

Overview and scrutiny in combined authorities: a plain English guide

Second edition

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Background and context

Devolution in general

In England, devolution is the process by which power and control is passed from the Government to local areas. The idea is to give local areas the power to effect real change on issues like transport, economic development, skills and public health.

For most areas, the mechanism through which this will happen is through the establishment of a Mayoral Combined Authority (MCA).

MCAs are at various stages of development across the UK. When the first edition of this guide was published they, and the overview and scrutiny systems designed to form a part of their governance framework, were yet to be tested in practice. This new edition has provided an opportunity for us to reflect on the three and a half years of practice since their introduction.

Combined authorities need strong governance to work well. They provide a forum and a framework for joint decision-making, and as such their systems and processes need to be designed and maintained with care. That design needs to be more flexible than that of local authorities – the bespoke nature of MCAs’ deals with Government, and the developing nature of those deals, means that scrutiny and governance needs to be managed to meet specific regional needs.

Nationally, there is one key point of learning which runs through this guidance – that scrutiny in combined authorities is distinct to that in local authorities. Although legal powers and modes of operation are superficially similar, the demands of MCA operations must lead to a significantly different approach. This guidance aims to describe that approach and provide MCA overview and scrutiny functions with the practical tools to deliver it.

Further information

Between 2015 and 2017 we published a range of papers setting out the emerging governance position for devolution. Although the policy landscape has since moved on some fundamental principles remain, and these principles are reflected throughout this document. Some of the principal source material is:

- “Devo how, devo why?” (CfGS, 2015);
- “Charting the way” (CfGS, 2016)
- “Combined authorities: a plain English guide” (LGA, 2016)

There are a range of related legislative provisions. Aside from the bespoke orders establishing the governance arrangements for individual MCAs, these include:

- The Local Democracy, Economic Development and Construction Act 2009;
- The Cities and Local Devolution Act 2016;
- The Combined Authorities (Overview and Scrutiny, Access to Information and Audit Committees) Order 2017 (SI 67);
- Overview and scrutiny: statutory guidance for councils and combined authorities (HMG, 2019)

Other powers relating to overview and scrutiny can be found in Schedule 5A of the 2009 Act, as amended by the 2016 Act.

In some instances an MCA OSC may provide scrutiny and support to a Mayor who is a police, fire and crime commissioner. Separate guidance on such matters is available but this guidance does provide

some brief commentary on how this might link in to scrutiny's broader role.

We do not refer in detail to every line of the legislation in this guidance, but the key aspects – relating to the powers of scrutiny, the composition and chairing of committees and the powers of call-in – are covered in depth.

Because many of those carrying out scrutiny activity in MCAs will have a local government background (as councillors and officers), elements of this guide will dwell on the distinctions and differences between scrutiny at local authority and MCA level.

Why scrutiny?

In a Mayoral Combined Authority, there are three points of power and accountability.

- The directly elected Mayor;
- The Combined Authority (CA), as represented by the local authority Leaders and others who sit on it;
- The CA overview and scrutiny committee (CA OSC), holding both to account.

Ultimately, all three of these sets of people are accountable to local people. The direct election of the Mayor in particular gives them a unique and immediate accountability to all those living in the area.

The relationship between all three of these individuals or groups must be clear and well-understood. Only two have decision-making authority (the exception being overview and scrutiny) but all three will hold each other to account in some way. All have their own source of democratic legitimacy. All should have priorities which are broadly aligned. For decision-makers, this should mean that their activities reflect a collective vision for the future of the area; for scrutiny, this is about ensuring that the focus of the function engages closely with that vision.

This fact is why the function of scrutiny in an MCA differs from that of a local authority. Combined authority working is about long term strategy; while delivery of services is a key component (in particular, in relation to transport) it is not the dominant feature as is the case for local authorities. The scope and nature of overview and scrutiny must, therefore, look very different. MCAs using local scrutiny as a model to transpose onto operations at a sub-regional level will find it difficult to make scrutiny effective.

Alongside this challenge of role and focus, scrutiny also faces challenges of resourcing at MCA level. MCAs are smaller, leaner organisations than local authorities; the nature of officer support for scrutiny is likely to look different.

Effective scrutiny is not just the responsibility of scrutiny members and the officers who support them. It is a collective duty. The Mayor and CA leadership are just as responsible for making it work.

Dealing with the differences between local authority scrutiny and combined authority scrutiny

Most of those involved in MCA scrutiny – from the officer and member sides – will be familiar with scrutiny at a local authority (LA) level. As we note elsewhere, the legal framework underpinning MCA scrutiny closely reflects LA scrutiny. Government guidance on scrutiny applies to the function at both geographical levels.

As such it would be tempting to assume that the two forms of scrutiny are identical, but this is not the case. There need to be significant differences – reflecting the different ways that MCAs work, and their priorities. There are also some distinctions relating to the structure and management of scrutiny committees at MCA level.

Some of the principal differences are set out below. There are all explored in more detail later in the text.

Local authority scrutiny	Combined authority scrutiny
Focus on strategic matters but with operational delivery influencing and informing where scrutiny's priorities lie	Highly strategic – about long term growth and strategies to deliver change in 20 to 30 years time. In most areas, operational oversight relating to transport
Involves oversight of a very wide range of service, safeguarding and community issues	Reflects MCA devolution deal – primary focus on economy and growth. Perhaps some oversight on operational matters such as transport
Strong and close community connection; strong sense of place	Scale poses challenges for connection to local community
Partnership is important to delivery but scrutiny is often about the council, as an institution, doing things	Partnership is fundamental to the ability of the MCA to deliver its priorities – everything the MCA does is about partners and partnership
Scrutiny of the budget reflects the need for close co-ordination with audit; financial monitoring on operational delivery is important; continual review of the budget development process is required; budget scrutiny reflects the fact that councils are large entities with multi-million pound service delivery budgets	Budget and financial focus will need to be on investment, the use of the Growth Fund and other issues rather than about the finances of the MCA as an organisation
Quoracy rules set in the constitution, generally requiring the presence of only a few members	Two thirds of members must be present for meetings to be quorate

What this means for scrutiny is that a sequence of sorts is required to ensure that impact can be maximised:

- The need to determine a focused and distinct role, which councillors and officers stick to;
- Using the clarity of this role to build and develop relationships within, and beyond, the MCA;
- Using good relationships to get timely access to proportionate, high quality information about MCA activities which relate to the scrutiny role;
- Using this information to set a realistic work programme which has an impact;
- Determining the ways of working at scrutiny's disposal to deliver this programme.

