the start of an inquiry to help members understand an issue, but it was seldom possible to sustain this engagement throughout the life of an inquiry. ***We note that few committees make regular use of external experts and call on councils to seek to engage local academics, and encourage universities to play a greater role in local scrutiny.***

Service users' perspective and public experiences

46. While recognising the constraints that committees operate under, we believe that it is possible to bring in a wider range of perspectives for limited expenditure, and that the benefits of doing so are significant. We note, for example, the case study presented by the LGA of Brighton & Hove City Council's scrutiny panel on equality for the transgender community:

> The panel's review was underpinned by an effective and sensitive engagement strategy enabling the views of a hard to reach community to inform recommendations for action. The panel worked in partnership with the Council's Communities team, the city's LGBT Health Improvement Partnership, and a local charity which supported transgender people, co-opting experts to help better inform the process, and directly engaging through community events and specially designed workshops. A significant amount of time was devoted to the consultation process which was pivotal in helping to build up trust. The Panel's findings were well received by the transgender community and partners, with all 37 recommendations adopted by the Cabinet.[49]

47. Bringing in the perspectives of service users undoubtedly leads to more effective scrutiny, both in developing policy such as the example from Brighton & Hove and in monitoring services. Officers from the London Borough of Hackney described an example of effective scrutiny in their monitoring of services for disabled children in the borough.

48 Local Government Association (OSG081) paras 10.1–10.3

49 Local Government Association (OSG081) paras 13.8 – 13.10

Rather than only using the testimony of the council officers delivering the service, "A major part of the evidence base for this review was the views of parents and carers of disabled children, as well as disabled children and young people themselves about the services they receive and the barriers they face in accessing current services."[50] **We commend such examples of committees engaging with service users when forming their understanding of a given subject, and encourage scrutiny committees across the country to consider how the information they receive from officers can be complemented and contrasted by the views and experiences of service users.**

50 Overview and Scrutiny team, London Borough of Hackney (OSG110) page 9

4 Resources

Reducing council budgets

48. Local government has experienced significant reductions in funding in recent years, leading many authorities to choose to reduce their scrutiny budgets. Whilst understandable in the context of wider reductions, it is regrettable that the resources allocated to scrutiny have decreased so much. The Centre for Public Scrutiny (CfPS) explains that:

> There are now significantly fewer "dedicated" scrutiny officers employed by English councils. In 2015 this dropped below one full time equivalent officer post providing policy support to scrutiny per council. In many councils, there might be only 0.2 or 0.3 FTE to carry out this role–or nothing at all. (We would describe a "dedicated" scrutiny officer as one whose sole duties involve providing policy advice to scrutiny councillors.)[51]

49. Cllr John Cotton from Birmingham City Council also described a significant reduction in resources in recent years:

> if I look at staffing for scrutiny in Birmingham, if we go back to 2010–11, we had 19.4 full-time equivalent staff. We are now working with 8.2, so there has clearly been a substantial reduction and we have seen a similar reduction in the number of committees and so forth … it does come back to this issue that, if you value something, you have to invest in it.[52]

50. Birmingham City Council explain that this reduction in resources has matched a reduction in the amount of scrutiny carried out:

> Birmingham has had five standing O&S Committees for the last two years, whereas there were on average ten committees in the ten years prior to that. Whilst this is line with the reduction in council budgets overall, it should be noted that the main impacts are the negative effect on the breadth and depth of work that can be covered by each committee, plus the reduced capacity to research, reach out to external partners and to residents and service users–and so to "act as a voice for local service users".[53]

Officer support models and required skill sets

51. The CfPS also note that increasingly the officers providing day to day support to scrutiny committees are those whose role is combined with wider democratic services functions or with a corporate policy or strategy role.[54] Whilst those working in combined roles are able to provide effective support to scrutiny, there is a significant risk that non-scrutiny functions can take precedence. For example, democratic services officers supporting scrutiny must balance effective guidance, research and advice with the immediate time pressures and statutory deadlines of agenda publication and meeting administration. In such roles there is a risk that scrutiny is relegated to an 'add-on' that is only done once

51 Centre for Public Scrutiny (OSG098) para 100
52 Q46
53 Birmingham City Council (OSG087) page 6
54 Centre for Public Scrutiny (OSG098) paras 101–105

all other tasks are complete. Several officers attending our workshop expressed this view, with one officer explaining that she worked full time but her time was split with a wider corporate policy role and she estimated that no more than a quarter of her time was spent working on scrutiny matters. The ability of council officers to effectively support scrutiny can often depend entirely upon the personalities and enthusiasm of those officers. For example, when we asked Cllr Mary Evans from Suffolk County Council whether she felt that she had sufficient officer support, she told us: "I would say, "Yes, but". Yes, we are adequately resourced, but it depends upon the fact that we have two extremely dedicated and experienced scrutiny officers who are working at full stretch."[55]

52. We heard evidence that the skill sets of officers is just as important as the number of officers allocated to support scrutiny. Professor Copus for example told us that when considering whether an authority's scrutiny function is effective, he asks:

> Is the scrutiny function well supported by officers and by the right sort of officers? I used to be a committee clerk, so I am not decrying that grand profession, but scrutiny committees need access to policy officers; they need access to people who can manipulate statistics, for example. They need the right sort of support.[56]

53. Jacqui McKinlay also highlighted that certain skills are needed to effectively support scrutiny. She told us that:

> We used to say a dedicated scrutiny officer [was the optimum approach, but] … As long as they have the passion, dedication and commitment to the principle of scrutiny and the specialist skills to do it, I would say we should leave councils to configure how that happens. We do need to acknowledge that we do now have the internet, and the days of research and how that happens have changed. However, it is wrong to presume that councillors themselves will have the time and the capacity to do the level of research that is sometimes needed to do good scrutiny on complex issues. Fundamentally, it needs the bedrock of good scrutiny skills within the team to do that.[57]

54. From speaking with officers and councillors at our workshop, it is apparent that there are many officers working in scrutiny that have these skills, and some are able to combine them with the different skill set required to be efficient and accurate committee clerks. However, we heard too many examples of officers working on scrutiny who did not possess the necessary skills. One councillor told us that in her authority scrutiny officers had become little more than diary clerks, with reports and data now coming from the service departments across the council, which were invariably overly optimistic about performance and unchallenging of the status quo.

55 Q45
56 Q4
57 Q23

Scrutiny's profile and parity with the executive

55. Whilst we regret that the level of resources allocated to scrutiny has diminished, we believe that the bigger issue relates to our earlier conclusions on organisational culture. In this respect, we agree with Cllr Sean Fitzsimons from Croydon Council who told us:

> Yes, it clearly does make a difference where the level of resource is, but it is too easy to put the blame on scrutiny not being at its best because we do not have the right officer or the right amount of resource in place. To me, it is clear that it is the power relationship between scrutiny, the executive and the officers. That really is the focus of where strengths and weaknesses are. You could have a very well-resourced scrutiny with officers who know their subject, but if you cannot get the chief executive or the executive director of a department to feel that you have a legitimate role, you can bang your head against the wall for as long as you like. For me, resources would come if we had that power balance right, rather than starting to look at resources first.[58]

56. We are concerned that in many councils, there is no parity of esteem between scrutiny and the executive. Resources and status are disproportionately focussed around Leaders and Cabinet Members, with scrutiny too often treated as an afterthought. Professor Copus told us that:

> in many councils, scrutiny lacks a parity of esteem with the executive. As a consequence, resources and focus are placed on the executive. For example, chief executives will find the time and have little problem in working directly with a council leader or with the cabinet. Expecting a chief executive then to work with the scrutiny process is always somewhat problematic. As soon as you differentiate between scrutiny and the executive with its officer base and its officer support, you start to chip away at the esteem that scrutiny has. One way around that, without expecting chief executives to work with every scrutiny committee, is to make sure that the scrutiny function has the resources to be able to produce evidence-based policy suggestions that the executive want to take on board, because they recognise scrutiny has done something they have not, which is spend three or four months looking at a particular issue in detail; cabinets cannot do that.[59]

57. As well as the disproportionate allocation of resources, we are also concerned that the uneven relationship between executives and scrutiny committees means that those officers supporting scrutiny can find themselves conflicted. Scrutiny officers can find themselves in the position of having to balance corporate or administration priorities with the challenge role of scrutiny, conscious that those they are scrutinising can make decisions regarding future resourcing and their personal employment prospects. Advice from officers must be impartial and free from executive influence. Cllr Fitzsimons told us that:

> You have to trust your officers and you also have to understand that they will have careers outside scrutiny … We need to make certain that they do not become part of the rock-throwing contingent, and that they are not seen

58 Q45
59 Q15

> as part of the group of officers supporting councillors who are making life difficult. I believe officers can be impartial, but they need to network and to network strongly within the council. If you really want to know what is going on in a department, you need an officer advising you in scrutiny who has those contacts within that highways department, as well as being good with the figures and being able to produce a report. You need impartiality, but you also need great networking skills.[60]

58. We believe that if a local authority does not adequately resource the scrutiny function, such impartiality is harder to ensure. With officers supporting both the executive and scrutiny, there is a significant risk that real or perceived conflicts of interests can occur. For example, an officer from a London Borough explained that in her authority following reductions in scrutiny support, designated senior officers from service departments act as 'scrutiny champions':

> The scrutiny champion's role includes supporting the committee with finalising its work programme for the municipal year, and includes directing departmental officers to produce the scoping report for the area the Committee will undertake an 'in-depth' scrutiny review on in that year. As the same officers provide direct support to the executive, one can immediately see the defect in this model–officers supporting the scrutiny function are not independent of, and separate from, those being scrutinised.[61]

Allocating resources

59. Councils are under extreme budgetary pressures, but we are concerned that decisions regarding the resourcing of overview and scrutiny can be politically motivated. Professor Copus told us that:

> In some councils, councillors have said to me, "It is a deliberate ploy that we under-resource scrutiny so that it cannot do anything and it cannot challenge the executive. It has very little role to play." Because of the financial constraint, supporting scrutiny is a soft and obvious target for reductions. It is a false economy, because good, effective scrutiny can save councils money, and indeed save other organisations money as well.[62]

60. When we asked the Minister about resourcing scrutiny committees, he told us:

> What we have to consider here is that we have not got a scrutiny function that is in the pockets of the executive and the senior management team. We need a scrutiny function where those senior officers have a relationship with the scrutiny function and the people conducting the scrutiny get to see how the executive works and understand the executive, but that does not take away the fact that we need to make sure that scrutiny committees are properly resourced. That is not necessarily, in certain places, about having a

60 Q53
61 An officer from a London Borough (OSG091) para 3
62 Q22

> dedicated officer; it is more about having access to the information, support and, at times, research, to make sure that they do a good job of scrutinising the executive.[63]

61. **We acknowledge that scrutiny resources have diminished in light of wider local authority reductions. However, it is imperative that scrutiny committees have access to independent and impartial policy advice that is as free from executive influence as possible. We are concerned that in too many councils, supporting the executive is the over-riding priority, with little regard for the scrutiny function. This is despite the fact that at a time of limited resources, scrutiny's role is more important than ever.**

62. ***We therefore call on the Government to place a strong priority in revised and reissued guidance to local authorities that scrutiny committees must be supported by officers that can operate with independence and provide impartial advice to scrutiny councillors. There should be a greater parity of esteem between scrutiny and the executive, and committees should have the same access to the expertise and time of senior officers and the chief executive as their cabinet counterparts. Councils should be required to publish a summary of resources allocated to scrutiny, using expenditure on executive support as a comparator. We also call on councils to consider carefully their resourcing of scrutiny committees and to satisfy themselves that they are sufficiently supported by people with the right skills and experience.***

The role of the Statutory Scrutiny Officer

63. The Localism Act 2011 created a requirement for all upper tier authorities to create a statutory role of designated scrutiny officer to promote scrutiny across the organisation. The Act does not require that the officer be of a certain seniority, or be someone that works primarily supporting scrutiny. The Institute of Local Government Studies (INLOGOV) at the University of Birmingham explains that:

> The intention was to champion and embrace the role of scrutiny. In reality, in most councils, the designated post-holder, while willing, is a shadow of the other posts required by legislation–the Head of Paid Service, Section 151 Officer, and Monitoring Officer. It is seldom an officer with a level of seniority sufficient to ensure that scrutiny is taken seriously when the Executive (both cabinet members and senior council staff) seek to close ranks.[64]

64. We believe that the role of a statutory 'champion' of scrutiny is extremely important in helping to create a positive organisational culture for an authority. However, we are concerned that the creation of this role has resulted in too many instances of Statutory Scrutiny Officers fulfilling the role in name only, with little actual activity. At our workshop, councillors described to us how Statutory Scrutiny Officers were often 'too low down the food chain', while officers told us of the need for a higher profile for the role, arguing that officers from across the council should know who their Statutory Scrutiny Officer is in the same way they do for monitoring officers. We agree with INLOGOV that the creation of the post has "proved largely ineffective"[65] and believe that reform

63 Q114
64 The Institute of Local Government Studies, The University of Birmingham (OSG053) page 6
65 The Institute of Local Government Studies, The University of Birmingham (OSG053), page 1

is needed in order to achieve the aspirations of the Localism Act 2011. The Association of Democratic Services Officers (ADSO) argue that the profile of the Statutory Scrutiny Officer role should be on a par with the Statutory Monitoring Officer[66] and the County and Unitary Councils' Officer Overview and Scrutiny Network argue that the requirement for a Statutory Scrutiny Officer should be extended to all councils.[67] We note the positive example of Stevenage Borough Council choosing to fund a scrutiny officer despite not being covered by the provisions of the Act:

> Some years ago this authority created a post of Scrutiny Officer and this has greatly helped with the running of an effective scrutiny function. We have prioritised this over other funding options. It is increasingly difficult to do so as this is not a statutory function at a District level, and the further funding cuts we face over the next three years place extreme pressure on existing budgets.[68]

65. ***We recommend that the Government extend the requirement of a Statutory Scrutiny Officer to all councils and specify that the post-holder should have a seniority and profile of equivalence to the council's corporate management team. To give greater prominence to the role, Statutory Scrutiny Officers should also be required to make regular reports to Full Council on the state of scrutiny, explicitly identifying any areas of weakness that require improvement and the work carried out by the Statutory Scrutiny Officer to rectify them.***

66 Association of Democratic Services Officers (OSG123) page 7
67 Council and Unitary Councils' Officer Overview and Scrutiny Network (OSG114) para 8.1
68 Stevenage Borough Council (OSG060) page 1

5 Member training and skills

The importance of training

66. Unlike the quasi-judicial council committees of planning and licensing, members of scrutiny committees are not required to have any specialist skills or knowledge. We have heard evidence suggesting that this can hinder the effectiveness of committees, and are concerned that some councillors might not take their scrutiny role as seriously as others. For example, an anonymous spouse of a scrutiny chair states that:

> Whilst most Authorities have educational classes for members they are not well attended for the following reasons. Members who are in full time employment are not willing to attend in their 'nonworking hours'; those who are long standing members think it beneath them and those who work for a political party are 'instructed' by the party's position on the subject.[69]

67. If scrutiny members are not fully prepared and able to ask relevant questions, the committee will not be able to fully interrogate an issue and committee meetings can become little more than educational sessions for councillors to learn about a service, rather than scrutinise it. An officer from a London Borough explains that scrutiny meetings are:

> typically between scrutiny members and senior officers where the temptation to ask questions to simply learn more about a subject matter is greater … The Council's Member Development Officer, together with Democratic Services Officers, do arrange training for scrutiny members when opportunities arise; but this has proved insufficient as members infrequently display the required level of listening and questioning skills to make scrutiny impactful. Too many discussions at meetings are based on requests for more information, without expressing why it is required or how it will facilitate good scrutiny.[70]

68. Jacqui McKinlay from CfPS explained that training for scrutiny members usually fell into one of two categories:

> One is the generic skills element—questioning skills, and understanding data and performance management information. We then also run training, which is around children's services, understanding health and social care integration, whatever it might be. We are getting into the nitty-gritty then to give people enough knowledge… [However,] it is about who comes forward and accesses that. The people who come forward and access that tend to come from good organisations.[71]

The suitability of training provided

69. Without the legal requirement for training such as on quasi-judicial committees, councils are not able to ensure that scrutiny members have all of the skills or knowledge

69 Anonymous submission (OSG006)
70 An officer from a London Borough (OSG091) para 10
71 Q30

that they need to deliver effective scrutiny, and those that need it most are the least likely to engage. However, we also note the view of Professor Copus, who highlighted that the value of councillors is that they are lay persons:

> There is a danger that we end up training councillors to be elected officers, and that has to be avoided. Officers are there to do their role. Councillors require a different type of skill and training. I am a great fan of council officers and I am not unfairly criticising them, but in many cases the training that is provided to members is what officers need members to understand, rather than what members need to understand.[72]

70. We agree that councillors require a different type of training from officers and that knowing a subject is not sufficient to ensure good scrutiny. The ability to question effectively, as well as actively listen to responses, is fundamental to successful scrutiny. Cllr Fitzsimons told us:

> Indeed, some of the simpler questions are some of the most pertinent questions going. Someone coming in not knowing too much about a subject can almost get more from a session than someone who has drifted into data nirvana or something like that, where they are really drilling down and finding out why this figure does not match this other one.[73]

The quality of training available and DCLG oversight

71. We are concerned that there is no mechanism to ascertain whether scrutiny councillors are able to fulfil their vital role or that the training they do receive is fit for purpose. We asked councillors about the training and support that they had received from the Local Government Association (LGA), and responses were mixed. Cllr Fitzsimons for example told us:

> the LGA runs some really interesting courses, which I have attended. They outsource some of it to the Centre for Public Scrutiny. I am not particularly a fan of the way they do things, and their training has not really moved on for a long time. The skills training that a councillor has for a meeting about questioning-and-answering skills are good training sessions.[74]

72. He argued that fundamental requirements for training included more emphasis on a self-reflective approach:

> I remember going to do a training session with the London Borough of Richmond in 2006, and my challenge to the councillors who were doing scrutiny was, "How much backbone do you have?" and I just do not see that within the training. Are you willing to ask difficult questions? Are you willing, in your own political group, after you have done a scrutiny meeting, to have people say to you, "You were a bit harsh on the leader"? They do not get that self-reflective type training about, "What is your role? Are you really going to hold to account?"[75]

72 Q32
73 Q59
74 Q64
75 Q64

73. Cllr Fitzsimons also criticised national conferences and networking events for having an insufficient emphasis on frontline scrutiny members:

> You do not see ordinary councillors leading the events … ultimately the LGA is focused on the executive and their whole setup. Scrutiny, I believe, is an add-on, and that is just a reflection of the way it works, because the people who are influential in LGA are more likely to be council leaders and cabinet members than the ordinary scrutiny people. Individual training is good, but overall I do not think it is hitting the mark.[76]

74. The Minister told us that the Department allocated £21 million to the LGA "so that it could support various activities to improve the governance in local authorities; and it is why we are absolutely committed to working with the LGA and its delivery partners—organisations such as the Centre for Public Scrutiny".[77] DCLG states that:

> The Government does not monitor the effectiveness of overview and scrutiny committees–which is a matter for the authorities themselves. However, the Secretary of State may intervene in authorities which have failed in their best value duty, as happened in 2014 in Tower Hamlets and in 2015 in Rotherham.[78]

75. We are concerned that DCLG gives the LGA £21 million each year to support scrutiny, but does not appear to monitor the impact of this support or whether this investment represents best value. When we questioned the Minister about his Department's monitoring of scrutiny effectiveness and the extent to which this was delegated to the LGA, he told us that DCLG "will look very carefully at the recommendations that are made by the Committee."[79]

76. **It is incumbent upon councils to ensure that scrutiny members have enough prior subject knowledge to prevent meetings becoming information exchanges at the expense of thorough scrutiny. Listening and questioning skills are essential, as well as the capacity to constructively critique the executive rather than following party lines. *In the absence of DCLG monitoring, we are not satisfied that the training provided by the LGA and its partners always meets the needs of scrutiny councillors, and call on the Department to put monitoring systems in place and consider whether the support to committees needs to be reviewed and refreshed. We invite the Department to write to us in a year's time detailing its assessment of the value for money of its investment in the LGA and on the wider effectiveness of local authority scrutiny committees.***

76 Q64
77 Q113
78 Department for Communities and Local Government (OSG122) para 19
79 Q125

6 The role of the public

77. Earlier in this report, we discussed the need for scrutiny committees to have greater legitimacy and independence from their executives. A key way of delivering this is to ensure that members of the public and local stakeholders play a prominent role in scrutiny. By involving residents in scrutiny, the potential for a partisan approach lessens and committees are able to hear directly from those whose interests they are representing. Many local authorities have been very successful in directly involving their residents through open meetings, standing agenda items and public appeals for scrutiny topics. Other authorities, and indeed parliamentary select committees, can learn from such positive examples.

Case studies of public engagement

78. Devon County Council argues that "Scrutiny serves as almost the only bastion of opportunity for local people to voice an opinion on changes to a wide range of services, not just those provided by the Council." The authority also cites an example where scrutiny considered a national issue which had a local manifestation. Search and Rescue services were previously provided by RAF Chivenor, but when this changed "Local People were very concerned about the loss of the service and scrutiny reviewed the evidence in an independent way. The subsequent report helped to reassure local people that the evidence supported the change as well as to establish a baseline from which to challenge future incidents."[80]

79. At its most effective, we believe that scrutiny amplifies the concerns of local residents and of service users. A positive example of this is in Exeter where the City Council established a 'Dementia Friendly Council' task and finish group. As part of its work, the group "invited members of the Torbay Dementia Leadership Group to visit the Customer Service Centre to observe the front line service and facilities from the point of view of a person with dementia and to see if the Council could make any improvements to the existing customer experience." Subsequent recommendations to improve the service have since been made.[81]

80. At our workshop with councillors and officers, one councillor explained that she did not like the term 'public engagement' and instead preferred to think of it as 'listen and learn'. This approach was evident in the example of Surrey County Council, cited by the LGA.[82] Surrey conducted extensive pre-decision scrutiny of the authority's cycling strategy to help inform the final strategy. Following an independent consultation, it was apparent that there were mixed views on the proposals within the strategy and a joint meeting of two scrutiny committees was held to consider them, with a public forum to allow residents to express their views. The outcome was a better-informed and more successful strategy:

> Having heard and considered the voice and concerns of the public on the Council's proposed Cycling Strategy, the committees made recommendations to ensure the final strategy was acceptable to Surrey residents. These included: ensuring benefits for local businesses; including

80 Devon County Council (OSG008) page 2
81 Exeter City Council (OSG011) para 7
82 Local Government Association (OSG081) paras 13.5–13.7

> cycling infrastructure schemes on highways maintenance programmes; lobbying central government so that unregulated events were regulated; working with boroughs & districts to develop cycling plans; and amending the strategy to ensure roads would only be closed with strong local support.[83]

Digital engagement

81. The examples above are illustrations of the value that greater public involvement can bring both to the scrutiny process and an authority's decision making process. However, we are also aware that the majority of scrutiny committees across the country are not well-attended by the public. Involving the public in scrutiny is time and resource intensive, but the rewards can be significant. In this context, it should also be noted that many members of the public do not want to engage with public services in the same way that they used to. Digital engagement is becoming increasingly important, with some councils embracing new media better than others (for example the twitter feed of Doncaster Metropolitan Borough Council recently received national attention for effective engagement regarding the naming of two gritters[84]). Jacqui McKinlay told us:

> There are some real challenges about what public engagement looks like in the future. It is not necessarily the village hall where we are expecting people to turn up on a wet Wednesday. We need to start to accept that when we engage with people they do not necessarily always speak the same language as we do, particularly on contentious issues. People are very angry. They are very upset. In scrutiny and public services generally, we have to think about what engagement looks like in the future. We are also in a digital and social media world where the conversations now, probably in the last six months, are happening in WhatsApp. They were happening in Facebook earlier. That is something that scrutiny is really going to have to manage if it is going to stay relevant and part of the dialogue.[85]

82. ***The Government should promote the role of the public in scrutiny in revised and reissued guidance to authorities, and encourage council leaderships to allocate sufficient resources to enable it to happen. Councils should also take note of the issues discussed elsewhere in this report regarding raising the profile and prominence of the scrutiny process, and in so doing encourage more members of the public to participate in local scrutiny. Consideration also need to be given to the role of digital engagement, and we believe that local authorities should commit time and resources to effective digital engagement strategies. The LGA should also consider how it can best share examples of best practice of digital engagement to the wider sector.***

83 Local Government Association (OSG081) paras 13.5–13.7

84 "*David Plowie or Spready Mercury? Council asks public to name its new gritters*", The Telegraph, 17 November 2017

85 Q39

7 Scrutinising public services provided by external bodies

The conflict between commercial and democratic interests

83. We heard a lot of evidence that scrutiny committees are increasingly scrutinising external providers of council services, both in an attempt to avoid politically 'difficult' subjects and as a reflection that services are being delivered in increasingly diverse ways.[86] We believe that scrutiny committees are ideally placed, and have a democratic mandate, to review any public services in their area. However, we have heard of too many instances where committees are not able to access the information held by providers, or the council itself, for reasons of commercial sensitivity (as further discussed in Chapter 3 of this report). Jacqui McKinlay from CfPS told us that there can be an "unbelievable barrier" with commercial organisations as they "do not recognise they are contracting with a democratic organisation that has democratic governance processes."[87]

84. The conflict between commercial and democratic interests means that many companies are not set up to accommodate public accountability. This is in contrast with health services, which have a more established history of engagement (backed up by legislative requirements). The London Borough of Hackney explains that:

> Health scrutiny has been luckier than other areas in that the duties to attend meetings and engage with scrutiny are well established and accepted. For health scrutiny in Hackney there is an understanding that if invited to attend to be held to account on an issue, the invitation cannot be refused. Where service providers have appeared reluctant to attend scrutiny is often linked to their accountability to local government and whether their management structures are local. We have found where structures are regional or national and the organisation has very limited local accountability there can be difficulty with engagement in the local scrutiny function.[88]

Scrutiny powers in relation to external organisations

85. Overview and scrutiny committees have a range of powers that enable them to conduct scrutiny of external organisations. The Health and Social Care Act 2012 gives local authorities the power to scrutinise health bodies and providers in their area or set up joint committees to do so. They can also require members or officers of local health bodies to provide information and to attend health scrutiny meetings to answer questions. Scrutiny also has powers with regard to the delivery of crime and disorder strategies, with those bodies which are delivering such strategies also being required to attend meetings and respond to committee reports. However, for all other organisations delivering public services, be they public bodies or commercial entities, their participation depends upon their willingness of both parties to do so and the ability of scrutiny committees to forge a positive working relationship. Attitudes to local scrutiny are varied, as Cllr Sean Fitzsimons from Croydon Council explained to us:

86 See for example Q9
87 Q30
88 Overview and Scrutiny Team, London Borough of Hackney (OSG110) para 11

> I would say that the smaller the organisation the better they are at coming along. The most difficult one I ever dealt with was probably the Metropolitan Police. Borough commanders do not think we have any legitimacy. Sometimes, you can see they are thinking about other things. As someone who has sat on a riot review panel, led by a judge, to get someone there was an effort. They may want to come and talk about a certain thing, but the moment you ask them anything specific it is like, "I cannot talk about it". Policing is a really difficult area, and it is actually within our remit. The fire brigade has been quite a useful organisation, and they are quite keen. The ambulance service is desperate to turn up.[89]

Scrutinising council contracts

86. A significant obstacle to effective scrutiny of commercial providers is an over-zealous classification of information as being commercially sensitive (as discussed in relation to council-held information in paragraph 40). Council officers are wary of sharing the terms of contracts as they do not want to prejudice future procurements, and contractors do not always see why they should share information. As discussed earlier in this report, we can see no reason for withholding confidential information from scrutiny councillors, who can then consider it in a private session if necessary. We believe that councils and their contractors need to be better at building in democratic oversight from the outset of a contract. We note for example the views of Cllr Fitzsimons, who argued that scrutiny often gets involved in contracting situations too late:

> It is only when the major recommendations can go to cabinet that you can say, "I am unhappy with that and I will bring it in." My experience, particularly in my local authority, is that the failure of the authority, at the time, to engage in scrutiny early on in the process so that we could help shape the outcomes meant that a decision had been taken by the relevant cabinet member, and really it allowed itself to drift into party political flag-waving, to say, "We are just not happy with the letting of this contract." If we had been allowed to look at it six months or a year beforehand, we may have been able to have had some influence for the betterment of the service. I have found that contractors are quite keen to talk, but what it again goes back to is how comfortable the executive is having their decisions challenged, when they may have done 18 months or two years of private work on it and they think they already have the answer.[90]

87. It is imperative that executives consider the role of scrutiny at a time when external contracts are still being developed, so that both parties understand that the service will still have democratic oversight, despite being delivered by a commercial entity. Scrutiny committees have a unique democratic mandate to have oversight of local services, and contracting arrangements do not change this. We therefore support the recommendations made by the scrutiny committee at Suffolk County Council, as described to us by Cllr Evans:

89 Q77
90 Q52

> We had a task and finish group that did a lot of work on procurement and contracting, and we are asking that, in future, when the council signs any contracts, those people who are making the contract are aware that we could well expect to see them in front of scrutiny at some point. They cannot sign a contract with the authority and expect never to be put on the spot and be accountable.[91]

88. We heard examples where committees had successfully engaged external providers, such at Suffolk County Council where the contractors for highways and for social care come to scrutiny willingly.[92] However this is not always the case and such variance is an issue of concern for us. We are of the view that scrutiny committees must be able to scrutinise the services provided to residents and utilise their democratic mandate and we therefore agree with the Minister, who told us:

