

# Hiding in plain sight: barriers to effective council scrutiny



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## Context

The Alexis Jay and Robert Francis Reports into appalling service failure in local public services have, amongst other things, illuminated the risks of weak overview and scrutiny – either in the capacity of non-executive councillors to carry out their scrutiny role or in the commitment of political leaders and others to respect and support the scrutiny role. Scrutiny by elected members is one of the mechanisms of local accountability currently relied upon significantly to provide assurance to central government, parliament and the public that public funding is being spent effectively at local level and delivering the outcomes that are expected.

While its primary purpose as set out in legislation is to form part of the governance of local authorities and to provide a check and balance to local executives, recent developments such as the [governmental accountability systems statements](#) following the demise of the Audit Commission and its central regulatory system have emphasized the importance of scrutiny as a source of national assurance. At CfPS we wanted to try to establish whether the failings highlighted in the Jay and Francis reports are reflective of a wider national picture and to understand what might lie behind these findings.

CfPS already conducts the only national survey of overview and scrutiny in England and Wales which provides an annual snapshot of the state of the local government scrutiny function in terms of resourcing, structures, approaches and overall effectiveness. This, along with our annual reports collating the best examples of good scrutiny practice, provides a balanced picture of the strengths as well as the weaknesses of local scrutiny of public services. However, we wanted to delve a bit deeper into the specific concerns raised by Jay and Francis around a lack of robust challenge by members, political culture issues, and obstructiveness from senior officers and members and indeed other public agencies. We have consulted scrutiny practitioners on the findings that follow and the conclusions we have drawn, and have amended the report to take these views into account. We would like to thank those who responded and contributed their views on this important issue.

## CfPS survey of scrutiny effectiveness 2014

Between September and November 2014 we carried out a survey on Survey Monkey, promoted via our networks and newsletters to scrutiny members and officers in England and Wales. It had 95 responses, a handful comprising responses from two different people at the same authority, 84% of which were completed by scrutiny officers, 5% by members and 11% other. Responses were reasonably spread across the different types of authority. It must be acknowledged that this is a limited sample only, and our main conclusion is to endorse [the recent recommendation of the DCLG Select Committee that there should be a national evaluation](#) of the operation, impact and effectiveness of overview and scrutiny – something which has not happened since the [2004 research commissioned into the operation of the new council constitutions](#) by the then ODPM and carried out by Professor Gerry Stoker et al.

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This recommendation is strengthened by the findings that emerge strongly, even from this limited sample, around political and officer culture, the prevalence of barriers to members carrying out their scrutiny role effectively, and what we believe are growing risks and strains in the system of local scrutiny and accountability. We believe that this small piece of research provides further weight to the [concerns expressed by the National Audit Office and Public Accounts Committee](#) around the stresses and strains being placed on local accountability systems by a range of pressures including resource reductions and the development of growing numbers of complex multi-agency partnerships and new decision-making bodies. We urgently need to understand better the causes of these risks so that local government can take steps to address them effectively and so that national government – recently criticized by the NAO / PAC and the Department of Health and DCLG departmental select committees for its lack of understanding about the local impact of national spending decisions – can have strong local mechanisms on which to rely.

## Headline findings and conclusions

### Biggest barrier to effective scrutiny? (analysis of free text responses)

1. Member commitment, engagement and skills – 25%
2. Attitude of senior officers – 24%
3. Political culture and leadership – 22%
4. Lack of resources or officer support – 21%
5. Poor scrutiny practices – 7%

### One single thing that would make a difference (analysis of free text responses)

1. More / protected resource for scrutiny, including officer support at senior enough level – 37%
2. More statutory powers, notably over external agencies and to force action on recommendations – 22%
3. Culture change at top, notably tackling impact of large political majority – 20%
4. Member calibre, training and status – 12%
5. Change scrutiny practices, notably more task and finish reviews – 8%

### In a significant minority of councils, scrutiny's requests for information may be being blocked or denied – despite a statutory requirement to provide information to scrutiny