This guidance deals with all of these issues in depth. It also covers the structural mechanics of establishing and operating committees.

Scrutiny's distinct role

The law

The framework for agreeing scrutiny's role is provided in the legislation. Scrutiny has the power to:

- Review or scrutinise actions taken or decisions made by the authority;
- Make reports or recommendations on the above;
- Make reports or recommendations on any issue affecting the authority's area or the area's inhabitants.

This relates to activities either by the CA, or the Mayor.

A CA OSC may require that an officer or member of the authority attend meetings to answer questions. This includes the Mayor or Deputy Mayor. Members of a CA OSC have enhanced rights to access information held by the authority; any information (including exempt or confidential information, excluding advice) must be provided on requests. We cover more on the access to and use of information below.

The law also covers call-in. This will be covered later in more depth, alongside discussions of pre- and post-decision scrutiny.

Sections 1 & 2, Schedule 5A, Local Democracy, Economic Development and Construction Act 2009, as inserted by the Cities and Local Government Devolution Act 2016

Article 7(1)-(3) [responding to recommendations], Articles 8 & 10 [use of information], Combined Authorities (Overview and Scrutiny, Access to Information and Audit Committees) Order 2017

Authorities should take steps to ensure scrutiny has a clear role and focus within the organisation, i.e. a niche within which it can clearly demonstrate it adds value. Therefore, prioritisation is necessary to ensure the scrutiny function concentrates on delivering work that is of genuine value and relevance to the work of the wider authority – this is one of the most challenging parts of scrutiny, and a critical element to get right if it is to be recognised as a strategic function of the authority.

Overview and scrutiny: statutory guidance for councils and combined authorities

These broad powers provide the framework within which scrutiny's role can be considered.

A sense of the priorities for devolution in the area, and the opportunities that might exist for scrutiny to contribute to these priorities, will make it easier for members to discuss and agree scrutiny's actual role.

The driving force of the devolution agenda will not be the same everywhere, so scrutiny needs to look different too. Scrutiny will need to be outcome-focused, and its ways of working and ultimate forms and structures must reflect this purpose if it is to have real impact.

This understanding of outcomes is something that should come from an understanding of the deal itself, and the approach that the Mayor and CA, and their partners, plan to take to deliver it. This is why early discussion with the Mayor about scrutiny's role will be important. It will also help to identify the partners – beyond the CA and Mayor – with whom the CA OSC will need to engage if it is to work effectively.

Scrutiny might, for example, provide assistance in the development of policy, by:

- Understanding and overseeing the development and implementation of post-pandemic economic recovery plans – the features of this unique role are discussed in more detail below;
- Reviewing the local community impact of major investment plans;
- Overseeing and evaluating how the CA prioritises decisions on major investments;
- If the CA takes a sector-based approach to its economic development plans, it might look at the ways in which individuals and organisations within those sectors are engaged and involved in the decision-making process;
- Highlighting issues or areas identified by the CA as high-risk, and studying them further.

It would be very difficult, within the resourcing available, to do more than one of these tasks, or to take a more “generalist” approach to scrutiny than we have set out here. This may present a challenge where along with high-level, strategic oversight, members feel a need to keep an active, watching brief on the MCA's operational transport duties – an issue that we explore in more detail below.

Scrutiny is not able to take a broad-brush approach to all MCA business. It is not able to shadow all aspects of the MCA decision-making process or conduct detailed task and finish style inquiries into a wide range of MCA responsibilities cutting across – for example – economic development, skills and transport. Quite apart from anything else, the resources will not exist to carry out such work.

In order to have an impact, scrutiny will have to carefully consider the skills, capabilities and experience of its own members, and how these might map onto the MCA priorities. This is not about picking individual priorities, or parts of priorities, for scrutiny to look at, to the exclusion of other work. Instead, it is likely to be about looking at how those priorities intersect, the work that has gone into developing them and thinking about delivering against them, and thinking about the different contributions that scrutiny might make to that whole process. These are the kinds of areas of focus we highlight in the bullet list above.

There is a real risk that a model of scrutiny which does not articulate, and stick to, a defined role ends up with a committee becoming a clearing-house for officer updates and presentations which, while interesting, will have little impact on the work of the MCA and none whatsoever on the lives of local people.

Getting this right is one of the most important parts of identifying the right role. This is discussed in more detail in the section on prioritisation, below.

Effective scrutiny of transport

In some areas, MCAs have direct operational responsibility for transport. Here, councillors will need to tread a fine line between ensuring that vital transport matters benefit from proportionate oversight, while ensuring that scrutiny is not overwhelmed by a range of operational matters.

In some MCAs, separate Transport Committees or sub-committees exist to carry out this scrutiny work – sometimes a legacy of the pre-MCA days when a distinct Integrated Transport Authority and Passenger Transport Executive led on strategy and delivery for local transport. The CfGS publication “Transport governance in combined authorities” (2020) sets out more detail on these dynamics, and suggests ways that scrutiny of strategic and operational matters can be effectively balanced.

The way that scrutiny of transport is designed and delivered will have to reflect scrutiny’s broader strategic focus, because transport will have an impact on broader MCA priorities and vice versa.

Other scrutiny functions: accountability in policing and fire

Some Mayors also hold responsibility as police and crime commissioners, or policing, fire and crime commissioners.

These roles involve additional statutory duties and, with them, additional responsibilities for scrutiny.

In such MCAs there may be a separate Police, (Fire) and Crime Panel or the functions of such a Panel may form part of those of the MCA OSC itself.

Here, the role of the body will need to take account of additional statutory scrutiny functions. Proper, robust oversight on strategic policing and fire matters is important, and for maximum effect should be properly integrated into scrutiny’s role and work programme. Designing separate meetings or parts of the agenda to focus on police or fire matters is likely to be less effective. A fully-integrated work programme which is able to identify links between police, fire and wider Mayoral responsibilities – capitalising on scrutiny’s ability to identify cross-cutting matters – is likely to be more effective.