> When councils put contracts out to external bodies, they should look at that in the context of how open and transparent those arrangements can be. That can quite often be difficult because of commercial confidentiality, but, as I say, that should not be a cover-all for everything. I think that that should be considered in the context of when a contract is let, in terms of making sure that a particular provider can be called to a scrutiny committee. However, when a particular local authority lets a contract to a particular company, I do not think it should lead to a situation where that particular local authority is able to sit back and just blame its contractor. The local authority in question should, when tendering out, put together a process over which it has a level of control that enables it to scrutinise a particular contractor and take enforcement action should that contract not be fulfilled.[93]

Following the 'council pound'

89. The CfPS highlight the difficulties that scrutiny committees can have monitoring services delivered in partnership, and notes that scrutiny has been effective when its formal powers give it a 'foot in the door':

> We would therefore like to see these powers balanced across the whole local public service landscape. We would like to see the law changed and consolidated, to reflect the realities that local authorities now face–particularly the fact that much council business is now transacted in partnership. We would like to see an approach which uses the "council pound" as the starting point for where scrutiny may intervene–that is to say, that scrutiny would have power and responsibilities to oversee taxpayer-funded services where those services are funded, wholly or in part, by local authorities.[94]

91 Q50
92 Q52
93 Q148
94 Centre for Public Scrutiny (OSG098) paras 149–151

90. ***Scrutiny committees must be able to monitor and scrutinise the services provided to residents. This includes services provided by public bodies and those provided by commercial organisations. Committees should be able to access information and require attendance at meetings from service providers and we call on DCLG to take steps to ensure this happens. We support the CfPS proposal that committees must be able to 'follow the council pound' and have the power to oversee all taxpayer-funded services.***

Scrutiny of Local Economic Partnerships

91. We are also extremely concerned at the apparent lack of democratic oversight of Local Economic Partnerships (LEPs). There are 39 LEPs in operation across England, tasked with the important role of promoting local economic growth and job creation. However, we fear that they vary greatly in quality and performance, and that there is no public assurance framework, other than any information they themselves choose to publish. LEPs have been charged with delivering vital services for local communities and do so using public money, and so it is therefore right and proper that committees of elected councillors should be able to hold them to account for their performance. LEPs are key partners of mayoral combined authorities and we note that the relationship in London seems established. Jennette Arnold OBE AM, Chair of the London Assembly, told us:

> The responsibility for the LEPs falls within the Mayor's economic strategy, so for us the buck stops with the Mayor. He then has a LEP board. There are local authority councillors and businesspeople on that. There is a Deputy Mayor who is charged with business and economic growth in London. Both members of that LEP board and that Deputy Mayor have appeared in front of our Economy Committee. We also had questions about skills, because skills was linked, so our education panel raised questions. Business as usual for us is that where there is a pound of London's money being spent, we will follow that and we will raise any issues as relevant.[95]

92. We applaud this approach and welcome the oversight of the London LEP provided by the London Assembly. In the next chapter we will consider the role of scrutiny in combined authorities, where we have concerns over the capacity of the newer organisations. Their relative infancy when compared to the London Assembly is reflected in unclear relationships with their local LEPs. Cllr Peter Hughes, Chair of the West Midlands Combined Authority Overview and Scrutiny Committee, told us:

> There are non-voting LEP representatives on the board of the combined authority and there has been since the day it started. I have LEP representatives on the Overview and Scrutiny Committee. Again, they are non-constituent members, as are some of the rural authorities. Their commitment to overview and scrutiny and to audit is patchy, to say the least. There is one big authority or LEP area that does not contribute to scrutiny or audit … We have not done so yet, but I am sure before the 12 months are up that the LEP involvement in the combined authority's work will be looked at.[96]

95 Q103
96 Qq104–106

93. Whilst we welcome the established arrangements in London and the intentions of the newer mayoral combined authorities, we are concerned that there are limited arrangements in place for other parts of the country. We do note that examples exist, and call for such arrangements to be put in place across the country. Wiltshire Council states that:

> Wiltshire Council is one of the few local authorities nationally to have a OS task group actively engaging with the region's Local Enterprise Partnership, providing extra public accountability to the LEP funding spent within the county. All LEP reports and expenditure are published to facilitate further scrutiny by members of the public.[97]

94. In October 2017, a review of LEP governance arrangements was published by DCLG. The review makes a number of recommendations and noted that while many LEPs have robust assurance frameworks, approaches vary. For example, LEPs are required to publish a conflict of interest policy and the review found that "Whilst LEPs comply with this requirement, the content of policies and approach to publication varies considerably and is dependent on the overall cultural approach within the organisation."[98] The review also noted that:

> A number of LEPs, but not all, refer to the role of scrutiny in overseeing their performance and effectiveness. Some LEPs are scrutinised from time to time by their accountable body Overview and Scrutiny function. This is an area for further development which would give increased independent assurance. Given the different structures across LEPs it is not appropriate to specify any particular approach to scrutiny. It is an area which could benefit from the sharing of good practice/'what works' to assist LEPs in shaping their own proposals.[99]

95. When we asked the Minister about the democratic oversight of LEPs, he told us that local authorities will usually have representation on LEP boards and that expenditure will often be monitored by the lead authority's Section 151 finance officer. When we asked him about more public methods of scrutiny, he told us that:

> in terms of the scrutiny there are ways in which a LEP can be scrutinised. At this point I do not believe that those arrangements need to be changed, but I will certainly be interested—I know you have asked this of a number of the witnesses at this Committee—in their views on local enterprise partnerships. Certainly that will be a Government consideration once the Committee has submitted its report.[100]

96. ***In light of our concerns regarding public oversight of LEPs, we call on the Government to make clear how these organisations are to have democratic, and publicly visible, oversight. We recommend that upper tier councils, and combined authorities where appropriate, should be able to monitor the performance and effectiveness of LEPs through their scrutiny committees. In line with other public bodies, scrutiny committees should be able to require LEPs to provide information and attend committee meetings as required.***

97 Wiltshire Council (OSG034) para 10

98 Department for Communities and Local Government, *Review of Local Enterprise Partnership Governance and Transparency* (October 2017), para 6.1

99 Department for Communities and Local Government, *Review of Local Enterprise Partnership Governance and Transparency* (October 2017), para 9.3

100 Q146

8 Scrutiny in combined authorities

97. We recognise that the mayoral combined authorities are in their infancy, but given how important organisational culture is, it is important that we include them in our inquiry to ensure that the correct tone is set from the outset. We are therefore concerned by the evidence we heard about an apparent secondary role for scrutiny. Mayors will be responsible for delivering services and improvements for millions of residents, but oversight of their performance will be hindered by limited resources.

The London Assembly

98. The London Assembly has 25 members elected to hold the Mayor of London to account and to investigate any issues of importance to Londoners. London Assembly Members are elected at the same time as the Mayor, with eleven representing the whole capital and fourteen elected by constituencies. The Mayor holds all executive power and the Assembly's ability to override decisions is limited to amending budgets and rejecting statutory strategies. The most visible accountability tool is Mayor's Question Time, when the Mayor of London is required to appear in public before the Assembly ten times a year to answer for decisions made and their outcome. Oversight is also provided by ten thematic scrutiny committees. In 2016/17 the London Assembly controlled a budget of £7.2 million, of which £1.5 million was allocated to scrutiny and investigations, with the remainder used for other member services and democratic services functions. This compares with the Mayor's budget of around £16 billion.[101] The Chair of the Assembly, Jennette Arnold, told us:

> You will see that we have been learning and changing over the last 16 years. I would say we are a much more robust body than we were, say, eight years previously because we have taken on learning. We set out to make sure that the centrepiece of our work, which is detailed scrutiny, is evidence-based, well resourced and is disseminated as widely as possible. We have two tracks: the first track is to follow the Mayor, i.e. we ensure mayoral accountability; and the other track we have is about any issue of public concern to London. I would say the combined authorities should look and see the clarity that we have. This is what good scrutiny looks like: it is separate; it has its own officers; it has its own budget; and there is money that is required to do that work.[102]

The mayoral combined authorities

99. We welcome and applaud the approach of the London Assembly, however the wide discrepancy in the approach to scrutiny in the newer mayoral combined authorities which has come to light during our inquiry is an issue of concern. Combined authorities have a far smaller budget and do not have an equivalent body to the London Assembly, with scrutiny instead being performed by members of the constituent councils. The Local Government Research Unit at De Montfort University argue that:

101 London Assembly, *The London Assembly Annual Report 2016–17*, page 57
102 Q83

> An opportunity was missed in the creation of combined authorities–because of the focus on leadership–to recreate a London Assembly style directly elected body with the responsibility to hold the mayor of any combined authority (and other organisations) to account. A directly elected scrutiny body with its own staff and resources may seem an expensive innovation, but … serious governance failures resulting in damage to public services and the public can occur where O&S is inadequate or fails.[103]

100. In contrast with the London Assembly, Cllr Peter Hughes of the West Midlands Combined Authority told us:

> The regulations for the combined authority actually state "a scrutiny officer", as it stands at the moment. This has been the case for the last 18 months. The combined authority scrutiny chair, whether it is me or anybody else, is supported by a part-time person who is lent out from our own authority. That is the case across all of the other issues. Effectively, the West Midlands Combined Authority is run on the basis of good will and people, chief executives and directors, giving up their time. That is exactly the same with scrutiny. At the moment, we have a person who is lent, with no financial refund to Sandwell, to the combined authority. That has not yet been formalised.[104]

101. We recognise that the resourcing levels are not necessarily decisions for the combined authorities themselves, with Government funding dictating that they be organisations with minimal overheads. However, we also acknowledge that the absence of an allocated budget or a directly-elected scrutiny body does not mean that the approach to scrutiny in combined authorities is necessarily wrong. Cllr Hughes for example told us how he will be measuring the effectiveness of his committee:

> Part of scrutiny is not just the questioning and scrutiny aspect of it; it is also that we are adding value to the work of the combined authority. As you have just said, it is in the very early stages at the moment. We feel that we can actually add value to some of the policy decisions that are being taken or being formed by actually taking specific pieces of work and drilling down and calling upon evidence from the local authorities beneath us to add value to the work of the combined authority itself.[105]

102. Susan Ford, Scrutiny Manager of the Greater Manchester Combined Authority, also told us that successful scrutiny in Greater Manchester will enable the Mayor and officers to:

> understand the value that scrutiny can bring, and… sense-checking what might cause issues in particular districts and bringing that kind of wealth of in-depth knowledge that scrutiny members bring in with them. The scrutiny function also has a duty to the public to try to simplify some of what can be seen as a very complicated governance arrangement. Having different governance arrangements across different devolved areas has not helped. Mayors in different city region areas have different powers, so

103 Local Government Research Unit, De Montfort University (OSG022) para 4
104 Q87
105 Q85

> there is a duty to members of the public. There is also a duty to broaden the engagement in terms of thinking about things like younger people and the way in which elected members actually engage with their constituents. We have to support them to be able to make devolution governance and decision-making intelligible.[106]

103. We raised the issue of scrutiny of combined authority mayors with the Minister, who argued that the scrutiny arrangements were sufficient:

> I consider that the scrutiny arrangements in that sense are stronger than they are for local authorities … Certainly the powers that were being transferred to Mayors were generally powers that hitherto had been held by Secretaries of State and, therefore, on a virtually daily basis when this House was sitting there was a method, potentially, of scrutinising the decisions that were being made, and their outcomes … That said, and I have mentioned this a number of times, I do not think there is any room, in this sense, for complacency. I would say that, in the same way as we are now talking about the scrutiny arrangements from the Local Government Act 2000 having bedded in … the question is: should there now be more changes to update things because time moves on? There will legitimately be the question, as time moves on: how have those scrutiny arrangements worked? Do we need to change anything going forward to make sure that we are responding to circumstances that arise?[107]

104. We welcome the approach to scrutiny by new mayoral combined authorities such as the West Midlands and Greater Manchester, but we are concerned that such positive intentions are being undermined by under-resourcing. This is not a criticism of the combined authorities - which have been established to be capital rich but revenue poor - as they do not have the funding for higher operating costs. However, we would welcome a stronger role for scrutiny in combined authorities, reflecting the Minister's point that the Mayors now have powers hitherto held by Secretaries of State. ***We are concerned that effective scrutiny of the Metro Mayors will be hindered by under-resourcing, and call on the Government to commit more funding for this purpose. When agreeing further devolution deals and creating executive mayors, the Government must make clear that scrutiny is a fundamental part of any deal and that it must be adequately resourced and supported.***

106 Q85
107 Qq131–132

Conclusions and recommendations

The role of scrutiny

1. *We therefore recommend that the guidance issued to councils by DCLG on overview and scrutiny committees is revised and reissued to take account of scrutiny's evolving role.* (Paragraph 12)

2. *We call on the Local Government Association to consider how it can best provide a mechanism for the sharing of innovation and best practice across the scrutiny sector to enable committees to learn from one another. We recognise that how scrutiny committees operate is a matter of local discretion, but urge local authorities to take note of the findings of this report and consider their approach.* (Paragraph 13)

Party politics and organisational culture

3. However, all responsible council leaderships should recognise the potential added value that scrutiny can bring, and heed the lessons of high profile failures of scrutiny such as those in Mid Staffordshire and Rotherham. (Paragraph 19)

4. *To reflect scrutiny's independent voice and role as a voice for the community, we believe that scrutiny committees should report to Full Council rather than the executive and call on the Government to make this clear in revised and reissued guidance. When scrutiny committees publish formal recommendations and conclusions, these should be considered by a meeting of the Full Council, with the executive response reported to a subsequent Full Council within two months.* (Paragraph 23)

5. We believe that executive members should attend meetings of scrutiny committees only when invited to do so as witnesses and to answer questions from the committee. Any greater involvement by the executive, especially sitting at the committee table with the committee, risks unnecessary politicisation of meetings and can reduce the effectiveness of scrutiny by diminishing the role of scrutiny members. *We therefore recommend that DCLG strengthens the guidance to councils to promote political impartiality and preserve the distinction between scrutiny and the executive.* (Paragraph 25)

6. It is vital that the role of scrutiny chair is respected and viewed by all as being a key part of the decision-making process, rather than as a form of political patronage. (Paragraph 27)

7. We believe that there are many effective and impartial scrutiny chairs working across the country, but we are concerned that how chairs are appointed has the potential to contribute to lessening the independence of scrutiny committees and weakening the legitimacy of the scrutiny process. Even if impropriety does not occur, we believe that an insufficient distance between executive and scrutiny can create a perception of impropriety. (Paragraph 30)

8. We believe that there is great merit in exploring ways of enhancing the independence and legitimacy of scrutiny chairs such as a secret ballot of non-executive councillors. However, we are wary of proposing that it be imposed upon authorities by government.

We therefore recommend that DCLG works with the LGA and CfPS to identify willing councils to take part in a pilot scheme where the impact of elected chairs on scrutiny's effectiveness can be monitored and its merits considered. (Paragraph 35)

Accessing information

9. Scrutiny committees that are seeking information should never need to be 'determined' to view information held by its own authority, and there is no justification for a committee having to resort to using Freedom of Information powers to access the information that it needs, especially from its own organisation. There are too many examples of councils being uncooperative and obstructive. (Paragraph 37)

10. Councils should be reminded that there should always be an assumption of transparency wherever possible, and that councillors scrutinising services need access to all financial and performance information held by the authority. (Paragraph 41)

11. We do not believe that there should be any restrictions on scrutiny members' access to information based on commercial sensitivity issues. Limiting rights of access to items already under consideration for scrutiny limits committees' ability to identify issues that might warrant further investigation in future, and reinforces scrutiny's subservience to the executive. *Current legislation effectively requires scrutiny councillors to establish that they have a 'need to know' in order to access confidential or exempt information, with many councils interpreting this as not automatically including scrutiny committees. We believe that scrutiny committees should be seen as having an automatic need to know, and that the Government should make this clear through revised guidance.* (Paragraph 42)

12. *We note that few committees make regular use of external experts and call on councils to seek to engage local academics, and encourage universities to play a greater role in local scrutiny.* (Paragraph 45)

13. We commend such examples of committees engaging with service users when forming their understanding of a given subject, and encourage scrutiny committees across the country to consider how the information they receive from officers can be complemented and contrasted by the views and experiences of service users. (Paragraph 47)

Resources

14. We acknowledge that scrutiny resources have diminished in light of wider local authority reductions. However, it is imperative that scrutiny committees have access to independent and impartial policy advice that is as free from executive influence as possible. We are concerned that in too many councils, supporting the executive is the over-riding priority, with little regard for the scrutiny function. This is despite the fact that at a time of limited resources, scrutiny's role is more important than ever. (Paragraph 61)

15. *We therefore call on the Government to place a strong priority in revised and reissued guidance to local authorities that scrutiny committees must be supported by officers that can operate with independence and provide impartial advice to scrutiny councillors. There should be a greater parity of esteem between scrutiny and the executive, and committees should have the same access to the expertise and time of senior officers and the chief executive as their cabinet counterparts. Councils should be required to publish a summary of resources allocated to scrutiny, using expenditure on executive support as a comparator. We also call on councils to consider carefully their resourcing of scrutiny committees and to satisfy themselves that they are sufficiently supported by people with the right skills and experience.* (Paragraph 62)

16. *We recommend that the Government extend the requirement of a Statutory Scrutiny Officer to all councils and specify that the post-holder should have a seniority and profile of equivalence to the council's corporate management team. To give greater prominence to the role, Statutory Scrutiny Officers should also be required to make regular reports to Full Council on the state of scrutiny, explicitly identifying any areas of weakness that require improvement and the work carried out by the Statutory Scrutiny Officer to rectify them.* (Paragraph 65)

Member training and skills

17. It is incumbent upon councils to ensure that scrutiny members have enough prior subject knowledge to prevent meetings becoming information exchanges at the expense of thorough scrutiny. Listening and questioning skills are essential, as well as the capacity to constructively critique the executive rather than following party lines. *In the absence of DCLG monitoring, we are not satisfied that the training provided by the LGA and its partners always meets the needs of scrutiny councillors, and call on the Department to put monitoring systems in place and consider whether the support to committees needs to be reviewed and refreshed. We invite the Department to write to us in a year's time detailing its assessment of the value for money of its investment in the LGA and on the wider effectiveness of local authority scrutiny committees.* (Paragraph 76)

The role of the public

18. *The Government should promote the role of the public in scrutiny in revised and reissued guidance to authorities, and encourage council leaderships to allocate sufficient resources to enable it to happen. Councils should also take note of the issues discussed elsewhere in this report regarding raising the profile and prominence of the scrutiny process, and in so doing encourage more members of the public to participate in local scrutiny. Consideration also need to be given to the role of digital engagement, and we believe that local authorities should commit time and resources to effective digital engagement strategies. The LGA should also consider how it can best share examples of best practise of digital engagement to the wider sector.* (Paragraph 82)

Scrutinising public services provided by external bodies

19. *Scrutiny committees must be able to monitor and scrutinise the services provided to residents. This includes services provided by public bodies and those provided by*

commercial organisations. Committees should be able to access information and require attendance at meetings from service providers and we call on DCLG to take steps to ensure this happens. We support the CfPS proposal that committees must be able to 'follow the council pound' and have the power to oversee all taxpayer-funded services. (Paragraph 90)

20. *In light of our concerns regarding public oversight of LEPs, we call on the Government to make clear how these organisations are to have democratic, and publicly visible, oversight. We recommend that upper tier councils, and combined authorities where appropriate, should be able to monitor the performance and effectiveness of LEPs through their scrutiny committees. In line with other public bodies, scrutiny committees should be able to require LEPs to provide information and attend committee meetings as required.* (Paragraph 96)

Scrutiny in combined authorities

21. *We are concerned that effective scrutiny of the Metro Mayors will be hindered by under-resourcing, and call on the Government to commit more funding for this purpose. When agreeing further devolution deals and creating executive mayors, the Government must make clear that scrutiny is a fundamental part of any deal and that it must be adequately resourced and supported.* (Paragraph 104)

Annex: summary of discussions at an informal workshop with councillors and officers

As part of the inquiry, the Committee hosted a workshop in October 2017 attended by over 45 council officers and councillors from across the country. Split into four groups, attendees discussed their experiences of overview and scrutiny, with each group considering three questions. The following provides an edited summary of the discussions held and is not intended to be verbatim minutes. Comments are not attributed to individuals or organisations, but seek to reflect the variety of statements made and opinions expressed. This summary and its content does not necessarily reflect the views of the Committee, or all of the attendees present at the workshop.

Q1) Do local authority scrutiny committees operate with political independence and in a non-partisan way

Officers:

- Scrutiny is only non-partisan on the surface: most of the discussion and debate takes place in group meetings, which officers and the public cannot see
- Scrutiny chairs often don't want to challenge their Leaders, so do more external scrutiny or pick 'safe' topics that are less controversial
- The ways that committee chairs are appointed means that chairs more likely to 'keep quiet', use the role as a way to prepare for a Cabinet position, or see it as a consolation prize for not being in the Cabinet
- Personalities of chairs and the ability to work well with executive colleagues is key
- Officers in combined roles struggle to adequately support scrutiny: the roles of scrutiny officer and committee clerk are fundamentally different with different skill sets needed
- Clerking a committee changes how officers are treated, with the value placed on their expertise and guidance lessened so they are treated as little more than admin assistants
- Task and finish groups are less partisan and work effectively cross-party. However, witness sessions are usually held in private with only the reporting of findings being in public. External scrutiny is also less partisan, and so can achieve much more while enthusing councillors
- Third party organisations can sometimes be reluctant to be scrutinised by lay persons. It takes significant time to build positive relationships
- There should be debate at Full Council for topic selection for scrutiny committees
- Committees need more power to force changes on executives

- There is too much executive control over what is scrutinised
- In some local authorities, cabinet members and the Leader attend health scrutiny meetings when the NHS is being scrutinised and sometimes lead the questioning of witnesses
- Appointment of members to scrutiny committees is in the hand of controlling political groups, so there will never be full independence

Councillors:

- Focussing on the impact we want, like improved health and wellbeing, gets rid of the party-political aspect because we've agreed on what we want to achieve
- The better the quality of the opposition, the better the contribution it makes. Currently, we have a very weak opposition and I don't think they understand the difference between scrutiny and opposition
- One problem is engagement of one's own backbenchers to participate in scrutiny. It's often the poor relation, and shouldn't be
- Is aiming for political independence realistic and necessary? If you have people from both sides on committee, as long as they challenge effectively, that's all that matters
- I want to know about value for money, so I ask awkward questions. Politics comes into it when members score points to get votes. It suits my nature to be challenging and ask probing questions. But you need knowledge of subject to do this. A lot of colleagues don't have this
- The role of the Leader is key: they have to believe in good governance. Scrutiny's success depends on the attitude of the Leader, who needs to recognise that good scrutiny reflects on the reputation of council. Too many Leaders seek to block scrutiny
- Scrutiny is improved in authorities where scrutiny reports go to Full Council and not the executive
- Officers have to be supportive of scrutiny. It's not just about the Leader
- Some chairs can be fiercely independent regardless of which party has control. An effective chair of a scrutiny committee need to be apolitical and work collaboratively across party lines. A lot depends on the group of individuals on the committee
- A lack of political independence is often more pronounced in small shire district councils where there is often too much domination by strong leaders and executives
- There is a problem with committees lacking teeth - the executive will often not listen regardless of what scrutiny committees say

- Joint scrutiny often works well, sometimes with different chairs. Working groups also increase political independence
- Decisions on who will chair a committee is often whipped vote, and there is considerable remuneration which binds chairs' approach
- The executive has control over scrutiny funding and budgets which is a big problem

Q2) Do officers and members working on scrutiny have sufficient resources, expertise and knowledge to deliver effective scrutiny?

Officers:

- Limited access to expertise is a bigger issue than resources: committees struggle to access expert advisors and find it hard to build relationships
- Scrutiny support is often combined with wider a corporate policy role, meaning officers often spend relatively little of their time actually working on scrutiny
- There is a tension in trying to scrutinise people with whom you might later seek to work with or for
- The reduced resources allocated to scrutiny has led to a corresponding reduction in scrutiny committees: local authorities cannot have committees that mirror each portfolio like in Parliament, leading to committees with extremely large remits
- Districts need to work better with upper tier authorities: on their own, districts are limited in what they can influence
- Scrutiny has fewer resources, but increasingly wide remits: it's not possible to do everything justice
- Health scrutiny has a huge workload so committees often struggle to do much more that the statutory requirements
- Scrutiny has become much leaner, but this is not necessarily a bad thing: it is more focussed now so that it achieves more impact and demands greater attention
- Accessing outside experts is easier in London as they are always relatively nearby
- Questioning skills for members are key, and remain the biggest training need
- Getting input from external experts such as academics is possible at the start of an inquiry, but sustaining this engagement throughout an inquiry is difficult
- There should be a separate budget for scrutiny, commissioning research and recommending options
- In authorities that are reducing staff numbers for budgetary reasons, more resources for scrutiny is often unrealistic

- In many councils, there are enough resources, but they aren't allocated appropriately: there needs to be a top-down reallocation of resources, with more priority given to the scrutiny team
- There is often a lot of resistance to scrutiny at the senior officer level. Many actively seek to keep scrutiny to a minimum, as they don't want to be challenged in what they're doing
- Information requested from senior officers is often sanitised or of limited usefulness. Officers need to realise they work for all councillors, not just the executive

Councillors:

- I'm not impressed by the quality of members. They need more training–it's only then they have the knowledge to ask probing questions
- We have people on our Committee with no expertise
- The way round the resource problem is to get members to do more work themselves.
- It is incumbent on members who chair committees and task and finish groups to take on knowledge and expertise and motivate other members to do so too
- The clerks don't prepare papers, someone from the relevant department (e.g. health and social care) does it
- We have found that scrutiny officers have taken on the role of being nothing more than glorified diary clerks. We need to motivate them to become more involved in the background and research. If you rely on reports from individual departments, they are too optimistic
- The key is understanding which questions to ask
- It's about the officers understanding the key role of scrutiny and not seeing it as a nuisance
- Commercial confidentiality is a big issue which impedes scrutiny committees
- Investment in member development is insufficient, but also hampered by large turnover of committee members
- Individual committees often have too wide a remit to cover individual issues sufficiently
- There is a growing trend to merge scrutiny function with corporate policy team. This negatively impacts on scrutiny because of conflicts of interest among officers
- Too many scrutiny committees remain talking shops. There should be more emphasis on measuring how effective scrutiny is in influencing policy and decisions
- Scrutiny staff must be completely separated from the executive

- There has been a trend towards fewer members on scrutiny committees in recent years. This has negatively affected good scrutiny
- To give scrutiny more agency scrutiny reviews should be regularly produced which go to the full council for consideration
- More focus of scrutiny committees should be placed on upstream policy formation

Q3) If you could make a single change, what would you change about the way scrutiny in your authority operates?

Officers:

- The whole process should be more independent of departmental officers: chairs are reluctant to challenge or disagree with senior officers
- Having opposition chairs would get much better engagement and input from other members
- More members need to actually read their committee papers–however some officers make the papers intentionally long to dissuade members from doing so
- There is a capacity issue for 'double-hatted' councillors, and those who work in outside employment
- With meetings being held in the evenings, discussions can go on quite late: with many of the best councillors having demanding day jobs, it's unrealistic to expect high performance
- Scrutiny committees should share expected questions with witnesses before meetings to ensure all information is available in advance: it shouldn't be a closed-book exam as some officers can deflect questions by promising to look into an issue and write back later
- Scrutiny in general needs a higher profile, including the role of statutory scrutiny officer: people across the council should know who it is with their status being far closer to that of the monitoring officer
- Scrutiny has become too broad and complex over the years: it is not achievable to do everything asked of it. There needs to be a clear remit for scrutiny with up to date guidance from Government
- Scrutiny will only succeed if the Leader and Chief Executive think it is important–strong scrutiny chairs and strong scrutiny managers are required when they do not
- Ensuring legislation is enforced regarding undue interference from the Leader and cabinet
- Resident-led commissions help to improve scrutiny. Broadening the scrutiny process out to involve the public and prominent campaign groups, inviting them onto task groups, or to serve as chairs of commissions

- There should be an independent secretariat for scrutiny committees with separate ring-fenced budget, independent of the council, to create greater organisational autonomy
- Councils should be able to compel witnesses to attend from publicly funded bodies, such as housing associations
- Legislation relating to scrutiny powers should be simplified, putting them all into one place
- Removing conflicts of interests where scrutiny committees are supported by officers responsible for the policies that are being scrutinised

Councillors:

- Better selection of candidates to be councillors, as well as improving their calibre through training
- We need full time councillors: the part time nature of the role means variable quality
- It should be constitutionally established that scrutiny is on a level with cabinet
- Greater public involvement: if you want to be effective, what really changes a Leader's mind is people and residents, and if you don't get them to meetings, you won't make changes
- Statutory Scrutiny Officers are too low down the food chain to influence people. This statutory post has to be a similar level and have access to the corporate management level
- We've also got to make use of modern technology. It's about getting the message out through facebook and twitter
- One of the changes is taking meetings out in the community
- Political groups need to treat each other with fairness and respect
- Completely disconnect all aspects of scrutiny (formation, governance, resources) from the executive
- Increase connection with residents and public through co-opted members. More witnesses and public evidence sessions
- Clearer feedback loops to quantify scrutiny influence
- Council leadership should be assessed on how they take into account work of scrutiny committees, for example through annual report on scrutiny considered by full Council or annual evidence sessions with cabinet members
- Allocate chairs on the basis of political proportionality
- All scrutiny work should be considered by Full Council, rather than the cabinet

Formal Minutes

Monday 11 December 2017

Members present:

Mr Clive Betts, in the Chair

Mike Amesbury	Fiona Onasanya
Bob Blackman	Mark Prisk
Helen Hayes	Mary Robinson
Kevin Hollinrake	Liz Twist
Andrew Lewer	

Draft Report (*Effectiveness of local authority overview and scrutiny committees*) proposed by the Chair, brought up and read.