- **36% said scrutiny requests for information were regularly or sometimes blocked or denied**

*“There is an officer & political culture to keep scrutiny away from the real issues”*

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- **This could be more a senior officer issue than a political one: 71% said blockages come from senior officers**, 40% from leader / cabinet (respondents could tick all that applied, hence totals come to more than 100%)

*“the problem seems to come from the culture, and the culture very much depends on senior officers/senior members.”*

*“Scrutiny is not universally valued or well understood at a senior management level. It is currently perceived and used as a tick box exercise to try to keep back bench members quiet.”*

**Large political majorities and strong leaders may inhibit scrutiny’s independence. Although CfPS Annual Surveys do not show correlation between political control, allocation of chair positions and effectiveness, there is some evidence that scrutiny is more valued and effective in councils under no overall control**

- **30% said the leader appoints all scrutiny chairs** and 31.5% said the majority group BUT 31.5% said chairs were appointed by non-executive members on a cross-party basis
- **65% give all chairs to the majority party**, with 47.5% taking all Vice-Chairs as well. 35% are held politically proportionately.

*“[We need] elections for Chairmen at full council and enabling non-majority party members to be chairmen.”*

- Over 71% authorities responding have a large majority – is this a problem for scrutiny?

*“Leadership culture of evading challenge - and feeding fish to scrutiny to keep them busy. Probably a result of large political majority.”*

*“Decisions made at Group - large majority do not want to show dissent in public”*

**A worrying minority of council scrutiny functions do not appear to be fulfilling their challenge role effectively, including failing to triangulate what they are told by officers and the executive against the experience of service-users or external benchmarking data**

- **Nearly 25% said scrutiny never or hardly ever robustly challenges executive** (20% said never or hardly ever robustly challenges senior officers)
- **31% never or hardly ever listen to other sources of evidence or service users** to inform their challenge

**The role of the Monitoring Officer is welcomed and valuable but the Statutory Scrutiny Officer role needs to be higher profile, higher status and better understood**

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- 61% felt Monitoring Officer supported scrutiny effectively BUT small minority (7%) felt didn't support at all
  - 79% would go to Monitoring Officer if they felt they had a problem with scrutiny's access to information etc, 49% would go to Chief Executive, 17% to CfPS
  - 34% say Statutory Scrutiny Officer never attends senior leadership team, while 31% say the role is not at all understood.

### **What else do we know?**

- CfPS 2014 Annual Survey found that resources and support for scrutiny are at lowest level since 2004 – down to 1.75 FTE staffing
- The trend is towards combining scrutiny and democratic services officers (up to 33% in this latest survey) rather than having a dedicated separate officer or team
- Many districts in particular have no dedicated scrutiny officer at all
- There is a clear correlation in CfPS surveys between effectiveness, following up recommendations and dedicated officer support
- LGA survey in 2012 found that 97% chief executives and 96% leaders agree that “local accountability is strong in my authority” but it is unclear what this means or how this works in practice

### **What steps would CfPS recommend to address these issues?**

1. We believe it is becoming urgent that a proper research project is carried out to establish and understand the operation, impact and effectiveness of the challenge provided by local authority overview and scrutiny, and the extent to which it is able to carry out the role envisaged for it by statute, government, parliament and public expectation, particularly in the context of on-going local government funding reductions. We acknowledge that the findings reported here are based on a limited sample but believe that this underscores the need for a properly resourced piece of research to establish exactly what the national picture is, and to enable the full capturing of good practice as well as any problems. Given the wide variation in scrutiny arrangements the exact scope and focus of such a research project should be carefully thought through and it may be more useful to focus on member governance, political and managerial culture or the different roles of executive and non-executive governors and to take a qualitative approach rather than attempting to draw any generalized quantitative conclusions.
2. Given the evidence presented here, which is borne out by all the anecdotal evidence of which we are aware from CfPS's work as well as the individual examples of serious service failure highlighted by inspections and public inquiries, we call on the LGA and SOLACE to

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collaborate with us to raise awareness and acceptance of the importance of independent, properly resourced and effective scrutiny and challenge amongst their senior member and officer council leaderships. We know that the best, most confident leaders accept and welcome challenge as helping them and their organisations improve what they do, but too many see it as something to be limited, obstructed and paid lip service to at best. This must change.