More detail can be found at:

■ [CfGS PCP guidance](#)

■ [LGA fire scrutiny guidance](#)

How will we know we’re succeeding?

Having some clear method of assessing whether CA scrutiny is working, or not, will be important.

This will need to refer back to scrutiny’s role. Members might, at the outset, like to reflect on what success would feel and look like – what a successful and effective scrutiny function would achieve. You could then review this after six months or a year to see if these aspirations had been realised and if not, why not.

Overview and scrutiny at local level has struggled to develop effective “performance indicators” to measure success. If you do go down this route, you might think about softer measures – establishing whether scrutiny is seen as an important part of the governance framework, and the extent to which it is respected by the Mayor and CA executive – than more process-driven ones, like those which measure the number of recommendations accepted and implemented. Such recommendations cannot properly engage with the substance and impact of scrutiny’s work.

You should not expect to see success straight away. It is likely that there will be difficulties – particularly in managing the relationships between the key people involved at CA level, and especially during the first few months. But having a sense of what scrutiny’s aims are, in terms of its impact and outcomes, will be important in providing something against which to evaluate the function.

Engaging with the right people

Authorities should ensure early and regular discussion takes place between scrutiny and the executive, especially regarding the latter’s future work programme. Authorities should, though, be mindful of their distinct roles.

[...]

Effective scrutiny involves looking at issues that can be politically contentious. It is therefore inevitable that, at times, an executive will disagree with the findings or recommendations of a scrutiny committee.

It is the job of both the executive and scrutiny to work together to reduce the risk of this happening, and authorities should take steps to predict, identify and act on disagreement.

One way in which this can be done is via an ‘executive-scrutiny protocol’ which can help define the relationship between the two and mitigate any differences of opinion before they manifest themselves in unhelpful and unproductive ways. The benefit of this approach is that it provides a framework for disagreement and debate, and a way to manage it when it happens. Often, the value of such a protocol lies in the dialogue that underpins its preparation. It is important that these protocols are reviewed on a regular basis.

[...]

The scrutiny function can often lack support and recognition within an authority because there is a lack of awareness among both members and officers about the specific role it plays, which individuals are involved and its relevance to the authority’s wider work. Authorities should, therefore, take steps to ensure all members and officers are made aware of the role the scrutiny committee plays in the organisation, its value and the outcomes it can deliver, the powers it has, its membership and, if appropriate, the identity of those providing officer support

Overview and scrutiny: statutory guidance for councils and combined authorities

Scrutiny at MCA level is all about relationships. If scrutiny’s role is clear, building relationships will be easier. Scrutiny will be able to articulate what it does in a way that others understand, and that clearly align with those partners’ own work.

At combined authority level there is the additional complexity of a range of local overview and scrutiny committees, all with their own stake in the process. Although the duties of the Mayor and CA focus on strategic matters, they will have a direct impact on local areas and the responsibilities of the individual constituent authorities – scrutiny will need to recognise those links and act on them.

Relationships will need to be built with:

- The Mayor. Discussing scrutiny's role with the Mayor will be important. The Mayor and CA OSC will need to understand each other and the jobs they have to perform respectively and together. It is likely that the MCA OSC will want to engage in "set piece" scrutiny of the Mayor, relating to its core role and responsibilities – this is described in more detail below;
- The CA Board (and through the Board the individual constituent authorities). Understanding the personal and political dynamics between those on the Board will help scrutiny to direct its attention to the areas where it will have most impact. The Board itself will be carrying out a scrutiny function of sorts, overseeing and supporting the work of the Mayor – it is therefore important that mutual roles and responsibilities are well-articulated, and understood;
- The CA's member Audit function. The roles of scrutiny and audit are distinct, but the CA OSC is likely to want to keep a watching brief over finance issues as part of its work, and the OSC's wider work on policy development and review of the CA's substantive activities will provide useful context for Audit.
- The scrutiny functions of the individual constituent authorities. This is discussed in more detail below;
- Local partners – which might include LEPs if they are not part of the MCA, local transport user groups, local businesses and others. Part of the challenge will lie in identifying this list of partners, which will hinge on what scrutiny's ultimate role is;
- The public. Scrutiny's role will help to define what outward-facing work happens with the public. Engagement may be easier on operational matters like transport. This is discussed in more detail below.

Many of these partners will be in a position to assist scrutiny – by sharing information and insights about the local areas. Speaking to some of these partners will help scrutiny to clarify and refine its role, and to make sure that it is selecting items for further study which reflect both that role and local need.

As the statutory guidance suggests, the development of an executive-scrutiny protocol might provide a way of providing certainty and consistency to some of these key relationships. An executive-scrutiny protocol might set out mutual expectations on the sharing of information, attendance at meetings and responses to reports – as well as expectations around informal dialogue and communication around communication, and steps that can be taken to demonstrate scrutiny's independence from the Mayor and CA Board.

We would not necessarily suggest the agreement of similar protocols with, for example, external partners. The Mayor/CA/scrutiny relationship is key, thus demanding such an approach – scrutiny's relationships with other partners can probably be managed in a more informal way, determined as needs arise. There may be circumstances where a protocol *is* thought necessary – for example, in the case of a separate LEP or LEPs covering the area for which the CA OSC provides external scrutiny.

Working with scrutiny in the constituent authorities

Scrutiny continues in councils across the MCA area. Some of this scrutiny may well intersect with work done at the MCA – particularly where it relates to devolved matters (commonly, economic

development, skills, transport and so on).

If further deals are done, and the responsibilities of the MCA increase, the opportunity for such crossover increases.

An important element of the devolution process is the concept of subsidiarity – the idea that responsibility for an issue should be held at the lowest appropriate level. In devolution, that will be important to prevent power from being drawn up to the regional level. This is equally important for the operation of scrutiny.

As such, there will be a wide range of operational issues relating to matters within the MCA's responsibility that the MCA OSC might want to look at. Tempting though this may be, it could make more sense to leave consideration of such local matters to local OSCs. It may be that on some projects the MCA OSC and the OSCs of individual councils can work together, formally or informally.