Ordered, That the Draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 104 read and agreed to.

Summary agreed to.

Annex agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned until Monday 18 December at 2.15 p.m.

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Monday 16 October 2017	*Question number*
Professor Colin Copus, Director of the Local Governance Research Unit, De Montfort University; **Jacqui McKinlay**, Chief Executive, Centre for Public Scrutiny (CfPS); **Councillor Marianne Overton**, Leader of the Independent Group, Local Government Association	Q1–43

Monday 30 October 2017	
Councillor Mary Evans, Chair of Scrutiny Committee, Suffolk County Council; **Councillor Sean Fitzsimons**, Chair of Scrutiny and Overview Committee, Croydon Council; **Councillor John Cotton**, Lead Scrutiny Member, Birmingham City Council	Q44–82
Jennette Arnold OBE AM, Chair, London Assembly; **Ed Williams**, Executive Director, Secretariat, London Assembly; **Susan Ford**, Scrutiny Manager, Greater Manchester Combined Authority, **Councillor Peter Hughes**, Chair, Overview and Scrutiny Committee, West Midlands Combined Authority	Q83–107

Monday 6 November 2017	
Marcus Jones MP, Minister for Local Government, Department for Communities and Local Government	Q108–152

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

OSG numbers are generated by the evidence processing system and so may not be complete.

1 B4RDS (Broadband for Rural Devon & Somerset) (OSG0006)

2 Birmingham City Council (OSG0002)

3 Chester Community Voice UK (OSG0022)

4 Councillor Tony Dawson (OSG0019)

5 Dr Laurence Ferry (OSG0017)

6 Dr Linda Miller (OSG0018)

7 F&G BUILDERS LTD (OSG0005)

8 Gwen Swinburn (OSG0015)

9 Heston Residents' Association (OSG0008)

10 Local Government and Social Care Ombudsman (OSG0007)

11 MNRAG (OSG0020)

12 Mr Bryan Rylands (OSG0003)

13 Mr Mark Baynes (OSG0009)

14 Mr Stephen Butters (OSG0001)

15 Ms Christine Boyd (OSG0013)

16 Ms Jacqueline Thompson (OSG0012)

17 Nicolette Boater (OSG0016)

18 North Lincolnshire Council (OSG0021)

19 Research for Action (OSG0014)

20 Susan Hedley (OSG0004)

The following written evidence was received in the last Parliament by the previous Committee for this inquiry and can be viewed on the inquiry publications page of the Committee's website.

1 A Journalist (OSG0004)
2 ADSO (OSG0123)
3 An Officer from a London Borough (OSG0091)
4 Anonymous (OSG0006)
5 Anonymous (OSG0065)
6 Anonymous (OSG0103)
7 Bedford Borough Conservative Group (OSG0069)
8 Birmingham City Council (OSG0087)
9 Bournemouth Borough Council (OSG0071)
10 Bracknell Forest Council (OSG0010)
11 Bristol City Council (OSG0082)
12 Broadland District Council (OSG0014)
13 Cardiff Business School (OSG0056)
14 Central Bedfordshire Council (OSG0019)
15 Centre for Public Scrutiny Ltd (OSG0098)
16 Charnwood Borough Council (OSG0080)
17 Chesterfield Borough Council (OSG0052)
18 Citizens Advice (OSG0076)
19 Cllr Jenny Roach (OSG0104)
20 Committee on Standards in Public Life (OSG0027)
21 Cornwall Council (OSG0051)
22 Councillor Ann Munn (OSG0109)
23 Councillor Charles Wright (OSG0088)
24 Councillor Chris Kennedy (OSG0106)
25 Councillor James Dawson (OSG0016)
26 Councillor James Dawson (OSG0118)
27 County and Unitary Councils' Officer Overview and Scrutiny Network (OSG0114)
28 Debt Resistance UK (OSG0094)
29 Department for Communities and Local Government (OSG0122)
30 Devon County Council (OSG0008)
31 Dr Laurence Ferry (OSG0023)
32 Dr Linda Miller (OSG0095)
33 Dudley MBC (OSG0058)
34 Durham County Council (OSG0079)
35 Ealing Council (OSG0041)
36 East Devon Alliance (OSG0040)

37 East Riding of Yorkshire Council (OSG0061)
38 Epping Forest District Council (OSG0012)
39 Erewash Labour Group (OSG0013)
40 Exeter City Council (OSG0011)
41 Federation of Enfield residents & Allied Associations (OSG0097)
42 Gloucestershire County Council (OSG0050)
43 Green group on Norwich City Council (OSG0057)
44 Hereford and South Herefordshire Green Party (OSG0119)
45 Herefordshire Council (OSG0101)
46 INLOGOV (OSG0053)
47 Institute of Local Government Studies, University of Birmingham (OSG0115)
48 It's Our County (OSG0124)
49 Julian Joinson (OSG0112)
50 Ken Lyle (OSG0032)
51 Leeds City Council (OSG0043)
52 Leicestershire County Council (OSG0036)
53 Lewisham Overview and Scrutiny Business Panel (OSG0078)
54 Liberal Democrats on Wokingham Borough Council (OSG0125)
55 Local Governance Research Unit, De Montfort University (OSG0022)
56 Local Government Association (OSG0081)
57 London Assembly (OSG0117)
58 London Borough of Enfield (OSG0075)
59 London Borough of Hackney (OSG0110)
60 London Borough of Merton (OSG0037)
61 London Borough of Tower Hamlets (OSG0105)
62 Marc Hudson (OSG0116)
63 Medway Council (OSG0021)
64 Mr G M Rigler (OSG0002)
65 Mr Gerry O'Leary (OSG0092)
66 Mr John Galvin (OSG0102)
67 Mr Martyn Lewis (OSG0003)
68 Mr Peter Cain (OSG0007)
69 Mrs Tracy Reader (OSG0009)
70 Ms Christine Boyd (OSG0086)
71 Ms Jacqueline Annette Thompson (OSG0074)
72 Newcastle City Council (OSG0015)
73 NHS Providers (OSG0064)
74 Nicolette Boater (OSG0107)

75 North East Combined Authority (OSG0084)
76 North East Councils Scrutiny Officers Network (OSG0083)
77 North Tyneside Council - Scrutiny Chairs/Deputy Chairs (OSG0028)
78 North Yorkshire County Council (OSG0018)
79 Nottingham City Council (OSG0024)
80 Officer from a Fire & Rescue Authority (OSG0121)
81 Pendle Borough Council (OSG0020)
82 Rachel Collinson (OSG0066)
83 Ryedale District Council (OSG0030)
84 Scrutiny Committee of East Devon District Council (OSG0035)
85 Sheffield City Council (OSG0073)
86 Sheffield for Democracy (OSG0025)
87 South Gloucestershire Council (OSG0113)
88 Southampton City Council (OSG0029)
89 St Albans City and District Council (OSG0099)
90 Stevenage Borough Council (OSG0060)
91 Stockton on Tees Borough Council (OSG0077)
92 Suffolk County Council (OSG0054)
93 Sunderland City Council (OSG0067)
94 Susan Hedley (OSG0038)
95 The Society of Local Authority Chief Executives and Senior Managers (Solace) (OSG0068)
96 Trafford Council (OSG0048)
97 Villages Focus Group (OSG0063)
98 Walsall Council (OSG0085)
99 West Sussex County Council (OSG0026)
100 Westminster City Council (OSG0039)
101 Wiltshire Council (OSG0034)
102 Woking Borough Council Overview & Scrutiny Committee (OSG0100)
103 Woodhouse Parish Council (OSG0111)
104 Worcestershire County Council (OSG0033)
105 Wyre Council (OSG0047)
106 Wyre Council Labour Group Of Councillors (OSG0042)

This page is intentionally left blank

Effectiveness of Local Authority Overview and Scrutiny Committees

Report of the H & C Communities and Local Government Committee

A Personal View

In December 2017 the above report was published. Its antecedents were reflections on the consequences of ineffectual scrutiny drawing on the failings of Mid Staffordshire NHS Trust (which criticised Local Authority Health Scrutiny) and the inadequacy of Rotherham Council where 'Scrutiny had been undermined by an organisational culture that did not value scrutiny' so that communities were not able to assess the information they needed to hold the Executive to account. The Committee sets out a number of recommendations for the Government and LGA to consider.

Role of Scrutiny

The H and C Committee stated 'at its best Scrutiny holds Executive to account, monitors decisions affecting local residents and contributes to the implementation of policy.' It therefore supported the Centre for Public Scrutiny's 4 principles of good Scrutiny in that it:

- Provides a constructive critical friend challenge
- Amplifies the voices and concerns of the public
- Is led by independent people who take responsibility for their role
- Drives improvements in public services

It also noted that:

- As well as reacting to decisions and proposals from local decision makers, effective scrutiny can also be proactive and help to set a policy agenda
- Pre- decision scrutiny is also a vital part of a committee's role offering the Executive the benefit of their ability to focus on an issue in greater depth (a role for PDG's)
- The role of Scrutiny has also evolved e.g.' an increase in scrutiny of external bodies especially health bodies'
- Scrutiny of the growing number of partnership arrangements
- Scrutiny of council driven commercial operations.

Councils are free to organise their own Scrutiny structures and at MDDC we have a single Scrutiny Committee backed by 4 Policy Development Groups who in effect assume the overview function.

The H and C Committee recognise that 'how Scrutiny Committees operate is a matter of local direction but urge Local Authorities to take note of the findings of this report and consider this approach'. It called on the LGA to consider how it can share innovation and best practice and on the DCLG to review its guidance to the account of Scrutiny's evolving role.

RECOMMENDATIONS

The Committee published a series of observations and recommendations:

- Need for buy-in at the top of the organisation – a culture where scrutiny is taken seriously
- Responsibility to foster an environment that welcomes constructive challenge and debate

- Mutual respect

1 **Scrutiny Reports** belong to Full Council, not the executive 'They should be considered by a meeting of the Full Council with the Executive response reported to a subsequent Full Council within two months'.

2 Scrutiny Committees need to have an **independent voice** and to make evidence based conclusions while avoiding political point scoring. They need to be sufficiently resourced, have access to information and operate in an apolitical impartial way.

3 '**Executive Members** should attend meetings only when invited to do so as witnesses and to answer questions from the Committee. Any greater involvement by the executive, especially sitting at the committee table risks unnecessary politicisation of meetings and can reduce the effectiveness of scrutiny by diminishing the role of Scrutiny members'.

4 'It is vital that the **role of Scrutiny Chair** is respected and viewed by all as being a key part of the decision making process rather than as a form of political patronage'.

5 'We believe that there is a great merit in exploring the **independence** and legitimacy of **Scrutiny Chairs** such as a secret ballot of non-executive councillors (but we are wary of proposing that it be imposed and call for a pilot scheme)'.

6 'Councils should be reminded that there should always be an assumption of **transparency** wherever possible and that councillors scrutinising services need access to all financial and performance information held by the authority'.

7 'We do not believe there should be any restrictions on Scrutiny Members **access to information** based on commercial sensitivity issues (i.e. and automatic need to know)'.

8 'We note that few committees make regular use of **external experts** and call on councils to seek to engage local academics and encourage universities to play a greater role in Scrutiny'.

9 'We commend examples of committees engaging with **service users** when forming their understanding of a given subject'.

10 'Scrutiny Committees must be supported by **officers** that can operate with independence and provide impartial advice to Scrutiny councillors. Councils should be required to publish a summary of resources allocated to Scrutiny, using expenditure on Executive support as a comparator. We recommend that the Government extend the requirements of a **Statutory Scrutiny Officer** to all councils and specify that the post holder should have a seniority and profile of equivalence to the Councils Corporate Management Team.'

11 **Member Training** "it is incumbent upon councils to ensure that **Scrutiny Members** have enough prior subject knowledge to prevent meetings becoming information exchanges at the expense of thorough scrutiny. Listening and questioning skills are essential as well as the capacity to constructively critique the executive rather than following party lines".

12 “Scrutiny committees must be able to monitor and scrutinise the **(external) services** provided to residents including by public bodies and commercial organisations and have the power to oversee all taxpayer funded services”.

13 “Encourage more members of the public to participate in local Scrutiny. Consideration also needs to be given to the role of **digital engagement**; local authorities should commit time and resources to effective digital engagement strategies”

As indicated above, the report set out recommendations for the Government and LGA to reflect upon and to consider re-issuing guidance to Local Authorities. Some issues may prove challenging e.g. commitment to extra resourcing or the potential to scrutinise commercial bodies funded by taxpayers e.g. Carillion?

In my view it would be premature to act before new guidance emerges unless Members felt strongly that there is a major shortfall in the operation of Scrutiny at MDDC. We have recently benefited from the long requested and welcome appointment of a Scrutiny Officer. As Chair I have always experienced nothing but full support from Cabinet Members and from officers, but that may not be the experience of other Members. We have had difficulty at times of questioning external bodies but I would suggest that is a consequence of a County underpinned by 8 District Councils. Members may have a view on the value of all Scrutiny reports going to Full Council – some but not all may take that route already but Council can be an unwieldly forum for in-depth analysis. Whilst all reports ultimately are the responsibility of Full Council. In conclusion I recognise that this is a valuable report, that MDDC is well placed to demonstrate compliance with much of the body of the report and that until new guidance emerges it would be premature to undertake any constitutional change.

Frank Rosamond

Chair of Scrutiny

This page is intentionally left blank

Intimidation in Public Life

A Review by the Committee on Standards in Public Life

Committee on Standards in Public Life

December 2017
Cm 9543

Intimidation in Public Life: A Review by the Committee on Standards in Public Life

Presented to Parliament
by the Prime Minister
by Command of Her Majesty
December 2017

Cm 9543

This publication is available on the Committee on Standards in Public Life website: www.gov.uk/government/organisations/the-committee-on-standards-in-public-life

Any enquiries regarding this publication should be sent to us at public@public-standards.gov.uk

ISBN 978-1-5286-0096-5

ID CCS1017273996 12/17

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

The Seven Principles of Public Life

The Principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Dear Prime Minister,

I am pleased to present the 17th report of the Committee of Standards in Public Life, on intimidation in public life. You invited the Committee to undertake a review on the intimidation of Parliamentary candidates in July 2017, considering the wider implications for public office-holders, and producing recommendations for action which could be taken in the short- and the long-term. The Committee wishes to thank all those who gave evidence to the review, particularly those who were willing to relate often highly personal and distressing experiences of intimidation.

The vitality of our political culture depends upon free and vigorous expression of opinion, and it is crucial that this freedom is preserved.

The increasing prevalence of intimidation of Parliamentary candidates, and others in public life, should concern everyone who cares about our democracy. This is not about defending elites from justified criticism or preventing the public from scrutinising those who represent them: it is about defending the fundamental structures of political freedom.

A significant proportion of candidates at the 2017 general election experienced harassment, abuse and intimidation. There has been persistent, vile and shocking abuse, threatened violence including sexual violence, and damage to property. It is clear that much of this behaviour is targeted at certain groups. The widespread use of social media platforms is the most significant factor driving the behaviour we are seeing.

Intimidatory behaviour is already affecting the way in which MPs are relating to their constituents, has put off candidates who want to serve their communities from standing for public offices, and threatens to damage the vibrancy and diversity of our public life. However, the Committee believes that our political culture can be protected from further damage if action is taken now.

Having taken evidence from a number of Parliamentary candidates, and a range of expert organisations and members of the public, it is clear that there is no single, easy solution. But, at a watershed moment in our political history, it is time for a new and concerted response.

Our report makes recommendations which address the full breadth of the problem we face. Those across public life must work together to address this problem: we must see greater energy and action from social media companies, political parties, Parliament, the police, broadcast and print media, and from MPs and Parliamentary candidates themselves. Above all, this is a question of leadership by our largest political parties. This is all the more important in the light of recent allegations of sexual harassment and bullying in Parliament which will have shaken public confidence in politicians. Political parties will need to work together to address intimidation in public life; they should not use this report and its recommendations for partisan purposes or political gain.

We propose legislative changes that the government should bring forward on social media companies' liability for illegal content online, and an electoral offence of intimidating Parliamentary candidates and party campaigners. Political parties must also put in place measures for more effective joint working to combat intimidation in advance of the next general election. In the long term, prevention will be more effective and important than any individual sanction. Those in public life must adopt a more healthy public discourse and must stand together to oppose behaviour which threatens the integrity of public life.

I commend the report to you.

Lord Bew

Chair, Committee on Standards in Public Life

"While we celebrate our diversity, what surprises me time and time again as I travel around the constituency is that we are far more united and have far more in common than that which divides us."

Jo Cox MP

Contents

Executive summary

Intimidation in public life presents a threat to the very nature of representative democracy in the UK. Addressing this intimidatory, bullying and abusive culture matters. It matters for the diversity of our public life, it matters for the way in which the public can engage with representative democracy, and it matters for the freedom to discuss and debate issues and interests.

While intimidation in public life is nothing new, the scale and intensity of intimidation is now shaping public life in ways which are a serious issue. Social media companies have been too slow in taking action on online intimidation to protect their users. The political parties have failed to show leadership in calling out intimidatory behaviour and changing the tone of political debate. Police authorities have shown inconsistency in supporting those facing illegal intimidatory activities, and electoral law is out of date on this issue. So, we make recommendations for action to social media companies, political parties, government, police and prosecutors.

Intimidation also reflects broader issues with our public political culture. Those in public life must take responsibility for shaping that culture. They must take steps to ensure that their behaviour does not open the door for intimidation and work to build public trust in public life. They should uphold high ethical standards, and should never themselves engage in, incite or encourage derogatory or dehumanising political debate.

To understand this issue we have heard from a range of individuals and organisations, including candidates, MPs, social media companies, local councillors, regulatory bodies, broadcasters and journalists, police and security authorities, and other relevant stakeholders. We held 34 individual meetings, a roundtable, and a public and private hearing. We also received 88 written submissions to our call for evidence.

Our recommendations stand as a package. They should be implemented together, as a comprehensive response to an issue of central importance to our representative democracy. It is clear that determined action on the part of all those involved is required. The cost of not doing so is too high.

Our recommendations

The widespread use of **social media** has been the most significant factor accelerating and enabling intimidatory behaviour in recent years. Although social media helps to promote widespread access to ideas and engagement in debate, it also creates an intensely hostile online environment. Some have felt the need to disengage entirely from social media because of the abuse they face, and it has put off others who may wish to stand for public office.

In the fast-paced and rapidly developing world of social media, the companies themselves and government must both proactively address the issue of intimidation online. Not enough has been done. The Committee is deeply concerned about the limited engagement of the social media companies in tackling these issues.

Currently, social media companies do not have liability for the content on their sites, even where that content is illegal. This is largely due to the EU E-Commerce Directive (2000), which treats the social media companies as ‘hosts’ of online content. It is clear, however, that this legislation is out of date. Facebook, Twitter and Google are not simply platforms for the content that others post; they play a role in shaping what users see. We understand that they do not consider themselves as publishers, responsible for reviewing and editing everything that others post on their sites. But with developments in technology, the time has come for the companies to take more responsibility for illegal material that appears on their platforms.

The government should seek to legislate to shift the balance of liability for illegal content to the social media companies away from them being passive 'platforms' for illegal content. Given the government's stated intention to leave the EU Single Market, legislation can be introduced to this effect without being in breach of EU law. We believe government should legislate to rebalance this liability for illegal content, and thereby drive change in the way social media companies operate in combatting illegal behaviour online in the UK.

Government should bring forward legislation to shift the liability of illegal content online towards social media companies.

The social media companies are not providing a safe experience for their users. This is having a severely negative impact on a wide range of people in public life, who can be subject to persistent, vitriolic and threatening abuse online.

In advance of legislative change, social media companies must take responsibility for developing technology and the necessary options for users to tackle the issue of intimidation and abuse on their platforms.

Social media companies must develop and implement automated techniques to identify intimidatory content posted on their platforms. They should use this technology to ensure intimidatory content is taken down as soon as possible.

Social media companies must do more to prevent users being inundated with hostile messages on their platforms, and to support users who become victims of this behaviour.

Social media companies must implement tools to enhance the ability of users to tackle online intimidation through user options.

The Committee is deeply concerned about the failure of Google, Facebook and Twitter to collect performance data on the functioning of their report and takedown processes. Their lack of transparency is part of the problem. None of these companies would tell us if they collect this data, and do not set targets for the time taken for reported content to be taken off the platform. This seems extraordinary when their business is data driven in all other aspects. This data must be collected, and made available to users to judge the companies' performance on takedown.

All social media companies must ensure they are able to make decisions quickly and consistently on the takedown of intimidatory content online.

Twitter, Facebook and Google must publish UK-level performance data on the number of reports they receive, the percentage of reported content that is taken down, and the time it takes to take down that content, on at least a quarterly basis.

Social media companies must urgently revise their tools for users to escalate any reports of potential illegal online activity to the police.

Political tensions run high during election campaigns, and this also plays out online. During election campaigns, political debate and discussion online can become particularly heated. This can be amplified when intimidatory content online is not taken down quickly enough, as it shapes the tone of political debate.

Therefore, government should work with the social media companies to develop an independent body which can be set up during election campaigns as a 'trusted flagger' social media reporting team for illegal, hateful and intimidatory content. This would lead to any intimidatory content online being dealt with more quickly during the fast-paced context of an election.

The social media companies should work with the government to establish a 'pop-up' social media reporting team for election campaigns.

Social media companies should actively provide advice, guidance and support to Parliamentary candidates on steps they can take to remain safe and secure while using their sites.

Political parties have an important duty of care to their candidates, members and supporters to take action to address intimidation in public life. Intimidation takes place across the political spectrum, both in terms of those engaging in and those receiving intimidation.

The leadership of political parties must recognise this duty of care, and call out and condemn intimidatory behaviour wherever it occurs. Political parties must also be prepared to work together and engage constructively on these issues. Although political parties rely heavily on volunteers, particularly at election time, given the seriousness of the intimidation experienced by candidates and others, the parties have a responsibility to show leadership in addressing intimidation.

Those in positions of leadership within political parties must set an appropriate tone during election campaigns, and make clear that any intimidatory behaviour is unacceptable. They should challenge poor behaviour wherever it occurs.

Political parties must proactively work together to tackle the issue of intimidation in public life.

Some of those engaging in intimidatory behaviour towards Parliamentary candidates and others are members of political parties and/or the fringe groups of political parties. Leaders across the political spectrum must be clear that they have no tolerance for this sort of behaviour in their party, wherever it occurs. They should not remain silent whenever and wherever intimidation takes place.

One important part of setting expectations for the appropriate behaviour is through a code of conduct for members. Codes of conduct should also be supported by training on the code, and backed-up with appropriate disciplinary processes and sanctions for inappropriate behaviour.

Political parties should set clear expectations about the behaviour expected of their members, both offline and online through a code of conduct for members which specifically prohibits any intimidatory behaviour. Parties should ensure that members are familiar with the code. The consequences of any breach of the code should be clear and unambiguous.

Political parties must ensure that party members who breach the party's code of conduct by engaging in intimidation are consistently and appropriately disciplined in a timely manner.

Political parties must collect data on the number of complaints against members for engaging in intimidatory behaviour, and the outcome of any disciplinary processes which result from these complaints.

Leaders of political parties should always call out intimidatory behaviour, even when it is perpetrated by those in the party's fringes. Fringe group leaders and spokespeople should immediately denounce any intimidatory behaviour on the part of their members or supporters.

To tackle this issue, more cross-party collaboration is needed. The parties should come together to develop a joint code of conduct on intimidatory behaviour during election campaigns. This would encourage cross-party consensus on recognising and addressing the issue, and reduce the party political element of enforcing breaches of the code.

This code should be jointly enforced by the political parties through regular meetings during election campaigns. By working together, parties can take steps to set aside partisan differences to combat the important issue of intimidation in our public life.

The political parties must work together to develop a joint code of conduct on intimidatory behaviour during election campaigns by December 2018. The code should be jointly enforced by the political parties.

Political parties have a responsibility to support and try to protect those who give their time, often on a voluntary basis, towards the democratic process and public life. This includes support and training on online campaigning.

In particular, the parties must provide support for those who are most likely to be subject to the most intensely hostile abuse online. We are deeply concerned about the impact of intimidation on the diversity of our representative democracy, therefore, the parties have an important responsibility to support female, BAME, and LGBT candidates and prospective candidates in particular.

Political parties must take steps to provide support for all candidates, including through networks, training, support and resources. In particular, the parties should develop these support mechanisms for female, BAME, and LGBT candidates who are more likely to be targeted as subjects of intimidation.

Political parties must offer more support and training to candidates on their use of social media. This training should include: managing social media profiles, block and mute features, reporting content, and recognising when behaviour should be reported directly to the police.

For the **law** to be effective and enforceable, existing legislation must have a sufficient scope, the **police** must be able to curtail and contain intimidatory behaviour, as well as be able to gather the required evidence where a prosecution is appropriate, and **prosecutors** must have appropriate guidance in place.

We have seen no evidence that the current criminal law is insufficient. New offences specific to social media are unnecessary and could be rendered out-dated quickly.

Intimidation of Parliamentary candidates is of particular significance because of the threat it poses to the integrity of the democratic process and of public service more widely. Specific electoral sanctions would reflect the seriousness of this threat. A new electoral offence of intimidating Parliamentary candidates and party campaigners during an election should be considered. This would serve to highlight the seriousness of the issue, result in more appropriate sanctions, and serve as a deterrent to those specifically targeting Parliamentary candidates and their supporters.

The government should consult on the introduction of a new offence in electoral law of intimidating Parliamentary candidates and party campaigners.

The requirement that candidates standing for election as local councillors must publish their home address on the ballot paper has enabled intimidatory behaviour. There is cross-party consensus for legislation to remove this requirement, which the government should bring forward. Provisions already exist to prevent local authority members' particular financial and other interests being publicly declared where there is a risk of intimidation to them or their family, and these provisions should be drawn to members' attention by Monitoring Officers.

The government should bring forward legislation to remove the requirement for candidates standing as local councillors to have their home addresses published on the ballot paper. Returning Officers should not disclose the home addresses of those attending an election count.

Local Authority Monitoring Officers should ensure that members required to declare pecuniary interests are aware of the sensitive interests provisions in the Localism Act 2011.

There have been a significant number of prosecutions and convictions, with a relatively high rate of successful prosecutions, for offences covering intimidatory behaviour. The Crown Prosecution Service (CPS) guidelines on cases involving social media communications rightly set a high evidential threshold and demanding public interest test, in order to ensure compatibility with the Article 10 right to freedom of expression under the European Convention on Human Rights.

We are persuaded that the CPS guidelines are reasonable and proportionate.

We commend the work of the Parliamentary Liaison and Investigation Team (PLaIT), a specialist police team based in Parliament which is building a national picture of the security threat to MPs and acts as a central point of contact and advice for individual MPs, and makes recommendations for additional security measures. However, its effectiveness requires MPs to make full use of the advice and services offered to them and to report any threats.

MPs should actively co-operate with the police and other security services working to address the security threats facing Parliamentarians and Parliamentary candidates.

There is currently inconsistency in the approach taken locally by police forces in policing intimidatory behaviour towards Parliamentary candidates. This may be due to police forces not fully understanding the context in which MPs and candidates operate, as well as a lack of understanding of social media technologies. Whilst we are mindful of pressures on police resources, better guidance and training is needed in this area.

The National Police Chiefs Council should ensure that local police forces have sufficient training to enable them to effectively investigate offences committed through social media. Local police forces should be able to access advice and guidance on the context in which MPs and Parliamentary candidates work.

There is a lack of policing guidance on offences which constitute intimidation during election periods, and local police sometimes conflate personal threats and public order offences. General election periods are a heightened environment in which candidates, in particular MPs standing for re-election, are more likely to experience intimidation.

The College of Policing Authorised Professional Practice for elections should be updated to include offences relating to intimidation, including offences committed through social media.

The rise of social media, in particular its transnational reach, has created significant challenges for policing. A most significant challenge is establishing who is responsible for sending a particular communication.

The Home Office and the Department for Digital, Culture, Media and Sport should develop a strategy for engaging with international partners to promote international consensus on what constitutes hate crime and intimidation online.

Parliamentary candidates have a broad range of expectations about what the police would be able to do in response to intimidatory behaviour they experience. Greater clarity as to what behaviour is and is not illegal, and what Parliamentary candidates can expect from their local police force, would assist Parliamentary candidates during a campaign and would result in more effective policing.

The National Police Chiefs Council, working with the Crown Prosecution Service and the College of Policing, should produce accessible guidance for Parliamentary candidates giving clear advice on behaviour they may experience during a campaign which is likely to constitute a criminal offence and what they should do in the face of such intimidation.

It is important that those who perpetrate intimidatory behaviour face proportionate legal sanctions. However, the law is a blunt instrument for dealing with much intimidatory behaviour. Policing and the law should not be seen as the primary means of addressing this issue. The primary focus must be on prevention.

Everyone in public life must play their part in **taking responsibility** for combatting intimidatory behaviour; this includes in particular MPs, leaders of political parties, and the media. They all play a role in shaping a healthy public political culture which does not open the door to intimidation.