3. We call on all councils to review their own member scrutiny and governance arrangements in the light of the Francis and Jay reports to ensure they are providing robust, evidence-based challenge to service delivery and performance that draws on the views and experiences of residents and service-users and provides assurance that risks are being appropriately managed. Again, we know that the best scrutiny functions already do this, and that a number have specifically done so following the Francis and Jay reports to ensure they are learning from those failures. Recognising the resource constraints under which authorities are operating, this review should ideally involve some independent, external assessment, for example, using a peer challenge approach or drawing on CfPS's Accountability Works for You methodology for assessing scrutiny's effectiveness, and could be overseen or commissioned by the council's audit committee to provide further independence.
4. We are concerned at the finding that 30% respondents said that scrutiny chairs are appointed by the leader, which must call into question their perceived independence at the very least, although encouraged that slightly more said they are chosen by non-executive members cross-party. We do not have any evidence as to the effectiveness or impact of different ways of choosing scrutiny chairs (something which, again, a piece of national research could address) but believe having an independent mandate sends an important signal about the chair's legitimacy and freedom to act. Given the impact we know a good scrutiny chair has on the effectiveness of scrutiny, CfPS believes the time has come for councils to seriously consider whether scrutiny chairs should be chosen by secret ballot of non-executive members of the council, based on an objective assessment of how well they are able to do the job. We acknowledge that local flexibility around overview and scrutiny arrangements remains an important principle but we would wish to see councils actively demonstrating that they have sought to find the best independent-minded leaders for scrutiny, in line with our long-established 3<sup>rd</sup> principle of effective scrutiny. There is a range of different ways that this could be done, for example giving members complete discretion over who they choose, either across the whole non-executive membership of the council or within the individual committee memberships, or on the basis of a certain proportion being reserved for the opposition as happens now in Parliament.
5. One interesting finding is that very few respondents independently identified either the external auditor or the remaining inspectorates, CQC and OFSTED, as a source of action or support if they were concerned that scrutiny was being obstructed or that an issue was not

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being properly addressed. We call on industry bodies (for example CIPFA and the big 4/5 accountancy firms) and the two inspectorates to work with CfPS to help them engage better with overview and scrutiny and to raise their profile with councillors as a source of action or support for scrutiny.

6. We have long argued for the importance of triangulation as part of the process of effective overview and scrutiny, and in particular the importance of hearing the voices of service-users, which has been one of our four principles of effective scrutiny since 2004. We note an apparent contradiction in overview and scrutiny practice which is that the many excellent examples of policy review and development (overview) which we see every year, for example, in our Good Scrutiny Awards, seem to adopt these approaches more effectively and readily than what might be described as the scrutiny and challenge element of the role. Challenge sessions seem far more often to involve simply hearing from and questioning cabinet members and officers on performance reports which they have produced, without recourse to external sources of evidence to back-up or challenge what the council is saying. We will redouble our efforts to impress upon scrutiny practitioners the importance of verifying internal evidence against other sources when carrying out performance monitoring, service reviews or cabinet member challenge sessions and call on national service-user, patient and other advocacy and consumer groups to work with us to enable overview and scrutiny committees to access the views of their members more readily and effectively.
7. Last but definitely not least, we must draw attention to the reduction in resources affecting most if not all overview and scrutiny functions in local government. As this report notes, resources are at their lowest level since 2004 and this is limiting the scope of what scrutiny committees are able to do. Councils are having to prioritise the issues they investigate and there are concerns that some issues may be missed as a result. Whilst it is right that councils focus their resources on the issues that matter most, continuing to cut back on scrutiny and good governance ultimately poses a risk to good decision-making. The research into governance effectiveness which we are backing must include an assessment of the impact of resource reductions on effective scrutiny.
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