There will be no way to easily decide what happens best at what level. Frequent dialogue between the CA OSC and OSCs in constituent authorities will probably be the best way to proceed. Given that most CA OSC members will be members of constituent authorities, this dialogue can be expected to happen as a matter of course, but officers should still keep up informal communication on a regular basis – in particular the sharing of work programmes.

This informal dialogue will prevent risks of overlap and duplication, and highlight opportunities for joint working.

We would not necessarily recommend the development of protocols or memoranda of understanding, or the convening of regular workshops or joint meetings, to share information and approaches. Regular informal dialogue should be enough.

Working with the public

The public can be key partners in MCA scrutiny. This is particularly the case where scrutiny's role is especially outward facing, seeking to understand the impact of key strategic decisions on local communities. An MCA OSC may however find it difficult to engage with the public across a wide geographic area in a way that is proportionate, and that sits within a tight resource envelope. Public engagement will need to be targeted to scrutiny's role and to the specific inquiries or issues that scrutiny is investigating, and MCAs should expect to provide support from other MCA staff to enable scrutiny to meet these objectives. This should form part of an executive-scrutiny protocol. We discuss the practicalities of public engagement in the section below on "ways of working".

This cuts to wider issues around the public "visibility" of overview and scrutiny at combined authority level. Scrutiny is carried out on behalf of the public and therefore requires transparency. MCAs should expect that some scrutiny work – set-piece questioning of the Mayor, for example – will be high profile. Scrutiny should be looking at matters of high importance, which may be politically contentious. This may particularly be the case where scrutiny engages with more operational matters, like transport. Communications support may need to be provided to ensure that scrutiny engages with these issues effectively. Again, this should form part of an executive-scrutiny protocol.

Case study: public questions in committee

Committees, in a formal sense, are “meetings in public”, rather than public meetings. There is not an automatic right for members of the public in attendance to ask questions or to contribute – although using different ways of working (for example, an “inquiry day”-style format which may explicitly seek to draw in public evidence) may provide for this more effectively.

In general, members of the public can find that the opportunity to ask public questions ends up being a frustrating experience.

If provision exists in standing orders or committee rules of procedure to do so, the member of the public may only have two or three minutes to ask a question. They may or may not receive an answer at the meeting itself; this will depend on whether someone is present to provide an answer. Questions often formally need to be “put” to the Chair; but the chair, as a scrutineer, may not be in a position to answer.

Usually there will be an expectation that, in order for an answer to be prepared, a question is put on public deposit beforehand, which also hinders accessibility. The member of the public may or may not have the opportunity to ask a supplementary question.

All in all, there are more effective and satisfactory ways to provide for direct public questions than through scrutiny. These might include:

- Provision for a member of the public with a matter of concern to use scrutiny as a mechanism for bringing that matter to the attention of the Mayor or CA more generally. Scrutiny could “champion” such issues; the Chair could ensure that substantive answers are received and, better yet, that the issue is resolved to the satisfaction of the person involved;
- Public involvement through inquiry days or other mechanisms better designed to ensure that local voices are heard.

Getting, and using, information to support prioritising work

The law

Members of the CA OSC have enhanced rights to access information under the control of the CA or the Mayor. Relevant information is that which relates to any business transacted at a decision-making meeting of the CA, or any matter in relation to which a decision has been made.

Information must be relevant to a matter under scrutiny by the member in question.

Where such a request is refused, a reason must be given.

Article 10, Combined Authorities (Overview and Scrutiny, Access to Information and Audit Committees) Order 2017

When considering what information scrutiny needs in order to carry out its work, scrutiny members and the executive should consider scrutiny's role and the legal rights that committees and their individual members have, as well as their need to receive timely and accurate information to carry out their duties effectively.

Scrutiny members should have access to a regularly available source of key information about the management of the authority – particularly on performance, management and risk. Where this information exists, and scrutiny members are given support to understand it, the potential for what officers might consider unfocused and unproductive requests is reduced as members will be able to frame their requests from a more informed position.

Overview and scrutiny: statutory guidance for councils and combined authorities

Scrutiny needs information to work properly. Information needs to be timely and targeted to scrutiny's role.

Scrutiny is not a place for officers to share general updates on their activities, or for councillors to keep a watching brief on the activities of the Mayor. Such an approach risks that scrutiny will take a scattergun approach – alighting upon issues in an unco-ordinated way, and in a manner which is likely to both duplicate discussions elsewhere, and also focus unduly on operational matters (where they fall within an MCA's purview).

The consideration of detailed performance and finance data (and other data-heavy reports and presentations) at a formal committee is also a practice that tends to be ineffective. It is often best that such “regularly available sources of information”, as described in the statutory guidance, is shared with members between meetings, with member briefings convened if there is felt to be a specific, justified need for face-to-face conversations. Having access to this information means that members can then make more informed choices about what issues they actually escalate to committee for discussion. This reflects the need for councillors to drive the work process, rather than having reports and information brought to them merely for information and comment.

This ensures that information can be properly used to inform the work programming process.

Prioritising work: effective work programming

The law

The law does not provide for work programmes, but it does state that any member of the OSC, of the combined authority or of any constituent council may refer an issue to the CA OSC. Referral means placing the item on the scrutiny agenda for discussion.

A member making a referral may make representations to help the committee to decide whether to use its powers to scrutinise that issue. If the committee chooses not to, it should give reasons.

The natural interpretation of this article of the Order is that, where the CA OSC has a work programme which is placed on the agenda for consideration and update at every meeting, it will be sufficient for a referral to be tabled as part of that item, with the committee deciding if it should be placed on the work programme for more detailed substantive discussion at a later date. CAs may want to put in place arrangements to allow for urgency – for example where urgency requires an immediate scrutiny response.

Article 6, Combined Authorities (Overview and Scrutiny, Access to Information and Audit Committees) Order 2017

Approaches to shortlisting topics should reflect scrutiny's overall role in the authority. This will require the development of bespoke, local solutions, however when considering whether an item should be included in the work programme, the kind of questions a scrutiny committee should consider might include:

- Do we understand the benefits scrutiny would bring to this issue?
- How could we best carry out work on this subject?
- What would be the best outcome of this work?
- How would this work engage with the activity of the executive and other decision-makers, including partners?