The public's lack of trust in politics and the political system creates an environment where intimidation in public life is more likely. Everyone in public life must take responsibility for turning this around. They need to uphold high ethical standards, so that they do not undermine or bring into disrepute the institutions they are part of. This point was emphasised in the submissions to our review from members of the public.

Nobody in public life should engage in intimidatory behaviour, nor condone or tolerate it. All those in public life have a responsibility to challenge and report it wherever it occurs.

Those in public life should seek to uphold high standards of conduct, adhering to the Seven Principles of Public Life, and help prevent a decline in public trust in political institutions through their own conduct.

Those in positions of power and leadership in public life have a particular responsibility to consider how their tone is likely to shape public debate, and must not engage in political debate in a derogatory, dehumanising, or abusive way.

In particular, they must seek to stop intimidation based on prejudice or hate, which has a disproportionately negative impact on women, BAME, LGBT and other candidates from minority groups. It is essential that those in positions of leadership take steps to stop hatred and intimidation based on personal characteristics.

Those in public life must set and protect a tone in public discourse which is not dehumanising or derogatory, and which recognises the rights of others to participate in public life.

Those in public life have a responsibility not to use language which engenders hatred or hostility towards individuals because of their personal characteristics.

The broadcast and print media also have a responsibility to help tackle the intimidatory tone of public life. The freedom of the press is essential and must be protected. Nevertheless, journalists, broadcasters and editors should consider how the content they create might incite intimidation through delegitimising someone's engagement in the political process, placing undue influence on their individual characteristics, or using threatening language. While continuing their important scrutiny of those in public office, they must also be careful they are not unduly or unfairly undermining trust in the political system, especially through portraying stories about disagreements as breaches of ethical standards.

The media must also take active steps to prevent intimidation by ensuring that they do not encourage or incentivise obtaining stories through intimidation or harassment.

Press regulation bodies should extend their codes of conduct to prohibit unacceptable language that incites intimidation.

News organisations should only consider stories from freelance journalists that meet the standards of IPSO's Editors Code, or the Editorial Guidelines of Impress, as appropriate, and ensure that freelance journalists are aware of this policy.

Election campaigns are competitive and Parliamentary politics is adversarial. Candidates and MPs must be able to have robust political debate within our democracy without opening the door to intimidation. Where candidates engage in highly personalised attacks, or blur the distinctions between policy differences, professional failures and breaches of ethics, they legitimise the behaviour of others who seek to engage in intimidation. They also undermine trust in the political system.

Those in public life should not engage in highly personalised attacks, nor portray policy disagreements or questions of professional competence as breaches of ethical standards.

Summary table of recommendations and timeframes

Recommendation	Responsibility	Timeframe
Government should bring forward legislation to shift the liability of illegal content online towards social media companies.	Government	On exiting the EU
Social media companies must develop and implement automated techniques to identify intimidatory content posted on their platforms. They should use this technology to ensure intimidatory content is taken down as soon as possible.	Social media companies	Immediately
Social media companies must do more to prevent users being inundated with hostile messages on their platforms, and to support users who become victims of this behaviour.	Social media companies	Immediately
Social media companies must implement tools to enhance the ability of users to tackle online intimidation through user options.	Social media companies	Immediately
All social media companies must ensure they are able to make decisions quickly and consistently on the takedown of intimidatory content online.	Social media companies	Immediately
Twitter, Facebook and Google must publish UK-level performance data on the number of reports they receive, the percentage of reported content that is taken down, and the time it takes to take down that content, on at least a quarterly basis.	Social media companies	At least every quarter, beginning in the first quarter of 2018
Social media companies must urgently revise their tools for users to escalate any reports of potential illegal online activity to the police.	Social media companies	Immediately
The social media companies should work with the government to establish a 'pop-up' social media reporting team for election campaigns.	Social media companies	Before the next general election
Social media companies should actively provide advice, guidance and support to Parliamentary candidates on steps they can take to remain safe and secure while using their sites.	Social media companies	Before the next general election
Those in positions of leadership within political parties must set an appropriate tone during election campaigns, and make clear that any intimidatory behaviour is unacceptable. They should challenge poor behaviour wherever it occurs.	Those in positions of leadership within political parties	Immediately
Political parties must proactively work together to tackle the issue of intimidation in public life.	Political parties	Immediately

Recommendation	Responsibility	Timeframe
Political parties should set clear expectations about the behaviour expected of their members, both offline and online through a code of conduct for members which specifically prohibits any intimidatory behaviour. Parties should ensure that members are familiar with the code. The consequences of any breach of the code should be clear and unambiguous.	Political parties	Within one year
Political parties must ensure that party members who breach the party's code of conduct by engaging intimidation are consistently and appropriately disciplined in a timely manner.	Political parties	Immediately
Political parties must collect data on the number of complaints against members for engaging in intimidatory behaviour, and the outcome of any disciplinary processes which result from these complaints.	Political parties	Within one year
Leaders of political parties should always call out intimidatory behaviour, even when it is perpetrated by those in the party's fringes. Fringe group leaders and spokespeople should immediately denounce any intimidatory behaviour on the part of their members or supporters.	Political parties	Immediately
The political parties must work together to develop a joint code of conduct on intimidatory behaviour during election campaigns by December 2018. The code should be jointly enforced by the political parties.	Political parties	Joint code should be drawn up within one year – it should be enforced beginning at the next general election
Political parties must take steps to provide support for all candidates, including through networks, training, and support and resources. In particular, the parties should develop these support mechanisms for female, BAME, and LGBT candidates who are more likely to be targeted as subjects of intimidation.	Political parties	Before the next general election
Political parties must offer more support and training to candidates on their use of social media. This training should include: managing social media profiles, block and mute features, reporting content, and recognising when behaviour should be reported directly to the police.	Political parties	At the next general election

Recommendation	Responsibility	Timeframe
The government should consult on the introduction of a new offence in electoral law of intimidating Parliamentary candidates and party campaigners.	Government	Within one year
The government should bring forward legislation to remove the requirement for candidates standing as local councillors to have their home addresses published on the ballot paper. Returning Officers should not disclose the home addresses of those attending an election count.	Government	Immediately
Local Authority Monitoring Officers should ensure that members required to declare pecuniary interests are aware of the sensitive interests provisions in the Localism Act 2011.	Local Authority Monitoring Officers	Immediately
MPs should actively co-operate with the police and other security services working to address the security threats facing Parliamentarians and Parliamentary candidates.	MPs	Immediately
The National Police Chiefs Council should ensure that local police forces have sufficient training to enable them to effectively investigate offences committed through social media. Local police forces should be able to access advice and guidance on the context in which MPs and Parliamentary candidates work.	National Police Chiefs Council	Within one year
The College of Policing Authorised Professional Practice for elections should be updated to include offences relating to intimidation, including offences committed through social media.	College of Policing	Before the next general election
The Home Office and the Department for Digital, Culture, Media and Sport should develop a strategy for engaging with international partners to promote international consensus on what constitutes hate crime and intimidation online.	Home Office and the Department for Digital, Culture, Media and Sport	Immediately
The National Police Chiefs Council, working with the Crown Prosecution Service and the College of Policing, should produce accessible guidance for Parliamentary candidates giving clear advice on behaviour they may experience during a campaign which is likely to constitute a criminal offence.	National Police Chiefs Council, working with the Crown Prosecution Service and the College of Policing	Before the next general election
Nobody in public life should engage in intimidatory behaviour, nor condone or tolerate it. All those in public life have a responsibility to challenge and report it wherever it occurs.	All those in public life	Immediately

Recommendation	Responsibility	Timeframe
Those in public life should seek to uphold high standards of conduct, adhering to the Seven Principles of Public Life, and help prevent a decline in public trust in political institutions through their own conduct.	All those in public life	Immediately
Those in public life must set and protect a tone in public discourse which is not dehumanising or derogatory, and which recognises the rights of others to participate in public life.	All those in public life	Immediately
Those in public life have a responsibility not to use language which engenders hatred or hostility towards individuals because of their personal characteristics.	All those in public life	Immediately
Press regulation bodies should extend their codes of conduct to prohibit unacceptable language that incites intimidation.	Press regulation bodies (IPSO and Impress)	By December 2018
News organisations should only consider stories from freelance journalists that meet the standards of IPSO's Editors Code, or the Editorial Guidelines of Impress, as appropriate, and ensure that freelance journalists are aware of this policy.	News organisations	Immediately
Those in public life should not engage in highly personalised attacks, nor portray policy disagreements or questions of professional competence as breaches of ethical standards.	All those in public life	Immediately

Introduction

The Committee on Standards in Public Life (the Committee) was established by the then Prime Minister in 1994 and is responsible for promoting the Seven Principles of Public Life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty, and Leadership – commonly known as the Nolan principles.[1]

In recent years, the intimidation experienced by Parliamentary candidates, and others in public life, has become a threat to the integrity, vibrancy and diversity of public life in the UK. In July this year, the Prime Minister asked the Committee if we would undertake a review of the intimidation experienced by Parliamentary candidates, including those who stood at the 2017 general election.

The Committee agreed to undertake the review, including considering the broader implications for other candidates for public office and those in public life, because we believe that the problem of intimidation is a matter of major concern. The intimidation of Parliamentary candidates stands as a threat to the culture of representative democracy in the UK, and determined action on the part of all those involved is required to address this issue.

Terms of reference

To review the intimidation experienced by Parliamentary candidates, including those who stood at the 2017 general election. The Committee may also consider the broader implications for other candidates for public office and other public office holders.

The review should:

- examine the nature of the problem and consider whether measures already in place to address such behaviour are sufficient to protect the integrity of public service; and whether such measures are (a) effective, especially given the rise of social media, and (b) enforceable
- produce a report, including recommendations for action focused on what could be done in the short and long-term and identifying examples of good practice

The review will recognise the important role of legitimate scrutiny of those standing for public office by the public and the press.

As part of this review, we have heard from a wide range of people about the nature of the problem of intimidation and its impact on our public life. We received 88 written submissions to our call for evidence from interested individuals and organisations. We held a roundtable with candidates, academic experts and stakeholder organisations, a public hearing with representatives from political parties, and a private hearing with those with a responsibility for policing and security. We have had 34 meetings with a range of individuals and organisations, including candidates, MPs, local councillors, social media companies, regulatory bodies, broadcasters and journalists, and relevant stakeholders. We are indebted to all those who contributed to our review.

Intimidation is already shaping our political culture, and poses a real risk to our representative democracy. It impacts us all, and we all have a responsibility to prevent this culture from taking hold. Our recommendations stand as a package. They should be implemented together as a comprehensive response to an issue of central importance to our public life. Without action, intimidation will have a significant impact on diversity, the relationship between those in public life and the public, and how we discuss and debate ideas.

1 The Seven Principles were established in the Committee's first report in 1995. The descriptors were revised following a review in the Fourteenth Report in 2013.

In this report, we review the measures already in place to address such behaviour, including actions taken by social media companies and the political parties, as well as the legislative framework. We consider whether these measures are effective and enforceable. We make recommendations for action to social media companies, political parties, government, police and prosecutors, as well as those in positions of leadership in public life. They all must work together to change the emerging intimidatory tone and culture of political life. Throughout, we have recognised the important role of legitimate scrutiny of those standing for public office by the public and the press.

Overview of the report

We consider the nature of **intimidation in public life** in chapter 1, including whether this abuse is anything new, what we have seen, why addressing intimidation matters and what can be done.

In chapter 2, we consider how **social media** is shaping political communication and engagement with the public, and set out the steps that the social media companies must take to combat online intimidation. This includes providing options for users, developing automated identification of intimidatory material, and supporting healthy political debate during elections. We also consider options for legislative reform.

Political parties have a responsibility to prevent their members from engaging in intimidatory behaviour and support their candidates in the face of intimidation and abuse. They must also demonstrate leadership in setting the tone of political debate. We make recommendations to the parties in chapter 3.

Addressing intimidation requires effective **law, policing, and prosecution**, which we consider in chapter 4. We review the sufficiency of the current laws in place to address intimidatory behaviour, and make recommendations on steps that should be taken to increase consistency in prosecution and policing of intimidation.

In chapter 5, we consider the underlying causes of intimidation and make recommendations to those in public life on the role they should play in **taking responsibility** for influencing a public political culture. Everyone in a position of responsibility in public life should show leadership in working together to set an appropriate tone for public debate, create a healthy political culture and call out intimidatory behaviour wherever it occurs.

We consider the **impact of intimidation** in public life in chapter 6, and return to consider the wider implications of this issue for the health of the country's political culture and the stability of its representative institutions.

Chapter 1
Intimidation in public life

What is the problem?

We have heard from many people in public life who have faced intimidation, and it is clear that intimidatory behaviour has become a significant and damaging feature of public life. It can be difficult to pinpoint a definition of intimidation, even though it may be straightforward to 'know it when you see it'.

For the purposes of this review, we have interpreted intimidatory behaviour as behaviour intended (or likely) to stop someone from wanting to engage in public life. It can be through words or behaviour, online or offline, and people across society can be perpetrators and victims.

Intimidation: words and/or behaviour intended or likely to block or deter participation, which could reasonably lead to an individual wanting to withdraw from public life.

Intimidation can include physical violence, threats of violence, damage to property, and abusive online and offline communications, amongst other activities. Sometimes, the collective impact of a number of individual actions can also be intimidatory, for example where people become subject to co-ordinated social media attacks.

"Threats have varied from...gestures of slitting my throat (witnessed by my then 6 year old daughter)...to requesting sexual activities including one disgusting comment...I've found it extremely embarrassing and humiliating as well as frightening.[2]"

Sarah Lesiter-Burgess

Intimidation is different from the legitimate persuasion or influence which takes place as part of the democratic process; intimidatory actions are not political pressure. Instead, they are intended and likely to cause an individual to withdraw from a public space, including social media, public events, or from public life altogether. This can have the effect of limiting freedom of expression by 'shouting down' opponents.

The rise of social media has been the most significant factor accelerating the prevalence of intimidatory behaviour in recent years. Although it can be a means by which to open up access to ideas, information, and debate, social media can also create an intensely hostile atmosphere online.

"It is hard to explain how it makes you feel. It is anonymous people that you've never met, true, but it has a genuinely detrimental effect on your mental health. You are constantly thinking about these people and the hatred and bile they are directing towards you."[3]

Rachel Maclean MP

People of course respond differently to intimidation, but it can significantly affect an individual's physical or mental health and wellbeing, as well as on those close to the candidate.

2 Written Submission 44 (Sarah Lesiter-Burgess)

3 Written Submission 49 (Rachel Maclean MP)

"I spoke on a number of occasions in the House of Commons in different committees about the rights of women. To which I suffered daily attacks on Twitter, on my email system or endless online articles written about how people wished to see me raped, they wished to come to find my sons hanging from a tree because I don't care about men..."[4]

Jess Phillips MP
(quoted by National Democratic Institute for International Affairs)

What we have seen

"2017 was the most negative campaign I have experienced. For example at hustings, if someone doesn't agree with you they shout you down."[5]

Rehman Chishti MP

Our evidence confirms the prevalence of intimidatory behaviour during election campaigns in recent years, including and especially at the 2017 general election. While intimidation in public life in the UK is nothing new, and is not limited to the UK alone, the scale and intensity of intimidation is now shaping public life. This is a matter of serious concern.

Findings from evidence submitted to the Committee:

33% of candidates surveyed had experienced 'inappropriate' behaviour during the election campaign[6]

56% of candidates surveyed are concerned about abuse and intimidation, and 31% say they are fearful[7]

No female MP who was active on Twitter has been free from online intimidation[8]

Of the women in Parliament, Diane Abbott MP received the most abuse. In addition to this, black and Asian women MPs – despite representing only 11% of all women in Westminster – received 35% more abusive tweets than white women MPs[9]

One clear trend is that social media is changing the way in which election campaigns are conducted and has led to a marked shift in how the public engages with Parliamentary candidates. Online intimidation is now a persistent characteristic of election campaigns for a large number of Parliamentary candidates, who can be subject to intimidatory messages 24 hours a day.

"Thirty years ago, when I first became an MP, if someone wanted to attack an MP, they had to write a letter—usually in green ink—put it in an envelope, put a stamp on it and walk to the post box. Now, they press a button and we read vile abuse that, 30 years ago, people would have been frightened even to write down."[10]

Rt Hon Diane Abbott MP

4 Written Submission 76 (National Democratic Institute for International Affairs)
5 Rehman Chishti MP, Individual Oral Evidence, 14 September 2017
6 Written Submission 89 (Dr Sofia Collignon Delmar, Dr Jennifer Hudson, Dr Wolfgang Rüdig, Professor Rosie Campbell)
7 Written Submission 89 (Dr Sofia Collignon Delmar, Dr Jennifer Hudson, Dr Wolfgang Rüdig, Professor Rosie Campbell)
8 Written Submission 87 (Amnesty International)
9 Written Submission 87 (Amnesty International)
10 Diane Abbott MP, speaking in a Westminster Hall debate on 12 July 2017, Hansard HC Deb, 12 July 2017, Vol 627, Col 159WH

Intimidation has been experienced by individuals across public life, from all groups and across the political spectrum. What is especially worrying is that some groups are disproportionately likely to be the targets of intimidation and abuse both online and offline. Candidates who are female, BAME or LGBT are disproportionately targeted in terms of scale, intensity and vitriol. The intimidation experienced by those who fit in more than one of these groups can be even worse.

> "I've been in and around lobbies since 2003 and have been in Westminster full time since 2014/15. There's been a sea change during that time in what's been experienced by MPs and candidates, especially women."[11]
>
> **Laura Kuenssberg**

The prevalence of intimidation during election campaigns, and in public life more broadly, has an impact on those beyond just Parliamentary candidates. It affects candidates' families, staff, party volunteers, supporters, and voters.

> "Intimidation may well put people off even acting as volunteers and activists for political parties at a grassroots level, which is often the first step towards public roles."[12]
>
> **William Wragg MP**

We face a serious challenge. Parliament cannot be cut off from the people it represents; we cannot permit intimidation to result in the exclusion of women and members of black and minority ethnic groups from the ranks of parliamentarians; and our public culture must be one in which people can debate, exchange views, and express their opinions, with mutual respect, civility and truth.

Why does addressing intimidation matter?

The wide spread of intimidatory language and behaviour is already shaping our political culture. Representative democracy is dependent on people's freedom to engage in political debate and discussion. That freedom is compromised when a culture of intimidation effectively forces people out of public life, and where people are put off engaging in the political process by intimidation. The vast majority of messages the public send to MPs are not unpleasant, abusive or intimidatory. Our culture needs to promote debate and discussion, but it needs to do so in a way which preserves the civility of that debate and the integrity of political processes and mechanisms.

Freedom of expression

> "We are definitely at a potential turning point. We are on a trajectory, there was a healthy change since the 1950s where the pedestal for office holders has been knocked down, but we are now at a stage of danger of dehumanisation. Right at the other end, if we end up there, it is a very dark and dangerous place for liberal democracy."[13]
>
> **Brendan Cox**

Freedom of expression is an important part of a vibrant public life, and our democracy depends on those with different viewpoints disagreeing well. Intimidation aims at shutting down debate – cutting off participation and engagement. In the past, and in many places across the world today, elections are violent and intimidatory, and result in the domination of those who bully most effectively, and often systematically exclude some groups. Tackling this intimidation, far from threatening genuine democratic debate and scrutiny, will serve to enhance and protect it. Indeed, in order to represent all legitimate interests all voices should

11 Laura Kuenssberg, Individual Oral Evidence, 14 September 2017

12 Confidential Submission

13 Brendan Cox, Individual Oral Evidence, 7 November 2017.

be heard so that the democratic process can be maintained.

More than half of candidates surveyed are moderately or very concerned about inappropriate behaviour (56%) and almost a third (31%) say they are fearful.[14]

A diverse public life

"I wouldn't have given up my job and stood for election if the abuse I would receive had been explained to me. I wouldn't have. I believed I had something to contribute with lengthy experience in the NHS, but I have a young family, and I wouldn't have wanted to put them through it. Their wellbeing is the priority."[15]

Dr Lisa Cameron MP

Intimidation is already having an impact on our public life. We have heard how racist, sexist, homophobic, transphobic and anti-Semitic abuse has put off candidates from standing for public office. If this issue is not addressed, we could be left with a political culture that does not reflect the society it should represent. This has serious implications for our democracy if our public life erodes to such a degree that it effectively excludes parts of the society it is there to serve.

"There is one woman in particular in my constituency who would make a fantastic MP. She said to me, 'I wouldn't do it, I couldn't do it, I couldn't go through what you experience."[16]

Luciana Berger MP

Changing the relationship between Parliament and the public

The intimidation experienced by Parliamentary candidates is also changing the way they interact with the public. We have seen how intimidatory behaviour has led people to reduce or seek protection for their public appearances, and change how they engage with the public online. Without action, this issue is not going to go away, especially as the reduced accessibility and presence of those in public life can itself lead to the dissatisfaction which can fuel intimidatory behaviour.

"Whilst experienced party members and I could handle ourselves, the experience was very off-putting for new members, particularly young and elderly activists. By the end of the campaign we feared for their safety and new activists were only sent out with experienced activists."[17]

Councillor Ameet Jogia

The tone of debate

"The tone of modern political discourse permeates through society and normalises abusive and occasionally aggressive language when discussing politics."[18]

Equality and Human Rights Commission

Intimidation is also changing the tone of our public life. There are many examples of behaviour aimed at shutting down some people's involvement in the political sphere, as well as discussion and debate around some subjects. Politics, participation and comment has changed dramatically in recent years, with the rise of social media in the context of an increasingly plural and diverse society.

14 Written Submission 89 (Dr Sofia Collignon Delmar, Dr Jennifer Hudson, Dr Wolfgang Rüdig, Professor Rosie Campbell)
15 Dr Lisa Cameron MP, Individual Oral Evidence, 1 November 2017
16 Luciana Berger MP, Individual Oral Evidence, 20 November 2017
17 Written Submission 51 (Councillor Ameet Jogia)
18 Written Submission 82 (Equality and Human Rights Commission)

Addressing intimidation is essential to maintaining an appropriate tone for political debate that does not lead to the exclusion of some groups.

> "That level of lively knockabout, which has happened all my adult life, has not changed. What has changed is the sense that the views of the other are illegitimate. The thought is that 'your views are illegitimate; you should be silenced."[19]
>
> **Nick Robinson**

The wide reach of intimidation

We are also aware that people across public life more widely, not just those standing for or elected to Parliament, have been subject to intimidation both online and offline, including journalists, teachers, police officers, election officials, judges and leaders of public bodies. Addressing the issue of intimidation is necessary not just to preserve the integrity of elections, but that of public life more broadly. Intimidation is a significant concern, and everyone in public life has a responsibility to work to ensure that intimidation does not undermine the freedoms that are essential to our liberal democracy.

What can be done?

Intimidation in public life is a complex issue that does not have a single, straightforward solution. Addressing intimidation will require practical prevention, deterrence, and enforcement of sanctions; but it also requires addressing the underlying causes, and minimising its damaging effects on individuals and on public life as a whole.

The rise of social media has dramatically changed the way intimidatory behaviour shapes our public life (see chapter 2). Steps can be taken by the social media companies to reduce incentives for, and the effects of, intimidatory behaviour online.

Most importantly, the companies must remove illegal content from their platforms altogether, this should be underpinned by a rebalancing of the liability of social media companies for illegal content.

Where intimidation cannot be fully prevented, steps must also be taken to mitigate its effects, and ensure it does not stop those who want to serve their communities – particularly those from diverse backgrounds – from participating in public life. Political parties will have a crucial leadership role to play in this area (chapter 3).

Some intimidation in public life is a result of fixated individuals. While it would be difficult fully to resolve this issue, there is a growing awareness of threats from these individuals, and an improved evidence base on how to assess and contain them.[20] For behaviour which is not a fixated threat, a number of preventative measures can be taken. Effective policing and prosecution can act as a deterrent and prevent intimidatory behaviour from escalating, and provide support to victims (see chapter 4).

Our evidence has also shown that intimidation does not occur in a vacuum. As we explain in chapter 5, some abuse takes place in response to an unhealthy public political culture. This can be a result of an unhealthy public discourse of those in public life – including the media – needlessly undermining trust in public institutions, or poor standards of conduct in public life. Working to build a more healthy public political culture should, in the long-term, reduce the underlying causes of some intimidatory behaviour.

19 Nick Robinson, Individual Oral Evidence, 6 September 2017

20 This has meant that such threats are being more effectively addressed, particularly by units such as the Fixated Threat Assessment Centre (http://www.fixatedthreat.com/ftac-welcome.php)

Chapter 2
Social media

Social media has come to play a significant role in British politics. Widely used social media sites such as Twitter and Facebook have become important ways to share political ideas and information. Elections are now played out online, as well as in the offline world.

Social media can be a democratising force, enabling citizens to communicate with those standing for office and their elected representatives more directly than ever before. During elections, Parliamentary candidates can engage more easily and directly with those they are seeking to represent. Through social media, candidates can mobilise support, engage with opponents, and promote their political platforms.

> "Abuse on social media bears a huge psychological impact and has a chilling effect on their [female MPs] right to enjoy freedom of expression online, and exercising their right to equal participation in public and political life, and the right to privacy, among others."[21]
>
> **Amnesty International**

Yet, these platforms of debate and discussion can and do become places of intimidation. The platforms are designed and optimised to generate an emotional response as this generally increases user engagement that is critical to commercial success. This can take a dark turn when that emotive content is intimidatory. Social media can lead to widespread access to ideas and information, but they can also facilitate abuse by those who seek to see certain individuals pushed out of public life. Some MPs and candidates have disengaged entirely from social media due to the intimidation they have received; others who may be interested in engaging in public life are being put off by the tone and intensity of political discussion online.

In this chapter, we explore the current legislative framework, discuss its limitations and enforceability, and make recommendations to government on how the legal framework may be revised to help combat intimidation online. We make recommendations to social media companies on steps they can take to prevent online intimidation, particularly during election campaigns.

In the fast-paced and rapidly developing world of social media, the companies and the government must proactively address the issue of intimidation online. So far, not enough has been done.

We have met with Twitter, Facebook, and Google, and we are deeply concerned about the lack of progress all three companies are making in protecting users online. We will be monitoring their progress in implementing our recommendations.

Is this abuse anything new?

> "Abuse of parliamentary candidates is not a new phenomenon, but evidence would suggest that with the growth of social media, candidates are more exposed and open to abuse which is taking place on a larger scale than even five years ago."[22]
>
> **All Party Parliamentary Group Against Antisemitism**

To an extent, the intimidation experienced by candidates is nothing new. In the past, some candidates received intimidatory messages by post, or were physically harassed.[23] These 'offline'

21 Written Submission 87 (Amnesty International)
22 Written Submission 34 (All Party Parliamentary Group Against Anti-Semitism)
23 Submission 10 (Sir Ronald Watson CBE)

modes of intimidation still take place, and are often illegal (see chapter 4).

However, the evidence we have received has demonstrated that social media has sparked a step-change in the abuse and intimidation MPs, candidates, and others in public life receive. The instantaneous and direct nature of communication online has shaped a culture in which the intimidation of candidates and others in public life has become widespread, immediate, and toxic. This is exacerbated by the ability to hide behind the anonymity of social media profiles.

Free and easy use of social media has opened communication with those in public life to everyone, including a minority of those who seek to use this freedom to intimidate and try to limit the freedom of others through intimidation. But this is not inevitable, and social media companies must take the proactive steps necessary to reverse this.

What has changed?

The scale

The current scale and usage of social media is enormous, and rapidly growing. Globally, there are on average 500 million tweets posted per day,[24] and there are 1.33 billion daily active Facebook users.[25] On average, 400 hours of video are uploaded to YouTube every minute.[26]

The accelerating pace of political debate

> "The existing social media platforms are being used to perform a specific democratic function for which they were not designed."[27]
>
> **BCS – The Chartered Institute for IT**

Social media has revolutionised how voters and candidates receive information. This has dramatically altered the pace of political debate by encouraging and enabling its users to comment on political news stories in real time. When commenting in this fast-paced environment, messages can be sent immediately without the deliberation which may take place in face-to-face communication.

The volume of messages

> "Some MPs receive an average of 10,000 messages per day."[28]
>
> **BCS – The Chartered Institute for IT**

Social media also gives the public unprecedented access to those in public life; anybody can send a message to a candidate or politician which arrives immediately on their phones in their pockets. While public figures could just disengage from social media, they lose the benefits of communicating with voters and constituents, which they should be able to do in a safe environment online. The stream of comment and information is direct, constant and ever present. During election campaigns, Parliamentary candidates receive a particularly large number of messages due to their public profile.

> "Social media also bleeds into your 24 hours home life, at night the tweets come in when you're cooking your kids' tea or going to bed. There is little place to hide."[29]
>
> **Lisa Robillard Webb**

24 http://www.internetlivestats.com/twitter-statistics/
25 https://www.statista.com/statistics/346167/facebook-global-dau/
26 Google/Jigsaw, Oral Evidence, 2 November 2017
27 Written Submission 64 (BCS - The Chartered Institute for IT)
28 Written Submission 64 (BCS - The Chartered Institute for IT)
29 Written Submission 36 (Lisa Robilliard Webb)

Abuse and intimidation online can be persistent and overwhelming. Intimidatory users can use social media to encourage others to inundate a user with hostile messages, known as a 'dogpile'.

Ease of communication online

Social media has made communication with those in public life much easier, with over 70% of UK adults owning a smartphone which can be used from any location to send messages directly to the social media accounts of politicians and candidates.[30]

> "Social media enables unplanned, impulsive comment to reach its target; whereas previously a penned missive entailed numerous opportunities to rethink and change approaches or presented barriers which many would not or could not be bothered to overcome."[31]
>
> **Public Submission**

> "The increasing accessibility to public figures through the likes of social media and digitalisation has led to a blurring of boundaries over what can be considered acceptable and what cannot. A huge amount of the abuse directed at female parliamentary candidates in particular is highly sexualised and dangerous."[32]
>
> **Scottish Women's Convention**

This ease of communication has increased the opportunities for those who intend to intimidate people in public life to do so without much effort. A malicious user of an internet platform does not need to be in physical contact with a candidate, or even write and send a letter to intimidate. Others who would not consider engaging in offline forms of intimidation, do engage in such behaviours online.

> "…our experience is that this an area where an old problem has been given a new and more toxic life."[33]
>
> **National Democratic Institute for International Affairs**

Brevity changing the tone of debate

The format of social media, most obviously Twitter, encourages brevity. While concise communication can make political messages more accessible, the motivation to boil down complex political ideas into short messages can change the tone of debate. The norms of appropriate communication online are not well established.[34]

The detailed discussion of a political idea or concept may be too long or complex to deliberate or debate on social media, whereas highly personalised political attacks are often more direct and more likely to be shared. Social media therefore incentivises content which is more likely to be negative. While communication and discussion in the traditional media also encourages brevity, these publications receive editorial oversight and operate within a regulatory framework which moderates content.

> "Extreme positions whether political or moral or abusive, you will get more a rise in followers. There is an incentive to go to the extreme."[35]
>
> **Lionel Barber, Financial Times**

30 https://www.ofcom.org.uk/__data/assets/pdf_file/0017/105074/cmr-2017-uk.pdf

31 Written Submission 22 (Norm Cooper)

32 Written Submission 59 (Scottish Women's Convention)

33 Written Submission 76 (National Democratic Institute for International Affairs)

34 Alex Krasodomski-Jones (2017) Signal and Noise: Can technology provide a window into the new world of digital politics in the UK? Demos. https://www.demos.co.uk/wp-content/uploads/2017/05/Signal-and-Noise-Demos.pdf

35 Lionel Barber, Editor of the Financial Times, Individual Oral Evidence, 30 October 2017

The impact of anonymity

It is remarkably easy for those who seek to hide their identity online to do so, and some of the social media companies do not require a real name for users to sign up to their services. We have heard evidence from Parliamentary candidates and others in public life that anonymity online perpetuates the abuse and intimidation.

> "Because of the internet and social media people feel emboldened to be ruder or more critical than they would otherwise be in person."[36]
>
> **Rt Hon Sir Hugo Swire MP**

Where individuals are able to speak anonymously online, the 'online disinhibition effect' can be made worse: people tend to show a lack of restraint when communicating online in comparison to communicating in person.[37] The evidence we have received from candidates supports this.

> "What is clear though, is that the anonymous and 'safe distance' nature of social media platforms allows such abuse to be handed out far less respectfully than it would usually be if delivered face-to-face."[38]
>
> **Demos**

Users can also use technology to make it appear as though they are in a different jurisdiction. This is especially concerning when the online intimidatory behaviour is illegal, as we have seen evidence that it can be difficult for the police to track down those involved intimidation across borders (see chapter 4).

Social media legislation and regulation

The current legal framework

The legislative framework in which social media companies operate is based on simple principles, but is complex in its application. Although the cultural attitudes of the companies are shaped by the US legislation, the key controlling legislation in the UK is the EU's 2000 E-Commerce Directive,[39] which was developed before the current main social media companies even existed.[40]

The E-Commerce Directive (the Directive) allows 'information society services' providers, such as internet service providers and social media companies, to be exempt from criminal or civil liability when their services are used to commit an offence – for example, publishing or transmitting illegal content.

The Directive sets out the responsibility of the social media companies as 'platforms' for content created by other people. The aim of the Directive was to strike a balance between maintaining a low regulatory burden on service providers, the social interest in removing illegal content, and upholding individual rights including freedom of expression.[41]

How does the law work in practice?

The posting of death threats, threats of violence, and incitement of racial hatred directed towards anyone (including Parliamentary candidates) on social media is unambiguously illegal. Many other instances of intimidation, incitement to violence and abuse carried out through social media are also likely to be illegal. We outline and evaluate the current law surrounding the content of communications further in chapter 4.

36 Sir Hugo Swire MP, Individual Oral Evidence, 20 November 2017

37 Written Submission 58 (Dr Jonathan Rose), Suler, J. (2004). The online disinhibition effect. Cyberpsychology & behavior, 7(3), 321-326

38 Alex Krasodomski-Jones (2017) Signal and Noise: Can technology provide a window into the new world of digital politics in the UK? Demos. https://www.demos.co.uk/wp-content/uploads/2017/05/Signal-and-Noise-Demos.pdf

39 European Union E-Commerce Directive (2000/31/EC)

40 Friendster was found in 2003, MySpace and Facebook in 2004, Bebo in 2005, and Twitter in 2006

41 European Union E-Commerce Directive (2000/31/EC), Recital 41

Social media companies are not held legally liable for any illegal content, as they are likely to fall within the 'hosting' exemption,[42] where the provider's relationship to that content as a host is considered merely 'technical, automatic or passive'.[43] The hosting exemption requires that the company does not have knowledge of the illegal activity or information, and removes or disables access to it 'expeditiously' if it becomes aware of it. This has formed the basis for what is called the 'notice and takedown' model.[44] Member states are prohibited from imposing a general monitoring duty on service providers in Article 15 of the Directive. This means that social media companies are legally envisaged to have a passive, rather than proactive, role in identifying and removing illegal content.

International comparisons on social media regulation

The EU E-Commerce Directive came into law 17 years ago, before most of the big players in today's social media landscape even existed. Since then, EU member states have diverged significantly in their legislative treatment of social media platforms.[45] Member states have differing interpretations of what counts as 'actual knowledge' of illegal content, what counts as 'expeditious' takedown of content, and whether 'manifestly illegal content' (content that is obviously illegal even to a non-lawyer) merits different treatment.[46]

Germany

In a significant development in June 2017, Germany became the first EU member state to pass legislation creating time-specific takedown provisions for social media platforms and introducing sanctions for contravention.

The German Network Enforcement Act applies to social media networks with two million or more registered users, and requires them to remove content that is "clearly illegal" within 24 hours of being notified by a user. A social media network intentionally or negligently violating this obligation can be fined up to €50 million.[47]

USA

The USA has significant liability exemptions for social media companies, based on Section 230 of the Communications Decency Act 1996. This section specifically states that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another content provider". Section 230 has been consistently upheld in US case law and provides robust exemption from liability for illegal material published on social media companies.

This gives the USA a regulatory environment which is highly favourable for social media companies, with the only significant exception being intellectual property breaches. Since the major social media companies all have their headquarters in the USA, this regulatory mindset can shape their engagement with legislative authorities across the world.

Legislative reform

The EU's E-Commerce Directive is the reason that the social media companies do not search proactively for illegal content in order to remove it. The notice and takedown model incentivises service providers to avoid actively monitoring or taking preventative measures against illegal content so that they benefit from the hosting exemption.[48]

42 Article 14, European Union E-Commerce Directive (2000/31/EC)

43 European Union E-Commerce Directive (2000/31/EC), Recital 42. The importance of meeting this condition to benefiting from the hosting exemption was confirmed by the European Court of Justice in Google France and Google, C-236/08

44 European Commission Staff Working Document (2012), Online services including e-commerce in the Single Market, SEC(2011) 1641, p39

45 European Commission Staff Working Document (2012), Online services including e-commerce in the Single Market, SEC(2011) 1641, p26ff

46 European Commission Staff Working Document (2012), Online services including e-commerce in the Single Market, SEC(2011) 1641, p32-39

47 Library of Congress, "Germany: Social Media Platforms to Be Held Accountable for Hosted Content Under 'Facebook Act'", Global Legal Monitor, 11 July 2017

48 European Commission Staff Working Document (2012), Online services including e-commerce in the Single Market, SEC(2011) 1641, p35

When the UK leaves the EU, it will cease to have obligations under EU law. The government may then seek to tip the balance of liability for certain forms of illegal content towards social media companies. Especially as technology has developed, removing or blocking access to individual content no longer requires disproportionate effort or expense for the social media companies.[49]

> "Our position is we would much rather when there are genuine, and there are genuine attitudes that concern, let's try and work with Parliamentarians, with governments, with NGOs and all the other relevant parties and with other companies to try and address the problem, such that Parliamentarians don't feel that they have to regulate...if they decide after all that there are still things that need legislating, it is clearly their call and we respect the democratic process."[50]
>
> **Facebook**

Due to the quickly changing nature of social media and the fast-paced change in technological advancements, government should look beyond just working with the social media companies. Instead, Parliament should consider on a first principles basis the legislative framework that the social media networks and technological companies of the future should need to grow within.

Parliament should reconsider the balance of liability for social media content. This does not mean that the social media companies should be considered fully to be the publishers of the content on their sites. Nor should they be merely platforms, as social media companies use algorithms that analyse and select content on a number of unknown and commercially confidential factors. These out-dated categories must be reconsidered to recognise the changing nature of the creation, ownership and curation of online content and communications.

> "We need new categories and to think about which parts of our current typologies still apply. The current distinctions do not do justice to the nature of [social media] institutions and their many and varied functionalities."[51]
>
> **Will Moy, Full Fact**

It is clear to us that the social media companies must take more responsibility for the content posted and shared on their sites. After all, it is these companies which profit from that content. However, it is also clear that those companies cannot and should not be responsible for human pre-moderation of all of the vast amount of content uploaded to their sites.

Legislation which rebalances the liability for online content can be considered when the UK ceases to have obligations under EU law. For example, legislation could remove the hosting liability exemption for particular types of content, such as death threats, where automatic removal or monitoring does not require disproportionate effort or expense.

Revising this legal framework which applies to the social media companies would incentivise the prompt, automated identification of illegal content. This would have a positive impact on combatting the intimidatory tone of online political discussions.

Legislative change to rebalance liability would ensure that our recommendations on speeding up the process of taking down content, and transparency about the collection of data on notice of takedown, are enacted. It would also remove the current perverse incentives for companies to avoid any form of active moderation using machine learning.

49 The High Court accepted this in Mosley v Google, [2015] EWHC 59 (QB), 49-54

50 Simon Milner, Facebook, Oral Evidence, 20 September 2017

51 Will Moy, FullFact, Oral Evidence, 30 October 2017

Government should bring forward legislation to shift the liability of illegal content online towards social media companies.

There are concerns across government about illegal online behaviours and activity, which touch on a number of issues across government departments. We are aware that the social media companies are often dealing with different parts of government on different subjects, including hate speech, child sexual exploitation, counter-terrorism, and copyright. We discuss this further in chapter 4.

The social media companies must uphold their responsibility to engage with government to help tackle these issues. The government should take a coordinated approach to promote joint working with the social media companies. Government and Parliament should consider the recommendations we make to social media companies, and make efforts to take them forward as part of their wider work with the companies.

Developing technology and supporting users

In the meantime, and in addition to legislative change, there is much that the social media companies can and should be doing to change the experience of users who experience online abuse and intimidation.

"We need to protect users, even from a commercial perspective, we need to make people feel safe online."[52]

Jigsaw

Using technology to combat online intimidation

Social media firms rely on a 'report and take down' model for offensive, intimidatory and illegal material: a company's users flag content to the host site, which then makes a decision about whether it breaches their rules and guidelines. Due to technological advances in text analysis and machine learning, companies should be able to develop ways to monitor proactively illegal and/or hateful content online.

"Machine learning is extremely important for flagging violent extremism content for review: over 83 percent of the videos we removed for violent extremism in the last month were taken down before receiving a single human flag... [we] receive over 260,000 user flags a day."[53]

Google

The Committee agrees with the House of Commons Home Affairs Committee's recommendation that "all social media companies [should] introduce clear and well-funded arrangements for proactively identifying and removing illegal content".[54] These companies are not lacking in resources, and having heard directly from social media companies, we remain unconvinced that they are going far enough or fast enough to tackle online intimidation or collect information intimidation reported to them.

52 Yasmin Green, Jigsaw, Oral Evidence, 2 November 2017

53 Google, Follow-up to Oral Evidence, 2 November 2017

54 https://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2015/inquiry7/

> "For the industry, as noted, further investment in artificial intelligence systems should be a priority. Algorithms must be created that more readily filter abusive words, accounts and pictures, and more effectively identify problem users and remove them."[55]
>
> **All Party Parliamentary Group Against Antisemitism**

The burden of combatting intimidation online should not lie solely with those who are intimidated. We have heard evidence from those who have experienced intimidation about the detrimental impact that having to deal with torrents of abuse can have on their lives. The social media companies have an immediate responsibility to develop and implement technology to support users who face intimidation by identifying, blocking, and screening hateful and abusive content.

> "The first thing we do in the morning is to block and delete online abuse, usually whilst having breakfast. Porridge with one hand, deleting abuse with the other."[56]
>
> **Office of Rt Hon Diane Abbott MP**

While there has been positive collaboration among social media firms, government and the third sector in tackling some illegal activities, for example online child abuse, this investment in a collaborative approach must also be taken for other key social issues, including online intimidation. The companies have told us that they do not compete on public policy or safety, so they must work together to address these issues.

Some progress is being made in the development of machine learning and automation techniques to try to change the tone of political discussion online. Jigsaw, formerly Google Ideas, and Google's Counter Abuse Technology team have been developing Perspective, an application-programming interface (API) which "uses machine learning to spot abuse and harassment online".[57] However, we were disappointed to learn that this development is not being embedded into Google products, including YouTube.

Companies should be taking steps to use machine learning to identify intimidatory patterns of behaviour of users – for example sending lots of messages to one user in a short time frame with no replies, or persistently using violent or inappropriate language. Technology to identify online intimidation must be taken up across companies. This technology should not rely solely on users actively opting-in.

The companies should then take steps to prevent these users from engaging in such behaviour. Twitter, for example has introduced an automated 'timeout' for users engaging in intimidatory behaviour online.

> "We're using technology in ways to try to find that behaviour. User reports are still critical – and we won't get past that because context is everything. We think there's good progress... We are taking action on ten times more accounts than this time last year, due to internal machine learning."[58]
>
> **Twitter**

55 Written Submission 34 (All Party Parliamentary Group Against Anti-Semitism)

56 Staff of Diane Abbott MP, Individual Oral Evidence, 1 November 2017

57 https://www.perspectiveapi.com/

58 Nick Pickles, Twitter, Oral Evidence, 25 October 2017

There has not been enough progress on developing automated techniques for the identification and takedown of intimidatory content online. As one way to combat intimidation in the immediate term, Facebook, Google and Twitter must do more to use technology to protect users from intimidation.

Social media companies must develop and implement automated techniques to identify intimidatory content posted on their platforms. They should use this technology to ensure intimidatory content is taken down as soon as possible.

Identifying and preventing 'dogpiling'

We have heard evidence of the 'dogpiling' of public figures, where an individual can receive tens of thousands of messages a day as part of a co-ordinated campaign or after becoming the centre of a viral news story. This can be a particular problem on Twitter, but also applies on other online platforms. The traditional press and broadcast media can trigger and perpetuate these 'tweet storms' by reporting on them.

"It got so bad during the election that for much of the campaign I came off social media and didn't post anything which impacted on my ability to campaign."[59]

Maria Caulfield MP

The social media companies are making some progress in this area by developing new, automated tools to reduce the impact of dogpiling on individuals. For example, Twitter has taken steps to enable their teams to review reported tweets targeted at a person who is being dogpiled more quickly.

Twitter has set out in their community guidelines that users are prohibited from encouraging this behaviour.[60] However, any such co-ordinated online intimidation could be organised on other web platforms or specialised websites. Some of these messages may also be sent by automated bots and anonymous accounts. Therefore, the social media companies must do more to identify dogpiling and support users.

"...multiple different people are sometimes targeting an individual at scale. This is where they need help – and that's why we have a relationship with political parties."[61]

Twitter

Facebook commented to us that they deliberately do not have a 'big red button' to report content, as they need to ask questions about the inappropriate online behaviour in order to prioritise it. However, Recl@im the Internet recommend a 'panic button' system, whereby users can report online intimidation in the case of dogpiling due to the intensity of the messages.[62] Combined with automated processes to identify where online dogpiling occurs, a panic button could help to protect those in the public eye from suffering intimidatory messages.

Social media companies must do more to prevent users being inundated with hostile messages on their platforms, and to support users who become victims of this behaviour.

59 Written Submission 53 (Maria Caulfield MP)
60 https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/609/609.pdf
61 Nick Pickles, Twitter, Oral Evidence, 25 October 2017
62 http://www.reclaimtheinternet.com/big_questions

Giving users options

Public figures who have experienced online intimidation told us that user options such as options to block and mute messages, phrases and other users are an important part of helping to protect themselves against some abusive content and managing their social media presence. But these measures do not yet go far enough to protect users.

Social media companies have taken some steps to give users options to reduce intimidatory behaviour online. These options, which should be simple for users to enable, provide those who experience intimidation with a means to prevent further threatening or offensive messages from appearing on their social media profiles.

> "You can mute certain words, or you can use a filter where you don't see tweets from someone who hasn't changed their profile picture from the default. Some MPs are worried about using too many filters."[63]
>
> **Twitter**

Twitter has announced the development of tools for users never to be shown tweets from a user who has never changed their profile picture or has not verified their phone number.[64] Facebook has introduced similar mechanisms to enable users to block profiles, and 'unfollow' pages and groups.

These tools must be improved and implemented in the immediate term. They must be clear to users and simple to set up. The companies have a responsibility to their users to enable users to protect themselves from reading intimidatory abuse online.

Social media companies must implement tools to enhance the ability of users to tackle online intimidation through user options.

Action on report and takedown

However, when users mute or block an account it does not prevent a discussion, which may be illegal and/or incite violence, from continuing. Therefore, once someone has blocked or muted an account they must rely on others to report content to the social media company.

> "They will remove them for you to see them, but not remove it altogether...But removing it from Diane doesn't stop another black woman from seeing it, or from emboldening someone else."[65]
>
> **Office of Rt Hon Diane Abbott MP**

As things stand, the delayed action by many of the social media companies in taking down content reported to them is unacceptable. We have heard from figures across public life about the frustration they have felt about the platforms' (especially Facebook, Twitter and Google) delayed response or inaction on content that has been reported to them.

> A Fawcett Society survey of women in public life found that only half of the women surveyed (50% of Facebook users and 43% of Twitter users) reported abusive content to the platform. This was largely because, from their experience, they did not think that the platforms would act on their reports.[66]

63 Nick Pickles, Twitter, Oral Evidence, 25 October 2017

64 http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/hate-crime-and-its-violent-consequences/oral/48836.html

65 Staff of Diane Abbott MP, Individual Oral Evidence, 1 November 2017

66 Written Submission 69 (Fawcett Society)

Delivering on takedown of reported content

Users of social media platforms should expect that the social media companies will take quick and decisive action on any content reported to them. The companies have a responsibility to their users, as well as a broader social responsibility, to act quickly to take down content on their platforms that violates their terms and guidelines. They already do this with commercial interests such as copyright infringement, and should do so with hateful and illegal speech which can be much more harmful.

In addition to developments in machine learning, human decision-making can play an important role in taking down some social media content, especially where online intimidation is very subjective.

> "There were very subtle threats because of the context of the previous communication. For example, a woman talked about a man who was in abusive communication with her… mentioning the road that she lived on."[67]
>
> **Dr Ruth Lewis**

Facebook told us that they are increasing the size of their global 'community operations' team from 4,500 to 7,500 people.[68] We commend this, but it must also have the impact of changing the user experience in terms of action on reported material.

This is not just a matter of allocating more resources; Google, Facebook and Twitter must do more so that action is taken on the content reported to them which breaches their rules. None of the social media companies have done enough to act on the content reported to them.

All social media companies must ensure they are able to make decisions quickly and consistently on the takedown of intimidatory content online.

Transparency about performance on takedown

We are surprised and concerned about Google, Facebook and Twitter's failure to collect performance data on the functioning of their report and takedown processes. Facebook and Twitter said that they do not collect data on the number of reports they receive by country, the percentage of reported content that is taken down,[69] nor the amount of time between the initial report and the content being removed from the site. Nor do they have targets for improving performance on the takedown of reported content.

> "JR: You don't keep performance data, you don't do data reports on how many you've had in a particular period of what type of incident? SM: No."[70]
>
> **Facebook**

The companies' failure to collect this data seems extraordinary given that they thrive on data collection. It would appear to demonstrate that they do not prioritise addressing this issue of online intimidation. This is unacceptable given the negative impact that intimidatory content can have on its victims. The social media companies have a responsibility to their users to monitor their performance on takedown.

67 Dr Ruth Lewis, Roundtable, 12 September 2017

68 Simon Milner, Facebook, Individual Oral Evidence, 20 September 2017

69 Google do publish country-level data on government requests for the takedown of content. https://transparencyreport.google.com/government-removals/by-country/GB

70 Simon Milner, Facebook, Individual Oral Evidence, 20 September 2017, Nick Pickles, Twitter, Oral Evidence, 25 October 2017.

> "These companies live on data, they just don't prioritise this issue enough to compile the data on it."[71]
>
> **Robert Shrimsley, Financial Times**

This data should be collected, and targets should be set for performance on taking down content, in particular the amount of time taken for content which breaches the community standards to be taken down. None of the three companies we spoke to would share any targets they had for the amount of time taken to takedown of content which violates their standards.

Social media companies must be able to collect this data so that they know where to invest in improving their report and takedown systems.

> "Our target is to review a flagged video and make a decision as quickly as possible."[72]
>
> **Google**

Not only should the companies collect this data themselves, they must be transparent with their users about their performance on taking down reported content. We note that Ofcom publishes a report on public complaints received on a weekly basis, and a list of current investigations on a fortnightly basis. The social media companies' lack of transparency on this shows a lack of respect to users, who should be able to know whether the companies are improving on taking down the inappropriate content on their sites.

> "We're also thinking about how we can be transparent about action we take automatically, without reports. But there is definitely renewed emphasis about how we can get more transparent."
>
> **Twitter**

Twitter, Facebook and Google, must publish UK-level performance data on the number of reports they receive, the percentage of reported content that is taken down, and the time it takes to take down that content, on at least a quarterly basis.

The government should ensure that this recommendation is written into their code of practice for social media companies, which was required in Section 103 of the Digital Economy Act 2017.[73]

Promoting swift and constructive escalation to the police

Behaviour that is illegal offline is also illegal online. However, more needs to be done to enable those who are being intimidated to report illegal behaviour to the law enforcement agencies. If someone is receiving credible threats of violence, social media companies should move quickly, not only to remove the post or account, but also to ensure that the threats can be escalated to the police.

> "Now the loud aggressor...can find a direct line to the...individual elected members they vehemently disagree with."[74]
>
> **Public Submission**

71 Robert Shrimsley, Financial Times, Individual Oral Evidence, 30 November 2017
72 Written Submission (Google follow-up)
73 https://www.gov.uk/government/consultations/internet-safety-strategy-green-paper
74 Written Submission 22 (Norm Cooper)

Google, Facebook and Twitter do not provide adequate advice to users on how to escalate a complaint to the police when they report an illegal message, comment or post. They must do more to create jurisdiction-specific guidance to users who seek to escalate their concerns about illegal intimidatory behaviour to the authorities. While all social media companies do have some guidance on reporting online behaviour, this guidance is not specific to the legal jurisdiction where the user is based.

General statements, such as "Remember that you should contact local law enforcement if you ever feel threatened by something you see on Facebook",[75] do not help users engage with the police when they are facing illegal and intimidatory messages online. The companies should provide guidance to users on what is illegal in each country, with a particular emphasis on only reporting illegal behaviour, how to report illegal behaviour, and steps that can be taken to help police investigations.

Users will currently, and understandably, often send the police screenshots of intimidatory comments, but these are difficult for the police to locate online without a link to the content. The Committee was surprised that when we asked Facebook why they did not offer guidance to their users about reporting URLs rather than screenshots, Facebook said they were not aware of this.[76]

Twitter has introduced an option for users to be sent an email which can then be forwarded directly to the police when they report abusive content. This email details the URL of reported message, and a link to Twitter's guidelines for police authorities about requesting user data.77 However, this option is only available for the reporting of violent threats.

Where illegal statements are made online, action should be taken quickly to protect the victim. Since they facilitate this communication, social media platforms have a social responsibility to ensure that victims of online threats are able to contact appropriate law enforcement agencies swiftly, and provide users with the means to provide the accurate and appropriate information to the police.

All social media companies have a responsibility to advise their users about how they escalate any credible threats they receive, the proper means to escalate their concerns, and an overview of the legal framework in operation within the country that the user is based.

Social media companies must urgently revise their tools for users to escalate any reports of potential illegal online activity to the police.

Addressing intimidation online during election campaigns

By their very nature, elections are competitive and adversarial, and political tensions run high during election campaigns. Social media provides a means by which citizens can engage with the political process during these times, but the darker side of such engagement is the intimidation that Parliamentary candidates, party campaigners, and others in public life experience.

Analysis of offensive language targeted at MPs during the month leading up to the 2017 general election found that in general, between 2% and 4% of all tweets sent to politicians on a given day could be identified as abusive.[78]

Social media platforms should work proactively during elections, recognising that the volume of intimidatory messages and abuse will increase.

75 https://www.facebook.com/help/212722115425932?helpref=page_content

76 Facebook, Individual Oral Evidence, 23 June 2009

77 http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/hate-crime-and-its-violent-consequences/oral/48836.html

78 https://www.buzzfeed.com/tomphillips/twitter-abuse-of-mps-during-the-election-doubled-after-the?utm_term=.xlnaVQOmp#.wpwo4qDMG

Social media companies should work with the police, Parliament and political parties to consider what special measures may be put in place during election campaigns.

Acting quickly to take down intimidatory content

The febrile atmosphere of elections is made worse when intimidatory content online is not taken down quickly enough during election campaigns, as it shapes the tone of debate.

Some organisations, including some government bodies, have been 'whitelisted' or become 'trusted flaggers' by social media companies. This means that their staff have received specialised training on behaviour that breaches the platform's rules, and so their recommendations for take down are acted upon more quickly by the social media companies. This model is already in operation in areas such as counter-terrorism and online child abuse.

> "What the trusted flagger can do, is that they can become an expert in the content that is not allowed on our platform, and they can flag that...that can help us get an expedited review and also help to feedback to them about the processes. That would be something well worth exploring."[79]
>
> **Google**

Twitter, Facebook and Google should work with the government to create a 'pop-up' election social media reporting team of trusted flaggers. This team should receive specific training on online activity which breaches the site's rules, so that their recommendations for takedown can be expedited.

This pop-up 'one stop shop' for elections should provide support to social media users by providing a means by which to report inappropriate behaviour to the social media companies. It should also provide advice on escalating any complaints of illegal behaviour to the police. The pop-up social media reporting team should also proactively search election hashtags and key accounts to identify and report intimidatory behaviour.

The team should also collect data on reports of online intimidatory behaviour, which will help political parties, government and the social media companies better understand this problem.

> "We almost need some kind of response service where we actually stand up for each other online to get away from the situation where if someone is attacking you, you feel a thousand eyes looking at you and you feel alone."[80]
>
> **BCS – The Chartered Institute for IT**

This proposal would also help to remedy the situation where candidates and others feel entirely unsupported and alone when they experience intimidation online at election times. This team should step in to support candidates where they experience intimidation online, and all candidates should be made aware of how to contact this team.

The social media companies should work with the government to establish a 'pop-up' social media reporting team for election campaigns.

Providing support and training to candidates

Twitter, Facebook and Google have advised us that they do seek to provide training and support for Parliamentary candidates during election campaigns. But, we found that Parliamentary candidates do not feel supported in their online activity, particularly on how to manage intimidating and other threatening behaviour on social media.

79 Katie O'Donovan, Google, Oral Evidence, 2 November 2017

80 David Evans BCS - The Chartered Institute for IT, Roundtable, 12 September 2017

> "We had an email from Facebook, but it was more of a 'come and make a candidate page'. We have had nothing from the social networks since."[81]
>
> **Green Party**

Alongside political parties (see chapter 3), the social media companies have a responsibility to provide advice, guidance and support to Parliamentary candidates. This should include support on steps that can be taken to prevent and address online intimidation.

Social media companies should actively provide advice, guidance and support to Parliamentary candidates on steps they can take to remain safe and secure while using their sites.

81 Aimee Challenor, Green Party, Oral Evidence, 21 September 2017

Chapter 3
Political parties

Political parties are the cornerstone of democratic engagement with the political system,[82] so they must demonstrate leadership in combatting the issue of intimidatory behaviour. They have important responsibilities towards their candidates, members and supporters.

The problem of intimidation during the 2017 election campaign period impacted on candidates and volunteers across the political spectrum, and some of those engaging in this abusive and derogatory behaviour have been party members.

> "They are interested in what they can use you for, not always on you as an individual, or what is particularly difficult for you."[83]
>
> **Sarah Olney**

Every political party, whatever their size or political persuasion, has three key responsibilities in relation to the issue of intimidation:

1. To show leadership in setting an appropriate tone for public debate around elections for their campaigners and supporters
2. To tackle intimidatory behaviour undertaken by their members
3. To provide support to their candidates who face intimidation during the election campaign

Political parties have not done enough in any of these three areas so far. Given the seriousness of the step-change in the intimidation of Parliamentary candidates and others in public life in recent years, the political parties have a responsibility to come together and engage constructively on these issues. The cost to democracy of not doing so is to too high.