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Where the MCA OSC takes a rigorous approach to prioritising its work, and only placing items on the work programme where they will clearly add value, and where they relate to scrutiny's role, the work programme will reflect that exercise. It will demonstrate scrutiny's focus on what's important. Work programming should be a challenging exercise, as members seek evidence to justify plans to consider certain items. Items should not be placed on scrutiny's agenda unless they relate clearly to scrutiny's overall role, and there is a clear sense of what value scrutiny will add through its work.

The "information digest"

Scrutiny should use information from a range of sources to back its decisions on these matters; this means that meetings themselves can focus on forensic questioning activity rather than exploratory discussions in which members are simply trying to learn more about a subject. The statutory guidance on scrutiny suggests the use of an "information digest", drawing together information from a regularly-updated range of sources, which together can give members a good sense of how the MCA is delivering its priorities. This can also help members to manage scrutiny of more complex, and more operational matters, such as transport. Here, prioritisation is particularly important, otherwise there is the risk that scrutiny gets drawn down to the most parochial issues – the placement of individual bus stops, for example – where this is little value to be had.

Work programming helps officers supporting the OSC to understand where their input might be required. It helps them, and members, to plan for scrutiny's work, and makes it more likely that work will have an impact. The work programme should be supported by other MCA officers too; the MCA officer corps, the Mayor and Board all have an interest in ensuring that members have the information to hand to select matters for inquiry where real value can be added.

Urgent issues are always likely to arise over the course of the year. At the time of writing, the ongoing pandemic places significant and short-term demands on prioritisation, making this activity particularly difficult. Work programmes are living documents and a confident and effective MCA OSC will be able to make informed judgments about whether something is of sufficient importance to go onto the programme at short notice. That said, it is likely that an OSC will want to have a broad long-term framework for the committee in mind to ensure that it is demonstrably transacting its role.

More on the principles underpinning work programming can be found in "Planning work, delivering impact" (CfGS, 2020).

Worked example: linking work programming development to scrutiny's role

It may be that an MCA OSC concludes that its role should be to oversee the approach the CA and its partners take to incorporating the views and concerns of the public into its plans and policies. This OSC might decide that it would develop its work programme to fulfil this role in the following way:

- Arrange regular informal meetings between the Chair and senior CA officers to talk about the ways they are “designing in” input from the public when they are developing major decisions, and then sharing the outcomes of these meetings with the public;
- Use discussions with local overview and scrutiny committees to understand where public concerns lie on issues connected to the CA’s strategic responsibilities, and decide whether these should be tackled at local level or at CA level;
- Use performance, finance and risk reports produced by the CA or its audit committee (which are communicated to members on a regular basis, between meetings, as they are produced) to highlight and escalate issues where public engagement and buy-in are seen as particular problems – this is the core of the “information digest” described above;
- Use insight from the local press, complaints from the public and local community and advocacy groups to understand what issues to focus on;
- Using a range of techniques more useful than traditional “consultations” to have a conversation with the public about local services planned by the CA, or with CA involvement;
- Use all of the above to inform two things in how the Mayor and CA are held to account:
 - Firstly, planning public meetings of the CA OSC to maximise the potential for public input;
 - Secondly, using public insight to inform questions asked of the Mayor and CA in public.

This is just one example of one way of looking at a given issue. It highlights how the approach taken to scrutiny will be highly bespoke – it will hinge on scrutiny’s overall role and the ways of working with which members, and the MCA itself, are most comfortable.

Ways of working

Scrutiny has limited resources. While scrutiny committees have great scope and freedom in how they choose to transact their work these resource constraints will often be a direct consideration.

A single committee model with a tight focus – likely to be the most effective model for MCA scrutiny as we have suggested – is one that suggests a range of ways of practically carrying out scrutiny work, as follows:

- Receiving updates and other general reports between meetings in the form of an “information digest” as described above;
- Using that digest / range of key sources of information to select a limited number of items for further, public scrutiny;
- Convening committee meetings which have only one or two substantive items on an agenda – which may involve:
 - “Set-piece” questioning of the Mayor or another senior MCA politician;

- Taking evidence from a panel of experts on the subject in question;
 - Roundtable-style discussion focused on identifying practical solutions to a defined problem.
- Convening longer committee meetings which take an “inquiry day” -style format – with the intention of producing defined recommendations at the end based on verbal evidence from a variety of individuals working through a carefully structured inquiry-style agenda;
 - Short, sharp task and finish-style working – perhaps only involving a handful of members engaging in some limited review of an issue away from a committee, reporting back quickly. In some cases it may be appropriate for a single member to be commissioned as a “rapporteur” to carry out such investigations.

In those MCAs with operational transport responsibilities, separate transport committees (or separate structures) may exist to provide oversight – as we set out in “Transport governance in combined authorities” (2020). Transport scrutiny may look different to scrutiny of other strategic issues because of this – officers and members will need to take care to ensure that the principles discussed in this paper are used to inform all activities even if scrutiny of transport needs to look and feel slightly different. MCAs may consider that drawing oversight of all matters – including transport – together in one committee may produce problems because of this distinctive character.

We have already noted that some ways of working are generally ineffective. Long officer presentations, and committee agendas that cram in large numbers of substantive items, are two examples – everyone will want to avoid the prospect of scrutiny becoming a paper-reviewing machine.

Longer-term and more resource-intensive task and finish-style reviews – of a type local councillors may be more familiar – are also likely to be less appropriate and effective in an MCA context. This is primarily for resource reasons, because such work can often end up looking and feeling quite open-ended, because the policy context can often be too fast-moving (long term task and finish working being not especially agile) and on account of councillors’ likely availability. For major and wide-ranging topics however exceptions might be made, and we suggest one example of this below in the form of scrutiny of post-pandemic economic recovery plans.

Case study: set-piece Mayoral scrutiny

An MCA OSC can expect to carry out frequent set-piece scrutiny of the Mayor. We suggest that time be set aside for this activity at least twice a year.