Taking responsibility for setting the tone

For everyone who engages in the political process, whether as party members, supporters, voters or observers, the political parties and especially their leaders play a fundamental role in setting the tone of debate surrounding elections.

> "If we wish our constituents to respect us as candidates and potential representatives we should lead by example and conduct our debates in the chamber and in the media in a more respectful and civil manner."[84]

Showing leadership

One of the Seven Principles is leadership, which demands that:

> "Holders of public office should exhibit these principles [Selflessness, Integrity, Objectivity, Accountability, Openness and Honesty] in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs."[85]

Those in leadership positions in political parties regionally and nationally have a responsibility to set an appropriate tone within the organisation. They should be aware of how their behaviour shapes the activities of party members and supporters, and take steps to eradicate a culture of intimidation.

> "…[if] political parties view harassment and abuse as legitimate tools they will give free reign to others to behave accordingly."[86]
>
> **Jackie Doyle-Price MP**

82 Written Submission 76 (National Democratic Institute for International Affairs)
83 Sarah Olney MP, Individual Oral Evidence, 17 October 2017
84 Written Submission 85 (Confidential)
85 https://www.gov.uk/government/publications/the-7-principles-of-public-life
86 Written Submission 73 (Jackie Doyle-Price MP)

The Committee does not underestimate the frantic nature of election periods, and many of those submitting evidence have referred to the 'rough and tumble' nature of politics generally and particularly during election time. Nonetheless, party leaders must send very clear signals that any intimidatory behaviour is unacceptable, as members and supporters will be looking to their leadership to set the tone of their engagement with the campaign.

A survey of Parliamentary candidates at the 2017 general election found that several candidates noted that political parties and candidates themselves are responsible for an 'abusive environment' because they use aggressive rhetoric in their campaigns.[87]

Leaders of parties must call out and condemn inappropriate behaviour wherever it occurs. At all times, including during election campaigns, leaders must take steps to set the tone of campaigning and communication, and take responsibility for making sure it is clear that any intimidatory behaviour is completely unacceptable.

Those in positions of leadership within political parties should make very clear that they have a 'not in my name' policy for intimidatory behaviour. They must send a clear message to their supporters that it is never acceptable to engage in, or open the door for, intimidation. Whether at a national or local level, parties should be prepared to directly call out behaviour of their supporters where it is inappropriate.

Online, this could include taking opportunities to retweet against the message or respond to inappropriate messages directly, to demonstrate that abusive behaviour is not acceptable. This would play an important part in setting an appropriate tone for political debate.

Those in positions of leadership within political parties must set an appropriate tone during election campaigns, and make clear that any intimidatory behaviour is unacceptable. They should challenge poor behaviour wherever it occurs.

Tackling intimidation on a cross-party basis

"It is not inherent in anyone's politics or ideology to act like this towards individuals. There is the possibility for cross-party and cross-political spectrum work on this."[88]

Joe Todd, Momentum

Elections are competitive, but denouncing the intimidation of Parliamentary candidates is one issue the parties can, and should, come together on. The Committee was disappointed to learn at our hearing with political parties about the lack of successful collaboration to date between the political parties on this issue.

"The Labour Party has not had cross-party talks with other parties with regard to intimidation, bullying and harassment. The reason for that is probably that there has been a bit of a stand-off. I want to be absolutely truthful about this. The Conservative Party has attacked the Labour Party, and the Labour Party has attacked the Conservative Party."[89]

Labour Party

We have seen parties unhelpfully using the issue of intimidation for partisan purposes, by alleging that the other party is the problem without addressing issues within their party or trying to work towards a common solution. The intimidation experienced by Parliamentary candidates across the political

87 Written Submission 89 (Dr Sofia Collignon Delmar, Dr Jennifer Hudson, Dr Wolfgang Rüdig, Professor Rosie Campbell)

88 Joe Todd, Momentum, Oral Evidence, 14 November 2017

89 Rt Hon Ian Lavery MP, Labour, Public Hearing, 14 September 2017

spectrum is too high a price to pay for political point scoring.

Political parties may also be reluctant to enforce their rules and codes for party members during elections due to the concern that other parties will use any evidence of intimidatory behaviour against their party as part of the campaign. In particular, party leaders at a national and regional level must show leadership in working together to address this issue across party lines.

Political parties must proactively work together to tackle the issue of intimidation in public life.

Intimidatory behaviour by party members

Political parties are membership organisations often with staff working on a voluntary basis with limited resources. They do, however, have a responsibility to ensure that their members are aware of the behaviour expected of them by the party, and take necessary steps to discipline any members who engage in intimidatory behaviour.

In a survey of 950 Parliamentary candidates at the 2017 general election, 33% reported 'inappropriate behaviour' by supporters of opposition parties and/or candidates. In the same survey, 68% of the 118 Conservative candidates who responded to the survey said they had experienced inappropriate, intimidatory behaviour during the 2017 election campaign, compared to 36% of the 229 Labour candidates.[90]

Evidence submitted to the Committee suggests that Conservative candidates were more likely to be subject to intimidatory behaviour than candidates representing the other political parties.[91] Those who gave evidence at our roundtable suggested that this could be due to the fact that the Conservatives were the incumbent party of government, and that their party members and activists are less likely to be active on social media.[92] For example, 38% of Conservative members said they 'liked' on Facebook something by their party or candidate during the 2017 campaign, compared to 63% of Labour members.[93]

"It [the skew in reported harassment] can be explained in part because the Conservative Party is in government and therefore does things to people rather than simply saying things to or about them, and that will tend to increase opposition and perhaps ill feeling towards it. ... but it is important to realise that to some extent that difference is demographic and structural."

Professor Tim Bale

We are disappointed by the lack of progress by the political parties in ensuring that intimidatory behaviour does not become prevalent within their parties, and eradicating it where it does occur. Parties should use the influence they hold over their members to stamp out any abusive and derogatory behaviour. Party leadership should act immediately to condemn such behaviour as soon as it occurs.

"Greater consistency of approach, in calling out abuse and leading efforts to change party cultures and structures, is needed."[94]

All-Party Parliamentary Group Against Antisemitism

90 Written Submission 89 (Dr Sofia Collignon Delmar, Dr Jennifer Hudson, Dr Wolfgang Rüdig, Professor Rosie Campbell)

91 Written Submission 89 (Dr Sofia Collignon Delmar, Dr Jennifer Hudson, Dr Wolfgang Rüdig, Professor Rosie Campbell)

92 Professor Tim Bale, Queen Mary University of London, Roundtable, 12 September 2017

93 Written Submission 80 (Professor Tim Bale), ESRC-funded UK Party Members Project https://esrcpartymembersproject.org/

94 Written Submission 34 (APPG Against Antisemitism)

Each of the parties which fielded candidates at the general election face different opportunities and challenges in managing this issue internally. Smaller parties are able to promote engagement with their members more directly, but have fewer resources to tackle breaches of the rules. The larger parties have more resources and staff to combat these issues, but also have a more disparate and larger group of members. Nonetheless, the recommendations set out below must be adopted proportionately by all of the political parties.

Codes of conduct for party members

Political parties have taken different approaches to developing internal standards on issues of intimidation, harassment and abusive behaviour. In particular, the parties have taken different approaches to developing and implementing codes and conduct and rules for their members.

Codes of conduct are a clear and visible way for political parties to set out the behaviour that they expect of their members. Codes of conduct can be powerful, and they give guidance in clarifying the right thing to do for those who are unsure.[95] While they are not a silver bullet solution, when combined with leadership, they can play an important role in addressing cultural issues within organisations.

Liberal Democrat Party

The Liberal Democrat Party has a members' code of conduct, which all members must sign up to. This code sets out a number of principles for appropriate behaviour, and also has a checklist of questions that members should ask themselves when they act internally or externally. One of the points on this list is:

> Could what I am intending to do or say or write (in any format) be taken as intimidation, harassment or bullying?[96]

We welcome this example of good practice of a political party setting out expected behaviours, and providing members with a framework by which to question their own behaviour. This code also clearly sets out the sanctions which may be employed if the code is breached.

Labour Party

At our public hearing, the Labour Party informed us they are developing a new code of conduct for members in light of the 2017 general election.[97] We welcome the Labour Party's commitment to developing a new code of conduct, and recommend that it should specifically address intimidatory language and behaviour. We recommend that the code should be produced quickly, and that it is made public.

The Labour Party has also implemented a pledge on online abuse and a social media policy which forms part of the party's membership terms and conditions. The pledge reads:

> I pledge to act within the spirit and rules of the Labour Party in my conduct both on and offline, with members and non-members and I stand against all forms of abuse.[98]

Conservative Party

The Conservative Party introduced a code of conduct in November 2017 in light of the sexual harassment scandals surrounding Parliament.99 This is accompanied by a new procedure for party

95 Committee on Standards in Public Life, Standards Matter, January 2013, 4.8 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/348304/Standards_Matter.pdf

96 https://www.libdems.org.uk/doc-code-of-conduct

97 Ian Lavery MP, Public Hearing, 31 September 2017

98 Written Submission 74 (Labour Party)

99 https://www.conservatives.com/codeofconduct

discipline and sanctions when there are allegations that the code has been breached.

This code is for 'anyone representing the Party as an elected or appointed official or office-holder' and therefore does not apply to the wider party membership. The code makes explicit reference to bullying and abusive behaviour by those officials, as well as setting out the importance of behaviour which upholds the Seven Principles of Public Life.

> They should: Not use their position to bully, abuse, victimise, harass or unlawfully discriminate against others[100]

The Conservative Party also has a code for the leadership and management of volunteers, which makes reference to intimidatory or bullying behaviour of volunteers by volunteer leaders.[101]

We welcome the development of a code of conduct and disciplinary procedure for party officials. The Conservative Party has recommended that all political parties should draw up and publish a clear statement of standards expected by members in particular, and how disciplinary proceedings for breaches of these standards would be enforced.[102] We encourage all parties, including the Conservative Party, to publish this information.

Political parties should set clear expectations about the behaviour expected of their members, both offline and online through a code of conduct for members which specifically prohibits any intimidatory behaviour. Parties should ensure that members are familiar with the code. The consequences of any breach of the code should be clear and unambiguous.

Sanctions, discipline and enforcement

The Committee received submissions from MPs and candidates across the political spectrum imploring the parties to ensure that the sanctions in place to deal with intimidation by party members are sufficiently robust and are enforced consistently at the national and local levels.

Where codes of conduct for members are in place, they must also be enforced and any breaches of the code should be sanctioned appropriately at local and national levels. Where intimidatory behaviour is not illegal, but is in breach of any party's code, the political parties should take responsibility for instigating sanctions against the behaviour of their members.

Given the seriousness of these issues, parties must use the full range of sanctions available to them to penalise inappropriate behaviour by their members. These sanctions include: removal from positions of influence within the political party, prohibition from opportunities to stand for elected offices on behalf of the party, temporary suspension from the party, and permanent exclusion from the party.

> "Parties were not expecting the snap election, and didn't have always the infrastructure to make sure that they controlled the frontline of campaigning."[103]
>
> **Electoral Commission**

We acknowledge that election campaigns are exceptionally busy and pressurised times for political parties, but this does not mean that they can shirk their responsibility to take action where there are accusations of party members engaging in intimidatory behaviour.

100 https://www.conservatives.com/codeofconduct
101 https://www.conservatives.com/volunteercode
102 Written Submission 67 (Conservative Party)
103 Electoral Commission, Oral Evidence, 25 October 2017

Indeed, timely and appropriate action by the political parties is particularly important during election campaigns as this is when candidates are the most high-profile and susceptible to intimidation. Parties should act immediately to address unacceptable behaviour by their members whenever it occurs.

In their evidence to the Committee, the Liberal Democrats highlighted that their process for escalating complaints against a member during election campaigns makes allowance for the increased pressure on the party's resources.

> "The full disciplinary processes of the party are suspended during a general election, and instead a small unit within the elections compliance team assesses the seriousness of a case, and determines whether the member concerned should be suspended until the full disciplinary process is reconstituted after the election."[104]
>
> Liberal Democrats

Political parties must ensure that party members who breach the party's code of conduct by engaging in intimidation are consistently and appropriately disciplined in a timely manner.

Collecting data on intimidation

None of the political parties that attended our public hearing (Conservatives, Labour and Liberal Democrats) collected centralised data on reports of intimidatory behaviour in particular by their members during general election campaigns.[105] This is deeply concerning; this issue should be of a high priority for the parties, who have a duty of care to candidates and volunteers to combat the intimidatory atmosphere of election campaigns.

Political parties must ensure that data is collected on the number of members disciplined by the party for engaging in intimidatory behaviour. This will require co-ordination between the parties at the national and local level. Enforcing the code and collecting and publicising data on breaches helps demonstrate the seriousness of this issue.

The Committee will be writing to each of the political parties in 12 months' time to request data on the number of party members investigated for allegations of intimidatory behaviour and the sanctions they received in the previous year. Political parties should collect this data centrally to make sure they can make appropriate changes to their disciplinary processes to tackle intimidation by their members.

Political parties must collect data on the number of complaints against members for engaging in intimidatory behaviour, and the outcome of any disciplinary processes which result from these complaints.

Fringe groups

Some of the intimidatory behaviour experienced by candidates at the 2017 general election has been perpetrated by groups of activists who operate at the fringe of the political parties. For some of these groups, members must also be members of the political party and therefore the party's code of conduct applies, while other groups are independent from the party.

Leaders of parties with fringe groups must also call out intimidatory behaviour of members of those fringe groups. They should not use the excuse of distancing themselves from such groups during election campaigns to avoid quickly and forcefully calling out intimidatory behaviour. They must take steps to make clear that intimidation is unacceptable, wherever it occurs within their party.

104 Baroness Brinton, Liberal Democrats, Public Hearing, 14 September 2017

105 None of the political parties were able to provide the Committee with numbers on the number of individuals sanctioned for intimidatory behaviour. In their follow-up letters to the Committee, no parties had data on intimidatory behaviour as a distinct category.

Fringe groups are often a loud part of the political discussion during election campaigns, so leaders within those groups have a responsibility to discourage their members from engaging in vicious and contemptuous behaviour both online and offline and to denounce it when it does occur. Fringe groups are often less coordinated than political parties, but those in positions of responsibility, and spokespeople for those groups, have no lesser a responsibility to act against intimidatory behaviour.

Where behavioural codes are in place within these groups, they must be publicly accessible, and proactively and consistently enforced. Political parties should also consider steps they can take to join up disciplinary processes between political parties and fringe groups where they have an overlapping membership.

Leaders of political parties should always call out intimidatory behaviour, even when it is perpetrated by those in the party's fringes. Fringe group leaders and spokespeople should immediately denounce any intimidatory behaviour on the part of their members or supporters.

A joint code of conduct

Leaders across the political spectrum must be clear that they have no tolerance for this sort of behaviour amongst their members.

To tackle this issue, more cross-party collaboration is needed. We believe this is important for two reasons: first, it reduces the party political element of enforcing breaches of the code; second, it would encourage cross-party consensus on recognising and addressing the issue.

> "If there is a cross party agreement on a code of conduct and mechanisms for members who breach this code, it would support candidates from all parties to come forward, knowing the issue of abuse will be addressed meaningfully and without any 'political points scoring agenda."[106]
>
> **Dr Lisa Cameron MP**

In addition to internal party codes, there needs to be a joint, cross-party code of conduct backed up by an appropriate range of sanctions for intimidatory behaviour during election campaigns. This code should be jointly developed by all of the political parties in Parliament, and should be jointly enforced by a committee of party compliance officers. Such codes of conduct can be highly effective when political parties have taken part in drawing them up and have voluntarily agreed to them.[107]

> "There has to be cross-party agreement on this because, if there is not, any attempt by a single party to enforce a set of regulations will be undercut by other parties that do not enforce them."[108]
>
> **Professor Mark Philp**

Having a joint code of conduct on intimidatory behaviour in place during election campaigns would provide an alternative mechanism for candidates across the political spectrum to raise and escalate intimidatory behaviour to an authority other than their party. Joint enforcement of the code can also help to overcome differences in variable party resources.

106 Dr Lisa Cameron MP, Individual Oral Evidence, 1 November 2017
107 Written Submission 54 (Professor Sarah Birch)
108 Professor Mark Philp, Roundtable, 12 September 2017

"There are accusations of another political party being involved – I asked if they [the other party] would investigate but they would say no."[109]

Lee Scott

This code must be drafted in advance of the next general election. We expect the development of a joint code of conduct on intimidatory behaviour during election campaigns to have reached a conclusion within the next 12 months. We are willing to host the discussions on developing the code, and will be writing to the political parties to suggest this. The code should be reviewed between elections to ensure that it remains relevant given the changing nature of online communications.

A joint code of conduct for political parties on intimidatory behaviour during election campaigns will promote cross-party collaboration on this issue as it will help parties to come to an agreement on identifying and sanctioning intimidatory behaviour of members during that period. A cross-party group of party officials should meet regularly during election campaign periods to enforce the joint code. The code should be published by December 2018, and be reviewed between elections.

The political parties must work together to develop a joint code of conduct on intimidatory behaviour during election campaigns by December 2018. The code should be jointly enforced by the political parties.

Providing support to Parliamentary candidates

Political parties have a duty to their candidates and volunteers. They have a responsibility to support and try to protect those who give their time, often on a voluntary basis, towards the democratic process and public life.

"There were instances where I had to attend meetings as a candidate and I knew I would face abuse but I didn't get a response from the party. When you think there is a high risk and you highlight it, you should get some support and guidance."[110]

Dr Lisa Cameron MP

"Being a candidate is a lonely experience."[111]

Lee Scott

We agree with the recommendations of the 2013 Report of the All-Party Parliamentary Inquiry into Electoral Conduct, which called on political parties to strengthen their support for candidates during the election period.[112] In particular, the report recommended that parties should:

- do more to provide candidates with the necessary training to prepare for the 'ruthless' nature of campaigning, including personal safety sessions and briefings from experienced campaigners
- develop welfare support networks for candidates to break the culture of silence regarding intimidation and abuse
- compile a register of contacts for candidates who are victims of online abuse, including help lines, counselling and other services

109 Lee Scott, Individual Oral Evidence, 11 October 2017

110 Dr Lisa Cameron MP, Individual Oral Evidence, 1 November 2017

111 Lee Scott, Individual Oral Evidence, 11 October 2017

112 All Party Inquiry into Electoral Conduct (2013) https://www.antisemitism.org.uk/files/cj3e6rg8y906h0104uh8bojao/cj4muuuz500250145fwnqvzat

The Committee has been disappointed to see that progress in this area has been mixed. We have heard evidence from candidates that they do not feel appropriately supported by their parties when they face online and offline intimidation.

> "I feel that as I am not in a winnable or marginal seat I am given less attention even though the abuse is the same."[113]
>
> **Lisa Robillard Webb**

Small and large parties across the political spectrum need to ensure that their candidates have access to appropriate networks and resources, training, and support with social media. This should also extend to local council candidates.

The short-notice nature of the 2017 general election meant that some of the support mechanisms and training that the parties would usually have in place for elections was not available. However, it is not unreasonable to expect parties to be able to respond quickly to political demands and they should have placed greater priority on this, and must do so for future elections as part of their responsibility to their candidates, members and supporters.

Promoting and supporting diversity

As we stated in chapter 1, female candidates are much more likely to be subject to intimidation than their male colleagues, as are BAME and LGBT candidates. This problem is even worse for those who fit into multiple categories.

Understandably, if left without the necessary support, members from these groups may choose to withdraw from public life due to the intimidation and abuse they have suffered.

> "Some of it aims to attack women in public life – whether Labour, Tory, SNP – they get a visceral response. It is almost asking, 'what are you doing in a public space?"[114]
>
> **Rt Hon Diane Abbott MP**

The Committee is deeply concerned about the impact that this targeted, aggressive behaviour may have on the diverse and representative nature of democracy and public life. If this issue remains unaddressed, the progress made to date in making Parliament more diverse could be undermined by the tone of electoral campaigns. In turn, when Parliament is not seen to be representative of its citizens, this can further stoke the divisions in society which can lead to distrust and disengagement from the electoral process.

All political parties must take steps to ensure they provide appropriate support to candidates from a diverse range of backgrounds so that public life can be an open space for people from all backgrounds to engage meaningfully in elections, and in turn, Parliament.

We are reassured to see that there is consensus among the parties we spoke to on the importance of maintaining and promoting diversity in public life. However we are concerned that too few proactive steps are being taken to promote such diversity by supporting the candidates who are most likely to be victims of intimidatory behaviour online and offline.

The Committee is disappointed that the recommendations of the 2013 Report of the All-Party Parliamentary Inquiry into Electoral Conduct to support candidates have not been implemented by all of the parties. In particular, the lack of resources and pastoral support available to candidates has left many candidates feeling vulnerable during election campaigns.

113 Written Submission 36 (Lisa Robillard Webb)

114 Diane Abbott MP, Individual Oral Evidence, 1 November 2017

> "We have particular groups, e.g. Greens of colour, women, LGBTIQA+ and others. These groups specialise in supporting these people…at election time they form a key part of supporting those groups."[115]
>
> **Green Party**

> "...when it comes to social media. The parties are trying to exploit it for campaigning purposes to the greatest possible extent, so maybe occasionally we are fuelling the engine. We just do not know how to control it."[117]
>
> **John Vincent**

There are some examples of good practice in this area, for example the Liberal Democrats have developed resilience training for their candidates, which was partly triggered by the awareness that they were losing good female candidates who were reluctant to engage in elections due to the nature and scale of abuse.[116]

Political parties must take steps to provide support for all candidates, including through networks, training, support and resources. In particular, the parties should develop these support mechanisms for female, BAME, and LGBT candidates who are more likely to be targeted as subjects of intimidation.

Social media: supporting candidates

Managing campaigning across multiple social media platforms during election campaigns can be challenging for Parliamentary candidates, who may have little or no experience of using these platforms for professional purposes.

As part of their duty of care to candidates, political parties must also play a role in supporting candidates online. Political parties themselves need to develop a deeper understanding of how social media campaigning works in the lead-up to elections.

One candidate told the Committee about their disappointment at having to spend hours reporting individual posts themselves to the social media companies during the election campaign, only for that abusive account to be closed and another established the next day.[118] When candidates are undergoing experiences such as these, the political parties must be in a position to support them.

> "…cross-party activity has to be there. We have to create the equivalent of the physical social norming whereby if one of your party members at a hustings starts being stupid then everyone rolls their eyes."[119]
>
> **BCS – The Chartered Institute for IT**

Just as we recommend that the social media platforms should strengthen their guidance and support to candidates during election campaigns, the political parties should supplement theirs with training on how to managing election campaigns on social media and online safety.

115 Aimee Challenor, Green Party, Individual Oral Evidence, 21 September 2017
116 Baroness Brinton, Liberal Democrats, Public Hearing, 14 December 2017
117 John Vincent, Roundtable, 12 September 2017
118 Lisa Robilliard Webb, Roundtable, 12 September 2017
119 David Evans, BCS - the Chartered Institute for IT, Roundtable, 12 September 2017

As the support network for candidates, parties are well placed to offer this training and guidance. This training could be conducted by the central party or regionally, and could take place in face-to-face or online formats. However it takes place, it is fundamental that candidates and their staff receive the necessary training on:

- managing a social media presence
- utilising block and mute features within the platforms
- how to report content to the social media companies
- recognising online behaviour that is illegal and that should be reported directly to the police

Social media policies and guidance issued by the parties provide a useful first step in addressing this intimidatory behaviour, but the parties have a duty of care beyond this to help candidates and their teams develop a practical awareness of the use of social media.

Political parties must offer more support and training to candidates on their use of social media. This training should include: managing social media profiles, block and mute features, reporting content, and recognising when behaviour should be reported directly to the police.

Chapter 4
Law, policing and prosecution

Our terms of reference for this review included establishing whether measures in place to address intimidatory behaviour, including the criminal law, are effective and enforceable. The fundamental importance of free speech and legitimate scrutiny of public officials needs to be recognised, and should not be unduly restricted. The vast majority of interactions between the public and those in public life are constructive and respect the principles underpinning our political system. However, it is right that legal sanctions exist for those whose words or behaviour threatens freedom of expression and the integrity of the democratic process. For the current law as a whole to be effective and enforceable, the smooth working of all the parts of the process is required, including legislation, the police, and prosecutors.

The law must have a sufficient scope: intimidatory behaviour, where it should be illegal, should fall within the scope of a relevant offence with appropriate sanctions. The police must be able to address intimidatory behaviour in order to curtail it or prevent it from escalating, but also be able to gather the required evidence where a prosecution is appropriate. The Crown Prosecution Service (CPS) must have appropriate guidance in place to prosecute offences where sufficient evidence exists and where it is in the public interest to do so. We consider challenges to the operation of different parts of the process, and make recommendations for how it can be improved.

Intimidation and the criminal law

The current law includes a range of offences that capture different aspects of our definition of intimidation, words or behaviour intended to or likely to block participation in public life.

> Intimidation: words and/or behaviour intended or likely to block or deter participation, which could reasonably lead to an individual wanting to withdraw from public life.

The law is indifferent to the mode of communication, whether speech, written communication, or through social media. Government ministers have emphasised in relation to social media that "what is illegal offline is illegal online".[120] Existing offences relating to intimidation are outlined in the summary table.

120 Hansard HC Deb, 12 July 2017, Vol 627 Col 167WH

Summary table of existing offences

Offence	Legislation	Maximum penalty
Common assault	Criminal Justice Act 1988	6 months' imprisonment and a fine
Destroying or damaging property	Criminal Damage Act 1971, s.1	3 months' imprisonment if less than £5,000; otherwise 10 years' imprisonment
Threats to destroy or damage property	Criminal Damage Act 1971, s.2	10 years' imprisonment
Threats to kill	Offences against the Person Act 1861, s.16	10 years' imprisonment
Harassment	Protection from Harassment Act 1997, s.2	6 months' imprisonment and a fine
Stalking	Protection from Harassment Act 1997, s.2A	6 months' imprisonment and a fine
Harassment involving putting someone in fear of violence	Protection from Harassment Act 1997, s.4 (as amended by the Policing and Crime Act 2017)	10 years' imprisonment and a fine
Stalking involving putting someone in fear of violence	Protection from Harassment Act 1997, s.4A (as amended by the Protection of Freedoms Act 2012 and the Policing and Crime Act 2017)	10 years' imprisonment and a fine
Using threatening or abusive words or behaviour with intent to cause fear of violence	Public Order Act 1986, s.4	6 months' imprisonment
Using threatening or abusive words or behaviour in the hearing of someone likely to be caused alarm or distress	Public Order Act 1986, s.5	Fine (level 3)
Sending a message using a public electronic communications network that is of an indecent, obscene or menacing character	Communications Act 2003, s. 127	6 months' imprisonment and a fine
Sending communications with intent to cause distress and anxiety	Malicious Communications Act 1988, s.1 (as amended by the Criminal Justice and Courts Act 2015)	2 years' imprisonment and a fine

Where criminal intimidatory behaviour is perceived by the victim or any other person to be motivated by hostility or prejudice based on race, religion, disability, sexual orientation or transgender identity, it will be prosecuted as a hate crime.

Sufficiency of the current law

Criminal law

To evaluate whether the criminal law has sufficient scope, we have considered whether intimidatory behaviours, where they ought to be illegal, fall clearly within the range of at least one current criminal offence with appropriate penalties.

> "Broadly, the law is there, and, broadly, law enforcement and policing are content with the law. There is a view that, with the advent of the internet, some of our more ancient laws are probably not applicable, but we do not find that. For example, threats to kill comes from the Offences Against the Person Act 1861 and is perfectly serviceable. The Public Order Act 1986 is perfectly serviceable. The Malicious Communications Act 1988 was designed around telephones and letters and is perfectly serviceable. Broadly, we are content with that."[121]
>
> **Chief Constable Mike Barton QPM, National Police Chiefs Council**

From our own analysis of the existing legal provisions, the Committee has found that the current criminal law is sufficient in the case of offences against the person and damage to property, as well as credible threats of violence. This was also the view of the expert evidence we received from the police and the CPS. However, in the course of the review, the Committee heard concerns about the sufficiency of the current law to deal with intimidatory behaviour on social media.

The relevant laws on abusive communications were framed before social media platforms existed, and there are no current criminal offences specific to social media.

Looking in detail at the offences listed above, the law is neutral on whether an offence is committed on social media or through other means. This is often expressed as the general principle that what is illegal offline is illegal online. This gives the law sufficiency flexibility to apply both to online and offline offences.[122]

The wording of current offences captures the relevant aspects of behaviour on social media that we are concerned about, such as the nature of the communication as menacing or intending to cause distress. Since this is the case, an offence relating specifically to social media is unnecessary. New legislation which is specific to social media could be rendered out-dated more quickly, since it would involve specifying a particular means of committing an offence.[123]

The House of Lords Select Committee on Communication considered the issue of criminal offences and social media in 2014, concluding that although all the relevant offences were framed before the prevalence of social media platforms, these offences are generally appropriate for prosecuting offences committed using social media, for the same reasons we have considered above. The Select Committee on Communication also concluded that they did not see a justification for a consolidation of the current law, since the law could be consolidated according to several different aspects of offences, of which social media is just one. Overlap in offences does not necessarily imply duplication, since some offences will be more or less serious than others.[124]

121 Mike Barton QPM, Private Hearing, 14 September 2017

122 Alison Saunders, Q15, House of Lords Select Committee on Communications, Social Media and Criminal Offences Inquiry: Oral and supplementary written evidence

123 Alison Saunders, Q17, House of Lords Select Committee on Communications, Social Media and Criminal Offences Inquiry: Oral and supplementary written evidence

124 Tim Thompson, Q16, House of Lords Select Committee on Communications, Social Media and Criminal Offences Inquiry: Oral and supplementary written evidence

> "Our view on social media at the moment is that we feel that we already have a suite of offences there, whether it is the Offences Against the Person Act 1861, the Public Order Act 1986...We believe that that is all there."[125]
>
> **Chief Constable Mike Barton QPM, National Police Chiefs Council**

A number of submissions to the review urged the Committee not to recommend the introduction of new criminal offences relating to the intimidation of MPs and candidates. Whilst some offences do exist specifically in relation to named public offices, for example police officers, the current criminal law captures all the relevant aspects of the behaviour that we are concerned with and includes proportionate sanctions. Whilst we believe that electoral law could be updated and improved, the criminal law is not the appropriate place to introduce any new offences directed towards Parliamentary candidates or MPs.