This will involve the Mayor attending a committee meeting to answer members’ questions on a variety of topics. This will provide an opportunity for members to further explore issues of critical importance relating to their role.

For this form of scrutiny preparation is critically important. The experience of MCAs has generally been that making it “count” is a challenge – the breadth of issues on which the Mayor is questioned often means that full answers cannot be given, and many questions end up being exploratory, rather than forensic, in nature.

Below we set out a process for this form of scrutiny derived from the experiences of MCAs. It is likely that a similar approach could be adopted to set piece scrutiny of other high profile individuals.

Preparation

- Meeting dates would be set a year in advance;
- Brief planning meeting between the Chair and scrutiny officer to look at the work programme and

to determine on what matters evidence from the Mayor might be useful. This will include a review of current, high profile issues to assess the need for the Mayor to answer questions on them;

- Chair and scrutiny officer to circulate a brief plan for the session to other members which sets out themes and focus for the meeting;
- On the wider committee's assent, basic information about the areas of the committee's focus are shared with the Mayor. The Chair and committee might have exploratory questions to help them to focus and refine their approach, and these should be answered before the committee meeting itself;
- Papers for the meeting are issued which contains any statement or other information which the Mayor wishes to share;
- The committee convene for a pre-meeting immediately before the committee meeting to consider what information they have to hand, to agree on the detail of the questioning process and to divide up themes and questions between them.

The meeting itself

- The Mayor is not invited to give a presentation at the start – the session heads straight into questions;
- The Chair is able to manage questioning as there is an agreed approach allowing the committee to operate as a team – questioning proceeds in a planned and systematic way through agreed topics;
- The fact that the Mayor knows which topics are being looked at (if not the detail of the questions) means that he/she will be able to answer questions then and there.

After the meeting

- The Chair and committee hold a short wash-up session, by phone or online, following the meeting;
- The wash-up session identifies any changes that need to be made the work programme as a result of the session;
- Actions and requests for further information are followed up promptly.

Pre- and post-decision scrutiny – “shadowing” the decision-making process

The law

The CA OSC will have the power to call in decisions of the Mayor and Combined Authority which have been made but not implemented. This applies to all decisions, not just “key decisions”.

Section 1(2)(a), Schedule 5A, Local Democracy, Economic Development and Construction Act 2009, as inserted by the Cities and Local Government Devolution Act 2016

A stop can be placed on the implementation of the decision once it is under scrutiny.

Section 4(1), Schedule 5A, Local Democracy, Economic Development and Construction Act 2009, as inserted by the Cities and Local Government Devolution Act 2016

The legislation does not specify the circumstances in which call-in can be triggered.

Key decisions must be publicised. This includes publicity 28 days prior to when they are expected to be made, although urgency provisions do exist which allow the timescale to be shortened – usually, with the agreement of the chair of the CA OSC. This will help the CA OSC to understand when particularly important decisions may be coming to be made, and to plan to influence them beforehand.

There is a period of (usually) five clear days after the decision is made for it to be called in. A certain number of members of the committee, or the CA, will be required to sign their names to a call-in for it to be valid.

Once the decision has been called in, a meeting will need to be convened in order to consider the issue and make recommendations.

If a call-in request is valid, the CA OSC may direct that the decision not be implemented for a period of up to fourteen days, to allow a scrutiny meeting to be convened. The power to direct sits with the CA OSC, but they can choose to delegate this function to the Chair as part of the local call-in rules, to avoid the need to convene a second meeting to deal with this issue at short notice.

Given the fourteen-day timescale, the CA OSC would need to quickly notify CA officers of the information required to support the meeting and the officers needed to attend; the Chair, and officers, would need to plan the meeting with those members who had made the call-in to ensure that time at the meeting could be used to best effect.

The CA OSC has two options, on considering a call-in. The first is not to make any recommendations. Under these circumstances, on expiry of the fourteen day (or shorter) the decision can be implemented. The second is to make recommendations. If this happens, whatever the recommendations might be, the CA or Mayor must hold a meeting to reconsider the decision.

Notwithstanding the CA OSC's recommendations, the Mayor or CA can still at this point decide to go ahead with implementing the decision, but it will have to give reasons if this goes against the scrutiny recommendation.

Call-in provisions must be published; the CA itself must sign them off before they take effect.

Section 1(4), (5) and (6), Schedule 5A, Local Democracy, Economic Development and Construction Act 2009

Articles 7(4), 11-13, Combined Authorities (Overview and Scrutiny, Access to Information and Audit Committees) Order 2017

The practice of shadowing Mayoral and CA decision-making deserves further comment. This appears to be a focused and directed way for effective scrutiny to happen – directly targeted at decision-making itself. It aligns closely with specific powers of call-in given to the MCA OSC (and on which we comment below). It is an approach which can therefore seem attractive. This could take the form of what some councils call “pre-decision” scrutiny – the practice of reviewing decisions which are due to be made by decision-makers in a few weeks. It could also take the form of immediate post-decision scrutiny, or “call-in”.

We would recommend a degree of healthy scepticism about the value of such scrutiny – although as we note below, if information about forthcoming decisions is not shared in a timely manner with scrutiny members it is an approach which an OSC can be forced into adopting.

With this caveat, this form of scrutiny is sometimes of poor value, delivering little real impact – although there can be exceptions. Scrutinising the full spread of executive decisions shortly before

or after they come to be made minimises the opportunity for those decisions to be meaningfully influenced, and members are unlikely to have the information at their disposal to make informed and high-quality recommendations on those points anyway. It is also likely to work against the idea of scrutiny having a sharp, focused role.

Call-in is a particularly blunt instrument. It can be useful in extremis – when all other methods to influence a decision have failed and members of the CA OSC have such concerns that they consider the decision needs to be delayed. This can bring an issue out into the open and force reconsideration. But reconsideration is all that needs to happen; the relevant decision-maker does not need to change their mind.