We have seen no evidence to suggest that the current criminal law is insufficient in covering the full range of cases that we have defined as intimidation for the purpose of this report. As such, the current criminal law should remain as it is.

Electoral law

Electoral law can overlap with and complement the criminal law, such that offences with criminal sanctions can also involve sanctions under electoral law. These sanctions are specific to the election process, such as being barred from voting for a certain period, or removal from the electoral register.[126] Such sanctions recognise that these offences, such as undue influence or electoral fraud, are offences against the integrity of the electoral process, and that it is therefore appropriate that individuals face sanctions relating to their own privileges within that process.

A number of submissions to the review recommended the implementation of the Law Commission's recommendations to consolidate and update the offence of undue influence in electoral law.[127] We believe it is important that voter intimidation is addressed, but it should be noted that existing offences relate only to voter intimidation, not to the intimidation of Parliamentary candidates or party campaigners.[128]

As we conclude above, we believe the current criminal law is sufficient to cover the full range of cases of intimidation. Therefore any new offence in electoral law should be no broader than the existing criminal law. However, the Committee considers that the issue of intimidation is of particular significance because of the threat that it poses to the integrity of public service and the democratic process.

During an election period, it would therefore be appropriate to have specific electoral sanctions that reflect the threat that intimidation of Parliamentary candidates and their supporters poses to the integrity of elections. Any such offence in electoral law should be tightly defined, to capture intimidatory behaviour that is directed towards an individual specifically in their capacity as a Parliamentary candidate or party campaigner, which intends unduly to influence the result of the election (for example, by affecting their candidature or inhibiting their campaigning).

We believe that any new electoral offence that is introduced should not have any wider scope than the existing criminal law in respect of intimidatory behaviour. No behaviour which is currently legal should be made illegal. However, we believe that the introduction of a distinct electoral offence will

125 Mike Barton QPM, Private Hearing, 14 September 2017
126 Written Submission 90 (Electoral Commission)
127 Written Submission 34 (APPG Against Antisemitism), Written Submission 74 (Labour Party)
128 Written Submission 90 (Electoral Commission)

serve to highlight the seriousness of the threat of intimidation of Parliamentary candidates to the integrity of public life and of the electoral process, and will result in more appropriate sanctions. We believe that specific electoral offences will also serve as an effective deterrent to those who are specifically targeting Parliamentary candidates and their supporters.

The government should consult on the introduction of a new offence in electoral law of intimidating Parliamentary candidates and party campaigners.

We heard evidence from the Electoral Commission of the need to update electoral law more broadly in order to protect the integrity of the electoral system. As part of this, we agree with the Electoral Commission that the imprints[129] currently required for print material promoting a political party should also be extended to online material, including social media.[130] This reform was put in place for the Scottish independence referendum in 2014, and was successfully implemented in relation to formal campaigning organisations.

Local government

We also heard from a number of individuals that the requirement that candidates standing for election as local councillors to publish their home addresses on the ballot paper had been a significant factor in enabling intimidatory behaviour, or would put them off from standing as a council candidate due to the risk of intimidation.[131] A number of former candidates stated that the disclosure of their home address enabled intimidatory behaviour to escalate when they subsequently stood as a Parliamentary candidate.[132] This is not a requirement for Parliamentary candidates, where candidates must state their address on their nomination form but can opt instead for only the constituency in which they live to appear on the ballot paper.[133]

Fawcett Society survey data found that when standing as a councillor, there is a gender difference between councillors identifying 'fear of violence' (13% of women; 8% of men), or 'harassment or abuse from the electorate' (46% of women; 35% of men) as barriers to engagement.[134]

In evidence we received from national political parties, we believe there is a consensus for removing the requirement that candidates standing as local councillors have their address published. Rather, as with Parliamentary candidates, candidates standing as local councillors should have the option to publish only the ward in which they live on the ballot paper. Equally, the addresses of agents, sub-agents, and election observers disclosed to the Returning Officer in order for them to attend an election count should not be disclosed to others.

The government should bring forward legislation to remove the requirement for candidates standing as local councillors to have their home addresses published on the ballot paper. Returning Officers should not disclose the home addresses of those attending an election count.

129 "Whenever election material is produced, it must contain certain details (which we refer to as an 'imprint') to show who is responsible for the production of the material…Election material is published material such as leaflets, adverts and websites that can reasonably be regarded as intended to influence voters to vote for or against political parties or categories of candidates, including political parties or categories of candidates who support or oppose particular policies or issues, and is aimed at the public or a section of the public" https://www.electoralcommission.org.uk/__data/assets/pdf_file/0004/166225/fs-imprints-npc.pdf

130 Electoral Commission, Oral Evidence, 25 October 2017

131 Written Submission 38 (John Woolley), Written Submission 72 (Lola McAvoy), Written Submission 79 (Anonymised), Dr Lisa Cameron MP, Individual Oral Evidence, 1 November 2017

132 Written Submission 72 (Lola McAvoy); Confidential Submissions.

133 Electoral Commission Guidance on standing as a Parliamentary candidate, https://www.electoralcommission.org.uk/__data/assets/pdf_file/0003/173019/UKPGE-Part-2b-Standing-as-a-party-candidate.pdf

134 Written Submission 69 (The Fawcett Society)

We also saw evidence that some local councillors were told to declare their home addresses as part of a declaration of pecuniary interests, but were not informed about the sensitive interests provisions in the Localism Act 2011, which prevents the publication of the details of an interest where the councillor and Monitoring Officer agree that it could lead to intimidation or violence against the councillor or their family. This meant that their addresses were in the public domain.

Local Authority Monitoring Officers should ensure that members required to declare pecuniary interests are aware of the sensitive interests provisions in the Localism Act 2011.

Enforcement: prosecution

Several high profile cases of intimidation of sitting MPs were successfully prosecuted. The individual found guilty of sending rape threats to Stella Creasy MP was found guilty under Section 127 of the Communications Act 2003; and an individual who sent multiple abusive racist messages to Luciana Berger MP was found guilty of racially aggravated harassment under the Protection from Harassment Act 1997. We have heard evidence that further convictions have taken place of individuals sending grossly offensive messages to or harassing MPs.[135]

We have seen at least one case where an individual convicted of an online offence – sending an offensive, indecent or obscene message to Luciana Berger MP – has also been charged with an offline offence – being a member of the proscribed organisation National Action, whose members have been accused of conspiring to kill Rosie Cooper MP.[136]

For offences including fear of violence offences and racially or religiously aggravated offences under the Protection from Harassment Act 1997 (excluding stalking), there have been a significant number of prosecutions and convictions, with a relatively high rate of successful prosecutions.

135 Crown Prosecution Service, Private Hearing, 14 September 2017

136 https://www.theguardian.com/uk-news/2017/oct/27/alleged-neo-nazi-appears-in-court-charged-with-plotting-to-kill-labour-mp-rosie-cooper

Protection from Harassment Act 1997[137]

Year	Cautions	Prosecutions	Convictions	Convictions as % of prosecutions	% change in prosecutions year-on-year
2015	6,859	28,926	22,316	77%	-
2016	5,399	25,521	19,651	77%	-12%

The numbers of prosecutions and convictions under the Malicious Communications Act 1988 and Communications Act 2003 have seen a steady increase in recent years, with a high rate of successful prosecutions.

Malicious Communications Act 1988 (including under Section 32 of Criminal Justice and Courts Act 2015)[138]

Year	Cautions	Prosecutions	Convictions	Convictions as % of prosecutions	% change in prosecutions year-on-year
2014	899	897	694	77%	-
2015	548	1,056	797	71%	18%
2016	131	1,420	1,083	76%	34%

Section 127 of the Communications Act 2003[139]

Year	Cautions	Prosecutions	Convictions	Convictions as % of prosecutions	% change in prosecutions year-on-year
2014	691	1,501	1,209	81%	-
2015	577	1,715	1,425	83%	14%
2016	207	1,969	1,399	71%	15%

137 Calculations based on Ministry of Justice Criminal Statistics Quarterly - December 2016 https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2016

138 Calculations based on Ministry of Justice Criminal Statistics Quarterly - December 2016 https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2016.

139 Calculations based on Ministry of Justice Criminal Statistics Quarterly - December 2016. https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2016

The CPS informed us that, overall, there has been a 68% rise in prosecutions of communications offences since 2013/14.[140]

In October 2016, the CPS published guidance on prosecuting cases involving communications sent using social media which fall short of being threats of violence or communications targeting specific individuals, such as blackmail or stalking.

These guidelines set both a high evidential threshold for prosecution as well as a relatively demanding public interest test.

The high evidential threshold required to proceed with a prosecution reflects how commonplace offensive comments are in everyday life, and the importance of context to determining if an offence has been committed. In particular, a communication must be more than simply offensive, shocking or disturbing.

In practice, on the guidelines provided, a number of cases of intimidation of Parliamentary candidates would seem to us to meet the requirement for prosecution but did not proceed to prosecution. We have heard evidence that the CPS test for what counts as 'grossly offensive' is not necessarily in line with the views of victims or the public more broadly. This is because police or prosecutors may have a different threshold for considering material to be grossly offensive based on their exposure to this behaviour.

We sought further evidence, and heard that the test for grossly offensive communications is a demanding evidential standard because it must be compatible with the right to freedom of expression under Article 10 of the European Convention on Human Rights. We also heard that what is grossly offensive will be highly context-dependent, which does not make it amenable to criteria set down in advance. Further, the police have to be able to establish the identity of those who sent the relevant communication before the matter can even be brought to the CPS, which can be a considerable challenge.

In framing its public interest test, the CPS notes the potential 'chilling' effect on free speech. Factors affecting whether a prosecution is in the public interest include if there is a hate crime element to the communication, if the target was a person serving the public at the time, and if the communication was part of a coordinated campaign or was repeated. CPS guidance states that a prosecution is unlikely to be necessary and proportionate when the communication is taken down quickly, the individual shows genuine remorse, the communication was not intended for a wide audience, or where the communication is not obviously beyond what would be acceptable in a tolerant society.

The CPS guidance states that one aggravating factor that tips the public interest test towards prosecution is that the target of a communication is a person serving the public at the time. The Committee heard that the CPS guidelines are sufficiently broad that this would include MPs, and would be very likely to include Parliamentary candidates at the time of an election. The Committee heard that cases of intimidatory behaviour towards Parliamentary candidates meeting the evidential test for prosecution would almost certainly also meet the public interest test. As such, the current enforcement of the criminal law in respect of prosecution seems to us to be satisfactory.

We also welcome the CPS revised guidelines on prosecuting hate crime, published on 21 August 2017, which make clear that there is a parity between online and offline hate crime. Whilst not all the behaviour we are concerned with would qualify as hate crime, particularly that motivated by political disagreement or disaffection, we agree with the principle that what is illegal offline should be illegal online.

140 Crown Prosecution Service, Private Hearing, Thursday 14 September 2017

We are persuaded that the CPS guidelines are reasonable and proportionate, in recognition of the potentially very large number of cases that could constitute an offence. We recognise the potential significant 'chilling' effect on the exercise of free speech should prosecutions for offensive but nonetheless low-level behaviour be pursued with the full consequence of criminal sanctions. CPS has rightly inserted a demanding public interest test for prosecution, but we are confident that cases of intimidation of Parliamentary candidates that meet the high evidential standard would proceed to prosecution.

Enforcement: policing

Effective policing is required for a number of reasons: it can prevent behaviour from escalating and curtail offences which are already being committed, it can deter potential offenders, and it is needed to collect sufficient evidence to proceed to a viable prosecution where appropriate.

Whilst sitting MPs have access to the Parliamentary Liaison and Investigation Team (PLaIT), Parliamentary candidates who are not sitting MPs do not. We have found that the approach taken on intimidation offences by local police forces is inconsistent. Whilst mindful of current pressures on policing, better training and guidance is needed to address this inconsistency.

Beyond this, social media, with its transnational reach, presents the most significant policing challenge when enforcing the current law.

The Parliamentary Liaison and Investigation Team (PLaIT)

The Parliamentary Liaison and Investigation Team (PLaIT) is a specialist police team based in Parliament which was created to assess and address security threats to MPs. The unit provides support to individual MPs about security concerns and coordinates the response within local forces.[141]

The Committee heard that PLaIT has very effective working relationships with the CPS and social media companies, which is helping the enforcement of intimidation offences committed against MPs. PLaIT is also able to assess and take steps to prevent some of the most serious threats, such as credible death threats, against MPs.[142]

The work of PLaIT is on the one hand to build a national picture of the security threat to MPs, through working with local police forces, and to develop intelligence relating to that security threat. It also acts as a central point of contact and advice for individual MPs with security concerns. PLaIT is able to recommend and implement security measures as required, in addition to the standard security package that is available to each MP and funded by the Independent Parliamentary Standards Authority (IPSA).[143] We commend this work. However, we note that its effectiveness requires MPs to make use of the facilities offered to them, and to take the advice that is offered. Whilst decisions about personal security are ultimately down to the individual, where police services are working to build a national picture of the threat to MPs, they require the intelligence necessary to do so. MPs should actively report instances of intimidation they receive to the police, not just for their own safety, but to help to address the threat faced by others.

MPs should actively co-operate with the police and other security services working to address the security threats facing Parliamentarians and Parliamentary candidates.

Since PLaIT is a Parliamentary facility, candidates are usually unable to benefit from its service

141 Written Parliamentary Question 61644, 30 January 2017

142 PLaIT, Individual Oral Evidence, 21 August 2017

143 IPSA MPs Scheme of Business Costs and Expenses, chapter 10. http://www.theipsa.org.uk/media/1977/mps-scheme-of-business-costs-and-expenses-2017-18-v12.pdf

during general election periods, even if they were previously sitting MPs. This is because there are technically no MPs once a general election has been called, and previously sitting MPs lose all services and privileges associated with that office. Cases involving Parliamentary candidates during election periods, or involving prospective or unsuccessful Parliamentary candidates, will be handled by the local police force.[144] However, for the 2017 general election, any security arrangements that were already in place for sitting MPs were not withdrawn – including any physical security arrangements in place at their home, London home, or constituency office. PLaIT would have acted as an advice provider or signpost to a local police force to a Member seeking re-election during an election period.[145]

The effective work of PLaIT does mean, however, that MPs seeking re-election will often have better access to advice and physical security arrangements compared to other Parliamentary candidates during an election period.

> "Other candidates do not have the support that we have. There is a real differential out there. It is about making sure that any candidate has the right to the same support when we reach an election period."[146]
>
> **Rt Hon Lindsay Hoyle MP, Deputy Speaker of the House of Commons**

The Committee also welcomes the recent approach taken by IPSA in taking personal security considerations into account in its publication policy, for example, by not publishing the start and end points of MPs' claimed journeys, or the names of MPs' landlords.[147] IPSA should remain alert to these considerations, particularly where a policy may disproportionately affect a particular group of MPs such as female MPs or those with families.[148]

National policing

The Committee has heard from a number of those involved in protecting the security of MPs that there is inconsistency in the approach taken locally by police forces.

This may be due to some local police forces not fully understanding the context in which MPs and Parliamentary candidates operate, as well as a lack of understanding of social media technologies.[149] This has meant that some offences have not been dealt with as effectively as they should be.

We welcome the government's announcement of the establishment of a new online hate crime hub, as well as the earlier publication of the hate crime action plan in July 2016. The online hate crime hub should replicate the effective single point of contact that PLaIT has established with social media platforms, and ensure consistency by introducing a centralised expert assessment process.[150]

Whilst we note current pressures on police resources, and competing operational priorities, the National Police Chiefs Council (NPCC) acknowledged in the course of our review that there is more work to do to improve the

144 PLaIT, Individual Oral Evidence, 21 August 2017

145 Parliamentary Security Directorate, Private Hearing, 14 September 2017

146 Lindsay Hoyle MP, Deputy Speaker, House of Commons, Private Hearing, 14 September 2017

147 Written Submission 71 (IPSA)

148 Written Submission 68 (Political Studies Association - Women and Politics Group)

149 The latter was suggested in a Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services, report 'Real Lives, Real Crimes: A Study of Digital Crime and Policing': https://www.justiceinspectorates.gov.uk/hmicfrs/our-work/digital-crime-and-policing/real-lives-real-crimes-a-study-of-digital-crime-and-policing/chapter-5-how-well-are-the-police-training-their-officers-in-digital-crime/

150 https://www.gov.uk/government/news/home-secretary-announces-new-national-online-hate-crime-hub

consistency of local policing, particularly in relation to internet offences.[151]

The National Police Chiefs Council should ensure that local police forces have sufficient training to enable them to effectively investigate offences committed through social media. Local police forces should be able to access advice and guidance on the context in which MPs and Parliamentary candidates work.

We have heard that there is effective joint working between constabularies' Single Points of Contact (SPOCs) for elections and the Electoral Commission, as well as enhanced training for policing elections.[152] We heard that SPOCs will routinely attend a candidate briefing along with Returning Officers at the beginning of an election period, which covers electoral offences and the Electoral Commission's guidance.[153] The work of SPOCs has brought enhanced consistency to local policing through effective training and a national network. However, this training has focussed on offences specific to electoral law, rather than offences of intimidation, by whatever means. We also heard evidence that Police Scotland have an excellent working relationship with election officials, which has ensured that potential issues arising during an election campaign could be dealt with effectively.[154]

Guidance during election periods

The Committee has found that there is a lack of policing guidance on offences which constitute intimidation during election periods. We have also heard evidence that local police sometimes conflate personal threats and public order offences. The College of Policing's Authorised Professional Practice (APP) guidelines for policing elections includes public order offences alongside electoral law offences, but these are generally framed in expectation of public protests, not the intimidation of Parliamentary candidates by whatever means. In particular, the APP makes no reference to harassment or offences that may be committed via social media during elections.[155]

The evidence we have received leads us to conclude that general election periods are a heightened environment which makes it more likely that candidates, in particular MPs standing for re-election, are likely to experience intimidation. Policing election periods effectively is also vital to uphold the integrity of the democratic process. In our view, this warrants additional training and guidelines for police on how to deal with such offences in order to ensure that they can be policed effectively. This would also enable more cases to proceed to prosecution where appropriate.

Given that police officers must have regard to the APP, and that APP guidelines exist specifically for elections, we believe that the APP would be the most appropriate place for additional guidelines on offences which relate to the intimidation of Parliamentary candidates. This would extend the benefits of consistency across local police forces, already achieved in the area of elections through a national network of SPOCs, to offences that address intimidatory behaviour during election periods. The number of relevant offences committed during an election period should be recorded separately, in order to monitor this issue. Although the College of Policing APP only applies to England and Wales, Police Scotland and the Police Service of Northern Ireland may wish to implement similar guidance.

151 National Police Chiefs Council, Private Hearing, 14 September 2017

152 Electoral Commission, Oral Evidence, 25 October 2017; All Party Inquiry into Electoral Conduct (2013) https://www.antisemitism.org.uk/files/cj3e6rg8y906h0104uh8bojao/cj4muuuz500250145fwnqvzat

153 Electoral Commission, Oral Evidence, 25 October 2017

154 Mary Pitcaithly OBE, Individual Oral Evidence, 14 November 2017

155 https://www.app.college.police.uk/app-content/policing-elections/

The College of Policing Authorised Professional Practice for elections should be updated, to include offences relating to intimidation, including offences committed through social media.

Challenges to policing

The Committee has found that the rise of social media, in particular its transnational reach, has created significant challenges for policing. A significant challenge is establishing attribution: who is responsible for sending a particular communication.

The policing challenges raised by social media, and use of electronic communication more broadly, are considerable. Those responsible for offences may be located abroad; co-operation with social media platforms is made more difficult by their international presence and the variety of jurisdictions in which they operate; and the current state of technology makes it very easy for individuals, organisations or institutions to hide their identity without requiring a significant level of technical expertise or equipment. Whilst methods exist for international evidence gathering, they are unlikely to be proportionate to the offence committed, and are unlikely to fit within the time period within which a prosecution for a summary offence must be brought.[156]

International co-operation on evidence-gathering requires a prior international consensus on offences and definitions. We have heard evidence of an effective cross-cutting approach within government to promote international co-operation on policing counter-terrorism and child exploitation offences. This is only possible due to a high level of international consensus and clarity as to what constitutes an offence. The government should therefore develop its existing international engagement on counter-terrorism and child exploitation to promote international consensus on definitions of hate crime and threatening speech in order to create a basis for greater international co-operation when policing these offences.

The Home Office and the Department for Digital, Culture, Media and Sport should develop a strategy for engaging with international partners to promote international consensus on what constitutes hate crime and intimidation online.

Clarity and guidance for Parliamentary candidates

A number of former Parliamentary candidates informed the Committee that they were not confident in recognising when intimidatory behaviour was likely to constitute a criminal offence. It is also clear from the evidence we received that candidates had a very broad range of expectations as to what the police would be able to do in relation to intimidatory behaviour.

> "Anything that could be introduced to support MPs in their role would be very helpful, at the moment there is virtually nothing."[157]
>
> **Luciana Berger MP**

It is in the interests of both effective policing and of Parliamentary candidates that there is clarity as to what behaviour is and is not illegal, and what Parliamentary candidates should expect from their local police force during a campaign. Police Scotland routinely issue security guidance to Parliamentary candidates in Scotland, although this is relatively limited in scope. In particular, the NPCC emphasised to us the importance of sensitive, non-partisan policing during an election campaign, which we agree is essential to maintain the independence and legitimacy of policing during election periods.[158]

156 National Police Chiefs Council, Private Hearing, 14 September 2017
157 Luciana Berger MP, Individual Oral Evidence, 20 November 2017
158 National Police Chiefs Council, Private Hearing, 14 September 2017

Guidance booklets distributed to Parliamentary candidates at the beginning of an election period could offer candidates clarity, by giving examples of intimidatory behaviour which is illegal, and detailing common behaviour towards Parliamentary candidates which, whilst uncomfortable or offensive, is not likely to be illegal. The process of creating and disseminating such guidance, if done in collaboration with local forces, could also enhance the consistency of local policing during election periods.

The National Police Chiefs Council, working with the Crown Prosecution Service and the College of Policing, should produce accessible guidance for Parliamentary candidates giving clear advice on the behaviour which they may experience during a campaign which is likely to constitute a criminal offence and what they should do in the face of such intimidation.

Focussing on prevention

It is important that those who perpetrate intimidatory behaviour are held to account and face appropriate legal sanctions. Equally, we have emphasised that effective policing can act both as an effective deterrent and can prevent intimidatory behaviour from escalating.

However, it should be recognised that the law is a blunt instrument for dealing with intimidatory behaviour. At the point that the force of law is invoked, already the relationship between Parliamentary candidates and the public has suffered, individuals may have been put off from standing for elected or appointed offices, and Parliamentary candidates will have gone through experiences that no individual ought to go through.

Therefore, addressing intimidation in public life will require a focus on prevention at all levels and by all with any interest, including those in public life themselves, which we discuss in chapter 5. More broadly, the recommendations we make throughout this review should be seen as a coherent package to address all aspects of the problem.

Chapter 5
Taking responsibility

Intimidation does not take place in a vacuum. Intimidatory behaviour is made more likely by an unhealthy public political culture. The evidence we have received suggests that there is a relationship between the public political culture and the behaviour of individuals. All those in public life, and in particular leaders of political parties, MPs, and the media, must take responsibility for shaping a healthy public political culture.

Our terms of reference for this review were directly concerned with the intimidation of Parliamentary candidates, but we are also concerned with everyone in public life who has a responsibility to help combat the issue.

Both the rights and the responsibilities of all those in public life should be acknowledged. This chapter addresses all those speaking up and taking a leadership role in public life, including (but not limited to) Parliamentarians, local councillors, Police and Crime Commissioners (PCCs), chairs of public bodies, political commentators and journalists.

> "Enormous ad hominem [personal] attacks in Parliament are us spray-painting our own window…Those who choose to play the ball rather than the man or woman can hold strong views without treating the others as if they are scum of the earth."[159]
>
> **Rt Hon John Bercow MP, Speaker of the House of Commons**

Democracy is a two-way street. It involves a reciprocal relationship between those in public life, and the public. Individual citizens should behave in a way which respects the principles and values on which our political system is built. Even in an atmosphere of frustration and mistrust, they must respect that with political engagement come responsibilities, which exist to protect the free participation of every citizen in public life and public debate.

The behaviour of those in positions of responsibility in public life, however, has a much greater influence over the public political culture. The culture that those in public life shape, itself shapes the response of the public. In fulfilling the demands of their own role, they therefore also have a responsibility to act in a way which does not damage this culture as a whole. When they fail to fulfil this responsibility, and breach high ethical standards, the result is mistrust, frustration, and a gulf between the public and those in public life.

> "I do believe that MPs should lead by example."[160]
>
> **Public Submission**

Every individual in public life must show leadership by taking responsibility for opposing and reporting intimidation and for maintaining high ethical standards. All those in public life, including the media, must take responsibility for how they shape the public political culture and set an appropriate tone for public debate.

Leadership in opposing and reporting intimidation

Intimidatory behaviour by anyone in public life is unacceptable. No political argument is strengthened by the threat of violence, and nobody in public life should engage in behaviour which intends to block someone else's participation in public life.

The principle of leadership demands that those in public life should challenge poor behaviour where it occurs. Intimidatory behaviour should not be condoned or tolerated wherever it is encountered

159 John Bercow MP, Speaker of the House of Commons, Individual Oral Evidence, 5 September 2017
160 Written Submission 8 (Adam Finkel-Gates)

in our democracy. This applies not just those involved in political parties, as we make clear in chapter 3, but everyone in public life.

> "We need to build back to an era not of deference but of mutual respect. Politicians have a key role to play in that in how they behave and treat each other, and calling out behaviour."[161]
>
> **Brendan Cox**

Everyone in public life should challenge intimidation, oppose it, and where necessary report it to relevant authorities, including where such behaviour is undertaken by a member of their own party or organisation.

Nobody in public life should engage in intimidatory behaviour, nor condone or tolerate it. All those in public life have a responsibility to challenge and report it wherever it occurs.

Leadership in setting high ethical standards

The Committee has long been concerned about the impact that low levels of trust in political life, political institutions and those involved in politics can have on public life. One consistent theme of the evidence we have collected, particularly from members of the public, is that some intimidatory behaviour is driven by the public's lack of trust in politics and the political system. Where people have low trust in political processes,[162] they may perceive those involved in public life to be legitimate targets for personal attacks and abuse.

The Seven Principles of Public Life were set out by the Committee in 1994 to set out the behaviours that the public expect of those in public life. In the face of the challenge of an intimidatory culture in public life, everyone in public life, including candidates, must play a role in rebuilding the public's trust in politics. One way of doing so is through ensuring that they show leadership in upholding ethical standards, so that their behaviour does not undermine or call into disrepute the institutions of which they are part.

> "Changing today's perceptions of politicians requires national effort by all involved in public service to demonstrate that they are there to help everybody and not to benefit themselves."[163]
>
> **Dr Clive Sneddon**

When those in public life show little respect for the public by not upholding ethical standards, some people will often feel no responsibility to be civil, and will have only a fierce sense of frustration and injustice.

Those in public life should seek to uphold high standards of conduct, adhering to the Seven Principles of Public Life, and help prevent a decline in public trust in political institutions through their own conduct.

High profile Parliamentary scandals involving a significant number of MPs, including the expenses scandal in 2008 and the sex and harassment scandal in 2017, demonstrate the immense damage to public institutions and to public trust caused by breaches of ethical standards.

Due to the high profile and representative nature of their role, MPs have a particular responsibility to uphold the highest standards of ethical conduct. They should consistently and reliably demonstrate high standards of ethical behaviour, openness and accountability, and recognise that even small

161 Brendan Cox, Individual Oral Evidence, 7 November 2017

162 Edelman's Trust Barometer has recently suggested diminishing public trust in the UK government, public institutions, and political leaders. http://cfps.org.uk/wp-content/uploads/final2017trustbarometerukmediadeck-noembargo-170113165126.pptx

163 Written Submission 55 (Dr Clive Sneddon)

lapses can have a disproportionately damaging effect on public perceptions.[164]

> "There is a disjunct between politicians lecturing [the public], and people feeling they should practice what they preach. So there is a sense of hypocrisy which supercharges people's sense of distrust and animosity because it's not just the sense you're as bad as everyone else, but also tainted with the accusation of hypocrisy."[165]
>
> **Brendan Cox**

Parliament, like all other institutions in public life, is made up of individuals who of course make mistakes from time to time, and sometimes fail to live up to the standards expected of them. How mistakes are rectified is also important to maintaining public confidence.[166] Where breaches occur, MPs must demonstrate honesty and openness about those breaches, and seek to rectify any wrongdoing.

> "If we are to hold people to high standards of accountability, as part of the foundations of mutual respect, then we have to allow them to correct mistakes. Where a mistake has been honestly made, corrections should be welcomed and respected and enforced."[167]
>
> **Will Moy, Full Fact**

Setting the tone of debate

Alongside showing leadership by opposing and reporting intimidation, and by maintaining high ethical standards, those in public life must also take responsibility for the way in which they shape the public political culture.

When those in public life engage in political debate in a derogatory and abusive way, or engender prejudice or hatred towards individuals or groups, they poison the public political culture by lowering the standards of behaviour that everyone accepts as reasonable. In turn, this can create a context in which others feel it is appropriate to engage in intimidatory behaviour both online and offline. Those who engage in intimidation may feel that their actions do little to damage the integrity of public service if that integrity has already been breached by those in public offices.

> "The attitude that is communicated through Parliament is often quite derogatory towards the opposition...it appears that people feel like they can say what they like from behind their position of authority."[168]

Public discourse must allow significant and robust political disagreement, but without creating the conditions which encourage intimidatory behaviour. This can only occur when participants in public debate engage in a responsible way. This involves recognising others' freedom to participate in public life and to hold different points of view. We have heard evidence from some who have significant experience of public life that this recognition of the right to participate, and the responsibilities it carries, is fading.

164 Further discussion in: Committee on Standards in Public Life, Standards Matter (2013), 6.19

165 Brendan Cox, Individual Oral Evidence, 7 November 2017

166 CSPL Public Attitudes Survey 2012, 3.2 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/337017/Public_Attitude_Survey_2012.pdf

167 Will Moy, Director, Full Fact, Individual Oral Evidence, 30 October 2017

168 Written Submission 17 (Confidential)

> "We seem to have lost in this country in the past 15 to 20 years the ability to disagree well... We can have robust debate, but it is about the level of personal abuse and deliberately trying to undermine people."[169]
>
> **Baroness Brinton, Liberal Democrats**

What is said in political campaigns and public political discussion reverberates throughout society. Our representative democracy has the House of Commons at its heart, so how MPs behave is crucially important to public discussion and debate, and public trust. But, it is not just Parliamentarians who shape the tone of public debate. Those in positions of leadership across public life also bear that responsibility and include councillors, candidates, people of positions of leadership in public bodies, and all those who deliver services to the public.

Those in public life have a responsibility to consider this when they make public statements. They need to think about how the tone they take shapes public debate. In the fast-paced world of politics, those in public life must make quick decisions about how they engage with their colleagues and opponents in the traditional media and online. Especially during election campaigns, there can be a temptation to engage in political discourse which undermines an opponent's right to participate and engage in public life, or to hold a different view from their own.

> "When you watch the news it is not uncommon to hear jeering in the House of Commons... it almost makes it acceptable for the public to continue this disrespect towards MPs."[170]
>
> **Public Submission**

Language which is dehumanising, vile, or abusive, and which treats political and partisan divisions as absolute and unbridgeable can, intentionally or not, encourage intimidatory behaviour by legitimising the idea that particular individuals are not worthy of common respect or participation in public life. Such attitudes can motivate action which attempts to block that participation, through threats, abuse, or violence.

Those in public life must set and protect a tone in public discourse which is not dehumanising or derogatory, and which recognises the rights of others to participate in public life.

We have found significant evidence of intimidation which is motivated by prejudice or hate. This might be based on an individual's gender, race, religion, or their sexual orientation. But speech which may fall short of being hateful may still adopt a tone which engenders hostility towards individuals because of their personal characteristics.

> "In the last period there hasn't been an upsurge in hatred, but these people feel they have a licence to articulate and follow through what they were thinking previously. It's not about people being converted to fascism or whatever, but they sense they have social licence to follow through and that is the thing that language does."[171]
>
> **Brendan Cox**

Contentious political questions should be able to be discussed in public life, even when they touch on highly sensitive questions of personal identity. However, everyone in public life must take responsibility for making sure that they do not criticise or dehumanise their opponents based on these personal characteristics. Otherwise, they can open the door for others who are motivated

169 Baroness Brinton, President, Liberal Democrats, Public Hearing, 14 September 2017
170 Written Submission 8 (Adam Finkel-Gates)
171 Brendan Cox, Individual Oral Evidence, 7 November 2017

by hatred or hostility to engage in intimidatory behaviour towards individuals based on those characteristics. This is of fundamental importance for protecting and promoting the diversity of our public life.

Those in public life have a responsibility not to use language which engenders hatred or hostility towards individuals because of their personal characteristics.

The responsibility of the media

We have considered the significant role of social media in chapter 2. But print and broadcast media also contribute to a culture in which elected public officials can become targets of threats and abuse; and where targeting personal attributes or mere participation in public life is perceived as legitimate. Threatening or contemptuous language to describe public officials, especially when they are upholding high professional and ethical standards, can shape a culture that makes intimidation more likely.

> "It must be recognised by media outlets that there is a fine line between political debate and instigating reckless behaviour in individuals towards electoral candidates."[172]
>
> **Scottish Women's Convention**

Broadcast and print media can amplify the effects of intimidation that takes place on social media, for example, by reporting on 'twitterstorms'. As the distinction between traditional and social media becomes increasingly blurred, for example, with online-only news outlets with a high profile on social media such as Buzzfeed, The Canary, and Guido Fawkes, the media should be increasingly attentive to how stories are reported can give rise to intimidatory behaviour.

> "…My office has just reported to the police about five tweets, if not more, that have issued threats against me following the front-page article of today's The Daily Telegraph…Would you [the Speaker of the House of Commons] make it very clear to everybody, in whatever capacity, that they have an absolute duty to report responsibly, to make sure that they use language that brings our country together, and to make sure that we have a democracy that welcomes free speech and an attitude of tolerance?"[173]
>
> **Rt Hon Anna Soubry MP**

Freedom of the press should be cherished and protected. Nevertheless, journalists, broadcasters and editors should consider whether the content they are creating could incite others to engage in intimidatory behaviour. Does it delegitimise someone's engagement in the political process? Does it place undue emphasis on someone's individual characteristics, such as gender, religion, race or sexuality? Does it use threatening language? Could it unduly undermine public trust in the political system? This responsibility also applies to local media, which can play a crucial role in election campaigns.

Press regulation bodies should extend their codes of conduct to prohibit language that incites intimidation.

Widespread recognition of public personalities and figures brings many benefits, including increased engagement in the political arena. However, an increasing 'celebrity culture' surrounding politicians, which has been partly fuelled by the print and broadcast media, also threatens to blur

172 Written Submission 59 (Scottish Women's Convention)
173 Hansard HC Deb, 15 November 2017, Vol 631 Col 386

the distinction between the personal lives and professional responsibilities of those in public life.

During the course of the review, we were told about a case where a freelance journalist previously door-stepped the seven-year-old child of a Parliamentary candidate at their family home, without parental knowledge or consent. Both the candidate and their child were extremely distressed. Intimidation or harassment of those in public life by print journalists is a breach of IPSO's Editor's Code.[174] Whilst the evidence we have heard from IPSO suggest that they consider press self-regulation has had a positive effect on journalistic culture following the Leveson Report, by putting in place measures to prevent and curtail intimidation or harassment, freelance journalists not acting on behalf of a regulated publisher do not fall within IPSO's remit.[175] This is because IPSO regulate publishers, who take responsibility for a story and the conduct of a journalist only where they employ that journalist, commission their work, or print that story.

We believe that the lack of redress in these sorts of cases represents a gap in the current press standards regime, and would not sufficiently deter persistent offenders. News organisations should make clear to freelance journalists that they expect the same standards of conduct from them as with staff reporters.

News organisations should only consider stories from freelance journalists that meet the standards of IPSO's Editors Code, or the Editorial Guidelines of Impress, as appropriate, and ensure that freelance journalists are aware of this policy.

The media are acutely aware of the potency of reporting on breaches of ethical standards, for example, by framing a story about disagreement or incompetence as one of wrongdoing. They should not undermine public trust by deliberately portraying partisan disagreement or questions of professional competence as a breach of ethical standards.[176]

Recent controversies surrounding 'fake news' present a considerable challenge in this area, since candidates' views or conduct may be not simply misrepresented but wholly fabricated.[177] We heard evidence that candidates face a difficult decision about whether to counter incendiary claims, which may often be followed by an intense period of intimidation or abuse, particularly via social media. We are also concerned about the wider implications of fake news in having a corrosive effect upon democracy,[178] and intend to keep a watching brief on these issues.

Personal attacks and politicising ethical standards

Throughout our review, we have heard evidence that one of the problems is MPs and candidates focussing on an individual rather than the issue at stake – described by the Speaker, Rt Hon John Bercow MP, as 'playing the player not the ball'. Highly personal attacks, rather than criticisms of someone's position, record, or competence, is what the public find off-putting, and what is in turn most likely to fuel political disaffection.

In particular, we have seen examples of where failures of competence or judgment – or even instances of disagreement – are wrongly portrayed as breaches of standards or ethics. While there are often political or electoral advantages in blurring the distinction between professional failures, partisan disagreement, and breaches of ethics, this

174 Whilst IPSO is the main press regulator that has been referenced in evidence received to the review, we note that IPSO is not the sole press regulator in the UK and that Impress are currently the only press regulator to have been recognised by the Press Recognition Panel.

175 Matt Tee, Chief Executive of IPSO, Individual Oral Evidence, 8 November 2017

176 Professor Mark Philp, Public Ethics and Political Judgment, July 2014. See also discussion in Standards Matter, 2.14, 6.18

177 Allegations of fabricated news stories relating to Parliamentary candidates during the 2017 Election were raised in the Westminster Hall debate on abuse and intimidation (Hansard HC Deb 12 July 2017, Vol 267 Col 154WH)

178 See the Committee's submission to the 2017 Select Committee for Culture, Media and Sport inquiry into fake news

comes at the high cost of damaging public trust in our political system.

Some in public life use breaches of ethical standards by their opponents for political point scoring. Drawing attention only to the standards failures of political opponents, or citing standards failures for personal or political advantage without seeking to improve standards across the board, is an inappropriate use of political power.

When MPs and candidates attack the integrity and effectiveness of one side of the political spectrum, this can have a 'splashback effect', undermining public confidence in politicians and the political system as a whole. Those in positions of political leadership should recognise a collective responsibility, across the political spectrum, to maintain high ethical standards.

Those in public life should not engage in highly personalised attacks, nor portray policy disagreements or questions of professional competence as breaches of ethical standards.

We recognise that on the one hand, the adversarial nature of party politics can give focus and energy to public debate and help interest and engage people in the political process. On the other, adversarial politics can be misused, creating a culture which opens a door to intimidation. Our adversarial political system can and should maintain a political culture which is free from intimidation and abuse. This is of critical importance for maintaining a healthy and functioning democratic political culture.

Chapter 6
The impact of intimidation

Our terms of reference for this review include considering the wider implications of the intimidation of Parliamentary candidates and those in public life.

Everyone who cares about our public life should be concerned at the threat that intimidation poses to the relationship between the public and those in public life, the free exchange of ideas in public debate, the diversity of candidates for elected and appointed offices, and the essential freedoms that underpin our representative democracy – to speak in public and to stand for public offices.

In this chapter, we chart how intimidatory behaviour has already affected Parliament and our political system, and show how it is beginning to have a wider impact on our political culture, and on other office-holders throughout public life.

The relationship between the public and Parliament

Our political system protects the public's right to hold their elected representatives to account, primarily at elections, but also through a wider public process of scrutiny and engagement. It is structured so that representatives listen to those they represent – primarily through elections, but also through the constituency system, public meetings, consultations, and petitions. Similar structures exist at the level of local government. In broad terms, the system encourages people to speak their mind to those in power. Newspapers, broadcasters and the news media more generally also have responsibilities in this area as part of process of holding those in power to account.

> "It is important to recognise that the democratic process requires some direct contact between politicians and the general public in the widest sense."[179]

This system, however, rests on a set of delicate balances between Parliament and the wider public culture, balances which are put at risk through intimidatory behaviour.

> "I now have video entry only into my constituency office. I have panic alarms installed. I only post on social media after I have attended events so people can't track my movements, on the advice of local police. I no longer put anything personal on social media. I no longer hold open surgeries, they are by appointment only and are not advertised in advance."[180]
>
> **Maria Caulfield MP**

Sitting MPs have related how intimidation and abuse has impacted on their working arrangements and how they interact with their constituents. Some MPs have had to make their surgeries less readily accessible, by not holding them in a public place and by making them by appointment only.

Other candidates and MPs have had to reduce their public appearances, ensure that they are accompanied to evening events, and in some cases have sought police protection at public events, particularly during general election campaigns.

179 Written Submission 49 (Confidential)
180 Written Submission 53 (Maria Caulfield MP)

> "I would never now attend an 'in-person' event on my own because of my experience at the 2015 election when I genuinely believed that I could have been subject to a physical assault."[181]
>
> **Labour Party 2017 Parliamentary Candidate**

Some candidates noted that having to take these steps has put them at a disadvantage during an election campaign, particularly when their political opponents draw attention to their reduced public accessibility.

If these trends continue, we are concerned that they will deepen the alienation and disaffection that may be driving intimidatory behaviour in the first place. If there are reduced opportunities to engage personally with political representatives, this would likely result in diminished public understanding of the Parliamentary process, of how individual Parliamentarians should behave, and how they assist citizens even where they disagree on a political argument.

> "Public campaigns are needed to ensure voters understand the nature of the roles. Misinformation about elections and public office needs to be countered."[182]
>
> **John Vincent**

Unacceptable influence on the political process

Intimidation also threatens the integrity of the political process. For decisions to be made in the public interest, decision-makers must be able to make reasoned decisions based upon their best judgment, and not be subject to unacceptable pressure or influence.[183]

Inevitably, some people will be disappointed and angry when things that they feel strongly about are not taken forward in the way they want. We therefore expect that exchanges in the political process will be robust, challenging, and highly charged.

If the political process is to work, however, that challenge must be appropriate, proportionate, and within certain boundaries. Most importantly, it should not undermine the authority and integrity of the process itself. Attempts to change the views, behaviour, or participation of candidates for public office by the use of threats or intimidation bring inappropriate influences to bear on the decisions of candidates or elected public officials. This threatens the integrity of the political process, as elected representatives and candidates may be afraid to act according to their judgement due to fear about the repercussions of doing so.

Even when the actions of representatives provoke fears, anger or frustration, all of us have a deeper responsibility to behave in ways that respect the principles upon which that process rests. Undermining the integrity of that process threatens public trust in the political system, and leads to decisions that are not made fairly in the public interest.

Candidates for public office and diversity in public life

The overwhelming view of Parliamentary candidates who provided evidence to the Committee was that intimidation is already discouraging individuals from standing for public offices.

Our public life will suffer when people with talent and experience are deterred from remaining in or

181 Written Submission 74 (Labour Party)

182 Written Submission 43 (John Vincent)

183 Concerns about unequal and unacceptable influences compromising the integrity of decision-making also lay at the heart of the Committee's recommendations in relation to lobbying in our 2013 report, Strengthening Transparency Around Lobbying.

entering politics by the abuse and intimidation that they receive. If we want a diverse and experienced set of candidates for public offices, we need to address intimidation in the political arena. For this reason, we also need to pay attention to who is being targeted. A clear finding of our review is that intimidation is disproportionately likely to be directed towards women, those from ethnic and religious minorities, and LGBT candidates. A failure to tackle such abuse will perpetuate inequalities in Britain's public life and restrict the diversity of those representing the public.

> "Our research shows that there is a real danger that high levels of online abuse against women MPs will have a chilling effect on women taking part in public life - particularly women of colour."[184]
>
> **Amnesty International**

We heard that women were likely to cite intensive abuse on social media as a key factor in preventing them from seeking public offices – particularly if there may be threats towards members of their family.[185] We are also concerned about the wider impact of intimidation directed towards the staff, supporters, and volunteers of candidates.

Volunteering on a campaign will often be the first step to future involvement in public life. We received evidence suggesting that individuals could be put off from standing for elected and appointed public offices altogether if they experience intimidation or witness it before they are even a candidate.

The freedom to stand for elected and appointed public offices is one of the core freedoms underpinning a representative democracy. Intimidation and abuse should not be considered part of the cost of involvement in politics. It should matter to everybody, and society as a whole, that no one who has an interest in serving and the capability to serve in public life should be deterred from doing so because they do not want to put themselves, their family, or their supporters in a position where they attract intimidation and abuse.

> "Almost everyone I know who goes into politics from any party is doing it because they care about their community and their country and they want to serve. Yet it makes you question constantly, 'is it worth it?"[186]
>
> **Rachel Maclean MP**

Freedom to debate

We have seen evidence that the effects of intimidation go beyond the bounds of the political system, and that some forms of intimidation are attempting to rule out particular topics or views as legitimate subjects of public debate.[187]

Our terms of reference for this review explicitly included the importance of maintaining freedom of expression. Democracy cannot function or flourish without protecting the essential freedom to express political opinions, however unfashionable or unpopular, where these do not undermine democracy or the rule of law itself.

In a free and democratic society, those working in the press must also have the freedom to ask legitimate questions of those in public life. We are concerned about cases where journalists have experienced threats or attempts to silence them.[188]

184 Written Submission 87 (Amnesty International)

185 Written Submission 69 (Fawcett Society)

186 Written Submission 25 (Rachel Maclean MP)

187 Lee Scott, Individual Oral Evidence, 11 October 2017

188 http://www.independent.co.uk/news/uk/politics/laura-kuenssberg-bbc-politics-editor-online-critics-trolls-silence-me-campaign-party-leaders-a8033086.html

> "I was then angry that people, especially young journalists, were having to go through the back door [at Scottish independence referendum events] due to intimidation."[189]
>
> **Nick Robinson**

Closing down debate of particular topics in a public forum weakens our public life, not just for those in positions of influence, but for all who should have the freedom to participate in public debate without fear or intimidation.

Acting now on intimidation in public life

We have seen and heard concerning evidence of the way intimidation is damaging our public life. Intimidatory behaviour is already affecting the relationship between the public and Parliamentarians, and threatens the vibrancy and diversity of our public life. It also threatens the core freedoms that underlie our representative democracy: the freedom to stand for public office, and the freedom to participate in public debate.

Addressing intimidation is not simply about the behaviour of individuals. It is also about the significant impact it has on the integrity and functioning of our political system.

We are aware that public office-holders in frontline roles, such as teachers or police officers, will have experienced threats or abuse for many years whilst serving the public. We are now seeing an increasing number of public office-holders being subject to intimidation. We note with concern reports that political journalists are experiencing threats of violence, which also represents a broader threat to the freedom of the press.[190] We have heard similar reports from some election officials.[191] We also heard that local candidates and councillors from across the political spectrum are also experiencing intimidatory behaviour.[192] The 2016 Judicial Attitudes Survey found that 37% of judges were concerned for their safety outside of court.[193] We are also aware of recent reports of threats directed towards doctors.[194]

Acting now is the only way to ensure that public office-holders in a variety of roles and sectors are not subject to pressures and conduct that undermines their freedom, willingness or ability to serve in public life.

Addressing the full breadth of this issue requires social media companies, political parties, Parliament, police services, prosecutors, and those in public life themselves to work together. This includes public leadership at all levels, preventative measures, and effective enforcement of existing measures and sanctions. These are all inter-related, and will depend on each other for their effectiveness.

Now is the right moment to address intimidatory behaviour. By doing so we can begin to rebuild a healthy political culture, and avoid intimidation becoming a permanent feature of our public life.

The recommendations we have made stand as a package. They should be implemented together, as a comprehensive response to an issue of central importance to our public life.

189 Nick Robinson, Individual Oral Evidence, 6 September 2017

190 "BBC chairman demands action on 'explicit and aggressive' abuse of its journalists", Radio Times, 13 September 2017; "How the BBC's Laura Kuenssberg was 'given a bodyguard' after threats by online hate mob during the election", Daily Mail, 14 July 2017

191 Mary Pitcaithly OBE, Individual Oral Evidence, 14 November 2017

192 Local Government Association, Oral Evidence, 31 October 2017

193 https://www.judiciary.gov.uk/wp-content/uploads/2017/02/jas-2016-england-wales-court-uk-tribunals-7-february-2017.pdf, p22

194 "Charlie Gard doctors sent death threats", The Times, 14 July 2017

Appendix 1: About the Committee on Standards in Public Life

The Committee on Standards in Public Life is an advisory non-departmental public body sponsored by the Cabinet Office. The Chair and members are appointed by the Prime Minister.

The Committee was established in October 1994, by the then Prime Minister, with the following terms of reference:

"To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life."

The remit of the Committee excludes investigation of individual allegations of misconduct.

On 12 November 1997, the terms of reference were extended by the then Prime Minister:

"To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements."

The terms of reference were clarified following the Triennial Review of the Committee in 2013. The then Minister for the Cabinet Office confirmed that the Committee "should not inquire into matters relating to the devolved legislatures and governments except with the agreement of those bodies", and that "the Government understands the Committee's remit to examine 'standards of conduct of all holders of public office' as encompassing all those involved in the delivery of public services, not solely those appointed or elected to public office".

The Committee is a standing committee. It can not only conduct inquiries into areas of concern about standards in public life, but can also revisit those areas and monitor whether and how well its recommendations have been put into effect.

Membership of the Committee, as of December 2017

Lord (Paul) Bew, Chair

The Rt Hon Dame Margaret Beckett DBE MP

Sheila Drew Smith OBE

Simon Hart MP

Dr Jane Martin CBE

Jane Ramsey

Monisha Shah

The Rt Hon Lord (Andrew) Stunell OBE

Secretariat

The Committee is assisted by a Secretariat consisting of Lesley Bainsfair (Secretary to the Committee), Ally Foat (Senior Policy Advisor), Dee Goddard (Senior Policy Advisor), Stuart Ramsay (Senior Policy Advisor), and Khadija Haji-Aden (Governance and Communications Coordinator). Press support is provided by Maggie O'Boyle.

Appendix 2: Methodology

Methods

In order to conduct this review, the Committee used a range of methods:

- a public call for evidence, to which we received 88 responses
- an invitation to every MP and Peer to contribute to the review
- a roundtable discussion with former candidates, academics, think tanks, and stakeholders
- a public hearing with political parties
- a private hearing with police and security services
- published interviews with social media companies
- interviews with Parliamentarians and Parliamentary candidates, and others who have experienced intimidation
- 18 meetings with stakeholder organisations
- desk-based research including:
    - a review of relevant academic literature
    - a review of existing codes of conduct of political parties
    - a review of relevant legislation
    - a review of relevant policing and prosecution guidance

Public call for evidence

The Committee held a public call for evidence, which invited submissions from anyone with an interest in these issues. The call for evidence was open from 9am on 24 July 2017 to 5pm on 8 September 2017. We received 88 responses to this call for evidence.

The call for evidence was published on our website, and was listed as a consultation on GOV.UK. The call for evidence was sent to all MPs and Peers, as well as to each of the political parties currently represented in the House of Commons with a request that they share it with former Parliamentary candidates.

Those responding to the review were given the option of marking their submission as confidential, so that individuals could give evidence which may be highly personal or sensitive or which might invite intimidation were it to be made public. We undertook not to publish or otherwise disclose these submissions unless required by law. Responses to the call for evidence that were not marked as confidential are published alongside our review.

The call for evidence stated the terms of reference of the review and invited evidence and comments on the following themes:

What is the nature and degree of intimidation experienced by Parliamentary candidates, in particular at the 2017 general election?

Does the issue of the intimidation of Parliamentary candidates reflect a wider change in the relationship and discourse between public office holders and the public?

Has the media or social media significantly changed the nature, scale, or effect of intimidation of Parliamentary candidates? If so, what measures would you suggest to help address these issues?

Is existing legislation sufficient to address intimidation of Parliamentary candidates?

What role should political parties play in preventing the intimidation of Parliamentary candidates and encouraging constructive debate?

What other measures might be effective in addressing the intimidation of Parliamentary candidates, and candidates for public offices more broadly?

Could the experience of intimidation by Parliamentary candidates discourage people from standing for elected or appointed public offices?

Has the intimidation of Parliamentary candidates led to a change in the way in which public office holders interact with the public in correspondence, on social media, or at in-person events?

Roundtable

The Committee held a roundtable discussion with a range of stakeholder organisations, think tanks, academics, and former Parliamentary candidates to discuss the nature and recent extent of intimidatory behaviour, what can be done to combat intimidation in public life, and the impact of such behaviour on public life. We have published the transcript of the hearing.

Name	Organisation
Professor Tim Bale	Queen Mary, University of London
Sir Kevin Barron MP	House of Commons
Professor Rosie Campbell	Birkbeck College, University of London
Professor Neil Chakraborti	University of Leicester
James Davies	BCS – The Chartered Institute for IT
David Evans	BCS – The Chartered Institute for IT
Adam Finkel-Gates	University of Leicester
Claire Foster-Gilbert	Westminster Abbey Institute
Dr Jennifer van Heerde-Hudson	University College London
Professor Ruth Lewis	University of Northumbria
Alasdair MacDonald	Equality and Human Rights Commission
Joy Morrissey	Former Parliamentary candidate (Conservative) and Women2Win
Fiyaz Mughal OBE	TellMAMA
Dr Victoria Nash	Oxford Internet Institute
Rt Hon Peter Riddell CBE	Commissioner for Public Appointments
Lisa Robillard Webb	Former Parliamentary candidate (Labour)
Dr Jonathan Rose	De Montford University
Sam Smethers	Fawcett Society
Josh Smith	Demos
Dr Mark Shephard	University of Strathclyde

Name	Organisation
Kasia Staszewska	Amnesty International
Danny Stone	Anti-Semitism Policy Trust
John Vincent	Former Parliamentary candidate (Liberal Democrat)

Public hearing: political parties

The Committee held a public hearing with representatives from political parties, to discuss the role of political parties in addressing intimidation, their codes of conduct and sanctions, and support offered to candidates. We have published the transcript of the hearing. We also invited all other parties currently represented in the House of Commons to speak to the Committee.

Name	Role and organisation
Baroness (Sal) Brinton	President, Liberal Democrats
Ian Lavery MP	Chair, Labour Party
Rt Hon Sir Patrick McLoughlin MP	Chairman, Conservative Party

Private hearing: police and security services

The Committee held a private hearing with representatives from the police and security services to discuss the sufficiency and enforceability of the current law, and current arrangements in place to protect and support MPs. The hearing was held on the basis that the transcript would not be published so as not to compromise important operational information.

Name	Role and organisation
Chief Constable Mike Barton QPM	Crime operations lead, National Police Chiefs Council
Eric Hepburn	Director of Security, Houses of Parliament
Rt Hon Lindsay Hoyle MP	Deputy Speaker and Chair of the Consultative Panel on Parliamentary Security
Gregor McGill	Director of Legal Services, Crown Prosecution Services

Interviews with social media companies

As with the public hearing, these meetings were held on the basis that a full note and audio recording of the meeting would be made available online.

Name	Role and organisation
Nick Pickles	Head of Public Policy and Government (UK and Israel), Twitter
Sean Evins	Government and Policy Outreach Manager, Facebook
Simon Milner	Policy Director (UK, Middle East and Africa), Facebook
Emma Collins	Public Policy Manager, Facebook
David Skelton	Public Policy and Government Relations Manager, Google
Katie O'Donovan	UK Public Policy Manager, Google
Yasmin Green	Head of Research and Development, Jigsaw
Lucy Vasserman	Software engineer, Jigsaw

Interviews with Parliamentarians and former Parliamentary candidates

The Committee held 11 meetings with Parliamentarians and former Parliamentary candidates. Due to the sensitive nature of these discussions, with the exception of Aimee Chanellor, who spoke to the Committee on behalf of the Green Party, these meetings were all held on the basis that no note of the meeting would be published, and material from the meeting would only be quoted in our report with the permission of the individual concerned.

Rt Hon John Bercow MP	Speaker of the House of Commons
Rt Hon Lord McFall	Senior Deputy Speaker, House of Lords
Rehman Chishti MP	Conservative MP
Lee Scott	Former Conservative MP
Rt Hon Sir Hugo Swire MP (by telephone)	Conservative MP
Rt Hon Diane Abbott MP	Labour MP
Luciana Berger MP (by telephone)	Labour MP
Rt Hon Yvette Cooper MP	Labour MP
Dr Lisa Cameron MP	Scottish National Party MP
Sarah Olney	Former Liberal Democrat MP
Aimee Challenor	Former Green Party candidate

Meetings with individuals and stakeholder organisations

The Committee held 18 meetings with individuals and stakeholders. These meetings were all held on the basis that the no note of the meeting would be published, and material from the meeting would only be quoted in our report with the permission of the individual concerned.

Name	Speaker of the House of Commons
Nick Robinson	BBC (personal capacity)
Laura Kuenssberg	BBC (personal capacity)
David Evans and James Davies	BCS – The Chartered Institute for IT
Officials	Crown Prosecution Service
Rachael Bishop	Department of Digital, Culture, Media and Sport
Claire Bassett and Bob Posner	Electoral Commission
Mary Pitcaithly OBE (by telephone)	Convenor, Electoral Management Board, Scotland
Lionel Barber and Robert Shrimsley	Financial Times
Official	Foreign and Commonwealth Office
Will Moy	Full Fact
Official	Home Office
Matt Tee (by telephone)	IPSO
Brendan Cox (by telephone)	Jo Cox Foundation
Iona Lawrence	Jo Cox Foundation
Mark Lloyd and Dr Charles Loft	Local Government Association
Cllr Marianne Overton MBE	Local Government Association
Joe Todd (by telephone)	Communications Officer, Momentum
DI Philip Grindell	Parliamentary Liaison and Investigation Team

CCS1017273996
978-1-5286-0096-5