Pre-decision and post-decision scrutiny can be more effective under two sets of circumstances:

- Where a Forward Plan is used to identify a small number of key decisions for scrutiny to look at, focusing members' efforts and allowing more work to be carried out to prepare for the exercise – particularly when those key decisions are one that relate closely to scrutiny's agreed role. The meaning of the phrase "key decision" is covered below;
- When the scrutiny happens a decent time before the decision comes to be made – not a matter of a couple of weeks. Effective CA forward planning should allow for scrutiny to be forewarned months in advance of particularly critical decisions; such forward planning also helps with fitting this form of scrutiny into the committee cycle. Again, the way that such matters are identified will need to relate closely to scrutiny's role.

Identifying key decisions: the Forward Plan and thresholds

MCAs have very different approaches to the key decision thresholds for the purpose of the Forward Plan (otherwise known as the "schedule of key decision").

This threshold is important, because it determines where a decision will be subject to additional requirements on transparency, and subject to call-in.

An MCA OSC should be able to consider the current key decision (KD) threshold, and whether it meets the expectation of members as providing for effective, proportionate scrutiny. A key decision threshold set too high risks harming public, and members' confidence in the transparency and effectiveness of the decision-making regime. It is likely that the threshold will be different for different MCAs – reflecting the different nature of deals, and differences in local political culture and expectations.

One solution is for the scrutiny officer and Chair to have early conversations with key directors about the developing programme of MCA work, of which key decisions are likely to form part. This sharing of information earlier in the process will make it easier for scrutiny to focus its time and resources. There are likely to be areas where the MCA OSC will want to exert influence which may include matters subject to future key decisions; scrutiny will want to have input into those matters well before the policy relating to these matters is formally decided.

This will provide justification for the OSC to exert particularly anxious scrutiny when matters come on to the Forward Plan of which they might not have been aware, or whose contents appear different to those shared earlier in the process. Directors, the CA Board and the Mayor will need to be aware that a loose approach to KD thresholds, and a loose approach to the timing at which KDs and prospective KDs are shared with scrutiny, makes urgent, "shadowing"-style pre-decision and post-decision (call-in) scrutiny more likely, and more necessary.

The law

A statutory scrutiny officer – an officer of the CA, not one of the constituent councils – must be appointed.

The scrutiny officer may be someone seconded to the CA from another council.

Article 9, Combined Authorities (Overview and Scrutiny, Access to Information and Audit Committees) Order 2017

The resource an authority allocates to the scrutiny function plays a pivotal role in determining how successful that function is and therefore the value it can add to the work of the authority.

Ultimately it is up to each authority to decide on the resource it provides, but every authority should recognise that creating and sustaining an effective scrutiny function requires them to allocate resources to it.

Authorities should also recognise that support for scrutiny committees, task groups and other activities is not solely about budgets and provision of officer time, although these are clearly extremely important elements. Effective support is also about the ways in which the wider authority engages with those who carry out the scrutiny function (both members and officers).

Overview and scrutiny: statutory guidance for councils and combined authorities

Most MCAs now employ a dedicated scrutiny officer to provide policy and administrative support to their OSC. This individual will often sit as part of a small, lean officer corps for the MCA generally. Resource commitments for scrutiny which will be felt keenly in a local authority will be even more acute in an MCA.

In developing their work programme and considering their role, MCA OSC members will need to recognise these constraints. They demand a focused and self-critical approach which accepts that there will be a number of interesting matters that the OSC will not be able to look at. The idea of identifying a clear focus or role is, in part, a way of dealing effectively with this limited resource, and ensuring that what resource is available is directed to scrutiny of the right issues, at the right time, in the right way.

It is therefore important for MCA statutory officers to recognise that there is a collective responsibility for making scrutiny work. Governance officers will require support from subject specialists. A scrutiny function which is more focused – which has a defined role, and which sticks to carrying out work of demonstrable value – will justify support from others in the organisation. It should be recognised in doing so that scrutiny must remain independently led by non-executive members.

Members may also wish to think about the support that might be provided by the scrutiny functions of constituent (and non-constituent) authorities. This may depend on the substantive links built between the CA OSC and those scrutiny functions, which we cover in more detail above.

Committee structure and composition

The structure of an MCA's scrutiny arrangements will depend on its role and ways of working, which is why this section is towards the end of the guidance. Structure should be the final rather than the first consideration when scrutiny is being evaluated.

Most detail on structure and composition of an MCA OSC can be found in the Act and the bespoke Order for each MCA. The Act and Order provide a framework for further discussion on these matters.

What should the committee structure look like?

The law

A CA must have at least one overview and scrutiny committee, but it may have more, which may establish sub-committees.

Section 1(1), Section 2(1), Schedule 5A, Local Democracy, Economic Development and Construction Act 2009

Many councils have more than one overview and scrutiny committee, to allow members the opportunity to do a significant amount of their work in public.

Most MCAs have a single overview and scrutiny. This reflects the resource envelope and the difficulty, in many instances, in convening quorate meetings (see below). Covering large geographical areas, the logistical challenges in convening multiple frequent meetings will be significant. With the combined authority having a strategic function, moreover, a lighter approach can be taken.

We anticipate that most combined authorities will continue to maintain a single overview and scrutiny committee to carry out broad strategic oversight – possibly supplemented by a separate transport committee where relevant.

Who chairs?

The law

The Chair can be an “independent” person, or if not, they can be an “appropriate” person.

An “independent” person is not a sitting councillor of one of the constituent councils, or a close friend or family member of such a person. Such a person may, however, be a member of a registered political party. If you want to have an independent person as chair, you will need to carry out a public recruitment process. We provide advice on this process below.

Alternatively, if the chair is not independent they must be “appropriate”. This means that they must be a sitting councillor for a constituent authority. They must also be of a different party to the majority of councillors in the area. In many areas this is likely to mean that the chair will be of a different political party to the CA Mayor and most of the area's leaders.

Section 3, Schedule 5A, Local Democracy, Economic Development and Construction Act 2009

Articles 5(2) – 5(4), 5(6), Combined Authorities (Overview and Scrutiny, Access to Information and Audit Committees) Order 2017

Who sits on the committee(s)?

The law

The combined authority itself is responsible for appointing members onto the CA OSC. For the purposes of the Order, members fall into three categories:

- Members of the committee appointed from a constituent authority. These members have a vote and are taken into account for the purpose of political proportionality. Such members would be nominated by their home authority, subject to proportionality requirements. There is no requirement that each council has to nominate one member;
- Members of the committee appointed from a non-constituent authority. These members do not have a vote. Such members would be nominated by their home authority;
- Members of the committee who are co-opted, because of their skills and experience, or for some other reason. These members do not have a vote, and are not taken into account for the purpose of political proportionality. A separate appointment process will be required for these people.

The committee must – when taken as a whole – reflect the political proportionality in effect across the CA authority area. This means that even though non-constituent members do not have a vote, they are taken into account for this purpose.

Following appointment of any member, the combined authority must (within 28 days) formally publicise the appointment, including the period for which the member has been appointed. Following local authority practice the period of appointment is likely to be one year, although it may be different for co-optees (see below).

Articles 3 and 4(1), Combined Authorities (Overview and Scrutiny, Access to Information and Audit Committees) Order 2017

When selecting individual members to serve on scrutiny committees, an authority should consider a member's experience, expertise, interests, ability to act impartially, ability to work as part of a group, and capacity to serve.

Authorities should not take into account a member's perceived level of support for or opposition to a particular political party (notwithstanding the wider legal requirement for proportionality).

The Chair plays a leadership role on a scrutiny committee as they are largely responsible for establishing its profile, influence and ways of working.

The attributes authorities should and should not take into account when selecting individual committee members (see paragraphs 27 and 28) also apply to the selection of the Chair, but the Chair should also possess the ability to lead and build a sense of teamwork and consensus among committee members.

Overview and scrutiny: statutory guidance for councils and combined authorities

There is a requirement for overall political balance within the committee, reflective of the wider geographical area. MCAs will already have in place mechanisms to determine appropriate balance and for the nomination of councillors by individual constituent authorities.

Co-option

Co-opted members can be local people with a particular expertise, or who are connected with another local organisation or body. They provide a way of deepening the effectiveness of scrutiny in carrying out its chosen role.

Co-optees can bring to bear a different perspective to that of elected members and providing particular subject expertise as well (depending on who is appointed).

Engaging and retaining co-optees can, however, be a challenge – particularly at a sub-regional level. MCA OSCs may conclude that co-option should only be pursued when there is an obvious skill or capacity gap on the committee that cannot be met any other way – for example, by engaging someone to act as an independent technical advisor or simply taking evidence from a local expert.

When appointed, co-optees ought to be treated as full members of the committee with just as much right to participate in debate and discussion as any other member – with the critical difference that they do not hold voting rights.

When a local authority wishes to appoint co-optees to scrutiny committees, it needs to do so in accordance with a co-option “scheme” which the authority has agreed. There is no such requirement for a co-option scheme at the combined authority, but it may still be useful to set out some basic principles for the identification and appointment of co-opted members. These might include:

- A public, well-advertised recruitment process with clear selection criteria;
- A requirement for those putting themselves forward as candidates to place on public record their expectations for the role and the contribution they would make on the committee;
- A member-led selection process culminating in an interview (which might take place in public);
- A limited term of office (say, two years), which could be extended by mutual agreement of the co-optee and the committee.

Co-opted members will be performing an important public role on the committee; they do not have the benefit of having been directly elected by local people and hence care is required to ensure that the way that they are selected is as open and accountable as possible. It goes without saying that co-optees would need to adhere to the same standards and codes of conduct as elected members.

Quoracy: when and where should committees meet?

Quoracy has been a dominant challenge for MCA OSCs since their establishment. The challenge of drawing together members from a wide geographical area for regular meetings has proven difficult with the added requirement that two thirds of members must be present for meetings to be quorate. The advent during the pandemic of remote meetings has made matters more straightforward – however, even if powers to convene meetings remotely are extended, quoracy is a consideration which will need to be addressed in the design of the committee work programme.

- Making agendas relevant and compelling is, of course, one way to encourage attendance. With other calls on their time members need to prioritise their commitments and will rightly focus on matters where they can make a difference. Scrutiny work which is vital and immediate will help to engage a wider range of councillors.

- Schedule meetings at times, and places, which maximise the likelihood of attendance. Meetings do not need to be held in CA or local authority buildings (Schedule 12, s4(1) LGA 1972). Holding meetings near transport hubs or other places where access for members is straightforward will help; an MCA OSC should not feel under an obligation to move from Town Hall to Town Hall for its meetings;
- Carrying out work through a range of informal and formal ways of working. We noted above how short and sharp task and finish-style working can supplement and complement business in committee. It might be decided to carry out less work in committee – cutting the frequency of meetings – and more in this way, which does not have the same quoracy requirements and which can be more flexible. However, there are transparency implications to this approach;
- Active management of substitutes can be another way to ensure quoracy, although this can be resource intensive for support staff.

Meetings can still “continue” if there are not sufficient members present to constitute a forum. But this will not be a formal meeting of the OSC and such a gathering of members cannot carry out committee business. It may be determined that meetings should go ahead where, for example, an external witness or witnesses are present and cancellation would cause reputational damage and/or a waste of resources. But it will need to be clearly recorded that this was an informal meeting of members being held in public rather than a formal meeting. MCA OSCs’ rules of procedure will need to provide for this, and MCAs will need to think about what it means for officer resourcing of these meetings, given that the fact of inquoracy may only be determined at the very last minute.

These difficulties emphasise why trying to take mitigating action to avoid inquoracy in the first place is always preferable. Given these ongoing challenges, advice on this issue should always be taken from the MCA Monitoring Officer in the runup to meetings, and the MCA should have standing arrangements in place for managing this risk.

Building a collaborative mindset: avoiding overt political tension and the need for taking formal votes

As far as possible the assumption should be made that an MCA OSC will take action through consensus. Scrutiny is a cross-party function and although it will look at political matters, it should not do so in a way that cuts down party political lines.

Avoiding taking formal, recorded votes is a matter for the way that the Chair and committee members work together. Building an independent and collaborative mindset is one way to avoid this need. Frequent, informal communication (likely remote) between committee members is one way to achieve this. Such communication recognises that, with members coming from different local authorities, personal relationships may not be as strong as they might be within a council. This relationship-building work is something that Chairs should actively lead, supported by the scrutiny officer.



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